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Special Issue:
Citizenship, Elections and Security: An Analytical Puzzle

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Editors' Note

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

Anca Parmena Olimid*[*],
Cătălina Maria Georgescu,**
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Revista de Ştiinte Politice. Revue des Sciences Politiques (hereinafter **RSP)** is a quarterly peer reviewed academic journal focusing on publishing original papers about the theory, practice, concepts and methods of research in the field of social sciences.

Since its first appearance in 2004, **RSP** focused on enriching the interdisciplinary research in the field of social sciences by highlighting the new topics of the international and regional developments such as: political participation and collective action, political theory in transition; Euro-atlantic and regional security; party fragmentation and political systems in former communist countries; the quality of democracy building in Central and Eastern Europe; the threats to political pluralism and liberal society; the European and Euro-Atlantic integration; economic and social challenges; journalism, communication and civic society participation in Eastern hybrid societies.

However, due to recent challenging evolutions of the regional political and social systems, **RSP** New Editorial Board launched the initiative of focusing in 2014 on the emergent topics of the Eastern Europe arena. Therefore, the first issue for 2014, issue 41/ 2014 (with a new cover andanew design) was a special issue entitled: ***East & West Post-Communist Encounters: Ideologies, Policies, Institutions Under Scrutiny***.

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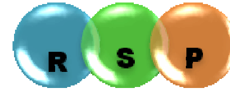
The second issue entitled ***Citizenship, Elections and Security: An Analytical Puzzle*** rejoins 22 articles (264 pages published) is the second of the four special issues edition published this year in order to celebrate 25 years of post-comunist experience.

In this innovative editorial initiative, beginning with issue 42/2014, **RSP** Editorial Board is honored and pleased to announce the occupancy of the vacancy for the position of Chairman of the International Advisory Board by Professor Dan Claudiu Dănişor, Ph.D., professor of Law and Political Institutions at the University of Craiova, Faculty of Law and Social Sciences and member of the Centre de Recherche et d'Etude en Droit et Science Politique de Dijon, University of Bourgogne, Dijon, France.

The contents of **RSP** issue 42/2014 includes original papers focusing on: the recent advances in security research and management in the 2000's; the political and administrative phenomenon in Kosovo; the role of descentralization in the Romanian public administration system; the study on doctrine and jursiprudence in the challenging context of the reparation of moral demages suffered by individuals and legal persons during and after the communist period; the coverage and legal interpretation of the impartiality of magistrates in the new Romanian Code of Criminal Procedure; comparative post-communist legislation; recent developments in the field of Europeanization, intercultural education, the local and parliamentary elections in the region; ideology, identity and belonging in the globalization era.

The cover of the first issue 41/2014 (print version), is entitled *"After 25 years: Pinpointing East and West Encounter Arena"*. The cover of the second issue 42/2014 is entitled "*Identity and Belonging in Post-Communism*" and is designed to encounter the analytical puzzle of identity-citizenship-collective choices-elections-security in post-communist Eastern Europe.



ORIGINAL PAPER

Recent Advances in Security Research and Management. Analytical Concepts Determining Paradigm Shift in Security Policy Agenda in the 2000's

Anca Parmena Olimid*

Abstract
Although the concept of "security research" is often used in international security studies, there is no literature consensus regarding this analytical concept and patterns. The present article discusses different theoretical aspects that configure the concept of security research and the application determining paradigm shift in security policy agenda over the last twenty years. The analytical approach of the study may be employed to indicate the basic and applied research and to compare the defining characteristics of contemporary literature. Furthermore, the article deals with the concept of "security research" as a complex and influent one. The article deals also with the security methodology and settings due to the fact that there is still a lack of analytical and empirical approach with regard how scientific method and evaluation research influence the security policy agenda. The analytical approach of the study may be employed to indicate basic and applied research and to compare the defining characteristics of security information policy and management. The present paper also argues that security research covers a wide range of paradigms and research methods aiming to fulfill the function and control in the security policy agenda since 2001. The development and implementation of plans, strategies and methods is conducted within different levels of conceptualization and observation of reality. In conclusion, the article suggests that the task of security research is to provide accurate information and tools for effective policy decision making-process.

Keywords: security, data information, security information, security policy agenda, organization

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Security research has evolved over the last decade with a variety of concepts and patterns such as: data security, information security, data system management, risk management, security administration and governance, political security, political decision-making process (Cai, 2013: 755-795; Kivimäki, 2012: 419-447). These conceptualized tools are reflective of the emergent resource reallocation of the security system. Whatever conceptualizing structure is organized and employed, the primary focus of the security research is to recognize and extent the dominant patterns of the security policy agenda. Furthermore, a mutual consensus maps the relationships between the security policy agenda, the national/ international security and the international relations namely, and the policy-making process which applies in the context of constructive redefinition of the concepts of power and peace (Emmerson, 2008: 135-154; Blokker, 2000: 135-154).

In this direction, the study aims to identify the shortcomings in the recent theories and concepts of security research leading to proposing alternative interpretations and extents meeting the causality between research-decision-explanation. This system cycle is a formal approach to look at the indicators of security research reconsidered and depending on security policy agenda since 2001. The issue of causality must of course be analyzed in relation to the challenges of international security system and the sources of security methodology and scientific method.

The analysis of the standard items and indicators on security policy agenda reveals a variety of phases and formal approaches beginning with the information evaluated during the monitoring and investigation phase. In the literature on security policy, this indicator of analysis refers to the ability of an organization to a feasibility analysis (Barnard-Wills, 2013: 170-180; Muñoz, Gonzalez, Maña, 2012: 979-994).

Through a qualitative analysis of the security research methodology and information, the study examines the variety of research squaring the security policy agenda in the last twenty years, aiming to categorize the types of the proposed principles and its contributions to a better understanding of the role of security research, techniques and functions for the political environment. With special reference to the security risk management framework, the research is conducted with the expectation that applied research is required to provide conclusive political decisions. While focusing on basic and applied security research, the article discusses the various implications of the descriptive research focusing on describing the characteristics of the security phenomena.

The scope of the security research is squared by one's definition of "security". In last few years emerging security research evidence has indicated that basic and applied research in the field of policy arena is often within the scope of "international security" (Robinson, 2008: 1-4). Each definition gives researchers the opportunity to expand scientific knowledge about theories on security implying "the absence of threat". Other security research findings about the international security system point out the dilemma facing 2000's of the causal and objective investigation of security strategies and environment (David, 2006: 2-3). The analytical approach of the study may be employed to indicate basic and applied research and to compare the defining characteristics of contemporary literature.

Security research covers a wide range of paradigms and research methods aiming to fulfill the function of knowledge and prediction in the security policy agenda. The development and implementation of plans, strategies and methods is conducted within

different theoretical and functional areas. This assumption suggests that the task of security research is to provide accurate information and tools for effective decision making. As mentioned above, the security research shifts from predictive analysis assumptions gathering to ongoing security settings (Robinson, 2008: 3). This argumentation is significant because it highlights the importance of security research engagement in last twentz years. Past researches on these issues have focused on evaluations of how much security challenges influence the actors behaviour, largely ignoring the changing parameters of needs, perceptions, understandings, attitudes of subgroups. Although the security research engenders the distinction between many organizational behavior on security policy agenda issue, the conclusive evidence on te preliminary data selection is yet to be collected (Kostakopoulou, 2008: 317-342; Thomas, Dhillon, 2012: 1148-1156).

Security research can be defined as the ongoing process of investigating, gathering, enabling and reassessing facts and data required by the making policy decisions. This definition points that the primary research data is neither subjective nor spontaneous included. As previously noted, security policy agenda can take various forms, but systematic security inquiry is a common, objective and important tool for decision-making facts and activities.

This definition is not squared to the need for objectivity, but it cleverly states that security research may generate and provide the accurate information upon which policy decisions makers' shift from subjective and preconceived area of decision entering to objective course of action. By reducing the proportion of subjectivity of decision, security research process is associated and connected with the systematic analysis and thematic interpretation of "international security".

Basic and applied security research

Designing the basic and applied research in security studies means dealing with questions and answers of analysis and interpretation beyond the simple identification of cause-and-effect relationship between various variables viewed as "normally cause-and-effect relationship security studies".

The present discussion starts from the assumption that in security research it is typical to establish an expectation of the relationship to be offered, such as identifying the influence of actors and organizational behavior, political-decision making process and conclusive decisions. To analyze the linking between basic and applied research means to broadly conceptualize the three above archetypes using the elements of "political influence" and the challenges of the inferring causality between research subject-causal factors-alternative plausible explanations (Hasegawa, 2007: 1-20; Deakin, Wilkinson, 1991: 125-148).

One reason for investigating and analyzing pattern theories and definitions for security research is to generate and develop new finding aimed to enrich the potential of research knowledge in the field. The above assumption does not point out that the basic research is applied exclusively in the field scientific knowledge. Basic research is developed and conducted to investigate the objectivity of a given theory and the acceptability of a base decision (Blockmans, Wessel, 2009: 265-308; Wessel, 2003: 265-288; King, 1999: 313-337).

In common with most fields of scientific research, security studies seem to face a crisis of analysis and "discourse" focusing only on monitoring, evaluation and

investigation of recent political events. It is easy to notice why talk of a “crisis of discourse” has abounded since September 2001. In particular, placing the 2001events in the context of the security research reveals a complex environment in which one criterion that must be established is that appropriate causal order causes behavior change and sequence of events.

The past decade, however, has been a marked increase of researches concerning the concomitant variation between the presumed cause in the security system and the assumed effects. For several reasons, recent papers have alternatively analyzed an occurrence of two phenomena or events: the presence or absence of explanations and the exploratory relationship between actors-organization-system. At the same time, all these studies conceptualize the influence of inferring causality in security research, involving: (1) the causal order; (2) the cause-and-effect political alternation; (3) the alternative explanations. More important, the issue of inferring causality is particularly significant to security research requiring causal definitions and explanations.

A more important feature of the recent literature deals with issues of the stages in security research. At the same time, we may consider the relationships between the backward security linkages implied to influence the applied research. Applied research is identified and conducted regardless a current of recent problem or opportunity. Applied research encompasses a particular action, fact or policy determining the nature of a situation and identifying and implementing a particular course of information and action, and evaluating and analyzing the generated actions occurrences.

Scientific method and evaluation research in security research

The article deals also with the security methodology and settings due to the fact that there is still a lack of analytical and empirical approach with regard how scientific method and evaluation research influence the security policy agenda. The procedures and tools utilized by basic and applied security research focus on political inquiry, causal functions and particular factors explaining particular types of mechanisms and outcomes. This reasoning raises and increases general correlations and findings in the security policy agenda. However, the exclusion of additional variables (such as subjective and discursive conceptions) generates ineffective decision-making process. In basic security research, first implementing the general correlations and findings and then testing and managing the particular observations about the applied research lead to the problem-solving of security policy agenda paradigm (Bourne, Bulley, 2011: 453-471; John, 2006: 975-986).

Other accounts of the different strategies and points of view in security policy agenda comes from the historians and analysts which preferred the management approach and description of the decision-making process as subjects of analysis of the particular item of rights and obligations in the policy agenda (Gherghe, 2005: 58-62). Use of scientific method in applied security research gains insight into the development and implementation of a decision-making that will contribute in evaluating the opportunity for alternative security conceptions or hypothesis.

Once security research identifies the challenges and opportunities, an important aspect is to determine the nature of situation and the planning information required for evaluation research in that particular field of study. Security research is essentially process of monitoring, analyzing and implementing information security data and policies as increasing higher levels of general propositions and principles of explanation.

Figure 1. Levels of conceptualization in the field of security theory

Source: author's own compilation

A key element of the empirical research of the security field is the "course of action" as a new dimension of the conceptualization of reality. Thus, concepts and operational definitions in the field of security research become the basic units of security theory development engendering a categorical course of action. The security theories require that the relationship between its concepts and operational definitions be understood and inter-related. In this direction, scientific method is the use of assumed procedures in order to establish and acknowledge theoretical statements about security policy agenda.

Nevertheless, the concepts and operational definitions in the field of security research are required to develop the theoretical framework and the hypothetic and deductive process on certain phenomena and their relationship with others. Both the concepts and operational definition flow logically from the hypothesis area in research method area (the link between the concepts and operational definitions in the field of security research).

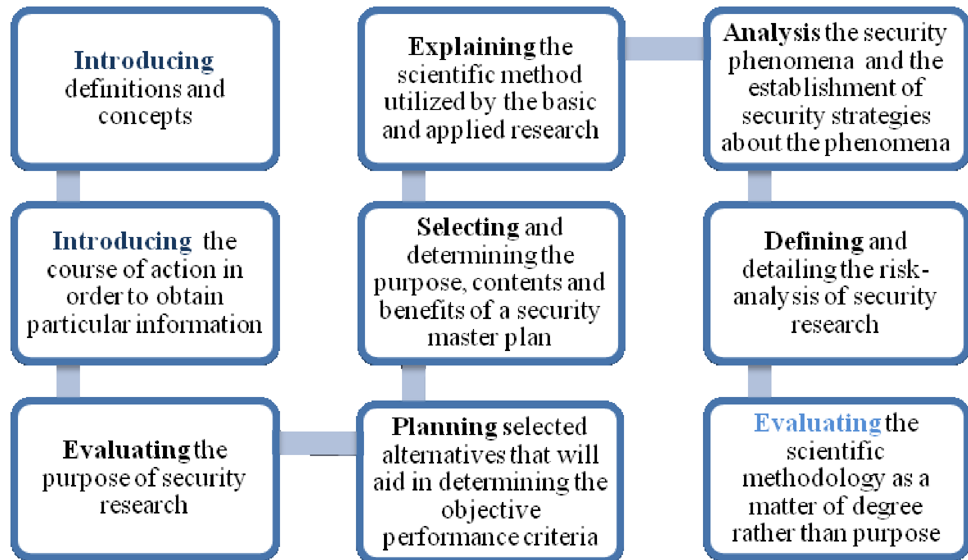
Security methodologies may be evaluated through the use of various "security business proposals" or "security master plans" criteria. A major course of action to develop and provide a security program or plan is through planned activities. Planned activities have various meanings, interpretations and explanations. In its most basic definitions and implementing, planned activities and operations are evaluated through empirical validity which is the formal and objective measurement and appraisal of a given project, program or master plan. In other words, security research may provide completed plans and programs according to their objectives or major factors influencing the integrative aspect security strategies.

Risk analysis and security methodology

There are many informal, subjective methodologies and measurements to which a given risk analysis has applied its objectives. Variations and extensions exist among practitioners, academics and researchers regarding the risk analysis, the definition of terms, procedures and methodology, definitions of concepts, metrics and reporting

performance levels. Whatever type of security methodology and risk-analysis methodology may be used to describe a specific security problem, performance-monitoring processes should be considered in this exploratory-monitoring action. For the security research management, the term "exploratory-monitoring action" provides feedback for the monitoring, evaluation and control of actions, programs and plans.

Figure 2. Concepts and operational definitions in the field of security theory



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Apart from the traditional monitoring, evaluation and control of actions, programs and plans, the management of security risks embodies the fact the security risk must focus on integrating protective measures and crisis management planning. In some circumstances, risk-management framework requires considerable regulation and reliance on information and environmental conditions (Bourne, Bulley, 2011: 453-471).

Performance-monitoring action, as source of security covers topics ranging from high-range planning to the most interdependent decisions and operations such as: the threat of terrorism, globalization and transnational risks, technologies research and information condition etc. The fundamental paradigm shifts from the systematic and progressive process of gathering and collecting, and analyzing data to selecting data for final decision. The objective of risk-management framework is not an objective itself but rather a tactical decision which supports and generates the tactical decisions. Given the similarities between concepts and theories in recent literature, we should adopt the idea that the basic or primary security research is also a conducting security research in all stages if the performing security (John, 2006: 975-986). We identify four main features of a performing security that seem problematic for their analysis of the practice of the

concepts such as: decision alternatives, problem identification and definition, direction of monitoring and evaluation, area of research and advertising themes.

Essentially, security methodology engenders all decision-making stages: to define and integrate the security issue, to explore standards and requirements and the effectiveness of methods used. As part of this process, one task of security research is to focus on a particular form of proposed theoretical propositions.

To maintain a suitable set of based security guidelines, organization and institutions involved in risk management should review and evaluate the standards and responsibilities of public awareness, including: security planning, particulars of priorities, objectives and management system, allocation of tasks and duties, information on targets and performance indicators; common activities and procedures for monitoring and evaluation of the security system.

For much of the past twenty years analysts and academics have debated whether the decision alternatives in research process suffers from a “crisis of discourse” combined analysis and tabular stages (Lüthi, 2011: 207-214). Security research methods provide reliable information if security data are collected and analyzed in a systematic and correct manner. Security research becomes the “management tool” that institutional actors use to avoid or reduce uncertainty.

This situation is considered to play two key roles for security. Firstly, it is part of the security decision-making plan. Security data provide effectiveness of current security strategies and it also provides insights for fundamental changes in security policy agenda. Secondly, data security is the principal instrument for identifying and empowering new availabilities and opportunities in security policy agenda and identifying potential risk situations.

Data security uptake

Data security also serves other purposes. It delineates a research area that combines an analytical concept – *data* – with a fundamental concept of the international security policy agenda – *security.* It conceptualize security as a relation between two components: “data” and ”security policy agenda”.

Data security has been a central concept in recent literature, and it often is conceived and defined as privacy measures and protection of data from unauthorized access (Walter, 2006: 105-135). Other authors have made a brief reference with regard to the concepts of “power” and “international power hierarchy” (Smith, 2010: 51-54).

In an extension of data security theory and argumentation, Tipton and Krause (eds.) have developed an information security and risk management multilevel framework. Instead of exploring one direction of research focused on building an effective program of information security policy, the data security system consists of a series of parallels between information security, security management, change control process and management data classification and custody of data, security management risk, security management planning, access control and evaluation (Tipton, Krause (eds.), 2007). Information security management function according to the same argumentation as a structure of processes, relationships, measures, standards and procedures appropriately directed to determine the effectiveness of security governance. (Tang, 2011: 511-536).

Descriptive security research uploading and maintenance

The orientation of the security research towards a broader context of analysis allows the possibility to seek and identify the linkage between the five stages charted by the scientific investigation since 2001: 1) defining the security problem; 2) planning a security research framework; 3) security data collection and investigation; 4) analyzing the data security; 5) formulating conclusions for policy decision-making process.

Figure 3. Descriptive security research uploading and maintenance

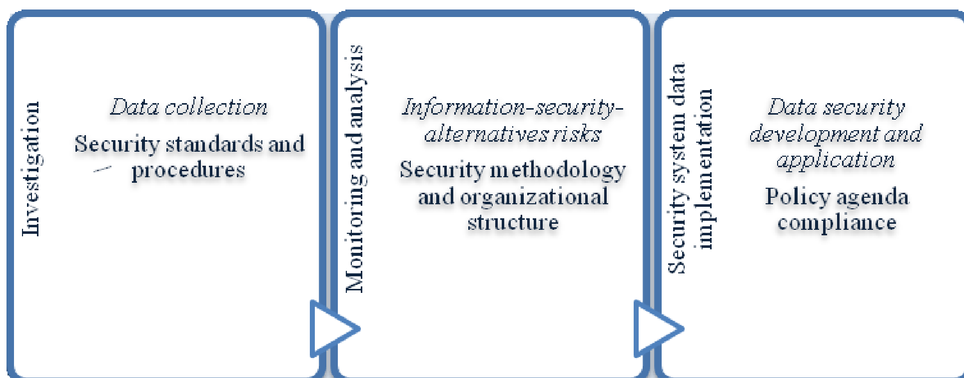
Source: author's own compilation

The literature argued that the recognition of security "as an industrial tool" structure belongs to a single category of scientific concepts. One may call it the category of "scientific management" required by the system performs and the "technical" analysis of security marketplace. Seen alone, the information security management and the security marketplace emphasize that an orderly definition of the security research framework gives a sense of direction to investigation and monitoring (Ahmad, 1991: 105-127). The question of the information security management and security marketplace is probably the most difficult problem of the security field recently expanded into a more comprehensive list of alternatives characteristics and values including information classification, investigation confidentiality, secure data security storage, investigation and monitoring of security policies. Although these characteristics and stages of the security research process are probably the most important phases, they are frequently the foremost sources of research concern. Security research has proved to be a stumbling block, from the process of achieving objectives between the coordination and completion of tasks, through the process of collecting and processing information up to the alternatives approaches and resolving conflicts, policy dilemmas, or regional challenges (Osano,

1999: 273-302). Pre-eminently, by assembling some of the more significant facts concerned the basic form of security management, we understand the many roles to play within international actors and organizations. Broadly speaking, neither in the practical experience nor in security theory, the three tasks of security management: informational task, inter-organizational role, the decisional role including and the control function of security research and the monitoring process of security organization cannot be absolutely separated (Jeong, Sauveron, Park, 2013: 274-277). Establishing the influence domains of security research in policy decision-making process within the security policy agenda, one therefore admits the principles of information security management. This selection is comprehensive: the knowledge area of security area is driven by the need of rethinking information and policies. The situation in which data security find itself since 2001 necessitates special efforts to explain the fundamental components of information security.

These questions complicate an already complex research, adding a new challenge to the initial stage of the research process. There is in fact a common perception of the preliminary activities undertaken to refine the data security analysis into a researchable one need to be technical or formal: a progressive investigation of the knowledgeable operational and tactical planning of the organizational strategy (Pantazis, Pemberton, 2012: 651-667). Consequently, the specific research objectives on information strategy in creates a strategic plan focusing on a number of secondary or historical variables regarding the impact of research techniques conditions. Above all, in this perspective, the studies design the relevance of secondary security data analysis, pattern cases, case studies and experiences surveys are based on the exploratory conditions of the formal investigation. Most current debate about the security research deficit squares the information-security-alternatives risks, the limits security resources, policy compliance, security methodology, security organizational structure, security standards, signature procedures, and information security implementation (James, 1998: 271-301). In using historical conditionality, many authors set the adoption of the security implementation rules and practices as conditions that the security systems developments have to fulfill a rapid application development (Tupakula, Varadharajan, 2012: 397-409).

Figure 4. The structure and format of security research



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What conclusions can be drawn if we sum up all arguments? During the security research process, one of the most challenging findings is that the planning phases provide specific frameworks ensuring that all areas of security policies are operational. Moreover, there are many interlinked categories of security research management influencing the security policy agenda.

Information Security Policies

Most fundamentally, the concept of "information security policies" highlights a combination of three dilemmas: first, a broad definition of information security policies, second, the role of information security policies in security decision-making process and third, the facts and factors determining and motivating the organizational behavior to undertake a specific security policy (Hankey, Clunaigh, 2013: 535-547). A real theoretical debate has to concentrate different key themes in the recent literature based on sub-dividing security policies and empirical investigations as a balance between structural differences and the overall framework of formal security policies approach. The lack of accurate security policies application and features appears inadequate in the light of security administration.

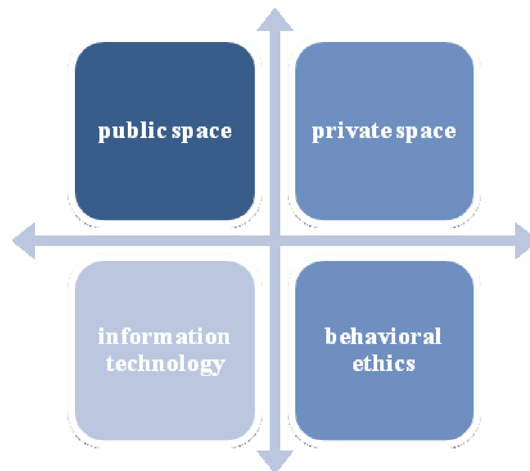
Taking into consideration this requirement any security policy has to develop and pursue its plan actions leading to the strengthening of its contribution to all security policies and to the implementation of a new mentality aiming to fulfill the condition of "mutual involvement" of all security information users and organizations. This new information security environment has to explore the relationship between the information security management and information security policy. Recently, a number of authors have emphasized the importance of this linkage uploading and developing (Georgescu, 2014: 250-261). The most reasonable analysis for the information security policy has to estimate the "geometry" of formulation and implementation in an organization. This selection depends on the level of security that an organization considers necessary: the security policies resulting in a new security administration driven by the need of rethinking new tactical applications, policies and capabilities. Consequently, the 2000's exposed the prevalence of "the case", its "discussion" and the best practices. Second of all, to oversimplify, the challenge of the security research was to develop and improve a strategy for constant improvement of purposes and practices.

There is also the support for a link analysis between the security research-information security measure-data security and after-implementation security activities. The implementation process of data security creates a new dimension for information security policy by the continuous improvement of specific links and reflecting the growing interdependence between the research agenda and security management (Niemetz, 2014: 69-88).

Not surprisingly, information security policy research agenda has been the spotlight of relatively little attention. Indeed, for the past two decades, it has been argued that a "security policy research agenda" is prevailing upon all aspects of the relationships established at the international level. Most recent studies on the concept „information security policy research agenda" commence with a few comments on structure, format and key terms. Other studies indicate that the information security research was formulated on the special conditions and approaches following the 2001's events. These contributions to the debate can be made by research exploring the policies including goals, beliefs, morality and ethics. A third group of studies seek to clarify and categorize

the relationship between the primary theory of security as it is applied from in the challenging debate on public vs. private spaces and the post-2001 experience by undertaking the ownership of data security with the view of three approaches: information technology, environmental ethics and security policy research and behavioral ethics.

Figure 5. Public vs. private space debate and the ownership of data security



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The first set of objective considerations influencing the debate on ownership of data security concerns the balancing link between the information security policy and the ownership of data. It is often argued that the information security system and data-processing must be considered when balancing public-private spaces. To achieve balance that is to operate data security that satisfies the needs of individual behavior and the professional one. From an empirical point of view, it is often argued that a successful information security implementation is likely to result from the system administration, that is, from a bottom-up approach (information technology → behavioral ethics → public/ private space). In recent years there has been an increased interest in analyzing the effects of information security implementation and the availability of data security in security research. However, in spite of this mounting interest, the absence of adequate information suggests that value of security research depends on the nature of the political decision-making process. However, in the new security policy agenda, where system configuration and its continuous monitoring are still in question, the literature fall into two groups to explain the variation in the security systems development organization and development: features of specific threats and particular types of control (type of action, risk management, security planning, organization's composition and structure) and institutional features (phases of security development, implementation of information security) (Trcek, 2010: 1106-1112).

Advocates of this functionality theory argue that the features of specific threats, the particular types of control and the institutional features enable efficient implementation of security information. To perform effectively, information or data security are primarily concerned with identifying the data classification standards. Taking as a starting point the claim that information security standards provide the basic and fundamental

developments, the security research underlines the idea that the data security goals and techniques owes the general and decisive duty to square the organizational design.

Indeed, there is a powerful relationship between the data security goals and purposes and the security management from the decision-making perspective. The answer to this issue composes the beginning of a critical analysis of the new security policy agenda. The diverse standards, purposes and activities undertaken illustrate effective design-to-implementation security policies to which security research is engaged in a new type of information security policy. This pre-planned security policy crucially performs the function of framework for the management and implementation of security information. The central argument in this pre-planned security policy is to find the key issues of the organizational security context by focusing on knowledge and practice areas. The scope and extension of this formulation is required to provide a suitable risk-management framework.

As security policies evolve and risk-management increases, it is needed to face a more complex regulatory framework including the analysis of the social, legal and security practice and the ability of institutions and organizations to reach its purposes. Developments in the evolving security theory and research directly influence the pattern of security information and related regulations. To conclude this approach, there are four important tendencies in the security policy approach since 2001: 1) the security theory fragmentation; 2) high political instability and the ideological challenge; 3) the increasing confidence of the relationship risk management-standards-principles and strategies; 4) the rise of the organizational values and ethics and the improvement of security management system links.

In conclusion, the twofollowing specific hypothesis are related to security policy research agenda: 1) under risk-management challenge, increasing security theories are to be expected; 2) risk-management still may be predicted, given the following analysis: understanding the reasons behind the security policy research agenda, frequently changes of security agenda, are important in the post-2001 international context. The variations of the information security monitoring and investigation have a significant effect on the level of data collection and implementation. In concluding this article it is important to notice that not surprisingly, the trajectory of the security research agenda emphasis a recent re-theorizing of the security course of action rather than a ideological or practical turn.

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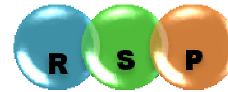

ORIGINAL PAPER

North Kosovo as a Political and Administrative Phenomenon

Attila Nagy* [*]

Abstract
Our goal is to explain and understand the recent political decision which has focused on the region of North Kosovo, the Brussels agreement from April 2013. The tremendous influence this agreement has caused in the region and to both the Serbian and Kosovo government is very big. Our aim is to see how such agreements are understood by everyday people, politicians and other stakeholders not just in the region but broader. This agreement is binding for Serbia and Kosovo, even more is binding for the people who live on North Kosovo. It is necessary to see how people react to it and how they can benefit, both on North and other parts of Kosovo. The application of the agreement is very broad and in fact can influence more Kosovo inhabitants than just those residing on North Kosovo. The specific situation which we call "Phenomena of North Kosovo" requires a very careful approach since this region is very popular for its chaotic situation which lasts for many years. The causes of division present here got stock in time and there is no possibility to solve them in a manner of one year. For the better understanding of the political and legal issue after the Brussels agreement present in both Serbia and Kosovo we have examined the legal framework of these states and their Constitutions. The Brussels agreement does change the meaning of some articles of the Constitutions and it can be predicted that this agreement will change and influence these Constitutions.
On the end we see that both states have given up something but at this moment we do not see the exact benefits to people and can't predict the final date when this agreement will be a part of everyday life on North Kosovo.

***Keywords**:* Kosovo, North Kosovo, Brussels agreement, Constitution of Serbia, EU foreign policy, Municipalities

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Introduction

A long history of political thoughts and decisions was always full of new inventions, agreements and solutions. It is not always easy to understand the new solutions and apply them in practice that is why we try to explain them through some other well known institutions and apply practical outcomes to those political decisions or solutions. In this work we will deal with a certain "phenomena" which is popularly known as North Kosovo, since it covers the territory of four municipalities on the North of The Republic of Kosovo and they have a Serbian majority population.

The establishment of this political entity is going back in time and history and we will not discuss it in this work, the fact is that the Serbian majority is native on the North and is one of the very few regions inhabited by Serbs today in Kosovo. The establishment of this territory as a political subject has its roots in the time when the Republic of Kosovo was established. From that moment a new law, state and political administration has been introduced on the territory of Kosovo which was a part of Serbia and according to Serbian legislation still is today.

From this moment we have an application of two different legal and political systems on the territory of Kosovo, the Serbian and the Kosovo system which has been previously established by the UNMIK (United Nations Mission in Kosovo) administration. So there is no loophole in the sense of the lack of law since there are two laws applicable, or at least applicable on the North Kosovo. This has caused many problems and now or specifically one year ago on April 19th 2014 a considerable effort was put in by both the Serbian and Kosovo governments to reach some agreements. On the end the parties have signed, under the close supervision and control of the EU, the historical "Brussels agreement". Now this agreement is being implemented and its different parts which were left for further development are still under "construction" and the final solutions and paths leading to them will be agreed in the future. There are many topics covered in this agreement and we will focus on the ones which are dealing with the political status of North Kosovo as a specific political "phenomena" in the framework of the Association of Serbian Municipalities.

Geographical, statistical and other data

The geographical area of North Kosovo constitutes of four Municipalities from which the newest and the most interesting one is North Mitrovica (Kosovska Mitrovica). It has a territory covering the parts of the city of Mitrovica which are North of the river Ibar, it also comprises of several villages which have a majority population of Albanians (OSCE, Mitrovice/Mitrovica, 2013).The territory is not very big but the density of population is very high, approximately 22,530 inhabitants. At this moment the establishment of the Mitrovica North municipality is in procedure and the Serbs from the city and other parts of North Kosovo can use the services of the Mitrovica North Administrative Office of the Kosovo government. The purpose of this office is to gather all the responsibilities of a municipality and then be able to transfer them to the municipality once it is established. Municipality Zvečan (Zvechan) has a territory of 122 km² and a population of 16,000 Serbs from a total of 17,000 (OSCE, Zvecan/Zvecan Municipal Profile, 2013) and is very close to the city of North Mitrovica, only the big hill of the ancient Zvecan castle is dividing these two cities. There is a road connecting the two cities and a railroad as well, the railroad is in

function which is very rare in Kosovo. The once big Trepča (Trepcha) mining factory is lying empty just next by the Zvečan train station.

Municipality Zubin Potok has a territory of 333 km² and is lying on the west from Zvechan, and bordering the municipality of Novi Pazar in Serbia. The road from Zubin Potok is one of the few connections to Serbia via the famous Gazivode lake and the checkpoint Brnjak which is just next to the lake. It has a population of 13,900 Serbs out of 14,900 total where the 1000 inhabitants are Albanians from the village of Chabra/Cabra (OSCE, Zubin Potok, Municipal Profiles, 2013).

Municipality of Leposavic has a territory of 750km² and is lying on the north of Kosovo just next to the Kopaonik Mountain, and a population of 18,000 Serbs out of 18,900 total (OSCE, Leposavic/Leposaviq, Municipal Profiles, 2013). It has a road which is connecting Serbia and Belgrade with North Kosovo via the famous checkpoint Jarinje which was a place of many incidents. The importance of this road is very high and is used to transport goods from Serbia to Kosovo, an alternative road is being build and will connect Prishtina with the Highway in Serbia close to the city of Nish.

Number of citizens on the North Kosovo is a data which can be influenced by many factors and for the purpose of this work we will use the number of voters from the recent elections. These elections have been conducted as part of the Brussels agreement (Voice, 2013) and have been delayed for various reasons. The importance and influence of the region can be understood if we take the number of voters registered in the Kosovo register from recent elections. North Mitrovica according to the Central Election Commission of Kosovo has 27,915 registered voters. The same source is used to determine the number of voters in Zvechan which is 9,986 voters, in Zubin Potok 8,948 and in Leposavic is 31,686 voters. The political decision making power is the most important value of this region and the strength can be clearly seen from the number of the voters. Many people who fled from the South are registered here and are able to vote according to their place of residence. These people do not have a status of refugees but of internally displaced persons since in Serbia they are coming from a southern province of Serbia and in Kosovo they have moved from one part to another. Similar stands for the Albanians who lived once on North Kosovo.

The most important fact is that the four municipalities are inhabited by ethnic Serbs and is representing the main body of Serbian minority in Kosovo. In some villages and peripheral regions of these municipalities some Albanian villages could be found. There are no mixed and multiethnic communities villages or cities and some notable examples could be found in Mitrovica where the two nations meet in the Bosniak mahala by the eastern bridge, The Three towers settlement close to the main bridge and Micro naselje settlement up on the hill where the famous Mitrovica miners monument stands. These zones are the remains of the once multicultural city and show us how people lived once close to each other. Also these settlements are the places where ethnic conflicts have occurred and are most likely the place where some misunderstandings could happen in the future.

Constitution and legislation in Serbia

The importance of Kosovo issue has called in for action of the Serbian law making bodies and has as one of the steps introduced a new constitution. In 2006 a new constitution was made and one of the most interesting parts was the preamble which deals specifically with the territory of Kosovo and Metohija which was at that time on

the territory of Serbia but under the supervision of the UN (United Nations) according to the United Nations Resolution 1244 (Nations, 1999). The Serbian Constitution preamble reads as follows: *Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia. Considering also that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations, the citizens of Serbia adopt* (Serbia N. A., 2006). The importance of Kosovo and Metohija, what is the official Serbian name for the territory of Kosovo is clearly outlining the importance of this territory for the Serbian state and calls in for action of all the responsible bodies to protect the state interests. It is a very important task and has to be backed up by different laws on which such actions have to be based. The unclear obligation of the Serbian state has to be viewed in the sense that Serbia does not in fact has and holds all the rights and obligations a state has in Kosovo, since it is administered by the UN after the bombing of Serbia in 1999. It is clear that Serbia has given up some rights according to the UN resolution 1244, but back in 1999 Yugoslavia was the one who signed that document and Serbia was just an integral part of that state. The disappearance of Yugoslavia also asks the question from whom Kosovo was taken and in this case it is clear that it was previously an integral part of Serbia. In 1999 Yugoslavia was a small federation of Serbia and Montenegro, the last has never contested the fact that Kosovo was in Serbia but after gaining independence Montenegro has also recognized Kosovo as an independent state in 2008.

Also the substantial autonomy which is granted to Kosovo according to the preamble is not clear and by the *de facto* situation present since 1999 and the level of development shows that some laws and institutions go in favor of the fact that Kosovo is more a state than anything else. The dependence of Kosovo on some foreign help is still visible even today in 2014 after almost 15 years of being separated from Serbia.

Another level of legal protection to Kosovo and Metohija is given in the oath which has to be given by the Serbian president. The text of the oath reads as follows*: "I do solemnly swear that I will devote all my efforts to preserve the sovereignty and integrity of the territory of the Republic of Serbia, including Kosovo and Metohija as its constituent part, as well as to provide exercise of human and minority rights and freedoms, respect and protection of the Constitution and laws, preservation of peace and welfare of all citizens of the Republic of Serbia and perform all my duties conscientiously and responsibly."* In the wording of the oath it is visible that the sovereignty of the Republic of Serbia treats specifically Kosovo and Metohija or treats it in a specific manner if needed, the way of treatment is not clear but it does mean that the president of Serbia has to devote a certain period of time or efforts when it comes to Kosovo. The president does need to treat Kosovo as a constituent part of Serbia, but once again the wording and obligations are rather unclear. Certainly the door for Kosovo as a part of Serbia with a high level of autonomy is left open and for a certain period of time, or even now, this option is supported by some government officials. Different institutions treat this territory and its citizens differently, so it is not possible to say that this vague obligation of the president can influence them or the situation. It also has to be outlined that the President does not take part in the Brussels meetings where both the Prime Minister and the First deputy of prime minister of Serbia both

have a say. So far the president has not influenced officially the outcomes neither took part what could be his task. The Constitution also defines the status of autonomous provinces in Serbia in its Article 182. An important part of this article reads*: In the Republic of Serbia, there are the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. The substantial autonomy of the Autonomous province of Kosovo and Metohija shall be regulated by the special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution.*

The two autonomous provinces of Serbia have had in the past 50 years a very similar treatment. In the Yugoslav era and constitutional framework they had more autonomy but later after the dissolution of the Socialist Federative Republic of Yugoslavia in the 1990s the autonomies have been deeply cut. It is not a question that human rights were or were not obeyed, but clearly the legal and factual root of the modern day Kosovo problem dates back to these times. The special law which will regulate the Kosovo and Metohija issue will have to be in the opinion of the author way to specific since the present constitutional framework will not apply to the *de facto* situation of the "Autonomous province of Kosovo and Metohija". Also the Serbian government which will be newly established shortly after the one year anniversary of the Brussels agreement will have the capacity to legally back this agreement in the Serbian legislation and even get support for a new constitution if needed.

Constitution and legislation in Kosovo

The Constitution of Kosovo entered into force on 15 June 2008 (Parliament, 2008). We will now examine its articles which are relevant to our topic and try to apply the legal framework to the *de facto* situation on North Kosovo and the *de iure* situation after the Brussels agreement. In article 1 the constitution defines the state and says among others in paragraph 1that the state of Kosovo is indivisible state. A similar idea is found in the Serbian constitution but here it is not clear why and how it could be divided. We can conclude that the division of the state is by this article prevented and no authority, president, prime minister or the government can agree to any act which could endanger or divide the territory of Kosovo. In article 16 we have an idea which is the characteristic of every constitution and it says it is the highest act in a state, but in paragraph 3 it says that Kosovo shall respect International law. It is not clear how that international law will come to force in Kosovo since the law could be made without Kosovo or its consent and still have effects. On the other hand International agreements are clearly defined in the constitution which could even deepen our ideas about the law. Also in article 19 the constitution separates the tern of International agreements from binding norms of international law. In the scope of the presidents of Kosovo duties among others in article 84 the first in paragraph one says that the president should represent Kosovo both internally and externally. We are here in doubt if the president has just formal obligations or is really empowered to represent the nation in front of international organizations and other states. Also here in this article in paragraph 7 it says that the president signs international agreements, but maybe not all of them. The prime minister also has duties according to art 18 in regard int. agreements, but it is still not clear where from applicable international law could come from.

When it comes to the local self-government the constitution gives a lot of rights to municipalities. In article 123 it is stated that Kosovo respects the European Charter on

Local Self Government in the same volume as its signatory states. The importance of municipal and local authorities is much higher in Europe and the importance to further develop them is visible both in Europe and Kosovo. This is going to be once again mentioned in the Brussels agreement. And similarly in article 124 paragraph 4 the constitution gives the rights for inter-municipal cooperation just as the Brussels agreement.

In the final provisions we can find article 143 which calls upon a special document when it comes to the understanding of the Kosovo constitution. The "Comprehensive Proposal for the Kosovo Status Settlement" has the following role in the Kosovo legal system: "The Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail." (UNOSEK, 2007) This act obviously stands above the constitution and the way it was made supposes that other acts can be imposed in the same way. Kosovo has a complete and understandable Constitution but this "Proposal" which was accepted on the end is making the understanding and application of the constitution more unclear and starting from the constitutional court and other state bodies it could cause some misunderstandings. This Proposal serves as a key to the constitution and the future development of Kosovo. The sources of Kosovo laws are more complicated than in a usual newborn state. This unclear path shows that using the same pattern other laws can also come above the constitution of Kosovo and in some way change or annul the effect of some of its articles. Now the outstanding question is whether and how could the Brussels agreement change and influence the positive legal order present in Kosovo. One of the interesting points could be also to find out if the Brussels agreement is in line with all the positive laws in Kosovo, it should be on the end.

Brussels agreement and its outcomes

The Brussels agreement or First Agreement of Principles Governing the Normalization of Relations (Voice, 2013) does not have many decisions and is mainly serving as a guideline for future negotiations. It is historic in a sense that Serbia and Kosovo have started to cooperate and even more important that they have established a benchmark, this agreement tries to cover the loopholes which have been present on the territory of North Kosovo, it does not specifically deal with the recognition of Kosovo but shows considerable efforts to recognize some authority. Unfortunately the opinions stated here need to be transferred to the field what causes and could cause many problems. One of the focuses is the territory of North Kosovo which is in some legal loophole and the fact that Serbia will transfer some rights to Kosovo does not guarantee the solution to the problem. The core of the problem was not legal and even by having a presence of military and other law enforcement personnel, human rights were never fully respected here. In the first six points the Brussels agreement is dealing with the formation of a Municipality association of the municipalities which have a Serbian majority. The agreement does not define the name of this grouping and is unclear by using sometimes "Association/Community" and "Community/Association" in different sentences. In the legal sense this switch can be understood differently and could be also that the writers of the text did this on purpose. When it comes to understanding of

separate points of the agreement which deal with many things the focus will be on individual sentences and this wording could play an important role. In our opinion the word Community has a stronger and more independent meaning and stands for marking something which is more different or specific. This wording is also an outcome of the lack of agreement of what that Serbian municipality group should be. From the text it is obvious that whatever it tends to be it will work in the framework of the Kosovo law and European Charter of Local Self Government. This gives a clear stand to this grouping and does not let it go outside of the Kosovo legal framework. One of the most important points is: "The Association/Community will exercise other additional competences as may be delegated by the central authorities." This possibility, if exercised at all, could transfer some important authority which could be specific and not usual for municipalities. It could make some positive discrimination in the sense that more rights will be given or les obligations requested from this grouping. But still in overall the rights will have to stay in the framework of the acts applicable to this grouping by Brussels agreement, namely Kosovo law and the European charter of Local Self Government. The agreements about Police and Courts/Judges is not giving any particular rights and does not differ from the court structure in some multicultural areas. It is important that such principles are implemented here since other solutions would not bring the conflict to an end or make advance in this divided area. Another important issue is the energy and telecom distribution. These services and benefits have been the most important field of misuse on North Kosovo and have caused problems not just in the region but in Serbia as well. In one word the goods and services offered on North Kosovo are not covered neither by Kosovo or Serbian law and system, the business activities have not been registered previously and have made a lot of opportunity for smuggling and the development of the black market. The point dealing with EU integration is a very important one if we know the parallel practices of different states blocking their neighbors in the EU integration. We are still unclear what "block" means and if it covers the legal way of requesting something which is based on rights and standards or just something what is known and has happened in the practice and process of EU accession.

Solutions from the past or the Dayton peace agreement

The long lasting practice of conflict resolution in the area of ex-Yugoslavia is giving us an example of a solution achieved in 1995 which brought to an end the war in Bosnia and Herzegovina. There are many similarities between the Dayton agreement and the Brussels agreement, mostly the problem of division and the diplomatic efforts to solve it. The Dayton Peace Agreement (Council, 1995) was the agreement which has established the independent state of Bosnia and Herzegovina and its purpose was to make the three nations make live in one state. The signing parties were represented by the presidents of states and in this fact we see that there is a difference from the Brussels agreement. It is no doubt that the presidents of Croatia Franjo Tudjman, Bosnia and Herzegovina Alija Izetbegovic and Serbia Slobodan Milosevic were the most influential persons in those states and probably in the conflict which took place on the territory of Bosnia and Herzegovina. The authority is not disputable but still we have after some almost two decades a very similar agreement where the prime ministers play the most important role of meeting, discussing and signing. One argument could be that the Dayton agreement was made mainly with the support of The United states of

America where the president has the role and duty to sign such agreements while in EU the prime ministers are the ones who play an important role in developing state policies. The prime ministers are the ones who always have support in the Parliament of a certain state and can by using the law making procedure easily apply International agreements into the local legal system. The authority which the Dayton agreement has acquired by being guaranteed by the leaders of once conflicting states is making it so hard to change that even today, it is not possible to agree on so many things as back then in 1995. A big part of the authority is also hidden in the fact that many International stakeholders took part in preparation, one of whom is the United States of America. Similarly to Dayton in Brussels we have the High Representative of the EU for Foreign Affairs and Security Policy, namely Baroness Catherine Ashton. It is obvious that the EU has interest of solving disputes on the European continent, but in the opinion of the author the broad acceptance of such agreements by the international community like in the case of Bosnia could cause some concerns in the future coming from multiple sides and stakeholders. The Kosovo case and its solution never got so wide international recognition as the Bosnian and it could cause some misunderstandings, as we see on recent case in Ukraine, Crimea etc. The Author believes that without a final say and approval of the Security Council of The United Nations the Brussels agreement is still just technical. Also the example of Dayton could have been successfully followed both in the region and worldwide for conflict resolution. Certainly the Brussels agreement will not be used as a bright example for future agreements if long lasting solutions are needed and international approval is necessary.

Conclusion

The phenomena of North Kosovo has got with the Brussels agreement a certain level of importance, it is on its way from an out of law region to a constitutive part of the Republic of Kosovo. The Serbian state has given up the title and the part of the sovereignty it had over this territory, although it had never exercised it fully after 1999. The specific situation which was present has its roots in a series of misunderstandings between Kosovo, the International community and Serbians living here. It is even today not clear how the Brussels agreement will be accepted by the people in North Kosovo since so far they did everything to cancel it. The novelty is that the Serbian state is now applying the Brussels agreement and is not silently supporting the Serbian community on the North. It is not possible to maintain the level of independence from Kosovo institutions any longer and the citizens from North Kosovo will be now forced from two sides. The support from Serbia was both financial and institutional and this will and is now cut down. Apart from leaving some loopholes they will be soon covered by the government in Prishtina. The unfortunate situation is that the whole issue of North Kosovo has got a big international value and is being dealt from the EU foreign policy directly. It shows that this region got its future in future EU policies and will be of importance to both Serbia and Kosovo in their future connections and everyday life. Another issue is that with this agreement it is very clear that the Kosovo state got divided with a sharp division line between the Northern municipalities including some Serbian municipalities from other parts of Kosovo. This division line was very strong previously but with this agreement it got a specific status which will certainly not be changed in the near future. Also the future of Kosovo as multiethnic state is now under

revision and could be a state of multiple nations since it is hard to imagine that Serbian municipalities will ever consider Kosovo as their homeland. For the ordinary citizens of Kosovo, Albanians, this agreement has no specific value since in their lives not many changes will happen. The future goal of joining the EU is now closer than it was earlier since it is officially encouraged but the efforts needed to achieve it are very far from the society which struggles to survive in the world of International norms and lack of basic human rights. On the end we come to legal questions and at this point it is very hard to answer them all. We can certainly conclude that with the Brussels agreement Kosovo got a long awaited step forward, it is getting closer to EU and some International organizations. The first step is always very hard but the rest will also require some changes and the democratization of the society by implementing laws and standards. This process was present in many Ex Communist European states, in Ex Yugoslav states and very present today in Serbia among which is this famous Brussels agreement which could have been never done without the EU and its efforts and values.

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Note of the author sent to RSP Editorial Board on May 6 2014: the sources used for the article “are not mainly books since the work itself is genuine and shows a real life situation and a case study where no literature is available yet”

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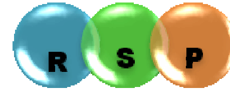

ORIGINAL PAPER

The role of decentralization in the Romanian public administration system: analysis, theory and models

Adrian Nicolescu*

Abstract
Modern society, characterized by contradictions and pluralism, involves a wide variety of social behaviors and, therefore, taking decisions at the central level is not enough, and this makes it necessary to adapt the decision-making process to local conditions (Alexandru, 2005: 148). Decentralization is an administrative organization system that allows human communities and the public service to administer their selves, under state control, which gives them legal status, allows the establishment of their authority and equips them with the necessary resources (Balducci, 1987: 150). An extremely important role in public administration is the relationship between deconcentration and decentralization. Administrative devolution is a step located between centralization and administrative decentralization, a so-called "mitigating centralization or weak decentralization " (Preda, 1995: 287). Both decentralization and deconcentration represent a process through which the transfer of jurisdictions of administrative nature occurs from the center of the state to legal institutions, others than the central ones, in the local community plan. The deconcentration principle, as opposed to the concentration, consists of recognizing certain decision-making powers for the state agents, organized on territorial basis, but such decision-making powers are limited only to the administrative units where they were formed. The multitude of state administrative authorities determines an ordering, so as to realize the functions they are vested with, based on two criteria: the territorial jurisdictional criterion and the subject-matter or functional jurisdictional criterion (Alexandru, 2003: 27). According to the first criterion, proper demarcation of administrative territorial units ensures the necessary conditions for access and participation of the citizens in the work of public authorities. Central public administration authorities act in the interest of the entire community from the level of the state, whereas the local public administration authorities are acting in consideration of the interests of local communities. The functional criterion of competence determines a specialized distribution of the tasks of public authorities, both central and local, on branches and fields.

Keywords: decentralization, deconcentration, public administration, technical decentralization, territorial decentralization, administrative decentralization.

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In the context of Romania's effective accession to the European Union, one can establish the problem of administrative models' compatibility within the states of E.U. The reality is that it's very difficult to talk about a type or a model of public administration, because it's a large variety between forms and grades of decentralization of member states. The public administrations of member state of E.U. adapted continuously to modern conditions, although they have a very old structure, including the accession in E.U.

The analysis of administrative models from a few member state of E.U., including Romania, and the way in which the transfer from center to territory is made seems extremely current and useful. This paper wants to highlight that administrative organization is both complex and problematic.

After the revolution of 1989, in our country, the administrative system, based on local autonomy, and the public services were reorganized. The national experience from the interwar period has been combined with the experience of democratic states. This process started with the creation of an appropriate legislative framework, designed to ensure the foundation of institutional changes, the transition from the centralized state to the decentralized one, process which included a lot of structure reforms.

One big problem was defining the systematic organization of the state.

Thus, under a formal aspect, the organization of the three state powers (legislative, executive and judicial) had to be established, including the establishing of the authorities which exert and highlight the relations between the above mentioned state powers (Iorgovan, 1996: 340-342).

Public administration can be defined as the ensemble of activities of the Romanian President, the Government, the local administrative authorities, or any other subordinated structures, by means of which they fulfill the law or, in laws' limits, they provide the public service (Iorgovan, 2001:78).

Most authors believe that public administration must exercise two basic missions: law enforcement and public services. For example, according to the author Victor Mocanu, public administration activities have a dual nature: that of device (mood) - prepared and issued under the regulations and the enforcement of the law and that of the provider (for performance) - public services or local interest (Mocanu, 2001: 63).

The sphere of activity of public administration is vast. Thus, it is responsible for issuing documents for execution of law enforcement, maintenance of public order, protection of rights of people and meeting their needs, and ensuring the functioning of public services (Manda, 2001:283).

Central state's administration is formed by the following categories of authorities:

- The supreme institutions of public administation, the Romanian President and the Government; between these two authorities there are no subordination relationships, only collaboration relationships.
- Specialized central institution:

1. Ministries and public authorities subordinated to the Government,
2. Autonomous administrative authorities, like Peoples' Attorney, the Country's Supreme Defense Council, Romanian Information Service, Court of Auditors, National Integrity Agency.
3. Budgetary institutions, companies subordinated to ministries or other central public administation instutiones.

Both Ministries and other administration authorities have legal personality, but, unlike the Government, they don't have material specialized competence, instead they have general territorial competence.

The state's territorial administration consists of:

1. Prefects, that acording to Article 123 from Romanian Costitution and Article 1 from Law 340/2004 concerning the prefect and the prefect institution, are the representatives of the Government on local plan.
2. Decentralized ministries services and other central institution from territorial administrative units organized as general directions, inspectorates and offices.

The local public autonomous administration has the following structure:

1. Local councils
2. Mayor
3. County councils
4. President county councils
5. Institutions and public services, companies under local and county councils authonomy.

It must be distinguished between the public administration made by state structures, or local communities leaded directly or indirectly by the Executive and the administrative activities held by other state institutions or public authorities: Government, courts, Constitutional Court, People's Attorney. The first one evokes an administrative fact which has a political source, and it was the reason which defined it as a political administrative state fact, whereas the second one evokes an administrative fact which mediates competence achievement (Iorgovan, 2001: 72).

Public authority administration system is thus extremely complex and it consists of a lot of internal institutions which establish a variety of reports. The public authority with general material competence which exercises general management of public administration in the whole territory is the Government. This exerts the task of executing the laws with the help of central and local public administration (Popescu, 1999: 89).

According to the Constitution, the Romanian territory is organized in what concerns the administrative aspect in villages, cities, and counties, and some of the cities are named municipalities. In 1998, in the program for membership of E.U., county councils were associated in eight development regions without having legal personality. It is worth mentioning that the doctrine highlights that the villages, with their autonomy, are previously to the state, and they are placed between the state and civil society (Iorgovan, 1996: 530).

Local autonomy is practiced at the administrative territorial unities level, through their own management institutions which supervise to please the local interests, detached from national interests in the most diversified fields of activity. The most important mission of the public administration is serving the human person and, this way, all the resources and methods of administration are subordinated to this purpose, its activity being based on law, morality, ethics and respect for the human being (Platon, 2007: 456).

Cultural conditions such as prevailing values, attitudes, beliefs, habits and socialization processes related to items such as family structure, political practices, religious practices, etc. are assimilated into the political discourse in the "mentality" and are extremely important in the functioning of the administration (Sâmboteanu, 1998: 56).

According to article 121 from Constitution, „the public administration authorities through which the local autonomy performs in villages and cities are the chosen local councils and mayors", the local councils representing deliberative authorities, while the mayor has executive authorities. Also article 122 from the fundamental law establishes that the County Council is the authority of public administration for coordinating villages and cities councils, in order to achieve public services of counties' interest. The way to compile, organize, and function and the main attributions of these authorities are established by Law 215/2001 – local public administration Law, as well as other normative acts.

As intermediate territorial administrative section between central and local authorities, apart from municipalities, cities, villages, the job of the county is to guide, coordinate and control the administrative activity, based on autonomy, legality, cooperation and solidarity principles, in order to perform tasks of mutual interest or more. The rationalization and simplification of the activity of local authorities, the avoidance of misjudgment and of encroachment on the attributes between the administrative institutions is obtained through coordination. The coordinating role of county concerning local institution authority from his area is the base which justifies it (Chirleşan, 2007: 463).

There are no subordination relationships between local and county councils, and between these two and Government, but this doesn't mean that the county council cannot exert its prerogatives of coordinating authority.

The prefect is the local Government's representative; he is named by the Government and exercises the legal capacity as the prefect institution. He ensures to fulfill local national interests, the application and respect of the normative acts, leads unsettled service activity checking the legality of local authority administrative documents.

According to the constitutional act, the public administration is working on decentralization principles, local autonomy and public service deconcentration. There is a close connection between decentralization principles and local autonomy. The two terms are synonyms, one representing the base -local autonomy- and the other the shape –decentralization- (Gîrleşteanu, 2009: 60). The science of administration (Popescu, 1999: 49) also says that the Constitution establishes as basic principles of public administration in the territorial administrative institutions the principle of local autonomy and the principle of administrative deconcentration.

When administrative regime admits that caring and solving of local or special interests shall be entrusted to authorities whose holders, elected by the electoral body, may establish rules valid for residents of the village, then we speak of decentralization.

The third article from the Law 215/2001, published in Official Gazette, number 123 from 20th February 2007, of local administration establishes that decentralization must be based on the principle of subsidiary, on the principle of ensuring the right resources for the transferred competences, on the principle of the responsibility of the local public administration authorities in relation with their competences, the principle of ensuring a process of a stable decentralization, predictable, based on rules and objective criteria, the principle of equitation and the principle of budgetary constraint.

To be able to speak about decentralization, it is essential for the territorial structures formed in the local communities to have the right of public law that allows them to have rights, to assume obligations as well as managing business different from those involving the state. The legal personality, different from the territorial

communities involves the fact that these have their own organization, their own patrimony and purpose in accordance with the general interest.

The essence of decentralization is the assurance of autonomy that has to be as broad as possible for the decentralized authorities, and this is achieved through the designation of the local public administration, through universal, equal, direct and secret vote that is freely expressed. The power of the authorities entrusted with the administration of the local public issues doesn't come from the center, it is not invested, it is not subordinated and cannot be abrogated by the state's administration. This kind of administration represents at the same time a guarantee for the local administrative institution of not being abolished through the state's unilateral decision.

In this content, this guarantee is ensured through the principle of the parallel right of the forms and competences that imply that this abolition can only be made by the ones that participated at the designation through election. Thus, consultative referendum can be considered a form of participation of local communities to exercise autonomy, whereas in what concerns the advisory referendum, the electorate of the local community expresses only the attitude towards the problem, the local council being the one to take the final decision. (Popa, 1998: 122).

The assurance of the decentralized authorities' economy through election regards also the local public institutions that fulfill issues for accomplishing service for public interest. The decentralization of public service implies the existence of moral persons with specialized material competence in accordance with their domain of activity.

For a long time it was thought that public services can be performed exclusively by public authorities. However, with the development of society, it was discovered that many public services can be provided as effectively, if not more effectively, by individuals. The current definition of public services is as follows: "Any kind of public activity, constantly offered, undertaken by public or private entities, in order to meet general or specific interests" (Ţepordei, 2002: 215).

Public-private partnership in the provision of public services is valuable not only for the partners themselves. In this context, the author Tudor Deliu says: "Today the citizens do not really care who provides the service, the main thing is that are provided." (Deliu, 1998: 84).

An effective process of decentralization cannot be taken into consideration without the implications of financial order that allow the local authorities to carry on with their autonomy with the competences transmitted through the process. On one side, the decentralization of service is in relation with the decentralization of the financial instruments and on the other side, without the financial autonomy one cannot talk about a real autonomy of the local communities.

In fact, the law regarding the public administration disposes: "the transfer of competence is made only concomitantly with the assurance of the necessary resources for exerting them. The exercitation of the competences is made only after sending the necessary financial resources". The financial means put at hand of the decentralized authorities, necessary for carrying on the specific activities, implies the budget construction for each of the two levels, central and local, as well as the possibility of establishment and collecting some dues and taxes, in accordance with the law but also the existence of a self patrimony in which there are included the goods belonging to the public and private domain of the county, of the city and village.

It is imposed to say that, although autonomous, in the conditions mentioned above, the local public administration authorities are not sovereign; they are submitted to a

specific administrative control exerted by the states' central administration through the prefect. This form of control has in mind the defense of public interest, being stipulated in the Constitution. If administration aims to serve the man, no doubt it must serve all members of that community (Sâmboteanu, 2001: 35). In this way, the public interest is covered.

The administrative trusteeship has two forms: the trusteeship over the existence of the defended institutions and the trusteeship over their activity (Popescu, 1999: 53). Through its form, the trusteeship over the territorial structures implies the right to modify, suspend or abrogate the acts adopted by them or the right to enforce through the abrogation or dissolution.

The administrative trusteeship, exerted over the activity, is the prefect's duty, stipulated indirectly in the article 123 align. 5 from the Constitution and it is about the control of the legality of the administrative papers emitted by the representative institutions of the local communities. Thus, the administrative trusteeship regards the papers of the autonomous authorities with public significance. These are the administrative papers and the administrative contracts. There are excluded the papers of private law, that the local communities create exclusively for the private law without using the public ability for which otherwise this control would not be justified and would appear excessive. The decentralization does not admit subordination relations between the public central administrative authorities and the local ones. Referring to that, the main idea is that in case of finding an illegality of the controlled document, this cannot be canceled by the prefect, but only by the court of administrative contentious.

So the specific elements for the administrative decentralization that characterize the public administration from Romania are the following (Preda, 1995: 398-401):

- solving the local problems that interest the village, city or the county is given in the local public authorities' competence;
- each of the territorial-administrative units (village, city, town, county) has its own patrimony, different from the one of the state and has its own budget that are administrated according to the law, for satisfying the needs and interest of the local concerns;
- the persons working in these authorities (local counselors, county counselors, mayors) are elected by the inhabitants of the town or county and the others clerks from the public services of these authorities are designated by these authorities;
- the rates between the local public administration authorities from the villages and cities and the authorities of the public administration from the county' level are based on principles of autonomy, legitimacy, responsibility, cooperation and cohesion in solving the entire county' problems. Between the local public administration authorities and the county council as well as between the local council and the mayor, there are no subordination relations; between the prefects on one side, local councils and mayors as well as the county councils and the chairmen of the county councils on the other side, there are no subordination relations.
- the central authorities' impossibility to cancel the documents (even the illegal ones) belonging to the decentralized local authorities.

In this matter, no authority belonging to the central public administration (Government, ministries) has the competence to cancel, modify or suspend a document adopted or emitted by the local council or the county council. This is not the case for the Government when talking about a document emitted by a minister or a prefect.

Neither the prefect, as a local representative of the Government, that has the ability to "watch over the activity of the local councils and mayors, the county councils and chairmen of the county councils, and to act according to the law", can suspend or cancel a document adopted or emitted by the local public administration authorities. What he can do most is to ask this to another authority of the state's court.

The decentralization institution has different juridical meanings, the problem of the relationship between democracy and decentralization being often in the eyes of the specialists. The territorial groups of citizens, that act as intermediate institutions between the individual and the central power, determine rules to be applied to each geographic area, personalizing the state's authority in accordance with their local problems.

The modern society characterized through contradiction and pluralism implies a big variety of social behaviors and that is why taking decisions at the central level is not enough. Adaptation to the local habit is required (Alexandru, 2005: 148). Decentralization represents a system of administrative organization that allows the human community or public services to administrate their selves, under the state's control, and gives them legal personality and allows the establishment of self authority and endows them with the necessary resources (Balducci, 1978: 150).

Through such a definition of the concept the general lines can be traced: it represents a transfer of attributes, but it implies also a minimal control from the state. Thus decentralization can also appear as a partition method for the state's power (Gîrleşteanu, 2009: 68).

A particular aspect of the decentralized structures is in accordance with the doctrine through the main decentralization forms: power delegation and power transfer. The delegation of power is about the possibility of taking administrative decisions al the local level while the transfer presumes the freedom of taking the political decisions. If delegation is practiced, the assignment of competences is precisely defined. In the case of a person or institution to which power is delegated, for extending the competences, they need the approval of the central powers in the first place. The situation is different in the case of the transferred power in the way that the limits and competences are much broad and the possibility of use is bigger.

The administrative decentralization is in essence the recognition of the legal personality as well as the increasing of the local authority that are not part of a hierarchical system subordinated to the center, but submitted to a control form imposed by the law (Preda, 1995: 287). Each of these non-statal administrative authorities have their own patrimony, different from the one of the state, and their own budget that is managed according to law in administrative private business, this leading to a certain degree of dependency on the central administration.

Thus the decentralized organization appears incompatible and eliminates any other form of centralization. This type of super centralized administration system has been established in states from central Europe and East Europe after the Second World War when the communist regimes appeared and the communist party was the single leading power. Thus the administrative centralization recognizes the existence of a single moral person of public right, the state, so a single territorial community and a single category of public interests, those of the state. The state exerted a rigorous hierarchical control being able to modify, suspend or cancel the documents of local authorities. The unity and uniformity are total, but the local characteristic is sacrificed (Popescu, 1999: 47).

The relation between the deconcentration and decentralization has a special role in public administration. These two concepts belong to the decentralized system, concerning the diminishing methods of executive power concentration from the control of state's institutions, presenting both common elements and distinctive elements. The administrative decentralization is a step, being situated between centralization and decentralization. It is a "soft centralization" or a "weak decentralization" (Preda, 1995: 301).

Through these principles they are trying to solve two tendencies that manifest themselves in the ruling of a country: unity and diversity. The unity tendency has a national general character and is determined by the necessity of living in a community. The diversity tendency corresponds to the diversity of social groups and is determined by the geographic and historical issues that need adopting of particular measures for each social group. Thus, the opposition unity-diversity translates through the construction of a dual structure with the form of center-periphery (Alexandru, 2010: 186).

Both centralization and decentralization represent a process through which there is produced a transfer of administrative competences at a central level towards distinct juridical institutions in the local communities. The distinctive element is given on one side, by their purpose, in decentralization the purpose being decomposing the command center by solving some problems at a local level. In decentralization it represents recognition of the possibility of self-administration of the local communities and the use of different procedures in organizing the administration.

The decentralization presumes the existence of some local public authorities, not subordinated to the central authorities, which function autonomously according to the law, being able to intervene directly in managing and administrating the communities' affairs. Through a split administrative regime one can maintain a unitary administration, the authorities being able to adopt the local characteristics and the general measures and orders belonging to the local authorities (Popescu, 1999: 44). The principle of deconcentration, as opposed to concentration, consists in recognition of a certain power of decision organized on territorial principles, for the state's agents. But this power is limited to the administrative unit on the structure on which it has been constructed. So being subordinated to the central power, these decisions are only for the state.

Over these authorities, the state's units only apply a minimal control in the way that they cannot save the documents from the effects of the elected authorities. A broad autonomy cannot be the cause of some political orientations in contradiction with the state's politics of the central authorities. So it results a difference between the two institutions regarding the designation method for the leaders' transferred competences: in deconcentration the institutions that act on the local plan are named by the center, which makes them an integrant part in the central hierarchic system, and answer directly to it; in decentralization, the local administrative authorities are the result of the election by the local elective corp. This type of central autonomy based on electing the representatives of the local administrative structures implies a guarantee against the risk of arbitrary removal by a unilateral decision of the state.

It has been declared that the administrative deconcentration, as a way of organization and function of the public administration, is not based on promoting the local interest, a defining element for the institution of decentralization. The

fundamental idea of decentralized organization is to fulfill public authorization tasks through their own agency.

The multitude of administrative authorities determined the ordering of the functions realization based on two criteria: the territorial criteria to whom the hierarchical structure corresponds and the material competence criteria to whom the functional structure corresponds (Alexandru, 2003: 27).

According to the first criteria the population is allowed to participate at public authorities' activity. But, it isn't allowed to make discrimination between local and central administration authorities (Alexandru, 2003: 186). Central administration authorities act for the community interests, and the local administrative authorities seek to solve the interests of the local community.

The functional criterion or that of material competence determines a specialized distribution of the tasks of public authorities, both central and local, on branches and fields. The efficient management capacity of the public administration largely depends on the functional structure of the latter.

The territorial communities have the public right capacity and the state recognizes a part of public issues according to the Law. The local administration organization helps the society to evolve through public investment and a good development of different areas.

The administrative decentralization is bound to the autonomous organization mode of the decentralized authorities as well as the number of public services given in their competence. Decentralization has two forms: the territorial and the technical one, the latter concerning the services of the state's public administration.

The territorial decentralization concerns the establishment of local communities at the level of defined areas of the state, as public law legal persons, whose specific activity is performed through the inhabitants of that community.

The territorial decentralization is based on preexistent advantages of the people from some geographic areas. The bigger the solidarity of interests, the more businesses there will be. From a sociological point of view, the level of this territorial boundary is strictly related with the real dimensions of the local community, the local businesses depending on this problem (Gîrleşteanu, 2009: 70).

The territorial decentralization presumes some autonomy level in managing the local affairs.

Thus there can be administrated, in better conditions, the affairs in a way that the local authorities do not have the obligation to submit the orders and instructions from the center. The material resources and the financial ones can be used with more efficiency. The best way for exerting the right of autonomous administration is represented by the election by the local electorate of some representatives that are directly submitted to them. The participation of the inhabitants at the designation of the local authorities enhances the reasonability factor and the initiative for the public life of the community in which they live and determines them to find solutions for all their problems. The relationship politics-administration is generally perceived twofold. The first view is that of a positive perception; politicians are those who define strategic objectives of government and the public policies that should be implemented (Sâmboteanu, 2013: 26).

On the other hand, the most popular view in relation to public administration-politics is one that has negative connotations: the influence of politics is disastrous and leads to effects like "politicization" of public employment after every election on the

basis of political affiliation (spoil system) and not competence (merit system), corruption, nepotism, favoritism, promoting the interests of some obscure groups at the expense of the citizens.

Still, participation of the citizens in the local affairs states the idea that the citizen, as a taxpayer, is both "user and owner" (Oroveanu, 1998: 569) of private public services.

The technical decentralization presumes the existence of legal personalities of public right designated for performing public services. This form presumes the way of administration participation in managing some services that have certain autonomy (Dănişor, 2006: 118). The central power has the obligation to supervise local and regional interests. It must supervise that local authorities achieve local demands and that they are directly interested in the well-functioning of the public service, in a constant manner.

Thus territorial decentralization represents a distribution of local administrative affairs imposed by the diversity of the local interests from different territorial parts of a state. Technical decentralization, although represents the same juridical technique, is the result of the need of the optimal distribution of functions for different echelons of the state.

Territorial decentralization is charged with local political aspirations having a political significance, while the technical decentralization is charged with efficiency issues, so that, in what concerns the latter form, the autonomy of managing internal affaires has a more highlighted character than the first form does (Gîrleşteanu, 2009: 71).

In terms of a comparative approach of the administrative model in other European countries, it must be distinguished between states that are experiencing a unitary form of government, a federal one and in some cases confederate. The administration unit system is divided into two levels: -central and local - unlike the federal system which has a tripartite structure- the state, regional and local level. This territorial division influences how the relationship between center and periphery takes place.

In what concerns the relationship between central and local administration, there are three traditional theoretical concepts. First refers to the French style centralized administrative model in which the state is heavily infiltrated in the territory through decentralized systems, local authorities being left with a reduced discretion. The second model is the British one, in which national policies are entrusted to local authorities endowed with greater powers. Thus, according to the English conception, decentralization is understood in a broad sense, that of self-management (self-government). The defining element for the British administrative model is the possibility given to the territorial units to be free to decide and act on their own initiative and responsibility. The last system is the German federal system, where we meet two distinct legal orders.

Any administrative- territorial organization aims to ensure an increased efficiency of public authorities, an increased initiative and efficiency in public service, an improved link between central and local authorities, in particular the basic units, to ensure a better control and support for the administrative units. In the unitary systems of government, the territorial public administration is organized based on three principles: the principle of centralization, decentralization and deconcentration.

The existence of local communities does not prejudice the unitary character of the state, decentralization being exclusively administrative. Moreover, the competences given in

the power of the local communities are determined by law and, as a consequence, the rules adopted shall be applicable only in the territory and not in the state as a whole.

In another manner of speaking, local public administration applies on a local plan the public policies defined centrally and tries to adapt them to the territorial collectivities. As opposed to decentralization, the federal states, by means of their capacity of self -organization, enjoy the competences of a state: constitutional, legislative, administrative and jurisdictional competences. Nonetheless, at a local level, federated states are prefigured with a governmental apparatus according to the principle of separation of powers, while the representation of local communities at a central level in the decentralized states is very poorly developed (Dănişor, 2006: 132)

Although at first glance there are created the premises of an uncontrolled centralization, in practice the relationship between center and periphery in unitary systems is as complex as in federal systems. (Filip & Onofrei, 1999: 13)

In conclusion decentralization is a durable and continuous process which assumes a stable and coherent framework for providing and financing public services.

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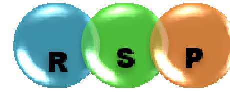

ORIGINAL PAPER

The reparation of moral damages suffered by individuals and legal persons during and after the comunist period. A study on doctrine and jurisprudence

Laura Antoaneta Sava[*], Nichita-Iulian Buşoi[**]

Abstract
The principle of full reparation of damages in the field of moral injuries is based on the need to restore relationships broken by a guilty and illicit fact, to reinstatement of the victim, as far as possible, in the situation previous to the act of tort. In the period prior to the establishment and consolidation of the Communist regime in Romania (1865-1952), Romanian classical legal doctrine and case law have set up a joint system of repairing moral damages that included both pecuniary (monetary) and non-patrimonial means (resources). From 1952 to 1989, the practice of monetary remediation of moral damages has been banned, following the Guidance Decision of the Plenary of the former Supreme Tribunal no. VII from December 29, 1952, the motivation of this prohibition being ideological: bourgeois idea of conversion into money of moral sufferings was in contradiction with the fundamental principles of socialist law. The authors used the comparative study of the case-law decisions handed down by Romanian courts in the communist period and after December 1989. The main conclusion of this paper is that, after 1989, the Romanian doctrine and jurisprudence returned to the thesis of repairing moral damages through economic means, including by admitting the idea that legal persons, not only individuals, may suffer moral injuries.

Keywords: contract, illicit fact, injury, law, liability

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The period of banning the financial reparation of moral damages (1952-1989)

During the comunist regime, the financial reparation was unconceivable, as it contradicted the „purity of the comunist world" (Radu & Avram, 2011: 235) and the marxist-leninist ideology which condemned the capitalism and the bourgeoisie. It aimed to abolish the private property, to make the individual uninterested in material possessions while the community will be thus more cohesive. This would put an end to the human self-enstrangement and create genuine moral relationships among individuals, or between individuals and nature (Avram & Radu, 2009: 423-435).

The interdiction to give material compensation for moral damages was an effect of a special background motivated by its grounds in the bourgeoise concept of turning the moral suffering into money, an ideea which would have been a serious deviation from the fundamental principles of the socialist law (Vintilă, 1999: 85): "The bourgeoise law permits – to a certain extent – the patrimonial reparation of the unpatrimonial damage generally named moral prejudice; American law calls it nominal prejudice. Capitalism turns everything into money: damage to human dignity, insult by means of marital infidelity or suffering caused by the death of a dear person. Even the owner of a dog or a horse who perished is entitled to get moral compensation, subjectively or emotionally" (Anghel, Deak & Popa, 1970: 82).

However, between 1948-1952, the Romanian judicial courts continued to grant material reparation for moral damages suffered due to felonies or offenses (Supreme Court, Guidance Decision no. VII, December 29, 1952) such as: violation of individual honour, false allegations, going to court for vexatious purposes, cohabitation, committing murder, psychologic suffering caused by body damage, failure to obey a court order regarding children custody, unjustified break of an engagement etc. (Hamangiu, 1925: 472-474, 479-485, 488-489). The legal cause was represented by the provisions of the articles 998-999 of the Civil Code according to which „whoever causes damage to someone else by their deeds, of any kind, is due to full reparations once the fault is demonstrated, making no difference between the moral and material damages" (Hamangiu & Georgean, 1931: 559). The interpretation given to the term "damages" in the 1865 Romanian Civil Code was any kind of damages material or moral, which led to the solution of the financial reparations (Alexandresco, 1898: 450). Thus, during the 1865-1952 period, a new mixed system was established, by means of both moral (the publication of the court order which condemned the author of the moral damages or forcing the author of calomny to retract publicly by publishing it in a newspaper) and material nature by granting financial reparation (Vintilă, 1999: 72).

Despite the fact that the judicial practice had allowed, as a tradition, the financial reparation of the moral damages during the period 1948-1952, the literature recorded an increasing number of opinions which condemned this practice considering that financial reparations for moral damages would contradict the socialist ideology and the fundamental principles of the socialist law. The idea to speculate moral damages as a mean to become rich was in contradiction with article 15 of the 1952 Constitution according to which: «In Romanian People's Republic (RPR – author's note) work is an obligation and an honour for each citizen able to work, meaning „no work, no food". In R.P.R. the solid socialist principle is put to practice: "take from all according to their abilities, give to all according to their work"». As the main source of income for the ordinary citizen was work, it became utterly unacceptable to grant a sum of money as compensation for moral suffering. No doubt, not even the communist regime could it

dare deny the reparation of such prejudice, but it solely referred to punishing the guilty parties “by means of publication of the conviction rulings and by other means suitable for the way the moral prejudice was inflicted so that the damaged party to obtain fully moral satisfaction, which will eventually contribute to the citizens’ education in the spirit of socialist norms abiding” (Vintilă, 1999: 86).

As recommended by the Supreme Court, the courts were not allowed to grant material reparation in exchange to moral damages so the judicial practice changed its course and the doctrine embraced the thesis of not granting financial reparation for moral damages. It was referred to as a means to creatively contribute to the perfection of the norms and principles of the Romanian Civil Law (Naschitz & Fodor, 1961: 158; Ionaşcu, Mureşan, Costin & Surdu, 1973: 164-167). The Decree no. 31/1954 received validation; it referred to both individuals and legal parties and started a system of reparation for the material damages by means of material substitues (Ionaşcu, Christian, Eliescu, Anca, Economu, Eminescu, Eremia & Georgescu, 1963: 425-437; Ionaşcu, Barasch, Ionaşcu, Brădeanu, Eliescu, Economu, Eminescu, Eremia, Roman, Rucăreanu & Zlătescu, 1967: 193-196; Stătescu, 1970: 99-106). Thus, the text of the article 998 of the Civil Code which referred to the generic obligation to repare any prejudice without differentiating between moral and material one, was left without applicability concerning the reparation of the moral prejudice by means of torts. According to article 54 of the Decree no. 31/1954, the person who suffered any damage concerning his right to his name, pseudonim, naming, honour, reputation, moral personal right to be the author of a scientific or literary work, inventor or any other moral right could ask the court for the termination of the deed which caused prejudice to moral rights and to coerce the author of the deed to submit to any measures considered necessary for the compensation of the prejudice. Thus, this decree introduced a new parallel system of civil liability, different from the one regulated by the article 998-999 of the Civil Code which during the whole communist period was used to repare material prejudice.

The returning to financial reparation of the moral damages after the fall of communism

Once the communist regime disappeared, the ideological considerations which led to the banning of the financial reparations were abandoned, the Romanian courts started granting financial reparations for moral damages, for example, when someone was badly treated after his imprisonment while later to be removed from criminal prosecution (Bucharest City Court, Civil Section III, Decision no. 324/1991); unfairly convicted as a result of judicial error (Supreme Court of Justice, Civil section, Dec. no. 1211/1992; Supreme Court, Civil Section, Dec. no. 552/1995; Supreme Court, Civil Section, Dec. no. 865/1995); work accident which led to permanent disability (The Braşov Court, Criminal Section, Dec. no. 762/1992); as a result of a car accident which caused permanent disability and aesthetic damage (Supreme Court of Justice, Criminal section, Dec. no. 3030/1995); forced sexual contact or sexual assault (Sibiu Court, Criminal Section, Dec. no. 319/1991); defamation through the press (Court of District 1, Bucharest, Criminal sentence no. 41/1991; Craiova Court, criminal sentence no. 3039/1998; Vintilă, 1999: 100); moral suffering caused by the loss of a dear person (Supreme Court of Justice, Criminal Section, Dec. no. 459/1993; Covasna Court, Criminal Section, Dec. no. 44/1995; Covasna Court, Criminal Section, Dec. no. 55/A/1996; Dolj Court, Criminal Section, Dec. no. 857/1998; Vintilă, 1999: 100) or

people, who were, due to accidents, in a chronic vegetative state (Timişoara Appeal Court, Criminal Section, Dec. no. 885/R/ 1996; Boar, 1997: 26; Urs, 1997: 30-35); reparation of moral damages for people who were persecuted for political reasons by the regime started on the 6th of March 1945 (Supreme Court, Civil Section, Dec. no. 2292/1991; Supreme Court, Civil Section, Dec. no. 776/1992; Supreme Court, Administrative Section, Dec. no. 552/1996; Vintilă, 1999: 99-100) etc. All these cases were motivated by the courts with the help of the article 998-999 of the Civil Code; they compelled the person responsible by the damages to repare it, no matter if the deed was commited by negligence or recklessly. Many papers have underlined the fact that the Civil Code does not differentiate between the moral and material nature of the prejudice thus any kind of prejudice should be compensated financially as where the law does not make a distinction the humans should not make one either (Turianu, 1993: 25; Pavel & Turianu, 1996: 207).

A traditional classification of liability according to the old Civil Code comprises contractual and tort liability. Thus, the old Civil Code clearly distinguished between these two: art. 988-1003 liability for damages caused by crimes and cvasi-delicts (tort) and art. 1081-1090 liability to fail the contractual obligations in their specific nature, by requiring the debtor to pay damages (contractual liability). Although there are differences of judicial regime between the two forms of liability, some authors considered though that „civil liability is unitary as they have a common structure which means they need the summation of the same structural elements: prejudice, a deed, a harmful act which usually is culpable and a causal link between the act and the damage" (Albu, 1994: 236). The tort liability is the obligation of a person to repare the damage caused to another person by unlawful act which is not comprised in a contract or, where appropriate, the prejudice that the law forces him to face (Pop, 1996: 171). Civil contractual liability is the duty of a debtor's obligation arising from a contract to repair the damage caused to his creditor by means of not performing *lato sensu* of the stipulated service (Vintilă, 1999: 16).

As far as the legal system and the field of application is concerned, it must be said that while the contactual liability refers only to the reparation of the contract prejudice, being conditioned by the existence of a viable contract between the author of the prejudice and the damaged party as well as the requirement that the prejudice to result from the lack of performance, improper or late performance of an obligation stipulated in the respective contract, tort liability refers to the compensation of all non-contractual damages while its rules apply, whenever it is necessary to contractual liability.

Thus, tort liability appears as a penalty under a general rule regulated by law, while civil contractual liability represents an application of the civil liability under a qualified hypothesis, namely that of prejudice resulting from the failure of a pre-existing contractual obligation (Anghel, Deak & Popa, 1970: 31).

In addition to tort liability for moral damages - the most common case in practice, the doctrine admitted the possibility of financial reparation of the moral damage resulting from contractual liability (Albu, 1992: 29; Albu, 1994: 258-266), for example, the corresponding failure of an employment contract (Beligrădeanu, 1992: 35-39).

Another problem Romanian doctrine and jurisprudence have sought together a solution is the overlapping of the two liabilities, tort and contractual liability. Thus, there is case law discussion about whether, when the damage resulting from the failure of a contractual obligation and the act in itself also constitutes tort, the injured has or not at hand the right choice between contractual claims and tort action, as interest

dictates. The solution lies in application of the principle that if there was a contract between parties whose non-performance caused the damage, the way forward is contractual liability, unable to use tort liability (Supreme Court, Guidance Decision no. 11/1965). The following exceptions were admitted:

a) when the failure of the contract is also an offence, one can choose between the two responsabilities;

b) even if the failure of the contract is not an offence, there has been acknowledged the possibility of action in tort liability, where this is the only way to cover the damage to private property (Supreme Court, Civil Decision no. 525/1959). When one chose a path either that of action in tort liability or in contractual liability, there cannot be followed the other way: *electa una via non datur recursus ad alteram*.

A final explanation that emerges is that with liability, agreements concluded before the illegal act are basically zero, while in the case of contractual liability they are in principle valid, with certain limits.

The reparation of moral damages suffered by individuals

Starting from the idea that the interference on a personal right attracts liability without needing to prove the damage suffered, there are authors who have admitted non-patrimonial damages classified according to the violations of individual rights as follows: physical harm (non-pecuniary damage resulting from the infliction of physical injury, of infirmity or disease, including aesthetic damage, leisure damage, loss of life hope, juvenile damage, etc.), damage to affective personality (such as mental suffering caused by the death or infirmity of a loved one), damage of social personality (non-pecuniary damage values such as name, nickname, honesty, honor, dignity, reputation, privacy, etc.) (Albu & Ursa, 1979: 79; Vintilă, 1999: 49-50). Aesthetic damage means that bodily harm which includes the amount of injuries and damage which affects the physical harmony or a person's appearance consisting particularly in the mutilation, disfigurement, scars and determines considerable distress for a person. Leisure damage consists in the injury causing "the detriment of the satisfactions and pleasures of life consisting of the loss of enrichment opportunities, entertainment, and recreation" (Toulemon & Moore, 1968: 138). The loss of life hope represents the situation in which a person realizes that, because of the injuries suffered, his life expectancy was considerably reduced. Juvenile damage consists of the "special moral damage suffered by a young human being who realizes that his life chances are diminished" (Le Tourneau, 1972: 141).

A special situation was represented by the compensation of moral damages suffered by employees because of their employer. According to the rules given by art. 269 of the new Labor Code (art. 253 in present), which took over the old regulatory provisions on the liability of the employer's property, it was only represented by material damage caused to the employee, not the moral one. However, given the new twist given to the non-pecuniary damage repair theory, doctrinal views were, however, divided on the admissibility of moral damages. On one hand, since the Civil Code allowed compensation without distinguishing between material and moral damages (art. 998-999, and the Labor Code was referring to civil law for patrimonial liability it results that the Labor code made use thus of the same rule (Ştefănescu, 2003b: 19-20). On the other hand, even the rejection of the idea of moral reparation caused by the employer to the employee, there was nothing to prevent the parties of the legal

relationship of employment to include in the contract a clause on the liability of the employer on moral damages inflicted to the employee (Moceanu, 2003: 45-46).

In the practice of the Romanian courts on the application of art. 269 para. (1) of the Labor Code in settling labor disputes where employees asked for moral damages there were two directions to be followed. First, there were courts which have ruled on the admissibility of granting damages in labor disputes because of the art. 998 and 999 of the Civil Code, having the character of a general law to the provisions of the Labor Code - special law, to complete them: "the granting of moral damages, an action admissible in principle on art. 998 of the Civil Code as a result of injury dichotomous classification must find support in the non-pecuniary damage suffered by the employee in terms of social appreciation or understanding of its professional conduct. This primarily involves the appropriate rules of evidence showing the existence of non-pecuniary damage, to the extent and severity of abuse measure, or at least all there can be presumed" (Braşov Court of Appeal, Department of Labor Conflicts, Dec. no. 1964/M/ October 26, 2005; Radu, 2012: 329-332). According to the second opinion, other courts have stipulated that compensation granted to the employees for non-pecuniary damage caused by their employer is admissible only to the extent that the contents of the collective agreement or individual employment contract included express provision to that effect.

Hearing an appeal on points of law stated by the Attorney General on the application of art. 269 para. (1) of the Labor Code in relation to moral damages claimed by employees in labor disputes, the High Court of Cassation and Justice (HCCJ) stated that: "As long as the legal nature of patrimonial liability, regulated by the Labor Code, is a variety of contractual liability, with certain specific features determined by the nature of the employment relations, including the particular one derogatory set by art. 269 para. (1) and art. 270 para. (1) that only covers the reparation of property damage, it is obvious that under such liability one cannot be granted moral damages which may be claimed, under art. 998 and 999 of the Civil Code, only in tort" (HCCJ, 2007). The Decision of the HCCJ no. 40/2007 from 07.05.2007, for the admission of the appeal in the interest of law filed by the Attorney General on the application of art. 269 para. (1) of the Labor Code in relation to moral damages claimed by employees in labor disputes (HCCJ, 2007) lacked applicability whereas the Law no. 237 of 12 July 2007 referred to the amending of the paragraph (1) of article 269 of Law no. 53/2003 – thus the Labor Code was amended and the article refers to the admission of moral redress for damage suffered by the employee: "The employer is obliged under the rules and principles of contractual liability to indemnify the employee in case he has suffered *damage, material or moral*, on account of the employer while performing service duties or in connection to the service."

Regarding the cases where the courts have granted compensation to employees for damages suffered because of their employer, we illustrate, firstly, the cases of work injuries or occupational disease, which caused the person to lose or decreased irreversibly his work capacity (Iaşi Court of Appeal, Department of labor disputes and social security, Dec. no. 164/ March 25, 2008; Radu, 2012: 299-306); the cases of nonperformance of the civil judgment ordering the reinstatement of the clerk to the official position held previously, which was "abusive and illegal behavior, such as to seriously injure the appellant – plaintiff's fundamental right - the right to work, causing moral harm and prejudice to his honor, prestige and dignity protected by law" (HCCJ, Department of Administrative and Fiscal Disputes, Dec. no. 2037/ March 29, 2005; R.

Radu, 2012: 348-350); the case of the abusive conditions to reinstate the employee to his former position; they regard the unilateral change of salary towards its substantial diminishing, which violated the consensus and good faith principle and caused patrimonial damage to the employee (Iaşi Court of Appeal, Department of labor and social security disputes, Dec. no. 86/ February 3, 2009; Bejan & Schmutzer, 2010: 427-432); the situation in which the employer requesting information regarding the behavior and credibility of the person seeking employment, the employment duration and functions fulfilled by the applicant to his former employers without candidate's prior notification (Ţinca, 2004: 33; Ţiclea, 2004: 129; Radu, 2013: 187).

In the event that the employee has suffered a prejudice as a result of an accident at work or an occupational disease, the employer's liability is subsidiary and complementary, in the sense that it is obliged to cover the damage only to the extent that the damage suffered by the employee are not fully covered by social security benefits (Art. 44 of Law no. 319/2006 concerning health and safety at work).

If the employer refuses to compensate the employee's damage, the latter may address a complaint to the competent courts. An employer who has paid the compensation will recover the amount of the prejudice from the employee guilty of the occurrence of the damage, pursuant to article 270 (art. 254 in present) and following of the Labour Code.

At present, the legal basis for the granting of damages in case of injuring the bodily integrity or a person's health is represented by Art. 1,387-1,393 in the new Civil Code. In case of injuring the physical integrity or health of a person, compensation shall include, under art. 1,388 and 1,389 of the Civil Code where appropriate, the equivalent of revenue gained out of work from which the damaged person was prevented from acquiring, through loss or reduction of its working capacity. In addition, the compensation must cover the cost of medical care and, where appropriate, the costs arising from the increasing life needs of the injured, and any other material damage.

Compensation for lossing or non-acquiring revenues out of work shall be provided, taking into account the increasing life needs of the person harmed, in the form of periodic cash benefits. At the request of the victim, the court will be able to grant compensation, for serious reasons, in the form of a lump-sum. In all cases, the court will grant the provisional compensation to cover urgent needs.

Compensation to the moral damages caused to legal persons

Compensation to moral damages suffered by legal persons initially raised the problem regarding the acceptance of the thesis that not only individuals, but also legal persons may suffer moral damages (Beligrădeanu, 1993: 13-16; Beligrădeanu, 1995: 6). The acceptance of this thesis was based mainly on art. 54 para. 1 of the Decree no. 31/1954 from whose interpretation resulted that the protection of personal rights refers to any person who suffered, among other things, prejudice in her right name or the choice of name (name being an attribute identifying the proper legal entity). Coming back to the admission of the thesis concerning granting financial compensation for moral damages which occurred after the Romanian Revolution from 1989, it was a proper moment to suggest and accept the idea of monetary compensation for non-pecuniary damage suffered by legal persons. The idea was supported by the provisions of art. 33 and 36 para. 3 of Law no.15/1991 on the settlement of labor dispute which stipulated that the organizers of an unlawful strike owed compensation to the employer

for damages that have been caused, without distinguishing between moral or material damage, especially since the liability of the strike organizers was of the tort liability. These provisions were later taken over by art. 61 para. 2 of Law no. 168/1999 on the settlement of labor disputes. The current regulation regarding the declaring conditions, the progress and termination of a strike - Social Dialogue Law - states in art. 193 para. 2 that "For damages caused by the participants in the strike, the employer may apply to the court for compensation." The interpretation of that article is that strike participants viewed individually, in their capacity as employees, can answer for material damage. Article 197 para. 5 also stipulates that should the strike organizers fail to fulfill the obligation to continue negotiations with the management in order to settle claims which form the subject of the collective labor conflict will attract liability for damage caused to their business. Thus, we can draw the conclusion that strike organizers liability cover material damages and moral one incurred by the employing legal entity. However, there are surprising provisions in the art. 201 para. 2 of the Social Dialogue Law no. 62/2011 under which, if the employer requests termination of the strike on the grounds of illegality, the court may decide the termination of the strike as illegal, and also "can force strike organizers and employees participating illegally in the strike to pay damages" (failure to operate the distinction between compensation for moral damages often leads to the idea of obligation to both types of damages). They contradict not only with art. 193 para. 2 of the same law, but with the idea that moral damages can be claimed only within liability, the liability of the employees participating in the strike as illegal can only be contractual, work interruption by employees is equivalent to breaching their obligations under the individual employment contract (Radu, 2008: 96, 103).

Regarding compensation for damage suffered by the employee, the first Labor Code adopted in Romania (Law no. 3/1950) clearly stipulated the material liability of the employees, who were responsible to their employers for damage caused in relation to their work. The Labor Code adopted in 1972 has maintained the institution of liability, limiting the recovery of damages to only actual damages, loss of profit not including the profit which could have been had. The current Labor Code - Law no. 53/2003 has replaced the material liability with patrimonial liability of labor law, a species of contractual liability with their own characteristics specific for employment relationships (Ştefãnescu, 2003a: 680; Ştefãnescu & Beligrădeanu, 2003: 78; Ştefãnescu, 2007: 485; Vasiliu, 2013: 234-243), which has attracted a number of consequences (Ştefãnescu, 2007: 485). Thus, based on art. 270 para. 1 (art. 254 after the re-numbering and republication of the Labor Code) the employees are subjected to patrimonial liability under the rules and principles of contractual liability for material damages, financial damages for material prejudice are not admitted (Ştefãnescu, 2003a: 702; Ţiclea, 2009: 714; Radu, 2004: 181-188). However, if the act committed by the employee causes moral damages and turns into an offense then tort liability rules are applicable (Zanfir, 2005: 256; Ştefãnescu, 2003b: 8; Ţiclea, 2003: 76; Moceanu, 2003: 46).

Regarding the inclusion in the individual employment contract of a clause concerning the acknowledgment of moral damage's reparation caused to the employer by the employee, it is inadmissible, its illegality arising from the provisions of art. 38 of the Labor Code prohibiting any transaction, waiver or limitation of the employee's rights recognized by law, in conjunction with art. 254 which stipulates the liability of the employee for material not moral damages (Ştefãnescu, 2003b: 19-20; Ţiclea, 2003:

91-92; Macovei, 2004: 332-333; Zanfir, 2005: 95-111; Popa, 2004: 284; Moceanu, 2003: 41).

The idea of the employee liability for damages caused to the employer due to the former's fault in connection to their work cannot be removed completely, especially when the employee commits acts of unfair competition by affecting the patrimonial rights of the employer, "the disclosure of information regarding the results of experiments which required considerable effort, the employee acts solely to provide the service or to accept the offer of a competitor employer, though a non-compete clause was previously assumed by the employee, the stealing of the employer's clients using the contacts he established in the previously held position with his former employer, the use of the company or brand name as to cause confusion with the legitimate use of another brand or company name or denigrate by comparison of inferiority, hiring the former's employer's staff to cause disruption of his activity" (Zanfir, 2005: 250; Vintilă, 1999: 145).

It is worth noting that, until the Labor Code was modified through Law no. 40/2011 for the modification and completion of the Labor Code – Law no. 53/2003, the recovery of the prejudice suffered by the employer from the guilty employees could only be done through action in justice. However, after the modifications introduced by Law no. 40/2011 (mainly concerning the text of the article 254 para. 3 and para. 4 of the Labor Code), the employer can recover, at least partially, the prejudice produced by the employee outside the court of law, on the basis of amicable settlements (Vasiliu, 2013: 234, 240-241). Thus, in the event that the employer finds that his employee had caused a damage out of his guilty and in connection with his work, he may request, by a note of ascertaining and assessing the damage, the recovery of the prejudice's amount, by agreement of the parties, within a time limit which shall not be less than 30 days from the date of communication. The amount of the damages recovered by the agreement of the parties may not be higher than the equivalent of 5 gross minimum wages per economy.

In conclusion, it is worth noting that, after 1989, the Romanian doctrine and jurisprudence returned to the thesis of repairing moral damages through economic means, including by admitting the idea that legal persons, not only individuals, may suffer moral injuries.

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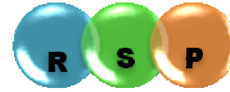

ORIGINAL PAPER

Coverage of the Impartiality of Magistrates in the New Romanian Code of Criminal Procedure

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Abstract

The recent regulations in force of the new Code of Criminal Procedure have significantly changed the norms which reflect the impartiality of the magistrates. The proposed aim is to ensure the equidistance of the magistrates first by separating their tasks. The exercise of these powers is checked vertically through the possibility of formulating remedies at law (complaints). The time limits for making complaints and their resolution are short. This method involves, as a rule, the performance of other procedures only after exhausting the previous procedures.

The new law aims sharp delineation of duties (competencies) of the magistrates aiming at increasing the degree of objectivity. This is because one of the objectives of the new Code of Criminal Procedure is, that with the application of new norms, to increase confidence in justice.

The cases of incompatibility are regulated in detail. The concerns of the legislative in the sphere of the impartiality of the magistrates are subordinate to the concern with respect to increasing the quality of the act of justice, with maintenance of a fair balance between the expedience of the criminal trial and the protection of the basic procedural rights.

Keywords: Romania, Code of Criminal Procesure, magistrates, impartiality, justice

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Motto: „*Freedom is the foundation of Law*”
Neagu Djuvara

The emergence of major laws which systematize a certain area certainly represents a milestone in the “*becoming*" of law.

If we accept this idea it is understandable that the entry into force simultaneously on 15.02.2014 of the Criminal Code and of the Code of Criminal Procedure in Romania is a moment that will not be easily forgotten.

The new laws seek to meet the expectations and needs of a more modern justice. The old codes of the communist period (in force between 1968-2014) had "*endured*" with some modifications and completions over the 20 years after 1990, but in spite of the frequent changes, it was found that this will require the emergence of other codes that respond better to the requirements of a constitutional State.

The ideas, the discussions, the controversies, the opinions preceding for over 5 years the emergence of the new codes have preserved even today, after the entry into force of the laws both the span and the intensity. At first glance this seems unnatural. But if we refer to the mentality that characterizes us in the meaning that only the imminence of a problem "awakens us" from the lethargy and while today the controversies are mainly quartered especially in the interpretation of legal norms and putting them into practice in a manner as homogeneous as possible, the initial impression of being unnatural is partially obscured.

The new regulations should be seen in close connection with the existing norms of the Constitution and other laws relating to the judicial independence according to which the judges are independent and are subject only to the law, they enjoy immovability, they cannot be part of political parties nor can they engage in activities of a political nature, they cannot held other public or private office, except for academic activities.

Starting from the statement (which was given the value of an axiom) that the making of justice has as an important component the existence of independent courts, the new legal framework settles the issue of impartiality as being intrinsic to the independence of the court.

To give efficiency to the presumption of impartiality in the Code of Criminal Procedure entered into force on 15 February 2014 shall be expressly regulated the incompatibility, the abstention and the recusal that constitute true institutions in the criminal procedure.

The incompatibility, the abstention and the recusal are provided as procedural remedies through which an official subject of the judicial bodies is removed or refrains from resolving a criminal case. The criminal cases involving judges are exposed with priority in art. 64- Code of Criminal Procedure.

The Article 64 of the Code of Criminal Procedure reads:

"(1) The judge is incompatible if:

a) He/she was a representative or attorney of a party or of a main procedural subject, even in another case;

b) He/she is a relative or is in kinship up to the fourth degree inclusively, or is in a different situation from those provided in art. 177 of the Criminal Code with one of the parties, with a main procedural subject, with the attorney or representative thereof;

c) He/she was an expert or witness, in the case;

d) is a guardian or trustee of a party or of a main procedural subject;

e) has performed, in the case, criminal proceedings or participated, as a prosecutor, in any proceedings before a judge or a court;

f) There is a reasonable suspicion that the judge's impartiality is impaired.

(2) The same panel of judges cannot be formed of people who are spouses, relatives or are in any type of kinship up to grade IV inclusively, or are in a different situation from those provided in art. 177 of the Criminal Code.

(3) A judge who participated in the trial of a case cannot participate in the same case in an appeal or retrial after the dissolution or the reversal of the decision.

(4) A judge of rights and freedoms may not participate in the same case, at the preliminary chamber procedure, in the judgment on the merits or in the remedies.

(5) A judge who participated in solving the complaint against the solutions of not initiating the criminal pursuit or criminal lawsuit may not participate in the same case, in the judgment on the merits or in remedies.

(6) The judge who ruled on a measure subject to appeal cannot participate in the review procedures."

Generally, this regulation is not fundamentally different from the old Code of Criminal Procedure.

One aspect of differentiation is the broadening of the sphere of persons falling within the incidence of Article. 64 letter b Code of Criminal Procedure because the meaning of the concept of "*family member*" is determined by art. 177 of the Criminal Code.

This text includes in the mentioned concept, not only the direct relatives, the descendants, brothers and sisters and their children, those who once adopted acquire the quality, the spouse but also *"people who have established relationships similar to those between spouses or between parents and children, where they live together"*.

This case of incompatibility comes to respond to the situations often met of civil partnerships increasingly agreed at the expense of marriage.

The Supreme Court finding an inconsistent application of the law of criminal procedure made a ruling through the decision no. 1/2006 published in the Official Gazette no. 291 of 31.03.2006 issued in the settlement of an appeal in the interest of the law that the change of the legal classification of the offense which is the object of the act instituting proceedings, the conclusion pronounced before settling the case, do not entail the incompatibility of the judge who was part of the panel.

This Supreme Court decision was based on the argument that the will of the legislature was to consider changing the legal classification of the offense to be decided as a procedural issue which did not entail the direct solution of the case. Being in the presence of a law problem solved by the Supreme Court, this solution is applicable in the present as well since there is the possibility of changing the legal classification of the facts to be decided during the trial.

In this respect the art. 477[1] Code of Criminal Procedure, to ensure a uniform judicial practice, it is expressly stated that the effects of a judgment in resolving an appeal in the interest of the law "*ceases*" in the case of a new appeal, or finding unconstitutionality or changing the legal provision that has generated the law problem, unless it subsists in the new regulation.

Following the same rationale the judge who resolved the proposal of preventive arrest during the criminal prosecution is not incompatible. As such, the same judge in

the same case can solve requests having the object of extension of the preventive arrest and may solve the cause on merits (decision no. 7/2007, Decision no. 22/2008 issued by the High Court of Cassation and Justice).

The incompatibility case of art. 64 letter a of the Code of Criminal Procedure was completed today in the sense that the judge becomes incompatible only if he was the representative or attorney of a party or of another main procedural subject in the case which he should judge and becomes incompatible if he had this quality "*even in another case* ".

The suspicion of incompatibility appears to be justified even if the attorney did not exercise any of the activities entailed by conducting the defence in a criminal trial. With respect to the incompatibility of the judge who was an expert or a witness in a case, the case is based on the idea that, on the one hand the expert expressed his opinion on certain aspects of the criminal case, on the other hand the person who provided evidence in a criminal case cannot subsequently evaluate that sample himself/herself. The phrase contained in art. 64 letter f has a very wide area of coverage.

The general reference to "*reasonable doubt*" covers a variety of situations both in the circumstances which would result in suspicion and also in the forms that can be of any type (e.g., the existence of a state of physical or emotional dependence).

With respect to the fact that was given up on the old regulation according to which the judge who "*received special favours from a party, attorney, or agent thereof*" (Art. 48 paragr. 1 lett.i of the old Code of Criminal Procedure) it is to conclude that in the presence of such a situation it becomes applicable the generic reason for incompatibility of art. 64 letter f of the current regulation.

The same generic reason covers also the above situation expressly regulated (currently foregone) on the existence of hostile relations.

A goal stated in the draft of the Code of Criminal Procedure was also to harmonize the European legislation and in particular the case law of the ECHR.

The Romanian regulation had previously in its contents as grounds for the incompatibility of the judge the situation in which *"the husband, the brother or the relative (of the judge) up to the fourth degree, has performed the criminal proceedings, supervised the prosecution, solved the arrest proposal or extended the preventive arrest during prosecution* "(Art. 48 paragr. 1 lett.e of the old Code of Criminal Procedure was introduced by Law no. 356/2006).

Giving up this reason may prove to be hasty, given suspicions that may arise due to the existence of a reasonable assumption that between the judge on the one hand and those listed there are relationships that may be reflected in the solutions of the judge.

It is true that these situations can be covered by a generic expression of art. 64 letter f. aimed at any "*reasonable doubt*", but it is noted that, at present, are common the situations where the people listed are part of the prosecution staff.

These people, even if they do not perform themselves the acts of criminal pursuit are involved in activities whose specific are the subordination, the verification, the confirmation of acts which subsequently are to be reviewed by a judge.

This view is not shared by the ECHR. By way of example, in the judgment of 29.03.2007 in Case Mircea against Romania it was held that the incompatibility of the judge persists even in the express assumption, namely that two of the lady judges who were part of the Supreme Court panel that convicted the applicant solely on the basis of

evidence administered during the investigation, were married to prosecutors at the court office attached.

There remained in the current regulation as well as "established" reasons of incompatibility certain situations, such as the incompatibility of the judge to rule on the same case in an appeal or participate in the trial of that case after the retirement or dissolution of the judgment.

In addition to the legal norms governing the cases of incompatibility for judges the law regulated also the incompatibility cases of other official participants. Thus, the art. 65 Code of Criminal Procedure reads:

„*(1) The provisions of art. 64 paragr.1 lett. a-d and f apply to the prosecutor and to the criminal investigation body.*

(2) The provisions of art. 64 paragr.1 shall apply to the magistrate - assistant and registrar.

(3) The provisions of art. 64 paragr.2 apply to the prosecutor and to the magistrate - assistant or, where appropriate, the registrar, when the cause of incompatibility exists between them or between any of them and the judge of rights and freedoms, the preliminary judge or one of the members of the court panel.

(4) The prosecutor who participated as a judge in a case may not, in that same case, exercise the function of criminal prosecution or to make submissions in the judgment of that case in the first instance and on appeal. "

The abstention and recusal are the procedural institutions through which incompatibility issues are resolved.

Under the law, an incompatible person is required to declare as appropriate, to the court president, to the prosecutor overseeing the prosecution or higher prosecutor that he/she abstains from participating in the criminal case and showing the incompatibility case and the grounds on which the reason for abstention lies.

The declaration of abstention is made once this person is aware of the existence of such incompatibility.

The obligation of abstention is of an immediate nature and is bound to the moral nature of the incompatibility. Failure to do so may result in disciplinary action. Depending on the circumstances, such a breach of the duty of abstention may have as a repercussion even the exclusion from the profession.

The recusal is the legal manner by which the parties, the trial subjects or the prosecutor may invoke a reason of incompatibility if the person did not declare the abstention. It is observed that in the current regulation it is recognized also the right of the prosecutor to apply for recusal.

The recusal may be made orally or in writing, mentioning for each person the alleged incompatibility of the case and the grounds known in fact at the time of application. The application for recusal made orally shall be recorded in a report or, where appropriate, in the conclusion of the hearing.

The application for recusal is formulated only against the person of the criminal investigation body, the prosecutor or the judge who performs judicial activities in the case. It is inadmissible the recusal of the judge or the prosecutor called to decide on the recusal.

These provisions shall also apply for the recusal of the assistant magistrate and the court clerk. It is also unacceptable the request for recusal of the entire panel of the court judges.

In such a situation one may apply to transfer the trial to another court *"when there is reasonable doubt that the court's impartiality is impaired due to the circumstances of the case, the quality of the parties or where there is danger of disturbing the public order" (*Article. 71 Code of Criminal Procedure).

The request for recusal must be necessarily made immediately after the person who makes it learns about the incompatibility and no later than the closing debate. Such a limitation is reasonable because, after the judgment, the court shall dismiss and the request for recusal is practically devoid of purpose.

Failure to respect the provisions regarding the specific indication of the recused person, in showing the reasons of fact or in the request for recusal against the same person for the same case of incompatibility it attracts the refusal to recusal according to the law as inadmissible. "*The inadmissibility is found by the prosecutor or the panel of judges before which has made the request for recusal*" (art. 67 par. 5 C. Criminal Proc.).

It is noticed that, generally, the examining of the application for recusal is made by other panel, respectively by another prosecutor. It is only reasonable the solution to assign the competence to examine the application to the panel of judges or to the prosecutor to whom the request is made when in the application for recusal is not given the recused person and (or) the grounds for recusal.

This solution is viable to avoid the time loss (in view of the designation of another panel or prosecutor to process the application for recusal) where requests are such that real and effective examination is impossible.

The solution chosen by the law in resolving repeated requests for recusal (" *against the same person, for the same case of incompatibility with basically the same grounds*") and that is to be examined by the panel or the prosecutor "*to whom one made the request for recusal*" is however, questionable.

This is because, in the presence of the indication of the recused person but especially in the presence of reasoning, it is necessary to examine the identity or the reasons de facto. However, only in the presence of an absolutely identical reasoning can be established that there is not a genuine request for recusal, but the repeated request of a copy.

The suspicions in this situation can exist as long as the new request for recusal against the same person for the same reason of incompatibility is formulated as motivating facts in similar terms, but not identical and the similarity does not preclude the new application to have yet concretely other items in the factual determination.

As such, it would be preferable for these recusal applications to be reviewed by other people than just those targeted by the request for recusal.

The resolution procedure of the declaration of abstention or recusal request is non-public and non-contradictory in principle, being done in less than 24 hours from the time of application, namely a declaration in chambers without the participation of the one that declares abstention or that is recused.

If considered necessary, the judge or panel of judges, as the case may be, may carry out any verification and can hear the prosecutor, the main proceedings subjects, the parties and the person who is abstaining or whose recusal is requested. Any such hearing is optional and not mandatory. The conclusion which solves the abstention or the recusal, regardless of the proposed solution is not subject to any appeal.

However, any of the people listed may require the review of the call to note the lack of impartiality of the judge and to have sent the case back to retrial for the legal

composition of the panel. In our law, the illegal composition of the panel judging a criminal case is still sanctioned by absolute nullity.

In the conception of the new Code of Criminal Procedure, the concept of impartiality is extended to all judicial bodies operating in the early stage of the criminal trial, namely the prosecution phase.

The cases of incompatibility of the prosecutor and the criminal investigation bodies were exhibited in art. 65 Code of Criminal Procedure in order to avoid the risk of bias from the start of the preliminary investigations.

By the provisions of art. 174 of the Code of Criminal Procedure Code are extended the cases of incompatibility provided for judges and experts.

A person in any of the cases of incompatibility provided in art. 64 cannot be designated as an expert, and if it has been designated, the judgment cannot be based on its findings and conclusions. The reason of incompatibility must be proved by the person who calls upon it.

The issue of settling the incompatibility of the preliminary chamber judge and of the judge for rights and freedoms is regulated as shown in the last three paragraphs of the article 64 of the Code of Criminal Procedure.

This issue must be regarded as closely related to the introduction for the first time in our law of a rule with value of fundamental principle of the criminal law suit. This principle is called "*separation of judicial functions*", aimed "*to ensure the operative development of procedures, the impartiality and the credibility in the exercise of the attributions of each judicial body*" (page 3 of the Explanatory Memorandum to the draft of the Code of Criminal Procedure).

Article 3 of the Code of Criminal Procedure reads:

"The separation of judicial functions (1) In criminal proceedings the following judicial function are exercised:

a) the function of criminal prosecution;

b) the function of disposition on the rights and freedoms of the person in the prosecution phase;

c) the function of verification of the legality of sending or not sending someone to trial;

d) the function of judgement

(2) The judicial functions are exercised ex officio, unless ruled otherwise by law.

(3) In developing the same criminal trial, the exercise of a judicial function is incompatible with other judicial functions, except those provided in paragr. (1) lett. C), which is compatible with the function of judgement. "

It is easy to see that this regulation, though elevated to a fundamental principle, includes an important exemption that relates to incompatibility. The waiver from a fundamental principle should be justified by a major interest and on the other hand an exemption under these conditions (even regulated as such) should be invoked only in specific circumstances, as little as possible.

Unfortunately, the waiver, the exception to a fundamental principle itself is recognized by the law its nature as a basic, usual rule. This character is given by the rule contained in art. 346 paragraph 7 C. of the Code of Criminal procedure: *"The preliminary court room judge who ordered the beginning of the judgment shall act as such in the case."*

Under these conditions, the same court judge who verifies the competence of the court, the legality of the intimation act elaborated by the prosecutor's office for

prosecution proceedings, the legality of the evidence management and of elaborating the documents by the prosecuting bodies rules the beginning of the prosecution and the same judge rules the criminal case in first instance.

It is noteworthy that both the waiver contained in art. 3 paragraph 3 as well as the last paragraph (7) of art. 346 were placed in the body of the new Code of Criminal Procedure by means of the Law no. 255/2013 implementing the Code of Criminal Procedure.

This law was therefore not limited to contain transitional rules of implementing the new law, but brought significant changes to the principle of separation of judicial functions (however, by means of the law enforcement, the code has changed regarding other procedural institutions as well).

However, there remains an incompatibility situation in the case in which the preliminary judge admits the complaint against the order made by the prosecutor through which he ordered the dismissal or waiver of prosecution, dissolves the order and rules the beginning of the court trial regarding the facts and persons because during the research the court proceedings were set in motion, when given sufficient legal evidence and there is no way to prevent the entry into criminal action in circumstances where there is public interest in prosecuting the offense for which they decided on the waiver of prosecution. This is regulated in art. 341 paragraph 7 point 2 letter c of the Code of Criminal Procedure.

The new Code of Criminal Procedure establishes that the existence of a situation of overlapping judicial functions generates basically a situation of incompatibility. The separation of judicial functions generates basically a situation of incompatibility. The separation of judicial functions is seen in close connection with the concept of functional impartiality.

This statement remains valid for the form of the law before being amended by the enforcement law. By this latter law, a part of the principle of separation of the judicial functions namely the one that refers to the function of verifying the legality of sending or not someone to trial (exercised by the judge of preliminary court) undergoes an important waiver.

This waiver becomes in fact the commonly applicable rule which has in turn an exception, the only one that falls within the principle and which is contained in art. 341 paragraph 7 point 2 letter c of the Code of Criminal Procedure.

* * *

The new code does not extend the incompatibility provided in art. 64 letter b to other situations that could be generated by kinship with the lawyer for example.

In this regard it is noted that, by decision no. 1519/15.11.2011 the Constitutional Court has returned to its previous constant practice and admitted the exception of unconstitutionality of art. 21 paragraph 1 of Law no. 51/1995 on the organization and performance of the profession of lawyers.

The text declared unconstitutional reads as follows: *"The legal profession cannot be exercised in the courts, as well as in prosecutors' offices attached to them, including the National Anticorruption Directorate, the Investigation of Crime and Terrorism Directorate, the High Court of Cassation and Justice or the Prosecutor's Office attached to the High Court of Cassation and Justice, where the spouse or relative or personal acquaintance of the lawyer to the third degree inclusively acts as judge or*

prosecutor, regardless of the section, direction, department or office in which they operate. "

In its older constant case law (e.g., the Decision no. 45/1995, Decision no. 679/2010) The Constitutional Court found that the text of Law no. 51/1995 is constitutional on the ground that it does not establish restrictions on the exercise of the right to practice law, but incompatibilities which are protective measures for the parties and against some suspicions that could alter the justice act.

It was noted that the prohibition contained in the text of the law is imposed by the need to protect important social values like order and public morality and on the other hand does not affect the existence of any law and that the incompatibility determined by the criticised legal text does not contravene either to the provisions of the Constitution, which provide that the right to work cannot be restricted, because the text does not establish the restriction of the right to practice law, but a legal guarantee, provided to ensure participants to achieve justice.

Adopting the Decision no. 1519/15.11.2011 through which the exception of unconstitutionality of those provisions of Law no. 51/1995 was admitted, the Court reconsidered its case law.

In the explanation of this reconsideration, the Constitutional Court noted that the reference object regarding the ensurance of a more transparent and more efficient judicial process does not necessarily imply a prohibition of the kind envisaged and that the restriction needs to be proportional to the situation that caused it.

To verify that this condition is met, it has to be checked to what extent there is a fair balance between the restriction being placed on the right of defence and the public interest protected by this limitation.

Or, in this respect, given the existence of the aforementioned legal regulations concerning the obligation of abstention of the judges and prosecutors, coupled with the possibility of their recusal, the Court considers that the prohibition on lawyers to plead in the courts and prosecutor offices where the spouse or relatives or related persons are working as judges, respectively prosecutors, finds no reasonable justification in relation to the interest protected, as long as, as shown, the maintaining of the presumption of impartiality of the court is assured by the relevant provisions of the Civil and Criminal Procedure Codes.

It therefore appears as excessive the restriction of the right to defence, as a consequence of the prohibition to practice to the full court where a judge works and has a family relationship or affinity with the chosen lawyer. The prohibition contained in the criticized text of the law ignores the obligation to abstain incumbent to the judge and prosecutor, at the expense of completeness for the exercise of the right of defence.

Moreover, as a purposive interpretation, the criticized legal text starts right from the premise of the failure of the judge, respectively a prosecutor of the above mentioned obligation. Such a conception of law is in conflict with the basic principles of ethics and the magistrates' deontology.

It was also noted that the text of art. 53 of the Constitution provides that the measure must be *"applied without discrimination"*. The Court examines this condition from the point of view of the one on which bears the prohibition contained in the criticized law text.

Thus, if we consider the category of lawyers affected by the prohibition on exercising the profession at that court where her husband, relative or his close relative

works as a magistrate, it can be seen that the measure is applied indiscriminately, affecting all those in this situation equally.

However, the measure has the effect of a clear discrimination of the lawyer who for the sole consideration of the relationship resulted from marriage, kinship or relationship with a judge or prosecutor, is unable to practice their profession in the whole court, respectively the entire prosecutor's office, although meets the same conditions as all the other lawyers authorised to provide legal assistance to that court.

Through the Decision no. 1519/15.11.2011 the Constitutional Court removed the reason behind the prohibition contained initially in Law. 51/1995.

In this context, it is noted that the Law for exercising the lawyer profession was subject to a constitutional review before promulgation.

The reason for the prohibition into the law in its original form was in a strong connection with the removal of any doubt where lawyer impartiality may be impaired due to circumstances of the cause. The practical reality that led to the imposition of that prohibition was that which also currently exists, namely that there are very often situations where a lawyer ensures defence services in the court or prosecutor's office where the lawyer's husband is a judge or prosecutor.

It is true that the law establishes a presumption of impartiality and that any analysis must take as a basis the presumption of good - faith, but it is no less true that it is not enough that the courts must be independent from the executive power, the public ministry or the executive power.

These basic conditions are met in our legislation, but it is also necessary that the judicial independence to be protected from any kind of pressures, either indirect or potential.

As noted, we chose the motto for this theme the quote of a known Romanian historian and philosopher (Neagu Djuvara) „*Freedom is the foundation of Law*" It can be said that freedom is the foundation of justice. Freedom understood as freedom to express yourself without fear for your family, profession or other repercussions. Freedom as a way to move, to act without having in the subconscious that there is the possibility of negative consequences.

The freedom understood in every way without interacting with the freedom of others. In the context of the theme, the freedom aims *"The law"* seen like a law adopted in the interest of many, regards justice as a system and last but not least regards the judge free from prejudice, pressures, and restrictions.

These commonly met themes in public speeches or private discourses lose the momentum they could provide in the context in which the legal committees of the legislature include persons who *"qualify"* in these committees without having the slightest connection with the legal field or in the context in which the judges body, proud of the immovability of its members, doesn't make sustained efforts to improve the quality of these members.

No wonder that the respect of the citizens (and correlative their confidence in the judiciary system) for the justice is low. The reference to the excuse of the legislative inflation, workload, working conditions, etc. is no longer sufficient.

We need a qualitative leap, a moral leap, an essential leap. The new law does not take it because it doesn't concern many problems that dragged on (e.g. the magistrate status of the prosecutor), it excludes incompatibilities that were required to be included, it governs waivers and turns them into rules etc.

We can however comfort ourselves with the thought that in general the laws are not perfect and sometimes it is as important as to how to apply the law itself. It is important that justice be done but it is also important for it to be seen that it is done, that the citizens really feel the effects of justice.

The restoring of the confidence of the citizens in the justice surely requires that impartiality is not in danger, is not impaired.

But trust is a volatile element. To inspire confidence is obviously that the impartiality must also be seen constantly emerging from the judiciary system.

The lamentations of some representatives of the judiciary power in that the justice is under pressure from the media do not help to restore public confidence. No citizen will understand the link between an unjust judgment decision and a media campaign, even a virulent one.

The speeches of politicians which criticize the judiciary system and sometimes foolishly suggest that judgment decisions would not deserve to be executed do not help to restore confidence. These manifestations are dangerous inherently and should be penalized.

The achievement of a true justice involves efforts from both the legislative power to create a system of rules able to ensure the freedom of justice, including impartiality of magistrates as well as efforts by magistrates themselves who are obliged to defend their independence. Last but not least, all the participants in judicial proceedings, regardless of their quality, must shape their conduct to this common and continuous effort.

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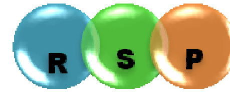

ORIGINAL PAPER

Recent Developments of the Lithuanian and Romanian "Testate Successions" (Terminological Peculiarities)

Irina Gvelesiani*

Abstract

The growing tendency of globalization has stipulated the resemblance of juridical norms of different countries. Among them are Lithuania and Romania – two magnificent Post-Soviet countries of the world. The given paper is dedicated to the problems associated with the transference of a deceased person's property. It describes a legal mechanism of practical realization of the right of inheritance and nominates it as one of the major rights of an individual. The rules of inheritance are usually applied after the death of a person. They comprise the norms of "testate" and "intestate" successions, which are greatly influenced by socio-cultural, socio-economic and even, political factors. Nowadays, the greatest emphasis is put on the development of the "Inheritance Laws" of some Post-Soviet countries. The change of political system from socialism to capitalism has stipulated the emergence of new juridical norms.

The "renovated" legal regulations, newly-established terminological units, their resemblance and difference – this is the major theme of our paper and one of the most prominent problems of today's juridical world. Romania's and Lithuania's inheritance laws after the fall of communism – this is the major challenge and the focus of our work. The given research is based on the theoretical data. Moreover, the carried out comparative analysis can be very useful for the lawyers and legal practitioners of different countries of the permanently changing modern world.

Key words: inheritance, intestate succession, Romania, testate succession, the Civil Code of the Republic of Lithuania, will

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The General Introduction

Nowadays, constitutions of many civil law countries guarantee the right of inheritance, which is generally defined as "the devolution of property rights, duties and some other personal non-property rights of a deceased natural person to his heirs by operation of law (intestate) or/ and to successors by the will (testate)" (Perkumien, Tamašauskienė, 2013). Moreover, "inheritance law is the unity of norms, which regulates the legal destiny of a deceased person's property" (Zoidze, 2000: 15). Also, "it could appear only after the appearance of the private property" (Javakhishvili, 1984: 272). The rules of inheritance are usually applied after the death of a person. They are regulated by the Law of Succession, which is regarded as an integral institution of the civil law. Majority of civil law jurisdictions recognize two major methods of inheritance upon death: by the will (a testate succession) and by operation of law (an intestate succession). These types of inheritance are greatly influenced by socio-cultural, socio-economic and even, political factors.

Nowadays, many scholars pay the greatest attention to the development of the "Inheritance laws" of some Post-Soviet States. The change of political system of former communist countries has stipulated the emergence of new juridical norms. The "renovated" legal regulations, newly-established terminological units, their resemblance and difference – this is the major theme of our paper and one of the most prominent problems of today's juridical world.

The paper pays the greatest attention to the development of the juridical terminology. It discusses terminology as "the "super system", which stands higher than the systems of concepts and terms" (Chirakadze, 1995). Moreover, this system is considered as "the unity of terms, which gathers … logically related ones" (Metreveli, 1990).

1. The Contemporary "Testate Succession" of the Republic of Lithuania (According to the Civil Code of the Republic of Lithuania of 2011)

After a person's death a universal devolution of the estate takes place - "death of the devisor does not bring his property, property rights and duties to a termination. They devolve to the heirs of the deceased, and, in the instances when there are no successors, or none of the successors accepts succession, the rights of the deceased shall devolve to the state" (Perkumien, Tamašauskienė, 2013).

Similarly to many other civil law jurisdictions, the contemporary Lithuanian law differentiates two ways of property transference: "*Paveldėjimas pagal testamentą*" (a testate succession) and "*Paveldėjimas pagal įstatymą*" (an intestate succession). The succession arises by operation of law ("*Paveldėjimas pagal įstatymą*") in the events, when there is no will/testament or the existed testament has been invalidated. In cases of a valid will, "*paveldėjimas pagal testamentą*" takes place.

According to the commonly excepted legal definition: an "inheritance law – sometimes called wills and probate – is concerned with the distribution of a person's property after his (her) death" (Haigh, 2006: 154). It means, that "the successors occupy the part of the deceased person in property relations. This type of permanent link between generations is a sine qua non (an essential precondition) for public stability and perpetuity of cultural, property and spiritual traditions" (The Commentary of the Civil Code of Georgia, 2000: 3) all over the world.

The contemporary Civil Code of the Republic of Lithuania makes distinction between the official ("*oficialieji testamentas*") and private ("*asmeninis testamentas"*) wills. "*Oficialieji testamentas*" are usually "made in writing in two copies and attested by the notary public or an official of the Consulate of the Republic of Lithuania in the relevant state" (The Civil Code of the Republic of Lithuania, 2011). In contrast to an official will, "*asmeninis testamentas*" is written up in hand by the testator indicating the first name and surname of the testator, the date (a year, a month, a day) and place where the will was made, expressing the true intent of the testator and signed by him" (The Civil Code of the Republic of Lithuania, 2011).

Any type of a will is usually prepared in a written form by one person (a testator – *"testatoriaus")*. However, the creation of a testament by two persons (only spouses) is also acceptable. Such a testament is called a "joint will" ("*bendrasis sutuoktinių testamentas*") and belongs to the category of „official wills". The Article 5.43 of the Lithuanian Civil Code gives the following definition of "*bendrasis sutuoktinių testamentas*": "By their joint will, the spouses appoint each other as the successors and after the death of one of the spouses, the whole property of the deceased (including the part of the common property of the spouses therefrom) shall be inherited by the surviving spouse, except the mandatory share of succession" (The Civil Code of the Republic of Lithuania, 2011). "*Bendrasis sutuoktinių testamentas"* is usually created and sighed by the spouses in the presence of a notary or any other person attesting the will. Besides mutual devolution of the estate, "the spouses may bequeath their whole property or a part thereof to the society for worthy causes or to charity. Such a direction of the will may be effectuated from the property of one of the spouses after his (her) death or from the common property of the spouses after the death of the surviving spouse" (The Civil Code of the Republic of Lithuania, 2011). Generally, the Lithuanian legal system enables the testator to bequeath his/her estate, its part or a single thing to the society for useful or charitable purposes. A successor of such property may be even a legal person established for the execution of the will of a testator.

The given attitude of the Lithuanian Civil Code directly indicates, that testators are free to bequeath their estate to anyone they wish: "1. Any natural person may bequeath all his property or a part thereof (including ordinary house furnishing and household equipment) to one or several persons irrespective of whether they are his heirs by operation of law, likewise to the state, municipalities or legal persons; 2. A testator may bequeath all his property or a part thereof to legal persons which will have to be established in executing the will, likewise to natural persons not yet conceived and born; 3. A testator may by his will disinherit one, several or all of his heirs; 4. In the event where the testator failed to indicate what share of his estate he bequeathed to every of his successors by the will, the estate shall be divided by equal shares to all of them; 5. In the event where the inheritable estate is divided by the will in such a way that all the shares in their totality exceed the amount of the whole estate, the share of every successor shall be correspondingly reduced; 6. In the event where the totality of all the shares is smaller than the amount of the whole estate, taking in regard the content of the will, the shares of the estate devolved upon each of the successor shall be proportionally increased or the remaining property shall be devolved by the operation of law" (The Civil Code of the Republic of Lithuania, 2011). Despite a vividly expressed freedom of disposition, the law of the Republic of Lithuania, as an integral part of the world civil law system, limits the testator's rights of devolution of the estate

by recognizing the so-called “mandatory share” or “legitim” (“*privalomoji dalis*”). According to the Article 5.20 of the Civil Code of the Republic of Lithuania of 2011:

“1. The testator’s children (the adoptees), spouse, parents (the adoptive parents), who were entitled to maintenance on the day of the testator’s death shall inherit irrespective of the content of the will a half of the share that each of them would have been entitled to by operation of law (a mandatory share) unless more is bequeathed by the will;

2. The mandatory share shall be determined taking in regard the value of the inheritable estate, including ordinary house furnishing and household equipment” (The Civil Code of the Republic of Lithuania, 2011).

It is worth mentioning, that the concept of the “mandatory share” was known even during the Soviet epoch. Therefore, “The testator’s incapable children (the adoptees), spouse, parents (the adoptive parents) and persons who were entitled to maintenance inherited irrespective of the content of the will not less than 2/3 of the share that each of them would have been entitled to by operation of law (a mandatory share)” (The Large Soviet Encyclopaedia, 1974).

Therefore, the Lithuanian testate succession comprises three major elements:

- *testatoriaus* (a testator) – a creator of a will;
- *įpėdinis* (an heir) – a person or a legal entity, which receives property from the estate of a deceased, through a will or the laws of intestacy;
- *testamentas* (a will) – a document created by the testator.

The property of a deceased person can be considered as the fourth and one of the major element of the contemporary Lithuanian (and not only the Lithuanian) hereditary relationships. Therefore, the following is stated in Article 5.1 of the Civil Code of the Republic of Lithuania of 2011:

> “The following shall be subject to succession: material objects (movable and immovable things) and non-material objects (securities, patents, trade marks, etc.) claims of patrimonial character and property obligations of the bequeather; in cases provided for by laws – intellectual property (authors’ property rights to works of literature, science and art, neighbouring property rights and rights to industrial property), as well as other property rights and duties stipulated by laws.
>
> The following shall not be subject to succession: personal non-property and property rights inseparable from the person of the bequeather (right to honour and dignity, authorship, right to author’s name, inviolability of creative work, to the name of performer and inviolability of performance), right to alimony and benefit paid for the maintenance of the bequeather, right to pension, except in cases provided for by laws” (The Civil Code of the Republic of Lithuania, 2011).

The Lithuanian inheritance law sets special rules for the transference such items of property as house furnishing and household equipment. Article 5.14 of the Lithuania’s Civil Code states:

> “Ordinary house furnishing and household equipment shall be devolved to the intestate heirs irrespective of their degree of descent and the share of inheritance if they resided together with the bequeather for a period of at least one year before his death” (The Civil Code of the Republic of Lithuania, 2011).

And finally, it’s necessary to distinguish a surviving spouse’s rights of succession. They always become prominent in the context of the study of hereditary rights of the members of a deceased person’s family. In the juridical systems of some world countries, a surviving spouse occupies an important place and acquires some special

rights of inheritance. However, Article 5.13 of the Civil Code of the Republic of Lithuania of 2011 presents the following particularities of a testator’s property transference:

> “The surviving spouse of the bequeather shall be entitled to inherit pursuant to intestate succession or alongside with the heirs (if any) of either the first or second degree of descent. Together with the first degree heirs, he shall inherit one fourth of the inheritance in the event of existence of not more than three heirs apart from the spouse. In the event where there are more than three heirs, the spouse shall inherit in equal shares with the other heirs. If the spouse inherits with the second degree heirs, he is entitled to a half of the inheritance. In the event of the absence of the first and second degree heirs, the spouse shall inherit the whole inheritable estate” (The Civil Code of the Republic of Lithuania, 2011).

2. Some Important Insights into the Contemporary Post-Soviet Legislations (According to the Civil Law of the Republic of Latvia and the Civil Law of the Russian Federation)

During the study of the forms of the contemporary Lithuanian law of succession, a parallel must be drawn between the Soviet and some Post-Soviet legal formations. This parallel will help us to comprehend some diachronic and synchronic aspects of the historical processes. At the same time, it will reflect the ongoing processes of the development of “testate successions” of post-communist countries – the countries of the former USSR (The Union of Soviet Socialistic Republics). Therefore, the picture of the strategies of post-socialistic legal challenges will be significantly fulfilled.

It is a well-known fact, that during the Soviet era, the communist legislation recognized only a notarial form of a will (The Civil Legislation of the Russian Federation, 1997). The same can be said about the Russian post-Soviet juridical system (even the law of 1996). However, after the introduction of some significant amendments, the Russian legislators made distinction between “*нотариально удостоверенное завещание*” (a notarially attested will) and “*закрытое завещание*” (a closed will). Generally, “*нотариально удостоверенное завещание*” is prepared by a testator. In certain cases, a will in the words of the testator is written down by a notary. Therefore, Article 1125 of the contemporary Russian Civil Code specifies: “a notarially attested will must be created by the testator or his/her words must be written down by the notary. The technical facilities (a computer, a typewriter, etc.) can also be used for writing or recording a will” (The Civil Code of the Russian Federation).

In contrast to “*нотариально удостоверенное завещание*”, “*закрытое завещание*” is made and signed personally by a testator. Moreover, he/she is entitled “to create a will without providing other persons, including a notary, with the chance of familiarizing himself/herself with its content (a closed will) … The closed will is passed in a sealed envelope to a notary in the presence of two witnesses who put their signatures on it. The signed envelope is put into another one and sealed in the presence of a notary, which makes a superscription giving an information about the testator …” (The Civil Code of the Russian Federation).

Like the post-socialistic Russian legal system, the contemporary civil law of Latvia differentiates two major forms of succession: testate and intestate. The testate devolution of property is carried out by a valid will (or a testament). The contemporary civil law of the Republic of Latvia makes distinction between three major forms of a

will: a “public will”, a “private will” and a “reciprocal will”. According to the Article 433 of the Latvian legislation: “public wills” (or “notarized wills”) “are pre- pared at the notarial office, at the orphan’s court or abroad – in the Consulate of Latvia” (The Civil Law of the Republic of Latvia, 2010: 17). They need the presence of a testator and two witnesses: “A written private will need not necessarily been written by a testator himself or herself, but he or she must sign it. A testator must either sign the will in the presence of the witnesses or must declare to the witnesses, that he or she has signed it in person. If the testator is illiterate or is unable to write, then the third person may sign in his or her place, except of the two witnesses, but this must be mentioned in the will itself and confirmed by the witnesses” (The Civil Law of the Republic of Latvia, 2010: 20).

A “private will” can be prepared orally or in a written form. “The Civil Law of the Republic of Latvia” recognizes “witnessed” and “unwitnessed” forms of a “private will”. Hence, the oral declarations are made only in cases of emergency and have a limited duration. Moreover, “oral wills” are usually regarded as privileged ones. Accordingly, the Article 460 of The Civil Law of the Republic of Latvia clearly makes the following statement: “If due to the exceptional circumstances, an estateleaver is unable to make a written private or public will, then he or she will have the right to state his or her last will orally. Such an oral will must be spoken in the presence of two witnesses invited for this purpose. They will be subject to the provisions of the Section 448, with the exception that literacy of the witnesses is not a requirement” (The Civil Law of the Republic of Latvia, 2010: 21). However, “if upon the cessation of circumstances set out in the Section 460, it is possible for the estate-leaver to make a written will, then the oral will shall cease to be valid three months after the cessation of the referred to the exceptional circumstances” (The Civil Law of the Republic of Latvia, 2010: 21). In contrast to the public and private testaments, a “reciprocal will” is defined as a testament “whereby two or more persons, in the form of one joint document, reciprocally appoint each other as an heir” (The Civil Law of the Republic of Latvia, 2010: 42).

Therefore, the overview of the Lithuanian, Russian and Latvian “testate successions” has vividly depicted the picture of the post-socialistic development of the law of the former USSR. The legal systems of the above mentioned countries nominate a "will" as the most commonly used legal instrument by which a testator regulates the rights of others over his (her) property after his (her) death. The Lithuanian Civil Code makes distinction between official (“*oficialieji testamentas*“), private (“*asmeninis testamentas*“) and joint (“*bendrasis sutuoktinių testamentas*“) testaments. The Russian legislation differenciates “*нотариально удостоверенное завещание”* (a notarially attested will) and “*закрытое завещание”* (a closed will). The contemporary civil law of the Republic of Latvia presents a “public will”, a “private will” (having: “witnessed” and “unwitnessed” forms; written and oral forms) and a “reciprocal will”. “*Oficialieji testamentas*“, “*нотариально удостоверенное зав-ещание”* and a *“public will*” can be considered as the Soviet-type testaments and can be identified under the umbrella of “a notarially attested will”. In contrast to a notarial will, “*asmeninis testamentas*“, “*закрытое завещание”* and a *“private will”* can be regarded as the Post-Soviet innovations. Moreover, the special attention must be paid to the Latvian “oral wills”, which have no equivalents in the Russian and Lithuanian legislations. The implementation of such type of a testament indicates to the vivid direction of Post-Soviet countries towards the acquisition of capitalistic legal norms.

3. The Contemporary Romanian "Testate Succession" (According to the Civil Code of Romania)

Similarly to many other jurisdictions, the Romanian inheritance law makes distinction between testate and intestate ways of succession. Testate succession considers the creation of a valid will, while an intestate succession in carried out under the laws of intestacy.

The Romanian inheritance law has a long history of development. In the old law, the transmission of a deceased person's property was governed by the legislation, which was under the influence of the "Roman law based on the principle of blood relation to the defunct. In the conception of this legislation, the defunct's patrimony had to stay with his blood relatives, which means that it had to be preserved in the same family. The thorough application of the above mentioned principle and the fear of transmitting a family patrimony to the surviving spouse was an obstacle to the recognition of the direct succession right for a long time" (Urs, 2009: 210). Therefore, in contrast to the blood relatives, a surviving spouse faced disadvantages throughout the centuries - when the spouses had no children, a surviving spouse received only one sixth of the inheritance, while in cases of surviving children, a widow inherited only the right of usufruct over a portion of the inheritance equal to the child's portion. However, the adoption of the Romanian Civil Code of 1864, "inspired by the French Civil Code of Napoleon of 1804, provided that the surviving spouse acquired the inheritance only after the last blood relative of the 12th degree defunct" (Urs, 2009: 210). Later, under the law of 1944, the rights of a widower (a widow) expanded. Therefore, he (she) acquired: a general inheritance right, a temporary right of the occupancy of the house and a special right over wedding gifts and movables of household.

Nowadays, according to the contemporary Romanian law, during an intestate succession, a spouse is regarded as one of the legal inheritors of a deceased person and has the right to at least ¼ of the inheritance. Moreover:

- In addition to the fraction of the inheritance established by law, the surviving spouse has a special inheritance right to furniture, domestic objects and wedding gifts;

- If the surviving spouse is not the owner of the house where he/she has lived for at least one year since the death of the deceased spouse, then he/she has a right of habitation to that house;

- In the event of no inheritors, the surviving spouse inherits everything (What inheritance laws apply in Romania? 2011).

Despite having the above mentioned inherit ance rights, a surviving spouse is regarded as a "separate inheritor" in the contemporary Romanian Civil Code. He (she) stands separately and is not included in the major four classes of heirs nominated during the intestate succession. Therefore, a deceased pe- rson's intestate estate is distributed in the following way:

- The first class of inheritors – the deceased's descendants: children, grandchildren;

- The second class of inheritors – the deceased person's privileged ascendants and collaterals: parents, brothers and sisters and their descendants until the fourth degree;

- The third class of inheritors – the deceased person's ordinary ascendants: grandparents, parents of grandparents, etc.;

- The fourth class of inheritors – the deceased person's ordinary collaterals – relatives until the fourth degree, for instance: uncles, aunts, primary cousins, brothers and sisters of the grandparents.

During the intestate succession, the existence of more preferable classes of successors excludes the less preferable ones. However, in contrast to the testate succession, legal inheritance is less popular nowadays.

Testate succession i.e. the inheritance established through the last will or testament is usually regarded as the distribution of the estate of a deceased person under his (her) valid will. It comprises three major elements:

Testator (a testator) – a person who creates a will;

Legatar (an heir) – a person or a legal entity, which receives property from the estate of a deceased, through a will or the laws of intestacy;

Testament (a will) – a document created by the testator.

Therefore, in cases of the testate succession, the distribution of the property depends on the testator, who makes a valid will. The contemporary Romanian Civil Code differentiates two major types of wills: *authentic* and *holographic*. The "*authentic wills*" are drawn up by the civil law notaries. They are usually recorded in the register, while the "*holographic wills*" are written, dated and signed by the testator himself (herself). Both types of wills are kept by the civil law notaries.

It's worth mentioning, that the existence of the testate succession does not mean the total freedom of a testator's wish. The concept of a "*reserved portion*" restricts the testator's rights of disposition. The given portion is transferred to the surviving spouse, the privileged ascendants and the descendants of the deceased. Moreover: *the estate* can be freely transferred to anyone. However, sometimes certain restrictions regarding the ownership of the land by foreigners or non residents of Romania occur.

4. The Comparative Analysis of the Contemporary "Testate Successions" of Romania and the Republic of Lithuania

All the above mentioned enables us to conclude, that "all-embracing" process of globalization has stipulated an international integration arising from the interchange of the experiences depicted in different areas of life. Drastic changes have been seen in the laws of the countries of the former USSR. The given paper has presented a study of the Romanian and Lithuanian legislations, which were formed on the basis of the legal system of the USSR. The major emphasis has been put on the concept of "testate succession" and terms related to it. The carried out research enables us to single out the following major outcomes:

The contemporary laws of Lithuania and Romania make distinction between testate and intestate successions. The legal systems of both countries single out three major elements of testate succession: a testator *(the Romanian – testator; the Lithuanian – testatoriaus),* an heir *(the Romanian – legatar; the Lithuanian – įpėdinis)* and a will *(the Romanian - testament; the Lithuanian – testamentas);*

The contemporary laws of Lithuania and Romania nominate a *"will"* as the most com- monly used legal instrument by which a testator regulates the rights of others over

his (her) property after his (her) death. The Lithuanian Civil Code makes distinction bet- ween official ("*oficialieji testamentas*"), private ("*asmeninis testamentas*") and joint ("*bendrasis sutuoktinių testamentas*") wills, while the Romanian law differentiates the *authentic* and *holographic* testaments. We believe, that the "*oficialieji testamentas*" is similar to an „*authentic will",* while the "*asmeninis testamentas*" and a "*holographic testament"* can be categorized as private wills. Both of them are written and signed by a testator herself (himself). The major difference between the Lithuanian and Romanian legal systems lies in the fact, that the concept of a joint will and its corresponding legal terms are not found in the Romanian law;

The Lithuanian and Romanian testate successions restrict the testator's rights of disposition via the establishment of a "*reserved portion" ("legitim")* (the so-called Lithuanian "*privalomoji dalis*"). In Romania the given portion is transferred to the surviving spouse, the privileged ascendants and the descendants of the deceased according to the percentages established by the law. The Lithuanian testate succession gives a more restricted disposition of a "*privalomoji dalis*" – similarly to the law of the former Soviet Union (the former USSR). It equals to a half of the share that each of the heirs would have been entitled to by operation of law.

5. Major Conclusions and proposals

Finally, it's worth mentioning, that the comparative analysis of the Lithuanian and Romanian legal systems revealed their major differences and similarities. Obviously, the existed terminological and conceptual gaps will be filled during the flow of time via the influence of all-embracing globalization. The post-communist Lithuanian and Romanian testate successions have undergone important changes after the completion of the Soviet era – the implementation of a private will and the Romanian exact pe- rcentages of the distribution of a "legitim" have simplified the process of the transference of the estate. Supposedly, the final establishment of capitalism will "increase the homogeneity" of Romanian, Lithuanian and other European legal systems. The given study may play an important role in this process. However, the further investigation of the legal systems will fulfill the picture of the development of the post-communist area.

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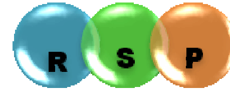

ORIGINAL PAPER

Legal Interpretation: A 'Janus-Faced' Concept

Adela Teodorescu Calotă*

Abstract
The present paper endeavours to detail some of the key aspects regarding the concept of 'legal interpretation', by considering its roles within the legal sphere, its doctrinal evolution and the manner in which it is perceived and applied by legislative and judiciary powers. The first part discusses legal interpretation through the glens of its relation with the law, as interdisciplinary discipline, with the legal language – which abounds in non-legal borrowings and references –, with the legal system as a whole and its connection to the progressive social environment, and ultimately, with the agents who appeal to the interpretative act to give meaning and practical finality to the norm. The second part analyses the exegetical and the evolutionary strands concerned with interpretation in the legal sphere, as well as the long-lasting dispute between the legislative power and the judiciary power over their roles as interpreters of the law. The exegetical school renders legal interpretation as appanage of the legislator; the legislator is viewed as single-handedly wielding the instrument of law interpretation, whilst the judge is reduced to the status of executor. The exegetical judge is committed to obediently follow the legislator's provisions and rigidly apply the law within the boundaries of some predetermined, all foreseeing legal meaning. The evolutionary doctrine revolutionises the idea of legal interpretation by admitting the interdependence that exists between law and the expansive social environment. Interpretation becomes the key instrument in judiciary argumentation. Judges can now scrutinise the law and reconstruct it so as to fit the particular circumstances it had been initially intended for and to achieve practical finality. As newly affirmed by legal theoreticians it can nonetheless be argued that legal interpretation has a dual, or a 'Janus-faced' nature. By embracing this new theoretical attitude towards legal interpretation, one that asserts its two-facetted nature, the present article attempts to come up with a resolution to the dissension over the power of legal interpretation between *Legislator* and *Judge*. The very word 'duality' presupposes that interpretation looks both back, at the original legal text emitted by the legislator and forth, at the innovative recreations of the genuine text by the judge, according to changes in the social setting.

Keywords: Legal interpretation, exegetical school, evolutionary school, social change, duality.

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Introductory Notes on Legal Interpretation

"Scire leges non hoc est verba aerum tenere, sed vim ac potestatem" (Celsus: 1.3.17)[*]

Section I: 'De Herméneuein' in Law

Interpretation, that "'herméneutikos' encountered in the philosophical literature of the antiquity, […] in the commentaries of Homer's writings and those of the Bible, [and later, so as 'to delineate itself as independent discipline'] in the lectures of Friedrich Schleiermacher" (Papadima, 2006: 6-7), constitutes an inherent part of all "domains of activity that are based on Man's intelligence" (Popa, Eremia & Cristea, 2005: 242) and is – should one think of it in such a manner – the binding element between human thought and the meaning that it offers to social reality itself, as a living, progressive and adaptable mechanism.

Law does not, and cannot exist in an intellectual and linguistic vacuum. The idea of a perfectly self-contained legal system, isolated from any other body of knowledge (cf. White, 2008: 3) is implausible in the context of its emergence as "precipitant of social unrest, […] not as science, but as fact or, more precisely, as technical construction of human conscience" (Sperantia, 1940: 2). Law exists in a state of permanent formulation (cf. Eremia, 1998: 33) and evolution in relation to its creators and practitioners, as well as to social progress and transformations; law's interdisciplinary character comes forth due not only to its appeal to methods and proceedings specific to other branches of knowledge, but mostly, to the frequency with which it borrows and applies economic, political, sociologic or philosophical terminology (cf. Dănişor, 2011: 53). From these points of view, "the role and purposefulness of interpretation in the realisation of law" (Eremia, 1998: 27) become endowed with great significance.

A first landmark in the process of defining the concept of 'legal interpretation' is represented by the *Legislator's* work, on the one hand, and that of the *Judge*, on the other hand. They both participate proactively in the 'interpretative labor' determined by the creation of the law by the legislative power, and its consequent application by the judiciary power. "Both the Legislator and the Judge, in their quality as interpreters, express the essence of Law through the medium of some active-type laws and represent – legislator and judge – integrative components of the legal system" (Popa et al., 2005: 242). The interpretative element thus becomes a constant in the creation of law, "a barometer of the legislator's craftsmanship and the judge's technicality" (ibid., 241). More than that, the appeal to interpretation as far as all parties involved in the complex process of conception and usage of law are concerned, underlines the fundamental role that legal interpretation plays in setting a proper balance between the legislative work and that of adapting the legislative content to concrete cases. A "coherence of the legal system, [a] revitalisation of the law" (Eremia, 1998: 32) is hence established. In his metaphorical argumentation concerning the meaning of law interpretation, Professor Djuvara points out the fact that "the law, from the moment it begins to exist, breaks away from the will of the legislator so as to follow its own destiny" (Djuvara, 1935: 33 in Popa et al., 2005: 243). The statement suggests a profound observation, namely that

[*] Quote in *De Legibus* 1.3.17, *aut. trans*. "Knowledge of the laws does not stand for possession of the words, but for knowledge of their effects and virtualities" (in *Course on Private Roman Law*, Hanga V. & Bob M. D.).

legal interpretation delineates itself as the force that ensures the *Legislator's* intent a constructive evolution, and the law the receptivity and pliability that it requires in order to survive in the social reality.

Legal norms are created and applied in the "social context in which they operate" (Eremia, 1998: 27); the reason for existence of the entire legal system must be perceived and analysed form the perspective and within the frame of real life phenomena. "Hence the law is not and cannot be isolated from reality, since it originates from it and is destined to be applied to it" (Popa et al., 2005: 248). Just as the legal system is an ineluctable part of the social reality due to which it came to exist, legal interpretation, alongside with its forms, methods and limits (cf. ibid., 249), "unveils – under the circumstances of current society – complex reflexes which identify and solve social states and phenomena, with the help of a knowing and anticipative legislator, of a judge continually responsive to all social changes, and to a Law capable of rigour and flexibility, at the same time" (ibid., 242). As in a circle[*], the agents of the interpretative act integrate the process of creation and application of the norm, by giving it not a random meaning, but by appealing to "the deep knowledge of the realities in the society [and by making use of] investigations of economic, sociological, psychological, traditional, etc. nature" (Eremia, 1998: 22).

By taking into account the premises that legal language by far an exhaustive type of language (cf. Dănişor, 2013: 62) and that it abounds in "concepts borrowed from other branches of knowledge" (ibid.) whose meaning is often equivocal and that legal texts persist in ambiguities and lacunae (cf. Dănişor, 2006: 379), interpretation is perceived as the necessary technique in the revision of legal content. The scope of legal interpretation is, from this perspective, to "rectify the imperfections of texts and to adapt them to current requirements; to solve contradictions; to enlarge texts so as to cover their gaps. To put it in one word, interpretation subsumes the ensemble of operations that are necessary in order to make the rules of law susceptible of application in concrete cases" (Pescatore, 1978: 326). Therefore, interpretation is the method that confers malleability upon the legal norm; from its incipient stage as will of the *Legislator* and to the moment to which the norm directly affects reality, the interpretative act accompanies it continually so as to elaborate the norm to the point of clarification, and of all things, to the point of determining "its compatibility with a factual situation" (Dănişor, Dogaru & Dănişor, 2006: 379).

Section II: The Reasons to Be of Legal Interpretation

The necessity of the interpretative act in the legal system finds justification in that it confers upon the law the specificity that it is initially deprived of at the moment when it is conceived by the *Legislator*. The *Legislator* "uses general formulations in the wording of legal texts. Such formulations require, however, the explanation of their meaning, so as to determine if a certain situation fits or not to the hypothesis of the respective legal norm" (Legeaaz.net, 2014). It can be hence inferred that the *Legislator* is unlikely to foresee the large spectrum of circumstances to which a certain norm can be applied (cf. Dănişor et al., 2006: 379); it is now that the interpretative act comes to

[*] "Complete knowledge always presupposes a circle, so as each part can be understood only within the whole to which it belongs and vice versa" (Friedrich Schleiermacher, *Lectures on Hermeneutics* retrieved from http://calliope22.files.wordpress.com/2011/03/hermeneutica.pdf).

play its role and whose difficult task is to transform abstract into discernable, to select "out of a system of norms with general and impersonal character [...] the one that applies to the actual case (a particular and individual case, determined by features which do not always find an accurate and detailed reflection into the content of the norm)" (Popa et al., 2005: 249-250).

A further point of view to be considered is that of the role played by legal interpretation against the background of the relation of interdependence between law and society. At the moment of its enactment, the law conforms to the requests and needs of the society; however, its content and purpose are neither engraved into timelessness, nor insensitive to the 'dynamics of society' which dictate the norm the imperative of adaptability. In this case, it is by means of legal interpretation that the norm can overcome the impasse of being obliterated by a constantly changing society. "In the absence of interpretation – at the moment of the elaboration of the law, on the one hand, and then the evidence of interpretation in exercise, the law will be in contradiction with society, with its economic, social and political manifestations" (Eremia 1998: 4). One does not talk here about the necessity of legal interpretation, but about its compulsoriness in the totality of the steps which imply the creation and application of the legal norm (cf. Dănişor et al., 2006: 379). In the company of the interpretative act, law gains strength to reinvent itself in conformity with the needs of the society it serves; the receptivity of the legal system to contemporary conjunctures, as well as its ability to look back in the past and forth into the future, to formulate viable reasonings, adherent to reality are indivisibly linked to the process of legal interpretation. "It is only through interpretation that Law becomes art; firstly the art to legislate and, secondly, the art performed in the realisation of the law" (Eremia, 1998: 21).

Interpretation imposes itself as a necessity for the legal system due also to the characteristics of the legal language among which, as previously shown, a type of dynamism generated by the influence of external terminology (Stoichițoiu-Ichim, 2011: 87), as well as by an accentuated tendency of ambiguousness brought about by, on the one hand, the polysemy of existing legal concepts, but also by their determination by the *Legislator* in a manner which is often "insufficient, equivocal, ambiguous, vague, with a variable content", on the other hand (Deleanu, 2013: 24). Within the discipline called 'jurilinguistique'[*] attention is being paid to the interdisciplinary character of legal language and to the existing interferences between it and the common language. "In case of DJN[†], the examination of the relations between legal terminology or

[*] La linguistique juridique ou la jurilinguistique a déplacé le centre d'intérêt vers l'etude de tous les moyens linguistiques qu'utilise le droit, considérés sous le rapport de leur fonction, de leur structure, de leur style, de leur présentation, etc. L'objet de cette discipline est constitué de toutes les interactions du langage et du droit, c'est-à-dire aussi bien l'action du droit sur le langage que l'action du langage dans le droit. [...] Cette discipline ambitionne d'être purement linguistique, se propose l'examen du langag e de la norme, de la décision, de la convention, des déclarations, des négociations, des avis, des rapports, de l'enseignement du droit. Cependant, elle est également considérée comme une étude juridique par toutes les actions juridiques qui s'exercent sur la langue. La loi nomme les contrats et les délits, la loi consacre un terme de la langue usuelle avec un sens juridique, la pratique notariale élabore ses formules, etc. (G. Cornu, Op. cit., p. 13.). The term 'jurilinguistique' was created following the model of such terms as: ethnolinguistique, psycholinguistique, sociolinguistique (Sferle, last accessed on Feb. 2014).

[†] DJN – abbreviation: 'discurs juridic normativ' *trans. as* legal normative speech (in Stoichițoiu-Ichim, *The Semiotics of Legal Discourse*, p. 87)

vocabulary [LV] and the general vocabulary [GV] represents a mandatory stage, as LV was formed on the basis of GV, and the borderline between them is relatively imprecise" (Stoichițoiu-Ichim, 2011: 87). And, indeed, as is it increasingly the case in the contemporary legal sphere, the employed terminology is "obscure and as if deliberately intricate [...], imprecise, difficult to approach, not only for a profane, but also for those initiated in the field" (Sferle: 4). And the "opacity of the legal vocabulary" (Chatillon, 2000: 687) results not only due to the jurists' indifference to knowledge and multidisciplinary study, to the incapacity to conceptualise according to legal and social reality and, to the "conformity of the doctrine with a often problematic tradition [...] and to the conformity of the jurisprudence with this type of doctrine" (Dănişor, 2011: 53), but also due to the sometimes accidental or deliberate process of pluralisation of the meanings which the *Legislator* confers upon legal concepts (cf. Deleanu, 2013: 24). Legal interpretation justifies itself fully from this point of view. Where the legal norm is precarious in meaning, or indeterminate as far as content and intended purpose are concerned, the responsibility of interpretation becomes the task of the judiciary. When the legal text is "esoteric, insufficiently determined, with a variable content, the judge [...] must excel through his work of 'interpretation'" (Deleanu, 2013: 24). In the hands of the judge, interpretation hence becomes the tool that clarifies the norm. With the help of adequate methods of legal interpretation, one can "identify component parts of the legal norm [...], with the scope of establishing the applicability field and the finality of the norm" (Popa et al., 2005: 252). An integrant element of judiciary activity (Deleanu, 2013: 25), legal interpretation fights against the inherent eclecticism of the legal norm; exists as method through which jurists can better analyse the existing tandem between law and other disciplines and through which legal language becomes less ambiguous and more specific; it is through interpretation that "the exact meaning of the law, [often hidden] behind the shield of some less delineated legislative expressions" (Popa et al., 2005: 252) is found and put into practice.

The Interpreters of the Legal Norm

Section I: Remarks on the 'Authentic' Interpreter and the 'Judiciary' Interpreter

The official, authentic interpreter is represented by the "authority that enacted the initial act" (Dănişor et al., 2006: 382) and that proceeds to its interpretation through a normative, interpretative act (cf. Popa et al., 2005: 253). The questions 'who' and 'for what purpose' are essential, if one takes into account the sometimes dangerous effects (cf. Dănişor et al., 2006: 383) that the interpretative act – sharing the same corpus with the original act – has on the law and its applicability.

Authentic interpretation is, therefore, necessary when the 'legislative act' is ambiguous, and the issuing body clarifies it, by means of interpretation (cf. Macovei, 2012: 214). Nonetheless, the way in which the resulting interpretative act should be thereon understood and applied brings about controversies. "Thus, there are authors who uphold the fact that the interpretation of the law is made through an interpretative law that explains or details previous regulations without modifying them, and that these laws do not entail new provisions, but merely explain and analyse the old laws, with the purpose of clarifying the meaning, and there are authors who claim, however, that the interpretative law, even if it is elaborated with the scope of clearing the meaning of the

regulations it stipulates, is nonetheless a new law and should thus be treated as such" (ibid., 214-215).

From the above mentioned debate evolves a new dilemma, namely that of the confusion that can occur between an interpretative law and a new law, a confusion that is caused by the lack of clear criteria for the differentiation of the two (cf. Dănişor et al., 2006: 383). From the definition given to the interpretative law, it clearly results that "its purpose is not to add new rules to the existing legal system, but to specify an existing rule" (ibid.). What hence pose interest are the effects that the interpretative law produces in time, which raise a question mark as to the infringement of the non-retroactivity principle by the *Legislator* and his interference in judiciary matters. According to the principle of non-retroactivity, stated in the Constitution of Romania, art. 15, par. (2), namely that the *Legislator* decides only for the future, – a principle that is "essential for the protection of human rights before the law" (Stângu, 2009: 1) – the interpretative law should not be applied retroactively. Thus, the rule of logical interpretation suggests that "the exception is of strict interpretation and application – [...] a legal norm that institutes an exception from the rule cannot be extended to other situations which that particular legal norm does not stipulate. Therefore, the exception from the principle of non-retroactivity of law [...] cannot be analogically extended to the interpretative law" (Macovei, 2012: 220).

Returning to the questions 'who' and 'for what purpose', one ascertains the fact that the lack of a clear delineation in case of the interpretative and the new law triggers the *Legislator's* temptation to interfere in judicial matters, to "qualify as interpretative law a retroactive law, thus intervening in [the sphere of] jurisdictional legal departments [and] infringing upon the principle of non-retroactivity" (Dănişor et al., 2006: 383). Or, the simple fact that the issuing body can easily suppress, reduce or change a law by means of another, "according to political interests, pseudo-economic reasons or the incapability to adequately solve economic etc. matters" (Stângu, 2009: 3) leads one to the conclusion that the individual is no longer safe (cf. ibid., 1) and that one stands before an abuse from the *Legislator*. "... The law is an order of the legislator, and an order can only be valid for the future; there can be no claim for obedience from behalf of the citizens to a law they cannot possibly know, since it does not yet exist" (ibid.).

However, far from being a mere mechanical creation of the *Legislator*, the legal norm shows interpretative adaptability in the hands of the *Judge*, whose responsibility is to apply the norm to a certain situation. The role that the *Judge* has to play is, nonetheless, a difficult one, due foremost to the subtle, sometimes imperceptible borderline between 'interpreting' and 'creating' the law (cf. Dănişor et al., 2006: 384). In the course of time, two divergent theories have been formulated, one that places the *Judge* in the role of executor of the norm, as it was originally laid down by the issuing body, and one that confers the *Judge* the function to recreate the law, by filling in the inherent gaps of the norms and adjusting them to social reality.

Section II: The Exegetical and Evolutionary Directions in Legal Doctrine

The exegetical school of thought, traceable back to Roman law, raises the *Legislator* to the statute of sole author, and equally, interpreter of the law (cf. Mitran, 2013) and minimises the role of the *Judge* to a "simple executing body, [or, otherwise said] 'a slave of the law'" (Dănişor, 2006: 384). In the Justinianic period, the *Legislator*

followed the principle 'eius est interpretari legem cuius est condere' (cf. Popa, 2005: 250), what meant that only he, who made the law, was also entitled to its interpretation. It is due to this that during this time appears the decree that imposes the mandatory character of imperial interpretation and puts under interdiction private interpretation (cf. ibid.). "The dogma of the completeness of the law and the omnipotence of the legislator" (Bălan, 2011) can also be encountered in the old French law where no other right besides from that which is formulated by the issuing body can be considered as bearing valid grounds – "only the king could interpret his ordinances. When a law was obscure, the judge could not rule upon it: the parties involved had to address the king, who would fix the meaning of the law through a resolution" (Mitran, 2013).

The method of interpretation that the exegetical school proposes is based solely on the intention or the 'will' of the *Legislator* at the moment when a legal norm is conceived. Following the promulgation of the 1804 Civil Code, the newly founded school of the exegesis proposes the law to be "reduced to the rule, moreover, civil law to be [reduced] to Napoleon's Code" (Bălan, 2011). A true cult of loyalty to the legislative formula is thus created (cf. ibid.); against this background, the *Judge* must rigidly subordinate to the norm, by "admitting as method of interpretation only the literal one [;] in this sense, 'to interpret means to place oneself in the position of the one who wrote the law and to investigate what the legislator probably decided'" (ibid.). The body responsible with the application of the norm enacted by the *Legislator* is, from this perspective, a puppet in the hands of the latter. The power of the *Judge* is limited, or one may say even inexistent (cf. Dănişor, 2007: 642); far from acting as an authority, the *Judge* is only allowed to give concreteness to a norm "whose meaning has been previously determined and which is imposed upon him" (Rousseau in ibid.).

The decline of the exegesis in law begins towards the end of the 19th century, when French doctrinaires initiate critiques against the rigidity and the artificiality of the norm based on the intent of the 'Napoleonic legislator' (cf. Bălan, 2011) and to perceive the law as a system receptive to social, political, economic evolutions, as mechanism whose wheels are permanently spun by its practical finality. As the German jurist Rudolph von Jhering affirms, "law is the result of a struggle, it adapts to conditions of time and space. [Hence,] the solution to legal issues must not be sought for in the game of some logic of concepts, but in awareness, in understanding of the practical scopes of and means by which the law is accomplished in conformity with its purpose" (in Mitran, 2013). The profound change of perspective upon the law brings about a strengthening of the position held by the judiciary power with respect to legal interpretation. Thus, the *Judge* is now at liberty to adapt the legal norm to a specific case, to reconstruct it where it evinces lacunae (cf. Dănişor, 2005: 385), to peruse and understand it beyond the initial scope or intent of the *Legislator* – as this 'will', may it be reasonably intuited by the interpreter, ultimately remains a vague concept, often disturbed by imprecise formulations, which give rise to controversial interpretations (cf. ibid.).

The evolutionary theory, unlike the exegetical doctrine, thus underscores the essence of the law, namely that the law is indissolubly linked to the social environment within which and to whose purpose it is conceived. Legal interpretation now becomes an effective tool in the hands of the *Judge* who "no longer limits to a simple deduction [derived] from the [initial text]" (Bălan 2011), but who contributes, by employing specific interpretation methods to the enrichment of the law and its proper application

according both to the original text, as enacted by the *Legislator*, and to the evolving and diverse reality.

The 'creative' role of the *Judge* is the more important as the norm, as originally designed by the *Legislator*, has a general character and it cannot foresee all concrete legal scenarios (cf. Deleanu, 2013: 25). One speaks, in this case, about a reconstruction or a re-clarification of the norm in relation to the specific situation to which it is applied, about a judiciary power that assumes the prerogative of completing the gaps in the law, where they exist and about the need to recreate a triangular balance between society, law and its practical finality. One can equally point out to a 'plurality of the sources of law', of an acceptance of the fact that "the judiciary construction of the individual norm also finds its place among the sources of the law. [...] By renouncing the mythical image of a rational, always preventive, complete legislator, one must admit sometimes, exceptionally, the quality – accidental or mandated – of the judge as 'specific co-legislator'" (ibid., 26).

By taking into account the image of the *Judge* as 'specific co-legislator' – responsible with the (re)creation of the individual norm, and not with the formulation of "generally mandatory provisions", a privilege assumed by the *Legislator* (cf. ibid.) – reference can also be made to the *Judge's* role to intervene where the norm contains vague, weakly determined concepts (cf. ibid., 24). The existence of such situations where the meaning of the norm is entangled in ambiguous terminology determines the *Judge* to casuistically interpret equivocal concepts (cf. ibid.). Loosely enacted concepts as 'equity', 'social need', or 'legitimate hope', concepts with changing meaning such as 'the superior interest of the child', 'significant imbalance' or 'optimal and predictable term' are clarified by means of legal interpretation, which ultimately becomes an inherent necessity in the activities performed by the judiciary power (cf. ibid.). The *Judge's* interpretative task is, nonetheless, a complex and arduous one: "the 'dissection' of an imprecise concept is not a simple matter of 'assessment', a simple problem of 'interpretation', but 'a matter of law', of 'legal creation', of 'conceptualisation' or 'legal re-conceptualisation'" (ibid., 25).

Conclusions – Towards a 'Janus-Faceted' Dimension of the Legal Interpretation

The two strands, that of the exegesis and that of the evolutionary theory, have imprinted themselves on the way in which legal interpretation is used by the legislative and the judiciary powers. From the perspective of the exegetical school, interpretation was the tool of the *Legislator*, whereas the *Judge* would be placed under the stringent control of the issuing body and would have at disposal only a limited space of manoeuvre and a restrictive, strictly literal possibility to interpret the legal text (cf. Mitran, 2013). The evolutionary school, on the other hand, revolutionises the idea of legal interpretation and, although the exegesis does not fully disappear, it is placed under the glens of reconsideration, due to "the diversification of investigation methods, and to the multiplication of investigation sources" (Bălan, 2011). In other words, the awareness, within the frame of legal doctrine, of the interdependence between the law and the expansive social environment, has led to the implicit acknowledgement of the important role that the *Judge* plays in adapting the legal text to reality. Legal interpretation hence becomes the 'pièce de résistance' in legal argumentation; by its means, the often inherent obscurity of the original norm is placed under the laborious scrutiny of the *Judge*, the entity that is now bound to reconstruct the law, so as to achieve its practical scope.

It is however beyond the scope of jurisprudence to fuel the historically evinced 'dissensions' between the legislative and the judiciary bodies, as interpreters of the law. As a compromise to the doctrinal dispute over the use of the act of interpretation in law,

such legal theoreticians as O. Fiss, R. Dworkin, A. Marmor, T.A.O. Endicott and J. Raz affirm that legal interpretation is essentially a Janus-faced concept and that duality is the main attribute of its nature (cf. Dickson, 2003). Legal interpretation is thus understood as consisting of two components; similar to the Roman divinity, interpretation entails a traditionalist, conserving element (cf. ibid.) – the Janus eye is in this case oriented backwards, to the original – and an innovative, creative element (cf. ibid.) – here the Janus eye projects its vision into the future and underscores the importance of the adjustment of the norm to facts in the social, political, economic and cultural environment. The existence of these two complementary facets suggests the fact that [...] an interpretation of something is an interpretation of *something* – it presupposes that there is a something, or an original, there to be interpreted, and to which any valid interpretation must be faithful to some extent, thus differentiating interpretation from pure invention –but it is also an *interpretation* of something, i.e. an attempt not merely to reproduce but to make something out of an original (ibid.).

While the above mentioned statement attempts to "strike the right balance between the conserving and the creative elements in interpretation" (ibid.), it also serves to underscore the thin line between 'interpretation' and 'invention' or 'creation' that one must bear in mind at all times. The question of how exactly law should be interpreted so as to achieve this balance has already been raised by theorists concerned with the way in which *Judges* should "undertake this balancing act" (ibid.). From this angle, the discussion revolves around two elements which refer back to the dual nature of legal interpretation, namely the act of "(a) reasoning to establish the existing content of the law on a given issue" and the act of "(b) reasoning from the existing content of the law to a decision which a court should reach in a case involving that issue which comes before it" (ibid.). It is hence inferred that *Judges*, as interpreters of the law, strive to respect the content of the law "as it currently exists", and, at the same time, to change, to add, or to "bring out something new in the law, in the course of reasoning from the content of the law to a decision in a particular case" (ibid.). Legal interpretation prevails as fundamental tool in legal reasoning, and above all, in the process of "'straddling the divide' between identifying existing law, and developing and modifying the law" (ibid.). Much along the lines of such theorists as Dworkin, one may assert that the Janus-faceted nature of interpretation, alongside with its prevalence in legal reasoning represent key indications of the fact that interpretation serves to "blur or even erase the line between the separate law-finding and the law-creating roles" attributed to *Judges* and to a lack of fundament in the "distinction between identifying existing law, and developing and changing the law" (ibid.). And indeed, interpretation is not only the means through which the original norm is moulded so as to fit the particular circumstances of a case, but also an indispensable tool in the hands of both *Legislator* and *Judge*, upon whose decision-making and interpretative skills depends the practical finality of the law.

Note of the author: Quotes in original language have been translated into English by the author of this article.

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ORIGINAL PAPER

Control Method of Granting and Taking Medical Leave in the Romanian Legislation - between the French and the Italian Solution

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Abstract
This article aims to analyse the changes in the Romanian legislation concerning the control of issuing sick leave certificates compared to the existing regulations in the French and the Italian legal system. Under the terms of the global economic crisis, the performances of public health system and sanitary units are of poor quality, with adverse effects on the efficiency with which people's contributions to the health insurance budget are spent. One of these negative effects, caused by the lack of budgetary funds, consisted in the modification of the Government's Emergency Ordinance no. 158/2005 on health insurance leaves and allowances through the Government's Emergency Ordinance no. 36/2010 which regulated the control concerning the method of granting certificates for sick leave, providing for the possibility to verify the presence of the insured person at his domicile or residence as indicated throughout the duration of the temporary incapacity for work. As methodology, the authors used the method of comparison between Romanian, French and Italian system, as well as the combining of the legal dispositions and specialists' opinions with statistics and public information provided by the Romanian Government, the Ministry of Health, the Ministry of Labor, Family and Social Protection and the National House for Health Insurance. As for conclusions, this paper highlights that the effectiveness of the administrative control (Italian model) in the matter of reducing the number of medical certificates and the budgetary funds spent for paying health allowances is doubtful as long as the beneficiaries of health insurance leave and allowances are not subject to medical supra-visits (French model).
Keywords: allowance, certificate, health, leave, physician

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Leave and allowance for temporary work incapacity due to illness or accident outside the regular labour

Leave for temporary work incapacity is granted in the situation when temporary incapacity for work is caused by disease and accidents outside work (Cernat, 2012: 246). Allowance for temporary work incapacity caused by an accident at work or an occupational disease is payable on the basis of Law no. 346/2002 on insurance for accidents at work and occupational diseases.

In the public system, the insured persons receive medical leave and allowance for temporary work incapacity, if they prove temporary working inability on the basis of a medical certificate, issued in accordance with the regulations in force.

The right to temporary work incapacity leave and allowance belongs to the insured persons who have a contribution period of at least six months, carried out over the past 12 months preceding the month for which it is granted sick leave. The insured persons receive indemnities for temporary working incapacity, without conditions of contribution period in case of medical-surgical emergency, tuberculosis and infectious contagious diseases in Group A, AIDS and malignancies.

With regard to duration of leave for temporary incapacity for work, the following situations may be encountered (Radu, 2009: 67-68; Ciochină-Barbu, 2012: 172):

a) duration is no more than 183 days within a period of 1 year starting from the first day of illness. From the 91-day, sick leave may be extended by the practitioner up to 183 days on the advice of the social insurance expert physician; for very serious diseases, the duration may be larger (typically 2 years);

b) If the patient was not recovered after the expiry of the period of granting allowance for temporary incapacity for work, the primary doctor or, where appropriate, the practitioner shall:

- propose temporary shifting to another work, reduction of working hours, resuming activity in the same profession or in another profession;
- propose disability retirement;
- whether, in cases duly justified by the possibility of recovery (in order to avoid disability retirement and maintain the activity of the insured), propose to extend the leave over 183 days (not with more than 90 days).

The period of granting allowance for temporary incapacity is greater in the case of certain diseases such as tuberculosis, cancer, AIDS and some of cardiovascular diseases (Radu, 2009: 68).

During the period of leave for temporary work incapacity, instead of the salary, the person concerned will receive an allowance from the health insurance house budget. The amount of allowance shall be determined by applying a percentage of 75% on the calculation basis. The amount of allowances for temporary incapacity for work caused by tuberculosis, AIDS, cancer, infectious disease in Group A and medico-surgical emergencies is 100% of calculation basis. The calculation basis of health insurance allowances shall be determined as an average monthly income of the last 6 months on the basis of which the individual social insurance contribution was established for the months in question (Radu, 2009: 69).

Leave and allowance for temporary work incapacity due to occupational diseases or accidents at work

Because the risks in the process of work is an integral part of working life of any employee, Law no. 346/2002 on insurance for accidents at work and occupational diseases introduced in Romania a specialized system which combines an active component, consisting of prevention of accidents at work and occupational diseases, with a passive component – rehabilitation and compensation for lost or reduced income (Radu, 2007: 429-446).

According to Law no. 346/2002, insurance for accidents at work and occupational diseases is part of the social security system, being guaranteed by the state. It comprises specific relations to ensure social protection against the following categories of occupational risks: loss, diminished work capacity and death as a result of accidents at work and occupational diseases (Ţiclea, 2009: 75).

Allowance for temporary work incapacity is granted for 180 days within a period of one year, counted from the first day of sick leave. The amount of the allowance is 80% of the average gross wage income made in the last 6 months preceding the occurrence of the risk. In cases duly justified by the possibility of medical and occupational recovery of the insured, the treating physician may propose the extension of medical leave over 180 days, but with no more than 90 days, depending on the progress of the recovery operations, in accordance with procedures established by the National House of Pensions and Social Insurance. The amount of compensation for temporary work incapacity in medical-surgical emergency is 100% of the average monthly insured income of the last 6 months preceding the occurrence of the risk (Radu, 2009: 88).

Physicians' competence concerning the issuance and granting of sick leave certificates

The insured persons receive sick leave and allowances, on the basis of the medical certificate issued by the prescriber, according to the Government Emergency Ordinance (O.U.G. in Romanian) no. 158/2005 on health insurance leave and allowances.

The physician, through his legal representative, conclude a convention on the issue of medical leave certificates with health insurance house in whose territorial-administrative area the medical unit is established.

At the emergency room of the hospital, certificates for sick leave may be issued in the event of a medical-surgical emergency without patient's hospitalization, only by the specialist doctor.

Doctors are required to direct patients to the health unit that must be addressed in order to obtain further medical care and sick leave certificates. Certificates for sick leave shall be completed and granted to the pacients on the date of the medical visit during which the required number of days of sick leave is established.

Family physicians have the authority to issue sick leave certificates for temporary work incapacity lasting no more than 10 calendar days, in one or more stages. In the case temporary work incapacity is maintaining for the same illness, sick leave may be extended by the treating doctor in the specialty ambulatory or hospital in case of hospitalization, in successive stages of a maximum of 30 calendar days, up to 90 calendar days within one year, counted from the first day of illness. Cumulative period

of medical leaves granted by family doctor for an insured in case of temporary work incapacity may not exceed 30 calendar days in the past year, counted from the first day of illness, regardless of its cause. After summing up to 30 calendar days granted by the family doctor, sick leave certificates will be issued only by the treating doctor in the specialty ambulatory or hospital in case of hospitalization, with the respect of maximum durations laid down by law.

Sick leave certificates for the duration of the hospitalization are granted by the treating doctor who cared and discharged the patient in the hospital.

At discharge from the hospital a sick leave from 1 to 7 days may be granted, and in special cases, with the approval of the physician-in-chief of section, up to a maximum of 21 calendar days. After the expiration of the medical leave granted at the exit of the hospital, where the patient's state of health does not permit his returning to work, the family doctor, on the basis of the letter issued by the treating physician of the hospital, may extend the sick leave by a maximum of 7 calendar days for the same medical condition, and, in the case that temporary work incapacity lasts, send the patient to the physician in the specialty ambulatory.

Treating doctors of health units with beds, caring for patients with tuberculosis, AIDS, cancer, issue medical leave certificates for the duration of hospitalization of the insured persons, and at the discharge from hospital may grant sick leave up to 30 calendar days.

Patients admitted in the hospital who have benefited over the past 12 months of 90 days cumulative of sick leave, counted from the first day of illness, will be sent to the offices of medical expertise of work capacity in whose territorial area the hospital is located. If patients can not move, the observation sheets, results of medical investigations and medical report will be send to medical expertise offices for the approval of medical leave extension.

In the event of a medical-surgical emergency, for which the severity of the disease does not require admission into hospital, the sick leave shall be granted by the doctor who assisted the emergency (family physician, the physician in the specialty ambulatory, emergency room, ambulance, emergency reception), for a maximum period of five calendar days. If the temporary work incapacity lasts, sick leave may be extended by the doctor for the same illness, according to the terms established by law.

Health insurance houses have the following obligations:

a) to control the manner of granting medical leave and of issuing medical certificates for sick leave;

b) to keep records, with the registration of sick leave certificates distributed to physicians as well as of sick leave certificates issued by them.

Obligations of doctors concerning the issuance of sick leave certificates

Doctors issuing sick leave certificates have the following obligations:

a) to issue certificates for sick leave in accordance with the provisions of the O.U.G. no. 158/2005;

b) to report monthly health insurance houses the data necessary for the pursuit of activities relating to the issuance of certificates for sick leave;

c) to respect the confidentiality of data and information relating to the certificates of medical leave issued to insured persons;

d) to announce the health insurance house about any changes regarding mandatory conditions which have led to the conclusion of the convention and to comply with these requirements at all times during the progress of the conventions;

e) to supply the control bodies of the health insurance house with primary health documents which formed the basis for issuance of sick leave certificates;

f) to direct patients to the health unit that must be addressed in order to obtain further medical care and medical leave certificates.

Obligations of insured persons and employers

The insured persons have the obligation to notify the payer of health insurance allowances about the emergence of temporary work incapacity and the identification data, i.e. the name of the prescriber physician and the health unit where the doctor is employed, within 24 hours from the date of issuing medical leave certificate. In the event that the emergence of temporary incapacity for work has been declared in a non-working day, the insured persons are required to notify the payer of health insurance indemnity on the first working day. Compared with the Romanian law, Italian law stipulates that the period within which the employee is obliged to inform the employer about the issuance of the medical certificate is of 2 days from its date of issuing (D'Agostino & Loiacono, 2009: 315).

The insured persons are required to complete and submit to the prescriber physician a declaration on their own responsibility. On the other hand, employers have the obligation to transmit to the health insurance house, no later than 8 days from the date on which they were notified about the occurrence of temporary incapacity for work, the list of persons employed in temporary work incapacity, as well as the information concerning the identification of the prescriptor doctor and the unit which he belongs to.

The control on the method of issuing certificates of medical leave, according to O.U.G. no. 158/2005, approved with amendments and completions by Law no. 399/2006, is carried out on the basis of a methodology developed by the National House for Health Insurance (CNAS).

Thus, one of the conditions on which the insured must satisfy to qualify for sick leave and allowances for health insurance, is to be present at home or at the address indicated, where applicable, within the period and under the conditions laid down in the implementing rules of the O.U.G. no. 158/2005, to permit the representatives of payers of health insurance allowances to carry out the verification.

Sanctioning failure to comply with the legal conditions for the granting of medical leave and issuing sick leave certificates

Within the meaning of the provisions of the O.U.G. no. 158/2005 (article 88), the following situations constitute unjustified refusals to pay health indemnities:

a) the interested person is not able of making the proof of the quality of insured for sick leave and health insurance allowances;

b) the insured fails to complete the contribution payment period, with the exceptions provided for by law;

c) the physician who issued or certified the medical certificate has not completed all the sections of the certificate for sick leave;

d) the insured did not submit proof of sick leave within the time limits provided for by law;

e) the doctor granted sick leave certificates retrospectively in circumstances not provided for as exception by law;

f) certificates provide a period of sick leave which exceed the maximum durations laid down by law;

g) payment of health insurance allowance was delayed as a result of the referral of control commissions by the employer who finds unjustified motives of issuing of medical leave certificates;

g^1) refusal of persons in temporary work incapacity to put themselves at the disposal of the persons authorized to carry out the verification of their presence at residence address;

h) other similar situations thoroughly substantiated.

The issuance of sick leave certificates by doctors prescribers, with failure to comply with the legal provisions constitutes contravention, being sanctioned with a fine between 5,000 and 10,000 lei. Fines may be imposed for improper completion of sick leave certificates, issuance of a disproportionate number of sick leave certificates in relation to the number of medical consultations, issuance of such documents for longer terms than those established by law, retroactively granting them outside exceptional situations provided by law, the disparity of data from medical records of the insured with the sick leave certificate, issuance of medical certificates without mentioning the diagnosis and recovery plan in the medical records. Also, the fines can be given for non-compliance with the legal provisions regarding the code of diagnostic, international classification of diseases, granting medical leaves in cases or for unjustified periods, wrongly framing medical leave under the category of “initial”, “further” or in other duly justified cases (National House for Health Insurance Tulcea, 2006).

Control method of granting medical leave and issuing certificates for sick leave

Control method of granting medical leave and issuing certificates for sick leave shall be conducted by teams made up of staff from the specialist services of CNAS, or of health insurance houses.

In duly justified cases, CNAS and health insurance houses co-opt representatives of Ministry of Public Health or public health directorates and medical divisions or similar structures in the ministries and institutions of the central public administration with network health requirements.

Control is achieved as a result of the referral to the health insurance house by the payers, as well as on the initiative of the authorities competent to carry out control.

Checks on compliance with the obligations laid down in the conventions concluded by the doctors with health insurance houses are effected by the control bodies of CNAS, respectively of the health insurance houses.

The cases of breaking the legal provisions of O.U.G. no. 158/2005 should be raported to the discipline bodies within the College of physicians of each county, respectively, of the College of physicians in Bucharest or, where appropriate, of the College of dentist physicians from Romania, on the domain of competence, and to the units with which doctors are in contractual relationships, for taking legal measures that might be required.

Disciplinary Committee of the College of Physicians in Romania, the county councils of physicians and of the municipality of Bucharest will apply measures provided for in the legislation in force, in the event that establishes the breaking of the legal provisions concerning the issuance of medical certificates.

At the level of CNAS, respectively of health insurance houses, joint committees for the analysis of medical leave are set up, according to the protocol concluded between CNAS, the National House of Pensions and Social Insurance and expertise doctors.

Health insurance houses are required to keep separate records concerning the registration of sick leave certificates distributed to doctors, as well as with medical leave certificates issued by them.

Disputes which relate to the calculation and payment of the indemnities provided for in the O.U.G. no. 158/2005 shall be settled by the competent courts, according to the social insurance jurisdiction.

Verification of the presence of the insured persons in temporary work incapacity at home or at the residence indicated

One of the conditions to be satisfied by a person for the benefit of medical leave and allowances for temporary incapacity for work is to be present during the period of incapacity, at home or at the address indicated, where applicable, within the period and under the conditions laid down in the implementing rules of the O.U.G. no. 158/2005, to permit the representatives of payers of health insurance allowances to carry out the verification.

Specifically, when receiving the sick leave certificate issued by the prescriptor physician, the insured shall complete a declaration on his own liability announcing the residence address chosen during leave (it does not need to match with the address in the identity card) and agrees with the cessation of the payment of indemnities for temporary work incapacity if he does not comply with the conditions laid down by law.

Verification of the presence of the insured persons in temporary work incapacity at home or at the residence address indicated in the declaration is made by the payer of health insurance indemnities, accompanied, where appropriate, by a representative of the police, taking into account the individual program recovery recommended by the specialist doctor. The presence of the representative of the police and the conditions under which it may be required are regulated by the Order of Ministry of Health no. 429/2010 approving the rules for the implementation of the provisions of article 51 par. 3^1 of the O.U.G. no. 158/2005 on health insurance leave and allowances. Verification of the presence of the insured shall not affect the rights and freedoms of citizens guaranteed by the Romanian Constitution, republished.

In accordance with the provisions of art. 81 par.7 and 8 of the O.U.G. no. 158/2005, the presence of the insured persons in temporary work incapacity at home or at the residence indicated can be checked only between 8:00-11:00, 12:00-17:00, 18:00-20:00, when a report signed by members of the Commission and by the insured will be concluded. The report may be contested within 30 days from the date of communication, at the headquarters of the payer of health allowances, who has an obligation to respond within 30 days of the date of the appeal's registration.

In the case of persons in temporary incapacity of work who refuse the verification of their presence at residence adress in the conditions stipulated by law, the payment of

allowances shall cease on the date of the refusal, under the conditions laid down in the detailed rules for the application of the O.U.G. no. 158/2005.

Failure to comply with the obligation to be present at home or at the residence adress in the intervals provided for by law attracts the non-payment of health insurance allowances starting from the date on which the absence was found.

Verification of the presence of the insured/employee at home or at the residence indicated during the temporary work incapacity is a measure introduced in our legislation through the adoption of the O.U.G. no. 36/2010 on modifying and completing O.U.G. no. 158/2005 on health insurance leave and allowances, control method copied after the Italian model, aiming at stopping the abuses on the issuance of medical certificates in order to spend the public money responsibly and increase the awareness of service providers and beneficiaries of medical leave and health insurance allowances. In Italian law, the employed persons in temporary incapacity for work must be present at home for the purposes of checks made by the competent bodies between the hours of 10:00-12:00, 17:00-19:00, inclusive on Sundays and public holidays (D'Agostino & Loiacono, 2009: 315). The Health Ministry has argued the need for such legal rules on statistical data, according to which in 2006, 3% of the funds were spent on medical leaves, sum doubled in 2009, fact which reduced the funding for treatments, medicines and hospitalisation. The trend has remained in growth in the first quarter of 2010 compared to 2009. If in the first quarter of 2009, 220 millions lei were spent for medical leaves, in the first quarter of 2010 the amount stood at 255 millions lei (Ministry of Health, 2010; National House for Health Insurance, 2010).

The College of Physicians in Romania, supported by the Coalition of Organizations of the Chronic Patients in Romania referred the matter to the Ombudsman regarding the unconstitutionality of the provisions of the O.U.G. no. 36/2010 on the basis that this police control of the presence of the insured in temporary work incapacity at home or at the residence indicated, made by the police, given that there is no legal guarantees ensuring the avoidance of abuse, prejudice the right to physical integrity of the person concerned, as well as the privacy, the freedom of movement and the dignity of the insured, by instituting a form of house arrest similar to preventive measures specific for criminal legislation, but not for people who have committed criminal offences, but for some sick persons (President of the The College of Physicians in Romania, 2012). This initiative was not successful, however, the provisions of the O.U.G. no. 36/2010 being applied starting from May 17, 2010.

The fact that the emergency ordinance does not provide situations in which refusal/ absence of employee from checking is justified, and the lack of studies in the literature relating to this issue could lead to a series of controversial situations in the practice of labor relations concerning the verification of the employee's presence at home/residence. The only reference to such a possible situation is contained in the model of the insured statement, which constitutes Annex no. 16 to the application rules, by which the employee says that is required to be present at the address indicated during leave, except in cases justified with medical documents for carrying out of specialised treatments, laboratory tests or other medical procedures.

The payer of allowances (employers, the institution which administers the unemployment insurance fund and health insurance house, where appropriate) may refer the matter to the House of health insurance with respect to the issue of certificates for sick leave only for their own employees or insured persons. Notification shall be addressed to the health insurance house which has concluded conventions with the

prescriptor physician for the issuance of sick leave certificates and the following shall be mandatory mentioned: name of employer, the identification data, a description of the medical case, copy of sick leave certificates to be controlled, the history of granting medical leaves to the same employee, the completion of the contribution period.

The project of the Order of the CNAS President for approving the methodology of controlling the issuance of sick leave certificates has stipulated, in the original form, the possibility that, in addition to making the visit at the domicile of the insured person and carrying out an investigation relating the patient's recovery plan during medical leave, the employer should be able to require, at its expense, confirmation of the diagnosis by another specialist. This possibility, which has not featured in the final order form, was adopted in the French legislation. It was originally laid down by the National Interprofessional Agreement of 10 December 1977 which was annexed to Law no. 78-49 of January 19, 1978. As a result of the exercise of control of constitutionality, the French Constitutional Council has declared that the principle of medical supra-visit of sick employees, at the initiative of the employer, is not contrary to the Constitution.

But if the doctrinal controversies and those between employers' and workers' organizations for breaching the sick employee's privacy and breaking medical secrecy were long ago explained in French literature, the terms and the scope of medical control at the initiative of the employer were debated in relatively recent decisions of the French Court of Cassation who considered it necessary to specify the rights and obligations of the parties in the implementation of this control and its effects (Bourgeot, 1998). While the employer has considerable flexibility with respect to exercising its right of control over the sick employee (it has the freedom to choose the physician who performs the supra-visit, the date and time at which it will take place), the Social Chamber of the Court of Cassation shall verify the legality of the procedure for the implementation of this control. Thus, apart from the obligation to inform the employer about the residence address throughout the duration of work incapacity, the employee has no other obligation; including the fact that this residence is abroad is not sufficient to establish that the impossibility of control can be imputed to the employee. With regard to the legality of verification, French case-law has held that an inspection carried out by persons without any competence or mandate in this sense does not produce any effect in terms of termination of payment of temporary work incapacity indemnities. Even if the sick employee is absent from home or residence in the intervals provided for by law or by collective bargaining agreements, the Court of Cassation held that the priority is to protect the employee's right to private life and the inviolability of domicile. Cases of legitimate refusal are considered the situations justified by the necessity of following the prescribed medical treatment or going to another consultation.

In terms of the effects of medical supra-control required by the French employer, if the controller determines that the reasons for the suspension of the individual contract for temporary work incapacity are valid, the employee will continue to receive the allowance, as well as the additional indemnity provided for in the collective agreement; otherwise, if the employee's ability to return to work is proved, payment of these indemnities and compensations shall cease on the date of the medical supra-visit (Bourgeot, 1998).

In the Romanian system, verification of the sick employee's presence at his domicile/residence is of purely administrative nature, not medical, because it is only "aimed at verifying the presence of the insured persons in temporary incapacity for

work at home or at the residence indicated" (so not the presence or absence of working capacity) and "is made by the payer of allowances, accompanied, where appropriate, by a representative of the police". It is worth noting that the procedure for monitoring and sanctioning is regulated in detail in the case of doctors who issue medical certificates, but extremely succinct in the case of employees who obtain such certificates through unlawful means. Although the stated aim of checking employee's presence at home in Romanian legislation is to reduce abuses on the issuance of medical certificates, the effectiveness of administrative control (Italian model) in order of reducing the number of certificates issued and the budgetary funds spent for allowances payment is doubtful as long as beneficiaries of health insurance leave and allowances are not subject to medical supra-visits (French model).

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ORIGINAL PAPER

Science in the Polish popular press – between Eastern and Western colonialism?

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Abstract
The paper provides an analysis of the image of science that can be drawn from the press texts dedicated to science in 1975 and 2005. The analysis covers full yearly editions of the most popular and influential Polish newspapers and magazines – 9 titles for 1975 and 9 titles for 2005.Methodologically, the paper is based on the content analysis and representative method. Based on the results of the analysis a question arises: which countries are referred to (or cited) in the Polish press as sources of scientific information. Then the sources for the years 1975 and 2005 are compared and contrasted in order to verify the following hypotheses. One of them is that the mediatisation of science (the way science is presented in the media, specifically, in the press) depends on the current cultural or political situation. Thus according to the dominant cultural / political trends reflected in the Polish press the main sources of scientific information communicated in the press are either the countries grouped in the Soviet bloc (especially the USSR) – until the transformation in 1989 – or the Anglo-Saxon countries (especially the USA) – from 1989. Cultural and scientific dependence of Poland (and probably other so called 'people's democracies') on the imperial role of the USSR (before 1989) or the USA (after 1989) resembles colonial relations. What comes as a surprise, however, is the fact that according to the analysis's results Poland has always been a western-oriented country – even while being a part of the Soviet bloc.

Keywords: mediatisation of science, the press, popular science, colonialism, imperialism

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Popularization of science and communication of research results have always been one of the most important tasks carried out by scientists. There are multiple ways to fulfil this task – from lectures or conference presentations as means of oral communication, to popular science magazines, to mass media such as radio, TV or the Internet. Thanks to them society is informed about recent developments or discoveries in multiple disciplines of science. The process of communication of science is often called 'mediatisation of science', which term highlights the fact that each type of communication uses specific media.In the term 'mediatisation' the sense of mediation is included, because in both popular science and press reports of recent discoveries the media are employed.Simply, each type of communication dedicated to science –be it horizontal communication within the academic circles or vertical communication from an expert to unprofessional society – is a manifestation of mediatisation of science (Michalczyk, 2009: 18–19; Bednarz, 2009: 115–120).

Communication dedicated to science not only employs the media, but it also is shaped by them. In consequence, the message is adjusted to the requirements of a particular medium, which– owing to its specificity – affects the form and content of the message (Lilleker, 2008). As a result, it is not science that is communicated by the media, but rather an image of science created by them (Paczkowski, 2004: 9–16).

Nowadays, in the era of information, as societies and institutions have become largely dependent on the mass media, people's understanding of scienceis formed by the media coverage of science,and their perception of research and researchers is shaped by the media content (Mazzoleni, 1999).

In this paper I would like to focus on the analysis of one of dimensions of the image of science that is transmitted by the Polish press, because this image functions as a substitute of science for the laymen. In other words, when people think of, perceive, understand, talk about science, they simply think of, perceive, understand or talk about the image of science, because it is the only manifestation of science accessible to the laymenthrough the means of media (Kuś, 2004: 31–39). In particular, I would like to identify the main directions of the origin of knowledge – countries mentioned in the Polish press mediatisation of science. It is possible as a result of the analysis which research centres (domestic and foreign) are referred to by the press coverage of science as sources of scientific information.

Hypotheses

In theory, it can be assumed that the sources of scientific information provided by the press are chosen according to their scientific significance and relevance. Practically, however, what also counts are political and cultural influences of powerful countries and, subsequently, dependency of Polish journalists covering scientific topics on these 'powers'. The question born during the analysis concerns the basic principle behind selection of sources in the Polish press mediatisation of science. In this study I would like to verify the following hypotheses:

1. The press image of the scientific output of particular countries (the map of science) does not reflect reality. By 'reality' I understand the actual scientific position of a particular country measured and evaluated with scientiometric and bibliometric methods and tools. What the press image does reflect, however, is the network of cultural, political and economic dependencies;

2. The presscoverage of science depends on the current cultural /political situation;

3. According to the dominant cultural / political trends the main sources of scientific information communicated in the press are either the countries grouped in the Soviet bloc (especially the USSR) – until the transformation in 1989 – or the Anglo-Saxon countries (especially the USA) – since 1989.

Colonialism or post-colonialism?

Speaking about political or cultural dependencies brings to mind colonial relations in which imperial countries in various ways conquered other territories. In many popular dictionary definitions of this term, colonialism is described as conquest, rule, or control of an imperial state over dependent territories and their people.

For example, according to Longman Dictionary of Contemporary English we can speak about colonialism "when a powerful country rules a weaker one, and establishes its own trade and society there." On the other hand, definition provided by Merriam-Webster Dictionary is more general. Instead of 'ruling',in the dictionary there is aword 'control' used. Moreover, it refers not only to the land but also the people: "control by one country over another area and its people." A combination of these two approaches is used in a detailed definition of Oxford English Dictionary, in which colonialism is defined as "the policy or practice of acquiring full or partial political control over another country, occupying it with settlers, and exploiting it economically." As we can see, all of these definitions contain a common element of control – lets add here, intentional control – undertaken by economic and political means, and cultural influences.

Currently it is commonly assumed that the era of colonialism has ended "with the dismantling of the great colonial structures after World War Two" (Said, 1994: 7). However, the manifestations of "control by one country over another area" have not yet ceased to be visible. At present, they are frequently described as 'neo-colonialism' or 'post-colonialism'. It is not easy to distinguish clearly these terms, because both of them include the component of direct or indirect control or influence (political, economic, and cultural).Rooted in them is the idea of imperialism, which "lingers where it has always been, in a kind of cultural sphere as well as in specific political, ideological, economic, and social practices" (Said, 1994: 9).

According to Edward W. Said,who was a founder of critical theory of post-colonialism, "At some very basic level, imperialism means thinking about, settling on, controlling land that you do not possess, that is distant, that is lived on and owned by others. For all kinds of reasons it attracts some people and often involves untold misery for others" (Said, 1994: 7). Noam Chomsky, another influential political writer and a linguist, makes no subtle distinctions between colonialism, neo-colonialism or post-colonialism. Describing the Old World Order (as he called the era before the Treaty of Yalta) he simply equates them, providing different names of the same phenomenon: "The major theme of this Old World Order was a confrontation between the conquerors and the conquered on a global scale. It has taken various forms, and been given different names: imperialism, neocolonialism, the North-South conflict, core versus periphery, G-7 (the 7 leading state capitalist industrial societies) and their satellites versus the rest. Or, more simply, Europe's conquest of the world" (Chomsky, 1993: 3). And Chomsky adds: "There is little reason to expect that 'the great work of subjugation and conquest' will change in any fundamental way with the passing of the Cold War phase of the North-South conflict" (Chomsky, 1993: 87).

Taking for granted that colonialism can be associated with the conquest of South America, Africa, Near and Far East, one can ask, after Ewa Thompson (Thompson, 2010: 1): "Can Poland and other East Central European countries be regarded as postcolonial countries." Thompson, without doubts, responds: "it can hardly be denied that the partitions of Poland in the eighteenth century and occupation of Poland by Soviet Russia after the Second World War were forms of colonialism; that is to say, they included a violent conquest and subsequent efforts to exploit and re-educate the locals who differed from the conquerors linguistically, religiously, and politically" (Thompson, 2010: 2). In other places, Thompson mentions the Germanic and Ottoman imperialisms, which also lefttheir marks on the history of Poland. In this way, in addition to well-established in theory and research *overseascolonialism*, we also need to distinguish *Europeancolonialism* (Thompson, 2012). The flourishing of both these forms of colonialism took place in the eighteenth century, their dismantling began in the mid-twentieth century.

As we can see, Poland, located on the very border of the Western world, has experienced colonial tensions from both western and eastern imperialism[*].Here, it is worth mentioning that Russian and Soviet expansion over vast territories of Asia and Eastern Europe is not commonly described as colonialism. However, many researchers indicate stark resemblance of this expansion and subsequent subjugation of foreign lands to colonialism (Sowa, 2008: 377; Thompson, 2000; Nowak (editor), 2006).

Worth analysing is how this geopolitical location has resulted in – alleged or actual – culturaldependency of Poland on either the eastern or western empire in the context of the press coverage of science.

Since countries with imperial ambitions indirectly affect the culture of dependent countries, it can be assumed that this will also manifest in the texts devoted to science – in particular, in the selection of sources of the knowledge that is described or delivered in such texts. In consequence, the image of science, and more specific, the sources of knowledge, to some extend reflects actual achievements of the countries cited in the press, but also the proportions shown in this image are probably biased by colonial dependencies.

Material

As we assume that the press has the ability to shape the human perception of reality (and of science too), we should also admit that the greatest potential in this area of shaping belongs to the press that is representative of the Polish press discourse. Press discourse is understood here both as simply the language used in the press (a narrow concept of discourse), and – in a broad concept – as a social practice of transfer, legitimizing, supporting and consolidating the current truths (created by 'the powerful'). After Foucault, we can assume that discourse is a form of organizing relations and social institutions. It serves to universalize standards adopted in the process of communication, making them an intersubjective set of shared social values.

[*] According to post-colonial interpretations, Poland itself in some respect contributed to the emergence of a kind of colonial tensions between the centre and the periphery in the course of the First Republic of Poland. Tomasz Zarycki, mentioning such attempts of post-colonial interpretations asks a question: "To what extent one can speak of the First Republic of Poland as of imperial power, and its periphery – which are now separate states – as its colonies?"(Zarycki, 2008: 34). Zarycki, however, does not give any simple answer, as this question is currently the subject of debate.

Discourse analysis is characterized by an approach including language and society, together with the context of institutionalized action (Foucault, 2002: 21, Grzmil-Tylutki, 2010: 67–69, 134).

Therefore, the material for this analysis was selected very carefully in order to take into account the titles that meet the criteria of representativeness.

The first and most important criterion is that the newspapers and magazines be credible, opinion-forming and prestigious. This is because such titles are read by those who are so-called opinion leaders. These people read and understand a content of a magazine, and form their opinions about a specific topic. Afterwards, within their community, they communicate their point of view to other people, thereby extending the range of influence of the magazine. According to this criterion the material chosen for the analysis should include press titles addressed to adult or adolescent readers of both sexes, preferably of secondary or higher education, medium or high income and coming from the city. These are the qualities characteristic for people able to influence others – for people who feel the need to read, who can find a way to access (purchase, loan from the library), have purchasing power and besides, who enjoy prestige in society. Moreover, the selected press titles should preferably be nationwide or at least cover a large territory.

Since the condition is representativeness, we must also take into account the criterion of potential and actual readers' access to an individual title.It is a quantitative criterion.One of its dimensions is the magazine's circulation (supply, potential use). The other dimension is the readership (demand, actual use). Access to this type of data is made possible by conducted regularly national surveys of readership.

According to these criteria there are 9 magazines selected for the year 1975 and 9 magazines for 2005 [Table 1].

Table 1. Representative press titles in 1975 and 2005

1975	2005
Dookoła Świata [Around the World]	Gazeta Wyborcza [Electoral Daily]
Kulisy [Backstage]	Polityka [Politics]
Kultura [Culture]	Tygodnik Powszechny [General Weekly]
Panorama [Panorama]	Gość Niedzielny [Sunday's Guest]
Perspektywy [Perspectives]	Przekrój [Cross-section]
Polityka [Politics]	Wprost [Direct]
Przekrój [Cross-section]	Newsweek
Trybuna Ludu [Tribune of the People]	Rzeczpospolita [Republic Daily]
Tygodnik Powszechny [General Weekly]	Przegląd [Review]

The choice of the years 1975 and 2005 allows to perform a comparative and contrastive analysis. These years differ in many respects – the political and economic system of the Polish state, the functioning of the media, and most of all – memberships of the blocks or international associations and subsequent political, economic and cultural interdependencies. The year 1975 in Poland fell at the time of economic recovery. The main slogan promoted by the authorities was "may Poland grow strong and people live prosperous."The authorities declared transition from "an industrial revolution" to a new stage of "a technical-scientific revolution". At the same time,

communism was the official ideology and the Polish United Workers Party was the leading political force, acting upon close collaboration with the Soviet Union.

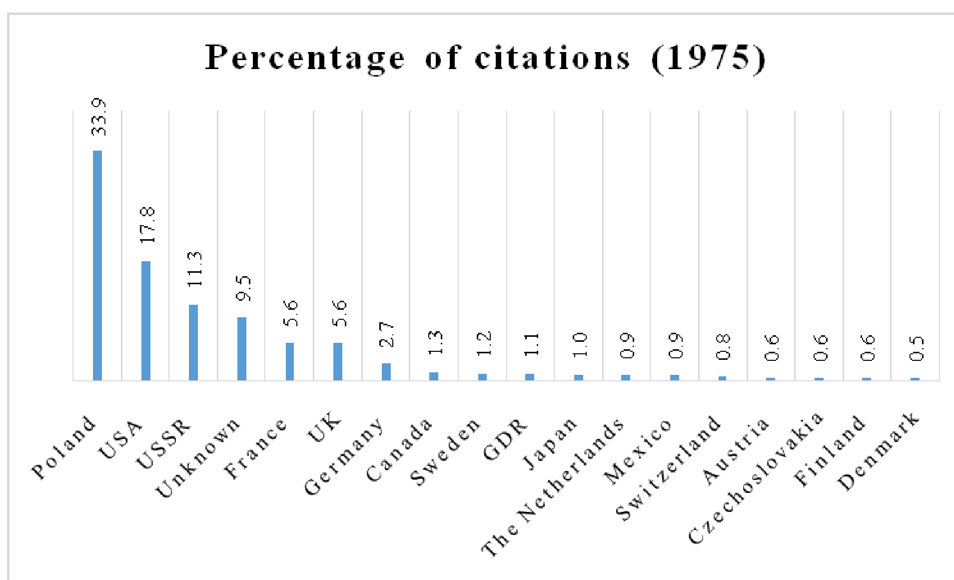
On the other hand, the year 2005 – 16 years after the fall of communism in Poland – was a time of strengthening democracy and capitalism. By this time Poland had become a member of the NATO and the European Union. Pluralism in politics and the media resulted in revival of formerly existing or creation of new various newspapers and magazines in the Polish market.

Percentage of citations in 1975

In this paper, the approach adopted to analyse the content of the press (in particular – the references to textual, institutional or personal scientific sources) is analogous to the approach applicable in bibliometric studies. Thus, by analogy to academic communication, in which references to other scientific works – books or papers etc. – are called citations, references to scientific output of different countries included in the selected material are also called citations, although they usually do not include – compulsory in the scientific literature – footnotes providing accurate bibliographic information.

The chart below presents a percentage of references to scientific output of different countries (the citations of countries) in 1975. Total number of citations in this year is 1287. The category "unknown" on the horizontal axis refers to all of these situations, when the texts contain references to scientific achievements of other researchers, but without an indication of their nationality.

Chart 1. Percentage of citations in 1975



Source: Author's own compilation

As we can see in the chart, Poland is the most frequently cited country (436 times, this is almost 34% of all citations), which has several probable causes. First of all, when media, especially those subsidized by the state, inform of the scientific activity undertaken by the home country, they also fulfil their obligations that result from the mission, and to some extent they perform patriotic duties. Although these are not strictly scientific facts, they significantly affect the image of science transferred by the press.

Taken into account should also be the fact that media in the communist regime, due to their strong politicization, publicized the achievements of socialism – among others achievements in the field of science, which was the triumph of rationalism over religion and – as the communist leaders claimed – superstition.

In this quest for full rationality science was the main – because objective – ally and weapon. In addition, the very high rate of citations of Polish scientists and research centres is related to an easyaccess to sources of information (whether through a news agency, or by personal communication).

To sum up, the highest percentage of citations achieved by the communist regime should be treated with reserve. It is because the high citation rate does not necessary reflect the actual high level of scientific performance. A preference for indigenous research centres as sources of knowledge for popular science is rather a consequence of the previously mentioned factors.

One of the hypotheses posed in this study was an assumption that the presence of references to scientific sourcescoming from various countries of the world is derived from political and cultural roles of these countries.

Until 1989 the Polish state remained under the political influence of the Soviet Union, which then functioned as a hegemon. To the same Eastern Bloc there belonged other so called people's democracies – communist countries under the influence of the Soviet Union. Members of the Eastern Bloc were interconnected politically, economically and culturally.

The net of interdependencies enabled the transfer of not only political and ideological matters, but also prolific scientific achievements of the Soviet Union and the Eastern Bloc.

On the other hand, in accordance with this scheme, achievements of the countries located on the other side of the Iron Curtain should remain –if not completely ignored – undoubtedly unexposed.

As results of the analysis presented in the chart indicate, onecannot defend this hypothesis. Although the Soviet Union gained a lot of citations (146, what amounts to over 11.3% of total citations), it is only on the third position of ranking – behind the United States (229, this is almost 17.8% of the sum of citations). Other communist countries also are poorly present in the Polish press texts about science.

If we assume that the Eastern Bloc comprises, according to the common use of the term, the countries under the influence of the Soviet Union, both in Europe and in other parts of the world (Asia, South America), it turns out that the list of these countries mentioned in the Polish press texts about science covers 8 countries.

The list of competitors of the Eastern Bloc has 21 countries. These are capitalist countries, once labelled the "First World" (the communist countries were called "The Second World")*. Total percentage of their contribution amounts to 40.4%.

The USA is the undisputed leader of this group. Polish authors referred to scientific output of this country 229 times (what covers 17.8 % of all citations). Distribution of citations in this category is very patchy – outside the US, no state received more than 10% of citations, and only seven states exceeded 1% of citations (France, the United Kingdom, Germany, Canada, Sweden, and Japan).

What is worth emphasising, in 1975 Poland – although under a strong influence of the Soviet Union, although censored or suppressed – was clearly a pro-Western oriented country.

Percentage of Citations in 2005

Thirty years later, in year 2005, one can expectthat the press coverage of science will reflect the momentous changes that have taken place since the fall of communism in Poland. By this time, the Polish state had broken off the dependence on the eastern imperium and there had been a political and economic reorientation towards the West. Moreover, it has to be noted that after the fall of communism in Europe the globe was no longer divided between two competing blocks.

It does not imply, however, that imperial ambitions of powerful countries had ceased. The period after the collapse of colonial empires (for the countries of Western Europe) and – even more visibly – after the dissolution of Soviet Union had been used to build a new world order.

Results of the analysis of the material from 2005 can be seen as an illustration of this new worlds order. This ranking brings little modifications to the list of the most frequently cited countries in comparison with the one from 1975.

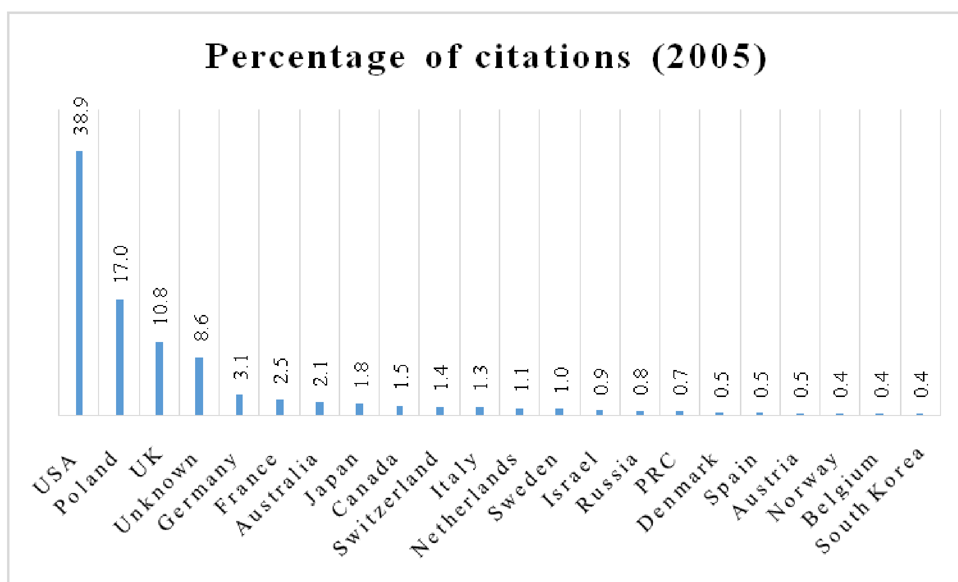
A significant change occurs in the first positions of the list. In the ranking, the United States take the position ahead of Poland, so a clear preference of Polish authors for scientific content coming from this country can be observed. Poland's position in this ranking is still high, most probably because of fulfilling mission duties.

Percentage of citations of Polish scientific output – although relatively high – is lowered at the expense of growth in the number of references to the United States.

The chart below presents a percentage of references to scientific output of different countries in 2005. Total number of citations in this year is 4736. Like in the previous chart, the category "unknown" shows references to scientific achievements of researchers whose nationalities or affiliations are not given in the texts.

* The terms of the "First World"and "Second World" were introduced to political science and sociology probably by Alfred Sauvy in 1952 to determine the division of the world into two ideologically hostile camps. The First World was composed capitalist countries of Western Europe and North America, and the Second World embraced the socialist countries. Apart from them, Alfred Sauvy also distinguished the Third World that comprised courtiers not involved in the conflict.

Chart 2. Percentage of Citations in 2005



Source: Auhor's own compilation

What is worth highlighting, the first positions in the ranking are occupied by western countries – most of them from so called Euro-Atlantic civilisation. To this group there belong the United States of America, the United Kingdom, Germany, France, Australia, Canada, Switzerland – to mention those on the top. Besides them, Japan (86 citations what equals 1.8% of the total number of citations), and Israel (42 citations, 0.9%) also are frequently cited, mostly due to the fact of highly developed technology.

Besides the USA and United Kingdom, the percentage of citations of other countries is relatively low, because only nine countries exceed 1%. Still, their presence in the Polish press is significant in contrast to stark absence of the "eastern" countries – formerly associated with the Soviet hegemon, now burdened with a post-communist legacy ("the East" here should not be understood geographically but rather culturally). The chart shows that only two countries formerly belonging to the Eastern Bloc – Russia and the People's Republic of China (PRC) – were mentioned in the Polish press as sources of scientific information. They take position near the bottom of the ranking, and the sum of their citations amounts only to 1.5%.

On the other hand, the list of western, capitalist or highly developed countries comprises 18 countries. What is more, distant West (the US, the UK) is more popular as a source of scientific knowledge, while near West (Germany, France, Switzerland and so on) creates a dense peloton of low frequency in the press.

To sum up, the analysis shows that after political transformation, with freedom, pluralism, no censorship, no repressions, Polish journalists cited scientific sources – personal and institutional – mostly from the Western civilization, also referred to as Euro-Atlantic. As mentioned before, although the ratio between the main countries has changed a bit, the overall picture of scientific sources cited in the press is very similar for 1975 and 2005.

Conclusions

Results of the analysis presented in both charts seem to contradict the thesis that presence of references to scientific sources coming from various countries of the world is derived from political roles of these countries. As shown in the charts, mediatisation of science in the Polish press employed mostly western sources – regardless of the officially declared association with the Soviet Union in 1975. The findings clearly indicate that Poland has always been a western oriented country.

There are several possible explanations of this orientation. One of them is the fact that Polish culture, legal and political system, science as well as religion, have been rooted in the Western tradition – ancient Greek, Latin, Christian, and finally in the humanistic and modernist exemplars from Western Europe.This legacy – being a result of the centuries-old relations with the countries of the West, in which Poland has entered – today also determines the directions of the relations and alliances.

Moreover, the reluctance to refer to the Eastern tradition could arise simply from the aversion to the empire that imposed its influence over Polish society. Poland at that time officially belonged to the Eastern Bloc, but Polish society mentally did not approve of this fact. Probably, a relatively small number of references to Soviet scientific output is a manifestation of this attitude.

However, the preference of Polish journalist to refer mainly to American sources can perhaps be the aftermath of some kind of servility manifested in Polish culture (mainly – mass culture). Servility typical of countries influenced by other powers, which could be called imperial. Ewa Thompson traces this servility to an inferiority complex of a part of the Polish elite that is one of the characteristics of colonialism in Poland: "One of the results of subaltern status is a gradual acceptance by the conquered population of the interpretation of that population offered by its colonial rulers. One of the goals of colonial discourse is to construe an image of the colonized as degenerate or backward, for this image justifies violence against them and facilitates the execution of power" (Thompson, 2010: 3).

The process of "bowing one's head" (showing appreciation towards the leading countries, together with a bitter feeling of one's backwardness) by the Polish elite started more or less with the partitions of Poland in the mid-18th century.However, in the second half of the twentieth century the colonial hegemon – the Soviet Russia – did not offer any exemplars worth following. The real hegemon – although powerful and feared – was not respected. Therefore, the Polish society in a quest for these exemplars to follow turned towards the West – not for the first time, by the way. In this way, the western countries have become what Ewa Thompson called 'a surrogate hegemon' (Thompson, 2010: 6–8). In the context of scientific sources cited in the Polish press, it seems that the vast preponderance of sources coming from the West, especially the United States, is a manifestation of 'bending one's head' before the surrogate hegemon.

Finally, I would like to answer thequestion whether Poland can be described as a country between two colonial powers (western and eastern). If one admits that apreferenceinthe Polish press texts about science tosources coming from a particular country can be treated as a manifestation of colonialism, then the answer to this question is positive. Two reservations, however, should be made. First and foremost, according to the press texts, one cannot talk about Poland being between two types of colonialism,as in the Polish press references to the leading role of the West strikingly predominate over the references to the East. This implies that –as long as we can

perceive it as a manifestation of colonialism –it is colonialism from the West, more specifically – the United States of America. The other colonialism (being under real political, economic, cultural influence of the Soviet Union) was apparently not as significant as to affect the content of Polish texts dedicated to science.And here, the concept of the 'surrogate hegemon' comes to our aid, because it properly separates a real, physical and direct dependence on the Soviet Russia from a mental, cultural and indirect dependence on the West.

We should also note the fact that if the texts devoted to science included references to scientific achievements of particular countries, these achievements really existed. It means that the Polish press texts referred to the USA's scientific output because the achievements of this country were the most significant and outnumbered other countries' output. In contrast, the lack of references does not automatically indicates the scarcity of achievements or their unimportance. So, if one can partially agree that the press distribution of sources to some extent corresponds to their actual scientific performance, the proportions of this distribution seem to be deformed by a biased perspective adopted by the writers.This perspective does not necessarily mean being under anycountry's direct influence. It can simply reflect Polish writers' postcolonial servility and reverence for the western direction.

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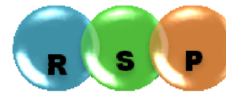

ORIGINAL PAPER

The necessity to develop competencies in the field of cultural and intercultural education to the level of the students - prospective teachers

Ecaterina Sarah Frăsineanu*

Abstract

One of the essential functions of the current education is represented by the enlightenment, and this function was subsequently completed by a perspective that focused on the cultural exchanges. The new educations refer to cultural and intercultural educations, which are components that can be addressed from the preschool age, to children, till youth, adulthood or old age as processes integrated in the lifelong training, but youth or the academic studies period is considered as the age that it can exploit the full learning potential of the individual. The cultural and intercultural education relates to other aspects of the education: axiological education, civic education, human rights education, education for democracy, political education, social education, European citizenship education, entrepreneurship education, moral education, religious education, education for tolerance and so on. The specific of the learning means that it depends on the field of the study and the accessibility of learning content, but there are also involved a number of individual features of the learner, the transfer, exercise and training strategies, moral, professional and pedagogical competencies of teacher, the quality of academic life, the systemic nature of the educational process, socio-cultural influences exerted from the outside.

Learning Pedagogy, as a trans-disciplinary science, contributes to develop scientific competencies of students: the capacity to recognize the essential features of the studied phenomena, the capacity to communicate the reasoning used and conclusions reached, attitudes, values and appropriate behaviors in social interactions. The prospective teachers apply in their teaching activity a key competence proposed to the European level and represented by the cultural awareness and expression. This is understood as an appreciation of the importance of the cultural expression of ideas, experiences and emotions of others through a number of channels (music, theater, literature and visual arts). For a future teacher, interculturalism requires keeping a balance so that its behaviors allow openness to other cultures without losing its cultural identity.

Keywords: education, culturalism, interculturalism, teacher, European competencies

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1. Background and existing connections within the sphere of interculturalism

The culture is the totality of the material and spiritual values of the society and cultural education emphasizes this concern derived at the pedagogical level, from the very meaning which it has education: in the Latin language “educere” means cultivation, transformation, overcoming the natural state existence.

The education comes close, but does not overlap with the notion of literacy, which is the one of its functions only, besides the functions of humanization, socialization, individualization, professionalism. One of the features of education is its axiological feature, the education is made by relating to a set of values widely recognized. Man is "a cultural human being and by that is educable" (Antonesei, 1996: 13-14).

The concern for the cultural education takes place in a complex context that includes references to a number of phenomena such as: the multiculturalism, the cultural relativism, the interculturalism as cultural exchange, the cultural negotiation and the need for everyone to be an active participant in the process of cultural building and reconstruction.

Going beyond the multiculturalism, the cultural pluralism meets the requirement of unity in diversity, which is itself a challenge, as practical goal, but this phenomenon is an important lever to the democratization of the social relations. From a constructivist point of view, it is obvious that cultural differences influence very much the learning and education (Richardson, 1997, Marlow, & Page, 2005, Henson, 2004).

The interculturalism makes references to process of the construction of social identity, which in its turn is the result of interaction of the psychological with the social at the individual level, with the possibility of differentiating oneself from the others, but also achieving the solidarity with the affiliation group. The process of the identity formation is a complex, tortuous process, marked by obstacles, stagnations, recoveries that never end and involves many life experiences, conflicts, changes, progresses of the person.

The European identity is a new concept which exploits the possibilities of the interculturalism and transculturalism, but at the same time, draws the attention to the compatibility between the national and the European values.

In the terms of the values it is showed that "The educational value is a standard that guides, directs the behavior of the actors involved, is a benchmark by which are built the principles that give the coherence to our critical judgments about the aesthetic, intellectual, religious, moral aspects and so on (...). In addition to the fundamental values (the truth, the good and the beauty – the eternal human values and the justice and freedom – the social values), there are contextual values (...), personal values (...) and specific values of the subjects of education (...)."(Ilie, 2011: 24-25).

Each of the education factors has a stronger or weaker influence, depending on the stage of life, but also on the social context in which a person lives, cumulating the effects of the others factors that acted before. It works here the explanation of the educational field as a "field of forces" (Lewin, 1989).

The partnership in education involves the relationship between the factors of education, by creating and operating some structures which support each other, in order to achieve common goals. The partnership is conducted either by the cooperation between two parties, for instance: family - school, or as a multiple partnership

The intercultural education, as a new education, is subsumed to the contemporary education issues, influenced in their turn by a number of social challenges: the

globalization and the interdependence of the countries, the development of the New Information and Communication Technologies, the education decentralization, the democratization of the education, the requirement of participation in the civic life, the market economy, the changing of the attitudes and the education reform, the interculturalism.

In the Report to UNESCO of the International Commission on Education in the XXI century, the intercultural education corresponds to the pillar of "learning to live together". According to the experts` recommendations, the universities should claim the intellectual and social vocation, the most important factor of the change of the conception being the globalization of the countries and human activity, the universal communication. Thus, "The education can promote the cohesion to the extent that we take into account the diversity of the individuals and groups, while trying not to cause their marginalization and social exclusion." (Delors, 2000: 41).

After (Ivasiuc Koreck & Kővári, 2010), the year 1984 marked at the European level a paradigm shift in which was unequivocally recognized the positive character of the integration of the populations resulting from the their migration and their contribution to the development of 'host' societies. Since that time were issued ideas to be applied in education (on the basis of a genuine intercultural dialogue) and in initial and continuous training of teachers in the field of the interculturalism. It is interesting, as showed the authors of the Research Report of The Community Development Agency "Together" the fact that the educational measures are no longer restricted to the groups perceived as minority, but are extended to all pupils, both majority and minority ones.

All the challenges or the major social changes (from 1990-2000) were determined, in addition to the positive effects, and a number of shortcomings at the social level:

- demographic imbalances (the overcrowding or, on the contrary, the reduction of the population);
- overturning the scale appreciation of the social values (especially the moral ones);
- conflicts, violence;
- environmental pollution;
- economic changes, the underdevelopment, the poverty;
- the immigration etc.

In fact, the concept of the problematic of the contemporary education has existed since the '60s-'70s, when there was a chronic maladjustment of the school to life. In a paper entitled "The global crisis of education", 1968, the American Philip Coombs indicated the existence of certain functional differences between the education, as a social subsystem and the other subsystems of the society through: the gap between the supply (too low) and the demand (too large) of a quality education; the gap between the quality of the human resources offered by the education and the social needs; the inadequacy of the curricula and the methods to the demands of the society; the inertia of the organizational structures of the education systems in relation to the dynamics of the contemporary society etc.

We might consider that these challenges of the education (which are maintained throughout the post-communist period) are related to the current state of many countries, which are in the processes of social transition, but they also derived from the new requirements generated by the current socio-economic and cultural development.

More recently, sharply in the recent years, the functional gaps between the education and the other social sectors have been boosted mainly due to the emergence of new economic phenomena such as globalization and the competitiveness of the

economic, the structural disruption of the labor market and the marginalization, the lack of integration economic of the youth. The intercultural education becomes this way a mean to prevent the conflicts` appearance by cultivating the empathy and the correct assessment of the interdependence.

From these trends and challenges have resulted at the level of the society: the need for man to permanent adapt to the pace of the social changes, the increase of the individual aspirations, the increase in their sense of personal dignity and the manifestation of man's need to relieve tensions, the need for confidence in the future and in progress, all being the arguments for the necessity of the self-education and lifelong learning.

As a general solution it was imposed the concept and the strategy of the sustainable development, which covers all the forms and methods of the socio-economic development, whose foundation is to ensure a balance between the socio-economic systems and the elements of the natural capital. Object of the sustainable development is the concern for justice and equity between countries, not only between generations. In the educational field, the sustainable development can be implemented by cooperation and intercultural dialogue, by curriculum innovation and consequently the innovation of the teaching-learning experiences through active learning and participation.

Another solution co-related with the intercultural approach is given by the education decentralization. If the quality assurance in education depends on the quality of the social life in general, the decentralization is dependent on the development of the local communities, with the valorization of the differentiated potential they may have, depending on the specific requirements of the labor market.

The numerous cases of school, family, social maladjustment, registered among young people are a worrying evidence that both the school, the family and the other social institutions and communities fail to fulfill their educational role always effective. Not all educational influences and actions have a convergent sense, although their purpose remains the same: to develop the child's personality.

Appears, therefore, absolutely necessary a collaboration among all the factors of the education, and this manner of conception and action is favorable for manifestation of the interculturalism, addressed in its natural environment, in informal and non-formal environments, not only in school.

The intercultural education of children, youth, and much more, the prospective teachers is closely linked to the promotion of the equal opportunities in education, as a basic principle in the current Law of Education (2010-2011).

This principle is correlated with the avoidance of the inequalities, discriminations of any kind: gender, race, ethnicity, national origin, religion, age, sexual orientation, family and socio-economic status, health status, beliefs, physical condition, intellectual, social, and emotional condition, language. It makes references to the rights and duties of the educated and the educators and the education should be accessible, open to all.

The declared aims of the education indicate the following: the education aims to build certain values to guide the behavior and career of the beneficiaries, ensuring their social inclusion, the civic participation and the integration in the labor market.

The Education Act states that the education supports and promotes the patriotism by cultivating the love for the country and the attachment to the national traditions. The education and professional training in the national education system also aim: forming a conception of life based on humanistic and scientific values, on the national and

universal culture, the fostering of the intercultural dialogue; the education in the spirit of respecting the rights and fundamental freedoms of the human beings, dignity and tolerance; growing the sensitivity to human issues, to moral and civic values, respect for the nature and the natural environment, social and cultural.

The equality of chances- refers to the fact that human beings are free to develop their personal abilities and choose without limitations imposed by the strict roles. The opposite of the equality is the discrimination when applying a different treatment for two people or situations where there is no relevant distinction between them. The equality of the chances or opportunities involves resolving the discrepancy between the right of self-determination and the effective experience of the self-determination (as show Mithaug, 1996).

Launched after 1990, the concern about the citizenship is considered "a paradigm of the political sciences that allows the interpretation of the democratic processes in terms of affiliation, political participation, identity, rights and responsibilities" (Bârzea, 2005: 6). The education for active citizenship depends on variables such as: the age, the socio-economic and professional status, the education level, the nationality, the ethnicity. An important role for the manifestation of man as an active citizen at various levels - from the local community to national, to European and even global – belongs to the quality of life, this being in the relation of reciprocal influence with the socio-human aspects, historical, political, economic, technological, informational of the reality.

The global education has been defined by the Global Education Congress (cited Kaivola & Melen-Paaso, 2007: 14) as "education that opens minds to people's eyes and the realities of the world, and awakens them to bring about a world of greater justice, equity and human rights for all. Global education is understood to encompass development education, human rights education, the education for sustainability, education for peace and conflict prevention and intercultural education, being the global dimensions of education for citizenship."

Worldwide, another phenomenon that interacts with the interculturalism is the migration, which is relatively small quantitative (approximately 3% of the world population). But in Europe, the migration has registered increased flows. Situations such as the ethnic conflicts, the nationalism, the terrorist threats, the environmental pollution, the diminishing of the solidarity among people, the distrust in the government forms and leaders remain issues to be solved and for this, the involvement/citizen activism and tolerant approach, peaceful being the ways to prevent or solve (Sartori, G., 2007).

Nowadays, the concern over these situations arises again, due to the risks generated in provoking crises, at the local or regional level, from the economic point of view, which could adversely affect the social order or could trigger riots from ethnic or religious grounds. The demographic decline caused by migration is given by the direct loss of the people leaving, followed by the temporal effects of damaging the population age structure.

Almost all the nations of the Organization for Economic Cooperation and Development continued to face the migration of the qualified personnel who populated the nodes of an increasingly global economy. In the last twenty years, these flows were accompanied at the global level by the human movements from South Asia to the Gulf and Middle East (Held et al., 2004).The effects of the migration can be: changes in the social identity (in national plan, historical, civic, political); the fact that the emigration

of the young people, parents influences the idea of family, the functions/role in the society (social, educational level); economic, demographic dysfunctions.

But the main effect of the migration is that it compels those who migrate to develop a number of new roles. Therefore, the European Commission Report – Teaching and Learning. Towards the Learning Society (2002) – showed that the training and education throughout life help to maintain economic competitiveness, in employment, but also is a way to combat the social exclusion.

We may conclude, therefore, that, in terms of notional, the interculturalism sets the priority ties with: the equality, the chances, the access, the success, the rights, the responsibilities, the focusing on the educated one, the dignity, the self-determination, the protection, the justice, the ethics, pluralism, tolerance, justice, solidarity, active citizenship, participation in the distribution of benefits, integrated education/inclusive school.

The European Parliament proclaimed the year 2008 as the European Year of the Intercultural Dialogue, and one of the key competencies required to young people is the competency of sensitiveness and cultural expression.

The intercultural Pedagogy is a trans-disciplinary field with psychological bases/roots, anthropological, sociological, communicative, philosophical, demographic, geographic, historical, political, international relations.

2. Experiences and possibilities of action in the intercultural training of the trainers

On a practical level, in education, the eco-cultural model means respecting the diversity. Neamțu conducted an inventory of the difficulties of the values internalization in the process of socialization at teenagers and, we would add, many of them are maintained during academic studies for young people aged 19-23 years: "low tolerance to frustration, poor self-control, self-centeredness, impulsivity, aggression, underestimating the seriousness of the mistakes and acts committed, the underdevelopment of the moral feelings, the indifference or contempt for socially useful activities, the avoidance of voluntary effort, the desire to achieve an easy life, the opposition to the legal, moral, social norms, the poor self-valorization, the false image about the world" (Neamțu, 2003: 55).

The academic training has a cultural background that tends to turn into trans-disciplinarity considering the globalization study programs and student mobility. The teachers in the higher education succeed to adapt to this specific through a reflective attitude on the approach of the students in teaching-learning-assessment, the interactions they promote; university broadcasts culture, and culture is diverse, being desirable the interculturalism.

The professionalization of the teachers was in the last three decades in a period of major restructuring. The concern for providing the professional approach to the teaching career is constant in the recent years in many other European countries. Such restructuring is determined by the fact that education, in general and the teacher`s activity, in particular, are extremely sensitive to the social and community dynamics; they evolve almost simultaneously with them.

The teaching professionalization requires not only a harmonization of the teacher personality dimensions in accordance with the requirements for acting the specific roles, but also brings to the fore those dimensions ensuring the quality and efficiency of solving the more complex existential situation.

The transversal competencies of the students who will be teachers aim the recognition and respect for the diversity and multiculturalism, the openness to the

lifelong learning, and the respect and development of the professional values and ethics, the active insertion in the community, school and professional community, cultivating a school environment focused on the democratic values and relationships. The professional needs are established both in the initial training of the pupils or students and the continuous training of the young people or adults; these needs are reassessed, adapted within the qualification, requalification, professional retraining or improvement. Voiculescu (2004: 99-120) includes the professional needs within the educational needs of the people (analyzed by the size of the education), considering that they imposed themselves the most powerful because they act both within school and outside (at the level of society).

The reputed teacher of Pedagogy, Constantin Cucoş, proposed in 2000, the initial and continuous training of the teachers, the training and intercultural training, seen not as a theory but as a methodology to be systematized in the following dimensions:

- personal dimension, regarding the own psycho-behavioral profile of the teacher, by overcoming the personal prejudices and stereotypes;
- cognitive dimension, of knowledge by the teacher of the historical, geographical, anthropological, sociological prerequisites, on the generation and consequences of the intercultural phenomena.
- methodological dimension, which refers to the accumulation of the methods and procedures to store and stimulate the differences, the application of the methods of differentiation and customization of values;
- relational dimension, of deep knowledge of the actual data about the pupils who are working with.

A powerful argument for the acceptance of the diversity is the creative contribution brought by the human heterogeneity; however, addressing the problem requires a critical-constructive attitude, analyzing the advantages, but also the potential problems caused by the interculturalism.

2. An example in the training of the teachers. Curricular documents analysis method

In the following table is made an excerpt on the correspondence among the existing undergraduate specializations at the University of Craiova (Decision no. 707 of 18/07/2012, published in Monitorul Oficial, Part 1, no. 525 of 30/07/2012) and the teaching positions in the secondary education, related to teaching the Civic Education (in secondary school) (Extract from the Summary of disciplines, fields and specializations, and competition tests available to hire teachers in secondary education, 2012).

Table 1. The correspondence between the specialized studies and specialty of the teaching position

Communication Sciences. Communication and public relations – position of Civic Culture, gymnasium education, high-school education
Sciences of Education. Pedagogy of Primary and Preschool Education- position of Civic Culture, gymnasium education, high-school education, position of Pedagogy - Social Studies, High School
Philosophy - position of Civic Culture, gymnasium education, high-school education

Sociology – position of Civic Culture, gymnasium education, high-school education, position of Sociology, Sociology - Social Studies high school education
Communication Sciences: Journalism – position of Civic Culture, gymnasium education, high-school education
Political Sciences - position of Civic Culture, gymnasium education, high-school education
Law Sciences – position of Civic Culture, gymnasium education, high-school education
History – position of Civic Culture, gymnasium education, high-school education
International Relations and European Studies - position of Civic Culture, gymnasium education, high-school education
Administrative Sciences: Public Administration - position of Civic Culture, gymnasium education, high-school education

Source: Author's own compilation

We mention that in present, by the psycho-pedagogical studies, level 2 during the master studies in the same specialization as the one of the Bachelor studies, the graduated are entitled to become teachers in the non-binding education (high-school, academia), so for the specializations listed above, the Intercultural Education can be taught in high school.

We could also notice, through the vast connections that intercultural education sets, the fact that even a foreign language teacher, a teacher of History, economics etc. are agents of intercultural education achievement of pupils. The most interesting aspect is that the pupils themselves (especially if they have a different cultural affiliation, ethnic etc.) become factors, active agents of intercultural education in the class or school in question.

We analyze further an important curricular document: The Syllabus for the optional class "The Intercultural Education" (Curriculum by the decision of the school for the high school), approved by the Minister Order No.5817/06.12.2010, 1 hour per week at high-school, any class depending on the school.

The arguments presented in the Syllabus are in fact the pursued goals:

- preparing young people for openness to the intercultural dimension of their existence;
- develop students' ability to recognize the diversity in its various forms;
- training young people as able to appreciate different cultures, to respect and positively value the cultural differences;
- develop students' ability to communicate and cooperate with the people belonging to different cultures, operating under fair representations of differences among ethnicities, races, cultures, genders, religions, social groups, professional groups, etc.;
- developing the skills of the youth regarding the participation to enrich the community life by sharing the identity elements, by dialogue and social participation;
- developing skills to live with others in a good intercultural living.

The above Syllabus assumes a range of values and attitudes: the positive valuing of the cultural differences; positive attitude towards individuals and groups belonging to different cultures, supporting different values, opinions and beliefs; respect for their

own cultural identity and the cultural identity of others; respect for the dignity and human rights; tolerance and understanding; peaceful resolution of the conflicts; cultural empathy; civic spirit; availability for the intercultural dialogue and cooperation.

The curricula contents refer both to the theoretical aspects such as: the social Diversity and cultural Diversity; the Education for the Interculturalism: Learning to live together and the applicative issues related to the Intercultural Education Project.

We consider that the student mobility, the personal and institutional development programs, as educational exchanges - are opportunities that have utility in teacher training.

At the level of originality of the analyzed syllabus is emphasized the role of the intercultural projects proposed for the prospective teachers. These projects have the following structure (stages).

A simpler version: local intercultural project:

- Identifying the subject;
- Planning the collection of information;
- Collecting of information (multiple interactions, including with members of the local minority communities, if applicable);
- Summary information and product realization;
- Presentation of the product made;
- Reflecting on the whole experience: acquisitions acquired (knowledge, skills, attitudes); running the process, conclusions on designing and implementing an intercultural project.

A more complex version - cultural partnership:

- Training: establishing a partnership with a class from another school (can be from the same locality, in another city or even another country);
- The mutual presentation of the partner classes;
- Identify the subject;
- Planning the collection of information;
- Collection of information (possible collaboration with the partners);
- Summarizing the information and product realization;
- Presentation of the product produced. Analysis of the product made conducted by the partner class product and provide feedback;
- Possible review of the product based on the suggestions and questions received from the partners;
- Reflecting on the entire experience: acquisitions acquired (knowledge, skills, attitudes); running of the process, conclusions on development and implementation of a intercultural project;
- Exchange of impressions and information with partners.

The instructive-educational methodology uses the debates, questionings for the clarification of the problems, exercises, simulations, case studies, analysis of texts, documents, the analysis of some footage projections, problem solving, the participation in the proposal, implementation of some projects, the approach from the multiple perspectives, the achievement of educational portfolios.

The assessing methods used include mainly the alternative assessment by observation of the behavior, portfolio, self-assessment, reciprocal assessment etc.

Analyzing the student record documents, in 2014, at the Teacher Training Department of the University of Craiova, level 1, are enrolled a number of 40 foreign students. Compared to the number of the Romanian students (2785), the ratio is 1,41 %,

but these intercultural influences are not formally structured in a strictly determined way, quantitatively and qualitatively.

The global evaluations of the students, we work with, show that there are clear benefits in the terms of integration of the foreign students, of the cultural exchanges (data about geography, history, lifestyle, education, customs, food etc.), as the phenomena of cultural integration.

At the level of the university students we can notice this interaction of the majority with the foreign students studying in Craiova and also the interaction of the Romanian students who benefit from programs, mobility projects abroad, as experiences with a real value for their professional and personal development.

The Erasmus Mundus Program – (http://eacea.ec.europa.eu/ erasmus_mundus/index_en.php) aims to improve the quality of the higher education and to promote the intercultural dialogue, by cooperation of the EU countries with other countries; Erasmus is the most important program of education and professional training in the European Union in terms of the mobility and cooperation of the students, teachers intending to teach abroad or university staff wishing to undertake training abroad.

During the initial training for the teaching profession, in parallel with the master cycle in college, the students who prepare to be teachers attend the class named: The Designing and Management of the Educational Programs, by which they can form the following professional competencies:

- Design, application, implementation and evaluation of the educational curriculum;
- Management and monitoring of the process of education and training of students;
- Design and implementation of pupils assessment and educational activities;
- Undertaking professional cooperation at the school level, with family and the local community to solve various problems of education.

The transversal competencies formed to students are: applying the principles and rules of professional conduct, based on explicit value options, specific to the future teacher, efficient cooperation in professional work teams, interdisciplinary, specific to conducting projects and programs in the education field.

Later, in school, the design and project management are activities that can support particularly from the methodic point of view (procedural organization), structural (structural organization) and human resource management, a complex task in a dynamic environment (Mocanu & Schuster, 2001). Neacşu also indicated strengths in students learning and we consider that these advantages are useful in their intercultural education (Neacşu, 2006; 18-19):

- rapidly widened access to modern information sources, allocation of free time differently as quantitative and use index value (either the social exerting pressure or creating opportunities to high standards);
- broad communicational experience based on direct use of 2-3 languages in documentation, in rapid access to intercultural values or by applying complex and powerful operating system packages (word processing, graphical user interfaces with multiple use);
- increased role for IQ, not only cognitive, but also intelligence emotional, consisting of empathic capacities, control and emotional self-control, communication etc.;
- enriched methodological and attitudinal experience, also social experience.

The media and the New Technologies of Informatics and Communication provide opportunities for remote interaction through various means of access that young people have joined very fast and they use frequently in the social communication.

The post-modern approach in Pedagogy takes into account the following: acceptance variants, indeterminacy, ambivalence, nonconformity, contextualism, decentralization, interdisciplinarity, changing strategies, relationship democratization, concern for the organization of knowledge and the main values promoted are: freedom, tolerance, unselfishness, originality, performance, interculturalism.

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ORIGINAL PAPER

Sociology of Reforms and Perspectives in Higher Education

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Abstract
Nowadays, reforms have become an important part in national higher education systems. Since 2003, with the signing of the Bologna Declaration, apart from the interrelation with the overall social system, opportunities are given to policy-makers and reformists in Macedonia in terms of the Europeanization of the whole sector as such. The 3+2+3 system, which is being rounded up within the last two years, brought up the issue of curriculum reforms, evaluation of institutions and overall performance improvement in working with students. In the last decade, higher education has been the target of numerous changes, modifications and amendments. University professors, politicians, other civil sector activists and domestic and foreign experts have been dealing a lot with the new challenges. The idea was to provide students with a more innovative and applicative approach to meet the latest needs of the community and industry. However, the principal question is whether these frameworks, legal amendments, evaluations, development strategies, etc., have positively influenced in one way or the other the overall educational life in Macedonia. This paper aims at focusing on the crucial issues related to the frequent change of educational policies in the higher education area in Macedonia. In recent years, there has been an intensified activity in terms of the future of education in general and this has produced huge debates, which the government refers to as intentions for increasing the quality of higher education. However, different reactions come from universities themselves, even those that identify these actions with the aim of the government to gain more control over the higher education under conditions when these institutions enjoy autonomy as per the respective law. Higher education is a public good (Atlbatch, Ph. et all, 2009), although scientific research data show that students claim that they are unsure as to whether the higher education they are attending will ensure better living and working conditions the way it is currently developing. Will universities be able to follow the modern European trends at times when the state is allocating less and less budget means for the development of higher education and scientific research? These are some of the questions and issues that will be dealt with through statistical data, analyses of reforms in the higher education area, etc.
Keywords: reforms, quality in education, curricula, evaluation, universitie

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Reforms in education as a result of the Bologna process

The Bologna Declaration of June 1999, prompted a number of reforms in higher education in Europe. After many dilemmas, debates, resistence, today this process has become a duty and main academic and social engagement for all countries and their public education. Since 2014, the Bologna process, as its main objective still has the creation of the European area of higher education where students can take a wide and transparent courses offer with high quality with facilities and access to the procedures for gaining knowledge.

It is known that higher education differs from primary and secondary education. It has to satisfy certain specific standards, which are determined in the agreement and in accordance with international norms and conditions, initiated and supported by industrially and economically developed countries. The quality of higher education affects the quality of prepared staff for the needs of public and social services, as in enterprises, hospitals, schools, military, police, scientific research institutions, and other services. If we rely on the *Orbis Dictus of Commenius* (Vertecchi *et al*. 2010: 7-12), logically it shows that the education in the future will have its own development in the sense that universities will be a self-regulatory environment, flexible for multilingualism and opportunities for teaching and learning. Muntilingualism is a result of greater penetration of English as the language of post-colonialism, globalization. This is mostly global educational philosophy.

Systemic Education reforms

Reforms in education are generally known as systemic reforms. In recent years there have been debates in different academic levels, media and policy, relating frequent changes. There is an impression that something constantly is required and that there is no way how it could be found or operationalized. Teachers criticize the government and the government and institutions criticize universities for resistance, detention etc. This in different and similar ways is happening in Macedonia, Albania, Bosnia, Kosovo, Serbia, etc. Often these reforms can be divided into two major concepts. First, it is a comprehensive concept in education, with changing laws, fulfilling their educational and governmental policy change. Second, systemic reforms suggest that education policy is integrated around a particular group of issues, e.g., curricula, teacher training, etc.

But what stands out more and that consumes more energy and is more costly is reforms in higher education. This should always stand beyond local and national barriers. This is the goal of all governments in the Western Balkans. From those positions enabling mechanisms for collaboration, mobility of students and teachers and evaluation of quality, are the foundation of programs and reforms. Especially are important the training and capacity building efforts and institutionalization of best practices associated with Western selection and evaluation mechanisms, qualifications of students, teachers, types and duration of curricula. All this will be result with strengthening the teaching standards for the qualification and selection of teachers and students in all three cycles.

In the future the quality of higher education will be based exactly on interactive teaching models and the acquisition of knowledge that will be accompanied by greater mobility of teachers, linked with the responsibility and development of their career.

However, the time of the reforms will be complemented by the development of institutions responsible for promoting self- development in terms of bigger and bigger competition in the academic field.

Theoretical Aspects of the Reforms in Higher Education

Regarding the reforms, lots have been written and enough paper and hard drives have been spent and filled up, while the work of various committees is resulting with blazing publications. But there is a principle question on how much these reforms are useful in practice. Whether here is decisive the factor of poor motivation of teachers that prevent to support reforms in practice? Foolaan Michael says that this is crucial. "If you take any hundred or so books on change, the message all boils down to one word: motivation. If one's theory of action does not motivate people to put in the effort basis - individually and collectively - that are necessary to get results, improvement is not possible " (Fullan, 2006: 37).

A number of theories is dealing with these reforms movements today. A large number of educators are interested in the new wave of educational theories that provide a new approach to how we should work with students and how to be more successful as educational leaders, as well as with students. The theory of constructiveness, the multiple intelligence theory, continues to grow in popularity today. Yet, the application of these new theories have not always gone so smoothly: as we shall later see in the comprehensive debate over whole language and whole math, the enthusiastic rush to apply new theory into practice has not always met with the best results.

Regarding reforms in education in general, there is a lot of work in the world and a lot of activities that governments do. "Higher education is particularly an area where a lot of money is spent and a lot of time and paper is sketched for its development. If we refer to Elmore's theory, he argues that "in every period of history, there were always abundance of ideas and projects, demonstration of science, many of which derive from the daily practices of teaching, about how we need to change relationships at the core of education" (Elmore, 2011: 13). On the other hand, other authors defend positions on the continuation of reforms in Europe. In the recent years we have seen a wave of policy reforms in EHE that have often departed from traditional public educational ethos that have historically prevailed in many countries. Many observers had pointed to a broad reform in Europe in 1980 and 1990 and an acceleration in the rate of change and reforms since the late 1990 and into the first decade of the twentieth century (Neavy: 2009; Midlhaust and Texeira, 2012: 2-3).

At the national level, one can identify major policy changes over the last decades in areas as important of the higher education as for rise of quality assessment and accreditation (Schvarc, Westerhijden: 2011) the transformation in the structure and models of founding and significant reforms in governance and management at the system and institutional levels (Meek *et al*, 2010; Neavy, 2009; Midlhaust and Texeira 2012: 2-3).

British Higher Education Reforms

The London Communicee of 2007 from the London Conference of the Education Ministers encouraged further the European common house, especially the conclusion as follows: building on the richness and diversity of European cultural heritage,

developing a European area of higher education on the principles of institutional autonomy, academic freedom, equal opportunities and democratic principles that will facilitate mobility, improve employment opportunities and strengthen Europe's attractiveness and competitiveness. Developed countries like England also make reforms, but they are of completely different nature where internal and self-assessment accountability of universities and their units is paramount. But, on the other hand, also they were some initiatives of initiated by the government. For example, the British Government introduced higher education reforme taking effect on the intake of new students for the academic year 2012-2013 with the aim of delivering a high-quality university sector for the UK. That is more responsive to the needs of students. So, how did universities prepare for the introduction of these reforms? Universities in UK carried out interviews with vice-chancellors to shed light on this question. A common theme that emerged was that institutions have become more acutely aware of the market conditions in which they operate. Many reported that they had reviewed what they have to offer their target market in order to better understand where they stand in relation to the competition.

Higher Education and social transition in the Western Balkans

The civilization in which we live and know the new generations schooling is becoming a vital issue not only for families, but also for communities and governments. In parts of Eastern Europe higher education reforms have intensified. Private capital is penetrating and despite weaknesses in education and new conditions of multiple bids, my guess is that it will give positive effects. School, and particularly higher education is strongly influenced by external factors that is happening in the global economy definitely will give its effects in schools, in preparing new generations for knowledge, society and new occupations. New challenges and research in the field of education in Macedonia, Serbia, Albania and Kosovo give us an overview of the restructuring of higher education with a continuous growth of the private offer which brings competition and increase quality in higher education. But, it also has stimulated many debates of experts, media and its students in all countries which have implemented the principles of Salzburg and Bologna process.

Educational systems of all countries of the Western Balkans have a basement and the same experience; they are created and structured as such in the Former Socialist Federation of Yugoslavia. A large number of teachers, textbooks, curricula have circulated to students or are still in circulation in new countries such as Serbia, Montenegro, Macedonia, Kosovo, Bosnia and Herzegovina, etc. Therefore their reform - initiatives have almost the same objectives - how to achieve common Europe educational space. According to Zgaga (Zgaga, Pavel, 2013: 15-18), reforms in the last two decades in the Western Balkans has been carried out in three waves:

1.The first wave of Reforms: The transition in the region changed the education laws and de ideologization of education;

2.The second wave of reforms: the Bologna Process. Here at all, states had to do with systematic changes that needed to be implemented despite the resistance and the starting and existing dilemmas. In some countries this process has been implemented and in some is still as an initiative. The largest number of states has already made it after 2000.

3. The third wave of reforms: "Political pressure". Since Bologna is implemented, the process of its institutionalization has been a challenge after 2005 and it is still today.

From Westerrn Balkan countries we have significant changes. My opinion is that Macedonia has diverted more money in the reform process in comparison with its neighbors. Government which is criticized from many has made the best in this direction. Kosovo has much work to do, starting from the Higher Education Law to scientific research in the academic sphere. Albania has a mass appeal involvement of adolescents in higher education, but on the other hand with the fall of quality. The government has now announced a fundamental reform of education. If we consider Serbia, we will see its priorities are almost similar to European countries. Moreover, the "improvement of the system of higher education in Serbia" deals with the institutionalization of Bologna goal and the main aim that the universities competing in an international plan. Through the project, young people in Serbia will have the opportunity to study in a more efficient higher education institutions which comply with the European quality standards. This will cause a better recognition of acquired qualification abroad. In the wider context, the project contributes to the improvement of the management and development of democracy in decision-making and governance of higher education institutions. Efforts have also been advanced in the area of greater social importance, such as the interconnection of higher education, research and innovation, respect for the principle of equal opportunities and life-long learning. On the other side we have strategic directions for the development of education in Bosnia and Hercegovina.

In 2009, the EU invested in the field of science and technology development 2% of itsGDP. In 2009, Bosnia and Herzegovina in the field of science and technology development, it invested a total of 0.08% of its GDP. Academics society requires to all public authorities to assume their responsibilities in financing of science and technology development in line with EU norms and within the next four years it reached (in the aggregate) 2% of GDP in the industry. In this sense, it is necessary to bring statutory laws of scientific research and research development activities at state, entity and cantonal levels; a law on the establishment of the fund (as legal persons) for scientific research and research and development activities at the state, entity and cantonal compliant with EU practice (Federal Ministry of Education and Science B&H, 2010); amendments to the law on Higher education in Macedonia.

In recent years, aiming the rise the quality and the standards for teaching and scientific-research work, a number of normative legal changes were accomplished. Changes deal with selection of teachers with scientific titles, scientific research, research ethics and organization of first and second cycle according to Bologna. Below, we will comment on the new changes that will take effect from 3 February 2015. These changes can be summarized in three key points:

1) a mentor can have up to 12 master candidates (MA);

2) the mentor should have published 6 papers in international scientific journals; or has published one paper in a scientific journal with impact factor and to be accredited by the Board of Accreditation;

3) mentors for master's theses must have published works in databases like EBSCO, Emerald, Scopus, or Thomson Reuters. The ninth amend (9) of the Law on Higher Education (15/2013) issued on January 25, 2013, particularly article 17 and 45.

The initiative of organizing studies of Cycle III studies in Macedonia is in its infancy. Access initiative is based on the fundamental principles of the Bologna Process

and the Law on Higher Education in Macedonia. This will be a continuation of two previous cycles and simultaneously increase the quality of higher education and building common European house of knowledge. But this job is not easy. It must meet many conditions. The first condition is that research centers work in order to achieve the main principle - what is new in the new system - to present research doctorates and independent work of the candidate. This work requires necessarily cooperation of more units, faculties, universities. The collaboration with university centers from EU and America, joint degrees, partnerships with the community and industry are also essential for the implementation of this initiative. Article 88 argues that "a professor can be a mentor to a maximum of three PhD students who are trained by them for scientific work" (U. no. 98/2011 of 3 April 2013, published in the "Official Gazette" no. 57/2013). In all cycles we have accreditation programs by the state Agency for Accreditation and Evaluation. But that was converted into a routine and working templets. Innovation is that the accredited programs of third cycle are accredited thanks to mentors who in their research areas must have certain number of published works in scientific conferences and reviewed scientific journals. These things, demands and conditions since 2011 are legal obligations.

Reforms and quality assurance

The Bologna process also tries to give life to the maximum pan-European educational space where students can take wide and transparent courses with high quality, accessible and procedures for obtaining relief on their knowledge. Liberalization of enrollment in Macedonia, especially in the study year 2010/2011 ruined previous criteria wiped of enrollment and balanced positions between public and private universities. The government did almost free registration at public universities, thus causing damage to private universities and causing competition. Macedonia became a member of the Bologna Process in 2003, whereas with the changes in the the higher education system started since 1999. In this regard, a Law on Higher Education and the reforms that followed forced the university to begin with the affirmation of lifelong learning, the implementation of ECTS, Bologna study programs, universities integrated using IT systems in three cycles, implementation of concept of learning outcomes, the implementation of the Diploma Supplement, joint degrees, student and teacher mobility, internal and external evaluation. (National Programme..., 2006: 250-262).

The Government of the Republic of Macedonia for a long time develops a pro-education media campaign under the slogan "knowledge is strength, knowledge is power". Marketing governor spoke about the university information, the web-learning, but the reality speaks that these towns were formally added with faculties, without a real academic staff, thus in many faculties exams are organized in commercial buildings, elementary schools, in "artisan homes" etc. Other changes occurred in the Law on Higher Education regarding the accreditation and evaluation, which created confusion in academic circles. University professors in Skopje took the initiative to go to protests on the streets to protect the autonomy and dignity of the profession of the university research worker. The idea of these changes in the law was to apply the so-called accepted European standards. These standards were implemented by the European Association for the Evaluation of Higher Education (ENQA-European Network for Quality Assurance) and others. This evaluation is done by committees

from certain areas by at least three professors from universities recognized internationally. In the current laws on Higher Education of 2000 and 2008, evaluation and accreditation have been as separated processes. There was an Accreditation Board and an Evaluation Agency. While Accreditation Board functioned in line permanently, evaluation Agency was working intermittently. With the new law of 11 February 2011, was formed a joint Board for Evaluation and Accreditation to establish a system of assessing the quality of higher education. This system provides:

1. assessment to high quality education, leadership, funding, and academic activities;
2. approval, certification, acceptance of academic institutions, their programs, their accreditation study;
3. self-evaluation and external evaluation.

According to the decree of the Government on norms and standards for the establishment and institutions operation of higher education (Official Gazette, no. 168 of 24.12.2010): in the existing institutions of higher education, the study programs that deliver third cycle studies / doctoral mentor must have: during the year 2010, at least two papers published in the peer reviewed international journals in the appropriate fields; during the last five years at least a participation in international meetings; from 1 January 2011, at least three papers published with peer-review in international scientific journals, relevant to the field during the last five years, at least two participations at international meetings, and from January 2012, 4 publications and 2 participations in international scientific meetings are required. From 2015 scientific publications in international journals with impact factor are required. Other changes have to do with the criteria for the realization of the third study cycle (Official Gazette of R.M., 2011). But if we refer to the following text, we will see that here in comparison with Macedonia, we have a big problem. While Europe maintains proper high autonomy for institutions of higher education, in Macedonia it fell short of what was in socialism, even the government policies narrow the education constantly. Government communicates with universities through inspection. Despite a general trend for increasing school autonomy in Europe, there are still significant differences between countries. While around a third of countries grant a high degree of autonomy to schools for managing financial and human resources, autonomy is more likely to be given to schools in some areas than in others.

The challenges of higher education and education as a massive process

Hannah Arendt and Francis Fukuyama call education basic of all inequalities in human society, where inequalities in education are the starting point of economic, political, cultural, emotional inequality, etc. There is no greater discrimination than discrimination for people in the field of education, says Fukuyama. This statement especially applies to those who have barriers to entry into the education system, but also to inequalities of all kinds: schools lack with space, poorly equipped, lack of framework, books and material assistance to weaknesses of any kind. The biggest, diversion that may be made to higher education in Macedonia, Albania and Kosovo with the large number of students is, whether majors produce diploma, if you give a diploma to students that do not deserve, knowledge assessment with low criteria. In the Balkans, the number of students who enroll each year in public and private universities in the past 10 years is growing. But also problematic today is scientific

research and unsuccessful reforms in this area important not only for higher education. but also for community development and industry. The following table can conclude that the number of research organizations is small only 59.

Table 1. Persons in paid employment in R&D and pedagogical work by type of employment and sector of performance, 2013

Item	**Number of research organi-zations**	**Total R&D personnel**	**Persons in paid employment for indefinite and definite period**		**External collaborators under work contract or fee**		**Persons in supplemental employment**	
			Total	women	total	women	total	Women
No	59	5 908	2 596	1 518	365	171	43	3
Researchers			1 686	896	235	111	43	3
Of these postgraduate researchers			161	99	-	-	-	-
Of these young researchers			133	71	24	10	-	-
Expert personnel			276	193	56	28	-	-
Technicians			335	221	23	15	-	-
Managers			22	11	-	-	-	-
Other			277	197	51	17	-	-
Business Sector	4	1602	112	87	2	1	-	-
Researchers			18	13	1	-	-	-
Expert personnel			68	56	1	1	-	-
Technicians			20	14	-	-	-	-
Managers			5	3	-	-	-	-
Other			1	1	-	-	-	-
Government	20	833	766	468	234	103	43	3
Government Sector			329	196	159	71	43	3
Researchers			31	25	24	10	-	-
Of these young researchers			86	47	31	17	-	-
Expert			145	85	13	9	-	-

personnel								
Technicians			17	8	-	-	-	-
Managers			189	132	31	6	-	-
Other	35	3 473	1 718	963	129	67	-	-
Higher Education Sector			1 339	687	75	40	-	-
Researchers			161	99	-	-	-	-
Of these postgraduat e researchers			102	46	-	-	-	-
Of these young researchers			122	90	24	10	-	-
Expert personnel			170	122	10	6	-	-
Technicians Other			87	64	20	11	-	-

Source: DZS, Publikacii/2.4

The reforms sociology and conditions

In the reforms period, in Skopje, at Goce Delchev Dormitory House, students are forced to live in conditions that would be unsuitable for even prison inmates. The buildings are covered in mold and filth. They are falling apart, but if the students want to receive an education they must go here. Sant Cirilius and Methodius University is even considered the first state school in the country, but the conditions at the Skopje dorms are so bad, the education doesn't even seem worth it. There is a large dormitory housing 1,200+ students every year. It is the biggest student dormitory in the country (Дневник број 2586, 2014). Another much debated problem for the last years is the expansion of faculties. New universities were opened, the existing ones expanded, with active campaign for education reform and educational process, there were provided conditions for convergence to target a quarter of the population of the Republic of Macedonia to gain higher education. In the period from 2008 to 2010, it is founded the "Goce Delcev" University, situated in Stip, and it is established a University for Information Science and Technology "St. Apostle Paul" with instruction in English and a combination of domestic and foreign professors (mostly from the U.S.). The University was established in Ohrid and its composition comprises five faculties: Faculty of Computer Science and Engineering, Faculty of Communication Networks and Security, Faculty of Machine Intelligence and Robotics, Faculty of Data Mining and Visualization, Faculty of Information Theory and Analysis. Tetovo University was also expanded in the last 5 years, with no standards for equipment and staff. And this happened at a time when the parent building in Tetovo does not have optimal

conditions for work over the last years. Expansion is done in universities and faculties in all state universities.

Conlusions

The discussion for education reforms become an important part of daily activities of scientist, politicians and university professors. The aim of reform is to deliver a high-quality university sector in order to respond to the needs of students. The Bologna Process has stimulated intensive reforms in universities in Eastern Europe. The number of faculty and students in the past 20 years in the Western Balkan countries is increasing. New research movements in higher education provide us data on the constant rise of the private offer. The question is how this reforms to positively influence, in one way or the other, the overall educational life in Macedonia. Higher education institutions are expected to strengthen in order to become more competitive in the global market of higher education. The reforms in the higher education field is important to be accomplished in cooperation with: universities, government and stakeholders.

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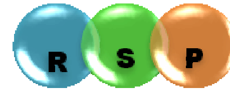

Europeanization Theories Revisited through Historical Institutionalism. EU as a Public Policy Role Model for Post-Communist South-Eastern Europe in the Field of Security

Cătălina Maria Georgescu[*]

Abstract

From the perspective of studies on the public policies dynamics in the European integration context, the analysis of *Europeanization* postulates the transfer of practices among the supranational, national, regional and local levels. This transfer supports two meanings: (1) the conceptualization of *Europeanization* as an explanation for the changes occurring at supranational, national, regional and local levels opting for a *top-down* approach of this phenomenon, with some authors even placing the concept at the level of supranational institutions created to promote integration; (2) the approach of *Europeanization* from governance theories perspectives, some authors even adopting an institutionalist and functionalist perspective arguing that *Europeanization* could be diffused beyond supranational institutions, in a *top-down, bottom-up* manner and even *horizontally,* including other security regimes, institutions and processes in the conceptualization of the term. Thus, the research built on *Europeanization* theories is meant as a study on the process of formally establishing security capacities for countries in a certain regional area. Undergone innovatively, the study offers a new working hypothesis for validation which renders historical conditionalities and *Europeanization* process of local institutions, state structure and local identities as independent variables for the analytical process on the evolution of security policies placed in the wider context of European integration. The research is thus configured to correlate the national and European formally set security framework and the *Europeanization* of national and local formal structures.

Keywords: Europeanization, process, structure, European integration, security, public policy

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Introduction

During a period marked by regime changes, conflictual events, internationalisation and/or globalisation, South-Eastern European countries and regions witnessed asymmetrical evolutions. The study is channelled on the most recent challenges discovered within the studies on European integration. These challenges include, but are not limited to, the transformations triggered by the Europeanization phenomenon at local, regional and national levels, since, from a historical point of view, after the fall of Communism, the process of administrative reform in most of the former communist states has been coordinated in order to dig in the assumed purposes of transition towards democracy and the "consolidation of institutional structures" which became indicative of the harmonization of national legislation and the establishment of institutional structures envisaged by the accession requirements to the European Union (Georgescu, 2009: 106-112).

These transformations were unleashed in order to fulfil the political criterion based on which the state progress is assessed. From a historical point of view, during the post-Communist period, the process of administrative reform in most former Communist countries was coordinated to serve the purposes of transition towards democracy and of "consolidating institutional structures" which was correlated to the harmonization of legislation and the development of institutional structures compatible to the demands for the accession to Community structures, considered part of the political criteria on which the state progress is assessed. Appreciating the existence of this conditionality on the evolution of public administration, the research follows the specific procedures of the accession process: the Accession Partnerships, for which the general framework is regulated at Community level, national programs for implementing EU legislation that candidate countries must observe, and the Plans of Institutional Establishment which settle the measures to be adopted in relation to public administration.

Establishing the study of the historical evolution of South-Eastern Europe public administrations on the criterion of consolidating the administrative capacity as a pre-condition for European integration is grounded on the argument that the European Union functions on the foundations of Member States' public administrations capacity to incorporate into national legislation the *acquis communautaire* thus reaching after European standards and implementing public policies (OECD, 1999: 14-20) as regulated through subsidiarity principle and in such manner as to achieve the goals established by the Union.

From the optics of studies on the dynamics of public policy-making within the context of European integration, the analysis of Europeanization (which postulates the transfer of practices among the supranational, national, regional and local levels) entails two meanings: (a) conceptualising the Europeanization phenomenon as an explanation for the changes occured at supranational, national, regional and local levels by opting for a "top-down" approach (Helen Wallace and William Wallace, 2000; Y. Meny, P. Muller and J-L Quermonne, 1996; K.H. Goetz and S. Hix, 2005). Wallace and Wallace (2000) even place the concept at the level of supranational institutions created to promote integration; for some Europeanization becomes equivalent to public policy standardisation **(**Damir Grubiša, 2009**)**; (b) approaching Europeanization through governance mechanisms (Ian Bache, 2008; Maria Green Cowles, James Caporaso and Thomas Risse, 2001; Vivien A. Schmidt, 2002). Maria Green Cowles, James Caporaso

and Thomas Risse (2001) and Vivien A. Schmidt (2002) adopted an institutionalist and functionalist perspective arguing that Europeanization can occur beyond supranational institutions, by also comprising other regimes, institutions and processes in the conceptualisation of the term, arguing that *Europeanization* could be diffused beyond supranational institutions, in a *top-down, bottom-up* manner and even *horizontally,* including other security regimes, institutions and processes in the conceptualisation of the term (Guderjan, 2012: 105-128). Thus, the research built on *Europeanization* theories is meant as a study on the process of developing EU-like security capacities for countries in a certain regional area. Vivien A. Schmidt (2002) even proposes a re-definition of the term in order to include the field of adaptation and convergence of law systems, others refer only to the observance of EU norms by national governments (Miniotaite, 2011). Starting from the interpretation of the role of local governance and the extension of the sphere of the subsidiarity principle over the local level (TEU and TFEU) one thus appreciates the need to analyse the impact of European integration on the evolution of public organizations within South-Eastern Europe.

Undergone innovatively, the study aims at analysing the process of local administrative capacity building for South-Eastern European countries, by offering a new working hypothesis for validation which renders historical conditionalities and *Europeanization* process of national institutions, state structure and local identities as independent variables for the analytical process on the evolution of security policies placed in the wider context of European integration. The research is thus configured to correlate the national and European security policies to the *Europeanization* of national and local formal and informal structures.

Within the historical analytical framework of European integration, the Europeanization theory offers a justification for the vertical and/or horizontal processes of uploading or downloading practices, policies and innovative ideas among supranational, national, regional and local levels.

The influences of the European structures exerted towards Candidate Countries and Potentially Candidate Countries are obvious in the framework of imposing the political criteria of eligibility established within the European Council of Copenhagen (1993) which openly state the obligation of Candidate Countries to establish "stable institutions guaranteeing democracy, the rule of law and minorities' protection". In the same account, the European Council of Madrid (1995) was rather interested in announcing Central and Eastern European Countries on the condition of "adjusting their administrative structures". It thus becomes obvious for national authorities the necessity to behave in the decision-making process within the administrative realm as regulated through the *subsidiarity* principle. However, the EU conditions the national governments' actions by imposing what was styled "performance requests" or "outcomes obligations" by Jacques Fournier in his original study entitled „Governance and European Integration – Reliable Public Administration" (in Preparing Public Administrations for the European Administrative Space, pp. 120-121). Apreciating the existence of this conditionality over the evolution of public admnistration, the research also follows the procedures specific to the accession process: Accession Partnerships, for which the general framework is regulated at Community level; national programs for implementing EU legislation that Candidate Countries are forced to follow; and Plans for Institutional Establishment which decide the measures that must be undertaken in the public administrative field. Any research should thus analyse diachronically the consequences of the European integration (appreciated as a historical

process of consolidating "peace, stability and prosperity" within the European space) on the decision-making and implementation of public policies within South-Eastern European countries (selected according to three dimensions: the case of European Union Member States, the case of Candidate Countries and the case of potentially Candidate Countries) starting from the impact of historical events within the respective geographical area and within the state itself and the historical evolution of the European establishment. The research would show its strength on the transformations in the public sphere by re-orienting the analytical perspective on institutional change using the support of contingency theory and offering for validation the research hypothesis which grants the value of independent variable to historical events, state structure and the process of European integration, but also to local identities. The study would thus impose the correlation of interpreting the impact of historical facts and specificities of South-Eastern Europe (culture, mentality, identity, history), but also a theoretical specialization which assumes the use of key-concepts from the field of political sciences and public organizations. This correlation of the different conditionalities would render relevance to the research scientific content.

***Europeanization* in a policy cycle analysis. The case of security policies**

Beyond the scope of defining the *Europeanization* phenomenon, this section aims at discussing Europeanization and security through the policy cycle approach which assumes several peculiar stages in policy-making: "agenda-setting, policy-formulation, decision, implementation, policy evaluation, policy termination" (Saurugger & Radaelli, 2008; Harguindeguy, 2009: 66-69). (Saurugger & Radaelli, 2008) in their introductory note to the special issue of the *Journal of Comparative Policy Analysis: Research and Practice,* Sabine Saurugger and Claudio M. Radaelli (2008) discuss Europeanization in the key of policy cycle analysis.

Beyond the "top-down", "bottom-up" and "horizontal" processes of transformation according to the role-model represented by the European Union (Guderjan, 2012), Europeanization was also characterised in terms of institutionalization, in this sense, national policy-making borrows from the European agenda-setting and policy-making (Păun, Păun, Ciceo & Albu-Comănescu, 2005: 98). Europeanization in this new meaning becomes synonymous with the institutionalization of the intergovernmental, inter- and intra-institutional forms of interdependence. This form of inter-conditionality between the national and the European levels is thus perceived in the literature in a positive manner, as a guarantee for the fulfilment of the integration process (Păun et al., 2005: 98). Consequently, the European integration process with the implicit conditionality of the Copenhagen criteria of democratization (1993) renders the legitimacy of domestic actions (Börzel, 2011). Another interesting point in this respect is the distinction made between "*Communitization*" and "*Europeanization*", in this sense *Communitization* is invested with the meaning of transferring the possession over the final authority in decision-making (transfer of sovereignty), while *Europeanization* is attached specifically in the framework of common foreign and security policies, justice, welfare and employment policies (Păun et al., 2005: 98-99). In this case, the national level becomes seriously involved in the European policy-making, the process of *Europeanization* being thus acknowledged both in a "top-down" and "bottom-up" approach.

According to Radaelli's definition of Europeanization, EU's *influences* exceed the stage of *implementing* supranational laws at national level and policy-making, reaching the realm of ideas, discourse and even identities. This is why we consider necessary a foray into the discursive practices as regards national security. Moreover, as some authors have argued, the European level represents a ground where national and European political elites "socialise" (Denca, 2008: 1-38; Saurugger, 2009: 935-949), national representatives being thus brought in the political and ideational climate which renders European discourse and policy-making coherence.

However, there are some issues in EU policy-making considered in a new interpretation of the power-politics frame which represent more than *stimuli* for domestic policy-making. It is what students in Europeanization have coined "negative integration", arguing that European courts ruling is a strong mode of policy-making, rather inducing a sense of "uncertainty" for domestic actors than normative policy-making (Schmidt, 2008: 299-308). View through the policy-cycle framework, policy-making at European level is the source of different constraints for national governments, perceived differently according to the degree of lobbying and preparation each policy presupposes. Consequently, the source of convergence is not necessarily the imposition of norms from the top, but rather the permeability of European ideas and practices at domestic level. As some authors argued, in some areas of policy the Open Method of Coordination (OMC) as a new type of governance produces the optimal results through learning and socialization (Radaelli, 2008: 239-254). National institutions are thus able to adapt to the European framework, while national actors do not perceive EU policy as constraining, but rather "learn" through policy-making and the European rhetoric.

Applying the historical institutionalism and discursive logic to the study of policy-making Europeanization

The theoretical framework of the analysis is articulated through the use of historical institutionalism and political discourse analysis methodology, agenda-setting model and contingency theory. Historical institutionalism instruments the research on the reform process by institutional analysis. The advantage of using the (new) historical institutionalism is the dynamics it borrows to the analytical process, since: (1) it evolves beyond a classical cross-institutional analysis; (2) it instruments the conditionality of already existing public policies and institutions (conceptualised through the path-dependency formula). Also, the agenda-setting model – the original terms agenda-setting and agenda-building are preferred to others by theoreticians such as Philippe Garraud (in L. Boussaguet et al., 2009, p. 55) due to its more encompassing meaning – and the contingency theory which values the strategic assessment of a future course of action based on the conditionality of the different historical and political contexts by which one could trace a profile of the relations among public policy-making and European integration in different states and establish a profile of the evolution of the institutional structures consolidation process in each state. At this level, the research based on historical institutionalism starting from innovative theories such as Europeanization, agenda-setting, contingence and path-dependence would contribute to the establishment of a new model of research of the relations between national policy-making and European integration. The approach would thus follow the most recent tendencies regarding research methodology through the interdisciplinary dialogue

between history and political sciences and through a rigorous vision of identifying the most relevant correlations in policy-making.

Political discourse analysis renders a more ideational-driven mode of analysis, the European and domestic rhetorics being taken into account for the effects it produces in policy-making. By this we encompass the institutional rhetorics along with actors' ideas in order to de-construct the process of legitimacy-building at domestic level which often accompanies institutional change and/or adaptation.

J. P. Olsen (2002) attaches five meanings to the term *Europeanization* by focussing on the formal institutional architecture of the European governance. By this the author is interested in studying institutional change through two dimensions: "political organization" interpreted through "organizational and financial capacity" and changes in the flow of ideas. Through this interpretation the author acknowledges that Europeanization is not limited to the EU and its Member States (Olsen, 2002), also encompassing third countries more or less geographically situated in the European Neighbourhood region.

The relationship between national and European identity and foreign policy (Hansen, 2006) is seldom described in the national security strategy. Often, in order to test the conceptual framework of the national security policy, researchers analyse a country's foreign policy at the discursive level. We have to note at this level that national security policy as a field within public policies (Zulean, 2006a: 38-45) is formulated by the country's political elite and the bureaucracy (Zulean, 2006b: 49). Hence, in this key we have to read the following paragraphs from the National Security Strategy (2005; 2007): "The security interests and goals of the European states […] do not generate conflicting states, with the security environment being positively influenced by the European and Euro-Atlantic integration processes, by the extension of the community of states sharing and promoting the values of democracy and market economy, and by deepening regional cooperation" (Ministry of National Defense of Romania, 2005). National security and public order were interests of national apprehension until 1989 and still are almost 25 years after (Gherghe, 2012: 401-407): "Romania's integration in NATO and EU triggers substantial changes in its status and strategic identity. From this viewpoint, the dynamics of the development of Romania's European and Euro-Atlantic identity, as well as that pertaining to the shaping of a profile matching its geo-strategic potential, will be structurally re-designed and promoted at a high pace. Membership involves the gradual configuration of a specific and active role for Romania within the two organizations and providing the necessary resources to fulfill it" (Ministry of National Defense of Romania, 2007).

Equally interesting is the disposition of states seeking EU membership to support and sometimes even embrace regional values and/or identities. The Ministry of Defense of the State Union of Serbia and Montenegro has issued a political document entitled White Paper on Defense of the State Union of Serbia and Montenegro which reads: "the international position of Serbia and Montenegro is strongly influenced by the general trends in the region and in European and world politics. A pro-European political orientation and the democratic reforms of social life in the member states of Serbia and Montenegro, as well as the positive changes in their relations with important international subjects, in particular states from the Euro-Atlantic area, contribute to the strengthening of the security position of Serbia and Montenegro. The striving of all the countries of this region to achieve the same civilisational values and integrations reduces the possibility of a direct threat to or aggression against Serbia and Montenegro

(…) In keeping with this orientation, a new security policy is being developed, on the basis of which Serbia and Montenegro is becoming an active factor of regional security cooperation and an equal, dependable partner in international relations" (Ministry of Defense of the State Union of Serbia and Montenegro). This drive towards the European and regional manifest values can be moreover interpreted through political discourse analysis, in this spirit, the National Security Strategy clearly "confirms the commitment of Montenegro to undertake all necessary activities so as to meet the conditions for its integration into the European, Euro-Atlantic and other international security structures. In that context, the strategic goal of Montenegro is to become a fully fledged NATO and EU member as soon as possible. (…) The Strategy represents the basis for an essential reform of the national security sector, as well as for normative adaptation and further development of the national security system" (National Security Strategy, 2008).

In the same geopolitical context, with the time frame set for 2020, the National Security Strategy of the Republic of Bulgaria states the state institutions readiness for re-structuring according to the objectives and priorities set forth: "[a]djustment to the changing security context calls for the reprioritization of security policies, the involvement of the society's whole institutional potential and the application of new forms of interaction between the State, the businesses and the non-governmental sectors, as for instance private-public partnerships. The expansion of the security policy social range faces the horizontal and vertical institutional coordination of the "chain of command" management with new challenges. Institutions and their structural units must act as integrated components of the national security system" (National Security Strategy of the Republic of Bulgaria, 2011). Again stating the success of the cooperation efforts and the domestic drive towards integration into European and Euro-Atlantic structures, the political institutional rhetoric of the Macedonian Ministry of Defence merges the trend of the political discourse in the whole South-Eastern European region, arguing for the state's driving forces towards integration: "The contribution of the Republic of Macedonia to international operations represents a concrete confirmation of the successes achieved in the defence reform and the firm strategic commitments of the country for NATO and EU membership" (Ministry of Defence of the Republic of Macedonia, 2012).

At this level of the discursive analysis, foreign and security policies appear to be converging towards the same ideals. However, how much is there pursuit of national goals, and how much is European constraint? Or both? Some students argue that convergence is just the tip of the iceberg, since Europe witnesses not one single security identity, but as many security identities as domestic interests/actors (Burgess, 2009).

Correlating Europeanization and Security within the European Multi-Level Conditionality and Socialization Frameworks

Europeanization phenomenon was explained through several institutionalist approaches: historical, sociological, rational, even discursive institutionalism. According to some students of Europeanization, it represents a force that, on the one hand, "empowers" national governments through conditionality mechanisms, and, on the other hand, renders domestic change legitimacy (Börzel, 2011: 394-413), at the same time, it triggers "institutional adaptation" (Denca, 2009).

Theofanis Exadaktylos and Claudio M. Radaelli (2012) are the editors of a study whose main aim is at putting together serious contributions on establishing causality-based relations between Europeanization and national policy-making, focusing on what they themselves have styled the "third wave" of Europeanization research which goes beyond the classical approaches and embrace temporality and causality through a top-down approach on Europeanization. Equally interesting is the researchers' attention on domestic institutional change, the power of discourse and flow of ideas in shaping national policy-making. Their interest is also manifest at the level of political party system and civil society, discourse and local identities (Exadaktylos & Radaelli, 2012: xiii). Adaptation and resistance to Europeanization are also discussed throughout the book, with researchers interested to validate hypotheses which place international security regimes or regional arrangements as explanatory variables for causality relations between the supranational and domestic levels. Hence a model of "process tracing Europeanization in foreign policy" (Exadaktylos, 2012) was established in order to determine causality in a diachronic perspective between different opportunities and/or conditionalities at European level and foreign policy-making within the enlargement framework. The study introduces into the time frame different constraints coming from the supranational level in order to determine a causal relationship with responses triggered at domestic level: directives and recommendations, Commission reports, institutional twinning, constraints arising from the budgetary exercise, Treaty reform, EU Agreements and Accession Partnerships (Exadaktylos, 2012: 203).

Sorin Denca (2009) analyses the Europeanization of national foreign policy-making through an institutionalist view within the European socialization framework in a top-down perspective. The institutionalism logic allows the identification of cross-national convergence or divergence and the import of institutional arrangements by national governments in the process of European integration, which was also styled "institutional adaptation" (Denca, 2009: 390; Popescu, 2010: 50-65).

Some researches brought together the process-tracing technique and the top-down and bottom-up approaches in order to detect and establish causality between European and domestic levels. Carlos Mendez, Fiona Wishlade and Douglas Yuill (2008) have sought to apply statistical analysis methodology to the relations between the supranational and national levels in order to predict state's responses to European intervention. So far, the authors have refrained themselves to impose a predictive model of policy outcomes and states' responses based solely on quantitative research, but made appeal to qualitative interpretations of national feedbacks to European stimuli (Mendez, Wishlade & Yuill, 2008: 279-298).

Consequently, relevant for this for this time-frame of foreign policy is the institutional evolution of Romanian central authorities with the creation of the Ministry for European Integration (December 2000), its abrogation on April 4th, 2007 and the passing under the subordination of the prime-minister of the Department of European Affairs (2007-2011), which later turned into the Ministry of European Affairs (September 2011). The Romanian case is characterised by some as missing short as regards the length of the foreign policy Europeanization period (Popescu, 2010: 50-65) and as regards the changes in the institutional structure of central public administration responsible with integration (Denca, 2009). Also relevant is Romania's participating in the War in Kosovo, and also Romania's participating in the War in Iraq and in Afghanistan. The literature also follows a sociological institutionalism approach by considering the influence of elite socialization in the study on Europeanization of

Romanian foreign policy and the pressures to fit the EU's requirements on the Common Foreign and Security Policy (Popescu, 2010). In this account we have to add other exercises in the same regional context, such as Kosovo government and European Commission Stabilisation and Association Process Dialogue or the creation of the Kosovo Ministry of European Integration and Kosovo's participation in the European Partnership (2004); the creation of the Albanian Ministry of European Integration responsible of the European integration process of Albania, the New European Neighbourhood Initiative Programmes 2004-2006, EU Structural Funds Accession and Implementation, Cross Border Cooperation Programs etc.; the creation of the Directorate for European Integration of Bosnia and Herzegovina responsible, among others, with the coordination of EU Assistance Programs; the creation of the Bulgarian Ministry of Regional Development following Bulgaria's accession to the EU, with its Directorate General on Territorial Cooperation Management responsible of cross-border and regional cooperation; the creation of the Croatian Ministry of European Integration in charge with the process of EU accession, its dissolution and establishment of a joint Ministry of Foreign Affairs and European Integration, later re-structured to form the present Croatian Ministry of Regional Development and EU Funds; the establishment of the Serbian EU Integration Office within the Government of the Republic of Serbia.

In this line of thought, domestic efforts towards European accession and/or integration become implicit feedbacks of the EU's forces of *Europeanization.* This is clearly case of *Europeanization* beyond the borders of the Union, facilitated, on the one hand, by the government's willingness to reform, to introduce changes favouring democratization, and on the other hand, by the capitalization of EU-based legitimacy through the rhetoric of "returning to Europe". Accepting and/or promoting institutional change in this fashion is not only results-oriented, but also based on an identity discourse. However, students in this sector of research cannot wonder whether one can analytically impose a clear correlation between a country's democratization process and *Europeanization* (Djordjevic, 2008: 77-93), in other words, how much EU-led *Europeanization* is operational in Member States, Candidate Countries or other non-member states, and how much domestically-enhanced willingness is there?

Moreover, by de-constructing states' foreign and security policy in the light of *Europeanization* studies, it is interesting to note the differences identified as regards the optics before and after the UE accession, with the rhetorics oriented towards justifying or even legitimising unpopular policies through European conditionality before the accession and registering a top-down permeability of European practice and ideas, and the change in the course of action following the accession with the pursuit of an adhesional bottom-up drive towards the imposition of domestic issues on the European agenda (Miniotaite, 2011: 101-n/a). In this context *Europeanization* can be de-constructed as mere observance of European norms and behaviour and adhesion to the European identity (Miniotaite, 2011).

Bruno Coppieters, Michael Emerson, Michel Huysseuue, Tamara Kovziridze, Gergana Noutcheva, Nathalie Tocci and Marius Vahl (2004) are the co-authors of a generous study on moulding a new framework for studying the interdependence between Europeanization and conflict resolution. In this approach the authors link conflict resolution and peace settlement mechanisms to the European multi-level conditionality and socialization frameworks when suggesting that there is a strong influence regarding the final outcomes of the conflict situation. The authors are

interested in the situation of conflict resolution beyond the Union borders in a three-tier governance framework where the third tier is the supranational EU level who acts as a mediator in the field of international relations. According to this situation Europeanization is analysed as an independent variable with asymmetric influence over three aspects: the national institutional framework, the national public policy-making and the national social mutations in the field of legislatures and party systems, civil society, identity and ideas (Coppieters *et al.*, 2004: 23). In this analysis the authors make a necessary distinction between the EU involvement and actions on a "carrots and sticks" basis on the one hand, and on the other hand, the EU's constitutional dimension serving as a political role model for all national states interested in joining its structures (Coppieters *et al.*, 2004: 24).

Although arguing for the introduction of other supranational or international actors into the analytical pool, the authors show their interest in defining the EU as a framework for conflict settlement accounting for the following arguments: European multiculturalism, the institutionalisation of free movement, European cohesion policy and drive towards borders „re-design" through the creation of trans-border regions (Coppieters *et al.*, 2004: 25-26). As such, European integration represents a vector of security within the framework of the geopolitics of religion and European multiculturalism, institutionalising a sliding operating scenario between state sovereignty and religious and cultural freedom (Olimid, 2011, 169-179). Related to this scenario, some scholars even invite readers to a foray into EU's real intentions as regards its (future) Eastern enlargement by considering EU's envolvement into the Europeanization of the European Neighbourhood Countries and its reserve to push forward the relations with the Western Balkans and Turkey, also having in view the differences in the incentives for change brought by the EU for Central and Eastern European Countries as against EU15 (Börzel, 2011: 394-413).

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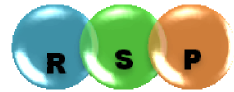

ORIGINAL PAPER

Reconfiguring the international system. The 1989 events and the fall of an ideology

Ionuț Şerban*

Abstract
In 1989 a system collapsed, and with it, a world full of illusions and hopes built on an artificial ideology. There were crashed institutions that seemed frozen in time, mentalities have changed structures and economic relations joined by thousands of threads that gave the impression that they are eternal demolished like a sand castle, human relations were discarded from the coat of constraints of all kinds, the family became again free to make their own projects.
In 1989 there was a process the reshaped the international system. It was then when a world came to life!
The concept of welfare state exhausted the credibility resources, and so it was opened another model of competition between individual entities or communities that engaged value above which until then were other masters.

Keywords: international system, communism, the 1989 revolution

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The Revolutionary year 1989 has swept across Europe, from the fall of the Berlin Wall in the GDR, extending to Czechoslovakia, Bulgaria, Poland, and Hungary, where the communists were removed from power by relatively peaceful events.

The international context was favorable to the revolutionary movements after the collapse of the "Berlin Wall" in November 1989 and the U.S. and U.R.S.S. leaders meeting in Malta, George Bush and Mikhail Gorbachev (Scurtu, 2009: 36-37).

The fall of communism in Poland, Czechoslovakia, Hungary and Bulgaria, generally by "palace revolutions" was followed by a popular movement in Romania, with a touch of violence, between 16 and 25 December 1989 that historiography calls "The 1989 Revolution in Romanian".

Romania will experience the bloodiest end of the communist regime, because Nicolae Ceausescu surrounded himself by a state apparatus, whose representatives did not have the courage to say anything against him.

Much has been written about the fundamental and radical changes that took place in former European socialist countries at the turn of the penultimate and the last decade of the past century. The social and political regime in these countries, which survived almost half a century, collapsed and their place was taken by democratic political systems based on free political competition, market economy, compliance values and human rights condition.

A System collapsed, and with it, a world full of illusions and hopes built on an artificial ideology. There were crashed institutions that seemed frozen in time, mentalities have changed (no matter how outraged we show towards their pace), structures and economic relations joined by thousands of threads that gave the impression that they are eternal demolished like a sand castle, human relations were discarded from the coat of constraints of all kinds, the family became again free to make their own projects. From end to end, central and eastern Europe registered events and facts of great depth in an accelerated dynamic as specialists, once used to seek explanations for boring events, repeatable from year to year, even predictable, after 1989, felt their ability to interpret and explain overwhelmed.

No one can hide the fact that in 1989 a world came to life! The concept of welfare state exhausted the credibility resources, and so it was opened another model of competition between individual entities or communities that engaged value above which until then were other masters.

Tailored on precarious concepts, having as fundaments common property of goods, using a rigid and centralized planning tool, the economy of Central and Eastern Europe collapsed at its turn, and within a few years, became a pile of scrap, the national market and the COMECON market did not work, the crisis became pervasive, inflation reached three figures, accumulations, no matter how many were quickly dissipated.

Having consolidated democratic systems, excessive flexibility and able to absorb, without explosive tensions, the economic, social or other disturbances, the West enjoyed the historic victory in dealing with a model that it spurned, but the end of this confrontation seemed unbelievable, incredibly fast. At the height of the crisis of the socialist system (1985-1989), at least economically, the situation of the West was also not at its best. The production stagnated, the major transnational trusts were seeking new markets for their production feverish stock, upgrading technology spending's could not be funded any more, government wage and social policies in general, could not be sustained no more. There was not foreseeing of a fast way out of the deadlock, although it is known that free market mechanisms are, ultimately, finding solutions to

overcome it. Therefore collapsing markets in socialist countries has meant a massive shift of Western trade with different products to Central and Eastern Europe, which allowed the resumption of production in the West, modernizing them and perspectives on the removal of the crisis. This phenomenon mentioned that lasted years, it is worth explaining much broader, what the present approach is proposing.

A first such approach to the historiography of the given events belongs to RJ Crampton who talks about how the Communist inspired propaganda was compromised highlighting how the welfare secured by the Communist regime to the working class, the working people, the social insurance systems, health facilities and generous eastern the forceful ensuring in any conditions of a stable job etc., offered Western governments an unexpected advantage in negotiations with the unions in their countries about to radicalize in 1989 and which often were pointing eastward saying how it is possible there. The collapse of the East and the real plight of the communist worker provided disbarment to Western union leaders in discussions with employers and government officials accepting finally that being unemployed as a Western worker is much better than the being a Eastern one (Crampton, 2002: 32-35).

Virtually almost all approaches related to the changes of regime and the political system in 1989 are related to the gesture, decision and the attitude of the new Kremlin leader, Michael Gorbachev, installed as Secretary General of the CPSU in 1985 after the death of Konstantin Chernenko. It is undeniable that without glasnost and perestroika any emancipation attempt from under Moscow's tutelage of East European socialist countries was inconceivable. Eduard Schevarnadze, the former Soviet foreign minister, said that the new thinking (Novoie mislenie) established clearly the impossibility to act in the new condition with old methods. It was impossible to sacrifice their own conceptions about peoples' right to free choice and of non-involvement to the common European house – he stated, trying to make this concept understandable – that by the very development of the events, the idea of the European house came into policy practice. The origin of the concept of the European common house belonged to Charles de Gaulle and was promoted insistent by Gorbachev later (Lache, 2007: 48-54).

Mikhail Gorbachev in his Memoirs, talks about his meeting in Malta (2 to 3 December 1989) with George Bush, where they discussed the imminent collapse of socialist-totalitarian regimes. Bush considered him then, Gorbachev added, indeed a catalyst for change in Eastern Europe that he appreciated as constructive. I have to say - as Bush said - I was amazed at the speed of transformation (Gorbachev, 2004: 82-89).

Essential for the running of the radical changes in the ex USSR satellite countries was Gorbachev's decision, communicated to his U.S. counterpart: “The basic principle adopted by us, which led us to the new thinking, is the right of each country to free choice, including the right of rethinking its initial option and change it”. One would think that it couldn’t be clearer than that! And yet, to eliminate any interpretation, Gorbachev says: “is painful (probably for the USSR) but is an essential right. The right to choose without interference from outside... other people has to decide which God to worship, if I can afford this metaphor” (Gorbachev, 2004: 82-89).

At the same meeting Gorbachev pleaded before the U.S. President in the behalf of the concept of the common European house, so the processes could take place simultaneously in the East and to converge with the West and not generate a new European division. The Kremlin leader did not politically survived his project.

The fall of the socialist - totalitarian regimes in eastern Europe countries and the Soviet Union has surprised everyone. Policy makers in the major countries of Europe felt that the Soviet Union would weaken the influence, its power will decrease, but this may be temporary. Western politicians and analysts were generally hoping in the disintegration of the USSR rather than predicted it.

We do not find the concept of revolution in the language of the originators that triggered the process that started in the European space at the end of the ninth decade of the past century. Concepts conveyed that stood out even in the West had the sense of reform. By glasnost (transparency) and perestroika (restructuring) Gorbachev wanted a reformed socialist system but the results were contrary. Albert Jourcin, relates how Alexander Zinoviev wondered rhetorically... it is a perestroika or katastroika? Anyway Albert Jourcin appreciated that in the change context that took place in Moscow, East European '90s looks more like the 1914 than Eastern Europe during the Cold War (Jourcin et all, 2006: 205-207).

There are many historians who made appreciation of Presidents Gorbachev role in the collapse of the socialist totalitarian regimes (mostly called communist) in Eastern European countries. Gorbachev - write A Jourcin - quickly learned political marketing techniques - has been credited in the West most often for these disorders. An unanswered question remains: what reasons led him, the Soviet number one, to accept, even spur the reform wave: Gorbachev unable us to keep it under control, Gorbachev secret follower of democracy, Leninist Gorbachev tied to the respite thesis? Shevardnadze explained how far Gorbachev wanted to go with these freedoms to his brethren: these events occur because people want them, but these states do not cease to be for us socialist allies and friends. Basically, as Jourcin appreciate, Gorbachev did not have a clear project for Eastern European countries other then to promote Russian reforms there and change the leadership. Alain Besancon appreciated that Gorbachev was ready to give many things to Eastern Europe, to indulge a political and economic system widespread in Western Europe.

No doubt, the concept of management of Gorbachev's new policy was different from that of its predecessors both in internal and in the way he understood the means by which Soviet law was to exercise hegemonic responsibilities in the area of its influence. The Western perception about the role of Moscow in a dedicated and recognized as belonging exclusively to it area remained unchanged. In decades of coexistence between Moscow and the brotherly countries capitals were build strong institutional and personal relationships, that it was quite simple and easy that a decision, an option of the Kremlin leader to be applied everywhere. Any attempts of emancipation from under Soviet hegemony, found all over this area in the 1948-1965 period of the last century were quick and brutal (even bloody) suppressed, and communist trader rulers were replaced with docile, trustworthy ones. Thereafter, until 1989, Moscow managed to control brotherly countries regimes, focusing on human resources policies, doubling the gentle sight control with active and professional intelligence network. To this general picture, there were clear a few features for events in each state depending the state and period. Jean -Marie Le Breton, a political analyst rather than history is among the few western people who managed to deepen the content and significance of processes going beyond the Iron Curtain. He benefited and had the privilege to have been successively ambassador to several Central and Eastern European countries, so that he knew direct and immediate interpreted events that have escaped other Western authors.

He uses, for Romania, the notion of establishing Romanian independent lines, which would have produced in the last years of Gheorghiu- Dej (Le Breton, 1996: 88-91).

Alexandru Osca and Vasile Alexandru Popa, speaking about the important political moment that took place in April 1964 when in an enlarged plenary, the Bucharest leadership adopted a statement (called by many improperly, obviously independence) using the pretext of the Soviet-Chinese polemic, a political document that stated that Bucharest will not accept to align Moscow's policy. This gesture may well remain without consequences (Gheorghiu-Dej was removed from his command but died suddenly and suspiciously a year later), and Moscow - now with inflexible Brezhnev at the helm - to re-impose authority. It happened, however, that the replacement of Dej, Ceausescu, continued, in this regard, the policy of his predecessor (in 1968, under street pressure, he publicly condemned the invasion troops of the Warsaw Pact countries, except Romania, in Czechoslovakia, and managed to get support and encouragement from the Western Democracies). The Romanian dictator conjured its loyal people, held them under extreme supervisory to keep them away from Soviet influence so that Gorbachev did not have at hand any credible alternative leadership in Bucharest, among activists in office in the tip power in 1989.

Mikhail Gorbachev’s gesture to apprehend Dascalescu in an embrace for a few minutes, in front of Ceausescu to which he separated by a cold handshake (December 5, 1989), horrified the Romanian Prime Minister scared that will be made by the dreaded index by his the suspicious boss (Osca & Popa, 1996: 28-31).

However, the General Constantin Olteanu denied this information in an interview to Lavinia Lavinia for the " National Journal " of December 4, 2009. In the same interview, Constantin Olteanu, at that time secretary of the CC of RCP in charge of International Relations, said that Gorbachev criticized the situation in Romania; Olteanu was personally convinced that the Ceausescu regime will fall.

In 1974, Ceausescu was elected President of the Socialist Republic of Romania, imposing a neo - Stalinist regime orientation. He concentered levers of power in his hands and a group of people that surrounded him, excluding and marginalizing the members of Gheorghiu Dej’s team and scaring off those who expressed their opposition to his plans.

After the entering in the government of Elena Ceausescu, Nicolae Ceausescu continued an unrealistic program of creating a socialist building, away from people and subjecting it to the privations of all kinds.

Because of the rigidity of the regime, an active dissident movement couldn’t be organized, many critics preferred to leave the country and insist by Western governments to find a solution to stop the abuses of the regime.

In 1977 miners' strike and Brasov workers strike of 1987 had limited objectives and action and their leaders were arrested and even made to disappear by the repressive organs of the state.

Coming to the leadership of USSR of Mikhail Gorbachev in 1985 was followed by his attempt to reform the Communist regime by applying the concepts of perestroika and glasnost. Widely debated in in the Western media, but also in other communist countries, they have been known in Romanian, in a way, to say, subversive, by listening to Radio "Free Europe" and by following television stations from Bulgarian, Russian, and Yugoslavia.

How much Romanians wanted to know bout perestroika appears evident from the fact that in the summer of 1989, when preparations for National Day - August 23rd - and to honor the XIV Congress of the RCP (which was to be held in November 1989) were in full swing, at the AEROFLOT Agency (the Soviet Air transport company) people was standing in line to buy books with the official documents of the Soviet perestroika process (Bărbulescu et all, 1998: 540).

This was the context in which the Romanian intellectual circles hoped that the upcoming Congress Ceausescu could withdraw in favor of his son Nicu, the first secretary of the RPC in Sibiu County (Oşca, 2009: 124).

The central leadership of the party and state, composed of loyal people of Nicolae Ceausescu, found a solution to counter speculation in this regard by proposing that the future general secretary to be discussed in each party organization in particular, so the things that Congress should are clear. It became obvious that Nicolae Ceausescu will be unanimously reelected to the office of the party, which it happened in November 1989.

Noteworthy is the fact that Nicolae Ceausescu indicated that, in the event that there will be anti-Romanian destabilizing actions, he will proceed in same way as the " Chinese companions", referring to the suppression of demonstrations in Tiananmen Square in Beijing, when they intervened with the tanks against the manifestations.

The only opposition in a Congress of the Communist Party was the declarations of an old party member Constantin Pârvulescu, who in 1979, at the XII century criticized Ceausescu whom he accused of seeking to impose his glorifying self to the party and to the state. His action did not have any inner party effect, but externally was appreciated by the media in Western Europe. Persecuted by Ceausescu, Pârvulescu will sign the " Letter of the Six " also (Costin Scorpan, 1997: 572-573).

However, this political construction with the final announcement aroused a feeling of dissatisfaction, especially in the teams on large manufacturer's sites, which wanted another leader for the next five years and did not like to be imposed a leader from the peak of the party. The Security forces (which launched controlled rumors on the possible replacement of Ceausescu, and his health problems) and party organs were able to settle grievances, especially since they were seized in discussions between party members (Oşca, 2006: 127).

Both before and after the Congress, a state of confusion was induced. A foreign dignitary accredited in Bucharest was even arrested because they were scattered on his car manifests against the regime (later, it turned out that they were spread by a Romanian anticommunist moving in a bike and putting it on cars in traffic).

A notable event, in the sense of analyzing the situation in Eastern Europe, had been Gorbachev 's meeting with the president of the U.S., George Bush in Malta on December the 3rd, 1989, witch Ceausescu considered as taking place to hit the interests of socialism, including those of Romania, which was invoked in the discussions with the first secretaries of counties in December 17-21, 1989.

Manifest texts like "Down with Dictatorship", "Down with Ceausescu’s tyranny”, "Death to the dictator"!, began to be spread in Timisoara, Iasi, Suceava, Sibiu, Cluj-Napoca, Bucharest yet from 10 to 11 December 1989.

On this background, on 16 December 1989 in Iasi, the Popular Front (National Salvation Front) unknown to authorities, put together a "Call" - a program that urged the city's population to gather in a anti - Ceausescu demonstration in front of the Palace of Culture: "to put an end to hunger, cold, fear and darkness who mastered them for 25 years! "... " Is in our power and ours only to free ourselves from the hateful yoke our

country ever had" (Ion Calafeteanu, 2009, 111). Authorities managed to prevent the demonstration, investigating and operating arrests.

On December 16, 1989, a protest broke out in Timisoara, although authorities blocked the information known about the action in Iasi. Almost all historians considered the events in Timisoara in 1989, to be held under the pretext of a solidarity action of Reformed believers and casual passers-bye with the Reformed pastor Laszlo Tokes, which his Bishop decided to move and the Romanian authorities have evacuated him using unnecessarily important forces acting against him.

Nicolae Ceausescu, as we can see in the steno grams of CPEX containing the teleconferences with the first secretaries of the county in the country, 17, 20 and 21 December, 1989, in his speeches on the radio and TV in the same period, said the disturbances were exclusively the result of anti-Romanian actions instrumented by Western Countries and even eastern European ones with the aim of destabilizing Romania and reducing its international prestige (Oşca, 2009: 128).

For him it was convenient to throw the blame for these actions on a person (Tokes) who was not obeying the country's laws and indulge in provocative actions against authorities instead of recognizing in front of all that the source of Timisoara's actions were himself and his inhuman regime in witch people starved and that he managed to isolate the country internationally. Moreover, to show that he was not afraid of challenges during the crisis in Timisoara, paid his last visit to Iran, where he was welcomed with honors.

In return, the head of the regime was surprised to find that Timisoara was the first city declared free from the communist dictatorship and that the Romanian Democratic Front assumed the community leadership. A brave team secured new political leadership: Lorin Fortuna, Claudiu Iordache, John Kish, Traian Vrăneanțu, Mihaela Trăistaru etc.

Some historians have tried starting fom Ceausescu's assertions (including those relating to the meeting in Malta) to outbid the involvement of external factors in the Romanian Revolution of 1989.

Actions of individuals or groups directed against the totalitarian regime before December 1989 can be assimilated to the concept of outgoing events, according to the historian Alexander OSCA, because they did not reached the level of a mass demonstrations, like the one in Timisoara on December the 16, 1989 (Oşca, 2009: 14).

The Rhetoric of the demonstrators developed in those days (16-22 December 1989), from demands to improve living conditions addressed to the local authorities, to specifying the political clauses and their bargaining with the representatives of central authorities, sent to clarify the situation.

Analyzing the slogans launched in that period we can conclude that people are did not used explicitly and excessively anticommunist slogans to express the desire for a regime change. The documents reveal that the slogan "Down with the Communism" appears sporadically before and after December 20, 1989 and not in Romanian Democratic Front proclamation of December 21, 1989.

December 22, 1989, it began to emerge at the forefront of the political scene more political and civic groups, so after entering the path of political democracy, which either as a group or through active personalities in the revolution, became the forming opinion that was explicitly directed towards eradication of the communism as a system.

Thus, some works devoted to the analysis of the revolution have issued some opinions full of contradictions, arguing that the anticommunist revolution broke out later, in December 1989 it was only a social uprising.

In a remarkable synthesis R.J. Crampton remarks: "... the late summer and early autumn of 1989, reform and revolution have befallen the communist regimes in Eastern Europe with such force that the whole system was swept of the earth. Therefore the valuable historian retains two terms in the sequence listed: reform and revolution curls to define the ways in which that system disappeared. The fact that is quite true, and the presence or absence of one of the two terms of the process in one or another of the East European countries gives the extent and do the differences in the peaceful or violent character of this collapse". In Hungary, for example, the author retains the ability of the Communist Party to start, promote and control the reform in that country witch by the end, almost imperceptibly, went from dictatorship to democracy (Crampton, 2002: 48-50).

Rip Zoltan stated that the Hungarian people were proud to leave behind dictatorship and to reach democracy without being given even a slap. Crampton retains that in Poland, the movement was promoted by forces outside the system, while in Hungary, although popular protests were far from absent, the party itself was the one who set up most of the changes radical (Crampton, 2002: 51-52).

A conclusion arising from the interpretation of most historians (and others) is that where the reforms were possible they were initiated by the reformist forces unit of the ruling party (communist) - that the radical change system and transition to democracy - has been a peaceful, nonviolent, in any event, without casualties.

Where the revolution began in the absence of reforms, forcing the regime that refused to initiate them, the act occurred inevitable violent and bloody confrontations, resulting in many casualties. It is undoubtedly the case of Romania. In Eastern Europe - says Crampton – the communist power was not destroyed, it abdicated. Even with Romania and Yugoslavia that make an exception, this was done through a process largely peaceful, even the name given to the transformation shows pride to its non-aggressive nature: Bulgarians talk about gentle revolution, Czechs and Slovaks of velvet revolution and because of the role of national music played, Estonians had sung revolution (Crampton, 2002: 62-63).

Quoting Timothy Garton Ash, Crampton indicates that... the specific processes in Hungary and Poland, carried so calm and gradually to democratic form is more like a reform than a revolution and devote the term: revolution. He explains differences on ways to achieve democracy? He believes that the starting point of this process is found in documents of the Helsinki Conference of 1975. Thus opening the possibility of piecemeal reform, progressive, whose owners always have to depend on Europe's supreme Communist CPSU and the Red Army. It is not a coincidence - says Crampton - that the regimes that are less dependent to Moscow, Bucharest, Belgrade and Tirana, opposed stronger to the dissolution of the system (Crampton, 2002: 71-72).

Bucharest takeover by the Council of National Salvation Front in the absence of structural reforms that were previously managed by an authorized technical apparatus meant a huge risk and responsibility.

Everywhere in other countries the first echelon of the party gave away the power to the second echelon witch was willing to trigger or accept reforms imposed by life and people. This echelon was also accountable - because perforce responsibility for any of their comrades actions - was also approved for because was part of the reserve cadres

that the party had it ready at any time. This meant that they had a certain credibility among the members with reformist views of his own party, and in different environments from the society, offering hope of a change for the better of the situation and of the society and, in substance, held under control out of shortfalls, the economic and social mechanisms that they have just reformed.

It is not known precisely whether there was a scheme conceived / developed into a center of how the whole process of transition from totalitarian to democratic socialism should proceed.

We note, however, that everywhere, willingly or forcing them their hand, the first echelon handed over its power to the second echelon of the Communist nomenclature.

Zhivkov was replaced in a party plenary meeting by Mladenov, who in turn, handed over the power to a dissident Zhelev Jelio. This process took place an entire year. The same things happened in other parties (Crampton, 2002: 80).

In 1989 East European societies were released first by socialist dinosaurs (Husak, Honecker, Zhivkov), accepting their younger followers in the first phase of the process. Gradually, the society joined the structured values and practices of democracy, different ideologies and parties have emerged, and civil society groups have emerged, civil associations and non-governmental organizations also. Political reformed leadership in Eastern European countries has tried various formulas, proposing societies various solutions, appealing to a pluralistic conception of the state leadership. According to it, the former communist party – no matter its name – could be accepted and it was to hold most of the levers of power, which it would share with other politic forces with a secondary role. Later (not as length but as process) were borne political parties that had the strength and capability of providing reliable, safe political management at national level. Notice the case of Poland, when the electoral law was accepted, by it the half of parliament seats were to belong to the former government party, although at the election, voters overwhelmingly opted with the Solidarity Party. The Civic Forum in Czechoslovakia did not took power immediately after Husak's leaving. The same happened in Former Democratic Republic of Germany or Hungary.

Pluralism, in the concept of the second echelon leaders of the former communist parties meant rather pluralism of ideas, but, if possible, within the same party structure.

Obviously, societies with a consolidated democracy were far from understanding the logic of the new ephemeral leaders in former communist countries. Democracy means the existence of political structures with different ideas and ideologies, to act out of the unique party (or with a leading role) and against it.

Once created these parties it broke the struggle to achieve power and have emerged political opponents and allies. The opposition slogans to determine the Communist Party to leave power was based on the idea that it only bears the full responsibility for the disaster those countries go through and not the first echelon leaders (which did not matter anyway - many were convicted), or those in the second echelon. Because it has changed a dictatorial regime and paved the way to democracy, to European integration, the 1989 moment could be considered now, more than two decades after, as a revolution.

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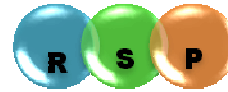

ORIGINAL PAPER

The Development of Left-Wing Political Thought and Organisation in Afghanistan

Darren Atkinson*

Abstract

Communist rule in Afghanistan (or rule underpinned by some tenets of communist thought) ran from 1978 to 1992, when the People's Democratic Party of Afghanistan (PDPA) was the party of government.

One of the many outcomes of the Saur Revolution of April 7th 1978 was the belief that organized leftist, socialist and communist political parties were initially formed through grassroots political organization that took place on the university campuses in the major cities during the 1960s. However, with the involvement of Afghans in the Baku Congress of the Peoples of the Eastand the formation of underground parties in the 1950s there is evidence to suggest that the antecedents of left-wing thought in Afghanistan go much further than the foundation of the PDPA in 1965.

This paper will aim to explore the history of left-wing political thought in Afghanistan and will attempt to provide an overview of the long-history of class division and political organisation.The paper will look at how leftist thought developed before, during and after the PDPA regime and will conclude by providing a sketch of the current situation of left-wing political thought and organisation that can be seen in Afghanistan today.

Keywords: Afghanistan, Left-Wing, Communism, Socialism, Revolution, Reform

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Introduction

Afghanistan is often presented as a place of kings, clerics and warlords with the Afghan people relegated to insignificant bit-part playersor referred to in quasi-mystical terms as noble people of indomitable spirit and will.[*] This view is misguided for a number of reasons including its ignorance of the many examples of quasi-colonial domestic and external domination that have characterised Afghanistan since, at least, the 18th century as well as being and out of step with the study of history as seen in other more politically significant countries.[†]The majority of the literature on Afghanistan, as the Afghan scholar HafizullahEmadi (1997: xv-xvi)) writes,'…lacks analysis of socio-economic and political developments and fails to note the class-character of the state'. One of the outcomes of this view of political history in Afghanistan is that there have been noticeably few attempts by scholars writing in the English language to explore the development of indigenous revolutionary movements in Afghanistan and to explore how and why they developed in a country of such seemingly religious and conservative people.[‡]This paper will look at the development of left-wing political thought in Afghanistan and will argue that far from emerging from a vacuum of Soviet control in the 1970s its roots are can be taken back to at least the early 1920s as a result of the rapidly changing external geo-political and domestic socio-economic realities.

The paper will be split into five sections and will examine the development of left-wing political thought and organisation in Afghanistan from the beginning of the 20th century to the current day. First, it will begin by exploring the ground for political change that was laid in the period of AmirHabibullah Khan (1901-1919) that eventually led to the anointing of the reformist King Amanullah Khan (1919-1929). Second, the paper will look at the implications of the Russian October Revolution, including early Soviet involvement in Afghanistan and will examine the evidence of proto-Communist or Socialist movements.

Third, the paper will look at the impact of the end of the Second World War and the development of national liberation movements across the world and will attempt to place the growth of radical leftist movements within this framework of global political change. Fourth, the paper will review the history of the People's Democratic Party of Afghanistan (PDPA) (*Hezb-e-Demokratik-e-Khalq-e-Afghanistan*) from its formation in 1965 up to and including its eventual demise as the party of government in 1992 and will explore this in conjunction with the Maoist opposition. Lastly, the paper will look at the role of left-wing political groups in Afghanistan after 1992 and will show that left-wing ideas and organisation have not become totally obsolete in this period but have reformed and adapted to the political situation and still operate, albeit from a position of farless influence than the previous decades.

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[*] See, for example, the letter from Phillips Talbot to American Universities Field Staff (1940:1) in which he describes Afghans as "…a well-built, sturdy man who is defiant, he is so independent".

[†] For example, understanding of the history of Nazi Germany has developed to such an extent that the idea of merely focusing on the elite-level decision making of Hitler or Goebbels was discredited many decades ago.

[‡] The work of Thomas Ruttig and HaifizullahEmadi are noticeable exceptions to this.

Antecedents of Left-Wing Thought

It was with the accession to power of Amir Abdur Rahman Khan (1880-1901) that Afghanistan first became recognisable as a "modern" state with defined boundaries with British India, the Russian Empire, the various Khanates of Central Asia, China and Persia. Afghanistan's history in this period is indelibly linked with that of the British Empire. While not a direct colony of the United Kingdom, Afghanistan was long within the remit of British India and, due the internalisation of British ideas about what it meant to be "Afghan", the legacy of understanding Afghanistan through the British colonial lens has become the dominant conceptual framework (Hanifi, 2009). When Amir Habibullah came to the throne in 1901 it was amidst a backdrop of elite reformulation across the Muslim world that saw the rise of constitutional movements in the Ottoman and Persian empires, the growth of pan-Islamic movements, the burgeoning power of workers' movements in Russia and the progress of independence movements in British India. It was during this period of historical tumult that the first clearly defined reform movement began to take root in Afghanistan.

The constitutionalist movement or *mashrutiat* (1903-1909) should be seen as the first organised political movement focused on institutional and political reform in Afghanistan. Its organisation was based on constructing a new political systemaround reforming the absolutist qualities of the Afghan Amir, removing British control of foreign policy and establishing a constitutional monarchy that invested power in Afghan elites outside of the Royal Court(Ruttig, 2006: 3).

Throughout this period the intellectual callfor reformcame from within the hierarchical Pashtun elites andthere is little evidence to suggest that popular social movements had the capacity to develop outside of these circles due to the lack of national unity and low socio-economic development of the geographical space known as Afghanistan. This period led to significant elite discord and certain members of the Pashtun elite,based around the Afghan nationalistMahmud Beg Tarzi, began to formulate a process of modernisation of the Afghan state though the creation of its first newspaper (*Saraj-ol-Akhbar-e-Afghaniyah*(The lamp [or torch] of the news of Afghanistan) (Dupree, 1964). *Saraj-ol-Akhbar* was the first attempt by Pashtun elites to establish an "Afghan" identity that, for the first time, attempted to 'redefine the term "Afghan" on a geographicand religious, rather than merely ethnic, basis, implying the equalityof all the inhabitants of the country' (Gregorian, 1967: 349). Newspapers have great power in helping to create a sense of national-belonging through their ability to create a sense of simultaneous understanding of the existence of other people with the same national identity (Anderson, 1983: 30). It was with the establishment of newspapers in Afghanistan that the first seeds of national identity were sown – something that is vitally important for the establishment of left-wing political movements.

After World War I and the October Revolution

TheBolshevik takeover of Russia in the October Revolution of 1917 had a significant impact on domestic politics in Afghanistan. For the first time in its history Afghanistan was now bordered by a state with a declared interest in assisting other states in seeking "liberation" from imperialism and domination from external

powers.[*] One of the key concerns for the Bolsheviks in the period following 1917 was the establishment of ties with liberation movements and independent governments across Asia. This took many forms including the subjugation of Islamic independence movements such as the so called"Basmachi" movement and the attempt to develop closer ties with independent countriesand liberations movements such as in Afghanistan and India. In 1919, *Pravda* wrote that 'Comrade Lenin met the Ambassador in his private office with the words, "I am very glad to see in the red capital of the worker and peasant government the representative of the friendly Afghan people, who are suffering and fighting against imperialist oppression"' ('Interview with Mohammad Wali-Khan, Ambassador Extraordinary of Afghanistan,October 14, 1919', 1919). Following this a series of letters were exchanged between Amanullah and Lenin which outlined the respective positions of the two states. It was clear from Amanullah'swords, where he stated that Lenin was '…the humane defender of civilization, the sincere protector of Eastern peoples and the friend of the free Afghan State and nation'that he saw the pre-Stalin USSR as the main guarantor of Afghan independence (Amstuz, 1986: 11-13).In addition to what was happening in the USSR the situation in British India also provided external context for the ability of the Afghan monarchy to establish Afghanistan's independence. Since, at least the Indian Mutiny in Bengal in 1857, political stability in British India was beginning to founder amidst calls for Indian unity and independence. Eventually the British brought into effect the Government of India Act 1919 which sought to placate these movements by offering limited political autonomy through a system described as "dyarchy" where rule is shared by two powerbases (i.e. the British and Indians) (Curtis, 1920: xxxi; Mitra, 1921). In many ways, this was the beginning of the end of "British India".

Amanullah's social, economic and political reforms played a significant part in establishing the class-based dispute that was taking place among the Afghan elites. For reasons that can only be hypothesised,Amanuallah and his Royal Court of advisors became convinced that the only way that Afghanistan could develop was through a process of top-down European-style reforms that would re-shape society along the lines of what had been seen in Turkey under Kemal Mustapha. These reforms aimed to establish land reform that broke-up power landholders, mandatory education for both sexes and emancipation of Afghan women. What became apparent after these reforms wereimplemented was that his government would have address and challenge two major internal bases of powerful landowners and clerics, both of whom were heavily intertwined socially, politically and economically. The Mullah's, as Emadi (1997: 4) writes,were opposed to socio-economic reforms but this was'…not a manifestation of their religious prejudices…but rather an expression of their class interests because a great number of Mullahs either were landowners or were on their payroll'. Due to the lack of a popular base, no external support from the USSR (caused by domestic Soviet issues and Afghan intransigence over Khiva and Bukhara) and the lack of a powerful standing army, the imposition of Amanullah's reforms became an impossible task. The inability of Amanullah to formulate a political movement that would see through his

[*] It is, of course, a matter of opinion whether the Bosheviks sought true independence for colonial and quasi-colonial states or sought to develop ties with movements that would allow them more leverage in world politics but it's clear that the ideological position of Lenin and Trotsky was based around providing support to independence movements across the world.

reforms eventually led to his downfall in 1929 but the ideas that not disappear and eventually were reformulated in a different time through different means but with the same end result: a conservative, elite-led backlash.

Soviet involvement in Afghanistanand Amanullah's reforms can both be said to have laid the foundations for the establishment of an indigenous Afghan left-wing political movement, although, as yet, no concrete evidence has ever been uncoveredregarding the establishment of communist proto-political parties linked to Moscow in the 1920s. What is clear is that when the USSR called for the establishment of the Baku Congress of the Peoples of the East there wereup to 40 Afghan delegates who participated with three named directly in the proceedings of the Congress. The Baku Congress was held in September 1920, during the early years of Amanullah's reforms, and was attended by a wide-variety of political revolutionaries from across Asia. According to the delegate list,an Afghan communist known as"Aga-Zade" and a non-party member known as"Azim" were both in attendance,(Congress of the Peoples of the East,Manifesto of the Congress to the Peoples of the East, 1920)and another, "Kara-Tadzhiyev", was noted to have been in attendance at the Seventh Session (Congress of the Peoples of the East, Seventh Session, September 7, 1920). During the collecting of demographic data the Afghans appeared to have been collated with the "Persians and Farsis" and "Jamshidis" and "Hazaras" (two ethnic groups from Afghanistan) as there is no separate record of Afghanattendees on the stenographic report.[*] What this shows is open to speculation as the single name formula commonly used in Afghanistan makes it almost impossible to track down who was in attendance and whether they represented an Afghan communist movement or were there at the behest of elements of the Afghan elite. It is possible to speculate that the Afghans were in attendance at the behest of King Amanullah in order to provide intelligence regarding Soviet aims across Asia and the Muslim world. However, with the development of proto-communist movements in Central Asia, the continued poverty of a majority of Afghans and the establishment of revolutionary movements in India and Persia it seems likely that there would have been genuine agitation for change among some sections of Afghan society, especially among the minorities such as Hazaras and Jamshidis who were noted to have been in attendance. While this issue will be open to debate for many years to come the records of the Baku Congress suggest that left-wing political activism can trace their history to at least the October Revolution of 1917.

Post-World War II National Liberation and Internal Reform

The period after the fall of Amanullah is one that offers little information about the continued importance of left-wing political movements in Afghanistan. As Tom Kemp(1977) notes in the foreword to the minutes of the Baku Congress, the '…leading figures, entrusted by the Communist International with the important work of encouraging the building of sections in the underdeveloped areas and among the national minorities in the Soviet Union, Zinoviev, Radek and Béla Kun, were to be murdered by Stalin in the 1930s' (Foreword to the Baku Congress of the Peoples of the East, 1977). After the death of Lenin and the excommunicating of Trotsky the ideals

[*] The editor's note of the stenographic report notes that 40 delegates from Afghanistan travelled to Baku to participate in the congress (Congress of the Peoples of the East, Composition of the Congress by Nationalities, 1920).

and beliefs of the Communist International gave way to the USSR's position on "Socialism in One Country" as espoused by Stalin in 1924 (Hallas, 1985). This had a significant impact on the construction of revolutionary movements across the East where many countries were still incredibly poor with little, to no, ability to develop sophisticated political organisation. It is of no doubt that the Stalinist eradication of the theorists and activists of Eastern revolutionary unity would have had a significant impact on the ability of Afghan revolutionary movements to organise and work against the power of the monarchy and other Afghan elites. As such, and due to the lack of any historical data to suggest otherwise, it seems certain that the left-wing movements moved towards the underground and had little impact on Afghan history during the 1930s. During this period Soviet involvement in Afghanistan appears to have been limited to state-sanctioned imperialism in which the goals of Soviet foreign policy, such as the rights of the '…Russian émigrés from Turkestan' who lived in Afghanistan for fear of reprisals from the USSR due to their Islamic beliefs, were at the forefront of concerns (Castagné, 1935: 703). Gone were the days of the USSR supporting genuine Asian revolutionary movements in the countries on its borders and beyond.

During the post-war period political movements based around further reform and change to the society began to take shape in Afghanistan. Of these movements two of the most significant for the development of left-wing political organisation were the *Wesh Dzalmian* (Awakened Youth) and *Hezb-e Seri Itehad* (Secret Unity Party) both of which showed characteristics of organisation and ideology that would later be seen in other revolutionary political movements. *Hezb-e Seri Itehad* was an underground political movement that sought to overthrow the monarchy of Afghanistan and establish a republic and was formed around the ideas of '…Sayyid Ismail Balkhi, a Shiite leader from the north, and Khwaja Muhammad Naim, the powerful Sunni police commissioner of Kabul' (Behzan, 2012: 446). With their goals, as Behzan (2012: 449) notes, being to '…kill the prime minister, arm members of the party, release prisoners, and take the national radio station and the royalpalace' the platform of *Hezb-e Seri Itehad* had striking similarities to the eventual PDPA coup, although in this case the planned coup was never initiated. It appears that while not an ostensible left-wing political movement the underlying policies of rebellion against the status-quo had a significant impact on the development of left-wing political organisation. *WeshDzalmian* was a largely Pashtun based organisation that formulated into something resembling a proto-political party in the early 1950s and can be said to have provided the blueprint for political organisation to other politically minded Afghans. Most importantly, for the study of the Left in Afghanistan, it was from this political environment that the two important proto-parties of the left came into existence: *Hezb-e Watan* (Fatherland Party) and *Hezb-e Khalq* (People's Party). As Ruttig (2006: 5) writes, '…Both raised pro-democratic slogans: a 'national government', free elections and the establishment of political parties; but *Hezb-e Khalq* had a somewhat more left leaning agenda, adding 'social justice' and the 'fight against exploitation' to the demand for democratic rights'. The initial stages of left-wing political organisation can be seen to have originated from the political milieu World War II and as a result of wider geo-political developments, but it was not until Afghans began to organise in groups with characteristics of political parties that the clearly definable left-wing organisation can be seen to have arrived in Afghanistan. It was with the formation of the PDPA and its Maoist rivals in the 1960s that left-wing political thought and

organisation can be said to have become popular, at least among a section of Afghan society.

The Rise and Fall of The Left (1965-1992)

Prior to the founding of the People's Democratic Party of Afghanistan (PDPA) a period time known as the "Decade of Democracy" was implemented by Zahir Shah's regime between 1963 and 1973. This decade saw the institutional opening of Afghan politics with the creation of a constitutional monarchy and the establishment of a form of parliamentary politics. Rather than being the hallmark of a genuinely democratic belief system it should instead be seen as an attempt by the monarchy and the ruling class to stem the tide of political agitation that was becoming a hallmark of Afghan politics as seen through the establishment of the political movements discussed in the previous section.

Throughout this period political parties were allowed to establish themselves and, in turn, created their own organs of communication such as newsletters and pamphlets that were distributed to supporters and potential supporters. However once these institutional reforms were implemented it became clear that the ruling class were unwilling to create a truly open political system and the levers of power were kept in hands of the powerful interests who had long dominated Afghan society. The top-down reforms were chaotically organised and eventually created the conditions for Zahir Shah's government to lose legitimacy, first to his cousin, former Prime Minister Daoud, in 1973 and eventually to the PDPA in 1978. The elite-led and controlled democratic period led, as Ruttig (2013: 7) writes, "…to a further destabilisation of the country and to a radicalisation and diversification of the opposition".

The PDPA was officially founded on January 1st 1965 and was the party of government from 1978 to 1992 having taken power in a military-civilian coup d'état on 27th April 1978 (Halliday, 1979). For a majority of its history it was split into two wings: *Khalq* (Masses) and *Parcham* (Banner).[*] Much has been written about the PDPA's status as a Soviet puppet deeply dependent on the USSR for its existence. While it is clear that the PDPA, and many of its most senior figures, were close with Soviet officials and implemented Soviet-style policies it is often overlooked that the PDPA grew as a result of numerous internal and external factors. The PDPA claimed power as a result of the underground work of political revolutionaries, both civilian and military, who were committed to changing the social and economic reality of Afghanistan. The existing political structure had provided little in the way of development for a majority of people and the burgeoning middle-class of teachers, junior army officers, civil servants and students influenced by events outside of the country formed the bed-rock of the PDPA's support base (Halliday and Tanin, 1998: 1363). It was on the campus of Kabul University that the ideas and organisation for the PDPA truly found its way into the minds of the next generation of middle-class Afghans. President Daoud claimed power in 1973 with the support of the left-wing groups (before brutally cracking down on their activities). Once in office his

[*] There is no room in this paper to explore the intricacies of the division between *Khalq* and *Parcham*. The traditional view is that *Khalq* was more rural and Pashtun and *Parcham*was more urban and Persian speaking but the author has series reservations about these particular assumptions.

government disintegrated the institution of the monarchy and declared Afghanistan a Republic. This was a crucial last step which removed the remaining legitimacy for the continued rule of the existing elite and ensured that the establishment of a new governing framework would form the basis for any further political change in Afghanistan. It is the contention of this author that the subsequent removal of Daoud and the establishment of a new institutional framework was an historical inevitability – the exact outcome was not fixed but it is clear that the era of Mohammadzai's, who had ruled the geographic space for hundreds of years, was over.

The PDPA-led military coup of the 7thof Saur was immediately replaced with a civilian government headed by NurMuhammedTaraki. This fact is often overlooked but it suggests that the "Saur Revolution" was not simply a military coup, as claimed by its critics and opponents, but was in fact implemented with some form of revolutionary zeal at the core of its ideology.[*]Consolidationof power while in government proved to be harder to implement than the initial taking of power from President Daoud. After the assassination of Taraki in 1979 his deputy Hafizullah Amin (and supposed assassin) came to power before eventually being assassinated by the Spetnaz in 1979 prior to the Soviet invasion which led to the installation of BabrakKarmal. Direct involvement from the USSR helped to create huge problems for the PDPA and caused further entrenchment of the political divisions that beset the partyas well asproviding the vital justification of foreign intervention to enable the rebellion to label their anti-government activity as "Jihad" against a foreign, atheist occupier.[†] PDPA rule led to very limited reform and very few concrete changes to the social fabric of Afghanistan – in fact once the PDPA were removed from power their programmes were effectively rescinded and abolished. Perhaps the most important failure of the PDPA was their inability to construct an institutional framework that could replace thegap left by the collapse of the monarchy. It was as result of these failures, as well as the lack of external support to establish lasting change in Afghanistan, that the conditions for the anarchy and chaos that characterised the years of rule of the Mujahedeen and Taleban governments were created.

One of the most fascinating aspects of the development of left-wing politics in Afghanistan was the remarkable strength and support of the groups that aligned themselves with the theories of revolution as espoused by Mao Tse-tung. No history of the Afghan left is complete without some reference to their opposition to the movement of the PDPA and their eventual involvement in the rebellion against the government of the PDPA during the 1980s. The main Maoist current was formed around the *Sazman-e-Jawanan-e-Mutaraqi* (Progressive Youth Organization, PYO), known as *Shola-ye Jawed* (Eternal Flame) after their party political organ (Emadi, 2001: 433). *Shola* espoused an oppositionist radical left perspective whereby they claimed that PDPA should be seen as a revisionist party of Soviet imperialism who had failed to accurately analyse the status of the Afghan peasantry and working class. For *Shola* members Afghanistan was a feudal country that required revolution to be led by radicalised peasants from the countryside and anything else was doomed to failure (Ibrahimi, 2012: 2).

[*]This is the view of ex-PDPA Defence Minister Shah Nawaz Tanai. Author's Interview, Kabul, 26 March 2014.
[†]Ibid.

In the 1960s it was student movements that led the way in the creation of radical rejectionist movements that sought to change Afghanistan and for a period of time the Maoists were, alongside the PDPA and Islamists, one of the most significant groupings on the campus of Kabul University. The divisions between the Maoists and the PDPA were deeply entrenched and there is no evidence of them working together to achieve a leftist takeover of the country. In fact, after 1978, the Maoists became members of the anti-government rebellion and actively fought in the anti-PDPA/Soviet resistance. This was a widely accepted position among the Maoists because of ideological differences and the brutal crackdown on their movement under the PDPA but, in later years, it provides some context behind the fragmentation of the Maoist left with certain ex-Maoist groups showing deep concern with the alliance with radical Islam that characterised the Mujahedeen years.[*]

Reformulation and Reform after 1992

The PDPA (now renamed as the *Hezb-e Watan* or Homeland Party) started the decade of the 1990s still clinging to power. By 1992 the support of the (now) Russian government had dried up due to major domestic issues taking place and there was no international support for a peace treaty even after the many concessions that Afghan President Najibullah had offered to the rebels. Eventually it became clear to Najibullah that his time was up and that it was time to hand over power to a transitional government sponsored by the UN – on his trip to the airport to seek exile he was captured by the troops of his erstwhile ally General Dostum and was sent into exile at the UN compound where he lived until his eventual execution by the Taliban in 1996. The period after 1992 is one of an almost total breakdown of the state – there was little law and order and many Afghans continued to flee to Pakistan and Iran as well as the more educated finding themselves in various Western states. In many ways it seemed that the end of the PDPA was also the end of left-wing political organisation in Afghanistan – they had lost the war and the political tide had turned toward Islamism. This, however, was not the full story. The history of the left in this time period is hazy and sketchy at best but it appears that the ideas behind the movement did not just disappear; they reformulated and reformed both in exile and inside Afghanistan.

Groups active in Afghanistan during the civil war period of 1992-1996 and the Taliban period of 1996-2001 were forced to operate in the political underground. This involved all of the various leftist groupings including *Khalq, Parcham* and Maoist. As a result of the violence of the war, the politically opposed Mujahedeen and the fact that organisational structures had disintegrated due to many powerful figures living in exile, the members of left-wing political groups tended to operate as secret discussion circles.[†]These discussion circles were crucial for the continuation of left-wing organisation and enabled members to meet and discuss political issues without the fear of being caught in public actively working against the new powerbrokers.Another significant approach to left-wing organisation in Afghanistan after 1992 was in the formation of exile groups in Pakistan and Europe. These groups played a key role in keeping party members together and collectivised and provided a base through which

[*]Loyand, Nasir. Foreign Affairs Representative of the Left Radical of Afghanistan. Email Interview. 28th December 2012.

[†]Arian, Abdur Rashid, ex-PDPA Politburo Member, Interview, 28th October 2013, Kabul.

they could continue to formulate ideas and policies for Afghanistan. After Afghanistan was invaded by the US and its allies in 2001 and the Taliban government was removed, many of these groups felt it was now possible to operate in the ostensibly democratic "new"Afghanistan. As such many of the exile groups reformed either as official parties or underground movements and, although forced to renounce their socialist views should they wish to become legally registered, they continued to call for reform to Afghanistan's social and economic structure. Some of the groups who reformulated in this period included *Hezb-e-Watan-e-Demokratik-Afghanistan* (ex-Parcham and direct successor to Najibullah's PDPA/Watan), *De-Afghanistan-De-SolayGhorzangGond*(ex-Khalq, led by PDPA Defence Minister Shah Nawaz Tanai), *Hezb-e Hambastagi-e-Afghanistan* (a radical-left oppositional group) and *Hezb-e Komunist-e (Maoist-e) Afghanistan (Shola-e-Javid)* (the Maoist oppositional party). This is not an exhaustive list of the political movements in Afghanistan but it goes some way to show that far from disintegrating and disappearing from the political scene, reformulated political movements still adhering to the political ideas of left-wing, socialist reform continued to exist and operate in Afghanistan.

Conclusion

Radical calls for reform and revolution have been a hallmark of Afghan politics for the last one hundred years. The historical reality of significant social change and political organisation in the early 20th century had a profound impact on the course of Afghan history. Certain sections of the elites within Afghanistan, whether through ideological commitment or understanding that social changes were already taking place outside of their control, understood that change was both necessary and historically inevitable. This understanding led to significant attempted reforms of the social, political and economic fabric of Afghanistan and, as a result, helped the justifications for counter-reform movements based around elites who rejected these changes. The counter-reform movement, while ostensibly successful in ousting Amanullah, undermining reforms during the period of Zahir Shah and violently rejecting the modernisation reforms of the PDPA has not been able to prevent the ideas of change from becoming engrained in Afghan culture, most notably within the urban centres of the country. This paper has attempted present a general overview of some of the historical factors, both internal and external, that have created the conditions for the establishment of left-wing political thought and organisation in Afghanistan. The end of Soviet-controlled socialism in 1992 seemed to signal the death of radical left-wing political thought and organisation in Afghanistan and yet, while very much weakened, the ideas of reorganising Afghan society in order to improve the livings conditions of all people lives on among a small section of politically engaged citizens.

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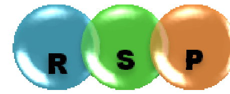

ORIGINAL PAPER

The representation of Poland and the Polish during communism in Polish coursebooks for foreigners

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Abstract
Teaching Polish as a foreign language is a new field of linguisticsproposed by language schools.Likewise, the methodology of teaching Polish as a foreign language is still evolving. Foreign language learning consists of several elements, such as: grammatical competence and communicative competence which include linguistic, sociolinguistic and pragmatic components. In foreign language teaching methodology, cultural competence, which is comprised of several components such as: customs, the knowledge of the conventions and systems of meaning, is also mentioned? The knowledge of culture is an integral part of language learning. This is why information about Polish culture, history, and customs are inherent in Polish language classes, in coursebooks and the syllabus of Polish for foreigners.
The communist system in Poland lasted for over 40 years. This time affected Polish society very strongly. It left an influence on language, behavior and Polish mentality. The knowledge of language likewise requires an understanding of the context of communication. This is the reason why content about Polish history is included in coursebooks to learn Polish as a foreign language.
In thispaper, it is shown how information about the communist history of Poland is presented for foreigners learning Polish as a foreign language. In coursebooks, the selection of content and also the way of presenting it will be analyzed. The purpose of the research is to elaborate on what kind of image Poland has as a communist country, and therefore an official Polish attitude to past times is presentedto foreigners learning Polish.

Keywords: Polish language, Polish coursebooks, teaching Polish as a foreign language, communism in Poland

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Teaching Polish as a foreign language is quite a new discipline of practical linguistics, which is developing constantly. Likewise, the popularity of learning the Polish language is still intensifying. Polish – the official language of Poland and mother tongue for about forty four million people (inhabitants of Poland and also Poles living abroad) – is the most spoken West Slavic language and one of the most widespread Slavic languages (after Russian, ahead of Ukrainian) (see also Sussex & Cubberley, 2006). Polish is a difficult language to learn because of its extensive inflexion, especially declensional system (seven cases in singular and plural). Despite this more and more people want to learn Polish. It is possible to pass certificate exams in Polish at levels B1, B2 and C2 which are based on recommendations from the Council of Europe. At present, the State Certification Commission is working on the introduction of examinations for levels A1, A2 and C1. Statistics about the countries of candidates also show the nationality of people who learn Polish. From 2004, when the first state certificate examination of Polish as a foreign language took place, till 2012 the most common nationalities of candidates had been: Ukraine (265)*, Germany (255), United States of America (173), Russia (114), Belarus (102), France (71), Japan (60), Spain (58), Slovakia (52) and Czech Republic (46). Up until 2012 eight candidates had been from Romania.

In Romania it is possible to learn Polish in several places. Most of them are in the capital of the country – Bucharest. The main one is the Department of Slavonic Languages and Literature at the University of Bucharest. Lessons of Polish are also offered by Center of Foreign Languages Ariel, Center of Polish Language and Culture, Polish Institute and also private schools: Fides, Echo, Bell Bucharest. There also is an opportunity to learn Polish at the Alexandru Ioan Cuza University in Jassy and at Babeş-Bolyai University in Cluj-Napoca.

The communist system in Poland lasted for over 40 years. It has affected not only Polish mentality and manners, but also language, national identity and symbols. Foreign language learning also is foreign culture learning because "a language cannot be learned without an understanding of the cultural context in which it is used" (Hinkel, 1996: 6). In *Common European Framework of Refernce for Learning, Teaching, Assessment,* among competences of foreign language learners, sociocultural knowledge is also mentioned. The importance of culture knowledge was emphasized:

> Strictly speaking, knowledge of the society and culture of the community or communities in which the language is spoken is one aspect of knowledge of the world. It is, however, of sufficient importance to the language learner to merit special attention, especially since unlike many other aspects of knowledge it is likely to lie outside the learner's previous experience and may well be distorted by stereotypes. (Common European Framework, 2011: 102).

The role of culture in the language teaching is a topic that has developed highly in present methodology of second language teaching and learning. This issue is mentioned in numberless amount of articles and teacher's books, such as: *Context and culture in language teaching* (Kramsch, 1993),*Teaching-and-learning Language-and-culture* (Byram & Morgan, 1994),*Culture in Second Language Teaching and Learning* (Hinkel, 1996), *Language Teachers, Poltics and Cultures*(Byram&Risager, 1999), *Cultural awareness and language awareness based on dialogic interaction with texts in foreign in foreign language learning*(Fenner, 2001),*Teaching and*

* In brackets the amount of candidates from each country is presented.

Researching Language and Culture (Hall, 2002),*Context and Culture in Language Teaching and Learning* (Byram & Grundy, 2003),*Aspects of Culture in Second Language Acquisition and Foreign Language Learning*(Arabski & Wojtaszek, 2011).Irene Krasner summarized the role of culture in the language teaching and learningthereby:

> Teaching culture in a foreign language classroom is complex. The concept of culture is difficult to define, but it is clear that in a foreign language course both linguistic and extra-linguistic cultural features should be taught. Failure to teach some aspects of culture could result in miscommunication, misinterpretation, and a major culture shock on the part of the students.
>
> A critical goal of teaching culture in a foreign language classroom is raising students' awareness about the new culture. Acceptance, understanding, and emphaty lead to real cultural and linguistic proficiency. (Krasner, 1999:87)

Language is more than just a code used to communicate. It is a social practice inseparable with culture. This is why foreign language teaching is also foreign culture teaching. Language proficiency is not only the knowledge of grammar and vocabulary of target language. Learners have to know the cultural context in which the language is used. Teaching cultureis an integral part of language learning. This is why information about Polish culture, history and customs are inherent in Polish language classes, in coursebooks and the syllabus of Polish for foreigners.

The aim of the article it is to show how information about the communist history of Poland is presented for foreigners learning Polish as a foreign language.This analysis will show what kind of image Poland has as a communist country, and therefore an official Polish attitude to past times is presentedto foreigners learning Polish.

Teaching culture in second language classroom also has additional function. Itaffects the integration of society and consolidates tolerance and respect for diversity:

> This means that language teaching has the potential to fulfil a key function in European integration. It does not simply contribute to increased foreign language competence in European countries. It also contributes to learners' awareness of cultural diversity and their ability to cope with its undoubted demands and to enjoy its equally undoubted richness of experience. (Byram& Risager, 1999: 168-169)

Two of the most popular and newest series of coursebooks were analyzed. They are*Hurra! Po polsku* [Hurray! In Polish] which offer books at three levels – A1, A2 and B1. The second series is *Polski, krok po kroku* [Polish step by step] with books at two levels – A1 and A2/B1. These are the predominantly used coursebooks in Polish language classrooms. Both coursebooks use a modern communicative model of teaching. Information about Polish history, traditions and customs is an integral part of both coursebooks' content.

In teaching foreign language several rules referring to teaching culture and language have to be emphasized. Culture should be taught implicitly, as a part of the linguistic forms that students learn.

Students' knowledge of culture should not be examined. Cultural information should be presented in a nonjudgmental fashion, in a way that does not place value or judgment. It is very appropriate to provide students with as much authentic material as possible.

In Polish coursebooks a few elements respecting the communist history of Poland recurred. It is possible to highlight several issues which concern historical and cultural content around:

- The personage of Lech Wałęsa
- Martial law in Poland [stan wojenny]
- Daily life in communism
- Political leaderships' attitude to religion
- Censorship
- Polish thaw ["odwilż"]
- May the 1st (Labour day)

1. The personage of Lech Wałęsa

Lech Wałęsa is one of the most recognizable Poles in the world. The surname of this Polish politician and trade-union organizer is widespread as a symbol of the fight against communism. The personage of Lech Wałęsa appears in the fifth lesson in *Polski, krok po kroku 1* for beginners. Using words from a box students have to write sentences about the people in the pictures. Lech Wałęsa'spicture has the description: *To jest dobry polityk – This is a good politician*. A very positive image of the Polish politician is presented, even though in Poland Lech Wałęsa is identified as controversial person.

Lech Wałęsa is also mentioned in lesson 21 in the coursebook *Polski, krok po kroku 1* [Polish, step by step 1]. In the listening exercise the grandfather of the main hero of the book recalls his previous life. In the recording information about a Nobel Peace Prize for Lech Wałęsa is included.

In lesson 3 in *Hurra! Po polsku 2* [Hurray! In Polish 2] six Polish Nobel laureates are presented. Students have to match photographs of the Polish Nobel laureates with little texts about them.

Among the presented people - Henryk Sienkiewicz, Maria Skłodowska-Curie, Władysław Reymont, Wisława Szymborska and Czesław Miłosz – Lech Wałęsa occurs. In the text it is mentioned that Wałęsa is the legendary leader of "Solidarność", the organizer of strikes at the Gdańsk Shipyards, the winner of the Nobel Peace Prize in 1983 and also first president of Poland elected in the independent election.

The personage of Wałęsa occurs in grammatical tasks as examples of using grammatical forms and structures in Polish. He is mentioned in an exercise for forming comparative and superlative forms of adjectives (*Hurra! Po polsku 2* [Hurray! In Polish 2], lesson 10), in which students have to fill gaps with appropriate forms. The sixth sentence of this exercise reads: *Lech Wałęsa is the most popular Polish laureatewinner of the Nobel Prize*. Cultural information occurs as a background to practice grammar structures.

Polish coursebooks for foreigners present the most widespread symbol of communist times in Poland – Lech Wałęsa. The dissemination of this symbol strengthens the image of Polandas a country fightingagainst the communist system and responsible for the collapse of communism in Europe.

2. Martial law in Poland (stan wojenny w Polsce)

“On Sunday morning, 13 December 1981, most Poles became aware of the imposition of mertial law” (Roszkowski, 2003: 27). Martial law was the period of time in Poland from 13 December 1981 to 22 July 1983. The lives of people had been drastically restricted. All activities of the government of the People’s Republic of Poland were aimed to stifle political opposition. During it many opposition activist had been interned and dozens of people were killed by militia and ZOMO paramilitary police.

In Polish coursebooks information about martial law is mentioned several times. In exercises dedicated to saying days in Polish one kind of task is very popular – matching the dates with events which took place in these years. Often among the given dates martial law in Poland is mentioned, however, no description about this historical event is included.

In *Polski, krok po kroku 2* [Polish step by step 2] all of lesson 17th “Trochę historii” (“A little bit of history”) is dedicated to martial law. First, new vocabulary related to martial law is shown. In the introduction to the lesson new lexis that occurs in the lesson is presentedto be recognized and translated by the students: an activist, a permit, a troop, armed, to hide, a repression, a citizen, a government, a crowbar, extemporary, a privilege.

In exercise 1,Tom’s notes, which he had prepared to write the presentation about martial law in Poland, are presented. Among the written sentences are: the entering of armed troops to telephone exchanges across the country, a bench-warrant, a curfew, a newspaper’s issuance suspension, a prohibition of residence change, an opposition activist, censorship, a radio and the television building’s occupation by the military. In an illustration beside this, two photographs with riot police officers and tanks in the streets are noticeable. Students also have an opportunity to see a food rationing card and a permit forjourney from place of residence to work from 10 pm. till 6 am. This exercise introduces students to a difficult issue of martial law in Poland.

In the second exercise students answer three questions which check their previous knowledge about martial law and announce the topic of the lesson: Do you know what martial law is? Do you know when in Polandmartial law was imposed? What kind of restrictions do you think occurred inmartial law?

After these difficult questions, students read a detailed text about martial law in Poland. In the text it is mentioned how martial law was imposed in Poland and what restrictions Polish people faced:

> December 13, 1981 is a date memorable for Poles. At 6:00 am General Jaruzelski, head of government, in the speech broadcasted on radio and television informed citizens about the imposition of martial law in Poland. But before, at 0:00 riot police officers started nationwide arrests of opposition activists. Warrants were not needed, no one had the right to defend, doors were forced in by crowbars. Slightly earlier, just before midnight, armed troops and militia entered into telephone exchanges across the country. Civil phones lines had been disconnected, even in embassies and consulates. At the same time soldiers occupied all the radio and television stations. On the streets of most cities tanks and armored cars appeared. The government acted hurriedly to confuse the public so no one had time to revolt against the restriction of freedom. “Our homeland is at the edge of an abyss” – General Jaruzelski

> announced in his speech explaining the imposition such a drastic restriction of civil liberties… (Stempek & Stelmach, 2012: 113)

Reading the remaining paragraphs students learn about further restrictions and discrimination such as: an imposition of a curfew, a prohibition of change of residence without a consent of the government, a ban on public gatheringsand even organizing artistic or sporting events withoutpermission (in exception, religious rituals and ceremonials were allowed); closing schools until further notice, a suspension of issuingnewspapers, magazines and all publications and newsletters, a censorship of private correspondence, a suspension of the activities of many student, labor, literary, artistic and journalist organizations. In martial law it was possible to convict an accused of the death penalty summarily.

In the text a public reaction to the introduction of martial law was also featured: strikes and demonstrations of people, particularly at Gdansk Shipyard [Stocznia Gdańska], at Vladimir Lenin Ironworks [Huta im. Lenina] in Kraków and in Wujek Coal Mine [Kopalnia "Wujek"] in Katowice. It is also mentioned that during the pacification of Wujek Coal Mine nine miners had been shot.

The author of the text raises the issue of the contemporary reception of the introduction of martial law in Poland. It was one of the most tragic and controversial events in contemporary Polish history. In Polish public debate several questions still are raised: Did General Jaruzelski's decision prevent the Soviet intervention in Poland? Whether its actual aim was to terrorize Polish society, a destruction of "Solidarność" and a maintenance of authority by the communists or not? These final questions provoke adiscussion about the significance of martial law in Poland.

After reading the text students have to complete exercise number 3, in which nine sentences about martial law in Poland are presented. According to the text students have to decide if the sentences are true or false. Among the set of sentences are: *December 13, 1981 is an important date in Polish history* [13 grudnia 1981 roku to ważna data w historii Polski], *The head of government informed the Poles about the introduction of martial law*[O stanie wojennym poinformował Polaków szef rządu], *Riot police began arrest at midnight* [ZOMO zaczęło akcję aresztowań o północy],*Civil phones worked only in the embassies and consulates* [Telefony cywilne działały tylko w ambasadach i konsulatach], *The radio and television stations still had civil management* [Stacje radiowe i telewizyjne były nadal w rękach cywilnych], *The prohibition of public meetings did not involve churches*[Zakaz zgromadzeń publicznych nie dotyczył kościołów], *Sporting events could be organized only with the permission of government* [Imprezy sportowe mogły byc organizowane tylko za zezwoleniem władz], *Many organizations could not continue their activities*[Wiele organizacji nie mogło kontynuować swej działalności], *After the declaration of martial law, no one went on strike* [Po ogłoszeniu stanu wojennego nikt już nie strajkował].

This exercise improves not only reading skills. Students are given a lot of knowledge about Polish history. Furthermore, searching in the text for detailed information consolidates their knowledge of martial law in Poland.

The main information about this important event in Polish contemporary history is also included in the next exercise, in which – according to the text – students have to answer several questions about martial law in Poland: *When, how and by whowas martial law announced in Poland?*[Kiedy, kto i jak ogłosił stan wojenny w Polsce?], *What three actions did the army and militia carry out on the night of 12th and 13th of December?*[Jakie trzy akcje wojsko i milicja przeprowadziły w nocy z 12 na 13

grudnia?], *Why did the authoritarian government of the People's Republic of Poland acthurriedly?* [Dlaczego władze PRL'u działały z zaskoczenia?], *What kind of restrictions of civil liberties did martial law impose?*[Jakie ograniczenia wolności obywatelskiej wprowadził stan wojenny?], *Did the Poles surrender to the new law without resistance?*[Czy Polacy podali się nowym prawom bez oporu?], *What issue still returns in discussions about martial law in Poland?*[Jaka kwestia powraca wciąż w dyskusjach o stanie wojennym?]

The aim of the preceding exercise is torepeat the information about martial law in Poland. Students have an opportunity to compare their understanding of the article with others. This part of lesson is crucial because:

> …communication about a text will give learners a chance to become aware of limitations in their own understanding. By listening to and discussing what other learners and the teacher express about their individual interpretations and understanding of the text, the learners will discover new aspects of that text, as well as personal reactions to it, which will, through further dialogue, expand their own scope and enhance their learning. (Fenner, 2001: 25)

In this lesson students are also asked to complete a listening exercise. Seven people: Edward, Irena, Marek, Tadeusz, Anna, Piotrek and Andrzej are recounting their stories fromthe time of martial law. Edward recalls the disconnection of telephone lines. Irena recollects the internment of her husband on account of distributing leaflets. She remained alone with their children. In Tadeusz's memories restrictions such as: a curfew, the prohibition of public gatherings and internment are mentioned. He indicates the church as an important organizational point - where people were searching not only for information but also for comfort and hope. Anna recalls strikes in the workplace. Piotrek, who during the introduction of martial law in Poland was 14 years old, recounts how he and his friends had painted anticommunistwriting on the wall. In the exercise the memoires of seven people are presented. Only one person is not an opposition activist. It is Marek – a militiaman. He joined the militia because of numerous privileges. During the pacification of Wujek Coal Mine he had remembered himself and had refused to participate in the action. People who he had known took part in the strike.

In the exercise only positive attitudes are presented. All the speakers were active as anti-communist activists. Their relation to the authoritarian government of the People's Republic of Poland was strongly negative. They were so brave and strong to show their resistance in the action.

Martial law in Poland is also mentioned in other modules of the coursebook *Polski krok po kroku 2* [Polish step by step 2]. In lesson 19 in exercise 3 students have to narrate what happened in the life of Łucja according to presented illustrations. In the first picture Gereral Jaruzelski's speech being transmitted on television is shown. In exercise 4, whose aim is to practice conditional clauses students are asked to present Łucja's life once more. This time recounting the woman's history they have to use structures with conditional clauses. First sentence given as an example reads: *If the situation in Poland had been stable martial law would not have started*.

The introduction of martial law is part of a Polish national myth. The information about this historical event included in Polish coursebooks emphasizes the oppositional attitude of Poles to the governmentthe People's Republic of Poland, the martyr's fight for freedom, the courage and fearlessness of Polish people struggling with a difficult reality. All the presented personages have a negative attitude to Communist leaders

andactivelyresist the authoritarian government. Cultural content in Polish coursebooks for foreigners strengthens the image of Poland as a country fighting with communism and responsible for the collapse of the system.

3. Daily life in the communism

In Polish coursebooks for foreigners, contents that refer to the daily life of people in communism are frequently found. In lesson 11 of the coursebook *Hurra! Po polsku 2* [Hurray! In Polish 2] students read a text about changes in daily life in communism and the time after 1989. In particular, difficulties buying products are mentioned: a long wait for products like cars or flats, small assortment of products in shops, the possibility to buy in shops called "peweks". In this kind of shop only payments in dollars were possible. The destination of holidays is also mentioned. In communism people were going to Bulgaria and Romania or Polish towns – Międzyzdroje i Szczawnica. It is compared to nowadays, when everything is available in a wide range – exactly what is needed. In this text a lexical exercise is included. Students have to match vocabulary concerning daily life in communism with definitions of these words. The words which appear in this exercise include: *the People's Republic of Poland* [PRL], *to queue* [stać w kolejce], *food rationing cards* [kartki], *prepayments* [przedpłaty], *coupon* [bon], *a special kind of shop with foreign products* [Pewex], *countries of People's Republic* ["demoludy"], *to buy something offhand* [kupić coś od ręki], *an employee holiday* [wczasy pracownicze]. The knowledge of the aforementioned wordsfacilitates students' understanding of the text about life in communist times in Poland.

Students also have to decide if the proposed sentences are true or false. The sentences pertain to daily life in communism. In this exercises students improve their reading skills and also consolidate their knowledge about previous times in Poland.

In this lesson there is also a listening exercise (the exercise 3d, lesson 11). Students, listening to four people: Stanisława, Władysław, Aniela, Marian, get to know typical Polish communist products such as: television set "Ametyst" or car "Syrenka". First students have to select which sentence refers to which particular speaker. In the following exercise these sentences appear: *When she was young there was no unemployment*; *Her husband was a director*; *Neighbors were jealous of his car*; *When he was young it was necessary to wait for a phone for 10 years*; *She did the shopping in Peweks*; *He had made the prepayment for the car "Syrena"*; *She had a special passport to the countries of People's Republic*; *His son pays by credit card*.

In the next exercise (the exercise 3e, lesson 11) students, listening to the stories of four people, have to complete a text with gaps. The peopleare comparing life nowadays to in the past. In their comparisons the availability of buying products and the possibility of leaving the country are underlined. Past times are not presented in a positive way. Conversely, it is a time of a lack of products and a very inconvenientway to live.

In the next exercise (the exercise 4a, lesson 11) students are asked to transform sentences according to an example: *Nowadays it is possible to spend holidays in Spain. In the past it was not possible to go on holidays to Spain*. All the examples present a negative image of life in communism and the convenience of the present: *Nowadays, color television sets are in shops*; *Nowadays, it is allowed to have a passport at home*; *Nowadays, there are no queues in shops*; *Nowadays, there is no need to wait to buy a*

telephone. There is only one negative example referring to present: *Nowdays there is unemployment*.

To sum up the material, students fill gaps in a text about the daily routine in communism. The presented information is strongly negative: long queues in shops, the lack of products, food rationing cards and communist propaganda are mentioned.

4. Political leaderships' attitude to religion

In lesson 14 of the coursebook *Polski, krok po kroku 2* [Polish step by step 2] called *All Souls' day* [Zaduszki] it is mentioned that the Polish name of *All Saints' day* was changed by communist publicity. Political leaderships did not accept the religious name of the day and they modified it into 'święto zmarłych' – the day of dead. This name is popular till nowadays.

In lesson 14 students, learning about Polish traditions of All Saints' day, read a dialog:

Mrs. May: Mami, are you going with us at the cemetery?

Mami: At the cemetery?

Mrs. May: Yes, today is All Saints' day so traditionally we visit the graves of our relatives and friends.

Mami: Oh… yes, we have read the text about it, but it was called the day of dead.

Mrs. May: The day of dead is the propaganda name used by The Polish People's Republic leaders because religious aspect of holy day was not accepted.(Stempek & Stelmach, 2012: 93)

Next to the dialog the abbreviation used in the text is explained: PRL [Polska Rzeczpospolita Ludowa]–The Polish People's Republic, the official name of Poland from 1952 to 1989.

5. Censorship

Several times students have an opportunity to get know that there was censorshipin Poland. In lesson 3 of the coursebook *Polski, krok po kroku 2* [Polish step by step 2] it is mentioned that the film *Apocalypse Now* [Czas Apokalipsy] was prohibited in Poland.

Students also learn about the prohibition of a performance of Polish drama *Dziady*, directed by Kazimierz Dejmek. This significant event initiated the series of protests, strikes and strongly dissatisfaction of the Polish.

In the dialog in lesson 14 of the coursebook *Polski, krok po kroku 2* [Polish step by step 2] students obtain more informations about the Polish 1968 political crisis, also known in Poland as March 1968 or March events [Marzec 1968] – "political crisis from fall 1967 until spring 1968, that involved a conflict between the Communist Party and elements of society opposing its rule, with an attempted coup d'état by forces opposed to the rule of Władysław Gomułka, the first secretary of the United Polish Workers Party (Communist Party)" (Cook, 2001: 993). In the dialog demonstrations, students protesting on the streets and militia with gas and sticks are mentioned.

6. Polish thaw [“odwilż”]

Polish thaw is also known as Polish October, October 1956 or Gomułka’s thaw. It was time of transition in Polandin the second half of 1956.Two historical events: the death of Joseph Stalin –the Soviet Union's leader and Bolesław Bierut – Polish communist leaderweakened the hardliners' Stalinist faction in Poland and increased autonomy for the Polish government (see also Kempch-Welch, 2008: 49-75).

Information about Polish thaw is included in the coursebook *Polski, krok po kroku 2*[Polish step by step 2]. In lesson 14 it is said that the history of jam session festivals was connected with the Polish thaw and reduction of restrictions. Jazz concerts expressed a desire of freedom and independence.

7. May the 1st (Labor day)

May the 1st was a typical communist celebration day. In lesson 15 in the coursebook *Polski, krok po kroku 2*[Polish step by step 2] after listening to the recording students have to answer a question: Howwas Labour day celebrated during communism? From the next exercise students get to know that Labour day was a propagandist holiday, in which a participation was compulsory.

Conclusion

The information about communism is mostly included in coursebooks at levels A2/B1 – this is the second book of the series. More information about communism is in the newest series – *Polski, krok po kroku*. That means the newest series include more cultural content than coursebooks published earlier.

The most frequent information about communism in Polish coursebooks refers to several main issues: the personage of Lech Wałęsa, martial law in Poland, daily life in communism, political leaderships’ attitude to religion, censorship, Polish thaw and May the 1st (Labour day). Polish coursebooks strengthen the popular symbols of communism in Poland. Most information is about historical events significant in present history of Poland, such as: Polish thaw (Polish October), The Polish 1968 political crisis, the martial law or Nobel Peace Prize for Lech Wałęsa in 1983. Relativelystudents obtain less information about the daily life of Polish people during communism.

In coursebooks for foreigners, Poland is presented as a country fighting with a communist system. The typical attitude of Poles to communism is highly negative. Most of the stories and memories of people included as recordings or texts in books for learning Polish comprise opposition elements of their biographies such as: an action in trade union “Solidarność”, leaflets distribution, painting anti-Communist writings on the walls, participation in strikes and demonstrations.

Communist reality often is featured as hopeless, unfavorable and without prospects. The former life is described as inconvenient with periods of heightened repression.

All collected contents present Poland as an anti-Communist country.

The bellicosity, bravery and inflexibility of the Polish nation is shown. That consolidates the image of Poland as a nation for which freedom is the main value. Cultural information in Polish coursebooks harmonizes with national myth – Poland as a country which suffered and destroyed the communist system in Europe.

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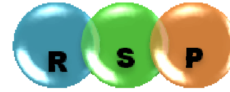

ORIGINAL PAPER

Evolutions of the Romanian electoral legislation after 1990. Do we need another electoral law?

Mihaela Ivănescu*

Abstract
Political representation is an extremely important issue for every democracy and it should closely reflect voters' opinions. Therefore, the technical aspects that have an impact upon representation – the party system, the electoral system, the government – must be in complete accordance with the type of society in order for the outcomes to be positive. This paper aims to analyze the manner in which electoral reforms have been performed in Romania during the past 24 years, their strenghts and their week points, in an attempt to identify the grounds for a new electoral reform. In the last years, there were many voices who argued against the current electoral system and sustained the return to the previous one, of proportional representation. There are, however, another groups, who consider that neither the propportional representation, nore the single member majority system are the proper solution and, instead, the most suitable for Romania would be a mixed electoral system. The second part of this paper is based on the assusmption that the effects of the electoral law that functions in Romania after 2008 were not the expected ones and, worse, they contributed to the decrease in the population's voting participation and in the diminished trust Romanians have in the political class. If we agree that, indeed, Romania needs a new electoral law, then we must answer to – what we consider to be – the main question: what would be the most appropriate type of electoral law for Romania? In order to do that, we try to search for a third solution, different from the ones we mentionned above and argue that Romania is prepared for and could apply one of the most „proportional" types of the proportional representation – the Single Transferable Vote.

Keywords: electoral laws, proportional representation, majority system, reforms, single transferable vote

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Romanian electoral legislation after 1990*

Representation of citizens is an extremely important element in a democracy, and it has to reflect the exact opinions of the electorate. Therefore, technical aspects determining representation – party system, electoral system, government constitution system – must fully correspond to the type of society, in order for the final results to be positive. However, the electoral system is fundamental as to transform citizens' votes into seats within national parliaments or other institutions whose members are elected by means of people's voting. It can be influenced and it can subsequently influence typology and operating pattern of the party system, thus proving once more the important role it plays within a society. As Maurice Duverger marked, the type of electoral system plays the part of a "nearly sociological" law (Duverger, 1979: 307). In his opinion, "one-round majority ballot converges towards party dualism" (Duverger, 1979: 307), while "two-round majority ballot or proportional representation converge towards multi-party system" (Duverger, 1979: 331).

If before 1990, in Romania elections represented rather a means of ritual consecration of power, a practice that reminded subjects their duty of unconditionally accepting regime decisions, and sometimes a means of identifying its opponents (those who were not present to vote or did not enthusiastically engage in the ritual, although not active protesters), with the revolution in December 1989 came emancipation. The result was the abolition of all structures of the communist regime and paving the way towards a democratic and parliamentary regime. In this respect, it was essential to restore political pluralism, essential condition for a normal democratic and parliamentary life, which came to life by the adoption, on December 31st 1989, of the *Decree - Law no. 8 on the registration and operation of political parties and public organizations in Romania* (Published in the "Official Journal of Romania" no. 9 of December 31st, 1989). With this measure, Romania took the first step on the long and difficult road of transition and democratic consolidation.

The Decree-Law no. 92 of March 14th 1990 for the election of the Parliament and of the President of Romania (Published in the "Official Journal of Romania" no. 35 of March 18th, 1990), drafted and adopted for the elections in May 1990, established the election of the President by a majority vote in two rounds (for more details about the majoritarian electoral system in two rounds, see Martin, 1999: 50-53) and of the members of the Senate and Chamber of Deputies – by a party-list proportional representation in multi-member constituencies (article 2). Regarding the allocation of mandates, it was carried using the method of the simple electoral quotient and, for unassigned seats, the rule of the strongest remains (see Martin, 1999: 70-80).

Political scientist Cristian Preda discusses in one of his latest works a project of the National Salvation Front (FSN), from January 1990, which provided the adoption, for parliamentary elections, of a single member majority system, most of the members

* A more detailed analysis of the electoral reforms that have been implemented in Romania after 1990 can be retrieved in one of the author's recent publications: Ivănescu, M. (2013). Romanian Electoral Laws between 1990 and 2012: Reforms and Evolutions, or Absenteeism Generating Instability?. *Analele Universității „Ovidius" din Constanța – seria Ştiinţe Politice*, (2), 159-173. The main conclusions of that paper is that the electoral laws that have been performed in Romania in the last 23 years had more negative than positive effects, the main ones being the legislative instability, the population's increased rate of absenteeism, as well as in the diminished trust Romanians have in the political class.

of the Provisional Council for National Union (CPUN) considering that the proportional representation system was more complicated than the majority system (Preda, 2011: 294). Another proposal was to maintain proportional representation, but in a single national constituency, and not with a constituency for every county. The main opponent of this proposal was Ion Iliescu, who argued that such an election would create a disproportional representation of counties (Preda & Soare, 2008: 91).

The parliamentary elections of September 27th 1992 were held in accordance with a new electoral law, *Law no. 68/1992 for the election of the Chamber of Deputies and the Senate* (promulgated by *Decree no. 145 of July 13th 1992* and published in the „Official Journal of Romania" no. 164 of July 16th 1992), which maintained the proportional representation election system, but introduced an electoral threshold of 3% of the total votes cast (article 25). In the case of electoral coalition, the same law added to this threshold of 3% of the votes cast, "one percent of the votes validly cast throughout the country for each member of the coalition, starting with the second party or political formation, without exceeding 8 percent of these votes" (article 91) (for more details, see Ivănescu, 2013: 160-163).

The main reason for introducing the threshold was to reduce the high number of parties that were represented in Parliament after the elections in May 1990. Therefore, as political scientist George Voicu observed, these changes in the electoral law, together with changes in political life led to setting up a system different from the previous one, realizing the transition from the „a party and a half" system to the „multiparty" system (Voicu, 1998: 223).

The 1996 elections were held in accordance with the same electoral law, but in 2000 the two electoral laws adopted in 1992 were modified by five Emergency Ordinances of the Isărescu Government. From all those Emergency Ordinances, *O.U.G. no. 129 of June 30th 2000, for amending and supplementing Law no. 68/1992 for the election of the Chamber of Deputies and the Senate and Law no. 69/1992 for the election of the President of Romania* (Published in the "Official Journal of Romania" no. 311 of July 5th 2000) brought notable changes, the most important one concerning the electoral threshold. Firstly, it was defined as "the minimum number of valid votes cast for parliamentary representation, expressed as a percentage" (article 65). Secondly, it increased, from 3% (as set in previous laws) to 5% for parties or political formations, and for political coalitions, a threshold of 8%-10%, depending on the number of associated parties (article 65). We could say that, apart from changing the electoral threshold and granting a higher degree of permissiveness to political organizations of national minorities, none of these emergency ordinances changed any essential aspects for the operation of the electoral system (Ivănescu, 2013: 163-164).

The situation in Romania after 1990 is characterized by political scientist Cristian Preda as a „chronic legislative instability" (Preda, 2005: 26), which was confirmed in 2004, when, after less than a month the above mentioned pieces of legislation were modified by the Năstase administration using two emergency ordinances and six government resolutions. This way, a „Romanian political tradition" (Preda, 2005: 26-27) of often modifications to the electoral legislation was continued. In less than two centuries (between 1831 and 2004) 18 different electoral laws existed in Romania. This means that the life expectancy of an electoral law in Romania is smaller than 10 years, which very clearly shows the legislative instability and fragility of the Romanian democratic regime, especially after 1989 (Ivănescu, 2013: 165).

On the other hand, Daniel Barbu believes that there are two reasons why the Romanian legislature opted in 1990 for a proportional representation electoral system: the interwar tradition and the belief that such a system, as opposed to the majoritarian one, better represent the Romanian society (Barbu, 1999: 172). However, although this type of electoral system was used until 2008, Daniel Barbu suggests it was rather one that has created a „proportional representativeness" (Barbu, 1999: 163-180). As shown by Preda, in 2000, „20% of the voters options have been redistributed; in absolute terms, this means that more than 2.3 million votes for the Chamber of Deputies and 2.2 million votes for the Senate have not found their political expression in Parliament" (Preda, 2005: 32). This representativeness that Barbu was talking about became more obvious after the redistribution of votes, which led to the granting of „substantial electoral premiums" (Preda, 2005: 32), sometimes even up to 10%, to parties which exceeded the electoral threshold.

Thus, the electoral system of proportional representation was between 1992 and 2000, an instrument with which political parties have won more votes and strengthened their dominance in parliament, even if the representativity was not proportional. As Barbu argues, during this period, the political parties that formed the governing coalitions "only enjoyed the support of one in five citizens entitled to vote and obtained 30% or less of the votes validly casted" (Barbu, 1999: 170) and therefore, despite the fact that they governed the country did not benefit from „clear popular mandate" (Barbu, 1999: 171-180).

The 2008 electoral reform

It was obvious, therefore, that between 1992 and 2000, although the electoral system was one of proportional representation, it produced some very strong majoritarian effects (Preda, 2005: 34). In the 2000 – 2004 timeframe, the Romanian political class discussed the need to reform the electoral system removing the proportional representation and replacing it with a single member majority voting system. The main motivation for this proposal was that the system of proportional representation generated Parliamentary fragmentation and, by using closed lists candidates, that were not accepted by the central organizations of the parties could not run for office. Also, the voters were not allowed to reorganize the candidates on the election lists.

Those who supported the shift from the proportional representation to a uninominal majority voting system did not take into consideration two issues: on the one hand, that the existing electoral system already produced similar effects to a single member majority voting system, and on the other hand, that, at the international level, „very few democracies cross from a proportional representation method to a majoritarian method" (Preda, 2005: 35). However, after the 2004 election, even President Traian Basescu made a political priority of changing the electoral system. A first draft amendment to the election law was carried out, in 2007, by the Pro Democrația Association, which proposed a mixed electoral system for Romania (Preda & Soare, 2008: 101). In this system, half of the parliamentarians would be elected in single-member constituencies, and the other seats were to be granted to those candidates who lost in the uninominal constituencies the electoral competition, but obtained the highest scores for their parties (Preda & Soare, 2008: 101; Martin, 1999: 97-114).

Discussions about the need for electoral reform continued and in March 2008 a new electoral law that is still in force today was adopted. *Law no. 35 from March 13th 2008 for the election of the Chamber of Deputies and the Senate and the amendment and completion of Law no. 67/2004 for the election of local authorities, local government Law no.215/2001 and Law no. 393/2004 for the Statute of elected* official (Published in the "Official Journal of Romania" no. 196 from March 13th, 2008) tried, at least in theory, to introduce the single member majority vote in parliamentary elections, but proposed a rather complicated formula, which was and still is blamed by many voices that also demand a change of the current electoral law (Downs, 2009: 510-513). Under this law, „Deputies and Senators are elected in single-member colleges [...] by uninominal ballot, according to the principle of proportional representation" (article 5). Also the law no. 35/2008 introduces a double threshold: in addition to the minimum need of 5% of the valid votes for political parties and at least 8-10% for political or electoral alliances, for a political party to enter Parliament, it must obtain a total of at least 6 Deputy seats and 3 Senate seats (article 47).

Besides other factors, the complexity and sometimes the contradictions of the electoral law have determined the Romanians to disbelief the possibility of a real change, or maybe their distrust in the political class, revealed by so many surveys and barometers of public opinion, have contributed to such a low participation rate (Artimof, 2009: 91). The certain thing is that not even the supreme argument used by most politicians, that according to which Romanians would finally have, for the first time after 1989, the possibility to vote individual candidates, and not closed party lists, did not prove effective at all in attracting the population to vote. The complicated manners of translating votes into parliament seats – which lead to situations considered to be unacceptable by certain citizens, where candidates ranked second or even third in their constituencies became members of the parliament – determined many voters to fail to see the utility of voting (Ivănescu, 2013: 171).

The Single Transferable Vote – a possible alternative

As in other states, discussions have taken place in Romania (quite frequently) regarding the dichotomy majority electoral system – proportional electoral system. Such debates are present on the Romanian society level, where, after two rounds of parliamentary elections observing the election law modified in 2008 (Law no. 35/2008), there are still rumors questioning the voting system, recently introduced in our country. On the one hand, creators of this project have tried to promote the advantages of such a system, but, on the the other hand, supporters of the old system of proportional representation brought to the fore disadvantages of the single member majority voting. There is, however, a third category of people: those who feel that proportional representation on closed lists was not the right solution, the current system is completely dissatisfying and who consider that a mixed electoral system or a version of proportional representation would be most appropriate for Romania.

Given that we include ourselves in the third category, we aimed at answering in this part of our paper the question if Romania is ready or not for one of the most complex (and complicated, according to most people) versions of proportional representations – the Single Transferable Vote – named STV from now on. To start our undertaking, we assume that proportional representation on closed lists is not the most efficient type of electoral systems, especially in Romania's case, as Cristian Preda

asserts, even though our country used this kind of electoral system after 1990, it actually triggered the effects of a majority system (Preda, 2001: 217-246), offering considerable advantages to large parties. Therefore, the influence of the electoral system over the party system is real and it is present even in the Romanian political system (for more details, see Taagepera & Shugart, 1989: 79).

The index for the elections in Romania, as marked by Cristian Preda, is the following: 5.18 in 1992; 4.82 in 1996; 3.45 in 2000 (Preda, 2011: 222). For 2004, the average index value was 3.19 (mean value between 3.34 actual parties for the Lower House and 3.03 actual parties for the Senate) (Radu, 2005: 5). These data bring forward the fact that, even though this disproportionate aspect lays Romania among the countries with majority systems, the electoral system produced a multi-party system, and not a two-party one or a two-and-a-half one, as expected in the case of a majority system (Andrei, 2005: 5-7). Thus it may be assumed that proportional representation as reflected on reality in Romania drew both majority effects, and proportional distribution ones. We include in the first category the idea that "the Romanian electoral system [proportional representation, used from 1990 until 2004 – A/N] produces a winner to whom it offers an advantage similar to the parties winning the elections in majority systems" (Andrei, 2005: 5); on the other hand, the same electoral system produces a multi-party system and an "opposition divided according to the multi-party principle" (Andrei, 2005: 6).

Many political scientists have considered STV as one of the most interesting electoral systems and gave special emphasis on its advantages while studying this type of electoral system, agreeing on the fact that they overcome disadvantages (Lijphart, 1994; Lijphart & Grofman, 2003; Martin 1999; Rose: 2000). Despite this fact, STV does not currently apply worldwide, except for two countries: Ireland, beginning with 1922, and Malta, beginning with 1947. This type of electoral system was used in other countries as well, but for short periods of time, because the complexity of its calculation method in order to determine winners of the elections had its replacement as a consequence (for example, Estonia used it in 1990 and then gave it up in favor of proportional representation). The operating principles of this type of voting were created in the 19th century, where STV was the first type of proportional system ever used. It was suggested for the first time by Thomas Wright Hill in 1821 when voting was still public; it was later adjusted for voting bulletins during elections in Denmark in 1855. Tomas Hare promoted it in Great Britain, at the same time with Carl Andrae in Denmark.

In the case of STV, we have multi-member districts, which usually have between two and five seats. Each voter must rank candidates in his district according to their choice, as in alternative or preferential voting. When expressing his choices trough this type of voting, the voter's reasoning is as follows: the candidate I want to vote is A, that is why I mark his name with 1; but in case he receives more votes so that he does not need my vote, or he receives too few and is eliminated from the race, my next candidate according to my choices is B; that is why I want my vote to be transferred to him, so I mark his name with 2; but in case he also receives too many votes, or too few and is eliminated, I choose that my vote is transferred to C, so I mark his name with 3. and so on. It is not mandatory that all candidates are listed, the voter may choose only for two, three or even one candidate. The vote counting process could be considered somehow complicated and it takes a long time. A very important element is the *ratio*, i.e. the minimum number of votes a candidate has to obtain in order to be declared

elected or, in other words, the smallest number of votes that can never be simultaneously achieved by more candidates than seats in a district. In the case of STV, *Droop Ratio* usually applies, deriving from the following calculus:

$$Q.Droop = \frac{\text{number of votes}}{\text{number of seats} + 1} + 1$$

For instance, in an electoral district with 100,000 voters and 4 seats, Droop ratio can be calculated as follows:

q = (100,000/4+1)+1 = 100,000/5 + 1 = 20,000 + 1 = 20,001.

This is the smallest number of votes that 4 candidates must achieve in order to be declared elected in the corresponding district (Rose, 2000: 293).

The candidates whose total number of first choices equals or surpasses the ratio are considered elected. The exceeding votes of the candidates surpassing the ratio is re-distributed to those who come second on the lists where the candidate in the first place had been declared elected. If no candidate achieved the ratio after this operation and there are still seats to be assigned, then the candidate coming last on the list is eliminated, and his votes are distributed to the others, taking into account the next choices on the bulletins of the eliminated candidate (Martin, 1999: 74-76). This vote transfer process continues until all seats are assigned. Thus, there is a tendency towards maximizing the number of lost votes. Votes may be lost though if some voters did not mark more than one choice (since they do not have to range all voters). Hence, the possibility that eventually two candidates remain for one seat is real, none of them having enough votes to achieve the ratio; in this case the winner is declared the one with the most distributed votes.

The simplest case of STV is when the district offers only one seat, a situation known under the name of *alternative vote* (used in Ireland for presidential elections). In this case, simple majority of votes represent the ratio and the counting process consists of gradual elimination of the lowest ranked candidates, until one candidate achieves majority (Rose, 2000: 293-294).

STV is considered one of the most developed electoral systems, because it offers its voters the possibility to choose not only between parties, but between candidates within the same party. The final result observes proportional representation since multi-member districts are relatively small, thus maintaining proximity connection between voters and their representatives. An advantage of STV is that it offers more chances of being elected to the independent candidates than proportional representation, since they benefit from acertain notoriety, and the voters choose rather candidates than parties. Moreover, the voter is allowed to express a transversal vote, i.e. to choose candidates from different parties, but holding the same position regarding a matter important to him (Martin, 1999: 76).

STV presents undisputable advantages that would be advisable in our opinion even for the electoral system in Romania, providing a bigger responsibility of the candidates as to fulfill their electoral promises and maintaining a closer relationship between the candidate and the voters who elected him. However, it is worth mentioning the fact that the vast majority of politicians in our country, of political analysts, and people interested in the political life agree at least with one thing: the Romanian political class must improve its quality before considering adopting such an electoral system. Contextually, the question arising automatically is the following: “Is it for

certain that if we chose this political class through uninominal majority vote and not through proportional representation on lists, it would improve its quality?" A report from 2003, edited by the Academic Society in Romania, sets this issue in a very interesting way: "We choose directly our mayors in Romania. Are they less corrupted than parliamentarians?" (Pippidi, 2003: 2). The document states that "12% of parliamentarians moved from one party to another since 2000 on, thus vitiating the received electoral mandate; but more than half of the mayors migrated to another party! Was it because they changed their political beliefs or from other earthling reasons? Like that, the vote assigned directly to the candidate, through a mandate freer than party discipline, favors rather than diminishes political corruption". If the political class in Romania does not reach higher standards, not even STV, which might create the highest proportionality rate in representing the interests of different social categories, would not solve the problem. Indeed we will choose better from a procedural point of view, but would we choose better persons? We will create competition not only between different parties, but between candidates of the same party. But if we have to choose between two flaws, would we live better than today?

In another train of ideas, a reason in favor of STV would be the fact that it represents one of the proportional solutions that would not completely change the nature of the electoral system and that would satisfy public opinion without too many damages. Voters would vote individuals, not lists, based on each candidate's qualities, yet the electoral system would still be a proportional one, not creating such considerable disproportions between the number of votes and the number of seats, as it is the case of a majority system. However the problem arising from this point of view refers to the level of political education of the Romanian people, an education that we cannot assert as being on the list of a common Romanian citizen's "strong points". As a matter of fact, one of the reasons STV has been fiercely attacked was the fact that this type of voting is little known to the voters in most countries of the world. Its use assumes the fact that all voters know how to make a list of choices and they possess a minimal level of literacy, a condition that is not always fulfilled. Moreover, when using this system, voters must be connected to the political life, take part in it, be capable to apply an objective hierarchy for the candidates. Various sociological researches showed the fact that Romanian voters still vote mainly based on emotional reasons, especially those who live in rural areas and their level of education is low or medium, so that they would not be perfectly capable of grasping the advantage of transferable-single-vote system.

Another criticism over STV is that parliaments elected by means of this electoral system appear to have the same flaws as the ones elected by means of proportional representation: they are governments relatively unstable and minority parties are assigned a stronger authority in some cases. From this point of view, the most serious problem that might occur would be the one related to the Hungarian minority in Romania, which could acquire even higher percentages during elections, a problem that would displease a large part of the population in our country.

It is worth mentioning that electoral practice does not justify all this criticism; elections in Ireland, Malta or Tasmania were concluded with relatively stable governments, legal governments, where one or two parties constituted majority. Great Britain's political life strongly influences Ireland's political life, so that the respect for the majority's decision (a characteristic of uninominal voting, based on the Westminster pattern) is very strong, despite the electoral system in use. On this line, even though a

real competition is established between candidates of the same party during Irish elections, it did not detain parties from staying united. Although in most cases candidates of a certain party were outrun by party colleagues rather than other candidates, once elected, this situation did not affect their cooperation in the Parliament.

It was also noticed that STV sustains alliances between parties (mostly due to the system of mutual exchange in their preferences), and voters hold a very important part in orienting the structure of post-electoral alliances, as determined in Ireland throughout history. Moreover, STV allows respect towards individual nominations, and it encourages parties to display their alliances to their voters, thus offering a sign about the preferences they would want them to follow. The Irish never questioned their electoral system because the vast majority perceives it as an equitable system that brings forward representative results and it offers the citizens the right to choose among both parties, and candidates within the same party. Experts noticed that the Irish generally vote either by following the "voice" of the party (i.e. for the candidate the party supports the most), or based on a geographical reason (i.e. for candidates coming from their region, irrespective of the party they belong to) (Martin, 1999: 77).

Instead of conclusions...

If we were to imagine the changes STV would create if applied in Romania, we should take into account the fact that they could be visible not only for parliament formation, but also when it comes to quality of representation and electoral competitions. First of all, we consider that large parties would have a slight advantage from this system, even though the degree of disproportion between the number of votes and the number of seats acquired would substantially decrease, as opposed to a majority electoral system. However, some small parties could benefit too, but only if voters prevailed in certain electoral districts. This is the case of UDMR, which under this situation would keep on being favored in some counties where the Hungarian population represents the majority (Harghita and Covasna). Small parties might be affected only if electoral districts were conceived in a way that is different than the current one: if areas where people vote mainly for a certain party were divided and included in different districts, thus reducing considerably the chances for that particular party to be favored. Maintaining the current electoral districts (where each county represents a district) would allow a very high level of proportionality of the results.

As for the post-electoral alliances created, they would probably be more stable, a situation that would also lead to an increase in stability for the governments facing the threat of reshuffling many times. Moreover, the electoral competition would improve its quality due to the fact that the representatives each party designates for the electoral race would not only compete with representatives of other parties, but with each other as well. Last but not least, the most important aspect regards the population who would notice an improvement in quality for the electoral competitions, which might result in an increase of voting attendance, one of the markers for the increase of the people's political education level, as well as for the existence of a consolidated democracy.

Given all the above, we think that we can offer an affirmative answer to the question regarding the STV as an applicable solution in Romania, a country that could opt for STV as a system with undeniable advantages outrunning in number and importance both single member majority systems (with one or two rounds), and the

ones involving proportional representation on closed lists. The only issue to be solved is the Romanians' relatively low level of political education today. However, along with the increase in the population's availability to be involved in the decision-making process (both nationally, and locally), and not just once every four or five years, along with the growth of living and education standards, and, last but not least, along with accountability and increase of political class quality, the STV could be an efficient, equitable and inexpensive alternative to any variation of majority or proportional vote that might be envisioned for Romania.

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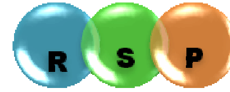

ORIGINAL PAPER

The electoral policy in 2012: the local and parliamentary elections from Dolj County (Romania)

Mihaela Bărbieru*

Abstract

The electoral elections from 2012 represented for Romania a moment of great interest, an electoral test that the Social Liberal Union took first with the local elections and in December with the parliamentary elections. Besides the failure registered by the PDL governing and the street protests from January and February, the decisive elements that contributed to the change registered on the political level are determined by the dissatisfaction among all the categories of the Romanian society and the experiences of the last years, in which "*austerity*" was the most frequent used word by the leaders. Equally, there was also a harsh political war, with the highest intensity after the Revolution from December 1989, when the opposition succeeded in obtaining the governing before the parliamentary elections, thus, USL became the greatest force, from the period after December 1989, and determined the regress in popularity for the president Traian Băsescu who, along with the Democrat Liberal Party, started to decrease electorally. The score registered after the elections surpassed the expectations of the two co-presidents of the alliance, Victor Ponta and Crin Antonescu, being higher than in the moment they had taken responsibility for the governing. The results of the elections led to a new political map in which USL obtained the 1st place, Dolj County being an integrant part of this event.

The author considers the most accurate presentation, on the national and, especially, Dolj County level, of the events related to the elections from 2012. The electoral campaigns, the debates among the candidates and the results of the elections are analysed according to the statistic data offered by the National Institute of Statistics, The Regional Department of Statistics from Dolj, the involved parties and the articles from the national and local media.

Keywords: elections, political alliances, government, change, candidates.

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In the life of a state, the elections represent an important moment in which the population offer their support towards one party or another, after which the representatives that are going to belong to the national and supra-national structures are designated. In the Romanian policy, 2012, marked by three major confrontations – the local elections from June, the referendum for the suspending of the Romanian President and the parliamentary elections from the 9th of December – represented a key moment, the changes from the political circle taking place in a special historic context. It was a year of the premiers, surprises and upheavals in which, for the first time, it was voted, in the Romanian Parliament, a motion of censure that resulted in the actual removal from the government of the leading coalition. In the Romanian Parliament was also voted another motion of censure through which the government led by Emil Boc was removed, but only after few months, the president Traian Băsescu named him again in the same position. Brought forward by the Social Democrat Union, the motion led to the fall of the government led by Mihai Răzvan Ungureanu on the 27th of April, with 235 votes for, 9 against and 4 annulled. Thus, for the first time in the post-communist Romanian policy, there was replaced from the leadership a coalition by another coalition, in opposition, before the legislative elections, a situation made possible by the parliamentary debate and, mainly, by the social street movements started in January, at Târgu Mureş, movements that grew bigger and extended all over the country. They had been initially released after the removal from his position of the Deputy Secretary of State, Raed Arafat. Later, the street movements spread all over the country and people expressed their discontentment for that moment governing.

The local elections from 2012 revealed the complexity of the dynamic equilibrium between the different political forces and the tendency of rejection, by the system of parties and the political one from the departments of the Euro-Parliamentary elections from 2007 and 2009, together with that from the local and parliamentary elections from 2008 (Pavel, 2012a: 21). It emerged a restoring of the extreme pluralism, based on the two electoral systems, for the election of the local and county counsellor, using the proportional representation, with a closed list voting, and for the election of the mayors and county councils leaders, it was used the majority electoral system, with a uninominal voting system.

As regarding the normative framework of the local elections, the legislative regulations were meant to complete, actualize and improve their organization and continuation. The novelty element was represented by the passing to the election from the first ballot for the mayors and the presidents of the county councils, fact determined by the increasing of chances of the commissioned leaders to obtain a new mandate and eliminated the institutional stimulant (the second ballot) for negotiation and cooperation between the political actors who took part in the elections. Law No. 67/2004 for the election of the local public administration, republished, with the ulterior changes and completions is the law that regulated the election of the authorities from the local public administration in our country – the local councils, the county councils, mayors and presidents of the county councils (Dănişor, 2003: 86). After the local elections from 2008, it was modified through Law no. 129 from the 23rd of June 2011 on the modification of Law no. 67/2004 for the election of the local public administration (The Official Gazette no. 444: 24th of June 2011). According to this modification, for the mayoral position, it is declared that candidate who gathered the greatest number of expressed valid votes in the first ballot. In case of a second ballot, a new poll is organized two weeks after the first ballot, with the candidates from this situation. If one

of the candidates passes away, renounces or no longer fulfils the conditions stipulated by the law for being elected, no other elections are to take place, the circumscription electoral bureau pronouncing the other candidate mayor (Gilia, 2007: 87).

Another modification for Law no. 67/2004 for the election of the authorities from the local public administration before the local elections from the 10th of June 2012, was made through Law no. 76 from the 24th of May 2012 for the entering into force of Law no. 134/2010 on the Code of Civil Procedure (The Official Gazette no. 365: 30th of May 2012). The citizens, according to the law, have the right to verify the writings from the permanent electoral lists and to fill in legal contests against the omissions, wrong noting or any other error from the lists, while the mayors need to find a solution. After the modifications brought by this law, it was regulated the fact that, against the solution offered by mayors, the citizens can appeal in 24 hours from the communication. The appeal must be solved by the Court that the locality belongs to, in no more than 3 days from the registration. It was also regulated the fact that in the counties where there were partial elections in one electoral circumscription, was not constituted a county electoral bureau, the solving of the notifications that regard the electoral fraud is made by the Court to which that electoral circumscription belongs, with the delivery made at no more than 3 days from the registration (Naumescu, 2003: 98).

Through the modifications brought by Law no. 67/2004, there is also regulated the fact that in case of appealing a candidateship, this is handed in to the instance that is competent for solving them, with a possibility for appealing in 24 hours after the delivery by the superior instance. For the election of the local councils and mayors, each commune, town, city and administrative-territorial sub-division of it, constitutes an electoral circumscription. For the election of the county councils, the president of the county council and General Council of Bucharest, each county and, respectively, Bucharest, constitutes an electoral circumscription. The numbering is made through a Governmental Decision. The norms of representation for the local and county counsellors is established in the stipulations of Law no. 215/2001 of the local public administrations, republished, with the ulterior changes and completions (Permanent Electoral Authority, A report on the organization development of the elections for the authorities from the Local Public Administration in June 2012: 5).

Through The Decision no. 57 from the 18th of May 2012, there were established, by the Central Electoral Bureau, the technical norms for the distribution of the counsellor mandates at the local elections. According to this decision, the electoral threshold is equal with the whole number, without decimals, resulted after the multiplication of the percentage points established according to art. 96 section (1) from Law no 67/2004, with the total number of the expressed valid votes in an electoral circumscription. Therefore, there were established the next limits of the electoral threshold:

a) for the political parties, organizations of the citizens that belong to the national minorities and independents - 5%

b) for political alliances and electoral alliances made of 2 members - 7%

c) for the political alliances and electoral alliances made of 3 members – 8% (Ionescu, 2006: 105).

In Dolj County, according to the law, the electoral campaign started on Friday, the 11th of May and ended on the 9th of June 2012 and the voting process took place between 7 a.m. and 7 m. Similar to the rest of the country, Dolj and, implicitly, Craiova were under the siege of the electoral posters. The candidates were designated, without discrimination, spaces to meet the electors that were in the buildings of the local

administrations, schools, in the two universities, in houses of culture, clubs from the county, cinemas, in Nicolae Romanescu Park from Craiova and other locations too. It was forbidden the organization of electoral campaign actions in the military units, but also in universities and schools while the classes were taking place. Moreover, as all over the country, receiving or promising or offering money, goods or other benefits during the electoral campaign or with the purpose to determine the electors to vote or not a certain candidate or list of candidates in any of the positions of mayor, counsellor of president of the county council, were considered crimes punished according to the law. In accordance with the legal stipulations, the mayors were forced to provide, up until the beginning of the electoral campaign and after it, special places for the electoral displaying. The display had to be done in areas frequented by citizens, without interfering with the circulation on the public roads and with the other activities from those localities.

As for the media, the political elite from Romania struggled to monopolize the written media, the radio and the television, in such a way in which it could benefit by the effects these institutions had on the market (Portelli, 1994b: 89). The political parties and the politicians tried to take advantage of the mass-media support that, many times, sided with them or proved lack of professionalism regarding certain candidates. In order to regulate the activity of the radio and television stations, The National Council of Audio-Visual (CNA) released The Decision no. 195 from the 24th of April 2012. The Decision stipulated principles and regulations for the development of the electoral campaign from 2012 for the election of the authorities from the local administration, on the TV and radio stations.

Consequently, in art 5 section (1) of the Decision 195/2012, it is stipulated that during the electoral campaign, the information on the electoral system, the technique of voting, the calendar of the electoral campaign, the political programs, the opinions and the messages with electoral content had to be presented as following:

a) informative shows - in which can be shown information regarding the electoral system, the technique of voting and the campaign activities of the electoral competitors; for this purpose, the programmed duration of the informative show can be prolonged with no more than 15 minutes;

b) electoral shows - in which the candidates can present their political programs and the campaign activities;

c) electoral debates - in which the electoral competitors, their sustainers or representatives, along with the journalists, the analysts and other guests, propose for discussion the electoral programs and the topics of public interest regarding the electoral campaign (CNA: decision no. 195/24th of April 2012).

CNA also mentions the fact that the informative shows have to be objective, equitable and to inform the public correctly and the electoral shows and electoral debates ones have to assure to all the electoral competitors equal conditions as regarding the freedom of expression, the pluralism of opinions and the equidistance (CNA: decision no. 195/24th of April 2012).

During the electoral campaign from June 2012, in Dolj County, were subscribed, for the proper presentation of the campaign activities, several radio and television stations, among which: TVR Craiova, GTV, 3TV, TeleUniversitatea, Radio Oltenia Craiova, Radio Sud etc. Both the written and the audiovisual media presented objectively, equitably and in an equilibrated manner the electoral programs and offers of all the competitors.

From the total number of 18.313.440 citizens who had the right to vote, 10.802.641 of them came to vote, signifying 58.9%, with almost ten percent more than in 2008 (Buti, 2012: 35).

In the electoral hierarchy, USL was on the first place with 38.46% of the expressed valid votes; PDL was on the second place with 15.44% of the votes, followed from a small distance by PP-DD with 7.29% and UDMR with 3.90%. Because there were electoral units where the formations that make USL did not have a common candidate, in the electoral classification there were also included PSD with 6.49%, PNL with 5.50%, or PC and ACD with subunit percentages. PDL appeared in front of the voters in many localities from the country, in different local alliances and under different names: The Alliance for Bacău, The Alliance for Argeş and Muscel, The Alliance for Constanța, The Alliance for the Future of Brăila, The Christian-Popular Alliance etc. Most of these ad-hoc electoral constructions did not manage to pass the threshold of 1% of the votes Buti, 2012: 35).

For the local councils, the hierarchy was also maintained: USL with 37.77% of the votes was placed on the first place, followed by PDL with 14.47%, PP-DD with 8.75%, PSD with 6.59%, PNL with 5.11% and UDMR with 4.30% of the votes. The first two competitors registered a considerable advance, as it could also be noticed in the distribution of the mandates. Thus, USL won with 32.68% (13.148) of the local counsellors mandates, PDL obtained 15,79% (6.354) counsellors, PSD – 10.21% (4.110), PNL – 7.83% (3.150), PP-DD – 7.77% (3.126) and UDMR – 5.62% (2.261) of the mandates. The distribution of the counsellor mandates was made according to the electoral coefficient (Buti, 2012: 36).

In addition, on the national level, the tendency is preserved for the mayoral situation. We are going to refer only to the big cities: with 17 mandates (42.5%), PSD seized the leadership, on the second position being PDL with 9 mayors (22.5%) and PNL, with 8 mandates (20%), was on the third place (Buti, 2012: 37).

We can declare that in Romania of 2012, the division of the political winning of USL to the three component parties led to a variation of the ratio of forces, meaning that the political formula, for which PSD, PNL and PC opted, determined the maximization of the winning, for each of them. From this point of view, the political alliance of the three formations passed the first electoral test, proving its useful purpose. Nevertheless, the Romanian political scene was unbalanced by the existence of an over-dominant political formation, with a political adversary to seriously contest its position (Gilia, 2013: 56).

For Dolj, as President of the County Council, was re-elected Ion Prioteasa, from USL (PSD), with 59.20%, the other candidates obtaining: Ștefan Stoica PDL – 20.89%, Dan Păloi UNPR – 9.05%. For the determining of the County Council structure, the votes were divided as following: USL – 55.65%, PDL – 20.14% and UNPR – 12.17% (INS-DRSD). Dolj County Council (36 counsellors) was made of USL– 21 counsellors (58.4%), PDL – 8 counsellors (22.2%), UNPR – 4 counsellors (11.1%), PPDD – 3 counsellors (8.3%) (INS-DRSD: 2012).

The mayoral race for Craiova was won by Lia Olguța Vasilescu – USL (PSD), the first woman-mayor from the most important city of a county, with 57.383 votes (45.60%), followed by Antonie Solomon – UNPR with 51.448 votes (40.89%). On city level, the expressed valid votes were 125.815, voting for the actual mayor 57.383 electors, representing 45.60% (INS-DRSD). The votes for the designation of the Local Council structure were divided as following: USL – 51.21%, UNPR – 25.82%, PDL –

10.80%, PPDD- 5.23% (Adevărul: 10th of June, 2010). The structure of the Local Council Craiova (27 counsellors): USL – 15 counsellors (55.6%), UNPR – 7 counsellors (25.9%), PDL – 3 counsellors (10.8%), PPDD – two counsellors (7.4%).

At the local elections from 2012, USL won 77 of the 111mayoral departments from Dolj County (38 were won by PSD, 14 by PNL and the rest by the common candidates that formed the Social Liberal Union), PDL won 38 mayoral administration, the UNPR candidates obtaining 3, in two the localities, PP-DD being the winner and PNȚCD in only one.

The turnover from the 10th of June 2012 for the election of the presidents in the County Councils was of 57.46 %, as confronted to 50.67% at the local elections from 2008 (A report on the organization development of the elections for the authorities from the Local Public Administration in June 2012: 45).

The result of the local elections from 2012 constituted a preamble for the general elections from the 9th of December, but also for the changes from the party and political system. They did not represent a surprise concerning the electoral hierarchy. The stake in this case was the obtaining by USL of the absolute majority of the deputy and senator mandates. The parliamentary elections from December took place in the context of the political disputes between the President Traian Băsescu, who was supported by centre-right alliance, The Right Romania Alliance (ARD), and the Prime-Minister Victor Ponta, supported by the centre-left Social Liberal Union (USL) that he also led. The referendum for the dismissal of the President, from the 29th of July, although was not validate due to the lack of minimum quorum stipulated by the law, polarized even more the political life from that moment and held an important position in the electoral campaign for the parliamentary elections. Although polarized, it did not have serious debates regarding the social and governmental policies of the country and the candidates from the uninominal electoral bodies focused more on the door-to-door campaign, the restricted number meeting and direct discussion with the electors.

The Romanian Parliament is bicameral and has a limited number of deputies and senators, elected either through the absolute majority obtained in an electoral body, or the assignment of mandates. The electoral system from our country is conceived in a manner to assure the proportional representation on the national level, along with the county circumscription level (Gilia, 2013: 33). According to the law, there are 42 electoral circumscriptions, made of 311 uninominal electoral bodies for the Chamber of Deputies and 135 uninominal electoral bodies for Senate. Through the supplementary designation of the mandates proportional with the number of votes obtained by parties and coalitions, the total number of the Members of the Parliament changes every 4 years, after the elections. Unfortunately, Romania has developed a complicated electoral system, in which many electors are uncertain concerning the relation between their votes and the result (The Final Report of the OSCE/ODIHR Electoral Experts Team: 5).

The electors exercised their right to voting in the polling stations they belonged to and those who could not make the proof of the domicile near a certain polling station, were registered on supplementary lists on the elections day. The Romanian citizens, with the domicile abroad, presented their passport or ID card, along with a document issued by the foreign authorities, which proved their domicile in another country (The Final Report of the OSCE/ODIHR Electoral Experts Team: 9). This way, the repeated voting was reduced.

On the national level, there were registered 2.457 candidates from 12 parties and electoral alliances and 18 national minority organizations, along with 12 independent candidates (The Final Report of the OSCE/ODIHR Electoral Experts Team: 10).

In Dolj, there were registered 90 candidates from 6 parties of electoral alliances: Social Liberal Union, The Right Romania Alliance, Dan-Diaconescu Party of the People, Great Romania Party, Hungarian Democrat Union from Romania, Romania Ecologist Party. There was nominated one person for each uninominal electoral body. There were organized 15 parliamentary electoral bodies – 5 uninominal bodies for the Senate and 10 for the Chamber of Deputies – and 17 bodies for the electoral circumscription. According to Law no. 35/2008 for the election of the Chamber of Deputies and Senate, the electoral circumscription is an administrative-territorial unit, for each County and for Bucharest, or for the Romanian that live outside the country, in which the elections are organized and where mandates are given, according to the result of the elections.

As comparing to the campaigns from the past years, there could be noticed an activity with more reduced intensity, the candidates choosing new electoral strategies that required their presence on the field and less electoral debated on television, this allowing them to be in a more direct relation with the electors.

The electoral campaign was mostly concentrated on the Prime Minister Victor Ponta and the President Traian Băsescu. Their acid political speeches started during the referendum, were intensified in the pre-electoral campaign and reached their peak in the electoral period. While USL tried to benefit by the protesting electorate, Traian Băsescu had repeated intervention for the opposition, becoming a usual subject in the campaign (The Final Report of the OSCE/ODIHR Electoral Experts Team: 3). Lacking competiveness, with strategically named candidates, the electoral campaign did not have political discourse on the subject of the policies, related to economy and reforms, the candidates preferred to debate subject of local interest. The mass-media institutions were used, along with the socializing networks, but the doo-to-door campaign, where electoral materials were handed in, was used as the main method in the entire country. Its peaceful character is also noticeable from the small number of incidents, the Ministry of Administration and Internal Affairs registering in the first 3 weeks 576 incidents, less than during the campaign for the local elections from June, where there were registered 1.500 disorders. “We did not meet any special problems. There are few cases under the incidence of article 55 from Law 35 related to electoral bribery. But, generally, the campaign remains under the limits of normality”, declared Mircea Duța, the Minister for Administration and Internal Affairs. Moreover, there were taken the necessary measures for the election to be carried on in a proper manner, according to the law and the poll from the 9th of December, to show the desire of the electorate. Mircea Duța required the prefects to be “very responsible” when organizing the local poll, “in order not to allow interpretations” (Giboi, AGERPRES: 2012).

According to the legal provisions, the public and private radio broadcasters were had to assure, through their services, an equitable, equilibrated and correct electoral campaign, for all the political parties, political alliances, electoral alliances and organizations of the citizens who belong to a national minority and for all the candidates. In order to regulate the activity of the radio and television stations, The National Council of Audio-Visual (CNA) emitted the Decision no. 738 from the 1st of November 2012. It stipulated principles and rules for the development of the electoral campaign for the election of the Chamber of Deputies and Senate, through the audio-

visual media services: “According to the legislation in force, the electoral campaign reflected on radio and television, including cable television, public or private, have to serve the next general interests of:

a) the electorate to receive concrete information, in order to be able to vote fully aware;

b) the electoral competitors, to make themselves known and to present their platforms, political programs and electoral offers;

c) the radio broadcasters, to exercise their rights and responsibilities that resort from the journalist profession” (Decision 738: art. 11).

At the closing of the ballot boxes, there were recorded on the level of the entire country, for the Chamber of Deputies, the following results: 18.423.066 – the number of the registered electors, 7.694.180 – the number of the electors who went to the poll, representing 41.76%, 7.409.626 (96.30%) – the number of the expressed valid votes, 187.383 (2.44%) – the number of the electors registered on the supplementary lists, 53.707 (0.70%) – the number of the votes from the mobile poll boxes, 212.289 (2.76%) – the number of the null votes, 71.364 (0.98%) – the number of the white votes. For Senate, there were registered the next results: 18.423.066 – the number of the registered electors, 7.416.628 (96.39%)– the number of the expressed valid votes, 7.694.180 (41.76%) – the number of the electors who went to the poll, 187.383 (2.44%) – the number of the electors registered on the supplementary lists, 53.707 (0.70%)– the number of the votes from the mobile poll boxes, 185.980 (2.42%)– the number of the null votes, 90.968 (1.18%) – the number of the white votes (The Final Report of the OSCE/ODIHR Electoral Experts Team: 26).

According to the Central Electoral Bureau, USL obtained the Chamber of Deputies with 4.344.288 expressed valid votes (273 mandates), while for the Senate, they gathered 4.457.526 (122 mandates); ARD obtained for the Chamber of Deputies 1.223.189 expressed valid votes (56 mandates) and for the Senate, 1.232.318 (24 mandates); PP-DD had for the Chamber of Deputies 1.036.730 votes (47 mandates) and for the Senate – 1.086.822 (21 mandates); for the Chamber of Deputies, UDMR obtained 380.656 votes (18 mandates) and for the Senate 388.528 (9 mandates) (BEC).

The number of the members in the Romanian Parliament, after the elections from the 9th of December, increased from 470 to 500 members. USL has 395 mandates (122 senators and 273 deputies), The Right Romania Alliance has 80 mandates (24 senators and 56 deputies), PP-DD has 68 mandates (21 senators and 47 deputies), UDMR has 27 mandates (9 senators and 18 deputies), along with 18 parliamentary members of the national minorities (BEC).

For Dolj County, USL won all the 15 parliamentary bodies, the candidates obtaining over 50% + 1 from the expressed valid votes, the next political formations being ARD and PP-DD. For the Senate, ARD obtained 17.73% of the expressed valid votes and PP-DD 14.96%. For the Chamber of Deputies, PP-DD obtained 17.29% and ARD 15.52% (INS-DRSD). As regarding the electoral campaign for the parliamentary elections from Dolj, it followed the traces of the national one and were not registered major events.

The winners in the parliamentary elections from Dolj, on the 9th of December 2012, were: Enea Constantin Cosmin (electoral body no. 1 USL), Vasilescu Nicolae (electoral body no. 2 USL), Stroe Ionuț Marian (electoral body no. 3 USL), Gust-Băloşin Florentin (electoral body no. 4 USL), Petrescu Petre (electoral body no. 5 USL), Manda Iulian Claudiu (electoral body no. 6 USL), Voicu Mihai Alexandru (electoral body no.

7 USL), Iane Daniel (electoral body no. 8 USL), Zgonea Valeriu Ştefan (electoral body no. 9 USL), Călin Ion (electoral body no. 10 USL) for the Chamber of Deputies and Anghel Cristina Irina (electoral body no. 1 USL), Fifor Mihai Viorel (electoral body no. 2 USL), Voinea Florea (electoral body no. 3 USL), Oprea Mario Ovidiu (electoral body no. 4 USL), Geoană Mircea Dan (electoral body no. 5 USL), for Senate (INS-DRSD).

After the redistribution, there were given for Dolj other 3 senator mandates and two for deputies, as following: ARD – Mărinică Dincă – Senate, Ştefan Stoica and Constantin Dascălu – the Chamber of Deputies; PP-DD – Antonie Solomon – Senate, Gigi Nețoiu – the Chamber of Deputies. Thus, Dolj County is represented in the Romanian Parliament by 20 Members, the five mentioned above being in the opposition.

On the 16th of December 2012, the senators and the deputies from Dolj received, in the meeting room of the County Council of Dolj, the Members of the Parliament certificates. They were handed in by the president of the Electoral Body of Dolj County, the judge Daniel Otovescu. The local officials attended this event: the President of Dolj County Council, Ion Prioteasa, the Mayor of Craiova, Lia Olguța Vasilescu, along with the prefect of Dolj, Marius Deca. From the 20 Members of the Parliament, Mircea Geoană, Antonie Solomon, Gigi Nețoiu and Daniel Iane did not attend.

USL obtained over 67% of the mandates for the new Parliament, a result that conferred it the sufficient parliamentary majority, with three mandates over the majority of exactly two thirds, not needing anymore support from UDMR. The categorical winning of USL determined the naming of Victor Ponta as Prime Minister, president of PSD and the election of Crin Antonescu, the PNL president, as the president of the Senate, both co-presidents of Social Liberal Union. Dolj County was represented in the executive body by the president of the county liberal organization from PNL, a Minister mandatory for the relation with the Parliament, the deputy Mihai Voicu. At present, Dolj fills the position of state secretary in the Ministry of European Funds through Alin Mitrică. In the Parliament, the deputy Valeriu Zgonea was elected the president of the Chamber of Deputies and Claudiu Manda, deputy-leader of the PSD group.

After the parliamentary elections, there were reorganized many parties, among which PSD. The political leaders of the party from Dolj were appointed, after the elections, national deputy-presidents: Valeriu Zgonea and Lia Olguța Vasilescu.

2012 represented a failure for PDL, the party being defeated repeatedly and obtaining 22% at the local elections from June, and the alliance it belonged to – ARD – won under 17% at the parliamentary elections, where it obtained 80 places in the Parliament – 24 senators and 56 deputies. On the list of the great losers were also important names from the Romanian policy, the ex democrat-liberal Members of the Parliament, Cristian Boureanu, Sulfina Barbu or William Brînza and the UDMR member Gyorgy Frunda. Neither Mihail Neamțu, Aurelian Pavelescu or Teodor Baconschi succeeded in obtaining a chair in the Parliament, nor the founder of Party of the People (PP), Dan Diaconescu.

The local and parliamentary elections from 2012 did not represent a surprise for Romania. The experience of the last years, in which "austerity" was the most used word by the leaders, determined the desire of change, expressed by the electors starting with the winter of 2012. The results of the elections led to a new political map, in which USL obtained the 1st place, Dolj County being on this political map too.

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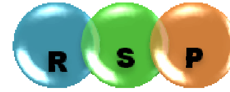

ORIGINAL PAPER

The 2012 Romanian Local Elections. An Analysis of the Local Strategies, Voting Choices and Final Results in Drăgăşani (Vâlcea County)

Georgeta Ghionea*

Abstract

From the political point of view, 2012 dealt with surprises, first time situations and upheavals. The local elections from this year represented the premises for some important changes in Romania, their result constituting the preamble for the general elections from December the 9th, but also for the changes from the parties and the general political system. In our study, we took into account the local elections from Drăgăşani, Vâlcea County. Following a more serious analysis of the first elections results (2012), we could notice several interesting elements that drew our attention for such a research. In the same time, there was also a personal reason that made us investigate certain phenomena that we observed directly and to take part to some of them.

Keywords: Drăgăşani, Vâlcea County, 2012, general elections, local elections

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In our study, we took into account the local elections from Drăgăşani, Vâlcea County. In the first section of my article I shall focus on the local election in 2012 in Romania. The local election had been expected with great interest both by the political class in Romania and the electorate, taking into consideration the PDL failure in the governing process, the street protest and the discontent among all the categories of the Romanian society.

In the second section of my paper I have analyzed the electoral strategies of the candidates, starting for the Mayor's office in Drăgăşani city (the 10th June 2012) and the election results. Following a more serious analysis of the first elections results (2012), we could notice several interesting elements that drew our attention for such a research.

The local elections from the 10th of June 2012, did not reveal through their results, the novelty of the campaign, but of the turnover (56.36% on national level), which was greater than at the local elections from 2008 (48.70%).

From the technical point of view, the elections considered two electoral systems. Therefore, for the election of the local and county counsellors, there was used the proportional representation, with a closed lists voting, and for the election of the mayors and county councils, it was used the majority electoral system, with a uninominal voting system.

The innovation that appeared in 2012 was observed in the elections for mayors and county councils presidents, where they passed from the two-ballots voting to the one-ballot one (Buti, 2012: 35; Bărbieru, 2013: 220-221). It is possible that the elimination of the second ballot might have had a special importance on the polls report, the electors being aware of the fact that they have just one opportunity to vote.

Thus, for the appointing of the local officials, there were 10.802.641 citizens who reported to the polls, from a total number of 18.313.440 with the right to vote, such is 58.9%, with almost ten percent more than in 2008 (Buti, 2012: 36; Radu, 2012: 6-7). The electors' options were materialized in: 1.324 mayoral mandates for USL (41.57%); 498 mandates for PDL; 378 – PSD; 264 – PNL; 203 – UDMR; 31 – PP-DD; 27 mandates – ACD (Buti, 2012: 35; Pavel, 2012: 24).

As we can notice from the above information, the main parties and political-electoral alliances that ran for the local elections from 2012 were: Social-Liberal Union (USL), made of three political parties – PSD+PNL+PC; The Democrat-Liberal Party (PDL), led, at that time by Emil Boc; UDMR, the representative group of the Romanian citizens of Hungarian ethnicity led by the deputy Kelemen Hunor; the National Union for the Progress of Romania (UNPR), a parliamentary party led by Gheorghe Oprea, Dan Diaconescu Party of the People-(PP-DD), led and founded by Dan Diaconescu (Bărbieru, 2013: 220).

If we survey the electoral hierarchy, we can observe, on the national level, that the formation led by Victor Ponta and Crin Antonescu won the elections clearly, obtaining 38.4% from the expressed valid votes, on the second place being PDL, with 15.44% and followed at a considerable distance by PP-DD, with 7.29 votes (Buti, 2012: 36). There were many cases in which the political formations that were making USL to not have a common candidate, in the electoral classification being included PSD with 6.49% of the votes, PNL with 5.50% and PC and ACD with a subunit percentage.

Altogether, PDL was present in many places from the country with different local alliances and under different names („The Alliance for Bacău", „The Alliance for Argeş and Muscel", „The Alliance for Constanța", „The Alliance for the future of Brăila",

„Popular-Christian Alliance"), most of them not being able to excel the threshold of 1% of the votes (Buti, 2012: 36).

The same hierarchy was maintained for the local councils voting. On the first place there was USL with 37.77%, followed by PDL with 14.47%, PP-DD with 8.75%, PSD with 6.59%, PNL with 5.11% and UDMR with 4.30% of the votes (Bărbieru, 2013: 221). The USL victory was also confirmed for the county councils presidents. Therefore, USL had 36 of the 41 mandates, on the next positions being UDMR with 2 mandates, PDL with one mandate, The Liberal European Progressive Popular Electoral Alliance, one mandate and The Liberal Christian Movement, one mandate (Buti, 2012: 36).

The high rate of the turnover, the massive voting for USL and the electoral failure of PDL were explained by Dan Pavel through the harsh austerity measures initiated and publicly announced by the President of Romania Traian Băsescu (the reduction of the wages with 25%, the cuts of the pensions and very many other budgetary austerity measures).

The same author said that the popular dissatisfactions from the University Square and from the entire country – from 2012 – were concentrated in three political claims: the stopping of the merging between the local elections with the parliamentary ones; the removal from the leading position of the PDL-UDMR-UNPR govern and the dismissal of the President Traian Băsescu, seen as the main responsible person for the too harsh austerity measures (Pavel, 2012: 19).

For Vâlcea County, the turnout in 2012 was of 61.65%, the county held the 10th position in the chart. According to the valid expressed votes, Ion Cîlea from USL was re-elected president of the County Council. He obtained 65.57 percentages, more exactly, 112.833 votes. The PDL candidate, Jurcan Dorel, obtained 17.58% - 30.262 votes, while Butnaru Florinel, the PP-DD candidate, obtained 6.81% (11.733 votes from the total number of expressed valid votes).

On the next places there were – National Union for the Progress of Romania – 10.086 (5.86%) of the total number of expressed valid votes; Trandafir Alin – The Party of the People – 1.858 votes (1.07%), Gherghinescu Sorin – The Green Party, 1499 votes (0.87%), Mateescu Constantin – The Social Alliance Party, 1.491 de votes (0.86%), Stan Ion Alexandru – The Social Christian Popular Union – 907 votes (0.53%), Tăbîrcă Mihai Bebiță – The Civic Force, 786 votes (0.45%) and Manea Gheorghe – The Popular Party of the Social Protection, 612 votes (0.35%) (The Official Gazette from Vâlcea County. Special edition – II, 2012: 33-43).

As we can easily observe, the distance between the first and the second place was more than double. As regarding the structure of Vâlcea County Council, the situation was: 21 USL counsellors, 6 PDL counsellors, 3 from PP-DD and 2 UNPR representatives (The Official Gazette from Vâlcea County. Special edition – II, 2012: 5-6).

Table 1a: County Counsellors (name A-M). 2012-2016 – Mandate

No	Surname and Name	Profession	Function	Political affiliation
1.	Câlea Ion	Engineer	**President**	**PSD**
2.	Andreianu Mihaela	Economist	County Counsellor	**USL PSD/PNL-PC (PNL)**
3.	Belciu Ion	Economist	County Counsellor	**USL PSD/PNL-PC (PSD)**
4	Bulacu Romulus	Engineer	County Counsellor	**PDL**
5.	Buşe Dunmitru Gery	Engineer - Economist	County Counsellor	**USL PSD/PNL-PC (PSD)**
6.	Buşu Adrian	Jurist	County Counsellor	**USL PSD/PNL-PC (PSD)**
7.	Butnaru Florinel	Engineer	County Counsellor	**PP-DD**
8.	Cîrstea Aurelian	Teacher	County Counsellor	**USL PSD/PNL-PC (PSD)**
9.	Filip Teodosie	Economist	County Counsellor	**UNPR**
10.	Folea Gheorghe	Medic	County Counsellor	**USL PSD/PNL-PC (PNL)**
11.	Grigore Petre	Jurist	County Counsellor	**UNPR**
12.	Grigorescu Remus	Teacher	County Counsellor	**USL PSD/PNL-PC (PSD)**
13.	Jinaru Adam	Engineer	County Counsellor	**USL PSD/PNL-PC (PNL)**
14.	Liţă Ioana	Economist	County Counsellor	**USL PSD/PNL-PC (PSD)**
15.	**Lupu Alina**	**Administrative Sciences**	**County Counsellor**	**PDL**

Source: The Official Gazette from Vâlcea County. Special edition – II, 2012: 5-6

Table 1b: County Counsellors (name M-T). 2012-2016 – Mandate

No	Surname and Name	Profession	Function	Political affiliation
16.	Marin Victor	Economist	County Counsellor	**USL PSD/PNL-PC (PSD)**
17.	Militaru Claudia	Jurist	County Counsellor	**USL PSD/PNL-PC (PNL)**
18.	Moise Iuliana	Engineer	County Counsellor	**PDL**
19.	Nicolae Ion	-	County Counsellor	**PP-DD**
20.	Oproaica Alexandru	Engineer	County Counsellor	**USL PSD/PNL-PC (PSD)**
21.	Păsat Gheorghe	Engineer	County Counsellor	**USL PSD/PNL-PC (PNL)**
22.	Persu Dumitru	Economist	County Counsellor deputy-president	**USL PSD/PNL-PC (PSD)**
23.	Petrescu Remus	Engineer	County Counsellor	**PDL**
24.	Pistol Bogdan-Alexandru	Economist	County Counsellor deputy-president	**USL PSD/PNL-PC (PNL)**
25.	Pîrvu Constantin	Technician	County Counsellor	**USL PSD/PNL-PC (PSD)**
26.	Poenaru Mircea-Constantin	Engineer	County Counsellor	**USL PSD/PNL-PC (PNL)**
27.	Popescu Victor - George	Engineer - Physician	County Counsellor	**USL PSD/PNL-PC (PNL)**
28.	Prală Ştefan	Economist	County Counsellor	**PDL**
29.	Rădulescu Constantin	Economist	County Counsellor	**USL PSD/PNL-PC (PSD)**
30.	Simion Aurel	Engineer	County Counsellor	**PDL**
31.	Stănculescu Victor-George	Jurist	County Counsellor	**USL PSD/PNL-PC (PNL)**
32.	Tărăşenie Dumitru	Economist	County Counsellor	**USL PSD/PNL-PC (PNL)**
33.	**Trancă Teodor**	**Jurist**	**County Counsellor**	**PP-DD**

Source: The Official Gazette from Vâlcea County. Special edition – II, 2012: 5-6

A significant distance was also noticed between the first two competitors on addressing the establishing of the local councils structure, where the situation was as following: the turnover was of 65.76% and from the 923 given mandates, USL was on the first three places, obtaining 302 mandates, PDL – 184 and the Electoral Alliance PSD-PNL Vâlcea – 122. As regarding the distribution of the mayor mandates: USL and the Electoral Alliance PSD-PNL obtained 74 of the 89 town halls in the county, PDL – 8 mandates, PC – 3, UNPR – 2, independent candidates – 2 (In Rm. Vâlcea the position of mayor was obtained by Emilian Frâncu (USL), with a percent of 39.6%. On the second place was Romeo Rădulescu (PDL), with 24.1%, followed by Eusebiu Vețeleanu (UNPR) with 23.5% and Ion Nicolae (PP-DD) with 4.9%).

In the mayoral electoral race for Drăgăşani entered 8 candidates, among which, one was independent. Although the turnout was low, in 2012, it was with 6-7 percents higher as compared to the similar poll four years before. According to the number of the voting citizens, recorded on the electoral lists, 17.590 voters were expected at the elections, but only 8.812 of them reported to the polls.

The PSD-PDL Alliance candidate started the electoral race from 2012 on a favourable position. Being an engineer, Cristian Nedelcu, filled the position of mayor between 2008-2012 too. Counting on his image of "efficient administrator" – a position also sustained by Ion Cîlea, the president of Vâlcea County Council, in the electoral campaign – in his television appearances, but also in the interviews for the media, the candidate mentioned the continuation of the already begun projects, voicing in front of his supporters that the accomplishments of his mandate were the result of the local administration's efficiency, in relation with his predecessors. The development of "Costache Nicolescu" City's Hospital Ambulatory Department, a project of 2.606.707 lei; the extending of the water and sewage system in the district of Roms from Sfântul Gheorghe and Troian from Drăgaşani; the arranging of the public garden from this city and Tudor Vladimirescu School are only few of the local administration's projects, led by Cristian Nedelcu during 2008-2012. A great deal of the masses appreciated his actions from this period mentioned above, the candidate of the PSD-PNL Alliance obtaining the highest rates of notoriety and trust.

As for the next projects, Cristian Nedelcu summed them up in an interview in this manner: "In my next mandate I am going to solve totally the problem of the sidewalks. We started in 2011, with smaller steps, we are continuing it this year and, in no more than 2-3 years, there are not going to be anymore problems... We are going to asphalt Troianu Street, in the district of Roms, where there have also been made investments in the water and sewerage systems, the road being therefore damaged. There are as well programmed investments in Sfântul Gheorghe district, where, for the moment we are going to make reparations and ballasting... We have also provided funds for the parking lots arrangements, most of them older than 40-50 years old" (Barbu, 2012a: 1).

Altogether, the rehabilitation of the Museum of Vineyard and Wine, a historical monument from this locality; the modernization of the social services physical infrastructure from Drăgăşani; the promotion of the touristic potential, by organizing the Annual Festival of the Wine; the development and the modernization of the public lighting and the green spaces; the projects for modernization of the urban public spaces were considered worth mentioned in the electoral campaign, for the people to take them into consideration when reelecting an efficient administration (Barbu, 2012a: 1).

Vicențiu Tiberiu Vătafu started also as a preferred candidate for PDL. Being a Mathematics teacher and headmaster of „I. C. Brătianu" High-School from Drăgăşani,

the PDL candidate chose as a slogan “A vote for me represents a vote for Drăgăşani”. In front of his supporters, Tiberiu Vătafu came with a list of objectives, made after an intensive study. Militating for “a clean, safe and nice city”, the PDL candidate mentioned: the asphalt of the streets, the sidewalks and the lane from the entire town area, the solving of the stray dogs problem, the building and the arranging of new parking lots, the rehabilitation and the extension of the sewerage system, creation of new jobs by attracting investors and also by supporting the small and medium-sized companies, observing of the civic norms regarding the comfort and security of the citizens, endowing of the school surgeries with medicines and apparatus (cronicazilei.info, 2012) etc. From the beginning of the campaign, the PDL candidate recognized that he was starting the race from the second position, admitting that, if he “succeeds to obtain at least the same number of counsellors as PDL in this mandate too (2008-2012), this should be fully appreciated” (Barbu, 2012c: 1-2).

Ilie Căpraru, lawyer, was the only independent candidate in the mayoral race for Drăgăşani. He started his campaign under the slogan: “For people. Serious and responsible”, motivating his entrance into the competition for Drăgăşani as following: “I want to make true a dream from my childhood, that is to be the one who comforts the suffering of my fellow citizens. There are people who long for asphalt for the ambulance, the fire-fighters to reach their homes faster and, why not, to bring their children to school without wearing rubber boots. These things cannot be made by me for my people from Drăgăşani as a lawyer, but as a mayor” (Electoral program, 2012: 1-8). His electoral campaign was unexpectedly young and dynamic, the candidate proving seriousness and participating well-prepared to the electoral confrontations with campaign materials produced by his own staff. Even though starting with small chances at the beginning of the electoral campaign, the lawyer Ilie Căpraru rapidly regained the distance that was separating him from the favourite, on one side due to the performant electoral strategy that he had and on the other side thanks to his determination and ambition. All the time among the people from Drăgăşani, the young lawyer – as the newspapers announced – presented his message in an explicit way and captivated them through his practical and entrepreneurial spirit. Intensely publicised, the performance of the independent candidate – for the first time in such a competition – was appreciated to be a winner one, locally and not only, due to the way he led his campaign: honestly, loyally, lawfully, full of respect and common sense.

Ion Crânguş, the PP-DD candidate, built his entire campaign on the necessity of reviving the local administration. “My entrance into the mayoral elections of Drăgăşani – said the PP-DD candidate – is a relatively simple one, because nothing seems to happen lately. The city Drăgăşani looks like a poor small provincial town. If something has ever been started, nothing has ever been finished. Whoever crosses the city, only on the main route, notices the obvious reality. I think people expect a lot and deserve a lot from us” (ramnic.ro, 2012).

Costică Marin, who graduated the Academy of High Military Studies, an officer in the guard of honour for 18 years, former leader of the Şcolii Militare de Subofițeri Jandarmi „Grigore Alexandru Ghica” Military School for Non-Commissioned Officers of the Gendarmerie (2006-2009), PhD in military sciences since 2003, started his electoral campaign as a representative of the Prodemo Party (PPRO), being convinced that: ”(...) a rigorous and exigent way in the administration and managing of the city is what the second big city from Vâlcea needs” (Barbu, 2012b: 1). He chose as a main slogan “Rigor and exigency”, sustaining in his entire campaign that “although he is not

an exceptional politician", his 30 years in administration, recommend him as being the most appropriate candidate for an efficient management of the city. The candidate PPRO presented the voters a complex electoral offer, including projects related to: administration, security and infrastructure, insisting on: the equal and correct applying of the law, the eradication of corruption, the stopping of waste, the knowing of the citizens' real problems, the consulting of the city's citizens through public debates and referendum in the special importance problems (Barbu, 2012b: 1-2). Petre Nițu (the PRM candidate), Georgeta Dumitraşcu Rita (PNȚCD), Viorel Florescu (The Popular and Social Protection Party) had a smaller chance to promote their electoral offers. They led discrete campaigns, with lower investment, considering their feeble chances against the main candidates. The results of the elections reconfirmed the mayoral mandate of Cristian Nedelcu, the representative of PP-DD Alliance, who won the local elections beyond question, obtaining 49.6% (4.375 of the expressed valid votes). The surprise was the unexpectedly high score on the independent candidate, Ilie Căpraru, who started, on the first choices, from the last place in the local elections. He managed to obtain a 23.15%, representing 2.040 on the expressed valid votes. According to the number of the votes, the next places were obtained by Vicențiu Tiberiu Vătafu (PDL) – 11.94%, Ion Crânguş (PP-DD) – 9.95%, Petre Nițu (PRM) – 1.70%, Costică Marin (PPRO) – 1.62%, Georgeta Dumitraşcu Rita (PNȚCD) – 1.23%, Viorel Florescu (PPPS) – 0.73%.

Table 2a: The situation of the results achieved in the elections from 10. 06. 2012: Mayors

No	Name	Total presence	Nedelcu Cristian	Vătafu Tiberiu	Crînguşi Ion
1.	Tudor Vladimirescu School	1.519	814	197	125
2.	I.C. Brătianu School	1.303	634	184	126
3.	Rahova	700	358	108	52
4.	I.C. Brătianu Garden	426	213	57	38
5.	Nicolae Bălcescu School	1.201	654	123	124
6.	Gib Mihăescu National College	693	334	110	66
7.	Agromec	613	225	64	81
8.	Birsanu School	542	241	50	48
9.	Rudari Garden	212	98	16	6
10.	Momoteşti School	430	245	38	50
11.	Capu Dealului School	440	231	54	48
12.	Zlătărei School	733	294	52	113
	Total - %	8.812 50.1%	4.375 49.6%	1.053 11.9%	877 9.9%

Table 2b: The situation of the results achieved in the elections from 10. 06. 2012: Mayors

No	Name	Rita D.	Florescu Viorel	Nițu Petre	Marin Costică	Căpraru Ilie
1.	Tudor Vladimirescu School	34	10	21	27	287
2.	I.C. Brătianu School	10	8	26	15	300
3.	Rahova	9	5	10	8	150
4.	I.C. Brătianu Garden	4	3	9	5	97
5.	Nicolae Bălcescu School	27	11	21	23	217
6.	Gib Mihăescu National College	8	4	6	8	157
7.	Agromec	1	4	11	10	187
8.	Birsanu School	6	10	7	9	171
9.	Rudari Garden	1	-	5	7	79
10.	Momoteşti School	1	1	6	6	83
11.	Capu Dealului School	4	2	10	11	80
12.	Zlătărei School	4	6	18	14	232
	Total - %	109 1.15%	65 0.73%	150 1.70%	143 1.62%	2.040 23.15%

When analysing the result of the local elections from Drăgăşani we cannot ignore the national context, related to a high degree of support for USL, as an alternative to the PDL governing. As for the political parties, the competition was won by USL and PSD-PDL Alliance from Vâlcea, being on the first place on the elections for the local council of Drăgăşani, obtaining 11 mandates from the total number of 17, followed by PDL with 3 mandates and PP-DD with 3 mandates.

Table 3: Local elections – 10th of June 2012. Local councils –Drăgăşani

No. crt.	Party	Votes			Mandates		
		no	% in aprox.	% in county	no	% in aprox.	**% in county**
		8.444	100.00	4.26	17	100.00	**1.58**
1.	PRM	329	3.90	0.17	0	0.00	**0.00**
2.	Asociația Partida Romilor „Pro-Europa” – “Pro-Europe” Party of the Roma	227	2.69	0.11	0	0.00	**0.00**
3.	PDL	1.396	16.53	0.70	3	17.65	**0.28**
4.	PPPS	150	1.78	0.08	0	0.00	**0.00**
5.	PNȚCD	200	2.37	0.10	0	0.00	**0.00**
6.	PP-DD	1.151	13.63	0.58	3	17.65	**0.28**
7.	UNPR	137	1.62	0.07	0	0.00	**0.00**
8.	Prodemo Party	197	2.33	0.010	0	0.00	**0.00**
9.	**PSD-PNL Alliance**	**4.657**	**55.15**	**2.35**	**11**	**64.71**	**1.02**

Source: The Official Gazette from Vâlcea County. Special edition – II, 2012: 33

After analysing the local campaign strategies of the candidates, we have noticed that the electoral offers of them were almost similar. No matter the party of they came from, during the electoral programs, the candidates approached approximately the same themes, subjects that they considered important for their community.

The administrative, the infrastructure, the economic, social, educational, cultural, sports fields imply problems that are always present around the dwellers of the city. The fact that these subjects, approached in the electoral platforms, were similar proved the focusing of the candidates on what they regarded as important for the people of Drăgăşani.

Table 4: The situation of the local elected people from Drăgăşani 2012-2016 Mandate

No.	Surname and Name	Profession	Function	Political affiliation
1.	Nedelcu Cristian	Engineer	**Mayor**	**USL (PSD)**
2.	Sanda Mihai Adrian	Engineer	**Deputy mayor**	**USL (PNL)**
3.	Bolocan Mihail	Jurist	Local counsellor	**USL (PSD)**
4.	Dumitru Dobre	Technician	Local counsellor	**USL (PSD)**
5.	Elisavescu Ion	Energetician	Local counsellor	**USL (PSD)**
6.	Guinea Ilie	Technician	Local counsellor	**USL (PSD)**
7.	Nedelcu Sorin Gabriel	Engineer	Local counsellor	**USL (PSD)**
8.	Petcan Lidia Florentina	Teacher	Local counsellor	**USL (PSD)**
9.	Boerescu Adrian	Accountant	Local counsellor	**PSD-PNL (PNL)**
10.	Caplea Elena	Jurist	Local counsellor	**PSD-PNL (PNL)**
11.	Greere Constantin	Sub-engineer	Local counsellor	**PSD-PNL (PNL)**
12.	Tănasie Gheorghe	Doctor	Local counsellor	**PSD-PNL (PNL)**
13.	Niţoiu Viorel	Engineer	Local counsellor	**PD-L**
14.	Vătafu Vicenţiu Tiberiu	Teacher	Local counsellor	**PD-L**
15.	Zăuleţ Adrian	Engineer	Local counsellor	**PD-L**
16.	Bercu Cornel	Engineer	Local counsellor	**PP-DD**
17.	Marin Nuţi	Technician	Local counsellor	**PP-DD**
18.	**Neacşu Viorel**	**Jurist**	**Local counsellor**	**PP-DD**

Source: The Official Gazette from Vâlcea County. Special edition – II, 2012: 6-7

If we detail, we can notice that the main problem on the agenda of all the candidates was the infrastructure and the proposed solutions were identical. Among these we can mention: new parking lots, the remaking of the asphalt on the streets where there had been worked on the sewerage, the cleaning of the sidewalks and their re- asphalting, the extension of the water and sewerage system from the outskirts. For this chapter, there was noticed the degree of detailed knowledge of the areas with major problems by the candidates: Nedelcu Cristian (PSD-PNL Vâlcea Alliance), the independent candidate Căpraru Ilie, Tiberiu Vătafu (PDL candidate) and Ion Crânguş (PPDD candidate). The social problems were especially approached by: Viorel Florescu (The Popular and Social Protection Party), Costică Marin (PPRO candidate), Ilie Căpraru, Tiberiu Vătafu, Georgeta Dumitraşcu Rita (PNȚCD candidate). On this respect, the candidates came with electoral promises related to: social constructions, thermic rehabilitation of the blocks of flats, the support of the performance sportive activities, the endowing of the laboratories, libraries and school cabinets, the transport of the students from Zlătărei, Momoteşti, Bârsanu to the schools from the centre of the city, a weekly newspaper with useful information for the citizens, the supervision of the students who do not attend school and the causes for this situation etc. All the candidates insisted on the environmental problems and the common solutions aimed the founding of new parks. The businesses were not omitted from the electoral programmes, the candidates insisting on the importance of attracting new economic investors.

The electoral campaign during which the candidates promoted their electoral offer played a very important part. It is well-known the fact that, during the campaign, it is decided, most of the times, the result of some elections and "if not always it changes the winner – as Vâlsan C. Noticed – then it certainly modifies some percentages" (Vâlsan, 1992: 15). Being present in certain law studies "the period before the day when the citizen takes the political decision", the electoral campaign period was the moment when the candidates and the political parties presented their electoral offer and the electors, according to the received information, mentioned their electoral preferences, expressed through the secret vote on the day of the elections. During the electoral campaign, a part of the competitors resorted to campaign sites, blogs, socializing networks – Facebook, transmitting through them, to the potential electorate and even their supporters, the places where they could be seen or the events they attended. The studies conducted in the last years on these socializing methods with the electors, proved that they consider them more credible that the traditional mass-media components (Stoiciu; Pripp; Beciu; Balaban; Foux, 2006: 38-39).

The real confrontation, sometimes, became a personal attack through the materials published in the local newspaper called ProExpres of Drăgăşani. If we look at the headlines from the front page of the ProExpres newspaper from Drăgăşani, between the 8th of May and the 7th of June 2012, we can notice that very few published materials offered information on the electoral process, most of them being related to the electoral programs of the candidates and most of them were focused on accusations against some of the local competitors. The most important part of the articles was centred on the candidate of PSD-PNL Alliance Nedelcu Cristian ("The entire Drăgăşani votes for Cristi Nedelcu!", "Cristi Nedelcu – the one thousand billion mayor!", "Another festival of Drăgăşani, Cristi Nedelcu brand") and Costică Marin, the PPRO candidate ("Costică Marin promises more action at Drăgăşani city-hall", "Costică Marin asks for rigour and exigency in the management of Drăgăşani", "Costică Marin: I am part of the

responsible generation") and the most of the accusations were brought against the independent candidate, who appears at the rubric "Who to vote and NOT TO VOTE". We should also mention that, after the end of the electoral campaign, the same newspaper, ProExpres of Drăgăşani, denied all the accusations brought against the young lawyer Ilie Căpraru.

Table 5: The situation of the results achieved in the parliamentary elections from 09. 12. 2012: Deputies

No	Name	Electoral potential	Valid vote	Vasile Bleotu USL	Ştefan Prală ARD	Marian Cristinel PP-DD	Barbu Roland PRM
1.	Tudor Vladimirescu School	3.075	1.205	735	287	132	14
2.	I. C. Brătianu School	2.938	996	584	219	162	20
3.	Rahova	1.461	530	299	91	112	14
4.	I. C. Brătianu Garden	913	376	237	45	72	8
5.	Nicolae Bălcescu School	2.509	1.017	613	252	114	12
6.	Gib Mihăescu National College	1.553	563	321	131	73	26
7.	Agromec	1.181	509	280	88	9	-
8.	Birsanu School	997	478	344	48	56	12
9.	Rudari Garden	468	312	168	21	23	14
10.	Momoteşti School	833	363	217	66	61	8
11.	Capu Dealului School	808	380	218	75	63	-
12.	Zlătărei School	1.242	508	260	108	117	9
Total - %		17.978	7.240 40.3%	4.276 59.1%	1.431 19.7%	994 13.7%	137

The reports of the observers, regarding the way the elections took place, showed that: in any of the polling stations, the vote was not suspended; there were not mentioned cases of lost or stolen stamps during the voting; there were not cases of voting papers taken out of the polling station, except for those necessary for the mobile voting box; there were not any cases of prolonging the polling after 9 o'clock p.m.

We cannot end without also mentioning the data referring to the results obtained at the parliamentary elections from the 9th of December 2012, in Vâlcea County the city of Drăgăşani. The total number of the voters from this county was of 343.407 and of those who came to vote was of 154.043. The USL candidates from the County obtained two Members of the Parliament mandates (6 deputies– Aurel Vlădoiu, Cristian Buican, Constantin Rădulescu, Traian Dobrinescu, Vasile Bleotu and Constantin Mazilu and 3 senators – Dan Nițu, Adrănel Cotescu and Laurențiu Coca). In Drăgăşani, according to the number of the citizens who had the right to vote, registered on the electoral lists, there were 17.978 electors expected to come for voting, but only 7.240 of them did. From the total number of the expressed valid votes, USL (Vasile Bleotu) obtained 4.276 votes, on the second place being PSD (Ştefan Pralã), with 1.431 votes, the next place being taken by PP-DD (Marian Cristinel), with 994 votes.

Conclusions

With a political score of almost 50%, having 80% of the County Councils presidents and with a great number of mayors, USL obtained in 2012 a dominant position on the Romanian political scene. The 2012 election, which took place under exceptional political auspices, is generally considered atypical when compared to the other five post-communist local election cycles, the two reasons for this being the increased citizen ballot presence and the specific legislature changes. 2012 was the year of popular movements and street protests, asking for political change. For the first time in post-communism, the coalition in power was defeated in Parliament with a censorship motion, followed by a new government, made from the previous opposition parties. In 2008, the party system moved towards tripartidism, but now the anti-system party is back, with a strong populist appeal. From the political point of view, 2012 was a year full of surprises, premiers and upheavals.

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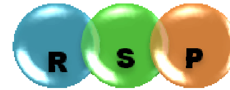

The Role of the President in Policy-Making in Macedonia

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Abstract
This paper aims at dealing with several issues regarding the role of the President in Macedonia, having in mind first of all the fact that it is a parliamentary country where the President does not have a full executive role. Therefore, we should focus on his role in balancing powers in a multi-ethnic, multicultural and multi-religious state, as is Macedonia. This includes the process of electing the president, the constitutional order and the decision-making role of the president in this type of government. We will also deal with the president's contribution in establishing sustainable relations among political factors both at a national and international level, especially when it comes to the political crisis between the position and opposition, also emphasized in the last EU Commission report of 2013, as well as the everlasting problem with its southern neighbor, Greece, with regard to the name dispute.
The political dialogue and promotion of human rights and freedoms are some of the main issues the president should be concerned with, especially as regards the rights and freedoms of the Albanians in Macedonia who comprise the second largest ethnic community in the country, in order to have a functional democratic state. This raises the issue of the legitimacy of the president as a president of all the citizens in Macedonia, which was further complicated by the latest changes in the legislation.
The methodology applied in this paper includes content analysis, historical analysis, statistical analysis, comparative approach as well as surveys with students at SEE University and analysis of interviews given by experts in the field.

Keywords: president, legitimacy, Albanians, citizens, democracy

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1. Introduction

The recent history of the Republic of Macedonia has been characterized with frequent changes in the sphere of politics and legislation, which has had an overall impact in the actual election processes. Although these changes were aimed to consolidate the fragile democracy, which has not been fully established yet within this everlasting transition period in this country, again they did not produce the necessary results in overcoming the many difficulties Macedonian politics faces. Quite often, these changes appear to be completely warring among themselves and as such confusingly affect the citizens who then find it very difficult to make the just decisions, especially at times of elections. All of this leaves a strong impression on the further flow of events, which can hardly be described as positive for the country. This also influences the foreign policy, and consequently, stops the process of fulfillment of recommendations and tasks given by the international community, and which are a precondition for integration into the Euro-Atlantic structures.

In Macedonia, in line with the form of governance, the institution of the President of the state does not have significant competences in policy making and decision making processes, which is primarily a duty of the prime minister and the government itself. On the other hand, the president of the state can play a crucial role in overcoming the difficulties and misunderstandings between key political factors and equally represent all of the citizens of his/her country, thus contributing to the relaxation of the tense interethnic relations which have recently moved towards reaching their summit, and as such, become the central figure in helping to find a resolution to the key problems in the foreign policy, as is the name dispute with Greece. In order to achieve this, the president needs authority, whereas authority is achieved through legitimacy.

Before dealing with the crucial issues in this paper, we should once again mention that the main methodological approaches in this paper were content analysis of resources by different authors, comparative analysis of election results from previous election cycles, historical analysis of overall political processes in Macedonia after the independence, etc.

2. The policy-making process

Many researchers and authors have been working on the issue of policy-making processes by trying to define it and explain the different models applied. In this regard we can mention Robert Dahl, Fukuyama, Huntington, David Easton etc. The process of policy-making represents a process in which the decisions are taken from the institutional actors, and is usually divided in different phases. Some authors divide the policy-making process in four scales, which are best described by A. Heywood:

In the initiation stage, policy proposals are originated and the policy agenda is set. In the formulation stage, broad policy proposals are developed into specific and detailed recommendations. The implementation stage consists of the processes through which policy decisions are put into effect. The evaluation stage takes the form of critical reflection on policy outputs designed to improve the policy process in the future.

On the other hand, Anderson shares a different opinion and has another approach and divides this process as follows:

- Problem identification and agenda setting. The focus here is on how the problems that may become the targets of public policies are identified and specified.

Why only some problems, out of all that exist, receive consideration by policy-makers requires an examination of agenda setting; that is, how governmental bodies decide what problems to address. What is a public problem? Why does some condition or matter become a public problem? How does a problem get on a governmental agenda? Why do some problems not achieve agenda status?

- Formulation. This encompasses the creation, identification, or borrowing of proposed courses of action, often called alternatives or options, for resolving or ameliorating public problems. Who participates in policy formulation? How are alternatives for dealing with a problem developed? Are there difficulties and biases in formulating policy proposals?
- Adoption. This involves deciding which proposed alternative, including taking no action, will be used to handle a problem. In American legislatures this function is performed by majorities. How is a policy alternative adopted or enacted? What requirements must be met? Who are the adopters? What is the content of the adopted policy?
- Implementation. (A synonym is administration.) Here attention is on what is done to carry into effect or apply adopted policies. Often further development or elaboration of policies will occur in the course of their administration. Who is involved? What, if anything, is done to enforce or apply a policy? How does implementation help shape or determine the content of policy?
- Evaluation. This entails activities intended to determine what a policy is accomplishing, whether it is achieving its goals, and whether it has other consequences. Who is involved? Who is advantaged and disadvantaged by a policy? What are the consequences of policy evaluation? Are there demands for changes in or repeal of the policy? Are new problems identified? Is the policy process restarted because of evaluation?

In the policy-making process we should analyze what the particular problem represents in reality, analyze the actors, the participants in different phases of implementation, analyze public policies, etc (Abdullai, 2011: 211).

In the case of Macedonia, the President of the country has limited participation on the policy-making processes, and which has a lot to do with the constitutional role of the head of the state. If we look more closely on the matter, we will see that the President of the State has a limited role in the phase of the implementation of a policy.

The main problem that should be analyzed is the difference between the normative and the real state of the conditions. Is the president using his power in continuous and real manner as based on the constitution, or he limits himself due to the lack of political power and will?

Again his role in the foreign policy should not be underestimated since he can contribute a lot in promoting the country abroad by highlighting the strengths and hiding the weaknesses. This situation in Macedonia is best illustrated through Fukuyama's thesis that "bad governance contributes directly to the impairment of respect of the international community towards a country's sovereignty."

The reason for president's weak position comes mainly because the candidates are nominated from the political parties which are part of the government. This means that in parliamentary states, the president besides the limited role in running the state, gets under the shades of the government.

This analysis has been done through all the newest history of the new state of Macedonia.

Based on Article 75 of the Constitution of the Republic of Macedonia, "Laws are declared by promulgation

- The promulgation declaring a law is signed by the President of the Republic and the President of the Assembly.
- The President of the Republic may decide not to sign the promulgation declaring a law. The Assembly considers the President of the Republic is then obligated to sign the promulgation in so far as it is adopted by a majority vote of the total number of Representatives.
- The President is obligated to sign promulgation if the law has been adopted by a two-thirds majority vote of the total number of Representatives in accordance with the Constitution."
- If we comment the above part of the constitution, it is very obvious that the President himself cannot stop a law to be passed by the parliament. In the near past there was not a single case when the president of the republic decided to overthrow a bill.

3. President competences

Pursuant to Article 84, the President of the Republic of Macedonia

- nominates a mandator to constitute the Government of the Republic of Macedonia;
- appoints and dismisses by decree ambassadors and other diplomatic representatives of the Republic of Macedonia abroad;
- accepts the credentials and letters of recall of foreign diplomatic representatives;
- proposes two judges to sit on the Constitutional Court of the Republic of Macedonia;
- proposes two members of the Republican Judicial Council;
- appoints three members to the Security Council of the Republic of Macedonia;
- proposes the members of the Council for Inter-Ethnic Relations;
- appoints and dismisses other holders of state and public office determined by the Constitution and the law;
- grants decorations and honours in accordance with the law;
- grants pardons in accordance with the law; and
- performs other duties determined by the Constitution.

If we see historically, after the independence of Macedonia, we have only once seen a political leader to become a president, and that was the case after the death of President Trajkovski, and the goal was to win absolute power. In all other cases the Presidents were nominated by the running government parties. Franjo Tugjman, Sali Berisha, Fatmir Sejdiu, Tomislav Nikolic, etc. have all been both heads of political parties and presidents at the same time and had real power, even though the state was a parliamentary one. In the case of Macedonia, the presidents appointed (nominated) by the governing parties had no influence at all.

4. The president's legitimacy

Legitimacy is a form of government, which is based on the political culture of the citizens and reflects the system of values by the citizens. Many countries in the world

are facing with legitimacy crises; however, it is the most evident in post-communist countries due to frequent political and legislative changes and shifts.

According to Max Weber, there are three types of legitimacy:

- Traditional legitimacy (in a family, the head has always been the leader)
- Charismatic legitimacy (based on extraordinary features of an individual)
- Rational legitimacy (the argument that the best thing is to have a rule of law) (Abdullai, 2011: 63-64).

By analyzing the above-mentioned classification of types of legitimacy, we can say that in our circumstances, the rational legitimacy has to prevail if we take into account the need for rule of law.

Within the framework of our paper, the analysis will be based on the last presidential elections in Macedonia, which were followed by legislative changes and dissatisfaction by certain political subjects. In 2009, the law on elections was amended making it possible to elect the president with a lesser turnout of voters. In fact, in order to elect the president of the state, there should be a turnout of 40% of the total number of voters in the second election round. This amendment was crucial for the election of the last president of the country, Gjorge Ivanov, who was elected with 42.63% voter turnout, of which more than 42,589 votes were invalid, which was not the case in the second round of the presidential elections in 2014, whereupon the turnout was 54.38%. The winning candidate from the ruling party, which also won the last parliamentary elections, earned 55.28% of votes against the 41.14% earned by the presidential candidate from the opposition, both Macedonians.

At that time, some political parties of Albanians in Macedonia contested the president's legitimacy, claiming that they do not recognize him as the president of all citizens of the country and that Albanians have huge disagreements in terms of how the country is led.

Having been instructed by what happened, today we can see and hear more liberal declarations which reflect the relevance of all communities in the election process. We can take as an example the statement given by one of the presidential candidates in the forthcoming presidential elections, who said that the Albanian votes will determine whether the next president is going to be legitimate or not.

It is interesting to analyze the way the president was elected in 2009. In this respect, it is important to mention that the low turnout of voters has made certain political parties today to blackmail by saying that they would boycott the elections if their proposals for a kind of consensual president are not to be taken into consideration.

This seems rather a confusing situation if we take into consideration the way the president is elected, i.e. through direct elections by all citizens of the country with the right to vote.

In case of a possible "concluded agreement", the dilemma of how to make people vote for what the political actors have agreed on, emerges. The real paradox is that those who call for boycott are actually part of the existing government, which as such has to be the main force in moving forward the democratic capacities of the state and is responsible for the protection of the country's image in front of international factors. After all, if political parties in power agree on a common candidate, then regardless whether the president has gained the people's trust, he will still remain under the shadow of the executive power. This was the case with the last president, whose position in the past five years has been of a secondary importance.

Political analysts, in their initial assessments of presidential candidates consider that Macedonia needs a candidate who will provide a civic concept rather than ethnocentric. The VMRO-DPMNE candidate, Gjorge Ivanov, competing for the second time, and the opposition candidate, Stevo Pendarovski, were the two Macedonian candidates competing in the second round of the presidential elections 2014. According to the analysts, the citizens will again vote for the candidate who has been proposed by the political party, and not for his/her personality. The current president, Gjorge Ivanov, during his first five-year mandate was under the shadow of the government; he was restrained, without any initiative and obedient towards the party he belonged to. He never opposed his party's decisions on both foreign and domestic issues. In addition, he never proved to be a president of all citizens, and has therefore been unacceptable for the Albanian population in Macedonia.

Unlike Ivanov, the opposition candidate gives the impression that he is not a slave of the party he belongs to; in the part of diplomacy and international politics, he has a clear vision in terms of the establishment of international relations and has a firm attitude with regard to Macedonia's accession in the EU and NATO.

Macedonia needs a president who would recover dignity to this institution and function; s/he should be a unifier of diversities among the citizens of this country – not schismatic.

The president should always be led by the general interests of his/her citizens; h/she should be corrective and reformative of the government and the laws the parliament brings. S/he should also have a clear vision when it comes to international relations and foreign policies in general, rather than repeating the government's stands on those issues.

Ivanov pursues the governmental policy; he does not backtrack from that path; this is what happened during his first five-year mandate as a president of the Republic of Macedonia. He does not even show any signs of changing his politics. This seems not to be the case with the other presidential candidate whose party supports him in the way of realizing his plans and objectives.

"The opposition made a good choice when they proposed Pendarovski for president, because he is a person with integrity, good experience and different from the actual president," says Edmond Ademi, analyst.

Mersel Bilalli, a university professor, considers that the Albanian electorate has the chance to decide on the next president of the Republic of Macedonia. In his opinion, "it is a unique political momentum for the Albanians to prove that they are a decisive factor in political processes in Macedonia. The opposition candidate has good chances to gain the support of the Albanians because they would reject voting for the current president, since his reelection would basically mean a repetition of the pro-Macedonian politics disregarding in this way the interests of the Albanians in Macedonia."

5. The political dialogue in transition democracy

The transition period has been followed by many problems and challenges as a result of the existence of dysfunctional democracies in post-communist countries, whereupon institutions of the state failed in the process of democratization of the society and the rule of law (Abdullai, 2008: 165). According to F. Fukuyama, the only source of legitimacy is democracy. A good state institution is the one that serves its citizens through transparency and efficiency (Fukuyama, 2004: 55).

The recommendations by the international institutions, especially those of the EU Commission should seriously be taken into consideration in order to find the proper solution to the above-mentioned issues. For several years it has been pointed out by these institutions that the public and state administration should be depoliticized, there should fair and democratic elections which would reflect the citizens' approach and wish for having a functional democratic multiethnic country.

According to the famous analyst, Arend Lijphart, democracy in plural societies is a very complicated process. Macedonia belongs to this category of pluralistic societies and it represents the historic, political, economic and cultural reality in the Balkans. It is part of the geographic area known for its cultural and ethnical diversity.

Some authors describe Macedonia as the epicenter or the hearts of the Balkans (Davutogllu, 2010). Macedonia is a cultural mosaic, with multiethnic and multi-religious background; it is a *unitas multiplex*, a corridor where the East and West, Islam and Christianity meet (Pajaziti, 2012: 31). If we take into account the multi-ethnic character of the country, then we should analyze John Stuart Mill's thesis in whose opinion it is almost impossible to have autonomous institutions in countries with different nationalities. When there is no will of fellowship among the people, especially if they speak and write in different languages, there is no chance of having a unique and single public opinion necessary for action in the representative government. (Lijphart, 1992: 25).

Based on the above-mentioned, we can say that in Macedonia the situation is very complicated because there is a need of an institution or a person who would be able to face the reality and numerous challenges in the way towards European integration. This is the viewpoint from which the president of the state should be analyzed, because he is the one that proposes the members of the Council of Interethnic Relations.

In the to-date practice, the Council of Interethnic Relations did not manage to overcome the interethnic division and misunderstanding which are more than evident especially before any election cycle.

The statement given by the EU MP from Slovenia, Jelko Kacin, who said, among other things, that Macedonia went back to the medieval age and is now moving even backwards to antiquity and most probably to the Stone Age can serve as a point from which we can see in which direction the state and the government foreign policy is headed.

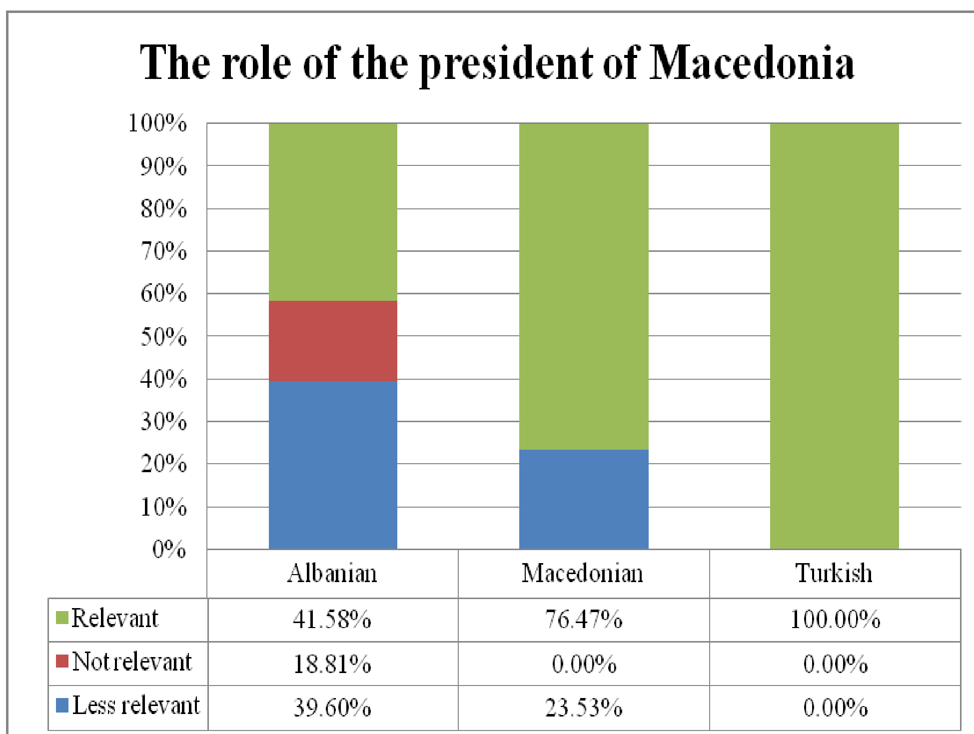
The attempts for political dialogue between the political parties have not produced a positive result up to now. This was also one of the crucial remarks during the last report of the European Commission on the work of the government. In this regard, Gjorgji Orovcanec, an ex-political leader and member of the parliament, is publicly asking whether this kind of a profile of a leader in Macedonia is appropriate and suitable to pull out the country from the crisis in which it has drowned (Open Society Institute, 2008: 5).

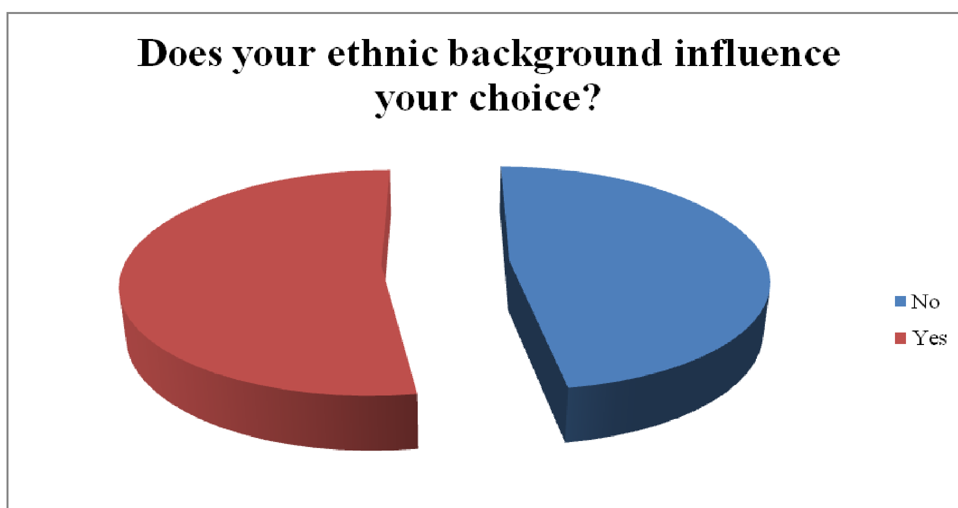
These and many other questions are similar with the ones of the citizens and experts ahead of the presidential elections in Macedonia.

We have taken into consideration the opinion of many political experts in the country and we also present the results from the survey that was conducted in March 2014 with students and employees at the South East European University in Tetovo and Skopje.

The selection of the surveyed people, i.e. students and academic, was done based on random selection of classes in both campuses in Tetovo and Skopje from the official

University roster. The administrative staff was selected based on their current availability at their working place. The number of people included in this survey was 320, of which 80% were Albanians and 18% Macedonians, and 2% Turkish. The statistical processing of the acquired data from the realized survey has been given below in a graphical form, though not all of the questions have been presented in such a way; we decided to show some of the questions which we thought would attract the public opinion's attention.





In response to the question: How much does the president take part in the decision and policy making processes in the country?, the answers were as follows:

	Albanian	Macedonian	Turkish	Grand Total
Average	36.63%	29.41%	0.00%	35.00%
Little	31.68%	35.29%	50.00%	32.50%
Not at all	21.78%	23.53%	50.00%	22.50%
Very	9.90%	11.76%	0.00%	10.00%

Do you think that election processes in Macedonia are credible, i.e. fair and democratic?

Here are the answers:

	Albanian	Macedonian	Turkish	Grand Total
No	82.18%	64.71%	50.00%	79.17%
Yes	17.82%	35.29%	50.00%	20.83%

Are you going to take part in the presidential elections 2014 in Macedonia?

	Albanian	Macedonian	Turkish	Grand Total
I haven't decided yet	27.72%	23.53%	0.00%	26.67%
No	30.69%	5.88%	0.00%	26.67%
Yes	41.58%	70.59%	100.00%	46.67%

The last presidential elections, as mentioned above, resulted in a turnout of 54.38%. The winning candidate from the ruling party, which also won the last parliamentary elections, earned 55.28% of votes against the 41.14% earned by the presidential candidate from the opposition, both Macedonians. This is approximately what the chart above shows, which means that the usual turnout, both in presidential and parliamentary elections in Macedonia, usually varies between 45 – 55 %. The rest of officially registered voters are generally inactive due to a loss of confidence in politicians, institutions, government and the state as a whole.

Conclusions

Countries around the world practice democracy through different types of institutions. However, most democracies in the world today use the parliamentary system as opposed to a presidential system like that used in the United States. Defining characteristics of the parliamentary system are the supremacy of the legislative branch within the three functions of government—executive, legislative, and judicial—and blurring or merging of the executive and legislative functions. The legislative function is conducted through a unicameral (one-chamber) or bicameral (two-chamber) parliament composed of members accountable to the people they represent. A prime minister and the ministers of several executive departments of the government primarily carry out the executive function. The political party or coalition of parties that make up a majority of the parliament's membership select the prime minister and department ministers.

The prime minister usually is the leader of the majority party, if there is one, or the leader of one of the parties in the ruling coalition. In a parliamentary system, laws are made by majority vote of the legislature and signed by the head of state, who does not have an effective veto power. In most parliamentary democracies, the head of state can return a bill to the legislative body to signify disagreement with it. But the parliament can override this ''veto'' with a simple majority vote. In most parliamentary systems, there is a special constitutional court that can declare a law unconstitutional if it violates provisions of the supreme law of the land, the constitution.

In a few parliamentary systems there is no provision for constitutional or judicial review, and the people collectively possess the only check on the otherwise supreme legislature, which is to vote members of the majority party or parties out of office at the next election.

A parliamentary democracy is directly and immediately responsive to popular influence through the electoral process. Members of parliament may hold their positions during an established period between regularly scheduled elections. However, they can be turned out of office at any point between the periodic parliamentary elections if the government formed by the majority party loses the support of the majority of the legislative body. If the governing body, the prime minister and his cabinet of executive ministers, suffers a ''no confidence'' vote against it in the parliament, then it is dissolved and an election may be called immediately to establish a new parliamentary membership. A new prime minister and cabinet of executive ministers may be selected by newly elected members of the parliament.

A few parliamentary democracies function as semi-presidential systems. They have a president, elected by direct vote of the people, who exercises significant foreign policy powers apart from the prime minister. They also have a constitutional court with

strong powers of constitutional or judicial review. For example, the constitutional democracy of Lithuania is a parliamentary system with characteristics of a presidential system, such as a president of the republic who is directly elected by the people and who has significant powers regarding national defense, military command, and international relations. Advocates of the parliamentary system claim it is more efficient than the presidential alternative because it is not encumbered by checks and balances among power-sharing departments, which usually slow down the operations of government and sometimes create paralyzing gridlocks. Further, in the parliamentary system, a government that has lost favor with the people can be voted out of office immediately.

Advocates claim that by responding more readily to the will of the people the parliamentary system is more democratic than the presidential alternative. However, both parliamentary and presidential systems can be genuine democracies so long as they conform to the essential characteristics by which a democracy is distinguished from a non-democracy, including constitutionalism, representation based on democratic elections, and guaranteed rights to liberty for all citizens (Patrick, J.J., 2006).

Recommendations

The president's competences in a multiethnic country should be increased and become compatible with the developed western democracies.

His/her competences, as per the constitution, should be reinforced and practically implemented – a practice that rarely or almost never happened in our country.

The president should be a significant figure and play the leading role in the process of policy making and maintaining the balance among communities in the country.

The president of the state should lead the Council of Inter-ethnic Relations and undertake concrete steps towards the mitigation of inter-ethnic tensions and establishment of reconciliation in the country.

The country should implement the recommendations by the international community for organization and administration of fair and democratic elections.

The current mode of electing the president of the state makes the president's legitimacy weak. Therefore a better solution should be sought for in order to strengthen his/her legitimacy and as such be a representative and supporter of all the citizens in the country.

A large proportion of the citizens are unwilling to vote in the upcoming presidential elections (about 30%); certain measures should be undertaken in order to make people motivated and willing to cast their votes, because the way things are moving now will end in having very few people on the voting polls.

Also, a lot remains to be done in creating a real democratic atmosphere so that every citizen can go and cast their own vote without feeling pressure from various different external factors that strive to spoil the whole process and make the country get the worst evaluations and remarks from the international community.

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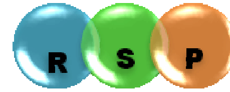

ORIGINAL PAPER

Identity, Belonging and Diversity. Dynamic Aspects of Citizenship in a Globalization Era

Măriuca Macovei*

Abstract

More recently people started having a quite controversial dialogue. To be more exact the conversation they carry is about multiple citizenships, the diminishing sovereignty of the nation states, the disappearance of the nation state, the dissipation of national identity. Moreover, these fluid and complex societies are confronted with problems emergent from this high stake game: one cannot pass by the fact that democracies depend directly on their citizens.

In the context of globalization and of an increase in the rates of migrations in the same pace as the one we witness today, we can estimate that if the nation states will not find the means to keep, educate and form their citizens, and if the states will not develop their abilities to adequately brand and market their national identities to attract new potential citizens, then they may as well face the risk of losing the competitive game of attracting high quality members.

Migration gives a second stronger impulse to the rhythm in which the "solidarity" networks form. These networks are being created by minorities of immigrants through the maintenance of connections to their home culture or country and even to immigrants in different countries than that of their own.

The question now is if it is truly possible for something like the national identity, something that has evolved out of myths and symbols centuries ago to be transformed through re-writing and re-interpretation so that in the end it would be redesigned into an open, inclusive and free vision.

Keywords: migration, identity, citizenship, globalization, society

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The unprecedentedly seen streams of citizens that exert their freedom to travel and end up by settling - temporarily or definitively - in the destination communities sets a pattern worth investigating by researchers in social sciences. Now more than ever these "atrocious voyagers" seem to avoid being incorporated in the "fixed", "definitive" or "permanent" categories. They are more likely fans of the mobile synergy and consistent with the dynamics of permanent movement. The challenges for social scientists today consist in the way they can redefine the manner in which these individuals situate themselves in relation to the nation states. At the same time, pining the appropriate referential framework that is capable to reflect the shift this massive migration trend is producing on the way nation states interrelate in the international arena, can also prove difficult. There are multiple theoretical approaches to this phenomenon (anthropological, historical, economical, political etc.) and each and every one of them accentuates the complexity of this global challenge.

The mix between the incapacity of more and more capitalist states that struggle to manage the difficulties of global migration and the global economic interdependence adds even more pressure to the buildup of stress applied on the nation-states' sovereignty. The question now is if it is truly possible for something like the national identity, something that has evolved out of myths and symbols centuries ago to be transformed through re-writing and re-interpretation so that in the end it would be made up into an open, inclusive and free vision. And how can the mediation between the political framework of reference and the cultural framework of belonging be accomplished.

Today the field literature is quite devised between scholars that proclaim the imminent exit of the nation state out of history's theatre play and those who defend with all their scientific arsenal nationalism and national identity. There is an obvious interest regarding this topic made clear by the size of the scientific papers' corpus that deal with this subject. The same can be said about connected themes such as: identity, citizenship, cultural diversity, state sovereignty, globalization. Today the world is polymorph and dynamic. We still have the occasion to witness the birth of new nation states, certain government forms are changing, the war raging over resources is increasingly tougher, loyalties are being transferred, protocols break, the information society is being propelled at a great speed leaving less time to analyze and sort out these difficulties. And this speeds up the decision process. The state actors seem to embrace openly this status quo and encourage the inclusion of more non state actors in a type of multi-level governance system, so for now the transnational civil society and the network of non-governmental actors share the authority with the national governments. But are these non-state actors really helping to create a global consciousness?

More recently the nation states have realized that it could be in their interest to grant the right to double citizenship. Both the countries of origin of immigrants, as well as the destination countries have advantages to gain over this measure. On one hand the attachment, socio-cultural belonging and economic relationships with the country of origin would be preserved, diminishing the risk of these ties being cut off for ever. And on the other hand, the host countries can speed up the process of integration and inclusion, by eliminating the obligation to give up the immigrants' loyalties to their country of origin. Are we witnessing a new citizenship model being created just as we speak? And if this is the way in which we are heading, could this finally be the aurea mediocritas we could use to develop the concept of cosmopolitan citizens with national roots? This concept of “rooted cosmopolitans” (Neumann, 2003: 93) refers to men who

are capable of reconciling different values and integrating them through reinterpretation of patriotic values for the common good. One strategy is to change the angle of observation and see nationalism not as an ideology, but as a moral philosophy that teaches us how to negotiate the different cultural values in order to permit them to coexist.

The multiple feelings of belonging crystallized on the complex identities of each individual clearly point to the fact that we cannot be reduced to individuals belonging to a single cultural space. So, given admittance to the fact that one is actively engaged in a multitude of social groups, the consequent questions that rise from this are rather interesting for social scientists: how does multiple group membership influence the way an individual defines his in-group role? Does social identity complexity (Roccas & Brewer, 2002) lead to a type of global identity? Does it encourage other social phenomenon such as openness to change and universalist values, tolerance for diversity?

Observing everything through an optic filter designed to restrict citizens to only national belonging, translates into regarding immigrants in the same manner: as belonging strictly to the country whose citizenship they bare. This kind of narrow observation ignores the other multiple belongings which are expressed firmly de fato: transnational, cosmopolitan or local belongings. Restoring the proper optic filter requires a transfer of importance from the macro level of theorizing cultural interactions to the micro level of daily, individually, regularly lived experiences of these people. When studying different groups, whether they are regional or national, should we not take into account the objective factors (language, territory, religion), but also the subjective ones (more elusive, but yet important, such as the feeling of belonging)?

Already this operation has led to the birth of several new concepts. Here are just a few of them: "literary multiculturalism" - the continuous building of the narrative which elucidates our sense of belonging to one culture or the other and the changes we go through at the level of individual identity during this shift; "everyday multiculturalism" (Wise & Velayutam, 2009) - the everyday individual perspective on the daily life; trying to change the focus from major concepts such as justice, equality or resources distribution, over to the so called minor ones.

It is perhaps easier for us to choose the nearby model of belonging proper to the European Union citizen. Today, the European citizen takes full advantage of his right to travel and work in this newly created political entity. This places him in a special autonomic relation vis à vis the nation state of origin. This is an interesting phase in the nation-state-citizen relationship. Ever since the beginning of Modernity, Western Europe has launched itself in a battle for supremacy and has been fighting this war to impose a certain cultural hegemony in the World. The rise of Modern Europe together with the building of a type of social, political, intellectual and economical movement, starting with the 15th century and going as far as the 19th century, has marked the first stage of globalization. We can identify the same period as being the emergent moment of the nation state, the entity which still dominates our political landscape today.

The metamorphosis the individuals have been put through is one of grand scale. If during the Middle Ages the individual was building a self identity in relation to religious beliefs, vassals or the spoken tongue, his sense of belonging had to shift profoundly and be redesigned so that it focused primordially on a type of national identity. By developing universal values and ideologies based on them, The West created a strong paradox between affirming certain rights and liberties for national

citizens and than building theoretical justifications for infringing them. Although this is a subject worth investigating, the field literature in this domain is still precarious (Bessis, 2003: 5).

The historic events extending over the last centuries already provide a specific narrative dealing with aspects that refer to who we are, where we come from and how we should relate to others. This national narrative is carefully constructed and thoroughly grounded on myths and symbols. It provides a mission and a set of values for the individuals that are part of it. It also traces rights and obligations, norms of conduct, legitimizing social and political actions. The design of this historic narrative sets a fine print on what is thought of as just, on the way resources are being allocated in that societal group. So it is very important to study the way historic myths influence the elaboration of social representation, of discriminatory attitudes, of ideologies or hierarchic structures developed inside a national state (Sibley, Liu, Duckitt & Khan, 2008: 542-565).

Often the emphasis is placed on cultural traditions instead of new challenges that our reality provides. In this globalization era diversity and large scale migration produce new patterns for citizenship unseen in the history of the nation-state as we know it. Many times immigrants find themselves in a relation with a judicial systems and legal frameworks that they do not know and barely understand, that of the destination country (Luchtman, 2013).

It is a moment when the fight for regional or ethnic identity (the fight for ownership of beliefs or official symbols) has intensified. Pierre Bourdieu recognizes them as a particular type of class conflict, whose ultimate steak is the grasping of monopole over power. Once the authority is achieved than the officially recognized identities can be proclaimed and legitimate definitions of a group can be imposed (Bourdieu, 1980: 63-72). To poses a legitimate identity is the equivalent of the right to harvesting the symbolic and materials profits associated with it. To be on the other side of the barricade, that is to have an illegitimate identity, is the equivalent of distancing oneself away from the center and even the common misconduct (for example, having an accent) can produce stigmata. To be stigmatized is to be deprived of material and symbolic capital. It also means that in order to eliminate the stigmata you have to rebel against it.

To be able to reverse the definition, to change the meaning and values of stigmatized traits is to be able to destroy the very basis on which the stigmata is built upon and also to obliterate the mechanisms through which the symbolic dominance is being exerted. We know that groups invest in this fight their whole social being and everything that allows them to make sense of "themselves" in a relationship with the "other". This is almost a tangible, physical feeling. That is why the mobilizing force of anything that relates to identity is so strong. Globalization through unification of the markets (both economic and symbolic goods markets) seems to have been born out of a universalizing tendency of the West. These fights over the power to control the symbolic goods always produce economic effects.

There is another important aspect we should take into account. This is where the studies of Serge Moscovici come into place with great impact. Through his intense activity and research, Serge Moscovici has discovered that the individual representation of the self is influenced by the type of society in which one lives in. If for example the individual is a member of a society that treasures individualism, a high degree of autonomy and emancipation, than the values he most strongly relates to and the image

of self that he projects will be in tune with this societal model. But if the individual lives in a society that cherishes the community and the value of the self derives from the role he or she plays in that community (the best example here is the Eastern societies, Oriental ones more so: China, India and so on), then that is how he will define himself, by accepting the role he plays in that social mechanism.

There are 133 studies performed in over 17 countries that looked at individualistic and collectivistic societies and the results have shown that those individuals who come from collectivistic societies tend to conform more rapidly to the group norms, while others that originate in the individualistic societies value more their autonomy. But the remarkable discovery was that although people living in traditionalist societies are more predisposed to conforming, the very moment that society is challenged with important changes or perils, this attitude changes and makes way for the voices and claims of the ones looking to produce and introduce on the market new norms, or new ways of interpreting the old, traditional norms (Levine & Zdaniuk, 2010: 42). Serge Moscovici has placed through his studies the power of change in the hands of minorities or even in those of a single individual. There are off course certain criteria to meet in order to gain this power to influence the majority (such as number, credibility, consistency over time etc.), but it is still remarkable how social influence of the minorities can alter the status quo that the majority fights to preserve.

Identities carry heavy burdens. Who we are is defined in a conflicting manner, sometimes within the individual itself. Conflict also rises many times from the differences in opinions regarding the manifestations allowed in the public sphere. The perspective chosen to clear these conflicts is often a normative one, not a political one. Through the invocation of the rights to freedom of speech, democracy, the West simply creates a dichotomy between Western values and Eastern ones, for example the Oriental or Islamic ones. This narrow perspective is only leading to a reduction in the role attributed to dialogue and to a diminishing of tolerance and acceptance. In the era of globalization and immigration the cultural hegemony is not enough because it is less and less representative in the demographic landscapes which is being shaped continuously. National identity and belonging is "a continuous and entirely voluntary process which demands inclusivity and the fair representation of peoples and cultures." (Thomas, 1997). The information society and the technological landscape fit with the "social schemata" (Alcock & Carment, 2001) people use to evaluate social roles, personas and events. These cognitive shortcuts are the fast way to determine and sort information, a cognitive pattern which we use more and more in this increased flux of information provided by the globalization era.

Although it is not a direct consequence of globalization, the Diaspora phenomenon draws some significant advantages from it. As forms of social organizations that show high adaptability, the diasporas are developing by making the most out of the economic and cultural communities that globalization is providing. As Robin Cohen puts it:"The nation-state system can't contain the proliferation of sub national and transnational identities." (Cohen, 2008: 175). In this environment, the reality of multiculturalism and diversity is demonstrated by the numbers concerning some of the world's diasporas. These large communities often times surpass the number of the population living in the nation state territory. There are 4 million Irish residents in Ireland and almost 73 million people of Irish origin living around the world. Similar to this, out of every 15 million Jews, only 5 million actually reside in Israel. The same applies to Armenians, Lebanese and even Greeks. Citizens settling for different periods in one country and

migrating to another, inhabitants of a physical space belonging to different cultural mediums simultaneously, these are becoming typical situations in today's world.

This revolution in migration movements will continue to produce shifts and modifications in the multiculturalists' ideology and in political philosophy at large. Till recently multiculturalism was focusing on the relation between the immigrants and the host country. From now on however it will have to consider the real aspects of people constantly on the move, for whom active participation is optional and selected with much care and attention. Their dialogue with the host country will become only one of the multiple conversations these people carry. The newly bred transnational groups consist of immigrants with loyalties deeply rooted in transnational social networks, unlike cosmopolitans who regard themselves as belonging to a global community. They do however have in common multilingualism and multiculturalism.

Belonging to one culture no longer means to belong to a national culture alone. The fast access to information networks allows jumping from one demographic pool to another, not just going for a swim in the territorial waters. Many political parties across Europe run for elections with campaigns focusing on reducing the immigration flow. But the newly arrived citizens may choose to participate to the political life by sabotaging these interests and voting against them.

Participation also takes form in the implication in niche cultural phenomenon, in the underground, finding a refuge in those areas that offer a sense of belonging that they seek. While the governments are busy implementing multicultural policies that aim for a better integration and assimilation, they also practice a type of deliberate exclusion visible at an institutional level (for example choosing to build social housing complexes at the periphery, far from the city centre may translate into a wish to place the immigrants in ghettos).

From the political arena comes a voice that strongly suggests that diversity is not welcomed, yet the world economy sells the impulse to be different, to be apart, together with the benefits. The capitalistic logic also plays an important role in determining the extent to which one can afford to move or is forced to move (Rutherford, 1990). Migration from periphery to center gives rise to the delicate problem of dealing with immigrants. At first showing great openness towards those qualifying as new, cheap and reasonably trained workforce, the politic of welcoming immigrants has seen a transition towards restricting their access. The immigrants cause an increase of the degree of multiculturalism of the host countries. That is one of the main reason why the need for a "politics of recognition" was perceived as vital (Taylor, 1994: 25-26).

Immigrants are actors in their own personal drama, being forced to live behind their families, in order to settle in a foreign country that often proves to be inhospitable. The direction of mass migration, from South to North, leads researcher Sami Naïr to call it "the displacement of the world" (Naïr, 1996: 17). Opposite from the 19th century migratory movement, which made colonization its main purpose, this new migration wave sets into motion alterations of great amplitudes in the social structures in both the home country and the destination one. Some positive outcomes for the host nation states consist in feeding the demographic pool, enhancing the economic capital, enlarging the group of trained workforce. Granting special rights to these minorities can prove a difficult and risky endeavor. So much so that sometimes the majority feel discriminated by this act of the government and fear that they might become "second-class citizens" (Kymlicka & Wayne, 2000: 42).

There seems to be a change in the way this globalization era is organizing the world we live in: far from multiplying patterns of uniformity, it appears we are now dealing with a strong phenomenon of organizing diversity. As local cultures from around the world tend to interconnect all the time, and the emergence of mobile cultures increases, the question of studying and understanding the dynamics between assimilations and transnationalism is the new challenge of the social sciences.

Citizenship may be the way to settle the disputes which diversity sparks. This concept was developed with the purpose to find means to transcend any given particularity. Citizenship seeks to integrate all individuals in a common public space, by looking at every individual as being as equal and free to any other and by not taking into account the ethnic characteristics. However, as optimistic as this sounds, citizenship cannot surpass every type of diversity. As the democratic nation has simultaneously an ethnic and a civic character, we often find that the civic fails to absorb and incorporate the ethnic (Schnapper, 2004: 218).

The responsible citizen could present a minimum of four virtues: 1. general virtues: courage, law obedience, loyalty; 2. social virtues: independence, open-mindedness; 3. economic virtues: a work ethic, not settling for less, adaptability to economic and technological change; 4. political virtues: the capacity to discern and respect the rights of others, the ability to evaluate the government's performance, the availability to participate in political debates. What is the best way to promote these virtues? It seems like the best "schools for citizenship" already exist in the shape of volunteering associations and nongovernmental organizations. The state could also have an input by organizing civic education in the educational system and facilitate the startup of these kind of groups and organizations.

There is a transnational civil society which is now displaying some authority by protecting individuals and groups from the excessive power manifested by governments and markets. This transnational civil society is developing simultaneously with the growing interdependence between regions and countries from all over the world. More than half the Globe's population believes in values like: freedom of choice, respect for human rights. At this moment, the national governments already share a great part of authority with nongovernmental agencies, syndicates and patronages and so on. Together they form an international network of institutions able to respond to a more increasing number of demands (Martin & Schumann, 1999: 128-129).

This global civil society consists of all the volunteering organizations, institutions and networks, ranging as far as the groups that fight for women's rights, organizations that fight for human rights and activists under the flag of environmental movements. The pluralists state that these organizations are more than just groups of interest, trying to influence politics of national governments. They assert that these movements count for the birth of a sort of international level of consciousness (Viotti & Kauppi, 1997: 17).

The importance and the influence the concept of identity plays in social studies is once again proven by the works of scientists in recent years. It has touched the economic field of study in very interesting ways. Economists have also begun to draw upon cultural concepts to understand where individuals' beliefs and preferences come from. Akerloff and Kranton (2000, 2002) draw on the concept of identity to develop a model in which individuals have preferences for behavior that is consistent with their group identities and derive utility from such behavior. These developments are promising and may suggest possibilities for greater interdisciplinary dialogue.

The issues of competing identities and cultures is even more difficult as identities are not neutral. In every identity reside different and sometimes conflicting values. These values are provoking conflicts not only between different communities, but often within individuals themselves (Weeks, 1990: 89). Today the world is so complex and hybrid that maybe the proper political strategies should take into account not the paradigm in which everything is fixed in a determined status quo, but rather acknowledge the dynamism, the continuous struggle for recognition. In this world, one should be more reluctant of giving priority to dominant, powerful, well established groups that act as isolated actors, govern with caution and restraining from anticipating the future transformations of social emancipator movements (Honneth & Frazer, 2012).

To conclude, these multiple efforts seem to indicate a setting of a multiculturalists frame. The real work starts when we will be faced with the reality of these policies and practices and how they work or do not work, and how they are perceived, weather negative or positive by the majorities in the nation states. We still have to face the fact that unfortunately, today, most majorities are focused around a mono cultural vision. The situation is starting to evolve into a communication and education problem, in which nation states have to put resources at work to get them fixed. Intercultural education may hold a key to understanding and cooperation. The importance given to dialogue and information exchange will therefore increase in value. From this we can draw the conclusion that the necessity to provide a technological base and equal access to technology and means of communication is becoming acute. Lack of access to information and mobility are now becoming primary obstacles in the way of reformulating the international space for cooperation. The main innovation that this new digital age is producing is the creation of a virtual gathering space, a place of meetings, briefings and dialogue.

In the context of globalization and of an unprecedentedly seen rates of mobility of their citizens, we can undoubtedly affirm that the nation states are in need of active, engaged and responsible citizens, citizens who can assume the task of their own growing and development, but also assume the roles in their communities of belonging, and who can provide their contribution to the political processes. As a concept developed in 16th century Europe in order to permit the reconciliation between different religious conflicts that were raging at that time, tolerance may be in some serious need of redefining. Perhaps the future could lead to an opening of this concept so that it could include both the respect and recognition of individual and collective forms of diversity (Modood & Maussen, 2012). The global world starts to resemble a world without a fixed centre. It is for the first time in history that no one can claim this spot. For business men the new digital age has opened up new opportunities. Information becomes power and it provides those in control with even greater authority. The geographical constraints are disappearing. The loyalty of transactions, the transparency in financial and banking activities claim to be overseen by an authority now more than ever. The role of the nation state is far from diminishing, but maybe its functions need a re-evaluation.

If we will regard culture as a system, one that calls for alignment to the newest media technologies, in order to cross the border towards equality and access, then we can imagine a societal design in which citizens are educated with the means and in the spirit of this type of intercultural facilitated dialogue and sharing. Instruments such as web sites, online portals, virtual artistic galleries and so on form a culture within themselves and accentuate the transition from static to dynamic, from collective to

connective. The internet provides access to information, chance equality, civic participation and involvement, social inclusion, all of which make facilitate intercultural exchanges.

Today we are witnessing an unique phenomenon in the history of human kind. For the first time ever since the birth of civilization, we can simultaneously access all the cultures that ever existed and the whole of cultural activities on Earth. Due to technological breakthroughs in communication and information technology, the data base of human knowledge and culture is at the touch of our fingertips. From here on, based on our preferences, we can freely chose how we organize our existence and decide if we want to belong to one or multiple cultures (Small, Harding & Lamont, 2010). The nation states should make it their priority to implement a multiculturalists curricula in the educational system, in order to give its citizens access to an education more suitable for life in a multi polar and interconnected world, in which we should assume values like empathy, responsability and respect for other cultures. Ignoring culture can no longer be an option. Ignoring culture will only lead to the elaboration of inadequate public policies.

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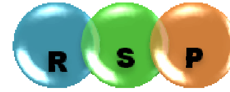

ORIGINAL PAPER

The effects of international migration on post-decembrist Romanian society

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Abstract
International migration evolved as a fenomenon in Romania after the revolution of December 1989, the first time in which the borders were opened after over 40 years of isolation.
The romanian society suffered a swift and major change due to the fall of the communist regime, change which attracted consequences in all areas of life. Migration has influenced Romania in many different ways, thanks to the connections in provides to other countries.
Unfortunately, migration does not only entail favorable changes in a society, but less pleasant ones such as: family abandonment - migrants leave their native land and sometimes discontinue all contact with those left at home, population decline in the country of origin – brought in both by those that choose to leave, and those that after leaving give up on having a family because they focus on their career in the country of destination, and when and if they return to their home country they are too old or no longer interested in starting a family.
Migration is a phenomenon that in the modern, globalized society is inherent, and needed in light of the transformations it brings and the connections it creates between nations and states.

Keywords: international migration, post-decembrism, family abandonment, social change

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Migration is a wide-spread phenomenon, due to the mobility of people all around the world. The phenomenon of immigration is neither novel nor recent, having been part of the human experience since time immemorial, with economics, politics and religion, as well as a yen fot exploration and adventure, fueling such movements (Segal, Elliott & Mayadas, 2010: 3).

In literature, the idea that national and international migration is a fact of life has been stated for a long time (Ghatak & Sassoon, 2001:1). Although sociology has implemented the idea that the migrant is a social being without roots, this idea tends to be abandoned and the migrant with the role to create links between states emerges. Arising from the devastating changes that are part of the legacy of the twentieth century – unprecedented worldwide migration, unreleting global conflict and warring, unchecked materialist consumption, and unconscionable environmental degradation – are questions about the toll if kiss such changes exact (Kelly, 2009: 2). Migration has always been present, but the phenomenon has developed in the last century, when individuals have started to give up more easily their birth place and depart to far-away places with the intention to travel, search professional development, settle for different reasons.

Europe, no matter how it is defined – either as the European Union or as another, broader Europe – embraces a wide variety of ethonocultural and national affiliations and identities; this diversity, furthermore, is not going to disappear under the pressures of globalization (Bosswick & Husband, 2005: 13). In communist Europe, international migration figures were traditionally low but in spite of those low figures, international labour migration also existed in communist Europe although it reached nowhere near the level of the non-communist countries (Jennissen, 2004:2). New destinations, new region of origins and new flows have thus emerged – economic transition, political changes and ethnic conflicts in CEE have affected the size and direction of European migration flows, while flows from non-European countries have continued to account for a sizeable part of migration in Europe (Bonifazi, Okolski, Schoorl & Simon, 2008: 9). The Romanian society has suffered a great change after the 1989 Revolution, because people have given up the exaggerated nationalism and have started to open borders and thus the exchange of ideas regarding emigrants and immigrants. Migration has brought a great advantage to Romania because of the received ideas, the foreign capital, Romanian citizens who were able to settle abroad and work, sending money home, but also the impact the feminization of migration had.

After 1989, when the border barriers had fallen, migration reaches a peak in Romania and becomes a country of net emigration and this fact implies severe consequences at different levels: demographic, social and economic – it is crucial to point out that the statistical data on migration captures only the regular emigrants who change their permanent residence (Roman & Voicu, 2010: 2).

Unfortunately, the phenomenon of migration has attracted less pleasant consequences, families torn apart, suicides due to loneliness, a major drop in demography, especially due to migrant women and more and more of them depart from a small age, choosing the career instead of procreation. The phenomenon of globalization is tied to migration, creating informational bridged between different parts of the world.

The economic and social aspects about people who have chosen the path of migration

Migration is nothing new, it is embedded in the history of human societies – as a social phenomenon, it reflects, and is determined by, the historical era in which it takes place (Hatziprokopiou, 2006: 16). Immigrations is one of the international economic activities that is part of the phenomenon often reffered to as globalization (Bodvarsson &Hendrik, 2013: 2)

Over the centuries millions of people have migrated – despite the physical, cultural, and economic obstacles – to other land in search of better lives for themselves and their children; it is estimated to be over 180 million or 3 percent of the world population lives outside their country of birth and movement of such large numbers of people creates significant economic benefits to the migrants, their families back home, and their adopted countries (Özden & Schiff, 2007: 1). After the 1989 Revolution, people have left from different reasons, but the most common factor was the economic one-Romanians prefer Occidental countries and other developed countries.

Why do Romanian leave their country? Workplaces are few, wages are low and it is difficult to have a decent living, taxes are high, savings are impossible to make and evolution is hard to attain in our country. Migration has followed a stream- from East to West and from the South to the North, meaning towards the economic centers. Without doubt, individuals constantly search the idea of wellbeing, reasons why people migrate towards developed countries in the idea of a better income, the chance of success in career, professional development. Furthermore, "regional differences continue to have an important role in the specific structure of rural and urban mentalities on essential dimensions such as pro-reform orientation and the perception of migration as a life strategy" (Sandu, 1996: 223).

In 2011, the world's population has reached 7 million and it is rising, the census from 2011 foresees a demographic disaster – 19 million people, compared to 22 million Romanians in 1999. The demographic drop has also natural causes, but, most of all, the phenomenon of migration attracts more and more people, reaching a grim provision, more and more Romanians chose to migrate and in Romania the population will continue to drop drastically. The provisions regarding the populations of Romania in 2050 are pessimist, reaching a minimum of 15 million people and a maximum of 18 million inhabitants. Although the population is growing old and it is a factor which affects every country, except third world countries, in which the birth rate reaches maximum thresholds, a drastic drop of demography is due to international migration and young people choose migration-after high school they chose to go to foreign universities. In the meantime, migration has positive effects, regarding an economic point of view, the money immigrants send home represent a true economic aid for their family from Romania and for the national economy.

Migrants also have a negative impact upon the country of residence because: they occupy the jobs of natal citizens, contribute to the decrease of wages because most of the time, migrants work illegally or, even if they work legally, they are contempt with a low wage, wages much higher than those from their natal country,from the developing place they have left. Most of the time, foreigners in other countries, especially Romanians who chose a developed country, such as: Italy, Spain, France, increase xenophobia, amplified by media, which puts the blame on strangers for everything bad happening in their country, reason encountered in electoral debates-the foreigner is

guilty for everything and solutions must be found in order to protect citizens from migrants. Although the media has militated against Romanians who work in other countries, Romania and Romanian migrants have a negative image due to people who leave to beg, steal o commit crimes in other countries, being put in the situation where we are ironized as a nation, especially by French people, who consider the entire nation as a country of beggars. The economic advantages of the demographic decline are limited in matters of time and value when this decline has origins in a drop in the birth rate and maintaining it at low values. The whole mechanism is the deterioration of the structure of age and the impact this deterioration has upon the evolution of the birth rate and the process of demographic aging (Ghețău, 2007: 9).

Free movement of people

The right of free movement is a necessary right for every individual and is part of the doctrine of the first generation of rights, such as: the right to a life, freedom, the right to have dignity, freedom to speech, the right to have a fair trial.

Due to the adherence to the European Union, Romanian citizens have gained the right to travel in the European state members and do not need a visa.

Art. 2 from the Protocol nr. 4 of the European Convention of Human Rights, document ratified by Romania, which mentions:

Art. 2, alin.1 "Anyone who is legally on the territory of a state has the freedom to movement and freely choose the residence.

2. Every individual is free to leave any country, including its own country.

3.There rights cannot consist the object of constrains than those who, according to the law, are necessary measures, in a democratic society, for the national security, public safety, preventing illegal acts, the protection of health and morals,or to protect their rights and freedoms" (European Convention on Human Rights Act 2003). The European Convention provides the individual with the freedom of movement and the limitation of this right is made only from extraordinary reasons and when it is necessary in a democratic society, but the state has the positive, effective and real obligation to assure the freedom of movement for individuals. In the text of the Convention, we can note that an individual has freedom of movement in the territory of a state, but also to leave that state; these nuances fulfill the right of free movement, the individual having the possibility to travel across the country, but also the option to freely leave any state, without being compelled to remain in a state without its will. Free movement of people imposes a solution to legal and political problems which are increasingly difficult, entering the international law sphere, the movement of people in a country is no longer exclusively in the sphere of internal law, being seen as a right to receive an international consecration (Bîrsan, 2005: 1109). It is important to mention that a state, including Romania, ensures the right of free movement for citizens and also for foreigners. It would be absurd to consider that such limitations could exist- strangers could leave from a state, but citizens wouldn't benefit from the same right or citizens have the right to travel or if a person enters a foreign county, he wouldn't be able to leave. The freedom of movement does not imply the obligation of states to accept on their territory any individual, the access can be limited through visas (is a Romanian wishes to travel to The United States of America he needs a visa and the Embassy of the United States of America from Bucharest decides if this individual can obtain or not a visa, meaning the possibility to enter US territory) or simply the right to refuse the

entrance of that individual, from various reasons: that individual has committed crimes and is wanted in other countries, does not posses a sum of money which can ensure his existence, has developed actions against that state.

Within the freedom of movement is also the right to have a residence where the individual desires, having the possibility to choose the place, with the obligation to respect the current national law. “The former Commission has decided that a consignment to residence-an obligation to not leave- in a region determines a restriction of the freedom of movement and choose a residence” (Bîrsan, 2005: 1113). Although Romania has ratified the European Convention for Human Rights and additional protocols, it has emphasized the interest in this definition by introducing in the text of the Constitution this right, under the name of freemen of movement.

Art. 25 from The Romanian Constitution states: “ freedom of movement within the state and abroad is guaranteed. The law establishes the conditions to apply this right. Every citizen has ensured the right to reside in any locality from the country, to emigrate and return to the country” (Constitution of Romania, 2003).

Therefore, Romanian citizens have this right guaranteed through Constitution, not just the freedom of movement within the state, but also abroad and also to freedom to decide a place of residence. The fundamental law states does not mention the conditions in which a person can travel outside the borders an can choose a place of residence in another country, but these attributes are made in accordance with the law. The legal law imposed for people who have committed certain crimes the obligation to not leave the country, but this restrain is necessary to a well development of legal instruction and prevents absolutely and without a time limit the fulfillment of the fundamental law in cause (Costitutional Court Decision 168/2002). By the freedom of movement outside Romanian borders it can be understood that departures, on a determined period of time, with the purpose of visiting another country and then return to Romania, for example, but also the case in which individuals travel to another country with the purpose of setting residence and return or not to Romania, being under the incidence of art. 25 align. 2, from the Constitution.

In accordance with the Constitution, people have the right to choose any place of residence in any locality from Romania- “the term locality refers to those mentioned in the Romanian law and excludes a possible arbitrary selection of the place of residence, leaving space for interpretation (for example, in deserted areas or inaccessible)” (Muraru & Tănăsescu, 2008). Romanian citizens have assured the freedom of movement, elements which was absent in the communist period. The Constitution of the Social Republic Romania mentions in art. 32 that the residence is inviolable and no one can enter the place of a person without its will, except for the causes stated in the law. Although the residence is mentioned, there is no provision of the fact that the citizen can change its residence, not the possibility to travel. The idea of freedom of movement has appeared because there is an attempt to recede nationalism and to attain a European community, the freedom of movement being an objective reality of our days, implying the process of migration, phenomenon which has evolved from an isolated phenomenon during the Revolution, to a common elements due to open borders, but also of the external policy, which has the role to create as many links between as possible, with various places from the world, not just within the European structures. The freedom of movement, without restrains, is a right granted by Romania to its citizens and strangers, art. 25 being an interpretation of art. 2 from Protocol nr. 4 of the European Convention for Human Rights. Protocol nr. 4 of the European

Convention for Human Rights mentions, text enounced prior, a limitation of the freedom of movement, provision which does not exist in the Romanian Constitution, but we must understand the fact that the role of a constitution is to regulate general law principles from a society, not to develop exceptions, this role being assumed by law. The freedom of movement is necessary to create a unite European community. “The freedom of movement implies the interdiction of any measure which can violate this right or restrain it, taking into consideration that it does not have to be forbidden in a democratic society which attains a legitimate purpose” (Renucci, 2009: 227). Due to globalization and the freedom of movement, after the 1989 evolution, a new phenomenon has appeared in Romania- the migration of women.

The feminization of migration

More and more women have started to follow the path of migration, making the career a priority, instead of choosing a family life. Women comprose an absolute majority around the world and constitute everlarger numbers of immigrants – globally, women migrate at approximately the same rate as men, but men constitute a higher proportion of migrants to developing countries whereas women comprise a majority of migrants to many developed countries (Tastsoglou& Dobrowolsky, 2006: 5). Lack of importance given to women in migration is also due to the social context, where women`s roles and positions in the family and the community emphasize their dependences on men; their movement to overseas destinations are believed to be limited and often associated with men`s migration (Dhar, 2012).

Fortunately, the profile of the migrant women has changed during past years; initially, a women would migrate from developing countries towards the industrial ones in order to substitute for “a house wife”, meaning to take care of the residence, subsequent, women started to migrate from other reasons, such as leader positions, occupying jobs which require a complex professional experience or in order to continue their studies. Reasons for which women migrate are, most of the times, similar to the ones men have: a better paid job, professional recognition, uniting the family, studies, but there can also be social motivation- women discrimination and, therefore, a difficult integration in society and abuse can be motives for which women chose to leave their birth place. Although the phenomenon of feminization of migration is a step forward for gender equity, but also for the consolidation of the role women have in society, matter which also has less pleasant effects in society. The women is often considered the person who balances the family life and although we plead for equality, we cannot deny the emotional impact, regarding a sociological perspective and psychological impact upon children left alone, compared to the impact the migration of the father has.

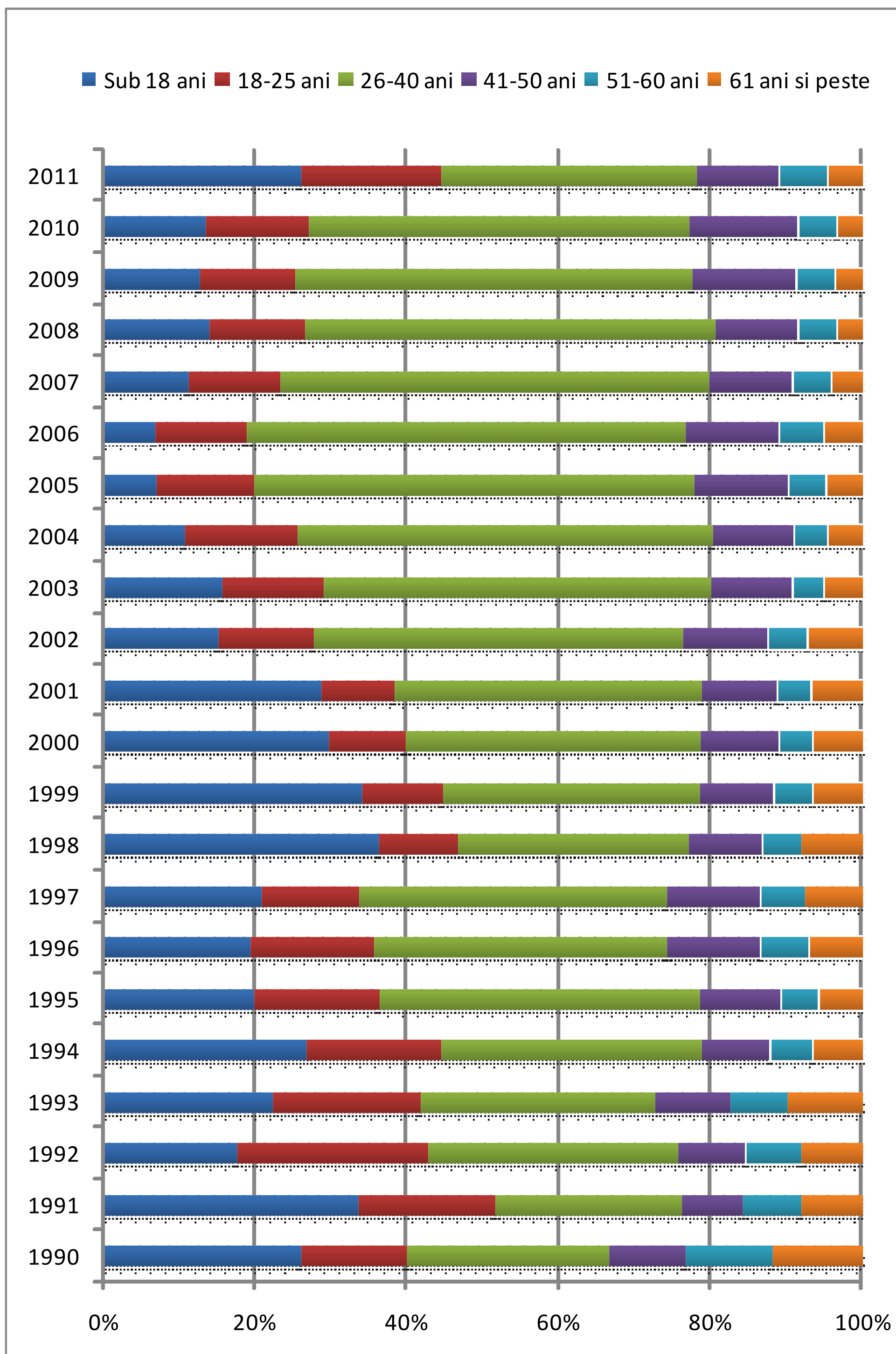
“Families in which women migrate are perceived as having a greater risk of disintegration, the secret for a stable family being the presence of the women in the domestic space, with the essential role of ensuring the cohesion of the family and for this reason the dysfunctions appeared in the family are seen as the failure of the women to perform this role” (Femeile şi migraţia internaţională, 2013). A women leaving her family generates undesired effects of migration: disintegrated families, abandoned children, elderly and helpless people. Children who are left home alone develop actions which negatively affect their construction as an individual; they are often left alone, without supervision from an adult and their school performance drops, the phenomenon of school dropout appears, a negative entourage appears, but there is always another

side: a child with only one parent or without both can develop depression, does not ask for help, isolates himself and in extreme cases they appeal to suicide. Unfortunately, most of the times, women chose to migrate when they are of the age of prosperity and return to the county and abandon the idea of a family, do not procreate or remain in a foreign country and due to isolation, loneliness or a high interest for career, they do not desire to have children.

Table 1. Emigrants by age group

Year	Under 18	18-25 years old	26-40	41-50	51-60	61 and over	Total
1990	25298	13570	25589	9790	11311	11371	96929
1991	14837	7949	10863	3533	3356	3622	44160
1992	5540	7807	10195	2861	2249	2500	31152
1993	4119	3608	5683	1822	1407	1807	18446
1994	4597	3036	5901	1569	959	1084	17146
1995	5137	4180	10875	2803	1245	1435	25675
1996	4198	3447	8347	2701	1332	1501	21526
1997	4145	2559	8091	2490	1143	1517	19945
1998	6371	1795	5379	1690	864	1437	17536
1999	4290	1357	4244	1236	664	803	12594
2000	4372	1513	5717	1551	657	943	14753
2001	2860	938	4017	1013	429	664	9921
2002	1233	1029	3972	915	417	588	8154
2003	1677	1426	5438	1159	449	524	10673
2004	1417	1920	7174	1414	577	580	13082
2005	765	1408	6359	1355	545	506	10938
2006	963	1726	8198	1782	839	689	14197
2007	1003	1062	4979	982	460	344	8830
2008	1214	1107	4722	974	445	277	8739
2009	1316	1270	5351	1393	522	359	10211
2010	1062	1074	3955	1156	406	253	7906
2011	4746	3417	6155	2003	1188	798	18307

Source: National Institute of Statistics (Romania)
Figure 1. Emigrants by age group



Source: National Institute of Statistics (Romania)

In 1990, many people have left Romania with the idea of residing in a foreign country for a determined period of time or not. The migrant's explosion from 1990 (96929 Romanians)was caused by the release from communism and the desire to leave Romania behind, even with the promises made by the fall of the regime. In 1991 and also 1992, the number of Romanian citizens who have chosen the migration path has maintain- 44160 in 1991 and 31152 in 1992. From 1993, the number of Romanians who migrated started to drop: 17146 in 1992, 19945 in 1997 or even 8154 in 2002. From 2003 we can notice again a rise in the number of migrants: 14197 in 2006, following 8830 in 2007 and 8739 in 2008. In 2009 we encounter a new rise in the number of migrants, due to an economic factor – the world crisis has affected even the most powerful countries, but they have readjusted much quicker than our country, reason for which Romanians chose migration: therefore, in 2011 we have 18307 people migrating from Romania. Analyzing data from the National Institute of Statistics, the highest percentage of people choosing migration is in the segment of age between 26-40 years old, people capable of working and develop from a professional point of view, another attribute of the demographic drop from our country, because young people chose to migrate and do not take into consideration to fulfill a family.

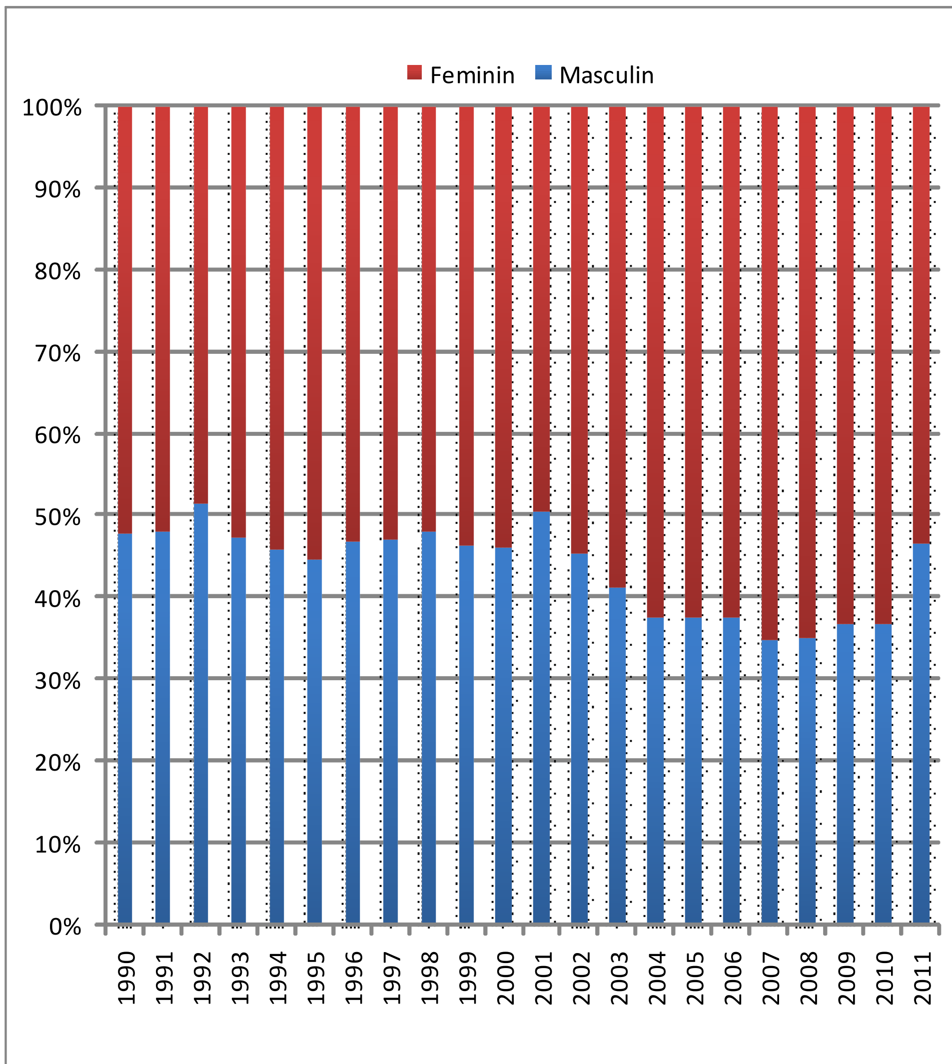
Table 2. Emigrants by gender

Year	Male	Female	Total
1990	46335	50594	**96929**
1991	21211	22949	**44160**
1992	16085	15067	**31152**
1993	8751	9695	**18446**
1994	7886	9260	**17146**
1995	11478	14197	**25675**
1996	10079	11447	**21526**
1997	9423	10522	**19945**
1998	8460	9076	**17536**
1999	5858	6736	**12594**
2000	6798	7955	**14753**
2001	5011	4910	**9921**
2002	3700	4454	**8154**
2003	4413	6260	**10673**
2004	4934	8148	**13082**
2005	4110	6828	**10938**
2006	5341	8856	**14197**

2007	3088	5742	**8830**
2008	3069	5670	**8739**
2009	3768	6443	**10211**
2010	2917	4989	**7906**
2011	8527	9780	**18307**

Source: National Institute of Statistics (Romania)

Figure 2. Emigrants by gender



Source: National Institute of Statistics (Romania)

In accordance with statistics, women from Romania migrate more often than men, situation appeared after the Revolution, a fact which proves the independence of women and the repulsion towards the communist idea of submission in front of a man.

In 1990, a year after the Revolution, women and men have migrated in a very high proportion- 46335 people. The high migration of 96929 people in 1990 was due to oppression from the communist period when people were not allowed to leave Romania and, therefore, in 1990, freedom and new opportunities allowed people to give up the exaggerated nationalism. During 1991-1992, migration continued to reach records- 44160 people in 1991, of which 22949 were women and in 1992 31152 people have chosen to migrate, meaning 15067 women, less than the number of men who have chosen to migrate in that year- 16065.

Why did migration continued to have such a great impact in 1991 and 1992? Not all people who had desired to migrate from Romania have succeeded right after the Revolution, maybe due to the lack of money- transport, accommodation and food- all you need to support yourself and find a job which can allow a decent living. From 1993 to 1998 there is a decrease in the number of migrants- for example, in 1994, 17146 Romanians have migrated and in 1998- 17536. From 1999, the phenomena of migration has reduced dramatically, the population being relatively stable- who desired to leave the country had done it right after the Revolution, they did not wait 10 years. From 1999 to 2007, migration is in the same limits, with slight variations- 9921 people in 2001, 10673 in 2003 and 10938 in 2005. From 2008, the migration of Romanians drops very much, event which coincides with the worl financial crisis. We reached a migration of 7908 people in 2010, 4989 of them being women, the biggest difference between the migration of men and women since the Revolution to 2011.

As presented above, migration is a phenomenon with great extent, involving more and more countries and the possibility of migration from a state to another is becoming easier and much common. In the case of Romanian citizens, they chose to migrate from various reasons, the main one being the economic one- they have a poorly paid job or don't have a job at all, they cannot provide a decent living for themselves and choose to migrate in a developed country in order to have a better life.

As the statistics show and following the analysis, we can observe that Romanian women migrate in a higher proportion than men, choosing this option in order to provide a better life for their families. Unfortunately, due to the feminization of migration, less pleasant effects have appeared: children taken care by fathers of grandparents, abandoned children, suicides, isolation, loneliness, lack of balance in the family, the mother being, therefore, the core of the family. In addition, statistics indicate that people choose to migrate at a young age, between 24-40 years old, causing the demography to drop drastically. Due to the high number of emigrants, the settled population can be composed of elderly people, because the young ones leave Romania and this percentage is very high and has a great impact regarding the human development.

Migration can be benefic for Romania, but on a determined period of time, coming home with precious information which can be benefic for the entire society, but, unfortunately, more and more Romanians choose to establish in a developed country and never come back. Migrants represent, without doubt, the greatest dynamics of a society, because they attract different problems, such as: human rights are not respected, they encounter difficulties at they workplace, the conditions in the destination county are more difficult that they have expected, foreigners are nt friendly,

making the integration process difficult, some migrants cannot cope with the situation and return to Romania; migrants count in a society because they represent the image of a state and other countries wish to minimize it. Altough migration has always been a part of the human experience, the twentueth century saw migration expand to become a global phenomenon with migrants moving across the globe in greater numbers and between countries – the new global reality has been termed an age of migration, in recognition that migration and population movement lie at the core of economic and political, national and international relations (Williams, 2010: 3). Romania is, without doubt, a country of migrants, not just regarding the high number of migrants, but also the implications the people who have left have upon our state, even political implications. In 2009, at the presidential elections, Traian Basescu was voted as president of Romania, being saved by the diaspora with 11581 votes, compared with its candidate, Mircea Geoană, who had obtained 31045 votes. This was unique moment in history, when the diaspora had the last word.

Irrespective of the reasons Romanians have to migrate, they do not seem to wish to restrain the phenomenon, but appear more involved in external relationships, giving birth to a new phenomenon- migration for studies. The intercultural exchange is very important for a state, especially one as Romania, in process of aligning with the European state members, supported by a study migration, fact which proves that Romanians produce more and more brain drain, but also that connections are set with other countries, not only for subordination-Romanians occupy places that other European citizens refuse-Romanians are targeted for their professional abilities, capacities gained in industrial countries which desire to keep them.

Romania is supported by migration and it would be faced with an economic and social collapse otherwise, stating the opinion of Kofi A. Annan, former General Secretary of The United Nations, who firmly believed that:" migrants will exist as long as nations exist". It is very important for all the Romanian people working abroad, their connection with the native country to be maintain, to be encouraged temporary migration and to be limited the permanent one.

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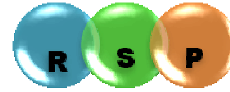

ORIGINAL PAPER

Jurisdictional competence of private international law in the matter of civil status actions in accordance with the rules of the European Union

Faisal Al-Tamimi*

Abstract

Under the terms of freedom of movement of EU Member States' citizens and of increasing labour mobility in Europe, is of particular importance to study the material and territorial jurisdiction of the courts in the matter of civil status actions, the recognition and enforcement of legal judgments rendered in matters relating to divorce, legal separation or marriage annulment, as well as the power of final decision of the judgments regarding the actions on civil status.

The present study analyzes the provisions of the EC Regulation of the Council no. 2201/2003 of November 27, 2003 concerning competence, recognition and enforcement of legal judgments in matrimonial matters and in the matter of parental responsibility, which entered into force on March 1st, 2005, in conjunction with the rules of private international law regarding the conflict of jurisdiction.

The author also analyzes the jurisdictional competence of private international law of the Romanian courts in the matter of civil status actions according to Law no. 105/1992 on the regulation of private international law relations and to the new Civil Code.

Keywords: court, divorce, judgement, marriage, recognition

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1. European Union rules on the jurisdictional competence of private international law in matters of civil status actions

1.1. General considerations relating to the civil status actions

Civil actions are those legal proceedings which have as their object elements of civil status of an individual (Beleiu, 2006: 376; Boroi, 2002: 351; Petrescu, 1968: 160; Ungureanu & Munteanu, 2011: 222). These actions follow either the establishment or modifying of the civil status of a physical person, through contesting or by changing an element of civil status. These actions shall not be confused with legal actions to annul, alter, rectify and complete civil status acts or their marginal mentions (Hamangiu, Rosetti-Bălănescu & Băicoianu, 1996: 341-343; Ciobanu, 1996: 246). In this context it is very important to specify that the action in cancellation, rectification, modification and completion of the civil status acts are different from civil actions through their object: the first refers to incorrect entries in the registers of civil status, the other refers to an element of civil status. This differentiation presents interest on the effects produced by the two classes of actions: the effects of actions in the first category concern only the contents of the document or record, while the actions of the second category have direct effect on the civil status of the person (Mureşan, Boar & Diaconescu, 2000: 80).The actions in cancellation, rectification, modification and completion of the civil status acts or marginal terms thereof shall serve, ultimately, to the necessity of being a full compliance between the marital status of a person and its acts of civil status (Lupulescu, 1980: 17-18).

Taking into consideration the freedom of movement and the mobility of individuals within the European and international space, the determination of the Court's material and territorial competence, the power of final judgments with respect to civil actions, as well as recognition and enforcement of a judgment given in a Member State presents theoretical and practical importance.

As from 1 January 2007, the date of Romania's accession to the EU, the provisions of the European Union's regulations are directly applicable in the territory of Romania, without requiring a transposition into national law, it is necessary to know the provisions of the EU rules in the matter of the jurisdictional competence of private international law.

1.2. Brussels II bis Regulation

Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II bis Regulation), entered into application on 1 March 2005, repeals and replaces Council Regulation (EC) No. 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses (Brussels II Regulation) which entered into force on 1 March 2001. The purpose of this regulation was to unify into a single text, the regulations on family aspects and those relating to parental responsibilities (Ancel & Muir-Watt, 2006: 131).The rules relating to jurisdictional competence of Regulation (EC) No. 2201/2003 contain provisions relating to disputes with a foreign element, in relation to a Member State, namely: exclusive competence in matters of divorce, separation and marriage annulment; exclusive competence in matters of parental responsibility; prorogation of jurisdiction in matters of parental responsibility; jurisdiction based on the child's

presence; residual jurisdiction in matters of divorce and parental responsibility; precautionary and provisional measures, etc. This regulation is directly applicable to Romania in relation to the EU Member States, including the Kingdom of Denmark. In matters of civil status actions, we must emphasize that they do not fall within the scope of Regulation (EC) of the Council no. 44/2001 (Brussels I Regulation) because it contains express provision that its stipulations "shall not apply to the status and capacity of natural persons" [article 1, paragraph 2, let. a)].

1.3. The material scope of the Brussels II bis Regulation

According to article 1, par. 1, this Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

(a) divorce, legal separation or marriage annulment;

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility regarding issues such as: (a) rights of custody and rights of access; (b) guardianship, curatorship and similar institutions; (c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; (d) the placement of the child in a foster family or in institutional care; (e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property.

Article 1, par. 3 establishes the situations in which this Regulation is not applicable, respectively:

(a) the establishment or contesting of a parent-child relationship;

(b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

(c) the name and forenames of the child;

(d) emancipation;

(e) maintenance obligations;

(f) trusts or succession;

(g) measures taken as a result of criminal offences committed by children.

As regards judgments on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures (par. 8 of the Preamble of Brussels II bis Regulation).

1.4. Rules of jurisdictional competence

According to article 3 par. 1 of the Regulation, in matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member

State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses. For the purpose of this Regulation, "domicile" shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

The court before which proceedings are carried out pursuant to article 3 shall be responsible also for the settlement of the counterclaim, insofar as this falls under the scope of this regulation.

Without prejudice to Article 3, a court of a Member State that has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides (conversion of legal separation into divorce).

It should be noted that, by applying the rules laid down in article 3 paragraph 1 of Regulation, only the competent Member State in terms of jurisdiction can be determined, the Court which has material and territorial jurisdiction may be established through the application of national rules of procedure in that Member State (Nicolescu, 2008: 98). The criteria listed in the article. 3 paragraphs 1 represent the only alternatives left to the parties' power of discretion. With no predetermined hierarchy between these criteria, the applicant will be able to choose the most advantageous criteria in order to obtain from the competent national court a judgment of termination, separation or annulment of marriage (Nicolescu, 2008: 98). From the analysis of these criteria results the European legislator's preference for competence based on residence in detriment of competence based on nationality which, while not ruled out, "is, due to the exigency of overlapping, subject to constraints that prohibit any branching and condenses it into a single element" (Ancel & Muir-Watt, 2006: 137). Thus, under the rules of competence covered by the Brussels II bis Regulation may also enter disputes which have points of contact with a third country, situation that can arise when nationality of one of the spouses or both spouses belongs to a non-Member State, but the competence in this matter is assigned to a court in a Member State on whose territory the habitual residence of the spouses or of at least one of them is situated.

Opportunity to opt for one of the criteria laid down in article 3 of the Regulation, however, is exclusive. Exclusive nature of jurisdiction under articles 3, 4 and 5 is reinforced by article 6, according to which "A spouse who: (a) is habitually resident in the territory of a Member State; or (b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her "domicile" in the territory of one of the latter Member States, may be sued in another Member State only in accordance with Articles 3, 4 and 5". Illustrative for understanding the exclusive nature of competence in matrimonial matters, determined according to the provisions of the Brussels II bis Regulation is the situation exemplified in the Annex to the Guide for the application of the new Brussels II Regulation: "A man who is a national of Member State A is married to a woman who is a national of Member State B. The couple is habitually resident in Member State C. After a few years, their marriage deteriorates and the wife wants to divorce. The couple can only apply for divorce before the courts of Member State C pursuant to Article 3 on the basis that they have their habitual residence there. The wife cannot seise the courts of Member State B on the basis that she is a national of this State, since Article 3 requires the common nationality of the spouses" (Guide for the application of the new Brussels II Regulation: 48).

In order to avoid the introduction of parallel actions in different Member States, and to prevent the pronouncement of irreconcilable judgments, Article 19 of the Regulation, making an application of the *prior temporis* principle, provides clear rules for dealing with situations of *lis pendens* and dependent actions: "1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. (…) 3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court. In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised".

Another rule aiming the uniformity of judicial competence system in areas falling within the material scope of the Brussels II bis Regulation was introduced by Article 17: "Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction".

Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5 of the Regulation, jurisdiction shall be determined, in each Member State, by the laws of that State (residual jurisdiction). As against a respondent who is not habitually resident and is not either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his "domicile" within the territory of one of the latter Member States, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

1.5. Seising of a court

According to the Article 16 par. 1 of Brussels II bis Regulation, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent; or (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Where a respondent habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defense, or that all necessary steps have been taken to this end.

Where the provisions of Regulation (EC) No. 1348/2000 does not apply, Article 15 of the Hague Convention of 15 November 1965 on the communication and notification abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the court or an equivalent document had to be transmitted abroad pursuant to that Convention.

1.6. Recognition of a judgment

With regard to the recognition of judgments, Article 21 of Brussels II bis Regulation stipulates:

"1. A judgment given in a Member State shall be recognized in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognized. The local jurisdiction of the court appearing in the list notified by each Member State to the Commission pursuant to Article 68 shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue".

Grounds for refusal of recognition of judgments handed down in matters relating to divorce, legal separation or annulment of marriage are covered by Article 22 of the Regulation:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;

(b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defense unless it is determined that the respondent has accepted the judgment unequivocally;

(c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or

(d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

By comparison, Article 168 of the Romanian Law no. 105/1992 on the regulation of private international law relations provides that recognition of a foreign judgment may be refused in any of the following cases:

1. the decision is the result of fraud committed in the procedure followed in other countries;

2. the decision violates public order of Romanian private international law; the violation of the provisions of article 151 relating to the exclusive competence of the Romanian jurisdiction constitutes a ground for refusal of the recognition;

3. the lawsuit was settled between the same parties in a decision, even if it is not final, by the Romanian courts or is undergoing trial in front of them at the date of seising the foreign court.

Recognition may not be refused for the only reason that the court which pronounced the foreign decision applied a law other than that determined by the Romanian private international law, out only if the process concerns the marital status

and civil capacity of a Romanian citizen, and the solution adopted is different from that which would be reached according to the Romanian law.

In accordance with article 25 of the Brussels II bis Regulation, the recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Under no circumstances may a judgment be reviewed as to its substance (Article 26).

Article 27 of the regulation stipulates the conditions under which the procedure for the recognition of a judgment may be suspended. Thus, a court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

Documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognized and declared enforceable under the same conditions as judgments (Article 46).

1.7. Enforcement procedure

The enforcement procedure is governed by the law of the Member State of enforcement. Any judgment delivered by a court of another Member State and declared to be enforceable in accordance with Section 2 or certified in accordance with Article 41 par.1 or Article 42 par.1 shall be enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State. In particular, a judgment which has been certified according to Article 41 par.1 or Article 42 par.1 cannot be enforced if it is irreconcilable with a subsequent enforceable judgment.

2. Jurisdictional competence of private international law of the Romanian courts in matters of civil status actions according to the provisions of the new Civil Code and the Law no. 105/1992

2.1. Preliminary considerations

According to Article 2557 par. 3 of the new Civil Code, the stipulations of Book VII, entitled “Dispositions of Private International Law”, “shall be applicable to the extent that international conventions to which Romania is a party, European Union law or the provisions of special laws do not establish another regulation”. It should be noted that the new Civil Code repealed Articles 1-33 and Articles 36-147 of Law no. 105/1992 on the regulation of private international law, but he left in force the provisions of the Articles 148-157 - Section “Jurisdictional Competence” within Chapter XII, entitled “Procedural rules in matters of private international law”, of Law no. 105/1992 (Băcanu, Căpățână & Zilberstein, 1992: 31-36). These rules are incidents to the extent that international treaties to which the Romanian state is a party do not establish other rules for determining the jurisdictional competence concerning the relations of private international law.

According to the Article 157 of Law no. 105/1992, the Romanian court seised shall verify *ex officio* its competence to address the process concerning the relations of private international law and, if it finds that it is not competent nor her and no other Romanian court, reject the application as not being within the competence of the Romanian courts. In the context of this verification, the Court is required to consider whether, in the dispute in question, EU rules or rules contained in the international conventions to which Romania is a party are incidents, rules which would have precedence over national provisions and that would cause another jurisdictional competence of private international law.

Article 153 of the same law regulates a case of legal prorogation of the jurisdictional competence of the Romanian courts, applicable including in matters of civil status actions: "Where the foreign jurisdiction is principally concerned to declare its non-competence to solve an action made by a Romanian citizen, this can be brought to a court in Romania with which process is most closely connected". This rule is likely to extend the competence of the Romanian court as necessity forum (Ungureanu, Jugastru & Circa, 2008: 238), being justified by the need to safeguard the interests of the Romanian citizen in the case the foreign court invokes its non-competence to settle the action brought by it (Nicolescu, 2008: 85; Stănescu, 2005: 79; Zilberstein, 1994: 50).

2.2. The exclusive jurisdictional competence of the Romanian courts in matters of civil status actions

Romanian courts are competent to judge the processes between a Romanian and a foreign part or only between foreign parts, natural persons or legal entities, under the conditions laid down in articles 148-164 of Law no. 105/1992 on the regulation of private international law relations.

According to Article 151 of Law no. 105/1992, the Romanian courts are exclusively competent to judge the processes concerning the relations of private international law relating to:

1. civil status acts drawn up in Romania and referring to persons residing in Romania, Romanian or foreign citizens without citizenship;
2. adoption's approval, if the person who is to be adopted is domiciled in Romania and is a Romanian or foreign citizen without citizenship;
3. guardianship and curatorship regarding protection of persons resident in Romania, Romanian or foreign citizens without citizenship;
4. putting under interdiction of a person who is domiciled in Romania;
5. termination, cancellation or nullity of marriage, as well as other disputes between spouses, except for those relating to immovable property situated abroad, if, at the date of application, both spouses are domiciled in Romania, and one of them is Romanian or foreign citizen without citizenship;
6. legacy of a person who has had the last residence in Romania;
7. buildings situated on the territory of Romania;
8. forced enforcement of an enforceable title in Romania.

It is worth noting that the situations listed in Article 151 represent cases where the Romanian state, as sovereign state, refuses the jurisdictional competence to foreign courts in order to provide added protection for Romanian citizens. Where the court of another sovereign state solves the respective process, the Romanian courts may refuse recognition and, where appropriate, the approval of enforcing on the Romanian territory

of foreign judgments handed down in these circumstances (Stănescu, 2006: 20), pursuant to articles 168 and 174 of Law no. 105/1992.

According to Article 151 section 1 of Law no. 105/1992, the Romanian courts are exclusively competent to judge the processes concerning the relations of private international law relating to “the civil status acts drawn up in Romania and referring to persons residing in Romania, Romanian or foreign citizens without citizenship”. The conditions to operate this exclusive jurisdictional competence is that the Act of civil status, as *instrumentum probationis*, must have been drawn up in Romania and to refer to a Romanian citizen or a stateless person residing in Romania. The civil status documents of foreign nationals, even if they are domiciled in Romania, do not fall within the scope of the provisions of Article 151 (Filipescu & Filipescu, 2002: 512). In the literature it has been argued that the text of Article 151 section 1 referred to Romanian citizens or stateless persons residing in Romania on the date of the action/investing the Court, irrespective of their domicile and nationality at the time of drawing up the civil status act (Nicolescu, 2008: 86).

Another provision affecting actions in matters of civil status, in accordance with the provisions of Article 61 par. 2 of Law no. 273/2004 on the legal status of adoption, is contained in Article 151 section 2 of Law no. 105/1992, which confers exclusive jurisdiction to the Romanian courts in respect of the processes related to the approval of the opening of adoption, custody for adoption and approval of adoption if the one who is going to be adopted is Romanian citizen or foreigner without citizenship and has his domicile in Romania (Avram, 2005: 63-88; Florian, 2006: 435).

In matters of civil status actions, provisions of point 5 of Article 151 of Law no. 105/1992 are also relevant. Under those provisions, the Romanian courts are exclusively competent to settle an action aimed at “termination, nullity or annulment of marriage, as well as other disputes between spouses, except for those relating to immovable property situated abroad, if, at the date of application, both spouses are domiciled in Romania, and one of them is a Romanian or foreign citizen without citizenship”. Therefore, one of the requirements is that both spouses to reside in Romania on the date of the action, no matter if during the process one or both spouses establish the domicile abroad. Unlike section 1 of Article 151, the condition that the marriage act has been made in Romania was no longer kept.

2.3. Determination of the alternative jurisdictional competence of the Romanian courts in matters of civil status actions

Art. 150 of Law no. 105/1992 provides for a number of situations in which competence belongs to the Romanian courts as in the case of civil or commercial processes with a foreign element, among which we mention the processes between persons residing abroad, relating to civil status acts or facts registered in Romania, where at least one party is a Romanian citizen (section 1) and processes relating to declaring the presumed death of a Romanian citizen even though he was abroad at the time of the disappearance (section 3). Jurisdiction in accordance with these provisions is alternatively established, besides the Romanian courts being also able to be competent the courts or jurisdictional authorities of the state with which the legal relationship concerned has a binding element.

For engaging the jurisdiction of the Romanian courts in the hypothesis provided for in Article 150 section 1 it is necessary that the civil status acts or facts have been registered in Romania, and at least one of the parties residing abroad be a Romanian

citizen (Zilberstein, 1994: 33). Thus, a divorce action or an action for declaration of absolute nullity or annulment of the marriage of two spouses who are domiciled abroad – in the same foreign state or in different states (Filipescu & Filipescu, 2002: 514; Nicolescu, 2008: 88), the marriage being registered in Romania, can be introduced and resolved by the Romanian court if at least one party is a Romanian citizen. The condition shall be considered satisfied if one of the parties holds more than one citizenship, including the Romanian - at the date of seising the court (Nicolescu, 2008: 89; Lazăr, 2003: 165).

The requirement of domicile of parties abroad is a foreign element that draws the jurisdictional competence of private international law of the Romanian courts (Zilberstein, 1994: 33). The provisions of Articles 150 section 1 are more incidents where one of the parties, of Romanian nationality, domiciles in Romania, the other conditions laid down in the legal text having been fulfilled (Filipescu & Filipescu, 2002: 514).

Condition that the civil status acts or facts have been recorded in Romania means, in practice, the registration of birth, marriage or death in Romania, by the persons involved in the civil status operations and under the conditions laid down by Law no. 119/1996 concerning the civil status acts, with subsequent amendments and additions. Romanian law does not require the holding of Romanian citizenship for registration of civil status acts and facts. Thus, foreigners residing or temporarily in Romania may request registration of civil status acts or facts as well as Romanian citizens, under special conditions, if these are expressly required by law (Article 31 of Law no. 119/1996). If the three cumulative conditions required by the hypothesis provided for in Article 150 section 1 – registration in Romania of acts or facts of civil status, domicile of the parties abroad, at least one of the parties to have Romanian citizenship – are not satisfied, the Court is required to verify whether the Romanian courts' jurisdiction is drawn on the basis of Article 149 section 1 of Law no. 105/1992 (common law jurisdiction) which stipulates that: "The Romanian courts have jurisdiction if: 1. the defendant or one of the defendants has his domicile, residence or commerce fund in Romania; if the domicile of the defendant from abroad is not known, the action is inserted at the court of domicile or residence of the applicant".

If the dispositions of article. 149 section 1 of Law no. 105/1992 are not applicable, solving of these actions will be the competence of the foreign courts or judicial organs. In this situation, the Romanian court, noting that there is competent neither she nor another Romanian court, will reject the application as not being within the competence of the Romanian courts in accordance with Article 157 of the same law. The Romanian court cannot, however, decline its competence in favour of a foreign court because it has not the power to invest courts outside national judiciary system by disclaiming its own competence (Zilberstein, 1994: 49-50; Ungureanu, Jugastru & Circa, 2008: 243).

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