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Social Justice: Problems and Perspectives

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Social justice in the European Union today is seriously threatened. The spreading of the idea of the free market and the extreme liberalization of economy as a consequence of economic globalization and unlimited mobility of the capital enables multinational companies to raise their gains following via different means. They can relocate their production in countries and regions with low costs of labor force. They can sell their products in the countries with high purchasing power. And finally, they can pay their taxes in the countries with the lowest taxes. What does it mean for the social justice? The unlimited mobility of the capital enables the big corporation to leave the country with high taxes and the developed social system and to go to the countries which offer the best conditions for the capital regardless the social benefits of their citizens. It seems that the governments have no choice of economic policy. Since they want to attract foreign investments, they must lower the taxes for the rich people and corporations and so they must cut the social system. This is the process of dying of the welfare state.[1] Solidarity and social justice have become dangerous for the governments in current global economy and the redistributive policy is the *spectre* for the economic growth.

In the sixties and seventies, Europe set the example of a fair society with the developed social system and the strong welfare state. On the contrary, nowadays Europe is becoming neo-liberal. In this paper, we would like to enter this political context and to introduce some ideas on the theory of distributive justice in all its forms and modes. We can imagine social justice as the market justice, justice of deserts, justice of redistribution or justice of needs. Today the *market justice* wins thanks to globalization. However, there are alternatives. We should point out these alternatives to see the perspectives of the social justice in Europe since

[1] See Keller, J.: Soumrak sociálniho státu. SLON, Praha 2005; See also Barša, P., Císař, O.: Levice v postrevoluční době. CDK, Brno 2004, pp.95-96

the political culture in Europe will suffer without alternatives. The dictate of one ideology is not the condition that we wished for.

The individual and redistributive justice

We would like to start with a noteworthy example of the American libertarian Robert Nozick.[2] Nozick provides the example of the basketball player Wilt Chamberlein who is an excellent player and who attracts all the fans trough his skills. Does he deserve his high income supposing him to be the best? That is Nozick´s question. He answers that Chamberlein does deserve his high income. Hence, if Chamberlein plays basketball well enough to make people willing to pay more money to appreciate his skills than they would pay to see his team-mates, Nozick thinks that the money belong to him in recognition of his merits.

In Nozick´s example we can find the ordinary and often used argumentation. If we start from our intuition about the Chamberlein higher wage, we will get into conflict with the very intuitions about justice. The first one is based on the idea that everybody should get as much as he or she deserves and so the people who are more competent deserve more than the less competent ones or maybe they deserve it all regardless the others. Nozick uses this kind of intuition about justice in his example. Let us call this dimension of justice *the justice of performance* or *individual justice*. By this concept the evaluation of individuals should be relative to their performance. In this case, we should consider mainly the quality of the performance, since the more competent should be justly evaluated *according to deserve* in relation to his or her performance. However, the question is, who will assess the quality (or deservingness) of the performance?

The answer of modern neo-liberals, including Nozick or Hayek, is simple – the free market mechanism. These thinkers also strongly reject any different mechanisms of evaluating the performances. However, as we know, in the history of thinking we can face the different mechanisms of the appointing the quality of the performance, for example, the significance of the performance for the community or the a priori supremacy of the performance of the privileged classes or the moral power of the performance (i.e. the moral deserve). Finally, Marx was the first thinker who stopped inquiring on the mechanism of assessing the quality of the performance and who turned his attention to its quantity and so to the produced work. As well as in his idea of communism, he took

[2] Nozick, R., 1974, *Anarchy, State and Utopia. Basic Books*, Publishers Inc., pp.160-163

into the consideration the next distributive principle negating the mechanism of assessing the quality of the performance – the human needs. But let us return to individual justice and remember that by this concept the individual is evaluated and rewarded on the basis of his or her own qualities (the way of assessing them is not decisive now) regardless the others or the society as a whole. The just or unjust is only the relation of the individual to his or her property and the relation of individual with his or her property to other individuals with their property is irrelevant in this case. Remember that we can meet three basic claims concerning individual justice in current political theory:

i) The just is anything what was achieved by individual in concordance with the actual law and with the market mechanism (Nozick, Hayek etc.);
ii) The just is to be awarded in relation to the produced labour or to get the flat contribution in relation to the needs (Marx);
iii) Justice should include moral deserves (in some aspects of his ideas, MacIntyre).

On the contrary, the second intuition about justice is based on the idea that we should consider also the less competent individuals (the criterion of the quality of the performance is not decisive now) and so nobody should be assessing in a such way as to lose human dignity or even the very possibility to survive. This intuition is based on the attitude of justice as equal respect and it is awaken in the peoples minds especially in the extreme situations, for example in mentions of the suffering of the starving and poor people. To put it simple: if someone has *justly* achieved the billions dollars and someone else is *justly* starving, it is not *just* at all. In this case procedural justice or individual justice is not enough and on the contrary we need the output-oriented principle of social justice. The point of this approach of justice is to equalize the social conditions for all individuals or at least to assure the dignified minimum wages for the survival of every human being. The relation of the individual to his or her property is related to his or her relation to other individuals with their property or his relation to the society of which he or she is a member. So, if in the case of individual justice we can speak only about the just relation between the individual and the property, in the latter case we speak about the just relation between the individuals. This attitude to justice used to be called *social* or *distributive justice*, but if we understand social justice as a unity of individual justice and a second form of justice, the term social justice would be confusing. So let us call this dimension of

social justice *redistributive justice* since it *de facto* necessarily requires the redistributive policy.[3]

Now, coming back to the Nozick´s example: the advantage of the example with the unordinary basketball player is hidden in three aspects:

i) It points out the cooperation in the social life (as it is in basketball);

ii) it abbreviates the assessing of the quality of the performance, because in the sports performance it is a priori assessing what to find valuable[4];

iii) it reduces the issue to the case of the natural endowments of the individuals which was called by John Rawls *the natural lottery*.

If we consider only the dimension of individual justice which Nozick prefers, we will ignore the issue of the natural lottery in favour of the naturally more competent, more endowed and more *prepared for the market*. Rawls fundamentally objects to this attitude and says that natural endowments are not relevant for the society to evaluate and award the endowed individual more than the others. Namely, the human being does not choose his/her natural endowments and so he or she cannot deserve it. They are given to him/her, he/she was born with them regardless deservingness. To say it with Rawls words, this is the game of natural lottery and nobody can choose the card he/she will get in the game. It is false to moral theory to decide about the justice after the cards (i.e. the endowments) are given. It would lead to extreme malignance and subjectivity and that is impervious in the case of justice.[5] So, Rawls eliminates the natural endowments of people from the issue of justice. If we abstract of those competencies and we use his famous veil of ignorance, we can rightly inquire the issue of justice. Then, if we ask Chamberlein behind the veil of ignorance what he thinks about the distribution of income for the basketball match, he would not probably agree with Nozick´s idea to give much more or everything to the best player and much less or nothing to the rest of the team. Namely, behind the veil of ignorance he would not know whether he was the best in the team.

[3] A similar distinction of two basic intuitions about justice in modern society is presented in MacIntyre, A.: Ztráta cnosti. OIKOYMENH, Praha 2004.

[4] Compare the term *practice* as MacIntyre uses it. (MacIntyre, A.: Ztráta cnosti. OIKOYMENH, Praha 2004)

[5] Rawls, J., 1994, *Teorie spravedlnosti*. Praha : Victoria Publishing, p.71

The difference principle

Rawls´ solution to the problem of distributive justice is the example of redistributive justice as we have defined it. Rawls offered his two principle of justice including the difference principle that accepts social inequalities only if they bring the most possible benefits for the less advantaged (i.e. the poorest) people. He based the argumentation on the model of original position where the social contract is adopted under fair conditions including the veil of ignorance. He presupposed that the subjects of the social contract would accept the inequalities if the benefits for the less advantaged were the most likely. However, as we can object, his refusal of the strict equality is based on the utilitarian model of the mutual benefits and so his point becomes the growing utility and not the just distribution. So, Rawls' objection to utilitarianism - it ignores the fundamental question of justice – the distribution – can be focused on his own theory in the case of the difference principle. His principle of social justice is based on the calculation of mutual benefits and not on the distributive-justice-as-it-is. The objections of Alasdair MacIntyre and Michael Sandel are similar. They think that Rawls´ liberal theory of justice is only the seeking for the rationality of the system and so it is only the metamorphism of Sidgwick's utilitarian attitude to social justice as the aggregative benefit of the group.[6]

Rawls continues his argumentation against strict equality using the idea of jealousy. He says that behind the veil of ignorance jealousy is something unknown and so the difference principle can admit the inequalities since the people do not envy somebody else's possessions. However, as we can object, we cannot understand strict equality as a derivative of pure envy, on the contrary, the difference principle as a derivative of the pure absence of jealousy. It is hard to assume that Rawls´ subjects of the social contract would vote for his difference principle, if they were not a little bit competitive, greedy and also jealous. If the subjects behind the veil of ignorance were not driven by the imperative "to have as much as possible" (*pleonaxia*) but by, for example, Erich Fromm´s imperative "to as much as possible", there will be no idea of the social contract subjects to find the alternative to the system of strict equality which is the first and automatic solution to the social justice issue, especially behind the veil of ignorance. Now, we can see the next

[6] Compare MacIntyre, A.1`993, „Transformácia liberalizmu na tradíciu." in: Gál, E., Novosad, F.: *O slobode a spravodlivosti (Liberalizmus dnes),* Bratislava :Archa, , p.191

serious problem with Rawls´ theory in general. The subjects of the social contract which were modelled by Rawls are not the neutral subjects of the pure rational abstraction, but, on the contrary, they are the liberalist mirror of the modern bourgeois people commanded by pleonaxia and cupidity. Both Rawls´ subjects and the principles of justice are the creation of the pure liberal tradition. The communitarians objected Rawls' theory in this sense as well. Sandel focused on the objection that the Rawls´ subjects are acquisitive individualists and only as acquisitive individualists they vote for the utilitarian most benefit regardless the accepted inequalities in society.[7] Michael Walzer objects, too: Rawls´ subjects are the creation of Western liberal tradition understanding the people as the burgees driven by instrumental motivations, focusing on performance. Even the equality of opportunity which is demanded by Rawls' second principle of justice is worthy only if the life of the human being is understood as a career. So, liberal equity is equity in the struggle for wealth and it is the feature of bourgeois equity. By communitarians, Rawls´ concept of distributive justice is only the bourgeois justice.[8]

Rawls' argumentation against strict equality is supported also by considering the so called *context of justice*.[9] This means in Rawls´ theory that the subject behind the veil of ignorance has the basic general information about the real world. Though the subjects behind the veil of ignorance do not know their endowments, interests, social status, wealth, gender etc, they have the basic information on humanity. In this way they find out that the economic system of strict equality is less effective and so strict equality should be overcome to create a better standard of living for everybody including the most disadvantaged. This is the next motivation for the decision of Rawls´ subjects to prefer the difference principle and not strict equality. However, this argument is very similar to the previous one. In a fair and democratic contract, the conditions are to vote for a well-ordered society on the basis of the argument of efficiency. But we cannot substitute democracy and justice. From the distributive-justice-as-it-is point of view, efficiency plays no role at all. Efficiency is the value from a different basket. Namely, justice-as-it-is does not mind if the huge cake is divided or if only the little dessert is divided. Society can be more

[7] See Sandel, M. J., 1982, *Liberalism and the Limits of Justice*. Cambridge : Cambridge University Press

[8] See Walzer, M., 2002, *Hrubý a tenký. O tolerancii. Kalligram*, Bratislava, p.29-40 and Walzer, M., 2000, *Interpretace a sociální kritika*, Praha *: FILOSOFIA*, pp.48-49

[9] Rawls, J., 1994, *Teorie spravedlnosti*. Praha : Victoria Publishing, , pp.87-89, pp. 320-321

just even if the average welfare is decreasing.[10] The claim for efficiency (i.e. the claim to have as much as possible resources for distribution) stands out of the sphere of distribution-as-it-is. Rawls adds to the issue of distributive justice the issues of efficiency, democracy, utility – the issues of a complex well-ordered society. By taking this step he passed the sphere of distribution and so the issue of justice.

We can agree with Rawls that the rational burgees behind the veil of ignorance would vote for the well-ordered society on the basis of the difference principle, but it is hard to assume that the difference principle is an adequate principle of social justice from the point of view of distribution. From this point of view, we should think *ad definitionem* that either strict equality or less social inequalities are possible. However, Rawls´ principles of justice could be welcomed as a noteworthy attempt to harmonize both values of just distribution and effective economy in the conditions of the market-oriented society. It could be the means for rejecting Hayek´s assumption that social justice logically negates the idea of economic growth.

Market as a game

A few comments on Hayek's ideas in this context: first, we would like to emphasise that economic efficiency cannot be considered as a social value by itself. If an economic system is maximally effective and produces enormous amounts of assets, but all the production falls to, let us say, only one person, then it is absurd to say that economic efficiency is a value for the society. The efficiency of the economic system becomes a social value only in a combination, for example, with the just distribution of the products of this efficiency, i.e. in combination of other values. That is the reason for tackling the issue of social justice. But Friedrich von Hayek completely rejects this project. One of his reasons is the argument or rather analogy of the market mechanism and the game. Hayek asserts that intervention to the game rules during the match is unjust. If we understand the market as a game which has given rules, we cannot intervene to these rules during the game on the purpose of removing the burden from one player and making the game more difficult to another player.[11]

[10] Compare *Blackwellova encyklopedie politického myšlení*. CDK, PROGLAS/JOTA, Brno 1995, p.494

[11] See Hayek, F., 1991, *Právo, zákonodářství a svoboda. 2) Fatamorgána sociální spravedlnosti*. Praha : Academia, pp.72-73

However, we can object to Hayek that the market is not a voluntary game which was freely chosen by its players. People enter a game when they like it or if they are prepared for it or if they have the competence for the game etc. But we were born to be a part of the market jungle and we are condemned to play this game regardless our wishes and desires. If we boycott this game, we risk starvation or minimally the loss of the material means for our human dignity. This basic lack of liberty in the ideology of liberty discredits other liberal assumptions about the liberty and freedom of the market mechanism. If people do not voluntarily choose the market game, it is correct to intervene to this game to help the less prepared players since the market is not the appropriate game for everybody. Besides, we cannot expect that the excellent ice-hockey player will be awarded a prize in the football match, we cannot expect that the people who do not have the endowments for the market game will be successful in the struggle for life on the market mechanism conditions. The market is a specific game which prefers some competencies to some other ones. Because this game is not voluntary, the interventions to the game are not only relevant but even needed.

Next Hayek's objection to the project of social justice refers to the moral deserves. He asserts that moral deserves cannot be objectively assessed in the society and so we should leave this assessment to the market mechanism. Why should we prefer the market mechanism from the moral point of view? Hayek cannot answer. However, the question for us is a different one. Is it possible to assess the moral deserves in the society? If not, one part of our concept of individual justice saying that justice should include the moral deserves would be irrelevant. We do not have enough space for deeper argumentation.. But, we would like to point out the considerations of the communitarians MacIntyre and Walzer about the significance of community and its conceptions of the good and virtues. If we do not work with the universal and hypothetical models of Kantian liberals as Rawls, we can rely on the common understanding of the communities concerning the moral deserves, morally worthy occupations, morally worthy behaviour etc.[12] We think that the community should evaluate the morally worthy occupations as the teacher, doctor, miner etc. also in the bonus material way and it is not

[12] See Walzer, M., 1983, *Spheres of Justice. A Defense of Pluralism and Equality*. New York : Basic Books, Inc., Publishers, and MacIntyre, A, 2004, *Ztráta cnosti*. Praha: OIKOYMENH

impossible to fill up another mechanisms of evaluating with this conception of just distribution based on the moral values.

At the beginning we were talking about individual and redistributive justice and then we mentioned ideas on the *market form* of individual justice (Nozick and Hayek) and on the *redistributive project* (Rawls). We briefly mentioned the *moral deserves form* of individual justice in the example of communitarism. We would like to say a few words on the last issue which outlined in our preliminary distinction of distributive justice. It is the issue of the *labour form* of individual justice and the conception of justice based on needs. The latter is ideally the solution of both individual and redistributive justice. Both mentioned dimension of distributive justice are represented by Marx and his followers.

Class, work and needs

Before we point out the labour and the needs in the case of justice, we would like to consider one more point of Marxist theory which is noteworthy and the very alternative to the attitudes of both liberals and communitarians that we were talking about. It is the class attitude to the case of justice and to the case of society in general. Marxists refuse to speak about society as a whole, about its goals and values, about the ideal of universal justice and about the overlapping concept of the well-ordered society. Liberal theories with their attempts of modelling the timeless and universal idea of justice are interpreted by Marxists as narrowly bourgeois. Namely, the goal is only bourgeois equality of opportunities which is the interest of the class of capitalists and which concerns only the destruction of the non-market class privileges. Proletarian equality which is the goal of Marxists proceeds to destroy all the classes. In this case, Marxism does not fake anything. It does not speak about classless universal interests or the hypothetical construction full of conjunctions like “if the fair social contract had existed, we would have agreed on this and these principles”. Marxism does not rely on the class of the rich after reading the books of Liberal idealists and on the behalf of the idea of eternal justice will altruistically help the class of the exploited and the poor. Marx thinks that idealistic philanthropy cannot solve anything. The class of the exploited should help by themselves and this is possible only by understanding and maintaining their interests. Marxism sees justice as

concerning class interest as well as politics in general.[13] We think we should not forget the political issues and values because the abstract models and hypothetical theories can be misleading in their ideal projects. We do not want to claim that the ideal theory is not important and we do accept the Rawlsian contractual projects or his *realistic utopias*.[14] However the relevant political theory should also include political interests and political fight.

We would like to enlarge on Marx' project of socialism which should be adorned by the slogan "to everybody according to his work". However, though Marx' project as it was described in *The Critique of the Gotha Program*[15] was not only about individual justice but also about public funds as the economic means of efficiency and also about redistribution etc., the slogan as-it-is is based on pure meritocracy.[16] The more endowed would be better evaluated and inequalities would increase in time.[17] However, Marx considered that the strict equality of the income is misleading. Such equality would only substitute the unjust relation of the individual worker to his work for the relation of all workers to the work. Society would become an abstract capitalist in this case. Therefore, Marx strongly rejects strict equality (theso called *rude communism*) including complete levelling.[18] So, there is agreement between the Liberalism, Communitarism and classical Socialism in refusing strict equality. In this case maybe Rawls´ refusal of natural lottery is more radical tha the n Marxist idea of socialism.

Anyway, the completion of Marx theory is in the idea of communism, which is ideally dominated by the slogan "from each according to his ability, to each according to his need". From the formal point of view it is the idea of individual justice, but the fulfilling of this idea would lead to a complete solution of the problem with distributive justice including the

[13] See Lenin, V.I., 1977, Kto sú „priatelia ľudu"... In: Holata, L.: *Marxisticko-leninská filozofia. Antológia z diel filozofov*. Bratislava : Pravda, pp.512-513; Engels, F., 1976, *Anti-Dühring* , Bratislava : Pravda, pp.116

[14] See Rawls, J., 1999, *The Law of Peoples. The Idea of Public Reason Revisited.* Cambridge : Harvard University Press

[15] See Marx, K, 1950, „Kritika Gothajského programu." in: Marx, K., Engels, F.: *Vybrané spisy II.* Praha : Svoboda, pp.19-20

[16] See Bahro, R., 1978, *The Alternative In Eastern Europe*. Thetford, Norfolk, NLB : Lowe&Brydone Printers Ltd, pp.177-178 and pp.208-209

[17] See Lenin, V.I., 2000, *Stát a revoluce*. Praha : Michal Zítko – Otakar II, p.108; Lukács, G., 1949, *Existencialismus či Marxismus?* Praha :Družstvo Nová osvěta, p.167

[18] See Marx, K., 1977, „Ekonomicko-filozofické rukopisy z roku 1844.: in Marx, K., Engels, F.: *Vybrané spisy v piatich zväzkoch. Zväzok 1 (1843-1849).* Pravda, Bratislava , p.61 and p.77

redistributive one. If we do not need to divide the cake, because everybody has got so much cakes as he/she wants, then the problem of distribution exists no more. However, this image is naturally rather one of the dreamland than of the real world. But the credo of communism is not so unrealistic if we interpret it in a different way. Metaphorically, what if the problem with the dividing the cake is solved not because of the abundance of the cakes is so enormous, but because everybody finds only the little dessert enough? What if the solution is hidden not in the characteristic of "the cake", but in the appropriate interpretation of "want"?

Human needs could be interpreted in various ways. Marx writes that the needs are historically relative to the contingencies of production.[19] Walzer writes that people do not have needs, but the notions of their needs and those notions are connected with history and culture.[20] As we can say, the insatiate desire for the material wealth which is immanent to the Western capitalist societies is the need only for the concrete particular culture. The different economical conditions could create complete different features of the personalities than the modern market individual has.[21]

There is a usual distinction of needs - real needs and false needs. The *real needs* have the threshold and they are not relative to other people. They are not the derivative of pleonaxia and unlimited consumption. On the contrary, the *false needs* are rather desires and they have no limits (see the works of the Frankfurt School writers - Marcuse or Fromm[22] and also the ideas of J.M. Keynes[23]). Fromm sees the capitalist system supporting the creation of false needs because the unlimited consumption is the *raison d´etre* of the market mechanism.[24]

It is not our goal goal to follow all the ideas of the social critics from the Frankfurt School though we find them very interesting. We just

[19] Narskij, I.S. a kol., 1982, *Dejiny marxistickej filozofie 19.storočia*. Bratislava : Pravda, p.307

[20] Walzer, M., 1997, „Bezpečnost a blahobyt" in Kis, J.: *Současná politická filosofie*. Praha : OIKOYMENH, p.426; pozri tiež Fromm, E., 1993, *Strach ze svobody. Naše vojsko*, Praha, p.132

[21] Compare Fromm, E., 1993, *Strach ze svobody. Naše vojsko*, Praha, p.20

[22] Fromm, E., 1994, *Umění být. Naše vojsko*, Praha; Marcuse, H, 1991, *Jednorozměrný člověk, Naše vojsko*, Praha

[23] See Bell, D., 1999, *Kulturní rozpory kapitalismu.* Praha : SLON, p.11

[24] Fromm, E., 1992, *Mít nebo být? Naše vojsko*, Praha, p.64; Fromm, E, 1997, *Anatomie lidské destruktivity. Nakladatelství Lidové noviny*, Praha, p.259; Habermas, J., 2000, *Problémy legitimity v pozdním kapitalismu.* Praha : FILOSOFIA, p.59

wanted to outline that the distributive principle based on needs is possible only if we take into account the *real needs*. Maybe Walzer is right and such conditions are unreal in their complexity and so we should consider a different theory of justice. His suggestion is about the distinction of eleven spheres of justice with their internal criteria and the point is hidden in the principle of the divided spheres where the distributive criteria and dominant good in one sphere do not intervene to another spheres.[25] We think that the ordinary liberal idea of the equality of opportunity is hidden behind this principle, but we do not have enough space to be more specific. Our very goal was to present some aspects of the modern discourse about social justice and to show that the market mechanism cannot be considered as the just mechanism from this point of view. There are appropriate alternatives to consider. The fundamental idea is that any inequality should be explained in a system of social justice. Hence we focused on strict equality and compared it to other alternatives. This is Rawls´ idea and we think we should follow it if we want to be consistent.

To conclude, the European Union faces the important challenges in the case of the character of the state. The *spectre* of minimal neo-liberal state seriously threatens the vision of social Europe and we think that the complex analysis of social justice could help prevent this neo-liberal vision. There are a lot of theoretical and practical problems in the projects of social justice, but we believe that this discourse can be very fruitful and we should not forget the social dimension of Europe any longer.

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[25] Walzer, M.: Spheres of Justice. A Defense of Pluralism and Equality. Basic Books, Inc., Publishers, New York 1983

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Résumé

La justice sociale dans l'Union Européenne est vraiment menacée aujourd'hui. La disseminatiuon de l'idée du marché libre et de la libéralisation extrême surgie de la globalisation et de la mobilité infinie du capital permet aux compagnies multinationales d'augmenter leurs profits par la redistribution de leur production dans des pays ou régions où la main d'oeuvre est moins chère.

Spanish-Romanian Relations after the Prague and the Copenhagen Summits

Patricia González-Aldea

I. Background to Current Spanish-Rumanian Relations

The two big summits of the European and Euro-Atlantic expansion to former Eastern countries, held at the end of 2002, opened new horizons for Romanian foreign policy, not free of difficulties but nevertheless full of opportunities. It provided a framework where bilateral relations with Spain can be re-inforced, and a chance for us to discover the country which in 2007 will become the European Union's seventh largest in population, and ninth in area

For decades, Spanish-Romanian relations were limited to a few commercial and cultural contacts, and have only begun to increase to a certain extent after the downfall of the Romanian dictator, Nicolae Ceausescu. But the background of these relations has been characterized by several milestones that it is convenient to underline.

Firstly, the fact that Romania, in 1967, was the first country to inaugurate the Spanish policy of liberalization with the so-called Eastern Bloc countries. Consular and commercial delegations in charge of a Head of Mission, without Ambassador rank, were created after several contacts

in Paris. It was, without a doubt, an important step for future bilateral cooperation.

Secondly, Nicolae Ceausescu´s visit to Spain in May 1979. A previously scheduled visit, in March of 1977, to meet the Spanish king D. Juan Carlos in Palma de Mallorca, had to be cancelled because of the earthquake that shook Bucharest then. He became the first Head of State of a socialist Eastern Europe country who visited us officially.

Three bilateral agreements were signed as a result of the mutual approach:

- A commercial one, signed as a Protocol in the head office of the National Institute of Industry in Madrid. It was related to the development of economic relations between both countries, avoiding double taxation in income tax and the wealth.
- Another, dealt with international transport of freights and land travellers.
- A third, focused on cultural and scientific cooperation. Ceausescu insisted on this one, emphasizing the affinities of language, culture, and civilization existing between our countries. As a matter of fact, Romania has always defended its Latin roots. In spite of being geographically situated and surrounded by Slavic countries, it has identified itself more closely to Western Europe. Especially since 1990, it has underlined its Latin origins as a way to claim its "moral right" to become a member of two important international organizations: a European one, the European Union, and a Euro-Atlantic one, NATO.

Since 1977 the reestablishment of full diplomatic relations has brought about an increase in the number of agreements between both countries, and the exchange of visits. The king and the queen of Spain went to Romania in May 1985, eight years after reestablishing diplomatic ties, but Romanians had to wait almost twenty years, until 2003, to contemplate a new visit like that.

The development of bilateral relations has not been the same in all areas, and after the Prague and Copenhagen summits, they will no doubt have new dimensions in the near future. That is why the economic and commercial relations, along with security and defense questions, and cultural ties –one of the best ways for mutual knowledge-, need to be analyzed one by one.

II. Cultural Relations

Cultural relations are regulated by the *Agreement for Educational and Cultural Cooperation* signed on January 25Th 1995, which revoked the *Agreement for Scientific and Cultural Education* adopted on the occasion of Ceausescu´s visit to Madrid in 1979. A joint committee develops biennial programs with the aim to deepen these relations. The committee meets alternately in one or the other country every second year.

It is also remarkable that Bucharest has been, together with Warsaw, one of the first head offices of the *Instituto Cervantes* in the Eastern European countries. At the beginning of the 90´s, the only Spanish library in Romania opened its doors for the teaching and study of Spanish, through the Spanish Embassy's Cultural Center in Bucharest, with 3500 books. After its enlargement, the *Instituto Cervantes*[26] of Bucharest was moved to a new facility, and in 1998 the number of volumes had reached 13,419, most of them books, 10219, and 3200 audio-visual materials.

The development of the teaching activity in the above-mentioned center reflected 1770 registrations and more than a hundred annual courses, by the end of the 90´s. Moreover, Spanish can be chosen as the first, the second or the third foreign language and is recognized at all of the educational levels. The work of the *Association of Romanian Hispanists* related with the translation of Spanish authors is also significant.

Six works of Catalonian writers were translated into Romanian and launched in the *Second Catalonian Cultural Conference* organized by the Bucharest University in May 2002. The *Instituto Cervantes* and the Romanian publishing house, Polirom, published the first *Dictionary of Spanish-Romanian Idioms*, with about 3000 expressions compiled by one Spanish and two Romanian professors.

More and more Spanish films have gained followers in Romania, with several seasons organized by the *Instituto Cervantes* or the Lyceum Cervantes. Since 1991, the Romanian State Television, through the Spanish International Channel, broadcasts the news and several hours of Spanish language programmes. But without doubt, the Latin-American soap operas have been the programmes which have achieved the greatest

[26]http:// www.bucarest.cervantes.es

popular impact, and have aroused interest or at least curiosity to learn the language.

On the other hand, Spaniards' interest for the Romanian culture and language is very low, regrettably. The number of Spanish people learning Romanian is much more modest. But we have to correct this imbalance in our relations, because Romania represents an opportunity for us on the new European markets, primarily because of its Latin language, the only one in this geographical area.

III. Relations in the Area of Defense

These relations are outlined in the *Treaty of Friendship and Cooperation between Spain and Romania*, signed in Madrid on May 4th 1992, when both countries promised to deepen their relations in the area of defense. The definitive thrust would come when a *Cooperation Protocol* about Defense was signed in March 1994. It contemplated five priority areas: Official contacts in the defense field, Cooperation between the Armed Forces, Scientific and technical cooperation, Technical and industrial cooperation, and cultural contacts.

The Protocol established the foundation of a Joint Committee between Spain and Romania, as an instrument for the relations between both Ministries. In principle, annual meetings are fixed, the first one taking place in Madrid in 1995, but from 2001 onwards, meetings were changed into biennial.

The Committee agrees on the *Bilateral Collaboration Program* which gathers all the activities to develop during the time period when the program is underway. According to the Spanish representative of the Committee, Lieutenant Colonel, Miguel Mansilla, "Romania is one of Central Eastern European countries which enjoys the closest diplomatic relations with Spain, and it has also become the country which profits most from the *Cooperation Program in the area of Military Education"*[27]. At the Romanian Defense Ministry´s request, the *Instituto Cervantes* has organized Spanish courses for officers and heads of the Armed Forces, since the end of the 90´s .

The collaboration programs can be modified at the request of any of the committee members, through the Defense Attachés of the respective Embassies. Meanwhile Romania accredited a Defense Attaché

[27] The Lieutenant Colonel, Miguel Mansilla, was interviewed by the author. February 2003

for Madrid, Iordan Gheorghe Barbulescu. His Spanish counterpart (Military, Naval, Aerial) accredited for Romania lives in Budapest and covers four countries: Croatia, Slovenia, Hungary and Romania. He is Colonel José Luis Labarga Lázaro.

All of this cooperative framework above described will undoubtedly undergo modifications after the implementation of the invitation to Romania[28] to join NATO, which took place in the sixteenth NATO summit in Prague on November 2002, and due to the final push to become a EU member in 2007, which was signed at the Copenhagen E.U. summit. The bilateral relations between both countries in the area of defense will be subordinated by the compromises and duties acquired because of its membership to both international organizations. This is the reason why the Spanish Defense Ministry believes that "the Joint Committee is going to be modified and adapted to a more flexible framework of bilateral relations, because bilateral contacts will multiply on the occasion of the common participation in the multilateral forums mentioned"[29].

The determined support of Spain to Romania's entry in NATO and the E.U. is far from those days when coinciding with the Warsaw Pact´s political summit in Bucharest in November 1976. Romania rejected any kind of expansion by either of the two military organizations set at odds. As a matter of fact, Romania was one of the strongest opponents to the possible entry of Spain in NATO.

After the Prague summit, Romania faces a new phase, where great efforts and hard work will be needed in order to complete the reforms pending in the military and defense fields, such as the following: the professionalization of the Army, the streamlining of the Armed Forces troops, the enactment of an appropriate legislative framework, the reform of the intelligence services due to the existence of the Securitate´s former members in outstanding posts of Romanian life who could threaten NATO's classified information. Romania's aim is to become a partner of the organization, on equal terms with other members, and not only to become a member "tolerated" or admitted for relevant reasons.

[28] More information about Romania-NATO chronology: SARCINSCHII Alexandra, *Romania-NATO 1990-2002*, in ROSTOFLEI Constantin (Coord), Cronologie Romania-NATO 1990-2002, Bucuresti, Editura Academiei de Inalte Studii Militare 2002

[29] The Lieutenant Colonel, Miguel Mansilla, was interviewed by the author. February 2003

In this process of reforms, the exchange of experience and information with Spain throughout the Joint Committee can be very profitable to Romanians. The E.U. applicant countries value the Spanish security model very positively, especially in three areas: the streamlining of 70% of the Army troops, our Armies´ participation in Multinational Forces and International Peace Keeping Operations, the democratization of our Armed Forces and at the same time, their contribution to the democratization of our country and civilian life as a whole.

Spain, as far as it is concerned, defends the incorporation of new members to NATO because it will be an advantage to gaining greater stability, as the recently published document of the Strategic Revision of the Defense points out: "The Atlantic Alliance continues being the mainstay of the European defense, and the final aim of European defense by Europeans far from threatening Atlantic relations, must try to reinforce them. That is why Spain bets too on a larger and transformed NATO"[30].

IV. Economic Relations

The economic relations during the 1990´s were organized around three main agreements:

- The Agreement for Industrial and Economic Cooperation. April 1990
- The Agreement for Cooperation in Tourism. February 1992.
- The Agreement for the Promotion and Mutual Protection of Investments. January 1995. In 1997, there was a protocol signed for collaboration in order to promote Spanish investments in Romania which showed both countries´ desire to intensify their economic exchanges.

The structure[31] of the balance of trade between Spain and Romania has reflected a debt balance for our country throughout the 1990s and to date. Regarding the trade distribution by products, it has not changed much in its composition. In 2000, among the main Spanish exports to Romania were cars, machinery and ceramic flagstones, and among the imports were fuels and minerals, machinery and fabrics.

Romania´s main clients at the beginning of the 90´s were Germany, and Italy, with Spain in the 23rd place. Meanwhile, on the suppliers´ list, our country fell to the 32nd place. Ten years later,

[30] Revisión estratégica de la Defensa, vol. I., Madrid, Ministerio de Defensa 2003, p.48
[31] http://www.mae.es/documento/0/000/000/617/Rumania.pdf

however, in 2000, Spain climbed to the 23rd place among Romanian suppliers, and is its 17th most important client.

From the Spanish point of view, Romania would have little importance in our foreign trade, about 0.1%, while Spain´s weight in Romania´s trade is 1.6%. It holds the 59th place in our client list and the 56th place in that of suppliers. But, the future looks much more optimistic after an increase of 21.96% in our imports, and 27.49% in our exports to Romania during the first semester of 2002, with respect to 2001.

The global trade exchange between the two countries increased from 103 million dollars in 1994 to 480 million dollars in 2002. The Romanian Prime Minister, Adrian Nastase, in his visit to Spain at the end of the 2002, established as a goal for the period 2006-2007 a global value of exchanges of 2000 million dollars´ worth.

Analysts are optimistic regarding the future of these transactions because the bilateral trade exchanges began at a very low level, and that is why they have great growth potential. They have multiplied significantly in recent years.

A study about the opportunities for Spanish companies on the Romanian market promoted by the Álava[32] County Council in 2002 focused investment opportunities in the following sectors:

- Agricultural: the food industry, vineyards and the farming sector.
- The Lumber sector.
- Intensive sectors in Labour.
- The Service sector.

At present there are about four hundred Spanish enterprises in Romania. The most important ones are:

- In the lumber sector there are two big ones, like FUPICSA, a Catalonian company which has been present there since 1999.
- Two important consultancy companies: IDOM and INOCSA, which deal with subjects of design and overseeing work or infrastructural restoration.
- In the energy sector the most important one is UNIÓN FENOSA SOLUZIONA, the firm that gathers all the companies of professional services at Unión Fenosa, began its activity in Romania in 2000. Soon after, it won an introduction all over the country of its commercial management system in the Romanian state electric company, CONEL- which handles more than 8,5

[32] http://www.alava.net/aeuropeos/pdf/guiaempresarial/drumania.pdf

million clients-, through a joint company. The Romanian electric companies have had to improve their management policies and their technological level in order to fulfill the requirements relating to the EC.

In the neighboring country, the Republic of Moldavia, Union Fenosa controls three of the five existing energy companies. With Spanish know-how not only have power outages been stopped, but also energy prices have been reduced.

- CAMPOFRÍO chose Romania as the first former Eastern Bloc country to start its expansion policy to Eastern Europe. GRUPO COREN is another food processing group dedicated to the distribution of Spanish non-perishable goods.

In spite of the advantages and opportunities for Spanish investments and exports to Romania, some difficulties exist which detour our trade to other Eastern countries, such as:

- The customs duties can go as high as 60% for wines and some food products.
- Romania does not offer interesting tax advantages in company tax. Since January 2000 a general rate of 25% has been applied to the accountant profit, while other countries like Hungary enjoy some of the lowest rates in Europe.
- The VAT has a flat rate of 19%.
- The Spanish Institution of Foreign Trade points out other obstacles like legislative ambiguity, excessive intervention on behalf of the organizations of financial control, and bureaucracy.
- The existence of significant levels of corruption and the slow rate of privatization.
- Moreover, Romania has not yet achieved the "label" of market economy from the European Union, and does not have a stable currency.
- For some analysts the instability in neighboring former Yugoslavia has impacted negatively with regard to foreign investments.

V. Conclusions

The bad image of Rumania in the business world has restrained our trade relations, which had an ill-fated precedent with the Spanish telephone company, Teléfonica, in the middle of the 90´s. The company

denounced the Romanian government due to the breaking of the contract agreed to in 1992, when it started to give mobile phones service in Romania, according to which the right to be one of the companies awarded of the mobile phones working with digital technology, GSM, would be given to Telefónica at a given moment.

Nevertheless, the possibilities of future profits as a result of investments in Romania are considerable if we take into account that it is the second most important market, -in terms of population, among the twelve applicants to the EU´s expansion-, and because of its natural resources.

If defense relations suffer changes in the near future as a consequence of the Prague summit, the same cannot be expected about the impact of the EU summit in Copenhagen, at least in the short term which means until the date of Romania´s integration into the EU in 2007. But to the extent that Romania progresses in the meeting of the Copenhagen criterions, its foreign image and the stability needed to increase investments and to improve any kind of relations will be very favorable. At the moment, and in spite of being one of the biggest receivers of EU funding, Romania regrettably also has one of the highest rates of corruption and fraudulent use of the mentioned funds.

Future Spanish-Rumanian relations will have to develop in a larger framework of multilateral cooperation, because of Romania´s membership of NATO and the EU. Nevertheless, this must serve to deepen and reinforce all of our bilateral relations, based on our cultural and linguistic affinities, in front of the other Central and Eastern Europe´s markets.

Resume

A la fin de l'année 2002, les deux grandes réunions concernant l'expansion européenne et euro-atlantique par l'intégration des pays ex-communistes ont élargi l'horizon de la politique externe roumaine. Ils ont fourni le cadre pour le renforcement des relations bilaterales avec l' Espagne en même temps que la possibilité de découvrir le pays qui, en 2007, par son adhésion à l'Union Européenne, deviendra le septième en ce qui concerne la population et le neuvième en ce qui concerne la surface.

Unemployment – a Serious Social and Political Problem

Roxana Radu

Unemployment is a negative phenomenon for any economy because it produces an unbalanced labor market resulting from the fact that job demand is higher than job offer.

Unemployment represents not only an economic problem, but also a social and political one because its consequences are felt by the unemployed as well as by the whole society.

In order to understand the proportion of this social problem, we can not only rely on the economic analysis; even if unemployment is a result of the transformations suffered by the economies all over the world, it reflects the redistribution of individuals, classes and states roles. A complete analysis cannot avoid the anthropological dimension[33].

In the Romanian literature, unemployment is defined as "a negative state of national economy, materialized in an important lack of balance on the labor market in which the demand of labor force is higher than the offer"[34].

Unemployment is a permanent part of the macro-social policies because any economy is functional only if all its markets are balanced and the existence of the labor market balance is a *sine qua non* condition for the existence of the macro-economic balance.

Among the unemployment causes are: new restructuring in the economic field, technological changes, and demographic increasing.

Through social policies, governments have in view the achievement of an employment rate closer to the total employment of the work force. According to the opinions of different Romanian and foreigner economists, a total employment rate is almost impossible to achieve, an employment rate of 97-98 % being considered as satisfactory as well as an unemployment rate of 2-3 %.

The experience of the world economy demonstrates that we will not be able to completely eliminate unemployment ever. Since 1900 the

[33] Dan, M., 2001, *Social policies*, Cluj : Napoca Star Publishing, p. 134
[34] Bistriceanu, G.D., Bercea, F., Macovei, E.I., 1997, *Lexicon of social protection, insurances and reinsurances*, Bucharest : Karat Publishing, p. 668

lowest rate of unemployment was of 1.2 % in the U.S.A. in 1944 when the economy was entirely mobilized for the war production. Certain states were a little bit more successful in maintaining a lower unemployment rate, but neither of them had zero unemployment. Considering this, we can say that full employment must not be interpreted as zero unemployment, but rather as a lower level of unemployment. At first sight, the abandonment of the zero unemployment as a national purpose could be seen as the government's incapacity to liquidate unemployment. This is a false theory because zero unemployment is impossible to achieve and at the same time unprofitably because the concurrence on the labor market disappears in this case.

The labor market undergoes continuous transformation. Which are the factors that determine the unemployment rate and the total number of the unemployed? Unemployment rises when the entrances on the labor market exceed the going outs. Unemployment increases at the same time with resignations, the cancellation of individual labor contracts and the new entries on the labor market because the new entered ones usually need a longer period of time to be employed. Unemployment decrease can be obtained by increasing the rhythm of employment and the number of the ones leaving the work force.

Any time the indexes of poverty - the sum between unemployment rate and inflation rate - have higher values, it is sure that they will compete for the position of the most serious social problem. When unemployment and inflation are high, they become national priority and have the capacity to influence the election results. When they are low, they practically disappear from the list of the problems that must be solved. A possible answer to the question "How can the ones responsible for the economic policy stability evaluate the relative costs of different options?" is offered by the theory of the economic and political cycle. According to this theory, actions are taken in due time in such a way that positive results could be obtained around elections. Inflation will certainly come, but later on, after the elections.

There are great differences between the rates of unemployment inside groups depending on age, gender or work experience. For example, there are higher than average rates of unemployment among young people and among women.

There is also great mobility on the labor market. The immigrations are in direct relation with the number of the employees and the unemployed workers. This mobility is cyclical: there are many dismissals

during recess and many voluntary resignations during economic expansion.

After December 1989, in Romania the necessity to re-analyze the social security system because of the transition from the planned economy to the market economy emerged. The law of social security draws basically its rules from the Constitution, international conventions, certain principles of law and even the European community law. More specifically, under article 41 social insurance for working people has become the object of public concern. Moreover, article 47 stipulates that the state is bound to set regulations of economic development and social protection, able to ensure the citizens a decent standard of living. Romanian citizens have the right to pensions, maternity allowances, medical assistance in the state medical centres, unemployment allowances and other forms of public or private social insurance benefits stipulated by the law[35].

As a rule, social insurance institutions have their own legal personality and exercise public authority in the form of legal entities of public law. There are, nevertheless, certain institutions serving social insurance purposes that have been created upon private initiative or have been qualified by the legislator as belonging to the private sphere of law. Financing of social insurance is provided in part on the basis of reciprocity (interdependence) between contributions and benefits, and in part on a social solidarity basis, aiming especially to provide a tolerable subsistence level.

The basic law in the field of the unemployed social protection is the Law 76/2002. This law includes also stipulations for preventing unemployment and for stimulating the employment of the work force. It serves the purpose of creating new jobs and sustaining the persons searching for a job to become employees. Among the stipulations we can mention: the increasement of the chances for the job seekers to be employed by professional reporting, work mediation and educational training; employers' stimulation in order to hire unemployed workers and to create new jobs.

Studies show that the so-called passive benefits cost state more than the active, individualized laws. Nevertheless, the government's effort is put into the support of schemes for the unemployed which encourage job seekers to (re)train, to look actively for work, to persist in job applications and to help to make themselves more attractive to employers.

[35] Article 47 paragraph 1 and 2 from the Romanian Constitution

Traditional employment services need to change themselves if they are to provide these new types of assistance.

If growth itself does not provide a sufficiency of jobs, then governments have to consider what they can do to support more labor-intensive work. Society has a significant demand for service jobs, notably in environmental improvement, child care and social services. Since it is small and medium-sized firms that have the better record in job creation, it is worthwhile considering how to help them to prosper. A main task for the government is to encourage local initiatives, employment intensive growth, to help with training and extra cost and to help firms to overcome legal obstacles which face firms who wish to take on someone who has been unemployed for some time.

Considering all these things, we can define the unemployed social protection as "the whole of public measures taken by the society in order to protect its members against the economic and social negative effects determined by the loss or the substantial decrease of their activity because of the unemployment"[36].

After 1989, the employment structure has altered. One of the most dramatic changes has been in the growth of information and communication technology both as a new industry and as a business tool. Often, however, the new growth is not geographically well placed to absorb redundant workers who, in any case, would need new skills, while the jobs it offers are frequently part-time or temporary, taken by women rather than men.

Romania's expectations from the European integration are high, as well as any other candidate state. This because "It is always hoped that the major economic policies of the Union, such as the single market and economic and monetary union either directly or indirectly will create jobs but, often, taking advantage of development means that workers must be more mobile and more highly trained than heretofore. Overall, the EU does not generate new jobs at a rate comparable with that of USA and Japan and the European rate is inadequate to absorb the larger labor force. It is obvious that there are great linguistic and cultural barriers in the EU to worker mobility and, meanwhile, there is a serious mismatch of jobs and workers which implies high unemployment rates"[37].

[36] Ghimpu, S., Țiclea, A., Tufan, C., 1998, *Social Security Law*, All Beck Publishing, p. 275

[37] El-Agraa, A.M., 1998, *The European Union. History, Institutions, Economics and Policies*, Prentice Hall Europe, p. 400

The main European Union's objective is to lower unemployment. Struggling against unemployment has became more difficult in the rich western societies because of their capacity to sustain - through *welfare* administrative measures or parental solidarities - a great number of unemployed workers, offering at the same time the low paid jobs to the extra European workers[38].

EU's concern over unemployment rose in the 1990s because unemployment has clearly been a more serious problem for the EU than for the USA and Japan. Apparently both the Americans and the Japanese seem more able to deal with the problems of unemployment that emerged in the developed economies in the 1990's. The USA was able to generate more jobs than the Europeans, while the Japanese seem to be more able to retain employment levels in the face of pressures on jobs resulting from recession and structural change. However, in the late 1990's unemployment rose in Japan, although the unemployment rate did not reach the levels experienced in the EU[39].

The majority of the European states confront themselves with extremely high unemployment rates; in the EU, their medium value is 11%. As a matter of fact, European unemployment is not only very high and persistent in time, but also very heterogeneous if we examine its distribution on geographical zones, age groups and education level[40]. The Modigliani Manifesto identifies the decline of the investments' rates as the principle cause of the European unemployment[41]. At the same time with the coming into force of the Amsterdam Treaty, the promotion of a high rate of employment became the main objective of the EU[42].

The problem of the Community's high rates of unemployment is starting to dominate the debate about the future development of the EU's social policy. Rising unemployment and the challenge of "globalization" have shifted the balance of the arguments towards those advocating neo-liberal labor market flexibility and away from the preservation of the European neo-corporatist tradition, with its emphasis on "social cohesion"

[38] Prodi, R., 2001, *Un'idea dell'Europa (A vision about Europe)*, Polirom Publishing, p. 170

[39] See McDonald, F., Dearden, S., 1999, *European economic integration*, Pearson Education Ltd, Prentice Hall, p. 25

[40] Romano Prodi, *cited work*, p. 170

[41] Modigliani, F., Fitoussi, J.P., Moro, B., Snower, D., Solow, R , Steinherr, A., Sylos Labini, P., *Manifesto contro la disoccupazione nell'Unione europea (Manifesto against unemployment in the European Union*), cited by Romano Prodi, *cited work*, p. 172

[42] Dony, M., 2001, *Droit de la Communauté et de l'Union européenne (Law of the Community and the European Union)*, Editions de l'Université de Bruxelles, p. 236

and workers' rights. Nevertheless, what composes labor market flexibility is open to a variety of interpretations. From a neo-liberal perspective, flexibility will be reflected both in variable wages and the right of managers to hire and fire easily. Policies should encourage geographical mobility, and there should be an emphasis on training and educational investment. However, the latter is common ground in the policy debate, with the increasing importance of flexible production underlining the need for employees who are multi-skilled and self-directed. This central role for investment in human capital requires the development of long-term relationships between employees and employers if the returns to such investments are to be realized. However, such stable employment relationships, which may be reinforced by the Community's emphasis upon policies of "social cohesion" and "social dialogue" are regarded as anathema to those advocating the primacy of market forces[43].

Despite all the reforms, work mobility will never reach in Europe the American level of geographical or financial mobility. The groups of Greeks, Italians and Poles that work in Germany will come back to their origin countries as the living conditions will be improved; they will contribute by themselves to this progress through the agency of their savings and the small shops they will open[44].

Unemployment is one of the most alarming social phenomena that requires political action, both at national and communitarian level, in order to reduce it. Romania differs from other EU member states or future member states (Poland, for example) by a lower rate of unemployment. This is a good sign because, starting from this level, it will be easier for us to reach the ambitious objective of the Lisbon Strategy to eradicate unemployment until 2010. But it is also a bad sign because it reflects an insufficient economic restructure that could increase unemployment in the future.

Evidently Utopian, the Lisbon Strategy's ideal to achieve a rate of full employment until 2010 has the merit to catalyze all the resources in the direction of unemployment's decrease. All the EU member states give to the unemployed social protection in order to guarantee them an income necessary for a decent standard of living. As the studies shows, the part of the gross domestic product allocated to unemployment has increased in all member states.

European unemployment is not a problem that can be solved only by reducing the rate of the interests or through expansive macro-

[43] McDonald, F., Dearden, S., *cited work,* p. 206
[44] Pond, E., 2003, *The Rebirth of Europe*, Târgovişte : Pandora-M Publishing, p. 188

economic policies. What is rather needed is interaction, a policy mix between macro and micro-economic policies. That is why a new program for jobs creating must rely on strong macro-economic stability; this is the fundamental condition for the guarantee of long-term economic development[45].

The idea that unemployment does not represent a social problem is in vogue, being justified by the fact that the unemployed worker has chosen to be unemployed and to receive the social benefits stipulated by the law. This theory is evidently false because not all the unemployed receive unemployment allowances. For the long-term unemployed workers, the loss of income is very important, leading to financial disaster. Moreover, many unemployed workers experience important social and psychological effects, considering themselves unpractical for their families and for the society at large. With respect to these social effects, a study made by the USA Congress estimated that a national rate of unemployment of 6-7% leads on the average to: 920 suicides, 648 murders, 20,240 deadly heart attacks, 495 deaths caused by cirrhosis, 4,227 cases of insanity, 3,340 persons sent to prison. This statistics shows the very serious implications that unemployment could have for the society.

Unemployment is also a political problem because the macro and micro-economic losses resulted from unemployment require decisions at the political level.

The social dimension of the European integration primarily raises the question of solving the problems between the ones placed inside the labor market and the ones excluded that are struggling to be accepted on this market. Under the circumstances, the social security system reform is needed. In order to meet the citizens' needs, political decision gains priority.

[45] Romano Prodi, *cited work*, p. 174

Résumé

Le chômage est un problème social et politique grave. Les régimes d'assurance sociale et de solidarité constituent, en matière d'indemnisation du chômage, le dispositif de droit commun. On y ajoute de dispositifs spécifiques multiples tendant soit à la l'indemnisation, soit au reclassement des chômeurs: les mesures de préretraite, les mesures de reclassement et de conversion, les mesures prises au profit des jeunes (formation professionnelle, accès à l'emploi), l'aide à la création d'entreprise issues de la loi 76 du 16 janvier 2002.

L'emploi se situe au centre des préoccupations des États membres, compte tenu du niveau élevé du taux de chômage moyen dans l'Union européenne. Avec l'entrée en vigueur du traité d'Amsterdam, la promotion d'un niveau d'emploi élevé est l'un des objectifs les plus importants de l'Union.

Considerations on the European and International Regulations of the Employment Laws

Oana Ghiță

Traditionally it has been thought that the employment law, more than any branch of law, exists largely to prevent the need for the parties to a dispute to resort to the tribunals or courts. That is why the law is very important in this area, as well at the contract of employment. The nature of this legislation is often controversial as it has been introduced as a result of political parties seeing such legislation as a major plank of their political platforms. The economic and political changes brought about by this legislation there fore cannot be ignored. But, above all these are the international obligations established by the European Convention for the protection of human rights and fundamental freedom, the European Social Charter and the Additional Protocol to it, the International Labour Organisation Convention concerning freedom of association and protection of the right to organise (no. 87), the International Labour Organisation Convention (no. 98) concerning the application of the principles of the right to organise and to bargain collectively, the ``Social Chapter`` of the Treaty on the European Union (the Maastricht Treaty) and, at last the Trade Union Reform and Employment Rights Act – 1993 which contains substantive legislation of its own.

The relationship between employer and employee is based on the contract of employment. However, there are many other aspects than this contract, generated by the development of trade unions, employers` organizations and state intervention.

The complex form of modern industrial and commercial organisation enables people to work under a variety of legal arrangements which may be entirely satisfactory to all concerned, but which are difficult to rationalise into well- defined categories necessary for the purpose of legal analysis. Legal rights and responsabilities are frequently interpreted on the base of verbal distinctions, for modern terminology does not assist in the process of drawing precise lines between different economic relationships. We can say that a worker may be legally classified as an employee, and yet the same person may be a self employed person from another standpoint as the lawyer, the economist,

the politician etc. The employer may be defined as any person, partnership, corporate body- who employs one or more persons under a contract of employment. We should not forget that there is also a relationship between them and the State that they belong to.

The general terms being defined, we can shortly analyse the international and then, the European treaties we have been spoken about.

1. The European Convention for the protection of human rights and fundamental freedoms provides the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests (article 11) without discrimination on any ground such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (article 14).

The national authorities are to ensure that everyone whose rights and freedom are violated has the possibility to an effective remedy.

2. The European Social Charter regulates, in its first article, the right to work which contains the right of the worker to earn his living in an occupation, the right to vocational guidance, training and rehabilitation and also, free employment services for all workers.

The workers have the right to just conditions of work and to safe and healthy working conditions, the right to a fair remuneration, the right to organise and to bargain collectively. Special rights are ensured for children and young persons and for women such as:

- persons under the 18 years shall be entitled to not less than three weeks annual holiday with pay, they will not work on nightshifts;
- women are not to be employed in underground mining and such other work; states will pay from public funds adequate social security benefits before and after childbirth up to a total of at least 12 weeks, dismissal during the maternity absence is illegal etc.

The Additional Protocol to the European Social Charter stipulates:

- the right to equal opportunities and treatment in matters of employment and occupation without discrimination on the grounds of sex;

- the right to be informed and to be consulted within the undertaking;
- the right to take part in the determination and improvement of the working conditions and working environment in the undertaking;
- every elderly person has the right to social protection.

3. International Labour Organisation Convention (no.87) concerning freedom of association and protection of the right to organise. Workers and employers, without distinction whatsoever:

- shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation
- shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisation of workers and employers.

4. International Labour Organisation Convention (no. 98) concerning the application of the principles of the right to organise and to bargain collectively. Workers shall enjoy adequate protection against acts anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to:

- make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- because the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Community law consists of articles of the Treaty of Rome, directives passed by the Council of Ministers, recommendations, and decisions of the European Court of Justice. Any common law or statutory rule which is contrary to European law is void, and if there is any conflict between European law and Romanian law, and any member state, the former is to be applied. Indeed, if, in any preliminary proceedings, it appears that the sole obstacle towards granting interim relief is a rule of national law which is in conflict with European law, that national law has to be set aside.

1. Articles of the Treaty

If an Article of the Treaty of Rome is clear, precise, unconditional, requires no further implementation, and dose not give any discretion to Member States, it is directly applicable and becomes an integral part of the law of Member States. For example, article 119 of the Treaty of Rome provides 'Each Member State shall ensure and maintain the application of the principle that men and women should receive equal pay for equal work…' This article has been invoked in a number of cases, and has been held to confer a distinct legal right on an individual, which can be enforced in national courts, in addition to any legal right conferred by national law. Similarly, article 48 of the Treaty provides that Member State shall ensure the free movement of workers within the community without discrimination as regards employment, remuneration and other conditions of work and employment, and this too has a direct legal effect.

2. Directives

A directive, passed by the Council of Ministers, is binding as to the result to be achieved, but the national authorities are given a choice of form and methods. However, as directives are binding on Member State, it is the duty of those States to implement them, and if the State fails to do so, an individual may seek to enforce the terms of the directive against a State in its capacity as an employer. For this purpose, 'the State' includes any body which is an emanation of the State (e.g. a nationalised industry) or which provides a public service under the control of the State.

In strict legal theory, a directive is not enforceable against a non-State body or a private individual. Thus, if there are no national rules on a subject, it is not permissible to rely on the provisions of a directive as the basis of a claim. It is permissible to rely on the provisions of a directive in order to interpret national law, and in particular those provision of national law which were designed to implement a directive. Thus the European Court will interpret national law in the light of the language and aims of the directive. It follows from the obligation on Member State to take all measures appropriate to ensure the performance of their obligation to achieve the results provided for in directives, that in applying national law, whether it was a case of provisions prior to or subsequent to the directive, the national court called on to interpret it was required to do so as possible in the light of the wording and purpose of the directive in order to achieve the result sought by the directive.

Finally the European Court has stated that if a Member State fails to take the necessary steps to achieve the results required by a directive, an individual who suffers damage thereby may sue the State for the loss suffered which results from that failure.

The European Court appeared to suggest that a claim could be made not only when a Member State fails to implement the terms of a directive, but also when it incorrectly implements a directive. Further, national courts are the appropriate forum for such claims, without the necessity of seeking a remedy in the European Court.

Directive 75/117/EEC(the Equal Pay Directive). This states that the principle of equal pay means, for the same work or for work to which equal value has been attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

Directive 76/207/EEC (the Equal Treatment Directive). This states that men and women shall be entitled to equal treatment as regards access to employment, including promotion, and also to vocational training and working conditions. There shall be no discrimination on grounds of sex, either directly by reference to marital or family status.

Directive 75/129/EEC (Collective Redundancies Directive). This directive requires employers to consult with workers' representatives before making collective redundancies, and also requires that prior notification be given to the competent public authorities.

Directive 77/187/ EEC (Acquired Rights Directive). This directive provides for the safeguarding of the rights of employees when their employment is transferred from one employer to another. The transferor and transferee are also required to consult with employees' representatives about the consequences of the transfer.

Directive 79/7/ EEC (Equal Treatment in Social Security Matters). This directive requires that there should be no discrimination on grounds of sex (either directly or indirectly by reference to marital or family status) in the scope of social security schemes (sickness, invalidity, old age, occupational accidents and diseases, and unemployment benefits)

Directive 86/ 613/ EEC (Equal Treatment in Occupational Pension Schemes). This directive requires that there shall be no discrimination between men and women in access to and benefits from occupational pension schemes.

Directive 86/613/ EEC (Equal Treatment for Self- employed). This directive requires that the laws of Member States relating to self-employment shall not contain any discriminatory provisions, that there shall be protection for self- employed persons and their wives during

pregnancy and motherhood, and that discrimination does not arise from the establishing of businesses or other self- employed activities.

Directive 80/987/EEC (Employers' Insolvency). This directive requires Member States to guarantee the payment of certain outstanding claims due to an employee when his employer becomes insolvent, subject to certain limits.

3. Recommendations

A recommendation made under Community law has no binding effect, and cannot be relied upon to enforce a legal right in a national court. The European Court of Justice held that national courts are bound to take recommendations into account when determining disputes which are referred to them, in particular when they clarify the interpretation of laws passed to implement them, or when are designed to supplement binding Community measures.

Recommendations have been made on such topics as the employment of disabled persons, hours of work and holidays generally, flexible retirement, vocational training for women and sexual harassment.

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Résumé

La législation internationale et européenne ratifie le droit du chacun au travail, le droit à l égalité des chances et de traitement en matière du contrat de travail. Les discriminations basées sur les différences de sexe, race, couleur, langue, religion, opinion politique, origine sociale sont interdites.

Cet article se propose de commenter, en bref, ces normes juridiques qui s'appliquent avec priorité par rapport à la législation interne de chaque état.

Agrarian Policies and the Propriety during the Communist Regime

Cezar Avram, Daniela Osiac

The collectivisation of the Romanian agriculture, after the model of the Stalinist kolkhoz, was one of the ample activities meant to transform the economy of the country, the social, political and moral spectrum of the people, to allow the perpetuation of the power of the unique party, of the communist state.

The abolition of the individual peasant property "in order not to block the development of the socialist agriculture ", after the nationalisation of industry, was meant to exclude, "for the present and for the future ", the resistance hot beds against the communist totalitarian state. In the party's vision the victory of the socialism in Romania was incompatible with the preservation of the private property on land. Along with the destruction of the private land property, the landed proprietor disappeared too - "a virtual and morbid" ally of the outside enemy - "the imperialism ".

At the same time, it was possible to come to social homogenising, meaning the disappearance of the classes, and later, of the state. Instead, the whole society was to be turned into a proletariat resulting from the alliance between the workers and the peasants, through the complete assimilation of the latter by the former.

Promising the eradication of " the physical and the moral misery ", an accelerating progress in all the fields, promising a bright future and the individual and family safety, the action of collectivisation - implant of the Stalinist model of the kolkhoz, known as being voluntary, peaceful and natural, became in fact permanent compulsion, repression, physical violence, obviously wearing away the standard of life[46].

The communist system considered the development of the agricultural production only from the following point of view: the

[46]Tismăneanu, V., 2005, *Stalinism pentru eternitate. O istorie politică a comunismului românesc.*, Bucharest: Polirom, pp. 145-148

subordination of the small producer to the industrial, over planned and over centralized macrostructure, permanently conducted by the party. "Two different ways: one for the peasantry and the other one for the workers do not exist and cannot exist in our country. Their way is the same...and the party is the defender of the working peasantry, its guide ", stated Gheorghe Gheorghiu Dej in February 1948.

The frequent and haunting references to the Stalinist experience existing on the theoretical and propaganda plan as well as on the institutional plan of the collectivisation, proved the lack of motivation based on the local essential features, the absence of the pragmatism of the Romanian party and state leaders in front of the ideological dictate.

Unlike many countries belonging to the socialist " camp " , where the curve of the collectivisation was moderated and stopped in front of the evident failure, in our country, in 1962, about 96.5% of the arable area belonged to the socialist sector, being a sign to the lining up to the Soviet model.

In Poland and Yugoslavia, the rate of the collectivist structures never exceeded 24% of the arable area of the country. In Czechoslovakia and in Hungary, the percentage was never higher than 64% and respectively 68%. Only in Bulgaria the percentage was 92% and that had been the situation ever since 1958.

The prevailing characteristic of the collectivisation process was rather a political one. Gheorghe Gheorghiu Dej led the Soviet model to its last result. While the Polish leaders had recorded the first shortcomings within the collectivisation process since 1956 , asserting in complete awareness that they did not need to follow in the footsteps of the Soviet Union's agrarian policy, Hungary and Yugoslavia in their turn already operating a decollectivisation of the agriculture, on the 11 of August 1961, Gheorghe Gheorghiu Dej was declaring that, on the whole, " the collectivisation of the agriculture was already accomplished ", as a result of the knowledge received from the "brilliant Lenin".

In Romania, the collectivisation process, carefully, steady and strongly supervised by the party and security bodies, was "the vector of the politicizing of the village ". In the absence of a favourable social base, the rural environment was penetrated through by a painful ideological implant.

With the help of the kolkhoz, of the Soviet counsellors and of the false defenders of “the interest of people ", the communist mentality and

practices succeeded in invading, slowly but disastrously, the village, a pillar of resistance of our national entity in time and space[47].

The unfolding of the whole process, gradually and slowly at the beginning, was due to the resistance of the Romanian peasant against the wave of disowning and denationalization, in front of the breaking off of his relationship with his own environment, of the forced pauperization and of imposing the status of dependence on the most rapacious master - the communist state. Besides all these, there was the existing political climate from abroad. Due to political reasons, the pressure was diminished, in the pursuit of new forms, the results of which were to lead to the same purpose - the total collectivisation. After the Soviet occupation army retreated, the process of collectivisation was enhanced and speeded up. At that time, the Soviet state was undergoing a process of destalinization. Without the protection of the "Eastern Empire " troops, the Romanian government considered the high percentage of those not enlisted in collective structures a real danger for the government and the party. The party and the bureaucratic apparatus didn't have a bigger popular support in 1958 than in 1945. Distrust in the ordinary people became an obsession for the leadership. On the basis of a decision coming from the Ministers' Council, the people who commented in a hostile way upon the achievements of the government were sent to working camps. According to the article no. 209 from the criminal code the peasants who wanted to withdraw from the collective farms or those who advised the others to do such a thing were sent to prison.

At the beginning of the collectivisation, the punishments had an economic reason, the legislation against the sabotage was correlated with the accomplishment of the state plan, of the collecting plan. In the last stage of the process, the aberrant in form and excessive in severity verdicts revealed the weakness of the totalitarian regime, the distrust in the rural population and the failure in transforming the state into an "Eldorado " through collectivisation.

During the whole process, a lot of incidents, hostile manifestations and revolts brought the peasantry as a whole in opposition to the Party, Militia and Security. The great numbers of communist propagandists threatened, beaten, sequestered, driven away from the village, the instances of sabotage from the G.A.C., S.M.T. and G.A.S., the devastation of the headquarters of the People's Council buildings were some of the truthful pieces of evidence concerning the rejection of the

[47] Avram,C., 1999, *Politici agrare. Mutaţii socio-economice în satul Românesc*, Craiova : Editura de Sud

communist propaganda. This evidence "worried" the authorities." The protesters", "the people's enemies" were not the landlords, the kulaks, the spies, but, in most cases, the peasants with some land who had become poor because of an incompetent and greedy regime that considered it could replace the shortcomings of the socialist agriculture by exploiting the private farms until they were brought to ruins.

The Communist Party and state, harassed by the prospect of starvation of the urban population between 1949-1955, decided to take away a lot of products from the peasants, at a lower price.

The severe punishments stipulated by the law were justified by the dependence of the communist regime on the quantities of collected products. Against the "refractory people" the regime used force sustained by justice. Violence was protected by the law. The provision, the decrees, the decisions coming from the Ministers' Council, and the laws covered the abuses, brutalities, confiscations, the acts of destroying the land owner or turning him into a humble commuter.

The law, as a promoter of violence, offered to all the participants a feeling of solidarity in making aggressions in the first stage and the release from any guilt later on. As a consequence of their brutal deeds, the aggressors turned from simple doers and virtual delinquents punishable by law into defenders of social order. Having in one hand the special laws and in the other one the Party's instructions, the public justice would become an accomplice in the bloody repression against the peasants.

To the mind of the communist leaders, collectivisation meant "the setting up of the whole agriculture on the basis of the same property - the socialist property ". The generalization of the collective structures had to lead to " the organization of the repartition relationships on new socialist principles, the work product being distributed corresponding to the vital needs of the peasants".

For instance: laws no.187/1945, 183/1949, decisions of the Ministers' Council no.41, 42, 267, 294, 299/1950 regarding the founding and equipping of the I. A.S., the decree 92/1950 on the nationalisation of the buildings, D. M. C. 326/1951 on dislocation and population removing, D.M.C. 308/1953, the decree 24/1954, the decree 89/1958, the decree 115/1959,and the famous 209 article of the penal code.

Collectivisation was supposed to allow "the integration of the whole agriculture in the unique plan of social and economic development of the country ". This goal was achieved. At the end of the campaign, the

party was proud of the fact that "the peasants' activity regarding material production had got a direct social character, not being individual, scattered and isolated anymore ".

The consolidation of the political power of the party and of the totalitarian state also meant the turning of the peasant into a " kolkhoz worker ", supervised and threatened continuously by the Communist Party propagandists, Security agents, presidents of the G.A.C. and also by the People 's Council, without tools and animals, old and sick, "rushing into town to get bread, living in humility and fear ".

The consequences of the collectivisation process extended over the whole family, especially over the children, who, because of the "unhealthy origin ", were excluded from schools, universities and the work process. Persecutions were made in the name of the class struggle and social marginalization confirmed the victory of the communist regime in the struggle against the land owners. Individual property disappeared in a proportion of 96% within the 13 years of collectivisation. Within the village, the goal of levelling the social classes by eliminating the right of individual property was partially a success. Work was exclusively in the interest of the state that became the unique and biggest owner. The private capital was eliminated and replaced with the state one. The same as in the Soviet Union, at the setting up of the collective farm, all the people becoming collectivists against their will had to lay down all their goods, livestock and the entire estate they owned[48].

The land belonging to the "followers" became collective possession, namely the indivisible plot of the Collective Agricultural Farm. If somebody left the collective farm, the land owned before enlisting was not returned, not even exceptionally. At best, the decollectivised peasant was given the equivalent of his land surface - an unproductive, a plot far away from the village. The unit of measure for payment was the work day - the " Trudzina " in the Soviet Union - which established the quality and quantity of the work done by each collectivist. In the general meeting of the collective farm, the leadership of the Collective Agricultural Farms made up and then reinforced the work rate and the capitalization of the work day. The president, the party secretary and the economist had absolute power regarding the settlement of the rate of every work day, minimum work days per year and the quantities that had to be given to the collectivists. The power generated abuses, theft

[48] Roske Octaian, R., 1994, „Accente în strategia colectivizării" in *Arhivele Totalitarismului*, no. 1-2.

from collective property, leading to the coming out of a section of privileged people in the village.

All along the collectivisation campaign there was a correlation between intensified pressures and ever enhanced effects. Due to the family relationships and economic conditions, the peasant had been rooted within the borders of the rural community for ages. He had minimal possibilities of retiring or transferring to the urban areas. The situation was even more dramatic when joining the collective farm meant the changing of the peasant into an agricultural proletarian; the continuation of resistance being equivalent to reprisals, prison, death. In order for him and his family to survive, the peasant was forced to choose the solution of the collective farm. He opposed it as long as he thought he was defending the material security of his family. After being invested, tortured, threatened with years of prison, those who did not submit were removed through the seizing of their estate.

The collectivist structures increased their land surfaces no matter if the "free consent" was respected or not. The collectivisation process did not consist only in ideological monologues and propaganda meetings. There are no statistics to mention the ill-treated, the mutilated, those people killed and those insulted in the public law courts, in the "travelling instances" from the Oltenia region and from the whole country.

The roller of collectivisation destroyed entire families and lots of destinies were changed. The influence of the institutional mechanisms functioning through administrative, political and economical levers was exclusively negative. Collectivisation had not only political and social negative consequences but also economical ones. Agriculture became a burden because of the excessive economical compulsions the peasants had been subjected to... The farming agriculture practised on individual properties was eliminated; agriculture, as prior branch of the economy in the years of the collectivisation, was strongly affected in a negative way.

Some of the negative consequences of the collectivisation were conspicuous from the beginning, others appeared and increased along the communist crusade of the socialist transformation of the Romanian village. Thus:

a) Extensive areas were deforested and the areas in slope have been cultivated; the effect of this "modern" reason consisted of catastrophic floods and changes within the pluviometric regime;

b) A lot of grasslands have been broken up and thus the fodder and livestock decreased rapidly;

c) Large individual wine- growing and fruit- growing areas were taken by the collective farms and state farms; they were partially cleared for farming, actually remaining uncultivated; hence the big differences between the total arable surface and actually cultivated arable surface;

d) Farming areas turned into marshes because of the water loss on channels and the irrigations done irrationally; the sprinklers were functioning usually in the same place (for instance, the irrigation system from Bailesti) and so the level of phreatic waters rose to the surface. Large quantities of limestone or salty soil were brought to the surface through the irrigation channels. Because of this, the natural soil fertility disappeared (for instance, Dranicea- Mehedinti (a 1 cm- thick fertile soil takes 100 years to appear); that means that fertility destruction took place for a long time). The wearing away of soil fertility also happened because of the levelling proceeding meant to make the mechanization and irrigation easier; another cause of lack of soil fertility was that the fertile areas between the dunes were covered with " dead " land and the high places with unfertile land. Because of nitrogen fertilizer put on the sandy soils left of the Jiu river and along the Danube, areas with shallow phreatic waters, these waters were polluted with nitrites, five times bigger than the maximum accepted amount, causing, especially with children, the so- called "blue disease".

e) The insufficient knowledge of the worker in agriculture led to an unsuitable application of fertilizers, amendments, herbicides, insecticides, regarding dosing, uniform distribution, and application period, their efficiency was reduced, the soil and the crops were polluted, the people grew ill and even the productions decreased. The agricultural work took place under the control and guidance of the Romanian Working Party activists, following the party's instructions, and not according to the specialists' decisions. The Viliam complex with perennial grasses, the Maltev system, the Lisenco methods, the artificial pollination, used without results and finally dropped in the U.R.S.S. were further used in Romania with a "revolutionary obstinacy " for many years. A lot of party commissions used to come to the cooperative agriculture farms in turns, giving contradictory suggestions, without having any sense of responsibility. The specialists could not do their work, receiving orders from everybody and nobody. On the other hand they had the whole responsibility for the results.

f) At the beginning of the collectivisation, the work faithfully followed the Soviet agro-technical programme, and then the decrees and laws that settled a date for seeding, tillage, cultivation and so on. The

specialist was forced to follow the orders instead of adjusting himself to the soil and climate conditions;

g) At the beginning of the collectivisation period, there was a negative propaganda regarding the maize crop, as being the crop of the poor countries and considered to cause nourishment illness; consequently, the land cultivated with maize was reduced; this had a negative influence on the development of livestock breeding and food industry;

h) At the directions of the Soviet counsellors, the cotton crop was introduced, so, in 1953, there were 55.042 hectares cultivated with cotton in the Craiova region, representing 6.65 of the 824.942 ha - the region's total area of tilled land; in the years 1950, 1951, 1953, cotton did not reach maturity, which practically meant wasting this land for cotton growing. In 1952, when cotton reached maturity, the yield was low, uneconomic, of inferior quality (1.6 quintals/hectare ; 7.339 tons from the 45.632 cultivated hectares). Moreover, the cotton growing caused the transformation of the arable land into marshy and salty soil;

i) The wagons, the horned cattle, the horses and the sheep belonging to the peasants went to waste because of the lack of proper care and the absence of suitable water;

j) The cooperative agricultural farms came to be led by proletarian workers and peasants (many of the " leading " peasants had sold their land in order to have money for drinking, many of them were tipplers, bad householders, unreliable, the " village tramps ") They had no knowledge of agriculture, nor the competence to manage a collective farm;

k) Huge farms for animal breeding were built; the refuse and the dried water containing toxic substances coming from the animals' hygienizing were collected in tanks for evaporating and fermenting. But most of the dried water penetrated into the soil and into the phreatic water, causing the pollution of the soil, of the phreatic water, of the springs, and so on[49];

l) Big irrigation systems were built, only the surface was important, not the production; instead of obtaining two or three times bigger yields, most of the time such productions were obtained, as if the land had not been irrigated. More than that, the systems were wrongly set up. Because of these systems, large areas of land were no longer suitable for agriculture, as a result of the digging of channels, the excavating of earth mamelons, the transformation of land into marshy and salty soils. If the ploughing and seeding were satisfactory, the crops' maintenance was

[49] Cezar, A., *op. cit.*, p. 433-435

beneath criticism; for lack of labour and because of bad management, large areas turned into not weeded, not hoed crops, which led to considerably diminished yields;

n) Because of the lack of common interest, a great part of the peasants (usually the best householders) and especially the youth set out for the city; the village labour grew old and scarce; the lack of labour was badly felt. However, the working day was reduced in comparison with the former situation when the land owners used to work in the field from dawn till night. In the collective farm, the 8- hour work day became the standard and even coming home from the field at midday was normal. Because of the lack of labour, a lot of maintenance work and especially the harvesting used to be done with soldiers, workers from factories, students and pupils. They missed their specific activity, and in the field they did little and bad work while the peasants would sit and chat by the side of the field. Sometimes, the people coming to work were provided neither food, nor means of transport to the field;

o) A great part of the harvest used to be stolen in a general disorder by everybody, but especially by the tractor drivers, brigade members, presidents of the collective farms;

p) The established number of work days per year was achieved only by the people involved in livestock breeding, and the payment for the work day was reduced and not in agreement with the amount of work done. That's why the agricultural products were stolen. This became a national disease. Stealing was a common practice with the people engaged in livestock breeding, the people working in the field, and the leaders alike;

r) The products were sold through intermediary agents who were sure to claim a higher price than the producers did. Being perishable, a large amount of the production was wasted;

s) The agricultural machines were of bad quality and were unsuitably used by the unskilled people. These machines would get worn out very quickly and the spare parts were very hard to get;

t) The patrimony of the cooperative agricultural farms was entirely under the authority of the bureaucratic apparatus derived from the collectivist structures and the Communist Party and state structures.

The collectivisation was used by those who ruled the country in order to fully control the peasants and all the resources.

The destruction of any resistance sources in the village, the creating of a social class obedient to the authority, alongside with the destruction of the private property represented the communist leader's

dream which did not come true. The complex process of destroying the "old " village structures was accomplished by corruptible people often having criminal antecedents, people that could be blackmailed. This process was also achieved through informers and through promises of economical and social advantages, by means of deportation, apprehensions, threatening and force, through the gradual impoverishment of the peasants' households.

The consequences on the economic, social and political level were profound and long- lasting.

The dissolution of the private property, the emergence of the agricultural proletariat, the migration of the peasants to the cities, the weakening of the social unit in the rural areas, the destruction of the hamlets and the small villages, the depopulation of entire areas, the desertion of rural households, the disappearance of traditional household industries, the disappearance of traction animals and livestock, the dependence of the village population on the state and on its resources, the appearance of the " poor people " who, for a living, used to steal more or less what they thought belonged to them, and so on, eventually led to the weakening of the economic power of the state, to the upsetting of the normal development of the whole society. The campaign of destroying the land owners and all the inhabitants of the village (whose "class status " was considered hostile) , was harmful for the whole human potential of the country; the traditional peasantry being eliminated from the new social order, imported with "sacrifices and a lot of obedience" from the East.

The party-state, not in the least so omnipotent as it assumed to be, with numerous internal influent groups during 1949 - 1962, adopted, after the Soviet model, a completely nationalised economy, based on a "continuously repeated" agrarian revolution[50].

The lack of enthusiasm of the peasants, never convinced of their so- called failure as small farmers, was a critical problem for the rulers. The propaganda, a forte of the communist regime did not have the anticipated effect in the rural area, and "the new man " with his positive virtues failed to appear in the Oltenia region and in the rest of the country

[50] *Agresiunea comunismului în românia. Documente din arhivele secrete: 1944-1989,* Bucharest: Paideea, 1998.

as well, although the negative consequences were also reflected in the folklore, literature, and poetry. A new kind of hero was created. The moral was replaced by the communist ideology. The traditional values, the real, authentic values of the Romanian nation were overthrown.

Just like the working class, the people who remained in the villages founded their existence "on the basis of the socialist property, on the means of production ". This new form of property levelled, theoretically speaking, the peasantry in the 70s and 80s, making it less numerous and older. The desired effect of this new property form failed to appear. The social levelling was achieved only through the depopulation and pauperization of the great majority of the collectivist peasantry.

The collectivisation process was a painful stage in our contemporary history, an attempt at the deviation of our development and identity, a path marked by numerous human sacrifices, a process whose negative finality was not in agreement with the communist propagandistic demagogy.

Résumé

La disparition de la propriété paysanne individuelle "dans le but d'arrêter le développement de l'agriculture socialiste", après la nationalisation de l'industrie, devait éliminer, pour le présent et à l'avenir, l'opposition à l'état totalitaire communiste.

Dans la vision du parti, la victoire du socialisme dans la Roumanie était incompatible avec le maintien de la propriété privée de la terre. De pair avec la destruction de la propriété privée, le propriétaire de la terre a disparu aussi, étant considéré "un virtuel et morbide" allié de l'ennemi de dehors - "l'impérialisme".

The Political Significance of the Papacy in Modern Times

Anca Parmena Popescu

Of the institutions of medieval Europe that have survived up to the modern times, none seems so out of place as *the papacy*. Monarchic in an age of democracy, so far as the personal character of the Popes is concerned, the papacy seems deeply and profoundly involved in the struggle against the powers of *Caesarium*, as the events of times in many countries sufficiently show.

Papacy Perspective on Politics and the Doctrine of Papal Primacy

The doctrine of *papal primacy* upholds the divine authority of the Successor of St. Peter to rule over the entire Catholic Church with ordinary and immediate jurisdiction. *Two documents* are key to understanding the catholic position as a desperate need to understand that humanity needs a supreme institution which combines divine wisdom with political power.

The first one is pointed by the *Pope Boniface VIII*, in his Bull *Unam Sanctum* (1302) who spelled out the doctrine to submit to the Papal authority for the sake of human salvation. Regarding the primacy of authority of Peter and his successors he stated: *"Therefore, if the terrestrial power err, it will be judged by the spiritual power; but if a minor spiritual power err, it will be judged by a superior spiritual power; but if the highest power of all err, it can be judged only by God, and not by man, according to the testimony of the Apostle: 'The spiritual man judgeth of all things and he himself is judged by no man' [1 Cor 2:15]. This authority, however, (though it has been given to man and is exercised by man), is not human but rather divine, granted to Peter by a divine word and reaffirmed to him (Peter) and his successors by the One Whom Peter confessed, the Lord saying to Peter himself, 'Whatsoever you shall bind on earth, shall be bound also in Heaven' etc., [Mt 16:19]. Therefore whoever*

resists this power thus ordained by God, resists the ordinance of God [Rom 13:2]".

Secondly, *Pope Pius IX* convened the First Vatican Council, which in addition to defining *papal infallibility* also defined papal primacy. The Ecumenical Council of Vatican has defined the *papal primacy: the chief of the bishops, the Popes is himself the bishop of each diocese.* And the papacy, except for a relatively short time during the Second and after the Second Vatican Council understood, in matter of faith, morals and discipline, that his power is supreme over any social and faithful structure.

The question of the primacy of Peter and of its continuation in the bishops of Rome is probably the most difficult problem of the ecumenical dispute for non-Catholics. Even in the Catholic Church herself. The Roman primacy has proved to be a stumbling block, from the medieval struggle between *imperium* and *sacerdotium*, through the early modern state Church movements and the nineteenth century's demands for independence from Rome, up to the contemporary surges of protest against the pope's function of leadership and his mode of exercising it[51]. If the Vatican, together with St. Peter's Basilica, is recognized as the spiritual center of the Catholic Church, the Pope is the spiritual center of the Vatican and of St. Peter's, and of all the subordinate sphere of the Church's activities. From this center of the Catholic Church radiates the whole architecture of the agencies of the Church throughout the world.

During the progress of modern civilization, between Rome and all the dioceses of the Catholic world, relations were direct and uninterrupted, rending communication with Rome and the exchange of correspondence more rapid and more sure[52]. The Catholic Church relied on the papacy as a guarantor of the Church's political power. Preeminently, by assembling some of the more significant facts concerned the unique and supreme authority of the Pope, we understand that what binds all things in the Catholic Church together is the principle of Hierarchy. Pope is the spiritual and secular power. Broadly speaking, neither in the practical experience nor in theory, the two main tasks of the Pope: the spiritual duty as a Catholic priest and

[51] Joseph Cardinal Ratzinger, 1996, *Called to Communion. Understanding the Church Today*, San Francisco: Ignatius Press, p. 47
[52] Ball, W., 2000, *Rome in the East: The Transformation of an Empire*, London: Routledge, p. 40

the political task, as the temporal Sovereign of Vatican City, can be absolutely separated.

Under the papal leadership, the modern Catholic Church was an attempted authoritarian state, in which political affairs were subordinated to the spiritual aims of the *Civitas Dei.*

The relations Church-State in the 19th century

During the 19th century, the European governments and the Catholic Church were united in *Catholic policy*. There are probably fewer topics in history which have attracted greater attention than the secular power of the Catholic Church in the relations between Church and State. Considering the multitude of elements that went to make the governmental edifice of the medieval papacy, the problem of the secular power of the Catholic Church is most linked with these central questions: what functions did papal doctrine attribute to a king or an emperor, and why was he to assume a position of inferiority-these and numerous other topics are so essential to the theory of *papal government* that they are part and parcel of the central theme[53].

Therefore, since the papacy entered the historic and political scene in the fifth century, it often lacked the possibilities to translate its doctrines, thoughts and ideologies into practice. For the modern times, the new type of organization of the society in the 19th century that was a stable *absolute monarchy*.

It is well known that the papal governmental authority exercised considerable secular power and political authority over empires, kingdoms, states and others. Indeed, Catholic political thought is incompatible with the whole idea of sovereignty, understood as the supreme authority over a territory and its people.

The historical climate of modern civilization, in contradistinction to medieval civilization, is characterized by the fact that is a "lay" or "secular", not a "sacral" civilization"[54]. Historically, there is a political influence of the Roman law and of the Roman constitution upon the papacy and its doctrine, programs and thoughts need to be examined this way.

[53] Walter Ullmann, W., 1962, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation to Clerical to Lay Power*, London: Metheun, p. 5
[54] Jacques Maritain, J., 1998, *Man and the State*, Washington: The Catholic University of America Press, p. 46

Modern Popes

We propose to select the most significant political programs of the Popes in the 19th century and at the beginning of the 20th century. The personalities selected will be compressed into a brief presentation of the essential characters of their political programs. The principle on which we have proceeded in this short presentation is plain from the general aim we have dedicated to this paper: the political significance of the papacy in modern times.

Leo XIII (1878- 1903), elected at the age sixty-eight, was supposed to be a transitional Pope. In the whole *Leonine corpus* we can identify some ninety documents which are relevant to the problem of Church and State. Perhaps twenty are connected indissolubly with the dominant ideas and doctrines of the problem of Church and State[55]. The life of Leo the XIII illustrates the concentration on religious power in the relations between the Church and the State, after three quarters of century of disastrous experience of the reactionary policy. *Rerum Novarum* examines the interdisciplinary relationships of Catholic social thought and management practice and theory.

Comparing the social encyclicals by popes in the first century after the publication of *Rerum Novarum*, we can notice a political transformation that came to pass, and that it means politically, not only in the attitude toward the real political-economic reality but also in their postulated social actions.

Pope Pius X (1903-1914). The modern period of the papacy is distinguished by the ease with which the popes are elected, because if in the 18th century, the cardinals needed the approval of the powers, in the 19th century, they would hope that their chosen person would be acceptable to the governments of France and Austria. Therefore, they saw no need to wait until they knew what Vienna wanted[56]. This process is related to the political terms of the modern times, the unity of Italy.

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[55] *Inscrutabili* (1878), *Quod apostolici muneris* (1878), *Arcanum* (1880), *Diuturnum* (1881), *Etsi Nos* (1882), *Nobilissima Gallorum gens* (1884), *Humanum genus* (1884), *Immortale Dei* (1885), J*ampridem* Nobis (1886), *Quantunque* Le siano (1887), *Officio sanctissimo* (1887), *Libertas* (1888), *E giunto* (1889), *Sapientiae* christianae (1890), *Dall' alto* (1890), R*erum novarum* (1891), *Au milieu* (1892), *Inimica vis* (1892), *Gardien de cette foi* (1892), *Praeclara gratulationis* (1894), *Graves de communi* (1901), *Pervenuti* (1902)

[56] Chadwick, O., 1998, *A History of the Popes, 1830-1914*, Oxford: Clarendon Press, p 13

The most important principle for the "political" action of St. Pius X, more topical than any other of his predecessors, is the *refusal of the legal apostasy of contemporary societies*. In his document, *Il Fermo Proposito* (June 11, 1905), we can identify that the Pope's worries are seen to be not exclusively religious, but rather politico-religious. The intent of the politics of nations at the beginning of the 20th century, not only in France but also in Portugal, Spain or in other countries of Latin America: Ecuador, Bolivia, and Mexico, was already to sever the ties between man and the *Author of all things* by means of civil legislation. In this encyclical on *Catholic Action in Italy*, St. Pius X declares: the *militant Catholics are therefore devoting themselves to bringing public laws in conformity with justice, to correcting or suppressing those which are lacking in that virtue as well as defending and supporting with a genuinely Catholic spirit the rights of God in all things, together with the no less sacred rights of His Church.*

At that moment, the overriding issue of the society was the relationship between Church and State. On these two solid foundations of the history of the European history and the necessary cooperation between Church and State we can outline the political program that St. Pius X passed down to Catholics at the beginning of the 21st century. The link with the society – a "just balance between the different classes of society"[57], and a "utilization of temporal goods according to Christian laws and institutions" was the most potent element that supplied the base for a pastoral approach even to political issues. Thus, he forbade any future interference or involvement by monarchs in papal elections. He allowed Italian Catholics to vote in the local elections of the Kingdom of Italy. In the line of the documents of Leo XIII[58] and the political program Pius XI[59], St. Pius X reminds the Catholics of the foundations of the Christian social economy.

The history of papacy is related to the history of Europe. The fact that ethical convictions are rooted in religious faith does not disqualify them from the political realm[60]. For some of us, *papal authority* is bound up in the notion of *papal primacy*, for others, it is intimately tied to the concept of *papal government*.

[57] Encyclical, *E Supremi Apostolatus,* October 4, 1903
[58] Leo XIII's encyclicals, *Rerum Novarum* (1891) and *Graves de Communi* (1902)
[59] Pius XI's encyclical, *Quadragesima Anno* (1931)
[60] Kenneth Cauthen, K., 2001, *Church and State, Religion and Politics* (this essay was published as a part of the book: *The Ethics of Belief: A Bio—Historical Approch,* 2 Vols, (Lima: CSS Publishing Co.), August 10.

Résumé

L'article examine les dimensions politiques des programmes des Papes au XIX-ème siècle. On attire l'attention sur trois aspects importants de la papauté à cette période: le pontificat de Pie IX (1846-1878), traversé par les révolutions nationales et libérales de 1848-1849 dans toute l'Europe et dominé par les événements dramatiques qui conduiront en une décennie (1859-1870), et caractérisé par la chute de l'édifice de l'État ecclésiastique, et puis le pontificat de Léon XIII (1878-1903) qui a marqué au contraire un renouveau de la culture catholique avant le pontificat de Pie X (1903-1914) et l'éclatement de la crise moderniste qui ne se traduisent pas par un nouveau raidissement.

The 1857 Constitution Project

Cosmin Lucian Gherghe

Being a man of solid knowledge, conversant with world and national history, sociology, philosophy and especially law, Emanoil Chinezu became an important name in the journalistic field of the time, elaborating a synthesis on the history and the legislation of the Romanian people.

After signing the Paris Treaty, Emanoil Chinezu publishes "several newspaper articles and lampoons about the problem of the Romanian Principalities after the treaty of the year 1856", of which we mention:" A current problem of the Romanians from the Danube", 1856, "The Romanians wishes before the European Commission in Bucharest in the year 1857", "Appeal towards the nation against the caimacans governments on the occasion of the publicationof Vogoridi's secret correspondence, 1857", "The Paris Treaty of 1856, March 30, Articles 20,21, 22, 23, 23, 25, 26 and 27 referring to the Romanian Principalities with comments", "A programme for the ad hoc Divan" in which Emanoil Chinezu makes a series of evaluations of the political situation of the Romanian Provinces stating that: "Our most eager and biggest wish is to define, to regulate, to circumscribe, once and for all our relations with the Gate: so that the ambiguity and the false interpretations can't take place anymore, nor the oppositions and the illegal appeals that may appear, and also, the interventions, collisions, and the protectorates."

In order for the Romanians to get known, Emanoil Chinezu considers that it is necessary: "to take our trial in front of the Congress, where, it is true, we can't ask for our representatives to be accepted, to sustain the interests of one interested part, because then the problem of the absolute suzerainty would be unchained by the fact, but we have the right to ask that our representatives take there our Declaration and sustain it". On this very purpose, he writes a complaint in French - *"MEMORANDUM SUR LES PRINCIPATES DANUBIENS*" écrit pour les commissaries européens, réunis à Bucarest d'après l'art.23 du traité de Paris en 1856- to submit to the European Commission.

He presents the situation in two different chapters: *Question extérieure* and *Question intérieure*, the people's rights throughout history and the conditions that took us to our relations with the Gate showing that "the Romanian state has an existence much earlier than the antagonisms between Russia and the Gate"

We also owe to Emanoil Chinezu the drawing up of a Constitution project called *The Constitution of Romania, reintegrated or the sketch for a constitution in Romania, written* in 1857. The sketch for the constitution was printed in Brussel and comprises the following chapters: *General provisions, Constituent, the Ruler, the Courthouse, the Senate, the Judges.* Emanoil Chinezu considers that "the first and the only preoccupation (of the government) must be the constitution(…) without which we will scream in vain, we will limit ourselves to everybody, we will invoke the convention and the will or the intention of Europe, we won't be able to take any step, at least, where the program is concerned. Oh, well!- continued Emanoil Chinezu- the anarchy will last until we have a constitution ,until we understand that the convention is not a constitution, but a diplomatic act of European public law, by which, making space in the European political republic for our state, giving it the right do give a constitution as free as it wants. (…) No one has the right to give us a constitution. "The right to give a constitution is ours" concluded Emanoil Chinezu.

At the basis of the Constitution, Emanoil Chinezu proposed the family and the property. "The property has an intimate relation with liberty and vice-versa. The general principles of the country will be: liberty, equality, fraternity and property."

The realist, traditional but still reformatory style of Emanoil Chinezu that influenced the unionist programme of Craiova - "The wishes of the Romanians" , determined this comprehensive research of the fundamental norms of constitutional and administrative organization of the state. We have mentioned that in the chapter "General provisions" Emanoil Chinezu presented the problem of the union of the Romanian Principalities as already solved. The first article stated: "Romanians are one people. The Romanian people is considered all the population that lives in the territories called the Romanian Country, Moldavia and Basarabia to the border that serves as a boundary with Russia between Hotin and Lacul Sarat." For a better organization and functioning of the Romanian administration, Emanoil Chinezu considers that: "There is one law for all Romanians" and "no law can be passed without the participation of the representatives of the nation."

Emanoil Chinezu sees the following constitutional powers as pertaining to the state: executive, legislative and judicial. Their organization and functioning is based on the principle of relative separation, which presupposes the hierarchy of the constitutional powers and their collaboration within the limits set by the constitutional act.

Emanoil Chinezu considers that: “in the Constituent resides the suzerain power of the people for all its accomplishment” and “the people will divide in electoral colleges. Colleges will be as many as the counties of the country where the Romanian people lives. ”Every college selects a certain number of delegates that are sent to the capital to form the Constituent Assembly and they are called constituent deputies”. Emanoil Chinezu also suggested that the number of the constituent deputies should be in accordance with the population, one for 5000 inhabitants.

The prerogatives and the attributions of the ruler are precisely formulated in the constitution project done by Emanoil Chinezu. Thus the ruler governs with the help of the ministers he chose, having the following main attributions:

a) to exert the prescribed power
b) to promulgates laws
c) to pardon and to reduce penalties as far as crime is concerned
d) to nominate people for the public functions

The ruler passes laws for the administration and judges.Furthermore, the ruler has to be a Romanian and a Romanian citizen and he will be elected for life by the constituent.

In Emanoil Chinezu’s opinion the courthouse must have the legislative power. It has be made up of 100 people that have to elaborate law projects, to design the state budget, to control the expenses for the maintaining of the state and also to increase the income and reduce the state expenses. The judges are assigned from the people by electoral colleges and they are the representatives of all the interests of the nation.

Emanoil Chinezu attaches great importance to the Senate that has the executive and administrative power of the country. The senators had to be the defenders of the country and of the constitution. The Senate had “all the concern and solidarity for bettering and the plans that will be necessary for the happiness, glory and the power of the Romanian country”. The Senators must be chosen by the ruler. The Senate had the following attributions:

- to elect three candidates to govern, from the senate by general meeting
- to elect the metropolitan bishop and the bishops
- to analyze the law projects sent by the ruler to the Courthouse
- to judge and punish the mistakes of the senators
- to design ,by general meetings, every project of national interest that might concern the prosperity of the Romanian country, to propose it ,by the ruler, to the courthouse chamber

Referring to the judges, Emanoil Chinezu proposed two kinds of courthouses: the courthouses for the first appeal and the Appeal Court whose decisions do not allow for an appeal. The legislative chamber will decide the number and the court's employees in accordance with its needs.

In the end, Emanoil Chinezu concluded: "Here it is our constitution, and here it is what we want it to be: a ruler that governs, a senate that administrates, a courthouse that legislates, a jury that judges."

The constitution project initiated by Emanoil Chinezu in 1857 was influenced in some ways by the French constitution of 1852 and by the Belgian constitution of 1831, and also by the Belgian electoral law.

Emanoil Chinezu focused on the electoral law. He proposed a national electoral law by which it was possible "to call for elections, by universal vote, the entire nation that knows how to write and read, and that thus, can elect for the powers of the state those men that, considering their past bear a reputation as men of the nation." The society will evolve -Emanoil Chinezu considered- only when "elections will be held better, when instead of sending tp our legislative chambers, no matter who, the one that knocks at our door earlier in the morning, we will send those men capable of doing something for the country."

But for the elections to be held better, the citizens must be informed. The importance of his work is also in the way the problems of the organization and the governing of the Romanian people were approached.

In 1858, Emanoil Chinezu translates in Romanian eleven chapters from the second book of the work of the famous Puffendorf , namely "The duties of the man and the citizen" followed by commentaries, stressing the role of civil society and of the elections: "to push our activity for the press and the newspapers, by our discourses in the chamber and in public, but also by our private behaviour in the elections, to contribute to forming a liberal party, devoted to the interests and the moral principles of the country."

After the union of the principalities the objectives of modernizing the Romanian society were integrated to several profound and fast transformations in all the fields.

These changes led to fundamental changes in the economical and social spheres but especially in the sphere of political and judicial status, domestic and international of the young Romanian nation."

Resume

Emanoil Chinezu (1817-1878), politicien, avocat, historien et philosophe a élaboré toute une série des oeuvres concernant la législation et l'histoire des roumains. En 1857, il a rédigé et publié a Bruxelles un projet de constitution pour Roumanie qui contient les chapitres suivants: Dispositions générales, le Constituent, le Souverain , le Senate et les juges. Emanoil Chinezu voit la famille et la propriété à la base de l'état roumain. Ce projet est l'un des premiers projets de constitution avant l'union des provinces roumaines.

Informatics and politics

Daniela Dănciulescu
Ecaterina Păun

What is the connection between informatics and politics, as the citizen, the adult sees it?

1. The Internet- a means of being connected to national and international politics irrespective of the location.
    a) The possibility to read local, national and international newspapers and magazines on-line, regardless where one might find oneself.
    b) Vote on-line! (7, 1 million Americans live and work outside the U.S. It's 7, 1 million Americans entitled to vote electronically, using the Federal Write-In Absentee Ballot system, which means, recording to Republicans Abroad International Web Site, that more than 18 senators of The United States are voted on-line).
    c) Be a member of a political group/ party even when not in your country!
2. "Political games"- applications meant to anticipate electoral results or to stimulate the participation in the elections. Top four most accessed political games online are:

    The Political Machine- a game released on the market in 2004 around the elections in the United States, giving customers the chance to use present political characters (John Kerry and George Bush) or past political characters, the chance to visualize political platforms and speeches, to simulate fund raisings for financing political campaigns. It is also offered……

    Power Politics- an online game already at its third version, giving the chance to manage the resources even at a local level, city or geographic area, as its own web-site reveals it: "YOU get to choose the president", "YOU get to hire the staff", "YOU get to pick the strategy", "YOU get to run the campaign". (http://www.powerpolitics.us/)

    President Forever (http://www.80soft.com/pforever/info/index.htm) and Frontrunner (http://www.lanterngames.com/games/downloads/frontrunner_index.htm) are two of the successful game releases in the campaign of 2004 in the U.S.

In the category of political simulations is also included the Congressional Simulation (http://courses.unt.edu/swood/). Having as

slogan: „Want to be a member of the Congress? This is your chance!", the University of Texas offers a complete application by means of which every student can evaluate his efficiency as a congressman. The game includes a simulation of a Congress meeting, a veto session, parliamentary procedures, interactions with the President of The United States, congressmen etc. The application represents the support used in the class of Political Science in the same University.

There are many ways in which informatics can interfere with politics. So far, the attempts to implement various electronic applications in leadership and governing and, of course, in information and specific research have become more frequent. Such applications refer to the government online (E-Government), the introduction of the Electronic Voting System, the expression of the people's opinion regarding a certain political decision by signing an on-line petition, as well as to the information and publicity developed on the Internet, in the electronic mail and throughout the informatics technologies.

E-Government

„Implementing an E-Governement type of application is very important, as it facilitates an interactive government at low costs," was the statement of the U.S. President, George Bush, at the release of the E-Gov web site in the United States. The electronic government, E-Government, based on the use of the Internet technology, was conceived as a connection tool between individuals or organizations and the government, as well as a fast and direct channel of communication between the citizens and the government. Its role was to eliminate redundant systems, and, simultaneously, to improve the quality of the government and ensure citizens' access to certain services.

Although it implies prior spending, the system proves efficiency all along functioning, so that more than 40 million Americans have accessed the official web site of E-Government searching for information concerning local and federal laws, while more than 20 million have used the Internet to send the president opinions, comments of their own referring to certain decisions, as The Pew Foundation reveals it.

E-Government means more than on-line applications or governing information-sheets; the system also includes various services (paying taxes, fees) and information for the population of the country.

At the EU member countries E-Government Conference in 2003 there were approved a series of regulations including: all countries members in the EU must offer public interactive services, public Internet

access sources, broadband connection, secured communication for the public services priory offered etc.

The electronic voting system

Elections offer the citizens of a country the possibility to opt for their favorite representatives in the superior chambers, the right to choose the régime of government. Normally, obtaining the integrity of the election system leads to obtaining the integrity of democracy; therefore the voting system must be chosen so that it should reflect as faithfully as possible the free will of the people expressed in the elections. The voting system must be, on one hand as solid as possible to stand up to various illegal attempts, and, on the other, transparent enough to be embraced by electors and candidates.

History abounds in cases of fraud in elections or attempts of fraud aiming to obtain certain results. One of these examples was met in the United States, in the 1998 elections when two candidates were apparently separated by only three or four votes, as resulted from the classic, manual counting. After recounting, more than 100 counting errors were revealed in the 80.000 ballots considered. Another important factor contributing to the elaboration of the electronic voting system is the human factor. The voting system must consider all categories of population, including citizens with medical, age or handicap limitations, individuals who often are unable to offer their vote.

In time, along with the technological evolution, more than one electronic voting system were conceived and tested. The counting systems assisted b computer were used for the first time in 1960, helping to speed up and, somehow, to secure the counting. However, these systems were unable to detect fraud. In the 70s, the first full computerized voting system is introduced. Touchscreens are, as we speak, a popular solution in the United States and the use of this equipment is expected to increase substantially as a consequence of a 2002 resolution prescribing that by 2006 all voting sections should be provided with at least one similar equipment at full disposal of the handicapped individuals.

While the electronic voting system seems to generate cascades of controversy in America, Australia appears to have an electronic voting system that reaches its target. Although developed by a private organization, the source was made public and the product was tested in the 2001 elections. The product known presently as "The Electronic Voting and Counting System" was chosen from more than 15 similar offers by reason of transparency. The system runs on a Linux platform

and proves transparency, giving reasons of satisfactions to both political parties involved in the elections and electors or observers.

Undoubtedly, the electronic voting systems will have their own privileged place in further elections, substituting, thus, suspicions referring to manual counting, as well as the enormous work volume involved in the process, facilitating the access of all individuals to vote. Nevertheless, we shouldn't ignore the accuracy and security problems generated by introducing the electronic voting system. As we speak, tests conducted or the already implemented systems proved high stability and low error rate.

SUA: the electronic voting system

The presidential elections in November 2004 also allowed the electronic voting system. What did we learn?

1/3 of the votes gathered in November 2004 came from the electronic voting. As expected, speculations referring to a possible electoral fraud have been rumored:

- the "black box" electronic voting system and the technology used weren't made public which led to the impossibility of a public evaluation of the security offered by the system.
- Other complaints referred to the lack of a uncontestable proof, such as a physical ID to certify the registration of the vote.
- Question marks also rose regarding individuals beneficiating from unlimited access, such as the founders of the electronic voting system.

Real problems were also met during the election:

- in New Orleans, for instance, part of the Sequoia voting machines displayed confusing messages due to a technical error.
- In Ohio, a Danaher voting machine inexplicably added 4000 supplementary votes for George Bush.
- In North Carolina, more than 4500 votes were lost due to an error in storing data.

Countries which have implemented the electronic voting system

There are two important categories of electronic voting:

- **polling place e-voting**- voting in election sections especially provided with the necessary equipment for electronic voting;
- **remote e-voting** – electronic voting from certain locations with no special election destination.

AUSTRALIA (polling place e-voting)

- § first introduced in the parliamentary elections in 2001
- § used by 8, 65% of the electors
- § electronic voting system used: polling place e-voting
- § the remote e-voting system: unimplemented until the 2004 elections.

AUSTRIA (remote e-voting)

- § electronic voting is not regarded as a priority
- § the remote e-voting system was tested in the elections in May,2003

BELGIA (polling place e-voting)

- § a country with tradition concerning electronic voting
- § first tests regarding polling place e-voting were made back in 1991
- § from May 2003, the polling place e-voting system was acknowledged as the unique voting system

Countries introducing/ testing the polling place e-voting system (from predefined locations):

Australia, Belgium, Brazil, India, Ireland, Portugal, Norway.

Countries introducing/ testing the remote e-voting system (from various locations):

Austria, Canada, Estonia, Germany, Spain, Switzerland.

Countries introducing/ testing both systems:

France, Holland, Great Britain, United States of America.

An important role was played by the EU CyberVote Project, an European project for electronic voting.

Romania

The electronic voting system was introduced for the first time in the referendum concerning the renewed Constitution applied only to military in official missions in Iraq, Afghanistan, Bosnia-Herzegovina and Kosovo.

What was the procedure?

The adopted electronic voting system was polling place e-voting. The location remained the classic voting sections, but the vote registration and

counting were made electronically, giving, thus, an automatic character to a large part of the process. Especially for this project, IGCTI (General Inspectorate for Communications and Information Technology) implemented an electronic voting system, supervised by the Central Electoral Bureau. The system led to certain stages of the process:

1. The elector receives, based on his ID, a casual sealed envelope containing an user name and an user password for the electronic voting
2. Based on the received data, the elector marks YES or NO
3. Counting was automatically accomplished by the electronic voting system and the result was send by means of a digital certificate available for each of the computers used.

And, thus, the system is secure and ensures an unique and anonym vote for each participant.

Can we trust electronic voting?

The answer is YES! The percentage revealing this answer differs from country to country. Most trustful in electronic voting proved to be north-Europeans.

"I've started by using the electronic mail, then I bought a book from Amazon using my own card, now almost 60% of my transactions are made online and I manage my bank operations on the Internet. Of course I'll use the electronic voting", stated Patrick Buttler, White House consultant in 2003.

Information and publicity

The Internet offers access to information and another kind of interpersonal communication by means of web sites or electronic mail.

For spreading political information, there are often used online magazines, e-mail services charge free or in exchange for a small amount, considering the profile of the publication. An example of such a public electronic service is E-Government Bulletin, "the first and the best e-mail service with public extension- teledemocracy", as the E-Government Bulletin web site defines itself. The publication, as many others, offers an independent, charge free news and information service regarding all political aspects and issues.

In what research on the Internet is concerned, there is only one problem: finding a trustworthy, valuable source. Whether it goes around consulting a web site or signing in for an electronic magazine, choosing the right source is extremely important, difficult and delicate.

Electoral publicity

After the 1998 campaign was over, statistics were conducted referring to the use of the Internet and revealed that political parties and groups tended to use both advertising systems simultaneously, although the number of electronic advertising users didn't reach very high rates. Therefore:

	Web + Email	Web, no Email	Email, no Web	None
Local campaigns	196	40	54	486
National campaigns	84	22	2	74

Table 1: *the use of Internet services by political party candidates in local and national campaigns in 1998, USA.*

The number of candidates turning to online advertising experiences a constant growth, as the Internet offers cheap assistance with increasing rating.

Statistics:

Power of the Internet:- as an information and political advertising tool

FACT:- more than 22 million Americans have visited in February 2003 a web site dedicated to taxes and deductions services. 2004 brought a 45% increase in the visitors' rate.

FACT:- news sites' traffic met a boom at the end of March 2003 when the war in Iraq went on. Figures prove that:
(http://www.nua.com/surveys/?f=VS&art_id=905358752&rel=true)

MSNBC was visited by more than 8.3 million unique visitors;

Yahoo News registered a 21% increase; that is approximately 6.5 million visitors

NYTimes.com appealed to 2.8 million visitors

AOL News: 2.7 million

Time's Magazine: 1million

British Daily and The Guardian: 835.000

The web site of the U.S. Defense Department appealed to 2.8 million unique visitors, 87% more than the precedent period.

FACT:- in 2007 the online banking services will have approximately 84 million users in Europe. In Sweden and Finland 40% of the population was using online bank operations in 2003.
(http://www.nua.com/surveys/?f=VS&art_id=905358751&rel=true)

FACT:- in Europe, 1 of 5 persons aged over 40 has Internet access, while one in 8 persons uses online journals as current source of information.

FACT:- in March 2003, more than 50% of Japan's population was using the Internet, 80% of the private homes and 79,1% of the companies in Japan beneficiated from Internet connection.

FACT:- March 2003: studies reveal that 2/3 of the online services users involved in politics have received or sent emails referring to the campaign.

The number of American people using the Internet for political research increased with 39% in the last 18 months.

FACT:- 75 million Americans used the Internet to come in contact with political data during 2004 (approximately 37% of the adult population and 61% of the U.S. online service users.)

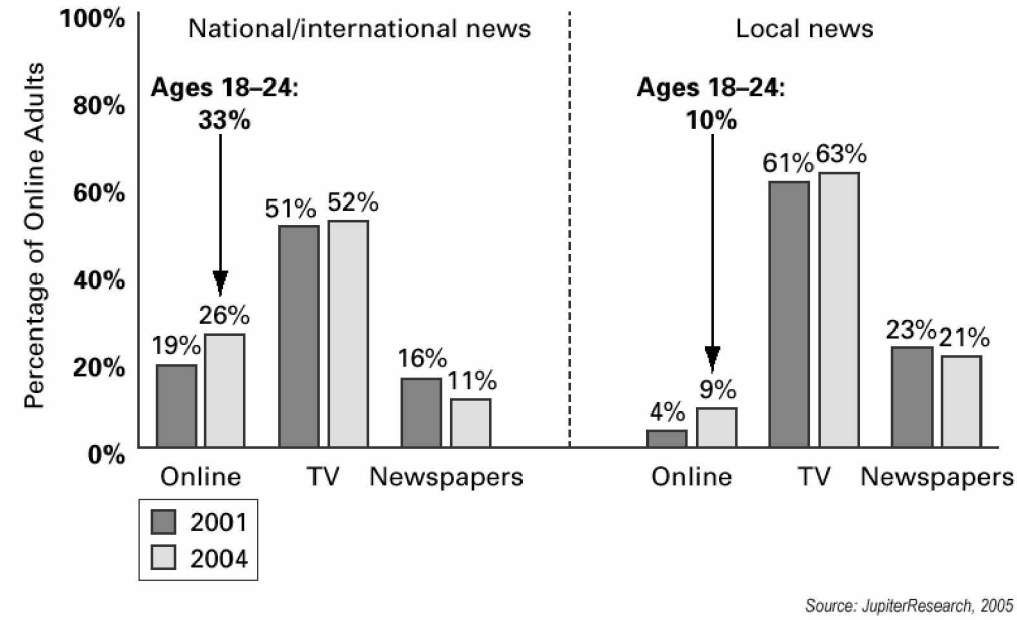
http://www.clickz.com/stats/sectors/government/article.php/3487866

FACT:- using the Internet in the U.S. tends to spend more time than television, which proves another important coordinate of an online presentation.

FACT:- U.S.: statistics on national/international news: in 2001, 19% of the adults were using online news wires as the main source of information- in 2004 the percentage increased to 26%. In 2001, journals were the single source of information for 16% of the adult population, in 2004 the rate decreased to only 11%.

(http://www.clickz.com/img/Local_National_and_International_News_Sources_for_Young_Adults_2001_and_2004.html)

Local, National, and International News Sources Among Adults, 2001 and 2004



Source: JupiterResearch, 2005

FACT:- U.S. online sales in 2008 are estimated to meet an increase 10 times the sales in 2003, reaching U.S.$299 billion; this means that at least 10% of the U.S. sales will be online, while the users' number will reach 65 million Americans
(As revealed by **www.ForestResearch.com**)
FACT:- no hard-copy printed source of information was used for this work.

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Résumé

L'article présente les rapports les plus récents entre la politique et l'informatique. Il s'agit des simulations ou des jeux politiques mais aussi de l'Internet comme moyen de communication entre le gouvernement et les citoyens(le « e-gouvernement), des divers systémes électoraux électroniques (le « vote en-ligne») et de la publicité électorale par l'intermédiaire de l'Internet. L'analyse este baséé sur des dates statistiques significatives.

Judicial settlement of disputes between States at the international level
-The International Court of Justice-

Irina Olivia Popescu

The Preamble of the UN Charter reaffirms the determination of the Member States to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. The UN Charter emphasizes the encouragement of the UN towards the progressive development of international law and its

codification[61]. The UN body of international law, consisting of more than 500 conventions and treaties sponsored by the United Nations[62], provides the legal framework for promoting the economic and social development and for ensuring international peace and security. According to the UN Charter the main judicial organ is the International Court of Justice.

The conception of the International Court of Justice was the effect of the huge effort of finding a pacific settlement of international disagreements. The UN Charter encourages the States to resolve their disagreements using the pacific means listed in the Article 33: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements[63].

The International Court is placed in The Hague (Netherlands). The ICJ started its work in 1946 when the International Court of Justice replaced the Permanent Court of International Justice. The activity of the Court is settled by the Statute of the International Court of Justice which is annexed to the UN Charter. The activity of the World Court focuses on issues such as: economic rights, rights of passage, the non-use of force, non-interference in the internal affairs of states, diplomatic relations, hostage-taking, the right of asylum and nationality[64].

The functions of the International Court of Justice consist in settling the legal disagreements presented to it by states, respecting the international law principles and giving consultative opinion on any legal problem whenever it is requested to do so by the General Assembly or by the Security Council[65].

According to the UN Charter, the International Court of Justice is made of an independent body. The 15 judges have recognized competence in the area of the international law and they have different nationalities. They are elected by the General Assembly and by the Security Council from a list of persons designated by the national groups in the Permanent Court of Arbitration. The members of the Court are elected for a nine-year term and they may be re-elected. The President and the Vice-President are elected by the members of the Court for a three-year term and they can be re-elected. The current membership of the

[61] The UN Charter, Article 13
[62] United Nations, Department of Public Information, *Basic Facts about the United Nations*, New York, 1998, p. 259
[63] The UN Charter, Chapter VI, Pacific Settlement of Disputes, Articles 33-37
[64] United Nations, Department of Public Information, *Basic Facts about the United Nations*, New York, 1998, p. 259
p. 259-260
[65] www.icj-cij.org

Court is as follows: President Shi Jiuyong (China); Vice-President Raymond Ranjeva (Madagascar); Judges Abdul G. Koroma (Sierra Leone) ; Vladlen S. Vereshchetin (Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter H. Kooijmans (Netherlands); Francisco Rezek (Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States of America); Nabil Elaraby (Egypt); Hisashi Owada (Japan); Bruno Simma (Germany); Peter Tomka (Slovakia) and Ronny Abraham (France). The Registrar of the Court is Mr. Philippe Couvreur (Belgium) and the Deputy-Registrar is Mr. Jean-Jacques Arnaldez (France).

The parties in the cases before the International Court of Justice can be, according to Article 33 of the Statute of International Court of Justice, only states. The entitled states are the member states of the United Nations, at present numbering 191 states.

The Court has jurisdiction to consider a dispute between States if only they accepted the Jurisdiction of the Court in one of the following ways:

1. by a special agreement they decided to submit the dispute to the Court;
2. the states are parties to a treaty that includes a prevision whereby in the event of a conflict they have to submit it to the Court;
3. through the reciprocal effect of statements made by them under the statute whereby each has accepted the jurisdiction of the Court[66].

The Sources of law of the International Court of Justice are as follows:

- the international treaties and conventions;
- the international custom;
- the general values of law;
- the judicial verdicts;
- the knowledge of the most competent publicists.

The procedure of the Court is defined by the Statute and includes two different stages:

1. the written phase in which the parties file and exchange pleadings;
2. the oral phase consisting of public hearings at which agents and counsels address the Court[67].

After the second phase, the Court deliberates in camera and then delivers its judgment at a public sitting. The judgment is final and without appeal.

[66] The Statute of the International Court of Justice, Articles 35-37
[67] The Statute of the International Court of Justice, Article 44

The decisions of the International Court of Justice are made with the majority of the judges present. In case of equality of votes the President of the ICJ has the casting vote and if he is not present, the person designed to replace him will have the casting vote.

The World Court can give advisory opinions when requested by the UN Organs and by the Specialized Agencies of the UN System.

The UN Organs which are authorized to request advisory opinions of the Court are:

- The General Assembly
- The Security Council
- The Economic and Social Council
- The Trusteeship Council
- The Interim Committee of the General Assembly

The Specialized agencies of the UN family[68] which can ask for advisory jurisdiction are:

- International Labour Organization (ILO)
- Food and Agriculture Organization of the United Nations (FAO)
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
- World Health Organization (WHO)
- International Bank for Reconstruction and Development (IBRD)
- International Finance Corporation (IFC)
- International Development Association (IDA)
- International Monetary Fund (IMF)
- International Civil Aviation Organization (ICAO)
- International Telecommunication Union (ITU)
- World Meteorological Organization (WMO)
- International Maritime Organization (IMO)
- World Intellectual Property Organization (WIPO)
- International Fund for Agricultural Development (IFAD)
- United Nations Industrial Development Organization (UNIDO)
- International Atomic Energy Agency (IAEA)

The twelve pending cases on the agenda of the International Court of Justice are:

- Application of the Convention on the Prevention and

[68] www.un.org

Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)

- Gabcíkovo-Nagymaros Project (Hungary/Slovakia);
- Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo);
- Armed activities on the territory of the Congo (Democratic Republic of Congo v. Uganda);
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro);
- Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras);
- Territorial and Maritime Dispute (Nicaragua v. Colombia);
- Frontier Dispute (Benin/Niger);
- Armed Activities on the Territory of the Congo (New Application : 2002) (Democratic Republic of the Congo v. Rwanda);
- Certain Criminal Proceedings in France (Republic of the Congo v. France);
- Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore);
- Maritime Delimitation in the Black Sea (Romania v. Ukraine).

The States entitled to appear before the Court are:

1. States, Members of the UN[69];

[69] Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, The Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, The Czech Republic, The Democratic People's Republic of Korea, The Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, The Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, The Philippines, Poland, Portugal, Qatar, The Republic of Korea, The Republic of Moldova, Romania, The Russian Federation, Rwanda, Saint Kitts and

2. States, not Members of the UN, Parties to the Statute;
3. States, not Parties to the Statute, to which the Court may be open.

According to Article 93(2) of the UN Charter, a state which is not member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

The conditions adopted by the General Assembly (Resolution 91) on 11 December 1946 are the following:
(a) Acceptance of the provisions of the Statute of the International Court of Justice;
(b) Acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter;
(c) An undertaking to contribute to the expenses of the Court such equitable amount as the General Assembly shall assess from time to time after consultation with the Swiss Government.

Before becoming Members of the United Nations, Japan, Liechtenstein, San Marino, Nauru and Switzerland were Parties to the Statute of the Court.

The International Court of Justice is also open for other states in accordance Article 35 of the Statute which underlines the conditions that need to be fulfilled. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in case shall such conditions place the parties in a position inequality before the Court.

The Court may be open to a state like this, if in advance, that state has deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court in accordance with the international

Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Arabia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, The Syrian Arab Republic, Tajikistan, Thailand, The Former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, The United Arab Emirates, The United Kingdom of Great Britain and Northern Ireland, The United Republic of Tanzania, The Unites States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

principles of the UN Charter and of the Statute of the International Court of Justice. The declaration of the state can be particular if it refers to the acceptance of the jurisdiction of the Court in respect only of a particular dispute or disputes already arisen, or general if the state accepts the jurisdiction of the Court generally in respect of all disputes or a particular class of disputes[70].

Résumé

La Cour Internationale de Justice est l'organe *judiciaire principal de l'Organisation des Nations Unies. Les quinze juges élus pour neuf ans par l'Assemblée Générale et le Conseil de Sécurité de l'ONU, ont une double mission: régler les différends juridiques qui leurs sont soumis par les Etats et donner des avis consultatifs sur les questions juridiques posées par les institutions autorisées, les Organes de l'ONU (Assemblée générale, Conseil de sécurité, Conseil économique et social, Conseil de tutelle, Commission intérimaire de l'Assemblée générale) et les Institutions spécialisées du système de l'ONU (Organisation internationale du Travail, Organisation de l'ONU pour l'alimentation et l'agriculture, Organisation de l'ONU pour l'éducation, la*

[70] The Statute of the International Court of Justice, Article 36

science et la culture, Organisation mondiale de la Santé, Banque internationale pour la reconstruction et le développement, Société financière internationale, Association internationale de développement, Fonds monétaire international, Organisation de l'aviation civile internationale, Union internationale des télécommunications, Organisation météorologique mondiale, Organisation maritime internationale, Organisation mondiale de la propriété intellectuelle, Fonds international de développement agricole, Organisation de l'ONU pour le développement industriel, Agence internationale de l'énergie atomique). La compétence de la Court est régie par un Statut qui fait partie intégrante de la Charte des Nations Unies. La Cour a deux langues officielles (français et anglais), tout ce qui est dit ou écrit dans l'une des deux langues est après traduit dans l'autre.

Contributions to the Theory of Privatization at the Current Stage

Constantin Ciurlău,
Cristian Florin Ciurlău

A. General context of the analysis

During the last century, for a long period of time, there coexisted in the world (and somehow and in some proportions they coexist even today), more or less peacefully, two social economic systems, totally opposed, regarding, first of all, the fundaments of social organization, namely the way of approaching economic goods and especially that of productive resources of the capital, the structure of economic power and the role of the market levels in order to regulate the economic activity, of

essential correlation at micro and macro-economical level, and secondly, the social finality.

It is about the so-called socialist system embraced especially by Central and East European countries but not only, based on collective properties (in different forms) of the productive means, on the pyramid-like structure of the economical power and on a super-centralized, all-embracing, bureaucratic and normative planning, and the so-called capitalist system embraced by Occidental Europe and North America and Japan, states based on private approaching of productive resources, on the inexistence of economical power hierarchy and on the decisive role of the levers and the instruments of the competitive market (more or less perfect) in order to regulate (or auto-regulate) the social economic phenomena. There was an obvious reality that the springs of the socialist system led to undesirable results, with unfavourable effects upon the social level of that population.

All these questioned the viability of the social organization fundaments of the socialism and the viability itself and the perspectives of the system.

It was a reaction of dispute and denial of that system, a thing that materialized itself during the complex revolutionary movements from the end of the penultimate decade of the last century. The first aspect taken into discussion was that of property. Collective property, especially the state property as it was constituted, is considered illegitimate. The option of the Central and the East European States population has been the building and the consolidation of a society based on capital in the competitive market. The capital and the competition can fully express themselves only within the field of private property. The privatization issue generated a large amount of debates on national and international scene, with one of the most original conclusions. The solutions that were proposed were of a great diversity.

It has been lately discussed about privatization with special reference to the countries still in transition, from the ordered economy, excessively centralized from Central and Eastern Europe, to the economy of competitive market, namely to the market economy or capitalist in the current, usual language. Nevertheless, we emphasize the fact that privatization under several aspects concerns all the contemporary states no matter the economical development level or the evolution stage they are going through: industrialized countries, highly economic developed, countries less economically developed or in the process of development, countries in transition towards competitive free economy. Of course, the

states from the last category face specific problems for this area with no past experience or practice. It still can be said, without making a mistake, that transition generally implies the solving of common issues at theoretical, conceptual aspect concerning the example of the state and of the private economical sphere to the private property, to privatization perceived as a public central reform, to distinction of the matter of privatization in the countries which are going through transition besides the countries in the process of economical development and others.

B *Essential theoretical problems of the property privatization*

B1. **The dependence of the privatization on the acute manifestation of some crisis phenomena in the economical, social and political fields** – this aspect is acceptable for all the states; of course, there are many differences between states or unions of states under the intensiveness aspect, the sphere of the aspects, of the causes and their consequences. So, during the economical crisis between 1975 and 1985, in the occidental states, there developed, for the first time, and it has been taken into account the issue that a larger contribution of public sectors might have negative effects upon national economy. The critical attitude towards the organization of the economy through the investments of the state materialized in the first measures of regulation and privatization in Great Britain.

A similar change also occurred in the politics of helping the developing countries, meaning that if in the decade 1971-1980 the World Bank still supported the nationalization as a means of solving the economical and social problems of those states, at the beginning of the next decade the measures of privatization represented an essential element of the programs of structural adjustment and adaptation imposed by this.

After the breaking up of the social-economical systems in Central and Eastern Europe, the privatization got a new dimension: it became the main coordinate of the transformation of the ex-economies with supercentralized planning. In these countries, within the broader context of transition, privatization manifests as an important necessity from at least two reasons:

a. the enlargement of the economical crisis within every country and within the mechanisms of their integration in the world economy
b. the consolidation of the political democratic process, namely the organizing of premises for the exert of economical rights and freedom of the individual, at the same time with personal and

collective responsibilities in this field. The differences are also essential in the group of the ex-socialist countries from Central and Eastern Europe.

B2. **The incapacity of Governments to ensure the development and to counterbalance the imperfections of the market**.

Between 1961 and 1980 in most developing countries with centralized, planned economy, the economical policy was based on the trust in the capacity of governments to act as an engine of development and to compensate the imperfections of the market; the attention focused upon the public sector from the following reasons: the private sector was underdeveloped, namely improperly structured in order to deliver the necessary goods and services under quantitative and qualitative aspect; the lack of financial resources of the potential enterprises or investors; the lack of transparency of the market which led to strategies of avoiding the risks in the private sector; the low development of capital and financial markets; the monopolies which appeared on a reduced marked could be efficiently controlled and their incomings were led to cover the financial necessities of the state; with the help of public enterprises some social objectives could be followed: - the avoiding of unemployment, acceptable prices, equal repartition of incomings and a lot of patrimony; the state's will to control he development of the sectors considered to be of a strategic importance; the conviction that the property structure has no influence upon the performances of the enterprises. The enlargement of the public sectors still proved to be inefficient and insufficient helping in a small measure to the elimination of economical underdevelopment and that is because of the disadvantages which public enterprises present, among which we can mention: massive investments of the state, both in strategy and planning as well as in current problems; the non-connection of the activities to the internal and external requests of the market; the inefficiency of information abundance; the absence of rigorous financial discipline – the registering of losses (planned losses) and easy access to public credits; the monopoly position of the enterprises and the lack of competition; improper qualification (professional training) of the managers and the lack of enterprising spirit; multiple objectives and sometimes contradictory. Public enterprises tax the state budget pretty much. The economical evolutions proved that even in the developing countries, the economical systems are directed towards the competitive market and they are more appropriate than those based on centralized planning – they lead to larger rates of investment and growth.

B3. **The Reconsideration of the Economical Role of the State** – everything we have mentioned above imposed the critical examination of the economical role of the state and its reconsideration. The reformation of the public sector concerns, all around the world, the identification of the capacities and resources of the private sector and re-dimensioning of the interventions in order to diminish them. In this new context, the repartition of the competences and the objectives between the state and the public centre on the one hand and the private sector on the other hand as well as between different public institutions is based on the subsidiary principle according to which the emphasis in solving the tasks must lie on the lowest possible level. The separation of the states' tasks from the private sectors gives priority to the individual responsibility. The state must interfere only where the private sector is inefficient or does not get involved, as the case of the natural monopolies and of the public good insurance. It must be pointed out, at the same time, that the over-reactive restrictiveness of the states' functions in the process of transforming and reform can lead to a series of dangers: the state has an important role in the creation of an economy in order to correspond to the needs of the population expressed on the market and the conditions for the efficient integration in world economy – so privatization must not be understood in the sense of total withdraw of the state. A small public sector, specialized and efficient, is necessary both for the accelerating of privatization as for the supporting of the new created private sector. We consider that the state's role can be extremely important in areas such as: external politics – outside protection of the country; - the providing of the internal order; the planning and coordination at a national and regional level and the solving of some social objectives. The development of a private economy can be stimulated only by a powerful state – for this one must assure a stable macro-economical politics, coordinate the changes generated from the structural politics in the structure of modernizing and assure the foundation of the institutions or organizations from the sphere of the enterprise.

B4. **Theoretical argumentation of the Superiority of the Private Property against the Public Property**- it must be based on the analysis of property rights, analysis in which a distinction is made between some dimensions of those meanings: the right of possession, right of usage, right of disposition, the right of benefit. In the case of private property, all the rights belong to the particular owner while in the case of the public

enterprises the abstract owner (collective, society or state) is separated from the user and therefore there appears a difference between the right of benefit and the right of usage. The users are not motivated to use judiciously the property and do not use all the opportunities of production because the benefit does not belong to them. In the case of the separation between the owner and the real user emerges the conflict owner-user, because the owner must assure himself that the user is using his property only in the sense wanted by it (rational utilization, the maintain of the substance, the growth of the profit, etc.). The impersonal control mechanisms from the public enterprises do not lead to correspondent adaptations, being necessary some administrative controls, which lead to supplementary costs and raise problems such as inflexibility, the political decision factors addiction and the danger of corruption; at the same time, the ones that are controlled, knowing better the situation at the sight, can avoid or weaken the controls. There may appear problems between the owner and his manager and in the case of private property, when private enterprises are not run directly by the owner – there is the problem of the way in which the management from the stock commercial companies which are not directly subordinated to the control of their owners, can be controlled. Commercial stock companies are submitted to the direct control of the capital market - the accomplishments of the management are valued on the stock market. The inefficient management leads to a decrease of the stock value, the enterprise may disappear and the managers can be fired. The problem of the owner-manager report can be solved in a competitive economy through private property. So, besides the market, the private property fulfils fundamental economic functions, such as: the clear attribution of the competences and the responsibilities of some particular persons by defining the property rights; the concentration, at the owners' level, of the costs and profits from the utilization of the resources; the coordination and the rational allocation of the resources; the stimulus of innovation.

B5. **The perception of the privatization as a central public reform** - one can say that there is no exact definition of privatization; privatization is generally defined as a transfer of the state activities to the private area; in a more juridical way, the privatization is defined as a formal change of the juridical form of the public enterprises in private enterprises. Starting from the general definition, through privatization we understand not only the juridical form of the public enterprises, but especially the decentralization of the economy, first of all of the property. This

represents the separation of the state sphere from the enterprises area and the introduction of some decentralized adjustment mechanisms and some stimulating structures which lead to positive economical effects in enterprises and assure efficient controls of the managers, workers and owners. The privatization is a multiple and complex process, which supposes: first of all, the transformation of the public enterprises in juridical subjects of private right; second, the transmission of the property rights of the enterprises to the private persons that are interested, and thirdly the entire transfer of the risk to the owners, thus forcing to an efficient management. The privatization can also take place by the development of some private enterprises already existent or new-founded (this is the so-called low privatization). In some countries there has been made a choice for the exclusive promo of the already existent public enterprises (e.g. India). In consequence, the privatization programs must not be seen as a purpose, in a singular way, but as a structural component of a great reform of the public area. The privatization interferes with other elements of the reform such as the promo of the competence - the privatization of the monopolies doesn't lead to the desired development of the economical efficiency if it is not accompanied by measures of stimulating the competition, such as opening the markets. But, the activities of the private area need a certain degree of stability and safety. For example, one must be sure that the property rights are for an unlimited period, and the contracts will be observed. Other elements of a stable environment are the assurance of the monetary stability and the existence of a social protection system.

B6 **The strategic objective** of the privatization programs is getting a global positive effect for the population of a country through the accomplishment of some efficient and competitive economical effects and through the enrolling, in the economical process, of the potential labor force; the privatization program is not a purpose in itself. The purposes of the strategic purpose, followed through the privatization programs, can be formulated as follows: the rise of the efficiency by making some clear property relations, starting from the superiority of the private production face to the public one, by the rise of the efficiency of the allocations, the rise of the production efficiency and the coordination of the economical activities by a competitive market; the social acceptance and the wide participation of the population (in many countries, privatization is associated with a wide distribution of the property and the patrimony rights, and the local population has only small economies; there is the

danger of taking out to sale the whole national economy, which divides the population in capital owners - often ethnical minorities and foreigners - and workers with no financial resources; the trend should be a privatization as equal as possible, so every citizen can have equal starting chances; the participation to the privatization of some wide social groups makes the base for a great economical development and determines the acceptance of the political stability); fiscal objectives can lead to the improvement of the financial situation of the country (the budget deficit) - the governments of many developing and in transition countries within the competitive market economy hope to make great incomes from the privatization as well relieving staff, so that they can focus on some particular problems (the constitution of a juridical system, organizing a modern administration, an efficient infrastructure and the promotion of an active structural politics directed towards future.

B7. **The development rhythm** - many people opt for a privatization as fast as possible, in order to assure, in a short time, the efficiency growth of the activities from the private area. There is the risk of a wrong attitude especially in the period between the announcement of a wide privatization and its development, because the small enterprises are not coordinated from the centre, they are not forced to take after the requirements of a competitive market: the workers of the public enterprises can use this period of transition and may demand, for example, high salaries, without responding for their consequences (Poland-enterprises which are administered by the workers). On the other hand, in the case of a privatization and a slow re-organization of the economy, there is the danger of a non-manifestation of the positive effects of property, which leads to social dissatisfaction from the population, especially from the appearance of unemployment. Taking this fact into consideration we can justify a privatization as soon as possible. But, it has to be said, the rapid privatization, and sometimes even thoughtless, has negative effects that lead to a social earthquake and endanger the reform. The German experience offers examples of conflicts because of the acceleration of the reform process - the serious crises appeared in the economy of the former DRG could be stopped only by the massive support of the state to assure a degree of social support as high as possible, but few countries have the capacity to finance such programs. The reality has proved that the formulated objectives can't be all reached at the same time, even if there are great conflicts of interests.

C. **Conclusions**. The problems of the privatization and of the reform are alike in most developing and in transition countries to the competitive economy, but the priorities and the implementation ways are different depending on the country, the level of development and the economic and cultural situation. Between the developing countries and the countries in transition from Central and Eastern Europe there are fundamental differences that must be taken in consideration in the privatization programs. A clear difference refers to the contribution of the public area to the making of the national gross product: in the developing countries it represents 20-40% (unlike the 5-15% in the industrialized countries), while the Central European economies reached up to 97% (e.g. Czechoslovakia). But the privatization is not a matter of volume. In the developing countries the privatization means redefining the part of the state and the private area, because a great part of the economical activities are already privatized and there are structures, mechanisms and institutions of the competitive economy, as well as settlements referred to property and laws in the domain of concurrence, so that there are assured, at least partially, the frame-conditions of an economical system towards the competitive economy; the population of the countries already has the experience in the matter of the functioning way of the economical competitive mechanisms and, in many cases, there is a national elite that knows the practice of the advanced western economies. In the former socialist states from Central and Eastern Europe it is discussed how to put in totally new systems or economical patterns based on the principles of the competitive market, meaning the transformation of some economic-social systems; so, privatization is an important part of the radical transformation of society. Many responsibility factors from these countries did not have at the beginning of the transition and do not have, even in the present time, knowledge on the economical policy directed towards the competitive market or on the enterprise management and nor on a practical experience in the domain. The new economical-social situation of the transition period which is characterized, among others, by assuming certain risks (of capital, for example), now causes to the ex socialist states much bigger problems than to the developing countries: the economical initiatives on their own responsibility were and still are unknown, so it is difficult for them to find enough local investors; it is difficult for people to understand that their job is not offered and assured by the state and that the remuneration depends also on their personal achievements.

The privatization raises a big problem: on the one hand, it is a condition sine-qua-non for the passing to an economy with a competitive market, and on the other hand its progress is conditioned by structures of the economy with a competitive market-forming market prices through the report demand and offer, the existence of some financial institutions or the insurance of some frame-conditions referring to the guarantee of the right of property, the fiscal legislation, the social protection of the unemployed etc. Until the beginning of the transition, such structures and institutions were almost inexistent in the commanded economies, while in the developing countries there were laid at least the bases of a future development. Considering the specific situation of the ex socialist states from Europe it was raised the question of the succession of the transformation stage, in the way that, first of all, the privatization measures have to be carried out, then following the market liberalization, the price liberalization, the opening towards the exterior, or the other way around. In both situations there are conflict aspects. For example, if the prices are liberalized after the privatization, one cannot know if the evaluation of the actives from the enterprises that are to be privatized is realist in the new system of prices. The countries in transition deal with special problems also due to the unclear situation regarding the right of property. After the first attempt of reform of the centralized economies, there appeared patterns of property much more complicated than the simple form at the uniform public property. Supplementary problems appeared with the claims of the ex owners, thing which led to important delays. In the close up of the discussions there was and there still is the question whether the state property should be given back to the ex owners and if these should be indemnified. At the same time, on many occasions, not even in the case of the already privatized enterprises from many countries in transition, we cannot talk about a private property which works according to the principles of the competitive market-in the case of mass privatization we reached a spread of property and, as a result, an inefficient control mechanism. Also, the vertical chaining of the economies that are found in transition (the enterprise often has only one dealer or only one beneficiary) makes that the collapse of an enterprise attract the collapse of the whole network.

We can say, in conclusion, that between the developing countries and the countries in transition there may be resemblances and common starting points in order to elaborate some good privatization strategies. Besides that, in all the countries, the same premises exist for the development of a private, dynamic and efficient area.

Résumé

Les auteurs ont abordé les problèmes théoriques de la privatisation des propriétés dans le monde contemporain, problèmes spécifiques et communs aux Etats en transition vers l'économie au marché concurrentiel, et aux Etats en cour de développement économique. Ainsi les sujets abordés sont : la dépendance de la privatisation de la manifestation aigue de certains phénomènes de crise dans le domaine économique, social et politique; l'incapacité des gouvernements d'assurer le développement et d'améliorer les imperfections du marché ; la reconsidération du rôle économique de l'Etat; l'argumentation théorique de la supériorité de la propriété privée vis-à-vis de celle publique; la perception de la privatisation comme réforme centrale, publique ; l'objectif stratégique des programmes de privatisation et le rythme du déroulement du processus de la privatisation.

Theoretical and Practical Aspects Regarding the Withdrawal of the Existent Complaint and Reconciliation of the Parties

Loredana Maria Ilin

Filing a complaint represents an essential condition to enforce penal liability on the doer and its absence or its withdrawal by the injured person represents a way to set aside a penal responsibility.

In compliance with art.131 parag. 2 of the Penal Code, withdrawal of the existent complaint is a way to put aside the penal responsibility, together with the absence of the complaint (art. 131 parag. 1 Penal Code) and reconciliation of the parties (art. 132 Penal Code),

incidence of the three causes on the penal trial to be judged is the end of this[71].

Lack of complaint means actually not filling or non-existence of the complaint which the injured party has the right to file given the case of existent felonies under the conditions mentioned by the law with a definite purpose, that of enforcing justice on the doer[72].

The complaint is missing when the injured person does not make use of the right offered by law to file such a complaint, and does not express the desire to enforce low penalty on the guilty part.

Lack of complaint is considered also the complaint filed disrespecting the legal requirements: complaint filed after the deadline, complaint filed by another person than the actual injured one or his/her mandatory (or in cases mentioned and accepted by law, person entitled to file the complaint)[73].

In order to produce the legal effects, meaning leaving aside penal liability, withdrawal of the existent complaint certain conditions must be met:

a. Withdrawal of the complaint must be done by the injured party who actually filed it;
b. Its withdrawal should be specific, stated in a precise and formal way or it should be the result of the situation falling under regulation of art. 284 of the Criminal Law, regarding unjustified absence of the injured person from two consecutive terms.
c. Withdrawal should be total, meaning it should include both the penal side of the trial and also the civil and unconditional side, in other words the injured party cannot give up the penal trial and cannot condition the withdrawal of the existent complaint by receiving civil compensation.

   There is also the opinion that the injured person can abandon only the sustaining of the charge, withdrawing the existent complaint from the penal point of view and putting thus aside the penal responsibility of the guilty part, but the victim can also maintain civil action in order to obtain compensation for the damage caused. At the same time there is the hypothesis that the penal decision to stop the trial by withdrawing the existent complaint

[71] Nicolae, G., "Theoretical Aspects Regarding the Withdrawing of Previous Complaint and the Reconciliation of Sides", in *The Right*, year XIV, 3rd series, no. 7
[72] Oancea, I., 1994, *Treaty of Penal Law.Generalities.* Bucharest: All Publishers
[73] V. Dongoroz, S. Kahane, I. Oancea, *Theoretic Explanations of Romanian Penal Code, Generalities*, 2nd volume, The Academy Publisher, Bucharest, 1970, p. 390

cannot represent a legal ground on which the court can reject the civil action as being not acceptable[74].

d. Withdrawal should have the form of an ultimate willingness' expression of the injured party, even if this is not properly done[75].

Thus, it has been decided upon the theft of couples (art.210 of the Penal Code) that since the husband and wife sued each other for theft before the court with the clear statement that the goal is not that of charging the other party, they only want a solution for the goods' spreading and being involved in a divorce, this attitude should be considered a silent withdrawal of the existent complaint – withdrawal has to be real and not determined by violence[76].

Under the circumstances, withdrawal of the existent complaint is considered to be obtained by love sickness as long as in case of trust abuse, the doer promised to give back the stolen goods and moreover kept the promise[77].

Withdrawal of the existent complaint has irrevocable effect, i.e. the injured person cannot undo it. This is the reason why most of the times when the injured party withdraws the complaint and then files another complaint about the same deed, the actual process will not be enforced.

Under this circumstances, the withdrawal of the existent complaint according to art. 131 parag. 2 of the Penal Code is irrevocable and the injured party cannot undo it during the appeal turned against the wife and consequently impede the penal trial[78].

Withdrawal of the complaint towards only some of the participants cannot have as effect disposal of the penal liability according to art. 131 parag. 4 of the Penal Code in order to produce the effects of

[74] Maria Ioana Michinici, *Again on the Complete and Unconditioned Character of the Withdrawing of Previous Complaint,* "The Right" magazine, year XII, 3rd series, no. 9/2001

[75] N. Volonciu, *Lawsuit Penal Right,* Didactical and Pedagogical Publisher, Bucharest, 1994, p. 115-116

[76] County Court of Suceava, *Penal Decision no. 375/1983,* Romanian Law Journal, no. 7/1984, p. 69

[77] Bucharest City Court, 1st Penal Section, *Decision no. 1905/1983,* Romanian Law Journal, no. 7/1985, p. 63

[78] Bucharest City Court, 2nd Penal Section, *Decision no. 92/1991,* Collection of Penal Judicial Practice –1991, Culture and Press House, 1992, p. 208

the withdrawal of the existent complaint, this piece of paper has to refer to all the participants[79].

In one case[80], the injured party withdrew his/her complaint towards only one of the persons mentioned previously in the complaint.

First, the court of justice made a mistake by charging the guilty person against which the complaint had not been withdrawn and decided to close the action against the defendant, in which case the complaint had been withdrawn, instead of charging him too, because withdrawal of the existent complaint only towards him did not imply any juridical effects.

A strange situation is referred to in art.131 parag. 5 of the Penal Code, stating that in that case of persons lacking of exercise or with little exercise, the penal action is enforced by help of state paid representative, although in order to enforce justice on the guilty parts only the initial complaint is enough.

Case[81] goes that the injured person, victim of the rapist, was a minor of 16 years old, with little possibility to develop the procedure. In absence of the complaint, the penal action-crime rape- was initiated immediately by the prosecutor.

First, the law court by using the statement of the injured person - conforming desire to withdraw the complaint, decided wrongly to stop trial against the guilty person. Because there was no such complaint, the law court acted on its own in this case, the trial could not have been stopped only because the complaint was withdrawn and even if such a complaint had existed, it still would not have been enough.

Admitting withdrawal of a complaint has basically the same grounds like not filing one: situation of minor importance with no special aftermath, when the injured person considers that it is not the case to apply a punishment; the deed committed involves some family members and no popularity is desired; enforcing penal liability is not considered useful anymore to cease the penal conflict, but it can be seen as causing further distress and this is the reason why the injured person would rather avoid such prospects[82].

[79] Supreme Court, Penal Section, *Decision no. 2144/1984,* Collection of Decisions, p. 319

[80] Supreme Court of Justice, Penal Section, *Decision no. 1889/1995*, "The Right" no. 6/1996, p. 114

[81] Supreme Court of Justice, Penal Section, Decision no. 2067/1995, *The Right* no. 6/1996, p. 117

[82] I. Oancea,I. (ibidem), pp. 301-303

Withdrawal of the existent complaint has as consequence disposal of penal liability of the doer; from the point of view of the trial, if the penal trial commences, the penal action cannot be continued anymore and decision will be taken to cease the penal trial (art. 10 letter "h" and art. 11, point 1, letter "c" and point 2, letter "b"- Criminal Law). The defendant or the accused person may ask follow-up of the penal trial according to art. 13 of the Criminal Law. In order to have all the juridical effects, reconciliation of the parties should meet the following requirements:

1. reconciliation should be done only in the cases stipulated by law (condition written down in art. 132 of the Criminal Law), i.e. those felonies in which cases law admits reconcilisation.
2. as a bilateral act, reconciliation must come between the injured person and the criminal or their legal representatives (or in other terms between the injured person and the defendant or the culprit).

This reconciliation must be crystal-clear, explicit, i.e. clearly expressed by the parties and not assumed due to the circumstances which may possibly imply it.

3. reconciliation must be personal: it should have an explicit reference to those who decided to reconcile and not use generic terms about the deed done (thing included in mentions of art. 132 of the Penal Code)
4. reconciliation must be total, unconditioned and definitive.

Reconciliation is total when it leads to complete arrest of the trial both from a penal and a civil point of view.

Reconciliation is unconditioned when it comes to levelling the obligations coming from the felony without any other condition. A reconciliation subjected to a condition would involve suspending the penal trial until that condition is fulfilled.

Obligation undertaken by the culprit must also be written down in the sentence stating the end of the trial because in case it is not accomplished, it can form the object of forced fulfillment[83].

Reconciliation is permanent when the parties declare that it is irrevocable, independent of the fulfillment of the undertaken obligations, unilateral or bilateral; it is also considered definitive when the obligations undertaken by the parties have been fulfilled before even mentioning this to the court of law.

5. reconciliation must intervene until the decision is made definitive and should take place in front of the legal authority[84].

In this way reconciliation can occur in any moment before the beginning of the trial or during it, during the follow-up period or during

[83] Bucharest City Court, 2nd Penal Section, Decision no. 2050/1976, *Romanian LawJournal*, no. 5/1997, p. 69
[84] Volonciu,,N., 1994 :p. 116

the trial (even during the appeal) but only until the decision is made definitive (art. 132 parag.2 of the Penal Code).

The opinion that reconciliation of the parties should not be irrevocable has been reworked because both the injured party and the culprit should have the possibility to undo the decision made and ask for a new development of the trial[85].

In case the injured party did not turn 14, this person cannot have a decisive behavior towards the culprit even if he/she is assisted by the father, a possible reconciliation is possible only with the parents[86].

The young woman who just turned 14 can exercise her rights and obligations but only if the parents are informed on this; she needs pre-approval from both parents in order to close the trial in which she is the injured party on account of seduction felony (art.199 of the Criminal Law)[87].

6. reconciliation of the parties should be clear, it cannot be deducted from other situations or deeds.

Reconciliation of the parties according too art. 132 parag. 1 of the Penal Code discharges penal liability and ceases civil action. Effects of reconciliation appear the moment when it is actually performed[88].

Résumé

L'introduction de la plainte préalable représente une condition fondamentale pour le tirage à la réponse pénale du coupable. Le manque de la plainte ou son retrait représente la cause de l' éloignement de la responsabilité pénale. Le retrait de la plainte préalable cause des résultats irrévocables: la personne blessé ne peut pas revenir contre eux.

[85] Nicolae, G. (ibidem), p. 103

[86] Supreme Court, Penal Section, Decision no. 2398/1983**,** Romanian Law Journal, no. 8/1984, p. 67

[87] Supreme Court, Penal Section, Decision no. 3137/1974, repertoire 1, p. 238

[88]Mitrache, C., Mitrache, C., 2002, *Romanian Penal Right. Generalities*, Bucharest Chance Publishing and Press House

Conforme à art. 10, lettre h du CCP, l' action ne peut pas être mise en mouvement et la poursuite pénale du procès pénal cesse si les parties conseillent.

The Ethics of Public Relations

Gabriela Boangiu

The moral talent is the ability to transform the ethical forbidding into a free but adequate behavior.
(Andrei Plesu, "Minima Moralia", 1988, p.80)

It is considered that the Ethics of Public Relations was shaped with this subject's growth. Nowadays the coherence of what Public Relations have become is clearly made visible, by analysing the main steps in making Public Relations an independent scientific field, within the complex 'family' of Communication Sciences. Thus, maybe paradoxically, the ethical principles that sustain the whole edifice of the contemporary communicational system; modern Public Relations find their origins in the shocking violation of some minimal moral rules. The example of Taylor Barnum may be eloquent in this case, and we shall refer to it in this paper.

There is a suspicion that sometimes hovers over the departments or firms concerned with Public Relations and that is due both to the nature of the role held by that this kind of relations in the wide variety of the social space, and to its controversial evolution. This evolution comes

from the promotion of an unidirectional pattern of communication (organized for a propagandistic aim), to that of a bi-directional communicative one (oriented both to the objectives of a Public Relations Agency-NGO, firm, governmental agency, and so on- and to the public's needs –that can be satisfied through the activity of that very agency/organization, and that of course respecting some ethical and deontological principles specific to the Modern Public Relations[89].

We have to specify that Modern Public Relations have remarkably enriched the Reference System with an ethical principle as compared to its incipient period, both as an independent academic discipline and as practice in different fields of social life (economy, politics, entertainment etc). It is necessary to analyse the nature of public relations both from the perspective of the definitions given by theorists throughout time (culminating with that of Rex F. Harlow) and from the one of symbolical interaction (especially Erving Goffman's vision on social life). Although Goffman "develops a style centred on the individual seen as an actor in the social life's show"[90], his work presents a pertinent methodological and theoretical point of view of both the micro-social universe (that of individual performances) and of the macro-social one (represented by economical, social, cultural institutions and organizations).

For a very long time, Public Relations have been identified to some propagandistic practice, meant to manipulate the public opinion so as to support the objectives of different organizations or of economical, political or cultural institutions. From their beginning as practice for the organization - seen as transmitter - and the different categories of public- as each and every communicative act , they present the features of a drama performance. If "the information about an *individual* helps to define a certain situation, right from the beginning, then they offer the possibility to know what is the individual expecting from them and, in turn, what they can expect from that individual"[91], Then, it is obvious that

1. James E. Grunig and Todd present in "Managing Public Relations" (1984) the first attempt to theorize the shape of Modern PR, by delimiting 4 patterns specific to the main moments of their historical evolution. The information about this first theory referring to the evolution of PR in the USA, has been obtained both from the *Public Relations* book written by Remus Procopie (pp. 4, 26-28, 44-45) and Denis Mc Quailand Sveb Windahl's *Communicaton patterns for mass study*, translated by Alina Bargaoanu and Paul Dobrescu, 2001, Bucharest, pp. 162-165

[90]Vlasceau, L., "Erving Goffman and social dramaturgy. Foreword" in *Erving Goffman, Daily life like performance* (translated by Simona Dragan and Laura Albulescu), 2003, Bucharest: Communication.ro, p. 7

[91] Goffman, E., *Daily life like performance*, (translated by Simona Dragan and Laura Albulescu), 2003, Bucharest: Communication.ro, pp. 29-43

the individual (whether deliberately or not) will express himself and "the others will have to be *impressed* by him in one way or another"[92]. Thus, from the "performer-like individual" there will appear as a direct result the intention of *controlling the others' attitude*, moreover their reaction at his appearance[93]. They will begin to tackle the moral character of projections, and the *reality impressions* performed by that individual. In this way, Goffman considers that "the society is organized on the principle that each and every individual that possesses certain social features has the *moral right* to expect to be evaluated and treated by the others in accordance to his condition. There is another principle that derives from this one, and that is "an individual that proves that he/she has certain social features (in an implicit or explicit way) *should be what he/she pretends he/she is* (…) He/she exerts a moral request on the others, making them to evaluate and to treat him/her as the people of his kind expect to be treated". Defining the social role as being "the … rights and duties related to a given status", Goffman considers that the social role "implies more *routines* and that each of different roles may be presented by the performer, on different occasions, to the same types of audience or to the same audience as well"[94]. In this permanent change of projections, coding and un-coding, the audience ("the others", "the witness", of the staging) always has advantages over the actor (the performer), because the ability to decrypt one person's behaviour to expose his "calculated non-willingness" seems to be better developed than the ability of manipulating his own behaviour by every performer-individual[95].

Thus, we understand why Public Relations have first developed empirically, as individual practice, built less on scientific grounds than on personal life experience, "flair", spontaneity, type of personality whose control is centred on the insight. We also consider viable the possibility to influence others' opinion through the activity done by the performer-like individual and other necessary but not sufficient 'ingredients'- as being observed along the time- to a true professional in PR. In this way, there has been developed the first step of the inter-human relationship in general and of the Public Relations in particular. There exists the possibility that the actor, whatever it may be (an organization, institution, *department or PR Agency*) can promote a certain *reality impression* or

[92] see Ichheiser, G., 1949, *Misunderstandings in Human Relations*, supplement for *The American Journal of Sociology*, L September, pp.6-7 apud Erving Goffman, read works, p.30
[93] Goffman, E., read works, p. 30
[94] *Ibidem*, p.43
[95] *Ibidem*, p. 36

perform a certain part in this way, intending to control the audience's responses and reactions. Although the latter (the audience) is placed in a passive attitude, it can more shrewdly decrypt the performed behavior rather than the actor that cannot control the staging of his own reality impression. Each performance' deviation into the false horizon, brings with it a series of regulatory behavior:

- On the one hand, (that of the audience) there is blame. They are trying to re-establish the order through adequate appreciations, and they are adding punitive reactions;
- On the other hand, (that of the performer) there are activated different types of defense devices. These are meant to retrieve the lost symbolical capital.
- This *moral control over the projections* of various performers that act into the communicational space constitutes the first element of PR' ethical basis. This leads us to an essential request in what concerns the job of a public relations officer, and that is, "judgment errors are not forgivable in PR". (…) He/she is expected to do his/her job with passion and responsibility.
- *Passion* in order to persuade and to have the courage to fight for their own ideas, to work under pressure and after inhuman schedules, to let creativity run wild.
- *Responsibility*, because all that he/she does can lead the organization on dangerous or, on the contrary, on happy paths; *"because an error can damage the organization's reputation or even his/her own one"*[96]. A so-called 'Relationist' that makes a mistake is *fully responsible*.

Public Relations can be considered the natural consequence of the need to control others' opinion, i.e. public opinion, maintaining in the right parameters the symbolical capital of a firm, organization, governmental agency, a NGO, etc. in the communicative process. There are some essential characteristics deriving from here. In 1976, Rex F. Harlow, after studying 472 definitions of PR and combining their essential elements, drew some important conclusions that define the role and function of PR:

1. Public Relations represent the distinctive

[96] Dagenais, B., 2002, *The Relationist Profession* (translated by Anca-Magdalena Frumusani), Iasi: Polirom, p. 83

managerial function. This helps establish and maintain some mutual communicative boundaries, mutual acceptance and cooperation between a company and its public.

2. They help in the Conflicts' Management, helping the managers to be informed over the public and to answer to its requests.

3. Also, they define and accentuate the managers' duty – to anticipate tendencies. Research and communication *based on ethical grounds* are used as main instruments[97].

Still, it is a long way to obtain that definition, it is rather complicate and it eludes a multitude of ethical principles that finally comes to integrate in this definition.

There are two points of view that complete one another referring to the evolution and becoming of PR in the modern form as known nowadays and, in this way, applied to in the specialized communication spaces. The first is that of J.E. Grunig and T. Hunt –they consider that Public Relations represent the management of communication between the organization and the public categories. Analysing the features of the communication process specific to them, they will bring 4 patterns that will correspond to different historical periods in the evolution of Public Relations: the impresario/publicity kind, the public informer one; the bi-directional and asymmetrical PR, and the bi-directional and symmetric PR[98]. Studying each case, we observe:

1. The impresario/publicity kind, promoted between 1850-1899. It is characterized through unidirectional, persuasive communication, from the company-transmitter, to the public-receiver. Its aim is a propagandistic one, and there is poor quality of the information through that pattern, from the perspective of their value as truth. An example of that period is P. T. Barnum, a controversial character of his times, but that will stand in the memory of PR as "maestro of pseudo-event, maestro of planned happenings"- basic elements of modern PR.

2. The public informer kind, that characterises the

[97]Harlow, R.F., "Building a Public Relations Definitions", *Public Relation Review* 2, no.4 (winter 1976): 360 apud Remus Pricopie, *Public Relations* (textbook), p5 and Bernard Dagenais *The Relationist Profession* (translated by Anca-Magdalena Frumusani, Iasi, Polirom, 2002, p. 55

[98] Denis Mc Quail and Sveb Windahl, *Communication Patterns for Mass Study* (translated by Alina Bargaoanu and Paul Dobrescu). Bucharest, Communication.ro p. 162-165 and Remus Pricopie, read works, 2001, p. 44

period between 1900-1919 and that, unlike the first one, will use correct and complete information. But communication will still remain unidirectional. A central figure in this period is that of Ivy Lee that formulates new ethical principles in the practice of PR and these will emphasize on informing the public-*The Public be Informed.* In this way, he puts the PR in the horizon of a moral image, surpassing the well-known expressions: *The Public be Fooled* and *The Public be Damned*, and with them, the philosophy specific to the PR promoted to the end of the 19th century (characterized by totally ignoring the public, but also by the lack of social responsibility of those who practiced the PR[99].

3. The bi-directional and asymmetrical PR presents a fundamental turnout both in the evolution of PR as communicative process and in what concerns the ethical grounds of its actions. That kind of communication is no longer a unidirectional one, but a bi-directional one, feedback playing an important part in the self-controlling process. Although, within this pattern there cannot be identified the essential elements of scientific persuasion, still, the public's needs, the objectives, the interests remain on the second position as compared to the aims of the company that practises this kind of PR.

4. The bi-directional and symmetrical PR puts the PublicRelations on ethical and explicit deontological grounds. Also initiated by Edward L. Bernays, this pattern will be developed into a long-term partnership between the organization and the public categories. Public interest is, in this case, on the same footing with the organization's objectives and the PR' function would be that of mediator, until reaching a correlation between them.

Apart form the theories of J. E. Grunig and T. Hunt, there has been another point of view, that of D. Newsom and his associates –J.V. Turk and D.Kruckenerg[100]. This theory wins a great deal of prestige due to the completion to Grunig and Hunt's theories, with a pertinent analysis of techniques' evolution used in different contexts, specific to the Public Relations. Also, the stages have been clearly defined in time and they have been associated to certain historical moments; they complemented one another, in this way contributing to a coherent deciphering of the evolution of PR throughout time.

Enlarging the applicability in different fields (economy, culture, politics), PR became different from Advertising, due to the necessity of

[99]Wilcox, D.L.,.Ault, P.H., Agee, W.K *Public Relations. Strategies and Tactics*, Harper Collins College Publishers, 6th ed., apud Remus Pricopie, read works, 2000, p. 52
[100] *Ibidem*

consolidating its *credibility* (in this way there appeared as 'self-conscience' of the new field). PR gained their own identity through the communication process – specific to Humanities, through elaborating a coherent complex of concepts, laws and their own research techniques and strategies.

The growth of PR implies an explicit preoccupation for respecting some ethical and deontological principles, principles that suppose certain transparency both in the research process and in the public campaign. Although there are many agencies that still use the old-fashioned patterns in PR, there is a general increase of social responsibility from the agencies to the end of the 20th century. Why did this turnout happen? Why did this preoccupation for transparency, for de-centering from the organization's aims and identifying the public's needs appear, in this way leaving the unidirectional old patterns specific to the 19th century and even the beginning of the 20th century?

The necessity of a credibility capital led to the drawing up of new campaigns in order to emphasize both the techniques and methods' transparency used in organizations counseling and the customers' activity (respectively of the PR departments). "The Agency's self-introduction" is based on strong ethical and deontological principles. The same happens with: the Agency's 'image'- made under an aura of transparency, of respect for the targeted public categories, the preoccupation for information, for its value of truth and avoiding disturbing actions. The permanent changes from the economical and social field have imposed a new approach from the active practitioners, one that cannot ignore the Public Opinion (no matter if it is a governmental or non-governmental institution, active in the economical, political, social or cultural field). This approach has to be persuasive, convincing, it has to take into account the targeted public categories, no matter if it does that for gaining some profit or for any other cause. Modern marketing real purpose is to identify the wishes of some potential customers and also to evaluate their ability of becoming buyers of any material and immaterial goods that would satisfy their requests. Thus, marketers *do not really create needs*, they can i*nfluence* the wishes through which they can satisfy the desires of the targeted public. Edward L. Bernays considered that: "Each and every firm and agency should be aware of the new conditions and it should adapt its behaviour so as those that depend on it to keep their benevolence[101].

[101] Mc Quail, D., Windahl, S., C*ommunication patterns for mass study* (translated by Alina Bargaoanu and Paul Dobrescu), Bucharest ; Communication.ro pp. 162-165 and Remus Pricopie, read works, 2001, pp. 26-28

Although active in the human communication field, PR may be frequently suspected of the possibility of transmitting false information. *The lie* in PR is a concept that acquires contradictory values, directly proportional to the effects on the Public Opinion. How can we then identify a lie? According to Ryan and Martinson, there are some kinds of lies in PR:

- The refuse to comment some journalists' statements;
- To offer evasive answers to clear and distinct questions asked by the journalists;
- To deny and infirm the rumours about the organization and about the members of the Board (through denial or counter-lie);
- To deliberately hide the correctness of the information already held by journalists and checked as true and revealing it only under pressure;
- To communicate other information to the wide public than that approved by the Board;
- To hide the information from the Board /client.

There is a thin line between "the Utilitarian Ethics" and the "non-professionalism" crossed by the wings of a large fan, from "the white lies" (for gaining the journalists or public opinion's approval) to "the grey lies" (which can become useful devices for avoiding or hiding negative aspects of the discussed topic)[102].

PR' growth and its substantiation on ethical and deontological grounds have been made in parallel or maybe as a consequence of society's growth, of strengthening the civil society, of its continuous education so as to limit the impact of public manipulation.

By further discussion about the PR' Ethics and its immersions into philosophy, we can emphasize the great importance that Kant gave, at the same time presenting his opinions about lie. Kant said that "the greatest violation of the man's duty for himself (considered to be a moral being), (the humanity in its own) is the opposite of truthfulness, the lie (*aliud lingua promotum, aliud pectore inclusum genere*[103]). It is clearly proved that, in Ethics, each premeditated untruth could not avoid this stressed name, its harmlessness not bringing any kind of further authorization"[104]. Here comes obvious the responsibility that each active practitioner from the PR has to take for the 'value of truth' of the information disseminated

[102]Bernays, E.L., 2004, *Crystallizing the Public Opinion* (translated by Florin Paraschiv). Bucharest: Communication.ro

[103] It is one thing to talk (to communicate), and it is another thing to lie

[104] Kant, I., 1999, T*he Metaphysics of Manners.* Bucharest : Antaios., p. 252

into the Public Space. Consequently, the Relationist profession combines art with science, and more and more increasingly with *ethics*, a necessary ingredient for transparency and, implicitly, for the credibility of the PR campaigns.

That is why we have chosen Andrei Plesu's quote: *The moral talent is the ability to transform the ethical interdiction into free but adequate behaviour* as a motto for the paper. Here, Andrei Plesu emphasizes the dynamics of some moral issues by activating them into the 'vivid', human-like type.

By saying 'moral talent', he makes the transition from the Decalogue's strictness (What you are not Allowed to Do), to the assertive act, adapted to some particular events. Moral talent represents the ability to value *The Dynamics of Neuter Principles* in the infinitely invariable context of daily moral debates. To have a moral talent is to have the intuition of palpable ethics, well distinguished by the generic law validation: to betray the Law in order to remain faithful to its spirit"[105]

The PR active modern practitioner has to reach the artistry of spontaneous wording, doubled by scientific grounds of Human Communication, guided by the permanent presence of Ethics in this activity as a challenge for a free, creative spirit, for there are no few those that consider Public Relations "un état d'esprit"[106] (a state of the spirit).

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[105] Plesu, A., 1998, *Minima moralia*, Bucharest: Romanian Book, , pp. 80-81

[106] "(…) Public Relations represent a state of the spirit than can be shared by all the partners of an organization. The Originality (PR) resides in the objectives, and mainly in that trusting climate between the organization and its public"- Dagenais, B., 2001, *The Relationist Profession* (translated by Anca-Magdalena Frumusani), Iasi: Polirom, p. 40

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Résumé

Cet article-ci fait l'analyse des fondements éthiques des relations publiques dès le commencement empirique jusqu' au présent modern de cette discipline. A partir de la définition que R. Harlow a formulé en 1976, après avoir étudié plus de 472 de définitions des relations publiques, et faisant la comparaison avec les modèles de l' évolution de cet domaine des sciences sociales (élaboré par J. E. Grunig et T. Hunt), l'article souligne l'identité spécifique des relations publiques modernes – en même temps art, science et éthique de la communication dans l'espace social.

The Role of the European Court of Justice in the Process of the European Integration

Adela Lupu

"A European federation will be achieved,
sooner or later, through the force of things."
Napoleon

The juridical element had a very important role in the process of European integration because the foundations of the European Community, which afterwards have been developed and continually renewed and defined via the derived law represented by recommendations, norms, regulations and other documents of the community organs, were laid through institutional treaties which represent the primary law of the European Union

The Court of Justice of the European Union has also played an important part in the process of European integration, exercising a direct influence upon forming the community law and conceding to this one an authority resembling the one of the federal law in the federal systems. By interpreting the institutional treaties, the Court of Justice of the European Union has changed into a catalyst of the process of European integration, contributing to the bridging of the community legislative gaps. At the same time, the competency of this juridical body has been in a continually extension upon some new fields according to the depth and extension of the community co-operation.

The history of the Court of Justice of the European Union begins with the foundation of the European Community of Coal and Steel (ECCS) through the Paris Treaty signed in 1951 and which came into force on July 23rd 1952, the treaty stipulating the foundation of an International Court of European Justice. The main prerogative of this instance consisted in exercising control on the legality of the sentences passed by the High Authority and the governments of the states members at the notices or complaints made by the states members of the treaty or by the representatives of the enterprises in the field of steel and coal production.

The Rome Treaties from 1957, come into force in 1958, regarding the foundation of the Economic European Community (ECC) and the European Community of the Atomic Energy (ECAE) stipulated the foundation of a unique Court of Justice for the three communities. The main prerogative of this Court of Justice was to secure the law in application and interpreting the treaties, in this way, the Court sanctioning the violation of the community institutional norms by the committee or by the states members.

Initially, the new Court was made upof seven judges, six being nominated by each state member (France, Germany, Italy, Belgium, Netherlands, Luxembourg) and the seventh one being nominated by the Councils. Once adhering the new states to the European Communities (and then to the European Union), the number of judges and lawyers has changed, there being one judge from each state member but keeping the odd number of judges.

Once increasing the number of the states members of the European Communities as well as the prerogatives of the Court of Justice from Luxembourg, it has been founded, through the Unique European Document, the Court of Prime Instance, which began its activity in 1989, as an instance subordinated to the European Court of Justice.

The Maastricht, Amsterdam and Nice treaties contributed, too. Thus, by the Nice treaty signed on February 26th 2001, the Court received new competencies in the field of the stressed co-operation of the states (art. 40). It also stipulated the possibility of founding some "Chambers of Judgement" subordinated to the Court of Prime Instance, the latter becoming instance of appeal against the sentences taken by the chambers. Thus, it is outlined a real juridical system that can ensure the efficiency of the control on the legality of the documents of the communitarian bodies and of the states members, European justice becoming trustworthy.

In solving the causes that have been presented to it, the European Court of Justice applies the communitarian law, which is specific because of the fact that it is characterized by two fundamental principles: on the one hand, the legality or direct applicability of the communitarian law in the internal law of the states members, and on the other hand, the priority of application of the communitarian law from the internal normative documents of the states members.

Regarding the legality and the direct applicability of the communitarian law in the internal law of the states members, this is necessary because the European Union represents more than a simple union of interests of some states, it has a right order, not only proper but also self-governing, where the right subjects are the states members as well as the physical or juridical persons seen as individual entities. Thus, once decreed by the competent organs of the European Union (the representatives of the states members bing part of this institution, the norms are applied directly to the national law of the states members, without a previous procedure of ratification or approval by the legislative body.

The principle of legality and direct applicability is strongly connected to the priority application of the communitarian law, the norms of the communitarian law having priority on the others pertaining to the national law. As a consequence, if a norm of the internal law contravenes to some of the communitarian law, the states members have to adopt immediately the national legislation, and the national judges have to observe the communitarian law.

Thus, the national judge will have to apply the communitarian norm even if this one contravenes to the norm of the internal law without waiting for the abrogation of this internal norm by the legislative body from his country and without requiring the approval of any constitutional court, as it comes out from Siemmenthal, March 9th 1978.

On the other hand, if the national judge has difficulty in applying or interpreting some communitarian normative documents, he may introduce a preliminary action to the European Court of Justice, the latter being the only authorized organ to decide upon the issue[107].

[107] Dauses, M.A., 1995, *Das Vorabentscheidungsverfahren nach Artikel 177 EG* – Munchen :Vertrag, Verlag C.H.Beck, p. 109

As art. 234 in the Amsterdam Treaty stipulates - if the conflict between the communitarian norm and the internal one is discussed in front of a national instance, its sentences not being susceptible of juridical appeal, the notification of the European Court of Justice is compulsory.

The principle of the priority rank of the communitarian law is also known in the legislations of some of the states members of the European Union, such as the Constitution of Netherlands (art. 65) and the Constitution of France (art. 55). The British law is a customary law and, without a Constitution, this principle is stipulated through the document of adhesion of Great Britain to the European Community from 1972 (European Communities Act). In Germany, Italy and Belgium this principle has also been known at the constitutional level, but, the most developed Constitution is that of Ireland (May 10th 1972), where it is affirmed that no other stipulation of the Constitution will contravene the communitarian law. These principles are applied on the basis of the institutional treaties of the European Union through which the states have definitely operated a limitation of their sovereign prerogatives. The primary communitarian law (institutional treaties), as well as the derived law (norms, regulations) benefit of the priority rank, which will have priority not only on the ordinary laws but also on the supreme laws of the state. Thus, the communitarian law makes an integrated part, with priority rank, of the internal juridical order applicable in every state member of the European Union[108]

Analyzing the features of the European Court of Justice, we can notice that this court has a "mi generis" character because it combines the characters of more types of internal, international and ad-hoc juridical bodies, resulting in an unprecedented juridical body, suitable for the co-operation form realized as part of the European Union which is also unprecedented. Thus, it can be seen as an international instance in a classical sense, too, but also as a constitutional court (in the case of the preliminary actions regarding interpreting and establishing the legality of some juridical norms when the conflict of laws between the internal norm and the communitarian norm appears). The European Court of Justice can also be seen as a contentious-administrative instance (in the actions against the communitarian bodies), a work instance (for the communitarian office workers or the employment institutions) or civil

[108] Gyula,F., 2002, *The European Court of Justice, over national instance of judgement*, Bucharest :Rosetti Press, pp. 26-28

instance (for the damages caused by the communitarian office workers without having some obligations stipulated by the contract). The European Court of Justice can also play the part of an arbitration instance if a contract among the states members is signed, for example, where there is a clause which specifies some litigations (which, in other way, were not the object of the European Court of Justice) they are judged by this one.

Having in mind the experiences of the Court of Prime Instance, and recently of the chambers of judgment, a real juridical system emerges, where the European Court of Justice plays the part of a supreme instance, in trying the appeals of the inferior instances, a different thing from the other international instances, the sentences of which cannot be set upon only through extraordinary ways of attack[109]

The part of the European Court of Justice was decisive in the process of European integration, being asked to give an answer to the many questions of constitutional nature which have a special economic importance. Through the preliminary actions allowed by art. 177 (234) in the Treaty, the Court has largely opened the gates towards national instances, establishing a type of co-operation which, in this way, had as a result the uniform application of the communitarian law.

The mission of the European Court of Justice was not easy if we consider that the national juridical systems with which the communitarian norm came into conflict were themselves different, and the different mother tongues brought about some other difficulty in interpreting the communitarian law in an uniform way.

The European Court of Justice had to impose on the national jurisdictions, well outlined, an authority which was still in progress. The judges of the European Court of Justice had to interpret the norm supporting the useful or practical effect, which the signers of the treaties had had in mind, in order to consolidate the European Union.

One of the most famous sentences of the jurisprudence of the European Court of Justice was Van Gend and Loos, passed on February 5th 1963[110], where there was formulated, in an unambiguous way, the principle of the direct applicability of the communitarian law and its superiority over the national juridical order.

[109] Fabian Gyula, F., *the quoted volume*, pp. 24-25

[110] The decision of the European Court of Justice, February 2nd 1963, case no. 26/1962, "N.V. Algemene Trasnport with Expedition Ondermevring van Gend&Loos/Dutch Financial Administration", Volume 1963, p. 1

More precisely, the Van Gend and Loos Dutch firm of transport noticed a Dutch court with an action against the Dutch customs bodies who applied a customs duty of 8% of the value from a chemical product coming from – at that time – The Federal Republic of Germany. The Dutch enterprise considered that, thus, art. 12 of the Treaty of the European Community was not observed as it forbade the introduction of new customs duties or increasing the existent customs duties on the Common Market.

The problem raised in front of the Dutch instance was, if an individual (physical or juridical person) had the right of availing oneself of a stipulation of an international treaty signed among the states, in other words, if these treaties, could give certain rights and duties directly to the individuals.

The Dutch court noticed the European Court of Justice and its sentence became famous, claiming that the institutional treaties of the European Community were directly applicable to the representatives of the states members when they were accepted without conditions and did not require other supplementary regulations for their application. As a consequence, the Dutch enterprise had the right to prevail directly over the stipulations of art.12 of the Treaty of the European Community, because these treaties had founded a new juridical order, the subjects of which are not only the states, but also their citizens.

Another sentence of the European Court of Justice, which represents the cornerstone of the communitarian law, was adopted in the case Costa vs Enel, the sentence being passed on July 15th 1964[111]. More precisely, lawyer Flaminio Costa considered that the law of nationalization adopted by the Italian government in 1962, by which the whole electricity production was allowed to one single enterprise: Enel, ex-shareholder to one of the nationalized firms, did not observe the Treaty of the European Community. Thus, Flaminio Costa did not pay a cheap electricity bill, around some hundred liras, because he wanted to make his rights acknowledged.

In Italy, there is the dualistic theory upon the law founded by Triepel (German) and Auzilati (Italian), who consider that international treaties are received in the internal law, having the value of a national law. Consequently, the law of nationalization from September 6th 1962,

[111] The decision of the European Court of Justice, July 15th 1964, Case No. 6/1964, "Flaminio Coasta/Enel", volume 1964, p. 1141

being a subsequent law to the one of ratifying the Rome Treaties, changed their stipulations[112]

Solving the conflict, the European Court of Justice stated that the Treaty of the European Community set up a new proper juridical order integrated in the juridical systems of the states members and which imposes on their jurisdictions, making it impossible for the states to prevail over a juridical order accepted on the basis of reciprocity, a subsequent one-side regulation opposed to this order. Thus, each state could abolish the stipulations of the treaties through a legislative document opposed to the communitarian texts[113].

The Court specified that by founding the European Community the states members limited their sovereign rights, founding a proper law system which they obliged themselves to respect. But these assumed duties, according to the Treaty setting up the Community, would have not been unconditioned but only essential if they had been doubted by subsequent legislative documents of the states signers[114]

In the Cassis de Dijon case (1979), the court stated, in an unambiguous way, that the Europeans can consume any kind of food products coming from the countries of the Community, on condition that these were legally produced and commercialized, there being grounds connected to health or environment conservation which would stop their import.

The European Court of Justice elaborated decisions on the human rights, although it there is not a charter of the fundamental rights. Thus, in the Defrenne case (1971), regarding the equality of remuneration of men and women, the Court estimated that it was not necessary to adopt special laws at the communitarian or national level, because the mere principle of equality between sexes stipulated by the Treaty is directly applicable to a concrete litigation. The Court pointed that art. 114 (119) of the Treaty of the European Economic Community has a compulsory character so the interdiction of the discrimination between men and women in the workfield is compulsory.

In the Reyners case, tried in 1974, the court considered rightful the complaint addressed by a Dutch lawyer to whom it had been refused the practicing of his profession; he had successfully taken the examinations

[112] Tandon, M.P., 1992, *Public International Law*, Allahabad : Allahabad Law Agency Asia Offset

[113] Duculescu, V., Duculescu, G., 2002, *European Justice; Mechanisms, Wishes, Perspectives*, Bucharest : Lumina Lex Press, pp. 94-95

[114] Manolache, O., 1996, *Community Law*, Bucharest : All Press, p. 40-41

needed in this country on the reason that the Law of Judiciary Organization in Belgium stipulates, as a condition of practising the lawyer profession, Belgian citizenship, the only exception being if there is reciprocity in the applicant's country.

The Court considered that the right of settling down refers to all paid activities of the physical or juridical persons and it has to make possible the establishment of any independent activities coming from a state member to another state member[115]

In the Francovich affair (1991) the Court stated the principle of the state responsibility for the prejudices caused to the individuals by breaking the communitarian law, as well as the duties of repairing the damage caused.

The few sentences of the European Court of Justice point to the decisive role which the Court has in the dynamics of the process of integration, a much more important role than that of the juridical bodies at the national level. The fact that individuals may intervene in front of the European Court of Justice and that they enjoy the protection of the rights gained directly through institutional treaties, had a clear impact on the pace of European integration[116]. Thus, citizens have a feeling of belonging to a community, with strict rules, capable of guaranteeing the rights gained by the "European citizens".

The European Court of Justice has encouraged the national instances to apply the communitarian law, because, the European Union will not be founded if each nation tries to preserve its own legislative system and does not undergo legislative harmonization.

Concerning the future and Romania's integration in the European Union, it is possible that the communitarian law can find certain adversity in applying the international treaties, the Romanian judge being cantoned somehow in the exaggerate "legality" of the Romanian instances. Thus, it is possible, that without a specific stipulation of the immediate effect and of the direct application of the communitarian law in the Treaty of adhesion, the judges refuse the direct application of the derived norms. Of course, initially, the step will be shy enough and certain mistakes in application will be inevitable, but this will not be something unusual or of tragic nature.

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[115] The decision of the European Court of Justice, June 21st 1974, case no. 21/1974, "Reyners", volume 1974, p. 631

[116] Renaud Dehousse,R., 1998, *The European Court of Justice,* London : Macmillan Press Ltd., pp. 94-96

For example, the Spanish instances were confronted with such mistakes in the application of the communitarian law, in the early years of their integration and now they are ones of the more disciplined from Europe, having an important contribution to enriching the communitarian law[117].

Romanian judges can use preliminary actions, through which even if the Court is required to interpret only a certain article of the Treaty, they will examine everything including the susceptible internal norm of getting into conflict with the communitarian law and give the solution which must be observed by the national instance. The European Court of Justice does not abrogate the internal norm, this thing being of prerogative of the national legislative bodies, but it prevents the stipulations of the European Court of Justice from operating until the sentence of the Court is compulsory.

If the judges were fully aware of the influence of their activity on the process of Romania's integration in the European Union, they could have the role that the judges had in establishing the communitarian juridical order (judges made Europe).

Résumé

Dans la structure des institutions communautaires, la Cour de Justice de l'Union Européenne a une grande importance. Ce remarquable forum juridictionnel, ayant son siège à Luxembourg, a exercé une influence directe sur la réalisation même du droit communautaire. Les fameux cas van Gend et Loos et Costa vs. Enel, prononcés au début de l'existence communautaire, ont défini avec beaucoup de clarté le caractère du droit communautaire, en fondamentant l'idée, de son applicabilité directe dans les pays membres de l'Union Européenne et de sa supériorité par rapport au droit national.

[117] Bojin, T.L., Flaviu Ciopec, F., 2001, "The Romanian Judge and the Communitarian Law" in *A Romanian Concept Regarding the Future of the European Union*, Iasi : Polirom Press, pp. 419-439

The Reference of the Romanian Civil Law to the Dispositions of French Civil Code Regarding Some Effects of the Mandate Contract

Cristina Popa Nistorescu

The juridical acts, which are concluded by the authorized agent (or his deputy)[118] on his behalf or on behalf of his principal, have as an effect the creation of direct juridical connections between the principal and third parties; actually, the third party negotiates with the authorized agent, and legally, they sign a contract with the principal[119]. Therefore, all the active or passive legal effects of the act concluded by the authorized agent with the third party have a direct effect upon the principal. He personally becomes the creditor, the debtor of the third party, respectively, or the titular of the real right obtained through the concluded act, and his patrimony will suffer a modification resulting in the estrangement or the constitution of the real right in favour of the third party or by puting an end to an obligation report[120]. Therefore, if, for example, the authorized agent signs a sale and purchase act of a thing belonging to the principal,

[118] "Even if the authorized agent was not conferred the right of substitution (but the substitution was not clearly forbidden), the act concluded by the deputy – within the rights conferred by the mandate – produces effects on the principal (for example – the debtor who paid to the deputy will be freed) because the deputy represents him; in relation to the principal, for the acts or the deeds of the deputy, not only he but the initial authorized agent will answer in front of law, according to article 1540 and article 1542, Civil Code" – Fr. Deak, F., 1999, *Treatise of Civil Law. Special Contracts*, Bucharest : Actami Publishing House, p. 354, footnote no. 58.

[119] Deak, F., quoted work, p. 354; Chirică, D., 1997, *Civil Law. Special Contracts*, Bucharest :Lumina Lex Publishing House

[120] Deak, F., quoted work, p. 354

the right of property regarding that case is no longer the principal's patrimony and belongs now to the patrimony of the third party purchaser as if the act had been concluded directly with the principal owner. The same thing happens when an act of association to a trading company, concluded by a authorized agent on behalf of and on a principal's account makes the latter become an associate, with all the rights and obligations which derive from this quality, as if the act had been concluded by himself[121].

What one must bear in mind is that according to article 1546 alin.1, Romanian Civil Code and article 1998 alin.1, French Civil Code, the principal suffers directly the effects of the acts concluded by the authorized agent only if the former has acted within the rights which were conferred to him. For everything the authorized agent does beyond the rights conferred to him by the mandate, he is not retained, excepting the case when he ratifies, directly or tacitly, the respective documents (art. 1546 alin.2, Romanian Civil Code and art. 1998 alin2, French Civil Code).

If the principal invokes a cause of invalidity, including the fraud agreement between the authorized agent and the third party, he will no longer be under any obligation according to the contract (the juridical act) concluded by the authorized agent within the limits of the received warranty.

In the case when the authorized agent concluded the juridical act with the third parties within the limits of the received warranty, the obligations contracted by him to the third parties will have to be executed by the principal. Thus, the principal can sue directly the third parties who contracted with the authorized agent, and in their turns, the third parties can sue directly the principal. A decision to coerce the authorized agent to the payment of compensations, within this quality, will be enforceable against the principal. It is true that the authorized agent is responsible for the crimes and quasi-crimes he commits, but it will be also taken into consideration the responsibility of the principal, because he cannot oppose the third parties the fraud or the culpa of the authorized agent. The existence of several principals excludes the solidarity to the third parties, excepting the situation when the solidarity clause has been stipulated[122].

In the juridical literature, two interesting consequences were noticed, consequences derived from the dispositions of the art. 1546, Civil

[121] Chirică, D., quoted work , p. 266
[122] E Safta – Romano, E., 1999, *Civil Contracts*, Iaşi: Polirom Publishing House, p.245

Code: a) the date of the act under private signature, and signed by the authorized agent, is opposable to the principal, although the acts have not received a precise date, according to the law; b) counter-document signed by the authorized agent is also opposable to the principal.[123]

What will the situation be if the authorized agent acts infringing the limits of his mandate?

Article 1546 alin2, Civil Code, stipulates, in this case, that the principal "will not be indebted for everything the authorized agent would have done besides the limits of his powers, only if he certified it directly or tacitly". Thus, the acts accomplished by the authorized agent with an infringement of its powers will produce no effects within the reports between the principal and the third parties. Although, normally, it is absolutely nul, the act accomplished without a given power by the authorized agent can produce effects within the reports between the principal and the third parties. This situation can derive from three distinct juridical mechanisms: ratification, business management or appearance[124]. Ratification opposes to the other two mechanisms because it depends on the principal's will.

The principal will be held by what the authorized agent did by the infringement of the powers which were conferred to him if he ratified the act of the authorized agent. Thus, we can affirm that the ratification is a unilateral act through which a person (the principal, respectively) approves of an act which is accomplished on his behalf but without his order. The ratification can be express or tacit. It can result from all kinds of documents, deeds or circumstances which show the principal's will to ratify. For instance, it can result from a beginning of execution, by the principal, of the obligations which derive from the irregular act. Nevertheless, the authorized agent must ensure that the principal wanted to agree to it and that he did it fully aware[125]. The ratification is maintained even if the authorized agent declares that he has asked it in his own interest, too[126].

The ratification, either express or tacit, has a retroactive effect regarding the reports between the principal and the authorized agent, until

[123] Hamangiu, C., Rosetti – Baicoianu,I., 1997, *Treatise of Romanian Civil Law*, Bucharest: All Publishing House, p. 620
[124]. Petel, P., 1994, *Le Contrat de mandate*, Paris : Dalloz Publishing House, p. 81
[125] Collart Dutilleul, F., Delebecque, P., 2001, *Contrats civils et commerciaux*, 5e edition, Paris : Dalloz Publishing House, p.527
[126]Collart Dutilleul, F., Delebecque, P., 2001, p. 527

the day of signing the contract, because the confirmation is equivalent to the mandate. As for the ratification with the third parties, it does not have retroactive effect. It cannot alter the rights of the third party between the date of the act concluded by the authorized agent and the ratification date. If a future ratification or no ratification act cannot alter the rights of good will third parties, instead we can say that they can consolidate their agreements[127]. If they retain their right, even by confirming the acts that overcome the authority, the principal can require penalties from the authorized agent[128].

There will be a tacit ratification when the principal accepts the acts deployed by Authorized agent out of the limits of the authority contract (e.g. execute a certain act) or, it does not mention anything when it founds that the Authorized agent has concluded an act by surpassing the limits of its authority.

The ratification must have the same conditions as the act concluded within the limits of authority. In this sense, if the act concluded based on authority is annulated for form faults, then, these faults must be resolved through ratification. If the act concluded by the Authorized agent is done without the observance of authentic form requested ad validitatem, the ratification must be in the authentic form. The ratification or confirmation can result from the Principal and his/her heirs.

Though the Principal can imposed ratification to the third party that concluded with the powerless authorized agent, the third party can sometimes go beyond the bad will of the Principal to benefit from such an act in the absence of ratification. In this sense, they dispose by a legal mechanism – the business administration and a praetorian construction – the theory of appearance[129].

Business administration is the case when a person takes care of someone else's business, without the former to know this, in order to do him/her a favour. If the acts fulfilled by the business administrator are utile, the owner of the business will fulfil certain obligations concerning the administrator and, among other things has to fulfil the obligations the administrator contracted on his behalf. This is the case when the act seemed like a good, reasonable opportunity when it was accomplished

[127] Banciu, M., 1995, *Representation in civil juridical acts*, Cluj – Napoca : Dacia Publishing House, pp. 160 – 161
[128] Safta – Romano, E., quoted work, p. 246
[129] Petel, P., quoted work, p. 82

and it would have been, probably fulfilled by the owner himself if this could have acted.

The French Civil Code specifies that an act concluded by a powerless Authorized agent obliges the Principal with respect to the good will third parties. Article 2005 of the French Civil Code offers this solution when the recallable Authorized agent deals with a third party that is unaware of its ademption and article 2009 extends this solutions to various situations in which the authority ceases and the third parties are not informed about this.

In the Romanian law literature it was considered that, if the authority was concluded in uncertain terms, from which the third party might think the power of the Authorized agent is bigger than in reality, the Principal will not be able to invoke article 1546, paragraph 2 in the Romanian Civil Code and will not be able to avoid the obligations contracted by the Authorized agent[130]. The principal will be forced to comply with all the Authorized agent acts when the authority was in blank, because the third party could not know the purpose of the authority[131].

Third parties cannot take action against the Principal if the Authorized agent acts within the limits of the authority. Third parties must know the limits of the authority, which is not always easy. In order for the third parties to be protected, it is necessary that the Principal is held responsible for what was done beyond the limits of the authority. He can be held responsible in the following cases: the authority was obscure, the authority did not indicate the limits of action, he did not specify the ademption of the authority[132].

The Principal can be held responsible also when it was not his fault, based on seemingly authority, in which case the trust of the third parties in the power of the Authorized agent are legitimate, this implying that the third parties did not verify the exact limits of the power offered to the Authorized agent. The appearance is, for the Principal, a source of obligations, independently of any mention to the felony responsibility[133].

The theory of seemingly authority is not free of dangers because a person can be held responsible based on appearance, against his will and without personal utility. This is why the appearance has its limitations.

[130] Hamangiu, C.,Rosetti-Bătănescu, I., Băicoianu, A., 1997, vol. 2, p. 621
[131] E. Safta-Romano, quoted work, p. 245
[132] Malaurie et Aynes,1990, *Droit civil. Les contrats speciaux*, Paris : Cujas, p. 575
[133] Fr. Collart Dubilleul,F., Ph. Delebeque, P., quoted work, pp. 527-528

The main condition is the legitimate trust or at least reasonable trust. The third party must believe that they deal with the right Authorized agent. There is no relevance that others do not let themselves fooled by the quality of the Authorized agent, what is important is that the third party should have a plausible excuse, even if they are the only one fooled. If the fault is obvious or implies an element that the third party should have been aware of, or must have been aware of it, such as the law, there is no logic for him to be protected[134].

All depends on the appearance in the case of seemingly authority. It is sufficient for the Authorized agent to have created a situation that determines the third party not to doubt its powers: he used the office of the Principal, he was dressed in his uniform, he used paper with the header of the Principal, the Authorized agent was the one doing the act on a regular base. The circumstances are decisive: the quality of the parties, the nature of the contract, the behaviour of the Principal etc[135]. The appearance must be proved by the one who invokes it. The judge must offer details regarding this, showing the fault and that it was a legitimate error.

The effects of the seemingly authority are the same with the effects of regular authority: the Principal is bonded with the third party. In exchange, the seemingly Authorized agent is not bonded with the third party – he could not conclude the act on behalf of someone else and it only engages his responsibility. He has no contract with the Principal but he is responsible for the conditions of business (e.g. in order to return the price of goods sold to the third party) because in the French law the seemingly authority is considered a quaasi-contract[136].

[134] *Idem*, p. 528
[135] Collart Dubilleul, F., Delebeque, P., quoted work, p. 529
[136] D. Mainguy,D., 2000, *Contrats speciaux*, 2'eme edition, Paris : Dalloz, p. 366

Résumé

Le mandante est chargé directement avec les effets des actes conclus par le mandataire avec les tiers dans la mesure où celui – ci a actionné dans la limite des pouvoirs qui lui ont été donnés. Pour ce que le mandataire fait dehors les limites des pouvoirs donnés par le mandate, celui – ci n'est pas retenu excepté le cas dans lequel il ratifie exprès ou tacitement les actes.

Encore que, normalement, l'acte conclu sans pouvoir par le mandataire est nul, il peut produire les effets vis – à – vis des rapports parmi le mandante et les tiers. Cette situation peut surgir à cause des trois mécanismes juridiques différents: la ratification, la gestion d'affaires et l'apparence.

Public opinion and democracy

Ileana Roman,
Miron Roman

The term *public opinion* is widely circulated in contemporary sociological and socio-political literature. *Public opinion* is to be equated to a global image consisting of:

- the psychosocial mechanism of social attitude emergence, functioning and change;
- the place and role of the public opinion within the social life;
- its impact on the social and political life.

As a social phenomenon, *public opinion* can be traced back to the early stages of human evolution when the first forms of social organization appeared, namely during the primitive communal system. The term *public opinion* appears much later during the bourgeoisie revolution.

From the very beginning, public opinion is related to mass assertion in the political arena as opposed to absolute state authority. Public opinion becomes a synonym for the spirit of the people, which due to the bourgeois revolution, has become more assertive, playing an important role in the class struggle. The spirit of the people was characterized by the fact that they spoke up their minds and acted accordingly. In this respect, the terms *public spirit* and *public voice* are very suggestive.

In an attempt to define the spirit of the people, the phrases *public spirit* and *public conscienc*e are launched and in the late 19th century the term *public opinion* replaces them and enjoys popularity in England.

In England, *public opinion* referred to the people's possibility of

expressing their opinion outside the Parliament where debates were not open to the public. There was interest in defining *public opinion* as expressing freedom of speech, political debates open to the public as opposed to parliamentary speeches. This meant in fact the application of an important bourgeois principle, i.e. freedom of speech and the ever more important role of the press. It explains why public opinion was, for the first time, a research focus in England.

Despite its unequivocal etymology, the term *public opinion* is used vaguely in ordinary language thus generating doubts about its future use. Harwood L. Childs states that *public opinion* is equated to the masses, to the crowd. In everyday verbal exchanges, metaphors are taken verbatim. We often hear "public opinion reacts against" or "public opinion accuses of / is worried about / disagrees with / acknowledges" etc. In reality, it is not the public opinion which is the agent, it is the people, the masses. Such phrases are generated by the tendency to personify public opinion. Sometimes, the term *public opinion* is wrongly used to designate individual opinions in a non-interactive way or to name the set of emotions and desires as an entity beyond the individual level.

In an attempt to explain the complex and controversial nature of the reality surrounding us, sociology hypothesizes and interprets things G. Burdeau draws our attention to the fact that public opinion is wrongly identified to the people's will, although they have different origins. Public opinion is a synthesis of various elements, formed at the collective level, in the sense that individual peculiarities are unaffected. As an intellectual phenomenon, public opinion requires the participants to espouse a theory. It is not an intellectual synthesis, but a set of requirements that do not affect the will of the people, it merely binds them together.

Such ideas are controversial. Among the French sociologists, J. Stoetzel considers that opinions and beliefs are temporary superficial processes which do not affect conscience in its deep structures. Another author, concerned with human evolution/decline, suggests that any enduring improvement of human behaviour is caused by a change in the environment and consequently man cannot change if there is no change of the environment.

In *Dicţionar de Sociologie*, *public opinion* is defined as a set of beliefs, knowledge and intense feelings of the members of a group or community, relative to an important field. The sociological dimension of public opinion is indicative of the fact that public opinion means more than espousing a theory, it is theory in action. This dynamic aspect, considered a prevailing attitude within a group, which manifests a clearly

– defined or diffuse conscience, thus shaping a common attitude.

If there is controversy on defining the concept of *public opinion*, it is due to its real or imaginary function in the social life, i.e. due to its social and political value in different social strata, professional groups and cultural or scientific organizations; at a larger scale, discussions concern the electorate's preferences, especially during campaigns. In fact, the democratic system generates overt or covert resistance on the part of the powerful and the rich.

It is what a French author called "an invention" for the balance of interests and opinions, "an invention" meant to break through totalitarian regimes.

In the early 1980s, Claude Séfart considered that the contemporary "democratic invention" was represented by all the protests and rebellions in Eastern Europe, which made it meaningful. Like many other authors, he tries to explain the social function of opinion trends and the relationship between their coming into force and a real dynamic democratic life; actually, the history of civilization has witnessed "perfect democracy" nowhere in the world.

To conclude, in spite of the controversies, *public opinion* can be defined as the sum of individual opinions on matters of public interest, such opinions influencing group behaviour and government policies.

All the definitions fall into four broad categories according to Daniel Derrivery:

1. quantitative – assessment, i.e. the distribution of answers to the questions of the opinion polls.
2. internal structure – public opinion is more than the mere sum of individual opinions, it is structured according to group instructions and to the relationship between opinion leaders and the masses.
3. the political dimension of public opinion seen as a force to be taken into consideration by the government.
4. the relationship between public opinion and political communication – the assertion of public opinion will influence political power.

The development of public opinion is a four-stage process:

1. the emergence of the opinion, the formulation of a relevant idea about a controversial matter of public interest;
2. the development of the idea and its correlation to the immediate and future expectations of the public so as to gain persuasion power.
3. the dissemination stage when different segments of the public, the most easily to be persuaded, are targeted.

4. the acceptance and espousal stage when the opinion becomes compatible with short – and long – term expectations.

In our contemporary society, public opinion emerges and survives if society has at its disposal the adequate media so that people may be informed on the events and may take a decision.

Mass-media, through their impact, are to be considered mediators between economic, social, political, ideological and cultural events and processes, on the one hand, and public opinion, on the other hand.

Mass-media inform the public opinion beyond the mere transmission of news, i.e. they help crystallize opinions.

Georges Friedmann emphasizes the mass media role, which he labels "the terrible weapon". He states that mass media can disseminate information, arouse curiosity, generate interests, enlarge the expectation scope, integrate the individual into his region, country, planet and refine his taste and intellectual curiosity, i.e. make the individual fully aware of events, art, doctrines etc. At the same time, mass-media can mislead, contaminate and annihilate all of the above senses.

Public opinion, as a topical issue, has its own history. Nowadays, it is common knowledge that public opinion is a fundamental notion in political science and society at large. Whether it is freely developed or it is fabricated, public opinion depends on the political life of the nation/state, being an important factor for the legitimacy of democratic authority.

Throughout centuries, public opinion promoted statesmen, political and historical figures, scientists etc. It also blocked anti popular movements and regimes. It rescued nations from downfalls and from irrational leaders or it "cured" such leaders of their weaknesses.

Alongside other components of the social and political life (democracy, equality, sovereignty), public opinion is part of an ideology and a tool of policy implementation. As a dynamic social factor, public opinion involves a democratic system or at least the citizens' right to support or oppose the state policy.

Public opinion cannot assert itself and become efficient unless there is genuine democracy and, in its turn, democracy becomes viable if it is based on the individuals' and groups' social and political options. Thus, within democratic system, the role of the public opinion depends on its place in the political structure.

If politics is defined from the point of view of the theory of systems, then public opinion is an element of both the input and the feedback. As feedback, it plays a major role in evaluating the

government's performance. As input, public opinion (in a democratic system) influences the politicians and finally politics itself. Of course, the input is not to be restricted to the public opinion warnings alone. Political parties, organizations and unions can be said to control politicians. In this respect, it would be fascinating to analyze the influence of the political parties vs. the influence of public opinion over the political decision making process. Septimiu Chelcea speaks of "the political art" which anticipates people's needs and persuades them that sacrifices are beneficial on long term.

Via elections and referenda, but also via its role in the normal social life, public opinion is a real socio-political force, capable of influencing politicians' and people's behavior. The relation between what the people think and do and what governments do, i.e. the interaction between public opinion and politics, involves a set of conditions and it is a problem-solving situation.

The first condition presupposes the existence of an ethic and political code commonly accepted, which should comprise: the acceptance of democracy and freedom as moral and political values; freedom of speech; time for solving out public matters; a set of procedures in order to change policies in different sectors of the social life. The last factor is clearly related to the first two and involves government power; of course, it does not exclude peaceful means of solving out matters. In the countries with an old democratic tradition, such procedures function smoothly whereas in other countries there is still need for refinement.

The government's policy heavily influences public opinion, especially by selecting and channeling information via mass-media, opinion leaders and other means. When democracy is genuine, any voting citizen can be said to take part in the decision-making process; the question arises how competent/informed citizens are. Free democratic vote is a necessity in case of voting constitution, for instance, but in the case of more specialized matters, the citizen's competence becomes questionable.

The vast bulk of political decisions is not made by directly consulting the masses, but by the acknowledged institutions or specialized agencies. In the case of representative democracy, the legislative power dilemma may arise, i.e. the MP has to vote so as to comply with his voters' desire or he has to make his own judgment.

Theoretically and practically, whether direct or representative democracy is the case, there is the problem of the relation between the

majority's and the minority's opinion. Although public opinion is not to be identified to the majority's opinion, the decision-making process essentially means taking into consideration the majority and simplifying matters to "yes" or "no" answers. Unlike the majority conception, a pluralist conception underlies the need for finding solutions which block or limit the majority's dominance.

Pluralism, as a general doctrine, is founded on the following theses: there is a wide individual and group variety in contemporary society, different mentalities, behavior types and lifestyles. The word "*pluralism*" has multiple meaning: cultural and political pluralism, being the most important. Political pluralism (democracy) presupposes the existence of political action of several organizations (parties, associations) which urge people to defend their interests. It can lead to a permanent struggle for power when ideologies are not convergent, or to moderation and compromise in modern societies where every individual is affiliated to several organizations.

Democratic pluralism does not involve only a few political parties which want to gain power, but also some other kinds of political elite in foreign affairs, educational policies, economic and military policies.

The pluralism conception is based on the idea that such institutions and procedures can be designed and implemented and that they alleviate tensions. All the solutions take into consideration the general principle of negotiations, of constructive compromise and compensation. It is important to make the right decisions that maximize the benefit of all the social actors (either individuals or groups) that take part in a collective action.

Sociologists claim that democratic pluralism, which foster individual or group rational behaves and maximizes the mutual benefits to gain, is more an objective rather than a reality.

Democratic pluralism and the theory of rational choice pleads for cooperation instead of competition and conflict.

Mass-media and the Mechanism of Power

Contemporary mass media are virtually unchanged in their nature: the mirror of a social and economic structure, a reflection of a group of interests and a certain stance with respect to the fundamental issues of the society in which mass-media operate.

The publications which openly admit their social or political affiliation are fewer indeed as most newspapers and magazines claim to

be independent and objective.

In a market-oriented economy where the press is a commodity to be sold at a price below the cost price, its very existence depends mostly on advertising. Advertising makes publications be dependent on large firms which practically guarantee their existence.

Political leaders have always been concerned with presenting and legitimizing their actions. What differs is the process scale and what is new is the emergence of a public space, a transparent arena for debates and public confrontations. The arena is undoubtedly supported by the press gaining power, a phenomenon that has stimulated public debates and critical judgment of policies and engendered new types of relationships. The public arena is controlled by mass-media and the government has to face this new power in order to legitimize its actions and impose lines of action.

Why is the world concerned with mass-media and their social impact? Because of the mass-media influence public opinion, shape attitudes and types of behavior or responses. Classical power, in the 3 forms identified by Montesquieu (legislative, executive and judicial), has to share this space with the media as a new source of legitimacy. At least for the time being, mass-media have the greatest impact on public opinion, they have even substituted public opinion on whose behalf they speak.

It is important to notice that political parties can no longer attract large segments of population without mass-media support.

The question "Is the press the fourth power in contemporary society" is recurrent in literature. Yet, the question is not one of hierarchy, but due to the fact that the press is powerful, it is important to know "At whom is it aimed and how is it used?", "How does the press fulfill its different social functions and what power shifts can it produce?".

Résumé

L'article analyse, du point de vue de la théorie sociale et politique, le problème des rapports entre l'opinion publique et la démocratie pluraliste. Aujourd'hui, on véhicule de plus en plus l'idée que l'opinion publique est l'une des notions fondamentales des sciences politiques et, en même temps, l'un des facteurs les plus importants de la société humaine.

In Support of Democratization: Free Trade Unions and the Destabilization of the Autocratic Regimes*

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The theory of "democratic peace" provides that free and open societies, in the form of liberal democracies, do not go to war with one another[1]. Since the Wilson administration, spreading democracy around the world to ensure peace has been a pillar of American foreign policy. Today, "encouraging free and open societies on every continent" is a cornerstone of Bush administration's national security strategy.[2]

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Bush's approach to achieving democratization has been described as "defiant unilateralism" and "an evangelical, militarist agenda."[3] The neoconservative foreign policy espoused by many members of the Bush

administration seeks to promote American ideals-such as democracy-by exerting hard power.

The exertion of hard power by the current administration coincides with its loss of soft power.[4] If the Bush administration hopes to succeed in the spreading democracy, it should consider a more nuanced approach. As an aspect of soft power, the United States should dramatically increase support for labor movements and free trade unions in developing countries. Special attention should be paid to the plight of labor in countries ruled by autocratic regimes. With the support and international recognition afforded by American diplomatic efforts, the role of labor movements in bringing together diverse peoples to exert political pressure on autocratic regimes will be strengthened and will result in a new wave of grass-roots democratization.

In order to explain how revitalized and refocused labor diplomacy can support the Bush administration's goal of democratization, this paper will describe the natural relationship of unions to autocracies and democracies. It will also review the history of labor involvement in destabilizing autocratic regimes and outline the political, as opposed to the economic, role of unions. Additionally, the involvement of the American government and international organizations in supporting labor movements in foreign countries will be examined, and suggestions will be presented for strengthening American diplomacy in the international labor arena.

UNIONS AND AUTHORITARIAN REGIMES

Unions are a natural enemy of authoritarian regimes. Former Secretary of Labor Ray Marshall writes, "unions are an independent source of power and almost always bring together groups that totalitarian groups seek to keep separate."[5] Likewise, Edmund McWilliams, former director of the U.S. Departament of State's International Labor office, argues that "trade unions have bridged ethnic, tribal and religious cleavages."[6] For example, labor unions in Spain brought together Catholics, Protestants, and Muslims as well as Basques, Catalonians, and Castilians. In Nigeria, the unions bridged the gap between Christians and Muslims as well as historically antagonistic tribes. In Poland, Solidarity provided a meeting space for workers, farmers, and intellectuals, both Jewish and Catholic.[7] South African trade unions broke the color barrier long before other sectors of civil society. In the former Yugoslavia, various ethnic groups toiled together for the same union goals and struck

together for the same democratic ideals. History provides no other mass-based organization with such broad social appeal.

When such diverse factions of society come together in collective organization, it becomes difficult for authoritarian regimes to formulate an adequate response. Pitting one tribe or religion against another, a tactic used by many dictators to foster disputes between potential rivals for power, becomes very complex when these groups stand together to make consolidated, collectively determined demands based on a shared economic, social, or political interest. The difficulty in dealing with organized mass-based movements, such as labor movements, often exacerbates hard-line versus soft-line divisions within regimes. In many cases, some described later, internal divisions rooted in disagreements over how to handle labor unrest constitute an initial step toward the destabilization of autocratic regimes.

Additionally, unions and labor movements have resilience. Unions are among the "most stable, organized and consolidated representative organizations in society."[8] Most have been in existence, in some form, for decades prior to becoming political actors in the fight for democracy. Weathering a series of shifting economies, political environments, and periods of outright repression, labor unions continue to function. The internal organization of unions is a major source of their staying power. Made up of both "locals" and "federations," unions tend to spread power and leadership across a relatively wide spectrum, from the various workplaces to federation headquarters. While it is relatively easy for an autocratic regime to arrest and depose of leaders at the national or federation level, shop-floor unionism and local leadership are harder to identify and neutralize. Additionally, unions sometimes claim to speak for an entire working class and have shown the ability to galvanize support beyond their formal membership. In summary, regardless of repressive actions taken by some regimes, the ability of labor to mobilize protest still exists.

Finally, labor unions have the tendency to diffuse wealth and power to a broader audience than an authoritarian regime might desire.[9] Aside from basic demands for democratic rule, unions often lobby for more equitable pay, better training and education programs, and general improvements in social welfare. Successful negotiation of such demands by organized labor can damage the monopoly of power and wealth that a dictatorial regime requires.

UNIONS AS NATURAL FRIEND OF DEMOCRACY

Unions are a natural ally of liberal democracies because they act as models of democracy, they share the goals of free and fair economic development, and they often advocate for democratic rule. Unions have "played and important role in supporting democracy" and "defending broader citizens' rights."[10]

First, unions are models of representation and democracy. They are usually founded to represent the collective desire of a mass of people, protect and advance basic rights and freedoms, and provide a political and economic voice to an entire class of people. At their best, unions possess internal mechanisms that promote debate, dispute resolution, negotiation, and most importantly, fair elections.[11]

Few, if any, organizations practice democracy to the extent of local unions and their representative federations. By the very nature of the organization they belong to, free-trade unionists are democrats. Second, unions in developing countries and their members share the goals of free and fair economic and social development espoused by many democracies. As agents of economic change, unions look to secure the best working situation for the people they represent. Initiatives such as ensuring freedom of association, ending child labor, and fighting employment discrimination improve the lives of members as well as assist in leveling the playing field for international trade.

Third, unions often advocate for democratic rule. While many people assume unions to be strictly economic actors, this is not the case. In order to legally exist, unions require democratic protections, especially the freedom of association. Thus, many union struggles are political, coalescing around the promotion of free and open society and democratic reform. Unions, through their political rather than their economic capadty, contribute to the destabi-lization of autocratic regimes.

UNIONS AND DEMOCRATIC REFORM: CASE STUDIES

The role of labor movements is not specific to any one region, but has been felt broadly in democrati-zation efforts across the globe. This section examines the role of labor in the fall of autocratic regimes in Europe, Africa, and Latin American and analyzes the common characteristics of those cases.

EUROPE

In Europe, labor movements were instrumental in the destabilization of autocratic regimes in Spain (1977), Poland (1989), and Czechoslovakia (1990).

Many accounts of the democratization of Francoist Spain begin with the death of Franco in 1975. These accounts understate the crucial role that labor unions played in the years leading up to the transition to democracy.[12] In response to political activism of independent unions in the late 1960s, hardliners in the Franco government pursued a policy of labor repression. However, the repression failed to neutralize union activity. On the contrary, it contributed to an unprecedented level of labor unrest, marked by an astounding 1,500 organized strikes in 1970.[13] Trying another approach. Franco appointed Carlos Arias Navarro, a moderate, to the post of prime minister in 1973 and charged him with creating a "softer dictatorship."[14] Labor unions, sensing Franco's political game, refused to settle for a partial solution and presented Navarro with a series of labor protests in 1974 and 1975 that, coupled with Franco's death and Navarro's subsequent loss of political support, forced his 1976 resignation.[15] Adolfo Suarez assumed the prime ministership and within months initiated a transition plan that called for democratic elections within a year. Labor unrest subsided. Despite Suarez's skill at negotiating, one cannot overlook the role of the independent labor unions in forcing the hand of the government. Had it not been for the continuous mobilization of the trade unions, the difficult decision regarding how to deal with civil unrest would not have been forced onto Franco and the Spanish conservatism movement may have pushed forward.

The Solidarity movement in Poland offers one of the best-documented and most memorable instances of a labor union destabilizing an authoritarian regime. Forged in the 1980 strike at the Gdansk shipyard orchestrated by the Worker's Defense Committee and Committee for Free Trade Unions of the Coast, the Solidarity union's initial demands focused on workers' rights."[6] Eventually, as it became a general political movement, legitimized by foreign recognition and the tacit blessing of Pope John Paul II, Solidarity demanded increased freedoms and a more open civil society. In 1989 the communist leadership of Poland agreed to some degree of democratization, in the form of limited free elections, which led to wider democratic reforms over the next several years.[17] The overwhelming electoral support for Solidarity in the competitive parliamentary elections of 1991 marked the conclusion of the Communist monopoly on political power in Poland.

Labor unrest was a critical factor in exposing the weakness of the Communist regime during Czechoslovakia's "velvet revolution" in 1990. While the government's repression of student demonstrations sparked widespread protests, it was a general strike on November 27 that "telegraphed the defection of the workers from the Communist leadership" and "induced the previously inflexible Communist rulers to abandon their resistance to change."[18] By June of 1990 fully competitive parliamentary elections ushered in an era of political freedom. While not as crucial an actor as in Spain or Poland, the labor unions in Czechoslovakia, leading the organizational effort associated with the general strikes, were instrumental in destabilizing the Communist regime and pushing the country toward democracy.

AFRICA

In Africa, labor movements were critical actors in ending the apartheid regime in South Africa. Additionally, labor unions brought international attention to the struggle for democracy in Nigeria in the 1990s.

The first democratic elections in South Africa, held in April 1994, were largely a result of the ongoing work of the African National Congress (ANC). But overlooking the role of the Congress of South African Trade Unions (COSATU) would be folly. From 1979 to 1994, union density grew from approximately 15 percent of the working population to over 56 percent, with the highest rate of growth amongst black workers.[19] Union membership not only provided black workers with a voice, it also exposed them to democratic structures. The exposure to democratic structures, the growing numbers of unionists, and formal partnership with the ANC were critical factors in the shift of COSATU from an industrial union to a political force. Throughout the 1980s the unions associated with COSATU staged numerous protests, strikes, and demonstrations.[20] The failure of the government to contain such action through traditional tactics of repression forced "a choice: intensify the repression toward the labor movement and risk alienating capital with no guarantee of eliminating mobilization from below or turn toward more fundamental political reform."[21] In 1989 President F.W. De Klerk chose the latter path and signaled his intention to reform apartheid. This reform eventually led to the democratic elections of 1994. Clearly, labor unions were instrumental in destabilizing the apartheid government. In fact. Nelson Mandela writes in his biography of crucial contributions of the

COSATU to the struggle against authoritarian rule and apartheid in South Africa.[22]

In Nigeria in 1993, General Ibrahim Babangida annulled the results of a presidential election and appointed General Sani Abacha to power.[23] Abacha abolished all democratic institutions and installed a military dictatorship to rule Africa's most populous country. Within a year, the National Union of Petroleum and Natural Gas Workers (NUPENG) and the National Labor Congress (NLC) organized a general strike calling on the government to "resolve the political crisis by respecting the democratic and sovereign will of the people as expressed in the last presidential elections. All democratic structures must be restored."[24] The government reacted harshly, arresting labor leaders and repladng them with their own appointees, effectively slowing the movement.[25] While unsuccessful in the initial de-stabilization of the regime, the union efforts helped to draw international attention to the Nigerian struggle for democracy. This exposure and subsequent pressure applied by international institutions, non-governmental organizations, and foreign diplomats contributed to the eventual transition from dictatorship to nascent democracy, signaled by free elections held in 1998.

LATIN AMERICA

Finally, as Ruth Collier and James Mahoney have noted, labor played a great role in the shift from authoritarian democratic rule in Latin America. Peru (1978), Argentina (1983), and Chile (1990) provide solid examples of the transitional power organized labor.

The labor movement in Peru played an important role in the fall of two different authoritarian regimes over the course of five years.[26] Persistent labor unrest precipitated the fall of General Velasco's government in 1975. Upon assuming power in 1976, General Morales Bermudez was also confronted by a labor movement dedicated to the end of authoritarian rule in Peru. Throughout 1976 a continuous string of labor rallies and mobilizations orchestrated by the General Confederation of Peruvian Workers consumed the government. The union action culminated in "the single most important event in triggering the Peruvian democratic transition," a widely observed general strike on July 19,1977 that called for "basic democratic freedoms" in addition to expansion of workplace rights.[27] The strike succeeded in forcing Bermudez to announce a timetable for a return to civilian rule. Labor protests, including another general strike, continued until democratic elections took place in June 1978.

Conventional wisdom dictates that the Argentine military dictatorship of the 1970s collapsed as a result of the ill-fated invasion of the Falkland Islands and subsequent defeat at the hands of the British.[28] While this is certainly the case, we can dig deeper to determine the conditions that caused the generals to make such a disastrous decision in the first place. Some analysts have argued that "labor protest contributed to a division within the military between hardliners and softliners" that the invasion of the Falklands was "intended to overcome" by stoking nationalist fires in the populace.[29] In 1981 the General Confederation of Workers (CGT) and the Union of Argentine Workers (CUTA) openly opposed the military regime and conducted a series of general strikes that exposed the government's inability to control organized workers and culminated in the resignation of the moderate General Viola. Viola's ouster led to the rise of hardliner General Galtieri. Galtieri's ascension to the presidency, facilitated by his promise to crack down on unions, further exposed the divisions within the military regime that were exacerbated by the issue of dealing with organized labor unrest. Despite changes to labor law intended to weaken unions, labor demonstrations continued through 1982. Internal debate regarding how to deal with the unrest intensified, and in an effort to overcome the divisions, Galtieri proposed the Falklands invasion to unite the population in a nationalist cause. The invasion was, then, a response by a regime in trouble and unable to control popular protest. The gamble failed, and soon afterward the military regime announced that general democratic elections would be held in the autumn of 1983. As some analysts have argued, and historical review supports, the continuous labor unrest in Argentina contributed to the creation of an environment that forced the dictatorship to pursue a self-destructive course.

The democratization of Chile post-Pinochet follows a slightly different path.[30] Rather than acting as one of the primary destabilizing factors leading to a transition, labor unions worked to organize opposition to ensure the loss of Pinochet in the 1988 referendum on his continuation in power. Pinochet assumed power in 1973, and harshly repressed the labor movement. The unions, however, refused to give in, and initiated a series of strikes and protests that swept through the mines, ports, and factories between 1977 and 1979. Recognizing that outright repression failed to contain working-class protest, Pinochet called for a "constitutional project" that required plebiscite or referendum elections on his rule in 1980 and 1988. Pinochet won the 1980 plebiscite, and the labor movement immediately began organizing for the next election. The labor

movement, led by the Confederation of Copper Workers, secured its role as a vanguard political force in July 1983 by leading a massive protest that called for "the participation of all popular organizations" in "a call for the return to democracy."[31] A national strike in the winter of 1984 and "days of protest" in September 1985 followed. By 1986, the union-led opposition had grown into a multi-party organization that became known as the Coalition of Parties. The Coalition of Parties, an organization owing its existence to the courageous role of the labor unions, directed the successful 1988 campaign against Pinochefs ratification. By December of 1989, democratic elections were held and the transition to democracy was complete.

COMMON CHARACTERISTICS IN UNION-LED DESTABILIZATIONS

A number of common characteristics unite the efforts of unions described in these cases. First, in each case labor unions, traditionally viewed as economic agents, made political demands, insisting that governments be accountable to their citizenry and make progress toward democracy. Second, each case displayed the ability of labor unions to galvanize broad-based support and mobilize masses of people including members and nonmembers. Finally, in the majority of cases, labor unions destabilized autocratic regimes without any significant external support. Lacking explicit international support (except in the cases of Poland, Nigeria, and to some extent Chile), labor unions organized themselves and remained defiant in the face of repressive regimes. The unions receiving external support from the likes of the United States and International Labor Organization did so in the later stages of their destabilization efforts, having established their organization and missions without input from external sources. To have accomplished regime changes without significant explicit support and without external organizations or governments bestowing legitimacy on their struggles is truly remarkable.

Common characteristics of the regimes themselves or the political environment also exist. The majority of regimes were either initially ambivalent toward organized labor or outright hostile, but all eventually grew to disfavor the union activity and employed repressive labor policies. The populist character of the Peruvian dictatorship and initial support for and by the working class provides the lone exception, but in time an antagonistic relationship between the government and the unions developed.[32] In almost all of the cases, the labor question-to crack down

on labor unrest or to allow it-exacerbated existing hard-line versus soft-line divisions within the regimes. The difficulty in handling the labor situation contributed to the destabilization of the regimes by widening already existing internal divisions.

PROMOTION OF FREE TRADE UNIONS ABROAD

Mechanisms do exist for promoting labor movements in foreign countries. This section briefly outlines the historical and current roles the United States government and the International Labor Organization play in supporting free trade unions.

HISTORICAL AMERICAN ENGAGEMENT

The labor attache program at the U.S. Department of State represents the primary diplomatic avenue for supporting foreign labor movements. Established in 1943, the program was designed to "go beyond the boundaries of traditional diplomacy and complement the work of embassy political and economic officers by developing contacts with ... workers and their trade unions."[33] The Cold War gave purpose to the attaches as they focused their efforts on minimizing communist influence in labor movements around the world. The anticommunist mission made it difficult for the United States to fully involve itself in union efforts against totalitarian governments since a number of the unions involved were suspected of, and in some cases did have, ties to communist parties. Additionally, a number of the union-led efforts described above took place when United States foreign policy favored stability in certain countries or regions over true promotion of democracy, providing another explanation for the relative lack of American influence. There are some exceptions, such as strong American support for Poland's Solidarity union, but overt diplomatic connections to democracy-promoting unions are hard to find in the relevant literature.

RECENT AND CURRENT AMERICAN ENGAGEMENT

The end of the Cold War saw the decline in perceived importance of labor diplomacy in American foreign affairs. Administrations eliminated labor programs at USIA and USAID. The number of labor attaches within the State Department decreased by over 50 percent.[34] Additionally, the Office of the Secretary of State/International Labor Affairs was abolished and the remnants of the program appeared several levels down in the State Department bureaucracy.[35] The second Clinton administration took steps to reinvigorate the labor program by slightly

increasing staffing coordinating Department of Labor/State operations and beginning constructive engagement with the International Labor Organization. But these efforts were coupled with a shift of the concentration of the program away from "political labor" and toward an "economic-labor emphasis."[36] The economic-labor emphasis centered on the promotion of fundamental labor standards worldwide as part of a concerted U.S. effort to "put a human face on the global economy" and to create a "level playing field" in international trade for the benefit of both American business and American workers.[37] The Clinton focus on globalization and the economy overlooked the potential political gains of supporting labor movements in foreign countries.

The Bush administration, "led by ideologues convinced that unions distort the beneficent workings of the market and interfere with important government policies, inducting the war on terrorism,"[38] continues to push an economic-labor policy, all but discounting the political benefits of engaging labor movements. The Bush administration's frequent dashes with the American labor movement over trade agreements and its reluctance to sign International Labor Organization conventions signal an unwillingness to support the rights of workers across the globe. The Bush administration is either unaware of potential political benefits of labor diplomacy or it views the economic cost to American corporations to be greater than the political benefits. The recent indusion of "encouraging... free trade unions" as part America's "forward strategy of freedom"[39] in President Bush's 2004 State of the Union address may signal a change of heart, but no visible action has yet to be taken diplomatically, cooperatively with American unions, or in collaboration with international institutions. At best, the Bush administration has provided slightly increased funding to the National Endowment for Democracy, a Washington, D.C.-based nonprofit organization whose mission is to "strengthen democratic institutions around the world through nongovernmental efforts" by providing grants and technical assistance to organizations that support free trade unions and other democratic institutions abroad.[40]

INTERNATIONAL FRAMEWORK

Founded in 1919, the International Labor Organization, the only surviving major creation of the Treaty of Versailles, became the first specialized agency of the UN in 1946.[41] The ILO seeks the promotion of sodal justice and internationally recognized human and labor rights by formulating basic, minimum international labor standards in the form of

conventions and recommendations that each member state is encouraged "to respect, promote and realize."[42]

Upon adoption of the Declaration on Fundamental Principles and Rights to Work in June 1998, the ILO focused its efforts on the promotion of a set of four core worker rights areas, including freedom of association and the right to collective bargaining, elimination of forced and compulsory labor, abolition of child labor, and ending of discrimination in the workplace.

The ILO is designed as a nonpartisan and nonpolitical organization lacking enforcement mechanisms. It operates under the United Nations' sovereignty and thus requires an invitation by a sovereign state before it provides assistance to the government, businesses, or unions of the country. As a result, the ILO has been less involved in supporting dissident labor movements than might be expected. The public admonishment of governments and the critiquing of the annual critiquing of the annual labor rights progress reports that member states submit presents the only true method of intervention available to the ILO. The "public shaming" approach has had mixed results, bringing international attention and some level of legitimacy to the Nigerian struggle, but being ignored in other countries such as China and Sudan.

The ILO operates in a complex international environment, often overshadowed by international financial institutions such as the World Bank and the International Monetary Fund that possess not only much larger budgets, but enforcement mechanisms as well. As a result, the ILO and its demands tend to take a back seat in the development of the structural adjustment programs.

The historical relationship between the United States and the ILO has been largely dysfunctional. While a partner in the initial creation of the organization, the United States has kept its distance from any sort of concrete, collaborative relationship. In 1977 the United States withdrew from membership in protest of the perceived focus of the ILO on providing assistance to developing countries in the Soviet sphere of influence.[43] American involvement upon reentry was uninterested and at times hostile, with the United States refusing to sign almost all conventions generated by the organization. Although the United States helped draft the 1998 Declaration on Fundamental Principles and Rights at Work, the government has ratified the conventions in just one issue area, relating to the elimination of forced labor.[44]

RECOMMENDATIONS

Unions are political actors. Unions and labor movements have destabilized and can continue to destabilize autocratic regimes. If democratization is a goal of U.S. foreign policy, then support for labor movements should be an integral part of the policy. To hasten the destabilization of autocratic regimes and speed the spread of democracy, the United States government should dramatically strengthen its international labor diplomacy. The focus should be on promoting the core principles and rights at work as described in the 1998 ILO Declaration with special attention paid to the freedom of association. This paper makes the following specific recommendations:

The United States should reestablish a true working relationship with the International Labor Organization. Ratifying all of the conventions pertaining to the four core labor standard areas laid out in the 1998 Declaration on Fundamental Principles and Rights at Work is a start. But the United States must also work to strengthen the monitoring and enforcement mechanisms of the ILO. Most important would be the addition of a formal mechanism to recognize labor unions, thus legitimizing the organization and, in turn, their struggle. Gaining legitimacy in an international forum provides some level of protection for the unions. If a regime is openly hostile or moves to arrest or kill members, then the international community, having legitimized the union and thus its struggle, would be compelled to react.

The Bush administration should increase the budget and staffing levels at the State Department's Bureau of Democracy, Human Rights and Labor. In particular, every embassy in the developing world should have a well-trained, full-time labor attache whose primary responsibility is to establish contacts with local labor leaders and provide them with the diplomatic support their anti-autocratic movement requires. Placing a labor attache in every embassy enlivens and emboldens unions, warns autocratic regimes, and sends the message that the administration is serious about international labor diplomacy.

The Bush administration should increase funding to nongovernmental organizations, such as the National Endowment for Democracy and the American Center for International Labor Solidarity, that support the creation and sustenance of free labor unions and other democratic institutions throughout the world. Additionally, relationships with international organizations such as the International Confederation of Free Trade Unions (ICFTU), a confederation of national trade union federations in over 150 countries, must be further developed. Appointing

an ambassador the ICFTU is a start, but the U.S. government should also seek to support the ICFTU training, education, and technical assistance services by providing expertise and sharing knowledge. Unlike the ILO, the ICFTU can and does intervene in countries without the invitation of the government. The ICFTU may prove to be a valuable portal into anti-autocratic movements and an international legitimizing forum in the event that suggested reforms of the ILO are not successful.

The administration should encourage the State Department's Intelligence and Research Division and the Central Intelligence Agency to work with the labor attaches in each embassy to identify labor leaders in that country. Identifying and developing the leaders of future labor movements provides the United States with a powerful cadre of grass-root agitators and eventual allies in the fight for democratization.

The United States should include enforceable labor rights in free trade agreements and work with other related international organizations to promote the spread of democracy through labor rights, especially the freedom of association. Special efforts should be made to include the four core ILO labor standards in the clauses of the World Bank and IMF loans. As the freedom of association spreads, so will labor unions. And labor unions are a necessary political and social ally in the fight against autocratic regimes.

The United States government should step up the rhetoric regarding labor rights. When speaking of democratization efforts in countries such as Afghanistan and Iraq, administration officials continually mention the importance of women's rights and a free press. Including basic labor rights, especially the freedom of association, in speeches by high-level officials would indicate a serious commitment to the cause.

CONCLUSION

The search for security in a dangerous world defines the American national interest. The Bush administration's neoconservative foreign policy argues that the spread of democracy will ensure security. Some commentators have gone so far as to state that the U.S. government considers the democratization of societies more than just a means to security, but an end in itself.[45] Regardless, the neoconservative approach, stressing hard power to achieve idealistic goals, limits the tools that the Bush administration has at its disposal.

Employing a self-limiting, neoconservative approach is a poor choice. Meeting the challenges of the new, post-September 11 world

requires a review of all possible mechanisms for the advancement of American national interest, denned by the Bush administration as the spread of democracy. Labor unions possess broad social appeal. In addition to the traditional role of economic agent, labor unions often speak out for democracy and galvanize mass support for political change. Supporting labor movements and unions in countries with autocratic rulers will hasten the demise of such regimes, leading the way for democratic reform and thus promoting American security.

Notes

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Résumé

La théorie de la paix démocratie se fonde sur l'idée que les sociétés libres et ouvertes, c'est-à-dire les démocraties libérales, évitent les conflits armés entre elles. A partir l'administration de Wilson, l'objectif principal de la politique externe américaine est celui de promover la démocratie dans tout le monde pour assurer la paix.

Politics and Economics in the Context of Globalisation

Aurel Piţurcă

One of the most complex and controversial problems to which humanity is confronted nowadays is, doubtlessly, globalisation**.**

Humankind has never been confronted with such process, on which its existence and its present and especially the future evolution depend. Countries, nations, large or small societies, rich or poor, democratic or not, are its ful effects, are dependent of it. The present world lives in an era in which we are not speaking about the person's existence, but about a globalisation in which the differences between cultures, lives and thinking ways, economies and governments and even national borders begin to disappear. Trade, international relations are the crucial factors in the globalisation phenomenon.

Persons, social groups, nations have regarded globalisation differently, adopting different stances. Some of them are suspicious, hostile and even fearful, making globalisation responsible of all evils, defects and social, economic and politic unfulfilling. The increase and depth of economic disparities and economic inequalities between the states, the standards and life quality diminution, the loosing of cultural, politic identity, the unemployment explosion, and the aggressiveness in international relations are causes of globalisation.

The rest of them regard globalisation like a process with determinations and positive influences, the only capable to assure the increase of living social standards, to approach the economic development levels between countries and peoples, to impose democracy in the international political life, to rehabilitate the environment.

Irrespective of the pro or counter positions, globalisation is a reality that cannot be ignored, avoided or rejected, because its effects are already present. Economy tends to have a most profound international character, becoming more integrated and interdependent. It has included all the components of the economic life, the capital, the market, the production, the organization, the sale.

Capital globalisation leads to the extension of multinational and transnational societies. International trade is confronted with the same globalisation phenomenon.

Globalisation is also present in production, it determines new types of behaviour in the producers. National borders disappear, capital owners include the most efficient market for placing it where the labour force is very cheap and there are sale possibilities. Today a whole network of institutions and productive elements from different places participate in the manufacturing of a final product.

"A *global* motor car is built of components parts derived from less than 16 countries."[137]

Production globalisation influences technological development, capital foreign investments and obviously the profit.

The phenomenon of production globalisation has also imposed trade globalisation. International trade, as aspect of global integration, is the result of the decreasing value of the duty, to which the specialized United Nations institutions had an important contribution, namely the National Organization of Trade, the former G.A.T.T., the strategies imposed by some financial international institutions, by the development of transports and telecommunications. A consequence of trade globalisation is its diversity and especially the imposing of the trade as services, these increasing quicklier than the one with industrial goods that in old times constituted its base.

Globalisation imposes new trends and directions in the social life evolution. At the international economy level, cooperation and regional integrity of production, sale, capital placing is going deep. Economic, cultural and political interdependence between the states increases. Nobody can develop alone or isolated from the international community, so one person presupposes all the others and cooperation becomes the only solution of existence and evolution. We currently speak of a "new economy" or of the third industrial evolution and of international economy models. Two of such types of international models are proposed by the researchers Paul Hirst and Grahame Thompson in their book *The globalisation under question mark:* a first type is a whole global economy, where national economies are subsystems of the international economy. The base of such type of economy is given by transnational

[137]Bari, I., 2001, *Globalization and Global Problems*, Bucharest: Economic, p.25

companies, the foreign capital, the international management, places that have nothing in common with the place where big and sure profits obtain. Such a type of economy regards as ideal; it does not comply with the control of the state-nation politics.

The second model is the inter-national economy, constituted from open national economies. In this type of economy "[138]the main actors are national economies. The trade and the institutions contribute to the intensification of the relations between distinguishable national economies. Such process involves the integration of a bigger and bigger number of concepts and economic factors in the trade international relations".

International economy is characterized by honor, the separation between the internal and international politics, the preservation of the national character of multinational companies and their obedience to the origin country's laws.

Globalisation also comprised politics, without it the international processes and phenomena, included the economic ones, cannot be explained. It is a truth and an unchallenged reality the fact that politics, especially its power, has become prepotent.

Its action is present both nationally and internationally, constitutes a propulsion element of the social progress or on the contrary, a hindrance, delaying changes, social transformations and renewal.

Political decisions establish, orientate, and manage national and international politics, engrave it a certain scope and finality. The globalisation phenomenon is dependent on politics, on power, on its decisions.

The political dimension of the globalisation is linked to the problem of the state- nation and national suzerainty.

The globalisation of the economy brought prejudices to politics, to national politics, to the national state. The last one is confronted with a permanent escape process; transnational societies are the main erosive factor. They are more powerful, more influential, even than powerful national states. The capital free movement generated by globalisation, made that no longer be attached to the national element, its location is there where the economic advantage is created. In such conditions the

[138] Hirst, P., Thomson,G., 2002, *The Globalization under question*, Three Ed. , p.25

state-nation adapts its political and economic attitude. Its political and economic influence decreases, it ceases d to be an effective economic manager, and as Zygmunt Bauman says" *all three feet of the suzerainty were convulsed. Obviously the braking of the economic foot was decisive"*[139]

The transnational companies and capital international markets released economy of politics compulsion.

Many authors keep considering that the state-nation has become a local authority of the global system, because it no longer decisively influences economic policies. In many situations it is limited to assure the infrastructure, the communication system, and the public constitutions, necessary to the social-economic activities.

The modern system of communication, the internet also limited the state authority especially in the IT field. The authority deficit in the policies of the state-nation is also displayed in the democracy field. This has become weaker because the state is less capable to maintain and promote the classical values, because often the government must be based on "capital voice" instead of the people's voice.

National parliaments' actions are limited by international politics. These are included in the political-juridical transnational systems, and national parliaments lose authority.

Under the circumstances, more political phenomena and processes, especially economic processes, escape from the state's authority. "Politics becomes more and more polycentric, the states represent a single level from a complex system of overlaps and often of concurrence between government agents"[140].

Nowadays, the question of the role of the national state arises more and more frequently - which will be its prerogatives, will it be capable to realize the protective functions of the citizens?

In the globalisation conditions, economy will be the one that will dictate society's rules and not vice versa. Nowadays two factors really count: the capital and transnational societies, both of them being obeyed by the government, because these may migrate anywhere else and their force can undermine the state. Thus, the state-nation acquires a secondary

[139] Zygmunt,B. , *The Globalization and its social effects*, Antet Editor, p.62
[140] Paul Hirst, Graham Thompson, *Op. cit*., p.317

role because no government is capable to oppose the force of the international capital.

An important factor that undermines the national state authority is represented by the international financial institutions. In this sense the most adequate example is The International Monetary Fund that provides funds only in the situation in which the state adopts conditioned politics – reduction of the budgetary deficit, privatization of industrial firms, tax increasing, and increased interest rate, which seriously affects the state's suzerainty, its general politics, its capacity to conduct the economy and the social life.

Even if the state does no longer dispose of the power monopole like in the classical period, it continues to be the fundamental institution of the society, the one that elaborates and applies thepolicies, and persists to be the master of its borders, of the own people movement.

And even so, globalisation must not be regarded only from the perspective of its negative effects, which should not exaggerated. Globalisation invites the states to collaboration, cooperation and the best example is The European Union**,** where the states have voluntarily accepted to waive a part of their suzerainty and to cooperate to economic and political plans. The disappearance of the national borders from the Schengen space, the imposition of the EURO unique currency, the commercial agreements; their own political institutions are examples of political and economic globalisation.

Economic prosperity, powerful democracy, both in the interior of the member states and also at the communitarian level, is the most convincing argument of regional globalisation of which The European Union represents an obvious example to be followed.

Résumé

Globalisation est l'un des problèmes les plus controversés avec lesquelles le monde se confronte aujourd'hui. L'avenir de l'humanité dépend dans une large mesure de l'évolution du procès de globalisation et le commerce et les relations internationales en sont les facteurs décisifs.

The Europe of the Contested Constitution

Ion Deaconescu

After the end of the Cold War and the fall of the Berlin Wall, Europe ceased to be the location of strategic highly performing actors, which used to play a crucial role on a stage where different interests (of the great European powers) were at stake.

Europe has become the homeland of all its peoples, giving fair chances to everyone. There are no visible borderlines, although they still exist and Europe plays another role (a novel one) in the political arena, i.e. to monitor the balance of power which is affected by so many shifts.

With the advent of new types of international relationships – due to the division of the former Soviet Union, the unification of the two Germanies (this being a wonderful dream of all Central European states) and the fall of the communist regime which made things even more complex – the restructuring of the old Europe requires new resources as well as new mentalities and it will not happen in the foreseeable future.

"Toto è a posto, e niente è in ordine " is what an Italian says when replacing the lira in his pocket by the EURO. Europe is authoritarian but also subject to pressure, powerful and torn apart by immigration-related conflicts, terrorism, drug trafficking, prostitution etc.

It is about a Europe that continues to deny Russia's power and has tolerated force and rapid changes in the international system for the last decade; perhaps, what Europe tolerates less is the American security policy as promoted by NATO.

European restructuring is something the former communist countries are eager to adopt, but it seems that this restructuring is but a project to be carried out by its initiators who have lost their enthusiasm. The loud and coherent European voice seems not to be able to give flexible and credible answers to the unpredictable dynamics of things. Europe depends on the other, on the government of each and every country and on the citizen which, under certain circumstances, chooses not to vote in favour of the European Constitution which was meant to

come into force into a new, borderless, unitary state, i. e. a newly born global Europe.

The fact that the French and the Dutch rejected the European Constitution virtually destroys the dream of a united Europe, of a solid edifice. Europe is regaining its self for which it has been longing for some years, i.e. since the multinational project which involved corporate responsibility in the economic, social and political life.

The negative vote had a strong impact on the European commissioners' well remunerated positions as they are missionary like people and managers of the community-related problems. Under the circumstances, the whole political structure of Europe should be re-designed since the appurtenance to the future community involves open and tough competition in all fields: political life, services, environmental policies, rules and regulations etc. The re-structuring and actualisation of a new political thinking should take into consideration European borders and the unpredictable and doublefold attitude of the citizens of the traditionally democratic countries, which sanction a model of living together, which may exacerbate potential contradictions, economic and social risks generated by transition.

Although the European Constitution was given a negative vote through the referenda in France and the Netherlands, the re-structuring of Europe continues in spite of the scepticism of those who condemn the preliminary implementation of administrative structures.

London has recently postponed a national referendum for a fundamental law, which is not to be considered viable because of the French and Dutch negative reaction (a kind of short circuit). There is hope that the constitution will not be rejected by all the eight countries, otherwise the European constitution will be abolished. Tony Blair's action of freezing the national referendum is motivated by the British indifference to the European model as seven out of ten Englishmen are sceptical about the proper functioning of the strict rules governing the future of Europe.

Those who oppose the European constitution as well as those which prove to be overcautious do not give credit to the implementation of the so called "preliminary actions": the law regulating foreign affairs (EEAS) which will take over a part of the external responsibilities of the Council of Europe, a ministry of Foreign Affairs empowered to represent Europe, the president of Europe and the Minister of Foreign Affairs.

Despite the negative reaction of the French and the British, some of the European structures stipulated by the constitution are already in operation, for example, The European Agency designed to coordinate European munition production and led by the British Nick Whitney.

There needs to be mention of the fact that we currently witness a surprising implosion of the community: special partners undermine the cooperative structure meant to create a pan-European force, able to strategically secure welfare and democracy. The attitudes of some countries, such as France and the Netherlands which blocked the legitimacy of the European Constitution, re-shaped the policies of the states in favour of regionalization. Some political analysts even speak of "an imperialistic logic "and of "a special confederation where the ones in power and their allies will cooperate to build their common future". Dominique David strongly argues that the re-working of Europe is a condition for the coming out of Europe, the projection to history whose number of actors is large indeed.

In conclusion, the Europe of the contested Constitution is still the site of the community policy implementation where efforts are coordinated and high costs are involved in scaffolding a new structure. If this structure withstands negative forces, it is something we will find out in the years to come, by looking into our children's eyes.

Résumé

L'article analyse les implications politiques du rejet de la Constitution Européenne par les citoyens français et hollandais qui trouve le continent dans une situation difficile pour la première fois après son projet multinational qui impliquait la responsabilité économique, sociale et politique de tous les États membres.

Europe and…what about the Constitution?

Irina Andronache

What is the Constitution?

Breafly, the Constitution puts forward a single text to replace all the existing Treaties in the interests of readability and clarity.

It consists of four parts:

Part I contains the provisions which define the Union, its objectives, its powers, its decision-making procedures and its institutions.

The Charter of Fundamental Rights, solemnly proclaimed at the Nice European Council in December 2000 has been incorporated into the Constitution as Part II.

Part III focuses on the Union's policies and actions, and alson incorporates many of the provisions of the current Treaties.

Part IV consists of the final clauses, including the procedures for adopting and revising this Constitution.

The Constitution prohibits all kinds of discrimination on grounds of nationality. Guaranteed by the Union throughout its territory are: the freedom of movement for goods, people, services and capital and also the freedom of establishment.

The European Council agreed on the EU's first-ever Constitutional Treaty on 18 June 2004. It was signed on 29 Octomber 2004, under the Dutch EU Presidency.

In principle, the Member States have two years to ratify the Treaty, through direct democracy (via a popular referendum) or parliamentary democracy. Most countries announced that the ratification of the Treaty would come through a parliamentary process, but a number of 10 states indicated that they would hold a referendum on the constitution. Those countries were the Czech Republic, Denmark, France, Ireland, Luxembourg, the Netherlands, Poland, Portugal, Spain and the UK.

In the Czech Republic were some plans to hold the referendum in June 2006, but these plans have been postponed indefinitely following the French and Dutch "no" votes. In Denmark the same situation: referendum scheduled for 27 September 2005 has been cancelled following the "no"

votes. In France the referendum took place on 29 May 2005 and the Treaty was rejected : 55% voted for "no" and 45% for "yes" (voter participation was 70%). In Ireland the referendum provisionally scheduled for Octomber 2005 has been postponed indefinitely after the results of the French and Dutch referenda. In Luxembourg it will be a referendum set for 10 July 2005. The Treaty was approved by Parliament. The Netherlands also held a referendum on 1 June 2005 and the Treaty was rejected in a consultative vote with 61,8%. What about Poland, will there be a referendum? The plans are on hold. Same situation in Portugal. Original plans to hold a referendum on 9 Octomber 2005 coincide with local elections so they have been suspended following failed referenda in France and the Netherlands. Spain was the first country to hold a referendum on 20 February 2005. 76.73% voted for "yes" and 17.24% for "no" (voter participation 42.32%). The Treaty was approved by Parliament's Lower House on 28 April and Upper House on 19 May. In the United Kingdom the original plans to hold a referendum in 2006 were cancelled on June 6 following French and Dutch noes.

Two weeks after the failed referenda on the EU Constitution in France and the Netherlands, the EU summit decided to put the document's ratification process on hold. Ten nations have ratified the document: Austria, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Slovakia, Slovenia and Spain.

In Austria was no referendum, the Constitution was ratified by national Parliament. Lower House voted in favour of ratification on 11 May by 181 votes to 1. Upper House completed ratification process on 25 May. In Germany was also no referendum. The Treaty was approved by German Parliament's Lower House, the Bundestang on 12 May and German Parliament's second chamber, the Bundesrat on 27 May. Greece was the fifth country that ratified the Treaty by Parliament on 19 April 2005 by 268 votes to 17. Hungary was the second country to ratify the Treaty by Parliament on 20 December 2004. In Italy Lower Chamber ratified the Constitution in January 2005. The Senate completed approval by a substantial majority of 217 votes to 16 on 6 April 2005. In Latvia the Treaty was ratified by Parliament on 1 June 2005. Lithuania was the first country to ratify the Treaty (by Parliament on 11 November 2004). Sixth country to ratify the Treaty was the Slovak Republic, where the Constitution was approved by Parliament on 11 May 2005 by 116 votes to 27 with 4 abstentions. Third country to ratify the Treaty was Slovenia (by Parliament on 1 February 2005).

Estonia will seek ratification through Parliament later this year. In Finland ratification through Parliament has been provisionally scheduled for late 2005- early 2006. The situation in Malta is not so much different for other countries. On 17 October 2003 PM Eddie Fenech Adami ruled out the possibility of a referendum arguing that there is no legal basis for holding such a referendum and that the March referendum (on EU accession) had been decisive. Ratification will come through Parliament in July 2005. Sweden is undecided whether to hold a referendum or to ratify through the Parliament. Decision if to proceed with ratification process has been delayed.

In an attempt to save the EU Constitution a growing number of member states are opting to put their ratification processes on hold.

The Constitution can take effect only if all 25 member states ratify it through referendum or parliamentary vote.EU leaders agreed to extend the November 2006 deadline to ratify the treaty until al least mid-2007.

Following Britain's idea (London suspended plans to have a referendum on 6 June 2005), the Czech Republic, Denmark, Ireland and Portugal have also decided to postpone the referendum. Malta has said that it will go ahead with the ratification in July and Sweden that it will decide within a year whether to carry on with the ratification process.

Poland indefinitely puts off referendum on EU Constitution. According to President Aleksander Kwasniewski, the original date of 9 October for the referendum is not realistic because of the double No votes in France and the Netherlands. He repeted that he would prefer a referendum and not a parliamentary vote. "We should hold a referendum, but when to do so is still unclear" said the President Kwasniewski. He will leave office in October and he said that he would leave it to his successor to set a date for the popular vote, but this decision, he added, "will not be taken this year". Poland's Prime Minister Marek Belka would prefer the Parliament to ratify the EU Constitution. He said on 20 June that it would be "in Poland's best interest" to let the Sejm (Parliament) ratify the document as soon as possible. He also mentioned that if the country opted for a referendum, planned by the Government for 9 October, in the same time as the presidential elections, "it will be tough to get people out to vote knowing that most countries are delaying their referendum". Nevertheless, he said that " I still believe that ratification on the constitutional treaty by Poland is in the best interests of our country".

Austrian President Heinz Fischer signed a text completing the ratification of the EU Constitution, saying that the rejection of the text in France and the Netherlands was no reason not to do so.

Austria did not hold a referendum but the Treaty was approved by majority in both houses of Parliament in May. The President declared: "It is clear that the rejection of the Constitution should lead to a rethink of European policy in several spheres, including the social sphere…But this rejection is no reason for me not to sign the Constitution, which was approved by an overwhelming majority in the Nationalrat and the Bundesrat". Fischer said that he had attached to the ratification document a setv of proposals to make the Constitution more transparent and accessible for Austrian citizens. He describes the Constitution as a "reasonable compromise" between member states and adds that it brings "basic improvements" to current treaties governing the functioning of the European Union. Among these, he lists its simplification of the EU decision-making process and a provison on national defence policies that will allow Austria to keep the neutrality that was imposed on the country in 1955.

French and Dutch voters did not say No to Europe, they only rejected the EU's new proposed Constitution. The vote was 54.8% against in France on 29 May, and 61.6% against in the Netherlands on 1 June. The analysts said that this rejection is not so much a rejection of the Treaty itself as a slap in the face to political elites in Brussels and the Hague.

Among those who voted No, the majority of French citizens cited their fear of the Constitution's harmful effect on employment (31%) and the current status of their country's economy and the labour market (26%). Many French voters also thought that the Constitution was "too liberal" (19%) or not "social" enough (16%). Many of No voters are motivated by the same motives as the French: opposition to EU enlargement, fear of identity loss, dissatisfaction with their government.

In the Netherlands, among the more 5000 eligible voters who said they will vote "yes" in the referendum:

- 62% said that the Constitution will improve the situation in their country;
- 56% said the EU provides more advantages than disadvantages;
- 38% said they approved of the Constitution document itself;

The PM Jan Peter Balkenende urged Dutch voters to approve the text, stressing that "the Netherlands will keep its own role and its own responsibility in Europe".

Among those who said they would vote No in the referendu

- 48% said they disapproved the document itself;
- 48% that the Constitution will worsen the situation in their country;
- 43% dislaked the arguments of the "yes"side;
- 40% were opposed to EU enlargement;
- 40% said they fear that the Constitution will help Turkey, a mainly Muslim nation, to become an EU member;
- 38% disapproved the Dutch politicians in general;
- 30% disapproved the Dutch government;

Elsewhere in the EU, public support for the Constitution is getting down. In Portugal 49.2% of the citizens would vote against the Constitution. Popular support for the Yes camp is decreasing in Luxembourg and Denmark. Some 57% of the public in Poland would support the Constitution, down from over 60% in May. The same situation in the Czech Republic and Ireland.

French newspapers described the No victory in the Dutch referendum as a massive shock to the European system, but noted that "from now on the 'black sheep' of Europe is not alone". "Thanks to the Netherlands, there is no longer a 'French exception'. The verdict of 29 May (France referendum) is no longer an isolated insult to Europe" said the conservative Le Figaro. In La Tribune opinion, the No vote in the two countries is the result of an over-hasty process of European construction."The rejection of the Constitution is in one way a rejection of enlargement" it said.

Ratification should go on but Europe needs a period of reflection. "The EU must now listen more intensely to its citizens" said Luxembourg PM Jean Claude Juncker, calling for a plan D of "dialogue and debate". He also said he would resign if his country rejects the EU Constitution: "It is a question of basic decency towards the voters of Luxembourg. If there is a "no" it is not the people who have to quit. It is up to me to go". Juncker confirmed also that there bis no way of renegotiating the EU Constitution. "Renegotiation is not an option" he said.

"If more than five countries said "no" the project is dead" said Juncker. There is a clause in the draft text which suggests this, but there has been some uncertainty over its interpretation.

While the German Chancellor and the French President encourage other countries to continue with the ratification process, the British message is clear: any attempt to proceed right now would be pointless. British Foreign Minister Jack Straw found subtle words in the House of Commons to describe the situation, but suggested that instead of wasting time European leaders should burry the Constitution and then settle for something "more modest".

Finnish President Tarja Halonen said she regretted the result, but her Czech counterpart Vaclav Klaus said he was happy, calling the votes " a victory of freedom and democracy in Europe". The EU had existed "for decades without a Constitution and can definitely exist without it in the future" said Klaus. At least both presidents agreed that there was no reason to panic. Klaus said both "no" and "yes" votes were legitimate expressions of opinion and should not be judged. "I would not call it negative, it's simply no" he said. Klaus was the only European head of state expressing the wish before French referendum that voters should throw out the treaty.

The French and Dutch rejection is bringing fear in the Balkans that the region may be left out. It is unlikely that this situation will affect Romania and Bulgaria, whose entry is scheduled for 1 January 2007. (A safeguard clause, an expression of doubt over the two countries' commitment to reform, provides the possibility to delay accession by one year. These were the first accession treaties that contain such a clause). Politically it will be difficult for Bulgaria and Romania to slip in now. The likely change of government in Germany after a general election this autumn will put the two countries on edge; the conservative Christian Democratic Union (CDU) firmly opposes Turkish membership and it also made noises against Romania and Bulgaria.

Romanian PM Calin Popescu-Tariceanu said that in result of the No vote the integration process would become more difficult and that aditional obligations might be asked from the two candidates.

Romanians are less enthusiastic about the EU than a short time ago. A recent poll put the number of those who view the EU favorably at below 50%.

France's former Interior Minister Nicolas Sarkozy recommends "suspending" EU enlargement after the entry of Romania and Bulgaria, sending this way a clear message to Ankara. Chancellor Gerhard Schroder said that the EU should not abandon its enlargement plans. Meanwhile, Angela Merkel, the leader of Germany's opposition Christian Democratic Union reiterated her opposition to the Union's enlargement in general,

and Turkey's full membership in particular. Poland's President Aleksander Kwasniewski said: "I think Europe should keep the doors open. It should be open for new countries…We need a united Europe in the field of the whole continent. Speaking in Kiev, Kwasniewski said that the EU-15 appears to be living a "middle-age crisis". "When I see the atmosphere in some European countries, especially among founders such as France, Germany and Holland, and the atmosphere in our countries, the new European Union members, the difference is that the founders are like people after 50 years of marriage and we are still in love with Europe", he said.

The commissioner responsible for enlargement, Olli Rehn announced that EU would continue its enlargement course, but at the same time said that "we have to be cautions as regards taking any new commitments in the field of enlargement".

This statement is not necessarly good news for the western Balkans. Croatia's President Stipe Mesic said: "Croatia is on its way to Europe, and Croatia is moving forward. A united Europe has no alternative. Just as there is no alternative to our place in a united Europe." This point of view is shared by the Macedonian counterpart Branko Crvenkovski. After a meeting with Mesic in Zagreb on 1 June, he told reporters: "France's rejection of the European Constitution must not stop reforms in our countries…We must do those things that are up to us".

Croatia is closest to concluding an accession treaty with the EU, but the only thing that is holding up the opening of the formal accession negotiations is the failure of the Croatian authorities to arrest General Ante Gotovina, wanted by the Hague-based International Criminal Tribunal for the Former Yugoslavia (ICTY) and who is regarded as a hero by many Croats for his role in retaking Serb-held teritories at the end of the 1991 to 1995 war.

EU foreign ministers decided in March to postpone the beginning of accession talks with Croatia. Neven Mimica, the Chairman of the foreign policy said that the EU will focus on its internal problems and not on the enlargement. "It is clear now how harmful it was that we failed to start accession negotiations on time…our position would have been easier now". The rejection of Turkey means the rejection of Croatia: "It will be politically and practically impossible to reject Turkey and open the door to Croatia, especially if the ICTY cooperation condition is not fulfilled" wrote the daily Slobodna Dalmacija.

Concluding, we do not really know what it will happen in the future with the European Constitution. Maybe it's true, maybe EU doesn't

really need this Treaty. Maybe we should reconsider and rethink about the future of this Treaty and the future of Europe itself.

Résumé

La situation politique en Europe à la suite du vote negatif de la France et d'Hollande est assez difficile, le "non" étant un véritable choc pour le chefs de l'UE et les autre pays membres, quoiqu'il n'ait pas été dirigé, tout à fait contre la Constitution et l'Europe unie, mais plutôt contre la politique abordé à Bruxelles. C'est tout à fait important que la ratification du Traité Constitutionnel continue malgre ceux qui se sont prononcés contre ou ceux qui se preparent pour dire «non». Chaque Etat Membre de l'UE a le droit d'exprimer son avis sur la Constitution, la voix des citoyens doit être respectée.

E-Commerce Evolution

Mihai-Alexandru Costescu

For some companies, *e-commerce* means any financial transaction, which involves IT technology. For others, e-commerce covers the whole sales circuit – including marketing and the sale itself. Many people consider e-commerce to be any commercial transaction, electronically driven, that involves buying products. However, broadly speaking, e-commerce has a much deeper impact on business evolution and actually involves not only acquisitions but also all the activities that sustain the marketing objectives of a company, which can also include, for instance, advertising, sales, after-sale activities, customer service etc.[141]

E-commerce, according to *Organization for Economic Co-operation and Development (OECD)*, refers to "developing a business using the Internet, selling goods and services, either off-line or on-line".

In classical commercial transactions, one can distinguish four different stages:

1. commercial information, regarding the transaction, i.e. marketing research
2. signing the commercial contract
3. selling the product or the service
4. the payment for the product or the service

If we consider the definition given above, the most common models for e-commerce that are in use today are:

1. business to business (B2B);
2. business to consumer (B2C).
3. business to government (B2G).

B2B transactions are characterized by the fact that both parts, which are involved in the commercial transaction, not only the salesperson, but also the customer, are companies or institutions.

[141] Rusu, C. (coordunator), 2002, *Comert intern şi international*, Cluj-Napoca,Ed. Dacia, p. 272

B2C transactions take place between individual customers and large companies or corporations. In this case, the human factor is much more important, interactivity being the main characteristic of the buying decision.

B2G and G2B transactions play a crucial role in the development of e-commerce, as they can contribute, by creating an efficient, rapid and interactive informative background, to make the companies become more and more aware of the advantages of this new field: e-commerce.

Other connections established through the Internet, related to e-commerce, are government to government (G2G), government to business (G2B), government to consumer (G2C), consumer to government (C2G), consumer to business (C2B) and consumer-to-consumer (C2C)[142].

If we consider the modern company, truly efficient and competitive, the improvement of collecting internal data, primary or secondary, represents a necessity, motivated by its nature and objectives.
A company's internal data have to be included in reports, periodically set up, which are used in dealing with all the company's operations. In this respect, it is necessary to improve the activity of collecting internal data through more and diversified collecting methods, such as, introducing statistical experiments, at the same time with collecting and sending data by using mainly computer networks.

The advantages of obtaining and improving data by using the computer rely on a series of factors, such as the larger/smaller scale access to using this tool and also the fact that, especially the developed countries continuously improve the data collecting techniques and the information sending techniques, via the Internet.

E-commerce is a new and valid way of doing business, which mainly unfolds:

1. tele-selling
2. automatic point-of-sale
3. statistic reporting systems and information sending systems, both needed for on-time decisions.

It can be estimated that in the near future and, obviously, on the medium and long term, the economic impact of e-commerce will mainly have the following effects:

- reducing the distance between the salesperson and the customer, thus allowing the acknowledgement

[142] www.business on-line.ro

of the customer's individual profile and performing marketing on new bases
- reducing the importance of time by shortening the production cycle, allowing companies to operate more rapidly
- finally, transforming the market, to what it is generally known as "on-line market".

The European Union mentions the e-Europe initiative, which aims to develop Europe, by the end of 2010, within a dynamic information economy, by proposing an innovative development programme of 29 services such as e-government and, at the same time, by preparing the member states in order for them to be able to more rapidly implement these services.

If we consider the Romanian e-commerce in this critical period for finalizing negotiations in order to be integrated into the EU, one can see that the legal framework needed for this new type of commerce was already created, in 2002, through the law of e-commerce.

E-commerce Law no.365

This law aims, as it is stipulated in art.no.2, line 1, to "establish the rules to supply the services of the information society, to provide safeguards against undermining the security of e-commerce domains, to issue and use e-cards in order to perform financial operations, with a view to creating a favorable framework for the free use and development of these services".

This law was modified in 2003 by the law no.161, concerning some methods for transparency in public domain, of civil servants and in the business environment, and preventing corruption.

The National E-System was founded through this law. It includes two systems, e-government and e-administration, which can be found on the Internet at www.e-government.ro. At the same time, there were bills passed against IT crimes via specific measures for preventing, uncovering and correcting of such crimes, thus guaranteeing human rights and personal data security.

The differences in e-commerce evolution between countries in EU countries and non-EU countries can be mainly explained by the following reasons:

- low income

- inefficient telecommunication laws and rules
- low credibility attached to the Internet
- small scale e-cards use

Still, the huge development of the Internet, and, in particular, of the international network (www), led to an important participation of consumers and companies in what is known as "the global on-line market".

In the future, the growth of e-commerce in goods and services in expected, with the help of the "mail-box systems", a system that refers to an increased data exchange.

We can say that the technological progress in commerce was also imposed by the changes in management, marketing and others fields, and the growth of e-commerce is a first hand factor for the implementation of the rules and techniques of a modern, civilized and efficient systems in commerce, complying with European standards[143].

At the same time, there still exists a series of elements concerning market access:

1. *The infrastructure for communications and the policies in IT technology* – the political documents adopted by the USA and the EU recognize the importance of free national communications on the larger purpose of creating a global information network, an advanced one and with a higher capacity. In particular, the policy of the USA relies on a set of principles that form the core of their government's policy:

- helping the private sector participate in investments in communication companies controlled by the government
- non-discriminating policies that guarantee access to the networks
- flexible and pro-competition rules, which are to be implemented via an independent set of rules, which meet the demands of the technological development.

The three proposals above emphasize the fact that implementing the WTO agreement on communication services and IT technology will have a positive effect on the development of IT infrastructure and will connect the global network.

2. *Supervising the Internet data* – one can say that there exists a consensus that the laws regarding Internet data should rely on a set of principles: both the USA and EU aim to eliminate discriminating or unacceptable rules for middlepersons (network operators and Internet

[143] *Revista de Comert*, issue 11-12, November-December 2004, pp. 61 – 63

providers).

The Japanese government agrees that, in some cases, Internet sites data is illegal or unacceptable by the society as a whole. In this respect, a platform for filtering Internet data is to be developed and it will allow users to introduce certain filters. The platform is to be developed in cooperation with a private corporation.

USA expressed their fears regarding the Internet publicity rules implementation. Publicity represents the target of many restrictions and many complaints, this situation differing from country to country. Consequently, USA suggests discussions with each country to establish the legal framework for Internet publicity, to avoid commercial barriers and rule overlapping.

At the same time, USA encourages the development of filtering technologies, international cooperation in consumer protection, coordination of policies according to social, cultural and political differences.

3. *The development of technical standards* – it is common knowledge that the private sector should induce the development of open standards, in cooperation with governments and international organizations which regulate standards. It is accepted that interconnectivity will be vital to the future growth of the global network. Some governments adopted their own standards, but these can lead to a technological fall-down of the country and to non-tariff barriers.

4. *Access for Small – and Medium – Sized Companies* – the EU and USA have always been staunch supporters of SMSCs participation in programs regarding global network development. The programs included human-resource development initiatives, information-dissemination, encouraging standard development and SMSCs training.

In this respect, there needs to be mention for two EU measures concerning:

a. improvement of on-line access.

Public authorities will have to communicate more via e-tools with SMSCs. Thus, SMSCs will have access to consultancy services, will be able to pay taxes or simply get on-line information at a faster rate and lower costs.

E-communication between public authorities and companies could be beneficial for both involved parties if we consider the fast rate costs efficiency and transparency. “On-line administration” initiatives may be a further challenge and motivation for SMSCs. The number of small sized companies using the Internet is on the increase; more than 40% of very

small companies in 1999, 70% in 2001; 67% of small-sized companies in 1999, 81% in 2001.

All the governments proved to be aware of the fact that their services should be accessible to everyone and that situations in which companies provide the same information to different institutions should be avoided. Many governments have created their Internet sites where information and consultancy services (regarding administrative procedures, financing etc.) are provided. Greece is a good example of smooth communication between ministries and local authorities and of information exchange. Single points of access provide information and administrative services for companies. The Swedish government has recently created an interactive webpage for data providing to companies and smother communication with the administrative sector.

Companies can do e-transactions with treasuries and social assistance organizations in France, Ireland, Austria and Norway, and web pages for public auctions are already in use or under construction in Denmark, Greece and Germany. "E-commerce ambassadors" or "E-Envoys", facilitate e-communication in UK and Norway.

b. a better legal framework.

The 2001 "Business Failure and Bankruptcy" project focussed on key-problems, relevant data collecting and exchange of information on financial problems and restarting a business after bankruptcy. A seminar on business failure in May 2001 underlined the necessity of a clear legal framework, to secure on-time interventions, viable company restructuring and fighting against negative perceptions of bankruptcy.

During 2001, there were submitted three documents regarding simplification and improvement of legal framework: to the EU Council in Stockholm, the European governing Charter and a specific document for defining a strategy (a better prepared legislation, new mentalities within institutions and better implementation of European laws).

As for the evolution of global strategies for the simplifications of the legal framework is concerned, in September 2000 a project of "best procedure" was launched, in order to evaluate the impact of the current laws on companies (Business Impact Assessment System). The project has as major objectives to identify new methods of assessment of costs and advantages as stipulated in the laws on the business environment and discussions on legislation improvement.

The legal framework of the internal market is reviewed by national experts, business people, consumers and trade-unions within the SLIM initiative (Simpler Legislation for the Internal Market). The

reviews focus on unclear or outdated stipulations which increase costs and hinder users' and national authorities' activity. "Business Test Panels", launched in 1998, aims to supplement assessment impact procedures by providing detailed information, received from companies which are afraid to be affected by new regulations.

In April 2001, the "Interactive Policy Making" was launched. It aims to improve governing via the Internet in order to collect and analyse market responses and to use the results in the EU policy making process. SMSCs are kindly invited to participate in on-line consultancy sessions through "Your Voice in Europe" (*Votre point de vue sur l'Europe*) web-site and through the web-sites of the companies' general directorate. SMSCs have also access to more than 200 Euro Info-Centres to have their opinions valued. This feed-back mechanism allows for more focussed replies to SMSCs requests, as the EU policy is becoming more transparent and efficient.

On the 29th of November 2000, a new legal framework was adopted for horizontal cooperation agreements. It comprises two rules regarding exclusion from a category and a guide to art. no. 81 in CE Treaty for horizontal cooperation agreements. The coming into force of these laws virtually reduces company costs. The new "de minimus" scheme from December 2001 makes it clear that agreements between SMSCs are not to observer art. No. 81, as they do not affect trade between EU countries.

On the 12th of January 2001, the 70/2001/CE bill was passed in order to validate assistance to SMSCs, thus replacing the 1966 law regarding government subsidy for SMSCs. According to the new bill, EU countries may subsidise if they comply with all the requirements. The new bill aims to administrative simplification and to allow EU countries to grant un-returnable loans to SMSCs as soon as possible. On the same day, a new bill on granting un-returnable loans was passed, so that the loan would be granted without prior notification. The "de minimus" loan is up to € 100.000 per beneficiary and covers a perioad of time of 3 years[144].

[144] Raportul anual privind transpunerea în practică a *Cartei Europene a micilor intreprinderi* – 2001

Résumé

L'évolution de la société a marqué tous ses éléments composants, mais le plus important est le commerce national et international. La généralisation du commerce électronique représente, au présent, la tendance la plus importante. Parce que le commerce électronique prouve son importance pour l'avenir et apporte des bénéfices désirés, il fait l'objet du contrôle des autorités nationales et internationales.

An *Historical Dictionary of the Settlements of Dolj County*[*]

Maria Loredana Ilin

The Grant of the Romanian Academy (2003) is contributed by a stellar cast of researchers at the „C.S. Nicolăescu-Plopşor" Research Institute", professors at the Faculty of History, Philosophy and Geography, in the Department of Political Sciences and the Department of History, and archivists of the National Archives Branch Dolj County, co-ordinated by Professor Cezar Avram.

The volume provides essential information for the researchers as well as for those who seek to know more details on the appearance and development of the placements of Dolj County: the etymology, geography, archaeology, records, evolution of propriety, historical events, institutions, and personalities. The work includes data about more than 114 villages, in alphabetical order. This broader perspective is even more explicit when it comes to entries on the administrative subdivisions of the present and foregone villages in 2004.

The authors produced a very helpful source of references and information on the history of this place and the administrative evolution of the county. The dictionary contains a broad range of topics including the resources of the terrain and the subterrain and the human potential of the villages.

[*] Cezar Avram (editor), *Historical Dictionary of the Settlements of Dolj County*, Craiova, Alma, 2004.

The Paradigm of International Relations[*]

Mihail Simion

Professor Ion Deaconescu's book **Teoria relatiilor internationale (Theory of International Relations)**, published in the early spring of 2005, enriches our department bookstock and provides a valuable source of information for both teaching staff and students.

The 350-page book consists of three main parts (each including several chapters) dealing with different topics in a unitary way.

As the author states in the first chapter, the interpretation of the paradigm of international relations in based on the description of international organizations and their mutual relationships.

In a very detailed and coherent way, the author discusses the origin of international relations and indicates the "why" and "how" of the first international laws, tracing then back to the division of society into classes and suggesting that they are reconfirmed with social changes.

Under the circumstances, it is worth mentioning that the author identifies a variety of ideologies and practical, physical and legal concepts related to the nature and development of international relations. He argues, providing solid evidence, that the first norms and organizations of international law originate in Ancient times, an idea opposed to the one favouring the Christian origin of the international law as early as the Middle Ages.

The author envisages social life from a global and systematic perspective as the social and political factors have led to the establishment of international relations in different fields. Such relations have been governed by legal norms since Antiquity, most specifically in the Near East where the first slave states emerged.

The introduction to the theory of international relations is followed by considerations on the actors of international relations. In this chapter, the author identifies the state as the leading actor and speaks of the

[*] Ion Deaconescu, *The Theory of International Relations*, Craiova, Sitech,/Europa, 2005

relation state, nation and nation-state, the last item being valued as the dominant form of political organization, characterized by economic development and market-oriented economy.

Hence, international relations are subject to change, reflecting the relations between the new political entities.

The other actor's roles are also presented, namely, financial institutions and regional organizations.

The second part of the book deals with international policies and with the main factors of international relations, the fundamentals of international law. The last three chapters focus on armed conflicts, terrorist acts and armament as world topical issues.

To sum up, the book provides answers to different subjects of interest to students as the main beneficiaries who have already acknowledged the quality of the book and appreciated it as a valuable tool for their professional training.

Besides, the vast bibliography, the author's original ideas and idiolect, the coherent and harmonious structuring of the book are also to be noted.

Events 2005

On the 14th and 15th April 2005, The Department of Political Sciences of the Faculty of History, Philosophy and Geography, University of Craiova, organized The International Symposium "Culture and Democracy", comprising the following sections: "Culture, Political Action and Political Behaviour", "Political Message" and "The Democratization of International Relations".

This event had the privilege of welcoming prominent figures: University Professors and political analysts from Romania and from abroad - Professor Cristian Parvulescu (University of Bucharest), Lubos Blaha (The Politics Institute, The Slovak Academy of Sciences), Patricia Gonzalez-Aldea, Reader (University Francisco de Vitoria – Madrid); Slavco Almăjan („Argos" Centre for Open Dialogue – Novi Sad); Nicu Ciobanu (Director of „Libertatea" Printing House – Novi Sad); Aurel Pițurcă, Professor (University of Craiova); Cezar Avram, Professor (University of Craiova); Mihail Simion, Professor (University of Craiova); Ion Deaconescu, Professor (University of Craiova); Emilia Parpală, Professor (University of Craiova); Ionel Groza, Professor (University of Craiova); Bianca Predescu, Professor (University of Craiova); Ion Turculeanu, Reader (University of Craiova); Alina Dodocioiu, expert, (Romanian Government); Miron Roman, Senior Lecturer, Mihai Costescu, Reader (University of Craiova); Silviu Şomâcu, Junior Lecturer; Gheorghe Florescu, Junior Lecturer, Dana Dănciulescu, Junior Lecturer, Ecaterina Păun, Junior Lecturer, Cătălin Stănciulescu, Junior Lecturer, Ileana Roman, Researcher, Adrian Bogdan, Junior Assistant, Parmena Popescu, Junior Assistant, Cosmin Gherghe, Junior Assistant, Constantin Barbu, Mihai Ghițulescu, teachers, Irina Olivia Popescu, Junior Assistant, Irina Andronache and Radu Riza.

The papers delivered at the symposium will be published in a volume to be edited in Novi Sad.

Reader Patricia Gonzalez-Aldea, University Francisco de Vitoria, Madrid, Spain, tackled the topic of the relations between Romania and Spain in the context of the European enlargement. The seminar proved to be very exciting and stimulating not only for the students but also for the rest of the participants.

Between 6-9 July, the Faculty of History, Philosophy and Geography, most specifically, the Department of Political Sciences organized the students' graduation exam. The examination board consisted of well-known university professors of the University of Bucharest, the Faculty of Political Sciences, namely Professor Constantin Preda, Professor Daniel Barbu, Reader Laurentiu Vlad and Reader Alexandra Ionescu. A third of the graduates were graded between 9 and 10 (A level) in the written paper and more than a half of the graduates were graded 10 in the oral examination.

The students of the Department of Political Sciences had their two-week professional practice in one of the following institutions: The Municipality of Craiova City Hall, The Dolj County Council, the University of Craiova - Research Centre and "C.S. Nicolae-Plopsor" Institute (under the patronage of the Romanian Academy).