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

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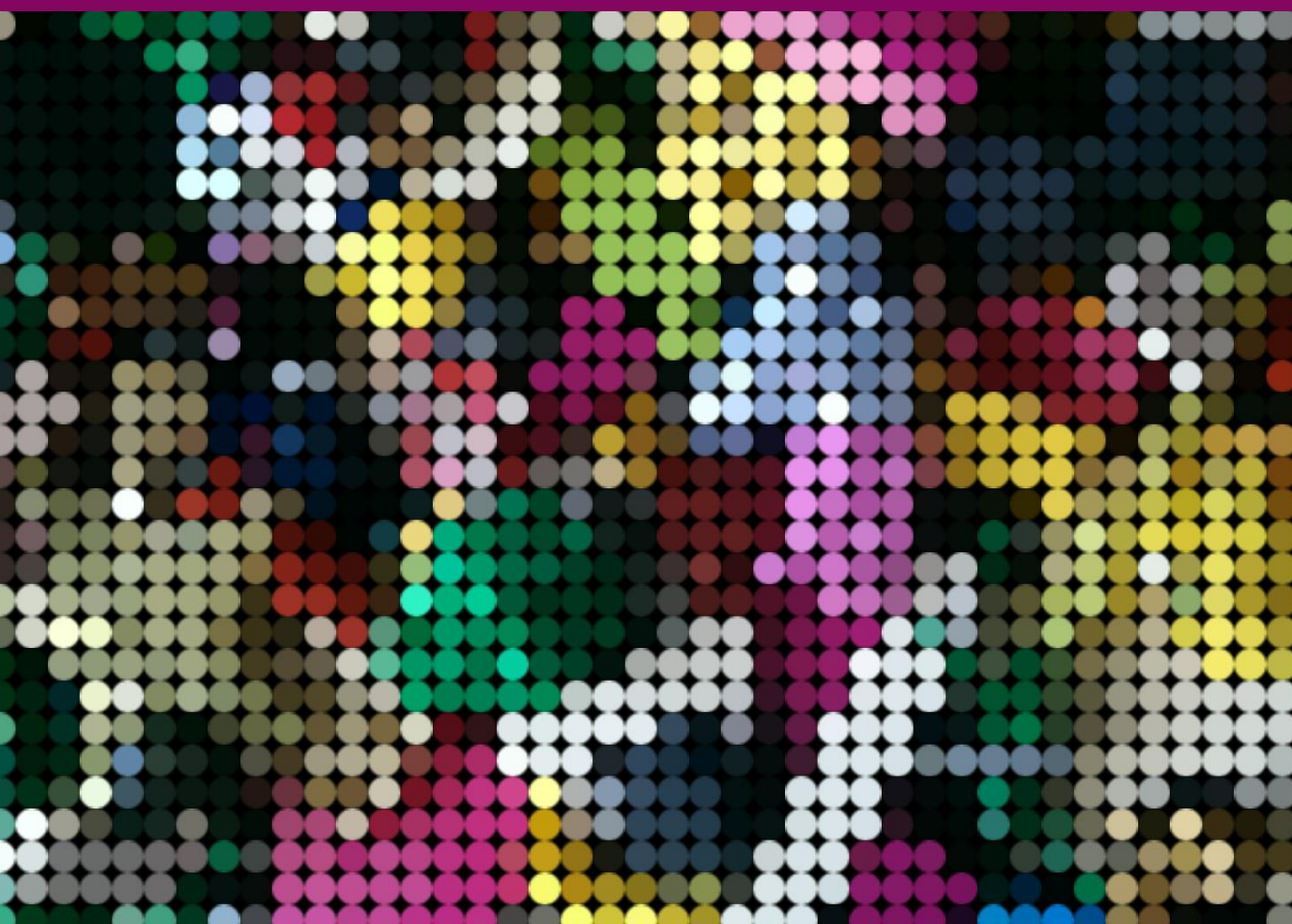

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RSP • No. 44 • 2014

Special Issue:
Local Governance & Local Political Participation Engagement: A Dialectics of Transition

CONTENTS

EDITORS' NOTE

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

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

Welcome to the fourth issue of 2014 of the *Revista de Ştiinte Politice. Revue des Sciences Politiqu/es* (hereinafter **RSP**). The new covers and the concept of the journal provided since issue 41/2014 are dedicated to further the research and critical observance of the social sciences investigation.

Due to recent polictical inconsistencies and contradictions in the region, **RSP** Editorial Board launched a new four issues series entitled as follows: ***East & West Post-Communist Encounters: Ideologies, Policies, Institutions Under Scrutiny (issue 41/ 2014); Citizenship, Elections and Security: An Analytical Puzzle (issue 42/2014); Compass of Politics: Systems and Regimes Synopsis (issue 43/2014) and Local Governance - Local Political Participation Engagement: A Dialectics of Transition (issue 44/2014 launched in December 2014).***

The special issue 44/2014 is concerned with the relationship between local governance and local local political participation, or more specifically with how the engagement between the two is variously examined in the context of transition. The authors of this issue focus on a complex interdisciplinary, political, legal, social and economic research to consider how the events before and after 1989 imposed a new model polarizing the public agenda of transition. A focus on how the dialects of transition is constructed and negotiated makes visible the reasons why the new ideological arena cannot be a single response to transition challenges.

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Editors' Note

The content of issue 44/2014 is a response to recent studies in the field that reconsider how a sense of governance and political participation is always appreciated within the local, national and international features. These articles highlight the dispute fed by the divergent uses of the concepts of regime, reform, constitutional justice, civil society, public law, social media, party performance, legal diagnosis revealing political, social, economic and legal reform considering the interface between "local" level, regional, national and international levels. To focus on the "local" means to encounter and re-design the practices of democratic mechanisms as a source and alternative viable form of the liberal state such as: local history, local institutions, local actors, local performance, local participation, local reform, local elections, local regulations etc.

Dănişor refers to this as a "relation between just and well-being, launching the discussion on the arbitrage procedure between the new ideological landscape of the well-being and the liberal ideas of the "just ver well-being".

In his analysis, Turker shares the common characteristics of the authoritarian regime in post-communist Central Asia demonstrating that the examples suggested show "how different patterns of patronage politics, political leadership, economic resources and Islamist revival may generate very different types of state power and autocratic stability". Georgescu directs the exploration of issue of historical institutionalist approach of the public administration dynamics and seeks to understand the governance and intra-governmental relations during the transition period.

The functionality and performance of semi-presidentialism is revealed by Tănăsescu's study of the Romanian Constitution. Therefore, Tănăsescu claims that "the aetiology of the malfunctions of Romania's semi-presidentialismis not of constitutional, but of extra-constitutional origin". Gîrleşteanu focuses on exploring the institution of amparo as an instrument for protecting the fundamental rights and freedoms, by emphasizing the role of the actors of amparo proceedings: the claimant and the defendant.

From a functionalist and participatory point of view, Olimid's ambivalence regarding the civic engagement and citizen participation in local governance is associated with the impact of the models of associational involvement of cultural governance, participatory governance and civil society. Bogdan locates the consensualism legal foundation of public international law. Udangiu explores the relationship between the ideology, narrative and soft power through the vision of the "third way" towards a "Good Society". By observing the plural responses to digital activism, Mitu and Vega conceptualize the foundations of an "extended participation through digital media means".

In the same repertoire, Rusu-Păsărin suggests that the implementation of a strategy fordeveloping alocal radio stations requires respecting and promoting its corporate mission and vision. While Gherghe focuses on the shifting scales of the electoral law reform in the XIXth century, Bărbieru makes visible the limitation of electoral performance in the Parliamentary elections (2014) at local level. The article of Ghiţă is built around the reform of the new Romanian Civil Code connected to "the delivery of justice and the need to ensure a unitary and foreseeable jurisprudence". Smarandache's article addresses the linkages surrounding the banking activity, the credit institutions and the financial environment of transition.

The article of Niţă drafts the connection between the discussions of completed and ongoing research in the field of education organization and conflict management. Seeking the right solution between national and international legislation and jurisprudence, Albăstroiu and Ghiţă explore a legal diagnosis of medically-assisted human reproduction at the edge of national and international legal interpretation.

Editors' Note

Building a historical bridge between political figures and local assumptions of political authority, Danciu addresses the lesson of political union as a experiential phenomenon. Ilie helps us to reconsider the historical shapes of the XXth century, often considered outside the purview of the post-communist landscape. Pădureţu locally maps the urban religious architectural history in between the process of restoration and the challenges of transition. In the end, Olaru brings the reader to the aesthetic register at the transition between the XIXth and XXth centuries.

The authors of the articles in RSP issue 44/2014 turn on the exploration and explanation of the catch-all concept of "local" as they engage with analyses, questions, interpretations, solutions on the sense of mobilising, involving and participating including a narrow definition of "transition" at the edge of constitutionality.

Following the initiative launched in issue 41, the cover and format hopefully individualize the research initiatives and studies of the present studies as follows: *After 25 years: Pinpointing East and West Encounter Arena (cover of issue 41/2014)*; *Identity and Belonging in Post-Communism(cover of issue 42/2014)*; *In-between change: system and regime algorithm (cover of issue 43/2014); Catch-All Transition: A Political Dialects of Acting and Performing (cover of issue 44/2014).*

ORIGINAL PAPER

Debating Revolution and After: Notes on Institutions Establishment and Cleavage Transition

Dan Claudiu Dănişor*

Abstract
The events ocurred at the end of 1989 and the beginning of the ’90s were interpreted for a long time by a great number of Romanian politicians and local intelligentsia as not being a revolution. The dispute seemed to be fed by the divergent use of the concept of “revolution” itself. The events were, thus, qualified as “coup d’état”, “insurrection” etc. Nowadays, after almost a quarter of a century, the stake seems to fade away. The revolution appears to be an acquired asset. However, the consequences of the fundamental issue which initiated it continue to be important, because this represents an ideological, political and legal fracture of the totalitarian regime or of a certain continuity between the two regimes. The essential question is if Romania chose the contrary of the totalitarian regime, that is a liberal state or an alternative viable form, or it continued the totalitarianism in a different shape, “with human face”, imitating, better or worse, the mechanisms of democracy. In the following pages I will try to demonstrate that the Romanian society is characterized of a certain modality of ideological monism, which only imitates pluralism, that is continues to be a mass society, without being capable to generate and to maintain a civil society autonomous in relation to the state, that the liberal principle of priority of just over well-being is not typical to the current Romanian state, as the priority of liberty in relation to the general interest or perfectionist values does not represent a reality in post-Communist Romania. In other words, the current Romanian state, despite the make-up, is not essentially different to the totalitarian one, the difference being only of degree, not of nature.

Keywords: liberalism, totalitarianism, pluralism, post-Communism, mass society, general interest, liberty.

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In 1989, Romanians took part to the overturn, popular as well as televised one, of the Nicolae Ceauşescu's regime. If then they wanted or not to also give up to the socialist state, this is debatable. Ion Iliescu, elected Romania's President with a pretty comfortable majority in 1991, although largely accepted by the population, clearly stated in the respective period the continuity between regimes. Thus, from an ideological point of view, he stated the necessity to overturn Ceauşescu's regime, but to continue the construction of socialism, in a reformed version, following Gorbachev's model, his collaborators at that time speaking of the Chinese model, as well as the Swedish model (!?)... From a political point of view, the use of National Salvation Front in the same time as power structure and political party also showed a tendency of continuity. The admission of pluralism, inevitable in the context of the fall of the entire block of socialist states, was accompanied by a clear tendency of building a dominant party and of de-ideologisation of the rest of the parties, thus ensuring the subtle, but firm assertion of a political doctrine by the state. The breakdown of the dominant party, apparently impossible to be understood or easily explained by the conjuncture discrepancies of opinion between its leaders, was, in fact, a movement of replacement of ideological pluralism with a structural pluralism inside a dominant party which embodies the general interest, thus situated beyond ideologies (you remember Traian Băsescu asking himself during a TV debate in the presidential campaign if the Romanian people is cursed for having to choose between two ex-Communists: Adrian Năstase and himself).

From a legal point of view, these tendencies of continuity were manifested in the affirmation of a continuity between the socialist Constitution of 1965 and the post-revolutionary one from 1991. Thus, the new constitution abolishes the old one, as if it had not been abolished following the revolution. The temporary power structure from Bucharest abolishes, by the Decree no. 1/1989, the power structures of Ceauşescu's and not the ones of the socialist state and "forgets" to publish in the Official Journal the Decree by which the Romanian Communist Party is dissolved. On the other hand, the new normative system does not prohibit the Communist parties in general, the decree-law regarding the establishment of the political parties prohibiting in principle only the Fascist parties.

In this context, I wonder whether Romania succeeded to get beyond totalitarianism or if it remakes it in a different shape. In order to answer, we have to see if in Romania, the evolution of political institutions caused ideological pluralism, if it generated a system with multiple and diverse centers of influence and if the legal system is centered on the guarantee of individual liberty against the structures of power, irrespective of their nature, by ensuring the priority of just, that is the arbitrage procedure, over weel-being, that is of each specific doctrine, with all the suite of consequences which the political liberalism built starting from here. On the other hand, it remains to be seen if democracy has any consistency a quarter of a century from the fall of Ceauşescu's dictatorship or if its mechanisms are imitated, as well as the restructuring of the legal system is imitated, as well.

Ideological and partisan pluralism or monism?

Did the Romanian society succeed to produce ideological pluralism on which the liberal democracies after 1989 are based? Or did all the subsequent evolutions of this society were directed towards maintaining an ideological monism specific to totalitarian regimes?

The current partisan system is one which might be easily apprehended as a single party system within which there are several factions, because all the parties do is to fight over conjucture issues and almost never over fundamental ones. The presidential election

campaign which has just finished is relevant from this point of view: it was all centered on the criminal issues in which the members of the power structures supporting the candidates are involved; the elimination of adversaries and not the analysis of political programs is the key subject of the so-called debate. The electorate's reaction was one of confusion, after which of conjuncture anger due to the faulty organization of the voting process abroad. Iohannis sis not convince by any program, as neither Ponta did it, he won on the background of the people's conjuncture discontent. The Romanians reacted in a unpredictable manner, as they also reacted against Băsescu when the removal of a state secretary from the Ministry of Health sent them to the streets, as the neglection of the public health system had not done it. Irrespective of the type of elections, all the debate teams seemed to be of conjucture and the solutions suggested superficial ones. The cause does not have to be looked for in the proven taste of Romanians for unsubstantial scandals and televised debates, but in the parties' lack of ideology due to the absence of fundamental social cleavages which should structure the system of parties in order to polarize the electorate. The persistence of de-ideologization, explainable in the respective conjecture, seems to point out a certain intentional attitute to avoid political pluralism or a profound incapacity of post-Communist systems to produce it.

The appetite of Romanians for de-ideologisation of parties is historically explainable. In 1989 the electorate was not ready at all for other ideologies than the one promoted by the ex-Communist party as being Marxist and which, in fact, had no connection watsoever with Marx. Mr. Ion Iliescu and the group he coordinated immediately understood this. The consequence was lofic: the territorial structure was more important than the ideology, gaving in consideration that the electorate had neither the training, nor the appetite to understand the last one. Thus, a revolutionary formation was born, which followed the structure of the state and of the Communist party. This was, then, transformed into the party which shall dominate Romania for the years to come and decisive for the new and hesitant Romanian democracy. After building the FSN structures as territorial structures of public power and on the criteria of work place, by the Decree-Law no. 8 deom the 31st of December 1989, the other parties were prohibited to use this last type of structure, that is they were prohibited the territorial structure typical to the Communist part. These parties tried to renew the tradition of Romanian parties which existed before the war, but they noticed that the political debate did not reach the electorate, this being opaque. As they did not have structures comparable to the ones of FSN, they all had to ally in order to succeed in winning the elections. This lead to an attenuation of ideological differences between them and to a large coalition government, which was apprehended by the population as a long array of negotiated hesitations. The ideology was, thus, condemned. The moment of structuring a system of parties had been missed due to the conjuncture which put shape above content, due to the reason of electoral efficiency. We, thus, had a system of parties imitating Western cleavages, which borrows the respective denominations, but which does not have the necessary social supportr because these cleavages have no meaning in Romania (By «cleavage» we understand a conflict representing a profound social fracture, different from the conjuncture conflicts linked to an event, a structural conflict, which is institutionalized, it is «consolidated»; Seiler, 1980; Seiler, 2000; Seiler, 2001). Such a system of parties cannot debate something consistent, because he does not find those Romanian themes which might polarize the electorate, and this cannot understand the stake of themes borrowed from the West and which are meaningless here.

The Western system of parties is structured around four fundamental social groups, which lead to a polarization of opinions which was so consistent and radical, that these

opinions became ideologies and the confrontation between them became permanent. These groups are the result of consecutive social revolutions which shook the basis of society. We refer here to four cleavages: proletarians/possessors, state/church, urban/rural and center/periphery. The ideologies of Western parties, as well as their names, usually borrowed by us, follow a logic of positioning on one side or another of these cleavages, which makes sense to position to the "left" or to the "right". In the case of Romanian political parties, there is no clarification of their positioning on these cleavages, having a tendency to be positioned in the center, that is in neither side, thus creating an ambiguity which confuses the electorate and homogenizes the electoral offer. The center usually exists only as a conjunctural compromise, usually to build an alliance in order to govern, when a coherent ideological majority exists. Usually, the parties have to decide on which side of the cleavage they position themselves. In our case, this centre became a constant due to the absence of ideological orientation of parties and due to the necessity, imposed to the opposition, to ally all parties in order to beat the dominant party. The absence of ideology has as initial explanation, as we have seen, a conjuctural one, but the reason for which the ideologization of parties was not succeeded for 25 years is a more profound one. It relates to the lack of functionality of Western cleavages in Romania. But I believe it is also related to the absence of consequences in the terms of socio-political cleavages of the anti-Communist revolution, in the former socialist states, as well as in the Western ones.

The possessors/proletarians cleavage should separate the social parties or democrat social parties from the liberal ones, irrespective of the manner they are called, the parties which are situated on the positions of possessors. A system of parties structured on this first cleavage does not seem possible in Romania, at least as long as the possessor class is regarded by the majority of the population as a bunch of thieves which, as a person which once reached the second tour of the presidential elections, currently candidate as well, said, should be executed on the stadium. Thus, we have, at the level of the names and statements, partie which, from an ideological point of view, would be situated on the position of possessors of means of production, but we did not succeed in building the necessary mentality for the existence of these latter parties, neither among the proletarians, nor among the possessors' class. The education is missing. This fact is proven by pre-electoral alliances between the parties situated to the left and the ones situates to the right part of this cleavage, such as U.S.L (Social-Liberal Union), A.C.L. (Christian – Liberal Alliance) etc., which seem to become compulsory in the centrist vision of Romanian politicians, and by the pseudo-doctrine displayed by the socialist candidate to the 2014 presidential election, who wants (the manner to do so, is, however, unexplainable) "to erase the borders between the left people and the right people, between those involved and those uninvolved, between those who need state help and those who manage by themselves, between the ones who perform and the ones who perform less" (Quote from the candidate's website), to unite, without understanding, in a paradoxical way I would say, that this is precisely what the regime existing before the Revolution did. The other candidate from the second tour, declared as belonging to the right, Christian and liberal, did not really approach a single theme of the right.

The state/church cleavage, which should polarize the electorate on the theme of political role of churches and of the clergy, separating the Christian-democrat parties of the anti-clerical ones is not, also, functional, because the Orthodox church is regarded rather as a public institution, religion is taught in public schools, the state universities have theology programs etc., tendency which is emphasized in favour of an absence of distinction between state and the church, also proved by the attempt to introduce in the Constitution a reference

to the historical role of the Orthodox Church in the formation of the state (Article 1 from the legislative proposal). The parties declare themselves as being "Christian", as if this would oppose them to another religion. The alliances declare themselves as being "Christian" over night, as is the case of the Christian-Liberal Alliance, which results from the union of a democrat-liberal party (also suddenly declared liberal, because it is the former F.S.N. (National Salvation Front), that is a continuation of the socialist party from the '90's, from which separated the wing lead by Ion Iliescu (first named F.D.S.N. - National Salvation Democratic Front and, then, P.S.D. – Social Democrat Party), with P.N.L. – National Liberal Party (which was, until recently, allied with the Social Democrat Party), that is by relative consolidation of two parties who had nothing in common with Christian-democracy. The electorate's confusion was obvious, due to the fact that the president elected in 2014 was supported by an alliance declared as Christian-democratic, but his electorate voted against the public role assumed by the Orthodox Church, choosing a Protestant. The urban/rural cleavage cannot structurate, by itself, a system of parties in Romania, duet o the fact that the state does not exist anymore as system of values, being destroyed by the Communism, the traditional values, those which existed, being perverted by forced industrialization, which, relocating the youth of the 70's to the city, failed to obtain an urban progressive culture.

Finally, the center/periphery cleavage is ethnicized in Romania, the opposition towards the Hungarian minority, centered in one part of the territory perverting any discussion on decentralization in one on territorial autonomy on ethnic criteria of this minority (Dănișor, 2013: 29-38). The clear proof is the fulminatory campaign launched by the U.S.L. – Social-Liberal Union regarding the decentralization and regionalization, which was extinguished when the Constitutional Court of Romania declared the entire draft law as being unconstitutional (Decision no. 1 of 10th of January 2014 on the unconstitutionality objection of the Law for the establishment of decentralization measures of competences belonging to certain ministries and specialty bodies of central public amdinistration, as well as reform measures on public administration, www.legalis.ro). If, until this moment, we were threatened daily that we could not absorbe European funds without building the regions, after the decision of unconstitutionality nobody said a word about it.

The conclusion may be only one: the Romanian system of parties is imitating the positioning on Western cleavages, this positioning not having any sense in the conscience of Romanian citizens. As such, the Romanian system of parties, which does not identify any typical Romanian cleavage, is not really structured as a pluralist one, being rather factions which claim to fight on ideological bases, but which really fight for the assertion of conjucture group interests. In fact, there are several political parties in Romania. In other words, the current political party is not different from the Communist totalitarian political system in which regards the system of parties and the ideological pluralism. The so-called Communist party was not a party, but a structure of public power, and the current so-called parties have no connection to what is usually called as such in a democratic and liberal state. The Communist Romanian Party was imitating the Marxist doctrine, without knowing it, as well as, nowadays, the Romanian parties are imitating Western ideologies without being aware of them. The absence of ideology characterizes, in fact, both regimes. From the point of view of structuring the system o parties and of ideological pluralism, the current Romanian political system restores totalitarianism under the mask of democracy.

The question is whether this tendency is willingly induced by the Romanian politicians or if it's due to more profound causes. The answer is not at all simple. It is obvious that, during the Revolution, there were two tendencies from this point of view. In Bucharest, the National Salvation Front wished, from the very beginning, only a reformed socialism,

although the continuation of the system based on ideological monism or a type of pluralism belonging to the socialist ideology. In liberal terms, we might say that the National Salvation Front would hsve wanted multiple power centers, but not diverse. Even if, at declarative level, this desire was abandoned, in reality it was pursued with discretion, but with determination. The Timişoara revolutionists would have wanted a fracture decided by the Communist regime, the prohibition for ex-Communists to occupy public functions etc. (Point 8 of the proclamation: "As a consequence of the previous point, we propose that the electoral law should prohibit for the first three consecutive legislatures the right to run, on any list, of the former Communist activists and of the former Securitate officers (Intelligence Service). Their presence in the political life of the country is the main source of tensions and suspicions which torments Romanian society nowadays. Until the stabilization of the situation and national reconciliation, their absence from public life is absolutely necessary. We also request that, in the electoral law shall be mentioned a special paragraph forbidding to former Communist activists to run for the position of president of the country"). They wanted more than an overturn of dictatorship, that is the establishment of a liberal state. If we look closely to the current Romanian political system, we will notice that the first version of structuring was imposed. Apparently, we have more parties, but all of them say the same thing or, rather, nothing. Democracy, which should be just arbitrage procedure between various doctrines, is understood as a doctrine per se, eliminating certain ideologies, such as the Communist one, or it eliminates even pluralism, because all the parties rather tend to eliminate the adversary than have a dialogue. The Romanians want consensus, not a debate; they have the nostalgy of the sole party. The cause is not one of conjucture, but a structural one.

The anti-Communist revolutions did not produce a new political polarization, they only operated an apparent comeback to the situation existent before the establishment of Communist states. However, this return is not possible. The political systems which emerged from the left totalitarianisms were not, thus, capable to polarize the electorate, duet o the fact that people want the same things, out of the desire to imitate Western civilization, thus believing that this imitation might bring them prosperity and rioting against partisan pluralism when this is not offered to them. The ideological engine of progress of these societies reversed the functioning sense: instead of leading the societies towards a new meaning, it reversed them to an idilic past, which, in fact, most of the times, they never lived.

The cause of imposibility to function of socio-political cleavages in the states undergoing transition from Marxist totalitarianism towards democracy is due to the fact that anti-Communist revolutions are the first which are not based on a new ideology, but assert superiority of a used ideology and of the democratic society which cannot be functional anymore, working only as an arbitrage between ideologies. In this case, the arbiter has nothing to arbitrate, duet o the fact that all joined the same team. Only a new ideology might operate the system, and it is long in coming. This is the reason for which the Hungarian Prime-Minister affords to claim, from a political point of view, that Hungary does not have to try to build a state based on liberalism anymore.

The Western world, itself, does not have the force of polarization anymore. The traditional cleavages worked, to a large degree, evern before the anti-Communist revolutions due to the external polarization with the Communist block rather than duet o the internal situation. After the fall of Communism, the West seems blocked. The economic crisis imposed the model, and the states prove to be incapable to offer an alternative. The only cleavage which seems functional is the one between the Western secular democracy and the fundamental states based on Islam. But this cleavage has two flaws: it is, on one side, an external one, and it is not an ideological one, on the other hand, because it compares a religious doctrine with an arbitrage procedure. In fact, The West unconsciously asserts another type of fundamentalism, due to the externalization of cleavage, and the ex-

Communist states return to totalitarianism by other means, due to the permanency of transition.

The ideology seems, thus, condemned not to a conjuncture death – a clinical one, with hopes of resuscitation – but to a more profound death, one which would set us back to the cleavages base don attachments to primary groups of identification: religious, ethnic, racial etc. Or, this setback may be operated only with the risk of missing the political integration of conflicts. The reactivation of these cleavages even in Europe is visible. For example, the integration model by granting citizenship, a functional one in Western world for such a long time, does not seem capable anymore to lead to the integration of Muslims. Also, the integration of Roma population does not seem to be possible in the classical framework of Western democracies. On the other hand, the reactivation of ethnic cleansing practices in former Yugoslavia is not only a conjuncture issue, nor the imperialism of the Russian Orthodox curch or, moreover of the Russian state, is not a conjuncture either. In our case, the activation in force of nationalism, in its anti-Hungarian form, as well as in its anti-Gipsy form, is not due to conjuncture, as well, not denied by the election of a German ethnic president, as some might be quickly tempted to believe. All these phenomena converge. They are due to de-ideologization and coming back to the social cleavages prior to modernity. The trumpeted post-modern state does not seem achievable, and, in which concerns us, seems rather a delayed effect bomb (Dănișor, 2009b: 99-109).

Romania is firmly situated within this trend. The absence of a new ideology creating new cleavages made our system to imitate the Western structures of the system of parties, the democratic mechanisms and the ones of the constitutional state, the legal restructuring in order to achieve it. The Romanian society seems inconsistent. Nothing seems authentic. This is why we become nostalgic: glory between the two World Wars, the king, even Ceauşescu, the safety of Communism … replace from a sentimental point of view the future objectives, because these have no basis on which to build.

Autonomous civil society or mass society?

The liberal democracies are base don the separation between state and civil society. The Communist state was based on their unity. If in Communism, the single party is confused with the state at the peak and replaces the trade unions at the basis, in liberal democracy the structures of the civil society shall remain autonomous in relation to the state and in relation to each other (Dănișor, 2009a: 256-278), and the state shall be, in its turn, functional autonomous in relation to these. Did Romania succeed to build such a system, or it continued to practice, despite the democratis system, the unity of state and civil society, which leads to its destructuring and to a mass society?

I believe that our system continued as well in this aspect the old regime by discreditation of intermediary bodies. Parties are aimed by this mentality of withdrawal of trust. The mistrust in parties, due to ideologization and incapacity to polarize the electorate, is speculated in order to accredit the idea that the democracy should not be supported on parties, that is should be directly based on the citizen, that is should revolve around referendum, as president Traian Băsescu did, or that we should erase the differences between them, as the social-democrat candidate to the presidential elections does.

The mistrust does not regard only political parties, but the entire associative life. The trade unions are destructured, the groups of interest are demonized or trivialized, the associations of vulnerable social categories are manipulated… and the entire social movement seems to rebuild the mass society, that is a society made up of a mass of individuals, unorganized and that is why, a formless one, incapable to resist to state power.

What cannot be understood ist hat democracy without intermediate structures is always rapidly transformed in dictatorship, even in totalitarianism, because the latter is not a political system without relation to democracy, it appears following a certain type of disfunction of democracy (Le Goff, 2012). Or, such a vision produces a mass society characterized by the impossibility of the individual to be backed by an associative structure autonomous from the state in order to oppose it. It is, thus, alone in front of the public opinion. The society is atomized in order to dominate without forbiddances the individuals.

From this point of view, also, there is a continuity between the regime existent before 1989 and the prior ones, a resemblance which is more and more obvious. The lack of trust in parties leads to the destructuring of democracy, the consequence not being "the return to the people", because we lived before the illusion of popular democracy, but the seizure of power by a transpartinic camarilla, that is dictatorship. Noboby achieved a democracy without parties or with only one party, so that, until we invent an ideological alternative, it would be more prudent to remain attached to the old framework, if we do not want totalitarianism again. The trade unions were discredited by the obvious political affiliation, contrary to art. 9 from the Constitution, but constantly practiced without anyone making any protest. The frequent appointment of trade union leaders in important political positions, as the case of Victor Ciorbea or Miron Mitrea, proves that the trade unions are only the launching platforms. The student organizations are also politically affiliated, those of women are not visible if not situated within a political organization, etc. The Economic and Social Council, consultative body which reunites the associative structures of civil society and, which, in Western democracies, plays an important role is basically not visible for years.

These trends prove that nowadays society, depite imitation of diversity of centers of influence, is destructured in the same way as the Communist society. Romania does not have a civil society distinguishable from the state, with multiple and diverse centers of influence, the category and intra-category pluralism being illusive, which makes the current society to be a mass one, that is one specific to totalitarian states.

Priority of just or of well-being, of liberty or of general interest?

The Communism differentiated from liberal democracies by reversing the relations between just and well-being. In the liberal states, the correct arbitrage procedure between ideologies which preach this "good" society has priority over any of them, meanwhile the Communist state chose one of them and declared it as the only one which is true, eliminating the others. In liberalism, the right has priority over ideology, in this sense being a constitutional state, meanwhile in Communism, the ideology is superior to the law, because the law looses its nature: it does not arbitrate anymore, it promotes a particular well-being, generally asserted. The question is if the Romanian society achieved, after 1989, to re-establish the priority of well-being that is, the constitutional state or i fit remained tributary to a substantial doctrine. The liberalism has several structural ideas: (1) the priority of just over well-being, (2) establishment of basis of space and public decision on the citizen detached from the primary groups of identification (Dănişor, 2007: 291–333) and which (3) self-determined, by self-building, (4) equality of chances, (5) state neutrality and (6) postulation of individual as finality of each social system, which is translated into the principle of priority of libery. I analyzed before the modality in which these fundamental ideas are observed in the jurisprudence of the Constitutional Court (Dănișor, 2014: 9-101). I will not mentioned again here all the arguments, instead, I will change the point of view, only referring to the main question of

priority of just and to its main consequence, that of priority of liberty. The direct or implicit option for a doctrine, irrespective of its nature, betrays a vision contrary to the liberal democracy. In Romania, this option was done by the transformation of democracy into a doctrine, although by its nature it is a procedural one, this being the reason for which it can accomodat with the presence of any doctrine, being translated into a real fear of pluralism.

The setting up of democracy into a substantial doctrine was done by Bucharest Tribunal and Bucharest Court of Appeals, when they rejected the registration of the Party of Communists non-PCR. The fear of pluralism is proven by the legislation in the field of parties, which links the registration of an association as party to the number of party members, by setting up an *a priori* representation threshold, when, in fact, the representativeness of the party would depend only on its results in the electoral procedure. The Constitutional Court considered this legislation pursuant to the Constitution, grounding its jurisprudence on a supposed danger for democracy resulted from an excessive pluralism.

a. Nostalgia of ideology masked in the rejection of Communism as sole doctrine

Democracy is a procedural one. There is no substantial doctrine of democracy, this being, due to this reason, compatible with any doctrine observing the cohabitation procedures with other doctrines, that is pluralism. Bucharest Tribunal, followed by Bucharest Court of Appeals, transformed democracy in a dogmatic one, which would be *a priori* incompatible with the Communist doctrine. Thus, the courts reject the registration of a political party, without proving in any way that it acts against democracy, being based only on the provisions of its statute, which assert, in essence, that "PCN is a revolutionary political formation of workers, which acts in an organized and conscious manner, in the constitutional framework, in order to eliminate the effects against the Revolution and in order to re-initiate the building of the most human and democratic society the history ever knew – Socialism".

The reasoning of Romanian courts is, in essence, the following (This abstract is reproduced from the decision of the European Court of Human Rights, Troisième section, Affaire Party of Communists (non-PCRs) et Ungureanu v. Roumanie, *(Requête n^o 46626/99)*, 3 février 2005, definitive on 6th of July 2005): "Examining the documents submitted at the file, it results that, in the status of the party, at the chapter which establishes its purpose, (…) it is mentioned that it acts in order to conquer political power in order to establish a human and democratic society. Thus, it results from its political status and program that the party wishes to establish a human state grounded on Communist doctrine, which means that the constitutional and legal order in force after 1989 is inhuman and is not based on a real democracy. This is why, the party breaches the provisions of art. 2 para. (3) and (4) of the decree-law no. 8/1989 according to which «by their purposes, the political parties shall observe the national sovereignty and the means used in order to achieve it shall be pursuant to the constitutional and legal order of Romania»". Why this reasoning is not compliant to the Convention eloquently explains the Strasbourt Court: "In the Court's opinion, one of the main features of democracy is the fact that it offers the possibility to debate by dialogue and without appealing to violence the issues raised by different trends of political opinion, even when they bother or concern. Democracy is, indeed, fed by the liberty of expression. From this point of view, a political group observing the basic principles of democracy (…) cannot be sanctioned only for criticizing the constitutional and legal order of the country and because it wants to debate this in a public on the political arena (…). Or, in this case, the internal

jurisdictions did not prove in what way the program and statute of PNC would be contrary to the constitutional and legal order of the country and, especially, to the fundamental principles of democracy. From this point of view, the Court cannot receive the Government's argument according to which Romania cannot accept the fact that the creation of a Communist party would represent the debate of a democratic debate".

The essence of democracy being one of procedure, for the Strasbourg Court it is obvious that, if the party accepts the democratic procedures, it has to have a doctrine. What interests from the point of view of my study is that Romanian courts and Romanian Government consider that democracy is incompatible with Communist doctrine. This doctrine is eliminated from the debate, due to a presumption of incompatibility with democracy. Democracy thus becomes dogmatic, because incompatibility is asserted prior to any experience. The substantialization of democracy imposes an official doctrine which eliminates the competition, considered contrary without being necessary the debate. It is what clearly states the Government and in a disguised way the courts: the establishment of a Communist party "cannot make the object of a democratic debate". By stating as such, the Romanian state proves that it is the advocate of the essence of the doctrine which it eliminates: imposition of a sole thuth controlled by the state.

The fear of pluralism seems to bear the fault, which in Romania is a conditioned reflex. As a joke from the Communist regime once said, even the tramways should travel on the party's line. In the mentality of the representatives of the Romanian state, nothing seems to change. Only if the line belongs now to democracy. Or, this statement is a contradiction in terms: democracy is never linear. The sinuosity given by the proceduralization, reflex of priority of just over well-being, confuses the representatives of the Romanian state, who still have the reflex of the priority of well-being, so of a perfectionist doctrine. Liberalism is too mundane. This is why democracy is converted into a doctrine pursuing perfection, if not the one of the "new man", at least of the "new society".

b. Aporias of excessive partisan pluralism – numerical limits imposed to the right to associate in parties

The political parties law imposes a condition of the number of members for a party to be registered. The tendency of the system is to increase that number. In addition, the members must be relatively equally distributed on the territory of the state.

The Romanian legislator starts from the idea that excessive pluralism may be damaging to democracy. The issue is extremely sensitive, due to the fact that it presumes a limitation of the right to pluralism and the right to associate, precisely in the name of preservation of democracy.

The Constitutional Court, controlling these legal norms, admits that political pluralism must be moderated so that democracy can function. It may be right, in principle, but we believe that, in a mistaken way, it considers that the modality of moderation of pluralism is an issue of legislative opportunity and not a constitutionality one. Thus, referring to the establishment of a representativity threshold for the establishment of parties by the Law no. 27/1996, the Court states that "the assessment of opportunity of a certain threshold of representativity is not a constitutionality issue, as long as the threshold established does not have the effect of elimination of exercise of right, only pursuing, as in the respective law, that the association of citizens into parties shall have the meaning of institutionalization of a political trend, without which the party resulted cannot fulfill its constitutional role, foreseen by art. 8 para. (2) to contribute to the definitivation and expression of political will of the citizens. Even the authors of the notification appreciate

that the provisions of the prior law «were too broad, resulting a real inflation of political associative subjects». It is considered that the «phenomenon of depreciation of parties» should not be counter-balanced by the representativity condition mentioned, but by the «electoral threshold». These arguments do not concern the constitutional legitimacy of the provision called in question, but the dispute related to its political opportunity. In the law, the electoral criteria was only mentioned in order to assess the continuity to function of the party, pursuant to art. 31. As such, the representativity criteria is not, per se, unconstitutional, being generally acknowledged in the field of exercise of the right to associate in political parties, having in mind their role in the formation and expression of political will of the citizens. This criteria might be unconstitutional, if, by its effects, might lead to the elimination of the right of association or i fit would be synonimous with such an elimination" (Decision no. 35/1996, published in the Official Journal of Romania no. 75 of 11th of April 1996).

The Court states that the representativeness threshold imposed for the establishment of parties might be considered as a limitation to the exercise of the right of association. But, afterwards, it does not make the real application of the control of necessity and proportionality of the limitation measure by law of this right. Thus, it is not clear why it would be necessary to limit the right of association in political parties for one of the reasons enumerated in a limitative manner by art. 53 of the Constitution. On the other hand, the Court states that the issue of representativeness threshold i sone of constitutionality only i fit would lead to the elimination of the right of association or it would be synonymous with this, without explaining this "synonymy", meanwhile the Constitution states that not only the elimination, but also the limitation of the exercise of the right is not constitutional if not done for one of the causes mentioned and it does not fulfill the conditions of necessity and proportionality established by the Constitution.

The necessity to limitate the pluralism by limitation of the right to associate in political parties in a democratic society is not really analyzed. In fact, the Court avoids the issue, making reference to the statement of the authors of the complaint, in order not to rule on the necessity to limit in a democratic society. Why the selection of method to reduce excessive political pluralism is one of opportunity and not of constitutionality, it cannot be understood, because the assessment of constitutionality or opportunity to limit the right of association in relation to the number of founding members mentioned by the law is not relevant, due to the fact that it induces a quantitative assessment where it would have been suited a choice of principle. It does not result from any consideration of principle which would be the maximum number of founding members imposed by the law so that it does not become unconstitutional. The numerical criterion is wrong, the authors of the notification being right when they use as criterion of representativeness of the party "the electoral threshold", depending of the citizen's vote and not a representativeness criterion imposed by the legislator without having as basis a clear principle of limitation of its power, so, possibly, arbitrary. In my opinion, the legal limitation of the right of association and of the right of pluralism is disproportionate, because it is not a minimum interference necessary to reach the purpose of the law – avoidance of the excessive character of pluralism – this minimum interference being the imposition of an electoral threshold for the representation of parties in Parliament, as the notification's authors validly affirm.

But, besides the discussion of the issue of proportionality, the unclear issue is why the Court infers that pluralism is a danger to democracy. Of course, apparently, it seems like that in the Court's opinion, only if excessive, leading to the devalorization of parties.

If it is clear that the excess, as devalorization, are not defined in principle, and their connection with the endangerment of democracy remains occult.

Actually, the Court inheres, when it affirms that the selection of one of the methods of reduction of "excessive" pluralism is an issue of opportunity, not of constitutionality, that it is not necessary to arbitrate between various doctrines which would substantiate the various methods of action necessary in order to obtain a result, the selection of one of the doctrines and of the related methods being the exclusive privilege of the legislator. In a liberal state, however, the legislator cannot choose in any manner from this diversity of ideas, but using a neutral procedure. Or, the Constitutional Court refuses to impose this neutrality precisely. One more time, the Court is the supporter of the priority of well-being over just.

The conclusion may be only one: our current state is afraid of pluralism, it ubstantializes the democracy, making of it a doctrine, in the name of which, due to the fact that the state is a constitutionally ruled one as dmeocratic, other doctrines may be eliminated, so, it is a state which is not different from the state prior to 1989. The Romanian state is not yet a liberal state, because it does not understand its essence. The difference between the totalitarian state and the current one is, in Romania, one of degree and not one of nature.

c. General interest against liberty

In the liberal state, there are several conceptions on a good society, and the mechanisms of justice, which make the coexistence possible, have priority over any of them (Ancient idea supported by Aristotle, subsequently assumed and developed by classical liberalism, especially by Kant, it is capitalized in the second half of the past century by John Rawls (A Theory of Justice, 1971; The Priority of Right and Ideas of Good, 1988; Political Liberalism, 1993; Justice as Fairness: A Restatement, 2001) causing a strong reaction on behalf of Communists, multiculturalists, libertarians and even some liberals). In which concerns the possibility of limitation of the exercise of rights and liberties, this first basic idea of liberalism is translated into a principle magisterially formulated by John Rawls: "A basic liberty («Fundamental» in the understanding of the Romanian Constitution) may be limited or refused in order to protect one or several other basic liberties and never […] in the name of the public well-being or of perfectionist values" (Rawls, 2007: 351). This means that, if our state wants to be a liberal one, that is by nature different from the totalitarian state prior to 1989, when the exercise of a liberty or of a right shall not be limited for the causes regarding the public well-being, mentioned in art. 53 para. (1) of the Constitution, only if by this a proportional protection of another liberty or of another clearly determined right is ensured.

The tendency to continue the idea of priority of general interest or of perfectionist values, then synthesized in the concept of "new man of the socialist society", in relation to the rights and liberties of individuals, that is the priority of social structure in relation to the person, rapidly and constantly manifested in the post-revolutionary period, and the Constitutional Court, warrant of liberty in front of authority, by imposing rights and liberties to persons before the laws of the Romanian state, finally missed the exercise of these attribution and, thus, the imposition of such priority of liberty.

The Constitutional Court had a good start in this field. Thus, in the Decision no. 139/1994 (Official Journal of Romania no. 4 of 12th of January 1995) it stated that the limitation of right to free movement by the establishment of a tax for crossing the border "assumes that the legislator shall set for which rights the tax was established for. The determination of such right cannot be, however, a generic one (…), but a concrete one".

Unfortunately, this promising jurisprudence was abandoned from several points of view. Thus, the Court allows the limitation of a basic liberty in the name of a general interest, such as national security, without verifying the condition imposed in the previous jurisprudence, in the name of public moral, that is of a "perfectionist value".

Confronted with the world economic crisis, the promising jurisprudence of the Constitutional Court, previously claimed, succumbed. Thus, for example, in the decisions given in which concerns the Law on the establishment of measures in the field of pensions and the Law on several necessary measures in order to re-establish the budgetary balance (Decisions no. 871/2010, no. 872/2010, no. 873/2010 and no. 874 of 2010, published in the Official Journal of Romania no. 433 of 28th of June 2010), the Constitutional Court admits that by law, the exercise of several rights and liberties may be limited, in order to defend national security, without impoing to the legislator the concrete establishment of fundamental rights and liberties thus warranted (Please consult especially the Decision no. 872 of the 25th of June 2010, published in the Official Journal of Romania no. 433 of 28th of June 2010).

Thus acting, the Constitutional Court leaves the governors the unlimited possibility to claim the common well-being against individual liberties. It, thus, breaches the first structuring principle of the liberal state. And, as a non-Marxist alternative to liberalism is not foreseen in Romania, the Court admits the totalitarian consequences of the Government's acts. I understand the difficulty to remain attached to principles in case of a global economic crisis. But I understand better the necessity for such a fundamental arrangement, because I did not forget so quickly that totalitarianism of right wing from the 20th century were imposed from a political point of view during such a crisis.

In the decisions mentioned, the Constitutional Court converts economic, non-legal reasonings and notions into "legal" arguments, which justifies the limitation of the exercise of liberties, without re-framing them. Thus, "the Court states that in the recitals of the criticized law it is mentioned that, according to the assessment of the European Commission, «Romania's economic activity remains poor» [...] and that «in conditions of current policies, the fiscal deficit target for 2010 (…) shall not be accomplished, due to deteriorations of economic conditions, of difficulties in collecting revenues and slips in the expenses». As a consequence, the Court finds that this threat regarding the economic stability continues to be present, so that the Government has the right to adopt adequate measures in order to combat them. One of these measures is the reduction of budgetary expenses, measure materialized, among others, in the diminuation of the amount of salaries/allowances/pays with 25% (Decision no. 872/2010, published in the Official Journal of Romania no. 433 of the 28th of June 2010). In translation: if the Government is not capable to collect the revenues to the state budget and to correct the «slides» in the management of public funds, it is entitled to reduce the revenues of citizens in order to «save» the state. The analysis of the necessity of this measure, of the fact that it is the minimum necessary intervention in order to reach the proposed purpose, is missing. As, usually, any real analysis of proportionality is missing in the Constitutional Court's jurisprudence. The Court makes economical politics, instead of constitutional jurisprudence. I am not claiming that the law (and, thus, the Constitutional Court) may be totally independent of economy. But a fundamental rule of the liberal society and of the state which frames it is that the assets or power obtained in a sphere of activity shall not be converted into another sphere. "Liberalism is a world of walls, wrote Walzer, and each of these walls creates a new liberty" (Walzer, 2007: 53-55; Huguenin, 2009: 56). The economic arguments cannot be used as such in the legal sphere. The have to be legalized.

Or, the art of this legalization is missing at the Constitutional Court, because it cannot understand in essence the fundamental idea of liberalism, that the just procedure of arbitrage has priority, from a legal point of view, in relation to well-being, even if it receives the determinative of «public» or «general».

In the liberal state, the exercise of liberties or rights cannot be limited for the defense *per se* of perfectionist values. These values are those which tend to perfection in life, not only towards cohabitation between liberties. Such a value is a moral one. Even when it receives an additional determinative, becoming «public». The law cannot have as moral source, but not being confused with it, even when it is a public one.

It is rather difficult to preserve the limits necessary for the protection of liberties when the cause of their limitation is a moral shared by the vast majority of the group. However, in order to transform the exercise of power into an act of imposition of a moral totalitarianism, these limits shall be preserved. The Romanian state has the tendency to establish such a moral totalitarianism, attesting a continuation of the Communist reflexes, and the Romanian Constitutional Court does not succed, sometimes, in preserving these limits, which is risky, even when the human dignity is claimed as a limit to the public moral itself.

Thus, by controlling the provision in the Criminal Code incriminating the dissemination of obscene materials, the Court finds that: "The notions «public moral» şi «good morals», as well as the notions of «obscene» and «pornographic» have a variable content, depending from one collectivity to another, from one period to another. In all cases, there is, however, a limitation to tolerance of displays whose breach is inadmissible and, in this sense, of the terms meant by the criminal law. The issue of conflict between morals and art, srating from the idea that art shall have unlimited means of expression, even if they are reputed as obscene, is a false issue, because, in reality, not the means used by the creator are of interest, but his artistic work, and this can never be insulting for human dignity by agressive vulgarity, lubricity, scabrousity. «The creations» of this type cannot be called «artistic works», but, as our criminal law calls them, «materials having obscene character»" (Decision 108/1995, Official Journal of Romania no. 9 of 17.01.1996).

The initial reasoning is hard to contradict, at least until the moment in which it refers to the criminal law, because then it occurs an assumption that morals should be compulsory defended by means related to criminal law, avoiding the main issue of proportionality of means used with the purpose intended, but also at the level of expression, because the court finds that "the artistic work is of interest and not the means used by the creator". The continuation is much more problematic. First because of the fact that the court leads the legal analysis of the limits of liberty of expression towards the analysis between the "conflict" between morals and art. First, because the court starts to transform into an art critic: some artistic means are "reputed as obscene ones", although it is not emphasized according to which standards they are reputed as such, the issue is a "false problem", although it is not mentioned which is the criterion of assessment of its value of truth... The artistic decision follows: the potentional works are considered "creations", and the criminal law is right when qualifiying them as "obscene", although it is obvious that the legislator cannot be qualified to make such assessments.

The court finds, with good reasons, human dignity as a notion which gives consistence to the concepts of public moral and good morals, considering them as having "a content which differs from one collectivity to another, from one period to another", because, irrespective of the conceptual fluidity "there is a limit of tolerance of

manifestations" given by the fact that they can never be "insulting for human dignity by agressive vulgarity, lubricity, scabrousity" (Decision 108/1995, Official Journal of Romania no. 9 of 17.01.1996). Thus, the court makes a leap from public morals as basis of limitation of liberty of expression, present in the Criminal Code, to human dignity as an criterion of assessment of this public moral itself. This autonomization of dignity in relation to public morals is not without dangers, because it may lead to the ruling of a new moral order which is not dependent of the public opinion. If public morals is imposed from the bottom to the top, being a democratical one, the moral order induced by the understanding of dignity as an absolute concept is imposed from the top to the bottom, raising the issue of establishment of a sole moral truth, thus, the risks of drifting to totalitarianism.

Thus acting, the Court imposes perfectionist values, which makes it contradict the liberal principle previoulsy referred to. The decision's terminology is relevant from this point of view. Thus, it states that "«public morals» and «good morals» are fundamental values, established in the Constitution (s.n.)" (Decision 108/1995, Official Journal of Romania no. 9 of 17.01.1996). Or, it is obvious that art. 1(3) C does not enumerate among the supreme values neither public moral, nor good morals. From here to the leap towards imposing a moral is only a step, and the Court makes it im a carefree manner: "The fundamental rights and liberties which it (the Constitution, n.n.) contains cannot be exercised in a manner contrary to good manners or which might breach public morals" (Decision 108/1995, Official Journal of Romania no. 9 of 17.01.1996). Or, in reality, the Constitution makes the rights and liberties of "citizens" a supreme value of the Romanian state, that is an instrument of balancing public morals when it is claimed as a reason of limitation of liberties. In adition, the exercise of rights and liberties may be limited only in an express manner, or, the Court seems to presume a generic limitation in the name of public morals, although the moral cannot be cause of limitation *per se*, but only with the condition thatm through it, a right or concrete liberty of the others might be protected. Moreover, the Constitution clearly expresses at least a right contrary to the majority moral (obviously, confused with public moral by the Court), the right to identity of persons belonging to national minorities (art. 6) and a supreme value which may be interpreted only as releasing the individual of the moral constraint of the group: free development of human personality (art. 1).

The Romanian state after the 1989 Revolution thus contradicts, at legislative level and at constitutional jurisprudence level the fundamental free principle according to which the general interest or the perfectionist values cannot be directly opposed to a basic liberty, if it is happening as such, the conflict may have one result: imposing general interest or the value claimed by the state. It is, thus, the entity continuing, under a different shape, less emphasized, the predominance of interests of totality in relation to the individual. The current Romanian state did not abandon, from this point of view also, the totalitarian reflexes. One more time, it is demonstrated the continuity and not fracture between the political regime prior to the year 1989 and the subsequent ones (or one?). The conclusion may be only one: the current Romanian state, despite the make-up, is not essentially different from the totalitarian one; the difference lies only in the degree, and not in the nature. It remains to hope that this will change as soon as possible. The first condition is to be aware of the reality.

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ORIGINAL PAPER

Explaining Authoritarian Regime Variations in Post-Communist Central Asia

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Abstract
Kazakhstan, Kyrgyzstan and Uzbekistan shared many characteristics at the end of the twentieth century. All three were relatively underdeveloped countries in Central Asia that experienced some regime instability in the Gorbachev era. Yet all three countries experienced different levels of political development and authoritarian variations in 1990s and 2000s. A comparison of these case demonstrate how different patterns of patronage politics, political leadership, economic resources and Islamist revival may generate very different types of state power and autocratic stability. This project argues that in the second half of the 1980s the Communist Party leadership intervened in Kazakhstan and Uzbekistan to restore political order to end leadership crisis. Communist Party did not intervene in Kyrgyzstan when ethnic riots eroded First Secretary Masaliev's legitimacy, which led to the fragmentation of then Kyrgyz political elite. In February 1990, Gorbachev ended the Communist Party's hold on power in an effort to sideline establishment elites opposing perestroika reforms. In the Kyrgyz case competition eliminated Masaliev and the elite unity that once characterize Kyrgyz polity, whereas Karimov and Nazarbayev carried their united parties into the post-Soviet period.

Keywords: Authoritarianism, Central Asia, post-communism, democratic transition, political institutions.

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Introduction

The five Central Asian States (CAS) – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan – did not face any significant security threat in political, social or economic terms when they were part of the Soviet Union. In fact they net beneficiaries of socioeconomic transition during the Soviet era from backwardness to modernity. Therefore they were against the break-up of the Soviet Union. The collapse of the USSR signaled the beginning of a chaotic transition period for these states and they have been facing various security concerns such as political security, border security, environmental security, energy security and so on.

The rediscovery of Central Asia by the international community has placed this region in a specific intellectual context, one marked by political and economic transition (Laruelle et al., 2010: 1). In line with modernization paradigm, the result of this transition would either be a liberal and capitalist regime or return to a time before Soviet rule where feudal institutions controlled societies. However this paper aims at taking issue with this kind of preordained understanding of political and economic transition.

Studying Central Asia requires a researcher to look back on the old geopolitical theories and debates around "the end of history" and "clash of civilizations". The revival of geopolitical theory, especially Mackinder's idea that who controls the Heartland controls the world, has profoundly shaped the new frameworks applied to post-Soviet states of Central Asia (Smith, 1999: 4). Moreover, theories about the revival of the Silk Road flourished in the West and Asia. The United States and the European Union have used them to promote the release of Central Asia from the Russian sphere of influence by opening toward south. Turkey, Iran, Japan, South Korea, China, India, and Pakistan have made references to their historical ties with the region, beyond the years of the Iron Curtain.

Nation-state building period of the newly independent Central Asian Republics have started to a large extend by the political elites of the former Soviet Union. The main assumption was that communist state structure is too penetrating in the political, economic and social life to the extent that it prevents flourishing of democratic policies and liberal markets. Therefore the obvious remedy for post-communist Central Asian states is to follow the Western path of reducing the power of state both in its size and scope. However this transition resulted in ineffective policies as well as diminishing institutional capacity of post-communist states, which is displayed by rise in corruption and organized crime, increasing social inequalities and decline in social services. Although these states had coercive apparatus, they lacked infrastructural power in the sense that their institutions were unorganized, poorly coordinated and not so easily adaptable.

There have been many studies which focused on the possibility of democratic transition and regime change in developing world as well as in Central Asia (Pilon, 1988; Colins, 2006; Luong, 2002). This study greatly benefited from these comparative studies. But it aims to demonstrate a break from many of these studies focusing on transition and democratization and explore those causal factors that produce substantive variations in patronage politics. Shortly, this study aims at explaining variations in authoritarian regimesin Kazakhstan, Kyrgyzstan and Uzbekistan. Tajikistan and Turkmenistan are excluded from this study, which has more to do with the nature of in-country field research rather than their uniqueness. Due to higher levels of authoritarianism and lack of access to reliable sources it is harder to study these countries. However, it couldbe argued that the causal logic used to explain variations in three casescould be applied to the Tajik and Turkmen autocratic rule.

Both quantitative and qualitative data has been used in comparative analysis of political change. Qualitative data come from archives and periodicals. Quantitative data come from polls conducted by International Foundation for Electoral Systems (IFES) and United States Agency for International Development (USAID). Both kinds of data have its problems. As McGlinchey argues researchers unfamiliar with local contexts may be swayed by seemingly precise quantitative data and as a result come up with findings disconnected from reality (McGlinchey, 2011: 12). A researcher on the other hand, deeply immersed with local community he or she is researching might also fail to recognize that the community two towns over exhibit markedly differing perceptions of state and society relations. Pairing qualitative and quantitative data hopefully help to avoid some of these pitfalls any comparative analysis must confront.

This project compares regime development in Kyrgyzstan, Kazakhstan and Uzbekistan. All three states are located in the same region, with similar levels of economic development during the last decade of Soviet Union. All three cases have experienced regime instability in the late 1980s and early 1990s. Finally all three cases were hybrid or authoritarian regimes throughout 1990s and 2000s. At the same time, three countries have differed considerably in terms of regime stability and levels of authoritarianism since the collapse of the Soviet Union.

Central Asian Context in the Post-Soviet Era

All five former Soviet Union Central Asian States were conceived during the Soviet period. According to Gleason none of these "republics" existed as independent states prior to that time these "socialist republics" were regionsmanaged by Moscow's political authorities. Little republic-to-republic interaction took place and the region was physically separated from the rest of the world by nearly impassible southern and eastern Soviet frontiers and by decades of northward-oriented infrastructure development" (2003: 162). As parts of the super power, the Central Asian Republics enjoyed total political and social security during the Soviet era. Therefore, the threat of political security was inconceivable for the leaders of the region although it became a reality, which they have to deal with when the USSR broke-up. During the initial years of independence there was a political vacuum (Allison, 2004: 181). As the communist ideology has lost its relevance, divisive elements of regionalism, factionalism, religious extremism tried to fill the gap (Matvaeva, 1999: 29). The objectives of the leaders could be understood as twofold: to safeguard sovereignty and to achieve political stability. These objectives attained paramount importance due to various developments. For example Tajikistan experienced the worst fears of insecurity when it was threatened bythe civil war initiated by various ethnic groups. Also instability and turmoil in neighboring Afghanistan had its severe impact on the already fragile domestic conditions prevailing in Tajikistan. Therefore the leadership of Tajikistan sought the help of Russia to overcome the situation. The magnitude of such problem was relatively less in the case of Kazakhstan and Kyrgyzstan. However, from time to time different factors have affected political stability and social security in the region. For instance, Ferghana Valley which is straddled by three Central Asian Republics has witnessed revival of ethnic and religious violence. According to some experts the main cause of extremism was political deprivation, economic deterioration, corruption and so on while other analysts have argued that strong religious elements have been mainly responsible for the social upheaval.

The people in the region have enjoyed benefits of social security in terms of employment and reasonable levels of income to meet their basic necessities during Soviet

era. However, as a result of transition to market economy substantial section of population has faced problems of unemployment and poverty. Moreover, income disparities have increased among various sections of the population which was inconceivable during Soviet Union.

By 1992 all Central Asian republics became members of major multilateral organizations such as United Nations, World Banks, International Monetary Fund and European Bank for Reconstruction and Development (Gleason, 2003: 162). In addition, with the exception of Turkmenistan, they have joined Asian Development Bank in 1992 and started their accession process to World Trade Organization. Some states such as Kazakhstan and Kyrgyzstan have adopted international standards on good governance while others such as Uzbekistan started to develop aspects of welfare state. War-torn Tajikistan, on the other hand initiated a national reconciliation process with a series of ceasefire agreements which resulted in signing of a peace accord in June 1997. However, while important elements of economic and structural reforms were initiated, politically oriented democratic reforms were harder to conceive. Today even though every country in the region holds regularly scheduled elections, authoritarian character of the political regimes is well consolidated. Simply put none of the regimes comply with the international standards for elections nor do they have any independent judiciary or a functioning legislature.

At the same time countries in the region have followed different paths to authoritarianism. The leadership of former party chief Islam Karimovhas adopted a form of populist authoritarianism with paternalist social policies, protectionist economic policies and authoritarian political policies (March, 2003: 210). Tajikistan entered a downward spiral of conflict and chaos after the independence which made it almost impossible to establish a non-authoritarian regime under the civil war conditions. Kazakhstan started independence years with enthusiastic reform oriented course. However Nazarbayev came under criticism for monopolizing power and being reluctant for initiating reforms to curb corruption. Kyrgyzstan also started its independence era with economic and political reforms but the benefits of rising prosperity remained elusive for the majority of citizens (Alkan, 2009: 360). Finally in Turkmenistan Soviet era communist boss Saparmurat Niyazov has established an authoritarian dictatorship revolving around his personality.

Factors Explaining Variations in Autocracy in Central Asia

Three factors have shaped the diverging outcomes of Kazakh, Kyrgyz and Uzbek patronage politics. These factors are Moscow's engagement or lack of engagement in mediating Central Asia leadership crises during the perestroika period, differing economic resources available to the Central Asian leaders and differing degrees of Islamic revivalism (McGlinchey, 2011: 7-16). After defining what Central Asian patronage politics is, I will turn to explain each of these causalities in little detail.

Patronage politics in Central Asia

Patronage politics in the region closely resembles what Africanists have identified as "neopatrimonialism". In contrast to patrimonial states of the past, these cases are neo in the sense that they exhibit characteristics of modern state bureaucracies such as professional military, trained and technocratic administrativestaff and industrialized economies (Remmer, 1989: 165). They are patrimonial in the sense that executive authority is achieved personal patronage rather than through ideology or law.

Understanding of patronage politics draws heavily from the literature but the insights gathered differs from the literature (Chehabi and Linz, 1998; Bartton and Van de Walle, 1994). Recent scholarship has focused on the critical role that state power plays in the creation of a stable political atmosphere. Scholars such as Juan Linz and Alfred Stepan (1996), and Guillermo O'Donnell (1999) among many others have argued, effective state power is necessary to support democratic institutions. Their singular focus on democratic transition and gravitation to democratization narratives distracts our attention from the reality of autocratic governance. This study suggests our focus should not be prospects of democratization in Central Asia. Such prospect is dim. Rather we should try to uncover the causal variables that produce variations in patronage politics.

Way argues, in order to understand the sources of stability and instability, we need to examine two essential tools that are key to maintaining incumbent power: states and ruling parties (Way, 2009: 105). While Kyrgyzstan have possessed weak ruling party and state, Uzbekistan and Kazakhstan have both possessed relatively strong ruling party and state apparatus. Barbara Geddes and Jason Brownlee argue that strong ruling parties are often essential to greater political stability. Strong ruling parties "encourage continued cooperation over defection" (Brownlee, 2007: 57) by institutionalizing the distribution of patronage to supporters and providing credible commitments that rewards will be distributed to those who invest time and resources to party's future. Way suggest that the most common source of cohesion is patronage (Way, 2009: 205). Accordingly short term patronage ties are vulnerable to elite defection during economic downturns since economic crisis impedes incumbent's capacity to distribute patronage. This is when patronage based parties often suffer massive defections. This trend is apparent in the case of Akaev's case. His hold on party officials in particular and elites in general has been negatively affected by international regulations on the aids providedby foreign resources. In his case, Akaev could not distribute patronage as freely as Nazarbayev and Karimov.

Politics of the Perestroika Period

VladislavSukhrov floated the idea of "sovereign democracy" as an ideological basis for Russia's modernization project. The concept is centered on two main ideas: independent path to democracy without outside pressure and on the basis of national values and Russia's historical experiences. Therefore, while Russia moves toward democracy, it should not necessarily correspond to Western standards of democracy. Some even consider this as a new name for "managed democracy" or a more centralized political system.

The ideas implicit in "sovereign democracy" have been articulated in different ways in most Central Asian capitals. In fact some the states have taken the lead to reject the Western model of liberal democracy in the name of their unique path. The president of Uzbekistan Islam Karimov argued, "There is no unified democratic path, which equally fits for all states and takes into account all their peculiarities and conditions. Any democracy must be based on historical, national, and religious features of each country."

After flirting with decentralization and separation of power, Central Asian states are back to the Soviet style concentration of power in the hands of the executive. Despite variations such as presidential, semi-presidential, and even presidential-parliamentary systems, the trend in recent years has been vertical integration of power. All other institutions appear helpless against executive power. Multi-party elections have been criticized as a contest between pro-executive (president) parties in most cases. Even when there are genuine opposition parties, these have been ineffective due to state resources

being used to help the ruling party. The ruling parties are regarded as instruments of legitimation of executive authority and policies. Democratic institutions like referendum and parliament have beenused to extend president's term or give life term to incumbent president. For example, in Turkmenistan late president Niyazov was declared as president for life in 2000 by the country's legislature. While some Central Asian states such as Kyrgyzstan experimented with liberal democracy, others had already moved along the path of authoritarianism right from the beginning of independence. The changes visible in post-Yeltsin Russia was closer to the developments already taking place in Central Asia.As a result, the most democratic among them, Kyrgyzstan, witnessed the ouster of two of its presidents due to internal turmoil.

According to McGlinchey, Gorbachev's decision to choreograph Kazakh and Uzbek executive change in late 1980s and his later decision to not to intervene in Kyrgyzstan's June 1990 leadership crisis had profound effect on elite unity in these three countries (McGlinchey, 2011: 9). Gorbachev's decision to mediate crises in Kazakhstan and Uzbekistan but not in Kyrgyzstan led to the perpetuation of a united Kazakhstan and Uzbekistan political elite and to the fragmentation of Kyrgyz politics. These crises were results of Gorbachev's own attempts at political and economic reform. His decision to replace politically corrupt but ethically Kazakh first secretary Dinmukhammed Kunaev with the ethnic Russian Gennady Kolbin sparked violent protests in capital Almaty (McGlinchey, 2011: 68). His plans to decrease the strains on the Uzbek economy via family planning and outmigration to Siberia sparked violent ethnic riots between Meskhetian Turks and Uzbeks and an immediate leadership crisis in June 1989 (Gorbachev, 2000: 86). The attempted implementation of Gorbachev' land reforms led to deadly ethnic riots in June 1990 between Kyrgyzstan and Uzbekistan in Osh as well as a leadership crisis in Bishkek (Gorbachev, 2000: 22).

Despite these shared causes, the consequences of these crises differ markedly. Gorbachev and the Communist Party resolved ethnic protests and leadership crises in Kazakhstan and Uzbekistan. The general secretary silenced the 1986 protests by shifting the de facto control of Kazakh politics away from the disliked Kolbin to NursultanNazarbayev. He similarly helped to establish elite stability in the wake of 1989 riots by replacing first secretary with self-proclaimed Uzbek traditionalist Islam Karimov. Yet in June 1990 when ethnic riots brought down first secretary Masaliev, Gorbachevleft it to the political elite to select their new leader. Gorbachev's decision to not to intervene in Kyrgyz crisis could easily be understood in his February 5, 1990 speech to the Communist Party: "The party's renewal presupposes a fundamental change in its relations with state and economic bodies and the abandonment of the practice of commanding them and substituting for their functions. The party in a renewing society can exist and play its role as vanguard only as a democratically recognized force. This means that its status should not be imposed through constitutional endorsement" (1990). Fractured Kyrgyz elite selected Askar Akaev as a compromise candidate in the absence of Moscow's external intervention for leadership succession. Akayev winning attribute was his perceived weakness (Dunlop, 1995: 92). In Kyrgyzstan, politics in short was unsettled even before the Soviet collapse. In Kazakhstan and Uzbekistan in contrast Moscow's central planning in Karimov and Nazarbayev's rise to power enabled these leaders to enter their post-Soviet period with a united and executive oriented single party.

Economic resources

The economic logic of variations in post-Soviet Central Asian politics can be easily grasped. Abundant oil wealth maintained the Kazakh patronage machine (Smith, 2004: 239). This oil wealth is so extensive and so concentrated in the hand of Nazarbayev family that the state does not need to be predatory toward citizens (Luong and Weinthal, 2001: 387). Nazarbayev can pay state employees. For example average public teacher salary in 2009 was about 300$ a month. Kyrgyzstan they have received no or partial salary since 2003. Uzbek teachers, in addition to poor pay, they were forced to join their students in harvesting cotton (Kyrgyz Channel 5/ BBC 2008). We can repeat this pattern in other sectors of state bureaucracy.

Furthermore, Kazakhstan's oil wealth has guaranteed a spot for the country in regional economic organizations. In October 2000, Kazakhstan, Kyrgyzstan and Tajikistan along with Russia and Belarus signed an agreement setting up Eurasian Economic Community (EURASEC) in Astana. A major aim of the organization is to create a strong economic bloc in which member of the bloc has pledged to form a common foreign-trade border, create a unified foreign economic policy and collectively regulate export-import tariffs and prices (Patnaik, 2011: 12). On January 2010 Russia, Belarus and Kazakhstan launched the Customs Union, which finally came into existence by 2012.

In Uzbekistan coercive patronage politics forces the regime into a delicate balancing act. State control of the cotton as well as the gold industries allows Karimov to buy loyalty and help him establish an ability to coerce some degree of deference to centralized authority (McGlinchey, 2011: 31). Uzbek bureaucrats or a citizen who became dissatisfied with the system can be eliminated through court trials, imprisonment and disappearances. In contrast to Kazakhstan, Uzbek administration prefers bilateral agreements, which eventually helps Karimovto keep his regime from foreign forces. Uzbekistan's best economic partner is Russia. Both countries entered into closer energy cooperation with a production sharing agreement of $1 billion for 35 years (Patnaik, 2011: 13). Also a Strategic Partnership Treaty under Uzbekistan's initiative was signed between Putin and Karimov on 16 June 2004 to strengthen economic, military cooperation by granting each other on mutual basis maximum favorable conditions for participation in investment and privatization projects.

Karimov's dilemma is preferable to Kyrgyz alternative. As in Uzbekistan, Kyrgyz patronage politics is largely based on rent-seeking. The average Kyrgyz teacher is not starving because they receive support from the local population in return for services rendered. That said, should a new patron emergewith better incentives bureaucrats are likely to defect. Thus in Kyrgyzstan, state university teachers leave their department to join the faculty of Soros funded American University of Central Asia just as local state employees begin to work for local business elites rather than the central government (McGlinchey, 2011: 31). Moreover the near complete absence of exploitable natural resources means that Kyrgyz executive cannot easily coerce compliance. Ensuring that judges, prosecutors and police reliably serve the central government requires money, which the Kyrgyz leader did not have. This is the underlying source of political instability in Kyrgyzstan.

Variations in economic resources do not explain why Central Asian states are authoritarian rather than democratic. All Central Asian states whether they are resource rich or poor are autocratic. However when we place economic resources in the context of inherited institutional legacies, we can understand diverging patterns of authoritarian regimes (McGlinchey, 2011: 31-33). Accordingly Kyrgyz leader with little access to

rentyielding economic resources cannot provide basic social programs while Nazarbayev, with its vast oil wealth can invest in public goods provision to minimize societal dissatisfaction.

Islam in Central Asia

Arriving in Central Asia in the mid-seventh century, Islam became the dominant religion in the region by the eighth century (Christian, 1998; Foltz, 1996; Haghayeghi, 1996). Until the rise of the Soviet Union in the twentieth century Islam continued to be the major force shaping the culture and identity of Central Asian peoples. Two variants of Islam can be mentioned corresponding to an opposition between tribal zones and the urban city centers that were conquered by Muslim Arabs. This latter form is a product of the religious schools (madrassas) of Samarkand and Bukhara and is often fundamentalist Islam. The dominant figures are the clergy. Olivier Roy mentions that Islam in tribal zones was imposed and penetrated through the intermediary of *Sufi* brotherhoods such as the *Yasawiyya*, (Roy, 2000: 143-144), which incorporate elements deriving from the shamanistic traditions of Turkic nomads. Overall the Islam in Central Asia was *quietist* (Lewis, 2008: 185), following the liberal *Hanafi* Sunni School which is known because of its respect for individual freedoms as in Afghanistan and throughout the Indian subcontinent (Sachedina, 1995: 456- 464), only to be challenged by *Wahhabism* starting in the 1970s.

Under Soviet rule, Islam throughout Central Asia had been driven underground, but even Soviet totalitarianism could not suppress it entirely. Mosques were closed, destroyed, or turned into something else (Roy, 2000). Young Muslims joined the Soviet youth organization rather than going to the mosque. The repression of Islam under Stalin was very severe from 1927 onwards. In 1943 the Spiritual Directorate of Muslims in Central Asia and Kazakhstan (SADUM) (Tazmini, 2001: 65) was created. Two offensives against Islam were to follow after Stalin's death. Khrushchev delivered the heaviest blow by forcing the closure of 25 percent of official mosques between 1958 and 1964. The effect was particularly felt in Tajikistan (16 out of 34) and Uzbekistan (23 out of 90). The four official mosques stayed open in Turkmenistan and of the 26 Kazakh and 34 Kyrgyz mosques only one in each republic closed (Tazmini, 2001: 65). These figures are indicative of the greater weight of Islam in Tajikistan and Uzbekistan compared with the other three republics. The last offensive was under Gorbachev in 1986, which was largely overshadowed by the general liberalization atmosphere. During Soviet rule Central Asia was on the edge of the Islamic world, with no contact with the major centers of Islamic civilization. The Israeli-Arab conflicts, the Islamic revolution in Iran, the Palestinian issue and much more had passed them by. When independence came to the former Soviet Republics of Central Asia "most Kazakhs had little knowledge of Islam", Olcott states that "most Muslims possessed a rudimentary knowledge of Islamic teachings" (Olcott, 2002: 211; Gunn, 2003: 390).

In 1991 as borders reopened, the Central Asian states found themselves back in the main current of a turbulent global religion. Similar to peoples of Central Asia, the region's political leaders were often poorly informed about Islam and their secularism was hardly dented by the cultural practices and Islamic traditions of the past. However many ordinary people began seeking religious answers in the ideological vacuum that followed the collapse of Communism. Islam was well equipped to provide simple answers to the complex questions of identity and purpose that accompanied the political turmoil of independence.

How differing patterns of Islamic revivalism have contributed to post-Soviet autocratic variation? Similar to the resource endowment logic, this identity based causality also exhibits strong economic dynamics. Islamic networks and shared religious norms build interpersonal trust and as a result provide fertile foundations for the growth of local businesses and charities. These local charities and businesses in turn provide social welfare that the post-Soviet Central Asia no longer provides. This shifting of social welfare provision further erodes the central state's presence.

Current variations in Islamic revivalism are results of past historical legacies. Islam's roots in Uzbekistan and Kyrgyzstan's Ferghana valley span 1000 years. In contrast it wasn't until eighteenth and nineteenth centuries that Islam saw wide adoption in most parts of Kyrgyzstan and Kazakhstan. In surveys that the International Foundation for Electoral Systems conducted in 1996, fewer than 20 percent of Kazakh respondents reported they were Muslims, whereas approximately half of Kyrgyz and 90 percent of Uzbek respondents identified as Muslim (IFES, 1996). In surveys McGlinchey and colleagues conducted in 2008, the percentage of Kazakh respondents reporting they are Muslim remained less than 50 percent, whereas it rose up to 80 percent in Kyrgyzstan and stayed all but universal in Uzbekistan (2011: 13-14).

In the absence of state services at the local level, local organizations (most notably Islamic ones) are stepping in to meet growing welfare needs. Muslim mutual assistance groups build schools and establish neighborhood charities. As these organizations expand, citizens in Kyrgyzstan and Uzbekistan are further drawn away from the state and toward alternative Muslim groups.

Conclusion

Kazakhstan, Kyrgyzstan and Uzbekistan shared many characteristics at the end of the twentieth century. All three were relatively underdeveloped countries in Central Asia that experienced serious regime instability in the Gorbachev era. Yet all three countries experienced very different levels of regime stability and authoritarian variations in 1990s and 2000s. A comparison of these case demonstrate how different patterns of patronage politics, political leadership, economic resources and Islamist revival may generate very different types of state power and autocratic stability. Why do Central Asian states with similar pasts display variations in their autocratic regimes in Post-Soviet era? In the second half of the 1980s Mikhail Gorbachev and the Communist Party leadership intervened in Kazakhstan and Uzbekistan to restore political order to end leadership crises. Party did not intervene in Kyrgyzstan when ethnic riots eroded First Secretary Masaliev's legitimacy and led to the fragmentation of then Kyrgyz political elite. In February 1990, Gorbachev ended the Communist Party's hold on power in an effort to sideline establishment elites opposing perestroika reforms. In the Kyrgyz case competition eliminated Masaliev and the elite unity that once characterize Kyrgyz polity,whereas Karimov and Nazarbayev carried their united parties into the post-Soviet period.

These three Central Asian cases suggest we reconsider academic and policy discussions on post-Soviet transitions. These discussions have as their starting point an assumption that political change is not only possible but also probable (Carothers, 2002: 6). However, even though these cases display differences, they are remarkably stable. These are not countries in transition as McGlinchey puts it (McGlinchey, 2011: 169), they are polities in stasis. Despite this reality, much of the academic literature has focused on pathways to change and more specifically, to democratic change. Therefore, a more meaningful understanding of Central Asian states should begin with this observation.

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ORIGINAL PAPER

Governance and Intra-Governmental Relations during Transition: A Historical Institutionalist Approach of Romanian Public Administration Reform Dynamics

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Abstract
Post-communist transition to democracy implied complex transformations within the economic, social and political system. Systemic changes are also a trademark of relations established at the level of government and an element of instability as regards the institutional structure. By locating governance in the realm of coordination, steering and guidance, the present paper de-constructs the formal institutional framework which encapsulates governance and intra-governmental relations during Romanian transition. The approach is historical institutionalist encumbing institutions as "rules of the game" which expound the orientation of the political system, the influences upon political behaviour and the anchoring of public policies within a pre-established template.

***Keywords*:** governance, government, law, public administration, Romania, transition.

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Introduction: governance and intra-governmental relations under the European integration logic

The literature highlights the liaison between governance studies and the use of institutionalism methodology, especially historical institutionalism and rational choice (Le Gales in Boussaguet, Jacquot and Ravinet, 2009: 148-149). It has been highlighted that governance instability is a dependent variable within a complex matrix aggregating the intra-governmental institutional relations and other political, economic, institutional independent variables (Olimid, 2009: 260). Thus, legitimacy plays a crucial role in this oftentimes shifting balance, the establishment and enforcement of democratic institutions being a *sine qua non* condition of political system and decision-making process (Kjaer, 2010: 12).

Europeanization effects on governance structures, the transformations of the legislative as well as of executive branches, have received a great deal of attention lately in researches on the changing patterns of governance in a EU Member State (Adshead, 2005: 159-178), adaptation of the national parliamentary system to a European logic (Auel and Benz, 2005: 372-393), the exercise of institutional vetoes by the legislatives (Bailey, 2002: 791-811; Benz, 2004: 508-521; Duina and Oliver, 2005: 173-195), on the implementation of the body of EU law (Berglund, Gange and van Waarden, 2006: 692-716; Dimitrakopoulos, 2001b: 442-458; Dimitrova and Rhinard, 2005; Duina, 1997: 155-179), the transformations of the executives (Bulmer and Burch, 1998: 601-628; Bulmer and Burch, 2005: 861-890; Egeberg, 2008: 235-257; Goetz, 2000: 211-231), and particularisation for the Nordic states (Damgaard and Jensen, 2005: 394-411), the different understanding of the European conditionality framework for the Southern part of the continent (Dimitrakopoulos, 2001a: 405-422; Fabbrini and Donà, 2003: 31-50).

European Union and the Balkans were studied within the integration framework – an integration within the supranational tier of government built with a declared aim of rendering "prosperity, democracy and peace" within a highly asymmetrically developped geographical space, but most importantly, within a highly diversified political, economic, ideological and ideational, ethnic, religious, social, cultural arena where different identities meet and collaborate. The Balkan space is especially representative for this assertion, its rich history, clashing identities, nesting ideologies, peculiar political destinies and actors searching a proper guiding force. The Balkan space with its intricate geopolitics of domestic and international actors' interests, objectives and capabilities has received lately increased research attention. The orientation of the Balkans towards "Europe" following half of a century observance to the East was addressed as a political will, a rhetoric of "returning to Europe" or "returning to the European family" being the meeting point of the entire region's political class (Kentrotis, 2010: 56).

As regards the accession of Romania and Bulgaria into the EU in 2007, the literature concentrated on providing comparative studies on the strategies, measures and mechanisms adopted by national authorities to cope with changes and the driving forces for change (Andreev, 2009: 375-393; Linden, 2009: 269-291; Bojkov, 2004: 509-522; Frusetta and Glont, 2009: 551-571). Most of the studies concentrate on the transformations undergone in the legislative and government branches (including public administration), and subsequently as regards public policy-making – economic, financial, single market, but also social fields, there are also studies concentrating on foreign policy also in relation to other Euro-Atlantic cooperation structures (Linden, 2009: 269-291).

Moreover, studies were aimed at identifying and assessing the mechanisms of passing along the European governance know-how, development and investment

programs, but also the instruments of economic and financial assistance, the stabilization framework and conflict-resolution and post-conflict re-construction and development delivered by international organizations (Kentrotis, 2010: 59). At governance level, the issue of national sovereignty transfer within the integration into a supranational level had to be compatibilised with the cultural and ideological national identities (Dragoman, 2008: 63-78).

Methodology: in search of an explanation through new institutionalism approaches

Public administration changes dynamics during the post-communist transition period have witnessed a new drive with the re-invention of institutionalist approaches – historical, sociological and rational-choice. New research paths have enriched the aggenda by re-considering the role of institutional actors within public policies analyses. The assymetrical approaches to public policies at national and local community levels had to be correlated to the divergent organization of public administrations accross Europe (Bezes in Boussaguet, Jacquot, Ravinet, 2009: 46). Historical institutional approaches proved seminal in boosting explanations on the selection of public policies and peculiar configurations of reform dynamics starting from analyses of existing institutional structures, thus path-dependence (Steinmo in Boussaguet, Jacquot, Ravinet, 2009: 270-274), while sociological institutionalism proved the emergence of values and beliefs building upon institutional structures and "institutional learning" (Aligica, 2003: 87-99).

Researches along this line would have to meet the requirements of validating the following two hypotheses:

(1) Changing patterns of governance and intra-governmental relations during post-communist transition in Romania are related to European conditionality framework and European integration dynamics.

(2) (National) Adjustment in administrative terms is linked to convergence of national bureaucracies towards a European administrative model system.

Organizing the functioning of public administration during transition: building institutional governance structures after 1989

The fall of the Berlin Wall and the dissolution of the Warsaw Pact meant the historical landmark for the former Communist Central and Eastern European countries in their transition from the centralized political, social and economic regime to democracy, the rule of law, de-centralization, and the free market economy. As the rest of the former Communist Central and Eastern European countries, Romania, too, embraced the reform trend, however, critiques of this process outline the inconsistencies and unsteadiness of a reform track that did not benefit from the internalization of a backbone of strategic vision and the materialization of coherent implementation policies (Hintea, 2006), which would turn to be perennial, the "weak *state capacity and governability*" being highlighted by researchers even after acquiring North Atlantic Treaty Organization and European Union membership statuses in 2004 and 2007, respectively (Andreev, 2009: 376).

Making appeal to in a some degree questionable traditional democratic values (Buzatu, 2011: 21-26; Frusetta and Glont, 2009: 551-571) or setting the pathways towards the integration within the Euro-Atlantic structures (Olimid, 2014: 53-64), Romanian government engaged into adopting a legislation-prone reforming process, in order to increase administrative institutional capacities requested to acceed to membership status. Institutional reforms and informal adjustments may thus be related to Europeanization

and/or convergence mechanisms (Spanou, 1998: 473). The legislative understood to enhance administrative capacity through the adoption and review of legislation. However, the communist ideological, institutional and procedural legacy increased the impediments for sound reforms, the new conjuncture being contingent to the local levels being inflicted autonomy principles and the central tier still assuming its centrality (Le Gales in Boussaguet, Jacquot and Ravinet, 2009: 150). Romania was included in the monitoring of the Cooperation and Verification Mechanism which assessed and enhanced the favourable evolution, but also triggered the alarm on corruption and malaware issues.

Among the great number of pieces of legislation adopted during the transition period, by focusing on the issue of governance and intra-governmental relations we discuss mainly the body of national law which regulates the field of public administration reform, especially legislation concerning the successive changes witnesed in this domain as regards government structures, the partition of competences and powers among the local, county/regional and central tiers of government and the decentralization and regionalization processes, the transformation of the institution of elections of the executives and legislatives at the local and county levels, the provisions applicable to the locally-elected, to political parties and the statute of civil servants. This last issue has received special attention in the literature and, as such, the present paper offers a presentation of the normative regulations adopted as a consequence to both internal and external (supranational and/or international) drives. Also, the paper offers a discussion on the opportunity and regulation of a new tier of government somewhere between the county and central/national levels by establishing the eight development regions in Romania aiming at financial assistance and intervention against regional inconsistencies and asymmetrical evolution (Surd, Kassai and Giurgiu, 2011: 21-30). Good governance principles and instruments that help attain political development also stood at the establishment of regulation (Linden, 2009: 278).

Following the fall of communism the general legal framework of Romanian public administration control was established through the Decree no. 93 of February 7th, 1990 regarding the creation of the Office for Local Administration by the Council of the National Salvation Front. The Office for Local Administration was institutionalised as "a central organ subordinated to the government (…) which ensures the unitary guidance of the activities of mayors and the collaboration with central organs in order to solve specific problems of territorial-administrative units" (Decree 93/1990). Decision no. 277 of March 16th 1990 regarding the attributions and functioning of the Office for Local Administration, foresaw it functioned as a transmission belt between local administrative authorities (county mayoralties) and the Government to whom it directed its analyses on the functioning of mayoralties, the legislative proposals originating from mayoralties aimed at solving specific problems of local administrative units. All in all, on paper the law established it as a means to increase local autonomy, de-centralization and democratization, modernization, organizing the information and paperwork fluxes and boosting civil servants performance. It thus acted as a forerunner to the current National Agency of Civil Servants as the law provided it introduced specific professional training for employees within local public administration units. However, even an ignorant can notice within the transition context the law of 1990 provided a faulty method to govern national territorial-administrative units as it proves to be an institution whose competencies were in part contrary to the constitutional order subsequently established in 1991. For instance, it could act as an initiator of the non-solicitor's procedure, the reprieval

procedure, acting again as a transmission belt by proposing the government the suspension or annulment of legislation issued by mayoralties (Decision no. 277/1990).

It thus acted as a precursor of the legality control of acts issued by mayoralties, procedure. Currently, the prefect exerts the legality control over local public authorities' administrative acts under the legislative framework which regulates its activity: the Constitution of Romania, Law no. 340/2004, Government Decision no. 460/2006, Law no. 215/2001. According to the constitutional provisions (2003) as "the Government representative at local level and leader of the public de-concentrated services of ministries and of other organs of central public administration of territorial administrative units" (Article 123 paragraph 2), the prefect has the competence to attack (and thus *de iure* suspend) an act – deriving from the mayor, local or county council – it considers illegal before an administrative solicitor's court (Article 123 paragraph 5). Law 340/2004 further empowers the prefect with the competence of exerting legality control of administrative acts adopted by county and local councils and mayors (Article 19).

It took the Romanian legislator another nine years to repeal the law, although it contradicted the constitutional provisions (Constitution of Romania, 1991, Article 150) – in 1999 the Government adopted the Decision no. 474 of June 14th 1999 regarding the abolishment of several normative acts through which it also revoked the Decision of 1990 which contained the provisions on the competencies and functioning of the Office for Local Administration. The law of administrative solicitor's office had already been into force since 1990 (Law 29/1990), it suffered several amendments especially in 2000 and was finally repelled through Law 554/2004.

In 1991 the Parliament succeeded in adopting Law no. 69 of November 26, 1991 regarding local public administration. The normative act was successively amended. Firstly, in 1996 through Law no. 24/1996 for the modification and completion of the Law of local public administration (published in the Official Gazette no. 79/18 April 1996), then in 1997, 1999, 2001 and 2006. The law replaced previous communist or transition period legislation regarding the organizing and functioning of popular councils (Law no. 57/1968), regarding the administration of counties, cities, towns and communes until the organization of local elections (Law no. 5/1990 and Government Decision no. 932/1990). The legal institutional order established in 1990 revoked the previous territorial-administrative organization of the state, the popularly-elected city, town and county popular councils formed by tens or hundreds of deputies according to the circumscription size (Law no. 57/1968) being replaced by national union councils temporarily established at the level of territorial-administrative units (Decree-law no. 2/1989 regarding the establishment, organization and functioning of the National Salvation Front Council, Decree-law no. 8/1990 regarding the organization and functioning of local organs of state administration and Decree-law no.81/1990 regarding the establishment of the Temporary Council of National Union). These national union councils were only temporarily in force, until the adoption of Law no. 5 of July 19th, 1990 regarding the administration of counties, cities, towns and communes until the organization of local poles which established the administration of the capital, cities, towns and communes under the competencies of prefectures and mayoralties as local organs of state administration, thus only the prefect and mayor had competencies to represent the local (and county) level, the institutional context lacked legislative bodies at local/regional level, local authorities exercising the competencies of "tackling issues regarding the economic-social growth of territorial-administrative units, aiming at observing the legal framework of economic activity exercise, ensuring the management of local budgets and solving issues of public utility

(…) Also, prefectures and mayoralties ensure public order, the defense of citizens rights and liberties through the public order organs legally established" (Article 3). Law no. 70 of November 26th 1991 regarding local elections introduces the direct election of local councils and mayors through universal suffrage, secret ballot and the indirect election of county councils (Article 1).

Law no. 24 of April 12th 1996 for the amendment and completion of the Law of local public administration no. 69/1991 introduces the principle of local administrative autonomy for the organizing and functioning of local public administration representing the capacity to administer local territorial-administrative units in the financial and budgetary fields. Law no. 215 of April 23rd 2001 further builds upon the legislation it paradoxically replaces by re-iterating in Article 2 the principles of "local autonomy, de-centralization of public services, eligibility of local public administration authorities, legality and citizens' consultation in solving local issues of special interest".

Moreover, Law no. 286 of July 6, 2006 for the ammendment and completion of the Law of local public administration no. 215/2001 resumes in Article 1, paragraph 2 the notion of "deliberative authorities" in reference to the local councils of cities and towns (including the General Council of the capital city), county councils and local councils of the towns administrative-territorial divisions, while "executive authorities" are defined as "mayors of communes, towns, cities, of the cities administrative-territorial sub-divisions, the general mayor of Bucharest and the president of the county council".

The national legislation regulating the election of local and county executives and legislatives was amended for several times across the transition period. On November 26th 1991 the Parliament adopted Law no. 70 regarding local elections which constituted the legal framework for the organization of local elections until the adoption of Law no. 25/1996 for the modification and completion of the previous legislative act (Gherghe, 2013: 19-24). The legal framework further molded the elections process (Bărbieru, 2014: 190-200). The law regarding local elections was further amended through Law no. 164/1998, Government Emergency Ordinance no. 28/2000 and also Government Emergency Ordinance no. 63/2000, Government Emergency Ordinance no. 72/2001 and Law no. 170/2002, Law no. 43/2003, and finally revoked through Law no. 67/2004 for the election of local public administration authorities. Moreover, the direct election of County Councils presidents by uninominal secret ballot as regulated through law strengthens the legitimacy of the county level within the circumstances of not having fully legislated on the statute and competences of the regional level (Crăciun in Crăciun and Collins, 2008: 50).

Institutional landmarks of government and governance

On December 12th, 1996 began the mandate of the new government with a minister delegated along the prime minister to coordinate the General Secretariat of the Government and of the Department for local public administration, while the structure of a Public Administration Ministry was created through Decree no. 611 which established Romanian Government since 28th December 2000. Since June 19th 2003 functioned the Ministry of administration and internal affairs until March 11th 2004 when it shifted its scope, being ruled by a State minister over social issues, the minister of administration and internals. Since 2007 (April 5th) it was re-structured into the Ministry of Internals and Administrative Refom. During 2009-2012 it re-appears as the Ministry of Administration and Internals, to enter a new structure in 2012 (December 21st) as a Ministry of Regional Development and Public Administration subordinated to the Government, re-structuring

the former Ministry of Regional Development and Tourism by adding the specialised structures and institutions of public administration (Government Emergency Ordinance no. 96 of 22 December 2012). Further, the institutional structures subordinated to the Ministry of Regional Development and Public Administration (for instance the National Agency of Civil Servants, the Agencies of Regional Development and the Cross-border Cooperation Offices) account for its focuses and activities.

The central tier of government was successively reformed, under the subordination of the Government being established some institutions on a pre-established temporary basis, forming a rather intricate institutional web missing clear-cut competences in the administration reform process: the Department for Central Public Administration Reform was thus established in 1998, while the Central Unit for Public Administration Reform was created later, in 2001, to which were added other institutions for public administration reform the founding act making a rather scarce overview for the sake of discrimination, such as the Superior Council for Public Administration Reform, Public Policies Coordination and Structural Adjustment (2003) and also the Governmental Council for Monitoring Public Administration Reform within Romanian Government structures (Alecu in Păunescu, 2008: 167), others received a permanent mandate from the very beginning, for instance the National Agency for Civil Servants created in 1999 through the Statute of Civil Servants and the National Institute for Public Administration which aggregate to the Central Unit for Public Administration Reform under the umbrella of the "national modernizing network" (State-Cerkez in Păunescu, 2008: 94-95).

Each cabinet reshuffling brought about changes some being required in the public administration capacity building. Changes arrived under the form of the institutionalization of new encumbencies within the government. The Public Policy Unit, the Project Management Unit for Public Administration Reform are aditional institutional structures created to serve the reform goals. Mirela State-Cerkez (2008) highlighted the futile increase of the intricacy structure of governmental reform-responsible institutions and the excessive bureaucratization and burdening of procedures, communication patterns and weight in the decision-making process – additional working groups, committees and secretariat-like structures being established under the supervision or subordination of the executive branch, and the legislative also, such as the Interministerial Committee for Administration and Public Position, De-centralization and Local Communities, the Interministry Working Group for de-centralization, the Interministry Committee for Coordinating the Reform of Public-Policy Process, the General Direction for Developing Administrative Capacity, the Public Administration Commission and the Interministry Technical Committee for Public Managers and the Interministry Committee regarding the Relations with Public Administration. Equally challenging were the decisions and the regulations through law of establishing new institutions, committees etc. within the architectural web of Romanian public administration reform which were not succeeded by enforcement, or had their mandate and competences successively transformed (State-Cerkez in Păunescu, 2008: 94-95).

European conditionality framework as a vector of national governance change dynamics

Europeanization mechanisms have been identified as "responsible" for national change dynamics and oftentimes cross-national convergence on certain issues, including administrative capacity-building and/or strengthening. The conditionality framework regarding Central and Eastern European countries has been institutionalized through the

provisions issued by the European Councils of Copenhagen (June 1993) and Madrid (December 1995). The quest for EU membership status has impacted upon national policies of reform. Central and Eastern European countries accession process was characterised by additional challenges expressed through the European Commission's Avis of July 1997 on the application for EU membership. Though insisting on the assertion that European recommnedation were rather generally addressed not having a thorough structural and institutional positioning, the conditionality they established for applicants explains their trajectories and institutional responses. EU's political criteria for acquiring membership status were collectivelly expressed through the voice of the European Council of Copenhagen which established the fundamental condition of being thoroughly acquainted with "stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities", which was later accompanied by the Madrid resolution prescribing the "adjustment of their administrative structures", conditions also explained in the Cannes White Paper (1995) (Georgescu, 2009: 107), while at Luxembourg it addressed the issue of incorporating the *acquis communautaire* within national legislation. The European conditionality framework cannot be analysed without taking into account the modules of the accession negotiation process which are built upon the (1) Accession Partnerships which settle the future action based on EU's Regular Reports, (2) National Programs for the Adoption of the Acquis (NPAA) and (3) Institution Building Plans referring to boosting the public administration capacity. Among the strategic pre-accession process, a central role is rendered to PHARE investment programs in support to developing the public administration reform process. Most of the PHARE projects were built along a *twinning* dimension through which the Romania as Candidate Country could download good practices, experience and expertise from its peers, projects appreciated for their ambition (Alecu in Păunescu, 2008: 167-169). The European conditionality framework could explain the dynamics of changes undergone in the regulation of local public administration (Phinnemore, 2010: 302) such as the translation of the negotiations on the environment chapter at the level of the administration by granting both local councils and mayors the competence to "ensure the accomplishment of works and undertake necessary measures to implement and comply to the provisions of the assumed engagements within the European integration process in the field of environment protection and water management for the services supplied to citizens" (Law no. 286/2006). Other issues could be explained as well under the same European conditionality logic, such as "minority rights, regional policy, environmental policy, freedom of movement within the Union or social policy" (Chiva, 2014: 65).

Moreover, European conditionality stood at the basis of triggering the regionalization process in Romania, a deeply re-structuring process still in progress which fundamentally aims at increasing cross-regional cohesion through sound European financial and investment intervention. The conditionality framework created a climate for change and a guiding environment; still, it allowed the selection of national proper instruments that would establish the borders and institutional structure of the new administrative level (Crăciun in Crăciun and Collins, 2008: 50).

At this point we can address ourselves this question: what do all theses documents – post-accession and reform strategies, program documents and a self-assessment frameworks – add to the reform process? The Civil Servants Statute (1999), the Law on the Liability of the Ministers (1999), the Law on the Organization and Functioning of the Government (2001), the Strategies for Public Administration Reform, Romania's Post-Accession Strategy 2007-2013, Operational Program "Administrative Capacity

Development" 2007-2013 and the Self-Assessment Framework of Public Institutions Functioning built a legal background in line with other EU national legal systems. Thus, Europeanization framework is loaded with the prerequisites for success for former totalitarian political systems (Bojkov, 2004: 513), domestic politics being forged within this process of downloading and/or upgrading governance practices, elite socialization, institutional *twinning* and ideational borrowing which permeat each layer and finally transform the entire political system.

Strengthening ethics, integrity and transparency as national strategic objectives in the governance reform process

Legal Provisions on Ethical Values, Integrity and Transparency in Romanian Public Administration were adopted during the transition period as a criteria for future cooperation at international level. Integrity and transparency were at the core of a reform strategy envisaged to re-build the public administration. Anti-corruption institutions, mechanisms and measures were established as a consequence of European enlargement process "even in the absence of a comprehensive EU anticorruption policy" (Ristei Gugiu, 2012: 432). The force behind the impulses for the anti-corruption struggle was the monitoring action of the EU institutions – the European Parliament through its reports, the European Commission's Regular Reports, other studies and reports, the publication of experts and professionals' opions, statistics, surveys and also the publication of the opinion and expert declarations of European officials (Ristei Gugiu, 2012: 432). In this respect, various pieces of legislation were adopted regulating as regards the establishment of ethical issues and the limitation of the exercise of political activity, the institutionalisation of various codes of conduct specific to civil services activities, the denyal of "attentions", the ban of political pressure and the enforcement of anti-corruption agencies reports, the compulsoriness of assets declarations and the adoption of provisions as regards the prevention, discovery and sanction of corruption (Georgescu, 2013). The legal framework was succesively amended, new pieces of legislation appeared to fill the legislatives loopholes, for instance, Law no. 188/1999 regarding the Statute of civil servants, Law no. 161 of April 19th, 2003 regarding some measures to ensure transparency in the exercise of public dignities, offices and the business environment, the prevention and sanctioning of corruption, with subsequent amendments which appeared as a consequence of EU negative reports and which would remain in the literature as the "Anticorruption Package" (Ristei Gugiu, 2012: 441). Furthermore, other relevant pieces of legislation regulating this field and filling the legislative void of as regards "pervasive corruption organised crime and judicial independence" (Linden, 2009: 272) are the Order of the Minister of Public Finances no. 252/2004 for the approval of the Code regarding the ethical conduct of the internal auditor, Law no. 7/2004 regarding the Code of conduct of civil servants, Law no. 477/2004 regarding the Code of conduct of contractual personnel within public authorities and institutions, Law no. 161/2003 regarding some measures for ensuring transparency in the exercise of public dignities, public offices and within the business environment, the prevention and sanctioning of corruption, with the subsequent amendments, Law no. 115/1996 regarding the assets declaration and control for dignitaries, judges, persons in management and control offices, and civil servants, with subsequent amendments, Law no. 176/ 2010 regarding integrity in the exercise of public functions and dignities, regarding the amendment of Law no. 144/2007 on the creation, organising and functioning of the National Integrity Agency, as well as regarding the

amendment of other normative documents lists under Article 1 the categories of persons obliged to fill in the declarations of assets and interest (Gîrleșteanu, 2011: 113-123).

Conclusions

At present the public policies agenda of line ministry is mainly dedicated to three major fields of intervention: (1) regionalisation and financial and administrative de-centralisation, (2) public administration reform and (3) local fiscal and budgetary policies. The road to democracy has so far implied complex transformations within the economic, social and political system. The literature views systemic changes as a trademark of relations established at the level of government and an element of instability as regards the institutional structure. By locating governance in the realm of coordination, steering and guidance, this work has de-constructed the formal institutional framework which encapsulates governance and intra-governmental relations during Romanian transition. The approach is historical institutionalist encumbing institutions as "rules of the game" which expound the orientation of the political system, the influences upon political behaviour and the anchoring of public policies within a pre-established template. This approach is well perceived by incrementalism model which explains the small rate of public policies evolutionary dynamics and also by path dependence which explains the selection of some public policies through the pre-established institutional framework.

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ORIGINAL PAPER

Constitution of Romania and the Functional Balance of Semi-Presidentialism

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Abstract
Starting from the finding that the functionality and the performance of semi-presidentialism is strongly influenced by non-institutional factors, the paper aims to examine the extent to which the aetiology of the current dysfunctions of Romania's semi-presidential system is constitutional and, therefore, to circumscribe the type of constitutional changes able to reduce the risk of intra-executive institutional conflict and autocratic political behaviour. At the same time, the paper seeks to highlight the extent to which this type of constitutional revision modifies the nature of Romania's current semi-presidentialism, inasmuch as the sense asked to amend the Constitution since 2005 was the consolidation and strengthening of presidential powers in order to gain some "levers" through which the President to solve the "situations" of "constitutional crisis". This sense of constitutional change is questioned given that, on the one hand, the current constitutional design has not prevented in the last two terms the President's interference in the constitutional powers of the Government, the manifestation of his belonging to the party that held the majority in parliament and, thereby, the non-assuming of the constitutional role of fair mediator in state and society. On the other hand, this sense of the amendment the Constitution is questioned inasmuch as the post-revolutionary option for a balanced semi-presidentialism, a "weak", attenuated" or "parliamentary" semi-presidentialism, with a not "very strong" "presidential centre" – given that the country just has separated from the toughest oppressive system in Eastern Europe – was motivated precisely by the need to constitutionally underlie the democratic functioning of the Romanian state and society through a distribution of power capable to eliminate the risk of authoritarian derives and autocratic presidential behaviour. The thesis of the paper is that a consolidation or strengthening of the constitutional presidential powers would increase the risk of the presidentialization of system, the "hypertrophy" of presidential powers and the imbalance of power in favour of the President, which would have thus the capacity to resolve in his favour any conflict with another political body.

Keywords: semi-presidentialism, "weak" semi-presidentialism, "strong" semi-presidentialism, presidentialization.

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Hypothesis

This analysis is based on two connected assumptions. One is that the aetiology of the malfunctions of Romania's semi-presidentialism is not of constitutional, but of extra-constitutional origin. The second assumption is that a modification of the Constitution in the sense of strengthening the presidential powers (a) would increase the risk of the presidentialization of political system and the "hypertrophy" of presidential power, that would lead to an imbalance of power in the favour of the President, which would have thus the means to resolve any conflict with an another political body in his favour and (b) would determine the modification of the nature of the current semi-presidentialism in Romania.

The constitutional design of Romania – the balance of power

In the present paper I do not consider the expressions political regime and political system as interchangeable. The general content of the concept of political system, widely accepted in the scholarly literature, includes the organizing, functioning and interrelationing of powers, authorities or "political bodies" at state level – studied in legal or political practice terms –, and the manifestation of other political agents (political actors and forces, interest and pressure groups), having their own values, strategies and methods of action, which activates in the whole "political field" (Cioabă, 2007: 9-17). Two trends have been highlighted as crucial in the functioning and evolution of political systems: one of structural differentiation and functional differentiation of the political activities and roles (mainly of the "strategic roles in major institutional spheres"), the other of integration or organizing and functioning of the political community in a centralized unit (the "structural solution") (Eisenstadt, 2010). The two trends are obviously essential to be highlighted both in structural-constitutional level and in the practical functioning sphere of the political domain landings – by identifying the conditions of functionality or non-functionality of their "horizontal" and "vertical" relations with respect to the constitutional provisions (Shugart, 2005: 4). On the other hand, the political regime was defined as a subsystem of the political system, the general content of the concept being limited to the "constitutional or legal articulation of institutions and mechanisms of the state functioning." In my view, the best essentialized conceptual formulation of this distinction in the context of semi-presidentialism analysis is the one proposed by Olivier Duhamel: the political regime as "constitutional structure" or "constitutional configuration of the political system" (Duhamel, 1987: 587, n. 3) – which in other authors appears under the denotation of "constitutional design" or "amount of constitutional power" (Skach, 2005: 3), the political system as proper functioning of political institutions – in relation to "the constitutional configuration," to the extra-constitutional factors or major circumstantial variables, such as the nature of the parliamentary majority, the relationship between the president and the parliamentary majority, the dynamic of leadership style and political behavior, the evolution of the party system etc.

The political regime instituted by the post-communist Constitution of Romania was subsumed to a systemic logic appropriate for the model of equilibrium of powers or of a balanced relationship between the Executive and Legislative. This model circumscribes as institutional structure of government the dual executive (Shugart, 2005: 1) or the two-headed structure of authority: the President and Prime Minister, a structure in which "a popularly elected fixed-term president exists alongside a Prime Minister and Cabinet who are responsible to Parliament". This "purely constitutional" definition of the concept of semi-presidentialism has the advantage of simply indicating also "the ways in

which the head of state and head of government come to office and how they remain in office" (Elgie, 2004a: 13).

Romanian Constitution has circumscribed, since 1991 – in the conditions in which the country barely was separated from the oppressive system, "probably the toughest in Eastern Europe" (Sartori, 2008: 317) –, a "not very strong" "presidential center", as Sartori expressed it, characteristic for a "weak", "attenuated" or "parliamentary" semi-presidentialism, for an "impure" two-headed executive. The "impurity" of the Romanian semi-presidentialism resides in a clearly specification of the President's role of supervisor and guarantor of the democratic game, which in terms of post-communist constitutional design translates, in fact, the non-involvement of president in the "act of governing".

In the case of Romania, as of other Central and Eastern European countries, the most important motivation for this type of constitutional design – the "weak" or "attenuated" semi-presidentialism – was, in my view, the fear of the risk of authoritarian derives and autocratic presidential behaviors and this explains why in almost all post-communist European space the description of the role and function of the President is often evasive and even ambiguous and, also, why in this space of Europe the President plays a symbolic role or a role of representation rather than one of decision-maker or "diarch". According to the constitutional provisions, the power of the President is limited to the "general" attributions, common for an "attenuated" or "weak" semi-presidentialism – the exercising of the function of "mediator between the Powers of the state, as well as between the State and society" (The Constitution of Romania, 2003: Art. 80, 2) –, the Parliament being the supreme representative body of the Romanian people. The Romanian Government, according to the Government's program accepted by Parliament, has as obligation to ensure the achievement of the country's domestic and foreign policy and to exercise the general management of public administration. This dispositional configuration expresses what might be called a semi-presidential model "shaped in presidential scenery but within parliamentary logic". The parliamentary logic, in which "the popular elected president never even tries to take part in every day governing", since it "entirely belongs to Government which is exclusively accountable to Parliament" (Nowotarski, 2012: 4), is determined by the goal of building a "strong balanced and well decentralized" regime, able to block the autocratism and the whole sphere of attempts to use the power discretionary or arbitrarily and, therefore, to prevent the construction of a system of "illiberal democracy" (Zakaria, 1997: 22-43).

The balance of power in the current constitutional conception combines the pattern of a horizontal "transactional relationship" between the "co-equal" "constitutionally defined actors" (inter pares) of the Executive which have, each of them, "autonomous" or "independent sources of legitimacy", with a dialectic of a diagonal hierarchical relationship between the Government and the President in virtue of "President's authority to select" the Prime ministerial candidate and, especially, of the vertical "hierarchical relationship" (of subordination) between Government and Parliament in virtue of Parliament's authority to dismiss the government as a result of a non-confidence vote and of the exclusive responsibility of the Government before the Parliament (Shugart, 2005: 4-8). It is essential that the role of "watchman" or supervisor of the observance of Constitution, which places him in the "political game" not in a position of pares ("co-equal") but of super partes, removes the president of Romania from the "active" role of "player".

Such a semi-presidentialism reflects a "mixed" "pattern of leadership" in which "the constitutional division of powers is more rigid" than in Finland, France, Lithuania, Poland, but that "neither the president nor the prime minister is in a dominant position" (Elgie, 2004b: 290). In Shugart and Carey, Romania's political regime is classifiable in premier-presidential category, without a position of predominance of either of the two heads of the Executive, but with a "primacy of the Prime Minister" over the President, resulting from the asymmetry of the power to revoke the Prime Minister (which belongs exclusively to the Parliament). As a consequence, Romania is located in the premier-presidential category of new democracies from Eastern Europe, with considerably weak presidencies and an important role granted to the Parliament, the Constitution of Romania being, in Shugart, "almost identical to the French" (Shugart, 1993: 31). The elected President is "lacking" by the quality of being clearly the chief of Executive, given that the Prime Minister is not strictly subordinate to the President.

The political practice of the semi-presidential democracies with "important parliament" and "weak presidency" (Shugart, 1993: 31) is but shaped decisively by the "crucial" variable of "parties' power" in building the system and of the variable "parliamentary majority".

The extra-constitutional factors

As such, the practical evolution of the premier-presidential semi-presidentialisms, and therefore of the system of Romania – particularly his capacity to maintain the standards of democratic functioning, if not to facilitate the democratic consolidation – it is necessary to be done through non-constitutional factors through what Maurice Duverger called, within its analytical model, endogenous features – (c) the composition of the parliamentary majority, and (d) the President's position relative to this majority (Duverger, 1980: 166, 177) [the exogenous characteristics being are (a) the actual content of the Constitution and (b) the combination of tradition and circumstances].

It must be emphasized, as political scientist Gianfranco Pasquino did, that the contemporary political science has not yet elaborated wide accepted criteria to evaluate the performance of institutional regimes and the quality of democracy (Pasquino, 2007: 28), but that at present the findings on various forms of semi-presidentialism are conclusive only in one respect: the functionality and performance of semi-presidentialism "seems strongly influenced by non-institutional factors" (Elgie, 2007b: 53).

In Shugart's definition of semi-presidentialism the president, as "part of the dual executive has both origin and survival separated from the Assembly", while the Prime Minister and the Government, "the other portion of the Executive", "has its survival fused with the assembly majority" (Shugart, 2005: 3). More specifically, in the premier-presidential regime the Prime Minister and the Government are exclusively accountable to the parliamentary majority. The nature of the parliamentary majority engages in the political practice of semi-presidentialism, as observed Shugart, a large variation in the relationship of the President with the Prime Minister and of the Government with the Parliament, with significant consequences for "the behavioral manifestation" of different systems of power.

Duverger formulated as a regularity that in the countries without a parliamentary majority there is the most important agreement between the letter of Constitution and the political practice, a situation that puts the President in an intermediate position, "neither ceremonial figure nor omnipotent", as in the case of Weimar Republic, Finland and Portugal. The reverse of this situation, i.e. the difference between the Constitution and

practice, is found in the countries with continuous consistent and stable parliamentary majority, that either puts the President in a dominant position, or limits the "parliamentary Head of the State" to a symbolic status. Practically, the difference depends on the President's position in relation to the parliamentary majority. The regularity established by Duverger is that in a Parliament with a disciplined majority the President controls the Legislative and the Executive at the same time and can reduce the Premier to the function of "chief of staff", if he (the elected President) is the one who formed the majority because he was a candidate in election from the position of party leader. In this situation, in the countries with disciplined parliamentary majority or quasi-majority the President can act by removing away from the constitutional provisions.

It is noteworthy that with respect to the behavioral practice also Shugart revealed the President's possibility to subordinate the Government in the situation in which the President and the parliamentary majority are on the same side of the "ideological division" and in which the President is de facto its "Head", the situation in which, like France until 1968, the Government acquires a "presidential" character. The commonly meaning of the term presidentialization is that of "empowering the Presidents over parties", of delegating by parties of a "considerable discretion to their leaders-as-executives to shape their electoral and governing strategies", this implying the "losing of the [parties'] ability to hold these agents to accounts" (Samuels, Shugart, 2009: 5). This sort of intraparty power and this kind of delegation actually involves "the lodging" of the executive authority "in a directly elected presidency", namely the concentration of authority in a single political agent, in discrepancy with formal constitutional provisions. Hence, it can be asserted that the presidentialization of party leads to the presidentialization of power. The conditions that facilitate the presidentialization and the hypertrophy of president's political influence and power are: the context in which the President and the parliamentary majority come from the same side of an ideological division and the context in which "the President is the de facto the Head of his party" (even if he is no more de iure his party's leader, he is de facto party leader). In terms of parties, the consequence is the alteration of parties' role, i.e. "the altering of the chain of delegation between voters and their agents in Government". In terms of executive power, in premier-presidential form of semi-presidentialism, this type of hypertrophying the President's power implies that the Prime Minister is politically subordinated to the President and, in this case, the "parliamentary confidence" has no relevance. In general terms, this sort of expansion of the President's power implies a growth of the zones which he controls, this state of affairs having serious implications for the liberal scope of the democratic governance (Poguntke, Webb, 2005: 1-26). More specifically, when the president is "recognized leader of parliamentary majority and, therefore, can cumulate executive and legislative power, the semi-presidentialism runs the risk of becoming hyper-presidentialism" (Pasquino, 2007: 24). Thus, the presidentialization of the executive power and, generally, of the power, or "the President's supremacy", involves "the dismantling of some features of the constitutional governance" and "the consolidation of some autocracies" elected by popular vote, the formation of "strong Executives, weak Legislatives and judicial [Powers]" and the restriction of economic and civil freedoms (Zakaria, 1997), or, on the contrary, the constitutional liberalism implies precisely the assuming of the control of power in each of its compartments, the equality before law, the impartiality of courts and tribunals.

In Romania, in the last two presidential terms, the hyper-presidentialism and the President's supremacy was a dominant of political practice and was manifested, first and foremost, as an aggregation of legislative and executive power under the conditions of

recognition of the President as leader of parliamentary majority (from 2009 until 2012). Secondly, the presidentialization was manifested (between 2005 and 2009 and from 2012 till now) as a tumultuous and counterproductive intra-executive conflict and as constitutional crisis or as paralysis of decision-making process. Thirdly, it ought to be emphasized that the hyper-presidentialism has manifested as a repeatedly President's personal "interpretation of the Constitution" in order to try to intervene "frequently and constant" in the parliamentary decision-making process and in "the Prime Minister's Powers". This is because, as it became of notoriety, the President declared at his first investiture his intention to be a "player President", i.e. partes of governing and "political play". The announcement has signified the President's intention to enroll in another "logic" of power than that drawn in Constitution for the President – namely that for an "un-player President", a logic that has damaged the balanced, "semi-presidential", functioning of Power. Of course, it should be reminded in this context that the discursive background of this assuming of the "player President" position was a profound agonistic, of confrontation, negatory one, expressed in "rejecting the system" and stating the intention to "eliminate the corrupt and mediocre politicians", especially the members of Parliament, to establish a direct relationship with the people and to amend the Constitution. All these intentions were actually part of a "tactic of challenging the legitimacy and rationality of the existing constitutional framework" (Sedelius, 2006: 80).

"The logic" expressed through the intention of being "player president" was, of course, that of "co-participant in the sphere of decision-making". President's provenance party recognized the President as leader de facto of the party (Müller, 2007: 58) and, through this, interceded a connection between President-Government-Parliament which allowed the President to resize the limits of his function and attributions. Besides, the 2004 and 2008 election, through the alliance system, "have set a determinant role for the President in appointing the government and in setting up some parliamentary majority of support" (Dima B, 2010: 35), a "fabricated majority", despite the predominant role that the Constitution provides for the Parliament. On the other hand, the "opportunistic nature of the party system" and the "personalization" of President's provenance party "were factors that favoured a involved role of the President already in the Government formation process" (Müller, 2007: 58). Traian Băsescu considered that, being elected directly by the people, "has the right to decide on the party with which wants to work so as his own program, promoted during the election, to become reality". He expressed consistently during his first term in office and during Tăriceanu Government this impetus by asking the Government to resign in order to be held early elections and to configure a comfortable parliamentary majority. In this context the dissensions from governmental coalition were generated by President's actions, conform to the model of "player President", actively and effectively involved in the political processes, and not just to that of a "well intentioned spectator". The president "individualized" himself by the frequency of his participation in Government meetings and by his unannounced appearance in such framework, by addressing on these occasions irrelevant issues, unrelated to the agenda or to the emergencies (Dima C, 2009: 48), by criticisms publicly launched against the Government, by ironic or incriminating statements, totally atypical for the dignity of the presidential function. The President forwarded tasks to the Government, pressured it in media, was involved in negotiations in order to strengthen his position and to be present constantly in the media, attacked aggressively the "interest groups" from the media and those around the Government, pretending to be the "censor" of the Government on behalf of the people. Gradually, he "enriched" the deterioration forms of the intra-executive relationship by

personalizing the conflict, by ostentatious and inelegant gestures and statements. Moreover, the "rivalry" President-Premier "symbolically was converted" into a rivalry President-Parliament. Evidently, President Băsescu rejected *ab initio*, disavowed constantly and boycotted the cohabitation (between 2006-2008 and 2012-2014), being unable to accept the advantages conferred by the democratic mechanism, ultimately natural and transparent, of the Powers oscillating according to the change of the parliamentary majority. President preferred the variant of intra-executive conflict, powered by interpreting in a specific manner the constitutional provisions, given that the temporary fragmented and fluid disposing of parliamentary parties, the Prime Minister and the parliamentary opposition ability to manifest a considerable degree of decisional autonomy and, particularly, the "special model", euphemistically speaking, of the President's behaviour.

Since 2009, while the "presidential party", strongly presidentialized and reconfigured in 2007, which formed the parliamentary majority and the Government has created a particularly conducive framework for a hyper-presidentialist conduct. The trends of authoritarian and autocratic leadership were supported by the mechanisms of parceling and colonization of the society, by a "carefully constructed, self-serving system" through appointing in "key positions" – heads of the chief prosecutors as well as the leadership of the Supreme Court of Cassation and Justice, the Superior Council of Magistracy, the Constitutional Court of Romania and the National Agency for Integrity, the National Agency for Fiscal Administration and the Audio-visual Commission – "his loyal supporters" "and by keeping those who show gratitude", by placing this "network of institutions" "under his personal command", by "taking total control of Romania's secret services" and "yielding subversive pressure on most of the heads of the key state institutions", by "compromising and eliminating his political rivals, his ex-allies", by "openly attacking the country's free press institutions" (Bergtahl, 2013).

As a result, the political practice of these years showed that, despite more limited constitutional powers of the Romanian President – in comparison with those of French, Finnish or Polish President, for example –, certain constitutional prerogatives are liable to generate, according to certain "logic of action" typical for the President, a strong political influence of the President on the other political and institutional actors and an important role of him, "sometimes crucial", specific for a "pronounced" type of semi-prezidentalism (Dima, 2009: 23). Therefore, this negative trend indicates that a revision of the Constitution in order to increase the presidential powers and prerogatives only broadens the conditions of possibility of a "pronounced" semi-prezidentalism or/and hyper-prezidentialism.

The nature of the Romanian constitutional revision

For a country with an autocratic heritage, as Romania, the method of appointment and dismissal of the Prime Minister, as well as of other components from the mechanism of Powers balance and control (check and balances organs), contained in the constitutional provisions, is of major importance, given that it faithfully reflects the configuration of "organizational power" within the political system. For a country with an autocratic political ascendancy the formal explicit provision of the limits of "organizational power" is meant, of course, to avoid "the institutional autonomization" and "the organizational dominance" of the Executive, and also the excessive concentration of the executive power which can be subsumed to the President ("the autocratic enclave") (Nowotarski, 2012: 16). From this point of view, Romania's constitutional design underlies the organizational

functionality of the political system on the horizontal and vertical accountability of powers mechanisms, typical for the premier-presidential semi-presidentialism, so as to avoid "the organizational proactivity of the Head of State" in "the game of appointments and removals" and in the control of the legislative agenda by the Executive, the concentration of power based on the hegemonic or dominant political party, the involvement of other "capabilities" in controlling legislative agenda – in purely clientelistic or patrimonial purposes, or in purely political benefit of the power holders (Nowotarski, 2012: 7).

The political practice of the last decade shows that the reserve and the fear of the authors of Romanian Constitution to establish a "genuine semi-presidentialism" with a forte President, of French inspiration, proved to be founded. Given that the current constitutional design has not prevented the President's interferences with the constitutional powers of the Government, President's expressing of the his memberships to the party that held the majority in Parliament and, thereby, President's non-assuming of the constitutional role of equidistant mediator in State and society, a change of the Constitution in the requested sense – that of consolidation or strengthening the presidential powers in order to gain some "levers" whereby the President could provide "an output" in cases of "constitutional crisis" – would only increase the risk of system presidentialization, of "hypertrophying the presidential powers" and of unbalancing the power in favour of the President, "who is thus able to resolve in his favour any obstacles or conflicts with another political body" (Canas, 2004: 98, n 7).

Given that Romania is the only form of semi-presidentialism has faced in the last two successive presidential terms – 2005-2009, 2010-2014 – two suspensions of the President in the Romanian Parliament, many intra-executive conflicts between 2005-2009 and 2012-2014 – all absolutely atypical for any Western liberal democracy – although the semi-presidentialism in Romania until 2004, except a case of unconstitutional decision and two situations of intra-executive tension, was evaluated as "uncontroversial", "stable" (Elgie, 2007a: 5) and, like other premier-presidential countries, "with an improvement or no decline in democratic performance" (cf. Elgie, 2011: 162), as maintaining itself "balanced" (Elgie, 2005: 98-112) as have expected the authors of the Romanian Constitution from 1991, an increase of presidential attributions and prerogatives would be obviously undesirable.

Conclusion

In what form and to what extent would be appropriate for Romania at present an approach of "constitutional engineering"? Sartori believes that, in general, such an approach would ensure "the deductive coherence of the legal universe" and the coherence of the structure of "appropriate incentives" or "awards and penalties" intended for the "class of power" engaged in organizing the state. In respect of the optimized design of the political institutions in the form of Constitutions, Sartori showed that the telos or quintessence of Constitutions is to be "instruments which restrict, obligate and bring under control the exercise of political power", "forms which structure and discipline the processes of state decision-making" and designed "schemes of governing" which "satisfy the exigencies of governability" (Sartori, 2008: 267, 271, 272). He also considered that is desirable a stability of the constitutions and that even the French semi-presidentialism is established more by the material constitution than by the formal Constitution.

The material constitution, as Sartori understood it, has a special significance in "flexibilizing" the formal Constitution. Therefore, an important role in the interpreting the political systems is played by the material constitution, by which is meant usually "the

tradition", the informal rules or "the constitutional conventions" sanctioned by a long political practice. The taking into account of the material constitution assumes, in fact, the capitalization of a "long-standing tradition of conceiving the constitutions as containing much more than constitutional law". According to it, "many elements of the Constitution will have to be looked for elsewhere than in the primary document labelled the Constitution", given that "the facts are stronger then constitutions" (Léon Duguit) and that "the 'law in books' is not necessarily the same as the law in action" (Roscoe Pound) (Turpin, Tomkins, 2012: 3).

In the definition of the famous constitutionalist A. V. Dicey, the constitutional conventions effectively limit government in the absence of legal limitation, these conventions being, "in effect, social rules arising within the practices of the political community which impose important, but non-legal, limits on government powers" and prevent thus the discretionary use of power. Because they specify how the powers (legislative, executive and judicial) are to be exercised, the role of the constitutional conventions lies in effectively limitations of the government in the absence of legal limitation (Waluchow, 2012).

Through this prism of interpretation, a new focusing on the constitutional design and on the present arrangement of the power centers is seen as having relevance in Romania only within a period of time sufficient so as to register an "evolution of the material constitution" (Sartori, 2008: 318), i.e. an evolution in terms of "living" content of fundamental law A evolution of the material constitution would be necessary in order that the Romanian society, politics and civil, to use the means for prevention, restriction and annihilation of any autocratic or deviant behavior, the politicians and voters to disavow and sanction (or not to maintain) an opportunistic or "pragmatic" party-system, the selection of politicians to impose predominantly, if not exclusively, meritocratic criteria, i.e. mainly: the respecting the fundamental law in its letter and spirit and the quality of political-decisional act in the public interest.

The public rejection of the requests to increase the presidential attributions indicates that the Romanian public and experts consider that these would radically unbalance the functioning of the political system and that in Romania does not work the material constitution of the kind that made from the General de Gaulle a "strong" semi-presidential President, but only that that requires the tools to counteracting "the expanding" of presidential power. This is also because the Romanians did not have the revelation of a major political figures as was de Gaulle's and because the Romanian political class failed to uphold and affirm such a personality.

As such, an eventual corrective approach of "constitutional engineering" might concern only (a) the explanation of the presidential function of "mediation between state powers and between state and society" and (b) the specification of the scope and forms of manifesting the transactional relationship between the President and other power centers, prime minister primarily, so as the president to "materialize" in an appropriate manner the equidistance of the role to "guard" the observance of the Constitution and the proper functioning of public authorities".

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ORIGINAL PAPER

The Amparo Procedure – Institutional Mean of Realizing the Constitutional Justice

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Abstract
The article focuses on describing the institution of amparo as an instrument for protecting the fundamental rights and freedoms, by emphasizing the role of the actors of amparo proceedings: the claimant and the defendant. The main principle of this proceeding is that of bilateralism, mainly the existence of opposing parties in a determined juridical issue. The claimant (the injured party) can be a person (both natural and artificial), a public entity or an injured third party. The defendant (the injuring part) can be a public authority, a private person or an entity.

Keywords: amparo, legal protection of fundamental rights and freedoms, injured party, injuring party, public authorities, Defendant of the People.

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This comparative legal analysis on the institution of amparo as an instrument for the protection of fundamental rights and freedoms is focused on the actors of the amparo proceedings: the claimant – the injured party and the defendant – the injuring part. The final part of this study will be published in the future numbers of Romanian Journal of Comparative Law and will follow the coordinates of the amparo action and its juridical effects: the sphere of the protected rights and freedoms, the lesion, the actions or omissions that are causing the lesion, the principles of the amparo proceedings.

The actors of the amparo proceedings

The fundamental principle characterizing the amparo proceeding as a means of protecting fundamental rights and freedoms is the principle of bilateralism (Brewer-Carías, 2009: 179), involving the existence of several opposing parties in a determined juridical issue. The general effect of the principle consists in the fact that, as a rule, starting the amparo proceeding implies filing a petition by a person with an interest in the matter, since the court cannot act *ex officio* (as an exception, in Guatemala and Honduras, the legislation on "amparo" institutes the obligation of the court to act ex officio and initiate specific procedures of protection when they know about injuring acts or actions against any rights). Thus, the initiation of such proceedings for the protection of rights requires the filing of an action, appeal or complaint within a jurisdiction by a claimant (the injured party) against a defendant or defendants (the injuring party or parties) as a result of the alleged prejudice to the constitutional rights of the former by the latter.

The claimant – the injured party

The injured party is, as a matter of principle, the person whose constitutional right was violated and who thus has a personal interest in filing a petition with a court for the purpose of ensuring the protection of the prejudiced right. From this perspective, the amparo action appears as an *in personam* action for the protection of the rights of a claimant who must have suffered an injury, a prejudice or harm to his or her rights and who has a legitimate personal interest in finding relief (Brewer-Carías, 2009: 181).

The national regulations on the amparo confirm the personal nature of the proceedings, also configuring the concept of "injured party" who may bring such an action to court as "any natural or artificial person whose constitutional rights are harmed or that are in a situation of imminent danger of being harmed by any disposition, act or resolution, and in general, by any action or omission from any public officer, authority or its agents" – art. 23 of Nicaraguan Amparo Law no. 49-1988 (http://www.bcn.gob.ni/banco/legislacion/Ley%20de%20Amparo.pdf). Therefore, in order to legally describe the active subject of the amparo proceeding – the injured party, certain aspects must be analysed: the capacity to stand in court and the status of the claimant as a human being, natural or artificial person under private or public law; the possibility for public entities such as Public Prosecutors or People's Defendants to file an *amparo* suit; or the possibility for a third party to intervene in favour of the claimant in the trial (Brewer-Carías, 2009: 181).

The injured persons standing in the amparo suit

The personal or subjective character of the action brought to court in an amparo suit qualifies the claimant as the person whose constitutional rights have been injured or threatened to be injured, excluding the possibility to start such an action with regard to the rights of another person on his/her behalf. Thus, the claimant in an amparo suit has to

justify a personal, legitimate and direct interest in order to stand *in personam* in a court of law or through his/her legal representative (Brewer-Carías, 2009: 181).

Although the general rule refers to the personal nature of the action in an amparo suit, the claimant standing *ad causam* for the legal protection of his/her rights, certain regulations in the amparo field in the states of Latin America also consecrate the possibility to stand *ad processum*, having the capacity to use the judicial proceedings for his/her own interest, as well as with regard to other people's rights (Salgado, 1987: 81; Camazano, 2005: 162).

a) Natural persons

The principle consecrated by the Latin American regulations in the amparo field is that any individual, natural person is entitled to protect his or her constitutional rights injured or threatened to be injured by such an action, regardless of nationality or citizenship. This happens as a result from the use in these regulations of the generic term "person" without referring to his or her belonging to a certain state or community of individuals, so the foreigners and stateless persons can also enjoy this legal means of protecting fundamental rights.

Moreover, the extensive interpretation of the amparo regulations by certain supreme courts has allowed access to this proceeding to the persons outside the geographical area within which the law is applicable if their rights have been infringed within this area. In Venezuela, art. 1 of Law *Amparo* of 27 September 1988 (*Ley Orgánica de Amparo sobre Derechos y Garantías Constitucionales* http://www.mipunto.com/venezuelavirtual/leyesdevenezuela/leyesorganicas/leyorganica_deamparosobrederechosy_garantiasconstitucionales.html) establishes that the *amparo* action may be started by "all natural persons inhabitants of the Republic". The restrictive semantic nature of the regulation by referring to those persons living in the Republic, residents or tourists or even transitory persons, has been extensively interpreted by the Supreme Court of Justice of this state by a decision of 27 August 1993, as aiming at any person living or not in the Republic "whose constitutional rights and guarantees have been directly injured or threatened by an act, action or omission carried out or produced in the Republic" (Gazdik, 2001: 98-99).

Minors have the capacity to stand *ad causam* in an amparo suit, but they lack the possibility to stand *ad processum*, this taking place by their legal representatives. As an exception, in Mexico, the Amparo Law (*Ley de amparo, reglamentaria de los artículos 103 y 107 de la Constitución política de los Estados Unidos Mexicanos)* (http://www.diputados.gob.mx/LeyesBiblio/pdf/20.pdf) stipulates under art. 6 that the minor may ask for amparo protection without the intervention of his/her legal representative when the latter is absent or affected, and in this case the court, without being prevented from taking emergency measures, must appoint a representative for the minor who should act during the trial. In Columbia as well, by art. 10 of Decree no. 2591 of 1991 on *acción de tutela*, it is established that the request for protection may be exercised at any moment, in any place, for any person whose fundamental rights have been infringed or threatened, deciding personally or by a representative (http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5304).

Another exception from the rule established in the matter, in accordance with which natural persons have the capacity to defend their rights before a court, is the situation of a an action of habeas corpus when due to the fact that the person whose rights have been injured is deprived of liberty, being in custody, the amparo proceeding may be started by any person on his/her behalf or on behalf of the injured person. Thus, in

Ecuador, pursuant to art. 48 of *Ley de control constitucional* (http://ecuador.justia.com/nacionales/leyes/ley-de-control-constitucional/gdoc/), the amparo appeal may be filed by any official agent justifying the impossibility of the injured person to act in this respect on condition that the decision is ratified within 3 days. In Uruguay, *Ley de amparo no. 16.011* of 1988 provides that in case the injured party or his/her representative cannot file an action, any person is entitled to do so personally.

b) Artificial persons

Just like natural persons, artificial persons may be the holders of an amparo action for the protection of the inherent and recognized constitutional rights, such as the right to appear in a court of law, economic rights, freedom of property, the exercise of the action being accomplished by their legal representatives. The amparo protection of the constitutional rights of artificial persons is legally recognized by considering their possibility to be holders of fundamental rights and freedoms, in this sense, the Supreme Court of Justice of Venezuela, by the Decision of 2 October 1997 (Brewer-Carías, 2009: 188), stating that: "it is undoubted that artificial persons, and consequently, political-territorial entities can be holders of the majority of rights enshrined in the Constitution (…)".

As for the possibility of artificial persons to file an amparo suit, it is necessary to specify several aspects.

First of all, one should emphasize the fact that the admissibility of the action depends on the actual existence of an injury against a right or freedom whose holder is the artificial person, therefore, as the Constitutional Chamber of Costa Rica (Brewer-Carías, 2009: 188) argued "the object and matter of amparo is not to guarantee in an abstract way the enforcement of the Constitution, but to protect against the threats and violations of fundamental rights of persons". From this perspective, the amparo action cannot have as an object the violation of the constitutional provisions by means of legal norms (Valle, 2001: 235).

Secondly, it is necessary to specify that the group of artificial persons which can bring an amparo action to court may include associations and foundations, societies and unions, political parties, as well as political-territorial public authorities. Although the essence of the amparo proceedings aim at a means of protecting private individuals, natural or artificial persons under private law, first against the state and its structures, public authorities or entities, at present, taking into account that the artificial persons under public law may be holders of fundamental rights, it is possible for such persons to file an amparo suit for the protection of these rights.

Thus, in Uruguay, Ley de amparo refers in art. 1 to public or private artificial persons, and in Venezuela, the Constitutional Chamber of the Supreme Court decided in 2000 that "the political-territorial entities as the States and the Municipalities, can (…) file amparo suits for the protection of the rights and liberties they can be holders of, as the right to due process, or the right to equality or to the retroactivity of the law" (Brewer-Carías, 2009: 190).

In Argentina, after the economic protection measures taken by the state in 2001, the federate state San Luis (San Luis Province) filed an amparo suit against the federal state Argentina for the protection of the constitutional rights to property in the context of *freezing* all the financial resources in American dollars and transforming them in devalued national currency, pesos. The Supreme Court, by the decision of 5 March 2003, San Luis case, admitted the amparo action initiated by the federate state San Luis, an artificial person under public law, and ordered the Central Bank of the Argentinean Nation "to

reimburse to the Province of San Luis the amounts of North American dollars deposited, or its equivalent in pesos at the value on the day of payments, according to the rate of selling of the free market of exchange" (Lazzarini, 1987: 238-240).

Along the same line, in Mexico, art. 9 of Amparo Law (http://www.diputados.gob.mx/LeyesBiblio/pdf/20.pdf) expressly stipulate that artificial persons under public law can file an amparo suit, but only with regard to the affected economic interests of these persons (*los intereses patrimoniales*). But this is the only case in which a person under public law could start such an amparo action because it would cause a conflict between the state authorities, in this respect the Supreme Court (Mac-Gregor, 2002: 244-245) stating that "it is absurd to pretend that a public dependency of the Executive could invoke the violation of individual guaranties seeking protection against acts of other public entities also acting within the Executive branch of government" or that "it is not possible to concede the extraordinary remedy of amparo to organs of the state against acts of the state itself manifested through other of its agencies, since this would establish a conflict of sovereign powers (…)".

Similarly, in Germany and Austria, the local communities or groups of such communities can file an amparo suit before the Federal Constitutional Tribunal in case their autonomy or self-government rights guaranteed at constitutional level have been injured by a federal law (Brewer-Carías, 2009: 191; Reyes, 2002: 25).

Public entities standing in the amparo suit

Although the amparo suit appears as an *in personam* action, under certain circumstances, when it concerns rights exercised in a community or of a diffuse nature, this can be initiated on behalf of groups of persons such as Public Prosecutors or the Defendant of the People (Brewer-Carías, 2009: 202-205).

a) The Defendant of the People

Besides the specific and original amparo proceedings for the protection of rights, the Latin American law systems also created independent constitutional institutions specialized in ensuring the protection of personal rights. It is about autonomous public entities whose origin lies in the Scandinavian Ombudsman institution, which enjoys certain competences with regard to the protection of personal rights concerning the activity of Public Administration and which appear under different names, such as the Defendant of the People (Argentina), People's Defendant (Paraguay) or Procurator on Human Rights (Guatemala).

Other such entities from states of Latin America enjoy a larger independence, concerning not only the protection of the rights exercised in relation to Public Administration, but also Parliament or other governmental authorities: People's Defendant (Venezuela, Columbia, Ecuadorand, Bolivia), Procurator for the Defense of Human Rights (El Salvador, Nicaragua), Commission on Human Rights (Mexico), People's Defendant Office (Peru).

The main characteristic of these public institutions for the protection of constitutional rights consists in their general competence to file amparo suits with regard to the injuries caused to collective rights (rights of political participation) or of a diffuse consecration (the right to a healthy environment or the rights of indigenous people). In this respect, the Constitutional Chamber of the Supreme Court of Venezuela stated that "as a matter of law, the Defender has standing to bring to suit actions aimed at enforcing the diffuse and collective rights or interests; not being necessary the requirement of the acquiescence of the society it acts on behalf of for the exercise of the action. The Defender

of the People is given legitimate interest to act in a process defending a right granted to it by the Constitution itself, consisting in protecting the society or groups in it (...)" (Brewer-Carías, 2009: 204-205).

b) Other public officers

The implementation at the state level of the European model of the Ombudsman had as a result the recognition of the exclusiveness of their activity as independent entities for the protection of human rights and, consequently, the absence or limitations of the intervention of other public authorities in this field. In these states in which these public entities of European origin were not created or whose activity is limited by their purpose, the competence to file an action of the amparo type for the protection of human rights was granted to other public entities such as the Public Prosecutors or the Attorney General.

In the United States of America, the main public authority entrusted with the protection of human rights is the Attorney General, whose competence to introduce injunctions was recognized with the Supreme Court Decision in Brown v. Board of Education of Topeka Case, 347 U.S. 483 (1954); 349 U.S. (1955) (Brewer-Carías, 2009: 206). The precedent created in the field of education, corroborated with the dispositions of the Civil Rights Act of 1957, 1960, 1964, 1968, led to the authorization of Attorney General on the part of the American Congress to introduce injunctions with a view to ensuring the protection of human rights, mainly based on the Fifteenth Amendment of the American Constitution relating to the right to vote, and also regarding other rights of such domains as public accommodations, state facilities, public schools, employments, housing etc. (Fiss, 1978: 21).

Certain states of Latin America recognize the competence of some public authorities like Public prosecutors, or jointly with the institution of the Ombudsman, to bring amparo actions to court for the protection of collective or diffuse rights, by excluding any other public or private entities. Thus, in Argentina the General Prosecutor may exercise the competence to file an amparo suit (Sagües, 2006: 59); similarly, in Mexico, in accordance with art. 5, 1, IV, the Federal Public Ministry, through the Federal Public Prosecutor may start such actions in criminal and family cases, with the exception of civil or commercial cases (http://www.diputados.gob.mx/LeyesBiblio/pdf/20.pdf).

The exclusion of any other public authorities from the exercise of the competence to file amparo suits results from the case-law of certain Latino-American supreme courts. In Venezuela, the Constitutional Chamber of the Supreme Tribunal, by the Decision of 21 November 2000, rejected an amparo action filed by the Governor of a federate state, motivating that the federate states cannot bring such actions for the protection of collective or diffuse rights unless they are expressly authorized by law in this respect (Brewer-Carías, 2009: 208; Chavero, 2001: 115). This practice was resumed by the Decision nº 656 of 6 May 2001, occasion on which the supreme court refused the competence of the Governors or mayors to file collective amparo actions, motivating that: "the Venezuelan State, as such, lacks, since it has mechanisms and other means to cease the damage caused to those rights and interests, especially through administrative procedures" and concluding that "within the structure of the State (…) the only one who is able to protect individuals in matters of collective or diffuse interests is the Defender of the People (in any of its scopes: national, state, county or special). The Public Prosecutor, the Mayors, or the Municipal auditors lack both such attribution and the action (unless the law grants them both)" (Brewer-Carías, 2009: 208).

The injured third party in the amparo suit

Besides the two above-mentioned subjects with legal rights, who may bring an action to court and appear in an amparo lawsuit, the injured party or those public entities entrusted with the protection of fundamental rights, it is possible for a third party to join the petition of the claimant and intervene in the trial, in the context within which the injuring action or omission brought to court affect his or her fundamental rights as well (Brewer-Carías, 2009: 209).

The courts may accept the intervention requests of the injured third parties when they prove a unity of interest in the subject matter of the proceeding and who are entitled to, and seek the same character of relief. Thus, in Mexico, in accordance with article 5, III ofthe Amparo Law (http://www.diputados.gob.mx/LeyesBiblio/pdf/20.pdf), the affected third party or parties have the possibility to intervene in an amparo suit in the following cases: a) The counterpart of the injured when the claimed act is issued in a noncriminal trial or controversy, or any of the parties in the same trial when the amparo is filed by a person strange to the procedure; b) The offended or the persons that according to the law have right to have the damage repaired or to demand for civil liability derived from the commitment of the crime in amparo suits filed against criminal judicial decisions, when the latter affects the reparation or the liability; c) The person or persons that have argued in their own favour regarding the challenged act against which the amparo is filed when being acts adopted by authorities other than judicial or labour; or that without arguing in their favour, they have direct interest in the subsistence of the challenged act. (http://www.diputados.gob.mx/LeyesBiblio/pdf/20.pdf).

In Guatemala, too, art. 34 of *Ley de Amparo, Exhibición Personal y Constitucionalidad* of 1986 provides that "the authority, the person denounced or the claimant, if they arrive to know of any person with direct interest in the subject matter or the suspension of the challenged act, resolution or procedure, whether because they are party in the proceedings or because they have any other legal relation and with the exposed situation, are obliged to make it known to the court, indicating the name and address and in a brief way, the relation with such interest. In this case the court must hear the referred person, as well as the Public prosecutor, considered as a party" (http://www.mintrabajo.gob.gt/index.php/leyes-y-convenios/leyes-constitucionales/55-ley-de-amparo-exhibicion-personal-y-constitucionalidad.html). It is necessary to specify that in the states of Latin America, before the implementation on a large scale of the People's Defendant institution, in the amparo suits or in the habeas corpus cases, it was the competence of the Public Prosecutors which was recognized, as a general guarantee of fundamental rights, competence to intervene and participate in the trial as a *bona fide* third party, a fact which has been preserved in certain states in the present context as well (Mexico, Argentina, Venezuela).

The defendant – the injuring part

The principle of bilateralism, as a fundamental principle with characterize the amparo proceeding, requires that the plaintiff that fill the protective action of a right, freedom or guarantee of constitutional value, must individualize the injuring party, which, by its actions or omissions, have caused the seized lesion. So, in the amparo proceedings, a person or a public entity must necessarily be individualized as a defendant.

The bilateral nature of amparo impose therefore the establishing of a procedural relation between the injured party and the injuring party, both parties being participants in the amparo proceeding. In this sense, the Supreme Court of Venezuela, in the Haydée

Casanova Case of December 15, 1992, stated that "the amparo action set forth in the Constitution, and regulated in the Organic Amparo law, has among its fundamental characteristic its basic personal or subjective character, which implies that a direct, specific and undutiful relation must exist between the person claiming for the protection of his rights, and the person purported to have originated the disturbance, who is to be the one with standing to act as defendant or the person against whom the action is filed. In other words, it is necessary, for granting an amparo, that the person signalled as the injurer to be in the end, the one originating the harm" (Brewer-Carías, 2009: 289-290).

The individuation of the defendant

As a general rule, from the formulation of the complaint filed by the injured party in an amapro suite it must be identified the injuring party, public authority, private person or entity. In the situation that the plaintiff cannot identify exactly or not the defendant, the judge, in order to guaranty the procedural bilateral relation, must provide the necessary means in order to determine it, as it stipulates the Paraguayan Civil Procedure Code in art. 569.b (Pangrazio, Pettit, 2009), or must designate a public defendant to take part and represent it during the case, as it is provided in the Uruguayan Amparo Law in art. 7 (Brewer-Carías, 2009: 290). In an amparo suite, the individualization of the defendant is necessary, but more important is providing legal protection to the person whose right or freedom has been lesion, so that, in the case that only the lesion fact or omission could be clearly identified, and not the injuring party, the complaint of the plaintiff will be filled: "the amparo action trends to focus on the damaging act and only in an accessory way on its author" (Salgado, 1987: 92), "more to restore the harmed constitutional rights, than to individualize the author of the injury" (Lazzarini, 1987: 274).

Even in these situations, however, it continues the general obligation of the injured party to try to identify the author of the lesion caused, the complaint may be dismissed if it is proved that the intention of the plaintiff was in the sense of compelling the court to conduct to an individualization that belonged as an obligation of the injured party. Thus, the Argentinean Supreme Court, in the Juan D. Perón case, rejected an amparo action because the lack of a "minimal individualization of the author of the act originating the claim", the plaintiff seeking only to obtain an order from the courts to practice the necessary inquiries regarding the whereabouts of the body of his dead wife: "the general principles of procedural law do not suffer any exception due to the exceptional character of the amparo and must be respected in order to eventually assure the exercise of the right to defense, from which the counterpart must not be deprived… This is evident from the text of the suit in which it is affirmed that the act provoking the claim has been executed by disposition of the former Provisional Governmen without adding any other reference or explanation regarding the pointed public officer or entity. It is evident that *the minimal requirement of individualization of the defendant, referred above, has not been accomplished in the case*. On the contrary what is revealed in the files of this case, is that in lieu of seeking protection to his constitutional guaranties harmed by an illegal State act, *the plaintiff has intended to use the amparo procedure with the purpose of obtaining from the judges the order to practice the necessary inquiries regarding the facts, which are not proved or specified with precision.* And it is clear that the performance of the instruction phase cannot be achieved by means of this amparo remedy whose incorporation to Argentinean positive law has purposes different to the one pursued in this case" (Brewer-Carías, 2009: 291; Lazzarini, 1987: 275).

In the cases of amparo actions against artificial persons of public or private law, the complaint, on the one hand, must identify both the artificial person and its representatives, and, on the other hand, can be filled directly against the natural person that represents the artificial person or against the artificial entity in itself (Brewer-Carías, 2009: 293). The bilateral juridical relation resulting from an amparo suite cannot be affected by the changes of the natural persons representing the injuring party, public entity or private corporation, the artificial person remaining the responsible author of the produced lesion.

The public authorities as a defendant in the amparo suit

The amparo proceeding was initially created as a mean to protect the constitutional rights and freedoms against the lesion actions or omissions from the State. Thus, the main "negative actors" in this legal protective procedure, the defendant, are the public authorities, public entities and public officers. The Mexican traditional conception regarding the generic author of the lesion in an amparo suite it is maintained in all Latin-American States. It should be noted that the majority of Latin-American legal systems recognized in addition to amparo against public authorities, the amparo against individuals or private persons, only a minority of states keeping exclusively the traditional conception (Mexico, Brazil, El Salvador, Panama and Nicaragua).

Regarding the public authority as a defendant in the amparo suit, it must be observed which are the public entities or public officers against it can be filled an amparo action. The Mexican Constitution of 1917, art. 103, states that the federal courts shall decide all controversies that arise out of law or acts of the "authorities" that violate individual guarantees, and the Article 11 of Mexican Amparo Law points that "the authority responsible is the one who edicts, promulgates, orders, executes or tries to execute the statute or the claimed act".

But not all public entities can be considered as "authorities", only the ones "that are empowered to adopt decisions and to impose or execute them to individuals by use of coactive public power" (Brewer-Carías, 2009: 297), with the exclusion of those "with purely staff or consultative nature" (Human Right's Defendant or autonomous universities). The plaintiff should identify the "authority" that has been the cause of the lesion indicating both those who have ordered the injuring action and those who had executed it. Unlike the Mexican example, in the majority of Latin-American states the term of "authority" it is used in a wide sense, being applied to any "public authority", public entities and public officers, regardless of its powers and competences. Only in Ecuador, Article 46 of the Amparo law states that the amparo can be filled against "public administration authorities", with the excluding of those public authorities that do not belong to the Executive branch.

The individuals or private persons as a defendant in the amparo suit

The amparo against individuals or private persons was for the first time admitted in Argentina, the Supreme Court of the Nation ruling in 1958 in the Samuel Kot case that "nothing in the letter and spirit of the Constitution allows for the assertion that the protection of constitutional rights is circumscribed only to attacks from the State" (Brewer-Carías, 2009: 300). After this decision, in the majority of the Latin-American states was admitted that the amparo action it is possible to be filled against any individual's act or omission causing a lesion in the exercise of constitutional rights of others.

In Venezuela, the Organic Law of Amparo of 1988 states in art. 2 that the amparo action "shall be admitted against any fact, act or omission from citizens, legal entities, private groups or organizations that have violated, violates or threaten to violate any of the constitutional guaranties or rights" (Gazdik, 2001). Also, the Uruguayan Amparo Law of 1988, provides in its first Article that the amparo action can be filled "against any act, omission or fact of the state or public sector authorities, as well as individuals that currently or imminently, manifestly and unlawfully impair, restrict, alter or threaten any of the rights and freedoms expressly or implicitly recognized by the Constitution". Some Latin-American states, like Guatemala, Costa Rica, Honduras, Ecuador and Colombia, admit the amparo against individuals in restricted way: only against those private persons "in a position of superiority regarding citizens or that in some way, exercise public functions or activities, or are rendering public services or public utilities" (Brewer-Carías, 2009: 303).

Conclusions

A first conclusion that must be aimed reveals that the claimant in an amparo proceeding can be a natural or artificial person as a general rule, but in some determined cases a public entity can stand in an amparo suit and also a third party can join the petition of the claimant and intervene in the trial.

A second conclusion that arises concerns the defendant or the injuring part, the majority of Latin-American legal systems recognizing that the amparo action can be filled both against public authorities and against individuals or private natural or artificial persons, and only a minority of states keeping exclusively the traditional conception of the amparo as a mean to protect the constitutional rights and freedoms against the lesion actions or omissions from the State (Mexico, Brazil, El Salvador, Panama and Nicaragua).

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ORIGINAL PAPER

Civic Engagement and Citizen Participation in Local Governance: Innovations in Civil Society Research

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Abstract
The relationship between civic engagement and citizen participation has become recently a key political research. What is less known is the connection between the two and the local governance in civil society research? Does this relationship mattersin terms of society research whether it reflects citizenship? Does it matter whether the civic and political activities explore the membership patterns with a relative impact on group dynamics? This article evaluates the influence of policy process and democratic procedures on civic engagement and citizen's participation. More precisely, we investigate the extent to which the impact of the models of associational involvement surrounds the notions of "civic engagement" and "citizen participation". Our findings indicate that while civic engagement is relatively associated to citizen participation and to the other recent innovations in civil society research: civic community, cultural governance and participatory governance. Under these circumstances, civic engagement and citizen participation have become two more consolidated factors in the local building at a time when participation and engagement need to correspond in fact to a participatory policy of self-involvement.

Keywords: civic engagement, citizen participation, local governance, cultural governance, participatory governance.

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Introduction

Over the last two decades, we have acknowledged a growing interest in civic engagement and political participation in the new established concept of "local governance". Much of these studies interest is justified by the influence of the latest innovation in civil society research and the other signs of public involvement: civic engagement and citizen participation, community democratization and local governance, political change and public participation, citizen participation and active involvement, civic and political activities, partnership and leadership etc.

This article evaluates the influence of policy process and democratic procedures on civic engagement and citizen participation. More precisely, we investigate the extent to which the impact of the models of associational involvement surrounds the notions of "civic engagement" and "citizen participation". This paper also addresses the question "does civic engagement work?". It argues that the simple answer involves both the principles and ideals of civic engagement and the contemporary expressions of the voluntary activity and social transformations.

During the last twenty years, growing number of analysts and practitioners recognize and connect the civil societies to the policy process and democratic procedures of social trust in new democracies. Most importantly for public field is that the methods and circumstances for assessing civic engagement are also required to support the democracy assistance, the reform programs and the citizenship outcomes such as"t*he individual civic capacities and dispositions and social bonds of civic reciprocity and trust*" (Wichowsky and Moynihan, 2008: 908-920). Significant problems and methodological assessment state to achieve and develop the political change arguing that"*political involvement not only reflects instrumental concern with political outcomes, but also involves normative motivations such as commitment to collective ideals*" (Straughn and Andriot, 2011: 556-557; Wichowsky and Moynihan, 2008: 908-920).

Such a distinction between political involvement and the collective ideals is both useful for the studies of political society and also for civil society research. This is because of the realm of participatory actions that effectively include many activities from being considered as forms of civic engagement and political participation by placing them under the influence of the local governance influence. Nevertheless, Papadopoulos and Warin aim to establish a connection "between normative democratic theory" and the research focused on policy formulation and implementation by noting the growth of various participatory forms, procedures and strategies in policy making (Papadopoulos and Warin, 2007: 445-472). Based on this participatory framework, the authors focus on the conceptual framework and the related theories used for the study and implementation of these procedures, which mainly focus on the "participatory and deliberative democratic" theory and on the literature connecting "government" to governance" (Papadopoulos and Warin, 2007: 445-472).

Civic engagement and citizen participation: an overview of the literature

Recent studies of deliberative civic engagement and citizen participation linking the policy and / or public involvement to public participation found that the meaning of all three concepts are legally interpreted the same as they all involve participation. In this context, we have to note three general conceptions of citizen participation as follows: 1. the first refers to civic participation in political, social, administrative activities; 2. the second refers to citizens' participation used as citizens' actions and interests showing that

the necessity of citizen participation and active involvement in civil society concentrate a two-level process of "community engagement" (Scerri and James 2010: 219-236).

The relationship between civic engagement and citizen participation has become recently a key political research. What is less known is the connection between the citizen participation and engagement and the local governance in civil society research. This reflects an overall politics interest regarding the mechanisms and instruments of activism in civil society research. Harriger argues that the level of deliberative dialogue and the development of democratic dispositions may influence the democratic system and the role of civic identity and community attachment (Harriger, 2014: 53-54).

At this point of the discussion, the article highlights the concept of citizen participation by taking into account whether the civic and political activities exploring the membership patterns with a relative impact on group dynamics. In addition, Sloam "compares and contrasts the civic and political engagement of young people" as "conventional forms of politics". What Sloam refers to as "conventional forms of politics" are "the core arguments that the forms of engagement practiced by young people are heavily structured in favourof highly educated and well-off citizens and that young people as a group have increasingly been marginalized from electoral politics" (Sloam, 2014; Harriger, 2014: 53-54).

Political changes have shifted civic participatory norms and values which in turn have engaged citizen's civic community engagement. Social-based participation norms are involving discussions of "social capital formation" and "informal measures of participation" particularly exploring the social activities, while norms of political participation provide other distinctive patterns of "labor market participation" (Platt, 2009: 670-671). The civic engagement repertoire and the norms of citizenship configure a multilevel analysis ranging from political system's effectiveness and legitimacy (Kotzian, 2014: 58-59). Citizens' attachment in a functioning polity and society are regularly called upon to the "individual-level characteristics" (Kotzian, 2014: 58). Drawing on the models of participation, Cornwall, Robins and Von Lieres argue that the instruments and mechanisms aimed "to enhance citizen engagement" and to contextualize "the normative dimensions of global narratives of participation and accountability" reflect the "empirical realities of civil society" (Cornwall, Robins and Von Lieres, 2011: 1-2). Secondly, the same authors argue that "the understandings trajectories of citizenship experience" and "the experience of civic engagement"draw attention to the diverse mechanisms of the social and political project while focusing on the "particular subject-positions and the forms of identification" of the "instantiations of citizenship" (Cornwall, Robins and Von Lieres, 2011: 1-2).

Globalizing civic engagement

Scholars have also criticized the relationship between participation in civic and political activities and the membership patterns with a relative impact on group dynamics and activities (Alexander, Barraket, Lewis et al., 2012: 43-58). According to the authors, "while associational intensity is positively related to civic engagement, associational scope (the number of group memberships per person), is a more influential determinant of the level of civic and political participation" (Alexander, Barraket, Lewis et al., 2012: 43-58). The picture that arises from the recent literature is of "globalizing civic engagement" depending upon the legal traditions and unitary structures of "global hierarchy of staff accountability" (Clark, 2003: 1-6; Alexander, Barraket, Lewis et al., 2012: 43-58). This shift beyond the basic representation of civic engagement summarizes

"the key governance challenges": partnership, leadership, international networking, conventional decision-making, accountability and policies of inter-governmental organizations (Clark, 2003). In this context, there is a unitary structure providing shared conditions and policy change. Societal networking involves conscious representation and involvement exemplified by the leadership patterns and models of decision-making through the historical institutionalism (Georgescu, 2014: 135-146). However, civic engagement due to common shared historical and social traditions and doctrines tends to formulate mass-action strategies and policies (Buzatu, 2011: 21-22). More importantly, this extensive typology does not take into account the political consequences regarded in the context of political engagement here considering the national, regional and local levels options and the enhanced policy responsiveness in the field of integration matters (Georgescu, 2014: 135-146).

The closest interpretation to the notion of "political engagement" including "the linking patterns" of "the use to civic and political engagement" are described by Mazzoleni using a wider typology of dimensions: communication, personalization of political leadership, political arena, political culture, mass media's power, political power, mass mobilization etc. (Mazzoleni, 2000: 35-43). Accordingly, the author argues that "discrimination and social exclusion experienced in everyday life inform the beliefs of subgroups of youth concerning whether the social contract between the state and citizens applies equally to all groups" (Mazzoleni, 2000: 35-43).

These concerns about civic engagement and mass-action strategies show that the "learning achieved through the combination of organizational work and mass action substantially developed community capacity" to pursue increase respect and equality of the social, cultural and traditional status of group activities. Thus, civic engagement may need to revisit the antecedents of specific social inequalities. By using citizen participation "to remedy democratic deficits", Öberg and Uba argue whether such participation is aimed to improve the "reason-based arguments" of the relationship between the citizens' contacts and the local authorities. According to Öberg and Uba's findings, "*the citizens deliver more reason-based input to democratic decision making" when they prepare and apply their interests and efforts in groups (collective level) than when they participate as individuals* (individual level) (Öberg and Uba, 2014; Clark, 2003).

This paper, therefore, challenges the several long-standing theories concerning the impact of the social structure of the community and the structural pluralism pattern influencing social system. Recently, there has been a concern about relationship between the social differentiation and the structural pluralism influencing community relationship, civic engagement and civic education. To give one example, we argue that the democratic theories of civic education and group deliberation increase individual and collective civic engagement and citizen participation and the ability to evaluate and deposit the respect for the positions and opinions of others. Other studies provide a systematic overview of the forms and types of civic engagement here included: social/ civic life, social engagement, public arena, political effectiveness, social capital (Gîrleșteanu, 2011).

Concurrently, the pluralistic patterns of participation impact and civic engagement conduct to an expanded range of topics covered by the civil society research focused on the challenges of the structural pluralism and the human capitals' outcomes. This way of thinking about the liberal arguments of engagement and participation opens up for analyses of definitions of political participation and the rationality in political actions. This new direction of thought is followed by the nature of the rationality perspective, the rationality of self-involvement, and the possibility of self-participation.

Secondly, the concept refers to human rationality as much more different as it is presented to be in the rational choice theory.It is considered that an extended newly range of topics is designed to provide "an alternative social and economic development paradigm to the dominant neoclassical/rational choice/human capital perspective" (Tolbert, Lyson and Irwin, 1998: 410-427). In this direction, the same authors argue that "local capitalism and civic engagement variables" are associated with positive and encouraging socioeconomic and cultural outcomes (Tolbert, Lyson and Irwin, 1998: 410-427). This implies different levels of civic engagement and citizen participation. At the same time, the nature of the civic engagement both determines the conceptual framework of social engagement and the political activities by expanding "the knowledge in several areas - political culture, political cognition, voting behaviour and political participation) (Dalton, 2000: 912-940). At the same time, Dalton admits that the often-cited definitions of civic engagement and citizen participation are in-between the "rapid expansion of the empirical knowledge more precisely the progress in collecting data to understand the role of the individual within the political process" and the four areas of political behaviourincluding all political, societal, sociological psychological factors such as: "the citizen politics" and its attributes: "modernization democratization", "political culture" and "cultural change", "process of voting choice", process of voting choice", "citizen participation in politics motivations at individual level" (Dalton, 2000: 912-940).

In order to focus on the need for such a framework, or more precisely, a new analysis, Cornwall identifies citizens' participation and engagement in political and social activities. Rather, the idea of "citizen involvement in public decision making" is to demonstrateon theone hand the traditional civic engagement and the conceptual confusion surrounding the notion of "citizen participation", and, on the other hand, the apparent decline of the notion of "public involvement". In this direction, Yang and Callahan address the citizen involvement efforts and the bureaucratic responsiveness by "*testing a framework that assumes the decision to involve citizens in administrative processes" and "reflecting administrative responsiveness to salient community stakeholders, normative values associated with citizen involvement, and administrative practicality*" (Yang and Callahan, 2007). Cornwall refers to "citizen participation" by noting the "remedial efforts" to involve "inactive citizens or clients" in government activity and strategies by including "autonomous citizen activities in the larger society, such as locality or community development, social planning, and social action" (Cornwall, 2002).

Civic community and public involvement

Focus here is not on the discussion about the theoretic decline of the "public involvement", but on the rise of the capture changes in citizen's engagement in a various mix of political and social activities. When analysing, citizens' levels of involvement in public life, Michles and De Graaf label civic engagement by extending the associational involvement with a functioning political system or a functioning democracy. Moreover, the authors focus on the relationship between citizensand government, local governance and local participation from "the citizens' perspective showing that the role of citizens in these projects is limited, serving mainly to provide information on the basis of which the government then makes decisions" (Michels and De Graaf, 2010; 477-491). In fact, this sparks a particular debate about the new patterns of public engagement at local level contributing to "to a higher degree of legitimacy of decisions". Following this, Dudley and Gitelson focus on the "the limited empirical knowledge available of the quality of civic life" (Dudley and Gitelson, 2003: 263-267; Dalton, 2000: 912-940).

Local state and local participation

Somewhat provocatively, Checkoway and Aldana argue that there are four form of civic engagement "for a socially-just diverse democracy" according to analytic categories and empirical studies by comparing them and raising questions for future researches (Checkoway and Aldana, 2013: 1894-1899). The authors are marked upon research in psychology, sociology, and other academic disciplines. In a manner of speaking, they explain the importance of "intergroup relations, multicultural education, social work, and other professional fields" (Checkoway and Aldana, 2013: 1894-1899). The main arguments that emerge from these assumptions refer to the relationship between civic engagement and the local community governance factors and items preserving different levels in the implementation of public policies (Kimoto, 2011: 27-43).

In this context, Font and Galais adopt a different strategy by constructing an explanatory analysis "of the procedural qualities of local participation" acknowledged in the local processes. The new multidimensional strategy captures the most important qualities of "the local participation" in the development of supra-local institutions (Font and Galais, 2011: 932-948). Other studies on local governance focus on the relations between society-local state-local governance. Sellers and Sun-Young Kwak argue that the "existing typologies of national infrastructures for local governance" have neglected the variables in the field of civil society focusing on the analysis of governmental institutions (Sellers and Sun-Young Kwak, 2011; Kimoto, 2011: 27-43). The effects of these variables depend on the influence of sociallocal actors as a predictor of specific patterns. In fact, local governance is based on the notion of multidimensional participation action, strategies and captures, but at the same time on the idea of civic engagement, citizen participation and civic community, through different collectives, most notably, of course, the local policy development. Local governance represents different segments of civil society and articulates the citizen participation and engagement. Making a distinction between the influences of different social local forms of political participation makes sense from another perspective as well.

The role of civic engagement has been receiving more and more attention in policy development and local government. This is intended to counter what Ostrander sees as a manifest form of "actual" community voluntary actions in relations of consolidated governance with the local governance. So far, civic engagement conventionally referred to actions that were intended "in opposition to local government as a separate towards parity in shared governance and in parallel to local government with but separate from local government as a way to influence that government" (Ostrander, 2013: 511-524).

The other factor of crucial importance for civic engagement in local governance is "people engage in society" such as "they discuss politics, follow political issues, write to editors, donate money, and recycle for environmental reasons" (Ekman and Amna, 2012: 291). Neither issue is easily identifiable, yet such studies have stressed the level of "civic engagement"at the local level noting the lack of consensus concerning the election of society representatives (Bărbieru, 2014: 190-200). Definitions of "civic engagement" as a "participatory process" in local community are presented "in the form of collaboration or joint action" (Ekman and Amna, 2012: 285). The latter encompasses the term "collaboration" and "joint action" and outlines the importance of capacity – building in participation management in the "civic community". Kim and Rokeach also propose their own definition of community engagement; it has basically to do with *"individuals' civic engagement (neighbourhood belonging, collective efficacy, and civic participation)" influenced by two main multilevel components related to the communication*

*infrastructure and network "focusing on ethnic heterogeneity and residential stability" (*Kim and Ball-Rokeach, 2006: 411-439; Ekman and Amna, 2012: 285).

More importantly, the new "objectivist conception of civil society"as "the anatomy of the dominant perspective on civil society" takes into account the kind of engagement that may be regarded as the "basic postulates" or the "dominant perspective" (Akman, 2012). This notion of the "objectivist conception" is based on "the need not so much to reject it outright but to try to transcend it by incorporating it in a wider and more encompassing framework" (Akman, 2012), but at the same time could be of great importance for "alternative conception of civil society". If we are interested in the objectivist understandings involving civility, social actors and toleration, we must not overlook such dimensions of the civil society "complemented by an alternative conception of civil society" (Akman, 2012).

As we have demonstrated so far, "civic engagement" and "citizen participation" have become something of a catch-all concept also emphasizing the access to local decision-making in recent years. Furthermore, the literature on "the access to local decision-making" and "citizen participation"stands out as promoting the "institutional measures" to "innovate the impact of the institutional design" (Van Eijk, 2014: 256-275; Gherghe, 2013: 19-24). Important aspects of the institutional measures to promote citizen participation and engagement are systematically overlooked, using "the differences between municipalities" and "variables at the institutional and political levels".

Other authors develop the idea of "the linkage between the processes and outcomes associated with government-organized public participation, including its potential to empower citizens in guiding administrative decisions" (Buckwalter, 2014: 573-574). Here, the idea is thus to enhance the level of participation measures, by constructing a new link between citizens and administrators. Turning next to the dual role of administrators in public empowerment, the idea is to emphasise that both its processes and outcomes "create the conditions for empowerment by shaping the venues in which the public participates and by providing information and other critical resources to build participant efficacy" (Buckwalter, 2014: 574-575).

Previous studies also paid attention to "participation" as a "popular buzz world of contemporary urban studies" implying "a deepening of democratic deliberation" (Silver, Scott and Kazepov, 2010: 453-477). Silver, Scott and Kazepov develop the idea that "rather than seeing participation as either consensus-building or conflicts of interest, as either a top-down or bottom-up process, the evidence suggests that it can be all of these" (Silver, Scott and Kazepov, 2010: 453-477; Buckwalter, 2014: 574-575). By adopting a more flexible position on the different "normative conceptions of democratic participation", the action squaring "participation" is directed towards influencing the political moments and phases of "policymaking, implementation and monitoring" (Silver, Scott and Kazepov, 2010: 453-477).

It is goal implemented or rational by illustrating the approachto "urban as a social laboratory". It is identified and can be scaled in order to observe "social life and multiple ways to perform democracy". It deals "with demographic and economic trajectories leading to urban outcomes"to influence "the development paths and local strategies" in society as they "appear on the agendas of politicians and urban planners until recently" (Wiechmann and Pallagst, 2012: 261-280). Other studies re-evaluate the neoliberal policies at the urban governance level raising questions concerning the extent of the analysis of key policies in local strategic partnerships (Fuller and Geddes, 2008).

So far, we have covered the manifest forms of "key policies" in local governance and political participation in our conceptual framework: different types such as neoliberal policies and the urban governance, as well as more oriented or "catch-all" concepts and forms of local strategies, like taking part in social actions / civic community and engaging in democratic deliberation.

Institutionalized participatory governance

It should be noted that we are in fact very close to the normative conceptions of democratic participation and in our way of understanding about what types of civic engagement constitute citizen participation, even if we include a more rational approach. What the above studies refer to as "civic engagement" and "political participation", "urban governance" and "democratic deliberation" are all included under the theoretic trajectories to perform democratic participation and the alternative framework, and what the majority of the studies call "social action" and "political participation" are covered by the discussion on the institutionalized participatory governance.

Other types of political participation and individual ownership, at the institutional level, cover what other scholars have referred to as "the conceptual and argumentative framework for studying how institutional design can enhance civic participation and ultimately increasing citizens' sense of democratic ownership of governmental processes" (Skelcher and Torfing, 2010: 71-72). As for the socio-political context for enhancing the democratic governance of "regulatory policies", the same authors highlight "the way in which civic participation and democratic ownership is given equal weight to economic competitiveness" (Skelcher and Torfing, 2010: 71-72). However, the potential for "institutionalized participatory governance" needs to relate directly to the democratic governance and the political institutional framework interacting with civil society. In this context, Holden argues the need for the selection of a sustainability indicator in the context of calls for more effective processes to "facilitate deliberative democracies in cities and the connection … between participatory means and ends in urban governance" (Holden, 2010).

In order to explore the political agenda or the political outcomes of the growing number of "participatory arrangements at the local level", governance may be examined by following "*the underlying patterns of logic that induce public authorities to develop new policy tools such as participatory arrangements"* (Bherer, 2010: 287-303). Here however, we deliberately can discuss the notion of "neighbourhood governance"since such forms of what was once considered policy agenda across Europe are recently associated with "innovation in both practice and service design" (Lowndes and Sullivan, 2008). Instead, Lowndes and Sullivan simply talk and make a special point out of distinguishing between four rationales for neighbourhood governance: civic, social, political and economic. Other scholars and analysts argue what role the public and the public interacting with the administrative sector should play in the sphere of public management (Thomas, 2013). Under these circumstances, Thomas identifies three principal roles "relative to public management *as customers, as partners, and as citizens*" in the history of public administration (Thomas, 2013).

Cultural governance

Also, under this heading Bang places "culture governance" in (or activity within) political authority and political community that deliberately stands outside the classic- the modern government and representative democracy" sphere, like new network-based

between "political authority and political community". Such forms of cultural governance concentrate "the de-centering of politics and policy as multiple discursive practices caring a new grand narrative too" (Bang, 2004: 157). Such expressions of politics and political community for political participation seem to fit both political and administrative analysis. The new connection isorganized in a hierarchical or dialogical way constituting "a formidable challenge and threat to democracy" as well (Bang, 2004: 157). Political engagement and democratic deliberation within network-based governance provides its institutions and authorities with a sense of "joined-up government", an opportunity to reasonable take a stand and organize politics. Cultural governance becomes concentrated to practices of public reasons for reforming institutions. A further review on the "project governance in linking policies to project" focuses exclusively on the public investments projects "according to the needs and priorities of the target group" (Tadege Shiferaw and Klakegg, 2012: 14-26). The analysis takes into account the development policies of government and outlines the impact factors on the project governance. Bae, Chang and Kang argue that the "national culture and investor protection" may interact with cultural governance and citizen participation in order to provide "the strong evidence that cultural differences matter" (Bae, Chang and Kang, 2012).

Also, at the historical level, public activism and encounters could come in the form of identifying "the great potential to overcome current limitations in understanding how public encounters can enhance the quality of services, decisions, and outcomes" (Bartels, 2013). Certain encounters and meetings are captured as a future agenda for developing it into a subject area. This is also a way for communities to directly influence the "face-to-face contact between public professionals and citizens, first identified as a key issue in public administration" (Bartels, 2013), and thus a rational form to examine the communicative practices and processes through which the administration encounters the citizens. Additional studies focus on "the role of youth socialization into civic life" and notably on "the development of youth civic activity and potential" (Matthews, Hempel and Howell, 2010).

In an emerging civic engagement and citizen participation literature, such debate is referred to as "the relationship between governance and government", focusing upon public arena, social and administrative hierarchies and networks considered as "principal modes of governance" (Bell, Hindmoor and Mols, 2010). Some forms of participation and governance, like the "exercise through persuasion" drawn also the attention to the role played by "the non-state actors" considering that "persuasion constitutes a further and distinctive mode of governance, one which inter-penetrates other modes of governance" (Bell, Hindmoor and Mols, 2010). At this point of the discussion, it is important to focus on the idea of "community activities' perceptions of citizenship roles in an urban community" (Hays, 2007). In this analysis, Hays addresses the "linkages and barriers between civic participation in urban communities" expressing the influence of community activists *"derived from civic engagement" that is quite different from those derived from political engagement* (Hays, 2007). In conclusion, we can present in a comparative analysis the networks and political participatory actions of in order to consider the political contexts and the role that different types of social and political networks have on participation. It is concluded that participatory networks may be sources compensating for the lack of theoretic framework, thus considering the use of citizen engagement and mobilization.

Conclusions

Previous research has paid more particular attention to those mechanisms and effects that lead to the decisions and public deliberation, but with much less knowledge and expertise on citizen participation. Building relationships between civic engagement and citizen participation is vital to mobilizing citizens in the context of the civic community and civic engagement. This can lead to obtaining public inputs in the decision-making process. Here, a reservoir of public inputs and decision-making trajectories could emerge. Our findings indicate that the civic engagement is relatively associated to citizen participation and to the other recent innovations in civil society research: civic community, cultural governance and participatory governance. Under these circumstances, civic engagement and citizen participation have become two more consolidated factors in the local building at a time when participation and engagement need to correspond in fact to a participatory policy of self-involvement. In conclusion, the present study contributes to the understanding of the linkages between the structural and functional antecedents of civic engagement and citizen participation by exploring a continuum political-civic-administrative relations and highlighting the mobilization a renewal hypotheses revisited of the concept of participation.

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ORIGINAL PAPER

From the Homeland Security to the Global Security Makeover: A Repraisal of the Practices and Institutions of International Public Law

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Abstract
There is currently a load center shift from the national sphere into the international sphere concerning the national security. The activity of the international organizations in this field of research interferes and sometimes overlaps, leading us to concluding the need of a pragmatic worldwide state security insurance policy, a policy where each international organization can bring their contribution. Furthermore, the present article focuses on the international community constituted out of all subjects of public international law and the international legal order is the elaboration and enforcement of public international law in this community.

***Keywords**:* national security, global security, international public law, security policies, international organizations.

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The concept of international law emerged in the nineteenth century, he was met along its evolution as the *ius gentium* (in Antiquity and a long period of the Middle Ages) or ius intergentes (until modern times). The international community is constituted out of all subjects of public international law and the international legal order is the elaboration and enforcement of public international law in this community. If in the national legislation social relations are regulated by legal norms issued by competent state authorities. In the international community such a supranational body does not exist, which required a different approach in this area. The need to regulate international relations lies in the imperative of positive governance of such relationships and in the establishment of limits within which states and international organizations can act. The adoption of international law is based on the parties agreement founded on the principle of sovereign equality in rights.

Unlike the internal law in which the public authorities legislative powers are constituted, in public international law, the legal basis of this right consists in the agreement of the sovereign states that make up the international community at a given time (Popescu, 1994: 33). The adoption only by consensus rules of public international law implicitly places this right in a coordination right posture, situation that makes it differ fundamentally from national law, which is regarded as a subordination right (Diaconu, 1995: 14). Nicolae Titulescu mentioned that international law is a coordination right because its rules are the result of unanimous will of Participating States in their preparation, as holders of sovereign rights, with unconditional respect their obligation. The complex procedure of obtaining the agreement will not exclude acts of pressure accepted by the international law. Since there is no international authority empowered to develop rules of international law, similarly, there is no such authority on monitoring the application and non-compliance sanctioning of international law. These actions are the exclusive responsibility of all countries of the world.

Given the fact that there is no international public authority, which to have executive and judicial powers similar to those in the states, the question is who qualifies an act or an illegal act, who is competent to apply the sanction and which international sanctions will be applied? According to international law, in case of an unlawful act by a State against another State, the State victim finds and proves the unlawful nature of the act and therefore can go to penalties, according to international law adopted by their agreement of will. Violations of mandatory rules of the category that is aiming at international crimes enables coercive measures to be taken by both the State victim and the other states. In action to enforce the supreme values of the international community (peace and security), along with states of the world, international organizations such as the UN can participate. Sanctions imposed by the State victim directly must fall into the category of specific right to self-defense, which may include military means, when the State is a victim of an armed attack. United Nations Security Council, intervenes and adopts measures only in the situation when you have restored the normative order, which aims to maintain international peace and security as a measure of collective security, being able to adopt, depending on the seriousness of the issues, political, economic or military measures.

Consensualism legal foundation of public international law, implicitly leads to the individualization of specific features of this law and the lack of a supranational body with legislative powers, the absence in the international legal order of government authorities aimed at enforcing the norms of international law and a system of courts with

general and mandatory competence to intervene and impose sanctions when the norms of international law are violated (Beşteliu, 1998: 4-5).

There are still areas of public international law not subject to negotiations between states. These concern: national security, free choice of the form of state organization, organizing internal policy, territorial organization of the state, so on. Between international law and national law there is a close interdependence as the basis of international treaties concluded, states are obliged to take action in order to implement international obligations to which they have committed. Domestic legislation contains rules governing their work externally. A major thesis is that the relationship between the public international order and mandatory rules of public international law.

Public policy is defined as the sum of international principles and rules whose application would be so important for the international community as a whole, that any unilateral action or agreement that would contravene these principles or rules would not legally recognize (Mosler, 1974: 34). Thus international public order mandatory.

Regarding the conflict between public international law we can accomplish a ranking of these rules according to their legal power. There are noted, at first sight, three categories of rules that may get into conflict, namely: rules arising from the UN Charter the rules contained in treaties concluded by Member States of the Organization; universal rules (contained in treaties with universal vocation) and private; mandatory rules and dispositive norms. In all these situations, the first category of rules prevails in case of conflict of laws. In the category belong the mandatory rules included in: the principles of international law contained in the UN Charter, fundamental human rights (right to life, the right to human dignity, etc.), generally recognized members of the international community rights (freedom of the seas, space law rules etc.). The fundamental principles of international law contain the general rules of conduct, compliance with which is indispensable for the development of friendly relations between states, to maintain international peace and security (Geamănu, 1967: 7). As in any area of law, fundamental principles of public international law are the backbone of it, structure on which any other legal institutions with which international law operates are grafted. Due to their overriding the fundamental principles ensure international relations conduct stability, regardless of how they arose.

The respect held for these represents their international peace and security maintaining assurance, developing friendly relations among states and nations. Any violations of the fundamental principles of public international law endanger world peace, having as an inevitable consequence the international responsibility of the State, which has violated the principle, for the deeds committed. Within the Western doctrine emerged attempts to challenge or minimize the role played by the fundamental principles of world peace. These opinions do serve aggressive policy pursued by some pressure groups that have pecuniary interests to conduct violations against fundamental principles of public international law. Not having immutable and eternal nature, the fundamental principles transform and develop the extent in accordance with the evolution of social relations.

Due to the progressive development of international law, its fundamental principles are enshrined in multilateral treaties that have an universal or regional character (Eg. UN Charter, art. 2). Applying the principles of sovereignty and equality have resulted in the definition of fundamental rights and duties of states. The proclamation of the principle of sovereignty has created the foundation for the recognition of equality of states, which removes conflicts feudal hierarchy on states and their representatives (Geamănu, 1975: 129).

You cannot talk about world peace as long as international security cannot be ensured (Titulescu, 2002: 8). For assuring world peace Nicolae Titulescu had a simple solution and that was to have united a front of peace. One of the mandatory rules of international law is the principle of sovereign equality and respect for the rights inherent in sovereignty. This principle is an essential element of public international law as it is the base of many of the rules of this law. Representing an essential attribute of state, sovereignty consists in the supremacy of domestic state power, and externally it consists in the independence of state power to any other power. This principle is part of ius cogens gentium as by requiring a State to conclude a treaty would violate a norm of ius cogens, which would have the effect, under public international law, the nullity of the treaty concluded. Sovereignty gives states the right to choose freely the political, economic and social system according to the will of the people living on its territory, and, at the same time, to promote their own domestic and foreign policy. Special Committee on Coding Principles Report from 1964 stated that sovereignty is seen as "a general mandatory rule of international law binding contemporary".

Another mandatory rule is the principle of territorial integrity and border inviolability. This principle could not be established as long as war was considered a legitimate mean of settling international disputes. The consecration of this principle was imposed, firstly, by the consequences of human and material losses caused by the First World War and, secondly, the need to maintain the status quo established by the Peace of Versailles, settled in June 28, 1919. Article 10 of the Covenant of the League of Nations stated that members of the organization undertake "to respect and defend against any attack from outside the territorial integrity and existing political independence of all members of the League".

Integrity and inviolability of territory imposes a number of obligations for the states, one of which was to refrain from any interference with the territory of another state through military action, or other means, from any attempt aimed at the partial or total rupture of national unity and territorial integrity of another State, from any act of force using or force of threat against the territory of another state, leading to military occupation, annexation, dismemberment of another State; from any act of seizure or usurpation of the whole or part of the territory of another state (UN General Assembly resolution, 26,25/XX). On the basis of territorial integrity are the inalienability and indivisibility of the state's territory, which allow the exercise of sovereign rights of a state over the entire national territory.

Any violation of the principle of territorial integrity leads, at the same time, to a violation of sovereignty. Another mandatory rule is the principle of non-interference in internal affairs that is known also as the non-intervention principle. Within the concept of Public International Law, intervention involves an interference into the internal and external problem solving of a state, which leads to its illegal nature. UN Charter provides that "nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of a state or shall require the Members to submit such matters to settlement under the present Charter" (UN Charter, art. 2).

It thus prohibits not only armed intervention but also any other form of direct or indirect interference in the affairs of other states, which prejudices the national sovereignty, the right of peoples to decide their own fate (Doc. UN A / 5746: 126). The Western doctrine is sustains that this principle is suffering from a series of exceptions. Mainly, it is about "consensual interventions" and "humanitarian grounds" interventions.

The compliance and application the principle of noninterference in the affairs which fall within national competence of the states is particularly important for new international relations, to respect other fundamental principles of international law, particularly the principles of sovereignty, equality of rights and the right of peoples to themselves decide their own fate, and for peace (Takacs and Niciu, 1976: 45). Regardless of the excuses that might invoke to justify intervention, it is prohibited by contemporary international law. This general and absolute prohibition is the guarantee of the defense of sovereignty, equality of states in rights and the right of people to decide their own fate (Geamănu, 1967: 191).

The principle of non-resorting to force or the force of threat was consacrated in a number of international documents including the UN Charter. This principle was able to exercise only when war was outlawed. Because of this, use of war was not admited, only exceptionally permitted in two situations, namely:in the case of exercising a right to self-defense; in the base of the decisions of the UN Security Council. The category of acts prohibited by this principle also includes: organizing and supporting civil war acts in another State; supporting terrorist acts in another State; toleration of carrying out activities within the State involving the use of force or force of threat. The interpretation of UN Charter shows that it is prohibited not only the use of armed force but the force which manifests itself in other forms. Unalloyed countries Cairo Conference in 1964 emphasized the idea that force can manifest in various forms such as militarily and politically or economically, and all these manifestations of force are prohibited.

Declaration of war addressed to a state, while appearing in the work of the London Convention of 1933, in the definition of aggression, though it was not retained in the UN documents, since it does not amount to an armed attack. That argument, however, is contradicted by international practice, which proved that all these statements were followed by military action. Violence threats consist in acts or actions of states, which are equivalent to express promises to use force against other states. These actions translate into: declaring a war ultimatum; concentration of troops in the border areas; military demonstrations, naval and aerial; complete or partial interruption of economic relations or means of communication; propagating war against states by means of the media. These actions constitute violations of the principle of non-aggression.

It is generally recognized that non-use of force or force of threat, is a peremptory norm of international law from which states can not derogate the relations between them. Although it was developed in conjunction with the UN collective security system, the principle of non-recoursion to force and force of threat has already acquired a customary rule which applies independently from the action of UN institutions (Diaconu, 1995: 292). Another imperative norm of international law is the principle of resolving international disputes by peaceful means, which is a corollary of the principle of non use of force or force of threat. Through The UN Charter, member states have pledged to renounce to the use of force and to settle any disputes only by peaceful means.

Regarding the war, Titulescu expresses his conviction that "war is never, but really never the solution to a conflict. War, in the best case, that victorious war, can only change the terms of the issue, the ungrateful of tomorrow will take the place of the dissatisfied of today. A war led in the name of justice will follow a war led in the name of righteousness. And so on and on. And at what cost? With a huge price paid by the international community for objective reasons of one or more of its members (Diaconu, 1995: 331).

The main rules that form the content of this principle are: the obligation to regulate only international disputes by peaceful means; obligation to seek resolution of disputes quickly and fairly, free choice of means of settlement, which the parties deem as the most appropriate in the circumstances and nature of the dispute, a requirement that if the parties fail to reach a solution through one peaceful mean, to continue to seek resolution of the dispute by other peaceful means, the obligation of states in dispute, as well as other countries, to refrain from any act likely to aggravate the situation and endanger peace and security or make it more difficult to settle the dispute, the obligation to settle disputes on the basis of sovereign equality of States and in accordance with the purposes and principles of the UN Charter (Diaconu, 1995: 294). Applying this principle is over all disputes, without exception.

In the conception of Titulescu "the most valuable asset of a country is prolonged peace that, alone, allows a nation to find its way, which by sole allows one to bring the general civilization benefits of the national creative genius" (Titulescu, 1996: 457). The international community, in order to resolve disputes occurred between certain states, has at hand a series of peaceful means of settlement of international disputes, namely: non-judicial means, out of which are part the direct negotiations, inquiry, mediation, conciliation, good offices and judicial means of within which belong International Arbitration and the International Court of Justice. Direct talks involving direct contact between conflicting parties to settle the dispute. They can materialize through negotiation or written document exchange. Negotiations are characterized by flexibility and discretion and within a set of rules to be observed and principles. In view of some solutions of international jurisprudence, the doctrine has formed a trend, according to which, in the context of peaceful settlement of disputes, we can talk about a rule regarding the anteriority of negotiations (Beșteliu, 1998: 306). Direct talks usually are worn through foreign ministries, the heads of state or government. Good offices consist in the intervention of a third country or an international organization or a private person to settle an international dispute. The initiation of good offices can be done so by a third State and of one of the warring parties. Good offices have as an object of activity the preventing of a conflict between states or defusing an existing conflict. Good offices goal is to sit at the negotiating table the conflicting parties in order to defuse conflict. Only the warring parties participate at the negotiations. Mediation consists in the action of a third party (state, international organization or personality), which participates directly to the negotiation and proposes the parties the solution, therefore the proximity of their positions and agreement reach (Diaconu, 1995: 217).

What differentiates mediation from the good offices is that the third part in the negotiations, can come up with solutions to defuse the conflict. It must be accepted by the parties in conflict, and can be requested by a party or may be provided by a third. Usually, armed conflicts, mediation is provided by a neutral state. The solutions offered by the mediator are not binding.

International investigation is the method of establishing the exact facts giving rise to the divergence between the parties. For this, in international practice have created commissions of inquiry. Committee of inquiry was established in Hague Conventions of 1899 and 1907 (Diaconu, 1995: 217). Commissions of inquiry shall be constructed on the basis of an international agreement signed by the parties in conflict, they are composed of an odd number of people. Members of committees of inquiry are called commissioners. Commissioners can be both nationals of states in conflict and of third countries. They are headed by a chairman, who shall be a citizen of a third state. The role of the committee is

to reveal, which is factual, which led to the creation of the dispute. To this end, States Parties are required to provide the committee with documents and paperwork necessary to establish the truth, and the list of witnesses and experţi. Exceptionally, the committee may conduct an on-site investigation, but only with the State. The commission is the development of a report. The report does not include solutions on resolving the dispute, but only presents a factual situation.

The institute of International Law defines international reconciliation as ”a mode of settlement of international disputes of any kind, in which a committee constituted by the parties, either permanently or for a specific situation, as a result of a dispute, shall make an impartial examination and strives to define the terms of an arrangement likely to be accepted by the party or parties granted help, which will be asked in order to regulate (Annuaire de l′Institut de Droit International, 1961: 374-375).

Unlike international investigation, conciliation goes further, finding facts beyond phase, reaching proposing concrete solutions to resolve the dispute. The proposed solution is not binding. Reconciliation is achieved through an international commission, composed of an odd number of members who may be citizens of the warring states and other countries. The work of the Committee shall be secret and end with a report containing reasoned conclusions, both in fact and in law. International arbitration means a peaceful settlement of international disputes, in which, the parties to a dispute, through a formal agreement, entrust settlement to a third party, which may be one or more persons and shall be subject to its decision as a result of contentious proceedings, resulting in a final judgment (Beșteliu, 1998: 312). This institution was provided for the first time, as a means of settling disputes under the Hague Convention of 1907 on the settlement of international conflicts.

The Court of International Justice began operations in 1946. Its functions consist of the following: resolving legal disputes between states, providing advisory activity consisting in offering opinions and advice on issues that are raised by international practice. International law recognizes the use of coercive means of international dispute settlement such as recourse to retaliation, reprisal or breaking diplomatic relations, the peaceful means based on coercion. In international relations there are situations in which a state commits an act or an illegal act, so could violate the rights or interests of another state. Under public international law is passed to resolve diplomatically the conflict resulting from this action illegal. If they all failed attempts to resolve diplomatically the conflict, the author of the delict fault state, it may resort to the use of peaceful means based on coercion, which take the form of sanctions. These sanctions may be imposed by the UN, regional states or other international organizations. Thus, when a state has suffered damage as a result of an unlawful act produced by another state, the state can sanction state victim guilty, but only with the UN conscent.

Penalties can result in acts of military response, acts of retaliation or reprisal. Military response documents are under the right of self-defense, when the state suffers a military attack victim from the aggressor state. Retaliatory acts consist of those unfriendly acts considered legitimate, such as severance of diplomatic relations, diplomatic or consular privileges revocation, imposition of an embargo or interruption of economic aid, when such action does not violate the provisions of a treaty. These acts may consist in unfriendly legislative, administrative or judicial acts.

Retaliation means those acts of a State which, detached from the context in which it is performed, should be considered illegal, but can sometimes be justified if they are a response to the conduct of another State contrary to international law. Retaliation may

have a political, economic or legal caracter, but can not have a military caracter. The aim of reprisals is to determine the guilty state to cease such unfriendly acts and to repair the damage. A classic retaliation example is the seizure of assets belonging to the guilty State citizens. There are specific forms of retaliation, which are reflected in the extent of the embargo and boycott. The embargo is a state action to ban imports, exports or merchant vessels of another state out of its ports or territorial sea, until the guilty state cease its illegal actions against the State concerned and it compensates properly for the damage. Also as a measure of embargo is retaining property of any kind belonging to the guilty state (Ciuvăț, 2002: 359). The boycott consists in measures of constraint enforced by a State or an international organization against another State, which has been found guilty of violating international law, the measures consisting in the interruption of economic, scientific, cultural and other ties with the guilty state (Ciuvăț, 2002: 359). UN has the right to penalize unlawful acts or acts of states through the Security Council, in order to restore international peace and security.

Sanctions taken by UN can be classified into two categories namely: sanctions applied without use of armed force, which are political and economic, consisting of interruption of economic relations and communications or the severance of diplomatic relations; sanctions applied with use of armed force that are military, consisting of military demonstrations, blockades and other operations by air force, marine or terrestrial of the UN Member States. Severance of diplomatic relations is the unilateral act of a State which withdraws its diplomatic mission in a state or that requires the state to recall his diplomatic personnel from its territory, thus putting an end to official relations between the two countries (Ciuvăț, 2002: 359).

Regional international organizations can apply a range of sanctions which are reflected in the loss of membership of the organization, the temporary suspension of voting rights in the organization, banning from the organization. The sanction is coercive measure is adopted by states, individually or collectively, or by an international organization against a subject of international law which infringed a rule of this right. In the 39th Article of the UN Charter are set out situations where may resort to sanctions against a state, namely: if the threat of peace where peace violation, if an act of aggression.

Use of military force without UN Security Council authorization is a violation of international law. Victim member of bullying may use coercive measures against the aggressor state, to restore the violated rights. According to recent works encoded in the frame of the International Law Commission on International Liability of States, injured State by an internationally wrongful act of another State is the holder of a new right, that recourse to counter - act or omission of a State, exercised response to an internationally wrongful act committed by a state (Beșteliu, 2003: 26). Typically, the application of coercive measures shall be performed by United Nations Security Council.

Unlike internal law, where coercive measures are applied for violations of a centralized unit, organized by the state, persons against whom they are directed, in international law, although there are judicial bodies, interpretation and application of the state is usually done, by agreement between them or the means of peaceful settlement of disputes, with or without a judicial choice of States Parties (Popescu, 1997: 53). Creating a multinational force mandated to punish countries that flagrantly violate the rules and principles of international law is a penalty to the use of armed force established by a resolution of the Security Council of the United Nations multinational force to punish the aggressor states, the states that have flagrantly violated the rules and principles of international law (Geamănu, 1967: 15).

It should be underlined that there is a difference between multinational forces and peacekeeping forces. While multinational forces effectively participate in operations of war, representing means of coercion used to resolve a conflict that threatens peace, peacekeeping forces to oversee the ceasefire between combatants and the respect of the armistice. The place generally limited its sanctions in international law practice is in part compensated by counter measures, those initiatives taken by states responding to illegal actions of other states in this category entering embargo applied by states either directly or with the consent of the Security Council the United Nations (Anghel, 1978: 86). In conclusion, we can claim that requires a close cooperation between States and international organizations, in order to ensure global security.

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ORIGINAL PAPER

Policy and the Narrative of the "Third Way"

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Abstract
A narrative is an intelligibility model of high generality that human reason imposes to the real in order to give it form and meaning. Otherwise, in our minds would be just a chaos of existential observations that can neither increase the knowledge, nor guide the action. Like any other derivation (ideology, theory, justifying discourse etc.), in order to survive, a narrative will have to pass the test of social utility. In other words it has to cope with a pragmatic criterion. This article will sociologically examine the vision of *the third way* toward a Good Society. Is this *way* an ideological synthesis that obviates Right' and Left' weaknesses? Is it rather an ideal, an ethical position? What brings it new and better in terms of social utility?

Keywords: narrative, ideology, third way, social utility, soft power.

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Introduction

A narrative is a model of intelligibility imposed to the reality. In order to survive it has to pass the test of social utility or, in other words, it has to cope with a pragmatic criterion. Alone, our reason cannot validate the models of action but can only propose them. This is because the complexity of the real almost always forces us to make simplifications, reductionisms that would somehow clarify to some extent, the image of reality. It is important to mention from the very beginning one of the principles of complexity, as formulated by Edgar Morin (1987/2002: 27-28) because together with the concepts of *ideology*, *narrative* and *soft power*, it forms the analytical and conceptual frame of this paper.

The dialogic principle is reflected in the simultaneous presence, in the act of knowledge, of *the dialogue* (as a way of reaching consensus) and *dialectic* (as dualistic opposition, closer to the Platonic dialectic than to the Hegelian one because the moment of synthesis is missing). This principle states so that two (or more) different logics are related into a unit in a complex way (complementary or antagonist), but without losing this duality.

We have many examples, from different fields of knowledge, to illustrate a logical and ontological duality that cannot achieve the moment of synthesis: psychoanalysis (Eros and Tanathos), physics (nature of light: wave - particle), sociology (community - society, common consciousness - individual consciousness) and even religion (human and divine nature of Christ, which are one, but not mixed). So, in brief, the complexity of the real is described by the dialogic principle. This principle is reflected in the simultaneous presence in the act of knowledge of the dialog and dialectics: dialogue, as a way of reaching consensus; dialectics, as dualistic opposition that can be considered as a unit.

Ideology, narrative and soft power

In 1796, Destutt de Tracy coined the term "ideology" from the desire to create a new area of biological investigation. This had to deal with researching the history of ideas and their sensorial bases. Not long after, however, de Tracy has been appointed by Napoleon "ideologue", i.e. a kind of unrealistic theorist, because he was suspected of liberal sympathies. This was the first negative connotation of the term (Kettler, 1987: 366).

According to Immanuel Kant, *ideology* is a religion "within the reason", that is a belief system that does not make use of fantastic elements to explain the world and the orientation within it, while religion is considered to be a "total ideology" (Kant apud Măgureanu, 1997: 299). But Karl Marx was the one who built the theoretical meaning of "ideology" as a symbolic system that serves to the mystification of reality. In *The German Ideology* (1845) and in subsequent writings, he warned upon ideological illusions, broken from real life but making up a "false consciousness" that keeps the working class enslaved. Later, Marx recovered the concept in favour of the revolutionary proletariat, arguing that ideology served to legitimize revolutionary action by rational justification of its existence and of acts (Kant apud Măgureanu, 1997: 296-298). Descendants of Marx's philosophy, generally go on critical and demystifying line. The sphere of the concept varied widely over time[1] avoiding pejorative connotations or, on the contrary, emphasizing them. But Kant was the first who captured and expressed very suggestive the ambivalence of the concept sending directly to what is called today a *narrative*.

However, neither this concept escapes ambiguity being sometimes used as a synonym to ideology. But it seems to escape the negative connotations of ideology

because these were transferred to the concept of *meta – narrative*[2] (Lyotard, 1993). In fact, no matter how we call our ideas of the "world of life", they will acquire the force of a "self-definition of the reality" and become the basis of what Joseph Nye calls *soft power*.

In *The future of power* (2010/2012), Nye examines the sources and behaviours of what he calls *soft power* and the difficulties and risks of using them. As a form of power over opinion, that means it is able to turn opinion in his favour, the soft power has as sources: cultural attractiveness, political values supported internally and externally and foreign policies that support these values. It is important to notice the required coincidence between the values proclaimed and concrete actions that must support these values. Otherwise, the lack of values orientation destroys moral legitimacy and overall credibility of the source. Everything will turn into mere propaganda. Efficacy and effectiveness of soft power is based on: the attractiveness of the source: refers to both the visibility of source and the feelings it inspires (empathy, trust, acceptance); how it uses persuasion: as a tool of influence (i.e. power) persuasion can be used to expose the target group to rational or non-rational arguments in order to strengthen the attractiveness of the source; persuasion can also be used as a tool of manipulation and deceit. Between the two ends of continuum sincerity - deception, are a large majority of actions, assuming a greater or lesser degree of manipulation, with all the risks involved; framing the agenda is a face of "defining the situation" as it brings in "light" certain topics while overshadows others. So, it operates a selection of topics that deserve or not deserve attention by proposing a specific "agenda" and a certain hierarchy of topics for discussion. It is closely related to persuasion by appealing to feelings and impressive narrative and not to pure logic; but if the narrative is perceived as propaganda, persuasion loses its power.

As happens many times, what gives power to a particular approach is at the same time its weakness point. The results of soft power are especially visible in the long term, given that it is not easy for this power to be incorporated into governmental strategies. Results depend almost as much on the source and on the target: target perceptions of source credibility are critical to the quality of interaction. Any suspicion of manipulation by misinformation and propaganda can crumble the foundation of cooperation. Therefore, says Nye, capital obtained through soft power is difficult to use, easy to lose and expensive to recover[3]. However, it is one of the few forms of power that can lead to a win – win type situation, without resentments and damages: "Politics has become a contest of competitive credibility (...) «Policy in the information age might refer ultimately to the holder of the winning narrative»" (Arquila and Ronfeld apud Nye, 2010/2012: 124).

The "good society" and the "bad society"

Is it a scientific problem to decide whether a society is good or bad? In other words, this analysis belongs to "episteme" or to "doxa" (public opinion)? Is this a matter of subjective perception or it is one of objective analysis? Abraham Maslow (1954/2007) is among those who argue that science can analyse the quality of a society and propose a criterion for the dichotomy of good / bad. *Dichotomy*, however, is not the most appropriate term because it implies an *or-or* option type while Maslow, applying a holistic methodology, avoids oversimplifications and "the crook" of reality in a "bed of Procrustes". Thus, he notes that some nuanced interrogations allow more nuanced answers, more realistic and therefore more "scientific" answers:

> "How good can be the society which human nature allows? How good can be the human nature which society allows? How good, could we hope, the human nature can become, taking into account the inherent limitations of human nature which

> we have already known? How good, could we hope, the society can become, knowing the inherent difficulties of his nature" (Maslow, 1954/2007: 231).

Examining the above questions, we see that in the report between individual and society, Maslow did not favour any of these terms: they are on equal footing in a report of co-determination. This means that a society cannot be much better than the nature of the individuals that make it up (the quality of individuals determines the quality of interactions) and, conversely, individuals cannot be much better than the society they live in (the quality of interactions determine the quality of individuals through socialization). This is a vicious circle which Maslow manages to break. In fact, in a society, no matter how good, there still will be violent individuals, liars, thieves, scoundrels, even due to "ignorance, stupidity, fear, poor communication, clumsiness" if not because of "their nature". Similarly, in a society, no matter how bad, there still will be exceptional individuals able to resist the pressures of social evil. It is very important not to have some utopian aspirations but to realistically moderate our expectations, wondering "how much can we hope?" The "good society", says Maslow, is "one that provides its members the maximum level of opportunities to become healthy human beings, capable of self-actualization" (Maslow, 1954/2007: 228). This is achievable if the institutions of that society are designed "to encourage, stimulate, reward and produce a maximum of positive interpersonal relationships and as few as possible of negative relationships" (Maslow, 1954/2007: 228). It is also very interesting the corollary arising from the above:

> "A corollary that follows from the above definitions would be that good society would be synonymous with the healthy society, from a physically point of view, and the bad society is synonymous with the mentally ill one, which means satisfaction, and respectively frustration of primary needs (i.e. insufficient love, affection, protection, respect, trust and truth and too much hostility, humiliation, fear, domination and contempt)" (Maslow, 1954/2007: 228).

The good society is therefore one that gratifies the primary human needs of its members. Conversely, the bad society is one that frustrates physiological needs, safety needs, love and belonging needs, esteem and recognition needs and self-actualization, for most of its members. A continuous frustration leads to mental illness, which in turn will create areas of social pathology. When these areas are expanding, society itself becomes sick and therefore evil. The idea of social pathology does not occur with Maslow's writings. It had been used before, to explain the emergence of social problems and ways to solve them. However, the source of evil in this approach is always the insufficiently socialized individual. Later, the fact that some external conditions to individuals (e.g. technological change, changes in the density of interaction or only in demography etc.) can be considered responsible for the emergence of various social problems was accepted[4]. Abraham Maslow considerations on "good society" serve as a starting point for both Amitai Etzioni's and Anthony Giddens' theoretical constructs, which I present below.

The third way and the "**good society"**

The Third Way, says Amitai Etzioni (2001, 2002), is a vague way to the "good society" ideal, a way without fixed milestones, which societies build according to their specific characteristics and contexts. It is also a public philosophy that is based on two principles: first principle argues that there is a social definition of "good" and the second one says that membership in different social groups is what gives meaning to existence and content to social identity. This road does not need an ideology or a doctrine because it will exceed the old left - right dichotomy that will become irrelevant and will be

abandoned. The definition of the good society, as Etzioni (2001: 5) consider it, tells us that:

> "A good society is one in which people treat one another as ends in themselves and not merely as instruments; as whole persons rather than as fragments; as members of a community, bonded by ties of affection and commitment, rather than only as employees, traders, consumers or even as fellow citizens. In the terms of the philosopher Martin Buber, a good society nourishes 'IThou' relations, although it recognizes the inevitable and significant role of 'I-It' relations"[5].

This definition is the starting point for a larger perspective that requires: to maintain a dynamic balance between state, community and market. Nowadays, this equilibrium is unbalanced both by the Leftists with their emphasis on the state and by the Rightists with their emphasis on the market; to treat man as an end and not as a means (Kant's moral imperative) and also as a whole and not fragmentarily. This holistic view, common to Maslow and Etzioni, is a reaction to the analytical reason that is considered guilty of "disenchantment of the world" and of the loss of meaning; the society is not a place of generalized consensus or widespread conflict, but allows conflict within consensus, as long as the conflict does not destroy social ties and shared culture; (How strong should be the social control for maintaining the established social order, allowing at the same time new forms of social equilibrium?); the state will work to limit inequalities, preventing the accumulation of resources in the higher classes; inequality intra and inter - communities will be significantly reduced; (But to work in this direction means to favour equality and to disadvantage equity and liberty and this will, of course, make a lot of people unhappy); the existence of the "moral dialogue" institution, i. e. free deliberation that recognizes not only rational or factual arguments, but involves also people's beliefs; at the societal level, the technology makes possible a mega-log; (Would be possible a mega – log as a form of rational argumentation?); the pre-eminence of shared moral values over the law; law is only the continuation of morality by other means; (Killing adulterous women is a traditional procedure that sustain a shared moral value in some cultures).

Community, as a social entity that feeds the relationships "I – Thou" will enjoy special attention because it is a combination of two elements: affective relationships that intersect and reinforce one another, placed in a common cultural environment (shared social values). Etzioni (2002) believes that the main advantages of living in community are: better physical and mental health of individuals and low costs of state intervention to solve social problems (This was true for the times in which social consciousness was very extended and personal consciousness very thin. Today, personal consciousness is extended and social ties weakened)[6]. Communities are traditionally closed and have strong hierarchies and that is why they can be oppressive. But basic human needs are better served by rather weak social bonds. The solution according to Etzioni is: the state will intervene to counter the strong community links with powerful systems of "self defense", sustaining both social ties and autonomy, social order and freedom[7]. (This is exactly what happens today in democratic societies when Right encourages strong community ties and Left encourages autonomy, but as different, complementary Weltanschauungs).

The state will no longer be just a set of political institutions responsible for the management of common interests but should be viewed as a "community of communities". The government should be seen as a partner of "good society", not as a problem or as a solution, as in the welfare state. Legitimate state interventions occur within the sphere of public safety to increase the certainty that offenders will be caught,

prosecuted, punished; in health sector government intervene to prevent epidemics, to increase food and drug safety and the practices of preventive medicine; in the field of market surveillance, government should be left free to decide how and when to restrict, to assure environmental protection, limit corruption (protection of public life against private money), limit inequality.

Market, as relationships' milieu between people and resources (I - it relations) should neither be demonized nor regarded with ecstasy. It is not the source of good or evil but a powerful economic engine which must have conditions to work but at the same time, should be closely supervised and restricted when works only for some. Specifically, Etzioni proposes the establishment of a Ministry of Community Development to deal with "cultivating" communities where they exist and with their constructing where they were lost. Thus, mutuality would be encouraged and supported as a form of human relations, natural for communities, based on mutual help and moral commitment. The moral culture of "good society" has as central principle "the responsibility of all to all" and it is placed between the rigid traditional morality and moral unlimited libertarianism. This new morality is open, always in public debate and may be modified through moral social dialogue (multilog).

Another description of the good society is that of Anthony Giddens (1998/2001). He also indicates the way to a better society through an intervention program that, of course, will transcend both classical social - democracy and neo-liberalism. The program proposes: transition from welfare state to welfare society by investing in human capital; helping citizens to be able to find a way through the major revolutions of our time: globalization, transformations in personal life and humans – nature relations; the values that must be supported are: equality, protection of the vulnerable, freedom as autonomy, no rights without responsibilities, no authority without democracy, cosmopolitan pluralism, philosophical conservatism (unrelated to the political right but with the pragmatism necessary to face changes).

This ambitious program will be implemented by an ideology of "radical center" that will create the new democratic state (the state without enemies) that will be also the social investment state. Here, in this society, a cosmopolitan nation will arise, in a democratic cosmopolitan milieu, an active civil society with the democratic family and the new mixed economy as foundation. The nation will fight for equality as inclusion and for positive (?) well-being: "Positive welfare will replace each of Beveridge's minuses with a plus: instead of Desire, autonomy; not disease but active health; instead of ignorance, education as a sign of continuity throughout the life; instead of misery, welfare; and instead Laziness, initiative" (Giddens, 1998/2001: 135).

Etzioni, Giddens or Robert Bellah et al. (1991) describe the good society as an "intelligent mix" among four elements: individuals, educated and informed enough to understand the importance of bonds among people and the responsibility to others; they must be so healthy emotional as to rarely act destructively or irrationally; a culture that promotes cooperation, tolerance, honesty, altruism, self-education and nonviolent conflict resolution; a structure of incentives: rewards and sanctions that make people understand that it is in their interest to behave well; institutions (economic, political, social) that use the structure of incentives to promote emotional health, education and a culture of social responsibility.

Conclusions

The manner in which I presented the project of "good society" from the point of view of Etzioni and Giddens, may give the impression that it is an attempt to caricature it. But the projects themselves, although discuss sensible aspects of our lives, are both naive and inconsistent. The "state without enemies", positive welfare as opposed to negative welfare (!) or a society cured of desires, diseases, ignorance, misery and idleness, seems to be assertions that are part of a rather propagandistic arsenal unfortunately located not "beyond" ideologies as the authors have claimed but right in the heart of one. In fact I tried to render the "picture" painted by some of the best known theorists of "the third way" as faithfully as I could. But these projects look like an attempt to recover the innocence of the "good savage" perverted by modern institutions. Maslow's description looks far more realistic and "beyond ideologies".

In *Myths and political mythologies* (1986/1997), Raoul Girardet examines the recurring theme of the Golden Age, that is the most stable part of political imaginary, crystallizing the impulses and energies in an idealized past that will serve as a project for the future. The projects I have analysed are built on this mythological structure that oscillates between "regret" and "hope". Regret for the loss of personal and secured community relations and for the loss of certainty and predictability in an actual "risk society" whose rate of change does not give us enough time to adapt without major shocks. Hope for bringing back the old days "before" when people enjoyed "protecting privacy of a closed social group, united, strictly hierarchical" but at the same time to preserve the personal autonomy from today. Do these narratives have any chance to convince somebody and to become "winning narratives"? No, I don't think so… because no concrete way is indicated, except the already existing one.

Of course, Etzioni suggests that the "eternal return" to the purity of the old days is the solution but he is also aware that, whatever anguish of the present, only few people would accept to live in the classical community. Therefore, wanting to preserve the autonomy of the individual and at the same time to prevent abuses of the closed authoritarian structures, it assigns the state the duty to preserve the balance between personal autonomy and community constraints, between order and freedom, using "strong system of self-protection". But how could be accomplished this desirable objective? State, conceived as a "community of communities", should turn even against his nature. Why should we ask for a "Ministry for Communities" establishment while here and everywhere in the world where there are free societies, are formed voluntary communities of those who share a common life project? Of course, rational responses have not a great value because the myth is self-sufficient, is at the same time "fiction, explanatory system and mobilizing message".

From this perspective Etzioni is right: "The good society is an ideal. While we may never quite reach it, it guides our endeavours, and we measure our progress by it".

Notes:

1. To better observe the variability of the *ideology* concept in time, we made a relatively chronological list of "abridged" definitions, as follows:

- History of ideas (de Tracy);
- Creation of a "theorist": idealistic, unrealistic (Napoleon);
- A religion within the limits of reason" (Kant);
- A view of the world that reflects the interests of the dominant social class (Marx 1); a justification, a conscious distortion of reality (mystification); the "false consciousness" of the working class (Marx 2); the legitimation of revolutionary action by rational justification of the its existence and acts (Marx 3);

- An assembly of images, representations and myths that determine behaviour and social practices (Lenin);
- The "situational determination" of somebody's ideas; how is formed the matrix of understanding of the world, within a group (Mannheim);
- A broader view of life, a Weltanschauung, much wider than the political approaches and theories (Dumezil, Dumont, Durkheim);
- Ideas transformed into "social levers" (Bell);
- A system of ideas "action - related" (Friedrich);
- A system of ideas and ideals transformed into beliefs; opium of the mind, the right not to reason (Sartori);
- Forms of philosophical popularization (Gramsci);

Explanations of cultural – historical nature (ideology = symbolic system of a historical society) escape reductionism but paying the price of losing "specific differences" from other concepts such as "mythology", "religion", "philosophies" etc.. The mobilizing power of ideologies and their capacity of generating action are intrinsically linked and represent the "specific difference" that separates them from philosophy, theories, paradigms or political approaches. This fact was recognized by most authors (Udangiu, 2013).

2. Jean - Francoise Lyotard, in *The Postmodern Condition* (1993), makes an analysis of postmodern epistemology, identifying its roots in the works of certain authors - some of whom could hardly be imagined as postmodern - such as Nietzsche, Weber, Heidegger, Freud, Frankfurt School philosophers, some Marxists and Neo-Kantians. All these have in common, like Foucault, Derrida, Deleuze, and many other of the "new" philosophers, the critique of European Enlightenment with its confidence in reason and progress, with its great scenarios that places man at the center of the universe. From this program were drawn "great stories" or "meta-narrative" like Freudianism, Marxism and hermeneutics that for nearly three centuries had a legitimized role in European thought. Humanistic thinking has relied on these stories all its lyrical illusions about the human being and all claims to explain man and his destiny in the world without rest, in a definitive and coherent manner. Inheritor of rationalism and romantic idealism, modernity continued to seek the "objective" truth and definite knowledge, supporting different scenarios.

3. Nye believes that *smart power* consists of a mixture, according to a certain context, between *military power* (hard power), *economic power* and *soft power*. *Attraction,* on which the latter is based, may be seen both at the states and at the interpersonal level. Sympathy, trust, acceptance, admiration, respect and emulation serve to convert resources (culture, values, policies) in a power behaviour.

4. Social pathology perspective has as a central reference point the "social morality" and the expectations generated by this shared moral among the members of society. But there are individuals who either can not be taught (defective) or have a disability that does not allow them to assimilate education (dependent) or simply refuse education (delinquents). Even if at first radical eugenics measures were proposed, later the idea was abandoned and the emphasis was placed on socialization in the spirit of common shared values (Rubington and Weinberg, 1971/1989).

5. Not far from the definition of the "good society" Etzioni warns us that: "The vision of a good society is a tableau on which we project our aspirations, not a full checklist of all that deserves our dedication. And the vision is often reformulated as the world around us changes, and as we change. Moreover, it points to different steps that different societies best undertake, depending on their place on the Third Way. But the ultimate vision is one and the same" (Etzioni, 2000: 6).

6. "Communities are the main social entities that nourish ends-based (I-Thou) relationships, while the market is the realm of means-based (I-It) relationships. The state-citizen relationship also tends to the instrumental. True, some people bond at work, and some barter in communities, but by and large without communities a deficit in ends-based relationships is sure to be pronounced". As John Gray (1996: 16) put it: "The flourishing of individuals presupposes strong and deep forms of common life". In short, communities are a major component of good societies (Etzioni, 2001:8).

7. "Communities in earlier ages, and even some in contemporary free societies, have oppressed individuals and minorities. It is the role of the state to protect the rights of all members in all communities as well as those of outsiders present within the communities' confines. Thus, no community should be allowed to violate the right to free speech, assembly and so on of anyone – whether they are members, visitors, passers-by or otherwise. Any notion that communities can be relied upon as the sole or final arbitrator of morality falls apart with the simple observation that a community may reach 100 percent consensus in discriminating against some people on the basis of race. This vision of contained yet thriving

communities is not farfetched. Numerous communities exist within democratic societies that abide by their constitutions or basic laws. The rules that contain communities may be further extended or curtailed as constitutions are modified, but the basic principle is the same: *unfettered communities are no better than unfettered markets or states*. A good society achieves a balance through mutual containment of its core elements; the community is not exempted. However, the fact that communities can get out of hand should not be used as an argument against communities per se. Like medicine, food and drink, if taken in good measure communities are essential elements of the good life; if taken to excess, they can destroy it" (Etzioni, 2001:16).

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ORIGINAL PAPER

Digital Activism: A Contemporary Overview

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Abstract
This article outlines some of the contemporary approaches of the digital activism and raises new question regarding digital activism and the use of social network sites for digital activism. When only 40% of the world population has access to the internet we dare to state that the promise of digital democracy and digital activism is still far from fulfilling. The foundation for an equal online participatory political system is just a myth. The goal of this study is to draw attention on different understandings of what extending participation through digital media means, and to provide a framework for further examination and evaluation of digital activism rhetoric and practice.

Keywords: cyber-protests, Facebook, digital activism, Internet, political engagement.

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Introduction

"The ideas of the ruling class are in every epoch the ruling ideas, i.e. the class which is the ruling material force of society, is at the same time its rulling intellectual force."
(Marx and Engels, 1970)

Technically the internet is considered a "global technological system of networked computer networks, a network of computer networks that works based on the TCP/IP protocol" (Fuchs, 2008: 121). Since the very beginning, the internet has been considered a powerful tool for the connection and mobilization of citizens. The internet has an enormous power of getting people together and "when large numbers of citizens are able to more easily connect to one another, to send and receive original content, and to coordinate action, they are able to create effective political movements" (Joyce, 2010: 2). Over the last several years we are witnessing an increasing interest towards the use of digital technologies for activism.

The expanding use of the digital technologies has led to a never-ending scientific debate on whether we have the infrastructure for a global digital participation or not. Katharine Brodock outlines thepromise of digital activism stating that "the greatest promise of digital activism is that it will serve as a foundation for a more equal and participatory political system – one in which all individuals have the opportunity and ability to speak, assemble, and coordinate more easily through the use of digital technologies (Brodock, 2010: 72). Therefore if the statistics say that in 2013only 40% of the world population has access to the Internet we can state that this promise is far from being accomplished (Internet Live Stats, http://www.internetlivestats.com/internet-users/, 2014). According to the statistics, there were only 2.802.478.934 estimated Internet users in December 2013 of a total population of 7.181.858.619 (Internet World Stats-www.internetworldstats.com/stats.htm, 2014). That means that we have approximatively 4.379.379.685 people for whom terms like digital democracy or digital activism do not mean anything.

This article outlines some of the contemporary approaches of the digital activism and elaborates a critique of these approaches. The questions that guide this article are: while many of the arguments for increased Internet access are compelling,what happens when people actually do not get access to digital technologies? How will those people be able to be a part of the global digital activism? Will they leave the others who do have access to the Internet decide for themselves? Marx and Engels state that: "the ideas of the ruling class are in every epoch the ruling ideas, i.e. the class which is the ruling material force of society, is at the same time its ruling intellectual force. The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it. The ruling ideas are nothing more than the ideal expression of the dominant material relationships, the dominant material relationships grasped as ideas" (Marx, Engels, 1970: 58). If we apply this to the contemporary idea of digital democracy and digital activism, are we facing the situation of the ruling classes (those who have access to the Internet) that decide over the working classes (those many who do not have access to the Internet and therefore do not have the means to impose their ideas/willing)? According to the statistics (http://www.internetworldstats.com/stats.htm, 2014) right now people from richer countries are the ones that are able to participate in digital activism, as Mary Joyce also

states: "people in richer countries are usually more able to participate in digital activism because of the cost and quality of Internet connections available to them" (Joyce, 2010: 3).

Theoretical Framework

Currently, the social participation has been facilitated by the online activity, especially for the young citizens who are significantly more likely to watch political video clips online, participate to forums discussions, or use social networking sites like Facebook for political purposes (Hargittai and Hinnant, 2008). But the use of technologies based on Internet does not prove that this represent people's real participation to the important topics for the society.

The Internet can serve as a forum that offers real-time information, brings people together, provides an opportunity to share different views from around the world, and challenges political institutions' control especially during instances of political upheaval (Ferdinand, 2000). The use of Internet as a tool to find out about political or social topics it is not enough to predict a participation. Furthermore effective engagement is essential to the social change (Putman, 1995). An effective engagement is defined as a vehicle that can be used to build more resilient relationships with community. It can lead to the identification of mechanisms for building a community's strength and its ability to join with government and other stakeholders in dealing with complex issues and change. The use of Internet has contributed for this propose (The Community Engagement Network, 2005). It means a community engagement network. Thus, the civic action represent the opposition to dutiful citizens. People who participate in social topics show that they are "open to many forms of creative civic input, ranging, from government to consumer politics to global activism; rotted in self-actualization though loosely tied networks" (Bennet, Wells and Freelon, 2011: 840), principally those individuals that are actualized in the use of the new technologies.

Internet and Activism

The Internet allows the existence of cyberspace and this has an important impact on all social spheres worldwide and it has allowed us to understand communities and citizens in a different sense. Over the last two decades, the Internet and more broadly cyberspace has had a tremendous impact on all parts of society. Our daily life, fundamental rights, social interactions and economies depend on information and communication technology working seamlessly. An open and free cyberspace has promoted political and social inclusion worldwide; it has broken down barriers between countries, communities and citizens, allowing interaction and sharing of information and ideas across the globe (European Commission, 2013: 2).

The term cyberspace appeared for the first time in 1984 in the book "Neuromancer" by William Gibson, a book that explored the origin of cyberpunk culture that allows cultural expressions, timelessness and transgression of time and space (Gibson, 1984). Cyberspace is referred in the story as: "Cyberspace. A consensual hallucination experienced daily by billions of legitimate operators, in every nation, by children being taught mathematical concepts ... A graphic representation of data abstracted from the banks of every computer in the human system. Unthinkable complexity. Lines of light ranged in the non-space of the mind, clusters and constellations of data. Like city lights, receding" (Gibson, 1984: 37).

Thus, it is necessary to explain the basic differences between Internet and Cyberspace. The differences lie in spatiality inasmuch as Internet requiresa physical space (Albrechtslunds, 2008). Albrechtslunds states that "cyberspace can be considered the space of online activities, including mundane Web surfing and social interaction, and this spatialmetaphor thus differs from the physical Internet consisting of servers" (Albrechtslunds, 2008: 1). Cyberspace is defined as a computer-generated landscape, i.e. the virtual space of a global computer network, linking all people, computers, and sources of various information in the world through which one could navigate.

The European Union had to include the access to cyberspace in their social life. The use of internet and access to cyberspace in a public or private sphere represents a big responsibility for all the countries in the world. Particularly in the EU countries. For cyberspace to remain open and free, the same norms, principles and values that the EU upholds offline, should also apply online. Fundamental rights, democracy and the rule of law need to be protected in cyberspace. Our freedom and prosperity increasingly depend on a robust and innovative Internet, which will continue to flourish if private sector innovation and civil society drive its growth. But freedom online requires safety and security too (European Comission, 2013: 2).

In this point each government needs to implement a series of strategies that assure the security of the citizens and government because the use of cyberspace might transgress them. Cyberspace should be protected from incidents, malicious activities and misuse; and governments have a significant role in ensuring a free and safe cyberspace. Governments have several tasks: to safeguard access and openness, to respect and protect fundamental rights online and to maintain the reliability and interoperability of the Internet. However, the private sector owns and operates significant parts of cyberspace, and so any initiative aiming to be successful in this area has to recognize its leading role (European Comission, 2013: 2).

However is well know that the power of internet in all instances of the contemporary life worldwide. But the regulation of cyberspace is complicated because it is not a physical space and so it need a non-physical control. Despite having a powerful impact on people and society especially in the last two decades, until today has been difficult to establish safer mechanisms that could ensure its use. The borderless and multi-layered Internet has become one of the most powerful instruments for global progress without governmental oversight or regulation. While the private sector should continue to play a leading role in the construction and day-to-day management of the Internet, the need for requirements for transparency, accountability and security is becoming more and more prominent. This strategy clarifies the principles that should guide cybersecurity policy in the EU and internationally (European Comission, 2013: 3).

The "public sphere" in cyberspace is an electronic environment where private individuals can meet through the internet to engage in debate regarding general issues. Put simply, it is the constellation of communicative spaces that allow information, ideas, opinions, and debates to circulate freely, which serves to shape and form public opinion (Dahlgren, 2005). A prerequisite for the creation of the public sphere is that there must be an actual forum where participants (speakers and listeners) can freely express their views, ideas, and opinions in a face-to-face interaction such as in a coffee shop, salon, town meeting and union hall. Secondly, there must be mutual commitments for equal and free interactions between the participants without any one participant possessing or exercising control over another. As a result of face-to-face communication, another feature of the public sphere rises to correct the limitation of this open-ended interaction, which "requires

technologies and institutions to secure its continued existence and regularize opportunities and access to it" (Bohman, 2004: 134). However, Poster (1997) points out that the question of democracy should be reconsidered because face-to-face communication in the public sphere no longer exists and proposes that new electronic mediation has taken its place instead. Peter Dahlgren (Dahlgren, 2005: 148-149) conceptualizes the public sphere into three dimensions: 1. structures, 2. representation and 3. interaction. According to Dahlgren (2005), the structure of the public sphere involves the formal institutional features like ownership, control, regulation, and political economy. The structures of the Internet are the legal, social, economic, cultural, technical, as well as Web-architectural features that comprise the public sphere. The representation of the public sphere refers to the media output that includes fairness, accuracy, agenda setting, completeness, and a pluralism of views. The final dimension of the public sphere that Dahlgren discusses is interaction between citizens' encounters with the media and the interactions between themselves. However, Dahlgren (2005) notes that political interactions (democratic deliberation) on the Internet remain minimal compared with other uses such as consumerism, entertainment, chatting and non-political networking. Dahlgren writes: "the argument is that the Internet has not made much of a difference in the ideological political landscape, it has not helped mobilize more citizens to participate, nor has it altered the ways that politics gets done" (Dahlgren, 2005: 154).

The activism or cyber-activism is a kind of protest based on the internet "cyber-protest as an emerging field of social movements" research that reflects the role of alternative online media, online protests, and online protest communication in society (Fuchs, 2006: 275). According to Denning (2001: 241), activism is "the use of the Internet in support of an agenda or cause". This includes online actions like setting up websites, surfing the web for information, posting materials on a website, transmitting electronic publications and letters through email, and using the Internet to discuss issues, form coalitions, and coordinate activities. Based on these explanations, this study will consider digital activism as "the expanding use of digital technologies mobile phone and Internet–enabled devices in campaigns for social and political change" (Joyce, 2010: viii). Some might ask what is the difference between "online activism" and "digital activism". At the first glance those two concepts seem similar. The term "online activism" refer only to activism on the Internet excluding the use of the mobile phone or other offline digital devices (Joyce, 2010). Digital activism is "the best term to discuss all instances of social and political campaigning practice that use digital network infrastructure" (Joyce, 2010: ix).

The social movements or civic activism are related to a series of coordinated actions, in this sense, "the Internet offers a powerful tool for communicating and coordinating action" (Denning, 2001: 242). The success of Internet in civic movements or civic activism it is based on five modes of the use of the Internet: a) collection; b) publication; c) dialogue; d) coordination of action, and e) direct lobbying of decision makers (Denning, 2001: 243). *Collection* refers toviewing the Internet as a vast digital library, breaking down barriers erected by the government. According to Denning, "the web alone offers several billion pages of information, and much of the information is free. Activists may be able to locate legislative documents, official policy statements, analyses and discussions about issues, and other items related to their mission" (Denning, 2000: 243).

Publication refers to the facility to publish activist content through Internet.The Internet "offers several channels whereby advocacy groups and individuals can publish

information (and disinformation) to further policy objectives. They can send it through email and post it to newsgroups" (Denning, 2001: 246). Thus, the Internet comes to be one of the most important media in popular activismbased on the cost advantage over traditional mass media. It is easier and cheaper to post a message to a public forum or put up a web site than it is to operate a radio or television station or print a newspaper" (Denning, 2001: 246). The Internet allows to create a forum for *dialogue* and debate about policy issues and other topics of interest to the society "these include email, newsgroups, web forums, and chat. Discussions can be confined to closed groups, for example through email, as well as open to the public. Some media sites offer web surfers the opportunity to comment on the latest stories and current issues and events" (Denning, 2001: 253). The Internet platform also facilitates the *coordination of action* because it allows to go beyond geography or time as Denning (2001) also notes "the Internet lets people all over the world coordinate action without regard to constraints of geography or time. They can form partnerships and coalitions or operate independently" (2001: 256).

The people can use Internet to work together to influence government decisions that relate to a particular issue, that means that the activists can use the Internet to lobby decision makers. Indeed, many email campaigns have been driven by nongovernment organizations. The organizations send email alerts on issues to electronic mailing lists, offer sample letters to send members of Congress and other decision-making bodies, and, in some cases, set up email boxes or web sites to gather signatures for petitions (Denning, 2001: 261). Assessed on civic Web sites the activism requires a set of civic competences. Bennet, Wells and Freelon suggests four categories of competences (Bennet, Wells and Freelon, 2011: 840-841): the *Knowledge* necessary to be an effective citizen; the *Expression* skills needed to communicate effectively; the skills needed for *Joining Publics* (groups or networks) that can emerge; coordination and organization around an issue or candidate; the skills needed to *Take Action* to address a specific issue or policy.

Activism Through Social Media

Contemporary protests struggle to construct a new public sphere model, "a place where alternative communication gains new ground" (Atton, 2002:152). The political activism through social media depends on a series of elements that guarantee an organized strategy, and not only based on a group of people connected to the social networking sites. Dallas Lawrence (2010) suggests some basic elements for a meaningful activism which could have an impact on the society. These elements are: a)Integration; b) Listen before engaging; and c) Turn online interaction into offline action.

The social networking sites have permitted the use of digital tools to watch over civic rights and create a participatory surveillance that could allow people to fight for their rights. In this sense, participatory surveillance brakes the traditional concept of surveillance "a conventional understanding of surveillance is that it is a hierarchical system of power" (Albrechtslund, 2008, *Participatory surveillance* par. 1). Also, the social networking sites have changed our understanding of the concept of gatekeeping (Barzilai-Nahon, 2008). However, it is very difficult to get a participatory surveillance or change the understanding of the gatekeeping concept if the people connected cannot create a real integration, listen and respect their own ideas, and turn online interaction into offline action (Lawrence, 2010).

The social media tools play an important role in public communication, they are increasing the participation of different sectors of society as students, journalist, governments, politicians, and citizens in general (Bruns and Burgess, 2012: 1). One of the

most important social media networking website around the world is Facebook. It allows constant social participation or activism "although Facebook was originally designed as an online version of personal network tools, some evidence demonstrates that this web service is also employed for activism and community-building tasks" (Warren, Sulaiman, and Jaafar, 2014: 284). This activism or civic movements trough social networking sites, and specifically Facebook, require a real engagement, far away from the computer mediated. This type of engagement refers to the individual or collective involvement of citizens in social issues. Civic engagement encompasses a variety of forms of political and non-political activities. Common forms of civic engagement are making donations, attending political talks, participating in community work or political campaigns while online civic engagement includes posting civic messages and signing online petitions (…). Hence, anyone who engages in such civic activities for the good of the community is commonly referred to as an activist (Warren, Sulaiman and Jaafar, 2014: 285). But, what does the activism mean? According with Denning,activism is defined as ''the use of the Internet in support of an agenda or cause" (Denning, 2000: 285). This include the possibility to use the new technological Internet-based tools, such as mobile phones.

Thus, this research considers digital activism as the use of the Internet or any other Internet- based application in supporting of apolitical or social cause. Thereby, the activism through Internet include the searching for information, expressing of own opinions on certain social problems, and the use of applications based on Internet to mobilize people to participate in a "real", physical manifestation. The main applications for this cause are the social networking sites, and the most important social networking site around the world is Facebook with a penetration growth between 2011 and 2012 of 12.1% around the world (www.internetworldstats.com/facebook.htm, 2014).

Activism on Facebook

Social Network Sites (SNS) are defined as: Web-based services that allow individuals to (1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system (Boyd and Ellison, 2007, "Social Network Sites: A Definition" par. 1). Currently the SNS have come to take an important place in the media studies scholars' works. The social network sites should help to maintain the existent relationships and to create new social connections (Boyd and Ellison, 2007, par. 3). Boyd and Allison (2007) define SNS as Social Networking Sites instead of Social Network Sites because the first term means to create new connections and maintaining existent ones meanwhile the second term implies only the achievement of new connections.

The use of Social networks became popular in1997. The first social network site identified is SixDegrees.com. SixDegrees.com was a platform where people were able to create a friends' list and a profile. SixDegrees.com was the first platform that integrated all the characteristics of what we call today a social network site (Boyd and Ellison, 2007). From 1997 to 2001, other social network sites were created, SNS that allowed the users to create personal, professional, and dating profiles. Some of are: AsianAvenue, BlackPlanet and LiveJournal in1999, LunarStorm, and MiGente in 2000, Cyworld and Ryze.com in 2001. After that, from 2002 to 2006, new sophisticated Social Network Sites were created, such as: Fotolog, Friendster and Skyblog in 2002, Couchsurfing, Linkendin, MySpace, Tribe.net, Open BC/Xing, Last.FM and Hi5 in 2003, Orku, Dogster, Multiply, aSmallWorld, Flickr, Piczo, Mixi, Facebook (Harvard only), Dodgeball, Care2, Catster

and Hyves at 2004. Yahoo! 360, YouTube, Xanga, Bebo, Facebook (High school network), Ning, AsianAvenue, and Black Planet in 2005. Windows Live Spaces,Twitter and MyChurch in 2006 (Boyd and Ellison, 2007). Of course, "like any brief history of a major phenomenon, ours is necessarily incomplete" (Boyd and Ellison, 2007). In a global context MySpace was very popular especially in the United States in its early ages but it was growing popularity all the world as well. Friendster was very popular in Pacific Islands, Mixi in Japan, LunarStorm in Sweden, Hyves in Dutch, Grono in Poland, Grono captured Poland, Hi5 was adopted in Latin America, South America, and Europe, and Bebo became very popular in the United Kingdom, New Zealand, and Australia, QQ in China but after that it spread worldwide, Cyworldwas very popular in Korea (Boyd and Ellison, 2007: 7).

In the U.S., blogging tools with SNS features, such as Xanga, LiveJournal, and Vox, attracted broad audiences. Skyrock reigns in France, and Windows Live Spaces dominates numerous markets worldwide, including in Mexico, Italy, and Spain. Although SNSs like QQ, Orkut, and Live Spaces are just as large as, if not larger than, MySpace, they receive little coverage in U.S. and English-speaking media, making it difficult to track their trajectories (Boyd and Ellison, 2007: 9).

In time the SNS have become the perfect environment for activism. The activism through digital media has been denominated as digital activism (Edwards, Howard and Joyce, 2013). This digital activism could occur using many applications based on Internet, the most important application, ranked by popularity are: social network sites; microblog digital video; e-petition; digital map; online forum; SMS.

When we are talking about activism, clearly the most "dominant platform across all categories is Facebook, side 99 percent of all the campaigns that uses social networks used that application" (Edwards, Howard and Joyce, 2013: 13). The social networking sites are the most common tools for theEastern European citizens to express their wishes while in North America B-petitions and microblogging are the Internet- based tools that people use to participate in digital activism. It is useful to note the importance of using social networking sites for digital activism, especially in Mexico, a country that had one of the first civic movements that used digital activism. *The Zapatistas* used email and UseNet groups in order todisseminate the purposes of their movement and to expand their movement in earliest 1994 (http://mashable.com/2011/08/15/online-activism/, 2014). Even if Facebook is the most popular social network website for digital activism we have to take into consideration that worldwide, there are over 1.32 billion monthly active Facebook users (Source: Facebook as of 6/23/14) of a total population of 7.181.858.619 and only 2.802.478.934 estimated Internet users in December 2013 (Internet World Stats-www.internetworldstats.com/stats.htm). That still does not mean that all the world population has access to Facebook and therefore is able to participate in digital activism. According to another study realized in 2014 (http://www.statisticbrain.com/FACEBOOK-STATISTICS/, 2014), the total number of monthly active Facebook users is 1.310.000.000. If we consider this out of 2.802.478.934 estimates Internet users in 2013 December 31st, we have 1.492.478.934 of Internet users who do not use Facebook and therefore cannot engage in digital activism through Facebook. This is not enough for an equal participation. Therefore the promise of digital activism "to serve as a foundation for a more equal and participatory political system – one in which all individuals have the opportunity and ability to speak, assemble, and coordinate more easily through the use of digital technologies" (Brodock, 2010: 72) is still very difficult to fulfill.

Conclusions

This article analysed outlined some of the contemporary approaches of the digital activism. Statistics show that in 2014 only 40% of the world population has access to the Internet. Therefore we dare to state that the promise of digital democracy and digital activism is still far from fulfilling. Worldwide we still have to wait until all the people will be able to have equal access to the Internet and therefore will be able to use digital technologies in campaigns for social or political change. The foundation for an equal global online participatory political system is still undergoing major problems. This article provided a different perspective on internet as a tool for digital activism, arguing that the luxury of an online participatory systemstill belongs to the rich countries. This study is the result of a wider international research project that provides a critique of the actual theories on digital activism and of the authors according to which the new technologies of communication will radically change our perception of the democratic practices. Although still in an initial stage, the project aims to provide consistent information on the effects that digital activism might have on contemporary societies and on people's lives. This article only raised new research questions regarding the digital activism and the use of Facebook for digital activism and aimed to draw attention on different understandings of what extending participation through digital media means, and to provide a new framework for further examination and evaluation of digital activism rhetoric and practice.

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ORIGINAL PAPER

Approaches to Local Broadcasting: Insights from the Romanian Public Radio Experience and Policymaking

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Abstract
The design, draft and implementation of a strategy for developing a regional station of the Romanian Radio Broadcasting Society require respecting and promoting the public radio character, the corporate mission and vision in full respect of professional ethics. It gives the public the most important regional news, pervasively combining the national and local features of the information. Regional public radio studios are clusters of interest that attract the loyalty of an audience eager to receive the regional specifics within the socio-economic, political and cultural areas and the proximity information. General strategies of comfortable positioning in the competitive context of the regional market (outside perspective) can ensure the primacy of reception regarding programs and promotional activities. This plan of action is based on management strategy and aim at the enunciation and reification of immediate impact targets: information, attitudes, and behaviors. Target: Radio Romania Oltenia Craiova to be perceived as a brand in the region. The paper presents a comparative study between the current perception of Radio Romania Oltenia Craiova regional radio station (a diachronic map) and the strategies required by the regionalization context, the specific radio programs in accordance with the directions of regional development proposed by the public agenda. Radio Romania Oltenia Craiova is an independent functional unit without legal personality, within the Editorial Production Department and part of the Public Network of Regional Radio Stations in the Romanian Radio Broadcasting Society. In the regional media market, Radio Romania Oltenia Craiova: holds the position of information and image multiplier for the organization, it generates visibility, credibility and renown, becoming the support and vector of regional development.

Keywords: regional public radio, regional radio as a brand in the region, editorial strategies, proximity information, the specifics of regional radio programs.

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Mass media and the European information process

The process of European information includes the area of communication, as an obvious catalyst. Communication as a phenomenon is produced primarily for the elite, representing various fields, and perhaps not enough for the public level. Joining the EU is founded on trust. Trust occurs as a result of a communication act. Between the media dimension of chronological events and decision elements offsets may occur due to information gaps. The role of mass media is crucial, because they are those who acquire process (through summary and comments) and quickly send information about the present and the future of the European Union.

Transparency in decision making is a characteristic of democracy. The European Union *has adopted policies to inform the citizens* and *has issued governmental regulations in this regard*. Their reception was also ensured by the media. Information management was required. From the *information management,* of the information resources (that is, the action on information and its subsequent use) *informational management* was claimed. Bemelmans (Cuilenburg, Van Scholten, Noomen, 1988: 103-104) synthesized the definition, emphasizing the systemic nature consisting in methods, auxiliary means and operations through which the necessary information is guaranteed. The *communication policy* is as important as the *information policy*. Free expression of opinions, adhesion as an act of will of the people was expressed by a great visionary, Robert Schuman: "We must build Europe not only in the interests of free nations, but also to receive the Eastern peoples, who, once free from oppression, *could apply for membership*(s)".

In the evolution of this concept, the Convention on the Future of Europe is the place where changes of views, of development gradually set in. The whole history of the European Union so far supports the claim of Jean Monet, the grey eminence of the Coal and Steel Community founders: "we do not federate states, but unite people". There are just a few central ideas of the founding concept of the European Union. They must be sent, communicated to citizens through simple techniques, accessible and persuasive, in order to generate interest in obtaining European information. Media are the channels of information through which information can be sent fast. The diversity of the communication spectrum will result in the change of mentalities. The public support of the high adhesion potential will diminish the gap between the potential and the current information about the European Union.

Therefore among the general objectives of the awareness campaign, one can include: the differentiated apprise of target groups (depending on their capacity of receiving the information and of understanding its meaning) and the inveiglement of support groups when sending the messages, the press being a core group. With their help, one will be able to run a management of change, to carry out a reform of attitudes, behaviors, and mentalities. It is the chance to synchronize with European values and to achieve adhesion within this area.

The press is an "interface" between European institutions and the public receiving the message. And the messages they receive do not always coincide with the messages sent through accredited official channels. The European information thus becomes a new product, a result of the interpretation of data provided by the European Community, the disseminators of information in the public space. The value of the message depends on the public's expectations (the answers to questions like: What do we negotiate with the EU? What are the costs of EU adhesion? What is the process of European integration?) Example: 7 years after Romania's adherence to the EU, these questions are still valid, which shows poor awareness in the area of involvement in the integration process (not

just membership); moreover, it depends on the fast coverage of European information. As information is faster received by the public, the processing and the default assumption time is shorter, its integration does not affect its validity. But, by trying to be the first that release information, European journalists submit European information without documenting the context of its enunciation and without its contextual placement, which results in distortion of the meaning of the message or at least, creates an artificial tension on the effects of accession and integration. Example: The recent visit of the IMF delegation was avidly pursued by journalists. "Rumors" that the IMF agreement could be suspended were validated by President Traian Băsescu. On entering the room where the discussion between the two parties involved was to take place, the President of Romania, said: "News Alert! Journalists expect cancellation of the agreement. Absurd!" Just commenting upon this, in a non-formal (but public) space, by denying the rumor, he leads to conjecture in an important situation for the nation. It further depends on the emotional aspect (the handling of sensitive issues regarding political affiliation, religion, ethnicity). Example: The situation of the Roma people expelled from the French space has generated reaction in several countries, and the theme of the free movement of persons in the Community returned to public attention, but is submitted to comments: What are the real limits of this freedom?

In this context, the volume of Dumitru Sandu, *Social Worlds of the Migration Abroad* (Iasi, 2010) reveals a concept that should be more closely analyzed: the "circular migration". Permanent or temporary emigration is replaced by a heavy traffic between Romania and the host countries. Return migration tends to become temporary return migration, following a circular pattern. Dumitru Sandu addresses the issue of re / integration of immigrants and the difficulties of adaptation / rehabilitation in the case of circular migration.

The media are still concerned with the transmission of European information on two major themes, which have various sources of information that generate the documentation perspective: information about the European Community institutions, about initiatives that affect the level of living in member countries of the European space, information about the development of some regions are of great interest because this directly influences the development of the social and economic status of those depending on economic transactions; information about working abroad. As it is mentioned in his writing, Dumitru Sandu found a consistent reduction in the definitive migration from more than 10,000 people annually to less than 9000 annually, in 2007-2008. The freedom of movement reduced the intention to emigrate and caused changes only within the group interested in working abroad (which is divided into two distinct subgroups: low-skilled and high skilled ones).

The migration behavior of migrants both from the country and abroad is reviewed by the sociologist over a period of 20 years. The results of the analysis of temporary migration motivation are of much interest to our subject. Socio-economic dissatisfaction levels are significant in 1999-2000, thereby replacing the political drive (cause of migration before 1989, and up to 2000) with the economic one. The media hunted this evolving process and has largely broadcasted programs on the theme of political emigration in the early '90s, refocusing attention on the new departures motivation, the economic motivation. Up to this level of dissemination of information about the Community, context favored the emotional side of the political or economic motivation. Amid social discontent, there is a shift of interest in violations of the normal behavior by those who are temporarily abroad. "The Dark Chronicle" of events caused by Romanians

who work abroad (but often not economically involved in the community or only involved in the "underground" economy and settled on the borderline of big European cities) catches the eye of the international public opinion and generates high audience ratings.

Immigration policies vary from one country to the next which will determine the reception of such information and will lead to "greening" actions within the communities (the decisions of former president Nicolas Sarkozy are a landmark in this respect). One draws attention to thought patterns and identity assertion, as effects of migration on those left behind. The European information on the evolution of the European community is gradually replaced by information about the degree of adaptation and integration in the European space, about the effects of this process at the level of Community behavior, criticizing "circular migration". The role of the media in redirecting the interest towards European information is important, that is drawing the attention of public to information about the development of the relations within the Community. During the period before Romania's adhesion to the EU, the European Commission, through its Delegation in Romania, underwent an intensive public awareness campaign, which naturally produced European communication. After Romania's adhesion to the EU, Romanian institutions were left to deal with this type of information, achieved from sources made available by the European Union.

The role of the European Information Centre, visible in the pre-accession period, was taken over by disseminators of information in the individual EU institutions (media, town halls and county halls), the coordination of these lines of information not being visible. Considering this, the proliferation of information about "the dark chronicle" of events / incidents involving Romanian citizens in the European space resulted in their subjective positioning in the public eye. From economic stability to the European Security Strategy in the European Union - here is the new track of the major topics of debate through the media, a process that should remain a priority in formulating and documenting information about the European community, the identity values within the globalization process.

The regional public radio – a vector of European information

Designing, developing and implementing a strategy for a regional station of the Romanian Radio Broadcasting requires respecting and promoting the character of the public radio, the corporate mission and vision of professional ethics. It gives the public the most important regional news, combining the national character of the information with the local one in a persuasive manner. The public radio must continue its tradition of being present at major social and political events and creating the area for a debate in which the genuine "voices" of history could participate at certain point (Rusu-Păsărin, 2012: 169). The media products designed, developed and delivered in such a manner, submit to the *corporate vision*: to be the most credible and effective means of informing and training the public, distancing itself from the vision of the rival private stations focused on information and entertainment (on behalf of wide accessibility).

The mission of the public radio is thus supported through all its channels and through the regional and local stations, providing information, cultural, educational products and entertaining for all audiences, aiming to broadcast information promptly and professionally at the national and regional levels.

The main goal of the public radio and the regional public radio in particular, is to establish good relations with almost all public institutions in the coverage area, thus generating an increase the reputation of organizations within the public sphere and inform

the target audience (cf. Blad, Theaker, Wragg, 2003: 91). The fundamental values and principles of public radio are thus implemented, supported at the regional level by the local and regional studios: the credibility, the quality, the independence, the respect for the public, the creativity, the competitiveness and team spirit, the synthetic image projection in the public space is that of an accountable and efficient corporation, within a permanent process to adapt to a dynamic society.

The analysis of programs / projects in progress and the development of proposals for strategic partnerships to ensure a border editorial approach for the Romanians in Northern Bulgaria and the Serbian Timoc

The radio should be more visible and promote national values both within the current borders of the country and in neighboring Romanian communities, thereby supporting the Romanian spirituality and fulfilling its mission of public radio station. In this respect the following are needed: 1. the design and development of programs with and about Romanians in Bulgaria and Serbia in programs broadcast in Oltenia and in areas adjacent to the border; the goal is to reunite families and to "mirror" the traditions and folklore on both sides of the Danube, cultural identity arguments (production costs are the same for a program in Oltenia as well as for programs produced 150 km away from Craiova), thus carrying out the requirements of Law 41/1994, ch. II, article 15. "Ethically and aesthetically, the folklore is the first Romanian classicism" claimed Vladimir Streinu (1983: 422) and on this cultural paradigm Academician Michael Cimpoi made a plea for the identification of the rehabilitation attitudes on ethics and aesthetics in the works of Grigore Vieru (The Republic of Moldova), cultural identity values of Romanians everywhere (Cimpoi, 2011: 169), which may build a framework for the analysis of future thematic radio programs; 2. developing joint projects within Romanian communities, Romanian associations of supporting the endowment of Romanian libraries in Vidin, Negotin and Bor with Romanian books. The social metasystem (institutions, group membership, social inclusion, values, and norms) is thus supported by the media (cf. Curelaru, 2006: 84); 3. developing duplex programs between Radio Romania Oltenia - Craiova and Radio Vidin (both public radio stations), permanent collaborators - through volunteering - at Bor, Mălainiţa, Negotin to convey the values stored in Romanian families and the Romanian community in these areas; the Calafat Bridge has already become a bond between communities on both sides of the Danube and a strategic point for the development of the area.

The media coverage of cross-border cooperation between the Dolj and Oreahovo counties and online news on the Radio Romania Oltenia Craiova website (a study by the Reuters Institute on digital media appeared in 2013 under the name *Tracking the Future of News* notes that "nowadays, half of the global news consumers prefer the online information, the Internet is both the main and the most accessed source" (Rad, Elijah, 2013: 221); it is a way to reach the home audience in the Romanian diaspora that can receive the information through Radio Romania Oltenia Craiova programmes, "audiences in the diaspora are bound by such media means" (Mattelart, 2007: 28). Moreover, the coverage of events organized by the Oltenia South West Development Region and the European Community and the development of partnerships within these entities. The design and development of experience exchanges, of radio productions between Radio Romania Oltenia Craiova - Romania Vidin and Radio Romania Oltenia Craiova - Radio Plovdiv (between the latter there are relations of cooperation and friendship, through the Department of International Relations of the SRR).

An European educational project and its community impact through radiant dissemination

The "Mainstream Subjects into School Curricula EU's in Lousada and Craiova" project COM-10-PR-02-DJ-PT was implemented in the Dolj County Council, in the "Marin Sorescu" School of Art and in the Orizont Cultural T Association, all of which were the Romanian partners. The project involved conducting various activities which had a profound community impact: 24 trips, the development of a research activity, creating learning communities, learning how to introduce the EU citizenship subject in the school curriculum and ways to improve student performance, organizing two public Forums (the 2011 and 2012 editions) with simultaneous translation – the 2011 forum was held in Romania, focusing on the theme of "labor market", while the 2012 forum was organized in Portugal and the theme was "Solidarity between generations".

The Portuguese participants in the project were: "Music School - Vale do Sousa" Lousada's Secondary School, Lousada's Professional Courses Center, Centro Social e Paroquial de Sousela and Escola Básica de Lustosa. During the trips, the focus was on Portuguese culture and civilization, as well as on the conditions and living standards in the Lousada community. The trips within the project had the following destinations: Lousada, Porto, Portugal, 24-28 November 2010; Craiova, Romania, 04-08 April 2011; Lousada, Porto, Portugal, October 2011; Craiova, Romania, April 2012; Lousada, Porto, Potugal, July 2012. During the first trips of the Romanian partners, a survey was drafted to test students' knowledge about the EU and EU citizenship. To achieve the project objectives, it was agreed that the survey would address students aged between 13 and 18. The selected research areas were as follows: health, education, employment, the environment, consumer rights, citizens' rights and taxes, the construction process of the EU, the main EU institutions, migration and multiculturalism.

In order to achieve a greater impact on the educational community and hence the urban community, at least two schools and high schools from each country were invited to participate in the survey. It was agreed that the questions should be phrased by the end of January 2011, the questionnaires for students should be submitted by the end of February 2011, and the result analysis should be finalized by the end of March 2011 in both Lousada and Craiova. The decision was to include 3 general questions for each area of interest – a total number of 30 questions, some being multiple choice questions, some with YES / NO answers. From February to March 2011 a survey on European issues was jointly drafted, which was then applied to a total of 200 Romanian students and 200 Portuguese students aged 13 to 18 years old. The results were then introduced as statistics on http://leusadacreuova.blogspot.com - the project blog created by the Portuguese partners.

During their visit in Portugal, the Romanian partners also agreed that after the application of the questionnaires, the field with poorest results should become the centre of the learning community. Each learning community had to correspond to a field of the school curriculum. A learning community leader would be nominated for each partner and each student leader would have a teacher to guide his or her work.

By using a blog, students and teachers exchanged information, opinions, etc. The blog was made by the Portuguese partners with support from the Romanian partners and it was intended as a means of connection between those involved in the project: http://leusadacreuova.blogspot.com/. The first edition of the Forum on the "Labour Market" was held in July 2011.

As a way to evaluate the results of the applied methods, Romanian and Portuguese partners jointly decided on cross evaluation throughout the project. The project has benefited from a continuous assessment and a summative annual one. The continuous assessment was based on the quantitative data: the number of emails, blog posts, the number of participants in the forum, the number of student questionnaires etc. A number of 400 questionnaires were submitted (200 Romanian students and 200 Portuguese students), and the result was displayed on the project blog, the statistics being set up by age and institution. The dissemination of the project was achieved through mass media (Radio TVS Craiova 20-09-2010 and 10-05-2011) and online discussions at multilaterale2009@yahoogroups.com (April 16, 2011 08: 37: 00 AM). The activities, events, meetings, work within the project, survey results were also visible on the Blog and websites of the institutions: http://leusadacreuova.blogspot.com/, www.cjdolj.ro, http://orizontculturalt.wordpress.com/project3/, http://www.liceuldearta.

The input and output stages theory was essentially applied, a theory developed by William J. McGuire (Chelcea: 2006, 178-179). The steps are: exposure in communication, attention focus, raising awareness, understanding the message, ability to learn, change in attitude, retention, search for information, decision based on new information, the agreement with the decision, strengthening performance, post-behaviour reinforcing. Message is dependent on the type of address, on information, on its organization and repetitiveness. The receiver is identified by demographic variables, skills and lifestyle, and the goal is immediate and direct, raising awareness through modern means of communication.

On a second level it is clear that clear that although McDonaldization is pervasive, our contemporary society is more than McDonaldization (Ritzer, 2003: 32). It is a very important social process, but it is far from being the only process that transforms the contemporary society. On a third level, perhaps the most important, one can speak of understanding the process of globalization, which, once started, has replaced the traditional perception and generated new methods, new styles, new approaches, new standards, new rules (Dobrescu, 2010: 22), to be explained, to be understood and assimilated.

The Press – Means of disseminating information about EU values among the youth

As we said before the *communication policy* is as important as the *information policy*. Therefore, the main goals of the awareness campaign include informing the target audiences and attracting support groups, such as the press, in an attempt to change attitudes, mentalities and behaviour. Bernays's statement on how public reactions to the press are divided is not to be ignored either. Some experts consider that the public spirit is stubborn in connection to the press and the latter does not have too great an influence over it (Bernays, 2003: 79).

The experience gained from implementing the "EU Mainstream Subjects into School Curricula's in Lousada and Craiova" project is an argument in favour of the effectiveness that the community involvement and awareness of educational factors have in the evolution of society and mentalities in the process of European integration. The role of the media and especially that of the Romanian regional public radio station, Radio Oltenia Craiova Romania in European information dissemination, has been highlighted by the ratings and has generated discussions among the listeners on issues concerning the European Union, the cultural specifics of the two partner countries within the project,

Romania and Portugal (*Mainstream EU Subiects into School Curricula in Lousada and Craiova*, 2012: 27-32).

The press, in general, and the radio and television, in particular, address a diverse audience. Even if issues are directly addressing the audience's target demographic or psychographic criteria, these broadcasts are heard by chance or listened to on account of the receptor's fidelity to a particular radio or television station. Therefore, the information should be general up to a certain degree, so that everyone can understand it, the specifics pointing to the level culture and level of understanding of the intended audience. A European project like the one run by the Dolj County Council - Romania and Lousada City Council - Portugal aimed at involving people responsible for organizing and providing education, teachers and spreaders of European information. Its other goals centred on disseminating information about the European Union among students and throughout the community, on discerning and accepting the specifics of the culture and civilization of each of the partners involved in the project, as part of the European community in a united Europe.

From this first level of European information management we went on to a second level; that was to get involved knowingly and responsibly: defining strategies for mainstreaming project themes in schools and universities. Experience exchange, project meetings, international Forums, research visits, meetings with students in the two countries, all these activities were the subject of the press. Articles were published in the local and county press, local and national Romanian TV coverage stories were broadcast. Perhaps the most effective way to disseminate information about the project and its results was "cascade" broadcasting over a period of time and release on all channel types - regional, national and international- of the Romanian Radio Broadcasting Corporation, the national public broadcaster. Such a diverse audience learned about the project specific activities at a broad regional, national and international level, the ratings of Radio Romania Oltenia Craiova, a market share of about 30% (in 2011), ensuring a massive reception of the information body and promoting the project and its supporters. The project was promoted in three ways which maximized the perception and interaction effect: a blog, a discussion forum and radio programmes produced by us at the Romanian regional public radio, as representatives of an NGO, the "Cultural Horizon T" Association. There were discussions about the Internet as a means of communication that fosters the assertion of alternative or multiple identities. The emotional interference is equally catalyzed, targeting not only the understanding of the message, but also the emotional experiences (Cosnier, 2002: 94). Digital interaction is considered a prerequisite for the formation of a budding audience, given that the Internet allows individuals to assert their various identities in the world of globalization. The preservation of cultural identity is claimed by its very own cultural history, its identity matrix (Rusu-Păsărin, 2010: 184).

If the first two methods (blog, discussion forum) addressed the youth in particular, the involvement of the Romanian public radio reception provided information to audiences of various ages and level of training. In addition, the programs made in Romania and Portugal became the documentary basis of a Romanian public radio archive, which adds value to the method of disseminating information about the European experience. It is a testament to the importance of the subjects developed in the project and a page of the history of the communities involved in the project: Craiova and Lousada. It is in fact a press and PR campaign, focused on two components: the relevance of the event and the manner in which information is conveyed to different target audiences in each country (Miculescu, 2001: 101).

The journalistic technique ensured transmission in stages, in a strategic crescendo, from the news release to broadcasting live from Craiova, Lousada and Porto, reporting live in the middle of events (the European Forum in Craiova, research visits in Portugal), radio debates in Romanian regional public radio studio and feedback comments (at the end of the project activities). It is an outstanding story of the European project, a default monitoring of the efficiency of those involved in the project, a syncretic image of two European Community countries in the process of appraising the two regions of major issues on the European agenda. Based on the sound documents made in this project a sound book could be edited about the culture and civilization of the two countries, and about receiving information about the EU. Academician Eugen Simion pleads for this type of book, "The spoken book has an advantage on its side: a greater seduction through dialogue, through the polemical character (...)" (Simion, 2013: 16).

Introduction of disciplines on topics about the history and evolution of the European Union to the school curricula, the use of casuistry in university practical courses are important targets in involving young people of different ages in the European integration process. The dissemination of information about these activities on the Romanian public radio various radio segments (with diverse audiences regarding age, profession, level of culture, residence) through a variety of radio formats, from the informative to the interactive ones, ensured a high reception and created a climate of empathy, solidarity. The Euro - optimism, especially in the current context information reception about the difficulties of the Eurozone countries, can only be maintained by concrete examples of best practices and experiences that validate the need for European. Young people should be informed and timely, objective reporting is responsible for creating confidence in the approaches of the EU regarding the stability, security and prosperity in a united community. The final target of this project was to reduce the degree of euro-scepticism and developing the concept of European citizenship. The cultural contact ensured an empathic perception of the values of each country and a dialogue on the cultural diversity of European values. The experiences of the administrative communities, the educational ones (pre-university education), of the cultural and non-governmental organizations involved in the project have provided the thematic information corpus which defined a great collaboration and created community cohesion. Romania and Portugal, Craiova and Lousada have become reference points on a current map of European collaboration which ensures an accurate reception of information on the evolution of the European Community in a time marked by social dynamics, economic and financial crisis and isolated cases of non-compliance to the social behaviour in a space of European civilization.

Conclusions

The press can reconfigure the media agenda and consequently the social agenda, in an accurate or a condescending manner, the latter creating false images of how European information and rules of living together in a community that respects the specific national and cultural identity are valued. This project clearly highlights the mission assumed and effectively carried out by the administrative, educational and press representatives which set out to disseminate information about the current history of the European space and the expectations of the youth nowadays. The dissemination of project information by the press, and especially by the regional public radio has secured a major impact (due to audience ratings) not only on target groups, but also on public radio audiences, drawn into a public debate on the specific topic of European citizenship.

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ORIGINAL PAPER

Shifting Scales of Electoral Law and Parliamentary Democracy in Romania at the End of the 19th Century

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Abstract:
This presents the evolution of the electoral legislation in Romania, focusing on the main electoral law elaborated up to 1900. Despite its limitations, the electoral system based on qualification contributed to the modernization of the Romanian society, to the knowledge of modern political rules. In this context, the article focuses on the modernization of the states at political level occurred as a result of the progress registered by the democratic system over time. The shifting scales of the electoral reform represent one of the expressions of political democracy to grant voting rights to a larger as possible number of citizens, presenting historically the introduction of this principle of national election (universal suffrage).

***Keywords*:** Romania, electoral system, laws, vote based on qualification (census).

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The modernization of the states at political level occurred as a result of the progress registered by the democratic system over time. One of the expressions of political democracy is to grant voting rights to a larger as possible number of citizens, "the only introduction of this principle of national election (universal suffrage) [considers Emanoil Chinezu] would lead to the development of the country, democracy would substitute oligarchy" (Chinezu, 1869: 64). Thus, the elections will allow people to exercise its sovereignty and to delegate its power based on the principle of representativeness (Muraru, 2005: 1). According to PP Negulescu "the essential act of the constitutional life is the election of the representatives of the nation. The functioning, good or bad of the mechanism, depends on the good or bad manner in which this choice is made (Negulescu, [n.y.]: 44).

Romanians, under the spectrum of interest to the three big neighbouring empires (Russia, Austria, Turkey), had sought and advocated for achieving in freedom the legislation necessary to modernize the society, to place the Romanian requirements in the upper register of the European development stage. The reform process had been long and difficult, the Phanariot rulers started it and it was supported by the local elites effort that have developed a series of political projects that would pursue the modification of the international status of the two Romanian countries and process of performing the functions of the State (Stanomir, 2005: 15).

All the pleadings and the reform projects submitted to the Imperial Courts in Constantinople, Paris and St. Petersburg contained important provisions for the Romanian society from the late nineteenth century and early twentieth century: the principle of separation of powers; the limit to the royal power; rights granted to the Community assembly; the aristocratic republic on the basis of the consultation and collaboration of "the entire people". In the period 1802-1822 these ideas and constitutional reforming principles, influenced by the spirit of the French Revolution of 1789, began to emerge more and more, for that after the revolution of Tudor Vladimirescu, they were registered in the Constitution of the old liberals, elaborated by the small and middle nobility of Moldova, headed by Ionică Tăutul, which A.D. Xenopol characterized as "the first political manifestation of liberal thinking" and "the first incarnation of a constitutional thinking in the Romanian Countries" (Xenopol, 1898: 23-28; Xenopol, 2005: 87).

By introducing the Organic Regulations from 1831-1832 it was established for the first time in the Principality, a new form of state organization based on the principle of separation of powers: the executive one given to the ruler, the legislative one exercised jointly by the Community Assembly and the ruler and the judicial one which becomes independent from the legislative and executive power. The conditions necessary to the voters or the communities were set, taking as elective criteria wealth and rank.

The Organic Regulations were, as Tudor Drăganu noticed the "first laws in the Romanian countries by which there were established assemblies based on suffrage, in order to, through their participation in the exercise of the legislative activity, reach a limitation of power, up until then absolute, of the chief of the state" (Drăganu, 1991: 40-41). The Organic Regulations contributed to crystallize and develop the liberal democratic trend in the Romanian Principalities (Banciu, 2001: 29). The events that followed the revolution of 1848 and the Peace Treaty of Paris in March 1856, the convocation of the ad-hoc Assemblies, chosen based on a large representativeness, with the right to expose their own desires, demonstrated the wish of the two political currents that were formed, the liberal and the conservative one, to strive for the building of modern Romania, the reorganization of the national state structures on the principle of representativeness. The

Developing Statutes of the Paris Convention of 7/19 August 1858 (Ionescu, 1997: 31), an international act meant to establish the national and international status of the Romanian Principalities, created the constitutional framework at the level of which there were established both individual freedoms as well as the representative system and the rules of ministerial responssability. The representative mandate requires the election of proportional representation. The Statute and the new electoral law comprising 36 articles were approved for the first time in May 1864 by plebiscite on 10/22 of May respectively 14/26 May 1864. The result of the plebiscite vote was overwhelming, the United Principalities thus marking an important step towards the state independence.

From the analysis of the two documents, the Convention and the Electoral law it shows that the state elite in general and the parliamentary one in particular was selected based on the census criterion, in part similar to that established by the Organic Regulations. We are seeing a decrease in the census which will enable a wider participation and voting representation from the bourgeoisie and the peasantry.

Investing census as a means of quantifying the status of the owner, with the criterion function essential in establishing the electoral body, the separation between direct voters and indirect voters is an institutional way that we also find in the constitutional regime of 1866 but which will be abolished with the extension of voting rights to the whole male population (Stanomir, 2005: 39).

According to the Statute the legislative power is exercised collectively by the ruler, the Weighing Assembly (also called a Weighing body or a Senate) and the Elective Assembly. The deputies of the Elective Assembly were elected by direct vote and by those who voted indirectly. Thus, the legislative power was for the first time, that of a bicameral parliament that will provide for the ruler the control over the executive process.

The indirect voters (or primary) were Romanian voters in the communal councils and paid a tax of 48 lei in villages and 80 lei lei in the urban communes, which led to a significant increase in the electorate. Indirect voters exercised their collective vote by appointing a direct voter. Thus, the 50 primary voters must appoint a direct voter.

Voters were from the "cities or villages, all born or naturalized as Romanians" who had an income of 100 golden coins and paid a tax of 4 golden coins, could read and write. The right to vote was exercised from the age of 25 years old. The priests, teachers, doctors, lawyers, architects, engineers and pensioners who had a minimum annual pension of 3000 lei were exempted from census and could vote as direct voters. To be elected as a deputy, in accordance with Article 8 of the law, there were eligible those who were more than 30 years old, were Romanian citizens by birth or naturalized, were voters and paid an eligibility census. The census was set at an income of 200 golden coins. Exempt from this census were those who held prior positions in the state, retired senior officers, teachers and all those who exercised appropriate liberal professions.

The vote was secret, and the mandate was obtained by an absolute majority of 50% plus 1 of the total of the cast votes. 94 deputies belonged to cities, and 66 deputies belonged to counties (The Official Gazette no. 145 from 3/5 July 1864; Gilia, 2007: 103; Xenopol, 2005: 453) which meant an over urban representation in relation to county / rural colleges. These electoral stipulations allowed access in the electorate only to a very small elite (Radu, 2005: 17).

It is mportant to note that voting citizens could choose only the members of the Elective Assembly. The Weighing Body or Senate was composed of 9 rightful members of the clergy, the army, the President of the Court of Cassation, and 64 members were

appointed by the ruler, of which 32 were appointed from among the persons who exercised the highest offices in the state or which could justify an income of 800 golden coins and the other half came from county councilors, 3 from each district. Being appointed by the Lord, the Senate was to be his submissive body.

Having denied the deputies the right of interpellation and the indictment of the government and establishing open voting rule in legislative proceedings we are witnessing a decrease in the activity of the executive. Parliament had no longer the role "to decide on behalf of the Romanian nation according to which it understood to be governed and to control the government in the implementation of the decided issues. It was nothing but a decorative body intended to maintain the illusion of a constitutional life" (Negulescu, 1926: 234).

The role of the Weighing Body was to adopt or reject bills passed in the elective Assembly before being sanctioned by the lord. The law also provided for penalties for the electoral fraud: abuse, falsification of lists and ballots. The modernization of the Romanian state during the reign of Alexandru Ioan Cuza was founded by creating new social structures and institutions specific to the new historical life paths, enabling the birth of modern Romania. The abdication of A. I. Cuza in 1866 and bringing to the Romanian throne of a foreign prince will open a new stage in the economic and political life of Romania. The idea of the parliamentary regime was imposed again with the entry into force of the Constitution of 1866. After long debates in the Romanian parliament the draft constitution was voted and approved, the sanctioned Constitution was promulgated and published in the Official Gazette on June 1, 1866. Along with the Constitution was also discussed the draft electoral law, which established the designation of the Members of the General Assembly.

The electoral law that brought significant changes to the voting system was approved and promulgated by the ruler on 16/28 July 1866 and includes 8 titles: On the electoral colleges, On the electoral capacity, On the eligible candidates, On the incompatibilities, On the political domicile, On the electoral lists, On the election operations and the General provisions.

The Constitution of 1866 introduced a new political regime which proclaimed national sovereignty, established hereditary monarchy, created a democratic parliamentary system, established the principle of separation of powers, set a wide range of individual rights and freedoms, sets the principles of modern representative government. Although it was considered one of the most liberal constitutions in Europe of the mid nineteenth century, by introducing a census electoral system, the access to power was limited according to wealth, protecting the interests of the liberal bourgeoisie and of the big conservaties landlords. A bicameral principle was adopted, thus the second Chamber (Senate), introduced by A. I. Cuza will be legitimized, being considered "a barrier opposing the tyranny of a single assembly, because it maintains balance" (Pencovici, 1883: 196-197) the only environment in which freedom can survive.

According to the Electoral Law, the vote was based on census and it was a secret vote and the Members of Parliament (National Representation) represented the nation and not the county or town which appointed them. The electoral body for the House of Representatives, according to Articles 58-63 of the Constitution, was divided into four colleges per county. According to the new electoral law the first college comprised those who had an income of over 300 golden coins each year; college II comprised those who paid a tax of minimum 80 lei, as well as the merchants or industrialists who paid taxes amounting to 80 lei. In this college were exempted from census the following categories

of people: those who practiced liberal professions; reserve officers, teachers and retired state workers.

All these three categories designated deputies by direct vote. Were part of college IV "all those who paid even the smallest tax to the state"; the college of the peasantry. The priests from the villages were also a part of this college. The members of this college voted indirectly, 50 subscribed voters nominated one delegate and the appointed delegates gathered in the county's seat where they elected a district deputy. The first two colleagues chose 66 deputies, one from each county, while the third college elected 58 deputies; in 22 county seats one deputy was elected, in 11 counties 2 or 3, in Iasi 4 and in Bucharest 6 deputies. The college IV designated 33 deputies. The number of deputies was 157.

The conditions to be a voter remained the same as in 1864, just the age was lowered to 21 years old, after 30 years in 1831 and 25 in 1858. By 1938 there was no more change in this regard. To be eligible for the House of Representatives the law established the following conditions: to be Romanian by birth or have received land there; to enjoy civil and political rights; to be 25 years old and domiciled in Romania. The mandate of the deputies was of 4 years. For the Senate, the electoral body was divided into two colleges in every county. In college I belonged all the owners of rural funds with financial income of at least 300 golden coins; college II was reserved for cities of residence and included all urban property owners with an income of up to 300 golden coins. The two colleagues voted separately, each electing a representative. The Universities of Iași and Bucharest appointed a senator elected by teachers. The Senate has 68 elected members plus the senators by right: the heir to the throne at the age of 18, the metropolitans and bishops of the diocese.

To be elected senator the following conditions had to be fulfilled: to be a Romanian citizen by birth or naturalization; to enjoy all civil and political rights; be domiciled in Romania and to be 40 years of age. The Senate members were appointed for a period of 8 years and half of them became renewable, every 4 years by drawing lots (Pencovici, 1883: 345-352; Gilia, 2007: 105-107; Radu, 2005: 21-22).

To exercise the right to vote the voters were called in the college they belonged to, in the place of election and the president of the voting bureau would call them out loud in alphabetical order. Each deposited in the ballot box a "note written on white paper, cut to the same size by the bureau, in front of the voters. Voting took place between the hours 9-16 during spring and summer and 10-16 during winter and could take a few days in a row, so no one could be prevented from expressing his or her option (Radu, 2005: 22-23).

Deputies and senators were elected by an absolute majority in the first round and by a relative majority in the second. The electoral system of the four colleges in the Lower House and of the two colleges in the Senate, by introducing high census will determine a significant disproportion between the number of voters and the delegates elected in the parliament. The pressure of the government on voters led to the election fraud. The fact that the peasantry, which formed college 3 did not vote directly but through delegates, they could be easily influenced by the candidate in their constituency, so voting results could be easily manipulated and known beforehand. This aspect highlights why the elections were won in general by governments organizing the elections.

The flaws of the new electoral law, although they have been found since the first elections (Cância, 1974: 62-63), the government instability that characterized the beginning of the constitutional regime did not allow the revision of the constitution (To reduce electoral corruption ever since 1876 The National Liberal Party who was governing, elaborated the programme. "The Romanian democratic union", in which it was

stipulated to modify the electoral law. In January 1878, the law of ministerial responsability was adopted, by which were set the "harsh" sanctions for the minister who did not respect the rights and prevented the exercise of free elections). C.G. Disescu believed that the electoral law in 1866 produced "bad fruit", among others such as the aristocratic character, the restricted colleges, the electoral corruption, the prevention of the formation of the public spirit and of strong political parties (Radu, 2005: 24).

With the change of the international status of Romania, by recognizing the state independence and the proclamation of the Kingdom on 14 March 1881 it was required the revision of certain articles of the Constitution and implicitly from the electoral law to extend voting rights by amending the articles considered too restrictive. There have been many debates and disputes within the legislative bodies on the articles that were to be replaced: the division of the electoral body into colleges; their composition, the number of MPs in the counties which were to be integrated into the election law because they were a part of the Constitution. There were discussed the articles related to: the electoral capacity; the eligibility requirements; the electoral lists; the electoral procedure and the incompatibilities (Mamina, 2004: 120).

On June 8, 1884, King Charles I promulgated the revised Constitution ("The Official Gazette", no. 51 of 8/20 June 1884: 1041-1046) and by Decree no. 1788 of June 8, he promulgated a new electoral law which contained 140 articles ("The Official Gazette", no. 52 din 9/21 June 1884: 1074-1081). The most important change brought to the electoral system was to reduce the number of electoral colleges from four to three for the Chamber of Deputies and decreasing the census necessary for the entry in one of the colleges. The differences between the direct and the primary voters were repealed and the category of those exempt from census was enlarged (Radu, 2005: 26; Preda, 2011: 115).

According to the new electoral law, the electoral body for the Lower house was divided into three colleges and reordered as follows: the first college included Romanian citizens which, in addition to other general conditions of electoral capacity in the old law, had a rural or urban land income of at least 1200 lei. No waiver of census was allowed. This college elected 75 deputies, i.e. 40% of the members of the chamber of 183 deputies. The College II under Article. 4 included "all those residing in cities and paying to the state a direct annual tribute of any kind for at least 20 lei". They were exempted from census: the liberal professions, the retired officers, the retired state workers; those who have completed at least a primary education. It was the college with the highest number of direct voters, but could only choose 70 deputies, i.e 38% of the members of the Chamber. College III is made of all the voters who are not in colleges I and II, "pay a smallest tribute to the state". The voters in this college, that have annual land revenues of over 300 lei and are literate, can choose a direct or an indirect voting. Thus they could vote directly "in the city of residence" or indirectly, together with the illiterate, "in their villages".

The census waiver was enjoyed by: rural teachers, priests and those who paid an annual rent of at least 1,000 lei. The remaining voters voted indirectly, 50 voters nominated one candidate (Data took from the Electoral law of 1884; Radu, 2005: 26). College III has 38 deputies. Also, another novelty introduced in 1884 is the differentiation between counties in terms of number of deputies, for all colleges, according to the number of inhabitants, and not, as in 1866 for only one (Preda, 2011: 116). Thus, the first college chooses two deputies for each county. Exceptions counties: Ilfov where

five deputies were elected, in Iasi and Dolj four each, Buzău, Mehedinţi, Prahova, Teleorman, Bacău, Putna, Botoşani, Tutova three each.

It was the same in the second college, of the cities: Bucharest, nine deputies; Iaşi six, Craiova and Ploieşti, four; Brăila, Turnu-Măgurele, Bacău, Roman, Galaţi, Focşani, Bârlad and Botoşani, three, Buzău, Giurgiu, Huşi, Piteşti şi Turnu-Severin two deputies, and one in the other colleges. The third College designated one depute for each county, except for Ilfov, Dolj, Prahova, Buzău, Putna and Suceava who elected two deputies each. In the Senate, the electoral body consisted of two colleges in each county. To the first college belonged those with a rural or urban land income of at least 2,000 lei annually. Census waiver is granted to certain people: current and former MPs and senators who were part of two legislatures; Generals; Colonels; former ministers; Presidents of the Court; general prosecutors; those who had a bachelor's degree or specialist's degree in any field and who have practiced their profession for 6 years, members of the Romanian Academy. The college chose 60 senators, i.e 50% of all the Senate members (Radu, 2005: 27). To college II belonged all the direct voters in cities and rural communities who had a rural or urban land income between 800 and 2,000 lei, traders and industrialists who pay a patent of Class I or II. They were exempted from census: those who possessed a degree of doctor of any specialty, licensees in law, letters, philosophy or science, engineering, pharmacists, architects, teachers of state schools in cities, pensioners with a minimum pension of 1,000 lei per year.

Two senators were appointed for each county except for the counties: Ilfov, five senators; Iaşi three; Brăila, Covurlui, Dolj, Prahova, Botoşani, Tutova, Teleorman, Mehedinţi, Buzău, Bacău, Putna, Dâmboviţa, Roman and Neamţ, two senators per county. For the universities of Bucharest and Iasi it was kept the same procedure as in the law of 1866. The number of Senators elected by this college was 50, representing 42% of all Senate members. The remaining 8% was occupied by the rightful Senators: the Crown Prince, metropolitans and bishops (Nicolescu, 1903: 9, 16-20; Radu, 2006: 137-138).

To benefit form the quality of a voter one had to be a Romanian citizen, aged 21 years old and to be of Christian religion. Unable to be voters were considered: the beggars; the bankrupt; those placed under judicial interdiction; the hired servants. They were "unworthy to vote" those convicted of crimes or offenses stipulated in the Criminal Code; "those who owned houses of prostitution or gambling". Some of these categories excluded from voting on ethnic criteria will be maintained in the law also after the First World War (Preda, 2011: 117). The eligibility conditions remained those set in the electoral law of 1866. Changes occurred also at the time of voting. It is the only one of this kind in our electoral history. Thus Article 29 of the electoral procedure, provided a break in the voting process at noon. The vote was cast from 8^{30} to 12^{00}, then voting was stopped for an hour to resume until 17^{00}. The voter cards were printed and bore the seal of the city hall.They included: the college of the voter; name and surname; profession, domicile and were submitted to each voter after the Mayor finalized the electoral lists.

The technique required separate printing of ballots for each candidate. The voter presented himself to vote with his voter card and he was handed a ballot of each candidate and one envelope, went up alone in a secret room, introduced the ballot in the envelope, folded it in four, sealed the envelope to be placed in the ballot box. Citizens placed in a white urn the ballots of other candidates (Preda, 2011: 117). The electoral operation took just one day. If voters showed up after 17 pm the urns will be open until all voters will have voted. They were also provided punishments for offenders of the law, by trying to

defraud the vote with fines ranging between 500-5000 lei or imprisonment from 3 months to a year, depending on the seriousness of the offense.

The amendments to the electoral law in 1884 have increased the number of voters for both the Senate and the Chamber. The electoral body has increased due to the urbanization process by increasing the urban population. However, the election of deputies and senators was made further based on an electoral system based on a census, of sex and one of financial endowment that allowed access to electoral colleges to certain restricted categories of people. This rule was so strict that "voters who voted in England in the first College could vote in Romania only in the fourth college" (Dogan, 1946: 9). Inequality was also in terms of the number of deputies elected by colleges: the first College elected 75 deputies, College two 70 and those in College three which was the largest, elected 38 deputies.

In conclusion, by adopting the revision law of 8 June 1884, the number was reduced from four to three colleagues for the House of Representatives, dropped the census threshold at the colleges senatorial level. It also introduced in the second senatorial college a number of exemptions from census required to registration lists, aiming to be broadening the recruitment of voters, gaining thus a higher weight in the upper chamber colleges economy (Stan, 1995: 152-166). By the electoral law of June 8, 1884 was added to the Constitution the Article 133, additional article ordering the application of the Constitution through special laws also in that part of Romania over the Danube, in Dobrogea annexed to Romania after the Peace Treaty of Berlin. The Act of April 14, 1910 granted political rights also to the inhabitants of Dobrogea. In the period 1884-1914, along with the advent of parties in Romania we are witnessing political debate on the modernization of the electoral system. Max Weber believed that "parties are the children of democracy and of the universal suffrage", there is a direct link between the development of political parties and the political thrive of the universal suffrage in the late nineteenth century and early twentieth century (Cultură politică şi comportament electoral în România: 8-9).

The Liberal parliament in 1903 passed a law amending the electoral procedure in 1884 which sought to ensure the secrecy of the vote. The Act of 1903 regulated, among other things, convening the electoral college, the ballot papers, the presence of magistrates in conducting election commissions, the withdrawal of possibilities to invalidate an election, the police non-interference in the election, though admitting military presence during elections (Radu, 2005: 29). Changes in the electoral procedures were made in 1904 and in 1906 and 1907. The law of 18 February 1907 introduced new stipulations on the establishment and modification of electoral lists. If the law of 1884 stated that the establishment of the voters lists was made by mayors and may be changed from year to year, the 1907 Act required the principle of consistent electoral lists, with the force of res judicata, but only for a period of one year. The lists were prepared under the supervision of the court president and included, in alphabetical order, all those who fulfilled the conditions required by law. Listing was done through a request made in person or by proxy together with the documents or justyfing certificates. Also, deleting or adding a voter in another college was made by a president on the basis ofa decision. By the decision of the Ministry of Interior of September 25, 1903 it is provided that ballots should have separate colors for each college: red for college I and the Senate and College III for the Chamber; yellow for College II for the Senate and college I for the Chamber; green for College I for the Chamber (Gilia, 2007: 108-109). The Electoral Reform of 1884 has satisfied all parties and political groups in the country.

The three revisions of the Constitution of 1866 failed to adopt the fundamental pact of the new political, economic and social aspects of the country, existing in the late nineteenth century and early twentieth century. They were more frequent requests from liberals and social democrats for the implementation of the land reform and political emancipation of the people by replacing the voting system based on qualification stipulated in the Constitution. Rosetti proposed extending the right to vote to all citizens without restrictions based on their wealth. Constantin Dobrogeanu-Gherea will score as the first point of the program from 1886 the requirement of direct universal suffrage a and every citizen, man or woman, reaching 20 years of age, should have the right to vote. This issue was specified in the political part of the program (Cuţişteanu and Ioniţă, 1981: 7). The Conservative and Democrat - conservative parties were limited to measures to ensure vote and greater access of urban bourgeoisie to voting and the electoral life by restricting colleges from three to two, the universal suffrage not cutting into their calculations considering that changing the electoral system "is not required by any necessity of moment" (Cuţişteanu and Ioniţă, 1981: 12). The Liberals were the main political force opposing to the conservatives by promoting new ideas of reforms that were aimed at developing and modernizing the Romanian society. The project proposed by radical liberals in 1882 provided the introduction of a unique college for all people who were educated and who paid to the state a direct tax of 25 lei per year, and others were to vote by delegates (proxy). The adoption of this project would have increased the number of direct voters and put on a new basis the system of designation of deputies and senators. However, the liberals were not in favour of such a radical a reform, the universal suffrage, as were taken up by socialists and radicals of George Panu, because they feared that this reform would lead to anarchy, the masses are not yet ready to engage in politics. PNL was stirring the electoral reform issue especially when in opposition, when they could promise more, but once in power, they found many reasons to circumvent these problems. In 1892, by the so-called "Program of Iasi", the liberals promise a new electoral reform which provided the "universal suffrage with proportional reprezentativeness" but felt that it was only an ideal towards which they were reaching. The universal suffrage was to be achieved "through gradual increasingly reforms prevalent for all social levels, the lights of a solid and sound education". Came into power in 1895, the Liberals will ignore this promise, the government program of 3 December 1906 did no longer mention the universal suffrage, but only the "Rule of Laws" (Radu, 2005: 48-49). In the period 1895-1896, there are more and more criticisms of parliament made by different political groups and by intellectuals, to debate the need to broaden the electoral body. Nicolae Iorga demanded that "every peasant, who gives his tribute in money, in blood, that one should participate in the political life of the country" (Iorga, 1939: 204). The period is marked also by governmental instability and social unrest: from 1788 to 1891, they were five successive governments and from 1895 until 1901 there were also five other governments. The conflicts arose within the political families often led to the fall of governments. The arrival of a new government brought new promises. The ideas of the universal suffrage will become increasingly debated in the newspapers and brochures that appear in this period. The issue of the universal suffrage will remain unresolved until after the First World War. By reviewing on the July 20, 1917, Articles 57 and 67 of the Constitution it was adopted the principle of the universal suffrage, equal, direct, compulsory and with voting on a list based on proportional representation (Mamina, 2000: 37).

"Article 57

The Chamber of Deputies is composed of members elected by the adult Romanian citizens by universal, equal, direct, and compulsory vote and by direct elections based on proportional representation. The electoral law shall determine the modality of the composition of the Chamber of Deputies.
Article 67
The Senate shall consist of elected senators and of rightful senators. The electoral law shall determine the composition of the Senate".

The legislation of the universal suffrage in Romania has produced radical changes within the electorate, the election campaigns will engage millions of citizens, and the political struggle becomes more diverse. In an analysis of the evolution of democracy in the countries of Central and South-Eastern Europe until World War I, Camil Mureşan notes that, initially, the electoral system was everywhere based on census, the electorate being divided on colleges or curies, which altered the representativeness of the elected officials. Rendering universal the right to vote was a phenomenon that took place gradually.

Conclusions

Regardless if the suffrage was limited by census or declared formally as universal, the electoral practice was not, and never were, anywhere, correct (Buzatu, 2011: 22). "The interferences of the authorities, the manipulation of the electoral body through constraint and / or corruption were permanent phenomena. They prevent to be able to speak of a real democracy throughout this entire geopolitical space" (Cultură politică şi comportament electoral în România: 10). Lately, contributions on the democratic heritage of 19th century parliamentary practice argue on their importance for the re-design and implementation of the rule of law institutional structures (Olimid, 2014: 53-64; Bărbieru, 2014: 190-200). Despite its limitations, the electoral system has contributed to the modernization of the Romanian society, to the knowledge of the modern political rules.

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ORIGINAL PAPER

A Critical Assessment of Political Party Performance in the Elections for European Parliament in Dolj County Romania on May 25, 2014

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Abstract
This study aims, in addition to an analysis of the elections for European Parliament members in Romania on 2014 and focus on the research of this phenomenon in Dolj County. Recent years have been for Romania charged of electoral events and social transformation, political change happening in the context of premieres, surprises and twists. EP elections were characterized, both at European and national level, by the low turnout of voters, the stake being the lowest for the Romanian public opinion since the themes of European interest are perceived as not having a direct impact on life daily. The election campaign was hard, and personal attacks belonged to a radical speech in which there was no central theme, dominant political figures were those of politicians who were to stand for president election in November 2014, they practically creating a preamble for the last ones. Elections in Dolj County made not discordant note perfectly enrolling in the limits imposed by the rest of the country, with a low turnout and results aligned with national results.

***Keywords**:* European elections, vote, share, European Union, European Parliament.

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Introduction

After the Second World War, organizing Europe began by small steps, but surely become reality. Romanians, placed in an area of complex political, cultural, commercial and strategic interference followers were and are bearers of Europeanization and European awareness even from past centuries, when, once the political assertion of the Romanian Principalities and due to the multiple and powerful confessional confrontations, seek support outside. As a result of the economic and political disputes in the region, Romania's accession to the European Union was achieved later than in other countries, but this did not prevent our country to successfully align the standards set (Avram, Radu, Pârvu & Gruescu, 2007: 49).

During the existence of the European construction, countries that have joined EU had a differentiated level of economic and social development. The countries of Southeast Europe have developed asymmetric developments due to the existence of a period marked by changes of regimes, conflicting events, internationalization and globalization. Among these, Romania, which in 1989 experienced the bloody end of the communist regime, then went through a period of many political frictions. The changes that occurred were aimed at meeting the political criterion based on the progress of the state. In most former communist countries, administrative and institutional reforms were coordinated to serve the purposes of the transition to democracy and formed part of the criteria for accession to the EU (Şerban, 2014: 148; Georgescu, 2014: 136; Avram and Radu, 2009b: 11) and to the North Atlantic Alliance (Olimid, 2014: 53-64).

Socio-political and institutional evolutions assumed an important step forward and allowed ambitious approach of signatories states (Gîrleşteanu, 2012). The evolution of institutions in a political system is determined by the changes taking place in the act of government and policy making (Gherghe, 2013: 19-24). In the EU, Europeanization is not uniform due to countries' own traditions and the moment when held membership (Schifirneţ, 2011: 15). National identity is defined by its characteristics of a nation as language, culture or religion and respect of the customs, traditions, customs specific to communities (Schifirneţ, 2009: 31-32; Buzatu, 2011: 22). In Olsen's opinion, Europeanization is determined by five processes: the act of change in foreign territorial borders, the development of government institutions at European level, the central penetration of national and sub-national governments, the export of forms of political organization and governance, as political project helping the formation of a strong and unified Europe (Olsen, 2002: 921-952).

The last two years, 2012-2014, were for Romania years uploaded of change and electoral events. Election year 2012 was marked by three major confrontations, local elections, referendum to impeach the President of Romania and parliamentary elections of December 9, political changes being made in the context of premieres, surprises and twists (Bărbieru, 2014: 191). In 2014 were held two rounds of elections in Romania: European elections in May and president elections in November.

European Parliament

Together with the Council of the European Union and the European Commission, the European Parliament, composed of representatives of EU Member elected by universal and direct suffrage, with a 5-year term mandate with representative character, has legislative power. The demographic share has a key role in representing and designating the number of the members of the European Parliament (MEPs), the number of mandates being determined by the size of states, taking into account the need for representation of

the least populated countries. The Maastricht Treaty has simplified the previous electoral procedure and introduced the concept of European citizenship with political and legal status conferring the right to vote for the general election of the European Parliament and also for the local elections to all residents regardless of their nationality (Radu, 2013: 35; Avram and Radu, 2009a: 98).

On 25 May 2014, a total of 21 European countries elected their representatives in the European Parliament, while in other seven states elections took place on 22, 23 and 24 May. In comparison with previous elections, the fact that the number of the member countries of the European Union is 28, after the accession of Croatia on July 1st, 2013, is a novelty. The first countries who elected their MEPs were Netherlands and the United Kingdom on 22 May, Ireland on 23, Latvia, Malta and Slovakia on May, 24 and the Czech Republic elections were held over two days, 22 and 23 May. For PE, in four EU countries, the Czech Republic, Ireland, Malta and Slovakia, citizens are not allowed to vote abroad, Estonian citizens abroad have three ways to vote – by post, to the Estonian embassy in that country or by email, Estonia being the only country that offers this possibility to its citizens. In Belgium, Cyprus, Greece and Luxembourg voting is compulsory. The minimum age for candidates for the European elections varies between 18 (in 15 EU countries), and 25 years old (Greece and Italy). In Romania the minimum age for candidates is 23 years, the only country whose law requires this specific minimum age limit. As regards the electoral threshold for parties, in 9 countries this is of 5%, including Romania, and in 14 countries law do not provide any threshold, including Bulgaria, Germany, Great Britain (Necula, Ziare.com: 2014).

Although the number of MEPs increased to 766 after the accession of Croatia, though their number was reduced to 751 for the 2014 elections, this number being constant in the future. They are representatives of more than 500 million citizens in the 28 member states. Allocation of seats in Parliament is based on the principle of "degressive proportionality" so states with larger populations have more seats than the smaller, but more places are distributed to smaller states than would result from a strictly proportional calculation. For the elections in May 2014, Romania received 32 seats, although previous legislation had allocated 33 seats to the Romanian State (European Parliament, official source).

European Parliament powers introduced by the Treaty of Lisbon

EP elections in 2014 were the most important European elections so far as they were first carried out after the entry into force of the Lisbon Treaty in 2009, which gave a number of new powers to the European Parliament. One of the novelties introduced by the Treaty refers to the nomination by Member States of the European Commission President who will succeed José Manuel Barroso in the fall of 2014. The nomination must be in concordance with the results of the European elections and the candidate for this position will be approved by the new Parliament. Thus, starting with this year, voters say an important word the one who will take over the governance of the European Union (European Parliament, official source).

As from November 1st, 2014 to 2019, the College of the European Commission consists of 28 members. President Jean-Claude Juncker is assisted in its work by a first vice-president, a senior representative, five vice-presidents and 20 commissioners. These, one from each EU Member State, the Commission will provide political leadership during their tenure, President assigned to each Commissioner responsibility for specific policy areas (European Commission official source). President Jean-Claude Juncker is assisted

in its work by a first vice-president, a senior representative, five vice-presidents and 28 commissioners, one from each EU Member State, which will provide political leadership of the Commission during their mandate. President assigns to each Commissioner the responsibility for specific policy areas (European Commission, official source). In the Juncker Commission, Romania's candidate is social-democratic Corina Crețu whom was entrusted to the mandate of the Regional Policy. The Romanian Commissioner considers that regional policy is "an essential tool" for increasing the competitiveness of the EU, "is not simply a transfer of funds from more developed regions to less developed regions" but "means that Europe's regions become stronger, help each other, learn from each other, grow together in a stronger and more competitive Europe" (Corina Crețu, official source).

The European Parliament also has the responsibility of drafting laws that affect the daily life of European citizens and of establishing the Union's annual budgeting. These competences are shared together with the Council of Ministers of the 28 national governments within the EU, in a way that resembles to a bicameral system. Since 2009, the Parliament was also granted real powers in the areas of politics, agriculture and fundamental freedoms, areas in which previously had only a consultative role. The European Union will have legal personality consolidated, the function of President of the European Council will be transformed into a permanent one, it will be established the post of the Union's Foreign Minister, officially named the High Representative for the common foreign and security policy and the number of commissioners will be reduced by one third (European Parliament, official source). The Lisbon Treaty also granted legal quality to the Charter of Fundamental Rights of the European Union (Radu, 2008: 36-43).

Applicable law and legal stipulations

The European elections on May 25, 2014 were held in our country according to legislation in force, Law no. 33/2007, republished in the Official Gazette of Romania, Part I, no. 627 of 31 August 2012 as a basic law, and modifying documents - Law no. 187/2012, published in the Official Gazette no. 757 of 12 November 2012, Government Emergency Ordinance no. 4/2013, published in the Official Gazette, Part I, no. 68 of 31 January 2013, Government Emergency Ordinance no.4/2014, published in the Official Gazette no. 111 of 13 February 2014. Romanian representatives in the European Parliament are elected by universal, equal, direct and secret suffrage based on the voting list and the applications of independent candidates.

Law no. 33 of January 16, 2007 on the organization of elections for the European Parliament states that the MEPs mandate is 5 years, with one exception, namely the termination of the mandate on the basis of the first elections in 2009, at the conclusion of the 2004-2009 term of the European Parliament. The right to run for a seat in EP belongs to Romanian citizens (including those living or residing abroad) who have the right to vote and have reached the age of 23 years until elections day.

The nationals of Member States of the European Union with domicile or residence in Romania, meeting the requirements to be elected as members from Romania to the European Parliament, have also the right to be elected for this European institution. Romanian citizens belonging to the following socio-professional categories - Constitutional Court judges, ombudsmen, magistrates, active members of the military, policemen and other public servants, including those with special status, cannot be elected as MEPs. Membership of the EP is incompatible with the function (public office) of deputy or senator in the Romanian Parliament or the one of member in the Romanian Government. Within 30 days from the date of validation of the EP elections outcome,

people who are in a situation of incompatibility are forced to choose between European parliamentary mandate and the function that generates incompatibility and to resign from one of these functions. After the deadline, if the incompatibility continues to exist, the persons in conflict will be considered resigned as MEPs and lose their mandates (Law no. 33/2007).

Government Emergency Ordinance no. 4/2014 on the operationalization of the electoral register provides, inter alia, that the permanent electoral lists are prepared and printed by mayors, based on data and information contained in the electoral register. Electoral operations are conducted in polling stations and organized under the law in force, Law no. 35/2008. Under the law, there were organized special polling stations for the citizens exercising their right to vote in another locality than the domicile one, after declaring in writing, on their own risk, that they had not voted and will not vote again in the same ballot. Establishing special polling stations was made by the government, by decision, within 5 days from the date of entry into force of the Government decision on the announcement of elections day.

The Emergency Ordinance no. 4/2014 provides that, for the elections to the European Parliament, the proposal application or the application for independent candidature of a citizen of a Member State of the European Union other than Romania, must be accompanied by a declaration on his own responsibility in which has to specify, in addition to personal identification data, that he does not candidate in elections to the European Parliament in another Member State of the European Union, he was not deprived of his right to be elected in the Member State of origin upon an individual judgment or administrative decision, provided that the latter is subject to appeal, local community or district in the state of nationality where he was last entered in the electoral list (OUG nr. 4/2014). This statement is subject to art. 326 of Law no. 286/2009 on the Criminal Code as amended and supplemented.

2014 EP elections in Romania

This article aims, beyond an analysis of 2014 elections for the European Parliament in Romania, at focusing on researching this phenomenon in Dolj County. In 2014, our country has passed through the third round of European elections, which, like those of 2009, had been carried out on time, unlike the 2007 elections, which were held exceptionally on November 25, during the 2004-2009 year mandate, after Romania joined the European Union (Mihalache, 2014: 3). EP elections are characterized, both at European and national level, by the low turnout of voters, being perceived by the public as "second order" elections, of secondary importance, a trend that has been preserved in all three polls in our country (Reif & Schmitt, 1980: 3-44). For Romanian public opinion, the stake of the EP elections is low because the themes of European interest are perceived as not having a direct impact on everyday life.

As in electoral battles in recent years, especially in 2012, by analysing the campaign and the simple means of communication used by the candidates one can easily see that they resorted to campaign websites, blogs, social networks, Facebook, through which they informed potential voters and their supporters about attending different events (Ghionea, 2014: 212). The election campaign was dominated by a radical discourse in which there was no central theme as unemployment or Ukraine crisis, discourse with no connection with Europe, with voters or related issues that concerned the future of Romania and other EU Member States.

Dominant political figures were those of politicians who were to stand for president election in November 2014, and not of those who have applied for a MEP position. Thus, we can say that the EP elections, which took place 6 months before the election for president, constituted a preamble to these.

Also, as in local and parliamentary elections in 2012, during the campaign in May 2014 was used continuously personal attack and political battle was fought primarily between President Traian Băsescu and Prime Minister Victor Ponta. Messages that have been exposed by electoral parties and candidates had a populist character, the slogans used being evasive and less relevant to the election stakes. The Social Democratic Party appealed to the "pride of being Romanian", using the sense of common national belonging for electoral purposes.

The same things cannot be said about the campaigns in Western countries that addressed issues of national interest, but with European dynamic such as economic policies, employment or education. For example, Italy has focused its campaign on apostrophizing the economic operator of the European Union and the political parties have a wide variety of applications, from reforming the monetary and financial policies of the European Central Bank to the actual exit from the Eurozone and return to old Italian lira. It can be easily seen that other Member States of the European Union talks and debates on EU functionality, the necessity of reforming the European Central Bank or the usefulness of the single European currency while in Romania such issues of European valence are still rarely addressed. In order for Romania to be an active and responsibly partner involved in the European construction is necessary to address all these issues which are relevant to European Member States shared future.

There were 15 registered political parties and alliances: the election Alliance PSD-UNPR-PC, the National Liberal Party (PNL), the Democratic Union of Hungarians in Romania (UDMR), the Liberal Democratic Party (PDL), Party People-Dan Diaconescu (PP-DD), People's Movement Party (PMP), National Peasant Christian-Democratic Party (PNȚCD), Civic Force, Socialist Alternative Party (PAS), National Alliance of Farmers (ANA), "Great Romania" Party (PRM), Green Party (PV), the New Republic Party (PNR), Social Justice Party (PDS), Romanian Green Party (PER) and 8 independent candidates: Mircea Diaconu, Corina Ungureanu, Dănuț Liga, Pericle Iulian Capsali, Paul Purea, Peter Costea, Constantin Filip Titian, Valentin Dăeanu (Central Electoral Bureau, official source). Up to 21 hours when the polls were closed, 32.16% of the voting population of Romania expressed their electoral option, 28.69% of them coming from urban areas and 36.88% from rural areas. The counties that had a higher percentage of voting population were Olt (46.57%), Ilfov (42.26%), Mehedinți (40.17%), Teleorman (39.84%), Giurgiu (39.12%), and a smaller percentage was recorded in Maramureș (25.31%), Ialomița (27.12%), Tulcea (27.66%), Timiș (27.94%) and Vaslui (28.22%), Bucharest registering 26.93% (Central Electoral Bureau, official source). From the statistics presented we can easily see the very low turnout, even for counties that registered the highest percentage.

In Dolj County turnout at 21.00 was 37.92%, 28.73% of it in urban areas and 49.65% in rural areas, maintaining the national trend of voting higher in rural areas (Central Electoral Bureau, official source).

Table 1. Table with voting situation in Dolj County on May 25, 2014

No.	Locality	Number of voters on lists	Number of voters to the polls	Valid votes
1.	Craiova	260001	70492	**66504**
2.	Băileşti	16051	3897	**3720**
3.	Calafat	15665	5370	**5119**
4.	Bechet	3191	1385	**1338**
5.	Dăbuleni	10635	4527	**4255**
6.	Filiaşi	15161	4530	**4207**
7.	Segarcea	6426	2536	**2401**
8.	Afumaţi	2321	1169	**1125**
9.	Almăj	1692	977	**953**
10.	Amărăştii de Jos	4378	2243	**2117**
11.	Amărăştii de Sus	1381	1205	**1175**
12.	Apele Vii	1773	1087	**1024**
13.	Argetoaia	3587	2323	**2228**
14.	Bîrca	3148	1429	**1369**
15.	Bistreţ	3351	2212	**2113**
16.	Botoşeşti-Paia	627	606	**586**
17.	Brabova	1170	804	**774**
18.	Brădeşti	3632	1470	**1388**
19.	Braloştiţa	2947	1465	**1368**
20.	Bratovoeşti	2686	1702	**1671**
21.	Breasta	3246	1134	**1048**
22.	Bucovăţ	3383	1546	**1464**
23.	Bulzeşti	1250	690	**652**
24.	Călăraşi	5053	900	**842**
25.	Calopăr	2911	1502	**1478**
26.	Caraula	1925	784	**746**
27.	Cârcea	1778	964	**942**
28.	Cârna	1166	752	**712**
29.	Carpen	1990	1113	**1096**
30.	Castranova	2625	1531	**1516**
31.	Cătane	1392	638	**617**
32.	Celaru	3719	1408	**1316**
33.	Cerăt	3048	1399	**1306**
34.	Cernăteşti	1499	803	**765**
35.	Cetate	4425	3014	**2968**
36.	Cioroiaşi	1309	806	**766**
37.	Ciupercenii Noi	4524	1940	**1843**
38.	Coşoveni	2613	1828	**1753**
39.	Coţofenii din Dos	1940	901	**837**
40.	Coţofenii din Faţă	1508	724	**688**
41.	Daneţi	5036	1905	**1806**
42.	Desa	3885	1527	**1498**
43.	Dioşti	2514	1021	**958**
44.	Dobreşti	2024	966	**926**
45.	Dobroteşti	1431	658	**627**
46.	Dragoteşti	1762	1392	**1331**

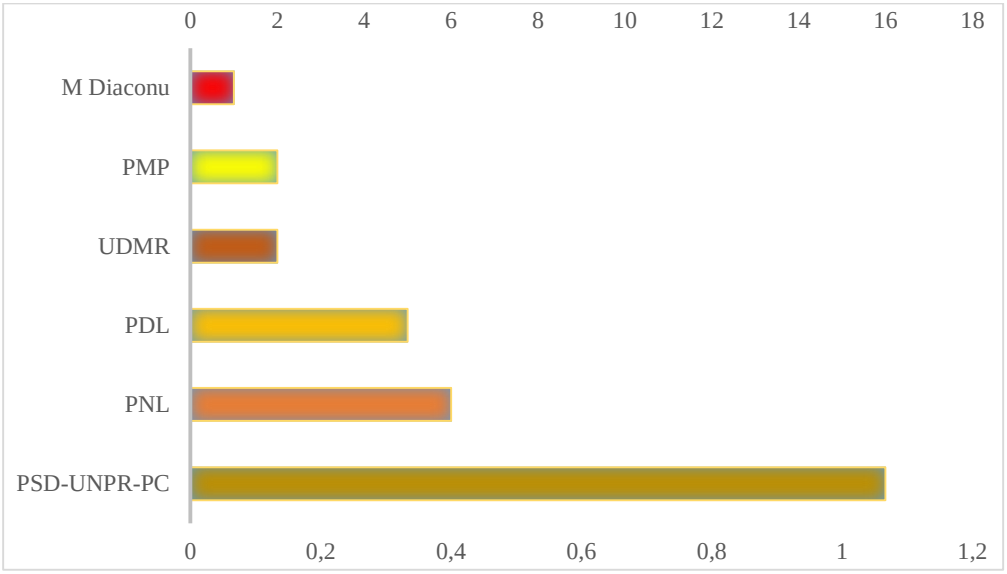
47.	Drănic	2121	1096	**1060**
48.	Fărcaș	1638	771	**710**
49.	Galicea Mare	3427	1562	**1526**
50.	Galiciuica	1144	611	**593**
51.	Ghercești	1407	1339	**1312**
52.	Ghidici	1807	1276	**1260**
53.	Ghindeni	1528	964	**905**
54.	Gighera	2430	1263	**1209**
55.	Gîngiova	2042	861	**829**
56.	Giubega	1782	580	**542**
57.	Giurgița	2423	1331	**1271**
58.	Gogoșu	573	376	**350**
59.	Goicea	2224	1551	**1467**
60.	Goiești	2559	1309	**1239**
61.	Grecești	1337	735	**673**
62.	Întorsura	1272	609	**587**
63.	Işalnița	3362	1841	**1736**
64.	Izvoare	1349	843	**812**
65.	Leu	4032	2175	**2078**
66.	Lipovu	2301	886	**835**
67.	Măceșu de Jos	1107	805	**761**
68.	Măceșu de Sus	1096	863	**836**
69.	Maglavit	4090	1502	**1404**
70.	Malu Mare	3244	1390	**1299**
71.	Mârșani	3819	2826	**2715**
72.	Melinești	3269	1763	**1665**
73.	Mischii	1473	1281	**1242**
74.	Moțăței	6095	2053	**1949**
75.	Murgași	2049	1116	**1052**
76.	Negoi	1722	1067	**1034**
77.	Orodel	2188	1281	**1231**
78.	Ostroveni	4161	1951	**1857**
79.	Perișor	1431	618	**590**
80.	Pielești	2975	735	**693**
81.	Piscu Vechi	2235	1306	**1262**
82.	Plenița	3853	1762	**1651**
83.	Pleșoi	1078	701	**676**
84.	Podari	5480	1576	**1497**
85.	Poiana Mare	9146	3068	**2898**
86.	Predești	1693	685	**683**
87.	Radovan	1038	549	**516**
88.	Rast	2844	1429	**1356**
89.	Robănești	2009	879	**845**
90.	Rojiște	1900	1134	**1092**
91.	Sadova	6410	2657	**2534**
92.	Sălcuța	1558	633	**596**
93.	Scaești	1661	979	**927**
94.	Seaca de Câmp	1626	1124	**1083**
95.	Seaca de Pădure	904	512	**489**
96.	Secu	836	405	**381**
97.	Siliștea Crucii	1274	1037	**1012**

98.	Șimnicu de Sus	3805	1726	**1620**
99.	Sopot	1474	993	**957**
100.	Tălpaș	1028	451	**431**
101.	Teasc	2567	888	**840**
102.	Terpezița	1343	1153	**1092**
103.	Teslui	1979	1185	**1149**
104.	Țuglui	2395	1280	**1232**
105.	Unirea	3110	1512	**1459**
106.	Urzicuța	2324	1056	**1000**
107.	Valea Stanciului	4455	2418	**2357**
108.	Vârtop	1355	795	**773**
109.	Vârvoru de Jos	2139	874	**825**
110.	Vela	1546	1261	**1237**
111.	Verbița	1058	339	**309**
	TOTAL	583.379	220.872	210.037

Source: Autor′s own compilation

After the counting, statistics on the distribution of seats in Romania is as follows:

Figure 1. Distribution of seats in Romania (national level-2014)



Source: Autor′s own compilation

In Dolj county it was kept the line required of the rest of the country, the more so since it is known that the political party PSD was preferred by Dolj county voters over time.

Table 2. Table with voting situation in Dolj County on May 25, 2014

No.	Locality	PDL	%	PMP	%	PSD UNPR PC	%	PNL	%
1.	Craiova	7749	11.65	5549	8.34	30007	45.12	5707	**8.58**
2.	Băilești	972	26.13	101	2.72	1515	40.73	559	**15.03**
3.	Calafat	527	10.29	174	3.04	3108	60.71	428	**8.36**
4.	Bechet	136	10.16	25	1.87	958	71.60	120	**8.97**
5.	Dăbuleni	609	14.31	159	3.74	2750	64.63	298	**7.00**
6.	Filiași	561	13.33	203	4.83	2317	55.07	392	**9.32**
7.	Segarcea	205	13.33	32	1.33	1767	73.59	129	**5.37**
8.	Afumați	140	12.44	91	8.09	565	50.22	206	**18.31**
9.	Almăj	207	21.72	17	1.78	588	61.70	45	**4.72**
10.	Amărăștii de Jos	290	13.7	49	2.31	1034	48.84	300	**14.17**
11.	Amărăștii de Sus	50	4.255	17	1.45	1001	85.19	33	**2.81**
12.	Apele Vii	231	22.56	16	1.56	184	17.97	530	**51.76**
13.	Argetoaia	183	8.214	105	4.71	1447	64.95	294	**13.20**
14.	Bîrca	196	14.32	54	3.94	725	52.96	289	**21.11**
15.	Bistreț	260	12.3	44	2.08	1610	76.19	77	**3.64**
16.	Botoșești-Paia	42	7.167	9	1.54	405	69.11	29	**4.95**
17.	Brabova	199	25.71	22	2.84	451	58.27	40	**5.17**
18.	Brădești	71	5.115	39	2.81	1066	76.80	71	**5.12**
19.	Braloștița	419	30.63	12	0.88	568	41.52	255	**18.64**
20.	Bratovoești	117	7.002	54	3.23	1187	71.04	186	**11.13**
21.	Breasta	543	51.81	41	3.91	298	28.44	49	**4.68**
22.	Bucovăț	230	15.71	81	5.53	865	59.08	111	**7.58**
23.	Bulzești	104	15.95	19	2.91	443	67.94	20	**3.07**
24.	Călărași	173	20.55	22	2.61	342	40.62	185	**21.97**
25.	Calopăr	136	9.202	32	2.17	1122	75.91	120	**8.12**
26.	Caraula	71	9.517	7	0.94	350	46.92	286	**38.34**
27.	Cârcea	37	3.928	10	1.06	813	86.31	25	**2.65**
28.	Cârna	82	11.52	12	1.69	532	74.72	52	**7.30**
29.	Carpen	74	6.752	19	1.73	843	76.92	115	**10.49**
30.	Castranova	949	62.6	25	1.65	392	25.86	85	**5.61**
31.	Cătane	78	12.64	10	1.62	342	55.43	160	**25.93**
32.	Celaru	230	17.48	50	3.8	661	50.23	200	**15.20**
33.	Cerăt	146	11.18	23	1.76	962	73.66	104	**7.96**
34.	Cernătești	78	10.2	35	4.58	460	60.13	120	**15.69**
35.	Cetate	38	1.28	33	1.11	2788	93.94	24	**0.81**
36.	Cioroiași	154	20.1	33	4.31	498	65.01	20	**2.61**
37.	Ciupercenii Noi	125	6.782	19	1.03	1533	83.18	62	**3.36**
38.	Coșoveni	449	25.61	158	9.01	814	46.43	92	**5.25**
39.	Coțofenii din Dos	135	16.13	51	6.09	445	53.17	105	**12.54**
40.	Coțofenii din Față	133	19.33	12	1.74	364	52.91	124	**18.02**

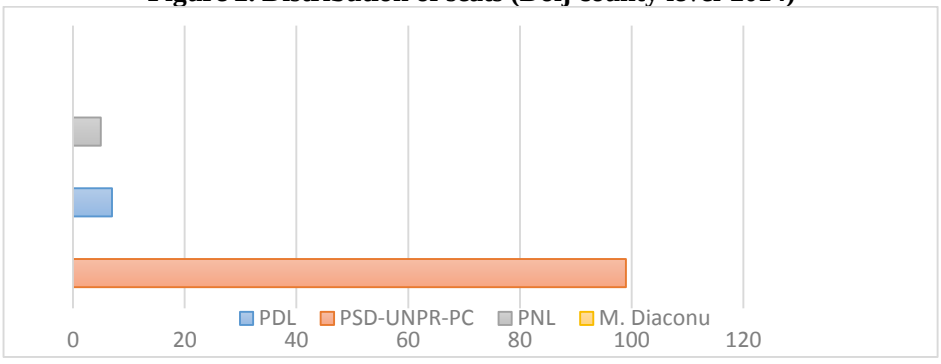
41.	Daneți	694	38.43	33	1.83	746	41.31	159	**8.80**
42.	Desa	184	12.28	26	1.74	1115	74.43	92	**6.14**
43.	Dioști	136	14.2	24	2.51	625	65.24	55	**5.74**
44.	Dobrești	60	6.479	40	4.32	553	59.72	204	**22.03**
45.	Dobrotești	120	19.14	45	7.18	338	53.91	70	**11.16**
46.	Dragotești	136	10.22	33	2.48	949	71.30	104	**7.81**
47.	Drănic	40	3.774	23	2.17	380	35.85	573	**54.06**
48.	Fărcaș	66	9.296	19	2.68	490	69.01	47	**6.62**
49.	Galicea Mare	106	6.946	19	1.25	573	37.55	718	**47.05**
50.	Galiciuica	213	35.92	49	8.26	256	43.17	33	**5.56**
51.	Ghercești	226	17.23	36	2.74	830	63.26	133	**10.14**
52.	Ghidici	133	10.56	16	1.27	1068	84.76	14	**1.11**
53.	Ghindeni	534	59.01	5	0.55	241	26.63	63	**6.96**
54.	Gighera	161	13.32	119	9.84	802	66.34	30	**2.48**
55.	Gîngiova	47	5.669	23	2.77	571	68.88	44	**5.31**
56.	Giubega	66	12.18	57	10.5	219	40.41	95	**17.53**
57.	Giurgița	455	35.8	15	1.18	531	41.78	197	**15.50**
58.	Gogoșu	71	20.29	8	2.29	225	64.29	15	**4.29**
59.	Goicea	212	14.45	20	1.36	841	57.33	275	**18.75**
60.	Goiești	465	37.53	48	3.87	449	36.24	101	**8.15**
61.	Grecești	137	20.36	42	6.24	361	53.64	54	**8.02**
62.	Întorsura	223	37.99	5	0.85	280	47.70	36	**6.13**
63.	Işalnița	127	7.316	44	2.53	1233	71.03	138	**7.95**
64.	Izvoare	297	36.58	17	2.09	404	49.75	22	**2.71**
65.	Leu	147	7.074	59	2.84	1368	65.83	328	**15.78**
66.	Lipovu	86	10.3	18	2.16	607	72.69	71	**8.50**
67.	Măceșu de Jos	55	7.227	12	1.58	553	72.67	53	**6.96**
68.	Măceșu de Sus	387	46.29	7	0.84	294	35.17	82	**9.81**
69.	Maglavit	110	7.835	66	4.7	986	70.23	60	**4.27**
70.	Malu Mare	131	10.08	119	9.16	821	63.20	102	**7.85**
71.	Mârșani	193	7.109	55	2.03	2029	74.73	140	**5.16**
72.	Melinești	170	10.21	35	2.1	1026	61.62	250	**15.02**
73.	Mischii	571	45.97	12	0.97	371	29.87	178	**14.33**
74.	Moțăței	237	12.16	58	2.98	1358	69.68	82	**4.21**
75.	Murgași	441	41.92	18	1.71	447	42.49	43	**4.09**
76.	Negoi	91	8.801	66	6.38	805	77.85	27	**2.61**
77.	Orodel	87	7.067	27	2.19	958	77.82	14	**1.14**
78.	Ostroveni	180	9.693	15	0.81	1466	78.94	65	**3.50**
79.	Perișor	183	31.02	15	2.54	161	27.29	178	**30.17**
80.	Pielești	130	18.76	55	7.94	323	46.61	81	**11.69**
81.	Piscu Vechi	175	13.87	20	1.58	845	66.96	128	**10.14**
82.	Plenița	280	16.96	25	1.51	985	59.66	82	**4.97**
83.	Pleșoi	42	6.213	23	3.4	583	86.24	6	**0.89**
84.	Podari	109	7.281	65	4.34	1026	68.54	64	**4.28**
85.	Poiana Mare	358	12.35	70	2.42	2034	70.19	131	**4.52**
86.	Predești	287	42.02	18	2.64	358	52.42	14	**2.05**
87.	Radovan	71	13.76	30	5.81	283	54.84	72	**13.95**
88.	Rast	176	12.98	19	1.4	976	71.98	29	**2.14**

89.	Robăneşti	120	14.2	22	2.6	520	61.54	102	**12.07**
90.	Rojişte	614	56.23	5	0.46	383	35.07	44	**4.03**
91.	Sadova	999	39.42	57	2.25	1104	43.57	123	**4.85**
92.	Sălcuţa	289	48.49	11	1.85	233	39.09	12	**2.01**
93.	Scaeşti	195	21.04	28	3.02	445	48.00	123	**13.27**
94.	Seaca de Câmp	227	20.96	19	1.75	735	67.87	28	**2.59**
95.	Seaca de Pădure	38	7.771	3	0.61	87	17.79	324	**66.26**
96.	Secu	142	37.27	10	2.62	149	39.11	55	**14.44**
97.	Siliştea Crucii	30	2.964	20	1.98	335	33.10	526	**51.98**
98.	Şimnicu de Sus	151	9.321	70	4.32	965	59.57	197	**12.16**
99.	Sopot	82	8.568	40	4.18	745	77.85	23	**2.40**
100	Tălpaş	69	16.01	9	2.09	289	67.05	16	**3.71**
101	Teasc	96	11.43	26	3.1	553	65.83	75	**8.93**
102	Terpezița	53	4.853	37	3.39	826	75.64	124	**11.36**
103	Teslui	253	22.02	25	2.18	739	64.32	46	**4.00**
104	Ţuglui	207	16.8	77	6.25	750	60.88	72	**5.84**
105	Unirea	294	20.15	39	2.67	1012	69.36	38	**2.60**
106	Urzicuța	62	6.2	23	2.3	765	76.50	52	**5.20**
107	Valea Stanciului	325	13.79	87	3.69	1706	72.38	62	**2.63**
108	Vârtop	28	3.622	10	1.29	682	88.23	9	**1.16**
109	Vârvoru de Jos	94	11.39	27	3.27	591	71.64	34	**4.12**
110	Vela	195	15.76	28	2.26	938	75.83	22	**1.78**
111	Verbiţa	61	19.74	6	1.94	182	58.90	9	**2.91**
	TOTAL	31.359	14.93	9.816	4.67	117.597	55.99	19.715	9.39

Source: Autor′s own compilation

The PSD-UNPR-PC alliance was successful in 99 of the 111 localities, PDL in 7 localities, PNL in 5 localities, and Mircea Diaconu obtained 10,701 votes, 5.09% of voters in Dolj county, without obtaining majority in any of the county's towns.

Figure 2. Distribution of seats (Dolj county level-2014)



Source: Autor′s own compilation

Conclusions

Mircea Diaconu was the big surprise of the European elections in May 2014 because he ran as an independent and managed to get a good percentage, 6.92%, even higher than some political parties, PMP and UDMR. Elena Udrea and his newly established party, PMP, passing through the first elections in this formula, had a lower percentage than the independent candidate Diaconu, knowing that he consisted of many former members of Liberal Democratic Party (PDL).

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ORIGINAL PAPER

Reforming the Trials' Procedure in the New Civil Procedure Code

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Abstract
During the evolution of Romanian civil procedure legislation, and especially during the one of the civil Procedure's Code, we are able to distinguish some changes of substance once every post-December decade. This fact might not be a hazard, we think. Yet, this status of things might mean "normality", for a matter which is especially sensitive in regard to successive modifications, the impact of which is directly suffered by the recipient of the modified norm and which almost always means a new reconfiguring of the trials' circuit. The modifications made in 1993, 2000 and 2010 were important moments in modernizing our civil procedure and in going through an undoubtedly necessary, but also reasonably laid in time reforming process, so that its practical impact could be monitored and evaluated. The project of the new Civil Procedure Code is proposing solutions which are obeying to the objectives aimed to by all the previous interventions of the legislator, which were not always successful. They especially focused on a reasonable shortening of trials' duration and on creating some suitable procedure mechanisms able to avoid, for a same matter, the appearance of practice lacking unity. The dispositions of the New Civil Procedure Code in matters of procedure do generally respond to the necessity of solving the trial with celerity and, as the newest request, predictability to be ensured for judicial procedure. These imperatives, joined to the desideratum of unitary jurisprudence, do generate a really new and adequate structuring of civil lawsuit. Under these circumstances, in our opinion, an instrument of judicial procedure has been successfully created which is able to correspond to the exigencies of the act of justice, as it is established by the European Convention for Human Rights and by the constancy of the European Court for Human Rights' jurisprudence.

***Keywords**:* New Civil Procedure Code; civil trial, celerity, predictability.

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Reforming the Trials' Procedure in the New Civil Procedure Code

Introductory Considerations

The reform of civil procedural law has always had a series of goals connected mainly to the efficiency of the delivery of justice and the need to ensure a unitary and foreseeable jurisprudence. If the lawmaker's interventions during the past two decades on the Code of Civil Procedure of 1865 have adapted several procedural mechanisms to speedy trial requirements or have tried to ensure uniform practice by modifying the jurisdiction of the courts of appeals or the restructuring of the forms of appeal, the New Code of Civil Procedure fully reforms the civil trial system, reconfiguring procedural institutions so as to ensure the production of important principles of civil process that all new regulation embodies (New Code of Civil Procedure, Law nr. 134/2010, entered into force on 15 February 2013). The specific objectives of civil justice - swift resolution of cases, a reasonable duration of trials, providing a coherent jurisprudence and legal practice predictable, find in the new code the appropriate procedural means of achieving, specific to a modern justice.

The previous reform process began drafting a new code with new judicial system established by Law nr. 59/1993, continued with substantial changes in Emergency Governmental Order nr. 138/2000, approved and modified by Law nr. 219/2005, with unsuccessful attempts of reconfiguration functional competence in 2003-2004 (Emergency Government Ordinance nr. 58/2003, approved and modified by Law nr. 195/2004, Government Emergency Ordinance no. 65 / 2004, approved with amendments by Law nr. 493/2004, return to the previous regulation of the Government Emergency Ordinance nr. 58/2003) and finally had the small Reform Law - Law nr. 202/2010 concerning certain measures of accelerating the settlement process. All these legislative interventions have adapted the procedural system to new requirements and even anticipated a series of solutions of the legislature that will be included in the new code. New procedural mechanisms, numerous in the new regulation, are founded on generally accepted doctrinal and jurisprudential or represent major innovations, which, since the design phase of the new code led to doctrinal discussions. For this reason, an analysis of procedural reformed institutions should emphasize not what is cutting doctrine and judicial practice, but to seizethe specificity of the new procedural tools in order to justify the legislator choice of them.

As shown in the explanatory memorandum that accompanied the draft of the new code (preliminary theses of the draft Code of Civil Procedure were approved by Government Decision nr.1527/2007, published in the Official Gazette of Romania, Part I, nr. 889 of 27 December 2007), and the explanatory memorandum to the Law for the implementation of the Code of civil Procedure (Law no. 76/2012), was intended to create a legal instrument in proceedings which meet all requirements imposed by the European Convention on Human Rights and the case law of the European Court of Human Rights. Beyond the overall reform of civil procedure, however, the reconfiguration of procedural institutions and the introduction of new procedural mechanisms which contribute decisively to the success of such a legislative approach are particularly evidenced. In this respect, the regulation of fundamental principles of civil trial represent one the most important reform elements that impact the restructuring civil process, contributing to the reduction of thetrials and the creation of appropriate procedural mechanisms to avoid the appearance of thenon-unitary practice in the same field.

Until the advent of the new code oftrial principles or civil procedure had distinct regulatory sources, namely the Constitution, the Law on judicial organization no. 304/2004, the Law on the statute of judges and prosecutors no. 303/2004 or disparate texts

of the Code of Civil Procedure 1865 or were a source of international regulations such as the Convention for the Protection of Human Rights and Fundamental Freedoms, known as the European Convention on Human Rights, which entered into force in 1953, the Declaration of Human Rights of 10 December 1948 and the International Covenant on civil and Political Rights adopted in 1966. In equal measure, certain principles have been determined through doctrinal measures and established through jurisprudence.

The New Code of Civil Procedure seeks to summarize the most important principles of the civil process, as was previously enshrined in the sources listed and outline defining the constituent elements of each. Codification of the guiding rules of civil process in the form of principles and claim legislature to regulate them exhaustively was criticized starting from just the specifics of these principles branch. Thus, it was considered, rightly, that some of the principles do not belong exclusively to the civil trial material, as a particular application of fundamental principles of law, such as the principle of legality and the principle of equality or other materials representing common procedural principles - the principle rights of the defense, the principle of justice. Moreover, it was criticized for categorizing principles of what is actually fundamental rights of the parties in the lawsuit: the right of access to justice, the right to defense, the right mood, the right to equality of arms, the right to a fair trial (Deleanu, 2010: 16; Deleanu, 2013: 202-203; Deleanu, 2008: 128).

Beyond these conceptual controversies we consider the legislative consecration of the principles of civil trial appropriate and the attempt at an exhaustive regulation, whether those principles represent particular applications of fundamental principles of certain organizing judicial principles or transposing a number of conventional or constitutional rules. Naturally, given that it represents the accounting rules governing a branch of law, some of the fundamental principles of the civil trialhave a higher legislative origin or, to the contrary,characterize only the procedure (Deleanu, 2010: 16) or overlap the fundamental rights of the parties involved in the lawsuit, rendering them even more important.

Definition retained in doctrine for the fundamental principles of civil trial, as well as their role, justify the choice of the lawmaker to regulate them in a separate chapter of the new code. Thus, the fundamental principles are the essential rules governing the civil trial (Tăbârcă, 2013: 36), and their importance is both theoretical and practical (Les, 2001: 33). These principles contribute to the interpretation of procedural principles, ensure the consistency of the subsequent legal process and impose a unitary jurisprudence. These functions of the fundamental principles justify the need for a rigorous regulation, as it is done in the new code, as the establishment of principles determines the procedural rules governing the civil trial. This is why an analysis of procedural institutions reformed by the new code cannot be achieved without presenting the principles that have imposed the new regulations. It is largely a set of principles laid down and under the influence of the previous code or accepted through jurisprudence continue to determine the conduct of civil proceedings in the new regulation as well - the principle of availability, the principle of the right of defense, the attempt to reconcile the parties, as other principles, such as adversarial principle, the principle of orality, principle of directness, the principle of publicity, the principle of continuity, the principle of the active role of the judge, though sometimes acquiringsupplementary dimensions remain characteristic of civil procedure.

The novelty in terms of their consecration in the procedural code, it is necessary principle of free access to justice and the principle of the right to a fair trial within optimal and predictable. Other principles such as the principle of good faith in the exercise of

procedural rights and obligations, acquire new meanings which prints them greater efficiency in achieving the purpose of civil proceedings. In equal measure, even the need to respect the fundamental principles of civil proceedings was raised to the rank of principle in Article 20 from the New Code by providing that "the judge has the duty to ensure respect for himself and respect for the fundamental principles of civil proceedings, under penalty as provided by law". Seated, surveying, before listing all the principles, the provision contained in Article 20 establishes a primary obligation to respect the judge himself fundamental principles and then to impose on the parties and other participants. Penalties provided by law for failure to comply with the fundamental principles of cancellation are circumscribed by the solution of annulling the judgment delivered in violation of principles (principle of the right of defense, the principle of publicity, the principle of discovery) or is preceded by compliance with those principles.

Free Access to Justice - Argument for Reform of the Code of Civil Procedure

Under the marginal title of "Duties on receiving and processing of applications", is expressed the principle of free access to justice, the traditional problem of the denial of justice and law analogy.

Having established that "judges have the duty to receive and settle any claim for court jurisdiction, under the law" relevance is given in a concrete way, to the principle of free access to justice, specifically the correlative duty right of access to justice (Deleanu, 2013 : 207). The right of access to justice is constitutionally enshrined in Article 21 of the Constitution, and in Article 6 of Law nr. 304/2004. It is also repeated in the new code, article 192 under the name "The right to appeal the court" in order to defend their legitimate rights and interests, any person may address the competent court of justice througha summons".

Without being expressly provided for in the Convention, it has been established judicially in the European Court of Human Rights. Article 6 paragraph 1 of the European Convention on Human Rights expressly enshrines, the right to a court, but that does not mean the same thing as the right of access to justice ("everyone has the right to have their suit examined fairly, publicly and within a reasonable time by an independent and impartial tribunal established by law, which shall decide on the person's civil rights and obligations or the merits of any criminal charge brought against him"). Although interrelated, the two categories of rights do not overlap, the right to a court is subsequent to theright of access to justice (Deleanu, 2008: 130). Or, in other words, the two there is a relationlike that between the right to summons to court in a procedural sense and the right to start an action. Equally, the right to access to justice should not be confused with the "right to an effective remedy" enshrined in Article 13 of the Convention, the latter having a wider scope, "effective remedy" may be exercised by any national authority, not only in a court that has jurisdiction (Deleanu, 2008: 130).

The right of access to justice is not absolute, the substantive and procedural rules may establish extrinsic requirements on it such as stamp duty, a preliminary procedure, a particular jurisdiction is or even conditions or terms relating to the right to exercise as all law is one that provides these proceedings and forms of appeal. These conditioningshould not be constituted byany prohibition on exercising the right of access to a court, but may represent limitations or restrictions provided that one is subordinate to the other "legitimate aim" and a "proportionality" for this purpose, in other words, the right may be subject to limitations or conditioning as long as its actual essence remains unaffected. In this respect, the European Court of Human Rights has held that "limiting the right of

access to a court is inconsistent with Article 6 paragraph 1 of the Convention, unless there is a reasonable degree of proportionality between the means employed and the aim pursued" (Deleanu, 2008: 135).

In this context, there have been discussions about the establishment of a stamp tax, a security, a prior procedure, to ensure the qualified assistance of a lawyer. Generally, stamp duty does not affect the right of access to justice in its substance if the obligation is not excessive in relation to the possibility of the party to pay it. A number of objections could be brought against stamp duty as it was stated in the new law regarding, Government Emergency Ordinance nr. 80/2013. Instead, the new code provisions regarding the obligation to assist or representation by a lawyer in the court of appeal, under pain of nullity, and the provisions of Article 2 paragraph 12 of Law nr. 192/2006 on mediation and the profession of mediator introduced by Government Emergency Ordinance nr. 90/2012, regarding the sanction of inadmissibility application for summons when it was not covered by the applicant information procedure on mediation, but from the point of their introduction, criticism of unconstitutionality and unconventional in terms of breach of the principle of free access to justice.

Recently, the Constitutional Court ruled unconstitutional the legal provisions governing the two aspects. Thus, through Decision nr. 462 of 17 September 2014, published in the Official Gazette nr.775 from 10.24.2014, the Constitutional Court declared unconstitutional the provisions of the Code of Civil Procedure contained in Article 13 paragraph 2, second sentence, Article 83 paragraph 3 and in Article 486 paragraph 3 with reference to claims arising from mandatory preparation and presentation of the appeal by a lawyer. In essence, to remember that although the aim of the legislator is sound, "there is a reasonable relationship of proportionality between the requirements in the general interest of good administration of justice and the protection of fundamental rights of the individual, the laws enshrining controlled imbalance between the two competing interests". Ensuring an effective right of access to justice entails the obligation of providing for mechanisms to ensure free assistance from a qualified attorney in civil matters, in this sense, there is the operating legal aid covered by the Government Emergency Ordinance nr. 51/2008. However, it was felt that the possibility of using the legal aid is not likely to replace the restrictions brought by instituting mandatory representation by an attorney.

The solution to this obligation or representation by a lawyer assisting the court of appeal provided for by Article 13 and Article 83 of the new code was justified even by its initiators through specific judicial review by way of appeal, considering also that the new provisions introduced in the code are compatible with the requirements of Article 6 of the Convention (Ciobanu, 2013: 36). Thus, before the court of appeals, applications and submissions of parties can be made and supported only by an attorney or, where appropriate, legal counsel, unless the party or its representative, spouse or relative up to the second degree inclusive, has a law degree, and in the drafting of the application and the grounds of appeal, the execution and the support of the appeal, individuals will be assisted and represented, where appropriate, only by a lawyer in the law, under penalty of nullity. A similar provision is found in the case of legal persons.

Under the provisions of the Law on Mediation, on the cases where mediation is possible, the court will reject the application for summons as inadmissible due tothe plaintiff`s failure to respect the obligation to attend the information meeting on mediation, prior to the request for summons to trial or after starting the trialuntil the deadline given by the court for that purpose. Therefore, concerning the lack of this prior procedure, the

law provides a penalty – dismissal of application for summons as inadmissible. What has been criticized in these provisions is included in a special law is, primarily the provision of the inadmissibility of the sanction deemed inappropriate, not only in terms of conditioning access to justice, but also to sanction under the new code for the lack of a prior reading.

The Constitutional Court has ruled with respect to this that provision by declaring unconstitutional the provisions of Article 2 paragraph 1 and 12 of Law nr. 192/2006 on mediation and the profession of mediator. It was held that the obligation imposed on the parties to attend the meeting on the benefits of mediation under penalty of inadmissibility application for summons contradicts the principle of free access to justice. Mediation is an alternative dispute resolution procedure, which must remain voluntary, and information on the advantages of mediation procedure cannot become an obligation for parties. The requirement of Article 5 paragraph 1 from the new code is concretized by provisions contained in the Rules of Procedure of the Courts, adopted by decision of the Superior Council of Magistrates, which states the obligation of the judge to receive requests and documents submitted during the meeting or before deadlines, and all unjustified refusal to receive requests from parties shall constitute misconduct for a judge, according to Article 99 letter E of Law 303/2004. The issue of referral to the competent court provided both in Article 5 paragraph 1 and in the Article 192 of the new code should not be seen as a reason for refusal of the application, thus denying access to justice. The application, even addressed to a court without jurisdiction,shall be received, and the analysis of ultra vires will be done subsequently before the competent court. In this regard the question of the possible lack of jurisdiction of the court will be examined from the preparatory phase of the process, the regularization procedure and communication application for summons, and if there is a manifest lack of jurisdiction the court to decline competence before making procedure communication.

Taking over an existing provision in Article 3 of the Civil Code of 1864, as well as in Article 4 of Law nr. 303/2004, Article 5 paragraph 2 of the New Code of Civil Procedure provides that "no judge can refuse to judge on the grounds that the law stipulates nothing, is unclear or incomplete". If the legal regulation applicable to the case is missing or incomplete, the judge will systematically turn to the rules of interpretation, the analogy to the law or the analogy right (applying principles). If the law is unclear the judge remains with the task of interpreting the rules of interpretation. Procedural law shows the sources that have, in turn, to be used by the judge, respectively, the sources of law, as provided by Article 1 of the Civil Code, the law, customs and general principles of law. According to Article 5 paragraph 3, where the solution cannot be given under any law or customary or legal provisions regarding similar situations established by analogy, that case will be judged on the basis of general principles of law, while regarding all its circumstances and taking into account requirements of fairness. Although seen as the application of natural law during proceedings before the courts (Ciobanu, 2013: 11), the application of equity is considered excessive by some authors, may be a source of arbitrariness in the administration of justice (Deleanu, 2013: 207).

Finally, by deciding on an application addressing the judge, in a decision that will decide will decide only the specific case before the Court, without establishing general rules, which would mean overcoming judiciary attributions (ground of appeal under Article 488). Thus, just as it had been in the content of the old Civil Code, it is prohibited judge to lay down generally binding dispositions through isrulings, through the effects of the judgment and res judicata that it generates, being limited to trial and the disputing

parties. Of course, in terms of their mandatory provisions they are provided separately as in the old regulation, in the appeal on points of law and novelty, prior judgment rendered by the Supreme Court for the ruling of law issues. The right of access to justice has benefited from new procedural safeguards through various provisions made in the new code. Thus, it contributes to improving free access to justice, to redistributing material competence, to invoking the failure of accomplishing prior procedure through the defendant's welcoming, the possibility of pursuing an appeal only against the judgment considerations, the possibility of exercising the appeal *omisso medio* or admissibility of any evidence on appeal, in case of retrial after scrapping with retention or referral.

The Right to a Fair Trial within Optimal and Predictable New Code

The right to a fair trial within optimal and predictable term, enshrined as a fundamental principle in the new code, the provisions of Article 6 summarizes the regulations contained in the same Article 6 of the European Convention on Human Rights, the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights in 1966. In national law, before being laid in the new code, the right to a fair trial was enshrined in Article 21 of the Constitution and Article 10 of Law nr. 304/2004, thus highlighting the aspects of constitutional and conventional principle. Compared to the European Convention and the jurisprudence of the European Court, the right to due process has been seen as a summary of the procedural guarantees contained in Article 6 of the Convention: the examination of the case in a fair and public way within a reasonable time by independent and impartial tribunal. Similarly, Article 6 of the new code provides that "everyone has the right to a fair trial of his case within optimal and predictable term by an independent, impartial court, which has been established by law".

Without trying the case in equity, in the sense of Article 5 mentioned above, the requirement of a fair trial, the synthesis of guarantees provided by the regulations to which we have referred, requires access to justice, the forerunner of the right to a court, the proper administration of justice, in the sense of organization and composition of the court (court provided by law, independent, impartial), the procedure followed, the publicity, the right to defense, contradictory, equality of arms, the proportionality between the means employed and the aim sought, motivating the decision, effective enforcement of the judgment (Deleanu, 2013: 210; Ciobanu, 2013: 12; Tăbârcă, 2010: 42-56). All these constitute the condition of fair trial rights and can encompass all the procedural guarantees provided by the Code and special laws. As a result of the way of its presentation, the right of access to justice is also a warranty or a condition as to the exercise of other rights (Deleanu, 2008: 157) and should be seen in relation to the right to a fair trial. In a judgment of the reference – Decision from21 February 1975 in Golder vs UK, among elements of the right to an equitable trial is retained in first place, the right of access to court, the rest - the right to a court, timeliness or advertising - being consequential. The right of access to justice is only one condition, appearance (basically and initially) in a court of law. The latter incorporates the right of access to justice with the right to a fair trial under due administration of justice, the right to obtain a solution with the request by saying the right to effective enforcement of the judgment (Vincent and Guinchard, 2001: 100).

Among the components of the right to a fair trial some constitute the principles of civil procedure, the right to defense, argument, advertising, and not the news from the perspective of the new code, while others, access to justice, equality of arms, indirectly introduced new regulatory aspects constitute the novelty.

Like the right of access to justice, no right to a court is not absolute and may suffer limitations or legal restrictions, however, should not affect its substance. Thus, consistent with the laws, constitutional and conventional limitations those that pursue a legitimate aim are proportionate to the aim pursued and the means or measures are reasonably related to the purpose (to meet reasonable relationship of proportionality between the means employed and the aim sought). As access to justice requires not need access to all levels of court and all remedies provided by law, no right to a court is not characterized, in substance, to the completion of all degrees of jurisdiction, limitations on access to justice being and limitations of the right to a court. The double degree of jurisdiction is not conventional or constitutional order so that the legislature can eliminate the appeal of the call. It is left to the legislature to regulate and limit the number of appeals, which may establish exceptions to the exercise of the judicial decisions in certain matters. Equally, however, as confirmed by the practice of the Constitutional Court (Decision no. 500 of 15 May 2012, published in Official Gazette nr. 492 from 18.07.2012; Constitutional Court Decision no. 967 of 20 November 2012, published in Official Gazette nr. 853 from 12.18.2012), no decision should be incapable of being attacked, as would prejudice the rights of the defense and eliminate judicial review by appeal undermines the principle of free access to justice and the right to a fair trial. Not being described as conventional rules, under the principle of subsidiarity, it is the right of the state legislature, but the obligation, positive and the result, is to regulate the right of access to a court and the right to a court in order to ensure their effectiveness and conditions exercise, but should not affect their substance. The regulation of these rights is intrinsically necessary, it is imposed by their very nature, but it must be "clear, accessible and predictable" (Deleanu, 2008: 159).

In matters of fundamental rights and as consistently held by the European court and the constitutional court, the regulation must meet the above requirements, accuracy, consistency and clarity, so that by the regulation of the legal proceedings, the procedural course of the parties should be predictable, conduct may be determined by its proper part, and it must to be able to foresee the consequences of his behavior and to adapt procedural vs. legal requirements. All this is, in turn, to secure the right to a fair trial. In ensuring the right of the proceedings pertaining to the essence of the right to a court, the legislature is therefore the one that sets the proceedings, any exceptions that prevent substantive examination, given that can challengea decision or conditions of exercise an extraordinary remedies. The latter can be restrictive, but without impairing the right to use an appeal, a component of the right of access to a court. The right to effective enforcement of the judgment, a component of the right to a court, is provided by the express provisions contained in Article 6 paragraph 2 of the new code, according to which the right to a fair trial applies enforcement phase of the civil trial. Equality of arms is not expressly provided through guarantees the right to a fair trial nor the Convention nor the new code. However it is seen as a component of a fair trial, as an element of its case-law and was established as a principle according to which each party must be afforded a reasonable opportunity to present his case under conditions that do not place a net unfavorable situation in relation to the opponent (Deleanu, 2008: 198-199). Closely linked to contradictory, equality of arms requires equality of means, a balance between a party and its opponent, that opponent or attorney times when he participates in the lawsuit.

The new code gives a greater equality of arms principle that it provides adequate procedural means for each party that facilitates presentation of the case. Thus, communication is much better regulated procedural requests in the initial phase of the

process and before the first hearing fixed, summoning the parties, proposal and approval samples remedies.

The regulation contained in the new code, like the conventional and constitutional attributes characteristic independence and impartiality of the court, along with the requirement to be prescribed by law. A court must be prescribed by law that is to exist and be organized according to the rules of the law of judicial organization, authority, i.e. can state with full jurisdiction and judge the composition and constitution required by law. Courts are established by law, it is prohibited by the Constitution to establish extraordinary courts, as is the law that sets out all the power and then performs the procedure. The principle of achieving justice through judicial bodies provided for in Article 126 of the Constitution and Article 1 of Law nr. 304/2004, according to which justice is administered by the High Court of Cassation and Justice and other courts established by law.

The independence of the courts was seen in two ways (Ciobanu, 1996: 18-22). Functional independence or independence of the judiciary requires separation of the legislature or the executive, with the foundation principle of separation of powers, that "the court" cannot belong to the legislative or executive power, nor can suffer interference from them. Independence is assessed in relation to the parts of the process. Personal independence involving litigation requirement without any interference, is seen in relation to the status of judges, important being guarantees given, as they may be judicially inferred from the European Court decisions, some of which are the assessment criteria independence (Bârsan, 2010: 471), respectively, the recruitment, tenure, protection against external stresses, the appearance of independence, they can add the level of remuneration, the way of advancement, the distribution of files, advertising debates secret deliberations. Of course, personal independence is ensured and the quality of the judge's reasoning reflected in his decisions, timeliness of motivation and continuing professional development.

Judges' tenure is a right and a guarantee of their independence, as provided in Article 125 of the Constitution and Article 2 of Law nr. 303/2004 regarding the status of judges and prosecutors. Irremovable judges may be moved by transfer, delegation, seconding or promoting their consent and may be suspended or dismissed only by law. The essence of the principle of tenure is that the judge cannot take any measures of the kind mentioned nor may face penalties for how he chooses to resolve a case. The independence of judges is a guarantee for impartiality and a precondition for that. Impartiality is ensured at the same time, a number of procedural mechanisms such as incompatibility or collegiate court judge.

Impartiality is provided by Article 124 of the Constitution, Article 2 of Law nr. 303/2004 and in the European Charter on the Status of Judges. Impartiality is the sense of fairness, objectivity in relation to the parties is a fundamental condition of existence magistrate. The European Court impartiality is the lack of prejudice or preconceived ideas to solve a case and can be seen as subjective or objective impartiality. Subjective impartiality can be considered a subjective approach designed to determine the intimate conviction of the judge. It is presumed, and evidence to the contrary, that the judge was biased, is difficult since this is a subjective factor. Only when there is an objection can it be demonstrated. Objective impartiality concerns external circumstances, apparently inducing implies a lack of objectivity and objective approach which tends to judge whether such guarantees to exclude any legitimate doubt (Theohari and Eftimie, 2013: 30). Thus, if there is a seemingly simple lack of objectivity, the judge should refrain from judging that issue in this new code, unlike the old regulation, providing in addition to the usual

cases of incompatibility, based on the circumstances leading to possible lack objectivity of the judge (condition for some, affinity, hostility, personal, etc.) and more general one: "where other elements that arise rightly doubts about his impartiality".

To prevent situations of partiality, procedural law establishes the concept of incompatibility of the judge, and providing specific mechanisms for their removal from the trial of a cause: abstention, recusal and relocation process. The new code, an absolute novelty, merges as the cases of incompatibility cases the former regulation is constituted distinct incompatibility cases and cases of abstention or challenge. Proceedings within optimal and predictable time limit, as provided by the new code in Article 6 correspond to the reasonable time requirement laid down in Article 6 of the European Convention on Human Rights, Article 21 of the Constitution, Article 91 of Law nr. 303/2004 and the Rules of Procedure of the courts, and at the same time, a higher standard. The term optimal replaces reasonable time stipulated in regulations mentioned, and its significance increases. The solution code is consistent with the requirement imposed by the Framework Program of the European Commission in 2004 for the Efficiency of Justice (CEPEJ - Ruling established by the Committee of Ministers of the Council of Europe) "A new objective for judicial systems: judging each case within optimal and predictable" (Deleanu, 2008: 282-283; Tăbârcă, 2013: 47). Under the program, "reasonable time" required by Article 6 of the Convention is a "minimum threshold" in respect of which it is estimated the compliance or nonconventional norm, but a more rigorous standard is imposed as "best period". The state form reaction process must be timely, effective, legal proceedings should not be too long, to ensure legal certainty of individuals and not even deny access to justice, but not too short, expedient, in order to ensure rights of defense. However, provided predictability establish judicial process, so that the can foresee or anticipate the process. The mechanisms by which the process is expected to be complementary to those that contribute to reducing the reasonable duration of this time, is the major desideratum.

Like reasonable time, any conventional or domestic regulations do not define the term optimal, its significance can be inferred from the European Court regarding reasonable time to hear the case. Civil process is, by its nature, an activity spread out in time, so it must combine the demands of aquality act of justice with the need for an effective judiciary and a prompt response from the supplier. Timing is inherent in the process, but when it becomes excessive is as damaging as no other judicial act. A large delay in any proceedings affects even the effectiveness and credibility of justice.

Like reasonable time, optimal term requires the principle of solving a case, the speed, but the content is much more nuanced. Thus, if the reasonableness means a normal limit, the preferred term is a term that ensures the best efficiency in achieving justice (Theohari and Eftimie, 2013: 30). Or in other words, the preferred term is more than the celerity of the procedure, involving the setting of "Framework duration of court proceedings, realistic and controllable, efficient and prompt intervention by appropriate measures, in case delays" (Deleanu, 2013: 211). The right to resolve the case within a reasonable time became fundamental through constitutional and conventional provisions, overriding the status element of a fair trial. Equally, however, this right must be viewed in relation to a strong guarantee of its implementation, namely, the right to an effective remedy provided by Article 13 of the European Convention.

The state has the positive obligation to ensure rapidity and results, the same obligations as the court. Also, if it finds violations of rapidity, and the process is being excessively delayed state intervention required to repair damage caused by delay in the

case. Violation of reasonable time thus draws in state responsibility, but only if such infringement can be attributed to pressing justice organs to administer justice.

The reasonable period of time and therefore the optimum term is assessed according to the European Court, in the particular circumstances of the case before. Thus, it can constitute criteria for assessing the reasonableness of the length of the trial: complexity of the case, given the nature of the dispute, the facts, the procedure, including preliminary procedures imposed legal issues raised; conduct of the parties that if involving abusive exercise of procedural rights cannot be imputed to the State; "Stakes litigation" that may impose greater celerity when the right in question requires a speedy resolution; behavior of state authority, including its agents entrusted with the procedural acts or experts operating under the control of the court proceedings. In the practice of the European Court has been identified as a cause for undue delay attributable to the State, legislative surveillance changes that have excessively delayed the process. Agglomeration court or judge in writing was not considered relevant decisions could justify excessive duration of the process. It was considered that the assessment made within a reasonable time after the first court was hearing or the date of opening of an advance, if this is mandatory and stretching and the enforcement phase, part of the civil trial. Addressing a preliminary question to the Court of Justice of the European Union is not taken into account in assessing the duration of the process, but the proceedings before the Constitutional Court is within the reasonable period of time (Bârsan, 2010: 522-527). In appreciation of this last situation should be considered repeal Article 29 paragraph (5) of Law nr. 47/1992 by Law 177/2010, so the court before which the exception of unconstitutionality no exception suspended due to settlement by the Constitutional Court. In the context of the new referral code arises whether the High Court of Cassation and Justice for a ruling prior to unraveling the legal issues, newly introduced procedure, similar to the procedure of the question, is a procedure to be included in the optimal term, given beings that, on the one hand, according to Article 520, judgment is suspended, and, on the other hand, once the procedure is necessary to clarify a complex issue of law which in itself constitutes the criterion for assessing reasonable time.

The lawmaker's concern with the new code to ensure optimal and predictable duration of the process is reflected in the procedural provisions with a novel quality establishing effective means of achieving that aim. The new code divides the trial in two stages, the trial research and debating the merits of the estimation process and introducing the estimation to the process requirement. According to Article 238, the first hearing at which the parties are legally summoned, the judge, after hearing the parties, estimate the time required for the research process, taking into account the circumstances of the case, so that the process be resolved in an optimum term and predictable. Thus, the estimated duration will be recorded at the end and for good reasons, while listening to the parties, the court could reconsider the initial estimated time. Also, a procedure for checking and regulating the application of the proceedings, followed by service on the defendant, for the formulation of defense, communication of defense applicant for it to formulate response to the defense, however before setting the first hearing, contribute to reducing the length of proceedings by outlining procedural framework in an early stage, avoiding thus further delays.

The new regulation adjournment for lack of defense can be ordered at the request of the concerned party, only exceptionally, for good reasons and are not attributable to the party or its representative and to speed up the trial, for the first hearing, the court may

approve the call for questioning the defendant, if the applicant made such a request, and other evidence requested by the applicant, subject to discussion contradictory hearing.

As indicated in Article 6 of the new code, following exposure requirements of due process, the court is obliged to order all measures permitted by law to ensure a fair hearing requirements imposed by the case and to ensure prompt deployment of judgment. Providing for speed is achieved by express provisions contained in Article. 241. Thus, for the research process, the judge sets the short terms, even from day to day, and only if there are reasonable grounds may he grant longer terms. The court may order the parties to make the acknowledgment by telephone, telegraph, facsimile, electronic mail or any other means of communication which shall ensure, where appropriate, communication or transmission of the text or document submitted for presentation at term notice and confirmation of receipt at the or the notification, unless the parties have indicated court corresponding data for this purpose. The judge may determine to parties and other participants in the process duties in terms of presenting documentary evidence, written relations, written response to questioning, and assisting in conducting competition within the expertise and any other steps necessary to solve the case. It is worth taking the new code provisions of Law nr. 202/2010, suggestively entitled Law on measures to accelerate the settlement process. In general, the procedural provisions setting deadlines for the exercise of procedural rights or effecting of pleadings and establish penalties for non-compliance with the deadlines.

In terms of providing an effective remedy as a guarantee of the right to resolve the case within a suitable time, the new code has established a domestic remedy by appeal on delaying settlement. In this way, any interested party may invoke the violation of the proceedings within an optimal and predictable time limit and may require legal measures for this to be removed. According to Article 522, appeals can be made when the court has disregarded the obligation to hear the case within an optimal and predictable time by taking measures established by law or by failing default when a law requires a pleading necessary to dealing although time since his last pleading was sufficient for making or performance of the measure. If such an appeal is upheld, it will issue an order for no further appeals, which take the necessary steps to remove the situation which caused the delay of judgment. Compared to the types of appeal proposed action for ensuring a reasonable term, compensatory appeal, which aims to cover damage caused partly by solving the case within a reasonable period of time and appeal preventive acting on the causes slowness of justice, i.e., disregarding rules that set the speed (Deleanu, 2008: 290-291), appreciated that the delay by regulating the appeal process established a preventive and punitive "remedy", without associating a compensatory "appeal" (Deleanu, 2013: 511).

Finally, as particularly important reform elements in the new code directly contribute to reducing trial time we must mention, without subjecting them to a comprehensive analysis, the redistribution of substantive jurisdiction and restructuring of the courts of appeals. Functional material jurisdiction was distributed among the courts so as to achieve an acceleration of the rate of judgment, and a uniform practice. Under the new code, the courts judge in the first instance, a number of cases of low value, less complex but common in practice, courts are courts with unlimited jurisdiction for trial at first instance, courts of appeal are appellate courts of law common and High Court of Cassation and Justice becomes common law court of appeal and so may provide a nationally consistent practice. In the matter of appeals, the reasons of process time, the new code, as a rule, are not subject to appeal judgments of courts of appeal in cases where the law provides that decisions of first instance are subject only to appeal. Thus, in most

cases was suppressed appeal the appeal and did not call, thus ensuring a double judgment on the merits of cases.

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ORIGINAL PAPER

The Banking Activity – a Criterion for Differentiating Credit Institutions from Other Entities in the Financial Sector

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Abstract
Within the national legal order, as well as at the European Union level, credit institutions belong to the category which includes entities providing financial services. The activities allowed by the legislator to the credit institutions represent one of the elements causing interferences with different legal entities operating on the financial market. Of the two operations defining banking activities as the essence of their object of activity, the activity which involves granting credits is the one occasioning similarities, whereas the activity which involves attracting deposits is the one making the distinction. As a framework law, the article considers the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy (Published in the Official Gazette no. 1027 of 27.12.2006, approved, amended and completed by Law no. 227/2007 for the approval of G.E.O. no. 99/2006, Official Gazette no. 480 of 18.07.2007, as subsequently amended and completed). Under these conditions, the author argues that credit institutions, Romanian legal persons, may be established and may operate in one of the following categories: banks; credit cooperative organizations (i.e. credit cooperatives and the central credit union); housing savings and credit banks; mortgage banks

***Keywords**:* banking activity; credit institutions; electronic money institutions; non-banking financial institutions; payment institutions.

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Banking - the Main Activity of Credit Institutions

As a framework law, the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy (Published in the Official Gazette no. 1027 of 27.12.2006, approved, amended and completed by Law no. 227/2007 for the approval of G.E.O. no. 99/2006, Official Gazette no. 480 of 18.07.2007, as subsequently amended and completed) provides that credit institutions, Romanian legal persons, may be established and may operate in one of the following categories: banks; credit cooperative organizations (i.e. credit cooperatives and the central credit union); housing savings and credit banks; mortgage banks (art. 3). The meaning assigned to a credit institution, as a Romanian legal person, renders the accurate meaning existing in the European legislation at this moment. Relating to the latest amendments to G.E.O. no. 99/2006, a credit institution is only "an entity whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account".

Basically, the definition of a credit institution is made exclusively through its core banking activities [art. 7 (1) point 1 of G.E.O. no. 99/2006] represented by two components: to receive deposits or other repayable funds from the public and to grant credits for its own account (for the view according to which a credit institution will be considered freestanding only if it performs both components of the banking activity (Sousi-Roubi, 1995: 63 apud Şaguna, Raţiu, 2007: 174) for the view according to which it is enough for an undertaking to have the right, in accordance with its memorandum of association, to perform the two types of activity (Grunson, Reisner, 2005: 475). The literature has expressed the view that the special importance of these activities and, in particular, that of attracting deposits, is one of the reasons that generated the need for regulation and supervision of credit institutions by the state (Diaconu, 2011: 18).

Credit institutions may include in their specific activities only those authorized by the legislature and those they are able to perform based on the business plan. Banking, along with other activities of these entities, authorized by G.E.O. no. 99/2006, may be carried out by credit institutions, usually on the basis and within the limits of the authorization granted by the National Bank of Romania and, only exceptionally, without needing any authorization. For the performance of certain activities, the authorization issued by the central bank must be accompanied by another specific authorization, approval or opinion, as provided by special laws. In all cases, credit institutions, Romanian legal persons, must effectively and mainly carry out, on the Romanian territory, the activities they have been authorized for. Under the provisions of G.E.O. no. 99/2006 (art. 101), credit institutions must organize their entire business in accordance with the rules of sound and prudent banking practices, the requirements of the law and the regulations issued for its implementation. In their activity, they are subject to the rules and regulations adopted by the National Bank of Romania in the exercise of its powers stipulated by Law no. 312/2004.

The activities of credit institutions, Romanian legal persons, which must be authorized under the conditions mentioned above are specified by the provisions of G.E.O. no. 99/2006 (art. 18 and art. 20) (for a more detailed analysis of these activities (Săuleanu, Smarandache, Dodocioiu, 2011: 87-103; Şaguna, Raţiu, 2007: 177-186, 197-223). These activities should be interpreted in the sense of covering all operations, transactions, products and services that fall within these activities or may be treated as such, including ancillary services. In performing them, credit institutions have the duty to comply with the legal regime established individually, usually by special laws and only exceptionally by G.E.O. no. 99/2006. According to the category of credit institutions, certain activities

are governed by certain particularities. Credit institutions such as banks, on account of their universal vocation, may perform any of the activities that credit institutions are authorized to perform under art. 18 and art. 20 of G.E.O. no. 99/2006. But some features of the activities included in the business scope appear within other categories of credit institutions, which have a specialized vocation, the framework law establishing a series of special rules (Smarandache, 2013: 273-290).

The essential role played by the bank in the business of credit institutions was materialized by the legislature in a monopoly on the conduct of business. In this respect, another natural or legal person that is not an authorized credit institution will not be able to perform a banking activity, i.e. to carry out the two activities that it entails. The doctrine (Gavalda, Stoufflet, 2008: 43) held that, in matters of authorized credit institutions, the monopoly can also be materialized in limiting the use of certain professional designations by this category of legal subjects [the monopoly on professional designations can take the form of the interdiction provided under art. 6 (1) of G.E.O. no. 99/2006]. Regarding the first component of banking, *the operation of receiving deposits and other repayable funds*, we have to mention the legal power of the National Bank of Romania to determine whether an activity is or is not one of receiving deposits or other repayable funds from the public, its appreciation being mandatory on the parties concerned. Within the scope of regulations on this operation one can find useful the general provisions of the Civil Code(approved by Law no. 287/2009, published in the Official Gazette no. 409 of 10.06.2011) devoted to the deposit contract (art. 2013, art. 2123) and the bank deposit (art. 2091- art. 2192), the provisions of G.O. no. 39/1996on the establishment and functioning of the Fund for the guarantee of deposits in the banking system (republished in the Official Gazette no. 587 of 19.08. 2010) governing the notion of "deposit" [art. 2 par. (3) letter a], and the provisions of G.E.O. no. 99/2006 (art. 5) concerning the interdiction incidental to the operation of receiving deposits and other repayable funds.

In terms of origin, the deposits (Postolache, Genoiu, Ionescu, Manea, Niță, 2010) and repayable funds must be attracted from the public or from any natural person, legal person or entity without legal personality, which does not have the knowledge and experience to assess the default risk of the investments made [art. 7 (1) point 18 of G.E.O. no. 99/2006]. The following are not included in this category: the state, central, regional and local public administration authorities, government agencies, central banks, credit institutions, financial institutions, other similar institutions and any other person deemed a qualified investor in the capital market legislation. The essential feature of the bank deposit is the right of the credit institution to dispose of the amount entrusted to it. This solution derives from the generally fungible nature of money (Gavalda, Stoufflet, 2008:115). The deposits received from the public are an essential way of financing the operations of credit institutions.

Coming back to the monopoly recognized to credit institutions on banking, we have to stress that this is a consequence of the limitation by the legislature of the categories of entities that can perform the operation of receiving deposits and other repayable funds from the public. In this respect, art. 5 of G.E.O. no. 99/2006 prohibits that any natural, legal person or entity without legal personality, which is not a credit institution, should be engaged in an activity of receiving deposits or other repayable funds from the public or an activity of attracting and/or managing amounts of money from the contributions of members of groups of people constituted for the purpose of receiving collective funds and granting credits/loans from the funds thus accumulated for the purchase of goods and/or services by their members.

The prohibition does not apply to the taking of deposits or other funds repayable by: a) a Member State or by the regional administration or local public administration authorities of a Member State; b) public international bodies of which one or more Member States are members; c) in cases expressly covered by the Romanian legislation or EU law, provided that such activities are properly regulated and supervised in order to protect deponents and investors. As for the latter component of banking, the *operation of granting credits for one's own account,* we have to mention the provisions of Law no. 93/2009 on non-banking financial institutions (art. 2-3) mentioning credit institutions as entities performing professional crediting activities and recognizing the National Bank of Romania as the competent authority to decide whether their crediting activity comes within the category of professional activities (Turcu, 2000: 15-33; Nemeş, 2011: 208-225). Within the legal scope of this operation, G.E.O. no. 99/2006 just specifies that credit institutions grant loans, including: consumer credits, mortgage credits, factoring with or without recourse, financing of commercial transactions, including forfaiting. Consequently, the regulatory framework on credit activities is considerably completed by numerous special laws, aimed at the diversity of categories of credits that can be granted by credit institutions, but also by certain provisions of the Civil Code in the field of loan with interest (art . 2167- art. 2170) or credit facility (art. 2193- art. 2195). The distinction of lending activities, performed by credit institutions, from other types of loans made by other persons or entities, is determined, accordingly, by the source from which they come, the destination or risk.

C.EC. Bank-S.A. - a particular case

The current C.E.C. Bank S.A. is a legal entity almost identified with credit institutions, Romanian legal persons, such as banks (Axenciuc, 2000: 79-80). In terms of regulations, the current legal regime of C.E.C. Bank S.A. started with G.E.O. no. 42/2005 on the establishment of measures for the reorganization of the savings bank C.E.C. S.A. for privatization (published in the Official Gazette no. 463 of 1.01.2005, as subsequently amended and completed) and continued with Order no. 425/2008 on the approval of the Statute of C.E.C. Bank S.A. (issued by the Ministry of Economy and Finances, published in the Official Gazette no. 164 of 4.03. 2008, as subsequently amended and completed). The two acts are backed by the applicable laws of credit institutions such as banks, by their own organization and operation rules adopted by C.E.C. Bank S.A. and the internal regulations which were legally issued.

The legal framework leads to the inclusion of C.E.C. Bank S.A. in the category of credit institutions, Romanian legal persons, primarily motivated by the fact that this entity operates as a bank. Regarding the scope of its activities, it consists of monetary intermediation, its business including activities provided by Statute, overlapping with those authorized by the legislature as far as credit institutions are concerned. Already operating as a bank, C.E.C. Bank S.A. pursues banking activities, namely receiving deposits and other repayable funds and crediting operations. C.E.C. Bank S.A. carries out the activities laid down in its Statute within the limits of the authorization granted by the National Bank of Romania, and subject to obtaining other authorizations required by law.

The name of "Bank" and the legal regime similar to credit institutions of this type justify the regulations on the registration of C.E.C. Bank S.A. in the register of credit institutions held by the National Bank of Romania, the number and date of registration in the register of credit institutions being one of the mandatory elements for the identification of official documents issued by C.E.C. Bank S.A.. Unlike other entities operating on the

financial market, the essential difference between credit institutions such as banks and C.E.C. Bank S.A. is not provided by its scope, but by its legal status and many features of its legal regime (Smarandache, 2013: 415 – 416).

The situation of electronic money institutions

Law no. 127/2011 on the issuing of electronic money (published in the Official Gazette no. 435 of 22.06.2011) regulates electronic money institutions as the main issuers of electronic money. Under this law, an electronic money institution is a legal entity authorized by law to issue electronic money. Electronic money currently refers to the electronically stored monetary value, including magnetic devices, representing a debt on the part of the issuing institution, issued upon receiving funds for the purpose of performing payment operations and which is accepted by a person, other than the electronic money institution [art. 4 par. (1) letter f) of Law no. 127/2011]. This legal framework provides, as a whole, a more permissive legal regime for electronic money institutions, in order to encourage and facilitate the establishment of such legal entities (Ştefănescu, 2012: 50-54). Until recently considered credit institutions, electronic money institutions do not currently hold this position, since they acquired a different status, distinct from that of credit institutions[considering the form of art. 7 (1) point 10 after the coming into force of G.E.O. no. 26/2010 for the amendment and completion of G.E.O. no. 99/2006 on credit institutions and capital adequacy and other norms (Off. Gazette no. 208 of 1.04.2010), which transposed Directive no. 2009/110/EC].

In relation to the banking activity that banks are authorized to carry out, as the prototype of credit institutions, electronic money institutions were unable to grant credits, and receiving repayable funds was immediately circumscribed to their transformation into electronic money. The doctrine has expressed the opinion according to which, in relation to banks, an electronic bank does not dramatically alter the role and activities of banks, but allows a considerable extension of their potential markets and particularly exposes them to new risks (Aglietta,Scialom, 2002: 85). Specifically, banking was not accessible to this category of credit institutions. On the one hand, they were not authorized to grant credits and, on the other hand, attracting funds in order to issue electronic money was not considered taking deposits or other repayable funds, if the funds received were immediately changed into electronic money. In other words, only by the will of the European and national legislatures was the status of credit institution recognized to electronic money institutions, independently of the possibility of carrying out the two operations that define banking, essential for credit institutions.

The current framework law on electronic money institutions has also brought changes with regard to the activities they are authorized to pursue. The legislature expanded the scope of the operations that can be performed by such legal persons and recognized the possibility that the activity of issuing electronic money, even if it is mandatory, may not necessarily be their main activity. However, banking in the sense given by G.E.O. no. 99/2006, remains the main component in the current delimitation of credit institutions from electronic money institutions.

Regarding the first component of banking activities, as reflected in the monopoly of credit institutions on receiving deposits and other repayable funds from the public, it should be mentioned that this operation has remained inaccessible to electronic money institutions. These entities are required to issue electronic money without delay upon receiving funds in exchange for which it is issued. In connection with this obligation, it is prohibited for the legal persons under analysis to attract deposits and other repayable funds

from the public, in terms of the operations that credit institutions are authorized to perform on the basis of G.E.O. no. 99/2006. Accordingly, receiving funds for issuing electronic money or payment services is not considered receiving deposits or other repayable funds from the public. Regarding the second component of banking activities, as reflected in the granting of credits for their own account, Law no. 127/2011 regulated for electronic money institutions the possibility of performing credit granting operations related to the provision of payment services [of the kind mentioned in art. 8 letter d), e) and g) of G.E.O. no. 113/2009] and the granting of credits under Law no. 93/2009. If the case of both types of credits, they cannot have as a source the funds received in exchange for the electronic money they issued.

The situation of non-bank financial institutions

In the national legal order, the non-bank financial institutions, Romanian legal persons,were from the very beginning a category distinct from that of credit institutions, Romanian legal persons, the delimitation being given by the structure of their activity (Peligrad, 2012: 331-352). Preceded by general regulations on financial institutions by G.E.O. no. 99/2006, the norms on non-bank financial institutions are currently provided by Law no. 93/2009 on non-bank financial institutions (Popa, 2007: 26-31). For the purpose of this final regulation, non-bank financial institutions are crediting entities that operate as professional bodies under the terms established by Law no. 93/2009.

Non-bank financial institutions were divided by their framework law into two categories according to their activity. On the one hand, there is the category of non-bank financial institutions which provide various types of lending services and which are included in the so-called "general register". Considering a criterion on prudential regulations, this first category is likely to make a distinction between non-bank financial institutions exclusively registered in the general register, not involving significant risk taking (in this case it is enough to meet the general requirements provided by law and by the regulations issued by the central bank in its application), and those which are both registered in the general register and in a special register, since they carry out a crediting activity comparable as size and risk to that of credit institutions (in this case, in addition to the general requirements, it is necessary to meet the special requirements provided by law and by the regulations issued by the central bank in its application). On the other hand, there is a category of non-bank financial institutions that includes pawn shops, mutual aid funds and entities performing crediting activities exclusively from public funds or made available on the basis of intergovernmental agreements, all of which are included and recorded in the so-called "records register". The three types of registers are open and kept by the National Bank of Romania.

Regarding the relationship between non-bank financial institutions and financial institutions covered by G.E.O. no. 99/2006, an overlap may be supported only in terms of activity, in the sense that financial institutions specialized in granting credits are treated as non-bank financial institutions. In the context of the normative dualism provided by G.E.O. no. 99/2006 and Law no. 93/2009, the latter makes relevant delimitations (Smarandache, 2013: 434-435). A comparative analysis of the legal regimes benefiting credit institutions and non-bank financial institutions reveals both similarities and differences. As a general note, the rules governing the establishment, authorizing, functioning, supervision and records of non-bank financial institutions do not have requirements comparable to the typical requirements of credit institutions.

The most important common element aims at the aptitude of both categories of

legal persons to perform professional crediting activities, such an activity being prohibited to any person other than those mentioned by law. As a characteristic, the correlation between crediting activitiesthat can be performed by legal subjects from a comparative perspective does not lead to identification, some non-bank financial institutions being able to perform, unlike credit institutions, pawnand lending operations for the purpose of supporting non-profit entities. Under art. 14 par. (1) of Law no. 93/2009, non-bank financial institutions can perform the following crediting activities: a) granting of loans, including but not limited to, consumer loans, mortgages, real estate loans, microcredits, financing of commercial transactions, factoring transactions, discount and forfaiting; b) financial leasing; c) guarantees, assuming commitments to guarantee, assuming funding commitments; d) granting of loans with receipt of goods in pledge, or pawning by pawnshops; e) granting of loans to the members of non-profit associations organized on the basis of the wilful consent of employees/ pensioners for the purpose of supporting their members through financial loans by these entities organized in the legal form of mutual aid banks; f) other forms of in lending.The doctrine also expressed the view that a credit institution may only occasionally accept a guarantee of dispossession on a movable asset to guarantee a loan that it wants to grant, unlike pawn shops performing such operations the main and single activity (Diaconu, 2011: 188).

Correspondingly, the essential difference between the two types of legal entities specialized in lending is given by the interdiction for non-bank financial institutions to receive deposits and other repayable funds from the public. As for the other activities that non-bank financial institutions are authorized to perform, they have a correspondent within the sphere of credit institutions, with the special mention in the former case that they are exclusively circumscribed to the lending activity. Art. 15 (2) of Law no. 93/2009 prohibit the following activities: a) receiving deposits or other repayable funds from the public; b) issuing bonds, except public offer addressed to qualified investors in the sense of the law on the capital market; c) transactions in movable and immovable property, except those related to lending or those necessary for the functioning of the entity under appropriate conditions; d) loans, conditioned by the sale or purchase of the shares of the non-bank financial institution; e) loans, subject to acceptance by the client of services unrelated to the lending operation in question.

According to the type of non-bank financial institutions, crediting activities are limited to operations legally recognized for each such category. However, the activity of non-bank financial institutions is not limited to professional lending activities, even if the main activity can only include lending activities authorized by law. Similarly to credit institutions, although retaining certain peculiarities, these legal entities can also carry out related and auxiliary activities connected with crediting activities or the functioning of the entity, as well as other operations (e.g. issuing and managing credit cards for clients and transaction processing activities involving the use of credit cards, representation operations, provision of advisory services, foreign exchange operations related to authorized activities, payment services) established by the provisions of Law no. 93/2009 (art. 14) and under the conditions laid down by this law, as well as other regulations in this field.

The situation of payment institutions

The payment institutions, as Romanian legal persons, represent a category of payment service providers recently recognized in the national legal system, on the basis of G.E.O. no. 113/2009 on payment services (Butnariu, 2009: 343-371; Mathey, 2010:7).

According to the definition established by the legislature, payment institutions are legal persons authorized under G.E.O. no. 113/2009 to provide payment services in the European Union and the European Economic Area (art. 5 point 16 of G.E.O. no. 113/2009). The National Bank of Romania will only authorize by law a Romanian legal person established under Law no. 31/1990 on companies.

According to art. 22 (2) G.E.O. no. 113/2009, payment institutions engaged in lending activities distinct from the provision of payment services as a freestanding activity, must comply with Law no. 93/2009 (Voiculescu, 2012: 399-400). In such a case, payment institutions acquire a dual status, having at the same time the quality of non-bank financial institution, which leads to requirements within both business areas.

Even if credit institutions are, just like payment institutions, payment service providers, the legal regime of the latter, which was taken over within the European context, reflects the fact that their activities are more specialized and limited, thus generating risks that are narrower and easier to monitor and control than those that arise in a wider range of activities that credit institutions are authorized to perform (art. 2 of G.E.O. no. 113/2009). The main interference of credit institutions with payment institutions occurs in the matter of their activity (pursuant to art. 8 and art. 21-23 of G.E.O. no. 113/2009) Strictly related to the two operations defining banking activities, as with other legal entities, the framework law on payment institutions established clear rules, concurrently highlighting the delimitation from credit institutions and the peculiarities of payment institutions.

On the one hand, G.E.O. no. 113/2009 [art. 21 par. (2)] prohibited that payment institutions should receive deposits or other repayable funds from the public, thus materializing the essential difference from credit institutions in terms of their activity. As a feature, payment institutions may receive funds from payment service users which should be used only for the provision of payment services, and this activity should not be considered receiving deposits or other repayable funds or issuing electronic money under specific legislation [art. 21 par. (3)]. In the case of credit institutions, they can use the deposits accepted from users to fund payment operations. On the other hand, the lending activity that payment institutions are authorized to perform is closely linked to payment services. Thus, payment institutions may grant credits related to certain payment services (those specifically mentioned under art. 8 letters d), e) and g) of G.E.O. no. 113/2011), in accordance with the rules of sound and prudent practices provided by law and only if the following requirements are met: a) the credit is ancillary and granted exclusively in connection with the performance of a payment operation; b) the credit granted in connection with a payment service which is legally provided, shall be repaid within a period not exceeding 12 months; c) the credit is not granted from the funds received or held for the performance of payment transactions; d) the level of the payment institution's own funds is appropriate at any time from the perspective of the National Bank of Romania in relation to the total value of loans. Basically, recognizing the possibility for these entities to grant credits seems appropriate only if this activity is carried out in order to facilitate the performance of payment services. Moreover, the legislature has recognized the right of payment institutions to grant credits other than those previously mentioned with the observance of Law no. 93/2009 on non-bank financial institutions(published in the Official Gazette no. 1027 of 27.12. 2006, approved, amended and completed by Law no. 227/2007 for the adoption of G.E.O. no. 99/2006, as subsequently amended and completed).

Unlike banking, essential for credit institutions, payment services are part of those

operations which, although authorized, are also available to other legal entities, as provided by law. In the case of payment institutions, the provision of payment services to the users of such services represents their main activity, inseparably connected with other activities authorized by law and giving these entities the status of a central actor on the payment services market.

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ORIGINAL PAPER

Education Organizations and Conflict Management: A Sociological Analysis of the Pre-University System

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Abstract
If by 1989, education organizations were centrally managed, subjected to some rules and regulations clearly stated, with the transition to a democratic society, which has led to major legislative changes, the educational system and thus the school organizations have lost priority in society, flexing itself the internal regulations (increased rights of participants to the educational act, the reduction and elimination of coercion and sanctions, the introduction of alternative disciplines and study materials, and so on). Thus, although in the book *The school - socio-pedagogical approach*, Emil Păun defined educational organization as a *system of activities structured around certain ends (goals, objectives) explicitly formulated, which involves a large number of individuals who own statuses and roles well defined in a differentiated structure, with management roles and coordination of activities*, today were embrittled the trainers and managers positions in educational organizations. Globalization, global economic crisis that led to social values mutations, media and rampant technological evolution destabilized the climate of educational organizations and have allowed the diversification of conflicts in this environment. The present analysis is based on a sociological research on the typology of conflicts and their management in education organizations in the Pre-University environment, held in 2013 on a representative sample of the South West region of 330 respondents, direct and indirect actors participants in the educational life (students, parents and teachers).

***Keywords**:* education organisations, conflict management, mediation, social culture.

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Introduction - Romanian education system between general perspective before and after 1990

The changes produced during the transition process from a state regime in which the education system was highly centralized and the conflict management process in the educational organizations was strictly stated through rules and norms, to a democratic regime, led to multiple legislative changes in the educational organizations, and thus, on how to manage conflicts within those structures.

During the communist period the school organizations held an important role in Romanian society, but immediately after the ’90s the interest for education gradually decreased due to major legislative changes that have caused a decrease in their importance in society. The period of profound reform in which have entered the Romanian learning organizations, in particular those pre university, resulted in an increase flexibility in the rights of all participants in the educational process. As a result of this process the coercion and sanctions applied to the participants in the educational process were reduced and even eliminated, and to all this were added: the introduction of new disciplines and numerous alternative materials of study in order to help the beneficiaries of the educational process. For a thorough knowledge of the fluctuations of the education system determined by the elements of the political system previously mentioned is essential to present the analysis of the traditional view over the educational organization, developed by Emil Păun and also to highlight the manner in which educational organization evolved, and consequently changed.

The hypotheses set were established based on the theories promoted by Emil Păun in his book entitled “School-Approach childcare” that adapt on the real context of the contemporary society. According to the author, the school as an institution “is one of the most complex social organizations. Its specificity as a social organization, the function and changes taking place, cannot be understood only by analyzing some of the most significant functional variables, among which stand out the culture, climate and management (Păun, 1999: 49). This article highlights the specific theoretical and practical aspects of deepening the knowledge over the conflict management process within school organizations, focusing on the culture and climate, ″on an individual perspective, as well as on the features related to the process of managing the situations that occur and disturb the proper functioning and development of schools that require immediate and efficient settlement as base of the ″restorative justice approach to conflict resolution″ (Barbara, 2003: 7). Emil Păun considers that “the sources of changes in organizations can be outside (social pressures of all kinds) or inside (internal constructive energy). To produce the desired changes, external pressures must be embraced by the organization, so that culture becomes the essential “filter”, which can encourage and support the change or, contrary, to block it and distort it” (Păun, 1999: 51).

The research approach has captured an analysis model outlined in the organizational culture, namely the multi-linear or layered model of organizational culture education, which, according to Emil Păun it “has three levels or layers: 1. The basic assumptions or beliefs; 2. The values shared by the members of the organization; 3. The rules governing the activities and conduct of individuals within the organization. According to this model, the culture analysis covers through the route from deep to abstract (layer 1 and partial 2) towards the observable and concrete (layer 3 and partial 2)” (Păun, 1999: 53).

The present article stimulates improvement of knowledge level on school culture as its considered important for all the participants at the educational act to fully

understand what school means, its internal communication channels, its rules and of great value, the roles of every person involved in this cultural act, as it follows "any attempt to improve school activity must start from the knowledge of school culture as it manifests itself at the level of managers, teachers and students".

The management of conflict situations has been attributed to the authority structure of schools, and not to a professional charged with the responsibility of managing conflict situations in schools, approach underlined by Emil Păun which states that "by owning the position of coordinator of activities in the school, the principal intervenes as a mediator of the relationships between organization members. The principle activates, facilitates, clarify, stimulates, guides, orientates, disengages senses, helps, and on this occasion, he creates a socio-affective atmosphere in school community. Important is that the atmosphere to be objectified in a positive climate" (Păun, 1999: 119).

Management of school institutions involves a set of methods and specific administration techniques, organizing and efficient control, in order to improve the educational activities and also the system, therefore the "relationships are critical" (Peter Benson et all., 1998: 21) and "in conflict resolution, particular attitudes, understandings, and skills are important" (Crowford and Bodine, 2001: 3). Summing-up the just mentioned quotation, those unaware of the complexity of conflict the management from the school organizations must regard it at least, as Peter Bensons said, through the school relationships between the participants at the educational act, no matter if those are part of the educational structure, teachers, mediators, auxiliary staff and others, or just an in-and-out flow of generational material in the conflict resolution. Considering that everyone knows its own rights and responsibilities and "once rules have been communicated, fair and consistent enforcement helps maintain students' respect for the school's discipline system" (Gaustand, 1992: 2). At the basis of this work of managing conflict situations, it is identified the participatory management theory, the democratic participative type characterized by "flexible structure of the organization, two-way communication, cooperation between members, between them and the management. Its premises are human confidence and the ability of taking responsibility of what a human being does. The presence of a positive and open environment provides the conditions of participation on making decisions and manifestations and full recovery of personal capacities. Participatory management is eminently collective, but not totally non-authoritative and decentralized" (Păun, 1999: 139). According to studies and analyzes performed in this area, it is noticeable a phenomenon that has gained extent after the fall of communism in Romania, namely the emphasize importance of the conflict situations management within the educational organizations, aspect which became widespread after the year 2000. The changes from the educational system have caused a quasi-opposition, which determined conflict situations between those who at the school level are against this type of management, conservative teachers, on the one hand, and on the other hand, teachers who are adherents of radical and rapid changes and teachers with moderate views on this phenomenon. Globalization, in this case represented by the information and communication technologies, the periods of crisis and economic recession, as well as by the mass-media which can exacerbate conflicts in educational organizations, diversifying the types of conflicts within them, making people "extending their thinking global capacity" (Bayne, Holly, 1994: 4). Representing a time of profound change, the year 1990 caused a number of changes not only in the Romanian educational system, but in all systems of our country society, and being necessary for the transmission of the intergenerational legacy, educational system had began a transformation process,

characterized by period of intense changes, followed by periods of disturbances in this system, in agreement with the political, economic and social reality from Romania.

The management of conflict situations within the educational organizations

Our theoretical and empirical approach is to identify, present and explain the conflict management in the context of continuous change in the school undergraduate organizations by presenting comparative analytical and general characteristics between the existing educational system and the communist regime educational system in order to understand how the phenomenon management conflict situations has appeared and developed. Of relevant importance to organizational practice for schools in Romania is how to improve the relationship between the participants in the educational process, something that has remained dynamic and insufficiently exploited. The participants in this process of sharing the historical heritage forward must understand every type of education that teachers provide to their pupils at any stage of their life. And as very important to any one of us the primary education lays the foundation of any nations future, as following "the links between early childhood care and education are strong and mutually reinforcing" (UNESCO Report, 2014: 8). Thereby, for an illustration based on practical elements aimed to scale this phenomenon we have been synthesized and brought to the attention of all the results of a sociological research conducted on a sample of 330 respondents, focus group made of teachers, parents, pupils, actors of the pre-university educational system, from primary school to technical college, etc.

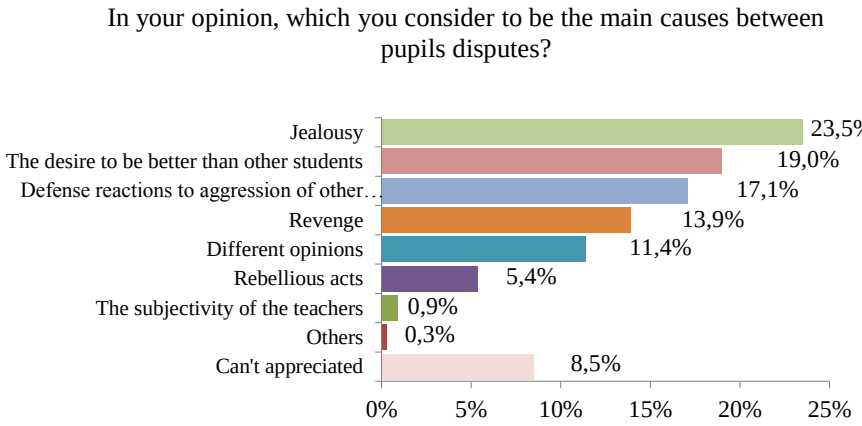
The objectives of the study aimed to analyze the evolution of conflict situations from Romanian schools, as phenomenon found in chronic stage, in order to identify appropriate preventive interdisciplinary approaches and solutions. In educational organizations, multiple conflicts arise daily and there are "persons who deal with conflicts negatively" (Smith, 1996: 1). To better understand what signifies a process of managing conflict situations in an organization is necessary to capture the correct shades of the conceptual boundaries of the phenomena encountered in the process. Thus, the term conflict comes, as it is known, from the Latin *conflictus* appoints "hitting with force" and implying that "disagreements and frictions between group members, speech interaction, emotion and affection [...] TK Gamble and M. Gamble (1993) define conflict as a positive alternative in that beyond all perspectives, conflict is a natural consequence of diversity" (Hinescu, Moisă, 2012: 583). Conflict is always present in everyday life, not just within the partner organizations. It is therefore very important to perceive conflict situations not only as having negative effects, but as the possible situations that may cause progress. These samples represent true change in which individuals must adapt continuously and need to control them to not degenerate.

So far, the specialists have made remarkable progress in the delimitation of the conflict conflicts, on the one hand, and conflict management, on the other hand. Often when a conflict situation is discussed in an educational environment is necessary to correlate the various forms of deviance that occur in pupils in order to build "a cooperative learning training" (David, Roger, 2013: 1). Thus "together with the child entrance in the school environment, the school deviance etiology is enriched with a number of factors related to the school functioning as an institution, the process of socialization from school and the educational process as such" (Bauman and Richie, 1995: 120).

Initially, pupils in the school environment adapt differently, primarily due to the way they have been socialized in the primary institution of family, so experts believe that at this stage children are subjected to a high risk of deviance involving the production of

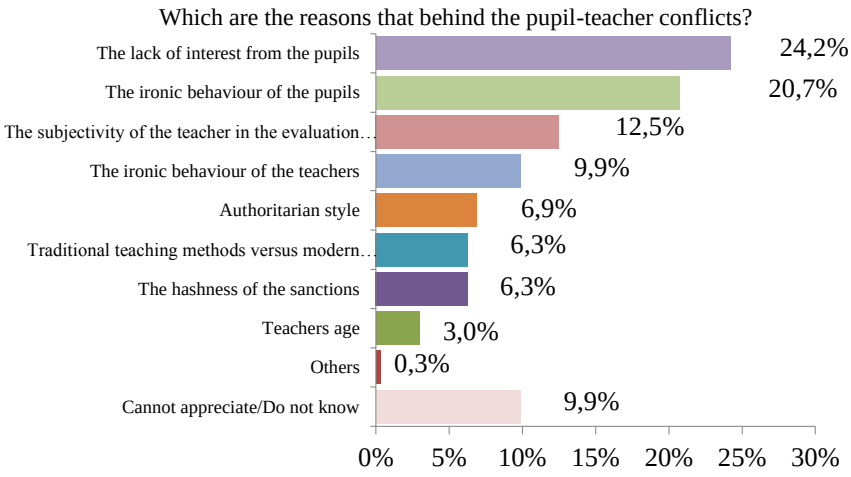
conflict situations. However, scientific studies have shown that, by its legislation the education system provides equal opportunities in education for all pupils, regardless of their inclination for deviance. "The child is the actor of his own education, he is not an passive "object" of the transformations they generate in his own being the educative action of various agents, the role of education is an active role. This is one of the "ideas-force" - in the sense of idea that stimulates and guides action - of contemporary science education and educational practices" (Stănciulescu, 1997: 212). To illustrate the perception over the conflict in the Romanian schools further are presented selectively from the sociological research on the typology of conflicts and their management in the pre-university educational organizations elements relevant to our analysis.

Figure 1. The main causes of disputes between pupils (May, 2013)



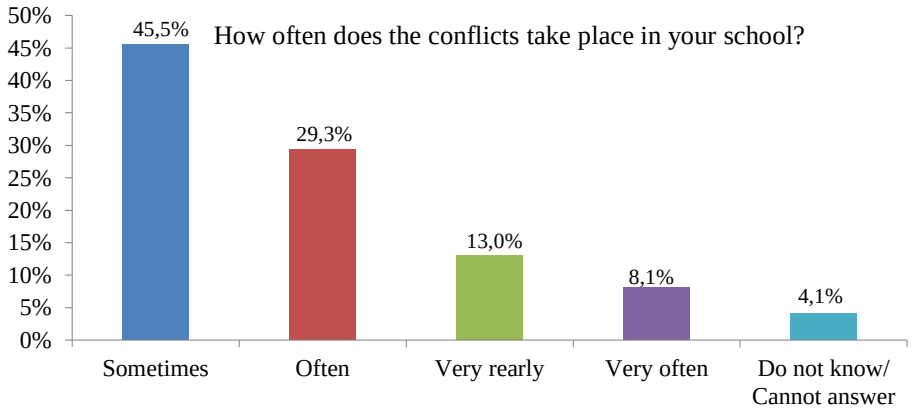
The pupils interviewed felt that the major cause behind these conflicts are numerous, but the most common are: jealousy with a share of 23.5%, variable that was followed by the desire to be better than the other ones in a share of 19%, which is followed by the reactions to colleagues aggressive defense with a percentage of 17.1%. The following other causes that can cause friction and conflict situations are possible: the revenge with a rate of 13.9% to which is added 5.4% rebellious, followed by the professors subjectivity by 0.9% and other causes in the counting around 0 3%. The number of respondents who said they do not know the answer or cannot appreciate the answer to this question was significant - 8.5% of them said that they cannot indicate which are the main causes of conflicts with colleagues. Specialists also say consider that ″being stigmatized as ″dumb″ and the lack of social skills that allow youngsters to deal effectively with others, especially their peers″ (Hechinger, 1994: 5). Creating a new typology over the causes that determine conflicts in schools, the result shows that the development of information and mass communication plays an important role in the contemporary period in influencing these causes, to which may be added chronic diseases of this century, such as stress, etc.

Figure 2. Causes of disputes between students and teachers (May, 2013)



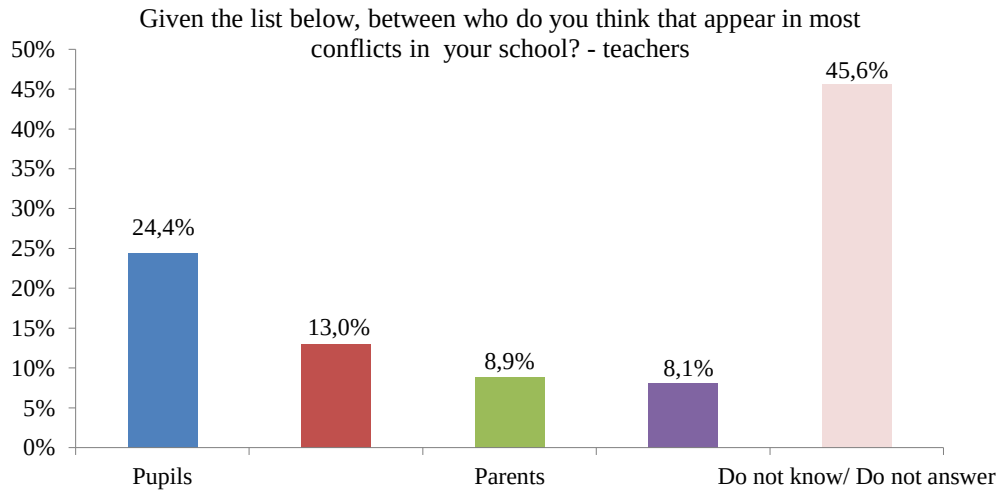
When asked "What do you think are the causes of conflicts between students and teachers?" the lack of interest of the pupils was seen at 24.2 percent of the respondents as the main reason for the conflict between the two categories of participants participating in the educational process, while 20.7% of the pupils believe that this kind of disputes occur because the pupil ironic behaviour. Furthermore, 12.5% of the pupils surveyed consider the subjectivity of teachers (12.5%) or ironic behavior of teachers (9.9%) most often lead to pupil-teacher conflicts thus "they receive a mistreatment by adults (or at least unfairness in the social structure)" (Hoover and Ries, 2004: 118). Other choices that the respondents have opted for are the authoritarian style (6.9%), the teaching methods (6.3%), the harshness of the penalties (6.3%) or the teachers age (3%).

Figure 3. The frequency of conflict situations in schools (May, 2013)



When asked "How often conflict occurs in your school?" As the graph shows, 45.5% of students surveyed stated that there are sometimes conflicts in their school, while 37.4% of respondents said that the conflicting situations of ten appear and/or very often. However, 13% of respondents chose option rarely. As we can see in figure 3 we have represented the conflict as a misunderstanding, an interposition of interest which may lead to pronounced disagreement that can degenerate into conflict, a question or a controversial situation between the interests and feelings of the actors involved. In the educational organizations we will encounter a wide range of conflicts, all influenced by the type of the institution of education, its features, the context of the conflict and generating sources, still is important to offer "equal opportunities in schooling, while strengthening the quality of education" (UNESCO Report, 2012: 191). In order to better understand this phenomenon, according to our research we aimed to know the actors who take part in these conflicts, as shown in Figure 4, so we present the first insight into the conflict, which is the one of the school teachers, and following those we offer the versions of other potential participants: pupils and school leaders.

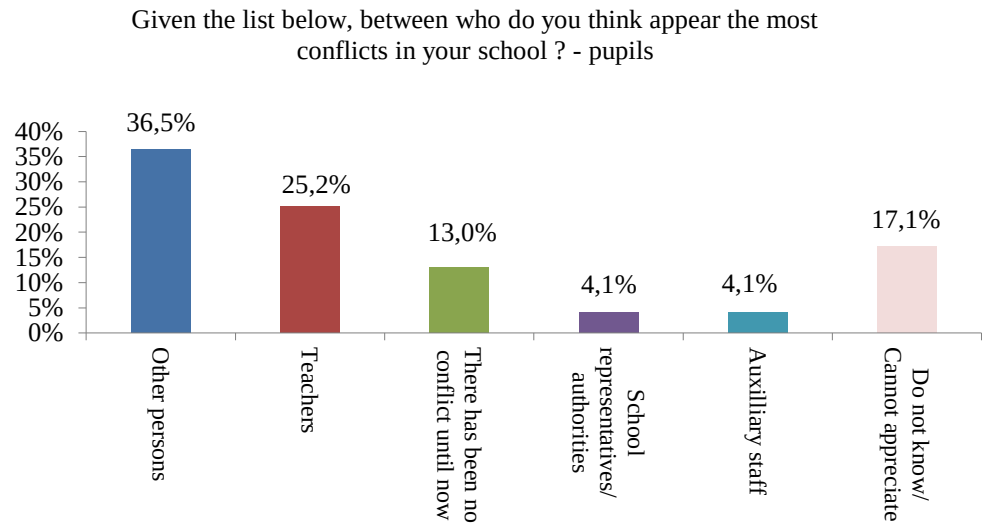
Figure 4. Actors that take part in the school disputes-teachers (May, 2013)



Regarding the conflicts involving the teachers have answered that 24.4% of the teachers conflicts of are with pupils, 8.9% with the pupils parents and 8.1% with school authorities. These results are similar to the previous question, pupils-teacher conflicts are close (24.4% - 25.2%), while 13% of the respondents are not aware of any conflict.

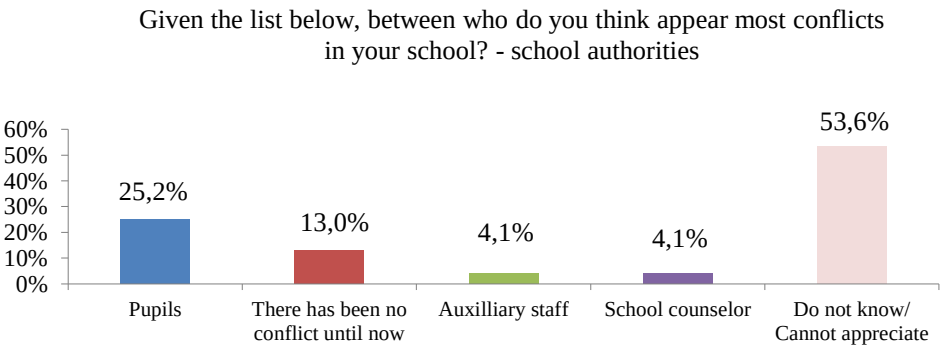
The perspective of teachers is really essential because they have a major role in the educational process of pupils and transmit them a number of necessary elements in the process of social integration, providing a direct feedback on the one hand, to the parents and other hand, to the specialists from the certain school organization that can provide solutions to solve these conflicts.

Figure 5. Actors involved in conflicts in school environment - pupils (May, 2013)



When talking about disputes involving pupils, those occur most frequently with other pupils or people from outside the school (36.5%). However, 25.2 percent of pupils are in conflict with the teachers or with the auxiliary personnel each 4.1% with and school authorities. However, 13% of respondents said they did not encounter conflict so far.The settlement of conflicts does not have as part of the school organizational culture of an extended period of practice, which characterize it as a process incipient in this environment that the specialists look upon as a challenge that can facilitate a better understanding of the most efficient and effective ways to address the disputes.

Figure 6. Actors involved in conflicts in school environment-leadership school (May, 2013)



When talking about school management and its perspective on the conflict we can say that after conducting this research the most common conflicts appear in this educational structure in interactions with pupils representatives. Further 25.2% of the conflicts involve relationships with the auxiliary staff and the school counselor with 4.1% each. The same percentage of 13%, as in the case of the previous questions, it represented by those who have not meet any conflict so far. Conflict solving means that, "all parties reach an agreement freely, having redefined and perceived the relationships between them and after making the assessment, meaning after examined and taken into account all the relevant aspects of relations" (Burton, Dukes, 1990: 231).

Thus, solving conflicts using a confidential alternative procedure whereby a third person, called a mediator, who has no connection with the conflict, thus impartial, offers its services in order to reach an agreement to the advantage of all actors that take part in the situation. Through this process, conducted friendly, diminishes or settles a conflict without any of the actors dignity had to suffer.

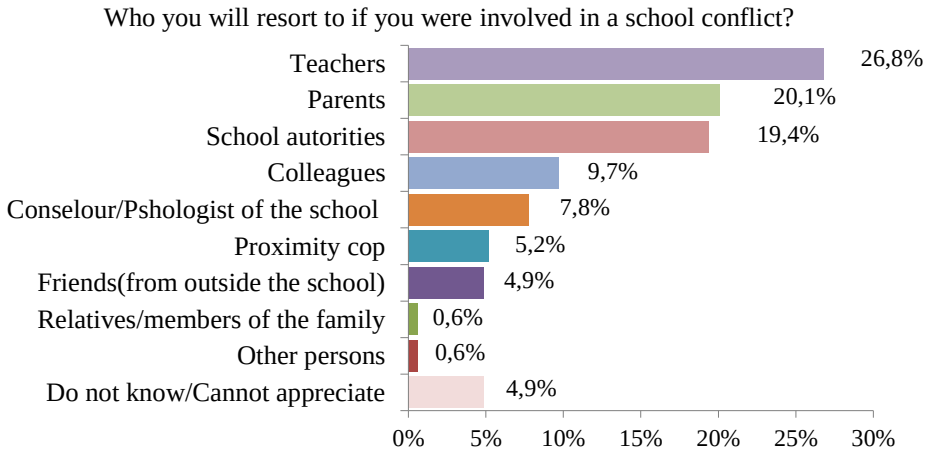
Having the full liberty of the actors to intervene and settle the conflict, the role of the mediator is to obtain the confidence of the parties involved and to facilitate the negotiations between them, supporting them in solving the problem, by obtaining a mutually agreed solution, effective and sustainable. They help the parties involved to communicate openly about the conflict emerged and to agree, jointly, a reasonable solution and appropriate, effective and lasting that satisfies all the actors involved, the only obstacle in the mediation may be the methods, "limited only by your creativity" (Cohen, 1995: 6).

So if we previously presented the role of mediator, a great importance is hold by the main purpose of the mediation process: facilitating dialogue between educational institution - the family and social environment. To this is added another important role that this process has, namely to improve the image of educational institutions and to increase individuals confidence in these, observing pupils during the process of social inclusion in school and establish solutions suitable for providing education equally to all participants in the educational process (Jones, Dan, 2001: 23).

In the research we have conducted, the persons participating were asked who would be those people that they would turn to for a possible conflict that would take part in the pre-university educational environment and according to the Figure 7 we can see that the first three categories of persons to which pupils would turn to in this situation are the teachers, the parents and the school authorities in various percentages.

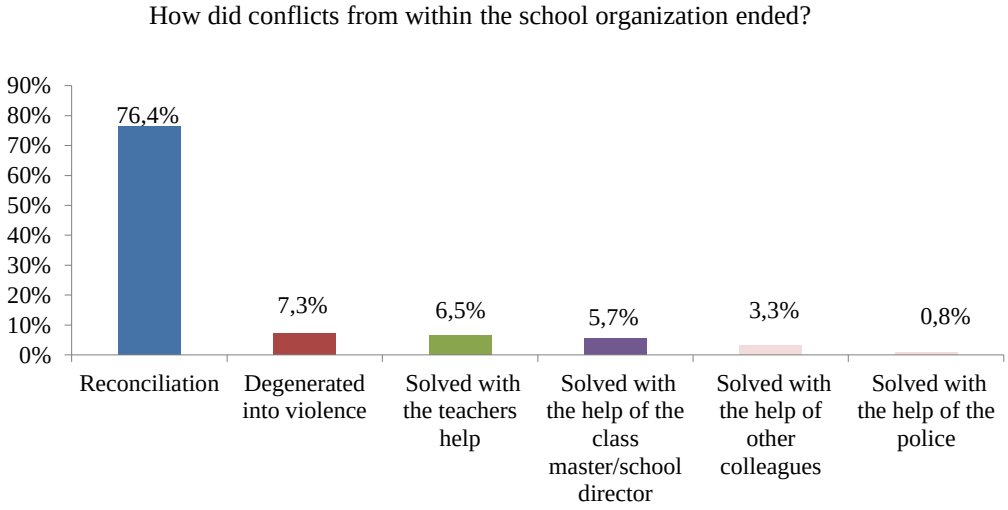
The conflicts in the school environment affects the students' school performance, the relationships within the learning units, relations with the family authorities that involve continuously in the educational process of their own children both for the children to receive a good education and to engage them in a complex system of social relations which will help these first recipients of education to give them confidence, solutions regardless of the circumstances and models where they will find help. And to sum-up all was said above the purpose is "to create a safe community" (Bodine, Croft, 1996: 2).

Figure 7. Persons to which pupils would ask for help in case of conflict (May, 2013)



Summing up the information above, in the case of a conflict developed within the school, 26.8% of students surveyed would resort in solving the conflict situation to their teachers, while 20.1% of them would resort to their parents and 19.4% at the school authorities. Also, 9.7 percent of those surveyed would resort to colleagues to solve their problems, 7.8% to counselor/ school psychologist, while 5.2 percent would call to the police, and 4.9% will resort to friends from outside the school. Characteristic for pupils is to understand that they can receive support in the education establishments from other specialists, other than the teachers and the school authorities, thus, the range of opportunities in solving their difficulties within this unit to be more extensive.

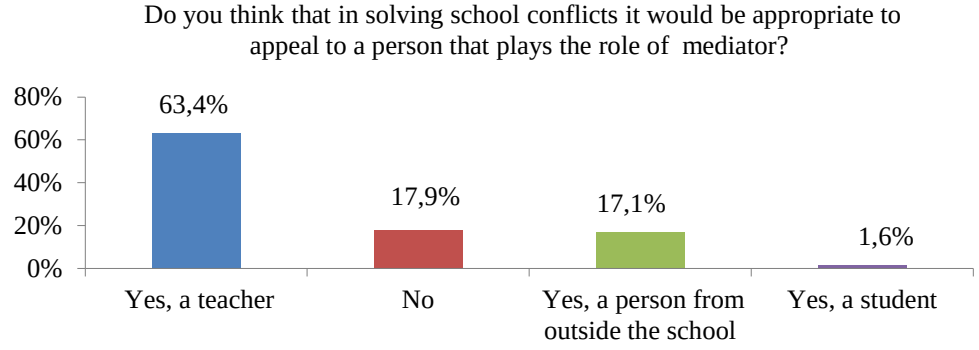
Figure 8. Settlement of conflicts in the school environment (May, 2013)



When asked "How were disputes that broke out in school usually ended?", it was found that 76.4% of the conflicts in the school environment were completed though reconciliation of the parties involved, while 7.3% were degenerate into acts violence, and 6.5% were solved with the involvement of teachers. However, 5.7 percent

of the conflicts were solved by involving class master / the director, and 3.3% by involving other colleagues. Only in 0.8% of the conflicts was no need for police involvement. "Managing conflict involves accepting and even maintaining it within certain limits, even the use of certain means is regarded as legitimate therefore acceptable for its control" (Buga (Smith), 2011: 9). "Beyond principles, the reality puts us in front of various intervention practices and patterns of the family-specialist relationships. Drawing on "socio-cultural and educational paradigms" built by Bertrand Valois [1982]" (Stănciulescu, 1997: 199). The manner in which disputes are settled in the school environment is an opportunity to solve possible similar cases that may occur in the future, to develop viable solutions that can be used in other cases, given the complexity of the educational system and the peculiarities of each actor participant individually will make every conflict unique. Still in implementing such programs the "staff and the provider perceptions of the programs tended to be positive" (Crosse et all., 2002: 33).

Figure 9. Settlement of conflicts the task of school mediator (May, 2013)



To this question 82.1% of students interviewed consider it would be better for the school to appeal to a person with the role of mediator. Therefore, 63.4% of respondents believe that the mediator should be a teacher, 17.1% consider it be more appropriate to person outside the school, while 1.6% said that this role should be assigned to a student: "the different conceptions over the conflict suggest different views on the sources of conflict. Solving conflict situations effectively requires the identification and awareness of the causes that generated it, because both the nature of the conflict and the methods to improve it dependent on causes. It should be noted that our main interest is moving the school manager's behavior as a mediator, sometimes resorting to negotiation, negotiation not the phenomenon itself. Mediation and negotiation are still poorly institutionalized school organization (Buga (Popescu), 2011: 12). During the last decades the parents have begun to collaborate in the education process of their children with specialists from within the education system, such as the school psychologist, teachers, school mediator or from outside the system with specialists in various fields who can help children, and specialized medical personnel, pediatricians, lawyers, in order to enhance the educational role of parents explicitly or implicitly, "however, the emphasis should be on discipline as a preventive measure" (Prothreroe, 2005: 42). The education that the pupils have benefited for in the educational organizations has the role to deliver a number of intergenerational specific features, implicitly achieving the social reproduction process by using alternative solutions. Those alternatives were discussed at the beginning of this paper, and have appeared in our country after 1990 as a result of regime transition and because the

representatives of these structures have accepted it, so important to any society, more rights and educational opportunity of all participants to educational process.

Conclusions

The theoretical perspectives on the school mediation process were borrowed from the Western educational systems, but it hardly can be apply to the features of the Romanian pre-university educational system. Still in practice, the persons designated in a specific educational structure or school to mediate the conflicting/disputes situations are most often the mediators, result which emerged from the studies conducted so far that outlines a path encouraging education in Romania. Although we started the study of conflicting situations from the change that may occur in an organization or within an entire system, as mentioned that it happened in the case of our country at the beginning of this paper, we meant to study the conflict situations in the South West Region of Oltenia with the purpose off deepening the knowledge of this phenomena that is taking place around each of us and also for establishing existing particularities and solutions offered locally.

The culture of the Romanian learning organizations changes, as it does for more than two decades for the better in terms of solving these conflicts that have become part of everyday life of all social actors, thus the early stage of development in school mediation allows a positive evolution for the future of this process that can be influenced by the research in the field and by the modern means of information and communication, very versatile and useful for both the actors that are part of the conflict situations and for mediators. The analysis of this issue had as point of orientation the changes in the learning organizations whom offer professionals the opportunity to improve school performance and the actual educational act and involved people from taking part in it, that can be students and teachers, and other fully actors. As it has been stressed all along the practical research the changes that happen in any school organizations are both positive and negative and in the event of conflicts these changes, no matter their first appearance, have to be used by the school staff through cooperation and innovativeness to build targeted strategies together with the students and other actors. In these conditions, to develop an effective management of change and conflict settlement in the school organization, an effort is needed to develop those sides of the managerial culture that can support the implementation of changes in school while being friendly controlled and targeted approach to conflict: "innovativeness, risk-taking spirit of cooperation and competition, building strategies for school organization, medium and long term, development of strategic plans for the objectives set" (Buga (Popescu), 2011: 21). The conflict management in the school organizations is considered an issue of great complexity, worldwide and in our country, studied, analysed and argued to be solved through various and original methods. Over the time the classification of conflicts, its cause, effects and solutions have been multiple, as we try to argue it further. Cornelius and Faire (1996) have distinguished five symptoms in cases of conflict that are graded as follows: 1) discomfort, 2) incident, 3) misunderstanding, 4) voltage, 5) crisis (Hinescu Moses, 2012: 585). In the process of solving conflict management, are required a few steps after studies have been conducted by those implicated, as it follows: 1) identify the causes of conflict, 2) requiring the submission of possible final results by the mediator to the actors who are part of the conflict, 3) establishing common positions between the conflict actors, 4) the development of a new configuration, in event of a failure in completing the steps above. These steps although guiding, given the organizational context been in a constantly

changing, are very important to note because it represent a framework in practice often used by mediators.

The research conducted in the period May 2013 in the pre-university educational structures based on the social investigation, aimed to obtain information on conflict situations, its causes and their participants, the actors views over these events and establish the role it has or may have in the future both in conflict mediation and school as a learning organization the mediator. And to all mentioned above we can add the ways to continuously improve their activities now and in the future. Therefore, as we could see from the graphs above, the perspectives concerning conflict in school are multiple because to the applied research instrument, the survey/questionnaire, have answered several categories of persons, namely: teachers, parents and pupils, as people involved in the educational process. Given the results of the research carried out on a representative sample of the South-West Oltenia region, we could observe that in the learning organizations the conflict situations are multiple and the changers are determined by a number of particularity, specific either to the actors participating in such situations, either to the school education or the education system itself. The perspectives over the causes of conflict are many and it depends on those who act on these situations, either students, teachers or school management, but it is clear that a person outside the conflict situation has a strong chance to solve the possible conflict, as we have seen in the graphs above. The recognized and accepted role of school mediator by students is continuously debated by the teachers standing in quasi-opposition that argue the benefits of the mediation process, conducted by the already mentioned specialists. This process aims turning this situation that is still negative regarded by most participants in the educational process in an opportunity to determine progress and to reduce the fear of alternatives and the denying of conflict. The mediation as a procedure used in solving conflicts is very versatile, being used in other systems of the Romanian society too, as the legal system, where is often regarded as an effective and increasingly used procedure. Therefore, we mention this perspective with the aim of knowing the viability of mediation, namely the advantages and the similarities between the two faces of the same procedure, as following: "on principle, the mediator gains the confidence of the parties, controls communication between them, identifies the themes of negotiation and establishes the discussion agenda, reduces the continence of the parties to make concessions" (Ilie, 2014: 185). The mediation is often used in the western societies, and has been taken over by certain specialists from our country to get an advantage in improving the performances of the education system. This procedure "was proved intensely at European and national level, by issuing legislation acts, organizing trainings, conferences or establishing mediation centers. The cases of voluntary mediations successfully completed, avoiding trial stage, are the happiest with minimum costs and also taking a short period of time" (Ilie, 2014: 187). The culture of the Romanian learning organizations changes, as it does for more than two decades for the better in terms of solving these conflicts that have become part of the everyday life of all social actors. Thereby the early stage development of school mediation allows a positive evolution in the future of this process that can be influenced by the field research and by the modern means of information and communication, very versatile and useful for both actors of the conflict situations as well as for the school mediators.

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ORIGINAL PAPER

A Legal Diagnosis of Medically-Assisted Human Reproduction: In-between National and International Legislation and Jurisprudence

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Abstract
The medically assisted human reproduction represents a source of controversy from a juridical point of view both in our legal system and at the international level. By regulating the possibility to resort to one of these techniques, namely the medically assisted human reproduction with a third donor, NCC opens up new perspectives for the couples or women who wish to have a child, but its extremely brief provisions make room for new debates so that, currently, the amendment of these texts is required. In this respect, the legislative proposal regarding the medically assisted human reproduction is now on the table of the House of Representatives (L. 453/2013), this proposal referring also to other AHR techniques. We now witness a variety of expressions of interest regarding such techniques even with countries which do not have a legal framework for these social phenomena. Thus, in countries such as France where surrogate motherhood is forbidden by law, couples choose to go to states which not only allow but also encourage these practices. In our country, even though there is no such regulation, we may find surrogate mothers or gestational carriers and that raises many questions: is the traditional family threatened by the evolution of bio-ethics? Is the drafting of a legal framework for AHR necessary? To what extent is the *mater semper certa est* principle still enforceable? Is the regulation of new AHR techniques required after a first approach of the matter by NCC?

***Keywords**:* medically assisted human reproduction, family, surrogate mother, third donor, filiation.

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Introduction

On the one hand, the complexity posed by the regulation of medically-assisted human reproduction techniques in our legal system lies in its novelty and, on the other hand, in its interdisciplinary, combining medicine, social life, religion, ethics and, obviously, law. Having regard to the ratio between theoretical and practical aspects, we note, not enthusiastically, the prevalence of the former. Oftentimes we could say that the traditional relationship between law and reality changes: thus, it is not the law that constraints the reality, but reality by its excessive mobility. Currently, the regulatory activity in an effort to cover the widest possible range of social relations is becoming ever faster, and the pace at which norms are established is virtually unstoppable. The multiplication of the legal norms is the result of the growing complexity of the social life, in conjunction with the need for coordination in order to protect the natural and social environment of millions of individual decisions, as well as the result of a higher degree of automation of social structures (Dănişor, Dogaru, Dănişor, 2008: 353).

The cutting edge advancement of science and technology has also impacted on medicine, and genetic research has developed significantly, these findings having legal effects and forcing law to evolve in the same direction. As these medically-assisted human reproduction techniques were immediately accepted and even desired by our society, many couples resorting to them, even if there was no legal framework to ensure the protection and stability of a relationship with the newly born child. Hence, the regulation required a new type of parentage, already in place in some countries, which is based on medically-assisted reproduction (RUAM). This new way of acquiring the quality of legal subject has given rise to ethical, moral, even religious, but mainly legal controversies, by the major implications it has on institutions such as parentage, kinship, adoption, human rights, etc. In an attempt to address these issues, the new Civil Code establishes the general principles of the entirely new parentage, the responsibility of the child's father, under the action in denial of paternity, the confidentiality of information, in a whole section entitled "Medically-assisted human reproduction with a third donor".

Notion and regulation of medically-assisted human reproduction techniques. The concept of *medically-assisted human reproduction*

The notion of *medically-assisted procreation* emerged after 1985, as a result of the use of new human reproduction techniques and the coinage of new terms, such as gamete donors, banks gametes, donor embryos, maternity replacement, surrogate mother, etc. Etymologically, the term covers all the terms and conditions of application of these new techniques (Astarastoae, Ungureanu, Stoica, 2003). The concept of *assisted reproduction* is not defined in a unitary way, there are many controversies given the diverse scope of the areas involved: medicine, law, ethics, theology.

Medically-assisted human reproduction was defined as a modern method of the treatment of couple infertility, consisting of biological and medical procedures and techniques that allow for procreation outside the natural process, and involving health care (Chelaru, Duminică, 2011: 30-38; Ungureanu, Jugastru, 2007: 40). The common medically-assisted procreation methods are: artificial insemination (which includes medically-assisted human reproduction with a third donor); *in vitro* fertilization and maternity substitute (surrogate mother).

Artificial insemination is a reproduction technique used in some cases of sterility and consists of the removal and insertion of the man's genetic material in the body of the mother to be, where fertilisation will occur. *In vitro* fertilisation (IVF) is the technique by

which the fertilisation of an ovum by a male gamete (sperm) is achieved in the laboratory (*in vitro*), the embryo resulting from this process being then transferred to the uterus (Cuisine, 1990: 245).

Regarding maternity replacement, it could represent the whole system of rules governing the legal situation arising between a woman who will carry and give birth to the child (the surrogate mother) and the donor couple, as well as the relationships of parentage that will result from this assisted human reproduction technique. In fact, the surrogate is a convention whereby a woman agrees to be artificially inseminated (with the genetic material of the couple or just with the genetic material of the man in the couple), to carry the pregnancy, give birth to the child and voluntarily cede her rights on the offspring to the beneficiary represented by a couple or a woman (Lupaşcu, Crăciunescu, 2011: 135). As they involve a large number of people (the couple or woman who wants the baby, the woman who gives birth, a third donor), an embryo and an offspring, all the rights and obligations incumbent on those proceedings, the legal nature of a convention concluded in this respect and its validity are highly controversial, which is why very few legal systems have enabled the use of the RUAM method.

Under the circumstances, in which in reality creates the legal doctrine, more often than not, the doctrine tends to be either a purely descriptive, empirical definition, the listing of the features of the social phenomenon, which or a constructive definition to yield an abstract concept. Actually, the law-maker may transgress its power to regulate social situations in the process of passing norms, seeking to define scholastically a series of metalegal concepts within the law, thus, having different consequences, often unintended ones (e.g. the object restriction). However, the social environment is very changeable, at least, lately, generating disruptions that the system is forced to absorb, compressing these "external shocks" in the rule of law. In order to be able to define this concept, rules that create the related legal framework are required.

Legal framework

In Romania the first regulations with regard to the medically-assisted human reproduction techniques date back to 2006, as laid down in Law 95/2006 on the healthcare reform. The general provisions of this law determine the conditions under which removal and transplantation shall occur (Title VI) , the determination of the donor and the way he gives his consent (Article 142 (t) provides that the regulations around the law are enforceable to the *in vitro* fertilization techniques). On a reasoned proposal, in order not to encourage the practice for reward of these procedures, the law-maker expressly enshrined the free nature of the removal of organs and/or tissues and/or cells of human origin under Art. 158 (1) stipulating that: "the organisation of and/or removal of organs and/or tissues and/or cells of human origin for transplantation, for the material profit for the organiser or donor, constitute the crime of organ trafficking (...)". However, it must be stressed that, in 2008, Romania was the only country in the European Union not to finance any technique and any stage of medically-assisted human reproduction (http://ec.eiropa.eu/health/blood_tissues_organs/docs/study_eshre_en.pdf).

Besides the fact that there were no such funding, the only regulations in the field of legal texts were far from the necessary legal framework for regulating the procedures and techniques of medically-assisted human reproduction. Although there have been attempts to regulate medically-assisted human reproduction (we envisage the law on reproductive health and medically-assisted human reproduction in 2004 that was subject to constitutional review, the notification by the President of Romania, and the

Constitutional Court by Decision no. 418/2005 found that several articles of the law as unconstitutional), now we are facing a legal vacuum in this respect.

NCC currently lays down the regulatory framework in Art. 441-447, whereby to carry out one of these techniques, namely *medically-assisted human reproduction with a third donor*. The law-maker intended the code to include guidelines related to trace the parentage system, the conditions under which consent shall be given to use such a procedure, confidentiality and the form in which such an agreement is concluded, and some aspects of the parentage. Thus, we encounter only the regulatory framework in the code, to be fully rounded by special laws, as laid down under Art. 447 of NCC: "medically-assisted human reproduction with a third donor, its legal status, the confidentiality of information pertaining to it, and their mode of communication are subject to a special law". Although the entry into force of the NCC took place in 2011, no special law or methodology brought in the much needed additions. Currently, the bill 453/2013 regarding medically-assisted human reproduction is still analysed by the Chamber of Deputies, awaiting a favourable opinion, after it was passed by the Senate in November. The paragraph discusses three forms of RUAM: *artificial insemination, in vitro fertilisation procedures or embryo transfer, extending the framework of the code*. The close examination of this bill revealed both its weaknesses and the elements to complement the existing texts. Hence, we see that the new rule does not absolutely concern the additions to the legal texts of the Civil Code as originally stated, it puts forward new techniques of assisted reproduction, without exhausting the subject, leaving unregulated extremely important issues.

Conditions of medically-assisted human reproduction techniques. Consent

In Art. 442 NCC, the consent is laid down as the only condition to be met to use the RUAM techniques with a third donor. In order to be valid the consent must be given before a notary public who shall explain to the parents, specifically, the consequences of their act on parentage and ensure full confidentiality. Likewise, the meaning of the concept of *parents*, who may be a man and a woman, or a single woman under art. 441 NCC, is provided. We see from the definition given by the law-maker that the possibility of resorting to these techniques is not determined by the marrital status. Moreover, with regard to the "single woman" status, we are entitled to assume that the woman is engaged in a relationship, or is married or currently in a relationship of cohabitation without having the consent of her partner, hence, becoming a single parent since the husband may deny paternity under art. 443 (2) NCC. Doctrine (Florian, 2011: 234-235) and case-law draw the same conclusion. In Decision 418/2005 of the Constitutional Court on the notification of unconstitutionality of the law on reproductive health and assisted human reproduction, in section 5, The Court, following the examination of the criticism of breach of Art. 16 of the Constitution as "there is discrimination of individuals and couples with regrad to the right to receive healthcare in terms of reproduction" found that such a provision violates the principle of equality before the law and public authorities: "the discriminatory nature of the regulation is more evident as the meeting such requirements on which, in the opinion of the law-maker, the very existence of the right depends, does not express the unilateral will of the person concerned by reproduction, but it equally implies a convergent act of will of the potential mating partner. It is only through the will of the partners that the couple is achieved. Or, under the circumstances, the recognition of the entitlement to medically-assisted reproduction exclusively to the couple violates the provisions laid down in Art. 16 (1) of the Constitution" (Decision 418, 2005).

To highlight the consequences of the existence of a concurrence of will of individuals in couples, the law-maker provides for in art. 442 (2) NCC that whenever there is a change that impacts on the realities that led to their desire to use the technique of reproduction, the consent has no effect (Hageanu, 2012: 228). Hence, the consent remains without effect in case of death, of an application for divorce or actual separation, prior to the time of conception by medically-assisted human reproduction. It can be revoked in writing at any time, including before the doctor called to provide assistance for third donor reproduction. From this point of view, we consider that bill. 453/2013 calling into question other RUAM techniques (artificial insemination, *in vitro* fertilisation procedures, embryo transfer) outside that with a third donor regulated by NCC give rise to new controversies, allowing for procedures whose effects are extremely difficult to determine, whether we imply the coexistence of rights and the prevailing rule or the identification of the person and thus the establishment of parentage. In an attempt to fully round the provisions of the new Civil Code, the project proposes a number of texts to customize aspects already under Art. 62-66 NCC, without distinguishing the conditions, rights and obligations of the parties (which we do not know, hence, multiplying indefinitely the number of the people involved) in each and every case, the limits of those rights and the consequences of using such a technique .

Age and health of parents

We can easily see that in addition to the provisions relating to consent, the law-maker does not cover any conditions regarding the use of these techniques in the new Civil Code. Nor are provided for the age or state of health of the parties to ultimately lead to the fulfillment of the principles regarding the right to life, health and integrity of the individual. Article 10 (1) of the bill discusses several conditions that parents must meet apparently cumulatively: "a) to be alive; b) to meet the medical criteria on physical and mental health, approved in the methodology for the application of this law; c) to give their consent prior to artificial insemination, *in vitro* fertilisation or embryo transfer; d) to have full legal capacity and have not been deprived of parental rights." Paragraphs (2) and (3) of the section provide that "sampling gametes is allowed only in the case of *women* aged between 18 and 45 years", "*women* aged between 18 and 50 years". These legal texts have more relevance in terms of ensuring the optimal deployment procedure, the effects having applicability in legal matters by laying down the conditions in which the life, integrity and health of the individual are guaranteed. In this respect, we consider them extremely important and welcome, where the of the statutory provisions should not become discriminatory nor shall they infringe on the rights inherent in human beings.

Effects of medically-assisted human reproduction techniques. Principle of *mater semper certa est*

Since ancient times the principle of *mater semper certa est* was enshrined, according to which the one who gives life is regarded as the mother of the child. This are the provisions laid down under Art. 408 (1) NCC stating that the parentage of the mother arises from giving birth. This principle is not questioned by the regulations of the new Civil Code, because here only establishing the parentage of the father is "uncertain nature" by the presence of a third donor. The bill addresses another situation whereby the multitude of techniques allows for a surrogate mother which would push that uncertainty to the mother and make the principle of *mater semper certa est* become relative. Thus, in an attempt to complement the existing regulations, the law-maker transfers us to a

regulatory maze where the presence of these texts leads us in two directions: one represented by legal gaps, and the other by legal incongruencies. The existing regulations are not complemented by the much needed information regarding the parties, conditions and effects, and the new regulations discuss new techniques without a solid legal basis (even if they have a social basis and extremely well supported in reality) that come to contradict the basic principles of the current civil law. It should noteworthy that in Romania there are medical centres which provide RUAM. In the absence of sufficient regulations in our country various techniques are practised, with and without donors, including surrogate and regardless of age. The offsprings are declared as natural (Guțan, 2011: 183) and surrogate practices are disguised by resorting to various methods which often go beyond legal terms.

To minimize these techniques as far as possible, the law-maker seought to change various pieces of legislation that allowed for such a breach. Such is Art. 7 (4) of Law 273/2004 on the legal status of adoption (reprinted, 2012) providing that "the child out of wedlock, recognized administratively by the father, and the child whose aternity has been established by judicial decision, whereby it is noted the recognition by the father or the agreement of the Parties, without having examined the grounds of the request, may be adopted by his/her father's wife if the parentage is confirmed by the results achieved by the serological methods of DNA expertise". This paragraph aims to deter the couple from taking the child away from a mother who does not want him/her, using the child's recognition, even if not real, administratively by the man of the couple, followed by the adoption of the same child by the wife. These practices are more present in other states even if they regulated and even medically-assisted human reproduction is supported, as they disagree with motherhood substitution since it strongly encourages transactions that concern the human body (the surrogate mother) and offsprings. In 1985 William Stern and Mary Beth Whitehead entered into a surrogacy contract stating that Stern's wife, Elizabeth, was infertile, that they wanted a child, and Mrs. Whitehead was willing to provide that child as mother with Mr. Stern as father.

Through artificial insemination using Mr. Stern's sperm, Mrs. Whitehead would become pregnant. Mrs. Whitehead would deliver the born child to the Sterns and terminate her maternal rights so that Mrs. Stern could thereafter adopt the child. Mrs. Whitehead's husband, Richard, was also a party to the contract; Mrs. Stern was not. Mr. Whitehead promised to do all acts necessary to rebut the presumption of paternity. The contract gave Mrs. Stern sole custody in the event of Mr. Stern's death. Mr. Stern agreed to pay Mrs. Whitehead $10,000 after the child's birth, on its delivery to him. He agreed to pay $7,500 to the Infertility Center of New York (ICNY) and ICNY arranged for the surrogacy contract. The history of the parties suggests good faith. However, almost from the moment of birth Mrs. Whitehead realized she could not part with the child. She nonetheless turned her child over to the Sterns on March 30 at the Whiteheads' home. Later that evening Mrs. Whitehead was stricken with unbearable sadness. The Sterns, concerned that she might commit suicide turned the child over to her on her word that she would return her in a week. It became apparent that Mrs. Whitehead could not return the child, and Mr. Stern filed a complaint seeking enforcement of the surrogacy contract. An order in favor of Stern was entered, and the process server, aided by police, entered Mrs. Whitehead's home to execute the order. Mr. Whitehead fled with the child. The Whiteheads fled to Florida with Baby M. Police in Florida forcibly removed the child from her grandparent's home and turned the child over to the Sterns. At trial, the court held that the surrogacy contract was valid, it ordered Mrs. Whitehead's parental rights be terminated, that sole custody be

granted to Mr. Stern, and immediately entered an order allowing the adoption of Melissa by Mrs. Stern. The trial court devoted the major portion of its opinion to the question of the baby's best interests, finding that specific performance would not be granted unless that remedy was in the best interests of the child. On the question of best interests, the Supreme Court agreed substantially with both the trial court's analysis and conclusions. However, the Court differed in its review and analysis of the surrogacy contract (see Baby M, a child born out of motherhood substitution in the USA in the 1980s, well known due to the fight for custody between the surrogate mother and biological father).

The case attracted much attention as it demonstrated that the possibilities of *third party reproduction* raise novel legal and social questions about the meaning of parenthood and the possibility of contracting around issues of pregnancy and childbirth. Among other points of contention, people argued about whether the ability to contract away parental rights to a child born to her invoke a basic human right for a woman to make decisions about her own body, or whether recognizing such a right would entail too great risks of exploitation. The New Jersey court's finding that no contract can alter the legal position of a woman who bears a child as that child's mother seemed to settle the question of the status of surrogacy contracts in America, at least until technological advances permitting gestational surrogacy resulted in cases where a woman can bear and birth a child to whom she has no genetic relation reopened the question in many jurisdictions.

At least in New Jersey, however, the Baby M. ruling continues as precedent. In 2009, New Jersey Superior Court ruled that *In re Baby M* applies to gestational surrogacy as well as traditional surrogacy cases, in *A.G.R. v. D.R.H and S.H.*. The intended parents were a homosexual male couple. They created an embryo using an anonymous donor ovum and the sperm of one of the husbands. The sister of the other husband carried the embryo to term and originally delivered the child to her brother and his husband, but a year later asserted her own parental rights even though she was not genetically related to the child. Judge Francis Schultz relied on *In re Baby M* to recognize the gestational mother as the child's legal mother.

However, a later ruling in 2011 awarded full custody to the biological father. In Canada, Australia, Belgium and Hungary using acsurrogate mother is legal on condition that her services are paid. In India and in some American rewarding the surrogate mother is legal, whereas in Italy and France surrogate mothers are punished, whether they receive money or not. In Romania there are no laws on surrogate mothers, so this practice is neither legal nor illegal which should be a warning, given the large number of such offsprings and which are subject to disputes and blackmail of the surrogate mother and and couple who wanted the child or whose genetic material was used.

Assimilation of the legal status of the child thus conceived to the child born through natural conception

The legal status of the a child born through medically-assisted human reproduction techniques with a third donor is that of natural child's legal status, and his/her parentage cannot be challenged even by him/her, on the basis of RUAM [Art. 443 (1) NCC]. Hence, in accordance with Art. 446 NCC, the father has the same rights and obligations to the child born by medically-assisted reproduction with a third donor as to a child born through natural conception. Nonetheless, we believe that the husband's right to pursue legal action in denial of paternity recognized by Art. 443 (2) NCC, where the married woman uses medical techniques to procreate without his consent, since it violates one of the conditions required for accessing medically-assisted procreation techniques:

parental consent. Moreover, we consider, in line with other theorists (Drăghie, Iorga, 2010: 93; Chelaru, Duminică, 2011: 35), that it would be useful to allow the child so conceived to take legal action for damages against the donor, who knowingly consented that his genetic material to be used by a couple or person who does not meet the conditions required by law to use such a technique of reproduction. We do not exclude the possibility of involving the civil liability of the physician assisting procreation in such conditions. The new Civil Code regulates the liability of the father who after consenting to medically-assisted reproduction with a third donor does not recognize the child born out of wedlock, being liable to to the mother and the child. In this case, the child's paternity is established by the court. We note that the text establishes the liability of the man who after giving his consent refuses to acknowledge the child, as well as how to establish the paternity. Both the mother and child are entitled to compensation for material and moral damages under the civil law. Regarding paternity established by the court the provisions of Art. 424 NCC are deemed applicable, with the particular mention that, under the circumstances, the only evidence to be administered is related to the father's consent and to the fact that the child was indeed conceived by RUAM with a third donor (Avram, 2013: 402-403; Baias, Chelaru, Constantinovici, Macovei, 2012: 368).

Exclusion of parentage between the child and the donor

Article 441 (1) NCC provides that medically-assisted human reproduction with a third donor does not determine any parentage between the child and the donor. This statement that the law-maker makes in relation to the exclusion of any legal "links" between the child and the donor father comes to legitimate the opinion on the existence of two types of parentage: a genetic one (in this case, the father as the donor) and a civil one (indicating as father the one who has the legal rights of paternity), with the amendment that Art . 443 NCC is wriiten clearly and does not allow for action against the legally established parentage in the case of medically-assisted reproduction (civil parentage). Article 445 (1) provides that any information on medically-assisted human reproduction is confidential.

As a medical act as it was found that (Florian, 2011: 233; Bogdan, 2004: 7) medically-assisted human reproduction is covered by the patient's right to confidentiality of medical information provided by Art. 21 of Law 46/2003 on the rights of the patient, the same considerations regarding the protection of privacy. Exceptionally, law allows authorized access to information where, in the absence of such information, there is a risk of serious injury to a person's health so conceived or to his/her offsprings. Equally, any offspring of the so conceived person may invoke this right, if being deprived of the information may cause serious damage to his/her health or that of someone close to him/her (Art. 445 (2) and (3) NCC). However, the law-maker does not specify who can apply to the court for authorizing the communication of information, but corroborating the texts of the law makes it clear that only the person so conceived and his/her offsprings are entitled to.

The doctrine (Chelaru, Duminică, 2011: 37; Bacaci, Dumitrache, Hageanu, 2012: 94) considers that the Romanian law-maker should be consistent and advocate for the anonymous status of the donor, unless the disclosure of information is required in situations where the child health is endangered. On the other hand, having rehard to Art. 7 section 1 of the Convention on the Rights of the Child of 20 November 1989, ratified by Romania by Law 18/1990, the child has the right to know his/her parents, if possible,

and be raised for by them. Regardless of the attitude of the law-maker, we support the protection of the donor and any paternity action against him should be dismissed.

Conclusions

Having such a large scope, given by its interdisciplinary nature, medically-assisted human reproduction has given rise to a number of controversies, especially on account of the incongruency between the social reality and lack of regulations. If practice and doctrine have managed to provide a legal framework of the medical aspects of the "techniques of *in vitro* fertilisation" (Art. 142 (e) of Law 95/2006) and a series of general provisions on the consequences of medically-assisted human reproduction on a third donor parentage (Articles 441-447 of the new Civil Code, not taking effect yet), we expect the special law and norms that establish the legal framework applicable to these techniques of human reproduction, complementing the existing one.

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ORIGINAL PAPER

Re-Flaming the Political Union and Unionists: Local Historical Reading Frontlines

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Abstract
Herodotus used to write about the Thracians in book V of his *Histories*: "the Thracian people is, after that of the Indians, the greatest of all. If they had one ruler and they were united, they would be invincible and, as I think, far more powerful than all peoples…". The lack of political unity has been and will remain an atavistic feature of the Romanian nation. Burebista managed to unify "the bravest and most righteous of all Thracians" within the natural boundaries and to achieve the greatest Geto-Dacian kingdom, but in 44 BC he was assassinated as a result of a conspiracy planned by just a few people". Michael the Brave had the same destiny. In the summer of 1600, he managed to be the sole political authority in the medieval history of Romania which had been able to master "the three Romanian Principalities". Unfortunately, this situation did not last long. The same political reasons and ambitions hastened the end of the brave ruler and, as a consequence, upset the plans of political unity for the second time in our history. In 1859, along with the Unification of the Romanian Principalities, we can speak of the Romanians' conscious and general expression of will. The political rivalries leading to the forced abdication of Alexandru Ioan Cuza moved onto the ground of reforms necessary for the modernization of the newly created state. We will try to develop these ideas by analyzing the connection between the three great state rulers and the premises which prefigured the framework for the achievement of political unification.

Keywords: unity, poltical institutions, political history, authority, ruler, people.

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In the fifth book of his *Histories*, Herodotus described our Thracian ancestors in the following words: "After the Indians, the Thracians are the greatest people of them all. If they had a single ruler and if they were united, they would be invincible and, in my opinion, much stronger than all the peoples (…)". The lack of political union has always been an inherent characteristic of the Romanian people and, probably, one of the reasons for which, since ancient times, no matter what we have achieved, we are still searching for our place in the history of Europe and we are still striving to gain recognition, despite our ancient roots and our permanence in this area. This is our responsibility, because we have never had the capacity of promoting ourselves through what has been representative in our culture and traditions. Someday we shall learn that with no history and no recognition of our own values we shall never have a happier fate. Our ancestors repeatedly sacrificed for our common fate. Many died in battle in order to maintain our independence and, even though we had a unitary civilisation, proving a long-standing presence in the same area, our national unity had to be sacrificed.

Burebista managed to reunite the "bravest and fairest of the Thracians within the natural borders" and achieve the largest Geto-Dacian Empire, but he was assassinated in 44 B.C., "following a plot of several people" (Strabon). The state created during and at the initiative of Burebista was dismembered into four to five political formations and, even though Decebalus had the same initiative, the Geto-Dacian state never had the same borders again. The Roman conquest interrupted and changed the natural course of the evolution of the Geto-Dacian society.

After the withdrawal of Roman troops and administration from the province of Dacia, the single form of social and political organisation was the territorial commune, which had the great merit of establishing and preserving our traditional values, despite the unfavourable conditions imposed by the wave of migrations. None of the temporary dominations managed to uproot this people or change its culture and, despite the same lack of political union, Romanians were spiritually united. The spiritual union was an expression of the solidarity between the members of the communes, which that Andrei Rădulescu featured as follows: "At the same time, these people knew how to make the most of their solidarity relationships and how to secure humane conditions, where feelings played a very significant role. This happened both on bad days and good days. Let us remember, for instance, what happened, especially to the wealthy people, on the occasion of name's days, on engagements, that were highly glamorous, but especially on weddings, which were not studied enough. There are customs that were found in these regions many years before Christ. These customs were kept. Moreover, one can see the feelings uniting these people, from children to old women" (Rădulescu, 1971: 73). This solidarity was also expressed in the legal field and resulted in what, later on, following the establishment of Romanian medieval states, would be named the Country Law or the Customs of the Land.

The relationship between Romanians and land is overwhelming and it is perfectly reflected in the laws of this people. The land where we were born, where we grew up and the one that we fought for has always been our link and, even though we have almost always been politically separated, our custom law was named the Country Law, not the Countries' Laws or the Countries' Law, and it had a similar content, for Wallachia, Moldavia and even Transylvania. However, political union has been and still is a dream that has always called for sacrifices. If, in ancient history, Burebista paid for his ambition of uniting the Geto-Dacian tribes, Michael the Brave had the same destiny later on. In the summer of 1600, he managed to be the single political authority in the medieval history of Romania that ruled "all three Romanian countries", "from the Dniester to Banat, from

Maramures to the Danube". In his chronicles, he entitled himself "Io, Michael Voivode, with the mercy of God, ruler of Wallachia, Transylvania and Moldavia" (Giurescu, 2003: 199). Unfortunately, it did not last for long. The same political reasons and ambitions precipitated the end of the brave ruler and, implicitly, destroyed political union plans for the second time in our history. The chronicles show that: "(…) envy lost many faultless men, as this one. Since he was helpful to Christians, and he was not only good to them, but the Turks had grown fearful of him; and the devil that went after the Christians did not leave him alone, but it entered the hearts of the evil and wicked, and managed to put him to death. And Christians and, above all, Wallachia became poorer with his loss".

The Romanians' attempts at political union were partially achieved approximately 250 years later, in 1859, in the general context of national independence. Alexandru Ioan Cuza, who was elected as ruler of the Romanian Principalities in 1859, was compelled to abdicate on the night of February 10-11. The reason of the coup d'état of February 1866 was not the "mismanagement of the country", but, as Mihail Kogalniceanu stated, "it was not Cuza's mistakes, but his deeds that led to his abdication" (Kogălniceanu, 1894: 79-80). Cuza's reformative activities were welcome neither by conservatives nor by liberals, so the ruler had to be removed. He was not killed, but he was expelled and compelled to die away from his country. Burebista, Michael the Brave and Alexandru Ioan Cuza are three leading figures of our history united by the same dream and the same destiny. We do not know to what extent the will of establishing a unitary state was a deliberate result of our own entity in the ancient and medieval periods. We think that the external threats, supplemented by the existence of leading figures driven by ambition, courage and visionary thinking were the main factors resulting in the state union, even though for a short period of time. It is in 1859, with the Union of the Romanian Principalities, when we speak of a deliberate and generally expressed act of will of Romanians. Political rivalries, resulting in Alexandru Ioan Cuza's forced abdication, now referred to the reforms required for the modernisation of the newly created state. In what follows, we dwell on these ideas, comparing the relations between the three great rulers and the premises of political unions.

The Emergence of the Geto-Dacian State under Burebista

Three significant texts of ancient Greek and Roman literature speak of Burebista's ascension and authority and, implicitly, of the emergence of the Geto-Dacian state. The first and the most significant, since it includes most data, is the text authored by the Greek geographer Strabon, showing that Burebista, "taking the helm of his people, raised the inhabitants overwhelmed by endless wars, and guided them in good habits, a balanced life and obedience of commandments, and in a few years he created a large empire and brought most neighbours under the domination of the Getae. He was also feared by Romans, since he fearlessly crossed the Ister and attacked Thrace up to Macedonia and Illyria. He defeated the Celts that were mixed with Thracians and Illyrians and the Boii who were ruled by Critasiros, as well as the Taurisci were wiped off the face of the earth. In order to persuade his people, he worked with Deceneus, a medicine man that had wandered through Egypt and had learned predictive signs that helped him understand the will of the gods. In a short time, Deceneus himself was deemed as loved by the gods, as we spoke of Zamolxis and, as a sign of obedience, the Getae agreed to cut off the vines and live with no wine (…)" (Strabon). The second text belongs to the Gothic historian Iordanes and refers to the beginning of Burebista's ruling, "when Sylla became ruler in Rome", i.e. around 82 B.C. According to some opinions, the inscription of Dionysopolis contradicts

this date, since, at that time, in the residence of Argedavon, it was Burebista's father who ruled, not Burebista himself, who occupied "the throne of Dacia later on, at an unknown date, somewhere between 70-60 B.C." (Daicoviciu, 1968: 100-101). Irrespective of when Burebista becomes king of Dacia, the authority he acquires on the tribes and tribe unions is significant. Thus, he becomes "the first and the greatest of the kings of Thrace", who created "a great empire". Drăgan appreciates that Burebista moulded his personality starting from the knowledge of his country's realities. The same author argues that he began by visiting Thracian tribes, then the Greek fortresses on the Black Sea seashore, he learned Greek and Latin, which was currently spoken as a second language in the area and, for a significant period, he lived in the courts of the various kings who then became his vassals. Interested in knowing the lifestyle of his time's society, he showed his best habits to noblemen, and to the lower classes that he accompanied in hunting, he behaved so that they might feel like he was one of them. In his wanderings he met Celts and he may have learned Gaelic, which was, of course, less complicated than today's French, closer to Latin, and, hence, to the Dacian language, as Gonzague de Reynold states. Being a polyglot was a requirement for those who prepared to become leaders in those times as well, since they had to establish direct relations with foreigners, in order to understand their character, mentality and customs (Drăgan, 1976: 258-259).

The fine mind of this man connected to nature was served by a sharp intuition. In new and unexpected situations, his reactions were prompt and his decisions were firm. His contemporaries frequently compared him to Alexander the Great, seeing in him the continuity of the great Thracian traditions. However, unlike his great ancestor, Burebista was more cautious. He was more balanced and more rational, he did not hurry and he did not defy destiny. When participating in incursions, he was highly prone to put into practice the plans he had devised and he followed them together with his staff, from the high observation position of the battlefield. He never allowed himself to be surprised in the crowd, knowing how disastrous the presence of the commander was. Like Alexander, Burebista achieved amazing results, though by different means, creating a great Dacian power, which some historians called an empire (Drăgan, 1976: 258-259). This portrait by Iosif Constantin Dragan depicts the personality of one of the greatest Geto-Dacian kings. Due to these qualities, he managed to complete his great plan of union of the empires within the Dacian territory, building a state whose borders lay in the Pannonian Danube, Moravia and the Small Carpathians to the West, from Western Slovakia to the Dniester and the Buh to the East, from the Forested Carpathians to the North up to the Haemus Mountains in the Balkans, to the South.

Hence, we speak of a strong political authority of those times, whose great merit was that of finding that, without the union of all those who had the same ethnic roots and spoke the same language, the Roman expansion could not be contained. Such expansion was a permanent threat to the Geto-Dacians: they became aware of it and they relentlessly prepared to face it. For instance, around 96 B.C., Dion Chrisostomos, travelling across the lands of Dacia, wrote: "I arrived at some enterprising people, who did not have time to listen to speeches, but were restless and disturbed like race horses before the start, always in a hurry and almost prepared to kick the earth with their hooves. You could see swords, shields, javelins everywhere, and there were horses, weapons and armed people all over the place". We might say that the Roman proximity was the main factor resulting in the accomplishment of the Geto-Dacian state. Thus, around 74 B.C., the Romans arrived at the mouth of the Danube, and by 72 B.C. they had already had dominion over the Greek fortresses on the shore of Pontus Euxinus. Through their union, the Geto-Dacians delayed

the Roman advance by almost two centuries. Even if the Geto-Dacian state did not maintain the same borders after Burebista's death, his successors, culminating with Decebalus, attempted at the the same unification policy, in order to prevent that Dacia would be transformed into a Roman province. All Geto-Dacian kings, from Burebista to Decebalus, tried to prevent the Roman offensive, either through a neutral policy, by interfering in the internal issues of the Roman state (as Burebista had done), or by attacking to the South of the Danube. On the other hand, Burebista also focused on the Celtic tribes with whom Dacians conflicted. According to Strabon, he "devastated the Celts that were mixed with Thracians and Illyrians and the Boii who were ruled by Critasiros, as well as the Taurisci were wiped off the face of the earth". As the Geto-Dacian state was formed, the authority exerted by the Celts on the Western side may have seemed much more threatening. This may have accelerated the centralisation of the Geto-Dacian power, even though there were hardly any comments on this issue.

Besides the external threats anticipated by Burebista, the favourable internal environment was determined by the economic and spiritual development of our Geto-Dacian ancestors. Nevertheless, even though the state created by Burebista was considered "a great empire", his union was not long-standing and the king's first enemies were not strangers, but his very fellow citizens, whose personal ambitions did not take into account common interests and political union.

The Union of Wallachia, Moldavia and Transylvania under Michael The Brave

Michael the Brave's ascension and ruling took place alongside the creation of a common anti-ottoman front named "The Christian League", initiated by the Habsburgs, that was subsequently joined by Spain, Venice, the Papacy and, subsequently, the Italian duchies of Tuscany, Mantua and Ferrara, as well as the Romanian countries. In general, the whole history of the Romanians was a continuous struggle to maintain independence, as we were ill-fated to be placed at the crossroads of the great powers. If we speak of Michael the Brave's ruling, the international area is dominated by the expansionist tendencies of the three great powers: the Ottomans, the Habsburgs and the Poles. The political merit of the ruler of Wallachia was that he led a politics and created a system of alliances to the service of gaining independence. His predecessor, Alexander the Bad, had been obedient to the Ottomans. Thus, some of the boyars, who did not approve of such a politics, prepared Michael's coronation in the fall of 1593, also helped by a significant anti-Ottoman group led by Mihai Cantacuzino from Constantinople and by the Patriarch Dionisie Rally from Tarnovo. It is often assumed that supported by anti-ottoman boyars and encouraged by the emissaries of the Christian League that had begun to appear in the Romanian countries, Michael, in cooperation with Aron Voda, the ruler of Moldavia, begins to fight the Turks in November 1594. He first kills Turk and Eastern creditors in Bucharest and other parts of the country, where they collected taxes, he then kills a Turk army in the capital and subsequently attacks the fortresses dominated by Turks on both shores of the Danube. In turn, the Moldavian ruler conquers other fortresses at the Danube and at Sea (Istoria României, 1978: 117). The Ottomans' response to such a politics and such measures came as no surprise.

Thus, history retains the battle of Calugareni (August 13-25, 1595) which, as the chronicles claim: "a great war started on August 13, from the sunrise to the night; much blood was spilt and even water was mixed with blood (…) Sinan Pasha came with great glory to the war, and went back with more shame. Then Michael took all the cannons

back, along with many Turkish flags", as well as the battle of Giurgiu of October 20-30, 1595, where, according to the same chronicles: "under the eyes of Sinan Pasha, Michael destroyed the entire fortress of Giurgiu and took all the cannons and bullets (…), causing unprecedented damage to the Muslims", and "such a disastrous retreat and defeat was not heard of in history". Pursuant to these victories, Michael the Brave became famous in Europe and was considered "one of the bravest, strongest and wisest princes living nowadays". The battle of the Romanians for keeping their ancestral homes, placed under a permanent threat, relates, as we previously mentioned, to the specificities of our history. The unprecedented achievement is the union of nationals with the same ethnicity and the same language within the same borders. The premises seem to be the same in ancient and medieval history: the imminent external threats and the political management by a leading figure whose capacities and destiny seem to have been meant for a great achievement.

In the ancient times, the threat to the Geto-Dacians referred to the Romans and, to some extent, to the presence of the Celts in the Dacian territory, whereas, during the Middle Ages, leaving behind the wave of migrations, hundreds of years since the establishment of medieval states and until they achieved their independence, after the 1877-1878 war, the Romanians continuously fought the Ottoman Empire. In the ancient times, Burebista had the initiative to unite Geto-Dacians and much later, about 1,600 years later, this initiative was resumed by Michael the Brave. They both paid the same price for the bold attempt at creating a powerful state. Michael the Brave's first step in the attempt to unite the three Romanian countries was the union of Transylvania and Wallachia. This resulted from the battle of Selimbar, October 18-28, 1599. The voivode started with an army of about 20,000 people and was helped by Székelys led by Moise Székely. Pursuant to this victory, the Wallachian ruler also becomes the ruler of Transylvania, being eagerly expected and helped by the general rise of peasants, especially Romanian peasants. On November 1, after a triumphant journey, Michael gloriously enters Alba Iulia, the capital of Transylvania (Istoria României, 1978: 121-123). Political steps were taken for reinforcing the union of the two countries. Thus, after obtaining the loyalty oath of Transylvanian noblemen, Michael the Brave maintains the existing political system, but appoints Wallachian boyars to the Transylvanian diet and loyal people to the prince's council. He names Romanian burgraves and judges in the main cities, i.e. in certain towns and issues orders in Romanian. The second great step to unification was the union of Moldavia. At the beginning of May 1600, two armies crossed the mountains: one, led by Michael, crossed at Oituz and another one, led by the captain Baba Novac, crossed at Rodna. Two weeks later, Suceava surrendered. Another week later, the entire Moldavia was ruled by Michael the Brave. if there has ever been a prince who is worthy of glory for his heroic deeds, he is Michael, the prince of Wallachia. This is how the contemporary historians describe the Wallachian ruler's attempt at reuniting the three Romanian countries and of his fight against the Ottoman Empire.

Through the union of the three countries, Michael the Brave rewrote a glorious page in the history of our nation and rightfully named himself, in the documents issued in Iasi, "the ruler of Wallachia and Transylvania and Moldavia", with his seal including a common emblem of the three united countries. Thus, the Romanian ruler's wish was fulfilled: "And the borders of Transylvania, as I have wished, are Moldavia and Wallachia". The same steps for reinforcing the union were taken in Moldavia, but to a lower extent, given the hostility he found there. A year later, that hostility wiped out all the efforts and victories of Michael the Brave. His assassination, one morning of August

1601, closed a glorious page in the history book of Romanians, but raised awareness of national unity.

The Union of the Romanian Principalities through the Double Election of Alexandru Ioan Cuza

According to the Paris Treaty of March 30, 1856, the Tsarist protectorate was replaced by the protectorate of the seven powers of Europe (French, England, Turkey, Sardinia, Austria, Prussia, Russia). Articles 15-27 of the Treaty provided for the Principalities: the establishment of a steering committee, including representatives of the powers, that should examine the current state of the Principalities and propose their future organisation; maintaining the sovereignty of the Ottoman Empire, which, in turn, undertook to provide the Principalities with an independent and national administration, freedom of religion, law-making, trade and navigation; calling for Ad-hoc Assemblies in each Principality, representing all social states and expressing the wishes of the Romanian people; rganising a national army to maintain domestic safety and border security. Marcu argues that "with regard to the Ad-hoc Assemblies, fierce fights began between unionists and separatists, which culminated in the victory of unionist forces. The resolutions of Ad-hoc Assemblies were submitted to the Conference of the Seven Powers of Europe, reunited in Paris on May 22, 1858. This resulted in the Convention of Paris of August 7-19 of the same year, a fundamental act that regulated the organisation of Romanian countries according to modern principles and represented the legal framework within which the Romanian Principalities could be united" (Marcu, 1997: 166). According to the Paris Convention, the Principalities remained under the sovereignty of the Ottoman Empire, under the name of "the United Principalities of Moldavia and Wallachia". Actually, there were two distinct states, two rulers, two governments, two elective assemblies, different administration and different laws. The Central Committee of Focsani and the Court of Cassation remained common.

According to the Paris Convention, three kaymakams were appointed in each of the two countries, with the mission to prepare and perform choices for elections. Since the Convention did not stipulate that the rulers elected in the Principalities should be different individuals, the Elective Assemblies of Wallachia and Moldavia adopted pragmatic policies and decided to elect Alexandru Ioan Cuza as ruler. Once elected, Alexandru Ioan Cuza had to face the response of the great powers. This is why missions including people who were loyal to the ruler were sent to the capitals of the great powers involved, in order to support the Romanian cause. In the second session of the International Conference (April 1-13, 1859), the double election was recognised by France, Russia, England, Prussia and Sardinia. Austria and Turkey disapproved since Austria was afraid that the national state would subsequently adjoin Transylvania, whereas Turkey would lose domination over the Romanian countries. Moreover, Turkey was preparing for an armed intervention over the Danube. Eventually, under the pressure of the other involved powers, Turkey and Austria officially recognised the double election in the third session of the Paris Conference (August 25 – September 7, 1859).

If, at an international level, difficulties concerned the recognition of the union, in the country, Cuza had to face the internal opposition, which showed reluctance to his proposals for reform. Thus, taking advantage of the fact that they held the majority in the Elective Assembly, landowners rejected all reformative draft laws. This is why the required steps were taken for introducing an individual power regime, so that the reform programme might be achieved. Hence, when the Assembly refused to vote the draft

election law on May 2, 1864, M. Kogalniceanu submitted the Decree for the dissolution thereof. Then, in May 10-14, 1864, a plebiscite was organised, resulting in the replacement of the Parliamentary system by a personal system, through the Developing Articles of the Paris Convention. It "had the value and legal force of a constitutional act, as the basis for the political and administrative union of the two Principalities" (Popa and Bejan, 1998: 107).

According to the Articles, the legislative function was exercised by the ruler, along with the Elective Assembly and the Pondering Body (the Senate), in a two-chamber system. The ruler had a legislative initiative. Draft laws were prepared by the ruler in cooperation with the State Council. They were submitted to vote in the Elective Assembly and the Pondering Body. Through these provisions, Alexandru Ioan Cuza was able to implement the reform programme aiming at modernising the newly formed state, even though, to an equal extent, it was his first step to abdication. One of the most compelling social issues was the agricultural one, regarding the situation of peasants. This is why, after repeated failures, the agricultural reform was carried out through the law passed on August 14, 1864. Article 1 of this law stipulates that "socagers are and remain the rightful owners of the lands under their possession, to the extent established through the existing law". The surface area was established according to their number of cattle. The system of socage was also dissolved, in exchange for an indemnity that peasants were to pay in annual instalments within 15 years. 2/3 of the lands of landowners became the property of peasants under this law, which was a blow for boyars.

Through the plebiscite of May 1864, with the Developing Articles, the Election Law was adopted, classifying electors as primary and direct. Fifty primary electors appointed a direct elector. Electors were entitled to vote from the age of 25. The election law dissolved the electors' separation by colleges, establishing that some electors exercised their rights in urban communes, and others in rural communes. The Law on county councils and the Communal Law of April 14, 1864 regulated the establishment, organisation and operation of counties and communes, as administrative and territorial units. In turn, communes were urban and rural. The administrative bodies established by law were: the Prefect and the County Council in counties, and the Mayor and Communal Council in communes. With regard to judicial organisation, the Law of July 4, 1864, established the following courts: local judge's offices, county courts, Courts of Appeal, Courts with Jurors for criminal matters and the High Court of Cassation and Justice. The drafting of the Civil Code, the Criminal Code, the Civil Procedure Code and the Criminal Procedure Code during the reign of A. I. Cuza, and at his orders, strongly impacted on the legal system. This is only an outline of the most important laws adopted in 1864, through which Cuza aimed at creating a modern country, but which resulted in rivalries accelerating his removal. Thus, in the night of February 10-11, 1866, the conjurors entered the Ruler's Palace. These three career officers, Vasile Pilat, Costinescu and Lipoianu, compelled Cuza to sign the abdication act, which was published in the Official Bulletin of February 11, 1866.

The reason of the coup d'état of February 1866 was not the "mismanagement of the country", but, as Mihail Kogalniceanu claimed, "it was not Cuza's mistakes, but his deeds that led to his abdication" (Kogălniceanu, 1894: 79-80). In all his activity, consisting of reformative laws that affected the interests of large landowners, he made numerous enemies. "The conservatives condemned him for thinking of him as too liberal and could not forgive him for the agricultural and electoral reform; the radicals abandoned him because he was not liberal enough. However, the parties grouped together in order to

remove Cuza as a ruler and replace him with a foreign prince" (Bărbulescu and coauthors, 2003: 311).

Thus, when the alliance between Prussia and Italy against Austria was prepared at an international level, it was thought that a more reliable ruler for European powers had to be brought to Romania. This is how Prince Charles of Hohenzollern Sigmaringen was brought to rule the Romanian state, while Alexandru Ioan Cuza was compelled to die away from his country, in Heidelberg, Germany. Paradoxically, a foreign ruler was to govern our destinies, while the former Romanian ruler, whose name is attached to the union of the Principalities and the attempts of modernising the political and legislative system, died abroad. In conclusion, we can see that, in three different moments of our history, the same attempts at reform and political union are rewarded in the same manner. The reasons were presented throughout this paper, and the wrap-up statement is the same: if we do not know how to appreciate our values, if we cannot respect our history and traditions, if we do not learn anything from the mistakes of the past, we shall never have a better fate.

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ORIGINAL PAPER

Re-Scaling Territories and Borders: Regional Claims and Local Powers in Romania in the Mid-20th Century Period

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Abstract
The territorial losses from the summer of 1940 had disastrous effects on Romania. By its position, that of single political party, the Party of the Nation (named before June 22nd 1940 – National Renaissance Front, a party founded and led by King Carol II) was the one that had to manage the situation of territorial claims arising from the Soviet Union, Hungary and Bulgaria. After the cession of Bessarabia, Northern Bukovina, North-West Transylvania and the Cadrilater, the Party of the Nation – particularly through its subsidiary party representatives, the National Guard – tried unsuccessfully to control the situation and maintain the peace in the country. Thus the documents from the archives of the royal political party can depict an interesting image of Romanian society and its struggles during the summer and autumn of 1940.

Keywords: National Renaissance Front, Carol II, National Guard, territorial losses, Party of the Nation.

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Introduction

The political evolution of Romania as a part of Europe can be understood from a past perspective (Georgescu, 2014: 135-146; Gherghe, 2013: 19-24). The political parties from the last years have deep roots in what happened in the history in the 20th century (Olimid, 2014: 53-64; Bărbieru, 2014: 190-200). The present Romanian territory is a direct consequence of the transformations that took place during the first half of the last century. What we are and what we have today is an evolution of our political past; knowing the past can help us better explain our present.

From the National Renaissance Front to the Party of the Nation

Between the winter of 1938 and the autumn of 1940, the Romanian political life was dominated by a single party, King Carol II's creation, established on December 16th, 1938 (Buzatu, 2009: 25-31), under the name of the National Renaissance Front and transformed, on June 22nd, 1940, in the Party of the Nation (SANIC, Fund FRN, file no. 2/1939-1940: 30). Emerged from Carol II's desire to require a thorough review of the entire country, but also from the influence of European policy, where most of the states had a single party system, the Front gave the King the opportunity to descend into the political arena and become also a politician.

An interesting presentation of the National Renaissance Front was made by Radu Florian Bruja, a historian that wrote a monograph of the political organization. In his opinion, the party "can be equated to with the end of the Romanian interwar democracy. At the same time, it was contemporaneous with one of the most tragic events in the history of the Romanian people, namely the disintegration of *Great Romania*. The single political party neither could prevent, nor could maintain the regime it had created). It assisted the undemocratic regime of Carol II's monarchy, the first in a series of undemocratic regimes of the 20th century Romania" (Bruja, 2006: 291).

The King Carol II, who long envied the popularity that Corneliu Zelea Codreanu had among Legionnaires, tried, after the removal of the Iron Guard Captain, to create a new image in the eyes of public opinion. Considering that he remained the supreme leader, after the death of the Capitan (C. Z. Codreanu) and *the only one that could guide the Romanians' ideals*, the King established the National Renaissance Front, by which he tried to impose his own political rule. Carol II took advantage of the fertile ground, prepared by the Legionnaires who led an intense campaign of discrediting the traditional political parties. The sovereign, wanting to control the Romanian political space and bouncing into the refusal of the major parties to follow his political scenario, decided, only a few weeks after the coup d'état, to outlaw political parties. Surprising was the fact that the leaders of the Romanian political parties did not have a strong reaction in terms of their interdiction to function within a legal rule. Taking advantage of the newly created position, Carol II initiated the procedures to establish a single political party, thus dominating politics and encompassing most of the old politicians. For King Carol II, "the idyllic" experiences lived at that time by Hitler, Stalin or Mussolini worked like a mirage, amongst the peoples they ruled. However the Romanian sovereign did not take into account that in those states the single parties were imposed over time, both the political parties and their leaders enjoying the confidence of the masses. From this point of view, the sovereign's perspectives to become the supreme leader of the Romanians were wrong and the policy pursued by him failed. By imposing his own will, Carol II irreversibly bound his fate to the achievements or failures of the political construction created on December 16th, 1938.

Perhaps without realizing it, the sovereign, by involving in the political sphere and by playing an active role in the decisions of the executive power, became his own prime minister. By adopting this position, the King made a major mistake, a mistake that cost him very much; the excessive politicization of the Crown, through the loss of impartiality, which was required by his sovereign position, made Carol II lose the throne and also leave the country. Thus, if the sovereign Carol II would have been very difficult to remove, the "Prime Minister" Carol II proved to be an easier prey for his opponents. With the departure of the monarch, the royal political construction disappeared from the Romanian political scene.

On June 22nd, 1940 the National Renaissance Front became, by royal decree, the Party of the Nation ("sole and totalitarian party"); this time, the party was directly under the leadership of King Carol II. With this new title, only theoretical changes were made regarding the royal party, because until then the party was also under the sovereign's rule and its character had been a totalitarian one. But that specification was necessary since it was meant to identify the doctrine of the Romanian single party with the European totalitarian parties and especially with the German one. In a time when England and France showed no willingness to guarantee the territorial integrity of Romania, the only one who could stop the annexation trends of the USSR, Hungary and Bulgaria was, unfortunately, Adolf Hitler. Therefore, King Carol II hoped that if he could have managed to convince the German leader that Romania was copying the politics of the Third Reich, our country was to ingratiate itself with the Führer and thus be saved from disaster; this did not happen and, although the King made efforts to legitimize the party as a totalitarian one, the Romanian ruler found himself, from July to September 1940, totally abandoned in terms of external support.

The Territorial Losses from the Summer of 1940

After the transformation of the National Renaissance Front in the Party of the Nation, Romania passed through a disastrous period, in which large territories were lost (Gheorghiu, 2009: 40-46). Scurtu argues that "in less than three month, Romania (...) collapsed, losing (...) one third of its territory and population, roughly 100,000 km^2 and 7 million inhabitants, most of them Romanians" (Scurtu (coord.), 2003: 565). One after the other, Bessarabia and the north of Bucovina, at the end of June (Buzatu, G., 2003: 353-359), the north-west of Transylvania, at the end of August (Oroianu, 2001: 301-313) and the Cadrilater, at the beginning of September, were taken by the Union of Soviet Socialist Republics, Hungary and Bulgaria (Scurtu (coord.), 2003: 566-589). The two Soviet ultimatum notes, the Vienna Diktat and the treaty from Craiova were the acts from the summer and the autumn of 1940 that brought Romania on the brink of disaster (Lungu, Negreanu: 2003) and determined Carol II's abdication. At the same time with this last event, the King's single political party – the Party of the Nation left the Romanian political scene.

The context and the consequences of the territorial losses were differently seen by the Romanian historians. Gheorghe Buzatu tried to explain the losses as a result of the Molotov-Ribbentrop pact: "the pact was signed and the world war began. Europe was affected, Romania could not avoid this situation and it was cut into pieces during the summer of 1940" (Buzatu, G., 2001: 2). The question "was Romania able to resist an attack of the aggressor states?" received an answer from Alesandru D. Duțu: "it is obvious that the chances of resisting an aggression from the Soviet army were very weak or even null, because Germany put pressure on the Romanian government to surrender and

abandon the fight" (Duțu, 2000: 50). A comparison with Poland from September 1939 can complete the image of the possible Romanian disaster from 1940; without being accused of contrafactual history, one can say that a negative answer from the Romanian authorities could have transformed Romania in a new Poland.

It is clear that in this situation the main question was: "who is guilty for the territorial losses?". Regarding Bessarabia and Bukovina, Carol II tried to blame the members of the Crown Council, who voted for the loss of the Romanian territories (Scurtu (coord.), 2003: 572). The King wrote in his diary: "what an awful, full of pain day, what a day of absolute cowardice for some Romanians (...) I cannot accept, as a sovereign of the country, how can I lose territories, which definitely and historically belong to Romania (...) why our Romanians do not have the weakest pride in these very difficult moments?" (Carol II, 1998: 216, 217, 223).

Some contemporaries saw the whole Carol II's regime as being responsible for the Romanian disaster from 1940. Thus, Valeriu Pop wrote: "after accepting the Soviet ultimatum, the change of the government kept up appearances and delayed the conclusion. After the arbitration from Vienna, it was clear that the crown and the King Carol II himself were at stake. When he started the royal dictatorial period in the spring of 1938, King Carol II took in his hand all the administration of Romania, in a personal and opened manner; by assuming the whole responsibility, he did not want, at the beginning, and did not succeed, in the end, to associate any politician to the power. The National Renaissance Front, with its uniforms and millions of adhesions, it was an inconsistent and shallow solution. The adhesions were nothing else but attitudes of opportunity dominated by a lack of conviction" (Pop, 1999: 99).

The quotation from above described the situation from Romania at the end of the 4th decade of the 20th century. By taking over the political power, the King became responsible of all the errors that were done during that period. If the sovereign in his diary, judged the loss of Bessarabia and Bukovina in a narrow context, directly linked to the decisions taken in the Crown Council, Valeriu Pop, who was not as subjective as the King, depicted the period from (ok) 1938 to 1940 and the territorial losses as a King's personal responsibility, when the sovereign tried to take his own decisions for the whole country.

Iuliu Maniu considered, as well as Valeriu Pop, that the King Carol II was guilty for the situation of Romania in 1940 (Stan, 2001: 294-302). Nicolae Dianu, who was the former plenipotentiary minister of Romania in Moscow, wrote about the circumstances of the territorial losses from Bessarabia and Bukovina: "I cannot stop blaming here Davidescu's naivety, who, receiving from Molotov the map on which the frontier was drawn with a red pencil, did not requested any explanation about the villages which were crossed by the border. This is how it was lost Herța and the surroundings" (Preda, Văratic, 2001: 16).

It is useful to mention another opinion which comes from historiography, therefore not from contemporary sources; referring to the events from 1940, Ion Calafeteanu wrote that "the Nazi government played an important role, totally hostile to the national interests of the Romanian people" (Calafeteanu, 1980: 262).

The territorial losses of Romania from the summer and the autumn of 1940 were also presented in the international media. The arbitration from Vienne and the treaty from Craiova were mentioned both by the radio and the written press, nu only in Europe, but also in America. Two files from the Central Historical National Archives of Romania (fund Vasile Stoica) contain press information about the territorial annexations from 1940 (SANIC, Fund Vasile Stoica, file no. I/133/1940, I/163/1940). A part of these documents

comes from the Ministry of National Propaganda (SANIC, Fund Vasile Stoica, file no. I/133/1940) and describe the international image of Romania during the mentioned period.

The territorial losses reflected in documents of the Party of the Nation

What were the direct consequences of territorial losses for the Party of the Nation and how it was this party involved in Romanian public life during the territorial anexation? These two questions are the subject of the following pages, as well the collapse of the single party.

Very soon after the loss of territories from the historical province of Moldova, on June 30th, 1940, the General Petre Georgescu, commander of the National Guards, made an appeal to the Guards of Bucharest, provinces, municipalities and counties to support the refugee population from Bessarabia and Bukovina. "The government has taken all possible measures to group the population on regions and to accommodate refugees from Bukovina and Bessarabia. They are located in the counties of Neamt, Bacau, Buzau, Prahova, Dambovita, Arges and Muscel" (SANIC, Fund FRN, file no. 468/1940: 53). While the authorities were involved in accommodating the refugees, the Romanian inhabitants were required to give them clothes and food. "These men were saved themselves only with their clothes and, until they manage to win their own food, they need help. I make an appeal to all our members from all localities in the country to think about them. From the little things they have to break a crumb and send it where there is lack, where is expected and where it will be received with thanksgiving of our poor brothers". (SANIC, Fund FRN, file no. 468/1940: 53)

On July 3rd, 1940, the central authorities of the National Guard sent a circular to the lands Prut, Suceava, Bucegi, Dunărea de Jos and the counties within those lands, to make "fast actions to build assistance teams in all localities where the refugees are distributed, as well as in the railway stations, where the trains with refugees are passing through" (SANIC, Fund FRN, file no. 468/1940: 56). Those teams were to be organized "with National Guard members only", part of which could be women, relatives of those members of the Guards Nation Party (SANIC, Fund FRN, file no. 468/1940: 56). These actions were part of the decisions taken by the King's political party, in order to support Romanian refugees from the two provinces occupied in the summer of 1940 by the Soviet troops.

A top secret circular from July 4th, 1940, issued by Petre Georgescu, demanded the territorial authorities to gather information about the conditions of crossing the Prut River by the refugees. The General Commandment of the National Guards wanted "to gather all informational material in order write a comprehensive report on the events that took place from June 26th to July 3rd in the territories of Bessarabia and Bukovina" (SANIC, Fund FRN, file no. 468/1940: 55).

The document recognized that, during the withdrawal, there were made "acts of banditry, looting, murders, attacks, tortures, etc." (SANIC, Fund FRN, file no. 468/1940: 55). The information gathering had to be made directly by the from the refugees by the commanders of the county Guards, the refugees having to confirm the information provided, "thus eliminating the rumours or the imagination and being a proof of their testimony for us" (SANIC, Fund FRN, file no. 468/1940: 55). The verification and the selection of the raw material were done by the central authorities of the Party of the Nation (SANIC, Fund FRN, file no. 468/1940: 55). This document contributes to a better understanding of the National Guard involvement in the disaster from the summer of 1940; additional to the material support, the auxiliary units of the royal political party were

interested in the atrocities and the physical suffering that Romanians refugees passed through in their painful way from Bessarabia and Bucovina, toward the Romanian territories that were not occupied by the Soviet troops.

On July 5th, 1940, the Party of the Nation, using the General Commandment of the National Guards and the new government of Romania gave a circular and a statement on the situation of the country (SANIC, Fund FRN, file no. 468/1940: 59). If the government joined the Berlin-Rome axis, regarding the internal politics, it was underlined that the territorial annexation "raised a new issue, one of the most painful for our heart, that of refugees from Bessarabia and Bukovina" (SANIC, Fund FRN, file no. 468/1940: 59, 60). One can see the collaboration between the members of the Government, "faithful soldiers of the Party of the Nation" (SANIC, Fund FRN, file no. 468/1940: 59) and King Carol II's single political party.

A special situation was mentioned on August 7th, 1940 by the National Guard from the county of Iaşi (SANIC, Fund FRN, file no. 141/1940: 323). The commander of this Guard showed that not only in the city but also in the county of Iasi, "there are numerous abandoned properties and industrial platforms, left by their owners, who have left the country for USSR (SANIC, Fund FRN, file no. 141/1940: 323). Since the remaining properties were managed by people without legal quality in this regard and "since abandoned possessions cannot be considered as vacant succession (as their owners are not dead or without heirs)", it was proposed that these possessions should pass to the state administration (SANIC, Fund FRN, file no. 141/1940: 323). So, one can see that the territorial losses from the of summer 1940 not only affected Romania by the refugees from Bessarabia and Northern Bukovina, but also recorded the reverse phenomenon, some Romanian citizens fleeing from Romania to the Soviet Union.

On August 24th, 1940 the National Guard from Durostor county made a report describing the evacuation of the Romanians from that county (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 17). The document underlined the attacks that took place at the Caracuzi forest and in the villages Frăşari, Rahman, Aşiclar, Sarsânlar, Alfatar and Ciler. The situation was brought under control by the authorities by bringing other troops in the region, thus allowing the villagers to raise the crops from the field, before the definitive evacuation. As an emergency measure it was proposed "to give weapons to the trusted members of the Guards and to remain permanently on them to prevent possible surprises" (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 17).

A confusing situation dominated Botoşani county. A note of this county Guard , from August 1940, arrived at General Headquarters of the National Guard, reported that since August 24th, it was a rumour in Botosani that the city was to be occupied by the Soviets (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 20). The officers, together with their families, left the city, taking with them the "shifting wealth", while the manager of the National Romanian Bank from Botoşani, received money only banknotes to be transported more easily in case of a precipitate departure, while the Prefecture gave orders to pack valuable articles in order to be sent to Gheorgheni (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 20). The image of a city on the verge of siege was completed by the lack of food and other goods. "The Jews – concludes the same report – are the only ones who seeks quietly about their business, without apparently giving any attention to everything that is happening" (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 20).

In the same month, August 1940, Ioan Mihăescu, the commander of the National Guard from Râmnicu Vâlcea, demanded by an official address that the General Commandment of the National Guards should intervene to "allow the mayor of the city

Râmnicu Vâlcea to raise the fund that the city has at the National Bank and to store flour, corn and wood, so as to ensure the peace of the population that is under threat" (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 26).

Another note from August 27th, 1940 described the population of Transylvania as "generally confused and oscillatory", the Romanians from this region claiming that "beyond the outcome of negotiations between Romania and Hungary, they are determined to defend Transylvania with scythes and axes" (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 245). One can see that before the Vienna Diktat, the Romanians wanted to keep Transylvania and were willing to defend it. Some good news came from the same note on the Party of the Nation, which "is better seen than the National Renaissance Front", while "the Romanians' adhesions to the party abounds with enthusiasm" (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 246); on the other hand, there was a reluctance of Hungarians, Germans and Székelys to join the single party (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 246-247). However, some problems were noted: "the activity of the party is not very present and the people wonder which the real cause is. The public clerks are unhappy because their contributions are withheld for the party" (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 247). At the same time, the disinformation practiced by the Soviet Union worked very well; the Romanians in Bessarabia, who asked to come back, were told that "it is a revolution in Romania and the King left" (SANIC, Fund FRN, file no. 253, vol. I/1940-1941, f. 264).

A secret note from the same month August 1940, issued by the National Guard from Brăila, was kept in the archives. A first comment is that "the adhesions to the Party of the Nation were more numerous than in the old party" (SANIC, Fund FRN, file no. 253, vol. II/1939-1940, f. 2). Regarding the territorial losses, the author of the document underlined that: "the hatred knows no borders for Italy and Hungary, while the arbitrage from Vienna was seen as an Italian action made to satisfy Hungary and threw mourning over the souls of all Romanians" (SANIC, Fund FRN, file no. 253, vol. II/1939-1940, f. 2). At Constanța, the adherence to the new political party was not satisfactory: "the adhesions to the Party of the Nation were not enthusiastic. Because of the drafting, the registrations went slowly" (SANIC, Fund FRN, file no. 253, vol. II/1939-1940, f. 7). The dissatisfactions in the same city were manifested because of the loss of Bessarabia, as well as for the decisions taken in Vienna. "We know that there are Transylvanian shepherds in Constanta, who still have relatives across the mountains; all of them are deeply sad" (SANIC, Fund FRN, file no. 253, vol. II/1939-1940, f. 7).

In Sibiu, on September 1st, 1940, there were organized major demonstrations against the Vienna Dictate. The participants were "the local school youth, as representatives of the younger generation, who wanted to have a full inheritance of the country, as it was left by the 800,000 dead heroes in battles from Oituz, Mărășești and Mărășești" (SANIC, Fund FRN, file no. 253, vol. II/1939-1940, f. 42). Other demonstrators went to the residence of the Metropolitan of Transylvania, Nicolae Bălan, and other groups, consisting of young people, shouted "we want war", "we want weapons", "we want the whole Transylvania", "long live Iuliu Maniu", "no furrow", "down with the Axis" (SANIC, Fund FRN, file no. 253, vol. II/1939-1940, f. 43). One can note a general dissatisfaction towards the arbitration from Vienna and public opposition to the ideas of the Axis. Regarding the internal politics, there was, at the same time, an opposition to the King and to his political party, some people often invoked Iuliu Maniu's name, a politician that did not support the ideas brought by Carol II's regime.

A very important document was issued in Bucharest, on September 2nd, 1940, by Petre Georgescu, the general commander of the National Guards (SANIC, Fund FRN, file no. 253, vol. I/1939-1940, f. 11). The motivation for the act in question was related to the latest political events – "the decision of the arbitrage from Vienna, from August 30th, 1940, by which Romania is bound to evacuate within 15 days a part of the national territory", as well as "the fact that it was decided to cede a part of the territory of Dobrogea to Bulgaria" (SANIC, Fund FRN, file no. 253, vol. I/1939-1940, f. 11). As a result it was decided that "it will be suspended, following this decision, the activity of the National Guards from the counties: Sălaj, Satu Mare, Maramureș, Someș, Năsăud, Cluj, Mureș, Odorhei, Ciuc, Trei Scaune, Caliacra și Durostor" (art. 1) and "will be suspended the activity of the Guard in the county of Bihor, until finding a county residence" (art. 2) (SANIC, Fund FRN, file no. 253, vol. I/1939-1940, f. 11). Created as auxiliary units for the National Renaissance Front and maintained after its transformation in the Party of the Nation, the National Guards restricted their activity on Romanian territory, as a result of the territorial losses from the summer of 1940. Ten counties from Transylvania and the two counties from the South of the Danube could not be a part of the activities for the royal party Guards, while in Bihor it was expected to establish a new county residence. Thus, it can be said that the political power of the single political party decreased with the territories lost to Hungary and Bulgaria.

On September 3rd, 1940, in a newsletter issued by the National Guard from Târnava Mare county it was underlined that "the Romanian element is very indignant regarding the arbitration from Vienna; following the general opinion, a great injustice was made by the fact that a compact mass of Romanians will enter under the Hungarian domination. For this reason a terrible hatred rose against the Hungarians and there were made vehement critics of Germany and Italy" (SANIC, Fund FRN, file no. 253, vol. I/1939-1940, f. 266). It can be seen that the international events were reflected in their true sense at a local level and the decision of the Great Powers deteriorated the already tense situation between Romanians and Hungarians in Transylvania. In the same official act, the central authorities from Romania were accused for the existent situation: "the majority of the Romanian population, both urban and rural does not understand the state policy, which accepted the arbitration of the Axis and says that if the exchange of population had not been accepted, nothing should have been ceded, because this is a slap in the face of the national dignity and the sacrifices of the past" (SANIC, Fund FRN, file no. 253, vol. I/1939-1940, f. 266).

A day later, on September 4th, the National Guard from Timiș county sent a document to the central organs of the single political party. The situation presented was characterized by tension between the Romanians and the local German community (SANIC, Fund FRN, file no. 253, vol. I/1939-1940, f. 283-285) and by public discontent in Caraș regarding the central authorities, due to territorial cessions acceptance. "The farmers over there say: how is it possible? ... Don't we have a King? ... We have no army able to fight to defend our country?" (SANIC, Fund FRN, file no. 253, vol. I/1939-1940, f. 285). Once again, it must be said that, assuming a large extent on the leadership of the state and the single political party, the King was seen as the main culprit to Romanian disaster in the summer-fall of 1940. From these latter documents one can observe that not only Romanian elite, represented by politicians such as Iuliu Maniu or Valeriu Pop, found Carol II in a responsible position for territorial losses, but also the ordinary people in Romania had the same idea. Unable to keep his "promise" made repeatedly, that he would protect the country in every situation occurred, the sovereign, without any kind of support,

was approaching the end of his political career, an end that finally led to the disappearance of the royal party.

On September 4th, 1940, the King Carol II assigned the general Ion Antonescu to form the new government (Scurtu (coord.), 2003: 595), the next day, he invested Ion Antonescu, by a royal decree, with full powers to lead the Romanian state (Midan, 2008: 367). During the same day, the general suspended the Constitution and dissolved the legislative bodies. In the evening of September 5th, Ion Antonescu requested Carol II to abdicate (Scurtu (coord.), 2003: 596). On September 6th, 1940, Romania's sovereign signed the abdication act in favour of his son, Mihai (Scurtu (coord.), 2003: 596).

The carousel of these political events was surprised by Petre Andrei in his diary: "the King abdicated. Leaving from Iasi to Bucharest (…) we saw the resignation of the Government Gigurtu and the Antonescu's duty to make the new government. It was not a usual change. The general Antonescu obtained entire powers, the cancellation of the Constitution from 1938, the decrease of the Crown powers and a leading position over the state. It seems that no one wanted to enter a new government proposed by King Charles II. There were demonstrations and shootings at the Palace. On Friday morning, September 6th, the King abdicated and Mihai was proclaimed as King of Romania" (Andrei, 1993: 102-103).

Conclusions

When Carol II left the throne of Romania, the period known in history as the Carlist regime or Carol II's authoritarian monarchy ended. The most important creation of the monarchy was the royal political party, the National Renaissance Front, which later became the Party of the Nation. As Carol II was the initiator of this party, which he strongly supported throughout its existence, the end of the King's political career meant also the dissolution of his political party. The general Ion Antonescu, who, by King Carol II's abdication, became the ruler of Romania, gave the decisive blow to the royal political construction, by signing on September 9th, 1940, the decree that abolished the Party of the Nation.

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ORIGINAL PAPER

Mapping Local Urban Religious Architectural History in Post-Communist Romania

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Abstract
After the demolition and systematic destruction of the churches in the communist period, special attention is given to Romanian cultural heritage since 1990. Thus under the Ministry of Culture and National Heritage have started many activities of conservation and restoration of churches and monasteries assemblies damaged and intentionally degraded in the communist period. Restoration interventions have been conducted so as to achieve a balance between the historical and the aesthetic point. Also, another aim is to keep as much of the original in the process of restoration of monasteries and church painting, without producing a historical and artistic fake or without removing the traces of transition through time of the work of art.

Keywords: restoration, communist regime, political life, religious monuments, monastery, church.

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Many monuments and buildings have disappeared in time, following earthquakes and fires, and many were destroyed and rebuilt in the second half of the 20th century, but most of the destruction of churches and monuments took place during the communist period. All the attempts at the end of the '70s and beginning of the '80s to stop the destruction of traditional patrimony had weak results. Before 1989, at least 29 cities have been destroyed and rebuilt at 85-90%, such as Bucharest, Iași, Suceava, Botoșani, Vaslui, Piatra-Nemț, Bacău, Focșani, Galați, Ploiești, Pitești, Craiova, Slatina, Râmnicu-Vâlcea, Giurgiu, Slobozia, Medgidia, Constanța, Mangalia, Tulcea, etc. The traditional architecture and urban structure were destroyed and replaced by collective buildings, thus creating an urban world, opposed to the previous one, with almost no connection to the past, but with isolated historical and church monuments and a few other buildings kept and sometimes hidden among the new ones (Giurescu, 1991: 50).

In Romanian culture and Orthodox spirituality, the churches and monasteries build are a major reference point, if we take into account the fact that, for centuries, the Romanian culture has fed from the religious life, which flourished in this region between the 17th and 19th centuries. The churches and monasteries of Bucharest of the 17th-19th centuries were characterized by a deep spiritual life, a rich cultural life and, at the same time, by the strong affirmation of Romanian specificity, with regards to monument architecture and painting (Snagoveanul, 1997: 13). Not only were the communist leaders atheists, but they also considered, above all, that all the society must be separated from religion, seeing it as the rival of communist ideology. Thus the oppression of the priests, the closing of monasteries and the chasing off of the monks and nuns started. Nevertheless, the regime did not dare completely prohibit the role of the church in the spiritual life of the Romanian people, as was the case in certain neighbouring countries, and during the communist era there were still over three hundred hermitages and monasteries (Anania, Luminea, Melinte, Prosan, Stoica, Ionescu-Ghinea, 1995: 194).

After the passing of the Law for the Systematization of Towns and Villages in 1974 and the dissolution of the Directorate for Historical Monuments, which had a very important activity in the preservation of historical monuments, and the great earthquake of 1977, the communists started the large-scale demolition of towns, villages and a large number of buildings such as monasteries, churches and monuments of art and culture.

The Directorate for Historical Monuments was created by the Royal Decree no. 3658 of November 17, 1892, which passed the "Law for the Preservation and Restoration of Public Monuments", voted by the Senate and the Chamber on March 27, 1892. Its creation (Anania et al., 1995) was the result of the efforts of Romanian intellectuals to protect the entire national patrimony. The decree of closure of the Directorate for Historical Monuments suddenly stopped the construction sites of the buildings that were being restored and started the disaster, the demolitions that lasted for 13 years, until 1990. Also, the communist dictatorship under Nicolae Ceaușescu was discussed (Anania et al., 1995), when a very large number of places of worship were destroyed and the earthquake of 1977 was used to justify the demolishing of many monuments, while the damages caused usually to old buildings were a reason for increasing to unbelievable levels the contempt for the architecture prior to 1944, especially for the churches. From that moment on, the rhythm of destruction of the urban and rural architectural patrimony was sped up, the disaster beginning in full in the centre of Bucharest with the Enei Church and continuing with churches and monastery ensembles in other areas of the city.

While many of the churches of the communist era have been completely destroyed, such as the Postăvari White Church, the Izvorul Tămăduirii Church, the Spirea

Veche Church, the Sfântul Spiridon Vechi Church, the Sfântul Ilie Rahova Church, the Nun Hermitage Ensemble, the Sfântul Ierarh Nicolae Church, the Mihai-Vodă Ensemble, the Cotroceni Ensemble, the Izvorul Tămăduirii Chappel, the Sfântul Nicolae-Sârbi Church, the Sfântul Nicolae-Jilnița Church, the Sfânta Vineri-Herasca Church, the Bradu Staicu Church, the Olteni Church, the Sfânta Treime (Crucea de Piatră) Church, the Sfântul Ioan cel Nou Church, the Pantelimon Monastery, the Gherghiceanu Church, the Văcărești Monastery, the Doamna Oltea Church, the Buna Vestire-Rahova Church, a small number of them were moved from their initial construction place, such as the Mihail Vodă Church, the Nun Hermitage, the Sfântul Ilie-Rahova Church, the Olari Church, the Sfântul Ioan cel Nou Church, the "Cuibul cu barză" Church, the Sfântul Gheorghe-Capra Church, the Antim Monastery. Given that the sudden demolitions practiced during the communist era are still happening nowadays, the need to protect and preserve the built patrimony is a necessity on all legal, economic, educational levels, and, last but not least, on the professional deontology of those effectively involved in the field.

Various requirements of the users lead often to compromises by the specialists, who, breaking their principles, ignore the transformation limits of the building. Even the nature of the rehabilitation sometimes leaves gaps through which the irreducible matter – unique memory is falsified because of the need to adapt to new user requirements. The reconciliation of such a conflict in the rehabilitation intervention requires a vast analysis in which critical judgment will choose the values, will put them in a preservation-restoration order appropriate for each case, but always based on several technical-aesthetic constants that do not allow concessions.

A fundamental issue that arises as early as the design stage is the solution to the structure-appearance binomial. Restoring a building does not mean preserving, fixing or rebuilding it. It means replacing it in an integral that perhaps has never existed, the restoration being the intervention on the art object in which the changes in the structure must not affect its appearance (Viollet-le-Duc, 1986: 193). The oldest and most veritable meaning of origin of the term "monument" is that of man-made work that was built for the exact purpose of preserving forever alive and presents in the mind of future generations the memory of an action or destiny, or a combination of the two. The building and maintenance of such monuments, which can be traced back to the oldest eras of human culture, is still happening nowadays. Nevertheless, when we talk about the modern cult and protection of monuments, we talk about the artistic and historical monuments (Riegl, 1999: 14).

When an object of mobile patrimony is concerned, it appears that this goal can be achieved by finding solutions for various situations, starting even from the status of museum item. Several parameters of a building preserved through use are subjected to various types of wearing, and their rehabilitation and optimization often involve radical interventions to the morphology of the building. It is the time when pertinent solutions are required in order to save the aspect of the architectural object. The two fundamental features that characterize the syntax of the object are the technical ones and the artistic ones. The patrimony built since the 19th century includes buildings erected when the modern materials started appearing, but which were done by builders and masters who knew the secrets of the old crafts. The present-day interventions concern the resistance of the structures where a mechanical wear is almost inevitable after almost a century. The modern intervention materials, as well as their scope, often require an intrusion into the general aspect, by which I mean both the purely technical, functional image, and, especially, the artistic elements that enrich the building. The application of modern

materials often cancels elements with a sometimes astonishing artistic or craft and manufacturing charge. Unexpectedly ingenious technical and artistic solutions often fall prey to impersonal present solutions and thus the material witnesses of important stages in the thinking and sensitivity of past generations of architects, artists and builders disappear.

The rigorous consideration of the solutions and their patient application may avoid such losses. The consolidation and preservation of the structural cores must be done as nonintrusive as possible; the functional and mechanical modern completions will consist of light additions subordinated to the degree of support of the skeleton of the carrying structure (the compatibility principle). The connotations hidden in the syntax of a building, concern in equal measure the fundamental dimensions of time and space. Reduced to strict functionality and support structure, the building is removed from time and becomes indifferent to space, lacking identity and location. The absence of time references creates a disquiet noted by the social-psychological studies done on living in instant environments, in which there is no forward and backward in time. The dislocation from history and, therefore, the loss of the collective memory may cause the disaggregation of a community (Augustin, 2002: 37). The removal from time is doubled by the alienation through uniformization, identical neighbourhoods without personality, entire cities resulting from identical projects.

Between the extreme indifference with which the elements defining the era, style and identity of a building are lost, and a studied, designed and meticulously preserved syntax, a complex suite of falsifications occur. Thus happen cases of expanded polystyrene moulding, fragments of stacco marble imitated in oil, stained glass made of plastic, stainless steel instead of wrought iron and stone floors or floors made of rare essences of wood replaced with faience and modern tiling etc.

The preservation of the cultural patrimony is conditioned by the interdisciplinary research in the study and preservation of cultural items. In essence, the preservation of a country's cultural and artistic patrimony is first an issue of scientific research and, second, an issue of technical performance. The main cause of degradation of the buildings, statues and non-sheltered archaeological vestiges is the climate, comprised of the result of various factors, among which temperature, humidity (rainfall, condensation and hydrometrical state), too strong sunlight, wind and air composition through high salt levels of the air in sea areas, air polluted by industrial residues and other human activities, percentage of O2 or CO2 etc. These elements also act on the objects kept in enclosed spaces, exhibited or stored in the halls of museums, installed in dedicated constructions or in historical monuments that received this destination at a later date, as well as on the monuments.

Throughout the world, the preservers and restorers of cultural patrimony items attempt, first of all, to stop the destructive action of micro-climate. This problem arises in the heavily industrialized areas and in the areas with big temperature differences between winter and summer. The notion of micro-climate contains all the temperature, humidity, light, air composition conditions of an area in relation to another. There is a micro-climate of Northern Moldova, with high humidity, which the object of monastery collections endured for five or six centuries. We could even speak of a micro-climate particular to archaeological locations, crypts, tombs or architectural monuments that have become museums.

In Romania, *The Norms of Preservation and Restoration of Classified Mobile Cultural Goods*, approved by Governmental Decision no. 1546 of December 18, 2003, mention the conditions that must be fulfilled by the spaces where the goods can be stored

and exhibited. In the article 4, letters b, c and article 11, letter a, one of these conditions is the obligation to leave a period of 3-6 months following the ending of the construction, renovation or restoration of the building before bringing cultural goods for exhibition or storage, in order to allow the complete evaporation of the water from the walls and the stabilizing of the interior microclimate.

Humidity is one of the worst causes of monument degradation, being one of the most harmful environmental factors, involved in all the categories of chemical, physical and biological processes, and, in the case of mural paintings, being the main cause and the most devastating one. Humidity is the property of a body or environment of absorbing and retaining a certain quantity of water or water vapours. Identifying the origin and eliminating the humidity are the first measures to be taken before intervention on the painted layer. The existing types of humidity that have the most effect on the structure of the churches are infiltration humidity, caused by flaws in the roof or exposure to rain, capillarity humidity, which can be found in walls after contact with humid soil, condensation humidity which appears on cold surfaces, variable humidity caused by the heterogeneity if the hygroscopic materials and induced humidity or humidity caused by humid air that comes from the soil.

The dampness, actually capillarity humidity or ascendant humidity, may be caused by an accumulation of water at the base of the wall of the monument or church, by the lifting of the groundwater, by the degradation of the insulation at the base of the wall, or by the movement of the soil, as well as by other causes. The consequences of not fixing the troughs and pipes on time may be the foundation for many problems, not just for the preservation of monuments, but also for the goods kept in museums or warehouses. Apart from changing the air humidity, such negligence may cause accidents that increase the possibility of infesting the wood with various types of biodeteriogens (Moldoveanu, 2003: 46). There is a tight correlation between temperature and the relative humidity of air. Thus, a hygrometric diagram shows that the air contains a larger quantity of water vapours when it's hot than when it's cold. After a certain temperature, the continuous heating leads to a decrease of relative humidity. The condition is for the absolute humidity not to be very high, because in that case the temperature must be increased very much in order to reach a satisfactory relative humidity.

In the case of frescoes, an important part is played by the devices for measuring superficial humidity and wall humidity, in order to monitor and act efficiently, both during the restoration process, and during the preservation of the monument, on the degradation factors caused by humidity.

There are many types of degradation caused by humidity. It dissolves and disintegrates certain materials and transports certain soluble salts, whose recrystallizing leads to weathering. In the case of a fresco, the capillarity water brings salts from the ground and attracts the salts in the plastering, which it brings to the surface, where they are crystallized when they dry, bombing the entire area. Following crystallization, the salts may cause efflorescence outside the wall support or, inside of it, crypto florescence, which are developed inside the pores. In both cases, a struggle may happen between the expanding crystals and the walls of the pores and one of them loses, depending on the resistance of the materials.

If the plaster is stronger, the crystal is expelled and the efflorescence appears, but if the walls of the pores do not resist and break, the weathering of the plaster takes place. In most cases, both phenomena happen simultaneously, because the materials are not homogenous and have a varied composition.

The veils and salt coats that fade the mural paintings are the most anaesthetic and visually disturbing. They affect both the appearance and integrity of the colour layers and can be seen on both lower and higher painting registers. There are many cases of mural painting that are impossible to recover after the removal of the efflorescence (Istudor, 2011: 305). In most cases, this crystallization of salts is the ones causing a strong degradation of the surface colour layer, because the formation of the crystals attracts colour particles. This phenomenon is found particularly on the lower side of the walls, especially in the monasteries that are being restored, such as Arbore and Probota. In these situations, the colour layer was brought back to the support layer by pressing it with a roller, through Japanese paper, on which salt solubilizing bolsters were applied until the crystallizing phenomenon stopped (Boldura, 2013: 77).

Very low humidity values, between 20% and 40%, can cause significant losses of the content of hygroscopic humidity of the painted layer, a process which causes the apparition of rigidity and, in time, of fragility and material losses in the support (Deac, 2008: 22). Over the limit of 70% relative humidity and at more than 25°-30°C, the mould develops in optimal conditions, especially since the storage area is not aired and the work sits in the dark. The materials containing cellulose are attacked, such as: cloth, paper, cardboard, wood, leather, animal and vegetable clays. *The Norms of Preservation and Restoration of Classified Mobile Cultural Goods*, approved by Governmental Decision in 2003, mention the conditions that must be fulfilled by the spaces where the goods can be stored and exhibited, the limits of acceptable humidity for the works of art being between 50% and 60%, with an optimal temperature of 15° – 18° C in winter and 18° – 22° C in the summer, with the mention that for warehouses any temperature between 1° C and 18° C is allowed, but always correlated to humidity and under the condition of maintaining the micro-climatic stability. These oscillations cause the sudden loss of water from the structure of the work, changing the volume, which leads to cracks, separations, the materials becoming reliable. The frost alternating with heat cause very big humidity fluctuations, which lead to dilations and contractions that can destroy even stone.

When treating a mural painting, the restorer takes care not just of a part of a larger ensemble, which is the total to which he will have to relate, from the aesthetic and historical point of view, as well as from the technical point of view, the statics of construction and humidity of the walls, climate etc. Also, he must think about his intervention from the beginning by relating it to this whole, which involves, on the one hand, the historical, aesthetic and technical understanding of the monument, and on the other hand an interdisciplinary collaboration with various experts, such as archaeologists, art historians, architects or engineers (Mora, Mora and Philippot, 1986: 28).

The first church demolished by the communists was the historical monument from the beginning of the 17th century, of an extraordinary architectural and environmental value, the Enei Church, which started the series of churches built in the following centuries in Wallachia. Thus, from one building to the next, houses, inns, but most of all churches, through the borrowing of techniques, masters, materials and decorative elements, the proportions were crystalized and that Romanian architectural style called the brâncovenesc style was perfected (Anania et al., 1995: 11). The structural core of the Enei church behaved well during the 1977 earthquake, thanks to the strong masonry and towers made out of reinforced concrete after the 1940 earthquake, but the dramatic circumstances of the March 4, 1977 earthquake were taken advantage of and in less than two months the Enei Church was completely destroyed.

The Enei or Ienii Church, named after its 1611 founder, a monument of special value, was the first church sacrificed in 1977. Based on the epitaph tombstone, kept until the present time, we know that there was a wooden church before the one made out of stone. Between 1720 and 1724, the Enei church was rebuilt out of stone and bricks and, like most of the churches of that time, was at first the church of a monastery, surrounded by cells, monastery outbuildings and the cemetery (Anania et al., 1995: 14). From an architectural point of view, the Enei Church belongs to the category of churches with a bottony plan, with small lateral apse, slightly over enlarged narthex, a tower on the nave and a bell tower on the narthex, a type borrowed and developed during the following century. The treatment of the exterior is characteristic to the 17th century, with two arched panel registers, the windows in stone framework worked with Moldovan crossed wands, and the entrance framework was also sculpted in stone, with a floral motif in the brâncovenesc style. The open veranda, with three round arches, supported on polygonal pillars of masonry, reminds us of the Doamnei Church, which still exists.

Even though the towers of the church did not crumble following the 1940 earthquake, they had to be rebuilt out of reinforced concrete. This explains why at the 1977 earthquake, which destroyed several apartment buildings in the centre of Bucharest, the Enei church only suffered shallow cracks in the plaster, without its structural core being affected. Even though a committee consisting of specialists of the Building Institute and of the National Cultural Patrimony Directorate said that the church was in good state, officials of the communist party requested the suspension of the services in the church under the pretext of the danger posed by the demolition works on the neighbouring apartment building. Thus, several nights after the official visit, the boom of a crane hit the bell tower of the church and after that the order to demolish the place of worship was obtained (Anania et al., 1995: 16-17). The Enei Church, with a 366-year old altar (1611-1977), a historical monument from the beginning of the 17th century, which marked by its architecture the beginning of a construction era, later defined as the brâncovenesc style, could have enriched even today the central area of the city, keeping alive an architectural and spiritual tradition (Giurescu, 1994*:* 18).

Many of the churches destroyed in Bucharest were in the Izvor neighbourhood, the area between the Dâmbovița River and Dealul Mitropoliei, close to Curtea Veche. At first, here there were monastery or hermitage churches, made in the 16th-17th centuries, historical altars that have kept only fragments of their premises, bell towers, chapels, arched cellars (in Dealul Mitropoliei, the Nun Hermitage, the Antim ensemble and, especially, Mihai-Vodă). Several of them were rebuilt from the ground up in the 19th century or in the beginning of the 20th century as the Albă-Postăvari Church, Izvorul Tămăduirii, Spirea Veche. According to the degree of destruction they have suffered, the 12 ensembles and churches in the neighbourhood can be divided into two categories, that of destroyed churches and moved churches.

The Sfântul Ilie-Rahova Church was built by one of the daughters of the martyr ruler, Safta Brâncoveanu, in 1705, as a monastery dedicated to Saint Ilie. In place of monastery cells, the church was surrounded by buildings with a ground floor and a first floor, built toward the 1880s in the architectural style characteristic of the ending of the 19th century. In 1984, these frame buildings that protected it by forming an enclosure were destroyed and the church was moved at 49m from the initial altar. The Sfântul Spiridon Vechi Church was an 17th century building which before the 18th century lost all of its neighbouring cells, remaining exactly the same, from an architectural point of view, until 1987, when it was destroyed by the communist regime (Anania et al., 1995: 52).

In the category of the moved churches, we mention the Nun Hermitage Ensemble, the Mihai-Vodă Ensemble, the Sfântul Ilie-Rahova Church, the Antim Monastery Ensemble. The Albă Postăvari Church, first documented in 1595 as a monk hermitage, was destroyed by the communist regime in 1984. On the rotive placed at the rebuilding in the 19th century, it was noted as the second oldest church, after the Bucur church. The Izvorul Tămăduirii Church was on the list of historical monuments and was first documented in 1785, as a wooden church. It was also destroyed in 1984.

The Mihai-Vodă Ensemble is the oldest monastery ensemble kept in Bucharest (1595), marking a historical monument of the end of the 16th Romanian century. In the last century, it became from a monastery-fortress the place where the National Archives were kept, and the buildings around the Mihai-Vodă Viteazul Church and Dealul Mihai-Vodă with their archaeological relics were completely destroyed. In order to spare the church, with its unique architecture, and its Eastern bell tower, from the same fate as that of neighbouring buildings, they were also moved out of their initial building site.

The Antim Monastery Ensemble was founded by the metropolitan scholar Antim Ivireanu, sanctified in 1715. The altar of the Antim Church is older now, the current church being preceded by a wooden one. This monastic ensemble was an active cultural centre, in which the school and printing press also operated, aside from the church. The North-Eastern corner, with cells and a building arched in the technique of the 17th and 18th centuries were destroyed in 1985 (Anania et al., 1995: 86). Four other monuments, such as the Dealul Patriarhiei Ensemble, the Domnița Bălașa Church, the Sfinții Apostoli Church and the Sapienței Church were left on their initial construction location, but their image was altered by the systematization around them.

The first church documented on the place where the Postăvari White Church was built was the historical monument church, of the 16th century, built at the same time as a monk hermitage, between 1564 and 1568. After a period in which it was subjected to various degradation factors, the church was rebuilt in the beginning of the 18th century, during the final years of the reign of Constantin Brâncoveanu. Damaged and completely destroyed by the 1838 earthquake, the church was demolished in 1855 and completely rebuilt before the end of 1857. The church was repaired again in 1908, in 1925 and after the bombings of 1944. According to the testimony of the vicar of the monument, the destruction of the Postăvari White Church took place on March 18, 1984, almost 420 years after its initial construction. The Izvorul Tămăduirii Church was first documented on March 30, 1785, as a wooden church, which was rebuilt as bigger, with three towers, after the 1838 earthquake. It was later renovated in 1861 and 1909 and, after the 1940 earthquake, its three towers were remade. After the bombings of 1944, certain repair works were also necessary, the last maintenance works taking place in 1969 and before the destruction by the communist regime in 1984.

The order of destruction of the Izvorul Tămăduirii Church was communicated, like in the case of most of the destroyed churches, by the Archiepiscopate of Bucharest directly to the vicar, by mail, the monument disappearing completely on the days of August 4, 5 and 6 of 1984. The Spirea Veche Church, built before 1765, went through certain changes in the 19th century, in 1832, 1834, 1847, 1865 and 1883, when lateral apses were added to it, its veranda was closed, a bell tower was added, the proskomedia was increased, its windows were enlarged and the pillars between the nave and the narthex were removed.

Because of the degradation and interventions made in time, the church became a ruin, the vestryman and the vicar deciding to demolish it in 1915, believing that it could

no longer be restored. The degradation means, therefore, the loss, to varying degrees, of the initial qualities of the works of art, both on their surface, and in their structure. The most fragile to the actions of the degradation factors are the objects made entirely or partially out of organic matter. Thus, one of the most important principles of contemporary restoration is to preserve and guard the integrity of the monuments. In the restoration process, we must use materials that are compatible to the old ones and the traditional work techniques, and each intervention on the monument must be reversible and its purpose must be to restore the original appearance of the monument (Art Conservation Support, 2011: 233).

A new building, similar as space and architecture to the Orthodox Cathedral of Timisoara, was erected in the place of the Spirea Veche Church. Even though the church had a particularly beautiful architecture, because it had been built recently, it was not on the list of historical monuments. Following its destruction by dynamite, by the communists, on April 27, 1984, the salvaged patrimony objects were exhibited in the museum complex of the Mogosoaia Palace (Anania et al., 1995: 50). The Sfântul Iererh Nicolae Church was inside the Crângași cemetery until 1986, when it was demolished. Based on the information in the Church house administration yearbook, published in 1909, it results that the church was from around the year 1700. During 1914-1919 the church was repainted, the original fresco being covered by oil iconographic scenes. Around 1934, the church was extended by adding a veranda with two lateral rooms, a kliros and a large tower above. On May 21, 1986, the church was completely demolished.

The Cotroceni Ensemble was first documented in 1598, being first built in the area where the church was, a wooden hermitage. The construction of the stone church took place during the first year of the reign of Șerban Cantacuzino, between 1679 and 1682, according to a plan and building techniques well established in the tradition of Wallachia, with two compounds and the church in the middle of the main yard, surrounded by cells, monastery houses, voivodal houses and an access bell tower.

The Cotroceni Church had an open veranda, covered with a cylindrical arch, supported by eight stone columns, with an octagonal section and a decoration with oriental influences. The stone frameworks of the windows were Moldovan, under the influence of the Transylvanian gothic, with crossed wands that recalled the Stelea church of Târgoviște of Matei Basarab. After several centuries in which the church was degraded and consolidated several times, 1976 marked the start of a project for the restoration and expansion of the entire ensemble in order to transform it in a new presidential residence. After the March 4, 1977 earthquake, a corner of the narthex and the Northern side of the veranda crumbled and the entire structure of the church cracked. Even though the preparation works for an eventual restoration of the church had already started, Ceaușescu gave in 1984 the order to demolish the entire monument.

Thus, a group of restorers of the National Art Museum extracted approximately 80.00 m^2 of the original fresco done by Pârvu Mutu on the founders' wall in the narthex, the fragments being transported in the restoration workshops of the museum. Under specialized guidance, in accordance with the patrimony law, the six tombs of the voivodal necropolis in the narthex were opened, the tomb of Șerban Cantacuzino, those of two of his brothers and those of other three family members.

The columns, frameworks, tomb slabs and other stone elements, arches, string courses, tracery etc. were inventoried and stored either at Cernica Monastery, or in the basement of the palace. The Cotroceni Church could not be saved during the communist era, that of the demolition of national patrimony, but, unlike the other historical

monuments, most of them unique and with an architectural value, which have been destroyed with the bulldozers or even dynamite, without salvaging anything from them, in this case the more valuable elements have been detached and kept, as well as the accurate image of the monument through complete sketches, photographs and video recordings (Anania et al., 1995: 106).

The Văcărești Monastery was the last voivodal foundation of the 18th century and the largest monastery of the Balkans. It was built in the time of Nicolae Mavrocordat, between 1716 and 1724, when the church, abbey, voivodal house, refectory, cells and the first compound wall with an entrance tower were built. Having an original architectural shape, it fit, with regards to planimetry and general placements, in the series of churches like the Curtea de Argeș Bishopry, the Bucharest Metropolitan Church, the Hurezi Monastery, being small, approximately 41 m long and 17 m wide. The veranda was covered by two octagonal towers and the frescoes inside and outside the church were large, representing iconographic themes rarely encountered (Leahu, 1996: 177). After the two earthquakes of 1802 and 1838, the structure of the masonry showed large cracks and several repair and repainting works were made in 1867.

In 1923, a printing press and a Greek school were founded within the monastery. It also housed the voivod's library, considered at the time the largest and most complete of Europe. In 1848 the monastery became a penitentiary, also maintaining its function of place of worship until 1973, when the purpose of the monument was changed (ACS, 2012: 78). The year 1974 marked the start of a large restoration program, the teams of restorers handling systematically and professionally the restoration of the monument and the removal of the additions, keeping only the original elements. Thus, around 1977, the Paraklesis and part of the Abbey, the Eastern wing which included the voivodal house and the two-level Gallery were almost completely restored and the church was going to be preserved and restored too. They wanted to open a Museum of Romanian Culture or a National Church Painting Museum in Văcărești (Leahu, 1996: 51). After the 1977 earthquake, when the Directorate for Historical Monuments was dissolved and the restoration of the Văcărești Monastery ceased, a new destination was intended for this ensemble, as church art museum, brâncovenesc cultural centre and ecumenical centre. Between 1985 and 1986 the entire ensemble was demolished, thus losing forever one of the most brilliant architectural monuments of the 18th century in Wallachia (The National Museum of Art of Romania, 2008: 134). Before 1986 the entire monastery ensemble was demolished and a small part of the mural painting of the church, approximately 120 m^2, was salvaged by the restorers through extraction, in hostile conditions, when the church was already crumbling. The essential principles of the preservation-restoration process were the basis of the interventions of re-transposition of the extracted paintings on a new support. The principles of minimal intervention, of material reversibility and of the methods used were obeyed first and foremost, allowing the possibility of future interventions (Gheorghiță, 2013: 51). The Antim Monastery – The All Saints Monastery, one of the most beautiful monastery ensembles of Bucharest, was mutilated in 1986 by the demolition of the cells and the movement of the Synodic Palace. All of this has led to the considerable decrease of the premises and the deterioration of the composition of the ensemble. The monastery was built between 1708 and 1716 by Antim Ivireanu, metropolitan of Wallachia, on the altar of a wooden church.

During its two and a half centuries of existence, the Antim Monastery played a particularly important part in Romanian culture. After 1716 a library and a printing press, started by the founder, operated here. In 1797 a school for priests was founded here, which

became the Seminary of the Hungarian-Wallachian Metropolitan Church starting in 1836 and, for a short period, the National Archives.

After periods of thriving, destruction and rebuilding, in 1909 the foundation of the Synodic Palace is approved. It is made between 1910 and 1912 in Neo-Romanian architecture and placed on the Northern side of the church, near the bell tower. This placement was an intervention in the initial design of the monastery ensemble, which followed the style of the Brâncoveanu era. At the beginning of 1984, Nicolae Ceaușescu visited the area of the monastery twice, giving orders for the demolition of the entire compound, except for the Synodic palace and the church, which were going to be moved to the South-West (Anania et al., 1995: 88).

Most of the frescoes belong to the Bucharest History Museum, but some of them are still being kept and restored at the Bucharest National Art University. The extraction of the painting fragments was done by the stacco method, the painted layer being removed with its plaster support, this method allowing the detachment of large painting surfaces. Special supports were manufactured for the extracted fragments, in order to support them and ensure a better stability during the restoration operation, as well as to be able to exhibit them later. The recovery and preservation of the original mural painting fragments once again recognizes the image of historical and artistic monument of the Văcărești Monastery Church, and the restoration and re-transposition works done can continue to be researched, preserved and better cherished in the future.

The technique used to extract the fragments is not known, but the print of the structure in the brick masonry, remaining on the back of the fragments, may be an important technical clue in the attempt to reconstitute the extraction methodology. The remains of bricks on the back of the frescoes have been preserved as part of the restoration operation, allowing visual access to this technological information, which is generally hidden from the viewer (The National Museum of Art of Romania, 2008: 194). After the earthquake of 1977, Nicolae Ceaușescu undertook the mission of creating the largest civic centre of Bucharest, dominated by the People's House. After his visit to China and North Korea in the '80s, the dictator wanted gigantic architectures, similar to those of the Asian dictatorship, to be built in Romania too. Thus, the building of a large congress hall was decided, placing it on the site of the Văcărești Monastery.

If during 1954-1977 numerous projects started for the restoration of architectural and church monuments, organizing visits and discussions at the main monuments with major mural paintings, at certain churches where too little of the initial painting was left, such as the Sf. Ioan cel Nou Monastery of Suceava, the Probota Monastery, as well as certain representative Romanian XIVth-XVIIth centuries art museums, at the Putna, Sucevița, Arbore, Dragomirna, Moldovița Monasteries, the Bălinești Church (Giurescu, 1994: 36). If such preservation-restoration actions had continued after the 1977 earthquake, significant parts of the country's artistic and architectural patrimony could have been saved. The state substantially reduced the funds needed for the preservation and restoration of the patrimony and the people in charge of the protection of the monuments lacked interest. This was the disastrous time of the demolition of churches and villages. The development of the cities, with the gradual renewal of their architecture, is always a natural phenomenon, but in Romania things went differently during the communist era, toward the end of the '70s. The systematization meant for the communist regime the destruction of almost all of the churches and monastery ensembles, traditional urban buildings and their replacement with apartment buildings.

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ORIGINAL PAPER

Ruskin's Aesthetic Theories at the Transition between Centuries (XIX-XX)

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Abstract
This paper attempts to present and interpret Ruskin's aesthetic theories at the transition between the 19th and the 20th centuries, as well as their impact on the development and tradition of European and Anglo-American modernism. Early 20th writers generally rejected Ruskin, as part of the modernist rebellion pattern against Victorian culture. Yet most of them rightly found in Ruskin an incipient modernism, both in his ideas and in his style. As Sharon Aronofsky Welman puts it in "Ruskin and Modernism" emphatic dismissal of Ruskin did not necessarily prevent his thought from permeating the new aesthetic (Welman, 2001: 7). While modernism renounced certain aspects of Ruskin's work, such as his retreat from modernity and his nostalgic backward glance at the Gothic, the moderns retained more of their Ruskinian inheritance than they threw away". In conclusion, one may assert that, although 20th century scholars took pains in minimizing Ruskin's merits, their effort has actually emphasized both his influence that reached across the world, and the part he played in the foundation of modernism.

***Keywords**:* John Ruskin, Gothic, architecture, painting, sculpture, landscape, incipient modernism.

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To speak about Ruskin's aesthetic writings actually means to consider his principles and personal interpretations of some artists and their works. He was prepared for such considerations since childhood, when he was taught to associate narrative and meaning with pictures, as George P. Landow mentions: "One of Praeterita's more charming vignettes relates, for example, that each morning while his father shaved, he told his son a story about figures in a water-colour landscape that hung on his bedroom wall" (Landow, 1993: 142). Such a fervent activity implied inevitable reconsiderations and contradictions, so we intended to emphasize here some general ideas constantly present in his creation, thus ascertaining not only Ruskin's cultural historic part, but also the unexpected modernity of some of his comments. In approaching these topics, we find it necessary to begin with an opinion commonly shared by Ruskin scholars, namely that his views on art "cannot be made to form a logical system, and perhaps owe to this fact a part of their value. Ruskin's accounts of art are descriptions of a superior type that conjure images vividly in the mind's eye" (Fowler, 1989: 245). As concerns Ruskin's writings in the field, Kenneth Clark distinguishes several important features: art is not a matter of taste, but involves the whole man. Whether in making or perceiving a work of art, we bring to bear on it feeling, intellect, morals, knowledge, memory and every other human capacity, all focused in a flash on a single point. Aesthetic man is a concept as false and dehumanizing as economic man; even the most superior mind and the most powerful imagination must found itself on facts, which must be recognized for what they are. The imagination will often reshape them in a way which the prosaic mind cannot understand; but this recreation will be based on facts, not on formulas or illusions. These facts must be perceived by the senses or felt, not learnt. The greatest artists and schools of art have believed it their duty to impart vital truths, not only about the facts of vision, but about religion and the conduct of life. Beauty of form is revealed in organisms which have developed perfectly according to their laws of growth, and so give, in his own words, "the appearance of felicitous fulfilment of function". This fulfilment of function depends on all parts of an organism cohering and cooperating. This was what he called the "Law of Help", one of Ruskin's fundamental beliefs, extending from nature and art to society. Good art is done with enjoyment. The artist must feel that, within certain reasonable limits, he is free, that he is wanted by society, and that the ideas he is asked to express are true and important. Great art is the expression of epochs where people are united by a common faith and a common purpose, accept their laws, believe in their leaders and take a serious view of human destiny (Clark, 1991: 133-134).

Critics also agree that Ruskin's merits in the concrete analyses of works are huge and can be accepted, although some of his aesthetic definitions and delimitations regarding Gothic art and the work of Renaissance painters are debatable, since his commentaries apply mostly to Italian and English art, profoundly studied, and to some aspects of French art as well. In the studied field, the basic achievements of German, Flemish and Spanish painting, as well as important moments of French sculpture had not been taken into account. But such deficiencies should not be surprising and, in relation to the knowledge horizon of the previous centuries and of his fellow Victorians, Ruskin played a pioneering part. In Ruskin's aesthetics, one can notice "the obsession of childhood" (Roth, 2004: 222), which means that, when studying a certain artistic cycle, he always prefers an incipient stage to an advanced one, the Greek sculpture of the 5th century to the Hellenistic one, the primitive Gothic to the out of time one. Regarding the preoccupation of recovering and diffusion of Gothic and early Renaissance values, Ruskin plays a central decisive part in the general aesthetic orientation of Europe.

Beginning with the Renaissance, the Gothic had been continuously minimized in Europe, being considered a "barbarous" moment of decay compared to the Antiquity. In "The Nature of Gothic" ("The Stones of Venice"), Ruskin speaks about the discovery of the Middle Ages at the beginning of his century. As a matter of fact, the process of recovery was due to Romanticism, however slow it had proved. In "Histoire de la peinture en Italie" (1817), Stendhal knows the names and the main works of art of all great Italian artists, but everything is evaluated to the extent to which they make the transition from the Medieval savagery to Rafael and Michelangelo. H. Taine in "Philosophie de 1'art" (1865) grasps the aspiration to the infinite dimension, as well as the symbolic orientation of Gothic art, but he explains them through the general decay of humanity in the Middle Ages (Cerutti, 2000: 16). Italian painting is reduced to the 15th and the16th centuries and before them we find "an un crystallized" art represented by Uccello, Verrocchio, Mantegna, Bellini and others, with the only exception of Masaccio, "a genius" and "an isolated inventor". But when he comes to Assisi, he enthusiastically speaks about St. Francis church and Giotto's painting.

At the beginning of the 20th century, Pierodella Francesca and Ucello were still unknown. The miniatures, the stained - glass windows, the tapestries as specific forms of art in the Middle Ages come gradually in the aesthetic conscience of our century. In a brief sketch of the recovery and spreading of Gothic values, Ruskin has a central fundamental place in the European general aesthetic orientation (Dearden, 2004: 26). He hesitates between the historical understanding of the Gothic, achieved by means of a concrete analysis of some monuments and its aesthetical and philosophical one, found in more theoretical works. In the famous chapter from "The Stones of Venice", entitled "The Nature of Gothic", praising Gothic ornament, Ruskin argued that it was an expression of the artisan's joy in free, creative work. The worker must be allowed to think and to express his own personality and ideas, ideally using his own hands, not machinery: "We want one man to be always thinking, and another to be always working, and we call one a gentleman, and the other an operative; whereas the workman ought often to be thinking, and the thinker often to be working, and both should be gentlemen, in the best sense. As it is, we make both ungentle, the one envying, the other despising, his brother; and the mass of society is made up of morbid thinkers and miserable workers. Now it is only by labour that thought can be made healthy, and only by thought that labour can be made happy, and the two cannot be separated with impunity" (Cook and Wadderburn, 1903: vol. 10, 201). Here Ruskin discusses six characteristic elements of the Gothic: wildness, variety, naturalism, grotesque, rigidity and redundancy, making a difference between the Northern and the Southern spirit. The architecture of the North is rude and wild compared to the Greek or Egyptian style, but we should not condemn or despise it for this reason. He considers that the wildness of Gothic architecture maybe considered as an expression of its origin among Northern nations.

As John Rosenberg puts it: "the modern English mind has much in common with that of the Greek, that it intensely desires, in all things the utmost completion or perfection compatible with their nature. This is a noble character in the abstract, but become ignoble when it causes us to forget the relative dignities of that nature itself and to prefer the perfectness of the lower nature to the imperfection of the higher" (Rosenberg, 1984: 177). The free, original expression implies imperfection, only the superficial, mannerist finishing is perfection: "those which are more perfect in their kind are always inferior to those which are, in their nature, liable to more faults and short comings" (Cook and Wadderburn, 1903: vol. 10, 206). Ruskin says that it is a law of this universe that the best

things are seldom seen in their best form. You can teach a man to draw lines, straight or curved lines and to carve them. Any man could also copy or carve any number of given lines with admirable speed and precision, but if you ask him to think about any of those forms, put him find other forms in his mind, he stops. His execution becomes hesitating, when he thinks he may be wrong and makes mistakes. This is the condition of the man, what makes him human. Ruskin's idea is that labourers have to be free at the artistic level of their creation and, what must be let out of them is their thoughtful part, whatever faults and errors we are obliged to take with it.

The medieval architect and sculptor (or any other artist, because in the spirit of Ruskin's ideas, the generalization is possible) conceives his work completely free, without subordination to any dogma; the master as well as the apprentice keep on innovating, guided by their own imagination, so that the architectonic building reserves to the onlooker the same surprises as reading the poetry of a good writer. No good work can be perfect and the demand for perfection is always a sign of the misunderstanding of the ends of art. Imperfection is in some sort essential to all that we know of life and it is the sign of progress and change in the mortal body as well as in the body of art (Craig, 2006: 304). For Ruskin "to banish imperfection is to destroy expression, to check exertion, to paralyze vitality. All things are literally better, lovelier and more beloved for the imperfections which have been divinely appointed, that the law of human life may be Effort and the law of human judgment, Mercy" (Cook and Wadderburn, 1903: vol. 10, 219). Otherwise, for Ruskin the imperfection becomes a universal law not only in architecture, but in any other noble work of men. As a conclusion, the Gothic cannot exist without this first element, Wildnessor Savageness, which is also an element in many other "healthy architectures", as the Byzantine and Romanesque.

The second element is variety, which is a necessity for the human heart and brain in buildings, in books or in many other things. Ruskin pleads for the liberty of the worker who may improve a given line and he does not find any pleasure in modern buildings. The third constituent element of the Gothic mind was stated to be naturalism, that is to say "the love of natural objects for their own sake" as Ruskin says and "the effort to represent them frankly, unconstrained by artistic laws" (Cook and Wadderburn, 1903: vol. 10, 245). Ruskin considers that Gothic builders unite the fact with the design (every composition starts from a fact) and that truthfulness is a special characteristic of both. Their power of artistic invention or arrangement was not greater than that of Romanesque and Byzantine workmen. The Gothic ones were taught the principles and received the models of design; besides, to the ornamental feeling and rich fancy of the Byzantine, the Gothic builder added a love of fact which is never found in the Greek and Roman cultures of the South. The Gothic artist put more nature into his work until at last it became true. The fourth essential element of the Gothic is the sense of the grotesque which influenced Renaissance schools. Ruskin believes that the tendency to delight in fantastic and ludicrous as well as in sublime images is a universal instinct of the Gothic imagination. The fifth element is rigidity, by this notion Ruskin meaning not merely stable, but "active rigidity". This is "the peculiar energy which gives tension to movement and stiffness to resistance, which makes the fiercest lightning forked rather than curved and the stoutest oak-branch angular, rather than bending" (Cook and Wadderburn, 1903: vol. 10, 249). Egyptian and Greek buildings stand mostly by their own weight and mass, one stone passively uncombed on another, but in the Gothic vaults and traceries there is an elastic tension and communication of force from part to part and also a studious expression of this throughout every visible line of the building. "Strength of will, independence of character,

resoluteness of purpose, impatience of undue control and a general tendency to set the individual reason against authority and the individual deed against destiny are all more or less traceable in the rigid lines, vigorous and various masses and independent structure of the Northern Gothic ornament" (Cook and Wadderburn, 1903: vol. 256). Ruskin also states that, paradoxically, the richness of the work is a part of its humility; that humility, which is the very life of the Gothic school, is shown not only in the imperfection, but in the accumulation of ornament. For Ruskin, there are, however, far nobler interests mingling in the Gothic heart with the rude love of decorative accumulation: "a magnificent enthusiasm", "an unselfishness of sacrifice" and finally, "a profound sympathy with the fullness and wealth of the material universe" (Farahbakhsh, 2011: 84). The fancy is possible by infinite variation, but the real character of the Gothic building depends, according to Ruskin upon" the single lines of the gable over the pointed arch, endlessly rearranged or repeated" (Cook and Wadderburn, 1903: vol. 10, 213), a statement considered rather debatable compared to the achievements of the Renaissance.

It is obvious that Ruskin's option for the Gothic does not mean, as it had often been interpreted, as an absurd negation of Renaissance art, but the proposition of a certain pattern of creation and of its afferent system of values which the Renaissance had left in favour of other values. On the other hand, being concerned with the condition of the small artist, not with that of the genius who has his own laws, Ruskin amplifies the problem to existential dimensions – man's image and function in the modern world – and opens it altogether to practical solutions (the Oxford Museum, the painting School in Sheffield).On the other, faced to the commerciality of Victorian art, to the obvious decay of craftsmen's art because of the technical development, Ruskin's revolt was justified and salutary. One could not say the same about his solutions. The return to the Gothic architectural style, beyond technical difficulties, would be evidently an anachronism, pointed exactly against Ruskin's idea of free and genuine expression, as the modern man has another aesthetic conscience than the medieval one. Therefore, a relapse to craftsmen's art, outside the production at industrial level is not only just, but also necessary, as the only possible measure against monotony and leveling. From this point of view, the broadening of the term "modern" until our time is perfectly possible (Cerutti, 2000:198). As a matter of fact, today the great problems of art are the same. The architecture of our century has passed through such rapid changes that the freedom of creation seems complete. Yet, the difficulty in finding "a style" to satisfy the demands of mass production (especially cheap lodgings), as well as aesthetic exigency, mainly fancy, free variation is just partly solved. In the case of other arts, including craftsmanship, the contrast between fashion or commerce and genuine creation is equally strong. Thus, Ruskin may be acknowledged as one of the first aestheticians who inferred the dangers and the artist's dramas (and of man in general) in the modern world (Cerutti, 2000:198). Therefore many of his indications are still of present interest.

There are two other aspects of the Gothic in Ruskin's conception which should be specified. They refer to two inborn feelings of man: the religious faith and the fear of death (or of sin, added the man who knew by heart passages of the Bible from childhood). In "Modern Painters", Ruskin discusses once more the process of passing from the Gothic to the Renaissance, concerning the first feeling: religious faith. Gothic painting made use of the decoration motif with precious stones, gold, luxurious clothes in order to evoke the Virgin; the watcher's trust in the reality of the scene paled, but he adored the elegant princess with unquestionable piety. The painter was expressing not a real fact, but his own enthusiasm about it. The Renaissance artist does not make use of art any longer in order

to awake the religious feeling, but, on the contrary, he employs religious representations to prove his art. Now, the accent is put on craftsmanship, not on religious content, unanimously felt. The artistic progress would have been real, if it had been carried out in "the service of truth" (Bryden, 1998: 146), but thus and so it was attained only "in the service of the vanity" (Bryden, 1998: 146), the development of this reasoning going to the logical negation of Pre-Raphaelite art (only from this point of view), in short, Ruskin complains abou the laicization of art.

Ruskin makes the mistake of reducing the aesthetical value of sacred art only to its confessed sacred content, and he excessively simplifies the lines drawn by eminently typological reasoning. Laicization and realism were permanent tendencies in the Italian painting, beginning with trecento. Then a question arises. Giotto (compared to Cimabue) and Duccio have not then painted striking human characters even named St. Francis, St. Joachim, St. Peter, or Virgin Mary? But Ruskin remains persuasive in tracing out the progress of realism and generally we could even accept his typology although it is debatable in evaluation and details (Daniels and Brandwood, 2003: 154). In his conception about the Middle Ages and the Gothic he does not use solid arguments, unimpeachably, rigorously demonstrated, but soft, violent and seductive images. He does not convince the reader scientifically, but lyrically, because he does not present the panorama of a cultural historian, but the vision of a poet. Starting from the mere observation of the Italian plastic phenomenon ("The Stones of Venice" is full of rigorous architectonic types), Ruskin gradually raises to the configuration of some kind of cultural myth, the world of the Middle Ages, the world of the Gothic, where, like a prophet, he concentrates his own aesthetical, moral and religions concepts (Daniels and Brandwood, 2003: 169). The manipulations of the myth are fascinating because they propose a coherent and possible world. Today, Ruskin's pages cannot have the character of a discovery as the aesthetical recovery of the Gothic had been made long time ago, but their poetic interpretations and lyrical aesthetic character enchant the reader even if the critical lucidity rushes to amend some statements.

In the context of discussing Ruskin's aesthetical ideas at the transition between centuries, one should also consider his functional conceptions about *architecture and sculpture*. When taking into account Ruskin's opinions about the Gothic style, it is not only architecture included, but any art which can be a "noble" art, as Ruskin calls the arts which ennoble man's life. In his work "The Seven Lamps of Architecture" we can find a definition of architecture: "Architecture is the art which so disposes and adorns the edifices raised by man, for whatsoever uses, that the sight of them may contribute to his mental health, power and pleasure" (Cook and Wadderburn, 1903: vol. 8, 204). Ruskin makes a careful distinction between architecture and building. To build means to put together and adjust several pieces of an edifice of a considerable size no matter if the edifice stands, floats or is suspended on iron springs. Moreover, "building does not become architecture merely by the stability of what it erects" (Cook and Wadderburn, 1903: vol. 8, 210). When the word architecture is applied in this sense it ceases to be one of the fine arts. It is not good to take this risk of extending principles which belong altogether to building into the sphere of architecture. He states: "let us, therefore, at once confine the name of that art which, taking up and admitting as conditions of its working, the necessities and common uses of the building, impression its form certain characters venerable or beautiful, but otherwise unnecessary" (Cook and Wadderburn, 1903: vol. 8, 210).

His main idea about art is that it is more beauty where it is more nature. But he somewhat rashly limited the elements of architectural beauty to imitative forms. Ruskin considers that beyond a certain point and a very low one, man cannot advance in the invention of beauty, without directly imitating natural forms. "The prophet", as he was called by his Victorian fellow writers, discusses fine arts (ornaments, painting and sculpture) starting from these principles. The method evidently considers also the Gothic specific aspects. He comments on different architectonical works of art, the Italian, English or French ones, and gives a series of technical pieces of advice concerning the aesthetical possibilities of building materials. The application of the method to Renaissance art, where the unity of the ensemble is lost, the fresco becoming autonomous, is debatable; moreover, the new orientation is critically looked upon from the point of view of the Gothic art: "As these paintings became of greater merit and importance, the architecture with which they were associated was less studied, and at last a style was introduced in which the framework of the building was a little more interesting than of a Manchester factory, but the whole space of its walls was covered with the most precious fresco painting" (Cook and Wadderburn, 1903: vol. 10,324). He is not considering such edifices to form an architectural art school and he considers that they were merely large preparations of the artist's panels; thus Titian, Giorgione and Veronese no more confer merit on the later architecture of Venice by painting on its facades as artists like "Landseer or Watts could confer merit on that of London by first white-washing and then painting its brick streets from one end to the other" (Cookand and Wadderburn, 1903: vol. 10, 326). This opinion on the evolution of Venetian Renaissance does not detain Ruskin to enthusiastically admire The Ducal Palace or St. Marc's Cathedral, to the later dedicating most pages of his volume "St. Marc's Rest". One should point out that in this case he applies his own functional definition, especially to the great Gothic Cathedrals of Rouen (in "The Seven Lamps of Architecture"), Amiens ("The Bible of Amiens") and to the Italian ones like the church Saint-Urbain de Troyes in Pisa ("Val d'Arno").

Since 1859, Ruskin wondered in "The Art of Criticism": "A new style in iron and glass?" (Cook and Wadderburn, 1903: vol. 15, 267). His affirmative answer shows a commendable openness and lack of prejudices of the Gothic admirer. The new style is worthy of modern civilisation in general and of England in particular. He finds iron to be a ductile and tenacious substance. Iron is the material given to the Sculptor as the companion of marble, as good as wood or any other material given by the "mother-earth". Furthermore, "abstractly there appears no reason why iron should not be used as well as wood, and the time is probably near when a new system of architectural laws will be developed and adapted entirely to metallic construction" (Cook and Wadderburn, 1903: vol. 15, 267). Spreading hope to people around him, Ruskin points out the limited possibilities in color and form of iron and glass, and considers that the tendency of the present-meaning the days when he wrote – is to limit the idea of architecture to non metallic work. However he admits that metals may and sometimes must enter into the construction to a certain extent "as nails in wooden architecture" and like "rivets and soldering in stone" (Cook and Wadderburn, 1903: vol. 15, 267). This rule is that metals may be used as cement, but not as a support. In the end, offering his opinion of the Crystal Palace, Ruskin asserts that "the value of every work of art is exactly in the ratio of the quantity of humanity which has been put into it, and legibly expressed upon it forever" (Cook and Wadderburn, 1903: vol. 15, 287); firstly, of taught and moral purpose, secondly, of technical skill, and thirdly, of bodily industry. Thus, interpreting the

architectonical beauty like a game of proportions, possible as well in the new technique discussed, Ruskin maybe rightly considered as a forerunner of modern architecture.

The criterion of arts assessments organizing relations between specific constitutive elements is more general in Ruskin's work. Describing sculpture as "imitative Sculpture", he defines it as "the art which, by the musical disposition of masses, imitates anything of which the imitation is justly pleasant to us; and does so in accordance with structural laws having due reference to the materials employed" (Pentelici, 1872: 215). Beginning with the example of a little girl who instead of cooking uses the pastry in the kitchen for making cats and mice, he finds the answer to the question why we wish to imagine things and says that sculpture is "an irresistible human instinct for the making of cats and mice and other imitable living creatures" (Pentelici, 1872: 215). Sculpture is to be a true representation of true internal form and much more, it is to be the representation of true internal emotion. It must be carved not only what one sees as he sees it but, much more, what he feels as he feels it. One may no more endeavour to feel through other men's souls than to see with other men's eyes.

One should remark that Ruskin starts from the early Gothic sculpture, based more on expression than on realism of details, but his theoretical conclusions, surprising for the art of subsequent centuries, find their actuality only in modernity, when sculpture cuts loose of its narrow realistic representation in order to allow the free play of forms, "the musical disposition of masses", meaning by this, beautiful surfaces limited by beautiful lines (Welman, 2001:234). The exact science of sculpture is that of the relations between outline and the solid forms it limits and it does not matter weather that relation is indicated by drawing or carving so long as the expression of solid form is the mental purpose; it is the science of the beauty of relation in three dimensions. Discussing the frontispiece of the cathedral San Zenone of Verona, Ruskin specifies: "you cannot tell whether the sculpture is of men, animals or trees, only you feel it to be composed of pleasant projecting masses" (Pentelici, 1872: 235). Further, the pleasantness of the surface decoration is independent in structure, that is of any architectural requirement of stability. The ornamentation should not be merely decorated structure and there are far more abstract conditions of design showing that "structure should never be contraindicated, and in the best buildings it is pleasantly exhibited and enforced" (Pentelici, 1872: 235).Another of his assertions is supported with the example of Mino da Fiesole: "I am not sure whether it is frequently enough observed that sculpture is not the mere cutting of the form of anything in stone; it is the cutting of the effect of it" (Pentelici, 1872: 235). Ruskin pre-eminently spoke about Gothic sculpture and the sculpture of early Renaissance, devoting many pages of fine observations to Niccolo and Giovanni Pisano, Ghiberti, Michelangelo, not forgetting Greek or Byzantine sculpture. Ruskin praises Greek sculpture asserting that on one side Greek art is the root of all simplicity and on the other, of all complexity. The Greeks were the masters of all that was grand, simple, wise and tenderly human, opposed to the pettiness of the toys of the rest of mankind (Pentelici, 1872: 174-175).

The Greeks rescue the forms of man and best "they sculpture them in the nakedness of their true flesh and with the fire of their living soul" (Roth, 2004: 179). For Ruskin the Greeks have been "the origin not only of all, broad, mighty and calm conception, but of all that is divided, delicate and tremulous" (Pentelici, 1872:174-175). Andin their doing this, they stand as masters of human order and justice, subduing the animal nature, guided by the spiritual one. For medieval sculpture Ruskin mentions the West Portals at Chartes whose statues have been long and justly considered as representative of the highest skill of the twelfth or earliest part of the thirteenth century in

France. Their "dignity and delicate charm" is owed partly to real nobleness of feature and chiefly to the grace, mingled severity of the falling lines of the thin drapery. But his own study, as well as most studies finish in composition, "every part of the ornamentation tenderly harmonizing with the rest" (Pentelici, 1872: 235). As far as Renaissance sculpture is concerned, Ruskin comments on the study of a group of artists who were correcting the impressions of sense by the appliance of the laws of reason. He calls it "Mathematic Schools" and includes here artists like Niccola Pisano, Brunelleschi and Michelangelo, three men who had a special gigantic power in Italy. Niccola Pisano stands for the physical truth and the trustworthiness of all things, Brunelleschi for the dignity of abstract mathematical law, and Michelangelo for the majesty of the human frame. Ruskin asserts: "to Nicola you owe the veracity, to Brunelleschi the harmony and to Michael Angelo the humanity of mathematic art" (Pentelici, 1872: 181).

Ruskin's writings about *painting* are maybe the densest in his work. Firstly, there is the theory of colour, but not in more or less isolated statements like in architecture or sculpture, but somehow systemized in the volume "The Elements of Drawing" (Cook and Wadderburn, 1903: vol. 10). For English painting Ruskin remains the builder of his own system of values, being the only one who avouched the quality and the dimensions of Turner's genius at that time. Like in sculpture, where he considers Greek works as ones of the best in the world, he also acknowledged that their painting is remarkable for its harmonies of colour. Ruskin also tried to show us how we may find in Greek early painting strong impressions of the power of light and how intimately this physical love of light was connected to their philosophy in its search, blind and captive as it was, for better knowledge.

The artist who "threw aside all the glitter and the conventionalism" was Giotto, (Cook and Wadderburn, 1903: vol. 15, 256), Ruskin considering that nobody could discover much about colour after him. In "Mornings in Florence", Ruskin says that "the most significant thing in all Giotto's work you will find hereafter, in his choice of moments" (Cook and Wadderburn, 1903: vol. 15, 256).Giotto has a name in the world of art because he was the first to reconcile sense with non-sense. He was the first of Italians and even the first of Christians, who equally knew the virtue of both lives (the earthly and the Heaven existence) and who was able to show it in the sight of man of all ranks – from the prince to the shepherd. "He defines, explains and exalts every sweet incident of human nature, and makes dear to daily life every mystic imagination of nature greater than our own. He reconciles, while he intensifies every virtue of domestic and monastic thought. He makes the simplest household duties sacred; and the highest religious passions, serviceable and just" (Cook and Wadderburn, 1903: vol. 15, 256); as a matter of fact, Ruskin is the one who infers that Giotto must be placed between Byzantine and Gothic painting.

In "The Art of Criticism", another Italian painter Ruskin praises much is Botticelli: "He is one of the most learned theologian, the most perfect artist and the most kind gentleman whom Florence produced" (Cook and Wadderburn, 1903: vol. 3, 368), in him, Ruskin encountering "the pure mental passion" (Cook and Wadderburn, 1903: vol. 3, 368). More of his paintings like "St. Barnabas Altarpiece" and "Judith and Holofernes" in the Uffizi Palace, or the fresco "The Life of Moses" in the Sistine Chapel, are remembered in Ruskin's books "The Schools of Florence" and "Mornings in Florence".

Ruskin most controversial lecture is probably "The Relation between Michael Angelo and Tintoretto", a text which expresses many of the writer's views of the Renaissance. He makes a division in the cycle of art history into three great periods. The

works of Raphael, Michelangelo and Tintoretto belong to the third period, a period of compromise in the career of the greatest nation of the world and "are the most splendid efforts yet made by human creatures to maintain the dignity of states with beautiful colours, and defend the doctrines of theology with anatomical designs" (Cook and Wadderburn, 1903: vol. 24, 277). The changes brought about by Michelangelo and continued by Tintoretto are criticised by Ruskin. They are bad workmanship for several reasons: because the greater part of all that they did is hastily and incompletely done, then because it implied both violence of transitional action, and physical instead of mental interest. Moreover, the body and its anatomy made the entire subject of interest and they chose evil rather than good as themes of their paintings. Ruskin finds that on the face of their subjects, instead of joy or virtue, appear sadness, probably pride, often sensuality and always vice and agony. Speaking about Michelangelo he says: "Nearly every existing work by Michel Angelo is an attempt to execute something beyond his power, coupled with a fevered desire that his power may be acknowledged" (Cook and Wadderburn, 1903: vol. 24, 277). Ruskin finds Michelangelo strong beyond all his companion workmen, yet never strong enough to command his temper, or limit his aims. Tintoretto, on the contrary, works in the consciousness of supreme strength, which cannot be wounded by neglect and is only to be thwarted by time and space. He is also much more indifferent respecting the satisfaction of the public. But both of them are always in dramatic attitudes and always appealing to the public for praise.They can be called classical because they "have the Greeks with them" (Cook and Wadderburn, 1903: vol. 24, 289) in the honour given to the body. There is also a love of sensation in both of them, but "Michelangelo has invested all his figures with picturesque and palpable elements of effect, while Tintoretto has only made them lovely in themselves and has been content that they should deserve, not demand your attention" (Cook and Wadderburn, 1903: vol. 24, 289).

Ruskin's concrete studies in the domain of painting embrace all possible directions and forms. The straight comment upon a panting, like "The Angel of Death" by Carpaccio, is usually based on the revealing of the emotional content. Here, his critical method (and not only here) develops both its qualities and deficiencies. Indeed, the significance of the painting is always caught in its moral and aesthetical side, although technical references miss. In the second volume of "Modern Painters", he spoke of Titian's Magdalena in the Pitti Palace. She is basely treated as disgusting. Ruskin is the first to infer the unapparent religiosity of Magdalena and understanding Titian's meaning. Titian was the first painter who dared to doubt the romantic fable of Magdalena (young and beautiful) and rejected "the narrowness of sentimental faith" (Cook and Wadderburn, 1903: vol. 4, 296). Ruskin asserts: "He saw that it was possible for plain women to love no less vividly than beautiful ones, and for some persons to repent, as well as those more delicately made" (Cook and Wadderburn, 1903: vol. 4, 296). He finds the Venetian mind illustrated by this picture of Titian "wholly realist universal and manly" (Cook and Wadderburn, 1903: vol. 4, 296) and considers Tintoretto to be the most powerful painter ever seen, being "the first who introduced the slightness and confusion of touch which are expressive of the effects of luminous objects seen through large spaces of air" (Cook and Wadderburn, 1903: vol. 3, 299). The power of every painting depends on the penetration of the imagination into the true nature of the thing represented and on the utter score of the imagination. Ruskin makes his comments especially on the works of the "Scuolo di San Rocco" and here he wants the reader to observe "the distinction of the imaginative verity from falsehood on the one hand and from realism on the other" (Cook and Wadderburn, 1903: vol. 3, 299).

Another of his important topics concerns landscape. Ruskin himself painted landscapes and a lot of his criticism is pointed towards such paintings. This problem is largely debated in his "Lectures about Landscape" (1897), where he classifies the schools of landscape and indicates their main representatives: heroic (Titian*)*, classical (Nicolo Poussin), pastoral (Aelbert Cuyp) and contemplative (Turner) (Cook and Wadderburn, 1903: vol. 22, 132). Further on, Ruskin praises the medieval landscape and the medieval feeling towards nature, being well known his worship for natural beauty. A tireless traveller, Ruskin felt the same excitement in front of the Alps and in front of their image in one of Turner's paintings. The lack of some firm theoretical delimitation is due to his structural lyricism, as well as to a sort of pagan cult-the cosmic artist. It is even curious how the puritan and admirer of Gothic art was so open to everything that meant vital high-tide and how he sang neither Jehovah, nor the crossed Jesus, but an aesthetic God, a creative Apollo, disguised in St. Francis, humbly admiring the infinite beauty of his own creation (Roth, 2004:132). The vibrating pages about the movement of the clouds in the sky, the play of the waves, the greatness of the rocks; all these make up real poems in prose, crossing "Modern Painters" with the infinite superiority of nature in front of the deadly limitations of anyman, even when this man is called Turner. It was often said that Ruskin was the first to acknowledge Turner's genius. He says about Turner's pictures that they are not at all works of colour, "they are studies of light and shade, in which both the shade and the distance are rendered in the general hue which best express their attributes of coolness and transparency, and the lights and the foreground are executed in that which best express their warmth and solidity" (Pentelici, 1872: 254). Turner's sense of beauty was perfect, Ruskin comparing also his love for truth with Dante's: "Had Turner died early, the reputation he would have left, though great and enduring, would have been strangely different... he would have been remembered as one of the severest of painters" (Pentelici, 1872: 254).

Ruskin thinks that the true talent of Turner is shown only after 1820, when he remains without any rival, the painter of the loveliness and light of creation. In colour he saw also that the specific grandeur of nature had been rendered, but never her fullness, space and mystery. For the conventional colour he substituted "a pure straight-forward rendering of fact, as far as was in his power" (Pentelici, 1872: 261). Turner rendered beautiful and inimitable facts: "he went to the cataract for its iris, to the conflagration for its flames, asked of the sea its intense azure, of the sky its clearest gold" (Pentelici, 1872: 261). And it was Turner, and Turner only who would follow and render on the canvas "that mystery of decided line, that distinct, sharp, visible, but unintelligible and inextricable richness" (Pentelici, 1872: 261), which, taken as a whole, is all unity, symmetry and truth, Ruskin being convinced that Turner never drew anything without having seen it.

Ruskin's numerous studies about Turner express his irrepressible enthusiasm for the painter and contain detailed favourable aesthetical assessments of his works, so that the public should understand and praise Turner. Although in Pre-Raphaelitism he justly grasps the flaws of some paintings or their tendency towards mannerism, Pre-Raphaelite artists are vigorously supported. The work "The Light of the World" by Holman Hunt, although weak from an aesthetic point of view, is praised for its intense spirituality and for the exactness of details: "examine the small germs on the robe of the figure. Not one will be made out in form, and yet there is not one of all those minute points of green colour, but it has two or three distinctly varied shades of green in it, giving it mysterious value and lustre" (Cook and Wedderburn, 1903: vol. 12, 330). But "The Scapegoat" of the

same artist is severely criticized for lack of composition and of technique, in spite of the good intentions of it. Reynolds and Gainsborough are assessed with an exemplary feeling of nuance, having the exact intuition of the lack of genius of these honest artists, accomplished in their little domain, typically British in measure and lucidity. For English painting Ruskin is not only a Victorian art critic, but he remains the founder of its hierarchy of values, being the only one at that time to acknowledge the quality and dimensions of Turner's genius. There are also a few exceptions in his hierarchy: the appreciation, today visibly disproportionate of some Pre-Raphaelite artists (Burne, Jones, Millais, Brett) and the total lack of understanding for Whistler and partially for Bonington and Constable (Dearden, 2004: 231). But one should not forget that in these cases, Ruskin is deprived of the necessary distance and that, on the other hand, present-day critical judgment regarding the Pre-Raphaelites' artistic value includes a century in the evolution of the world's plastic arts. Once more, Ruskin's merits in painting concrete analysis are real and they can be plainly accepted, even if some aesthetic generalizations remain doubtful.

There are dozens of particular issues which arise from an examination of Ruskin's writings. Towards the end of his life he obviously composed far too much and acquired a certain facility that was unworthy of him. But, as Derrick Leon points out: "he never became complacent and, in his deepest heart, he never forgave himself his own weaknesses" (Leon, 1949: 178). For this and other reasons, the voice of prophecy in Ruskin has an urgency that does not appear quite so consistently in other critics' volumes. Ruskin's major writings retain that sense of immediacy and inner power that is shared by all durable literature. The Gothic theory remains an option and a myth, the more restricted theories in painting, sculpture and architecture often are of a surprising actuality. Beyond the simplicity, the errors and his restrained information, Ruskin is a pioneer and a romantic visionary, replacing with a tumultuous living of the idea, the imprecision of this idea in itself. But above all, Ruskin is a pure and noble soul, approved of the aesthetic living of a man for whom the life was always a miracle. Early 20th writers generally rejected Ruskin, as part of the modernist rebellion pattern against Victorian culture. Yet most of them rightly found in Ruskin an incipient modernism, both in his ideas and in his style. As Sharon Aronofsky Welman puts it "emphatic dismissal of Ruskin did not necessarily prevent his thought from permeating the new aesthetic. While modernism renounced certain aspects of Ruskin's work, such as his retreat from modernity and his nostalgic backward glance at the Gothic, the moderns retained more of their Ruskinian inheritance than they threw away" (Welman, 2001: 209). Here are only a few, but telling examples that account for Ruskin's invaluable legacy. In literature, Tolstoy described him as: "one of the most remarkable men not only of England and of our generation, but of all countries and times", making extensive use of Ruskin quotations, and translating numerous writings of his into Russian. (Eagles, 2010: 79). Proust, another fervent admirer of Ruskin's, followed the former's example (Gamble, 2002: 158). As far as art and architecture is concerned, professionals including. Le Corbusier, Louis Sullivan, Frank Lloyd Wright and Walter Gropius incorporated Ruskin's ideas in their work. Art historians and critics, among them Herbert Read, Roger Fry and Wilhelm Worringer knew Ruskin's work well. Admirers ranged from the British-born American watercolourist and engraver, John William Hill to the sculptor-designer, printmaker and utopianist, Eric Gill (Cianci and Nicholls, 2001: 42). Therefore, one may conclude that, although 20th century scholars took pains in minimizing Ruskin's merits, their effort has actually emphasized both his

influence that reached across the world, as well as the part he played in the foundation of modernism.

Note:

Quotations from the writings of John Ruskin are taken from: Cook E.T. and Wadderburn A. (ed.) in 39 vol., *The Complete Works of John Ruskin*, Library Edition, George Allen, London, 1903-12. The Arabic numerals in parentheses refer to volume and page numbers. *The Online Books Page*.

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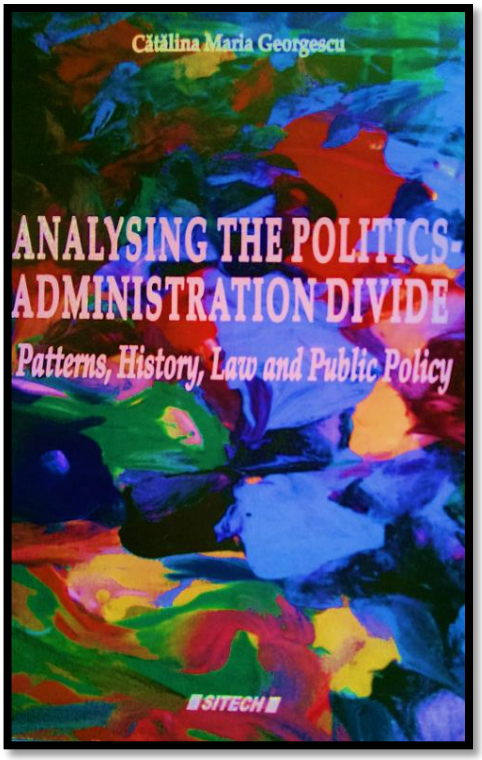
BOOK REVIEW

Cătălina Maria Georgescu, Analysing the Politics-Administration Divide: Patterns, History, Law and Public Policy, Craiova, Sitech, ISBN 978-606-11-3903-3, 216 pages.

Anca Parmena Olimid*



There has been a growing interest over the last 25 years to address the politics-administration divide. Much of the studies have focused on the problem of institutions and policies at the regional and national level. Reading through Cătălina Maria Georgescu's complex study of the politics-administration divide, it totally obvious that the "change of paradigm" in the field is based on the "argument that the post-bureaucratic organization is oriented towards the quality of services" (page 21). *Analysing the Politics-Administration Divide: Patterns, History, Law and Public Policy* takes on the paradigm of the politics-administration dichotomy. In a sense, Cătălina Maria Georgescu's volume investigates the ambivalence of the relationship between the traditional and innovative paradigms in the study of public organizations focusing on the comparative approach and the model of complementarity between politics and administration. *Analysing the Politics-Administration Divide: Patterns, History, Law and Public Policy*" is a remarkable new book by Cătălina Georgescu which frames, in original and innovative terms, an inquiry into political sciences, public administration, law and communication. To answer this question, all ten chapters of the author' approach are imperatively opened to innovation and transperancy in public administartion. The brilliance of all ten chapters enforces the

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strategy and the public policy framework. The main motivation of Cătălina Georgescu is to test and accumulate evidence on the historical, legal and political consequences of the "administrative capacity" conditionality.

The author focuses on reframing the traditional paradigms in the study of public organizations given the challenging relation between politics and administration in comparative analysis. As Georgescu states in Chapter 1, "the public sector aggregates all public entities created in order to answer the needs of the whole society" (page 16). Two of the central questions guiding the book is what are the key factors influencing the ethical values, integrity and transparency in Romanian public administration and employment area and what patterns of political-administration divide are important for organizational outcomes? The book addresses these questions by exploring the descriptive statics, the correlations analysis, the multicolinearity analysis and the regression analysis. The author's scope and objective of writing this book is an ambitious and organized one. The book is intended to appreciate the functioning structure of the public administration.

Chapter two and three explore the patterns of communication and transition and the challenges of the procedures in communication practices. Chapters four and five illustrate the most important recent developments and innovations in governance and administration. Chapters 6 to 10 highlight three main shortcomings: firstly, the legal and political implications of the ethics and integrity standards within Romanian public administration; secondly, the features of ethics, integrity and transparency "as national strategic objectives" and thirdly, both the opportunities and challenges of the public organizations operationalizing "the variable competition for resources". Furthermore, in the book's chapters 6 and 7, Georgescu develops a framework for analyzing public administration suggesting "the efforts stimulated by the reform process have imposed the use of a public management quality assessment instrument within public administrations" (page 96). In Chapter 8, the author argues that "the increase in public organizations' efficiency directly involves public managers, members of parliament, theorist, stakeholders who must answer a series of questions". The last two chapters are the most challenging in the fields of law, economics, social sciences, administration etc.

The book covers a great deal of themes and social application provinding a critique of the "historical perpectives" pointing the policy recommendations for a "good administration" and the leadership of public organization (page 91). Georgescu's readers are thus left with the patterns of the relationship between politics and public organizations approaches. I like and recommend this book, the text of the book is an educational and intellectual effort of the author enlightening the perception of public administration research in post-communist Romania.

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