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ORIGINAL PAPER

Emanuel COPILAŞ

The 'patriotic guards' and the 'popular war doctrine'. On the ideological scaffolding of Socialist Romania's security policy

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Abstract: *„Prague spring", or, in other words, Moscow's intolerance for political and economical reforms challenging the communist monopoly in the „brotherly countries", posed a considerable influence on the security policy of socialist Romania. It even led to major reinterpretations and reorganizations of the existent strategic conceptions. Accordingly, the „popular guards" were once again put in place, and the doctrine of „popular war" came to light. The constitutive extent in which these concepts were penetrated by the romantic-Leninist ideology constitutes the object of the present paper.*

Key words: *romantic-Leninism, strategic thinking, „patriotic guards", „popular war", Warsaw Treaty.*

Outlining romantic Leninism

I have chosen to conceptualize the ideological structure of Romanian communism during the 'Ceauşescu era' under the name of romantic Leninism. An unusual mélange between different ideological extremes, romantic Leninism enters the stage once Gheorghe Gheorghiu Dej's young successor, Nicolae Ceauşescu, achieves and consolidates power. But romantic Leninism is much more than Ceauşescu's thinking, despise the fact the latter represented the primary source which fueled it - reflecting a multitude of social tendencies, mentalities, bureaucratic inertias and ideological fidelities. The Leninist component of romantic Leninism is characterized by its permanent projective orientation in the sense of overcoming the 'bourgeois' world trough massive industrialization, considered to be validated by historic laws and, in general, trough intransigent attitude, 'revolutionary vigilance', oriented against any political or ideological shortcomings or 'deviations'. The romantic component, on the other hand, includes the cult of heroism, exacerbated nationalist flares against all inside minorities, respectively for international affirmation, externally, the hypertrophyation of the party in relation to its leader, the general secretary of the Central Committee, a fascistic evolution, because only in fascist regimes the most important depository of legitimacy is the leader, not the party – and, in general, the importance accorded to the nation, a concept which the Romanian communists tried to ideologically aseptize trough, among others, a substantial contribution to the creation of a 'new international order'. Leninism, romanticism, nationalism and fascism, paradoxically, but functionally, coexist inside this species of Leninism and confer it an unique identity, formed both by positivist elements, with an exacerbated modernity (Leninism), and form premodern elements (romanticism and nationalism). On short, a paramodern identity, which the regime tried to impose the society until its very last second of existence, hoping and acting trough any means possible to ideologically enroll an essentially hostile population and therefore 'counter-revolutionary'.[1]

The consequences of the 'Prague spring' in Romania. Ideological and security aspects

'We have decided that, starting today, to begin the formation of armed patriotic guards, made of workers, peasants and intellectuals, defenders of the independence of our socialist homeland'- Ceauşescu ranted in front of the people gathered in 21 August to listen about the position of the Romanian leadership regarding the events in Czechoslovakia. 'We want our people to have its own armed units to protect its revolutionary conquests, to ensure its peaceful work, the independence and security of the socialist homeland'.[2] Moreover, after two days, on a military parade, the 'patriotic guards' ostentatiously marched in front of the Soviet embassy.[3] 520 000 soldiers, 'including the active reserves', and '700 000 members of the patriotic guards' could have been mobilized by the end of 1968 by the Romanian Communist Party (RCP).[4] Ceauşescu intended to transmit a clear signal to Moscow, namely that he will continue to firmly defend its position as a supporter of Czechoslovak reforms and as an accuser of the

Warsaw Treaty Organization's (WTO) military intervention in that 'brotherly country', under the Soviet aegis; Romanian Socialist Republic's (RSR) defiant attitude will come to an end several days later, when, as we are about to see, the Soviet ambassador in Bucharest will deliver a clear message to the impetuous Romanian leader from the Political Bureau of the Communist Party of the Soviet Union (CPSU). The 'patriotic guards', however, were not founded in 1968 during those turbulent circumstances – when Romania was not as endangered by a potential Warsaw Treaty intervention as it is usually considered; they had a much longer history. Even before 23 August 1933 these guards were constituted as 'shock brigades' trough which the communists had presumably prepared the 'armed insurrection' against the Antonescu government. In reality, the 'patriotic guards' were paramilitary formations that terrorized the population and the state institutions to create confusion and discouragement, vital ingredients for the communist takeover. Composed 'in a large extent by the most advanced and determined workers in the fight against fascism, communist, communist youth and party-less workers', the 'guards', commanded in those days by Emil Bodnăraş, were secondated by 'groups of patriots with local missions, which trough sabotages and agitation had to a general confusion in the fascist state apparatus'.[5] The shock groups played, apparently, a considerable role in bringing under control the public institutions and the population in general. Together with the army, 'which turned its weapons against the Hitlerite occupants' and the 'masses of workers and peasants', the guards 'created that revolutionary force which gave a large popular character the armed insurrection and ensured the conditions to reach victory'.[6] The 23 august 'victory', to be precise; however the guards also had a notable contribution to the installment of the regime, by being maintained 'in cities and even in some villages' as forms of 'citizen control against speculators, thieves and other delinquents'.[7]

Being established and abolished after the regime's liking, the guard gradually loosed their general utility as post-revolutionary Leninism[8] replaced successfully the 'bourgeois' organization of the Romanian society. They were reactivated in 1956, once the Hungarian revolution broke up, but they gradually slipped into obscurity after the retreat of the Soviet army, two years later, and finally ceased their activity in 1962. During Gheorghe Gheorghiu Dej's leadership, these groups were officially named 'fighting formations of the people'. Only in 1968, when, due to Ceauşescu's insecurity, they were permanently reinstalled, they became 'patriotic guards'.[9] The new denomination reflects the nationalist surplus of the new leadership. Furthermore, trough the permanentization of those specific guards we can partially understand the integrative tendencies of romantic Leninism in relation to the society, much more pronounced than that of autonomous post-revolutionary Leninism (Romanian communist ideology during the Gheorghiu-Dej regime).

The reconstitution of these formations begun immediately after Ceauşescu's speech in the palace market. Benefiting, at least in that period, of popular adherence, the guards reached impressive numbers. Only in Timiş county (the territorial-administrative reorganization took place in February)

they summed up about 15 000 members, assigned as it follows: in Timişoara, Lugoj and Jimbolia were created 79 guards including 4284 members, and in communes (implicitly in villages too) existed 169 formation like these, including 10599 members.[10] We can therefore build up a general image regarding the national number of 'patriotic guards'. Most importantly, in those moments, the RCP could count, in case of an improbable external aggression, on the vast majority of their members. One cannot say the same however in the 1970s and 1980s, when the regime had for long lost popular enthusiasm, in which's inertia still continued to imagine itself.

As romantic Leninism became progressively isolated, both internally and externally, and therefore less and less capable of putting into practice its communist inter-national project (of uniting all 'anti-imperialist' and 'anti-colonial' forces in the effort to bring about a 'new international order') – the role of 'patriotic guards' as 'socialist conscience' and 'revolutionary patriotism' promoters amplifies.[11] So does the romanticism specific to this type of Leninism, in which fascist tones are recognizable. Regardless of the organizations they were enrolled in, all citizens had the 'primordial obligation' 'to be ready anytime to defend with abnegation, *with the price of blood and life*, the revolutionary conquest of the people, the sovereignty and national independence'. Mobilizing exhortation in the style of Nicolae Bălcescu are also present: 'To be worthy of our ancestors, we are obliged to fulfill their dream of making the homeland more and more flourishing, to lift it on new peaks of civilization, so as to shine forever between the countries of the world'.[12]

Both during an armed conflict, and during peacetime, the 'fighter' from the 'patriotic guards' had to obey first of all the legislation in force. Build after Leninist patterns, this would have constituted and indispensable action guide for the combatant. '«*Socialism cannot be build trough disobeying laws, trough anarchy!*»' Ceauşescu vehemently stated. '«*This represents a bourgeois and small-bourgeois mentality and spirit, foreign to the working class which, through its essence, is a disciplined, revolutionary class!*»'.[13] Moreover, discipline, alongside resistance, was considered the most important quality of the fighter; its courage and 'bravery' had to be always subsumed to the party leadership, the only force entitled to build 'socialism'.[14] Next, the members of the 'patriotic guards' had the duty to 'vigilantly' protect 'the revolutionary conquests of the people', especially against internal enemies, which's actions were always supported, material or only ideological, by foreign enemies. The filiation between romantic and post-revolutionary Leninism is clear in this point. Therefore, because 'in a form or another, remains of old habits, attitudes and conceptions alimented by a series of bourgeois influences from outside still persist in the conscience of some of the society's members', the guards members had to identify and 'combat' the 'corrupt elements', instrumented by 'reactionaries' and by 'imperialists', nothing more than 'remains of the former exploiting classes' or 'declassed individuals, hungry for laziness and ease, creatures free of the most elementary moral norms, willing to sell their homeland, to betray the country in which they were born and grew up in order

to satisfy their own petty personal interests'. These were categorically condemned by the RCP's general secretary: '«*for a handful of silver, they betray their homeland*».[15] Using biblical metaphors to accuse the society's lack of adherence towards the revolutionary project of the regime confirms the fact that its romanticism became more exacerbated as it lost the war with 'bourgeois' reality. Romantic Leninism was making its final, more and more absurd attempts to force the appearance of 'revolutionary conscience' for the society and an organic unity between it and the aspirations of Nicolae Ceauşescu, concomitant with the rejection of foreign influences, from now on inimical regardless their political and ideological provenience.

> 'As part of socialist consciousness and of revolutionary patriotism, revolutionary vigilance does not constitute a conjunctural act, but a rule of conduct which must guide every working man, every military and patriotic guards fighter in any circumstances. For the citizens of our homeland there is no greater honor, no nobler and uplifting duty that to love and defend the socialist homeland. The high revolutionary conscience of our people, its ardent patriotism, the strict obeying of the country laws, the hatred towards those who attempt to violate its revolutionary conquests, its independence and national sovereignty, made it hard for the foreign information services to find fertile ground for their espionage activities. It is proven that a characteristic of our society is constituted by the monolithic unity between the people around the party, unity expressed in the determination with which all working people, regardless of nationality, work for the development of the economic power and defending capacity of the homeland'.[16]

The 'patriotic guards' were subordinated to the RCP and the army. Never being involved in an armed conflict, they were used for a multitude of functions which included: assisting the 'Internal Ministry units' or 'border guard troops', security and maintaining public order missions, but also helping in case of natural calamities, fires or major accidents that would have required their convocation.[17] Enrollment in the 'patriotic guards' was voluntary. Of course, we are talking about the Leninist sense of voluntary; from a document of the Timiş County National Archives we can find out that, in the 23 of August 1968, the constitution of the new formations in the Timiş county communes was over. Unsurprisingly, 'no one refused to be a part of the patriotic guards'.[18] The age limit, 60 years for men and 55 for women, could be exceeded on request. The minimum age to become a member of the 'patriotic guards' was 21 years, for both sexes. But the recruitment of 'youth squads for defense purposes' begun much earlier, from 16 years on.[19] The young learned, under the army's guide, detailed instruction programs on one to one combat, the use of different types of

weapons and deriving advantages from the position and the resources of the field on which the rejection of the outside enemy would have taken place. The 'youth training for defending the homeland' manual, edited by the Ministry of National Defense, is highly concluding in this sense.[20]

In case of war, the guards would have fought under the army's command to defend the aggressor (The RSR would have fought only 'just', defensive wars) within the framework of a 'popular war' war 'war of the entire people' which, in Ceauşescu, would have obtained epic proportions. This would have meant a coordinated effort which the whole population, 'young and old, men and women' would have been obliged to fought for saving the 'homeland's independence'. Now, the guard's 'fighting missions' include the defending of different strategic objectives and the facilitation of logistic actions to stop the invader, but, occasionally, they can be also offensive. What is interesting is that, in order to ensure the combativity of the guards, these would have been located, in case of war, in the perimeters of the cities or villages where the fighters lived or were born.[21] Here is how the national sentiment was induced and exploited not only 'from above', but also reversely, 'from below'. The concept of 'entire people's war' was not Ceauşescu's invention, but a borrowing from the Yugoslav military doctrine. The popular war will be utilized also for undermining the security policy of the whole 'socialist camp', managed by the WTO. The RSR did not acquiesced to the 'common defense' desideratum this organization tried to impose, but, on the contrary, transformed the national security in a principial question incompatible with a superior referent.[22] Romantic Leninism will vehemently affirm its dissidence at the military level; the army's type of nationalism was blended with the one coming from the official ideology for an assault as efficient as possible over the 'old', the 'small-bourgeois spirit', which obstinately resisted the party's propagandistic avalanche. The army's main role will be diverted into an 'agent for patriotic socialization' which, under RCP's leadership, will strive to create the 'socialist conscience' that was so necessary for the future 'new man'.[23]

Truly, as Jones and Alexiev observed, the RCP managed to successfully imprint its 'ideological values' to the Romanian military thinking, therefore military nationalism was combined almost perfectly with romantic Leninist nationalism.[24] 'In the military field, the leadership is by excellence a political activity, due to the revolutionary character of the armed institutions, its role and functions in the society, its sacred mission', and the whole activity of the army must be subsumed not only ideologically, but also organizationally, to the RCP. The romantic-Leninist indoctrination was also a basic component of the army's activity 'all commanders, all cadres must understand that political, educational work it is not a specialty in our army, it is not the task f a distinct category of cadres, but a major attribution of all the cadres'.[25] Here are some of the characteristics that the 'military cadres' had to develop in order to serve the 'homeland' as good as possible: first of all, they had to attend to their '*political and ideological culture*', respectively 'the profound and multilateral understanding of the party's policy, their arming with the revolutionary

conception of the working class about the world and life – the profound knowledge of comrade's Nicolae Ceauşescu's work which represents the creative appliance of Marxism to the concrete conditions of our country'. Then, the military must have proved they had 'ardent patriotism' and cultivate their 'revolutionary spirit' and 'militancy'; they also needed 'to be animated by a *developed sense of justice*', not to disobey 'military dignity and honor', to show their 'high responsibility' in work and to have the 'courage of assuming responsibility', to manifest 'initiative spirit', to permanently overflow with 'unquenched *passion* in work', 'to serve as *example for the subordinates*' and, last but not least, to have the 'skill to mobilize and enliven the subordinates to the irreproachable fulfillment of duties'.[26] How can these principles not be compatible with romantic Leninist ideology when they represent nothing more than a vehement expression of it?

Moreover, how can military nationalism not be compatible with the romantic Leninist one when the latter integrally confiscated the former and instrumented it according to its own ideological logic? While the 'bourgeois spirit' penetrated more and more the communist world, the RSR's military propaganda strived to inoculate the uniform wearers 'the mixing of their own being to the goals and ideals of the party, a mixing expressed in an unreserved dedication to the relentless fulfillment of these goals and ideals'. Therefore, it was not just 'the propagation and explanation of some conceptions, theses, qualities, virtues', but an 'authentic transformation of them in ideals and unshakable beliefs of the military, which to come to life in their attitudes and facts, in their way of thinking and living'.[27] As Alexiev properly underlines, the RCP ideologically articulated a new type of nationalism which can be described as 'calculated policy to elicit support for broader party objectives and is used primarily as a mobilization tool'. But, Alexiev does not forget to add that, 'in pursuing a nationalistic course, the party itself has undergone a process of resocialization in nationalistic values. This had, in turn, made it more receptive to intrinsic military values. A logical consequence of this process has been the party decision to restore the formerly downgraded military to its traditional position as repository of national ideals'.[28]

Back to the 'popular war', we find out that, unlike classical wars in which 'the fighting actions are carried out only or almost only by regular armed forces', in the 'popular war' 'act and play an important role the popular fighting formations (guerillas, partisans, patriotic guards, resistance formations etc.) which, according to the circumstances, can act independently or together with the regular army'.[29] A typology of this type of war, advanced in the last years of the regime, helps us understand better the manner in which romantic Leninism conceived its (in)security. In this way, the 'popular war' is not to be confounded with 'defensive wars' or 'social liberation' or national wars, although it undeniably encompasses elements of this kind. Although found in 'capitalist' states as well, the semantics of this kind of war is much more pronounced in Leninist regimes, where 'it ensures the indissoluble blending between the patriotic and the revolutionary spirit in social and military action'. Furthermore,

to be truly popular, a war necessitates 'a mass, large participation'. Its fighting techniques are varied 'in relation with the possibilities of the people, the nation, the social forces that support and wear it'; event if it is indicated that the adversary should not be 'massacred', eventually, this aspect depends on its behavior. Fighting against the enemies is without 'restrictions or prejudices'; the invader must be rejected and the national being defended at any cost. Moreover, 'the popular war is a long war'. Its extension reflects the population's resisting capacities and the progressive erosion of the material and moral forces of the enemy. Nonetheless, this type of war 'has its own fighting forms and techniques', of which the most important is 'the strong correlation of the social-political dimensions with the forms and procedures of armed fighting' and it is also a 'total war' because 'it assumes an engagement on all fields – military, political, ideological, economic, moral-psychological' in order to successfully deal with the aggressor.[30] It was estimated by the military experts that approximately 50% of the population could be mobilized in case of such a conflict.[31]

The main component of the 'popular war' thus becomes visible: ideological indoctrination.[32] Romantic Leninism needed in the first place a faithful society, believing and acting for 'building socialism'; in the eventuality of a conflict, its capacity to maintain power would have been seriously questioned, and the RCP's leadership was undoubtedly aware of this aspect. The propaganda in favor of the regime, camouflaged to some extent in the form of 'revolutionary socialist patriotism', entered an exacerbation process as the society was furthering away from the regime, giving in the 'bourgeois' ideological temptations. The tendency is clearly confirmed by sociological studies done on Romanian mass-media from that period, which concluded that 'the citizens' preference for audio-visual mass-media placed political-patriotic-economic reports on embarrassing low positions – less important than any musical or entertaining program, than any sports, theater or cultural transmission, even than the weather bulletin'.[33]

Farewell but not goodbye. Eluding the WTO policy

The internal field of RSS's security policy is intertwined with the external one as much as the internal orientation of romantic Leninism is connected to the external one: the mobilizing and integrative totalitarianism with reference to the 'socialist nation' has its counterpart in the independence desideratum, be it military, political or economic.

Established in 1955 as a counterweight of the North Atlantic Treaty Organization (NATO), the WTO represented the military dimension of the 'socialist camp', instrumented of course by Moscow. In general, the WTO's structure was made of the Political Consultative Committee, an organism which gathered twice a year to discuss pressing military issues, followed by a 'permanent commission with the task of elaborating recommendations in foreign policy problems' and a 'united Secretariat' which held representatives of the member countries.[34] In 1969, to these organisms was added a 'military council': the security of the 'socialist camp' needed to be redefined after the 1968

events. The council had a consultative role and iti did not comprise representatives of the RSR.[35] Approximately in the same period, a political directorate' is created, having the role of preventing the centrifugal tendencies of member countries tempted to adopt security strategies similar to Yugoslav or Romanian ones.[36]

One of the main activities of WTO's members consisted in joint military exercises. These were introduced by marshal Greciko n 1961, Cristopher Jones argues, 'in order to prevent Romania to develop a territorial defensive system and to prevent other defense ministries of the WTO to follow the Albanian and Romanian examples and retreat their armed forces from the interior of Soviet control mechanisms'.[37] As we already know, Soviet troops were pulled out of Romania in 1968, and Albania and the Soviet Union ceased their diplomatic relations in 1961, when Enver Hodja vigorously took the Chinese side in the Sino-Soviet conflict.

Consonant with its new foreign policy launched at the beginning of the 1960s, Bucharest did not allow Soviet troops to perform military maneuvers on Romanian territory from 1962 on. Until 1967, Romanian communists have refused large scale applications, participating only in 1964 and 1967 on exercises 'developed on the P.R of Bulgaria's territory'.[38] After 1964, the new Soviet leadership – Nikita Khrushchev was replaced trough a coup d'état by its former subordinate Leonid Brezhnev – pressured the RSR for a growing integration of its military forces in the WTO's structures, a fact which only further deteriorated the relation between the two states, already at a historical low.[39] Starting with 1969, due to the consequences of the military intervention in Czechoslovakia and to the straining of political relationships within the 'socialist camp', the RSR became aware of the imprudence of continuing to speak on a defying tone about East-European military problems and it will get involved more frequently in WTO's activities, even if its overall participation remained sporadic.[40]

In general, the RSR's interactions with the WTO were formal in relation to the involvement degree of the other member states, but one cannot affirm that the Bucharest leaders have neglected the duties incumbing them as signatories of the pact. They only maintained the at a 'minimal level'.[41] After 1970 there were allowed a certain type of WTO's actions on Romanian territory, namely simulations of military exercises on maps carried on by officers; the involvement of effective military contingencies, as in the case of other member states, was not allowed because they would have entailed the fear of violating the national sovereignty and of ceding the leadership of the Romanian army to the Soviets. Ceauşescu was highly sensible regarding this aspect. His romantic heroism, coupled with the vanity of being the supreme commander of the Army forces was taking the lead: '«the Romanian army will receive orders only from the supreme party and state organs and at the call of the people, and (...) will never receive orders from outside»'. The nature of the relation between the RSS and WTO is plastic and ironically described by Cristopher Jones '«after the 1963 joint exercises (Aurel Braun advances 1962 as the year the joint activities of the

pact within the Romanian borders stopped, m.n.) Romania never allowed maneuvers on Romanian soil, although it sent personnel to the WTO which the Romanians described as observatories, and the Soviet described as participants»',[42]

Beside, or reasoning with the ideological direction of the relations between the Moscow centre and its east-European satellites, the military component plays an important role as well. The Soviet Union intervened military when, Jones argues, not necessarily the Leninist ideology entered a stage of collapse, as it happen in 1956 in Hungary or in 1968 in Czechoslovakia, but when the local communist regime did not manage to mobilize the population against an eventual external aggression. Tito's Yugoslavia, Gomuł ka's Poland and Ceauşescu's Romania were not part of this category. In case of an intervention in one of those countries, their communist regime could count, at least partially and on this regard, on the support of a great part of the population. Even if the defensive forces had no chance against the invader, the geopolitical risks which a scenario like this entailed convinced Moscow that prudence is preferable.[43] I agree with Jones to a certain point: yes, political realism had a considerable weight among socialist countries which pretended they overcome it, unlike the 'imperialist camp' which transformed into a central international strategy, but, on the other hand, we cannot place the Leninist ideocratic framework on a second position in this equation. On the contrary, we are more likely to deal with a Leninist realism, to say so, at least until the first half of the 1960's, when Europeanized Leninism still believed sincerely in the feasibility of the global revolution, even if in rather social-cultural than political-military terms.

In fact, the main inadvertence of the RSR and WTO's relationship resided in the fact that 'the Romanians had the tendency to see the Warsaw Pact more as a traditionally military alliance of sovereign states than as a military fraternity of socialist countries which share objectives, social systems and an identical ideology',[44] something that reasoned perfectly with the independence ambitions and the heroic posture in which romantic Leninism imagined itself and aimed to be perceived on the international stage. But, on the other hand, the RSR did not passed over the limits of Soviet tolerance in the military affairs of the 'socialist camp', as it did not in political and economic regards as well.

Ceauşescu criticized roughly, in 1968, the Dresden discussions regarding the centralization of WTO, to which the RSR was not invited. The meeting foreshadowed the imminent invasion of Czechoslovakia which was met with hostility in Bucharest.

> 'At the Dresden meeting our country was not invited. We do not reproach anyone this. What kept our attention is however that at this meeting were discussed problems of the C.M.E.A. (Council for mutual economic assistance, m.n.) and of the United Armed Forces Commandment of the Warsaw Treaty participant states. We consider that discussing such problems, which refer to international organisms to which's

> foundation Romania did not took part, cannot be done only by *some* member states. It surprises us the fact that it was discussed about the military commandment of the states participating to the Warsaw treaty, because in Sofia was decided by all delegations that the ministries of armed forces would elaborate, in a six months term, proposals for improving the activity of this commandment. (...).
>
> As the experience so far has proven, such actions and procedures are not likely to contribute to the enforcement of these organisms, to the increase of confidence, collaboration and unity of the socialist countries.[45]

The WTO was considered an organization with a pure defensive role, which would act 'only when a country of those which have associated in this organization would be attacked by an imperialist country'.[46] According to Ceauşescu, the force and cohesion of the WTO consisted in the permanent enforcement of national capacities of the member states, not in its centralization, from which only the contrary would have resulted. Even since 1966, when the new Soviet team, lead by Brezhnev, tried to redefine the WTO in terms as advantageous to Moscow as possible, the RCP's leadership affirmed that is 'not suitable to exist representants of the Supreme Commandment of the United Armed Forces in the armies of the states participating to the Warsaw Treaty',[47] a position which the RSR will never abandon.

> 'The thesis that tries to be accredited lately (at the end of the 1960's, m.n.), according to which the common defense of the socialist countries against an imperialist attack assumes the limitation or the renouncement of sovereignty by any state participating to the Treaty does not correspond to the principles of the relations between socialist countries and cannot be under any circumstances accepted. Appurtenance to the Warsaw Treaty does not only not question the sovereignty of member countries, does not «limit» in a way or another their state independence, but, on the contrary, as it is provided even in the Treaty, it is a way of enforing the independence and national sovereignty of each state'.

Not the resurgence of centralism, which would have reminded of periods from the international communist movement that literally loathe the RSR, the general secretary of the RCP considered to be the solution to the security problems of the 'socialist camp', but, as we already mentioned, their military capacities: 'the forces of the countries anticipating to the Warsaw Treaty are based on the force and strength of each national army', and 'the responsibility of every state is to strengthen its own army'.[48] Pretending to act trough the

empowerment and in the name of the people, with which it tried to build up the romantic Leninist variety of socialism, Ceauşescu declared vigorously that, acting exclusively for the security of the Romanian nation, the leadership of its army could never be exteriorized: 'it is not conceivable in any way the ceding of any part, no matter how small, of the part of command and rule of the armed forces by the party, by the government'.[49] The Bucharest leadership permanently legitimized its position using principles from the founding documents of the WTO and reinterpreting them in a romantic Leninist key: 'in the statute of the Warsaw Treaty is said clear that every country would participate to its activity according to its capacity, with the provisions and decisions each state will adopt. Therefore, we did not concede and will not concede to anyone else the right to engage the Romanian army in any military action except the parliament, the people, the Romanian party and state organs'.[50]

In 1978, the RSR once again obstructed the Soviet plans to increase the military spending of the WTO by refusing to adopt the Soviet posture in the most important international events like Moscow's condemnation of the Camp David accords, in the signing of which the American president Jimmy Carter occupied a central role. The Soviets were surely unpleased by the fact that Israel's position emerged enforced with ratio to the Arab countries, this state being considered by the Kremlin as a bridgehead of American influence in its own geopolitical perimeter. Nonetheless, the Bucharest leadership refrained from intervening in China's critic, ritualistic by now. Brezhnev condemned roughly the RSR's attitude, accusing it of 'demagogy' and of the undermining of the defensive potential of the 'socialist camp' in relation with the 'imperialist' one.[51]

The behavior of Romanian communists regarding the WTO was maintained on the same positions during the next decade. So did the romantic Leninist ambition of an international independent policy which did not manage, and probably never could, overcome the level of autonomy:

> 'The fact that Romania is a member of the Warsaw Pact is not likely to limit in any way its independent foreign policy. This pact was created to defense the independence of each member nation in case of outside attacks and it justifies its existence only to the extent that each country can ensure its full independence, and it can actively participate to the international life, according to its own interests'.[52]

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1 The concept of 'paramodernity' is borrowed from the work of Sorin Adam Matei Boierii minții. Intelectualii români între grupurile de prestigiu şi piaţa liberă a ideilor, Bucureşti, Compania, 2007. I develop the romantic Leninist ideology in my doctoral thesis entitled Geneza leninismului romantic. O perspectivă teoretică asupra orientării internaţionale a comunismului românesc, 1948-1989, defended in December 2011.

2 Nicolae Ceauşescu, Cuvînt la adunarea populaţiei din capitală în piaţa palatului republicii, în România pe drumul desăvîrşirii construcţiei socialiste, Bucureşti, Editura Politică, 1969, pp. 416-417.

3 Dan Cătănuş, România şi „primăvara de la Praga", Bucureşti, Institutul Naţional pentru Studiul Totalitarismului, 2005, p. 86.

[4] Cristopher Jones, Soviet influence in Eastern Europe. Politicau autonomy and the Warsaw Pact, New York, Praeger Publishers, 1981, p. 83; H. B. Jacobini, International law, defense and aspects of Romanian military doctrine, in International Journal of Romanian Studies, nr. 1, pp. 85-103, p. 84.
[5] Lecţii în ajutorul celor care studiază istoria P.M.R., Bucureşti, Editura Politică, 1960, pp. 449-450.
[6] Ibidem, p. 466; Leonida Loghin; Alexandru Petricean, Gărzile patriotice din România, Bucureşti, Editura Militară, 1974, pp. 28-53.
[7] Leonida Loghin; Alexandru Petricean, op. cit., pp. 94-95; În sprijinul activităţii politico-educative din cadrul gărzilor patriotice, Bucureşti, Secţia de asigurare tehnico-economică a presei şi publicaţiilor Ministerului Apărării Naţionale, 1986, pp. 20-21.
[8] I have advanced, in the article Counter-idea of the 20th century. Varieties of Leninism in Soviet and post-Soviet Russia, under review at Communist and Post-Communist Studies, a typology of Soviet Leninism as it follows: revolutionary Leninism (classical), post-revolutionary Leninism (Stalinism), Europeanized Leninism (Khrushchevism), systemic Leninism, (Brezhnevism) and post-Bolshevik Leninism (Gorbachevism). Without entering into details, I consider the first three types as revolutionary, in the sense that, in different degrees, appreciated the global revolution as unavoidable and acted, in different ways, for its reification, while at the last two types the revolutionary substance disappears, in the first case because of using strict political means and of the slow renunciation of ideology (global revolution) in the relations with 'imperialism', and in the last case due to the repudiation of the Bolshevik dimension of Leninism, of the 'democratic centralism' which instituted the infallibility of the communist party and its role as the unique guide of the revolutionary process.
[9] Leonida Loghin; Alexandru Petricean, op. cit.
[10] Direcţia Judeţeană Timiş a Arhivelor Naţionale, (DJTAN), fond Comitetul Judeţean PCR Timiş, Dosar 34, 1968, f. 10, 17.
[11] În sprijinul activităţii..., p. 24-25.
[12] Ibidem, pp. 60-61 (emphasis mine).
[13] Ceauşescu apud. Ibidem, p. 109 (emphasis in original).
[14] Ibidem, pp. 110-111.
[15] Ibidem, pp. 150-151 (emphasis in original).
[16] Ibidem, p. 153.
[17] Ibidem, p. 23.
[18] DJTAN, fond Comitetul Judeţean PCR Timiş, Dosar 34, 1968, f. 18.
[19] Leonida Loghin; Alexandru Petricean, op. cit., p. 133; Ari Chaplin, The „popular war" doctrine in Romanian defense policy, în East European Quarterly, nr. 3, 1983, p. 273.
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[22] Alex Alexiev, Party-military relations in Eastern Europe: the case of Romania, in Roman Kolkowicz; Andrzej Korbonski, (ed.), Soldiers, peasants and bureaucrats: civil-military relations in communist and modernizing societies, London, George Allen & Unwin, 1982, p. 213; Alex Alexiev, Romania and the Warsaw Pact: the defense policy of a reluctant ally, in Strategic Studies, no. 1, pp. 5-18.
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[24] Ibidem, pp. 221-222; Cristopher Jones, op. cit., p. 171.
[25] Mihai Arsîntescu; Gheorghe Găinuşe; Oliver Lustig, Componente ale doctrinei militare naţionale. Reflecţii, Bucureşti, Editura Militară, 1985, pp. 154-155.
[26] Ibidem, pp. 160-174 (emphasis in original).
[27] Ibidem, p. 224, 248.
[28] Alex Alexiev, Party-military relations..., p. 207.
[29] Corneliu Soare, (coord.), Tipologia conflictelor armate contemporane, 1988, Bucureşti, Editura Militară, p. 216.
[30] Ibidem, pp. 220-225; Aurel Braun, Romanian foreign policy since 1965. The political and military limits of autonomy, New York, Praeger Publishers, pp. 173-178, 184-185; H. B. Jacobini, op. cit., pp. 85-103.

[31] Alex Alexiev, art. cit., pp. 6-7.
[32] Ari Chaplin, art. cit., pp. 276-277.
[33] Daniel Nelson, Romanian politis in the Ceauşescu era, New York, Gordon and Breach, 1988, p. 30.
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[35] Cristopher Jones, op. cit., p. 133.
[36] Ibidem, pp. 164-171.
[37] Ibidem, p. 106.
[38] Gavriil Preda; Petre Opriş, România în Organizaţia Tratatului de la Varşovia, 1954-1968, vol. II, Bucureşti, Institutul Naţional pentru Studiul Totalitarismului, 2009, p. 372.
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[45] Constantin Oancea, et. al., Tratatul de la Varşovia, 1955-1980, Bucureşti, Editura Politică, 1981, p. 34. (emphasis in original).
[46] Ibidem, p. 38.
[47] Gavriil Preda; Petre Opriş, op. cit., p. 256.
[48] Constantin Oancea, op. cit., p. 39.
[49] Ibidem, p. 47.
[50] Ibidem, p. 75.
[51] Daniel Nelson, op. cit., p. 205.
[52] Constantin Oancea, op. cit., p. 67.

ORIGINAL PAPER

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The adherence of national minorities to the National Renaissance Front

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Abstract: *Established by King Carol II, the National Renaissance Front had the mission to group around the sovereign supporters of his political plan. Those charged with enrolments to the party tried to attract representatives of all social categories, leaders of old traditional political units, but also representatives of national minorities; the placing of the latter in the Front was desired to be perceived as a national consensus regarding the political regime of Romania at that time. The Romanian leaders, given the territorial claims that some of the minorities had, considered such an agreement absolutely necessary, inasmuch as their demands were intensified by revisionist tendencies manifested at European level. The first agreements were signed, as expected, with the German, Hungarian and Bulgarian minorities; although they signed applications for membership, individual or collective, to the royal political party, most of the minorities not only joined its doctrine, moreover, they tried to combat the F.R.N. principles from inside.*

Key words: *National Renaissance Front*, *King Carol II*, *national minorities, adherence agreement, territorial claims.*

The National Renaissance Front, the party founded by King Carol II on December 16th, 1938, was intended to be a mass party, a political party that would include among its representatives people of all social categories. Going forward, the Romanian sovereign tried, and to some extent also succeeded, to bring together in the F.R.N. representatives of each Romanian traditional political organization; through his endeavour, the king intended to give the impression of unanimous agreement of the political class, but also of citizens, regarding the Front. It was necessary for this general approval on the new political concept to also come from national minorities, especially that the end of the fourth decade of the 20th century had brought on the European continent an accentuation of the contestations regarding borders drawn after World War I and the main reason cited by opponents was that a significant number of their own compatriots were living in other states.

Thus, once the euphoria of the early weeks of joining the single-party ended, the authorities turned their attention to the national minorities[1] who – in accordance with the provisions of the Regulations of the law for the establishment of the Front – entered in the F.R.N. could "value in own sections the rights provided to them by applicable laws" [2] . For Romania the international situation had become quite delicate at the end of the year 1938 because of the increase of territorial contestations coming both from Hungary and the Soviet Union on the Romanian provinces; these claims have appeared on a favourable ground, created by the influence growth of Hitler`s Germany at European level, which had transformed bringing back all German nationalists within the boundaries of the mother country – into a state policy.

This unfavourable context forced the leadership of our country to try to adopt a strategy of getting closer to national minorities, by which it was desired to demonstrate a national consensus regarding the regime established on 10th/11th of February1938 by King Carol II. The enrolment of members of different minorities was seen by the sovereign and policymakers of F.R.N. as the best proof of that national harmony that was destined to ensure the reduction of claims regarding Romanian territories which, at that time, were in a rampant rise.

The magnitude of this problem has been also betrayed by the charging with its solution of Armand Călineacu[3], at that time, in the conception of the king, the most skilful politician the new regime had; he was assisted in that endeavour by Silviu Dragomir, Minister of National Minorities. On January 10th, 1939, negotiations took place between these two Romanian officials and Hans Heidrich, envoy of the German minorities, who took part in the discussions on behalf of Fritz Fabricius, the official representative of Germans in Romania[4]. After consultations an agreement was reached, in which it was stated: "Given the Law and Regulations for the establishment of the National Renaissance Front, as well as the Decree and Journal of the Council of Ministers from August 4th, 1938, relating to minorities, the following were established: 1) The Germans, Romanian citizens, are joining, in corporate manner, the F.R.N. In the rural and urban localities with mixed population, separate German sections are

formed. These sections will be represented by 6 members in the Superior National Council and one in the Directorate[5]. In the secretariat offices will be also appointed corresponding German officials. 2) All professional organizations of Germans, Romanian citizens, in the country, will fall in corporate manner in various professional organizations provided by the existing laws and those which will occur in this area, assuring them the appropriate representation at management level. 3) In addition to political events falling all in F.R.N. policy, Romanian German citizens can create an own organization for cultural, economic purposes and social works" [6].

Observing the provisions of this Agreement, the Saxons of Transylvania had filed requests for enrolment in the single-party[7], fact also confirmed in a report from March 1939, sent by the commander of the Legion of Gendarmes Fagaras to the General Inspectorate of the Gendarmerie, in which it was stated that: "The Saxons of Transylvania changed their past attitude of reserve and indifference to everything that was public activity, enrolling in great extent in the National Renaissance Front" [8]. The same document stated, however, the fact that "their action is going to be checked in this political body"[9], mention which denotes that also in case of their registration in the front, the doubts that hung over the Saxons` of Transylvania intentions to be really submitted to the new regime did not disappear.

The second national minority which decided the enrolment in the royal political party was the Hungarian one[10]; on January 14th,1939, its representatives - Nicolae Banffy, Pál Szasz, Gabor Bethlen and Elemér Gyárfás, in the presence of Silviu Dragomir – were received in an audience by the Interior Minister, Armand Călinescu[11]. A new round of negotiations was held on January 17th, when it was signed the Agreement (the text of which was very similar to the one signed with the Germans) which ruled that "Hungarians, Romanian citizens, fell in corporate manner in F.R.N." [12] Following the conclusion of enrolment agreements in the single-party of the two most important Romanian minorities, the newspaper "Romania" printed on January 21st, under the title: "A victory of memorable amplitude", the following lines: "The National Renaissance Front did not include in its political space a broader family of Romanian blood, but placed in unconstrained manner also the mass of main ethnic minorities, thus achieving besides the national solidarity also the solidarity of the State itself in its legal expression" [13]. This type of articles, along with the submitting of collective or individual applications of enrolment in the party of the minorities representatives in the Romanian newspapers, were used by the authorities as a means of propaganda in favour of the new party. Returning to the Agreement concluded between Hungarians and the Front[14], it stated that 10 Romanians of Hungarian nationality had to enter in the Superior National Council and one in the Directorate; at the beginning of the month of February it was announced that two representatives of the Hungarian minority entered in the F.R.N. Directorate - Nicolae Banffy, for the category intellectual pursuits and Pál Szasz, for agriculture[15], and in the National Council of F.R.N. 9 representatives of this minority were sent[16].

Although the Hungarian leaders had decided to join the single-party, at the level of the common population the adherence to the Front was perceived differently, a report of Fagaras Gendarmerie from the end of the month of March 1939, presenting the following situation: "in their ranks the same attitude of reserve and indifference is maintained [...] so far, still not joining in great extent the National Renaissance Front, although at the centre the Hungarian minority has made a pact with the Government in this matter, their enrolments in the Front being isolated and very few." [17] Moreover, those who had enrolled also see their presence in the royal political party rather as an opportunity to discuss or promote ideas regarding the territorial claims that the Hungarian minority had[18]: "it was found that – it was mentioned in a report of the Gendarmerie – the meetings of the minorities [Hungarian] within the F.R.N. programme, do not represent but good moments to discuss matters concerning only their trends and the goals they seek". [19].

Not less true was also the fact that, although they had concluded agreements both with the Germans and the Hungarians for their entry into the royal political party, the Romanian authorities were aware of the fragility and inapplicability in a strict manner of the provisions of these official documents. Therefore, the activity of the minorities represented, during that period, a subject to closer monitoring both from the Gendarmerie and the Police and from the members of the National Guard.

Negotiations to join the Front were also carried with the Bulgarian minority. The delegation arrived for consultations on the Bulgarians side consisted of: Enciu Nicolof, Iordan Lefterov, Gh. Zoga, Petre Devetacof, Apostol Nanof, presidents of Bulgarian communities of Caliacra, Silistra, Constanta, Balcic and Bucharest; to these other important names of the Bulgarian community of Romania were added. The negotiations ended with the signing, on February 10th,1939, of an agreement[20] similar to those previously concluded with the German and Hungarian minorities. The signatory Romanian representatives were the same – the interior minister, Armand Călinescu, and the minister of National Minorities Silviu Dragomir[21]. Following this Agreement, three Bulgarian representatives were appointed in the Superior National Council of F.R.N. - Enciu Nicolof (agriculture and manual labour category) [22], Gh. Toporov and Hristu Tancov (both in trade and industry category). [23]. Efforts were made by the Romanian authorities also to attract the other inhabiting national minorities within the single-party. Thus, individual enrolment applications were submitted, but also in block, from: Ukrainians (who only in October 1939 were held in separate section within the Front, sending four representatives in the Superior National Council) [24]; Poles, Russians and Turks (the latter sent in the Superior National Council Selim Abdulahim)[25]. There are documents certifying that also the Romany population submitted enrolment applications in F.R.N., the number of those registered being around 480.000[26]. A special situation was recorded in case of Jews, who, although they indicated their readiness to join the new party, have faced difficulties in fulfilling this task. Although there was no provision of the law Regulations establishing the

F.R.N. to make direct reference to Jews, the Romanian authorities proved to be quite reticent about their adherence to the royal political party. International trends, drawn by Nazi Germany, imposing a certain policy for Jews, forced the Front leaders to rally themselves to that trend and, therefore, to limit as much as possible the entry of Jews in the single-party. The fact that this has not been clearly stated since the establishment of F.R.N., left room for interpretation, on December 21st, 1938, the Regional Police Inspectorate of Chisinau reporting that " in the Hebrew mass, because it is not known if the Jews can enter in the National Renaissance Front, is a great panic" [27]; in the same document it was also stated that, if they will not be allowed to enrol, "Jews will suffer a great disappointment"[28]. However, there were Jews who, individually or through collective lists of the institutions where they developed their activity, joined the Front[29]; their number was quite low.

The policy of attracting in F.R.N. the national minorities, which had been obviously initiated in order to create a unitary image of the state at international level and also to achieve a closer collaboration with these minorities within the country, did not have the expected results. Moreover, many rights that they have received with this appointment among the members of the single-party, led to an intensification of the propaganda of each national minority, in order to achieve their own purposes, which, very often, were contrary to Romanian aspirations. In this respect, the leaders of the two major traditional parties – P.N.T. and P.N.L. – Iuliu Maniu and respectively C.I.C. Bratianu, submitted, on June 20th, 1939, a joint letter to the Senate President in which they stated: "The country cannot accept a leading system that allows all to minorities and stops any Romanian free expression. We do not want as a people to oppress anyone, but we cannot allow that in Romania, Romanians not to have any of the public liberties, while minorities enjoy all"[30].

The entire period of existence of the royal political party (December 1938 – September 1940) appears rather as a period in which the king and the people close to him tried, greatly unsuccessfully, to obtain the moral approval of the Romanians on the new political concept – the National Renaissance Front. This party was born by the superposition of different ideas – some of them of national nature, while others of totalitarian origin – to which the desire of King Carol II to control the executive power and to have, at the same time, his own political party, added. Thus, without a clearly defined ideology and without having a path outlined regarding the actions to be undertaken in a difficult period as the beginning of the Second World War, the National Renaissance Front did not enjoy public support to the extent aimed at by the sovereign. The national minorities were much less concerned to give their support to the royal political party, being the fervent supporters of the policies practised by their States of origin. The Germans and Hungarians were, as we have also seen from the documents previously presented, the main opponents of the ideas promoted by the Front; they, although enrolled among the single-party, not only did not rally to its doctrine, moreover, they have tried to fight from within against the principles of F.R.N.

[1] For an overview image on the national minorities enrolment in the National Renaissance Front, see also Petre Ţurlea, *Partidul unui rege: Frontul Renaşterii Na ▪ ionale*, Bucureşti, Editura Enciclopedică, 2006, p. 85-103 şi Radu Florian Bruja, *Carol al II-lea şi partidul unic: Frontul Renaşterii Na ▪ ionale*, Iaşi, Editura Junimea, 2006, p. 71-75.
[2] Serviciul Arhivelor Naţionale Istorice Centrale (S.A.N.I.C.), fund Frontul Renaşterii Naţionale, dossier 1/1939, f. 10.
[3] Petre Ţurlea, *op. cit.*, p. 86.
[4] *Ibidem*, p. 87.
[5] The six representatives of Germans in the Superior National Council of F.R.N. were – for the agriculture and manual labour category: Hans Heidrich, Otto Broneske, Hans Kaufman and Peter Anton, and for the trade and industry category: Gust Weldemer and Gustav Prall; in the Directorate, at the „intellectual pursuits" category was named Helmuth Wolf (S.A.N.I.C., Frontul Renaşterii Naţionale fund, dossier 20/1939-1940, f. 22, 24-25.); see also Constantin Argetoianu, *Însemnări zilnice*, vol. VI, *1 ianuarie – 30 iunie 1939*, ediţie de Stelian Neagoe, Bucureşti, Editura Machiavelli, 2003, p. 67.
[6] „România" and „Universul" from January 12th, 1939, apud Petre Ţurlea, *op. cit.*, p. 88; see also Constantin Argetoianu, *op. cit.*, p. 28.
[7] In an informative note of the Legion of Gendarmes Târnava Mică, from December 24th, 1938, it was stated that „the Saxon population refuses to join the party «the National Renaissance Front» until receiving an order in this respect from leaders. We are also informed that the Saxons were intended, that before they enrol to the "National Renaissance Front" to ask the current government certain rights and only after being granted the rights they required, to enrol in the "National Renaissance Front" (S.A.N.I.C., fund Inspectoratul General al Jandarmeriei, dossier 61/1938, f. 46).
[8] *Ibidem*, dossier 2/1939, f. 55.
[9] *Ibidem*.
[10] Negotiations for the accession of Hungarians to the National Renaissance Front started on January 7th, 1939, in Cluj, taking place in the royal residential palace; to discussions participated Silviu Dragomir, bishop of the Reformed Church – János Vásárhely, bishop of the United Church – B. Varga, bishop of the Roman-Catholic Church – Aron Márton, Nicolae Banffy and Pál Szasz (Petre Ţurlea, *op. cit.*, p. 90).
[11] Livia Dandara, *România în vâltoarea anului 1939*, Bucureşti, Editura Ştiinţifică şi Enciclopedică, 1985, p. 117.
[12] *Ibidem*.
[13] „Romania" from January 21st, 1939, p. 5.
[14] Constantin Argetoianu, *op. cit.*, p. 46.
[15] S.A.N.I.C., fund Frontul Renaşterii Naţionale, dossier 20/1939-1940, f. 22.
[16] „Romania" from February 8th, 1939, p. 5.
[17] S.A.N.I.C., fund Inspectoratul General al Jandarmeriei, dossier 2/1939, f. 54.
[18] Onisifor Ghibu, *Politica religioasă şi minoritară a României* (reeditarea ediţiei prime din 1940), ediţie îngrijită de Mihai O. Ghibu, Bucureşti, Editura Albatros, 2003, p. 758-759.
[19] S.A.N.I.C., fund Inspectoratul General al Jandarmeriei, dossier 6/1940, f . 2.
[20] This agreement was signed ten days after the Bulgarian Parliament had asked the annexation to the Bulgarian Kingdom of several Romanian territories – Cadrilaterul, Dobrogea and southern Basarabia (Constantin Argetoianu, *op. cit.*, p. 99; see also Radu Florian Bruja, *op. cit.*, p. 73).
[21] Petre Ţurlea, *op. cit.*, p. 97-98; see also „Romania" from February 15th, 1939, p. 5.
[22] S.A.N.I.C., fund Frontul Renaşterii Naţionale, dossier 20/1939-1940, f. 24.
[23] *Ibidem*, f. 25; see also Livia Dandara, *op. cit.*, p. 138; Petre Ţurlea, *op. cit.*, p. 98.
[24] Radu Florian Bruja, *op. cit.*, p. 74.
[25] Petre Ţurlea, *op. cit.*, p. 99.
[26] Radu Florian Bruja, *op. cit.*, p. 74.
[27] S.A.N.I.C., fund Direcţia Generală a Poliţiei, dossier 209/1938, f. 8.
[28] *Ibidem*, see also Petre Ţurlea, *op. cit.*, p. 100.
[29] Radu Florian Bruja, *op. cit.*, p. 74-75.
[30] C.I.C. Brătianu, Carol II, Ion Antonescu, *Amintiri. Documente. Coresponden ▪ ă*, cuvânt înainte, note, îngrijire de ediţie, indici de Ion Ardeleanu, Bucureşti, Editura Forum SRL, 1992, p. 78; see also Petre Ţurlea, *op. cit.*, p. 102-103.

ORIGINAL PAPER

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The Jewish Question - a particular political issue in modern Romania

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Abstract: *The article reveals some main aspects which reflect the Jewish question in Romania as they appear in the archive documents and also in the special bibliography. The Jewish Question had its decisive moment in 1877 -1878, after the independence war of Romania at the Peace Congress of Berlin, but the grant of citizenship for all Jews from Romania, was possible only after 1918.*

Key words: *Jewish question*, *Missir Law*, *Zionism*, *Constitution of 1866, citizenship, Berlin Congress*

The problem of political and legal status of the Jews in Romania was the subject of much controversy, both domestically and internationally. Most statements and assessments reflected the political circumstances, were not supported by adequate documentary basis. Without going into dispute with various historians, lawyers or politicians, we try to present documents that governed the fundamental political and legal status of Jews, from the first document which formed the basis of modern Romania until now[1].

A key moment in the modern history of Romania was the unification of Romanian Principalities, Moldavia and Wallachia, which was on the agenda after the 1848 revolution. Unionist movement was so strong and active, that at Peace Congress in Paris, gathered after the Crimean War (1853 - 1856), they were able to put on debate the issue of the Romanian Principalities.

Congress in Paris decided to convene in the gatherings of the two countries ad-hoc organization to decide on the future of the Romanian of the Principalities. On this basis, elections were held, and ad-hoc meetings in the October 1857 voted in favor of the union of Moldavia and Wallachia in one state with the name of Romania. At 7 / 19 August 1858, European Conference of the Seven Powers (Britain, France, Austria, the Kingdom of Sardinia, Prussia, Russia and the Ottoman Empire) adopted the Paris Convention, which established the political, social and administrative framework for the Principalities[2].

This document stated that the two countries will bear the name the United Principalities of Moldavia and Wallachia. Article 46 of the Convention stated: "Moldavians and Wallachians are all equally before the law, before contributions (taxes) and receive equally in public positions [...] Moldavians and Wallachians of all Christian rite, equally will enjoy political rights. These rights could apply to other religions through legislation. "The formulation that political rights benefited only people of "any Christian rite "makes it clear that those of Mosaic rite were excluded from these rights. The Seven Powers adapted an Annex to the Convention of 7 / 19 August 1858 which referred to the establishment of elective assemblies.

Article 5 stated: "No one could vote unless is 25 years old and born or naturalized Moldavian or Wallachian." Paris Convention was elaborated and adopted by the major European powers, without the participation of Romanians. The initiative of the Jews exclusion from the political life of the Romanian Principalities belonged not the Romanians, but to these great powers. The Convention synthesized the modern, liberal conception of Europe during that period. Based on this, were held elective Assemblies of Moldova and Wallachia, which on 5 and January 24, 1859 elected Alexandru Ioan Cuza as ruler. On 24 January 1862, the United Principalities of Moldavia and Wallachia and officially took the name of Romania[3].

Following the referendum that took place on the 10 to 14 May 1864, it adopted the Statute of the Paris Convention Developer which more clearly specified the duties of Parliament and Prince. Legislative power was held in two Chambers: Elective Assembly and Senate. The electoral law established

several categories of voters, depending on income. Article 3 stated: "One can be direct voter, either in cities or in villages, and anyone that has been born as a Romanian, or possessing citizenship that will have an income of one hundred ducats, and of any kind." Voters could not be under any foreign protection. Obviously, they could not be elected deputies or senators. The law made no reference to religious rites, but certainly within the range of the Paris Convention.

An important moment in Romanian history was the adaptation of the Constitution of 1 June 1866, the first fundamental law of the country developed by Romanian politicians and lawyers, without any foreign involvement. It is inspired by the Belgian Constitution, which was the most advanced in Europe of that period. Title II of the Constitution, entitled Romanian rights, stated: "Romania shall enjoy freedom of conscience, freedom of education, freedom of the press, freedom of assembly" (Article 5). Article 6 stated: "The present Constitution and other laws relating to political rights, determine which are particularly Romanian citizenship, the requirements for exercising these rights." Article 7 stated as follows: "The Romanian citizenship is acquired, maintained and lost according to the rules settled by the civil law. Only foreign Christian rites can acquire citizenship rights. "Article 8 stipulates:" Citizenship is given by the legislature. Only citizenship could level the foreigner with a Romanian to exercise political rights[4]. "

In fact, the Constitution of 1866 the Paris Convention resumed on acquiring citizenship, which only foreigners could obtain of Christian rite. At the same time, Article 11 stipulated that: "All foreigners who are present in Romania of protection given by Romanian laws benefit people and wealth in general." Among them: individual freedom, inviolability of domicile, guaranteeing property of any kind, declared "sacred and inviolable "freedom of conscience, freedom of education, freedom to communicate and publish their ideas through words, through writing and through the press, privacy of letters and telegrams " is inviolate[5]. "

In the 60s - 70s of the nineteenth century throughout Europe there was a certain evolution in the sense of granting political rights (citizenship) for Jews. This was reflected in some international documents, which also referred to Romania. In October 1872 the first Jewish international conference took place in Brussels, there being requested granting of civil and political rights for Jews in Romania. On 9 May 1877, Romania proclaimed its independence of State, and then participated in the war between Russia and Turkey, helping to defeat the Ottoman Empire.

The Peace Treaty was signed in Berlin on July 1, 1878, by Russia, Germany, Britain, France, Italy and the Ottoman Empire. Article 43 of this Treaty stipulated: "The High Contracting Parties recognize the independence of Romania, provided compliance outlined in the following two articles: Article 44. In Romania, the difference of religious beliefs and confessions can not be opposed to anyone as a reason for exclusion or incapacity in regard to the

benefit of civil and political rights, admission to public office, or the use of various professions and industries in any locality[6].

Any religious freedom and practice will be provided to all earthly citizens of the Romanian state as well as to foreigners and will not put any obstacle both to hierarchical organization of the various religious communities and also to their relations with their spiritual leaders. Nationals of all the Powers, traders or others, will be treated in Romania without distinction of religion. Equally article 45 gives up in expense of his Majesty King of the Principality of Romania, the Romanian territory part of Russia, separated from Russia after the Treaty of Paris of 1856, which on the west borders the Prut thalweg and on the south to the thalweg of the Chilia's arm and to Stari-Stambul. "

These two articles provoked vivid discussions in the country, especially Article 45 by which Romania, although it contributed to achieving victory over the Ottoman Empire, lost part of its territory, namely three counties of Southern Bessarabia, which had been retroceded to Romania at the Congress in Paris in 1856. Russia in turn, violate their own signature put on the convention that was concluded with Romania on April 4, 1877 by which it was obliged "to maintain and respect the political rights of the Romanian state as resulting from internal laws and existing treatises, as well as to protect the integrity of Romania[7] "

With reference to Article 47 of the Treaty of Berlin, Prince Carol I, who came from the Hohenzollern family, famous in Germany, stated that "the Romanian nation was never and is not animated by the spirit of intolerance nowadays." He said that after the fall of Constantinople many Christians who "fled out of the way of the Ottomans, found asylum in the Romanian" later "when the Israelites, persecuted in other states, had invaded us, this immigration was encouraged by traditional Romanian hospitality, and by the tolerance that one could find here[8]. "

Following the amendment of Article 7 of the Constitution and after the proclamation as Kingdom of Romania, in 1881, which allowed individual naturalization of Jews in Romania, the Jewish issue continued to be a reason for national and international debate.

King Carol the First appreciated that immigration became the character of"a true invasion" so that foreign nationals influenced national trade and industry development, and this imposed certain legal restrictions. The Great Powers pressures on Romania were extremely strong, especially from Germany, so that Romanian politicians decided to comply with positive obligations under, Article 44 of the Treaty of Berlin. On October 1, 1878 the Article 7 of the Constitution was modified. In the new drafting, new religious equality was admitted and was granted citizenship to all Jews who participated in the War of Independence of Romania, other Jews could get citizenship by an individual application and by vote of Parliament.

Thus, 883 Jews who fought in the war obtained citizenship. Another several hundred Jews received citizenship by individual request until 1918.

This number was very small, if one takes into account the fact that at the census of 1899 registered 269 015 Jews, representing 4.5% of the country population. Although few Jews possessed political rights, in reality they participated actively in economic and cultural life of Romania. Thus, Jacob Marmorosch and Maurice Blank founded in 1863 one of the largest banks in Romania (Marmorosch Bank, Blank et comp.)[9].

Although many Jews didn't receive citizenship, they didn't want to be treated like foreigners, claiming their earthly origins. Romanian law continued to regard Jews who didn't have citizenship as foreigners. Many of them had difficulties in their commercial activities where they had real skills. By 1902, 122 large industrial enterprises were run by Jews, representing 19.5% of all existing businesses in Romania. In 1909 was founded the Jewish earthly Union, which played an important role in promoting the interests of this community in relation with the Romanian state as well as on international level.

The Jewish Question represents in the first decade and a half of the twentieth century one of the key issues for Romania's position on the European political scene. Aspirations of the Jewish communities in Romania, which had developed as a result of a favorable political and social climate, came to have a word to say in the land lease, trade and crafts were felt when Romania was doing determined steps on the way to achieve unity and conquest of national independence.

Romanian society had to adapt to the new constitutional principles, which seemed to be too advanced, so that in the first five years of the reign of Carol I there was a severe instability of the parliamentary government. Precisely because of these troubles and of difficulties of adjustment, there were attempts of revision in a restrictive, authoritarian way, in the period 1867-1871. Fortunately, such initiatives started either by politicians, or by Carol the First, remained only in planning phase. Also, the constitutional principles were not always followed and applied at the rule of law. A serious anomaly which would be rooted in our political life, but common in other countries with similar parliamentary system, was that the Government, following interference in the elections would give the composition of the Chambers and not vice versa, as was normal and according to constitutional requirements .

Since the vote was censitary and empowerment, the Jewish community, limited numerous but economically active, would have had a decisive influence in Romanian politics, as was for example the case of Italy, where in a diplomatic document it was clearly specified that 400 Jews could vote as much as 40 000 Italians. Romanian political class, being isolated during Phanariot rule, wanted to control, considering the emancipation of Jews a threat to national interests[10].

The activity of the Jewish communities outside Romania, as well as their influence with the Great Powers, led the question of recognition of Romania as an independent state, following a victorious war, like that of 1877-1878, to be called into question the Jewish issue. After obtaining

independence, Romania would have needed for its recognition by European powers to content the requirements imposed by the Treaty of Berlin of July 1, 1878. This involves amending Article 7 of the Constitution, within the meaning of granting citizenship regardless of religion, which would cause contradictory reactions not only in political circles but also among public opinion, such a problem eventually being a task belonging to the internal law. Thus, the famous "Jewish issue" will return to the forefront of political life, leading to heated and passionate debates in Parliament and in the press. On the other hand, a vast diplomatic campaign for recognition of Romanian independence was conducted before Parliament to comply with article 44 of the Treaty of Berlin, campaign which was not successful. Finally, without accepting fully the requirements aforementioned article, political circles in Bucharest modified article 7, with a solution in accordance with the realities of the Romanian society of those times. Individual naturalization, along the 1074 block of Jews (most participants or mobilized in the campaign of 1877), represented the solution that was made not to cause unnecessary internal disturbances, when Romania's independence was not yet recognized by certain European powers[11].

For two years, political life was completely overwhelmed by a veritable campaign of revising the Constitution for the purposes of broadening the electoral base. It will show on this occasion a genuine dispute of ideas between two adverse sides: one, the radical liberals who argued the need for electoral reforms, wider participation in politics and thus, strengthening their own position and the other, composed of moderate liberals and conservatives, who rejected any modification of the Constitution, seeking to keep positions gained or to prevent the maintain of the Liberals to power. On this occasion faced the political conceptions of the two friends and party colleagues, C.A Rosetti and I.C Brătianu. The first was the supporter of unique Electoral College of intellectuals; the second supported the idea of an electoral base increase by reducing the number of electoral colleges from four to three. The more pragmatic conception of I.C Brătianu would triumph.

Overall, the constitutional amendments made in 1884 had a positive role, contributing, on the one hand, to a broader participation in political life and to draw those lines meant to lead to the democratization of Romanian society, and on the other hand, offered the need for a more free and guaranteed press opinion, a necessary condition for democracy. It is true that this reforming action initiated and completed in 1884 belonged exclusively to the National Liberal Party, which proved once again - because their own interests - much more open to democratic political life, even if the ideas of C.A Rosetti were, perhaps, too advanced for that time, couldn't have been adopted totally. Here is reflected, we believe, one of the losses suffered by this party, becoming a more moderate: the disappearance of its radical wing and separation of C.A Rosetti of his old collaborator and friend, I.C Brătianu. Constitution revision in 1884, even if it didn't cause the elimination of

government interference and abuse and did not increase the number of voters, was an important step towards a democratic regime[12].

The Jewish Question continued to occur at the time when, over the borders began to infiltrate Jews families, who under the pretext of transit to the West, where they hoped to obtain support from their co-religionists and to remain in Romania. If native Jews wanted to leave, the Romanian authorities released passports to pass, that ensured their right to leave the country. The ones, who wanted to immigrate to Western Europe and the United States and could not prove they had money to travel, were forced to return by the Austro-Hungarian authorities, but were not received by Romanians, because they had no valid documents.

Archival documents show that the Romanian authorities pay particular attention to illegal immigration, as to the discussion regarding Jews or Russians with socialist views that did not tolerate the czarist regime, or the Bulgarians, persecuted by the Turks[13].

It is obvious that the Jews that obtained citizenship continued to do their duty to the country that had naturalized them, but at the same time their increasing number led authorities to take further measures that were considered controversial.

One of these was the Missir Law[14], or law of the professions, which recognized the right to practice professions by foreigners only if their own state granted similar conditions to Romanians residing there. Again, it was considered that the measure aimed to Jews, which had no state of their own, so they could not have the right to practice their craft[15].

The initiative of constitutional revision in 1914 belonged to the National Liberal Party, with the purposes of expropriation within certain limits of the great properties and adoption of the electoral unique college of intellectuals. This initiative will cause new doctrinal clarifications to the Conservative Party and a fierce confrontation of ideas in Parliament, in the press, in public meetings. If all politicians recognized the need to amend the disproportion between large and small property and improvement of the peasantry by appropriating land, differences occurred as to the discussion regarding the way of their realization. Liberals that were in power advocated for expropriation of the landowners, namely the great landed properties by compensation, opinion shared to a point by conservatives Democrats, representatives of the Conservative Party considered sufficient the allotment of the land in possession of the state, the properties acquired Rural house, the expropriation being illegitimate, unnecessary and dangerous to the mood of the Romanian society. Opinions were divided in terms of broadening the electoral base. Beyond the principle of unique college supported by liberals, conservatives Democrats thought more appropriate system of two colleagues and old conservatives were satisfied with the existing system of the three electoral colleges[16].

Given the outbreak of World War I, the issue of reforms would be postponed until 1917, when, in very harsh circumstances - occupying two

thirds of the national territory by the enemy, the withdrawing to Moldova of the Government, of the army and part of the population - Parliament in Iasi would resume discussion of reforms project, this time more advanced than previously. It now provides, after consultation and negotiation, expropriation of more than 2 million hectares and universal suffrage. Again, there were heated debates and confrontations without opinions, but the results would exceed the expectations of politicians. All these revealed a greater clarity the ongoing evolution of Romanian society and the need for democratization, especially since the national aspirations of unity of all Romanians had to be achieved at the end of the war. At the level of political arena, we have seen, on the one hand, the National Liberal Party's ability to adapt to the modern times, and on the other hand, the Conservative Party struggle for survival[17].

That constitutional amendments introduced in 1917 did not remain a dead letter that being proved by the expropriation decree-law of 15 and 16 December 1918 (that was followed by the agrarian reform laws of 17 and 30 July 1921) and the organization in November 1919 of the first parliamentary general election based on universal suffrage. Then need to strengthen the Romanian unitary national state would impose the adoption of a new Constitution, with a strong democratic character, on 29 March 1923. We can not conclude these rows without mentioning that many of the principles of the Constitution of 1866 shall remain in the new fundamental law.

Jews participated in the Balkan war and in the war of national reunification. Many managed to be naturalized, according to the amendment of Article seven. The worsening of the international situation and the fragmentation of Jewish communities in the two military blocs, would lead to a weaker highlight of the Jewish issue in the domestic political struggle.

Under these conditions, the solution of the Jewish Question would find a natural solving, only after the Union of state of 1918.

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ORIGINAL PAPER

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Does the position make the difference? Measuring perceptions on politicization, corruption and control among civil servants in public positions of leadership and execution

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Abstract: *The study is aimed at finding a suitable answer to the main research question: Is there a difference of perception between civil servants in public positions of leadership and civil servants in public positions of execution as regards politicization, corruption and control in public organizations? Do perceptions on these phenomena vary along the hierarchy? In other words, does the position make the difference? Using survey data from respondents in public positions of leadership and execution, the study on the differences of perception on politicization, corruption and control within public organizations compares perceptions in four types of public organizations: (1) central public administration, (2) local public administration, (3) de-concentrated public services, (4) councils and mayoralties. To test our hypotheses on the existence of significant differences on the perceived politicization of public administration, the degree of independence of the decision-making process, existence of corruption and efficiency of different measures to combat it and the importance of different merits or spoils-based employment practices within the administration, we compared the mean scores by public position – leadership or execution. The results indicate significant leadership and execution differences, with civil servants in execution positions reporting lower perceived independence in decision-making and higher perceived corruption within public administration.*

Key words*: politicization, independence in decision-making, corruption, employment, public administration, leadership, execution, civil servant.*

Introduction

The relationship between democratic political control and bureaucratic autonomy has been a theme of huge interest for researchers especially as it created a controversy over the real possibility they could co-exist. The issue of analyzing the degree of independence of public administrations from any political or other external influences has enjoyed a complex coverage. Researchers focusing on quantifying the bureaucratic response to political dynamics have been lined up into two strands of research, with promoters of the politics-administration dichotomy on the one side and the revisionists of this theory on the other, supporting with statistical evidence the simultaneous existence of control and autonomous behavior.

Such is the case of the study undergone by Doo-Rae Kim[1] (2008) who re-analyzed the relation between political control and bureaucratic autonomy in order to sustain his thesis that these two items are not necessarily dichotomous in a democratic society. On the contrary, Kim's research theoretically and empirically proves that political dynamics is not only a source of influence for bureaucracy, but also is fuelled with the feedback received from the administrative policy implementation. Thus the process appears to be twofold, with influences from both directions, which contradicts Woodrow Wilson's thesis that politics and administration are two separated entities. Kim places his theoretical and empirical model in a presidential democratic regime, demonstrating that institutional interactions among the US President and Congress meet not only bureaucratic responsiveness, but also bureaucratic autonomy.

These outstanding outcomes are both surprising and challenging; surprising as they point out the real possibility for political control and bureaucratic autonomy to coexist in a democratic system, and challenging as they raise the question of representing the nature of the politics-administration relation within a semi-presidential regime. How are politicization and political control viewed from within the Romanian administration? How is independence in decision-making perceived by Romanian civil servants? Are these perceptions similar, or can we detect sharp differences within the hierarchy? These are research questions this study wishes to find a suitable answer to.

We thus thought it would be useful to compare perceptions from the same set of public organizations to detect whether there are significant differences in civil servants' perceptions on control, politicization and corruption within the administration. In this line of research we sought interesting to observe whether civil servants in leadership positions perceive these aspects in the same manner as civil servants in execution positions. And if there are significant differences in perceptions, can these be explained by making appeal to the public positions they occupy within the hierarchy?

The originality of this paper stands not only in the complex statistical technique used in the empirical section, but also in the data employed, in the

original theory, hypotheses and variables built, aimed at validating the assumption that control, politicization and corruption within the administration are perceived differently at the top and bottom of the hierarchy. There is evidence in the literature on the existence of differences in perceiving such phenomena through complex comparisons between public, private or non-profit organizations managers or between public managers and politicians. For instance we took note on the studies of Hal G. Rainey and Barry Bozeman[2] (2000) or of Barry Bozeman and Stuart Bretschneider[3] (1994) for complex comparisons between public and private managers or the study of Dag Ingvar Jacobsen[4] (2006) for a comparison between public managers and politicians' behaviours or of Mary K. Feeney and Hal G. Rainey[5] (2010) for a comparison between public and non-profit employees.
In their study, Hal G. Rainey and Barry Bozeman (2000) reviewed some taken-for-granted theoretical aspects regarding the public-private simmilarities and distinctions regarding goal complexity and goal ambiguity, organizational structure, formalization of personnel and purchasing processes, work attitudes and values in order to put together the theoretical and empirical researches and show the power theories have, especially when validated by empirical research. A study accomplished Barry Bozeman and Stuart Bretschneider (1994) tests some aspects related to comparing the red-tape phenomenon in public and private organizations by referring to employment and purchasing policies, to discover that, unlike one would assume, private sector managers report longer periods of time to complete these processes. Another study on purchasing behaviour, this time testing the differences between public managers and politicians was undergone by Dag Ingvar Jacobsen (2006) in order to detect the relative expansiveness of public managers compared to politicians, by also taking into account the left-right ideological distinction. Another study that drew our attention was that made by Mary K. Feeney and Hal G. Rainey (2010) which compared perceptions on personnel flexibility and red tape in public and nonprofit organizations in order to detect differences between public and nonprofit managers' views under political control. Still, little research dealt with identifying discrepancies between employees regarding the aspects we were interested of.

Building variables and hypotheses

The data on which we built this research were gathered through a 2007 inquiry of the Metro Media Transilvania research institute on behalf of the Romanian Agency for Governmental Strategies. The questionnaire, database and descriptive statistics report can be openly accessed from the website of the Agency for Governmental Strategies. What interested us in this research was not the sample composition by institution type, which offers a representative structure for public administration institutions throughout the country, the MMT study being carried on in four types of institutions – (1) central public administration, (2) local public administration, (3) de-

concentrated public services, (4) councils and mayoralties, but the differentiation of civil servants by position – leadership (125 cases) and execution (980 cases).

In order to test our theory on the existence of differences of perception between civil servants in leadership and execution positions we selected several variables from the structure of the questionnaire used by MMT research institute in their inquiry on the bureaucratization of Romanian public administration.

The first variable we selected deals with the perceived politicization of public administration. Respondents were asked whether they perceive the politicization of Romanian public administration as being more reduced as compared to other domains (table 1).

Table 1. Politicization of public administration
Q20.3: In what extent do you (not) agree with the following statements…Politicization of public administration is more reduced as compared to other domains (4-Totally agree; 3-Partially agree; 2-Partially disagree; 1-Totally disagree; 8-Don't know; 9-Don't answer).

***Note:** All variables used in this research have been selected from the questionnaire part of the May 2007 inquiry of the Metro Media Transilvania research institute on behalf of the Romanian Agency for Governmental Strategies. The questionnaire, database and descriptive statistics report can be freely downloaded from the website of the Agency for Governmental Strategies, at the section Studies and researches* (source: http://www.publicinfo.ro/pagini/sondaje-de-opinie.php, http://www.publicinfo.ro/library/sc/s_bp.pdf, http://www.publicinfo.gov.ro/library/Chestionare/birocratia_publica_in_romania_2007.pdf.

Accordingly we developed the first research hypothesis stating that:

H1: Perceptions of public administration politicization vary between civil servants in public positions of leadership and civil servants in public positions of execution.

The second research variable measures the perceived degree of independence of the decision-making process within public organizations (table 2). Decision-making on public issues is a theme widely commented in the literature, an interesting approach being that which analyses the complex relationships among state, civil society and political parties[6].

Table 2. Degree of independence in decision-making variable
Q7.6: During the period you performed as civil servant, did things increase, remain the same or reduce as regards the degree of independence in decision-making? (1-Increased; 2-Remained the same; 3-Decreased; 98-Don't know; 99-Don't answer).

Consequently, the second research hypothesis asserts the following:

H2: Perceptions of the degree of independence in the decision-making process within the public administration vary between civil servants in public positions of leadership and civil servants in public positions of execution.

Analyzing perceptions on corruption within public administration and the most efficient means to combat it were our next themes of interest. Accordingly we selected the *corruption* variable to test for the existence of differences in perceiving this phenomenon and three other variables – *attention, punishment, replacement* – to determine whether civil servants differ in their views on defending the practice of offering attentions for civil servants' services, on punishing civil servants who accept bribes or on replacing the leadership of the organization for cases of corruption (table 3).

Table 3. Corruption within public administration
Q7.8: During the period you performed as civil servant, did things increase, remain the same or reduce as regards corruption within public administration? (1-Increased; 2-Remained the same; 3- Decreased; 98-Don't know; 99-Don't answer).
Q20.6: In what extent do you (not) agree with the following statements…There is nothing wrong in offering a small gift to a civil servant so that he would pay greater attention to one's requests? (4-Totally agree; 3-Partially agree; 2-Partially disagree; 1-Totally disagree; 8-Don't know; 9-Don't answer).
Q21.1: How efficient do you consider to be the following measures…Increasing punishments for civil servants who accept bribe? (5-Very efficient; 4-Efficient enough; 3-Not very efficient; 2-Very little/Not at all efficient; 8-Don't know; 9-Don't answer).
Q21.4: How efficient do you consider to be the following measures…Replacing the leadership of public institutions where cases of corruption occur? (5-Very efficient; 4-Efficient enough; 3-Not very efficient; 2-Very little/Not at all efficient; 8-Don't know; 9-Don't answer).

On the basis of the selected corruption variables we have developed the following hypotheses:

H3: Perceptions of corruption within public administration institutions vary between civil servants in public positions of leadership and civil servants in public positions of execution.

H3a: Perceptions of civil servants in public positions of leadership and execution vary as regards the wrong nature of offering "attentions" for public services.

H3b: Perceptions of civil servants in public positions of leadership and execution vary as regards the efficiency of increasing punishments to stop bribes.

H3c: Perceptions of civil servants in public positions of leadership and execution vary as regards the efficiency of replacing the leadership of public institutions to decrease corruption.

The manner in which civil servants perceive employment practices within the administration was the next challenge. The whole discussion of merits (qualifications, knowledge, competences) versus spoils system (the use of kinship, political party membership, money, bribe, acquaintances) in employment within the bureaucracy has been supported by substantial research. What particularly made us focus our attention on the merit versus spoils discussion was a research of Anirudh V. S. Ruhil and Pedro J. Camões (2003) who supported with evidence the political motifs for which merit system was adopted throughout the US[7] during 1883-1940.

Table 4. Merits vs. spoils system in employment
Q39.1: In your opinion, how important are the following factors for the employment in public administration institutions…professional competence, qualification and experience? (1-Very important; 2-Important enough; 3-Less important; 4-Very little/Not at all important; 8-Don't know; 9-Don't answer).
Q39.2: In your opinion, how important are the following factors for the employment in public administration institutions…the fact you have acquaintances, friends, relatives among the employees of the institution? (1-Very important; 2-Important enough; 3-Less important; 4-Very little/Not at all important; 8-Don't know; 9-Don't answer).
Q39.3: In your opinion, how important are the following factors for the employment in public administration institutions…the fact you are part of a political party? (1-Very important; 2-Important enough; 3-Less important; 4-Very little/Not at all important; 8-Don't know; 9-Don't answer).
Q39.4: In your opinion, how important are the following factors for the employment in public administration institutions…the gifts or money offered to some employees of the institution in decision positions regarding employees' selection? (1-Very important; 2-Important enough; 3-Less important; 4-Very little/Not at all important; 8-Don't know; 9-Don't answer).
Q39.5: In your opinion, how important are the following factors for the employment in public administration institutions…the fact you personally know you future boss? (1-Very important; 2-Important enough; 3-Less important; 4-Very little/Not at all important; 8-Don't know; 9-Don't answer).

The following hypotheses were developed:

H4: Perceptions of employment practices within public administration vary between civil servants in public positions of leadership and civil servants in public positions of execution.

H4a: Perceptions of the importance of merits in employment policies within public administration vary between civil servants in public positions of leadership and civil servants in public positions of execution.

H4b: Perceptions of the importance of kinship in employment policies within public administration vary between civil servants in public positions of leadership and civil servants in public positions of execution.

H4c: Perceptions of the importance of being a party member in employment policies within public administration vary between civil servants in public positions of leadership and civil servants in public positions of execution.
H4d: Perceptions of the importance of bribes in employment policies within public administration vary between civil servants in public positions of leadership and civil servants in public positions of execution.
H4e: Perceptions of the importance of personally knowing the employer *in employment policies within public administration vary between civil servants in public positions of leadership and civil servants in public positions of execution.*

Due to the fact that the two samples included in the study are independent, different from the perspective of the position occupied by the civil servant within the public organization hierarchy (leadership or execution), comparisons between the two types of subjects are to be done using the *t* Test, as it is a technique useful in analyzing numerical data resulted from attributing scores.

Interpreting the results

Politicization of public administration

As regards the perceptions of civil servants on the politicization of the administration, there is a difference between civil servants in public positions of leadership – the mean for employees in leadership positions being 3,82 – and civil servants in public positions of execution – with a mean of 3,75 (table 5). Table 6 offers us information on whether the two means differ signifficantly.
Since the value of significance for the Levene's Test is 0,296 it is assumed that variances do not significantly differ (table 6). The value of *t* is 0,406 which, with 1103 degrees of freedom, has a two-tailed level of significance of 0,685.
Thus the mean for the values of the perceived politicization of the administration test of civil servants in public positions of leadership (*M*=3,82, *SD*=1,677) is higher (with *t*=0,406, *df*=1103, two-tailed *p*=0,685) than that of civil servants in execution positions (*M*=3,75, *SD*=1,748).

Table 5. Comparing means for politicization

	Leadership	***Execution***
N	125	980
Mean	3,82	3,75
Standard Deviation	1,677	1,748
Standard Error Mean	0,150	0,056

Source*: Author's calculation and illustration, MMT database*
Note: The table shows the number of cases, the mean, standard deviation and standard error mean.

Table 6. Independent Samples Test Report for civil servants in leadership and execution positions for politicization

Levene's Test for Equality of Variances	
F	1,094
Sig.	0,296
T Test for Equality of Variances	
t	0,406
df	1103
Sig. (two-tailed)	0,685
Mean Difference	0,067
Standard Error Difference	0,165
Confidence Interval – Lower	-0,257
Confidence Interval – Upper	0,391

***Source**: Author's calculation and illustration, MMT database*

Independence in decision-making

Table 7 shows that for public employees in leadership positions the mean value of independence in decision-making is 1,76, and the standards deviation is 0,856, while for the interviewed public employees in execution positions the mean value of independence in decision-making is 2,09, and the standards deviation is 1,434, suggesting a clear difference between the two types of respondents.

Table 8 shows us that the difference between the values of the perceived degree of independence in decision-making test for public employees in leadership positions (*M*=1,76, *SD*=0,856) and public employees in execution positions (*M*=2,09, *SD*=1,434) is –0,33. Since the 95% confidence interval for this difference is from –0,59 to –0,075, the difference is statistically significant at the two-tailed significance level of 5% (p=0,011), thus clearly validating the second research hypothesis.

Table 7. Comparing means for independence in decision-making

	Leadership	***Execution***
N	125	980
Mean	1,76*	2,09*
Standard Deviation	0,856	1,434
Standard Error Mean	0,077	0,046

***Source**: Author's calculation and illustration, MMT database*

*p<0,05

Table 8. Independent Samples Test Report for civil servants in leadership and execution positions for independence in decision-making

Levene's Test for Equality of Variances	
F	0,827
Sig.	0,363
T Test for Equality of Variances	
t	-2,537
df	1103
Sig. (two-tailed)	0,011
Mean Difference	-0,333
Standard Error Difference	0,131
Confidence Interval – Lower	-0,590
Confidence Interval – Upper	-0,075

***Source**: Author's calculation and illustration, MMT database*

Corruption

Tables 9 and 10 present the manner in which public employees perceive different aspects related to corruption within the administration. Thus we have to notice that the mean for the values of perceived corruption test of civil servants in execution positions (*M*=3,40, *SD*=2,526) is significantly higher (*t*= –2,537, *df*=1103, two-tailed *p*=0,011) than that of civil servants in leadership positions (*M*=3,09, *SD*=2,236), results which validate our third research hypothesis. The rest of the results shown in tables 9 and 10 indicate differences (though not significant) in the perceptions of the two types of public employees for the *attention, punishment* and *replacement* variables.

Table 9. Comparing means for perceived corruption

	Corruption		***Attention***		***Punishment***		***Replacement***	
	Leader	***Exe***	***Leader***	***Exe***	***Leader***	***Exe***	***Leader***	***Exe***
N	125	980	125	980	125	980	125	980
Mean	3,09*	3,40*	2,53	2,64	4,30	4,32	4,22	4,29
Standard Deviation	2,236	2,526	1,261	1,439	1,186	1,322	1,402	1,415
Standard Error Mean	0,200	0,081	0,113	0,046	0,106	0,042	0,125	0,045

***Source**: Author's calculation and illustration, MMT database*
*p<0,05

Table 10. Independent Samples Test Report for civil servants in leadership and execution positions for corruption

	Corruption	*Attention*	*Punishment*	*Replacement*
F	0,827	2,137	0,748	0,028
Significance	0,363	0,144	0,387	0,867
t	-2,537	-0,814	-0,091	-0,483
df	1103	1103	1103	1103
Sig. (two-tailed)	0,011	0,416	0,927	0,629
Mean Difference	-0,333	-0,110	-0,011	-0,065
Standard Error Difference	0,131	0,135	0,124	0,134
Confidence Interval – Lower	-0,590	-0,374	-0,255	-0,328
Confidence Interval – Upper	-0,075	0,155	0,232	0,199

***Source**: Author's calculation and illustration, MMT database*

Employment policies

Tables 11 and 12 present the results of the analysis of the manner in which civil servants perceive the importance of the use of different criteria for the employment within the administration. The study relates to the use of the merits-based employment system, in which competences, qualifications and knowledge are key requirements for hiring, versus the spoils system, in which different criteria are employed, such as kinship, party membership, bribe, acquaintances.

The first variable in this set is used to compare public employees perceptions on the importance of merits in employment by type of position – leadership or execution. Because the variances for the two groups are signifficantly different (F=3,926, p=0,048, thus smaller than 0,05) we have used a t Test for unequal variances. The analysis shows that the mean for the importance of merits in employment policies within the administration test of civil servants in leadership positions (M=1,62, SD=1,506) is higher (though not significantly higher) than that corresponding to employees in execution positions (M=1,51). The *kinship-*, *party membership-*, *bribe-* and *acquaintance-based employment* variables have also scored values indicating non-significant differences between the bureaucratic leadership and execution employees.

Table 11. Comparing means for merit vs. spoils system in employment

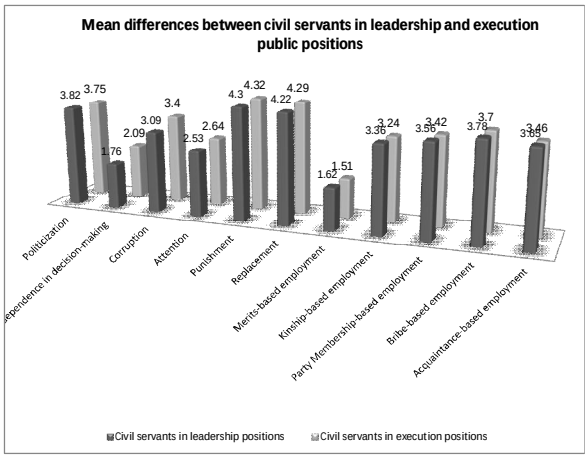
	Merits-based employment		*Kinship-based employment*		*Party Membership-based employment*		*Bribe-based employment*		*Acquaintance-based employment*	
	Leader	***Exe***	***Leader***	***Exe***	***Leader***	***Exe***	***Leader***	***Exe***	***Leader***	***Exe***
N	125	980	125	980	125	980	125	980	125	980
Mean	1,62	1,51	3,36	3,24	3,56	3,42	3,78	3,70	3,65	3,46
Standard Deviation	1,506	1,180	1,472	1,380	1,516	1,465	1,555	1,465	1,493	1,441
Standard Error Mean	0,135	0,038	0,132	0,044	0,136	0,047	0,139	0,047	0,134	0,046

***Source**: Author's calculation and illustration, MMT database*

Table 12. Independent Samples Test Report for civil servants in leadership and execution positions for merit vs. spoils system in employment

	Merits-based employment	*Kinship-based employment*	*Party Membership-based employment*	*Bribe-based employment*	*Acquaintance-based employment*
F	3,926	0,506	0,010	0,141	0,064
Significance	0,048	0,477	0,921	0,708	0,801
t	0,784	0,894	1,007	0,550	1,337
df	144,056	1103	1103	1103	1103
Sig. (two-tailed)	0,434	0,371	0,314	0,583	0,182
Mean Difference	0,110	0,118	0,141	0,077	0,184
Standard Error Difference	0,140	0,132	0,140	0,140	0,137
Confidence Interval – Lower	-0,167	-0,141	-0,133	-0,198	-0,086
Confidence Interval – Upper	0,386	0,377	0,415	0,352	0,453

***Source**: Author's calculation and illustration, MMT database*



***Source**: Author's calculation and illustration, MMT database*

Conclusions

The *t* Test results presented above show that significant differences between the two samples of public employees (in leadership and execution positions) are accomplished in the case of reporting the perceived degree of independence in decision-making (p=0,011) and in the case of reporting the perceived importance of the perceived corruption in the administration (p=0,011). Thus, the value of p of 0,011 highlights the fact that the sample of 125 civil servants in leadership positions differ significantly from that of 980 employees in public execution positions as regards their perception of the degree of independence of the decision-making process. Consequently, the subjects from the leadership sample report a higher degree of independence of the decision-making process than the respondents from the execution positions. The value of the two-tailed significance level thus becomes the expression of a tendency to perceive higher degrees of independence in decision-making by the leadership in comparison to execution civil servants.
A similar situation became obvious as regards the corruption phenomenon within the administration, as the value of p=0,011, highlighting the fact that civil servants in execution positions are significantly more likely to report

higher values for the existence of corruption than civil servants in leadership positions.

Thus the statistical results obtained by using the *t* Test support the existence of statistically significant differences between the two groups of public employees as regards their perceptions of independence in decision-making and corruption within the administration. To sum up, based on the above discussion and analyses we can validate the hypothesis which claimed that perceptions of the degree of independence in the decision-making process within the public administration vary between civil servants in public positions of leadership and civil servants in public positions of execution. Moreover, at the same time we can also validate the hypothesis which stated that perceptions of corruption within public administration institutions vary between civil servants in public positions of leadership and civil servants in public positions of execution. However, we found no significant relationship between type of public position and politicization and employment policies.

Notes:

[1] Doo-Rae Kim. 2008. Political Control and Bureaucratic Autonomy Revisited: A Multi-Institutional Analysis of OSHA Enforcement, *Journal of Public Administration Research and Theory.* 18 (1), pp. 33-55.

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[4] Dag Ingvar Jacobsen. 2006. Public sector growth: comparing politicians' and administrators' spending preferences. *Public Administration.* Oxford: Blackwell Publishing. 84 (1): 185–204.

[5] Mary K. Feeney, Hal G. Rainey. 2010. Personnel Flexibility and Red Tape in Public and Nonprofit Organizations: Distinctions Due to Institutional and Political Accountability. *Journal of Public Administration Research and Theory.* 20: 801–826.

[6] For detailed observations we recommend Anca Parmena Olimid, *Politica românească după 1989,* Craiova: Aius PrintEd, 2009, pp. 126-127.

[7] Anirudh V. S. Ruhil, Pedro J. Camões. 2003. What Lies Beneath: The Political Roots of State Merit Systems. *Journal of Public Administration Research and Theory.* 13 (1): 27-42.

[8] For a clarification of the concept of conslidated democracy in which the citizen/client/ beneficiary of public services has the power to intervene and sanction elites which politicize these institutions see Anca Parmena Olimid. 2008. Tranziţie şi consolidare democratică în Sud-Estul Europei: strategii, modele, teorii şi concepte. *Revista de Ştiin ▪ e Politice/Revue des Sciences Politiques.* 18-19: 64-69.

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ORIGINAL PAPER

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Uncertainty and the logic of imperfect ideological integration

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Abstract: *In this paper I provide an argument supporting Downs's defense of political party attempts to construct weakly integrated ideologies, i.e. supporting certain policies which contradict the assumed ideological mainstream. In this respect I employ a simplified version of the Davis-Hinich-Ordeshook proximity model in order to identify the voting mechanisms of individuals which analyze party policies as part of their electoral decision-making process. I conclude that although the main reason for occasional policy defections from the conventional ideological program is the fact that voters attach different weights to each policy dimension, uncertainty is in its turn a key factor in this respect.*

Key words: *ideological integration, ideology, policy dimension, proximity model, uncertainty.*

1. Introduction: Political ideology

The term "ideology" occupies a central place within political theory ever since its first usage, attributed to Destutt de Tracy in 1801[1]. In its initial form the term had a pejorative substance, being heavily popularized by Napoleon Bonaparte who labeled the "liberal intellectuals" of the French Institute as "ideologues" due to their interest towards abstract ideals rather than to the concrete, material interests of the French post-revolutionary society[2].

The conceptual restructuring of the term "ideology" can be seen for the first time in Marx's philosophy who continues to interpret the notion in a negative key, identifying it as "a social object which contains and is defined by values or illusory attitudes"[3]. The Marxist line of thought will prove over time to be particularly proficient, theorists in the field being responsible for elaborating various interpretations derived in a similar logic up to the contemporary period[4]. Although Weber, Durkheim, Pareto and others have had significant contributions to the development of the concept, it is Mannheim's work that is frequently considered in the specialized literature[5] the starting point for modern interpretations of the term. In regard to the Mannhemian approach, it is mainly organized around two distinctions: a) the distinction between the particular conception of ideology and the total conception, where the former has a psychological basis and refers to a "conscious disguise of the real nature of a situation" and the latter refers to the "characteristics and composition of the total structure of the mind of an epoch or a group" [6] and b) the distinction between ideology and utopia, whereby utopia is differentiated by ideology through the fact that it represents a system of ideas which is not incongruent with empirical realities[7].

In present, understanding ideology as a "communal resource" is a position which has been adopted by a wide spectrum of theoreticians, the notion being defined from this perspective as an identifiable cluster of concepts[8] which has the function to "guide practical political conduct"[9] and which is composed of both central and constitutive concepts which give the community represented its ideological identity as well as secondary concepts, unstable in character and structure, which can be contested from within or from outside the community[10].

2. Ideology and uncertainty in the Downsian interpretation

In contrast to the well established positions in normative political theory[11] in this paper I intend to analyze ideology from the perspective of an approach specific to Public Choice Theory[12], more exactly the Downsian interpretation of the term, according to which ideology is a "verbal image of a good society and of the principal means of constructing that society" being used as an instrument to obtain power by individuals and/or political parties[13]. In the Downsian conception, ideologies are therefore a mean through which parties, considered teams of people who strive to obtain control of the governmental apparatus through accession to power by way of free and fair

elections[14], are trying to achieve their constitutive purpose. By offering such a definition, exclusively oriented towards the instrumentality and effects of ideology, Downs avoids being entangled in the classical and never-ending debates regarding the axiological nature of ideology, the validity of its epistemological foundations, the relevance of psychological elements or social components in ideological construction, etc.

In the Downsian conception ideology can only be built due to the existence of uncertainty, concept which is defined as a "lack of certain knowledge regarding past, present, future or hypothetical events"[15], because in absolute certainty conditions voters can exhaustively analyze policy proposals and do not require the intermediary mechanism which ideology basically represents[16]. To define uncertainty, Downs operates with a trilateral distinction between reason, contextual knowledge and information. First of all, Downs argues that reason represents the capacity to operate with logical thought processes and the principles of causal analysis[17], considering that reason is universally valid in individuals[18]. Contextual knowledge, defined as knowledge regarding the fundamental forces which are relevant to a specific field of action" and information, which is defined as the data set symptomatic to current evolutions and the status of those variables which are subjects to contextual knowledge[19], are susceptible to imperfections as a lack of education or a lack of information can determine potential uncertainty regarding a targeted field.

As uncertainty is a characteristic of individuals, it affects both voters and political parties. According to Downs, uncertainty can affect voters in the following manners: a) they do not know if their utility level is modified as a consequence of governmental or other types of actions, b) they do not know the effects of governmental actions on their own actions, c) they are not informed regarding all governmental actions (including potential alternatives), d) they do not know the degree of influence which they exercise over governmental policies, e) they do not know the distribution of voters[20]. In regard to political parties or candidates, they are affected by uncertainty in the following manner: a) they do not know the decisions of non-political elements of the economy, b) they do not know the effects which a governmental action can have on the utility of voters, c) they do not know the objective consequences of governmental actions, d) they do not know the influence exercised by some voters over others, e) they do not know the level of awareness of voters in regard to governmental actions and f) they do not know the policies proposed by the opposition parties[21].

In addition to the forms identified by the Downs through which voters and parties can be affected by uncertainty, there are other elements which can be taken into consideration in the analysis as: a) the fact that parties do not know the distribution of voters[22], b) the fact that voters do not know the capacity for policy implementation by parties once they gain political power, c) the fact that parties do not have *a priori* knowledge regarding the ideological

positioning of the parties in opposition, d) the fact that parties do not know the decisional mechanisms of voters, as well as others.

Because uncertainty affects both voters and parties, ideology, which is formed as a consequence of this fact, is useful for both categories. For voters, ideology is useful because it represents a shortcut, used to decrease the level of information costs. In order to avoid studying each relevant policy position proposed by parties and subsequently to pay for significant costs to obtain information, voters can choose to study only the ideological platform of parties from which they can extract the general policy directions of parties[23]. In regard to political parties, ideology is useful as it represents an instrument to attract the electorate by concentrating political positions into a series of philosophical and general statements. In classical economics terms ideology is a good produced by political parties to meet the demands of the voters with respect to the reduction of information costs. The ideological offer is in its turn various, as each producer of ideology seeks to attract the maximum social pool, but due to uncertainty regarding the dominant social groups and the necessity to maintain credibility[24] and responsibility[25] the parties cannot exactly determine which ideological position is optimal and consequently they cannot converge toward this equilibrium point.

Alongside credibility and responsibility a third characteristic which according to Downs defines ideology is the "level of integration", i.e. the consistency between an ideology assumed by a party and the policies proposed by that party. A party ideology can be considered perfectly integrated when no policy proposed by it deviates from the supported ideological line of thought. Downs however asserts that ideologies can frequently be weakly integrated, offering as argument the fact that they are built to attract a plurality of social groups[26]. If all the other conditions of the model are considered valid and sufficient, Downs' argument for imperfect integration does not appear particularly attractive as it does not give us any concrete reason why occasional defections from the ideological mainstream should be translated in the winning of non-ideologically attached electorate.

3. The logic of imperfect ideological integration

The purpose of this paper is to provide an argument in order to explain the reason why it is rational to construct imperfectly integrated ideologies, considering that although Downs' conclusion with respect to the level of integration of ideologies is correct, his theoretical substantiation is insufficiently developed and requires the introduction of supplementary elements when trying to determine the decisional process of voters, a central factor being the persistence of the uncertainty assumption, considered by Downs relevant only in the formation of ideologies and not in their future development[27].

First of all, in the construction of my argument I formulate a distinction between the decisional mechanisms of voters, which is also largely iterated by

Downs in somewhat different terms, i.e. the differentiation between "partisan identified" voters[28], termed by Downs "loyalists" [29], who do not take into account policies or ideology but rather vote for the same political formation in a constant manner, "dogmatic" voters[30] who analyze party ideologies to reduce information costs and voters who analyze policies, who I will subsequently term, for a lack of a better word, "informed voters". Because the primary objective of parties is to gain power by accumulating a wide electoral pool it is natural for them to try to maximize the voting share received[31], through maximizing each term from the expression, $V = v_p + v_d + v_i$, where V = number of votes gained by the party, v_p = number of votes received from partisan voters, v_d = number of votes received from dogmatic voters and v_i = number of votes received from informed voters.

Although each element of the expression is important for a party, ideological integration is only connected to the last term, as in the case of partisan affiliated voters party policies are irrelevant and in the case of dogmatic voters, because they only pay minimal information costs they do not have access to policy results, thereby rending them redundant[32]. In regard to the third element however, i.e. votes received from informed voters, it is necessary to conduct a deeper investigation into the decisional mechanisms which determine their voting patterns.

Although within Public Choice numerous models are formulated for identifying and explaining the decisional processes of voters, in this paper I will use a simplified version of the proximity model constructed by Davis, Hinich and Ordeshook[33] due to its clarity and the fact that it is still perceived by the majority of specialists as the classical model for analyzing electoral competition[34]. The mathematical expression of the model for a single policy dimension is $U(V) = \alpha(v_i - c_i)^2$, where $U(V)$ = voter V's utility function , α = the parameter which reveals the importance of the policy dimension to the voter, v_i = the ideal position of a voter on the spatial dimension of a policy, c_i = the candidate's position on the spatial dimension of a policy. Generalized to a number of n dimensions, the expression of the classical model becomes: $U(V) = \sum_{m=1}^{n}\sum_{k=1}^{n}\alpha_{mk}(v_{im} - c_{im})(v_{ik} - c_{ik})$ [35]. In order to simplify the model I drop the assumption according to which in an n-dimensional political space the utility gained by a voter on a policy dimension can be influenced by another policy dimension[36] [37], therefore cutting the mathematical expression to: $U(v) = \sum_{i=1}^{n}\alpha_i(v_i - c_i)^2$ [38], which is much easier to understand and operate. We can therefore observe that the utility function of a voter depends, according to the model on the number of policy dimensions, the relevance of each dimension to a voter, the ideal position of the voter and the policy position of the candidate.

To underline the logic which lies at the heart of imperfect ideological integration let us consider the following example[39]: party A and B are in an

electoral competition. Party A is social-democratic and B is liberal. Let us consider that both A and B enjoy the support of an equal number of partisan and dogmatic voters, therefore making the interested voters decisive for the electoral outcome[40]. Let us also consider that the political agenda contains three policy dimensions which are analyzed by voters. Without a loss of generality, let us assume that these dimensions are social inclusion, agriculture and national defense, the problem at hand being related to the budget available to each of these fields. Each dimension can be represented on a continous scale within the interval [-5,5], where -5 is the inferior bound of the dimension, 5 is the superior bound of the dimension and 0 is the ideologically neutral point. Let us consider that party A, which is social-democrat occupies the positions {-2}, {-2} and {-2} on each of the three dimensions, having a perfectly integrated ideology as all the political positions are in accordance with their ideology. Opposed to them, let us consider that party B which has a liberal ideological stance, occupies the positions {2}, {2} and {-4} thereby having an imperfectly integrated ideology as it assumes a policy which is not characteristic to liberalism regarding the budget for national defense. Considering the previously described scenario let us analyze the example of a voter who is socially-democratic inclined but who analyzes policies and does not vote dogmatically and who is furthermore particularly interested with the third dimension, the national defense budget. Let us assume that his ideal positions are {-2}, {-2} and {-4} and the weight parameters[41] are $\alpha_1 = 1; \alpha_2 = 0.5; \alpha_3 = 8.5.$ The parameters reflect the degree of interest manifested by the voter towards a policy dimension, the numbers used in this example reflecting the fact that the voter is extremely interested in the national defense dimension and is almost completely disinterested regarding other dimensions[42]. According to the data presented, when applying the Davis-Hinich-Ordeshook model, previously described, the individual utility calculus is

$$U(v,A) = \sum_{i=1}^{n} \alpha_i (v_i - c_i)^2 = \alpha_1 (v_1 - c_1)^2 + \alpha_2 (v_2 - c_2)^2 + \alpha_3 (v_3 - c_3)^2 = 8.5(-4+2)^2 = 34$$

and

$$U(v,B) = \sum_{i=1}^{n} \alpha_i (v_i - B_i)^2 = \alpha_1 (v_1 - B_1)^2 + \alpha_2 (v_2 - B_2)^2 + \alpha_3 (v_3 - B_3)^2 = 16 + 8 = 24 .$$

Because $U(V)$ is a "loss function" [43] the utility units represent losses in the utility income of the voter, therefore a rational behavior will trigger the election of the candidate who is closest to 0 from a utility standpoint. Thus, voter V from the previous example will choose B, as he is overall closest to the voter's ideal position, an apparently counterintuitive result as both V and A prefer social-democrat policies while B generally prefers liberal policies, but as it does not have a perfectly integrated ideology it can also assume positions which are not fully in accordance with the ideology.

This example is designed to provide the reader with a concrete instance where using a fully integrated ideology can be detrimental to the party electoral

basin, even if the voter in question is ideologically oriented in the same direction as the perfectly integrated party. But the example is not isolated and can be generalized to a much wider range of cases. Let us consider that the simplified version of the Davis-Hinich-Ordeshook model described previously, i.e. $U(v) = \sum_{i=1}^{n} \alpha_i (v_i - c_i)^2$ is universal for all informed voters and that for simplicity reasons there are only two candidates: A and B in the electoral competition. Let us also consider that on all policy dimensions $i = \overline{1,n}$: $A_i = A_1 = A_2 = A_3 = ... = A_n$ and on all policy dimensions $i = \overline{1,n} - \{k\}$: $B_i = B_1 = B_2 = B_3 = ... = B_n$. Informally, this means that A has a perfectly integrated ideology and that B has an imperfectly integrated ideology as on policy dimension $\{k\}\ B_k \neq B_n$. If at least one voter V exists such that $v_i = A_i, (\forall) i = \overline{1,n} - \{k\}$ and $v_i \neq A_i, i = k$ and $v_i \neq B_i, (\forall) i = \overline{1,n} - \{k\}$ and $v_i = B_i, i = k$ and $\sum_{i=1}^{n} \alpha_i (v_i - A_i)^2 - \sum_{i=1}^{n} \alpha_i (v_i - B_i)^2 = \alpha_k (v_k - A_k)^2 -$ $-\sum_{i=1}^{n} \alpha_i (v_i - B_i)^2 > 0$ then it is rational for party B to assume a different ideological stance on policy dimension {k} in order to capture V-type voters. The model is constructed under the very strict assumption that informed voters are ideologically similar to a party in all but one policy dimension. If we relax the assumption and consider that informed voters differ in policy positions on more than one dimension, the above stated inequality is even more likely to occur and the chances that a party gains electoral support by placing on certain policy positions which are not traditionally associated with the ideology assumed increase even further, depending on the capacity which the party has regarding the identification of policies which have a significant weight among a social group or a community. To give a concrete example consider a group of factory workers who are informed voters and therefore vote according to policy positions. Even if in general they would be inclined to adopt the same policy positions as a socialist party, if for example the owners of the factory would threaten to close it down and relocate in another country if the socialist party would win the elections and impose a different tax scheme which would put the business sector under a heavier financial burden, some of the workers would vote for a more liberal party in an attempt to keep their jobs intact, the α parameter which reveals the weight of each dimension being high enough on the tax dimension in order to unilaterally determine the choice of the worker. If the community of workers in the specific factory is sufficiently high or if there is a sufficiently high number of such factories then the socialist party would have to take into consideration shifting from the policy position which would be in full consistency with the ideological stance and assume an imperfectly integrated ideology in order not to lose the votes from informed voters who are

normally within their electoral basin but radically differ on a single policy, valued at a much higher level by the voters than all others.

Thus, occasional defections from the ideological mainstream in regard to proposed policies reflect a rational party behavior as they can use this mechanism to attract a number (even if it is not extremely high) of voters who are traditionally attached to opposing parties, especially when the opposing party has a perfectly integrated ideology, case in which the imperfectly integrated party does not risk to lose sympathizers from its own electoral pool. Further, parties can use the mechanism to defend their own electoral pool from an opposing party which has an imperfectly integrated ideology. The main information required by parties is the importance which each dimension has on individuals aggregated in social groups or communities. This information is not always available for identification however, because of the uncertainty which characterizes the "homo politicus" as Downs defines him.

4. The necessity of uncertainty

Bearing this in mind the mechanism presented earlier, which legitimizes and instrumentally justifies the construction of imperfectly integrated ideologies, is sustainable only in uncertainty conditions. In conditions of perfect information each party would exactly know the configuration of the voter distribution function and the distribution of policy dimensions corresponding to the level of interests. In this case either: 1) all parties would converge toward the same position on each dimension, i.e. the dominant position[44] or 2) if the parties would be forced to maintain relatively constant policies so as not to risk the alienation of a certain share of the electorate, the attempt to assume a non-traditional policy position to gain some of the opponents electoral pool would prove useless as the latter party would place itself in the same position, the logic of the movement being tightly connected to the fact that the opposing party does not know the exact placement of social groups on a policy dimension nor the weight attributed to it. If the opposing party has perfect information then a defection from the ideological platform would be redundant as no position would exist where the imperfectly integrated party could exploit the opposition's lack of knowledge regarding voter policy positioning.

5. Concluding remarks

I consider that in this paper I managed to outline the basic structure of a mechanism through which it can be argued that imperfectly ideologically integrated parties, i.e. parties which propose certain policies which are not completely consistent with the ideological mainstream, exhibit a rational behavior, taking advantage of the fact that the level of interest manifested by voters which choose candidates according to their policy positions differs between policy dimensions and can be occasionally exploited. The primary way

to exploit this circumstance is the occasional adoption of positions which are more intense than those held by opposing parties but directionally similar. Further, I argue that this mechanism is only valid in uncertainty conditions, countering Downs' claim that ideological development does not depend on uncertainty, which is in his view only required for ideology formation[45], as first of all the relation between ideology and the policies assumed by parties is influenced, *inter alia*, by uncertainty[46] and secondly at least one essential component of the ideological construct, its degree of integration, which is in turn part of its development process fundamentally depends on the presence of uncertainty.

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[2] George Lichtheim, "The Concept of Ideology", in *History and Theory*, 1965, 4 (2), pp.165-166.

[3] Andrew Vincent, "Ideology and the Community of Politics", in *Journal of Political Ideologies*, 1999, 4 (3), p. 403.
[4] See for example Louis Althusser, "Ideology and Ideological State Apparatuses", in Zizek, *Mapping Ideology*, London, Verso, 1994, pp.100-140 or Slavoj Zizek, "How Did Marx Invent the Symptom", in Zizek, *Mapping Ideology*, London, Verso, 1994, pp. 296-333.
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[7] Lapalombara, op.cit., p.13.
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[10] Terence Ball, "From ‚core' to ‚sore' concepts: ideological innovation and conceptual change", in *Journal of Political Ideologies*, 1999, 4 (3), pp.391-392.
[11] Some of which were presented in the introductory part of this paper.
[12] Public Choice Theory is a research program which can be defined as the economic study of nonmarket decision-making. For a detailed monograph see Dennis Mueller, *Public Choice (Vol. 3)*, New York, Cambridge University Press, 2003.
[13] Anthony Downs, *O teorie economică a democraţiei [An Economic Theory of Democracy]*, translated by S. Cerkez*,* Iaşi*,* Institutul European*,* 2009*,* p.144. All references to this paper are translated from Romanian to English by the author.
[14] Ibidem, p. 62.
[15] Ibidem, p.121.
[16] Ibidem, pp.144-145.
[17] Ibidem, p.123.
[18] In this instance we notice that Downs constructs his "political individual" starting from the principles of maximal rationality (the "homo economicus" model) used in classical and neo-classical economics, operating on the possibility of holding complete information but not on the assumption that individuals who have an equivalent level of information and have the same maximal preference set can take different decisions.
[19] Ibidem, p. 123.
[20] The distribution of voters geometrically characterizes the way in which an electorate is placed on an ideological dimension.
[21] Ibidem, pp. 124-125.
[22] Because they are in a permanent state of fluctuation.
[23] Ibidem, pp. 146.
[24] According to Downs, a party is credible if its statements regarding policies made at the beginning of an electoral period can be used to correctly predict its behavior during the term in power (Downs, op.cit., p.152).
[25] According to Downs, a party is responsible if its policies from a certain period are consistent with its actions from the preceding period (Downs, op.cit., p.152).
[26] Downs argues however that although ideologies can be weakly integrated they cannot be internally contradictory (Downs, op.cit., p.162).
[27] Ibidem, p.149.
[28] Angus Campbell et al, *The American Voter*, New York, John Wiley and Sons, 1960.
[29] Downs, Op.cit., p.147.
[30] Ibidem, p.147.
[31] Downs is not specific about what exactly parties try to maximize, using plurality and vote maximization interchangeably. The distinction is formulated by Hinich and Ordeshook (Melvin Hinich, Peter Ordeshook, „Plurality Maximization vs Vote Maximization: A Spatial Analysis with Variable Participation", *American Political Science Review*, 1970, 64(3), pp.772-791) who argue that depending on the maximization objective parties can apply different optimal strategies. In

this paper, for simplicity reasons we will consider that parties maximize votes, especially as we will treat both two-party systems and multiparty systems, the general assumption being that in the latter case parties act as vote-maximizers.

[32] If they generally respect the ideological outline assumed by the party.

[33] Otto Davis, Melvin Hinich and Peter Ordeshook, "An Expository Development of a Mathematical Model of the Electoral Process", in *American Political Science Review*, 1970, 64(2), pp.426-448.

[34] Although the Downsian model is considered the foundation stone of spatial analysis due to its numerous methodological and theoretical deficiencies and its much too restrictive assumptions which determine a clear contradiction between the obtained results and empirical proofs it is not usually considered the benchmark in analyzing utility functions of voters.

[35] Ibidem, p. 433.

[36] Ibidem, p. 433.

[37] This simplification is designed to make the understanding of the model more easier, having no effect on the results of the paper.

[38] In the general form, excluding the parameter α, this expression is known as "squared euclidean distance". In the spatial analysis a second calculation formula is also used, termed "linear euclidean distance", having the expression: $U(V) = \sqrt{\sum_{i=1}^{n}(v_i - c_i)^2}$. For more details on this matter see Samuel Merrill III, "A Probabilistic Model for the Spatial Distribution of Party Support in Multiparty Electorates", in *Journal of the American Statistical Association*, 1994, 89 (428), pp.1190-1197; In my current example it is irrelevant which of the two formulas is applied as both produce similar results.

[39] The example constructed is intentionally constructed in a simplified reality to underline the role of the factor with which this paper is concerned, namely the reason for occasionally adopting policies which contradict the official party ideology.

[40] We assume that the voting rule respects the property of group additive responsiveness, i.e. if G and G' are two groups that do not overlap $(G \cap G^I = \{\varnothing\})$ and $F(R_G) = 0$ then $F(R_G \cap R_{G^I}) = F(R_{G^I})$. For the formalization and more details on group additive responsiveness see Adrian Miroiu, "A Weak Characterization of the Simple Majority Rule", unpublished, 2008, accessible at http://adrianmiroiu.files.wordpress.com/2008/05/weak_characterization_of_mj.pdf.

[41] Because the authors do not propose any basis for describing the weight parameters I will consider in this example that the total level of interest of the voter is of 10 units and it is divided among all policy dimensions in such a way that the parameters are directly proportionally linked to his level of interest, with the lower bound of the interval being 0 and the upper bound 10.

[42] We could assume for instance that the voter belong to the military officers community.

[43] Davis et al, op.cit., 432.

[44] The dominant position is the position in which a candidate "is guaranteed at least a tie in the election and a positive plurality if his opposition selects some position other than the dominant one" (Davis et al, op.cit., pp.426-427)

[45] Downs, op.cit., 149.

[46] Downs claims that the development of ideologies is reducible to the relation between ideologies and policies (Downs, op.cit., 149).

ORIGINAL PAPER

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Cultural phenomena and processes in contemporary society – determinants of cultural policies

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Abstract: *Cultural phenomena and processes in the contemporary society, influenced by the social development models and by the fact that the constitutive elements of the culture have become the decisive factors of social change, are the determinants of the cultural policies. They are centered on the active process of cultural globalization that emphasizes besides the assimilation of the European principles, also the preservation of the cultural dialog without identity loss.*

Keywords: *culture, cultural identity, cultural policies, national identity, (the) cultural crisis.*

As a set of value systems that expresses aspects of the physical and social reality, but also the characteristics of the relations between these two realities, culture, social complex integrating spiritualism and intellectualism, goes in consonance with the current global macroeconomic crisis through an unbalance.

Cultural evolution, rather the development of forms throughout time is in continuous transformation. The specialization of functions and the progressive differentiation of culture are the consequences of the social, cultural and biological evolutions of modern societies. The elements of a culture can freely go from one system to another and the social systems live through a system of institutionalized values, in regard to which its members must be strongly united and attached and must adhere in their actions.

While developing as „zoon politikon" (social animal), we discharge and receive cultural information, we polish and give us the finishing touches as creative beings, defining individual and collective cultural horizons for us. Today it is unanimously accepted the idea according to which a society cannot exist in any of the historical phases of its evolution without a cultural minimum.

We do not find a society in the history of mankind that does not build itself a cultural structure centered on the legacy determined by the degree of evolution of the production forces specific to that society.

The new thinking of systems and the different forms of artistic expression existing in the contemporary culture are generated by the fundamental changes that took place in different areas of cultural creation, technical progress and political organization. Most changes happened in science and in the space of aesthetic creation, subsequently expanding in the technical and economic plane of civilization, planes without which one cannot understand the characteristics of the contemporary world.

By means of the individual and collective communication of behavioral models, acquired attitudes and reactions, it is obvious that shaping the human personality is conditioned by culture, this being the one where through social and cognitive experiences are preserved and affirmation mechanisms of the human being are set up.

People's ability to form personal pertinent opinions that retrospect exactly to the given reality is achieved as a result of the received education, for the latter has as specific function to methodically develop and create the capacities, feelings and tastes of the individual. From a social and economic point of view, nowadays' culture is dominated by the confusion of the right and responsible choice to the confusion everyone experiments when he/she must choose the right way or option.

The frequent legislative changes in education have generated disorientation and confusion regarding the adequate construction of a social and educational curriculum, which led to the elaboration of culturally defective text books, to the fragilization of the spiritual horizon, to the alienation of the young generations from reading and to the emphasis of the advanced electronic technologies appropriation as means of information and culturalization. The educational environment is not however the only tributary of the cultural

vulnerabilization of the young generation, for the family environment has a similar importance in forming and consolidating the complex system of cultural attributes, faiths, morals, feelings and perceptions.

Individuals give originality to each country or each nation and they have determined the elaboration of their own answers to the fundamental problems of mankind. These answers are just as many possibilities to progress in science, culture and civilization. The proposed and adopted solutions have made the difference, up to now, with specific contrasts being developed among individuals: starting from the attitudes they adopt regarding a certain activity to the each one's form of sensing certain norms, values or attitudes.

Development is also a cultural process not only an economic one and the density of cultural creation, especially the scientific one, has projected certain societies in the vanguard of contemporary civilization. The interest for the problems of culture is related today to the new models of social development and the fact that the constitutive elements of culture have become decisive factors of social change.

Contemporary culture cannot be appreciated unless we know the main processes and phenomena that lately have generated impressive changes in the area of technology and means of communication. Due to these transformations we witness a change of the cultural paradigms, a mutation of values. At global level there is a certain cultural competition between societies, competition in which everybody defends and develops their own interests by means of the creative contribution they bring to community.

The 20th century has determined radical changes in the area of culture, among which we can emphasize the extraordinary successes obtained in scientific knowledge, hence the major importance given to values of science, acceleration of cultural changes, the crisis of traditional values, the increase in intensity of creation, the rapid integration of cultural values in the system of social activities through mass media, the democratization of the access to culture, the expansion of mass culture, etc.

One of the most debated themes is the one of the relation between cultural and national identity and the processes of economic globalization, having special implications for the understanding of the European integration process. It is much insisted on the problem of cultural diversity. It is extremely important the recognition and awareness of the differences and identities between cultures, while trying to have an intercultural dialogue. The expansion of the European Union represents an opportunity to know the culture of different countries and an attempt for mutual understanding, beyond the economic advantages.

In the last years the academic researches as well as the ones ordered by big companies or international structures have dealt with identifying the role culture has in social development and what impact the cultural processes or phenomena have on individuals.

The visibility of culture as central factor of the development of contemporary societies is also favored by the globalization of the economies and the ascension of the means of production and communication.

The extraordinary development of industry, agriculture, transports, science, etc finds a correspondent in culture. Today we witness an unprecedented development of culture in all areas. The last decades have made available a huge mass of cultural values, statistics showing that in the world there annually appear hundreds of thousands of book titles, an impressive number of radio and TV programs are broadcasted, there are painted and shown plays as never before. We have reached a cultural explosion, especially in production and in distribution, the individual having facilitated access to all the cultural goods, being able to choose the manner in which he/she wishes to fulfill his/her cultural needs. Some cultural goods, like movies, TV programs or books are conceived to be only a result in an industrial production.

The cultural industries in The European Union – cinematography and the audiovisual, editing, music and arts – are an important source of income and places of work. The European Union has support programs for certain industries in the area of culture, encouraging them to take advantage of the opportunities offered by the sole market and the digital technologies. Furthermore, it tries to create a dynamic environment for these industries simplifying the administrative procedures, facilitating the access to financing, contributing with research projects and encouraging a closer cooperation with partners from inside and outside the Union.

Cultural industrialization developed through the means of mass communication. Of course it had major advantages, but the tendency of product making and distribution led to self consumership. The multiplication of passions justifies the reactions to the industrialization of culture, the number of collectors, amateur artists or passionate in an area or another visibly increasing. A manner of interpreting these tendencies is the analysis of subjective participation of readers, spectators and listeners to the ideal and emotional making of contemporary art works. The convincing example is the Internet, which allows the production of large ranges of goods and by means of this channel the individual can easily consume culture. On the Internet we find cultural magazines and online bookshops, cultural publications and sites addressing the amateurs.

Contemporary culture also supposes at the same time the increase of the necessary of investments in different cultural areas, in auditoriums that need substantially enhanced improvements in regard to previous years or in libraries that must be fitted with modern and expensive electronic equipments.

In contemporary society we talk about mass culture as being the direct result of mass media action, professionals studying the audiences seeking „rather to impress the public opinion than capture it", „to influence it rather than measure it". The effect of this culture consists in the uniformization of the ways of thinking and behaviors, prevailing in this area the entertainment which keeps the individual outside the problems of society. Mircea Eliade emphasized the

manner in which the whole mediatic system carries a series of wasted and unproductive myths in order to orient the community in a desired direction and to obtain invisible political effects.

Modern and urbanized societies are mass societies with urban agglomerations and compared to the traditional ones, they introduce a new style of life in which time is severely segmented. From this reason there also appeared the individual's social need to spend this free time carrying out cultural activities but amusing at the same time. Specialized cultural creations have a prevalent value system, yet when it comes to mass culture we notice an increased tendency towards the commercial side. The products of this culture must be sold and their production must be profitable.

This type of culture has become a reality in contemporary societies acquiring a more and more important role in current society. The success and attraction of the new forms of mass culture combine the informational and educational dimension with the entertainment one, becoming dominant forms in developed societies, which led to the expansion and penetration of this type of culture in societies with a peripheral economic and political statute.

Today there is also much talk about a rather classic opposition, namely, culture versus technology. The first assures the difference and the second one is seen as an agent of integration. Due to the technological explosion that clutched human community but also the way in which individuals have changed their priorities and concerns, it came to talking about the decline culture has, naming this phenomenon „culture crisis".

The term „culture crisis" belongs to each person's value judgment on culture at a certain moment, judgment that can be molded but that can be influenced at any moment according to the context we refer to. This crisis can be different, in the sense that it can exist at the creator's level, the consumer's but also the culture critic's level.

Régis Debray highlighted two reasons of cultural crisis the world is going through, namely: the rapid increase of the population, but also local retirement which the technological globalization reactivates, according to a model of inverse proportionality. The more people start to resemble, the more individuals try to differ and this last effort is done through local cultures.

Cultural consumption does not represent such a recent phenomenon as one might believe, it has been debated for a long time, it is an ancient yet new theme, a complex subject that does not include only reading or the representatives of elite culture, theatre, library, museum, etc., but also the products of technology, TV, radio, PC, etc. In a world where almost everything can be quantified, culture and people's adherence to it does not get rid of measurements. And in recession times, cultural consumption decreases. At least that is the situation of Romania, reflected by a barometer elaborated by the Centre of Studies and Researches in the Area of Culture, subordinated to the resort Ministry in Bucharest.

The cultural practices are studied by the National Institute of Statistics and Economic Studies (INSEE) within the budgetary expenses of households.

The first such inquiries were initiated in the 19th century by Federic Le Play. Besides the inquiries regarding consumption expenses, in the last years many inquiries were made regarding holidays or the spending of free time.

When making a technical analysis of the current development of civilization one can notice a close connection between industry and culture, some professional authors talking about an industrialization of culture or about the culturalization of industry. The industrial revolution eliminated from people's life the aesthetic dimension that the hand - made world had. With the lapse of time, it was spread the conviction according to which technique and art irremediably separated. We can however notice the connection between artistic means and contemporary aesthetic conceptions, but also that absolute frontier where technique develops.

In the work „The culture consumers", Alvin Toffler shapes the idea according to which the increase in the number of artists imposes a competition which implicitly leads to virtuousness. Toffler states that wages in art are very low. Referring to the "industry of culture" the author shows that there are two types of cultural institutions: the ones that act in the payable area (commercial books publishing, CDs production) and others that act as nonprofit institution (theatres, opera houses, museums etc). Of these types of institutions, the nonprofit ones are confronted with financial problems, they usually activate in deficit, while the ones in the payable area can be prosperous institutions.

One cannot say one culture is superior or inferior to another culture, but we can discuss the inequalities which happened in their development. Nowadays there are different possibilities of production, distribution and access to culture between various countries due to the economic discrepancies. The cultural development of poor countries cannot be limited to preserving traditions and folklore, as those are starting to become an exponent for different occasions or for foreign tourists.

„We need a huge amount of money to produce culture". Therefore "cultural industry" is organized around various half - learned who present only a material interest for culture.

Synthesizing, we can state that in contemporary culture the generally human, moral or aesthetic ideals found a wide reflection, the individuals cultivating pride sentiments towards the national values.

Going through a period of mutual assimilation of the national and European values, but also the permanent exercise of keeping native - born values belong to an old principle of preserving the verticality of national culture. The cultural dialogue we should be suggesting to Europe, without concessions, without identity loss, without the sentiment of marginalization should come first in detriment of the assimilation of European principles as something compulsory preassigned, even though after Romania's adheraration to the European Union we have acquired its cultural policies' principle, that of absolute respect given to cultural diversity, with accent on the European common cultural heritage.

The legislation, institutional structure and adopted programs, initiated and made by Romania in the area of culture are in full agreement with the

provisions of the Treaty on the European Community, as well as those of the Parliament and Council Decision regarding the starting of the Program "Culture – 2000", provisions that emphasized the improvement of spreading knowledge about the culture and history of the European states, preserving and protecting the European cultural heritage, developing non - commercial cultural changes and supporting artistic and literary creation, including that of the audiovisual sector.

The principles and objectives assumed by Romania in elaborating its cultural policies are respected just as in all European Union member states:

- *Cultural policy is considered a key component of the development strategy;*
- *Cultural policies promote creativity and participation to cultural life;*
- *Cultural policies consolidate the measures to preserve the cultural heritage and promote cultural industries;*
- *Cultural policies promote cultural and linguistic diversity in informational society;*
- *Cultural policies assure the increase of human and financial resources for the culture's development.*

The main objectives of cultural policies in Romania consider all the elements that configure cultural life - contemporary creation, cultural heritage and the dissemination of culture, they balance themes and make them compatible with the principles and objectives internationally identified, but also with the national demands and traditions. Thus, cultural policy in Romania is based on 6 main principles:

- *the principle of protecting the national cultural heritage, according to which the values and goods that belong to the cultural legacy have the quality of fundamental resources of knowing our past and present;*
- *the principle of creation freedom, according to which the freedom of artistic expression and public communication of artistic works and performances represents not only a fundamental right, but also an essential element of human progress;*
- *the principle of independence of cultural institutions, according to which initiating and carrying cultural programs and projects cannot be restricted or censored due to ethnic, religious, political criteria or to satisfy some group interests;*
- *the principle of value primordiality, according to which it is ensured the creation of material and moral conditions, it is supported and promoted the application of specific evaluation and selection criteria, the affirmation of creativity and talent;*
- *the principle of equal chance to culture, according to which by means of the harmonization of cultural policies at national level with those at local level it is ensured the access and participation of all citizens to culture, as well as the development of the spiritual life of collectivities, in all their diversity;*
- *the principle of cultural identity in the world value circuit, according to which it is ensured the protection and valorization of cultural legacy, it is supported and promoted the introduction in the national and international cultural circuit of the values of national spirituality and is facilitated the circulation inside the country of the values of universal culture.*

The European Union proposes and develops important programs to preserve and valorize the intangible heritage. But the success and particularly the authenticity of the considered phenomena depend on the good intention, honesty and, last but not least, competence of those involved in such wide scope activities.

So that the European Union to be able to develop viable cultural policies we need to solidly know the past as well as to cultivate a respect for diversity. In this sense, *Romano Prodi* states the fact that in the moment in which Europe extends, comprising the great Slavic cultural traditions, more than ever we cannot let anything from the common European identity be lost and everything to coexist in a higher and more vigorous synthesis.

Europe is the continent of numerous national communities, with its own features, cultures and languages, a mixture of complementary identities in a vital way. *Constantin Noica*, in „De dignitate Europae" (1988), presents the cultural concept through the potential of constant evolution of a individuality up to the level of assessment and recognition of the general, the construction of that individuality that will obtain unity.

Preserving the national cultural identities, the heritage of identity values and identifying the values common at European level are the only forms in which the European Union will be able to keep the ideals it was founded for, proving that globalization can determine the ambivalence of the terms „European culture" and a „Europe of cultures".

A political culture of the developed countries is supported by the United Nations (UN) by means of the General Declaration of Human Rights. The society is in continuous change and the change it displays sometimes brings unbalance and instability. Many times changes are benefic and necessary, but they should also be guided by the norms imposed by every culture.

Acknoledgement

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ORIGINAL PAPER

Laura Elena MARINAŞ, Mihai Ovidiu CERCEL

The Role of Pre-Accession Non-Reimbursable Funds in Preparing the Access to and the Absorption of Non-Reimbursable Assistance of the 2007-2013

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Abstract: *The pre-accession instruments that supported the adhesion of new Member States in 2004 and 2007, as well as the new instrument, have an important component of technical assistance designed to support future Member States to access and manage structural funds - the main form of non-reimbursable assistance to Member States. The technical assistance measures applied are designed to support future Member States to build institutional and legal framework, including the training of human resources required for the new created structures.*

Key words: *pre-accession funds, reimbursable assistance, EU, financial assistance, PHARE.*

The pre-accession instruments that supported the adhesion of new Member States in 2004 and 2007, as well as the new instrument, have an important component of technical assistance designed to support future Member States to access and manage structural funds - the main form of non-reimbursable assistance to Member States. The technical assistance measures applied are designed to support future Member States to build institutional and legal framework, including the training of human resources required for the new created structures.

Using pre-accession financial assistance in preparing the framework for accessing post-accession non-reimbursable funds

Prior to joining the European Union, the financial resources available under the Phare pre-accession instruments ISPA and SAPARD have been directed mainly to projects aimed at creating the institutional system (legal framework, working procedures, training human resources) to ensure a high level of accessing future EU non-reimbursable funding – the structural funds; some of these projects have included information and training of potential beneficiaries. Most of these institutional construction projects were funded by Phare.

As a general trend in the new Member States, Phare was used for two types of actions aimed at creating the preconditions necessary to the institutional construction of the national management framework of structural instruments:

1) **Information and training of potential beneficiaries about the opportunities and how to access these new instruments of accession**. The objectives of these actions cover both the visibility and providing necessary information about these financial instruments and issues of access, and create a pool of eligible projects for funding by structural instruments. Analysis of Member States experience indicates that it is important that such actions have a high impact if carried out in the last year prior to joining the EU and, at most, in the first year of implementation of structural instruments in the new Member States. It is also extremely important that while these measures are implemented, priorities for use of non-reimbursable assistance is irrevocably set, otherwise there is risk of transmission of incorrect information, inconsistent with the reality. In most new Member States, using pre-accession assistance for training potential beneficiaries has included at least two dimensions:

a) Presentation of the main elements of the new conditions of access and implementation of new European Union financial instruments;

b) Presentation of the basic concept concerning financial priorities related to the new financial instruments and means of implementation.

In most new Member States, the main entities concerned

2) **Institutional building**, including the creation of the institutional framework for accessing and managing post-accession non-reimbursable assistance. These actions were initiated in the new Member States in the last 3

years prior the accession of these countries to the European Union. The main institution-building activities included:

a. Financial support and expertise provided by the EU in order to define priorities and objectives for the implementation of which will be used post-accession non-reimbursable assistance. In most new Member States, defining priorities for non-reimbursable assistance, for the first programming period in which they used structural instruments, was generally an exercise in taking over the priorities identified at European level; in the new Member States, there are differences only in terms of ranking / relative importance given to the European priorities. Taking over the priorities is a natural consequence of the participation of EU experts in defining national priorities for directing structural instruments, and the absence of a coherent national policy framework in the Member States, in the sense of the existence of well-defined sectoral strategies. Taking European priorities at national level was a simple approach, given the general character of the objectives set out in the European Union. For example, in Romania, defining funding priorities of structural instruments was based on an exercise of national economic and social analysis, but the national priorities set were a simple transposition of European goals. In the absence of clearly defined national strategy, priorities have kept a general character, without precise targeting to national policy objectives; for this reason, the expected impact on economic and social development is, in relative terms, smaller, general formulation of priorities ensuring greater dissipation of financial resources and inadequate application of the principle of concentration, specific to these financial instruments. As regards the new Member States, for those who joined the EU in 2004, the first programming period was the period from 2004 to 2006 (this is the period for which pre-accession financial assistance was used), unlike the case of Romania and Bulgaria, for whom the first programming period in which they benefit of pre-accession non-reimbursable financial assistance is from 2007 to 2013 (pre-accession assistance to facilitate the preparation and definition of priorities for this period). For Member States that joined in 2004, 2004-2006 brought an added value, the first programming year being an exercise that ensure institutional learning in 2007-2013 to better align European priorities for which fulfillment is being used non-reimbursable financial assistance of the EU, to national development needs.

b. Defining the institutions involved in the management of these instruments at national level, defining working procedures and training staff of those institutions. In terms of institution building, there are differences between the new Member States. In the new Member States that joined in 2004, institutional construction was carried out from 2002 to 2004, according to the institutional model prescribed by European legislation in force at that time. Given the legislative changes adopted in 2006 regarding access and management of structural instruments valid for the period 2007 to 2013, these Member States were in position to rethink and restructure the institutional framework for the period 2007 to 2013, to ensure compliance with the new institutional model defined at European level by the 2006 Regulations. In these Member States, the

restructuring of institutional framework implied a significant rethinking of the institutions involved in the management of structural instruments and their functions; their main advantage is the existence of institutional experience in the development and application of working procedures and qualified human resources with experience working with these new tools. As a common feature of the new Member States examined, it is to emphasize the fact that the institutional management of structural instruments was built on the "skeleton" of the institutions involved in the management of pre-accession financial assistance. This approach allowed the internalization of institutional good practice and experience gained from managing pre-accession financial assistance. An important component of institution building was the use of pre-accession assistance in the form of technical assistance for the development of work procedures and training of human resources/personnel of the institutions involved in the management of post-accession non-reimbursable assistance. In the case of States which joined the EU in 2004, changing the legal framework and European institutional model from 2007 to 2013 involved complete change of working procedures and self-financing staff training processes; in this case, Romania and Bulgaria, which joined in 2007, have enjoyed a substantial advantage in that they received substantial pre-accession non-reimbursable funds for implementation of new rules for accessing EU non-reimbursable assistance.

Lessons learned from the experience of new Member States in the period 2004-2006 of using EU post-accession non-reimbursable assistance from 2007 to 2013.

In the process of building national management and control systems of available non-reimbursable funds as structural instruments in the programming period 2007-2013, the new Member States have sought, first, compliance with the specific Community principles and regulations, but also to improve from good practices and difficulties encountered during the programming period 2004 - 2006.

The main weaknesses identified in the operation of the implementation were:

1) The difficulty of coordinating measures between the different structures involved in the management of structural instruments - these differences were evident in the case of Member States with an implementation system which included a large number of institutions, each with their own interests, practices and policies. Overcoming these difficulties has been possible in the new Member States that joined in 2004 for the period 2007- 2013 and found an extremely difficult exercise in Romania and Bulgaria (e.g. in Romania, the preparation of documentation for programming EU non-reimbursable assistance started in 2005 and was completed during April-October 2007, unlike the Member States which already have joined in 2004, where the process started in late 2006 and was completed in mid 2007). The experience of Member States that joined in 2004 was integrated by them between 2007 and 2013, in the process of building

the management and control system and in defining priorities for financing from 2007 to 2013. Despite the exchange of experiences between Member States (including those that joined in 2004) and Romania, best practices were not integrated in the process of institution building and in defining financial priorities of post-accession non-reimbursable funds. Difficulties in reconciling financing priorities were derived from structural instruments in Romania's case, the difficulties of relating the various sectoral or regional objectives of ensuring complementary financial assistance from different financial instruments (structural instruments, other community programs and national public funds) and the absence of a coherent national sectoral strategy. In Romania, The National Development Plan 2007-2013, approved by the Government in 2005, and The National Strategic Reference Framework 2007-2013 have shown a large number of priorities, which simultaneous accomplishment limits the effectiveness of non-reimbursable assistance by non-reimbursable instruments.

2) Little experience in developing and implementing projects financed by structural instruments, especially the new Member States, including in those states which joined in 2004, compared to the EU-15. For the Member States which accessed in 2004, the experience in implementation of structural instruments, relatively higher (due to the advantage of a programming exercise above, namely 2004-2006) to that of Romania and Bulgaria, has been eroded by changes in the legal management of structural instruments in 2007-2013. However, the main gains of the new Member States derived from attending a group exercise in 2004 (incomplete) of non-reimbursable assistance by structural instruments, implied an advantage to the Member States which joined in 2007, materialized mainly in:

- Improving the information, communication and visibility of EU non-reimbursable assistance, in terms of identifying the main categories of potential beneficiaries, and concrete ways to address them. This derived from the 2004/2006 experience. Hungary, for example, in an early stage, lacked of information offices. For a later stage they were poorly organized, monitoring and evaluation teams being unable to cope with thousands of phone calls daily. The practical outcome was that the creation and expansion of geographic information points and help-desks, functional and efficient. In Romania, the functionality of these information measures in 2007-2009 was reduced from a number of reasons, which can be listed, non-exhaustive: lack of experience of the staff of these structures located at the level of non-reimbursable assistance management structures; the variety of concrete situations in which it was necessary to interpret the rules of implementation of structural instruments derived from the variety of priorities and objectives to be achieved with the assistance of structural instruments.
- The creation, between 2004-2006, of a critical mass of organizations and qualified human resources capable of relatively rapidly integrate and apply new rules for 2007-2013, specific to structural instruments. In 2004-2006, Hungary, Poland, and the Czech Republic witnessed the development of a true industry of consulting firms, resulting in thousands of practically similar projects, with

minor adaptations, without a legal mechanism to refuse them. The situation has continued similarly in Romania between 2007-2010, resulting in emergence of expert advice in preparing applications for funding and reduced ability to use structural elements to address real structural problems of development. The lesson of Poland, Hungary and the Czech Republic was integrated by Romania only partially in the concept of access and absorption of structural instruments; in Romania, the Operational Program Human Resources Development (POSDRU) is distinguished by multiplying the type of projects developed by consulting firms, while for the Sectoral Operational Program – Increase of Economic Competitiveness (POSCCE) for certain lines of financing involves accessing European funds in preparing the grant application by consulting firms approved by the Intermediary Bodies for POSCCE.

3) The pressure to launch calls for proposals, due to the need to respect the "n+2" rule, caused in 2004-2006 an overloading of the Management Authorities and Intermediary Bodies with a large number of requests for funding that had to be evaluated and contracts. Coupled with the use of evaluation and selection criteria, either too flexible or too restrictive, there were inevitably delays in approving funding, and appeals that have contributed to delays postponed the final results. In Romania, over 2007-2013, this pressure was increased significantly due to relatively delayed approvals of operational programs. The continuous launching of calls for projects and the use of extremely flexible evaluation criteria and a highly flexible interpretation were the "bad practices" of the new Member States group which joined in 2004, integrated in the practice of POSDRU in Romania during 2007 - 2010, which is the program under which a project approval takes on average more than one year from the date of submission of the grant application by the beneficiaries.

4) Improper working procedures in 2004 - 2006 resulted in implementing errors in the new Member States, which led to an increase in cases of irregularities, of which the most cases and the highest values being irregular in Poland (157 cases, over 12 million Euros in 2006), and Hungary (97 cases, over 6,3 mil Euros in 2006). Romania and the new Member States generally have integrated this lesson in 2007 - 2013, most actions taken by the anti-fraud departments having a preventive character and being materialized in the form of training and information sessions to post-accession non-reimbursable funds recipients (at least one training seminar for each operational program, per trimester, in Romania, from 2007 to 2010). However, Bulgaria has not exploited this lesson and was confronted in 2009 with the European Commission decision to suspend the implementation of certain lines of funding in 2009.

5) Implementing difficulties, high number of irregularities, increased bureaucracy, especially in Member States and operational programs to implement the system based on a large number of intermediary bodies. In these Member States (Hungary, Poland), there was need to reduce the number of intermediary bodies and to provide more tasks to the remaining ones. For Romania, this lesson was not internalized into the management system of non-reimbursable accession funds from structural instruments. Thus for three

Operational Programs the number of intermediary bodies remains high (this is the case of the Regional Operational Program - 8 intermediary bodies, the Sectoral Operational Program Human Resources Development - 13 intermediary bodies, the Sectoral Operational Program - Increase of Economic Competitiveness - 4 intermediary bodies). In addition, in 2004 - 2006, in Hungary, Poland, Czech Republic, the frequent changes of rules and application conditions, an inefficient informational flow, as well as insufficiently harmonized legislation (public procurement, financial control) and high staff turnover were specific difficulties of the new Member States that affected the process of access and implementation of structural instruments. These negative aspects as well as those of a large number of intermediary bodies in the same program already materialized in the case of Romania, during 2007-2010 in weak institutional coherence, at the same program's level, pursuant to specific rules of implementation of structural instruments (e.g. the adoption of decisions on completely different financial management for similar situations by various intermediary bodies).

6) Difficulty in meeting deadlines and malfunction management system for EU non-reimbursable assistance from structural instruments. Thus, between 2004 and 2006, in Hungary it was observed that: much of the required documentation was useless, unable to comply with regulations and procedures in order to obtain funding by the applicants; double-checking system has led most often to a useless duplication of work. In Hungary there was no time limit for conclusion of funding contracts, but generally it was 6 months (between selection and contracting effects). The monitoring system has proven to be slow, inefficient with the procedures and useless costs. The installment payments to 20% when the project is completed were difficult to be accepted by the applicants from Hungary. Systems for receiving and approving projects were too complicated (e.g. the Czech Republic) and led to increased costs and the proliferation of non-transparent project selection methods.

Lessons learned by new EU Member States during pre-accession

The main "lessons" from accessing pre-accession non-reimbursable funds for new Member States transferred in the process of accessing and managing post-accession financial assistance were:

1) Building the institutional management framework of structural instruments determined the integration of best practices in each state, based on national assessments. Institutional framework for access and management of post-accession non-reimbursable funds from structural instruments must be built before starting to use post-accession financial instruments, as faster as possible, more accurately and adapted to national specificities. The evaluation of the pre-accession period indicated that institutional structures cannot be automatically copied/replicated from one State to another, but they must take into account peculiarities of administrative organization and traditions of each State. In Romania, building the institutional management framework of post-accession non-reimbursable funds was generally completed only by the time of its

accession; afterwards, the frequent changes of government structures influenced the allocation of responsibilities for management of structural instruments (e.g. moving the IB - Energy from the Ministry of Economy to the Ministry of Finance and then back to the Ministry of Industries). In the case of POSDRU, building national management framework was not yet completed at the end of June 2010 (i.e. two intermediary bodies had not yet been designated);

2) Overall, simple management structures of the EU non-reimbursable assistance are considered more effective, more flexible, more transparent and requiring a less expensive institutional building; such structures are easy to manage. Even so, simple management structures at national level are at risk to develop tree-like structures downstream, difficult to access, information, control the use of non-reimbursable assistance funds to the beneficiaries. In Romania, the institutional framework is a complicated one, which includes 18 national management authorities and contact points, over 30 intermediary bodies with national and/or regional responsibilities, etc.

3) The ability to access and manage non-reimbursable assistance depends, essentially, on the existence of qualified personnel, efficient and sufficient in number and structure. One of the aspects to be considered in the management of post-accession non-reimbursable assistance is related to the recruitment and motivation of the personnel working within the national management structures of these instruments. In Romania, in May 2010, due to budgetary constraints in 2009 and 2010, the effectiveness of financial motivation of the human resources from the management authorities and intermediary bodies was seriously affected and caused "migration" of the human resources to other sectors, so that coverage on the whole did not exceed 60%. This situation has negative effects on the absorption of structural instruments (increased processing time and verification of projects funded, etc.).

4) Development, prior to starting the process of accessing and implementing post-accession non-reimbursable funds, of a set of working procedures in order to ensure efficient and sound financial management of these financial instruments. The set of working procedures must be available prior to accession and must be adjusted continuously, as more appropriate to actual conditions of access and management of structural instruments, facilitating access and absorption of post-accession non-reimbursable funds. The operating mode with these types of manuals was experienced by the new Member States during the implementation of pre-accession non-reimbursable funds. However switching to post-accession assistance did not involve the automatic download of the old procedures, such an approach is limited by the fact that the rules applicable to grant post-accession assistance (EU regulations) are not completely identical with the specific pre-accession assistance (e.g. PRAG Manual). The existence and implementation of a coherent and workable set of procedures will ensure a high degree of objectivity in the management of structural instruments will facilitate the integration of new staff employees in the management structures of post-accession assistance and reduce dependence of key individuals in these structures.

5) Ignoring best practices and failures in pre-accession period limits the effectiveness and functionality of management systems of post-accession assistance, and thus the access and absorption of these financial instruments in the new EU Member States.
6) Information and training of project beneficiaries from structural instruments are essential for creating a larger pool of project ideas, development of quality projects and the adequate management, based on principles of sound financial management, of the funded projects. The concentration of these actions, carried out by the new Member States, the former beneficiaries of the projects financed from pre-accession assistance, has enabled the rapid generation of a large number of projects funded, but also presents a risk of repeating the same errors that they have done during the pre-accession period, and automatic implementation of pre-accession assistance under the rules, completely ignoring the new conditions for post-accession non-reimbursable funds.

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ORIGINAL PAPER

Cristina Ilie GOGA

Policy of the Spanish state regarding immigration. Free movement of Romanian workers restricted in Spain

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Abstract: *The immigration policy of the Spanish government in the last years was based on controlling the illegal immigration and the attempts to rate the migratory flow. The alarming increase of the unemployment level in Spain in the last year and the decrease with 3,9% of the level of the gross domestic income in just two years determined the Spanish state to invoke "safeguard clause" in the area of free movement of workers. Thus the European Commission approved on August 11th 2011 the restriction of the Romanian workers access until December 31st 2012.*

Key words: *immigration policy, Spain, free movement of workers, safeguard clause*

Spain's General policy regarding immigration

For many years the massive entry of immigrants on the Spanish labour market, especially in unqualified work places like agriculture, hotel services, constructions and domestic services happened with an insignificant intervention from the Spanish government.

In the year 1993 a quota system was created by means of which the regulation of migraiton was wanted. They tried to create some levers where the migratory flows would be aimed towards the departments that had workers deficiency. However, when implementing it, this system confronted with many difficulties from adminsitrative ones to bureaucracy and lack of coordination of the institutions. Due to the differences that were created between the quotas size and the real needs of the labour market, it got to the phenomenon of informal economy increase by the emergence of many businesses over the quota level and at the same time of many workers operating without legal forms.

In 1995 Spain had only 500,000 foreign citizens who lived on its territory, namely 2% of the total population. In comparison, at the half of the year 2011, in Spain there were 5,144,269[1] foreigners with registration certificate in the documents of civil status or resident card, that is to say 10.94% of the total population (47,021,031 inhabitants)[2].

Until 2000, the Spanish Government did not have many initiatives in the sense of controlling the migratory flows. Still, the demand for workers in some economic departments was accompanied by a series of initiatives thought to manage the manpower migration from abroad in a more ordinate manner and at the same time it was consolidated the fight against ilegal immigration and the border safety. They wanted to create an active policy, which would orient the migratory flows in the sense of satisfying the labour market needs. Thus in the year 2000 the "Plan Greco 5" was published, which is one of the most complex Spanish political documents in that period. This program was based on few basic elements:[3]

-approval of the immigrants admission criteria,
-mention of the number of immigrants in order to obtain the annual quota,
-mention of the number of seasonal workers,
-organization of some mechanisms to allow workers to be trained in their origin countries.

Starting with 2004, Spain began to have a more active policy regarding the management of flows of immigrant manpower, the quota system being modified various times.

Only workers who had never been to Spain until that moment could benefit from this program and the selection was made in their origin country. Another new element consisted of the fact that there had been involved new actors like the local governments, syndicates and the business department.

In the last years, the quota activity was continuously reviewed according to the specific needs of the labour market.[4] These new measures have imposed creating the "Special Catalogue of the Open Work Places" made by the Spanish employment agencies in collaboration with local governments, the emergence of

the "visas for searching a work place" and the seasonal permits valid for nine months.

At the same time in the last years, towards facilitating the migratory recruitment, a series of bilateral treaties were concluded with countries from Europe, Latin America and Asia.

Also it was much enhanced the number of inspections made at the place of work, precisely to have a monitoring as accurate as possible of the labour market.

The data of the *Economically Active Population Survey*[5] shows the fact that, in the last ten years, the activity of foreign workers on the Spanish labor market has been intense, they having a bigger activity rate than the native population. But, of course that, in presenting this situation one must take into account the smaller age average of the foreign citizens in regard to that of the native population. Also it should be emphasized the fact that most foreign workers, work in lower categories of the Spanish labor market, having especially bad paid work places (unqualified workers, 1st and 2nd level clerks).

In the year 2007 in Spain it was created a new department within the Ministry of Labor and Migration, whose purpose is to manage the number of skilled workers: "The service for large - sized businesses"[6]. It deals with work authorizations and residence permits of the highly qualified immigrants like scientists, university professors, notoriety artists, company managers, doctors, etc.

In conclusion, the immigration policy in the last ten years consisted of numerous attempts of the different Spanish governments to control the migratory flow as a response to the needs of the national labor market, leading to establishing the rates of immigrant workers. At the same time, a priority in the last decade has been the customs policy for fighting the illegal immigration and the mafia that deals with human trafficking.[7]

Attempts were made to maintain under control the immigration, but the legislative instability and the contradictory immigration policies, led to the presence of a large number of immigrants in Spain. Furthermore, the lack of integration of many immigrants led to conflicts between the host population and the new - comers.

A distinction is made in the Spanish legislation between two situations: the foreigners in Spain can be in a situation of temporary installation or residence. Temporary installation is defined as the presence on Spanish territory for a period of up to 90 days, except for students, who can stay for a period equal to that of the courses they are registered for. On the other hand, the persons with residence are the foreigners who live in Spain with a valid resident permit. They can be in the situation of permanent or temporary residence where the legislation covers the entry and the residence of the family members, the employed or freelance persons and students.

Also, the legislation considers three specific situations: the special regime of students, the residence of the stateless persons, people without documents and the residence of minors.

The effects of the economic crisis in Spain

The disastrous effects of the world economic crisis and the work places crisis that affected the population determined the Spanish government to restate many of the policies developed during the period of economic increase.

Spain was one of the states in which the economic crisis was felt very strongly, taking into account the fact that the economy of this country is based primarily on the areas of constructions and tourism.

Even in the press release no. IP/11/960 issued by the European Commission it is presented with details the evil situation in which Spain is.

Spain has to deal with obvious problems in the labor market area, having the highest unemployment rate in the European Union that is 21% in June 2011, in regard to the average of 9.4% registered at the level of the EU member states and 9.9% within the countries in the Euro area.

Also, the unemployment rate among the young is extremely high (reaching the level of 45.7% in June 2011) in regard to the average of 20.5% registered at the level of all EU member states and 20.3% at the level of the countries in the Euro area.

Another negative element consists of the slow economic recovery, the GDI in the first half of the year 2011 being of only 0.3%, in regard to the average of 0.8% registered in all the member states of the European Union as well as those in the Euro area.[8]

The situation of the immigrants in Spain

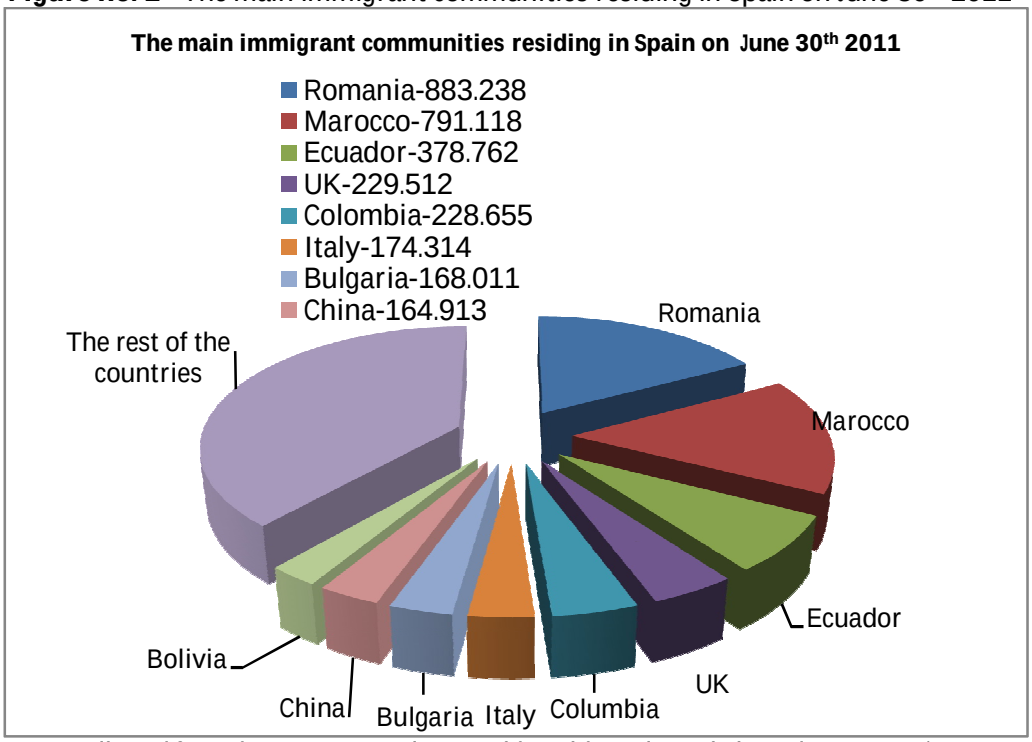
According to the Report - "Foreigners with residence in Spain" issued by the Spanish Government, Ministry of Labour and Immigration and the "Permanent Observer regarding Immigration" on June 30th 2011 in Spain there were 5,144,269 immigrants, holders of a registration certificate in the documents of civil status or resident card. Among these 2,476,334 that is 48.14% belong to the community regime[9] and 2,667,935 that is 51.86% belong to the general regime[10]. Among the immigrants with community régime, 2,098,847 come from member states of the European Union.

The main groups of immigrants were represented on June 30th 2011 by Romanians with 883,238 persons, followed closely by Moroccans with 791,118. As the figure number one shows, the rest of the immigrant communities are way behind the first two from a numerical point of view.

The economic crisis determined a fast rise of the unemployment and the migrants were the most affected by this phenomenon.

The highest rise of the unemployment took place in the constructions area, from 69,400 unemployed in 2007 to 228,300 unemployed in 2009, in agriculture 34,200 unemployed in 2007 and 57,000 unemployed in 2009 and in services, increasing from 156,500 unemployed in 2007 to 361,300 unemployed in 2009 (see table 1).[11]

Figure no. 1 - The main immigrant communities residing in Spain on June 30th 2011



Data collected from the Report - Foreigners with residence in Spain issued on June 30th 2011, Spanish Government, Ministry of Labor and Immigration and Permanent Observer Regarding Immigration, pages 3 - 7

Table 1 - Evolution of the number of immigrant unemployed on activity departments

	2007	2008	Increase registered in the year 2008	2009	Increase registered in the year 2009
TOTAL	407,700	779,300	371,600	1,076,300	297,000
Agriculture	34,200	43,100	8,900	57,000	13,900
Industry	29,500	61,300	31,800	73,300	12,000
Constructions	69,400	192,700	123,300	228,300	35,600
Services	156,500	273,300	116,800	361,300	88,000
Unemployed for more than 1 year	66,300	130,900	64,600	276,200	145,300
People who are looking for their first job	51,800	78,000	26,200	80,200	2,200

Data taken from the Volume "Immigration and the labor market. Report of 2010" belonging to the "Permanent Observer Regarding Immigration"

The situation of the Romanian immigrants in Spain

In the last years, due to the economic recession, the flow of Romanian immigrants has dropped, but nevertheless, the Romanian community has the biggest proportion among the foreign citizens in Spain (883,238 on June 30th 2011). According to the press release number IP/11/960 issued by the European Commission, the Romanian migrants who live in Spain are deeply affected by the crisis, in the first half of the year 2011 the unemployed number reaching 191,400, that is 30% from this community. This number is alarming, especially if compared to the level of unemployment in the first half of the year 2008 when it was of only 12.6% (80,100 people) from the number of Romanians residing in the peninsula[12].

The free movement of Romanian citizens restricted in Spain - applying the safeguard clause

The free movement of people is one of the four main principles of the European construction (next to the free circulation of goods, capitals and services) and at the same time one of the fundamental rights of European citizens.[13]

The right to free movement and stay for the people who perform an economic wage activity is provided in art. 39 TCE (the ex article 48), which has the following content:

„1. Free movement of workers is assured inside the Community;
2. It involves the abolition of any discrimination, based on nationality, between the workers of member states, regarding the place of work, remuneration and other work conditions;
3. It carries the right, subject to limitations justified by public reasons, public safety and public health:
a) to respond to the work places effectively offered,
b) to travel freely to this effect on the territory of the member states,
c) to settle in a member state to fill there a place of work according to the legislative, statutory and administrative dispositions that govern the work of the national workers,
d) to remain, in the conditions that will be the object of some application regulations established by the Commission, on the territory of a member state, after filling a place of work there.
4. The dispositions of the present article do not apply to the work places in the public administration".[14]

In theory, any European citizen can benefit from the right to free movement, but practically, the entrant citizens in the European Union can be subjected to some transitory measures that can limit the access on the labor market of the old member states for a maximum period of 7 years (2 years + 3 years + 2 years). We are now in the second phase that started on January 1st 2009 and ends on December 31st 2011.

The transitory measures for the free movement of workers, agreed between the old and new member states mean maintaining in effect the systems before the adheration, where a citizen from a future member state needed a work permit to work in the EU. These limitations can be complete or partial. The safeguard clause grants a member state the possibility to reorganize restrictions regarding the access on the labor market, supposing it confronts with serious disturbances of the labor market or it anticipates such situations. Spain invoked the "safeguard provision" in a letter addressed to the European Commission. The Spanish state liberalized the access on the labor market for Romanian workers, from the beginning of the second phase, January 1st 2009. Hence, Spain can only restrict the access of workers from Romania by invoking the so - called "safeguard provision".

The Spanish Government convinced the European Commission that the labor market cannot cope with so many unemployed. The executive of José Luis Rodríguez Zapatero argued that the system does not bear the arrival of Romanian citizens in the rhythm it took place in the last years and that it is necessary to limit their entry. Brussels allowed Madrid to reintroduce, although with some limitations, the work permits for Romanians, says the newspaper "Público".[15]

The European Commission approved on August 11th 2011 the petition of the Spanish authorities presented on July 28th to restrict the labor market for the Romanian workers untill December 31st 2012, as a result of some serious disturbances that took place on the Spanish labor market. It was the first time when a European Union state invoked the "safeguard clause" in the area of free movement of workers. The authorization conceeded to Spain on the basis of the safeguard provision is valid until December 31st 2012. Starting with December 31st 2011, the Spanish government will have to notify every three months the Commission, regarding the evolution of the labor market.

The restrictions imposed will not affect the Romanian citizens who are already active on the labor market or those who were registered until August 11th 2011 at the Public Employment Service in Spain.

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1 *Report - Foreigners with residence in Spain* issued on June 30th 2011, Spanish Government, Ministry of Labour and Immigration, Permanent observer regarding immigration

2 National Statistics Institute, Spain. The data are taken from municipal level, independent community and region by means of the Register Office, 2010 in http://www.ine.es

3 Ana López - Sala, Ruth Ferrero - Turrión, *Economic crisis and migration policies in Spain: The big dilemma*, Centre on Migration, Policy and Society, University of Oxford, Annual Conference, 2009, p. 5

4 Idem.

5 *Study on the economically active population* (Economically Active Population Survey - EAPS4)

6 Unidad de Grandes Empresas (UGE)

7 *Comparative study of the laws in the 27 EU states regarding illegal immigration*, International Organization for Immigration, February 2008

8 www.europa.eu

9 *Community regime* is the legal statute of foreigners which applies to the citizens of the European Union and in AELS - EFTA countries (Iceland, Liechtenstein, Norway and Switzerland), as well as their families and the Spanish relatives, who are natives of third countries.

[10] *The general régime* is the legal régime which applies to natives of third countries, that is to all the countries that do not belong to the community régime.
[11] Miguel Pajares, *Immigration and the labor market. Report 2010*, documents belonging to the "Observatorio Permanente de la Inmigración", table 20, Grafo S.A. Publishing House, Madrid, 2010, p. 49
[12] Press release no. IP/11/960 "The European Commission accepts that Spain can temporarily restrict the free movement of Romanian workers", issued by the European Commission on August 11th 2011, http://europa.eu/
[13]http://www.birouldeconsiliere.ro/detaliu.aspx?eID=362&t=Articole
[14] http://www.antifrauda.gov.ro/docs/ro/legislatie/TCE%20consolidat.pdf
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ORIGINAL PAPER

Roxana Maria PÎRVU

The impact of the world financial crisis on the fulfilment of the convergence criteria

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Abstract: *This paper presents the way in which the international financial crisis has affected the EU Member States. The levels of the public debts are pointed out and also the levels of the budgetary deficit, but also the measures taken by the authorities in order to improve the economies. In consequence, the eight countries left in the Euro competition will have to reduce the budgetary deficit below 3% and to maintain it for the EU to analyse the other indicators which might lead to delays in the Europe adoption program.*

Keywords: *convergence criteria, budget deficit, public debt, inflation, interest rate.*

1. INTRODUCTION

Where did the crisis start from? The answer given by all analysts was: from the very controversial practice of the subprime lending practiced on a large scale in the USA which expanded and became a real global crisis of liquidities, loans and credits at the same time with the sudden reduction of the trust and availability of the credits around the world.

The creativity of the American financial operators led to the emergence of some financial instruments and schemes as the subprime lending and the security mechanism. The subprime lending concept contains a variety of credit instruments: mortgage subprime credits, auto sub-prime credits, subprime credit cards, but the most frequently used type was the one of the mortgage subprime credits. The terms subprime (near-prime, non-prime, second change lending) refers to the statute of the borrowed person, of the customers having a score below a certain level (for example 600 points) and not to the interest rate. Even from their emergence these instruments were controversial. The arguments against them were related to the idea that the financial promoters focused on the subprime niche were committed to lending practices focused on granting credits deliberately to some debtors who were not able to meet their obligations.

The crisis started when the real estate boom from the USA burst out in 2005-2006. The real estate boom from the period prior to the crisis was supported by:

- Easier and easier standards for the approval of mortgage loans
- A significant growth of the incentives for credits, as initial advantageous credits
- A long term tendency of growth of the price of the houses.

In consequence the population did not hesitate to resort to burdening mortgage loans, with the hope of being able to re-finance them for more advantageous instalments. If in 1994 65% of the Americans has a house in 2004 there was a historical maximum of 69,2%. The prices of the houses increased very much between 1997 and 2006 the growth being of 124%. As compared to the annual average income of a household, the average price of the houses increased from 3 times the annual average income to 4,6 in 2006.

Seeing that the value of the houses was growing, many Americans put a second mortgage on the difference of value, and with the money the financed the growing expenses. Speculators also had their role. Seeing that the price of the houses is continuously growing they invested in houses, almost 40% of the houses sold between 2005 and 2006 were not permanent residences.

The subprime mortgage lending, with a high degree of risk went up from 5% in 1994 to 20% of the total of mortgage loans in 2006.

Some analysts say that this mortgage crisis is just the peak of the iceberg: the real source which generated this financial disaster is represented by the monetary policies of the central banks. It was thought that with the help of the credit relaxation and the monetary expansion generated by the policies of the central banks, the monetary authorities including EDF distorted the signals of the market regarding the resources left for the investors. The illusion of the capital

which in reality became inexistent led to a series of non-sustainable investments, for which the economy did not have any resources.

So there was the situation where these projects had to be liquidated in order to stop the losses. The relocation of the resources stuck in non-sustainable projects can be done only with losses and capital erosion and decreasing productivity.

2. The fulfilment of the convergence criteria under the impact of the world financial crisis

The entire global economy was affected by the loss of trust in the financial system which had as an effect the loss of liquidities, the growth of the interest rates and the internal and external funding costs. In most of the countries the central banks from the developed countries were forced to supply the markets with money. At the same time the surveillance rules of the financial markets roughened and determined the revaluation of the risks of investments.

As the states come between economies, either to save banks or companies from bankruptcy, or to support the economic activity and to create working places there is the need to re-balance the state budgets. The governments of the EU countries do not have various tools as the devaluation of the currencies and or the inflation, but a single one which is a combination between the reduction of the budgetary expenses and the tax increase.

The crisis affects the small and middle enterprises, because the state budgets are smaller, the banks do not offer loans anymore and the small companies lack a risk capital

The social assistance is also affected by the crisis, the resources for the health adopt some efficiency measures wanting the same results for less money, education, and research and culture are private by the necessary funds.

The negative impact of the crisis is also manifested on the pension funds. The effect determined by the crisis was the one of erosion of the money accumulated before the crisis. The proportion of erosion relied on the type of portfolio where the money where invested which the stock market shares went down by 50% in some states, the bonds experienced a more modest depreciation.

Under these circumstances the Maastricht Criteria regarding the budget deficit and the public debt are no longer respected. The budget deficits of some states go beyond the maximum limit of 3% and determine in time an amplification of the public debt of more than 60%. The Greek budget deficit reached 13,6% and the Great Britain budget deficit 11,5%, levels which do not have anything in common with the convergence criteria. Regarding the other convergence criteria, from Germany, the share of the public debt in GDP will reach 83% by 2014 with the perspective of coming back to 60% in 25 years.

The level of the budget deficit and of the public debt in EU

Country	Budget deficit (%)	Public debt (%)	GDP/capita
Austria	3,4	66,5	6.248
Belgium	6,0	96,7	45.718
Bulgaria	3,9	14,8	6.248
The Czech Republic	6,9	35,4	19.006
Cyprus	6,1	56,2	30.583
Denmark	5,4	41,6	57.425
Estonia	1,7	7,2	13.559
Finland	4,1	44,0	45.869
France	7,5	77,6	44.464
Germany	3,3	73,2	40.688
Greece	13,6	115,1	31,014
Ireland	14,3	64,9	58.050
Italy	5,3	115,8	36.350
Latvia	10,0	36,1	11.154
Lithuania	9,5	29,3	10.354
Luxemburg	0,7	14,5	110.335
Great Britain	11,5	68,1	36.336
Malta	4,7	69,1	19.619
The Netherlands	5,3	60,9	53.428
Poland	6,0	51,0	11.127
Portugal	9,4	76,8	22.559
Romania	8,3	23,7	7.229
Slovakia	6,3	35,7	16.249
Slovenia	2,5	35,7	25.417
Spain	11,2	53,2	36.402
Sweden	0,5	42,3	45.663
Hungary	3,9	78,3	12.881

Source: Convergence report, May 2010

On 24 March, there were evaluated the stability and convergence programs from other 10 EU Member States: The Czech Republic, Denmark, Lithuania, Latvia, Luxemburg, Malta, Poland, Romania, Slovenia and Hungary. From this group of countries, only Denmark and Luxemburg maintained their budget deficit below the level of 3% of GDP in 2009. These countries also experienced in 2009 a strong deterioration of their budget situation. Six of the 10 evaluated program point out a public debt as compared to GDP below 60% in the period 2009-2012(the Czech Republic, Denmark, Lithuania, Luxemburg, Romania, Slovenia).

Austria According to the predictions of the services of the EU Commission the economic recession from Austria reflects the drastic reduction of the private investments and of the foreign trade in the manufacturing industry oriented towards export, as a consequence of the worldwide financial and economic crisis especially the much lower growth perspectives of the main commercial partners (the Eurozone, Central and Eastern Europe). Moreover, the estimated overtaking of the reference value of the indicators regarding the budget deficit and the public debt cannot be considered temporary. The criterion of the deficit from the treaty is not fulfilled. According to the data from October 2009 registered by the Austrian authorities, the gross public debt was situated above the reference value of 60/5 from GDP from 2008, and reached the level of 66,5% from GDP in 2010. According to the predictions of the services of the EU Commission it is expected a growth of this share. We cannot consider that the share of the debt is decreasing and is getting close to the reference value in a satisfactory way in the sense of the dispositions from the treaty from the stability and growth agreement. The criterion of the debt from the treaty is not fulfilled.[1]

Austria registered problems related to the performance of its bank subsidiaries from Eastern Europe and of the insurance companies from the same region. In spite of this, the Austrian economy did not suffer much and last year in spite of the recession the purchasing power of the population has grown. Analysts say that Austria's economy will start making progresses from 2013 until the level reached before the financial crisis.

Belgium According to the data given by the Belgian authorities it is expected that the Belgian public deficit will reach 6,0% of GDP being in this way above the reference value of 3% from GDP. This is also due among other causes to the significant decrease of the economic growth in the sense of the dispositions from the treaty and from the stability and growth pact. On the other hand according to the prediction from the autumn of 2009, the forecasted overtaking of the reference value cannot be considered temporary because it is anticipated a stabilisation of the deficit from 5,8% from GDP in 2011, taking into account the consolidation measures which are well stated up to the present and that is why the authorities have considered that the deficit criterion from the treaty is not fulfilled. The gross public debt went down constantly from 134% from GDP in 1993 to 84% from GDP in 2007. In 2008 the operations to make the financial sector stable have led to the growth of the debt to almost 90% from GDP. In consequence, the level of the debt continued to be situated above the reference

value of 60%. According to the data given by the Belgian authorities it is foreseen that the gross public debt will be around to 97,6 from GDP. According to the predictions of the services of the Commission from autumn 2009 it is expected that it will reach 104% 2011. We cannot consider that the share of the debt is considerably decreasing and it is getting close to the reference value in a satisfactory rhythm in the sense of the dispositions from the treaty and the stability and growth pact and that is why the criterion of the debt from the treaty is not fulfilled.

The salaries of the public clerks are expected to be cut down, it is also expected a fight against the fiscal fraud and the growth of the retirement age. The aim is to reduce the budget deficit from 6% to 4,8% of GDP in 2011.

Bulgaria is not subject to a EU Council Decision regarding the existence of an excessive deficit. In 2009 Bulgaria's budget deficit was of 3,9% of GDP but the level of the public debt was inferior to the reference value of 60%. It is estimated that the sustainability of the public finances from Bulgaria registers a low level of risk, but there are necessary fiscal consolidation measures so that it could fulfill the average term objective.

Regarding the level of inflation Bulgaria registered an annual average rate of inflation IAPC of 1,7%, a higher level as compared to the reference vale of 1,0%. According to the most recent prognosis regarding the inflation this will be situated between 2,2% and 2,6% in 2010 and between 2,7% and 3,2% in 2011. The growth beyond expectations of the prices of raw materials on international markets represents the major risk in the sense of growth for the forecasted inflation. If we take into account the fact that in Bulgaria there are use monetary agreements like the ones from the monetary council and alternative anti-cyclic instruments the prediction of the re-emergence of some macroeconomic disparities is hard to prove, including that of the high inflation rates.

The Bulgarians have started the budget reduction from the top to the bottom. The government wants to reduce with 15% the budgets for parties and to cut down the transport expenses for the members of parliament. The legislative power will also reduce the amounts of money of its members for accommodation. On the other hand the Ministry of Finances analyses the possibility of increasing by 10% the basic salary in all the state institutions.

The Czech Republic was subject to a EU Council Decision regarding the existence of an excessive deficit. In 2009 the budget deficit was of 5,9% of GDP which was higher than the reference value of 3%. The share of the public debt in GDP was of 35,4% lower than the reference value. According to the studies carried out by the European Commission, the Czech Republic seems to be confronting with major risks regarding the sustainability of the public finances. It is expected that there should be taken comprising measures regarding the fiscal consolidation so that the Czech Republic could fulfill the average term objective.

According to the most recent available prognosis, the inflation rate will be situated between 1,3% and 2,2% in 2011. The growth of the level of inflation rate can appear as a consequence of the majority of the raw material prices especially that of the petrol price on the international markets. In what the long term

interest rates are concerned there were situated around 4,7% a lower value than the reference value for the convergence criterion.

We can assess that in order to create a favourable environment for the sustainable convergence in the Czech Republic it is necessary to maintain a monetary policy oriented towards stability and the implementation of a credible fiscal consolidation process.

The right coalition which won the legislative elections from last year promised the cut off of some social and fiscal prudence benefits. The target is to reduce the budget deficit of 5,9% from GDP to 4% in 2011. The GDP of the Czech Republic went down by 4,1% last year but it is expected to grow this year by 1,5%.

Denmark The government launched an austerity plan on three years in order to spare 3,2 billion Euro, so that in 2013 it could have a deficit below 3% of GDP. Thousands of Danish people went on strike against this package which includes the reduction of the unemployment allowance period from four years to two years, freezing the development allowance and the family allowances.

Estonia reached a high sustainable economic convergence level and adopted the Euro currency on 1 January 2011.

The average inflation rate from Estonia in the 12 month before March 2010 was of 0,7% below the reference value of 1,0% for that month and it is likely to maintain below the reference value in the next period. Estonia will have to watch over the maintenance of a low level of inflation mainly by keeping an ambitious orientation regarding the fiscal policies and by guaranteeing the fact that the internal demand is complying with the fundamental economic principles.

The deficit and the public debt is framed in acceptable limits for the evaluation of the convergence: the deficit reached 1,7% from GDP in 2009 in spite of a decrease of 15% of the nominal GDP. It is expected that the deficit will increase to 2 ½% in 2010 and in 2011 according to the predictions of the Commission from spring. The public debt will increase by 7,2% from GDP in 2009, level which is much beyond the limits set in Maastricht and will remain below this even it is expected that the public debt is going to grow until 2013.

The criterion related to the long term debt is not applied directly to Estonia, due to the fact that neither the long-term reference governmental bonds are available, nor other relevant securities in order to assess the durability of the convergence as it is reflected in the long-term interest rate.

In what the exchange rate criterion is concerned, Estonia is taking part in ERM II from 28 June 2004. In the two years period which was concluded on 23 April 2010, the Estonian crown was not subject to some strong tensions and since the crown is taking part in the mechanism there was no deviation from the central ERM II rate.

Unlike the rest of the Baltic states, Estonia could increase the education and agriculture expenses due to the cut-offs from the beginning of 2009 and was able to create an emergency fund in order to help the local administrations in need. In spite of the unemployment which reached alarming numbers (almost

20%) and of the fast inflation the Estonians did not block the activity through strikes in no important sector.

France The budget deficit from 2009 is the equivalent of almost 144, 8 billion Euros according to the French statistics bureau. At the same time the public debt from France went up last year from 1.489 billion Euro or 77,6% from GDP under the circumstances when at the end of 2008 the indicator was around 67,5%. . Like other Euro member states, France has exceeded the limits regarding the debt and the deficit stipulated by the European legislation according to which the public debt of a country using the single European currency should not overcome 60% of GDP while the deficit should reach a maximum of 3% of GDP. In spite of these, the European Union states received last year exemptions for the temporary overtaking of these limits on the reason that it had made massive financial efforts in order to stimulate the economy. According to the estimations of the French government, the budget deficit of the country will continue to grow this year reaching 7,5% of GDP at the end of 2010 and coming back to 3% threshold in 2013. The public debt is expected to grow until the end of 2012 to 87,1% from GDP and will decrease starting with 2013.

Even if the Prime Minister Francois Fillon has promised that he will interfere in the pensions and the taxes, the 150 aid was cut off for the families with modest incomes and then the salaries of the clerks were frozen. Moreover they did not receive the 13th and 14th salary. The public expenses were frozen for 3 years and then the subventions and they decided to increase the retirement age, gradually up to 63 years old until 2015. The government announced that it might also increase the VAT.

Finland is along Luxemburg the single country which respected the Maastricht criteria for a long period of time with a budget deficit below 3% from GDP and a public debt of 60% from GDP. In spite of these in 2010 the EU Commission proposed the year 2011 as a deadline for the correction of the budget deficit in Finland (4,4%). With a social system envied by many people, Helsinki intends to increase the income granted to this sector in 2010. In order to eliminate the problems related to the ageing of the population, the government has decided to make easier the conditions for granting the nationality.

Germany Berlin has announced budget reductions of almost 80 billion Euros in the next four years in order to reach the limit of 3% from GDP up to 2013. 15.000 administration jobs will be cut off and the military expenses with 40.000 professional soldiers, the retirement age will grow from 65 to 67 years old in 2029 for a full pension. The unemployment benefits will be also reduced and there will be introduced a series of taxes.

Greece In the third trimester of the last year, the Eurozone economy contracted with 4% as opposed to the period corresponding to the previous year while the Greek economy lost only 1.7. The Greek GDP management to resist well during the crisis but this evolution as also due to the public expenses which were extremely high, expenses which generated a record budget deficit.

In 2009 Greece registered a record budget deficit of 12.7% while the average of the Eurozone was of 6.4% in 2009 and of 6.9% in 2010. The huge and

unsustainable budget deficit on long term determined the European Commission to take attitude and to request the limit of 3% until 2012, but for some countries among which Greece it was impossible to maintain such a performance especially under the circumstances when the drastic reduction of the deficit cannot be done without the drastic reduction of the public expenses and the increase of the unemployment, measures which were not accepted by the trade union.

Greece was under an extremely bad position due to the fact that it has a high current account deficit, so that the "twin deficits" as the budget deficit and the current account are called will be extremely hard to finance.

On of the reasons for which there were voices which did not agree with supporting Greece was this abatement of the European Union from the norm which it imposed. While the government from Athens took the money, the situation of the deficit and of the public debt will be more complicated: debt degree of the state will reach almost 150% of GDP in 2013.

The state which took the most drastic measure was Greece which raised the VAT from 19% to 23% and increased the alcohol, tobacco and gas excise by 10%. It also reduced the average salary by 20%. The public clerks had their salaries cut off by 8% and they were taken also the bonuses – the 13th and 14th salary. The retirement age was also increased in order to make it equal with the retirement age of the men (65 years) and then the pensions were cut off by 105. Greece hopes to reduce the deficit with 5% this year and 7,6% next year. For 2011 other tax increases are planned – tax on property, on gambling, and the pensions will remain frozen. These measures generated the most violet social strikes in Europe which ended up with dead people and ravaged buildings.

Ireland In February 2009 an additional tax of 7,5% was imposed on the public clerks and the tax on profit was increased. In December 2009 the government adopted another series of drastic measures: decreasing the salaries of the public clerks by 5-10%, reducing the family allowances and the unemployment aids. More than 1000 manifested in Dublin on 15 May against these policies. Ireland intends to reduces the budget deficit which is presently 14,3% of GDP to 2,9% in 2014. Ireland's deficit went down by 12% in the last four years.

The same as Greece, Spain and Portugal in spring Ireland's credibility depended on how seriously it would get involved in the direction of some austerity measures. Any measures are expected to be hardly supported by a country where the unemployment rate is above 30% among young people, where 100.000 people emigrated after 2008 and there 100.000 families are supposed to have great difficulties in paying their bank rates and current expenses. The situation of the companies is not good either, the worst position is that of the construction and real estate companies – "the engine" of the spectacular growth at the beginning of 2000 up to 2007. At present 300.000 of brand new houses build during the real estate "boom" cannot find their owners.

The Irish banks are the most affected by the crisis. They have become "black holes" after which they swallowed 50 billion Euros from public money (one third of GDP) but the total of debts towards the foreign banks is of almost 800 billion.

Irrespective of their sacrifice, the Irish tax payers cannot enjoy "an investment" which might be profitable for a long term period. The five Irish banks quoted in the Irish stock exchange index ISEQ value only 2% of they used to value in 2007, according to Bloomberg.

Italy Unlike Greece or Ireland, in Italy there was no breakdown of the real estate market or an implosion of the banking system. On the other hand, the same as Portugal its income did not cover the debt. Between 1998 and 2008, Germany's productivity increased by 22%, the French by 18% but Italy's productivity only by 3%. If the situation does not change, Italy will not be able to have an economic growth higher than 1% in 2010 and 2011. In this case according to the European Organisation for Economic Cooperation, the income from taxes will be reduces and Italy will not be able to reach the budget deficit target.

According to the analysts it is hard for the companies which could be able to generate innovation, productivity and growth to be developed because of the taxes system and of corruption, fiscal evasion and bureaucracy.

Although Italy has almost the highest public debt in Europe, it has a risk prime of only 1,7% unlike other countries from the Eurozone. For example Greece, Ireland, Portugal and Spain are paying between 5 and 7%. It is assessed that if the Italian economy will not manage to grow to a more accelerated rate of 1%, the investors will not hesitate to tax this. We have to take into account the fact that the debts will represent almost 120% of GDP a higher percentage than that of Portugal, which has a 85% of GDP debt.

The salaries of the clerks will be reduced by 20% and those of the Member of Parliament by 5%. The subventions for the political parties will be reduced and the funds for the regions, provinces, communes are reduced by 14,8 billion Euros while those for ministries by 4,6 billion Euro and those for the pharmacy industry by 1,5% Euro.

Latvia After the IMF agreement the salaries from the public sector went down in average by 28% while those from the private filed by 30%. There were fired 14.200 state employed people (20%). The tax on profit was increased from 16% to 23% and the VAT with 3% (from 18% to 21%). In this state there were important strikes, thousands of people demanding the resignation of the government.

As a consequence of the high level of budget deficit which was more than 3% Latvia was subject to a EU Council decision regarding the existence of the excessive deficit. The share of the public debt in GDP was situated around 36,1Â% inferior to the reference value of 60% but it is forecasted a growth up to 48,5% this year.

In what the convergence criterion on the inflation rate is concerned, it was noticed that although in the period previous to 2008 the annual average rate of inflation registered a level of 15,k3% in 2009 and it was reduced to 3,3% as a consequence of the considerable and constant reduction of the consumption expenses. As a consequence of this state in Latvia there should be permanent concerns regarding the support of the convergence process of the inflation rate.

The long term interest rates were situated on average around 12,7% last year, a value which was higher than the reference value corresponding to the convergence criterion regarding the interest rates.

In order to provide a favourable environment for the sustainable convergence Latvia has to implement economic policies which should provide the economic and price stability. Due to the fact that the monetary policy is hindered by the existence of a fixed rate regime, the Latvian authorities have to use other economic policy fields as rebuilding a sound fiscal position and recovering the fiscal position in sustainable parameters.

Lithuania The same as Latvia, Lithuania is subject to a EU Council Decision regarding the existence of an excessive deficit as a consequence of a deficit level of 9,5%. The public debt of 29,3% of GDP is inferior to the reference value and will reach according to the European Commission estimations a level of 38,6%.

The monetary council agreements and the limits of the anti-cyclic policy tools might bring a higher effort from Lithuania in preventing the emergence of some macroeconomic disparities, and some high inflation rates. The inflation growth in Lithuania was due to the growth of prices for food products and energy but also to the more restrictive measures on the labour market and the growth of demand.

The long term interest rates were situated on average at 12,1% a higher value than the reference value corresponding to the convergence criterion for the long term interest rates. This was especially due to the international financial crisis, the decrease of the ratings for borrowings and the reduction of the liquidity volume which affected negatively the markets from Lithuania.

The Lithuanian government reduced the public expenses by 30% by reducing with 20% (even 30%) the public sector salaries but also by firing 20% of the state owned staff. The pensions were also reduced by 11% starting with 2010. And Lithuania increased the VAT from 18 to 21% and the tax on profit by 5%.

Luxemburg The international financial crisis gas significant effects in the real economy. In 2009 Luxemburg passed though a recession of 4% and a shy comeback in 2010 according to the international bodies predictions.

The 4th semester of 2008 was fatal for the Luxemburg economy, the GDP went down so that at the end of the year it registered a decrease by 0,9%. The labour market from Luxemburg was facing some bleak perspectives: the growth of the unemployment rate makes the proportion of the unemployed to be of 7% of the active population until 2010. Luxemburg is one of the few EU countries to comply with the rule of the budget deficit below 3% of GDP. However, this year the deficit is thought to reach 4,2% of GDP due to the effects of the crisis. The issue of cutting expenses and strikes did not come into question. The public debt is 14,5% of GDP well below the limit imposed by EU.

Great Britain The European Commission considered the level of public debt and budget deficit is too high for Great Britain. In spite of this the European

Commission cannot impose fines to Great Britain because Great Britain is not part of the Eurozone.

The government is taking into account to freeze some social benefits, to reduce tax incentives for families with children and to freeze the salaries increase in the public sector. The VAT increase is not excluded which is presently 17,5%. The budget deficit of the country is one of the highest in Europe exceeding 11% of GDP. The sterling pound has depreciated by 11% as opposed to the dollar this year. The changes to the taxation system might reduce the impact. The British with the highest incomes (more than 150.000 pound per year) will pay 50% income tax and the tax relief for the pension fund contributions will be reduced.

The Netherlands In 2009 the Dutch economy was affected by the world economic crisis, but the forecasts for the new period are optimistic. The Dutch government was to bring to zero the public deficit (estimated to 6,6% in 2010) and to reduce by almost 10% (20 billion Euros) the annual expenses of the state until 2015. The Netherlands was also among the 12 states nominalised by Eurostat for overtaking the level of 60â% of the public debt, but the level of this indicator will be evaluated in the sense of the evolution trend and not as absolute figures.

Poland Is the only EU country which registered economic growth last year but it has to reduce the budget deficit with almost 15 billion Euros in the next two year in order to be able to enter the Eurozone. The public debt is of 51% of GDP. The growth of the Polish deficit to 7,9% from GDP in 2010 much above the target deficit in 2010 weakened the credibility of the fiscal estimations of the country. The Polish government announced that the deficit will be situated around 7,9% of GDP much above the target set by EU of 3% from GDP but the Polish government announced that it will not meet this criterion sooner than 2013. The Polish government approved all the plans for the reduction of the working places in the budgetary filed and the limitation of the expenses in order to reduce the budgetary deficit and the public debt. The executive wants to reduce the number of employees from the state agencies and the funds by 10% in 2011 and to maintain a limited level of the labour force until 2013. At the same time the government has reduced the public expenses. The purpose of these measures is to reduce the public debt and cost of reimbursement. The measures will help to reduce the budget deficit at the limit of 3% from GDP imposed by the European Union, allowing Poland to adopt the Euro at a certain point in the future. The Ministry of Finances estimated recently that Poland's public debt will increase this year to 55,4% from GDP from 50,9% from GDP in 2009. The reformation of the pension system is desired and the growth of the retirement age from 57 to 62,5 years. Important amounts of money will come from the budget and from privatisations.

Portugal Portugal is making efforts in order to stabilise its public finances give then huge debts and the budget deficit which have reduced the confidence in this country and which have led to the growth of the funding costs on international markets.

Although the last OECD figures show the fact that Portugal's deficit is situated much below the level of Greece or Ireland (the forecast for this year is 7% from GDP and 4,5% of GDP in 2012) and a level of debt below 80% of GDP, the problems are the following : the lack of competitiveness on an international level which led to a modest economic growth (the average level of the GDP evolution registered in the last 10 years is around 1%), a high level of the provate debt reported to GDP and a higher dependence towards the foreign capital flows.

Portugal proposed the comeback this year of the budget deficit until 7,3% from GDP, from 8,3% as it was initially estimated. In 2009 the budget deficit of Portugal reached a record level of 9,4% from GDP. Being a member of the Eurozone, Portugal is forced to maintain the annual public deficit below 3% from GDP. At the same time Portugal's public debt reached last year 76,6% of GDP and might reach this year 86% much above the maximum admitted level of 60% for the Euroland countries. An austerity plan was launched and is meant to reduced the budget deficit to 7,3% from GDP in 2010 and to 4,6% in 2011. The salaries of the politicians and employees from the public sector were reduced by 5%. The value added tax was also increased, the income tax and the tax on profit were also increased (from 1% to 2,5%). According to the trade unions almost 300.000 people took part in the protests organised in Lisbon at the end of May

The long term interest rates were 6,1% higher than the reference value corresponding to the convergence criterion regarding the interest rates. This growth is due to the high level of the risk aversion of the investors and of the uncertainties regarding the economic perspectives. The creation of a favourable environment for the sustainable convergence in Poland needs a monetary policy oriented towards the stability of the prices on an average term and the implementation of a credible and comprising fiscal policy.

Romania According to the international funding agreement concluded with IMF/EC Romania has committed to reduce the level of the budget deficit to 4,4% from GDP in 2011 (almost 5% from GDP according to the European standards). Therefore, our country took some fiscal correction measures (increasing the VAT from 19% to 24% and reducing the salaries from the public sector) and reaching these objectives involves continuing the fiscal reforms in the next years.

And Romania is subject to a EU Council decision regarding the existence of an excessive deficit with a 8,3% value from GDP much higher than the reference value. The share of the public debt in GDP of 23,7% is lower than the 60% value and this is the single converge indicator fulfilled by Romania at the present moment.

The most recent available prognosis regarding inflation, delivered by the main institutions show that the inflation rate varies between 4,0% and 4,4% in 2010 and 3,0% and 3.5% in 2011. It is estimated that the process of recovering the disparities will exert an influence upon inflation and on the exchange rate because the GDP per capita level and the level of the prices are significantly reduced as opposed to the Eurozone. The long term interest rates were situated on average around 9,4% a higher value than the reference value with respect to

the convergence criterion of the interest rates. The growth of the long term interest rates is explained by the aversion of the investors towards risk and the uncertainties regarding the perspectives of the economy.

After nine years of economic growth, when then deficit was of 8,3% and after 2009, a bad year from the point of view of the reforms, the Bucharest government with a weak support in Parliament was forced to take some drastic measures: 25% reduction of the salaries from the budgetary system, 15% reduction of the pensions, elimination of the privileged pensions, possible salary reduction in the state-owned companies.

Slovakia The Slovak economy contracted last year by 4,7% this being the first decline after the independence from 1993. IMF anticipated the Slovakia's economy will register a 4% advantage this year.

The government from Slovakia will increase the VAT with one percentage point to 20% in 2011, in a budget austerity plan which includes the reduction of the public expenses by 10% including the reduction of the salaries of the ministers and members of parliament. The austerity package approved in the Monday to Tuesday night also contains the increase of the excises for alcohol and tobacco. The VAT increase is going to be maintained at least until the public deficit will be reduced under the limit of 3% from GDP foreseen the European Union legislation, in 2013 according to the estimations of the Ministry of Finances. For this year the government anticipated a budget deficit of 7,8% from GDP and hopes that next year the indicator to go down by almost three percentage points.

Slovenia has initiated a austerity plan since 2008, managing to save one billion euro especially by cutting off the military expenses and the infrastructure investments. This year the expenses with accommodation and travel of the members of parliament have also been reduced. Students will not be able to work 14 hours per week and will be able to earn 6.000 Euro per year. The measure of working time reduction will be applied for other categories, a reason for which thousand of Slovenians protested in May in Ljubljana.

Spain If Spain's public debt is not a real short term concern reason, the economic growth and the fact that the state will come out of recession harder than their countries from the Eurozone is a reason for which the authorities should be concerned. Unlike Greece, Spain does not have a direct problem with the public finances. The public debts are around 60% from GDP being half of the ones of Greece and in consequence can be easily managed. Thus, taking into account only the public finances, Spain does not seem to have a problem which might undermine growth. But Spain's problems come from indirect debt, the ones that the Government might decide to take over in order not to endanger development and in order to provide that there are no difficult financial situation. Another reason of concern is the extremely high unemployment. Spain has a 20% unemployment rate which means that 4,5 million of people do not have a job. Under these circumstances the consumption comeback is impossible.

Spain has also cut off the population income: it has reduced by 5% the salaries of the public clerk and will suspend from 2011 the 2.500 aid for each

family at the birth of a child. The pensions will be frozen from 2011 and the retirement age will increase to 67 years and the anticipated retirement conditions will be hardened. The public investments will be reduced between 2010-2011 with 6,45 billion Euro. VAT will be increase with 2 points up to 18%. After announcing these measures important strikes took place in all Spanish sectors.

Sweden has corrected its budget deficit and reformed the pension system in the 90s. In 2009 being in full recession, the National Bank took a measure: the bonus interests for the commercial bank deposits were on minus (0,25% per year). The result: the GDP increased by 1,4% in the first quarter of 2010. Sweden is not subject to a EU Council Decision regarding the existence of an excessive deficit because in 2009 it registered a budget deficit of 0,5% of GDP and in 2010 a 2,1% and the public debt is of 42,6% from GDP lower than the 60% level.

In the period 2009-2010 the annual inflation rate registered by Sweden was of 2,1% a higher level than the reference level of 1,0%. The most recent prognosis regarding the inflation point out that the inflation rate will be situated between 1,6% and 3,2% in 2011. The long term interest rates were situated at 3,3% a net inferior value to the one corresponding to the convergence criterion of the interest rates.

Hungary With a budget deficit of 4,0% of GDP in 2009 and 4,1% in 2010 Hungary is subject to a EU Council decision regarding the existence of an excessive deficit. The share of the gross public debt in GDP reached 78,3% in 2009 and 78,9% in 2010 much above the level of 60% from GDP. In the period 2009-2010 the annual inflation rate registered by Hungary was of 4,8% a higher level than the value of 1,0% corresponding to the criterion regarding the price stability.

Among the measures announced by Viktor Orban's government one can mention freezing the public expenses and the reduction by 15% of the salaries in the budgetary field, the increase of the retirement age from 62 to 65. The taxes for small and middle enterprises will be lowered from 19% to 10%, the VAT will grow to 25% and the real estate credits in foreign currency will be forbidden. They will also eliminate 10 taxes for small and middle enterprises. The government proposed an increased tax for the profit of the bank a measure which will also be applied for three years and the introduction of the single personal income tax of 16%.

3. **Conclusions**

The increasing public debt and the possible financing difficulties are causing more concern in Europe. The budget deficit problem was masked last year by generous cash inflows meant to stabilise the financial sector. Now, many governments from EU are forced to pay the price of the previous fiscal relaxation by applying austerity measures in order to slow down the rhythm of economic comeback.

The budget deficits from the Central and Eastern Europe have recently grown for two reasons. First of all, these countries did not take advantage of the favourable years from the economic development period in order to reduce their deficit. The strong economic growth has led to the growth of the volume of income from taxes. In consequence, the expenses increased more and they masked the structural deficit from the period 2005-2007. The sudden economic decrease pointed out this lack of a sound fiscal consolidation. Secondly, some of the governments were too late in reviewing the budgets and adjusting the expenses according to the changes on the level of the marco hypothesis. In consequence the structural deficits were deteriorated more and more in all countries except for Hungary and Romania which as a consequence of the IMF program were forced to act promptly and to supervise closely the growth of the expenses.

The public debt of four countries from the ECE region (Poland, the Czech Republic, Slovakia, Romania) is below 60% from GDP, much more reduce both in nominal and relative terms (as a percentage from GDP) than the one from the Euro zone. The analysis agree that the lower level of the current public debt and of the budget deficits from the ECE countries as compared to the ones from the Eurozone will make that the borrowings contracted for these states to be much more reduced.

The European Commission will grant a special attention to the fulfilment of the Maastricht criteria in a "credible and sustainable way". This means that the candidate countries will be requested to fulfil these criteria with a more extended margin and/or to maintain the deficit below 3% of GDP on a longer period of time (not for a given moment) in order to benefit from a positive evaluation. At the same time, the European Commission might impose a level of the structural deficit below 3% of GDP and the accomplishment of the structural reforms (the health system reform, the pension reform) which might reduce the vulnerability of the long term public finances. This means that the positive evaluation of the Maastricht criterion will be made at least one year earlier after the reduction of the deficit below 3% of GDP which might delay the adoption of the Euro currency until 2015-2016 in the case of ECE countries.

[1] EU Council Decision from 19 January 2010, JO L125/32.

Acknoledgement

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6. The EU Council Decision from 19 January 2010, JO L125/32.

ORIGINAL PAPER

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Model of Analysis of Influencing Factors on the Romanian Postal and Courier Services Market

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Abstract: *In Romania the market of private postal and courier services appeared after 1990, witnessing are more and more accentuated growth following the liberalization of postal services market in 2000. The present paper proposes to built a model of analysis of the existing relations among different sectors of the national economy, as well as the manner in which they influence the Romanian postal and courier services market and the human resources emloyeed in this sector.*

Keywords: *postal and courier services, GDP, GDP per capita, IT sector, variable.*

Introduction

Services exist in interdependence relations with the other activity sectors, they ensure connections among all the sectors of the economy, have a stimulating role in the economic growth. The connections of the services' sector to the other branches of activity are structured along two main lines – the impact with the production sector and populations' needs[1]. A company specialized in supplying services can offer superior quality services and lower prices to production firms than the ones the latter can obtain for themselves. This is why more and more firms externalise their services to specialized firms[2].

In order to face the challenges of a competitive environment, the management of services companies has to master a strategy that corresponds the requests specific to the firm's objectives, operating environment, resources and the manner in which they are used. According to the literature, strategic management is more than strategic planning, definitions given by specialists in the field highlighting the fact that strategic management is a „modern form of leading an entreprise" [3]. The strategies of growth adopted by the courier companies were different, however, one can identify the prevalence of the strategies of national growth through the services franchising system[4]. In all cases, a company's success stands in a strong, solid management, capable of understanding both the clients' expectations and the employees' demands, of accomplishing its objectives and mission in the conditions of high quality and performance standards.

Though less evolved than the postal and courier services market within developed countries, the Romanian market of postal and courier services witnessed an extremely strong evolution during the last ten years. The economic growth and Romania's integration to the European Union are two factors which positively influenced this sector's continuous development. Companies offering private postal and courier services have to be characterised through safety, innovation, flexibility, benefits for client. The postal and courier services market is permanently connected to the other sectors of the economy, being extremely sensitive to changes undergone within these sectors and at the level of the national economy.

The present paper aims at analysing the manner in which the evolutions of certain factors, such as the growth of IT and electronic commerce sector and the economic growth, influence the market of postal and courier services – the aggregate volume of mailing and the work force in this sector respectively.

Consequently, in order to quantify the objective of our research we built the following theory, subject to validation through the present research: There is a strong correlation between the evolution of postal and courier services market and the evolution of other interdependent sectors and the evolution of the national economy. In order to validate this theory, our scientific approach is guided by the folloing research questions:

1. In what extent is the evolution of postal and courier services market influenced by the evolution of other sectors of activity and the evolution of the national economy?
2. In what extent is the number of employees in the postal and courier services sector influenced by external factors such as the total volume of mailings?

Dependent variable

We have searched for a dependent variable capable of representing the evolution of the postal and courier services market within the private sector as well as possible. This variable is measured through the *total number of private sector mailing* indicator measured in the 2004-2010 period.

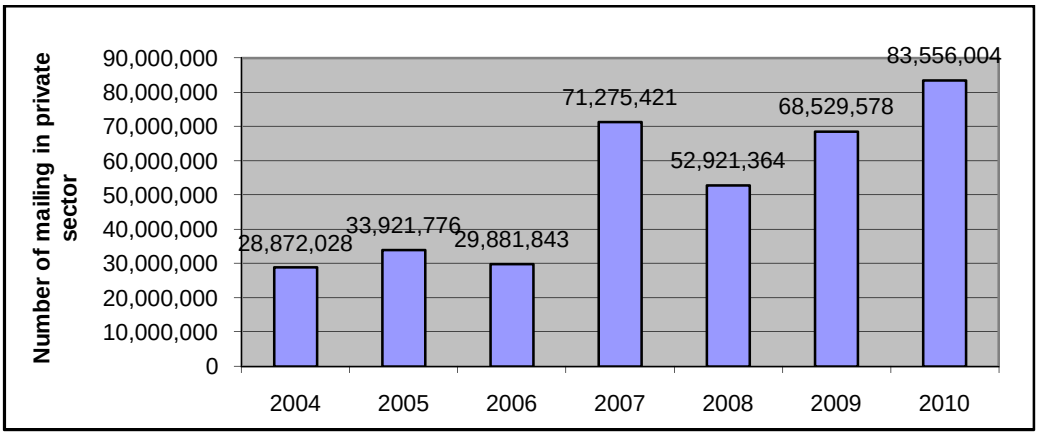

Figure 1. Mailing dynamics by private sector postal operators 2004-2010
Source: Author's own analysis and illustration based on data gathered from the ANCOM (National Authority for Management and Regulation in Communication) Reports 2005, 2006, 2007, 2008, 2009, 2010, 2011.

One can notice that the total number of mailing through private postal and courier services operators has had an oscilating evolution until 2008; after this point, during 2008-2010, the number grew although the ecnomic crisis was strongly experienced in this domain. 2008 was marked by changes in this field, companies with a high market share either experienced bankruptcy or were acquired by other companies. Although during 2008-2010 the number of mailing through courier operators increased, the total number number of postal mailing (both public and private) in this field decreased reaching 412 million mailings in 2010, 10.4% lower than the level of 2009.

Independent variables

We have considered the following independent variables: the growth of the IT sector, the population's purchasing power and the evolution of the national

economy. The first independent variable, the growth of the IT sector, was selected because in the last years both at international level and in Romania, the growth of the postal and courier services sector was based in a huge extent on the development of the IT, the increase in the electronic commerce, a niche segment on which many postal and courier companies oriented.

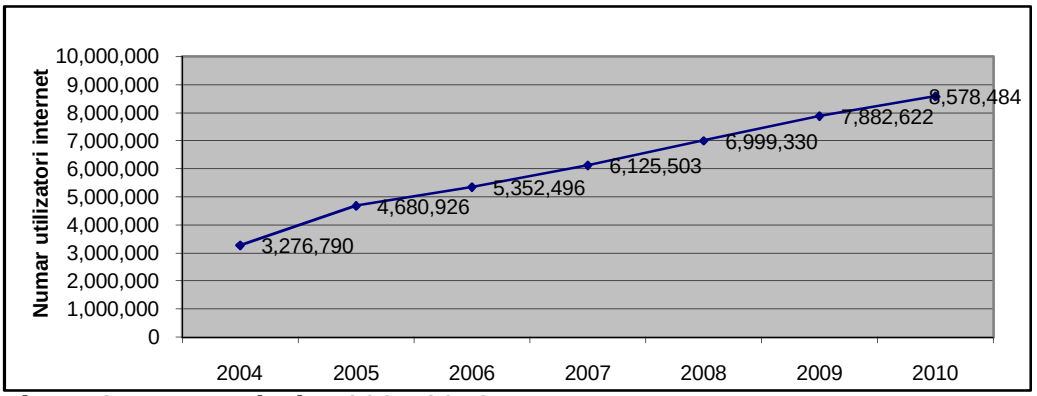

Figure 2. IT Users during 2004-2010

Source: Author's illustration, World DataBank, http://databank.worldbank.org/Data/Home.aspx

One can notice the fact that in Romania the number of Internet users has increased constantly, reaching to 8,578,484 users in 2010, approximately 40 users to 100 inhabitants compared to the European Union mean which indicates that from 100 inhabitants approximately 71 of them use the Internet.

Also, the number of electronic commerce stores has witnessed an increase during 2004-2008 reaching to 2410 electronic commerce stores in December 2008, according to Trafic.ro. Over 80% from the online stores products distribution is made through private postal and courier services companies.

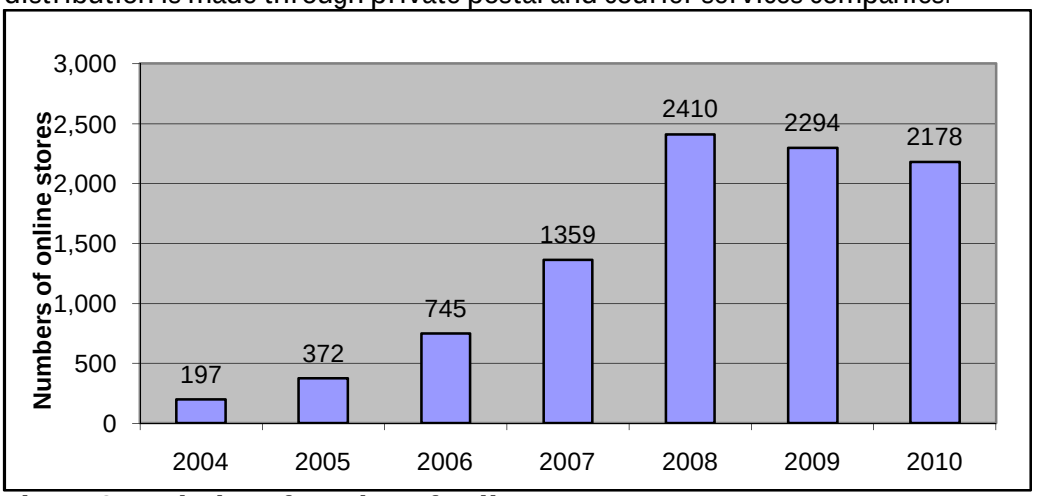

Figure 3. Evolution of number of online stores

Source: Author's own analysis based on data gathered by trafic.ro

We can now launch our first research hypothesis:

Hypothesis 1: There is a strong association between the Există o corela ▪ ie între numărul utilizatorilor de internet, a magazinelor de comer ▪ electronic şi traficul de expedi ▪ ii poştale în sectorul privat.

The second independent variable – *the population's purchasing power* – measured through the Gross Domestic Product per capita indicator, wasselected in order to analysed the manner in which the change in the purchasing power influences the volume of the postal and courier services sector.

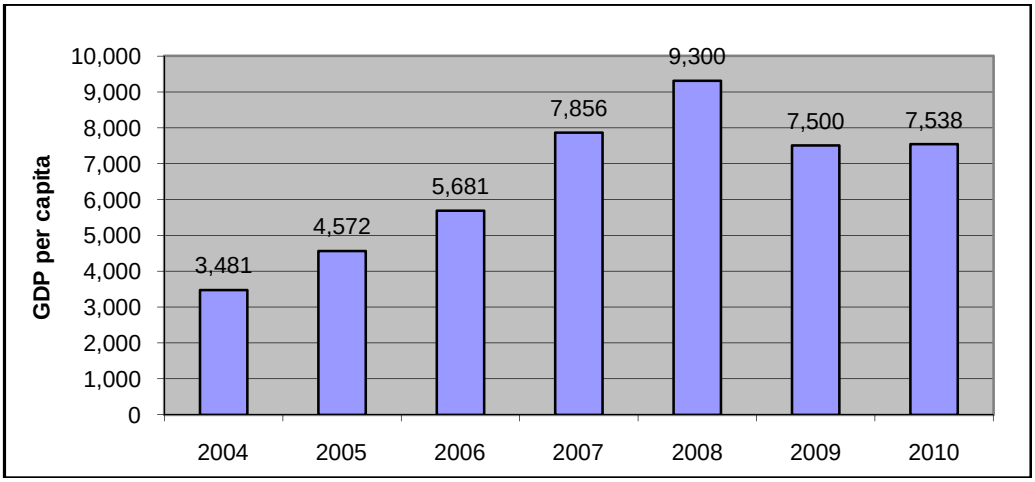

Figure 4. Gross Domestic Product per capita
Source: Author's illustration, World DataBank

Hypothesis 2: There is a strong correlation between the population's purchasing power and the evolution of the private postal and courier services market.

The third independent variable, measured through the *Gross Domestic Product* (GDP) indicator – the main indicator used to measure the national economic situation, was selected in order to highlight the economic situation 2004-2010. Between 2004 and 2008 the GDP increased constantly reaching in 2008 to $200 billions. 2009-2010 were marked by a strong economic recession, the GDP decreasing to $161 billions, the most severily affected domains being commerce, constructions, auto repairs, transports, telecommunications, hotels and restaurants which contributed with 31% to the GDP formation.

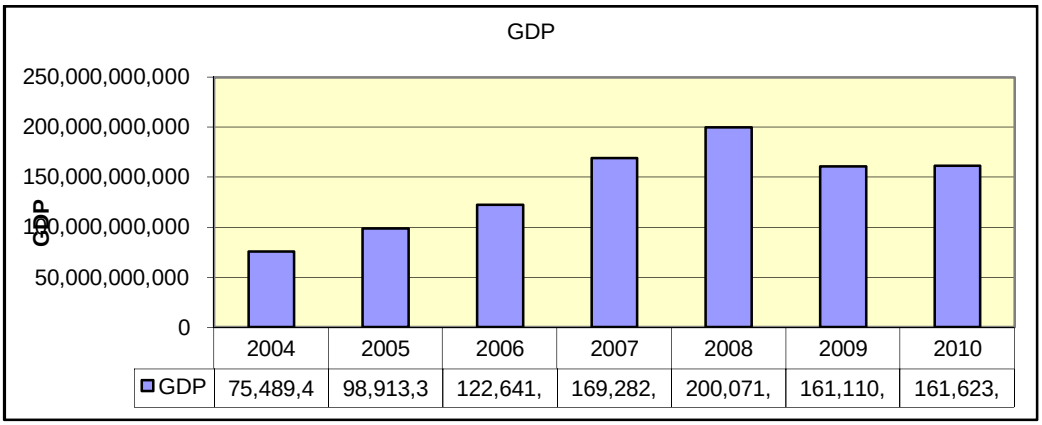

Figure 5. Gross Domestic Product
Source: Author's illustration, World DataBank

Following the illustration of the fourth indicator used in our research we can now launch the third research hypothesis which claims that:
Hypothesis 3: One can identify a strong association between the national economic situation and the private postal services evolution.

Interpreting the results

In order to validate the three hypotheses we have previously launched we will present the variables and indicators used, as well as the descriptive statistics (minimum, maximum, mean and standard deviation).

Table 1. Indicators used in the research

Indicators / Years	Number of mailing in private sector	Number of IT users	GDP per capita(US$)	GDP (current US$)
2004	28,872,028*	3,276,790	3,481	**75,489,440,362**
2005	33,921,776	4,680,926	4,572	**98,913,392,472**
2006	29,881,843	5,352,496	5,681	**122,641,508,768**
2007	71,275,421	6,125,503	7,856	**169,282,491,900**
2008	52,921,364	6,999,330	9,300	**200,071,062,765**
2009	68,529,578	7,882,622	7,500	**161,110,320,401**
2010	**83,556,004**	**8,578,484**	**7,538**	**161,623,662,681**

Source: ANCOM (National Authority for Management and Regulation in Communication), World DataBank, http://databank.worldbank.org/Data/Home.aspx
** Estimated calculation due to legislative changes and differences in data collection*

Table 2. Descriptive statistics

Variable	Indicator	Min	Max	Media	S.D.
Private postal service evolution	Number of mailing in private sector	28,872,028	83,556,004	46,119,752.68	**22,318,996.11**
Growth of IT&C sector	Number of IT users	3,276,790	8,578,484	6,125,503	**1,855,964**
Population purchasing power	GDP per capita	3,481	9,300	7,500	**2050.704**
Evolution of national economy	**GDP**	**75,489,440,362**	**200,071,062,765**	**161,110,320,401**	**43,814,668,658.82**

Regression analysis

Table 3 contains the matrix of correlations among all the research variables. We have to note that the values of Pearson's coefficient of correlation are very high, indicating a strong positive correlation among all the variables.

Table 3. Matrix of correlations among variables

	Private postal service evolution	Growth of IT&C sector	Population purchasing power	Evolution of national economy
Private postal service evolution	1,00	0.870449645	0.730075438	**0.726612196**
Growth of IT&C sector	0.870449645	1,00	0.821829119	**0.818074947**
Population purchasing power	0.730075438	0.821829119	1,00	**0.999975666**
Evolution of national economy	**0.726612196**	**0.818074947**	**0.999975666**	**1,00**

Table 4. Multiple regression output

Regression statistics	
Multiple R	0.881993504
R Square	0.777912542
Adjusted R Square	0.555825084
Observations	7

Table 4 presents the results of the multiple regression analysis; we have represented in the table the value of the multiple coefficient, the value of the determining coefficient, the adjusted value of the determining coefficient and the nuber of cases. One can easily notice that the variance of the *private postal sector evolution* dependent variable are explained in a proportion of 78% by the other research variables employed in the study, thus indicating that there is a strong association between the dependentvariable and the independent variables.

In order to solve the second question of our study – In what extent is the number of employees in the postal and courier services sector influenced by external factors such as the total volume of mailing? – we have analysed the situation of human resources from the private sector postal and courier services companies.

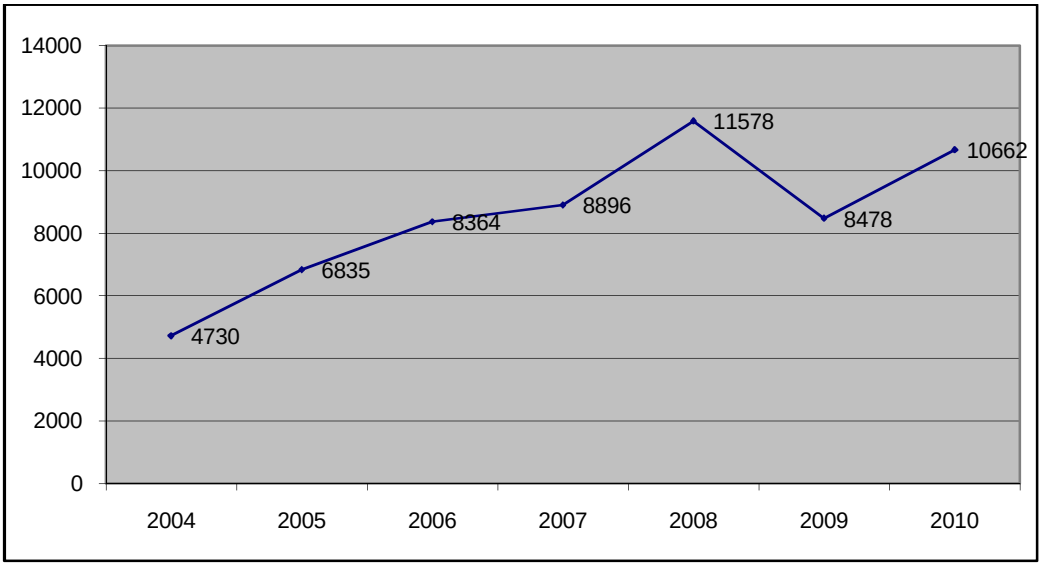

Figure 6. Evolution of number of employees in the private sector postal and courier services companies 2004-2010

Source: Author's own analysis based on data gathered from the ANCOM Reports 2005, 2006, 2007, 2008, 2009, 2010, 2011.

Following the analysis of the Pearson coefficient of correlation we must note that there is a strong positive correlation between the *number of employees in the private sector postal and courier services companies* variable and the independent variable *number of mailings in this sector.*

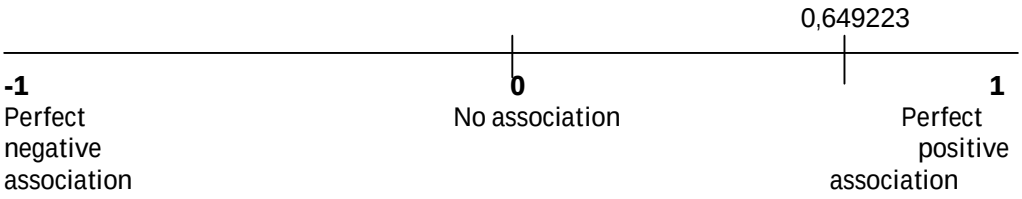

Figure 7. Interval in which the correlation coefficient for the variables number of employees and number of mailing in private sector varies

Conclusions

In conclusion, one can assume that through empirical research and through the establishement of this model of analysis we have succeeded in validating our theory which claimed the existence of relations and influences of other activity domains over the postal and courier services sector. We consider, though, extremely necessary to continue the research in this direction.

The postal and courier services sector has not benefitted from studies and complex researches. This inconvenience exists partially because of its recent date appearance which did not allow the study of the domain on a long period of time. Unfortunately, this is also one of the limitations of this study along with limitations due to changes in the Romanian legislation, changes in decisions to grant licenses for services' delivery, and changes in the manner of data collection and reporting, as well as Romania's integration to the European Union.

Notes:

[1] Ion Criveanu, *Managementul Serviciilor*, Editura Sitech, Craiova, 2007, p. 21.
[2] Gheorghe Militaru, *Managementul serviciilor*, Editura C.H.Beck, Bucureşti, 2010, p.17.
[3] Tudor Nistorescu, Cătălina Sitnikov, *Management Strategic*, Editura Sitech, Craiova, 2003, p. 14.
[4] For details we recommend Hans Kasper, Piet Van Helsdingen, Mark Gabbott, *Services Marketing Management. A Strategic Perspective*, second edition, John Wiley & Sons, LTD, West Sussex, 2006, pp. 292-293.

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ORIGINAL PAPER

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The National Integrity Agency - autonomous administrative authority

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Abstract: *In the Romanian law system, The National Integrity Agency is a legal autonomous state institution which operates in a sensitive area: combating institutional corruption by ensuring the performance of public functions and dignities in terms of impartiality, integrity and transparency. The existence of the Agency from the time of its establishment by Law no. 144/2007 and so far, appears to be a turbulent one, its legal status going through many changes and interventions due to the Romanian Constitutional Court, especially with regard to the limits of action and the conformance of these legal abilities with the fundamental rights and freedoms.*

Key words: *National Integrity Agency, autonomous administrative authorities, property control, conflict of interest, incompatibilities.*

I. The emergence of the National Integrity Agency (the Agency): European and national context

1. The European Context

a) The European Commission Decision no. 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption - Condition no. 2 for Romania

The emergence in the Romanian law system of a legal institution such as the National Integrity Agency (the Agency) was determined by the complex process of accession to the European Union by the Romanian state.

In this context, the initial point in the emergence of the Agency consists of the European Commission Decision no. 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (published in the Official Journal of the European Union no. 354 of 14 December 2006).

The Decision of the European Commission identifies four benchmarks for Romania, of which condition no. 2 refers to "The creation, according to the commitments, of the Integrity Agency, with responsibilities in verifying assets, incompatibilities and potential conflicts of interest, and also with the competence to adopt binding decisions on the basis of which dissuasive sanctions can be applied.

In this way, an obligation is created for the Romanian State that involves the adoption of the necessary legal framework for the creation of the National Integrity Agency (the Agency).

2. The National Context

a) Creating the Agency - Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency

Shortly after the EC decision, the Romanian Parliament adopted, on 21 May 2007, Law no. 144, normative act which created the Agency and set out the general coordinates concerning the organization and functioning of the institution.

Through this law, according to previous commitments, the Agency is placed in a specific field of action, namely: ensuring the performance of public functions and dignities under conditions of impartiality, integrity, transparency.

The role of the Agency is to organize a unified and institutionalized activity of inspecting the property acquired in the exercise of mandates or the performance of public functions or dignities and the verification of conflicts of interest and incompatibilities.

Structurally, the Agency is run by a president assisted by a vice-president. Basically, property control and verification of conflict of interest and incompatibilities is done by the Agency through its integrity inspectors.

b) The need for the Agency in the context of parallel regulations of its specific field of action - Law no. 144/2007 fails to approach the matter in a single regulation

Creating the Agency was an important step for Romania in meeting its commitments to the EC, but the concrete way of regulating its scope of action resulted into a multiplication in the Romanian legal system of some norms with common objectives: property control and verification of conflict of interest and incompatibilities.

Thus, Law no. 144 overlaps with previous legislation in the same area, namely: Law no.115/1996 for declaring and controlling the wealth of dignitaries, magistrates, certain persons with management responsibilities and control of civil servants and Law No. 161/2003 on certain measures of ensuring transparency in the exercise of public dignities, public functions and in business, preventing and punishing corruption. The new legislation repeals or amends certain provisions of previous laws and provides the legal framework for conducting specific activities of the Agency, but according to art. 2 "it is completed with the provisions of the normative acts in force."

The Constitutional principle of the rule of law *("Rechtsstaat"),* provided by the Romanian Constitution (adopted in 1991 and revised in 2003) in art. 1 par. (3) requires the Law to engage and limit state action in order to provide legal security for individuals. Thus, this rule of law must necessarily have some normative formal consistency, must be public, must be clear, with no gaps, must not be retrospective, must, in short, be certain[1]. These legal consequences of the constitutional principle of the rule of law are primarily imposed on the legislator, which will be thus forced to avoid parallel regulations and seek to unify them.

Undoubtedly, the need to establish the Agency was mandatory, but the purpose of the new law should have been twofold: on the one hand, the creation of a specialized institution whose activities directly relate to the specific domain and, secondly, to unify previous regulations into a single normative act.

II. The Agency - an autonomous administrative authority

1. The specifics of the Agency as an autonomous administrative authority: independence from government

Given the specific activity field of the Agency, this institution was created as an autonomous administrative authority.

Nowadays, autonomous administrative authorities represent a set of original structures within the state authorities[2]. The overall picture of these legal institutions is that of bodies created in order to pursue actions liberated from political influences and pressures of various economic or professional interests in certain areas of activity considered "sensitive" and which require an impartial protection.

In the Romanian law system, the autonomous institution of administrative authorities is at constitutional level, in art. 116 and 117, the

fundamental act establishing the power to create these authorities and the necessary standard of law for this. Thus, an autonomous administrative authority can be created only by Parliament, by an organic law. This is very important because it develops a major regulatory consequence: insubordination of these authorities to the Government.

At the same time, it should be noted that in the Romanian law system, the Government, in certain situations, may exercise the legislative function by adopting an emergency ordinance under art. 115 of the Constitution. In other words, the Government can "regulate" instead of the Parliament by ordinance, even in matters belonging to the domain of organic laws, the Constitution not providing an express prohibition.

Therefore, several problems of legal interpretation occur: can the Government create an autonomous administrative authority through an emergency ordinance? The phrase used by the Romanian Constituent, "organic law", refers to the strict meaning of the law (decree by the Parliament) or the broader sense of the word (any act which exercises the legislative function)?

We believe that the correct interpretation, given the fundamental nature of these authorities, autonomy or independence from the government first of all, is that only Parliament is empowered to create them, the Government being unable to do so or to amend the legal status of these authorities because, in this case, it might cause a subordination. However, the Romanian legal reality proves the contrary.

Thus, the legal regime of the Agency, as an autonomous administrative authority, should not be subject to the Government's action, for the purpose of ensuring the independence and impartiality needed by such an institution which is active in the field of combating the corruption phenomenon.

2. Limits of the Agency's actions: specific powers as an autonomous administrative authority

An important modification regards the activity performed by the integrity inspectors in the verification field if there is an obvious difference between the assets acquired during the exercise of the function and the income earned during the same period by a person.

Concerning the work done by the Agency in the control and verification of assets, conflicts of interest and incompatibilities, Law no. 144 provides that the institution benefits from certain specific powers (competences).

These powers[3], while also limiting the Agency's action, should necessarily be specific to the institution of autonomous administrative authorities, so only of a certain kind: administrative. This should be emphasized, because later the Romanian Constitutional Court declared unconstitutional certain provisions of the law through which the Agency was in fact entitled to exercise powers of a jurisdictional nature.

Powers initially available to the Agency through Law no. 144 consisted of powers of investigation and verification of assets and potential conflicts of interest or incompatibilities, powers of recommendation and issuing opinions on

statements made by persons subject to the law, powers of a court referral, tax authorities referral or bodies of criminal prosecution referral in cases of breach of law or powers of sanction by the application of contravention fines.

III. The evolution of the Romanian legislation and constitutional issues in the activity domain of the Agency

1. The first legislative inflection - Emergency Ordinance no. 49 of 30 May 2007[4] amending and supplementing Law no. 144/2007 on the Agency

After one week only from the creation of the Agency, a first inflection appears in the institution's legal status by amending and supplementing Law no. 144 by the Government Emergency Ordinance no. 49 of 30 May 2007.

This first legislative inflection was determined by not providing Law no. 144 with terms in order to accomplish some of the steps necessary to render the Agency operational and by the fact that starting the Agency's activity was supposed to be done in the short term.

Thus, in the original text of the Law no. 144, the legislator established the opportunity for inspectors in case they find that "the difference is not justifiable" to refer the court in order to determine that part of assets or property acquired "illegally", which calls for a seizure. Such an expression of the Romanian legislator had the effect of overturning the constitutional presumption established by art. 44 in property law, which states that “Legally acquired assets may not be confiscated. Legality of property acquirement is presumed”, turning this into a legal provision of unconstitutional nature. In this sense, the text of the law was modified replacing the phrase "illegally" with "unjustified".

The new regulation provides a legal definition of 'obvious difference', which means a difference between assets and income earned of at least 10,000 euros.

It should be noted that, although the alterations and completions made by the Government were required, this ought to be done only by Parliament, by law, in consideration of the Agency's autonomous administrative authority nature.

2. A new amendment - Emergency Ordinance no. 138 of 6 December 2007[5] amending Law no. 144/2007 on the Agency

A second legislative inflection in the legal system of the Agency occurs through the Emergency Ordinance no. 138 of 6 December 2007 amending Law no. 144/2007 on the Agency.

In fact, six months after the creation of the Agency, this institution was unable to function due to the fact that until that moment, the procedure of appointing the president was not completed. Two competitions organized according to the law by the National Integrity Council (the Council), politically formed body, to fill this function had failed to lead to the appointment of a chairman of the Agency.

At the same time, Romania had to quickly implement the recommendations in the Report of the European Commission to the European

Parliament and the Council on progress concerning the evolution of accompanying measures after the accession of 27 June 2007 [COM (2007) 378 final], implementation which was conditioned by the Agency being operational.

In this context, the new amendment establishes the possibility of exercising the statutory powers by the Agency's Vice President in the event of the President's inability to exercise or vacancy of office.

3. Parliament's approval of the first change - new changes and additions - Law no. 94 of 14 April 2008[6] approving the Emergency Ordinance no. 49 of 30 May 2007 with amendments

According to the Romanian Constitution, the exercise of legislative function by the Government, a body of the executive power, in emergency situations, through emergency ordinances, is necessarily subject to the approval of Parliament. Thus, almost one year after the first amendment of Law no. 144 operated by the Emergency Ordinance no. 49, the Romanian Parliament approved Law no. 94 of April 14, 2008 altering the normative act.

In addition to approving amendments to the Agency's Law, Law no. 94 makes further adjustments to the legal status of this institution reducing the autonomous nature of the Agency and strengthening the control exercised by a political body, the Council.

In this respect, if the original legislation stipulated exclusive jurisdiction of the president, in the matter of the preparation and approval of the institution's control activities and verification of assets and conflicts of interest, the new amendment preserves only the right to draw up strategy, the right of approval being given to the Council, which validates the potential influence of the Agency from the political sphere.

4. The Constitutional Court and the presumption of lawful acquisition of property[7] - Decision no. 453 of 16 April 2008[8]

As previously mentioned, Law no. 144 fails to unify the specific area of regulation, the combating of corruption, overlapping with previous regulations.

From the very beginning, Law no. 144 takes over previously used phrases in Law no. 115/1996 regarding the control of assets. Thus, the term "unjustified differences," regarding the property acquired during the exercise of the function and the income earned during the same period, appears in the Agency's law in the following form: "if the integrity inspector finds that there is an obvious difference (...) he will check if the obvious difference is justified. "

Practically, even if the new legislation is an attempt of withdrawing from the previous one, by mainly using the term, this time, of "obvious difference", it actually has the same disposition as the alternative, because it subsequently states that the obvious difference should be justifiable.

In this context, the Constitutional Court's position regarding this fluid term from a legal perspective, "unjustified distinction", should be emphasized, even if not directly on the provisions of the Agency's Law, but on those of Law 115/1996.

Referred to with the unconstitutionality of certain provisions of a bill amending Law 115/1996, provisions that also contained reference to "unjustifiable differences" in terms of assets, as compared with the Romanian constitutional provisions which stipulated the presumption of lawful acquisition of assets, the Romanian Constitutional Court held that "the proposed modifications are unclear and inadequate, since the expression «unjustifiable differences» is used, a term whose scope cannot be determined."

Regarding the alleged unconstitutionality reason, on the violation of art. 44 par. (8) of the Constitution, the Court holds that the presumption of lawful acquisition of assets is one of the constitutional guarantees of property rights. This assumption is also based on the general principles on the basis of which any act or legal fact is lawful until proven otherwise, imposing in terms of one's wealth, that the unlawful acquisition must be proved. So, the presumption instituted by the constitutional reference text does not prevent the investigation of the unlawful nature of the wealth acquisition.

The purpose of the criticized provisions, however, was in the Court's opinion, overthrowing the burden of proof of the legality of the property, providing that the property whose acquisition cannot be justified will be confiscated. As a consequence, it follows that one's wealth is presumed to have been illegally obtained until contrary evidence made by its owner.

The Court strengthens its position as expressed in its previous jurisprudence concerning the protection of the fundamental right to property, stating that "legal security of property rights over assets that make up one's wealth is inextricably related to the presumption of lawful acquisition of assets. Therefore removal of these assumptions means suppression of constitutional guarantees of property rights".

5. "Abolishing" the Agency Law by the Constitutional Court - Decision no. 415 of 14 April 2010[9]

Having become relatively operational and carrying out specific activities for which it was created in April 2010, the legal organization and functioning of the Agency were simply "dissolved" by Decision no. 415 of April 14, 2010 of the Constitutional Court[10]. In the context of maintaining in Law no. 144 parallel provisions with Law no. 115 and its separation from the Court's jurisprudence (provisions which were previously declared unconstitutional by the Court, such as those that used the phrase "unjustifiable differences" in the matter of wealth acquisition, were preserved), declaring the Agency's Law as unconstitutional was just a matter of time.

Decision no. 415 of the Court highlights all the weaknesses of a law created in a hurry, having failed to unify the regulations and which had not been adjusted to the mandatory Constitutional Court's decisions, and points out the major violations of the fundamental Romanian act.

Firstly, the Court found that certain activities of a judicial nature were carried out by inspectors of integrity. Thus, on the grounds of art. 46 of the Law no. 144 and as a result of investigation and verification activities, creating

confusion between the function of investigation and trial, the integrity inspector - based on his findings in the administration of evidence, by a procedure that does not comply with contradiction - decided that part of the wealth was unjustified and therefore gave a verdict, stating the law *(iuris dictio),* activity permitted only to courts, in accordance with the Constitution of Romania *("Justice is done through the Supreme Court and other courts established by law").*

Secondly, in the characterization of the Agency's judicial duties, the Court found that the investigation and ascertaining activities, on the basis of which the court or prosecutors were referred to by inspectors, requiring the confiscation of wealth, could not fit in the exercise of administrative jurisdiction, because they were not optional, as required by art. 21 par. (4) of the Constitution, but mandatory.

Thirdly, the Court found that the power of the integrity inspector to confiscate violates the provisions of art. 44 para. (8) and (9) of the Constitution, *"The illegally acquired assets cannot be confiscated. Legality of acquisition shall be presumed "and" goods intended for, used for, or resulted from offences or crimes may be confiscated only under the law".* Thus, admitting the possibility of the integrity inspector to refer to the competent court - if there is an unjustifiable part of wealth or property - to confiscate this part or property, the law extended confiscation of illegally acquired assets and unjustifiable property. In this respect, the Court noted its previous decision on Law no. 115 of 2008 which stated that "the seizure of property is an exception to the constitutional principle which presumes the lawful nature of the acquisition of goods. Thus, seizure merely affects the presumption of lawful acquisition of goods, which can only lead to the conclusion of the unconstitutionality of these provisions of law which permits such a prejudice to a person's property. Therefore, such a measure is constitutional only if there is proof of offences or contraventions, namely situations representing acts with a certain degree of social danger."

Fourthly, the Court notes that the constitutional principle of presumption of lawful acquisition of property must also apply to the persons investigated in accordance with Law no. 144, and those who claim that one's wealth has been illegally acquired must prove it. From the provisions of Law no. 144 it was clear that the investigated person is required to prove the lawful origin of all assets acquired during the period under control, causing, therefore, a reversal of the burden of proof, which contravened the established constitutional presumption.

Fifthly, the Court holds that the criticized legal provisions, considering the integrity inspectors' possibility to make a request to the competent court to confiscate part of the wealth or property, ruling on the guilt of a person, violated the provisions of art. 23 par. (11) of the Constitution relating to the presumption of innocence, because the confiscation of assets was required in the absence of a final court decision, which should determine the criminal or contravention guilt. Likewise, according to the principles of criminal procedural law, no one is obliged to prove their innocence, the burden of proof being on the shoulders of the prosecutors and the accused having the benefit of the doubt *(in dubio pro reo),*

whereas, in the findings of inspectors of integrity, which asked for confiscation of wealth, the person under investigation had to prove his innocence.

Sixthly, the Court finds that the legal obligation to publish statements of assets and interests on the websites of those entities where those persons, in accordance with the law, are required to submit these statements and send them to the Agency in order to be published on its website, violates the right to respect and protection of intimacy, family and private life consecrated by art. 26 of the Fundamental Law, by and exposing on the website, without any objective or rational justification, the data on the wealth and interests of these people. The right to respect and protection of intimacy, family and private life belongs to the category of fundamental rights and freedoms, as expressly stipulated under art. 8 of the Convention on Human Rights and Fundamental Freedoms, a provision which primarily requires a negative obligation on the part of state authorities to do nothing that might limit the exercise of such a right to privacy.

6. A new attempt to maintain the Agency - the rush and deficient regulation determines the Constitutional Court to declare the bill unconstitutional - Decision no. 1018 of 19 July 2010[11]

Decision no. 415 of the Court did not surprise anyone taking into account the major defects of unconstitutionality, under which, the Agency's activity was constantly contested from the very beginning.

In the context of a regulatory gap and of a legal restraint to the Agency, the Government had quickly exercised, in just two weeks from the judgment, its right to legislative initiative, bringing a bill to Parliament an bill concerning the consolidation of the integrity of the exercise of public functions and dignities in an attempt to reconcile the unconstitutional provisions of Law no. 144 with the provisions of the Constitution.

The bill was originally debated and adopted by each of the two Chambers of Parliament, first by the Chamber of Deputies, as the first Chamber referred to, and then by the Senate, Chamber of decision which approved the final version of the law.

Since it was submitted to promulgation to the President of Romania, he exercised his constitutional right to seek a one-time reconsideration of the law by the Parliament arguing that there is a decision conflict between the two Chambers, the legislative solutions adopted being radically different. Revisiting the law, the two Chambers of Parliament maintained the above mentioned solutions, so the President requested the arbitration of the Constitutional Court.

By Decision no. 1018 of 19 July 2010[12], the Constitutional Court found extrinsic unconstitutionality of the bill, which was adopted in disregard of the legislative procedure established by the Constitution. In fact, although in this case the Senate was the Chamber of decision, according to the constitutional provisions, if the firstly notified Chamber adopts a provision within the competence of its decision, the provision is irrevocably adopted if the other Chamber agrees. Otherwise, only for that provision, the law is returned to the

firstly notified Chamber, which will make a final decision through the emergency procedure.

Again, the rush of the legal framework regulating the Agency, led to the maintenance of already created deadlock.

7. Reducing Law no. 144 to a simple legislative act of organization and functioning of the institution, Law no. 176 of 1 September 2010[13] on the integrity in the exercise of public functions and dignities for amending and completing Law no. 144/2007, as well as for amending and completing other normative acts

The coming into force of Law no. 176 of 1September 2010 on integrity in the exercise of public functions and dignities has the effect of unblocking the previous situation and continuing the work of the Agency. The new law overtakes and regulates in its content the specific purpose of the Agency and its limits, reducing Law no. 144 to a simple act of organization and functioning of this autonomous authority.

Law no. 176 establishes the scope of the Agency in ensuring integrity in the exercise of public functions and dignities and the institutional corruption prevention through the exercise of responsibilities in evaluating assets declarations, data and information on wealth and patrimonial changes occurred, incompatibilities and potential conflicts of interest during the exercise of public functions and dignities.

To reach this purpose, the integrity inspectors can only currently achieve a task other than the assessment of the situation of the existing assets while exercising public dignities and functions, conflicts of interest and incompatibilities of persons subject to the law. Evaluation reports prepared by inspectors are submitted later on, both to persons whose legal situation was assessed, and to an investigation committee of the court, composed of two judges and a prosecutor who will decide whether to refer or not to the judicial bodies competent to render a judgment impartially and irrevocably.

It can also be noticed, in relation to the control of assets, the replacing of the old expressions such as "obvious differences" or "unjustifiable differences" by the fluid expression "significant differences", defined by law as "differences of more than 10,000 Euros or the equivalent in Lei of this amount between changes in wealth during the exercise of public functions and dignities and the income earned during the same period."

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[1] For further details regarding the principle of the rule of law, see Dan Claudiu Dănişor, *Drept constitu ional şi institu ii politice. Vol. I. Teoria generală*, Ed. C. H. Beck, Bucureşti, 2007, p. 150-164; Dan Claudiu Dănişor, *Constituţia României comentată. Titlul I. Principii generale*, Ed. Universul Juridic, Bucureşti, 2009, p. 38-42.

[2] See Marie-José Guédon, *Les autorités administratives indépendantes*, Ed. L.G.D.J, Paris, 1991; George Dupuis, *Les autorités administratives indépendantes*, Ed. Presses Universitaires de France, Paris, 1988; George Gîrleşteanu, *Autorităţi administrative autonome*, Ed. Sitech, Craiova, 2009; Michel Gentot, *Les autorités administratives indépendantes*, 2e édition, Ed. Montchrestien, Paris, 1994; Verginia Vedinaş, *Drept administrativ*, ediţia a III-a, Ed. Universul Juridic, Bucureşti, 2007, p. 345-348.

[3] For further details regarding the specific powers of the autonomous administrative authorities, George Gîrleşteanu, Robert Bischin, *Limits of action of autonomous administrative authorities in the Romanian law system*, Revista AGORA International Journal of Juridical Sciences nr. 2/2010, at http://www.juridicaljournal.univagora.ro/download/pdf/5-2010-26LIMITS-OF-ACTION.pdf.
[4] Published in M. Of. nr. 375 of July 1, 2007.
[5] Published in M. Of. nr. 843 of December 8, 2007.
[6] Published in M. Of. nr. 305 of April 18, 2008.
[7] See also regarding the presumption of lawful acquisition of property George Gîrleşteanu, *Consideraţii privind compatibilitatea reglementărilor propuse prin proiectul de lege privind revizuirea Constituţiei României din 9 iunie 2011 în materia dreptului de proprietate şi a instituţiei imunităţii parlamentare cu dispoziţiile actului fundamental român în vigoare - aspecte teoretice pe marginea argumentaţiei prezente în Decizia nr. 799 din 17 iunie 2011*, Revista Pandectele Române nr. 7/2011, Ed. Wolters Kluwer, Bucureşti, p. 174-181.
[8] Published in M. Of. nr. 374 of May 16, 2008.
[9] Published in M. Of. nr. 294 of May 5, 2010.
[10] For further details about the juridical implications of this decision see Mădălina Putinei, *Notă la Decizia nr. 415 din 14 aprilie 2010*, Revista Română de Jurisprudenţă nr. 2/2010, p. 83-88.
[11] Published in M. Of. nr. 511 of July 22, 2010.
[12] For further details about the juridical implications of this decision see Mădălina Putinei, *Notă la Decizia nr. 1018 din 19 iulie 2010,* Revista Română de Jurisprudenţă nr. 2/2010, p. 113-115.
[13] Published in M. Of. nr. 621 of September 2, 2010.

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ORIGINAL PAPER

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Protection of ownership right in the view of Civil Code with regard to ECHR case-law

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Abstract: *The action for recovery of possession of property represents the most energetic way to protect the ownership. The best known definition of this action is the following: action in justice available to the owner of the movable of immovable asset against the holder or against another person unrightfully holding the respective asset. This type of action was subject to major developments following the European Court of Human Rights case-law and the entry into force of the New Civil Code.*

Key words: *ownership, action, possession, Civil Code, ECHR.*

The ownership right. Preliminaries.

The ownership right is regulated in the Civil Code 1864 in article 480 and following and in the New Civil Code in article 555 and following**.** According to these legal texts the ownership right represents the right to possess, use and dispose of an asset, absolutely and exclusively in the limits of law[1].

The characteristics of the ownership right regard the fact that is a principal real property right, it can be established on immovable assets as well as on movable assets, it is a principal right, and a perpetuous one.

The action for recovery of possession of property represents the most energetic way to protect the property right. The best known definition of this action is the following: action in justice available to the owner of the asset against the holder or against another person unrightfully holding the respective asset[2].

From the point of view of the typology we distinguish two different types of actions: the action that protects the property of immovable assets and the action that protects the movable assets.

Characteristics of the action for the recovery of possession in the view of the Civil Code 1864

The main question concerning the action for recovery of possession is when the action can be filed.

As a creation of the doctrine, the action for the recovery of possession is *imprescriptible,* being able to be submitted anytime. The judicial literature considers that this rule is applicable regardless whether the claim concerns a movable or an immovable asset[3] except for the cases where the law provides otherwise.

The second rule that regards the judicial regime of this type of action, concerns the person who can file an action for the recovery of possession.

Because it protects the property of the asset, the owner of the ownership title can file the action. In case of co-ownership (tenancy in common) it is applicable the principle of unanimity that rules that all co-owners must file the action.

The main problem in the case of this action regards the proof of the ownership title. In order for this action to be admitted the applicant must proof his ownership title, and the ownership title of his author and so on and so forth. The only secure proof is the long usucapion[4].

The effects of the type of action.

In case the action is admitted the defendant must fulfill certain obligations that. The main obligation of the defendant is that he will be obliged to return the asset. If, the asset has perished by hisr fault the defendant will be obliged to pay damages evaluated in relation with the moment of the return. The *mala fide* holder will also be obliged, on request of the plaintiff, to return the fruits produced by the asset until its return to the owner[5].

Moreover, following the request of the defendant, the owner can be obliged to return to the holder the necessary expenses the latter has incurred, the useful expenses, within the limit of the increase in value, as well as the necessary expenses for the production and harvest of the fruit or produce. The defendant is

not obliged to cover the expenses made of hisr free will. As a creation of the doctrine the defendant is free to retain the works performed through these expenses only if the asset is not damages thereby[6].

In what concerns the opposability of the decision, taking into account the usual effect of a judicial decision, the ruling regarding the action for the recovery of possession is opposable only to the parties and therefore it cannot be opposed to third parties.

In case of co-ownership, if the decision regards only one co-owner it cannot be opposed to another co-owner who was not a party in the case. In other words the decision in an action of this type cannot be carried out against the acquirer third party, if the latter was not a party in the case.

The Civil code 1864 does not offer a definition for the action for recovery of possession. Also, there is no provision in statute law in what regards the action for recovery of possession of property held in undivided shares. In general, this type of action is a creation of jurisprudence and doctrine in the period of the Civil Code 1864.

It must be mentioned that following the case-law of the former Supreme Court held in a judgment of 24 November 1972, a single co-owner could not initiate such an action, stating as follows, the former Supreme Court stating that: "... as long as the property remains co-owned in undivided shares, the co-owners' rights over it are indeterminate and they cannot claim exclusive rights over their shares until after the property has been divided, when each co-owner has been granted exclusive ownership of part of it. It follows that one [individual] co-owner cannot seek recovery of a property held in undivided shares prior to its partition, since an action for recovery of possession implies the existence of an exclusive and determinate right, which a co-owner can acquire only as a result of the partition."

At the European level, the ownership right is very well protected[7]. According to Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, article 1 – Protection of property: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law[8].

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

Is must be mentioned the fact that there was no provision in statute law, before the entry into force of the New Civil Code, for the application of the rule that an action for recovery of possession of property held in undivided shares had to be brought by all the co-owners.

In what regards the action for recovery of possession of property held in undivided shares, the case of Lupaş and others v. Romania (Applications nos. 1434/02, 35370/02 and 1385/03) is relevant.

The circumstances of the case. The nineteen applicants are the descendants of some of the co-owners of a plot of land of approximately 50 hectares in Constanţa, on the Black Sea coast. In a judgment of 16 April 1937 the Bucharest Court of Appeal, noted that some of the heirs had sold their shares of the estate to Nicolae Lupaş, who therefore remained a co-owner of the property in common with twelve other heirs.

Following a further purchase of shares in the estate, Nicolae Lupaş became the owner of 264/360 of the property, which was now owned in common with eleven other heirs. All actions filled in the Romanian courts for recovery of property were dismissed on the grounds that *it was common knowledge that an action for recovery of possession of property held in undivided shares could not be brought by one of the co-owners without the others' consent, since the aim of such an action was not only to protect the ownership of shares but also to secure recognition of title to the property as a whole and its return to the claimant*.

In this case, the European Court of Human Rights ruled that the right of access to a court is not absolute but may be subject to limitations but the limitations must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. In what concerns the unanimity rule, the Court observed that the domestic courts declared their actions inadmissible on the ground that they had been brought without the consent of the heirs of two of the former co-owners of the property being claimed.

In this regard the Court must observe whether *the unanimity rule applied in the instant case by the domestic courts was clear, accessible and foreseeable in effect within the meaning of the Court's case-law, whether the restriction it imposed on the applicants' right of access to a court pursued a legitimate aim and whether it was proportionate to that aim*.

The Court observed, firstly, that the rule in question is a judicial construct which does not derive from any specific procedural provision but is inspired by the particular features of an action for recovery of possession.

In para. 69, the Court stated that having regard to the fact that this judge-made rule was followed by most domestic courts, the Court can accept that it was clear and accessible and that its application in the present case was foreseeable and it pursued a legitimate aim, namely the protection of the rights of all the heirs of the former co-owners of the property.

In para. 70, the Court analyzed whether by requiring the consent of all the heirs of the former co-owners, the courts imposed a disproportionate burden on the applicants, upsetting the fair balance between the legitimate concern to protect the rights of all the heirs and the applicants' right of access to a court in order to seek recovery of their shares of the property held in common.

The answer was to be found in para. 74, where the Court underlined that, seeing that it was impossible to obtain the consent of all the heirs of the former co-owners, the Court considers that any intervention by the other fourteen applicants would have had no bearing on the outcome of the action.

Also, the Court notes that, *reiterating that all the provisions of the Convention and its Protocols must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory, the Court cannot accept the Government's argument that the dismissal of the applicants' actions placed only a temporary restriction on their right of access to a court. In this connection, it also notes that apart from a judgment given by the High Court of Cassation and Justice on 3 February 2005, the Government have not indicated any legal means whereby the applicants might be able to assert their inheritance rights. Lastly, the Court notes with interest that a bill to amend the Civil Code, expressly abandoning the unanimity rule, was recently tabled in Parliament. 76. In the light of the foregoing considerations, the Court finds that the strict application of the unanimity rule imposed a disproportionate burden on the applicants, depriving them of any clear and practical opportunity to have the courts determine their applications for recovery of the land in issue and thereby impairing the very essence of their right of access to a court*.

New Civil Code. Novelties.

Although we still don't have a legal definition for the action of recovery of possession, according to art. 563 et seq. of the New Civil, the owner has the means of defense in justice of the right of private property. In what concerns the right of public property, this action has a specific ruling, namely art. 865 paragraph 3 of the New Civil Code.

Characteristics of the action for the recovery of possession in the New Civil Code

Although the action for the recovery of possession was considered imprescriptible, the New Civil Code states expressively that it can be submitted anytime, regardless whether the claim concerns a movable or an immovable asset, except for the cases where the law provides otherwise, according to article 563.

According to art. 937 paragraph 1 of the New Civil Code, the lost or stolen movable asset can be claimed from the bona fide possessor, if the action is submitted, under the sanction of forfeiture, within 3 years from the date when the owner lost the material ownership of the asset.

Who can file an action for the recovery of possession?

Of course, the New Civil Code in the same way as the Civil Code 1864 states that the owner of the ownership title is entitled to file this action. As an element of novelty, as opposed to the principle of unanimity underlined by the old regulation, more precisely by the doctrine and jurisprudence, in the case of tenancy in common, each co-owner can appear alone in court, regardless of the position in the trial.

The common property is regulated by the Civil Code (articles 631-686). As a legal definition the common property supposes that, on the basis of a legal deed or some other way of acquisition provided by law, the private property title is shared by two or more title holders. There are two types of joint property as following: ownership on quotas/shares (co-ownership), which can be: ordinary or forced and common indivisible ownership (indivisible co-ownership).

The novelty of the New Civil Code regards the fact that all legal proceedings, including the action for property recovery, can be filed by one co-owner. More precisely, the New Civil Code states that the decisions issued in favor of the co-ownership are profitable for all co-owners, but the decisions against one of the co-owners are not opposable to the other owners[9].

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[1] C. Birsan, *Civil Law. Principal real rights*, Hamangiu Publishing House, Bucharest, 2007, p. 27-28
[2] L. Pop, L.M. Harosa, *Civil Law*, Universul Juridic Publishing House, Bucharest, 2006, p. 309
[3] C. Birsan, *cited*, p.197-199
[4] C. Birsan, *cited*, p. 197-204
[5] L. Pop, L.M. Harosa, cited, p. 314 and following
[6] www.csm-1909.ro
[7] For a detailed analysis on the subject of democracy promotion in post-communist countries as congruence between historical, legal and political patterns in European Union see Anca Parmena Olimid, *Democracy Promotion in Post-Communist Countries. Congruence between Historical andPolitical Patterns in European Union* in Anca Parmena Olimid, Irina Olivia Popescu, *Politics and religion in EU and US*, Aius Publishing House, Craiova, 2010, pp. 107-122.
[8] *Ibidem*. pp. 115-122.
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ORIGINAL PAPER

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Credit institutions from the perspective of the National Bank of Romania's contribution to the publicity of the banking law

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Abstract: *At present the components of the national banking system are the credit institutions (private law entities) and the National Bank of Romania (independent public institution), this structure being reached after numerous legal changes. Regarding the legal regime of the credit institutions, Romanian legal entities, this could not have remained uninfluenced by the publicity of the banking law. Therefore, one of the reference points for the public intervention within credit institutions is the competence of the National Bank of Romania itself to ensure the financial stability by authorizing, regulating and prudential supervising the credit institutions. The state's intervention through the national central bank is determined by the need to protect the public interest. Keeping under surveillance the entire legal existence of any credit institution, Romanian legal entity is achieved this way.*

Key words: *credit institution, National Bank of Romania, publicity of the banking law, authorization, regulation, prudential surveillance.*

I. Components of the current national banking system

Within a general approach the banking system contains the ensemble of the entities specific for the banking domain, which operate in a national economy and which have the currency as basic object of their activity. Related to the components of the national banking systems within the present stage they are usually structured on two levels[1]. One of the levels is assigned to a banking authority with responsibilities various and different from a state to another, this being the national central bank and/or other competent entities. The second level is assigned to the banking institutions which depending on the national legal order in which they activate, referrer to categories of different legal entities.

The pattern mentioned previously was followed also at the construction of the present Romanian banking system, this allowing the identification of both the pluri-institutional level represented by the category of credit institutions, Romanian legal entities, and the mono-institutional level at which the National Bank of Romania is situated. Yet, until it reaches this structure, the Romanian banking system has known numerous changes both related to its components and to the legal regime indicated by the legislator. Chronologically the set-up of the National Bank of Romania was preceded by the existence of a range of banking institutions which have known extremely various changes related to the name, legal form and legal regime, the characteristic of the national historical-social-economical status being permanently imprinted on them.

Related to the credit institutions, Romanian legal entities, we apprehend that these are the expression of the national legal dynamics and the influence of the changes occurred at the level of the European Union's legislation in the domain. One example of rendition of the European legislator's will in our legal order is the notion itself „credit institution" which according to the Government Emergency Ordinance no. 99/2006[2], defines "a entity whose activity consists of attracting deposits or other reimbursable funds from the public and granting credits from its own account". On its turn the credit institution, Romanian legal entity, designates only the following categories of legal entities: banks, credit cooperative organizations (namely credit cooperatives and central house of credit cooperatives), saving and loan banks in the housing field and the mortgage loan banks[3]. Starting with the 30th of April 2011 the electronic money institutions ceased to form the category of credit institutions, Romanian legal entities, the change being determined by the adoption of the Directive 2009/110/CE which set up a new legal regime for these legal entities and at the same time the obligation to render it inclusively within our national order[4].

At the same time on the Romanian territory both credit institutions and their units with or without legal personality, and credit institutions from other EU member states, namely from third states under the forms therefore regulated perform their activity taking into consideration the legal framework applicable in the sector.

Related to the National Bank of Romania this holds currently the quality of the Romanian state's central bank, its fundamental objective being to ensure and to maintain the stability of the prices, for its achievement numerous

responsibilities which are under its competence being set up according to the standards. At the territorial level this is present through its territorial network of branches.

II. General presentation of the National Bank of Romania

The National Bank of Romania was founded after the attainment of the state independency, namely on the 17th of April 1880, *the status acknowledged by the legislator* going through numerous changes in time. The evolution of this institution from the quality of central administration body to an independent public institution[5] is outlined by the legislative instruments which have governed it time. Hence if based on the Decree no. 124/1970 the National Bank of Romania was deemed a central body of the state administration, subsequently the Article 1 from the Law no. 34/1991 on the Statute of the National Bank of Romania mentioned that this "determines and rules the monetary and credit policy within the state's economical and financial policy for the purpose of maintaining the stability of the national currency." Also within the Article 1 it was provided that the National Bank of Romania is the state's body and has legal personality. Such mention was in contradiction with the position of central bank within the market economy within which the central bank must be independent in relation with the state's bodies[6]. This contradiction was outlined by the provisions of the Article 31 (from the Law mentioned above) which allowed the possibility of granting some loans to the state budget so that the bank's debtor was the higher hierarchical body itself, being in contradiction with the principle of equality which governs the legal relations between the bank and the customer, which are relations of contractual nature.

Exactly considering the need to set up an independent status through the Law no. 101/1998 on the Status of the National Bank of Romania it was mentioned in the Article 1 that this is the central bank of the Romanian state, having legal personality but through the last law governing the current legal framework of this institution, namely the Law no. 312/2004 on the Status of the National Bank of Romania [7] practically it is provided in the Article 1, paragraph (2) that the National Bank of Romania is an independent public institution. The significant role held by this institution within the banking system and also within the national economy it is revealed also by the legal framework applicable to the central bank, the legislative instrument mentioned previously being supplemented through the provisions contained in numerous other legislative instruments.

Related to this component of the banking system the impact of the European Union's legislation is a subdued one, being obvious only within certain responsibilities which fall on our central bank, the essential role still falling on the national legislative sources. This reality gets its justification in Romania's non-participation in the Eurozone, the National Bank of Romania being party only of the European System of the Central Banks and not of the Euro-system..

The independency of the National Bank of Romania acknowledged from the legal point of view grants to it a distinct position within the public

institutions[8]. The need for a central bank to be independent results from the impossibility to be subordinated to the Government which at a certain moment under certain difficult economic conditions can have foreign subjective interest to assure financial stability on a long term.

At the level of the legal literature to define the central bank's level of independency it was estimated that it is necessary to consider its following major coordinates, namely: a) *institutional independency* (mainly appreciated depending on the lack of any subordination to the Government and Parliament and on the nature of the state's fully paid registered capital); b) *operational independency* (appreciated in relation with the role assigned from the legal point of view in the matter of formulating and implementing the currency policy as component element of the state's economical and financial policy); c) *the independency of the members from the central bank's management body and the body itself* (on the one hand determined by their method to assign, the members of the Board of Directors being elected by the Romanian Parliament according to the law and on the other hand by the series of special incompatibilities imposed to them); d) *financial independency* (revealed by the existence of a budget financed from its own sources, approved by its Board of Directors)[9].

The need for independency is given exactly by the role and responsibilities of a central bank from a state with market economy. Therefore, *the fundamental objective* determined through legislative instruments for the National Bank of Romania is to ensure and to maintain the stability of the prices. From the plurality of the responsibilities[10] which fall on it, the State itself has nominated as *main responsibilities*: a) elaboration and application of the monetary policy and of the exchange rate policy; b) insurance of financial stability through the authorization, regulation and prudential surveillance of the credit institutions, as well as through the promotion and monitoring of the good functioning of the payment systems; c) issuance of bills and coins as legal payment means on the territory of Romania; d) establishment of the currency regime and surveillance of its observance; e) administration of international reserves of Romania. As an addition to them, numerous other responsibilities of the Romanian National Bank result from the interpretation of the provisions from other legislative instruments incident to the national banking system.

III. General aspects related to the mark of the public law and public interest on the credit institutions

The existence of the credit institutions and the activities performed by them involve public values such as the stability of the banking system, the transparency of the offered financial products or the protection of the depositors and investors, making the connection between the public interest and the activities allowed for the credit institutions irrefutable. As a consequence the need to protect the public interest led to a publicity of the banking law (which is a subdivision of the private law within our legal system), its mark being visible mainly on the legal regime of the credit institutions.

The issue of the public interest which is represented by the operations performed by the credit institutions, Romanian legal entities, especially the allowed banking activity with their exclusive character has not remained alien to the jurisprudence of the High Court of Cassation and Justice[11]. For the explanation of one of its decision the assertion according to which "the banking activity, although is performed by private legal entities, represents an irrefutable public interest" can be found.

A first bench-mark of the public intervention within the credit institutions is given by the set-up of the competence by the legislator under the responsibility of the National Bank of Romania to ensure the financial stability, including through the authorization, regulation and prudential surveillance of the credit institutions [12]. This way the state through the national central bank controls the entire legal existence of any credit institution, Romanian legal entity, influencing therefore their behavior. Within the context of the recent global financial crisis the public intervention in the banking system for the prevention of their members' bankruptcy and a systemic crisis was accentuated, appearing under the form of the national central bank's intervention (which this way exercised also other responsibilities than the one previously mentioned) and the governmental intervention (which has an exceptional character and consists of the means of action with micro-economical character)[13].

The second bench-mark of the publicity appears under the form of hyper-regulating the banking sector and the imperative character of most provisions from the legislative instruments from this sector. The status is an atypical one for the private law but fully justified by the public interest which is represented by the stability of the banking system. Through its regulations the legislator follows to remove the risk for depositors' and shareholders/members' to reach the status of being bare of the savings or investments which they made.

The last bench-mark regards the monopoly set-up related to the performance of the banking activity. No other natural or legal entity that is not an authorized credit institution shall not be able to perform any banking activity, meaning at the same time to perform activities to attract deposits and other reimbursable funds from the public and to grant credits from their own account. Within the legal literature[14] it was estimated that related to the authorized credit institutions the monopoly can be materialized also in limiting the use of certain professional designations only by this category of legal entities.

IV. Regulation, authorization and prudential surveillance of the credit institutions by the National Bank of Romania

The National Bank of Romania's competence to authorize, regulate and prudential surveillance the credit institutions, Romanian legal entities, represents one of the responsibility's components regarding the assurance of financial stability. The exercise of this prerogative determines the central bank's main contribution to the publicity of the banking law.

A. Regulation of the credit institutions, Romanian legal entities

Within a general approach we keep in mind that the banking sector benefits of a proper attention according to the legal aspect, motivated by numerous causes. Within them the prudential reasons are yet predominant, determined by the increase and the diversification of the market's risks, by the allowed activities or by the acknowledged responsibilities of the components from the national banking system. Related to the aspect of purpose by hyper-regulating, which characterizes the banking sector, the assurance of the credit institutions' stability, the guarantee to protect the customers' interests (mainly the private customers and as consequence the operation and viability itself of the banking system within its ensemble) were aimed.

Within this context the legislator has admitted to the National Bank of Romania the competence to intervene upon the banking system implicitly by issuing legislative instruments. According to the provisions from the Articles of Organization itself (Article 25) to ensure the operation and viability of the banking system, the National Bank of Romania is empowered to issue regulations, to take measures to impose their observance and to apply legal penalties in cases of non-observance.

The legislative instruments issued by the central bank belong in our view to the secondary legislation which contains both the legislative instruments issued by other authorities [15] than the one rightful owner of the power of enactment (Romanian Parliament) and also other legislative instruments which are incident to the banking sector motivated by its subdivision character of the national legal system[16]. This secondary legislation supplements the primary legislation (namely specific legislative instruments which have a general character and are exclusively applied to the financial-banking system)[17], the European Union's legislation incident to the banking system (namely both its primary sources represented by the multitude of communitarian treaties and also its derivative sources represented by regulations, directives, decisions, recommendations and permits) and also other legislative sources[18].

The instruments issued by the National Bank of Romania appear under the form of leaflets, regulations, norms or orders. Irrespective of the form in which they are issued, the regulations of the central bank present a mandatory character for all legal entities, both public and private, as well for natural entities. Related to the credit institutions the regulation ensured by the central bank is practically influenced by behavior.

All the regulations issued by the central bank are published in the Official Gazette of Romania, Part I. Additionally the National Bank of Romania has opened and keeps a public register of its regulations published in the Official Gazette of Romania. The objective of their communication is to offer to the wide audience, to the internal and international business environment, institutions of the public administration and academic community a clear image on the policies and measures adopted by the central bank for the fulfillment of its responsibilities.

B. Authorization of the credit institutions, Romanian legal entities

The set-up of the credit institutions as legal entities able to perform

specific activities is a real process which assumes the observance of the terms determined by law regarding the set-up instrument, the authorization and registration. The Romanian central bank holds an essential role within the authorization process of these legal entities, this being imposed by the legislator through imperative norms.

According to the legal aspect according to the provisions of the Government Emergency Ordinance no. 99/2006[19], the National Bank of Romania is the one that determines through regulations and notifies the European Commission the terms in which any authorization and the documentation which must accompany the application to obtain the authorization are granted. This way the authorization procedure, the authorization conditions and the documentation which must be submitted to the National Bank of Romania for the authorization process are determined mainly through the regulations issued by it[20]. In this sector the Government Emergency Ordinance no. 99/2006 as the framework law of the credit institutions ensures only the general regulation [21].

Concretely any credit institution, Romanian legal entity can be set up and can operate on the Romanian territory only based on the authorization issued by the National Bank of Romania. The authorization process implies the following two stages: the Romanian National Bank's approval of the set-up as credit institution, Romanian legal entity and the authorization of the credit institution's operation as Romanian legal entity by the central bank for the performance of the activity in Romania. According to the law the attainment of the approval for set-up does not guarantee the attainment of the operating permit, but only indicates the permission given to the shareholders/members to proceed to the set-up of the credit institution according to the legal provisions and in accordance with the methods provided in the documentation submitted to the National Bank of Romania.

The legal form accessible to the categories of credit institutions, Romanian legal entities was determined for each of them by the provisions of the Government Emergency Ordinance no. 99/2006[22], depending strictly on the interpretation and with prioritary application. According to this aspect the analysis of the incident provisions reveals a delimitation between the credit institutions which are set-up under the legal form of joint-stock companies (such as banks, mortgage loan banks, saving and loan banks in the housing field) and the credit institutions which, although are defined as autonomous, non-politician and non-governmental assocciations performing activities specific to credit institutions for supporting their members observe observe the regime of the joint-stock companies (the case of credit cooperative organizations). Related to the method of setting-up the credit institutions the simultaneous set-up was imposed by the Government Emergency Ordinance no. 99/2006 as single method, the initial capital must be fully subscribed at the moment of the set-up by observing the quantity and the regulatory restrictions in the sector.

Without presenting any detail on the characteristic elements which they suppose, the sequences exercised by the set-up process of the credit institutions must observe the following order: 1) the editing of the credit institution's draft

representing the articles of association; 2) the fulfillment of the formalities preceeding and conditioning the initiation of the authorization process but only if some particular cases provided by the legislator[23] occurr; 3) the request for the approval of the credit institution's set-up at the National Bank of Romania for the purpose of the procedural stages specific to this stage being covered[24]; 4) the set-up of the credit institution which obtained the approval to set-up from the central bank under the legal form permitted by the law by finalizing the elaboration of the articles of association (related to the editing and the conclusion of the form permitted by the legislator) and by registering to the Trade Register Office; 5) requesting the operating permit to the National Bank of Romania within maximum 2 months since the communication of the decision related to the awarding of the set-up approval, therefore the procedural stages specific to this stage being covered[25].

In conclusion for any credit institution the successful coverage of the first stage within the authorization process (materialized in attaining the set-up approval) conditions its set-up as legal entity by registering to the Trade Register Office whilst the coverage of the second stage (materialized in attaining the operating permit) conditions only the possibility to perform the activities for which it was authorized by the National Bank of Romania. Therefore, in the case of the credit institutions awarding the legal personality and the access to perform the activities permitted by the law depends on the evaluation performed by the Romanian National Bank within the authorization process.

C. Prudential surveillance of the credit institutions Romanian legal entities

As general notion the control is the activity performed by certain empowered persons in accordance with the regulations in this sector through which the method of performing any activity or applying an instrument by the authorities, institutions or persons are controlled under certain terms regulated for the attainment of the pursued purpose. The surveillance is a variety of the control, performed under certain determined terms, being specific to a certain activity which is its object. Related to the prudential surveillance this is a specific method used in the banking sector to control the credit institutions' prudentiality indexes[26].

For the purpose of protecting the interests of the depositors and ensuring the stability and viability of the entire banking system, the National Bank of Romania ensures the prudential surveillance of the credit institutions, Romanian legal entities, including their branches set-up in other member states or in third states by determining some norms and banking prudence indexes and the follow-up of their observance and other requirements provided by the law and by the regulations applicable both at the individual level and also at the consolidated or subconsolidated level, if applicable in order to prevent and limitate the risks specific to the banking activities.

The prudential surveillance performed by the National Bank of Romania in its competence sector appears under different forms and occurs in different moments of the credit institutions' existence[27]. On that effect we exemplify: the

regulation of the norms with prudential character on the requirements for authorization; the analysis of the documentation submitted by the founders upon at set-up; the analysis of the periodical reports and the performance of the on-site control actions related to the observance of the prudentiality norms[28]; the approval of the merger or demerger; the application of penalties and measures [29]; the exercise of the rights granted by the law within the insolvency procedure of the credit institutions; the participating managing some institutions related to the activity of the credit institutions[30]; the conclusion of written coordination and cooperation agreements with the competent authorities from other states as the authority responsible for surveillance under consolidated and/or individual form[31]; the receipt and the settlement of the notices or applications on the implementation of the international penalties according to the law in this sector [32] .

In conclusion the intervention of the National Bank of Romania on the legal regime of the credit institutions is performed during the entire period of their legal existence. Its three actual forms (regulation, authorization and prudential surveillance) go through the most different changes and their overlapping is visible in numerous occassions. In this last sense we keep in mind that many of the regulations issued by the Romanian National Bank are meant exactly to the authorization process and the prudential surveillance which the Romanian National Bank itself performs and the autthorization process allows the start of the prudential surveillance on the credit institutions, Romanian legal entities. The status of independent public institution doubled by the responsibilities acknowledged by the legislator of the Romanian central bank including in the sector of the credit institutions contributes to the publicity of the banking law.

References:

[1] On this theme L. Bercea, *Evoluţii în structura sistemului bancar din România*, în Revista de Drept Comercial nr. 4/2004, pp. 248 - 257.

[2] Art. 7, paragraph. (1), point. 10.

[3] The legislative definitions are established by the provisions of the Government Emergency Ordinance no. 99/2006 [art. 288, 318, paragraph. (1), art. 333 - 335].

[4] At present the legal regime of this type of legal entity is established by the Law no. 127/2011 on the activity of issuing the electronic money, published in the Official Gazette no. 345/22.06.2011.

[5] I. Silberstein, *Banca Naţională a României. De la organ al administraţiei centrale la instituţie publică independentă*, Ed. Hamangiu, Bucureşti, 2006, p. 93 şi urm..

[6] *Ibidem*, p. 98.

[7] Published in the Official Gazette no. 582/30.06.2004 with its subsequent amendments and additions.

[8] I. Silberstein, *quoted work*, p. 100.

[9] D. Drosu Şaguna, M. A. Raţiu, Drept bancar, Ed. C.H. Beck, Bucureşti, 2007, p. 97.

[10] For a more detailed approach, L. Săuleanu, L. Smarandache, A. Dodocioiu, *Drept bancar*, ediţia a 2-a , Ed. Universul Juridic, Bucureşti, 2011, pp. 26-49.

[11] High Court of Cassation and Justice, unified sections, Decision no. XIII from the 20th of March 2006, mandatory, published in the Official Gazette, Part I, no. 677 from 07/08/2006.

[12] In the national doctrine the opionion according to which the control which the state has through the central bank has as purpose the influence of the credit institutions' behavior in order to reach

this way the objectives of the monetary and foreign currency policy, as well the normal surveillance of the credit institution was expressed. Therefore, I. Silberstein, *Banca Națională a României în perspectiva unei bănci centrale în cadrul Sistemului European al Băncilor Centrale*, în Revista de drept bancar şi financiar nr. 1/2006, pp. 13 - 18.

[13] On this theme, L. Bercea, *Intervenţia publică asupra sistemului bancar: între too big to fail şi too big to let fail,* în Pandectele Române nr. 2/2011, p. 49-62.

[14] Ch. Gavalda, J. Stoufflet, *Droit Bancaire. Institution-Comptes. Opérations-Services,* 7e édition, Ed. Libraire de la Cour de Cassation, Paris, 2008, p. 43.

[15] As example the Romanian National Securities Commission, the National Supervisory Authority For Personal Data Processing or the National Authority for Consumers' Protection also belong to the category of authorities for which the legislative prerogatives were acknowledged by the legislator (legislative instruments therefore issued being mandatory within the banking system).

[16] For example: civil legislation (mainly the new Civil Code) and the commercial legislation (mainly the Law no. 31/1990 on trading companies).

[17] We remind as example: Law no. 312/2004 on the Status of the National Bank Of Romania; Government Emergency Ordinance no. 99/2006 on credit institution and capital adequacy; Government Ordinance no.10/2004 on the bankruptcy of the credit institutions.

[18] We have in mind: a) the regulations incident to the banking law considering the current interferences between the divisions of the national legal system; b) different international treaties and/or conventions in the sector to which Romania is part of and which were ratified according to the law; c) national and European jurisprudence which have legislative value according to the law whereas it is incident to the banking sector; d) customs under the terms of the new Civil Code.

[19] Art. 10, paragraph (2).

[20] For example the Regulation no. 11/2007 on the authorization of the credit institutions, Romanian legal entities and branches of the credit institutions from Romania and third states, published in the Official Gazette no. 837/06.12.2007, with its subsequent amendments and completions.

[21] For example it is regulated summarily the minimum authorization conditions, namely: its own funds or registered capital; the registered office and, if applicable, the real office; the shareholders or members, natural or legal entities, that are about to hold directly or indirectly qualified shares in a credit institution, Romanian legal entity; persons to whom the management and/or leading responsibilities are entrusted; the activity plan. Therefore: the provisions of the art. 11- art. 16 from the Government Emergency Ordinance no. 99/2006.

[22] Art. 287, paragraph. (1), art. 291, paragraph (1), art. 319, paragraph (1) and art. 351, paragraph (1).

[23] Going through some special stages previous to the initiation of the authorization process was regulated by the Government Emergency Ordinance no. 99/2006 for: 1) the credit cooperatives which are set-up and affiliated to the central house already authorized (in their case the attainment of an affiliation approval granted by the respective central house is mandatory in order to be able to be authorized by the central bank); 2) the credit institutions, Romanian legal entities within which significant shareholders are about to be persons from third states (in their case the central bank must evaluate previous to submitting the authorization application if the requirement regarding the adequacy of the surveillance framework from the origin country is fulfilled).

[24] Within this stage we differentiate the following procedural stages: a) submitting the application and the related documentation to the National Bank of Romania; b) instrumentation of the application and the related documentation by the National Bank of Romania; c) pronouncement and communication of the National Bank of Romania's decision.

[25] Within this stage we differentiate the following procedural stages: a) submitting the documentation certifying the set-up to the National Bank of Romania; b) submitting the documentation certifying the amendment in relation with the terms under which the set-up was approved; c) instrumentation of the documentation; d) pronouncement and communication of the National Bank of Romania's decision.

[26] To this effect I. Silberstein, *quoted work*, 2006, page 213.

[27] For a more detailed approach, L. Săuleanu, L. Smarandache, A. Dodocioiu, *op.cit.*, pp. 148-162.

[28] According to the provisions from the own Articles of Association (Article 25) the National Bank of Romania is empowered to control and to verify based on the received reports and by on site inspections the records, accounts and any other documents of the authorized credit institutions, which are deemed necessary.

[29] For example in the sector of preventing, controlling and sanctioning money laundry and financing of terrorism actions.

[30] For example: Bank Deposit Guarantee Fund, the Company for Funds Transfers and Settlement - TransFond S.A.

[31] Within this collaboration the exchange of all the information necessary to exercise the National Bank of Romania's authorities assigned according to the regulation in the sector of supervising the entities from the financial – banking sector is ensured. The information supplied based on the collaboration agreements concluded by the National Bank of Romania with the authorities and bodies from third states reminded above are subject to the requirements from the Articles of Association related to confidentiality of the know-how. The exchange of information must be escribed exclusively for the purpose of fulfilling the responsibilities which fall on the sector of surveillance. In the case of the information received from a member state it can be supplied with the express approval of the competent authority from which it was obtained and only for the purposes for which the approval was obtained.

[32] According to the Government Emergency Ordinance no. 202/2008 on the application of the international penalties.

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ORIGINAL PAPER

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The evolution of criminal judicial cooperation in the European Union

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Abstract: *International judicial cooperation in criminal matters in Europe has specific regulations, based on a proper legislation that would simplify procedures between states. In the European Union, in the light of the expanding cross-border crime and terrorism, Member States have stepped up cooperation by eliminating all cumbersome procedures in order to create an area of freedom, security and justice. The European Convention on Extradition was replaced by the European Arrest Warrant and the Lisbon Treaty, aiming to simplify all procedures, by providing recognition of judicial and court decisions, increasing the role of the Court of Justice of the European Union and Europol and by creating new institutions with specific responsibilities.*

Key words*: European criminal law, judicial cooperation, area of liberty, freedom and security, European arrest warrant.*

1. International judicial cooperation in criminal matters. The concept of international judicial cooperation in its modern sense is relatively new, as well as the extradition, as it is currently regulated in bilateral or multilateral international legal instruments. Since the 19th century, the Romanian government has concluded bilateral agreements established by the appropriate legal international judicial cooperation. Legislative developments in Romania and all states are a reflection of the emergence and development of cross-border criminality and terrorism, realities that led to the need to implement effective cooperation.

In order to counter proliferation threats of the 21st century and to strengthen global security, states have proceeded to the conclusion of agreements, treaties, etc., to harmonize national anti-crime tools.

Competent national authorities transmission requests in the areas of extradition, transfer of proceedings in criminal matters, recognition and enforcement of criminal judgments and judicial documents, transfer of sentenced persons and mutual legal assistance in criminal matters are: the Ministry of Justice, if the object of extradition and transfer of persons convicted relates to the work of law enforcement of criminal judgments, the Prosecutor of the High Court of Cassation and Justice, where it refers to activities of investigation and prosecution, the Ministry of Interior, where it refers to criminal records.

In most European countries the Ministry of Justice is the central authority with the greatest responsibilities for judicial cooperation, with a range of powers granted by law in the areas of extradition, transfer of sentenced persons, transfer procedures, recognition of judgments, judicial assistance at the trial or the execution of criminal judgments. The Prosecutor of the High Court of Cassation and Justice is the central authority for requests for assistance in criminal matters during the investigation and prosecution, and the Ministry of Interior is the central authority for requests for criminal records.

In the relations between the Member States of the European Union, the Romanian Ministry of Justice as central authority for judicial cooperation in criminal matters has as a main task to assist and support direct contacts between Romanian judicial authorities and the Member States, including through national contact points for the European Judicial Network (EJN / EJN).

For other forms of cooperation at EU level the Ministry of Justice or the Public Prosecutor of the High Court of Cassation and Justice shall retain the powers conferred by law, in areas such as border monitoring, border surveillance, etc., transfer of sentenced persons, in particular special skills regarding the updating of the database on European Arrest data provided by all relevant Romanian authorities.

Other central institutions with responsibilities in international judicial cooperation are: Cooperative Initiative Regional Center in south-eastern Europe for cross-border crime (SECI) and the International Police Cooperation Centre, the central unit in the Ministry of Interior[2].

2. Extradition. Institution in a constantly evolving need, extradition came amid absolute monarchies to maintain authority but became one of the most effective forms of struggle against transnational crime and the doctrine defining this institution approached it differently depending on the features that it has had in history.

As an institution which has always drawn the attention, in theory, in agreement with the laws of time, extradition was defined by different specialists in different ways.

The first authors who gave definitions to extradition were Cesare Beccaria[3], but also Professor Enrico Ferii[4] who defined the institution of extradition as: "..... an institute of international criminal law and domestic criminal law while on particular defendants, which consists in asking the state to require that a person who has committed a crime on its territory can be judged in that State".

As for extradition as an institution of international law, the doctrine said that its appearance marks "... the beginning of international solidarity, solidarity that comes from the mutual interest of each nation state to teach the criminal justice, when public order has been disturbed "[5], it represents an act between two states, the delivery of a convicted offender to the state where the offence was committed or sentencing."[6]

By extradition as a form of international legal cooperation, we thus understand "the act by which the sovereign state (called requested State), in which a person prosecuted or convicted in another state took refuge, surrenders the offender or sentenced person to the State in which the offence was committed or State against the interests of which the offence was committed or State which sentenced him (requesting State), the delivery being made for the person to be tried or to enforce the punishment to which he was convicted[7].

Extradition is therefore a vital institution for the observance of the principles of territoriality, personality, reality and universality of the Romanian criminal law, the ultimate goal being to prevent and combat cross-border crime by punishing offenders.

In its evolution, the institution of extradition was a permanent topic of negotiations between countries of the world, the ultimate goal being to find the most effective ways to teach offenders refugees in another state. Bilateral agreements have resulted in treaties, conventions or other similar instruments that have played a decisive role in preventing and combating crime.

One of the fundamental problems that caused many political-legal discussions between the countries of the world was the course the extradition of nationals.

For a long time, all countries (except U.S. and Britain, but only bilaterally and in certain conditions), did not accept in any case the extradition of citizens, indeed, there were no employees even to judge according to domestic laws on those who have committed criminal acts in other states.
In justification of such attitudes in those periods state sovereignty was invoked, which gave the interpretation that any extradition would harm its own citizens (state sovereignty).

In our institution extradition legislation is provided in art. 19 of the Constitution of Romania, art. 9 of the current Criminal Code and Law no. 302/2004, amended by Law no. 224/2006 and Emergency Ordinance no. 103/2006, domestic legal rules on extradition are complemented by conventions and treaties concluded with other states and ratified by Romania[8].

The three forms that can take on extradition are: regular, voluntary or simplified. Unlike the usual procedure, established by the European Convention on Extradition and Law. 302/2004, while extraditable person being able to defend against the extradition request, voluntary extradition takes place when the extraditable person waives the benefits conferred by law (to defend against the extradition request), agreeing to extradition, and simplified extradition is similar to voluntary elimination assuming additional requirement of a formal request for extradition transmission if the extraditable person consents to extradition.

3. **The specificity of the criminal justice community cooperation**. Inside the EU, Member States decided to supersede formal extradition procedure ¬ for individuals escaping a penalty of imprisonment imposed by a final conviction, with the delivery simplified respectively to accelerate the formal extradition procedure, for those escaping prosecution and trial[9]. From the definition of its specific features regarding extradition, the fact that extradition is an act of sovereignty occurred in the relations between two states, is a judicial act sought and granted exclusively in order to achieve repression, the extradited person is a defendant or convict, but it is also an international act of legal assistance[10].

Extradition is a bilateral act, as it involves, on the one hand, a request for extradition from the requesting State and, on the other hand, the delivery of the extradited person by the requested State and may be granted for trial in the state where he committed the offence (passive) and the extradition of the convicted person, for execution of the sentence in the state where he was sentenced (active)[11].

The revised Constitution in 2003 has some provisions on extradition in art. 19 entitled "Extradition and expulsion". Thus, according to what has been previously mentioned, the Romanian citizen may not be extradited or expelled from Romania. Despite this provision, therefore, by way of exception, Romanian citizens can be extradited based on international conventions to which Romania is part, under certain circumstances, under the law and on a reciprocal basis.

The exception referred to in paragraph. (2) was imposed in our legislation as a result of new realities in the global architecture and European transnational crime. Thus, in recent years "there has been an increase in crime in Europe (especially offensive to some organized crime), terrorism has done more and more victims, there were multiple acts of manufacturing and selling drugs, trafficking women and children, trafficking in arms, etc.

These realities require effective cooperation between judicial authorities to achieve a European legal framework and, especially, to prosecute offenders under the single jurisdiction. Therefore, the Romanian constitution completed art. 19 with one exception, finding that, despite the provisions of par. (1),

Romanian citizens can be extradited under international conventions to which Romania is part, under the law and on a reciprocal basis "[12].

Although there were multiple bilateral extradition treaties between European states, the first and most important step in the improvement and modernization of the institution of extradition within the European Union was achieved in the second half of last century by the European Council, by adopting the European Convention on Extradition from December 13, 1957, ratified by all European states, and later by adopting the two Additional Protocols of 1975 and 1978, ratified by most European countries.

The European Convention on Extradition is the first document involving joint action by several states, the field of prevention and combating of crime in Europe.

The most important provisions of the Convention refer to:

Cele mai importante dispoziţii ale Convenţiei se referă la:

• accepting the extradition of nationals under certain conditions;

• giving up the limit for the offences for which extradition is approved, and expanding extradition opportunities for a greater number of offences punishable by law by the punishment of one year or more, and for convicted persons or against whom a detention measure was taken for sentences of at least 4 months;

• establishing categories of offences that cannot be regarded as political

• acceptance of extradition for fiscal offences;

• adopting a set of rules for mandatory and optional grounds for refusal of extradition;

• the possibility for the extradited person judged and sentenced in absentia to request retrial in his presence;

• establishing procedures and deadlines related to the request for extradition, arrest warrant postponed or conditional surrender, submission, etc. objects.

However, the general trend showed that the arrangements are insufficient compared to the European evolution and realities.

Establishment of the European Union and Schengen later, permanent territorial expansion by the admission of new states, created the possibility of other developments on crime. The facilitated traffic of the offenders from corner to corner of Europe has become reality and can be done without any risk on their part, which led to the obstacle in the EU goal of becoming an area of freedom, security and justice, a wish that seemed to be in danger.

It is therefore clear why it was necessary to establish a new delivery procedure between Member States, a solution to simplify the whole procedure in a way that all offenders in the European Union can be tried and convicted as soon as possible. Member States have decided that the formal extradition procedure should be suppressed to the people who tend to escape the responsibility to justice, after having been subject to a final conviction, and replaced by a simple transfer of the person[13].

The Council Framework Decision 2002/584/JHA European Union of 13 July 2002 on the European arrest warrant and surrender procedures between Member

States has emerged as a consequence of the events of November 11, 2001 in New York, invoking in this sense the need for a European arrest warrant covering a scope identical to that of extradition, which it replaces, referring to both the stage before sentencing in a criminal trial and the one after delivery"[14].

The innovations that make the decision framework in the procedure of offenders delivery between Member States, simplification and timeliness are found in that judicial cooperation is achieved within the European Union through the following ways:

• establishment of a European arrest warrant, the obligation of Member States (with certain exceptions) to proceed with its execution;

• broadening the scope of criminality;

• simplification of delivery;

• shorter deadlines;

• simplifying the administrative stage;

• the possibility of direct cooperation between law enforcement institutions, etc. involved.

The establishment of a European arrest warrant in the European Union has practically replaced the European Convention on Extradition, which remains valid only between Member States and those which are not members of the European Union, the European arrest warrant mechanism replaces the traditional extradition procedure for the transfer of a person from a Member State to another by mutual recognition of judicial decisions, decisions to be made automatically throughout the EU.

Romania joined the European Union in January 1, 2007 amending and supplementing the existing legislation with the required new provisions of the Framework Decision referred to above[15].

Thus, the special law in matters of international judicial cooperation has changed during the accession procedures (as supplemented by a number of provisions on the European arrest warrant and surrender procedures between Member States, in accordance with the Council Framework Decision of the European Union).

The European arrest warrant, applicable in all EU Member States replaced old instruments on judicial cooperation in criminal matters between Member States of the EU, particularly under the European Convention on Extradition of 13 December 1957 and the Convention implementing the Schengen Agreement of 19 June 1990[16].

In order to enforce the common goal of transforming the European space in an area of freedom, security and justice, European countries agreed to establish an European arrest warrant, replacing the cumbersome procedure[17] of extradition provided by the former international treaties on extradition[18].

Simplified procedure to surrender the person sought in the EU involves removing the administrative stage, the only competent judicial authorities to rule on a request for extradition, central administrative authorities may be designated by Member States to assist the competent judicial authorities[19], as regulated by art. 7 of the Council Framework Decision no. 2002/584/JHA of 13 June 2002.

The framework decision was prompted by the need to improve international judicial cooperation, mentioned even in the preamble of the decision and has reduced barriers related to national sovereignty, the European Convention disadvantages and those caused by cumbersome procedure to grant extradition. Reduced efficiency in the fight against crime is obvious from the perspective of fighting terrorism, intensification and diversification of European cross-border crime and the declared purpose of the community to create an European area of freedom, security and justice by coordinating efforts to prevent and combat crime.

However, with the simplification of extradition, mutual recognition of judgments and the recognition of their effects by the EU Member States increased the mutual trust between Member States. All these actions are taken but with the enforcement of EU fundamental rights and freedoms of citizens, by avoiding expulsion or extradition of persons to a country where there is a serious risk of imposing a death sentence or other inhuman or degrading punishment or treatment.

4. European arrest warrant

The European arrest warrant is the first tangible evidence in criminal law implementing the principle of mutual recognition which the European Council considers as "the cornerstone" of judicial cooperation[20].

According to law, the European arrest warrant[21] is a judicial decision issued by the competent judicial authority of an EU Member State, to arrest and surrender to another Member State a person required for the prosecution, the judgment or the order of a penalty or a deprivation of liberty[22]. The text above was inspired by the provisions of the Framework Decision, in which the European arrest warrant is defined as "a judicial decision issued by a Member State to arrest and surrender to another Member State a requested person, for the prosecution serving a criminal sentence or security measure involving deprivation of liberty"[23].

European arrest warrant is executed on the basis of recognition and mutual trust (paragraph 2 of Article 77 of the Law no. 302/2004), the principle is mentioned in the Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (2002/584/JHA)[24].

So, in legal terms, the European Arrest Warrant is defined as a judicial decision issued by the competent judicial authority of an EU Member State, to arrest and surrender to another Member State a person required for the prosecution , the judgment or execution of a sentence or measure involving deprivation of liberty[25].

Another author, considering the legal provisions referring to the framework decision, states that "the European arrest warrant is a judicial decision issued by the competent judicial authorities of an European Union member state, to arrest and surrender to another Member State a person required for the prosecution, the trial or serving a sentence or security measure of imprisonment[26].

So the European arrest warrant is issued only in order to allow the execution of an arrest or imposition of a penalty or a deprivation of liberty safeguards, issued by the competent court, only when the person against whom it is given is avoiding the enforcement mandate, seeking refuge in another EU country.

The European arrest warrant should not be confused with the preventive arrest warrant, as the European arrest warrant is a judicial decision always based on an arrest warrant for penalty or issued under domestic law, the European Arrest Warrant is an arrest warrant, issued only when an arrest warrant or execution of sentence cannot be brought out in the country, because the person seeks refuge on the territory of another EU Member State[27].

Regarding the obligation to respect fundamental rights and fundamental legal principles, the Framework Decision states that: "This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as established in Art. 6 of the Treaty on European Union"[28].

The Romanian authorities responsible to issue a European Arrest Warrant are the courts, and the authorities responsible to issue the execution warrants are the Courts of Appeal. The Romanian Central Authority is the Ministry of Justice (Article 78 of the Special Law). The Romanian competent authorities to receive the European arrest warrant are the Ministry of Justice and the Courts of Appeal appointed under paragraph (2) in whose district the requested person has been located. If it is not known where the requested person is, the European arrest warrant is transmitted to the Prosecutor of the Court of Appeal.

The Ministry of Justice as a central authority is the institution receiving the European arrest warrant issued by a judicial authority in another EU Member State and forwarding it to the Prosecutor of the Court of Appeal in whose district the requested person was located or the Prosecutor's Office of the Court of Appeal of Bucharest, if the requested person has not been located, whenever the issuing authority fails to transmit the European arrest warrant directly to the receiving Romanian judicial authority. The European arrest warrant issued by a judicial authority is transmitted through the Romanian Ministry of Justice, if it cannot be transmitted directly to the receiving foreign judicial authority or if that was the explicit appointment of the executing Member State.

5. Features and advantages of the European arrest warrant.

The European arrest warrant is a legal instrument of international cooperation in criminal matters only valid in relations between two or more EU Member States while the extradition is valid between any Member State and another third country, including those in Europe (for those not part of the European Union)[29].

Although we can say about the European Convention on Extradition, adopted on December 13, 1957, with the two Additional Protocols, that it was a very important document, in virtue of which the Council of Europe has cooperated in the fight against crime through mutual extradition of perpetrators of offences under its procedure, with the years the improvement of cooperation between EU

member States has not been effective due to criminal methods of organized crime which made the operational cooperation between states cumbersome.

EU enlargement has brought more attention to the need for an area of freedom, security and justice within the borders of the enlarged Union to come into agreement with the new mutation in the evolution of crime.

There were attempts to harmonize the regulations for preventing and combating crime more effectively, but not being ratified by many countries they have proved ineffective. The European arrest warrant is a judicial decision issued by a Member State to arrest and surrender to another Member State a requested person for a criminal investigation or for a penalty or a deprivation of liberty safeguards[30].

Carrying out a comparative analysis between the European Arrest Convention and the new provisions of the European arrest warrant, the conclusion is that the Council Framework Decision of 13 June 2002 of the European Union on the European arrest warrant and surrender procedures between Member States (2002/584/JHA) brought a widening of the scope by reference to a larger number of crimes that can execute a European arrest warrant.

Thus, as we noted, the Convention provides that "will give rise to extradition offences punishable by the laws of the requesting and the requested Party by deprivation of liberty or a detention order of imprisonment of at least one year or a more severe penalty. When on the territory of the requesting Party there has been a conviction or a sentence imposing a detention, the punishment will be for a period of at least four months "[31].

The European arrest warrant maintains a series of offences (32), which requires that they are punishable in the issuing State by a custodial sentence or detention order of imprisonment for a maximum period of at least three years, without verification of double criminality[32]. So, absolutely new elements are the emergence of 32 categories of offences that are granted to extradition without the requirement of double incrimination as a necessary condition.

The Framework Decision on the European extradition brought the elimination of the administrative stage, this being accomplished through diplomatic channels or otherwise agreed[33]. The Framework Decision states that the European arrest warrant will be sent directly by the issuing authority, the executing judicial authority, thus avoiding the referral stage through diplomatic channels (administrative).

The Institution of the European arrest warrant can also bring the person sought in the SIS, something which is equivalent to a European arrest warrant (legally). This mode can be addressed only when it is not known where the requested person is hiding. Such a possibility does not count in implementing the Convention. The establishment of a European arrest warrant led to the obvious shortening and simplifying of the delivery time, the Framework Decision provides that the European arrest warrant shall be settled and implemented urgently[34].

The deadline for settlement is 10 days if the extraditable person consents to extradition, and the procedure is carried out normally. Delivery runs in the shortest time that more than 10 days after the final decision on the execution of the European arrest warrant. The European Convention on Extradition provides for terms of 18 or 40 days for provisional arrest of 15 or 30 days for delivery.

The Decision allows Member States to conclude bilateral or multilateral agreements or arrangements, to the extent that they help to simplify procedures for surrender of persons under a European arrest warrant in the set time limits, shorter extension for running such a mandate, limiting the grounds for refusal of execution of the warrant and lowering the threshold provided for offences that can run office.

The Framework Decision provides clear indications relating to the right of defence, while the Convention mentions only that the applicable procedure is that of the requested Party. Complying with the assumed commitments, Romania has transposed the Framework Decision no. 584/JAI of June 13, 2002, by Title III of Law. 302/2004 on judicial cooperation in criminal matters, as amended by Law no. 224/2006. Those provisions took effect starting with 1 January 2007, Romania's EU accession date.

6. Impact of the Treaty of Lisbon on EU operation[35].

Treaty of Lisbon was signed on 13 December 2007 and entered into force on 1 December 2009, following ratification by all EU Member States according to their own constitutional traditions[36].

The Treaty of Lisbon amends the two major treaties governing the currently functioning European Union: the Treaty establishing the European Community (TEC), which will become subsequently the Treaty on the European Union operation (TFEU), and the Treaty on European Union (TEU)[37].

Because giving up the EU pillar structure[38], as established by the Maastricht Treaty (1992), will not distinguish between the European Community and the European Union, the distinction becoming superfluous. Community terms therefore, are replaced by the terms Community Union, the European Union.

Police and judicial cooperation in criminal matters (third pillar of the EU) will not be an area of intergovernmental cooperation, but will form, together with first Pillar (now Community pillar) a supranational field, the change being important especially in terms of decision making.

The Court of Justice is the European Union Court of Justice (Cour de Justice de l'Union Européenne / European Court of Justice), the Court of first instance is the Court (le Tribunal / the General Court), judicial chambers are specialized courts (tribunaux spécialisés / Specialised Courts).

Composition remains unchanged but with the union pillars I and III and the repeal of Art. 35 TEU, art. 68 TEC, the Court jurisdiction extends to the European Union police and judicial cooperation in criminal matters[39], but, according to art. 10 of Protocol no. 36 on transitional provisions, the powers of the Court will remain unchanged for a period of 5 years after entry into force of the Treaty of Lisbon.

Regarding the history of the area of freedom, security and justice, in 1992, the Maastricht Treaty stated the third pillar considering the Justice and Home Affairs (JHA, intergovernmental pillar), in 1997 the Treaty of Amsterdam states the concept of Freedom, Security and Justice: part of the JHA (visas, asylum, immigration and other policies related to free movement of persons) is transferred to Pillar (Community, supranational), and Pillar III is limited to police and judicial cooperation in criminal matters.

The Treaty of Lisbon (2007) completes the range of over-state Justice and Home Affairs, stating that all specific instruments will be used for ordinary procedure of co-decision and qualified majority voting in Council, except where specific provisions stipulate otherwise. Therefore, the disappearance of the specific Third Pillar instruments, the framework decisions will replace the Directives. In addition, instruments adopted in this area will be subject to judicial review of the Court of Justice of the European Union.

Benefits of joining pillars I and III are: more coherence in EU exercise different JHA areas, decision-making rules will be the same whether it is a tool for police or judicial cooperation in criminal matters or a legal instrument for cooperation in civil matters in order to facilitate the adoption of normative acts, no longer need the unanimous council vote, as such, there will be more effective, democratic decision-making and legitimization through greater involvement of Parliament in the co-decision procedure than consultation, subject to judicial review tools of the Court of Justice of the European Union.

The disadvantages of the union of pillars I and III would be: waiving intergovernmental procedure in a highly sensitive area for Member States (criminal law) which, traditionally, represents an expression of national sovereignty, majority voting and co-decision qualified not automatically guarantee the efficiency of decision making, there are occasions when proposals for legislation have long been negotiated without the adoption of tools to get consistent and legally correct[40], is likely to increase substantially the number of instruments promoted and adopted legislation in this area.

7. Judicial cooperation in criminal provisions of the Treaty of Lisbon

The European Community Court of Justice has jurisdiction limited to actions for annulment and preliminary application (Art. 35 TEU), in the latter case, the jurisdiction of the European Court of Justice was subject to the Member States making a declaration, which was accepted in the Community jurisdiction[41].

After the entry into force of the Treaty of Lisbon: the entire area of freedom, security and justice will come under the jurisdiction of the Court of Justice of the European Union, with the exception referred to in art. 276 TFEU[42].

Any national court, and not only the last instance court can address the European Court of Justice for a preliminary ruling, the matter of police and judicial cooperation in criminal matters preliminary procedure may be initiated by any national court, in any Member States, whether or not made prior to a declaration accepting the jurisdiction of the European Court of Justice pursuant to art. Article 35. 2 TEU.

Possible adverse effects of changes in the Treaty of Lisbon EU Court of Justice in the area of freedom, security and justice would be increasing the number of requests for a preliminary ruling with the European Court of Justice and risk prolonging proceedings, the Court judges dealing with specific aspects of the European Union, without always the necessary expertise, the problem will refer especially to preliminary applications where there are difficulties in understanding the law of the Member States.

In creating the area of freedom, security and justice, before the Lisbon Treaty, national parliaments had no specific expertise in this area, they could check the subsidiarity principle when new proposals were made in the same way that could make this verification of the EU instruments in other legislative areas, Article 69 TFEU expressly refers to the role of national parliaments to verify compliance with the subsidiarity principle on the matter of legislative initiatives police and criminal justice, in accordance with the Protocol on subsidiarity and proportionality annexed to the Treaty of Lisbon.

Review draft legislation of the Area of Freedom, Security and Justice is mandatory in the cases when the non-subsidiarity is voted with minimum ¼ of the votes allocated to national parliaments .

In the Lisbon Treaty provisions, the national parliaments are involved in the evaluation of EU policies in the area of freedom, security and justice (Art. 70 TFEU) and Eurojust (Art. 85 TFEU).

Article 82 paragraph. 1[43] defines more clearly the elements of judicial cooperation in criminal matters and provides expressly limited measures that the EU can take in this matter. There is a significant expansion of EU competence.

Article 82 paragraph. 2[44] establishes more clearly the EU competence to adopt criminal procedure, conditional on the existence of a border size (requirement first mentioned specifically). List areas where the EU can take exhaustive measures, referring to mutual admissibility of evidence between Member States, the rights of individuals in criminal procedure, crime victims' rights. Extending action can only be made by unanimous vote of the Council, after approval by the European Parliament.

Article 83 paragraph 1[45] clarifies the regulatory powers of the EU in the material and criminal law, recognizing the status- quo outcome following normative acts already adopted in Europe.

Article 83 paragraph 2 is a novelty to the preceding provisions of the Treaty and contains an additional legal basis for the approximation of substantive criminal law of Member States when establishing offences and penalties is needed to ensure effective implementation of a Union policy in an area which has been subject to harmonization measures. The provision establishes legal jurisprudence of the European Court of Justice in the matter[46].

On Eurojust, art. 85 TFEU takes most of the contents of former Art. 31 par. 2 TEU. Eurojust's mission is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a

prosecution on common bases, operations conducted by the Member States and Europol and the information provided by them.

Eurojust tasks listed in the TFEU do not differ substantially from those covered by TUE in the previous form, which may include (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, especially those relating to offences against the Union's financial interests, (b) coordination of investigations and prosecutions; (c) strengthening of judicial cooperation, including resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network; News to the Treaty of Lisbon expressly provides a legal basis for legislation that would set up the structure, operation, scope and powers of Eurojust. They may be established by Parliament and Council Regulation, in accordance with the ordinary; brings Eurojust under the jurisdiction of the European Union Court of Justice.

A new institution established by the Treaty of Lisbon is the European Public Prosecutor. The order to establish this institution as defined in art. Article 86. 1 TFEU, is to combat crimes affecting the financial interests. The European Prosecutor may be established by Council Regulation adopted in accordance with a special legislative procedure, required a unanimous vote of the Council and European Parliament approval. If unanimity cannot be obtained, the rule of enhanced cooperation operates.

The European Prosecutor is responsible for investigating, prosecuting and sending for trial, where appropriate, with Europol, the authors and accomplices in crimes affecting the financial interests; the European prosecutor exercise in the competent courts of the Member States the public action in relation to such offenses.

The main issues linked to the establishment of European Prosecutor's Office can be summarized as follows: it is difficult to assess the impact of European prosecutors on national prosecutors work and how relations between the two categories of prosecutors will be, it is not clear is what he means by crime affecting the financial interests of the Union, establishing all the facts which fall within this category of offence can be problematic, not known at this time, details on how effectively the prosecutor would actually work, TFEU being just under Initial legal drafting up.

For the first time the principle of mutual recognition is expressly mentioned in the text of an EU treaty on judicial cooperation in criminal matters (Article 67 paragraph. 3, art. Paragraph 82. 1, 2 TFEU), admitting his role as essential.

Notes :

1 Acknowledgement

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2 Institution established by Government Emergency Ordinance no. 103/2006 on measures to facilitate international police cooperation, order published in the Official Gazette. no. 1019 of December 21, 2006, approved by Law no. 104/2007 (Official Gazette. No. 275 of April 25, 2007).
3 In his " Dei delitti e delle pene " (about crime and punishment), accept the punishment of all offenders, but have reservations about their possible extradition. Its reserves were justified by the cruelty of punishment which is applied in some states or disproportion between the offence committed and the sentence imposed.
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5 Vespasian V. Pella, Delicte îngăduite, Cartea Românească, Bucureşti 1919, pg 465
6 I. Oancea, Drept penal. Partea generală EDP, Bucureşti, 1971, p 111,
7 Al. Boroi, Drept penal. Partea generală, Ed. C.H. Beck, Bucureşti, 2006, p. 56, F.R. Radu, De la extrădare la mandatul european de arestare. O privire istorică şi juridică, Dreptul nr. 2/2006, p. 199
8 International instruments on extradition and judicial cooperation activities that Romania has ratified under the EU accession procedures are: Law no. 76/1996 ratifying the European Convention on Transfer of Sentenced Persons, Law no. 80/1997 ratifying the European Convention on Extradition signed in Paris on December 13, 1957, and its additional Protocols, signed in Strasbourg on 15 October 1975 and March 17, 1978, Law no. 236/1998 ratifying the European Convention on Mutual Assistance in Criminal Matters, signed in Strasbourg on April 20, 1959, and the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg adopted on March 17, 1978
9 Council Framework Decision of the European Union no. 2002/5 84/JHA of June 13, 2002 which embodied the decision made by the European Council in Tampere on 15 and 16 October 1999
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12 Constantinescu, A. Iorgovan, I. Muraru E.S. Tanasescu, op. cit., p 27.
13 Recommendation 28 in the prevention and control of organized crime review the possibility of creating a European judicial area in extradition and examine in this context the issue of extradition in absentia procedures (missing) in full respect of fundamental rights guaranteed by the Conventionon Human Rights
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16 C. Drăghici, CE. Ştefan, Aspecte teoretice şi practice referitoare la procedura executării mandatului european de arestare, Dreptul nr. 10/2007, p. 205; M. Platha, European arrest; revolution in extradition, Journal' crime, Criminal Law and Criminal Justice, 2003, p. 193.
17 F.R. Radu, Principalele instrumente juridice ale Uniunii Europene în domeniul extrădării şi predării infractorilor, Dreptul nr. 9/2007, p. 149-150.
18 European Convention on Extradition, Paris, 13 December 1957 and its additional protocols, adopted in Strasbourg on 15 October 1975 and March 17, 1978, the European Convention for the Suppression of Terrorism, adopted in Strasbourg on January 27, 1977, the Convention on simplified extradition procedure between the Member States adopted in Brussels on March 10, 1995 and the Convention on extradition between EU Member States adopted in Dublin on September 27, 1996
19 F.R. Radu, De la extrădare la mandatul european de arestare. O privire istorică şi juridică, Dreptul nr. 2/2006, p. 201; S. Combeand, Premiere reussite, pour la principe de reconnaissance mutuelle: le mandat d'arret europeen, Revue internaţionale de droit penal nr. 1-2/2006 p. 131; L. Benoit, Le mandat d'arret europeen, Revue du marche commun de L'Union Europeenne nr. 465/2003, p. 106.
20 F.R. Radu, De la extrădare la mandatul european de arestare. O privire istorică şi juridică. Dreptul nr. 2/2006, p. 201.

21 Title III Provisions concerning cooperation with EU Member States in applying the Framework Decision no. EU Council Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States
22 Article 77 par. (1) of Law no. 302/2004 with subsequent amendments.
23 Article 1. (1) of Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (2002/584/JHA), we will mention the framework decision.
24 Article 1. (2), which states that "Member States shall execute any European arrest warrant, based on the principle of mutual recognition and in accordance with this Decision".
25 F.R. Radu, Principalele instrumente juridice ale Uniunii Europene în domeniul extrădării şi predării infractorilor, Dreptul nr. 9/2007, p. 150.
26 D. Mercan, Mandatul european de arestare. Procedura de executare, R.D.P. nr. 3/2007, p. 70.
27 F.R. Radu, op. cit., p 150.
28 Article 1. (3).
29 A special procedure for extradition under a bilateral agreement exists for the execution of an arrest warrant in relation to judicial cooperation between Member States, on the one hand, and Norway and Iceland, on the other hand
30 Council Framework Decision of 13 June 2002 the European Union on the European arrest warrant and surrender procedures between Member States (2002/584/JHA).
31 Article 2. (1) of the European Convention on Extradition.
32 Article 2. (2) of Framework Decision of 13 June 2002.
33 Article 12. (1) of the European Convention on Extradition.
34 Article 17 par. (1) of the European Convention on Extradition.
35 This material was developed based on a study of the UK Parliament House of Lords - The Treaty of Lisbon: an impact assessment, accessible at http://www.parliament.the-stationery-office.co.uk
36 Romania has ratified the Lisbon Treaty by Law 13/2008 to ratify the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, published in Official Gazette no. 107/12 February 2008
37 TEU, as amended by the Treaty of Lisbon includes general principles and objectives of the Union institutional framework provisions, general provisions on Common Foreign and Security Policy (CFSP). TUE provisions explicitly governing values and goals, the principle of conferring of powers and competences of the Union, the principles of subsidiarity and proportionality, the role of the Charter of Fundamental Rights, EU neighbourhood policy, European citizenship, national parliaments, EU institutions, foreign and security policy common procedures for revising the Treaties. TFEU contains detailed provisions on the operation of the Union. Annexed to the Treaty of Lisbon are a number of protocols and declarations (protocols are equally authentic with the actual text of the Lisbon Treaty, the statements are political manifestations of the will of Member States and can play an important role in the interpretation of Treaty of Lisbon).
38 Pillar I - European Community, Pillar II - Common foreign and security policy - the field will continue, and after entry into force of the Lisbon Treaty to be governed by special rules, particularly on how the decision making Pillar III - Police and judicial cooperation in criminal matters.
39 Exception: art. 276 TFEU maintains the rule set in the former art. Article 35. 5 TUE: Court of Justice has no jurisdiction to review the validity or proportionality of operations carried out by police or other law enforcement services in a Member State or to decide in the exercise of responsibilities incumbent upon Member States to maintain public order defence and internal security
40 See Directive 2006/123/EC services in the internal market - Bolkestein Directive Romania
41 Declaration was approved by Law no. 340/2009 on Romania by making a declaration pursuant to Art. 35 paragraph (2) of the Treaty on European Union, published in Official Gazette no. 786/18 November 2009.

42 In exercising its powers regarding the provisions of Part III, Title V, Chapters 4 and 5 on the area of freedom, security and justice, the European Court of Justice has jurisdiction to review the validity or proportionality of operations carried out by police or other enforcement services law in a Member State or the exercise of responsibilities incumbent upon Member States to maintain public order and the safeguarding of internal security

43 Article 82 paragraph. 1 TFEU : (1) Judicial cooperation in criminal matters within the Union is founded on mutual recognition of judgments and judicial decisions and shall include the approximation laws, regulations and administrative provisions of Member States in areas referred to in paragraph (2) and Article 83. European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to: (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions; (b) prevent and settle conflicts of jurisdiction between Member States; (c) support the training of magistrates and judicial staff; (d) facilitate cooperation between judicial or equivalent authorities of the Member States in the prosecution and enforcement of decisions.

44 Article 82 paragraph. 2 TFEU (2): To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters dimension, the European Parliament and the Council, the Directive in accordance with the ordinary, establish minimum rules. These rules shall take into account differences in legal traditions and systems of the Member States. These relate to: (a) mutual admissibility of evidence between Member States; (b) the rights of individuals in criminal procedure; (c) the rights of crime victims; (d) other specific aspects of criminal procedure which the Council has identified in advance by a decision, the decision, the Council shall act unanimously after approval of Parliament. Adoption of minimum standards specified in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

45 Article 83 par. 1 TFEU: "Parliament and the Council may. By means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, human trafficking and sexual exploitation of women and children, drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime. Depending on the crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. The Council shall act unanimously after obtaining the consent of the European Parliament".

46 Article 83 par. 2 TFEU: "If the approximation of criminal laws, regulations and administrative provisions of Member States in criminal matters is needed to ensure effective implementation of a Union policy in an area which has been subject to the harmonization measures, directives may establish minimum rules concerning the definition of offences and sanctions in the area concerned. Directives shall be adopted by ordinary or special legislative procedure for the adoption of the harmonization measures in question, without prejudice to Article 76 ". These are causes C176/03 Commission / Council, C440/05 Commission / Council.

ORIGINAL PAPER

Oana Maria BĂLAN

The Interpretive law, between the different meanings given by pedants and the abusive legislator's intervention in jurisdictional disputes

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Abstract: *The consequence of authentic interpretation consists in an interpretive law. This interpretive law tends to clear up the meaning of a previous equivocal law, without creating further rights. The interpretive law must not be a new law. The procedure of interpretive law has to be employed only when the ambiguity of a normative text leads to confusions and jurisprudential struggles. Since it has as a purpose to clear up the meaning of the previous law, the interpretive law is part of the one which is being interpreted. Regarding to this, the interpretive text is a declarative law, because it proclaims the meaning that the interpreted law has always had. The approach of the interpretive laws theory is highly delicate. Firstly, because the doctrine gives a different meaning to these interpretive laws, which leads to different consequences concerning their retroactivity or non-retroactivity and secondly because of the impulse of the legislator to interfere in the judiciary area through fake interpretive laws. In conclusion, the interpretive law, as a result of authentic interpretation, is interesting due to the fact that there is no delimitation between the interpretive law on the one hand, which is allowed by the Romanian legal system, and the retroactive law on the other hand, which is forbidden by the Constitution of Romania. What is also interesting about the interpretive law is to know how to determine it from a new law. The purpose of the interpretive law is to make clear the meaning of a previous law that is not well understood by its incumbents and by no means to be, by itself, a new law.*
Key words*: interpretative law, authentic interpretation, retroactivity, ambiguity of a normative text, confusions and jurisprudential struggles.*

I. Introduction

Any text, including the legal normative one lies in its author purpose who, consciously, sought to „say something". Consequently, the norm becomes an expression of its author's intentions and attitudes. But, once the text took effect, it is considered to be independent. Moreover, we could say that it represents „something" which rises above its author himself.

The normative act integrates with the ensemble of legal system. Using an artistic language, we could mention that the law „express himself", that is what the legislator aimed to say, but in the same time it „expresses" the spirit of law in force, considered as the entire normative acts[1].

Interpretation agents can be either a public authority or a private person. In case the interpretation is made by a public authority we are referring to a formal interpretation while the interpretation provided by a private person is considered to be an unofficial one.

When referring to the first category of interpretation, the formal one, two different interpretation types are parted, depending on the institute who realized the interpretation. This way, we can talk about an authentic interpretation when it comes from the legislator himself, namely an author's willingness interpretation (*interprétation par voie d'autorité*). On the other hand, if the interpretation is made by institution which enforces the law, depending on its status, we can distinguish between judicial interpretation and administrative interpretation[2].

II. Authentic interpretation: notion and definition

The first interpretation source is represented by its author himself. The interpretation provided by the author of a norm is named authentic interpretation. It is natural to allow the institution which made the norm the possibility of interpreting. This idea is traditionally stated by the Latin adage: *ejus est interpretari cujus est condere.* This way, the authentic interpretation becomes a responsibility, an attribution of institution which made the norm[3].

A stringent equivalence between the original act and the act which interprets it is needed in order to talk about an authentic interpretation. This equivalence is granted by a dual requirement, namely the interpretation should be made by the same institution and keeping the same shape as the original act. In default of either of above requirement, the interpretation loses its authentic disposition.

The interpretative act has the same force as the original one which is interpreted; with other words it is general and mandatory. Being as mentioned above, but also interpreted by the institution which made the original norm, namely a legislative attribution institution[4], it will require the courts to be bound. This way, the authentic interpretation concerns all laws and it becomes important to mention that in this context the "law" notion is used in *lato sensu* which means that we consider all general, impersonal and mandatory norms.

The interpretation given by the legislator expects one of the enactment work's elements. For this, in doctrine[5], one should not take it for the interpretation in law enforcement.

III. Interpretative law

The consequence of authentic interpretation consists in an interpretive law. This interpretive law tends to clear up the meaning of a previous equivocal law, without creating further rights.

The interpretive law must not be a new law. The procedure of interpretive law has to be employed only when the ambiguity of a normative text leads to confusions and jurisprudential struggles[6]. Since it has as a purpose to clear up the meaning of the previous law, the interpretive law is part of the one which is being interpreted. Regarding to this, the interpretive text is a declarative law[7], because it proclaims the meaning that the interpreted law has always had.

The approach of the interpretive laws theory is highly delicate. Firstly, because the doctrine gives a different meaning to these interpretive laws, which leads to different consequences concerning their retroactivity or non-retroactivity and secondly because of the impulse of the legislator to interfere in the judiciary area through fake interpretive laws.

1. The different meanings of interpretative laws, given by pedants

Having a short review of the foreign doctrines we can notice that there is no unity when referring to the interpretative laws' qualification. Thereby, three conceptions can be parted.

The first one is based upon the fact that the interpretative law is not a new law. In this case, one cannot come up the issue of the interpretative law's retroactivity.

The second conception assumes that the interpretative law is supposed to define the meaning of the interpreted law. Hence, the aim is to mark out the meaning of the unclear law, the ambiguous one and not to replace it with a clearer law.

Thus, interpretative law will take effect starting from the date of entry into force of the law interpreted, precisely that, inevitably, it becomes part of it. It is considered that the interpretative law can be retroactive, but only to the extent that the legislator has clearly provided for this.

Thus, it is necessary that the interpretative character to be expressly stated by the legislator itself. Moreover, the interpretative nature of a law can be asserted by a judge as well. This possibility is merely to accentuate the creative power of jurisprudence[8].

On the other hand, according to the third conception, the interpretative law is a new law and, consequently, it will take effect in the future only.

Referring to Romanian constitutional system, the issue of the law's retroactivity or not implies certain nuances. So the question arises whether to recognize the retroactive nature of interpretative law taking into consideration that the Constitution, art. 15 para. (2), establishes the principle of the non-

retroactivity of laws, while stating the only exceptions to this principle, namely the penal law more favourable and along with the redaction taken in 2003, the contravention laws.

Therefore, we can affirm the necessity that interpretative laws rollback and this possibility should be clearly provided in the ground law. However, the Romanian doctrine is almost unanimous in recognizing the retroactive character of interpretative laws.

Moreover, it is necessary to delimit as clear as possible what is meant by interpretive law and who has jurisdiction to determine the interpretative nature of a law.

Reviewing the definitions given to interpretative laws, two aspects must be retained[9]. The former is referring to the fact that the interpretative law's object should be only to clear up the meaning of a previous text. Thus, misunderstanding the meaning determines few difficulties in doing the interpretation. These problems must exist and the aim should be to clarify the text of an ambiguous law, using an interpretative law.

Asserting that a text carry interpretation difficulties must be grounded by the existence in the jurisprudence of some divergent views. This means that assessing the need for the qualification of a text as being ambiguous is left to the discretion of Parliament.

Thus, it avoids the risk that a law to be stated interpretative, without any foundation, namely the vagueness of the text, just based on legislator initiative, on the assumption that "it doesn't suit me".

Besides these interpretation difficulties, which should be, as noticed above, specific and to exist into their substantiality, the law, in order to be considered as being interpretative, should settle the controversy emerged in the jurisprudential interpretation, but in line with this controversy.

This because moving the problem into a new area allows us to resolve the controversy. And this movement is incompatible with the nature of interpretative laws which evidentially implies clearing up the meaning of an ambiguous law. Consequently, not any controversy solving laws are interpretative laws as well[10].

The second aspect refers to the requirement that into the particular law it should expressly provide that is has interpretative nature. *Per a contrario*, the law would have novelty and therefore it would be non-retrospective, hence it will take effect in the future only. But this interpretative nature of a law should derive, into the Romanian law system from the legislator itself.

Thus, it is not given to the judge the possibility to invest an interpretative law with an retroactive effect[11]. But neither the legislator can use an absolute right to determine the interpretative nature of a law.

Thus, just for principle, the interpretative character is strictly determined by the legislator. And this is because one cannot state for an absolute decision made by the legislator under the condition that the retroactive principle is the essential principle in our rule of law.

It is possible to recognize the retroactive nature of interpretative law, but through the appearance that these laws are not expressly provided as exceptions

to the non-retroactivity, it is necessary that the legislator's willing should be according to the Constitution. And this control of compliance with the ground law is performed by constitutional judge who will consider and determine whether the interpretative law is not in fact a new law, which based on the incorrect assumption that it should be interpretative law it would be a retroactive one.

Thus, the interpretative law is submitted to Constitutional Court control under art. 15 para. (2) of Constitution[12].

The issue bears a nuanced debate, namely the gap between ordinary and constitutional judge. Ordinary judge is bound by law enforcement and therefore by the compliance with the conditions provided by the legislator.

Thus, if the legislature qualifies a law as being retroactive, the ordinary judge is also obliged to offer this law retroactive character and therefore to enforce it in the past. In Romanian law system, at a procedural level, it is provided the possibility that an ordinary judge who is analysing an apparent interpretative law, but in fact, a new law, to ask for the Constitutional Court, under the non-constitutionality exception, to state that the law which was initially regarded as interpretative in fact a new law, precisely to control this legislator's right to qualify a law as being interpretative. And the retroactive nature provided by the apparently interpretative law contravenes the Constitution and namely the non-retroactivity of the new law.

Therefore, the ordinary judge is not vested with the power that allows him to state that a law has apparently acquired its interpretative nature if the legislator considered that. Instead, he can initiate a constitutional control, a procedure where the constitutional judge will interfere and decide whether the interpretative law is according to Constitution.

From this perspective, we can refer to a control of the ordinary judge bred through the constitutional one regarding the legislator's right to provide a retroactive nature for interpretative laws.

2. The abusive legislator's intervention in jurisdictional disputes under new law's appearance considered as interpretative ones

Here we have the situation where, if already initiated litigation which would fall under influence of a particular law, the legislator would "come" and set an interpretative law to that law, but in fact, the legislator will provide a solution to that jurisprudential clash through the apparent interpretative law.

In the situation described above, the legislator would replace the functions of the judge. That interpretative law would be non-constitutional as the principle of powers' separation would be also broken down (art 1. para. (4) of Constitution).

For example, we can mention the Decision no. 19 of 14 February 1995 on the constitutionality of the Law interpreting art. 21 para. (1) and para. (2) of republished Law no. 53/1991 on wages and other rights of Senators and Deputies and also the staff salaries in the Parliament of Romania. In that decision, the Court held as follows: "Constitution does not expressly provide, nor rejects the idea of an interpretative law. What is for sure is that the constitutionality of

an interpretative law depends on provisions given by art. 15 para. (2) of Constitution which state that «Law rules for the future only, unless more lenient criminal law»".

It is also necessary to notice that the constitutional legislator only ruled the idea of a Constitution's law interpretation, as in art. 72 para. (2) it is shown that «Constitutional laws are aimed to revise the Constitution», namely to modify the Constitution. It is widely accepted that the interpretation law does not alter or add anything to the interpreted law, it only clear up its meaning, blurred by an inadequate wording. On the other hand, like any ordinary or organic law, the interpretative law, as it claims to be the impugned one as well, must be according to Constitution. From this point of view, it is irrelevant whether a law considered by Parliament to be an interpretative one has this nature for certain or, under the interpretation mask, it is changing the previous legislation" [13].

Notes:

[1] Gheorghe Mihai, *Fundamentele dreptului*, vol. I-II, Ed. All Beck, Bucureşti 2003, p. 476.
[2] Pierre Pescatore, *Introduction à la science du droit,* Centre Universitaire de l'État, Luxembourg 1960, p. 328
[3] François Terré, *Introduction générale au droit*, Précis Dalloz, Paris 1991, p. 383.
[4]Authentic interpretation concerns the government's ordinances because those are thrown out under the legislative delegation.
[5] Mihail-Constantin Eremia, *Interpretarea juridică,* Ed. All, Bucureşti 1998, p. 34.
[6] N.G. Vrabiescu, *Interpretarea legilor şi legile interpretative. Legile interpretative* in Curierul Judiciar nr. 7, Bucureşti, 1928, p. 101-106; Nicolae G. Vrabiescu, *Interpretarea legilor şi legile interpretative. Legile interpretative în raport cu principiul separaţiunii puterilor în Stat* in Curierul Judiciar nr. 18, Bucureşti 1928, p. 275-278.
[7] Paul Delnoy, *Eléments de méthodologie juridique. 1. Méthodologie de l'interprétation juridique. 2. Méthodologie de l'application du droit,* 3e édition, Larcier, Bruxelles 2008, p. 122.
[8] Philippe Malaurie, Laurent Aynès, *Introduction générale*, Defrénois, Paris 2003, p. 185.
[9] M. de Villiers, Th. S. Renoux, *Code constitutionnel,* see in Dan Claudiu Dănişor, *Drept constitu ▪ ional şi institu ▪ ii politice*, vol. I. *Teoria generală. Tratat*, Ed. C.H. Beck, Bucureşti 2007, p. 570-571.
[10] Paul Roubier, *Le droit transitoire*, Dalloz, Sirey, Paris 1960, p. 259.
[11] Unlike the French legal system in which some academic commentators admit this possibility. On this line, please see Philippe Malaurie, Laurent Aynès, op. cit., p. 185-186.
[12] Dan Claudiu Dănişor, *op. cit.*, p. 571.
[13] For the entire text of the decision, please http://s221.central.ucv.ro/oficiale/afis.php?f=5826.

ORIGINAL PAPER

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Preliminary ruling, the means of interpretation of Community law

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Abstract: *In this article the author presents the preliminary ruling as a form of cooperation, involving national courts, addressing the question of judicial bodies in interpreting treaties and EU regulations deriving from them, and establishing a mechanism by which domestic courts and the ECJ enter into dialogue to correctly apply Community norm that conflict with a legal, national, thus contributing to strengthening the principle that "the national court is the Community courts of common law".*

Key words*: law, EU, Treaty of Amsterdam, regulations, European Court of Justice.*

By Article 234 TEC was provided a new procedure, namely a preliminary ruling procedure, a procedure that allows the national courts in proceedings before the their Court to ask questions, questions that concern the interpretation or validity of a rule community to resolve that dispute before.

Action for a preliminary ruling is, by its originality as a proof of uniqueness "new legal order of international law" (Case 26/62, Van Gend & Loos v. Netherlands, 1963 ECR 1), "separate but integrated system Member States 'legal' (Case 6 / 64, Costa C. ENEL, 1964 ECR 585).

Form of cooperation, involving national courts addressing the question of judicial bodies in interpreting treaties and EU regulations deriving from them, establish a mechanism by which domestic courts and the ECJ enter into dialogue to correctly apply Community norm that conflict with a legal, national, thus contributing to strengthening the principle that "the national court is the Community courts of common law" (Case T-51/89 Tetra Pak vs. Commission, ICC 10 iul.1990, ECR. II, p.309, pt.42).

After the entry into force of the Treaty of Amsterdam on 1 May 1999, the scope of the preliminary mechanism is exercised in two ways. On the one hand, under Article 68 EC, including material from third Title IV of the EC Treaty ("Visas, asylum, immigration and other policies related to free movement of persons), the right to refer a preliminary court is limited tribunals whose decisions are not likely an appeal under national law. On the other hand, for, under Article 35 EU, the scope of Title VI of the Treaty on European Union restructured ("Provisions concerning police and judicial cooperation in criminal matters"), covering jurisdictions whose separation depends on the decision to accept issued by each Member State.

It should be noted also that after the entry into force of the Amsterdam Treaty, the Union has adopted numerous pieces of legislation, cooperation in civil matters, asylum, immigration, visas and free movement of persons. An impressive number of Community legislation in the field is about to be built in response to the expectations of European citizens and residents who want to live in a genuine area of freedom, security and justice.

All these laws require their uniform interpretation and application throughout the Union, whose guarantor is the Court of Justice. Given the increasing number of acts, especially given the importance of the rights which they confer, it is imperative to ensure their uniform application throughout the Union. In this case, the procedure that allows the unit to guarantee the excellence of the Court Community law is the preliminary ruling under art.234 TEC. This procedure holds close cooperation between the Court and national courts in the center building is the Community legal order.

An essential element of this procedure is that any national court may discuss with the Court. Any derogation from this principle prevents the Court to guarantee the unity of Community law for all litigants. That is why in 1995 the Court warned that "limiting the possibility of recourse the Court may have the effect of discussing the application and uniform interpretation of Community law and the Union may deprive individuals of effective judicial protection and to

affect unit jurisprudence ... The preliminary ruling is a real cornerstone of the common market because it is essential to preserved nature of treaties established Community law and is intended to ensure in all circumstances the right to have the same effect in all Member States ... One of the missions of the Court is especially essential in ensuring a uniform interpretation and this can be achieved by answering questions put by national courts "(the Court of Justice on certain aspects of the implementation of the EU Treaty, 1995, PP5-6).

The Court reiterated this view and later, saying that "uniform system of legal protection under the Community design is the best way to ensure respect in all areas of EU law" (Proceedings of the European Convention, CONV 572/03 of 23 February. 2003).

In this direct cooperation between judges, in which the preliminary ruling mechanism is the tool, we compare the report is established between the two groups of judges who are in health, from a general practitioner and a specialist. Generalist judge who is the national judge is one who should first go to normally, and the judge who is a specialist Court of Justice, to which the appeal is to intervene only in certain cases, and through the general practitioner.

This cooperation is voluntary and is essentially the right to address the Court, as is granted to any jurisdiction in proceedings in which the solution is called to give to. If some jurisdictions are in a position of cooperation imposed by the Court (particularly having regard to their position in the judicial hierarchy), their cooperation with the Court is possible only with their consent, and always within a framework established by the judge even the country.

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Therefore, this procedure has three phases, or stages: the first takes place before the national court, before which the litigation in which the question of applying a rule of Community law, the second takes place before the European Court of Justice, the judge it addresses a national question, and the third phase occurs again before the national court, based on the response to the judicial authority in Luxembourg, adopts a solution corresponding to the response.

If the original jurisdiction to decide the action in a preliminary ruling was for the exclusive Court of Justice, later to relieve her of her very large number of such judgments delivered by the Nice Treaty (entered into force on 1 feb. 2003) amended Article 235 TEC and was granted and the Court of First Instance jurisdiction to decide the preliminary ruling procedure in certain matters expressly provided for in the Statute.

Therefore not created special courts to judge the actions of individuals and businesses in case of wrong application of rules of Community law, European Community system attributes, as noted above, implicit and necessary, the national court, the role of the Community judge common law.

Before the national court, Community law is being invoked to support claims of a party, be challenged to justify certain claims. Object duality preliminary ruling into account these two opposite situations.

The preliminary ruling mechanism is the only way of organizing the relations between the Court and national courts, under the Treaty. These relationships are not designed or organized as a hierarchical relationship. The term sometimes used for "preliminary appeal" to qualify unnamed mechanism by Article 234 is misleading and should be avoided. It has nothing in common with a remedy against a decision contested preliminary issues are otherwise contentious lack of character and allow the Court to adjudicate the rules have nothing in common with those of a litigation.

Action for a preliminary ruling is placed in the hands of the national judge and the parties ever.

This is the only one who decides, even ex officio, if required such an interpretation of Community rules, or an assessment of the validity of Community law, all he is the one who decides whether to send a question through the use of law is assigned, or fulfilling an obligation to refer such questions, in some cases, and all he is the one who lays down the respective question.

Court of Justice as Community law specialist, when brought before the general (national judge), it states in the preliminary decision, than the right. This is also the formula used by the Court "sitting right" when placing the device in its decisions and assessing the validity of interpretation.

TEC regulates two categories of preliminary proceedings, the action for a preliminary ruling in the interpretation of Community law and action in a preliminary ruling in establishing the validity of Community law. Differences between the two types of actions exist in procedural plan (in terms of the obligation to notify the ECJ, the Court not only ICC, which has jurisdiction only in matters of interpretation of Community law actions) and the plan of the European Court judgment effects.

The preliminary ruling mechanism has two functions, one aimed at the proper administration of justice, another being structural.

The first function of this mechanism is to facilitate the Member States, where litigation solutions that Community law is at stake. The national judge is in principle can proceed to the interpretation of Community law itself, which is necessary to resolve the dispute taking place in front of him, and at least at first reading that it considers the validity of secondary legislation in respect of that dispute. This procedure, which is at hand, are what help can be given by the Court, since he is one who "will have to take responsibility for the judicial decision that will decide" (ECJ , 21 apr.1988, Pardina, C 338/83, ECR p.2041).

Preliminary ruling has a second function which relates to prevention solutions contrary to the law. From the multitude of disputes pending before national courts, it is great diversity, both in terms of law to which they belong, their place in the legal hierarchy, given that they come from different legal systems, therefore resulting in Clearly, differences and disputes over the application of Community law, both within the same Member State and between

different Member States. These differences are the result of case law decisions of the courts whose decisions are likely to be challenged in law, since it offered the possibility of first instance judges, whose decisions ultimately states not to cooperate with the Court is likely to avoid or limit. In addition to the remedies normally exercise is likely to remedy the inconveniences arising from the differences that inevitably arise.

More must ensure that the courts ultimately involved in disputes within national systems, and such solutions have the power to unify the courts whose solutions are attacked, do not develop themselves discordant case. That is why it imposed the requirement that court, whose decisions are not likely to be challenged by way of law, to cooperate with the Court, under art.234 paragraph 3.

This is why compromise envisioned by the authors of the Treaty of Rome, which gave right to cooperate with the Court of all courts of the Member States putting in place mandatory cooperation, imposed, only those who are called upon to make decisions, non- judicial remedy under national law. The same concern explains the praetorian review by the Court in 1987 on the preliminary assessment mechanism. To prohibit the lower courts found themselves invalidity of a Community act and to make them wear this preliminary ruling mechanism provided by art.234, the Court of that State Foto-Frost (314/85, Foto-Frost c. Hauptzollant Lubeck-Ost, 1987, ECR 4199): "Even if you give the national courts, whose decisions may be subject to appeal under national law, the Court can address questions concerning the interpretation or validity of documents, art.177 not clarify jurisdiction of these courts themselves to establish the invalidity of acts of Community institutions.

These courts may consider the validity of a Community act and, if deemed unfounded pleas raised by the parties can reject these reasons to conclude that act in question is entirely valid. Through such action, the courts do not question the existence of a Community act.

On the other hand, the court has the power to declare acts of Community institutions invalid. As outlined in the decision of 13 May 1981 (International Chemical Corporation, 66/80, Rec.p.1191) the powers vested in the Court under art.177 intended primarily to ensure uniform application of Community law by national courts. This requirement of uniformity is imperative when it comes to the validity of a Community act. Differences between courts on the validity of Community acts would be likely to endanger the very unity of the Community legal order and would undermine the fundamental requirement of the legal system .... Since art.173 gives exclusive jurisdiction of the Court to annul an act of a Community institution, coherence should be reserved for all Court jurisdiction to determine the invalidity of the same act, if it is invoked before the national court. "

Preliminary ruling is a close relationship with the possibility of invoking Community law and its direct effect. Preliminary ruling to the uniform application of Community law concur allowing individuals to exercise vigilance and to develop.

The interpretation is as a complement and as a substitute for action for failure to fulfill the obligations of a Member State as deriving under the Treaty regulated CE.A rt.226-227 also became a second opportunity to bring before the Court the question of compliance with Community law of a rule of national law or existing administrative practice in a Member State. (Case Warner C. ECJ, 11 mar.1980, Foglia, C 104/79, ECR p 766) .

Due to this procedure, the Court has a "panoramic view" of the Community, leading to a detailed knowledge of how national courts exercising the function of the Community courts.

Action for a preliminary ruling is a fundamental mechanism of action of Community law enforcement mechanism designed to give national courts the means to ensure consistent interpretation and application of this law in all Member States.

It should be emphasized that the preliminary ruling in the interpretation of a provision of Community law takes effect in other litigation, both on the ordinary courts, as well as those placed in a position of cooperation required.

ECJ rulings are a major source of Community law. Thus, since the treaties and secondary legislation does not contain comprehensive explanations of why they were adopted, or explanatory reports, Court in the interpretation of Community measures of function acquired during cvasi-normative.

Although the Court is not bound by their decisions, in practice rarely change their views on an issue, which led in time to create a fairly constant and predictable jurisprudence.

The existence of a previous ECJ on the interpretation of Community law exempts domestic court must notify the ECJ (in the event that that court is a court whose decisions are not likely to be attacked), even if the circumstances of the case are not identical, just like (because Da Costa, cited above).

Preliminary ruling is therefore the most important means of interpretation of Community law, original and effective mechanisms that ensure a uniform as in all EU Member States.

ORIGINAL PAPER

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Understanding EU Conditionnality: A Conceptual Framework of National Sovereignty and Religious Freedom (Romania case study)*

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Abstract: *The present article defines the new balance of the relations between the state and religion. In the context of religion and geopolitics, religious pluralism had an evolution and a destiny which generated in the context of European integration a real challenge equally for the states and the educated. Furthermore, the article argues that European integration represents an element that mustn't be ignored in the process of interpretation and comprehension of the geopolitics of religion. . Such an observation is articulated in two historical hypothesis: Hypothesis 1: in the first direction, individual freedom is accompanied by cultural pluralism and the obligation „from belonging to supporting"; Hypothesis 2: the second direction which presents the dichotomic analysis of the political neutrality at empirical level. A particular importance in this context is related to collective preferences and national sovereignty .*

Key words: *integration*, *Romania, religion*, *national sovereignty, multiculturalism.*

A. National sovereignty, multiculturalism and European integration

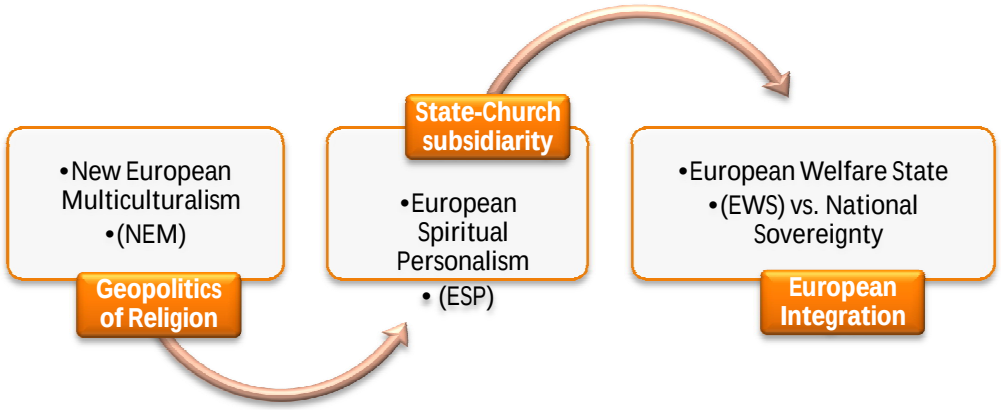
In the early 1990s, when many researchers enthusiastically aspired to be as objective as possible from a methodological point of view as well as from a scientific point of view, notions as *European integration, national sovereignty* and *religious multiculturalism* have acquired a time-space versatility and mobility, presenting experiences and circumstances characteristic for the whole period of contemporary history defining the new balance of the relations between the state and religion. We can thus say that in the context of geopolitics of religion, religious pluralism had an evolution and a destiny which generated in the context of European integration a real challenge equally for the states and the institutions[1].

Therefore, so far from the subject, religious multiculturalism, in one way or another, lies between the position of those who consider that European integration represents an element that should not be ignored in the process of interpretation and comprehension of geopolitics of religion and the position of those who consider European welfare as an immanent part of the process of recognition of the European spiritual personalism.

What on the contrary is common and, as such, characterizes the European law system is that, although the state proclaims its sovereignity, in fact, religion participates practically in *the institutionalization process* (especially when the legal statute of religion is approached). Due to caution, the state is autonomous in virtue of the *idea of common good*, of that *idem sentire de re publica* (but not also in power), not necessarily neutral, even in the societies where there is a strict separation regime between the state and religion (contrary to the principle of subsidiarity between the State and religion).

Figure 1. Type of causal argument in the new occidental multiculturalism paradigma

In this context, the problem of subsidiarity is influenced by the emergence



and establishment of a new type of institutional influence of the church that opens the perspective towards the crisis of the relationship state-church[2]

paradigm. In the second hypothesis, in the last decade, spiritual personalism presents some special features:

(1) By force of historical and political circumstances, in Eastern Europe the church assumed the role of an „ad extra" figure generating an *identity multiculturalism*;

(2) In the case of Western Europe, *geopolitics of religions* generated a temporal perspective and a merging reality according to Western legal system;

(3) Hence, the development of a dichotomic scenario activates the influence of religion majority in the context of European integration.

B. Church-State Subsidiarity and Negative Liberty

Thus, a second theoretical perspective focuses *de novo* the attention on the historical and generic link between multiculturalism and individual freedom which activates as a barrier claiming „negative freedom" and the non-integration perspective[3]. Such an observation is articulated in two historical hypothesis:

- **Hypothesis 1:** in the *first direction*, individual freedom is accompanied by cultural pluralism and the obligation „from belonging to supporting" in the context of the respect of national sovereignty;
- **Hypothesis 2:** *the second direction* which presents the dichotomic analysis of the political neutrality at empirical level[4]. A particular importance in this context is related to collective preferences and *national sovereignty* .

Adding up, as we notice, the circle of conceptual dilemmas and the model of „fluidity" is based on the observation that theoretical vocabulary concerns not only the „short-term strategy of restrictions due to freedom", but also the „long-term strategy of the total freedom".

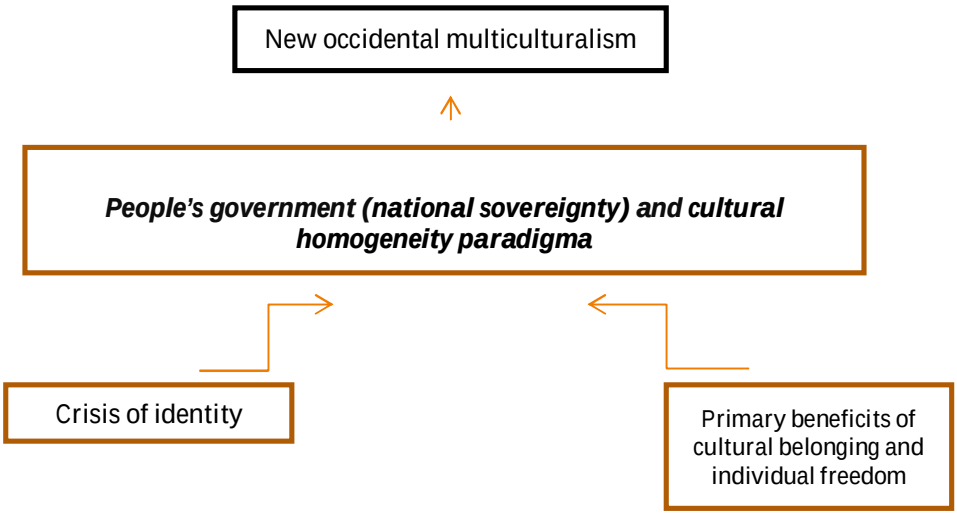
If we follow the hypothesis of the circle of conceptual dillemas of freedom in present European public sphere, we have to note Kymlicka's liberal theory rather seen as a consequence of changes of realities and events, following the direct correspondence between short-term measures of freedom restriction and the perception of the disintegration of the society (see Hypothesis 1).

Just like Will Kymlicka observes, the linear perception of absolute freedoms includes within the collective behaviour two complementary perspectives:

- the *paradigm of cultural uniformity*;
- the *paradigm of political community* (the sense of the „recognition of primary benefits of cultural affiliation"[5]).

Although Kymlicka's vision regarding the features of freedom leads to dissensions in the social and political area, the quality differences produce consequences for the „negative freedom"[6] and the conceptual framework of national sovereignty.

Figure 2. Type of causal argument in „from belonging to supporting" paradigm (hypothesis 1 and 2)



Considering that, it is always possible to check the functional aspect of how the new theory articulates classic theology and social magisterium in the last two centuries. Moreover, it is difficult, from an ideologic perspective, to understand „people's government" (in terms of national sovereignty) and „assets administration" (see Hypothesis 2). This approach has essentially contributed to the establishment of a new scientific and rational theory on the particular evaluation of the human spirit starting with the 15th century, in opposition with the Christian social thinking. Thus, by the saint-simonism theory we understand the rational point of view of social reality, "translated" from a philosophical perspective at the interface between the hermeneutics of a reality centred on self abandon and the value commitments of European social doctrine.

Remaining in force the fact that, usually, the context of Western dialogue allows us to understand if the term „Europe" is understood empirically or symbolically, as a set of ideas and theories. The thesis proposed in the West in the last ten years is the one stating that European social thinking, far from being a residue of old Europe or just a non-scientific resort, represents the reflection of the European multiculturalism progress.

On the other hand, European society was characterized by a radical amount of the individual freedom and national sovereignty, in the functional

terms of a liberalism that intends to signal the revirement of public opinion. From the conceptual framework of new social doctrine, Saint-Simon enunciates the following conclusions: But why was needed such a „moralization" condition for the whole area of social life? Refusing church magisterium, Europe should have retaken the new doctrine of multiculturalism from a theological and philosophical perspective by claiming the virtues and moral values of industry, science and commerce: cooperation, peace, communion, solidarity etc.[7].

For West, the great challenge lies in how secular religious crisis may take new shapes and aspects[8]. The consequence of this challenge is the spiritual crisis of modernity, of the individual's desire to discover spiritual freedom and to reinvent the reconciliatory potential of the new multiculturalism.

Secondly, Taylor affirms that the relation between religion and European identity represents the natural consequence of the integration process, reasoning from here, that law (the legal recognition of religious affairs in the European law systems) cannot be removed from the essential structure of the social relationship which distinguishes a removable event of the last years namely, the „crisis of identity". Taylor appreciates that religion has a polarized configuration, in the sense of ambivalence which refers to the dichotomy political identity/identity crisis/ rights violations.

Starting from here, the interpretation of European identity and religious freedom as essential phenomenons of European integration could be opposed to the view conflict as possible event. In this sense, the vision of Charles Taylor's hostility toward the concept of group identity can mobilize both internal conflict as well as a conflict that takes place within a community. Such an approach is relevant to the political and epistemological assertion of freedom of thought, conscience and religion because because it[9]:

1. exerts a corroboration role between the theories regarding the regime of cults and the European law systems in the „modern world"[10]. The phrase „modern world", which Taylor's thesis is based on, stands on the fundamental idea of *political legitimacy* conceived in the sense of popular sovereignty that always existed. However, such an argument is the decisive factor that requires the appeal to the factological argument of political identity when accompanied by appropiate explanatory support;

2. emphasizes the possible deviant cases of how the types of *relationships between state, church, law and citizen's rights in Europe*. The conceptual debate around religious pluralism moves decisively in the sense of a philosophical itinerary that strenghtens the beginning of the Christian civilization[11].

The initial forms of separation is totally different from the contemporary cases, but its bases accompany continuously the modern development[12] and it fulfills the role of an analysis and interpretation of religion in contemporary Europe especially where Orthodox religion represents the majority. In the new legislative context, after the communist dictatorship, religion has reaffirmed its autonomy before the state, demanding *de facto* the legal recognition of this autonomy and the respect of law at the EU level[13]. We have to mention that according to these

statistics, the legal recognition of freedom of thought, conscience and religion generated a new work hypothesis according to the *social and cultural and confessional reality* in each of the member states (see the Romanian case).

3. therefore, putting aside the fact that approaching this problem might generate a new working hypothesis, putting aside the affirmation that claims the existence of religious multiculturalism and pluralism, the problem is that the discussion about the social and cultural realities in each state is definable from the perspective of personal worship and personal affiliation to Church's body in a limited sense" (moreover, according to article 9 of the European Convention on Human Rights: "*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance*" - see Article 9 of the European Convention on Human Rights Freedom of thought, conscience and religion) [14].

4. emphasizes the existence of a situation that can be regarded, in the logics of *individual and community differentiations*, as a crucial experiment of different European law systems and EU condirinnalities. Thus, researching the problematics of religious freedom and the regime of cults becomes in current political theory a cosmopolite approach, offering a creational perspective of diversity beyond the simple natural communities: family, minority, ethnicity, nation. In other words, religious freedom becomes one of the mutiple extremes of the politics-religion-law continuum, definable in the appreciation of „free exercise of religion"[15].

C. EU integration and Romanian legislation on religion and religious freedom - case study

The emergence of law of religion is an eloquent proof of the special significance of the relationship between law and religion in the current period. Limiting himself only to some aspects, Walzer distinguishes a functional aspect of European multiculturalism, as expression of religious pluralism and pole of a continuum where there are determined the authority hierarchic structures and the „rational-efficient" level of the relationship law-religion in new EU member states[16]. These ideas have then been sistematically developed by Walzer starting with the '70s in order to explain some compulsory definitions for the future researches regarding community pluralism and multiculturalism in the new European context[17].

Closely connected to the problematics of *religious freedom and tolerance* in the European multicultural space there also appears the analysis model of European reality proposed by Walzer for defending multiculturalism, by appealing to pluralism and critical demonstration, starting from the analogies between political market and legal arena. The objective assumed by Walzer proposes a reflection that emphasizes the philosophical stigmatization and it

inspires a new plan concept, based on the interdisciplinarity between the political, legal and theological approach[18].

Examing these interpretations, Domènec Melé refers to a "free-rider problem" (in this context, the new interpretation refers "to those who take advantage of social cooperation for personal interest without making any contribution"[19]). Consequently, these benefits emphasize the uniqueness of human communities and its blind necessity to involve consciousness and freedom[20].

After ar least five decades of „perversion" and „gnostic" consternation of community personalism, Europe should have retaken, solitarily and solidarily, its Christian origin, from a theological and philosophical point of view as well as from a political and juridical one, by the assumed option for a *geopolitics of religions* in the spirit of *new occidental multiculturalism.*

In order to illustrate that, Kurth introduces the theme of the „religious marketplace". The author points the central role occupied by religion in the architecture of the European spiritual integration and European national identities beginning with the 1960s. Kurths also explains that contemporany European identity has to deal recently with a certain "counterfactual European history"[21].

We also have to note that Kurth's arguments will be developed by Verkuyten. In 2009, Verkuyten argued the new European multicultural system, national identity and national identification become the *central terms* in debates on immigration and in-group interests after Romania and Bulgaria's EU integration[22]. The debates adopt an interdisciplinary approach, methods and methodology. Although one of the aims is to make a significant contribution to the causal argument in the paradigma of European new multiculturalism in the context of "new arrivals": Romanian and Bulgarian Orthodoxy.

From the integrationist point of view, the European development, which, with its occidental limitations, was supposed to serve as a central model for the "other Europe" (former communist countries with Orthodox majority), converged actually to a certain "broken rule" to borrow the words of Kenneth Grasso, "catholicism is the only game in the town"[23].

Furthermore, The Romanian Constitution defines freedom of thought, opinion, and religious belief in its second chapter (Article 29), *Fundamental Rights, Freedoms and Duties*, Chapter I Common provisions. In fact article 29 states that "freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever". Needless to say, the freedom of conscience is guaranteed. In evaluating this principle mentioned in article 29, we must bear in mind that conscience "is an individual phenomenon, and the strengths and weakness of this approach stem from its individualist understanding of religious commitment" [24].

"Article 29

(1) Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions

(2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.

(3) All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law.
(4) Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults.
(5) Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.
(6) Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them"[25].

In this context, to respond to the question of a connection between individual prefference and political neutrality, Richard Bellamy and Dario Castiglione open a background on democratic legitimacy, the authority of institutions and procedural rules. They argues this merely implies "the diffusion of democratic procedures at the European level" as a "checking and balancing" system of interests and powers[26] between old and new EU members. Moreover, reffering to the studies on the theme of preferential option and the existence of a common good, Barrera systematizes the "operative core of tradition" and the "content of common good". His theory addresses two gaps by providing am overarching outline of "bonum commune" and the principle of subsidiarity[27].

In conclusion, the current analysis reconstruct the set of interaction between human nature and the theory of „new multiculturalism", preffering to study the content of some definitive aspects of spiritual personalism and emphasizing two important themes in implementing EU legislation namely: the declarative and preferential option for the moral and physical existence of the poor and the theme of common good[28]. Hence we must conclude that in the contingent game of religious identity, religious freedom and national sovereignty, legal aspects and political interests, the comparative analysis of the implications in a comparative perspective reunites three independent systems, which function in parallel: common-law, equity and statute-law[29].

Lastly, the individual becomes the exponent of a closed and self-referential system, result of a deduction of particular principles and knowledge[30]. We will add the fact that in all democratic countries it is recognized the fundamental right to a private religious life and the differentiations are based on observation, description, individualization, on specific manners to acquire this basic legal capacity[31].

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Notes:

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[2] There were two different studies on this topic, see Jean Baubérot, (Dir.), *Religion et laicité dans l'Europe des douze*, Paris, Syros, 1994.

[3] *Ibidem*, p. 79.

[4] *Ibidem.*

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[28] Cătălina Maria Georgescu*, Challenges in implementing EU anti-discrimination legislation in Member States* in "Revista de Ştiinţe Politice. Revues des Sciences Politiques", no. 24/2009, pp. 47-52.
[29] See, for a comparative perspective, Irina Olivia Popescu, *Condiţiile esenţiale pentru validitatea actului juridic civil în tradiţia şi perspectiva sistemelor de drept europene* in "Revista de Ştiinţe Politice. Revues des Sciences Politiques", no. 24/2009, pp. 121-127.
[30] *Ibidem*, pp. 122.
[31] Cătălina Maria Georgescu*, op. cit*., pp. 50-51.

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Raymond CANNING

Culture or Faith? Origins of Conflict in our Society A Catholic Perspective

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Abstract: *This is a revised text presented at the Fifth International Inter-Religious Abraham Conference, Sydney, August 2006, which took as its theme Interfaith Relations in Confronting Cultural Conflict.*

A very clearly stated Christian perspective on the role of interfaith relations in confronting conflict in society was presented by Archbishop Michael Fitzgerald, then President of the Pontifical Council for Inter-religious Dialogue, in delivering the inaugural *Pacem in Terris* lecture in February 2005.[1] The Archbishop's development of his particular perspective on how interfaith relations can confront cultural conflict revolves around four precise requirements of the human spirit. These had already been identified by Pope John XXIII in his encyclical as truth, justice, love and freedom; for John, these four elements are indispensable if order is to reign in society. "[The] foundation [of order in society]," John XXIII had said, "is truth, and it must be brought into effect by justice. It needs to be animated and perfected by people's love for one another, and, while preserving freedom intact, it must make for an equilibrium in society which is increasingly more human in character."[2] On the fortieth anniversary of *Pacem in Terris*, Pope John Paul II in his turn would refer to these same requirements of truth, justice, love and freedom as "pillars of peace," and to these four pillars, Archbishop Fitzgerald in his 2005 lecture at Georgetown added a fifth, viz., prayer. "Prayer for peace," he stated, "can be a distinct interreligious activity, but prayer should permeate all interreligious endeavours … It is the spirit of prayer that reminds us that in meeting and cooperating with people of other religions we are not seeking the advantage of our own group, but the good of all. In this way interreligious dialogue can truly be a contribution to peace in the world."

As these abundant references to Popes and papal encyclicals, and to Pontifical Councils and Catholic universities, make clear, the particular Christian perspective that I wish to bring to the question "Culture or Faith? Origins of conflict in our society,"[3] is profoundly shaped by my own Roman Catholic upbringing and affiliation. Many alternative approaches would be possible. It might, for example, be illuminating in the context of a discussion of culture, faith and conflict in society to consider the fervent opposition mounted by some elements of German Protestantism to the racially and religiously inspired violence that was being perpetrated by the National Socialists in the 1930s.

This opposition was embodied in the famous Barmen "Theological Declaration" of 1934, according to which only the Word of God is to be trusted and obeyed. All other "events and powers, forms and truths" cannot be recognised as revelation. Thus the critical distance from this world and its idols which is mandated and enabled by the so-called "Protestant principle" – based as this principle is on the one Word of God spoken from outside this world – gave strong theological grounds to a number of German Protestant Christians to call into question and even repudiate the purported truths, powers and heroes of National Socialism.[4]

Whatever one's perspective, however, it is essential to note a possible ambiguity in the question as stated, "Culture or Faith?" Does this imply a straightforward option? Are we to expect that either one or the other, i.e., either culture or faith, will be identified as the principal cause of violent conflict in our

society? Such an approach, it is clear, could lead the unwary into an over-simplistic exoneration either of culture or of faith (or belief or religion), without paying sufficient attention to the considerable cross-fertilization between them. As far as a definition of "culture" is concerned, a classic treatment is to be found in the extensive 2003 work of Michael Paul Gallagher SJ, *Clashing Symbols: An Introduction to Faith and Culture*.[5] The central concern of this work is the interaction of culture and Christian faith in today's context. Gallagher's treatment of "culture", it is true, is framed around a somewhat different question from the one that is being examined here. Still, in clarifying the concept of "culture" and developing a twelve-point synthesis of its multidimensional nature, Gallagher's analysis can help shed light on our own discussion of culture and faith with its focus on analysing their propensity to give rise to strife and violence.

Three of the twelve dimensions of culture that Gallagher lists have particular bearing on our question. Firstly: "Underlying [its] social manifestation culture is found to involve a convergence of both visible factors and acquired ways of interpreting the world [elsewhere Gallagher refers to these acquired ways of interpreting the world as "a more concealed set of subjective attitudes often assimilated unconsciously over a long time"[6]]. For instance, culture carries and

expresses: (a) meanings and *beliefs*…; (b) values…; (c) customs, practices and traditions." Secondly, the connection that has been established here between culture and beliefs is now extended to embrace religion as such: "At its 'higher' reaches, culture includes not only such spiritual activities as art or literature, but some ultimately *religious* vision." And, thirdly, in the last of his twelve points on culture's multidimensionality, Gallagher concludes in this "religious" vein: "Throughout most of human history," he writes, "cultures have been rooted in *religious consciousness*."[7]

However we might wish to respond to these points in detail, it is clear from Gallagher's presentation that:

(1) belief, tradition or some "ultimately religious vision" or "religious consciousness" is virtually inseparable from the notion of culture – as Pope John Paul II wrote, "[a]t the heart of every culture lies the attitude a person takes to the greatest mystery, the mystery of God"[8]; and

(2) the power of culture to sway people lies in its "being largely concealed in its impact";[9] lived culture, far from being neutral in its effects, "can encourage creativity or it can prove imprisoning";[10] indeed, for Gallagher, "[a]wakening to [culture's] non-neutrality [its concealed sets of assumptions, which may be very deep-rooted and unconsciously clung to] is a first step towards a Christian response to culture in practice."[11]

Gallagher's very nuanced treatment of the multidimensionality of culture, therefore, is again fair warning against any cheap and easy kind of either-or option (culture or faith) when it comes to identifying the origins of violent conflict in our society. Culture is not neutral, even though it may be fashionable in rationalist circles to read it only as "secular, rationalist" culture and to pit it against purportedly "irrational" religion.[12] Culture, however, on Gallagher's

reading, cannot but embody faith – whether people are aware of it or not – and this embodiment takes the form of beliefs, traditions and practices. From a mainstream Catholic perspective also, by the very fact that these beliefs, traditions and practices represent attempts to express the mystery of God in human language, they will inevitably bear the marks of the particular cultures according to which they have been shaped.

Thus, once the term "culture" is weighed and assessed, it is found to include belief and beliefs in its own very pores; and this remains true even if the "beliefs", the concealed sets of assumptions, are purely rationalist and denigrating of religion. What then is to be made of the term "faith" when we find ourselves faced with the proposition that either culture or faith is the cause of violent conflict? Could we, without any shift of meaning, simply replace the term "faith" with "belief" or with "religion," such that the question becomes "culture or *belief*?" or "culture or *religion*?"

From a Catholic perspective it is prudent to recall at this point St Thomas Aquinas's reminder that "the act of the believer [i.e., the personal act of faith] does not terminate with the proposition [i.e., with the words communicating the content of faith] but in the reality [i.e., the living reality of God's self]."[13] Aquinas thus makes a clear distinction between "faith" as an act of personal response to God and "belief" as denoting content in the form of propositional statements. According to this understanding, the act of faith, as an act of surrender of the whole person to the mystery of God revealed in Christ, transcends the objective belief and beliefs that the believer has about God or Christ. And these beliefs, as necessarily partial expressions of the fullness of that divine truth to which faith is committed, will always be limited and inadequate. To this extent, faith itself would seem to be above the fray.

It would be unwise, however, to run too rapidly to such a conclusion. If personal faith in the living reality of God's self were to resist all expression in particular beliefs, it would soon become prone to distortion and manipulation. Faith needs beliefs in order to maintain its own vitality, integrity and credibility. It is bereft without them. Until it reaches its ultimate destination in the very fullness of God, could faith itself then remain totally untouched when Christian belief adopts certain cultural expressions that may foment violence? For example, what is to be made of Bernard of Clairvaux's view that killing in Christ's name could be undertaken with a clean conscience?[14] Is this just an utterance of belief, all too prone to the impact of culture, or is faith itself implicated?

We have seen that people's belief and beliefs are central to a number of essential dimensions of what we understand by culture, and while it is important, along with Aquinas, to distinguish faith from belief, still faith and belief cannot do without each other so long as human beings are pilgrims on this earth. In the words of Pope John Paul II, it is not only beliefs but also the personal faith that they express which are "at the heart of every culture." If this is so, one will need to proceed carefully in deciding whether to lay blame at the door of *either* culture *or* faith when it comes to the origins of violent conflict in our society, for faith is itself inscribed at the very heart of culture. On the other hand, as Aquinas shows,

faith can also be distinguished from belief in that it is specifically oriented to the full reality of God. To the extent that faith transcends any and every specific set of beliefs, it puts Christians in a position to respond critically and creatively to the actual structures and practices of the particular cultures in which they find themselves. At this level, to consider the question of the origins of conflict and violence in terms of "culture or faith" can in fact prove fruitful, but now with an understanding of faith as potentially transformative of culture.

From a Catholic perspective, therefore, the question to be probed might be formulated as follows: how, and under what circumstances, might a culture influenced by Catholic *belief*, and even the Catholic community itself, be responsible for causing strife and violence? Conversely, how might Christian *faith* help to resolve conflict and build peace in society, both in awakening people to any particular culture's hidden assumptions and in representing an agency by which cultures might be transformed.

These are not questions that can be dealt with at any length here. It should not be overlooked, however, that the Catholic Church has in fact acknowledged the historical complicity of its members in doing harm to others, and recognised that the expression of its belief has not always been faithful to the transformative power of its faith in the mystery of God revealed in Christ Jesus. An important expression of this recognition resides in the service of *Confession of Sins and Asking for Forgiveness*[15] which was observed as part of the Jubilee Year in Rome on 12 March 2000. The then Cardinal Ratzinger, for example, led the following call to prayer:

> Let us pray that each one of us ... will recognize that even men of the Church, in the name of faith and morals, have used methods not in keeping with the Gospel in the solemn duty of defending the truth.

In the same service there was also a call to repentance for "the words and attitudes caused ... by enmity towards members of other religions ...", and for the contempt shown for the cultures and religious traditions of others. Reflected in these prayers is that spirit of repentance called for by Pope John Paul II in his letter on the eve of the new millennium in which he lamented "the acquiescence given, especially in certain centuries, to intolerance and even the use of force in the service of truth."[16]

What are the sources of this intolerance and recourse to the use of force? At the beginning of the fifth century in Christian North Africa St Augustine eventually invoked the power of the Roman Empire in order to suppress the Donatist church which had, in his view, broken and separated itself from the communion of love. This policy of compelling the so-called heretics to come in (cf. Lk 14:23) is often taken as the starting point of the Church's turn to force in the service of the truth. How could Augustine, the Church's great Doctor of Love, have done this? How could he resort to state-sanctioned violence as a means of resolving the social and political conflict with the Donatists, with its tangled historical web of doctrinal and cultural roots? According to a recent commentator, the reason was that Augustine's humility failed him at precisely this point. Where he ought to have continued to cling to God with continent love,

waiting for love's true realisation in God's time, he instead strove to anticipate the presence of "higher [ultimate] goods through coercive and manipulative [incontinent] grasping."[17] As Gerald Schlabach puts it:

> Augustine longed for…the eschatological fullness of all love for God and for neighbour…when all creatures in loving God as their *summum bonum* would also be bonded together in mutual love for one another "in God."
>
> For a passionate, forceful personality such as he, the great temptation was then to rush the creation of an order of mutual love. His pre-conversion desire to be loved and esteemed had not gone away, for such desire alone was not sinful. Yet such desire could and did become an incontinent desire as it goaded his impatient effort to create that order of mutual love through human power.[18]

Leaving aside what might have driven Augustine, and bracketing for a moment the putative origins and causes of the abuse of force in the history of the Christian Church, we may take heart from the principle enunciated in Vatican Council II's *Declaration on Religious Freedom*,[19] and reiterated by Pope John Paul II in his 1999 letter referred to earlier, that "[t]he truth cannot impose itself except by virtue of its own truth, as it wins over the mind with gentleness and power."[20] This same spirit of openness and non-violence also pervades the Pope's letter at the close of the millennium year, where he states that "interreligious dialogue is especially important in establishing a sure basis of peace and warding off the spectre of the wars of religion which have so often bloodied human history."[21]

To this dialogue, which is essential for peace, the Christian Church brings its own symbol of peace, "Christ [who] is our peace" (Eph 2:14), the humble God who "triumphed [upon the cross] with a love capable of reaching even to death," the judge of the last judgment who identifies himself with the stranger ["I was a stranger and you welcomed me" (Mt 25:35c)], the one who proclaims "Blessed are the peacemakers" (Mt 5:9).[22]

The five "pillars of peace" derived from reflection on *Pacem in Terris* – truth, justice, love, freedom, prayer – clearly stand at the basis of many of Pope Benedict XVI's statements during his recent visit (8-15 May) to the Holy Land.[23] There is, however, a significant gloss. A sixth shared "pillar" is now specifically identified, for Christians and Muslims are called to work together "to cultivate for the good, in the context of faith and truth, the vast potential of *human reason*."[24] This summons has been seen by some prominent Christians and Muslims to mark a shift in the Pope's thinking beyond his 2006 Regensburg address, which appeared to depict Islam as weak in reason and therefore prone to violence.[25] Now, however, adherence to truth, which is embraced by both parties, is presented as keeping "debate rational, honest and accountable and [opening] the gateway to peace." It is seen as broadening "our concept of *reason* … and [making] possible the genuine *dialogue of cultures and religions* so urgently needed today."[26]

Thus the largely concealed set of often unconsciously assimilated subjective attitudes identified by Gallagher, which give both cultures and

religions the power to sway people for good or for ill,[27] can be critically brought to light and creatively reconstructed. Across cultures and faiths, cultures and religions, tapping "the vast potential of human reason" thus becomes a common challenge for people of faith everywhere as they struggle to move beyond situations of conflict and perceptions of a clash of civilisations towards building together a civilisation of love.

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1 An initiative taken by Georgetown University, Washington DC, to keep alive the spirit of Pope John XXIII's encyclical of that name: *Pacem in Terris / Peace on Earth*. See the full text of Archbishop Fitzgerald's address, "Peace in the World: The Contribution of Interreligious Relations" at [Accessed 28-05-09]: http://www.bc.edu/research/cjl/meta-elements/texts/cjrelations/resources/articles/fitzgerald_28Feb05.htm

2 *Pacem in Terris* 37.

3 I read as conflict in terms of "violent" conflict. For a recent, quite comprehensive treatment by a Catholic author, see L. D. Lefebure, *Revelation, the Religions, and Violence* (Maryknoll, New York 2000). See now also W. W. Emilsen and J. T. Squires (eds), *Validating Violence – Violating Faith?* (Adelaide 2008).

4 On this question see D. Sölle, *Thinking about God: An Introduction to Theology* (London / New York 1993) 11-12.

5 M. P. Gallagher SJ, *Clashing Symbols: An Introduction to Faith and Culture*. New and Revised Edition (London 2003).

6 *Clashing Symbols*: 24.

7 *Clashing Symbols*: 26. Emphasis within each point is my own.

8 *Centesimus annus:* 24.

9 *Clashing Symbols*: 10.

10 *Clashing Symbols*: 11.

11 *Clashing Symbols*: 12.

12 For a critique of arguments that posit a secular/religious dichotomy, and that attribute religion's proneness to violence to its absolutism, divisiveness and irrationality, see the address entitled "Does Religion Cause Violence?" delivered by Dr William Cavanaugh at St Mary's Church, Upper Coomera, on 8 June 2006. [Accessed 28-05-09]: http://www.bne.catholic.net.au/mission/downloader.php?dir=&file=cav_does_religion_cause_violence.pdf

13 Aquinas, *Summa Theologiae* II-II, q. 1, a. 2, 2. See D. Lane, *The Experience of God: An Invitation to Theology* (New York / Ramsey 1981) 68-78. Also on the relations between faith and belief, see R. Haight, *Dynamics of Theology* (New York 1990) 26-29.

14 I have this quotation from J. A. van der Ven, "The Multicultural Drama: Religion's Failure and Challenge", *Australian EJournal of Theology*, Issue 7 [Accessed 28-05-09]: http://dlibrary.acu.edu.au/research/theology/ejournal/aejt_7/van_der_ven.htm For this reference van der Ven cites R. Forst, *Toleranz im Konflikt* (Frankfurt 2003) 89.

15 See full text at http://priestsforlife.org/magisterium/papal/00-03-12prayerofforgiveness.htm Accessed 28-05-09.

16 *Tertio Millennio Adveniente* 35.

17 G. W. Schlabach, *For the Joy Set Before Us: Augustine and Self-Denying Love* (Notre Dame, Indiana 2001) 127. See also Schlabach's "Augustine's hermeneutic of humility: An alternative to moral imperialism and moral relativism", *Journal of Religious Ethics* 22/2 Fall (1994) 299-330, especially 315-330.

18 *For the Joy Set Before Us*: 138.

19 *Dignitatis Humanae* (promulgated 7 December 1965) 1.

20 *Tertio Millennio Adveniente* 35.

21 *Novo Millennio Ineunte 55.*

22 As Pope Benedict XVI reflected in a seven-minute meditation which he delivered in the little mountain parish of Rhemes Saint-Georges (Val d'Aosta) on 23 July 2006. See [Accessed 28-05-09]: http://www.chiesa.espressonline.it/dettaglio.jsp?id=73684&eng=y

[23] See, for example, "Visit to the "Regina Pacis Center": Address of His Holiness Benedict XVI". [Accessed 28-05-09]: http://www.vatican.va/holy_father/benedict_xvi/speeches/2009/may/documents/hf_ben-xvi_spe_20090508_regina-pacis_en.html

[24] "Meeting with Muslim Religious Leaders, Members of the Diplomatic Corps and Rectors of Universities in Jordan: Address of His Holiness Benedict XVI", Mosque Al-Hussein bin Talal – Amman, Saturday, 9 May 2009. See [Accessed 28-05-09]: http://www.vatican.va/holy_father/benedict_xvi/speeches/2009/may/documents/hf_ben-xvi_spe_20090509_capi-musulmani_en.html (emphasis added).

[25] See Tom Heneghan, "Pope Benedict slowly learns dialogue with Muslim", 14 May 2009 at [Accessed 29-05-09]: http://uk.reuters.com/article/idUKTRE54D2LE20090514

[26] "Meeting with Organizations for Interreligious Dialogue: Address of His Holiness Benedict XVI." See: http://www.vatican.va/holy_father/benedict_xvi/speeches/2009/may/documents/hf_ben-xvi_spe_20090511_dialogo-interreligioso_en.html Accessed 29-05-09. Emphasis added.

[27] *Clashing Symbols*: 24, 10-12.

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Asian and Middle Eastern Islam

E-Notes

May 26, 2006

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Abstract: *This essay is based on his presentation at FPRI History Institute's May 6-7, 2006 conference on Islam, Islamism, and Democratic Values.*

We in the West have long identified Islam with Arab culture. In one sense this is reasonable enough. After all, the Quran and the canonical accounts of the actions and sayings of the Prophet Mohammed (the Hadith) are all written in Arabic, and Muslim scholars insist that a proper study of these sacred works is possible only in Arabic. The holy lands to which Muslims daily turn in prayer, and to which they are enjoined to make the pilgrimage at least once in their life if they have the means, are also located in Arab lands. And during the first century of their spectacular expansion from the Arabian peninsula north into Syria, westward to Spain, and eastward toward India beginning in the seventh century C.E., the armies that created one of the most cosmopolitan empires Eurasia has ever seen were Arab-led and Arab-staffed.

Beyond these early historical facts, however, the ethnic and civilizational complexity of the Muslim world becomes clear. Ethnic Arabs comprise only about 15-18 percent of the world's 1.2 billion Muslims. More than 60 percent of the Muslim population lives not in the Middle East, but in Asia. The single largest Muslim-majority society in the world is Indonesia, whose population of 230 million is 89 percent Muslim. The greatest single regional concentration of Muslims lies in the Indian subcontinent, with its almost 400 million Muslims.

The Arab expansion northward into Central Asia stimulated a process of Islamization and militarization among Turkic people of the Central Asian frontier. By the early Muslim middle ages (11-12th centuries C.E.), the now-Islamized Turkic peoples of Central Asia had become rulers across much of the Middle East. Descendants of these early Turks, the Ottomans grew from their small beginnings in the 13th century to create the most expansive empire the Muslim world has ever seen.

By the eighth century of the common era, peaceful Arab traders had made their way to southern China, and by the 11th century, Arab armies had marched into northern India. Between the fourteenth and seventeenth centuries, the maritime territories that stretched from southern Arabia and India all the way to today's Indonesia and southern China were transformed into the most prosperous trading zone in the world. Trade and travel, not force of arms, helped spread Islam to the coastal peoples of archipelagic Southeast Asia-what is today Indonesia, Malaysia, and the southern Philippines. From the 15th to the 18th century, the Indonesian portion of this great trading arc developed towns, arts, and a commerce that rivaled those of Renaissance Europe.

Thus, Muslim civilization was long engaged with and influenced by Asian peoples, in military organization, commerce, and state structures. Islamic civilization after its first century was not the property of one region or ethnicity, but a multiethnic and trans-regional religion in which Asian Muslims played a central role.

Even as we acknowledge these Asian influences on historical Islam, the question remains, Is there a difference between Asian and Arab Islam? Answering this question requires making an important distinction between Islam's scriptures and normative commentaries, on the one hand, and Islam as a civilization or a set of "lived" cultures, on the other.

Normative Islam

To understand this distinction requires that we stand back for a moment and make an important distinction between Islam's scriptures and normative commentaries and Islam as a civilization or a set of "lived" cultures. With regard to Islam in this first, "normative" sense, the simplest answer to the "is Asia different?" question is "no"-a "no" that can be qualified, but a "no" nonetheless.

To understand why this is so requires a brief comparative aside. Since the European reformation, Westerners have become comfortable talking about Christianity in broadly national terms. Thus we speak of the Church of England, the Swedish Lutheran Church, Dutch Calvinists, and the like, without our feeling that we are somehow doing violence to Christianity. For most modern Muslims, however, any comparable discussion of "Indian Islam" or "Indonesian Islam" as opposed to "Arab Islam" is disquieting; indeed, for some Muslims such ethnic references are repugnant. The first meaning of *Islam* for most Muslims refers to an attitude of surrender to God based on the universal and invariant guidance that God provided for humans in the holy Quran and the recorded words and actions of the Prophet Mohammed. To distinguish Muslims and Islam on the basis of ethnic or national culture, then, is to confuse what is contingent and local with what is invariant and sacred; only the latter, God's revealed guidance, is "Islam."

Accordingly, Muslims' disquiet at the ethnicization of Islam is not the result of the Muslim community's greater *empirical* unity by comparison with Christianity. On the contrary, just as with Christianity, Islam in its first centuries splintered into a variety of opposed sects; the most important of these today is the well-known division between Sunnis and Shias. Moreover, beyond the Sunni-Shiite divide, other differences emerged during the first centuries of the Muslim era: differences among schools of religious law; differences among rival mystical or Sufi brotherhoods; differences in the state's role in managing religious affairs; and, last but not least, differences in local Muslim customs and behaviors, including such still-vexing issues as to how women should dress and what role they should play in public life.

All world religions "succeed" by striking a sometimes uneasy balance between a universalizing message and localizing accommodations. The Muslim case is especially complex, because Islam does not have a formal ecclesiastical organization or Church to stabilize its development, as the main streams of Christianity did prior to the great splintering of the early modern period. Rather than a priesthood and a Church, Islam has scholars, as does orthodox Judaism. In Shiism the scholars are more organized and even have some of the qualities of a Catholic hierarchy. But in most of the Sunni world-85 percent of modern Muslim world's population, and about 97 percent of Asia's Muslims-there is no hierarchy, just a network of scholars.

It was precisely in response to the acephalous and non-ecclesiastical nature of Islam and the threat of the religion's dissolution into a disparate variety of local traditions that Islam's religious scholars came to emphasize the unity of Islamic ritual and the unchanging finality of its holy word. Islam's central rituals and canons emphasize unity and commonality, as in the insistence on the finished

truth of the Quran, on the five pillars or ritual activities incumbent on Muslims, and on the implementation of God's law as incumbent on all Muslims.

Of course, this has not prevented Muslim communities from dissolving into fractious sects or even falling into fratricidal warfare. When the battle is over, however, Muslims far more than modern Christians return to the Quran and the idea of a God-given law (sharia) and affirm that they are a single community of believers. It is this influence that leads most modern Muslims to take exception to the idea of national versions of Islam and insist that there is just one Islam.

Culture and Practice

In culture and practice, as opposed to in the normative ideal, the answer to the question as to whether there are Arab and Asian versions of Islam is a highly qualified "yes." The strongest qualification concerns the religious law that developed in Asian and Arab Islam. Islam is, with Judaism, a religion of divine law. In Sunni Islam, the Islam of most Asian Muslims (unless we include Iranians as Asians, as specialists of Islam sometimes do), the law has been discussed and developed since the eighth and ninth centuries through the conventions and authorities of four schools of law. Notwithstanding their different histories and cultures, not one Asian Muslim society developed its own tradition of religious law. On the contrary, the scholars of Islam in Asia all took the texts and methods of the schools of law developed in Iraq and Syria in the eighth and ninth centuries.

This is very significant. In modern times, print culture and mass education have tended to make Muslims more textualist and legal-minded in the way they understand their faith. Accordingly, the influence of the schools of law on the popular practice of Islam became *greater* in the nineteenth and twentieth centuries, as more and more Muslims came to understand their religion through schooling and religious books. As Asian Muslims have become more religiously schooled, they have become more legal-minded. Their views on everything from divorce to women's dress have converged with their counterparts in the Middle East.

There are two realms where Asian Muslim culture does look different from Middle Eastern Islam: in popular culture and in politics.

Popular Culture

As much as Asian Muslims have always differed in their religious practice from their Middle Eastern brothers and sisters, they have differed almost as much among themselves. When speaking of Asian Islam, it is helpful to distinguish between two primary Asian civilizational streams: a Central and South Asian tradition, on one hand, and a Southeast Asian tradition, on the other. Each of these has its own variants, but one can draw a broad South-Southeast Asian contrast.

First, some commonalities. South and Southeast Asian Islam have long had in common the tradition of mysticism, or Sufism. Asian Islam has always been deeply mystical. Sufism is actually a congeries of traditions. Most variants are quite orthodox in their profession of the faith, not deviating too much from the letter of religious law. However, during the early centuries of Islam's diffusion

to South and Southeast Asia, a number of folk schools of Sufism developed that were deeply syncretic or heterodox. In South Asia, some of these blended Hindu concepts of divinity with Islamic concepts of sainthood. To this day in India, some of the shrines of great Sufi saints are also visited by Hindus and Sikhs, although this practice is in decline.

In the 14th century, when mass conversion to Islam began, Hinduism and Buddhism were the religions of state in much of island Southeast Asia. Unlike India, however, where most Hindus did not convert, the Hindu-Buddhist tradition in Southeast Asia suffered a near-total collapse. In Indonesia and Malaysia today, the only surviving indigenous Hindus are those on Bali and in a small corner of neighboring Java. But folk Sufism in Indonesia and Malaysia contained a number of sects that were vigorously syncretic. Their syncretism drew on indigenous tradition of ancestral veneration and pantheistic naturalism. These "heterodox" Sufisms survived well into the twentieth century, but are declining today.

A second commonality to popular Islam in both South and Southeast Asia is that, beginning in the early 19th century, both regions saw the rise of new and powerful movements of Islamic reform, most of which sought to abolish heterodox traditions and bring the profession of the faith into conformity with an Islam closer in spirit to that practiced in Arabia. The reform movements benefited from, and to some degree were a response to, the intrusion of Western colonialism into Muslim lands. But they also reflected the diffusion of new methods of learning and schooling across the Asian Muslim world. Most of these new methods were in turn modeled on new patterns of printing and education that had been pioneered in Egypt and Saudi Arabia. It is hard to exaggerate the impact of these reform movements on Asian Islam over the past two centuries, especially since these nations achieved independence in the 1940s and 1950s. They have pulled popular Islam in Asia into far greater conformity with the style and standards professed in the Middle East.

Where it comes to the status of women, however, Southeast Asia still differs from South Asia. Southeast Asians are heirs to a tradition of kinship and gender that accorded women a significantly higher social standing than even their sisters in premodern Europe. In Southeast Asia, Muslim women were not subject to home confinement after coming of age. On the contrary, they worked in agriculture, operated most of the stalls found in local markets, and moved about quite freely in villages and the countryside. In farm families, girls were often given a share of the inheritance equal to that of their brothers, an arrangement that is contrary to Islamic family law (which specifies that brothers should receive shares twice that of their sisters).

In modern times, Southeast Asian women have not achieved full equality with men. But girls today participate in education at a rate comparable to that of boys. And although there is a gendered pattern to the professions, the idea that women might want to work outside the home after marriage does not provoke the controversy that it does in some parts of the Muslim world.

The gender difference between Muslim Southeast Asia, on one hand, and South Asia and the Middle East, on the other, relates to an even more complex

aspect of local culture. Arab society in the Middle East preserved a clan and tribal organization that, along with the sectarian divisions of Sunnism and Shiism, has played a pivotal role in political alliances and violence. South Asian society-but not Southeast Asian-is only somewhat less fissiparous, and its profusion of clan, lineage, and sub-ethnic groups is no less complex. One of the effects of all these allegiances is that politics and public life in South Asia tend to have a clannish and often vengeance-prone quality.

Southeast Asia is not entirely lacking in acts of honor and vengeance. But kinship in most of Southeast Asia is what anthropologists call "cognatic"-the more individualistic kinship found among most modern Americans and Western Europeans. Similarly, in Southeast Asia there are almost no tribal or clan associations. Southeast Asian Muslims tend to be more individualistic and familistic than tribalistic, which is one reason they have found it easy to accept modern notions of citizenship and human rights.

Politics

In modern times all three of South Asia, Southeast Asia and the Middle East have experienced a similar series of political movements. In the nineteenth and twentieth centuries, South and Southeast Asia were swept by Islamic reform movements similar in method and ambition to those seen in the Muslim Middle East. Both areas also witnessed a decline in heterodox Islam and the rise of a more legal-minded orthodoxy. During the first six decades of the twentieth century, South and Southeast Asia, like the Middle East, were swept by nationalist movements demanding independence from European colonial powers. There was a "Muslim" wing to the nationalist movement in Asia, as there was in the Middle East. In both regions, however, a more or less secular or non-Islamist leadership dominated the nationalist movement during the first half of the twentieth century. In all three areas, though, the last decades of the twentieth century witnessed an Islamic resurgence that has challenged secular nationalism to its core. In the Middle East, as in Asian Muslim countries, secular nationalist governments have had to make enormous concessions to Muslim cultural interests, with the result that secular nationalism in Egypt, Pakistan, Malaysia, and Indonesia today has many more Islamic colors and hues than it did in the 1950s.

The differences in politics between the Middle East and Asia have less to do with Islam per se, then, than with the concrete political arrangements and alliances that came to characterize individual countries in each region after independence. In India, the Muslim minority, which comprises about 12 percent of India's more than one billion people, has been an enthusiastic participant in that country's democratic government. Just to the north, in Pakistan, the Muslim population shares identical cultural roots with its counterparts in India, but has proved far less skilled at making democracy work. Born from out of a bitter secession war with Pakistan, Bangladesh has done a slightly better job than Pakistan in operating a system of free and fair elections. However, like Pakistan, it has in recent years witnessed the emergence of a militant Islamic movement that demands that the country be transformed into an Islamic state.

The situation is not entirely different in Muslim Southeast Asia. The Muslim minorities of the southern Philippines and southern Thailand have been treated badly by the non-Muslim governments, and since the 1970s both regions have witnessed the rise of Muslim-led secessionist movements. In the 1990s, some among the local militants made contact with international jihadi networks, like Al Qaeda, adding fuel to the secessionist fire.

That's the bad news from Southeast Asia, but there's much good news as well. Notwithstanding the intensity of the conflict in the southern Philippines and southern Thailand, Muslims have at the same time been affected by what they have seen taking place in their Muslim-majority neighboring countries, Malaysia and Indonesia. The economic prosperity these latter countries experienced beginning in the 1970s has taken much of the wind out of the sails of Muslim separatists in the southern Philippines and southern Thailand. Certainly, Muslims in these two regions want a better deal from their non-Muslim rulers, but for most the deal need not include full independence, especially if the package allows the Muslim minority to share in something of the mainstream population's prosperity.

Although far removed from the Middle Eastern heartland, Malaysia and Indonesia present an even more promising picture, and remain two of the most politically interesting countries in the Muslim world. Plagued by ethnoreligious tensions between the Malay-Muslim majority and a prosperous Chinese minority, Malaysia in the 1960s looked as if it were teetering toward national collapse. However, not only did the country not collapse, it worked out a new prosperity-sharing deal between the Malays, who were then agricultural, and the urban and industrious Chinese minority. It wasn't a perfect deal: the Chinese do not enjoy full equality with the politically-dominant Malays, and many chafe at affirmative action programs that target Malays but not poor Chinese. Nonetheless, Malaysia since the 1970s has implemented what is arguably the most successful program of affirmative action in the world. Today there is a confident and prosperous Malay Muslim middle class and a Malay-dominated leadership that has been outspoken in its opposition to radical Islamism and terrorism. The present leadership of Prime Minister Abdullah Badawi is particularly impressive. Badawi has sought to disseminate his message of Islamic moderation not only in Malaysia, but to the broader Muslim world. Of course, the Muslim opposition to Badawi is also large. Nonetheless, the prospects for Malaysia's future remain bright.

Indonesia is a special case. Not only the largest Muslim-majority country in the world, it also has the world's largest and most broadly based tradition of democratic Islam. Since the ouster of the authoritarian President Soeharto in 1998, the country has conducted two free and fair elections marked by thundering moderation, which is reassuring for those worried about the compatibility of Islam and democracy.

Alas, problems remain. An archipelagic country of 12,000 islands and more than 300 ethnic groups, Indonesia has a proud tradition of multiethnic and multiconfessional nationalism. However, since the middle of the twentieth

century, it has always also had a small but determined armed Islamist community. The radicals have proved skilled at maintaining underground networks and carrying out occasional terrorist attacks. The Jemaah Islamiyah (JI), the group responsible for the Bali bombings of 2002 and 2005, is the most recent expression of this. But the longer the Indonesian political system continues to make progress toward democracy, the weaker will be this group's appeal.

Conclusion

What conclusions can we draw, then, about the relationship of Arab and Asian Islam? The scholarly and normative tradition of Islam in both regions has always been more closely aligned than were the folk and populist Islamic traditions indigenous to each area. The fractious tribalism and honor-and-vengeance politics that is so much a part of politics in much of the Middle East has some counterpart in South Asia but very little in Southeast Asia. The same applies to the patriarchal traditions of clanship and lineage that confined women. Although this tradition of gender and honor made its way to South Asia, it failed to make the passage to Southeast Asia. On gender matters, Southeast Asian Muslims remain among the most liberal in the Muslim world.

With the rise of Islamic reform movements in the nineteenth and twentieth centuries, however, Islamic culture in both the Middle East and Asia has become more normative and somewhat more alike. But since the reformists themselves disagree on just what is required to be a good Muslim, we shouldn't expect Islam in the Middle East and Asia to become drably unitarian any time soon.

The most significant influence on Muslim politics in both regions has been not Islam but the nation-state. Even as scholarly traditions of Islam have converged, most of what goes on in the national political arena shows the distinctive influence of country-specific state structures, alliances, and conflicts.

On Asian Islam's political future, we will probably continue to see a cautious and generally democratic development of Muslim politics in India. Bangladesh is still a hopeful case, but much will depend there on the state's ability to handle its enormous economic problems. In Pakistan, the situation is more serious. Although there is an intermittently effective system of national elections, the tradition of democratic Islam in this country is weak. The war in Afghanistan and Iraq may yet push the tradition over the edge. Pakistan's future is also tethered to the outcome of U.S. efforts in Afghanistan and Iraq.

Malaysia and Indonesia look far more promising. Notwithstanding a conservative Islamist opposition in Malaysia and a tiny terrorist fringe in Indonesia, both of these countries have begun to develop an impressive system of democratic elections. Both also have established traditions of pluralist and democratic Islam. If they continue to develop economically and link market development to efforts to revitalize Islamic education, as the moderate leadership in both countries is attempting, these countries will jump to the front of the global struggle to forge a pluralist and democratic Islam.

In short, a democratic Islam is emerging, and its first land of accomplishment may well be not the Arab heartland, but Muslim Southeast Asia. If this happens, the achievement will be good news for the entire Muslim world.

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ORIGINAL PAPER

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The Disputes between Roman-Catholics and the Anticlerical movement in France during the XVIII-XIX centuries

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Abstract: *Throughout the XVII-th century a series of scientific discoveries, as well as some importance intellectual works, allowed the establishment of a new discourse meant to justify itself exclusively on the faith in natural laws, on the excessive confidence in the innovative power of the human reason, or on the observation of the universal order. A predominantly rational approach on all aspects of the religious life was noticed on this background, but this was extended also to the religious life due to a secularized orientation towards the world and life, motivated by a presupposed need of the human progress based only on reason.*

Key words: *anticlericalism, France, liberalism, separation, galicanism.*

In the second part of the XVIII-th century, about which we can say that it was a century characterized by a strong affirmation of the liberalism and of the capitalism, the world of the venerable monarchical dynasties was replaced with that of the nation-states that have declared their establishment on the political dogma of the sovereignty of the people[1]. The Age of Enlightenment or the Enlightenment was a large movement that led to revolutions in Europe, North America and South America. This century full of excesses obliged of the Roman Church to take into account the recent facts, to reflect and respond to these challenges.

The Civil Constitution of the Clergy from France (1790)

Under the influence of J. J. Rousseau's thought, the new liberal French state will legitimate and prove its authority through the concept of the popular sovereignty that does not allow another authority superior to the nation. In this sense, Church has not had any of the supremacy that enjoyed throughout the Middle Ages. Using to the limit the principle of the popular sovereignty, the new French state sought to regulate the internal administration of the Church by various legal texts. On the basis of anti-Christian ideology, the leaders of the French Revolution voted between 1789-1790 a series of laws / decrees, which had as declared aim the restriction of the area of influence of the Roman Catholic Church on the territory of the French state; this is actually the most important institution closely linked to the French people, although there existed the Reformed Church, too[2]. One of the laws with a strong impact was the civil Constitution of the clergy that involved the transformation of the clerical staff into officials of the French state, as well as the elimination of the monastic orders out[3]. This decree has contributed at the same time at the anticlerical movement that has rapidly spread in the Western Europe of this revolutionary age. The anticlericals[4] fought to eliminate the religious institutions from all the forms and aspects of the political life of the state, but also from the public administration. They have also militated for and supported the decrease of the influence of the religion not only within the state institutions but also from the daily life of the citizens[5]. Although it emanated mainly from an European environment that was mainly Christian, the Western anticlericalism[6] was not limited to the elimination of the Christian institutions from that which will be very soon called "the public sphere", but it has appeared over the centuries also in the Islamic countries due to the political and economic dissatisfaction .

The first Republic (September 1792 - May 1804)

After gaining the power, the Thermidorians have reduced substantially the powers of the revolutionary bodies, dissolving the very dreaded Revolutionary Court (31 May 1795), but also the national security Committee (October 1795). Although there were enough arrests and executions, however, one can say that this period was more peaceful than others, especially after the elimination of Robespierre and his close collaborators. This period was known as Thermidorian, because the power - obtained by the moderate Montagnards deputies led by Bertrand Barrère of Vieuzac, on the one

hand and on the other, by the partisans of the constitutional government led by Emmanuel Joseph Sieyès, - was taken in mid-July 1794, which was called "thermidor" in the Republican calendar. Protected by the Law of the suspects, voted on September 17, 1793 and claiming any offense against freedom[7], thousands of aristocrats, priests and bourgeois were arrested. On September 18, 1794 the Thermidorian Convention (July 1794 - October 1795) excluded from the French state budget any amount destinated to the Church; in terms of the new Civil Code, that meant no salary for any representative of any cult nor any other indirect expense.

Two theological schools of thought

Due to the fact that Church was forced to defend itself, two French great theological schools of thought has appeared in this period of Enlightenment: the liberal Catholicism and the Ultramontanism. The first current was mainly illustrated by Felicite de Lamennais, Charles Forbes Rene Count of Montalembert and by Felix Dupanloup. They believed that what happened during this period (the XIXth century) in France is not entirely wrong and that they must seek what is good and positive for the Church[8]. The following were considered among the good things for the Church: the freedom to worship God, the freedom to talk about God, the freedom of the press.

Montalembert was a great journalist, but also a great historian. Besides Lamennais, he is considered one of the leading theorists of the liberal Catholicism. He wrote in order to defend the freedom of association, the freedom of teaching and learning (1850 – the Falloux Law) and to respect the rights of the oppressed nationalities. Besides his struggle for the civil liberties listed above, he wanted that especially the Roman Church to be free from the state control and he protested towards the monopoly of the national education[9] that was assumed by the French state; he, in his turn, was accused by the authorities because he gave lectures in a free school in Paris without having a license for teaching.

Montalembert with the abbot Lamennais and with the abbot Lacordaire founded the newspaper *L'Avenir* in 1830 and all of them publish papers in it. The basic theses of the liberal Catholicism were published in this journal, reason for which Montalembert lost aftewards many lawsuits filed by the Roman Curia. After being forced to close the school from Rue de Beaux-Arts, whose director was Montalembert, they hopefully went to Rome to be judged by Pope Gregory XVI himself. Although they defended Catholicism in a country where the Revolution still gave heavy blows to the Church, however, in 1832 the Pope condemned their liberal ideas in the encyclical *Mirari vos*. He strongly supported the restoration of the monastic orders (Benedictines, Dominicans and Jesuits) which were abolished by the Revolution.

The Abbot Hugues Felicite Robert de Lamennais was considered a precursor of the liberal Catholicism, of the social Catholicism and of the Christian democracy. Lamennais said in a work[10] published anonymously in Paris (1808) that the era that France crosses requires an awakening of the ultramontanist spirit and a religious revival. The book did not last long due to

the fact that the police of the Emperor Napoleon considered it to be dangerous for the regime and destroyed it.

Later, Montalembert founded at Saint-Malo, along with his brother, the Congregation of Saint Peter which was intended to form a scholar clergy to be able to answer to the questions that the philosophers of the time could have asked and to fight for the restoration of the papal authority in France. In another book[11], he condemned the galicanism and by this he meant the control, but also the influence of the political French authority in the internal affairs of the Church, especially in the election of bishops. His biggest work is published in four volumes and is entitled *Essai sur l'indifference en matière de religion* (1817), where he condemns the indifference of the state in religious matters and spiritual death. For this work he received the formal approval of the Roman Curia and was called by Pope Leo XII in Rome where he was congratulated.

In 1828 he writes *Les Progrès de la revolution et de la guerre contre l'église* in which he completely gives up to the royalist principles and he will promote to the end the theocratic democracy based on a mystical concept of the mandatory presence of the Church in society.

The newspaper *L'Avenir* appeared in an anticlerical political context and the editors have tried to reconcile Roman Catholicism with the democratic aspirations of the people on the background of a reactionary galicanism. Lamennais was the editor-in-chief of the publication that appeared for only one year and that was considered later as a first major failure of the effort to adapt Catholicism to the new socio-political context that was extending across almost all Europe.

Through the above cited and published articles, the authors preached the separation of the Church from the State and asserted, at the same time, the sovereignty of the Pope in religious matters, but also the sovereignty of the nation in civil matters. Prominent characters of France wrote in this newspaper under the mark of a greater freedom of the press that could be noticed in1830.

For the opinions expressed in this newspaper, the encyclical *Mirari vos* led to its closure. In the encyclical, the propaganda of the newspaper for the religious pluralism that the signatories to the papers sustained was condemned. Lamennais - because he was an abbot[12] - was asked to say whether or not he complies to the papal decision and he refused; one year later, in 1833, he resigned from all the ecclesiastical functions. After publishing *Parole d'une croyant* (1834), which is a collection of aphorisms where, among other thigs, he expressed his personal separation from the Church, he was again condemned by the Roman Curia trhorugh the encyclical *Singulari nos* signed by Pope Gregory XVI. The second current which we want to mention is the Ultramontanism[13]. This was a Catholic school of thought that did not want to make any compromise towards the new situation through which the Roman Church but also the old Europe was passing through especially from the perspective of the non-Christian new statute of the state. The Ultramontanists asserted from the very beginning the Pope's absolute

sovereignty in religious matters and also won another very important theological position through Vatican Council I where they were able to impose the dogma of the papal infallibility. This thesis, the Ultramontanism, is strictly related to the Roman Catholic centralism and opposed since the fifteenth century to the conciliar movement, i.e. to those who wanted to diminish the powers of the papal primacy through the sinodal Councils of the Church. In France, the opponents of the extension of the papal power have created the Gallican movement that wanted to restrict the papal authority in France. The freedom to organize and participate in a public divine cult was restored only in 1795 and the decree was put the condition that these ceremonies to take place only in private spaces, without displaying outward signs. The freedom of cult[14] was confined to chapels and churches of lesser importance or in geographically isolated areas. In that year many priests began to return from exile in France. Through the decree of 1790[15], the priests were obliged to swear an oath by which to accept the sovereignty of the people and, this way, there is a division among them, on one side are those who accept such an oath, considering that this way they respect the authority of the state, and the other side, there are those priests who did not want to abdicate from the old Roman practice which took them off the state jurisdiction and put them under the jurisdiction of the Roman Church.

Napoleon Bonaparte and Pope Pius VII

In 1800 Napoleon Bonaparte initiated the first discussions with the representatives of the Pope in order to establish a Concordat[16]. The negotiations up to the moment of signing this concordat lasted more than a year. If we look from top to bottom this concordat, we can see that it gave to the Roman Catholic confession the title of the religion of most of the French people, but also the public exercise of the cult which was forbidden at the beginning of the Revolution.

Another gain of the concordat for which the minister Talleyrand fought was that all churches and chapels that had been closed by the state, went again to the French clergy service. As a sign of the power[17] of Napoleon, through the concordat, a new assignation of the bishoprics in France was made and all the bishops across of France were appointed by Napoleon again. Both bishops[18] and priests have been conditioned to the appointment by the swearing of an allegiance to the French state.

The concordat allowed the faithful to make donations to the Church, after a period when this civil right, after the Revolution, had been canceled. With a great legal ability, the same day Concordat was signed, Napoleon added to its text, without the pope approval, some "organic articles[19]", through which the number of archbishops and bishops and priests and of the staff has been fixed. Napoleon managed to dislodge the whole French clergy by the Concordat, going so far as in order to publish a papal bull or other doctrinal decisions of ecclesiastical authority, the prior authorization of the Government was needed. Under liturgical report, it was agreed that on the entire French territory only a form of Mass to be officiated and only one catechism to be used. Through

this Concordat, the authority of the state over the Church increased and the priests and bishops are subjects for the French civil law and therefore they can be judged by the state. The Vatican never accepted the so-called Organic Articles added by Napoleon, but failed in removing them. A great part of the Concordat was taken over by the French law of separation of the Churches from 1905. This Concordat is applied today in the districts of Alsace and Lorraine from France since 1905, when they were part of Germany.

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[1] Ernst Cassirer, *The Philosophy of the Enlightenment,* Princeton University Press, 1992, p. 17

[2] Encyclopædia Britannica, *Anticlericalism*, Encyclopædia Britannica, Cambridge University Press, 2007

[3] Helmstadter, Richard J., (ed.), *Freedom and Religion in the Nineteenth Century,* Stanford University Press, California, 1997, pp. 251-253. Vezi şi următoarele studii: Hans Maier (ed.)*, Totalitarianism and Political Religions,* Routledge, 2004 ; Emilio Gentile, *Politics as Religion,* Princeton University Press, 2006 ; Emilio Gentile, *The Struggle for Modernity,* Greenwood Publishing Group, 2003

[4] Sidney Z. Ehler, *Church and State through the Centuries,* Biblo & Tannen Publishers, 1988, p. 234

[5] C. T. McIntire, *Changing Religious Establishment sand Religious Liberty in France. Part I: 1787-1879*, în vol. *Freedom and Religion in the Nineteenth Century*, Stanford University Press, California, 1997, p. 241

[6] Heinrich Geffcken, Edward Fairfax Taylor, *Church and state: their relations historically developed, Vol. I-II*, ed. Longmans, 1877, Londra, (2010)

[7] *Art 1.* Immediately after the publication of the present decree, all suspected persons within the territory of the Republic and still at liberty shall be placed in custody. *Art. 2.* The following are deemed suspected persons: 1st, those who, by their conduct, associations, talk, or writings have shown themselves partisans of tyranny or federalism and enemies of liberty; 2nd, those who are unable to justify, in the manner prescribed by the decree of 21 March last, their means of existence and the performance of their civic duties; 3rd, those to whom certificates of patriotism have been refused; 4th, public functionaries suspended or dismissed from their positions by the National Convention or by its commissioners, and not reinstated, especially those who have been or are to be dismissed by virtue of decree of 14 August last; 5th, those former nobles, husbands, wives, fathers, mothers, sons or daughters, brothers or sisters, and agents of the *émigrés,* who have not steadily manifested their devotion to the Revolution; 6th, those who have emigrated during the interval between 1 July, 1789, and the publication of the decree of 30 March – 8 April, 1792, even though they may have returned to France within the period established by said decree or prior thereto.

[8] Thomas Bokenkotter, *Church and Revolution: Catholics and the Struggle for Democracy and Social Justice*, New York, ed. Doubleday, 1998, p. 53

[9] *The Obligation of Catholics in the Matter of Freedom of Teaching,* (1843)*; Catholic Interests in the Nineteenth Century* (1852)

[10] *Réflexions sur l'état de l'église en France pendant le 18ieme siècle et sur sa situation actuelle*

[11] *De la tradition de l'église sur l'institution des éveques,* 1814

[12] the abbot was a catholic priest, superior in a monastery (abbey)

[13] *Ultramontanus* comes from the Middle Ages which means *beyond the mountains* in the sense that Roman Catholics in Northern Europe is always reported to the Bishop of Rome, but also to the Roman Curia and the Alps was the best symbol to denote this relationship. The same term was used in the Middle Ages when the Pope was elected as a non-Italian (Pope ultramontano) but also for the students that were studying at the Italian universities.

[14] Magalie Flores-Lonjou, *Les liex de culte en France,* ed. du Cerf, Paris, 2001, p. 23

[15] The Civil Constitution of the clergy

[16] The Concordat is a legal agreement between the Roman seat and a country where the confession is Roman-Catholic. The Concordat from the Napoleonic times was signed on July 15, 1801 and promulgated on April 8, 1802.

[17] Here's how through the new Concordat, the appointment of the bishops in France was done: The first French consul appointed the bishops and the Pope gave them the canonical book, which meant that he recognized them, but he could also refuse them. The priests were appointed by bishops only from a list of priests approved by the Government.

[18] The bishops received again the right to open a theological seminary in their diocese.
[19] These articles were the methodology through which the Concordat was put in practice.

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ORIGINAL PAPER

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The European Union and transnational religion

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Abstract: *This article intends to deal with the manner in which two institutions representing the supranational dimension of the European Union, the European Commission and the European Parliament, are approaching the issue of the transnational manifestation of religion on the European continent. The study uses concepts and ideas promoted by the French School of Discourse Analysis, particularly Dominique Maingueneau's theoretical distinctions between „generic scene" and „scenography". In order to coherently illustrate the manner in which these two categories apply on the analyzed subject, the structure of the paper follows Maingueneau's distinction. („The European Union and the transnational religion").*

Key words: *European Union, transnational religion, discours analysis, Islam, European Commission, European Parliament*

Introduction

The Westphalian paradigm subordinated religion under the concept of sovereignty and established its apparently indestructible, biological bond with the (national) territory; in the Westphalian world religion was an internal matter of the state and had no relevance for the international scene due to the well known principle "cujus regio, ejus religio", which managed to design the first circle having the function of "enclosing"/disciplining/subordinating religion or replacing its authority with a different one[1]. The second circle enclosed religion within the walls of the private sphere, almost without exception mistakenly seen as a form of manifestation opposed or parallel to the public sphere[2]. The exile of religion into the private sphere, generally expressed through the concept of "secularization", was a complex process having multiple causes and stages *grosso modo* clustered under the assumption the religion and modernity were/are incompatible[3]. The two circles down-graded religion as a phenomenon and religious institutions as actors to an insignificant position in the domestic and international politics in the same time. Yet, what is nowadays the analytical value of the two mentioned circles? The image of the contemporary international system they are offering is it an accurate one in terms of mechanisms, processes and actors activating on the international scene?

The theoretical debate concerning the role of religion in international relations (fully grown mostly after September 11) from Samuel P. Huntington's thesis of the "clash of civilizations"[4] to the studies dealing with the necessity to "bring religion back" into the paradigms of international relations[5] manifested a preference for approaching Islam and the effects of its violent dimension[6] and less for exploring the capacity of religion as a contributor in the peaceful resolution of conflicts[7].

Transnationalism, as an alternative approach to international relations opens a whole lot of ways for exploring the capacity of contemporary religion to break the circles or, for using Fabio Petito and Pavlos Hatzopoulos' formula, to analyze the religion's "return from exile". Transnationalism gives the researcher the possibility to move beyond the Westphalian logic of the nation-state by emphasizing the importance of non-state actors and their interactions for the structure of the international system. Albeit it had only recently experienced a certain interest from researchers in the field of international relations, transnationalism proposes an explanatory pattern which manages pretty well to answer the questions arisen by the so-called "post-national constellation"[8]. Without assimilating transnationalism with the end of the state, some authors are writing about a version of the international scene as a system of complex and de-centralized interactions whose stability isn't the result of some balance of power but rather of a complicated process of governance[9]. In 1973, Samuel P. Huntington stated that "transnational organizations have always existed in history", but after the Second World War these organizations have grown in terms of number, dimension, function and degree of interaction, phenomenon which determined the author to speak about a "revolution of transnational organizations in world politics"[10].

The literature approaching the manifestation of transnational religion in the public space has recently gained a considerable importance even though, almost without exception, we can find as a commonplace the affirmation that "transnational religion is nothing new". Yet, studies dealing with the manner in which transnational forms of religion can be a challenge for the classical concepts of the discipline do not represent the mainstream.

Riva Kastoryano considers that religious communities have always been stimulated by secularization towards organizing themselves as pressure groups and acting in international relations[11]. Jose Casanova states that the "ongoing processes of globalization offer a transnational religious regime like Catholicism, which never felt fully at home in a system of sovereign territorial nation-states, unique opportunities to expand, to adapt rapidly to the newly emerging global system and perhaps even assume a proactive role in shaping some aspects of the new system"[12].

Giorgio Shani defines the transnational religious actor as "any non-governmental actor which claims to represent a specific religious tradition which has relations with an actor in another state or with an international organization"[13]. Jeffrey Haynes analyses the relationship between globalization and transnational religion using the examples of the centralized Roman-Catholic Church and the Muslim community, *umma*, which he sees as real challenges for the westphalian definition of sovereignty[14]. Emphasizing the importance of globalization for transnational religious actors, the author brings an interesting perspective concerning the relationship between transnational religion and power, one of the key concepts in the discipline of international relations. Building on Joseph Nye's concept of "soft power", Haynes is trying to explain the influence of transnational religion on the contemporary international system[15]. Religious transnationalisation describes the process through which the superposition of religion and territory is dissolved, translates the breaking of the two circles (the westphalian logic and the secularization process). Unblended with a particular religious tradition, the transnationalisation is assimilated with a possible challenge due to its capacity of escaping any form of institutional control.

This study intends to present the manner in which the European Union responds to one of the "challenges" of globalization: the diverse forms of transnational manifestation of religion. Concerning the research methods a considerable attention will be paid to discourse analysis: the paper deals with the manner in which the representatives of the supranational dimension/voice of the European Union elaborate and (re)produce their discourse on the transnational manifestation of several religious traditions. The research purpose is to present and analyze how the discourse creates images about and for the public space. The analysis will use as a guiding principle Michel Foucault's affirmation about the "method" of discourse analysis: « one does not search under what has been said », one does not search « le non – dit », « it's about defining a limited system of presences »[16]. Equally, a certain usefulness can be found in Dominique

Maingueneau's concepts of « discursive community » and « generic scene/scenography »[17].

Regarding the structure, the study has two parts: the first one tries to present the generic scene/discursive scene that determines the production of the two institutions' discourse on the transnational forms of religion in Europe, while the second one analyses the manner in which the discourse constitutes its own scenography.

The generic scene: religion in the European Union

According to Dominique Maingueneau the generic scene is a form of given, pre-discursive reality, comparable, if we can draw an analogy, with the structure of the international system in the realist approach, while scenography, with its emphasis on the "interactive discourse" is closer to the constructivist perspective, focused on the interdependence between agent and structure, between text (discourse) and context.

One of the first questions to approach in characterizing the generic scene is the manner in which one can see the European Union as a discursive community, in other words if and how one can identify a constitutive, mutual interaction between the discourse and a particular European identity. Yet, the issue here is the difficulty one encounters in the effort of answering the question: who is the European Union? Concerning the identity of the European Union or of the European Economic Community, the founding texts have nothing to say about a "supranational identity", and as Kenneth Houston pointed out, it is only after Maastricht that we have the idea of the European identity in a treaty[18]. In the same time, Houston asserted that the absence of an European/common identity can be replaced by a "nucleus of European values"[19]. The deficiency in articulating a discourse on this issue creates some problems for the methodological efficiency of the expression "discursive community" during the analysis; I will come back to this afterwards in the paper. Therein, in order to indicate a possible representative for the voice of the European Union, one should first decide over a particular domain: common policies, or those policies which for the most part still fall under the control of each member state.

Beside the intergovernmentalism – supranationalism debate, in identifying the voice/voices of the European Union concerning religion, as a transnational matter or not, one also encounters the difficulty to situate religion as an issue in a particular policy: is it a foreign and security item due to its connection with the extra-European migratory flows? Is it a social matter? Or it must be placed under the umbrella of cultural and spiritual matters that the European Union dreads to approach with the supranational lenses? Transnational religion is a challenge for the EU's difficulty to articulate a coherent discourse about its own identity; yet, in the same time it could be seen as a good exercise to overcome this faltering dynamic.

So far the European Union hasn't established any form of uniform regulation concerning the legal status of religious communities assigning this resposability to the member states. Hereby, the first step was the Declaration no.

11 of the Amsterdam Treaty afterward transcribed in the article 52 of the Draft Constitutional Treaty and eventually in the article 17 of the Lisbon Treaty which guarantees the fact that the member states have the competence for managing the relationships with the religious communities. Notwithstanding, the paragraph 3 of the article 17 mentions the need to maintain an "open, transparent and regular dialogue" between the European Union and the Churches and philosophical organizations[20]. None the less this dialogue experienced some "i-regular" forms before the Lisbon Treaty became effective. Mostly after Maastricht the Commission launched several initiatives in order to establish some contacts with the religious communities. One of these initiatives was "The Forward Studies Unit", a programme created by Jacques Delors, with the purpose, among others, to facilitate the dialogue between the European Union and religions[21]. Another example is the creation in 1994 of a programme called "A Soul for Europe", attached to "The Forward Studies Unit" initiative, "a sort of common forum for the Commission, the Parliament, the religious leaders and the representatives of philosophical organizations", a place for debating the spiritual matters of the European continent[22]. In 2002, "A Soul for Europe" became an independent non-profit international association based until 2005 in the office of Church and Society Commission of the Conference of European Churches. After 2005, the president of the European Commission had annual meetings with the religious leaders[23]; in recent years the president of the European Parliament and the president of the European Council also take part at the meetings[24].

In this context, one can note that it isn't the extra-regular character of the dialogue that renders questionable the analytical pertinence of a formula such as "discursive community", but rather the challenge to find a common voice of the European Union regarding the matter of religion. This is mainly the reason why I chose to bring into focus the two voices of the European supranationalism: the European Commission, which, according to the treaties is meant to represent the common interest of the Community and nowadays of the Union, and the European Parliament, the representative of the citizens' interests. The reason why these two institutions depict a form of "discursive community" in progress is that they are more than the simple juxtaposition of some national discourses regarding religion[25].

Considering the principles that organize the generic scene or the pre-discursive reality, the contacts between the actors (the European Union and religions), if one takes as a fundament the official regulations, then the European Union's neutrality towards religious matters seams to be the key issue. Yet, neutrality has many shades if one considers the experience of the extra-regular dialogue. Consequently, neutrality is less ignorance or indifference, but rather some sort of a combination between the European Union's refusal to identify itself with a particular religious tradition and the exploration of a functional dimension of religion for the European construction.

Furthermore, what continues to be contentious is the manner in which one can clearly distinguish a pre-discursive reality of the relationship between the European Union and religions. In his analysis of the role of discourse in the

process of European integration Thomas Diez stated that there is no extra-discursive reality that can be analyzed, and therefore, there is no extra-discursive politics[26]. That is to say it is difficult or rather impossible to separate the discourse from the context it creates/produces.

Two discourses on (transnational) religion or how a "scenography" can be constructed

As I already mentioned earlier, among the European institutions, the Commission took the first step in approaching religion. In decomposing the institutional position and particularly the president's declarations one can identify two images or two projections relative to transnational religion.

First of all, the Commission has a real contribution, due to initiatives like "The Forward Studies Unit", "A Soul for Europe" and the dialogue with the leaders of religious European institutions, to build up a transnational dimension of religiosity/religion in Europe. The contacts of religious European actors with a supranational institution, like the Commission, and with other religious actors stimulates a set of mechanisms which "forces" religions to cross the national dimension and to opt for (institutional) transnationalism in order to fill it up. More accurately, it is not a relationship of mutual exclusion between national and transnational as two contexts for religion to operate, but rather one of complementary angles from which to approach the world/reality; religious institutions are becoming or, in some cases are made, aware of the fact that globalization renders indispensable the contacts with other entities beside the state and the local authorities. Due to its dynamic, I propose to couch this process throughout the concept of "transnationalisation by means of contamination".

In addition, it is possible to delimit two directions of this form of transnationalisation: on the one hand, are the religious institutions that during a first stage don't have any direct contact with the Commission, but through the ecumenical organizations they are part of[27]; on the other hand the dialogue with the Commission and the engagement in programs such as "the Forward Studies Unit" and most of all "A Soul for Europe" created for the religious institutions new contexts for the consolidation of the transnational dimension of the ecumenical and/or interreligious dialogue. The president of the European Commission, Mr. Jose Manuel Barroso, gave a positive and even functional value to this form of "transnationalisation", officially termed "intercultural and interreligious dialogue", seen as "a prove that the preachers of the clash of civilizations were wrong", this "dialogue is the best way to transform the violence in peace, the hostility in respect, the distance in closeness and friendship"[28]. Ecumenism, as a form of religious transnationalisation receives a positive appreciation in Mr. Barros's speech: "the Conference of European Churches (...) even from the beginning had accompanied and encouraged the great adventure of the European construction", "Europe can count on your (he refers to the religious leaders reunited at Sibiu in 2007) contribution for overcoming the divisions and for acquiring the desired unity in diversity, or, for re-echoing an expression frequently used in the ecumenical language, the reconciled diversity"[29]. In this

manner, the discourse on the interreligious dialogue and in the same time the institutional support, mostly after 1994 are part of the Commission's effort to create/produce the conditions for an alternative reality to that of "the clash of civilizations"[30], namely to produce a "scenography" for its own discourse.

The second image of transnational religion that can be distilled from Mr. Barroso's discourse has some references to the terrorism issue. Thus, in an equal manner the president mentions "the fanatics" that "invocated religion in order to justify their acts"[31]. Therefore, the president of the European Commission sees the meeting with the religious leaders as "part of a democratic answer against terror". Such a discourse marches on two formulas: "unity in diversity" and "intercultural dialogue" as an effort to illustrate the democratic and peaceful solutions that Europe, this "common home that we are building" to balance against "the falseness and aridity of the terrorists' own miserable world view". Two other aspects can be draw out of Mr. Barroso's speech: the decision to persuade that is not religion the real motivation of terrorist activities, and the determination to promote a discourse which favors the cleavage between "us" and "them" in order to avoid a discourse built on the distinction between "us" and "you", a dramatic change of attitude if one keeps in mind that the "us" comprises this time religion too. The explanation for this attitude lies in the need to emphasize the functionality of the peaceful dimension of religion for the European ongoing project.

The two images are complementary discursive constructions that prove a certain coherence. The strategy is that of a comparison between the positive transnationalisation of religion (the dialogue with the religious leaders and the interreligious dialogue) and negative transnationalisation of a false religion (terrorism). The former is created and inculcated in order to spoil the latter: the good transnationalisation of the true religion is the main weapon against the bad transnationalisation of the false religion[32].

The European Parliament's position on transnational religion doesn't differ very much in the essential aspects from that of the European Commission as it also marches on ideas such as "the intercultural dialogue", "the cooperation, the partnership and the mutual respect between cultures and religions"[33]. As Sara Silvestri notices the European Parliament focuses more than the Commission on human rights, and particularly on the freedom of religion.

Without making direct references to the concept of "transnational religion", a study written by the Commission for "Civil liberties, justice and internal affairs" of the European Parliament, from Mai 2007, called « L'islam dans l'Union européenne. Quel enjeu pour l'avenir ? », proposed a discourse partially different from the above mentioned constancy, mostly due to the emphasis on the overtones and the concrete solutions advanced, and less to the attitude or tonality which follows the same coordinates: dialogue – integration. The differences emanate from the nature of the document, which is a study and not a speech, yet representing under some aspects the position of the European Parliament. Thus, the analysis mentions the dynamic of Islam "from a religion of the immigrants to a religion integrated into the European reality"[34]. The same

document operates the distinction between "European Islam" and "world Islam"; without directly assimilating the latter with terrorism, it mentions some of its noxious effects over the former ("European Islam continues to be affected by the dynamic of world/international Islam"[35]). Anyhow, through this study the Parliament made an attempt to dissociate oneself from the rhetoric frozen within the anti-terrorist paradigm, particularly by using a different vocabulary: the study hardly mentions "terrorism", but "some groups how call for an armed struggle against the West and its ideas or against the Muslim powers that they see as oppressive". Furthermore, the study tries to downplay the threat: "these groups (...) are small" and "in the end, most of their actions have a non-European target", "the causes for these problems can be found, most of the time out of Europe"[36]. Doubtless, the aim of the analyzed document is to avoid to "stigmatize the Muslims" and eventually their answer to stigmatization: the repulsion towards Europe. Herewith the strategy marches on the effort to break the monopoly of the security paradigm an to by-pass the classification of the issue as exclusively religious, in order to focus on the socio-economic aspects of the Muslim presence in Europe, a vocabulary far more familiar for the European institutions. Sara Silvestri noticed the fact that the differences between the two European institutions have their source in the different voices they represent, one the voice of the political compromise, of diplomacy (the Commission) and the other the voice of the people, far more open to debate (the Parliament)[37]. Yet, concerning the aims of "the scenography" for both discourses, there is no major difference between the two: the same effort to invalidate the "clash of civilizations", the emphasis on considering an error to make religion responsible for the terrorist attacks and the promotion of the image of an European Union open towards the collaboration with religions and the affirmation of a positive transnationalisation.

Conclusions

The two institutions' discursive attitude regarding the transnational manifestation of religion have the aim to produce the adequate conditions for contradicting the discourse about the clash of civilizations. In constructing this "scenography" the two enunciators do not ignore the pre-discursive reality but use it as a departing point during the argumentation: terrorism and the European answer to it – the intercultural and interreligious dialogue – are the two basic elements of the discourse. Thus, the effort to alter the pre-discursive reality relies mostly on mechanisms such as: the comparison/opposition, the (re)definition of concepts; in fact, the generic scene and the scenography aren't two different stories, but rather two different manners of telling the same story.

A simple comparison between the two institutions' discursive position illustrates the fact that similarities are far more obvious and important than the differences, in terms of interests, discursive strategies, key concepts, spatial and temporal contexts. The different nature of the two voices, as Sara Silvestri observed, is toned down by the supranational commitment as the first characteristic of an ongoing discursive community. The real problem is in the manner in which supranationalism is representative for the European Union

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[1] Scott M. Thomas, "Taking Religious and Cultural Pluralism Seriously", *Religion in International Relations. The Return From Exile*, ed. Fabio Petito, Pavlos Hatzopoulos, Palgrave Macmillan, New York, 2003, pp. 21-53.

[2] See for example, Jurgen Habermas, *Sfera publică şi transformarea ei structurală: studiu asupra unei categorii a societăţii burgheze,* COMUNICARE.RO, Bucureşti, 2005.

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[5] *Religion in International Relations. The Return from Exile,* ed. Pavlos Hatzopoulos, Fabio Petito, Palgrave Macmillan, New York, 2003; Jonathan Fox, Shmuel Sandler, *Bringing Religion Into International Relations,* Palgrave Macmillan, New York, 2004.

[6] For mentioning just some authors, Olivier Roy, *The Failure of Political Islam*, I.B. Tauris, London, 1994; Gilles Kepel, *Jihad. The Trail of Political Islam*, I.B. Tauris, London, 2002; *Radical Islam and International Security. Challenges and Responses*, ed. Hillel Frisch and Efrain Inbar, Routledge, New York, 2008; Ekaterina Stepanova, *Terrorism in Asymetrical Conflict. Ideological and Structural Aspects*, Oxford University Press, New York, 2008.

[7] Some examples in this direction are *Religion, the missing dimension of statecraft,* ed. Douglas Johnston and Cynthia Sampson, Oxford University Press, New York, 1994; *Faith-Based Diplomacy. Trumping Realpolitik,* ed. Douglas Johnston, Oxford University Press, New York, 2003; Madeleine Albright, *Puternicul şi Atotputernicul. Reflecţii asupra puterii, Divinităţii şi relaţiilor internaţionale*, Institutul European, Iaşi, 2009.

[8] Nancy Fraser, "Transnationalizing the Public Sphere", source: http://republicart.net/disc/publicum/fraser01_en.pdf.

[9] *Migration: A New Perspective. Building Global Governance*, Bertrand Badie, Rony Brauman, Emmanuel Decaux, Guillaume Devin, Catherine Wihtol de Wenden, Éditions La Découverte, Paris, 2008, source: http://www.ceri-sciencespo.com/ressource/migration.pdf.

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[12] Giorgio Shani, « Towards a De-secularised Transnational Civil Society ? Transnational Religious Actors and International Relations », source: http://turin.sgir.eu/uploads/Shani-sgir_2007_%28shani%29.pdf, March 10, 2011.

[13] *Ibidem.*

[14] Jeffrey Haynes, "Transnational Religious Actors and International Politics", in *Third World Quarterly*, 2001, 22, pp.143-158.

[15] Idem, "Causes and Consequences of Transnational Religious Soft Power", source: http://saopaulo2011.ipsa.org/sites/default/files/papers/paper-1000.pdf, February 20, 2011. See

also George Weigel, "World Order: What Catholics Forgot", in *First Things*, May 2004, source: http://www.firstthings.com/article/2007/06/world-order-what-catholics-forgot-37, March 10, 2011.; Prodromos Yannas, "The Soft Power of the Ecumenical Patriarchate", in *Mediterranean Quarterly*, 2009, 20, pp. 77-93.

[16] Michel Foucault, *Arheologia cunoaşterii,* Univers, Bucureşti, 1999, pp.133-147.

[17] Dominique Maingueneau, *Analiza textelor de comunicare,* Institutul European, Iaşi, 2007, pp.49, 65 and 104. See also Dominique Maingueneau, "Analysing self-constituting discourses", in *Discourse studies*, 1999, 1, pp.183-199, the author defines "discursive community" as a community structured by the discourse, produced and promoted by it; "the generic scene" gives roles to the actors, establishes the place, the moment and the instrument through which the discourse is produced and re-produced; "the scenography" derives from the choices made by those who produce the discourse, "scenography" is a construction, while "the generic scene" is a given.

[18] Kenneth Houston, "The Logic of Structured Dialogue between Religious Associations and the Institutions of the European Union", in *Religion, State and Society*, 2009, 37, p.213. The author mentions a declaration from 1973.

[19] *Ibidem*, p. 214.

[20] For following the evolution of the "regulation process" see Sara Silvestri, « Islam and Religion in the EU Political System », in *West European Politics*, 2009, 32, pp.1212-1239 ; Philip Schlesinger, François Foret, « Political roof and sacred canopy? Religion and the EU Constitution », in *European Journal of Social Theory*, 2006, 9; Bérengère Massignon, "Les relations des organismes européens religieux et humanistes avec les institutions de l'Union européenne : logiques nationales et confessionnelles et dynamiques d'européanisation », in *Croyances religieuses, morales et éthiques dans le processus de construction européenne*, source : http://www.ladocumentationfrancaise.fr/rapports-publics/024000363/index.shtml, March 15, 2011; Thomas Jansen, „Europe and Religions: the Dialogue between the European Commission and Churches or Religious Communities", in *Social Compass,* 2000, 47, pp.103-112; Alfredo Canavero, „Europe, Eglises et organisations religieuses", in *Cultures religieuses, Eglises et Europe. Actes du Colloque de Lyon, 8-10 juin 2006*, Parole et Silence, Lyon, 2008.

[21] Thomas Jansen, art. cit., p.105.

[22] *Citoyenneté. Droits et Devoirs. Société civile. Réflexions et contributions des religions et des humanismes*, Commission Européenne, Cellule de Prospective, source : http://ec.europa.eu/dgs/policy_advisers/archives/index_en.htm, October 23, 2008.

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[26] Thomas Diez, « Europe as a Discursive Battleground : Discourse Analysis and European Integration Studies », in *Cooperation and Conflict*, 2001, 36, p.19.

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[28] « Président Barroso meets leading dignitaries of the three monotheistic religions. President Barroso's speech », May 5, 2008, source: http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/docs/events/speech_20080505_fr.pdf, March 12, 2011.

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[31] José Manuel Barroso, « Talking against Terror : the Role of Churches and Religions in Europe », Meeting with religious leaders, Brussels, 12 July 2005, source: http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/docs/events/barroso_speech_20050712.pdf, March 12, 2011; « Président Barroso rencontre les leaders religieux européens », Bruxelles, le 11 Juillet 2005, source: http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/docs/events/press_release_fr_20050712.pdf, March 12, 2011.

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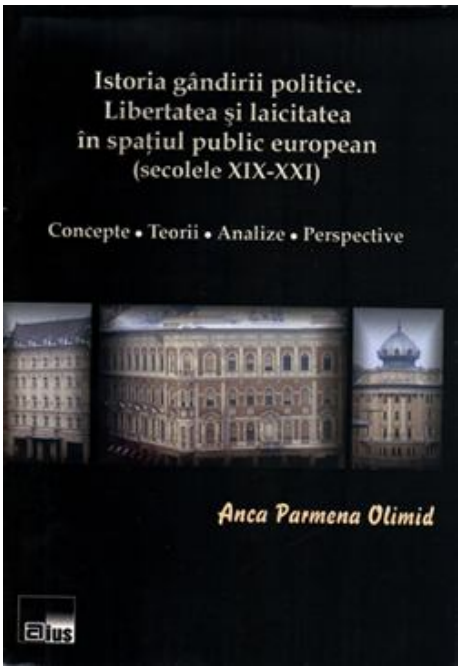

Anca Parmena Olimid, *Istoria gândirii politice. Libertatea și laicitatea în spațiul public european (secolele XIX-XXI)*, Craiova, Aius Publishing House, 2011,
ISBN 978-606-562-098-8,
252 pages.

Since the terrorist attacks of September 11, 2001, freedom of religion and laicity have played a crucial role in the history of political ideas. In a well honored intellectual initiative, Aius University Press launched Anca Parmena Olimid's volume on liberty and laicity in the middle of 2011.

Offering a comparative perspective on the status of freedom of religion and laicity in political and philosophical theory, this book was intended primarily as a monographic work, because there has always been a particular relation between the two in past two centuries in Europe's long road.

The product of a postdoctoral scholarship among the EU strategic grant POSDRU 61968 (2009) accomplished at Craiova University (2010-2013), the present work says relatively little about political actors, events or consequences. Adopting the comparative analysis through a short-social and historical strategy, the book explores the trajectory of the concepts of liberty and laicity in modern and contemporary political thought.

Any attempt to explain religious sphere and laicity's areas cannot focus solely on historical perspective.

The issue of the political and spiritual transformation in the European public sphere as questions about "new christianism", new European social doctrine, regime of cults, the relationship between the three liberties (political liberty, religious liberty, and intellectual liberty, positive and negative liberty, the new European identity, multiculturalism as an expression of religious pluralism, a new theory on human rights, ethno-cultural status of minorities in multiethnic societies, law on religion and "political market", and more have created a great deal of confusions, dissensions and controversy.

What unites in a complex "com-union" this worth reading book is the free exercise of religious liberty and laicity as a genuine foundation of a perfect equilibrium in the European public sphere. In a remarkable overstatement, Professor Olimid posits that participation and liberty

designed the *only veridical frame for legitimacy of the institutional architecture in the current crisis of identity*. The author also attempts to demonstrate that multiculturalism and pluralism generated over the last two centuries, and especially over the last twenty years, an original, but controversial mix of political thought, historical perspective, and philosophical interpretations that lead to the formulation of a rather eclectic architecture for the European public sphere.

Reconstructing the subtitle of the book, all four chapters generate a new working hypothesis surrounding the innovations of the two concepts in the XIXth and XXth centuries. Moreover, first six sections focus on six well-known theorists: Saint Simon, August Comte, John Stuart Mill, Friedrich August Hayek, Karl Raimund Popper, and Isaiah Berlin.

The author admits that she feels closer to Popper's and Berlin's theories which reinforced the theoretical foundations of liberty as a reality on two levels (chapter 2).

Turning to other well-known liberals of our times, Professor Olimid explains how Jean Dominique Durand and Francis Messner allowed the conceptualization of the relationship between civic involvement and Christian democracy through: the post-functional theory of the European spiritual integration, theory of a new Christian-democrat politics, the foundations of the liberal Catholicism and social normativity (chapter 4).

As the author argues, in this direction, the issue of the institutional image deficit is inevitably accompanied by the analysis of the theory of liberal state as the first level of the establishment of an institutional pluralism in European Union (chapter 4).

In search of a new liberal foundation for European dichotomist sphere, the author turns to the thesis of the separation of Chruch and State as basis for constitutional theory of laicity. From recent data, Professor Olimid highlights four main domains of the present research:

(1) to outline the main understandings of "individual liberty", "theory of citizenship", "constitutional theories of ecclesiastic institutions", "religious market", and "religious market" developed over the last twenty years;

(2) to argue that the agenda of religious politics develop a "determinant effect" on state neutrality in the context of the theory of rational choice and multiculturalism;

(3) to indicate the main patterns of the new theory of liberal state between the "political market" and "religious market" in connection with others types of social, political, legal and cultural representation.

In the same context, a finer analysis of the political and religious phenomena in contemporary Europe would point a more nuanced perception of the theory of religious freedom. Nevertheless, the overall European spiritual reality has embodied a unique character. Despite its unilateral view on state neutrality and rights and obligations of ecclesiastic institutions, *Istoria gândirii politicii. Libertatea şi laicitatea în spaţiul public european (secolele XIX-XXI)* is an

exciting and stimulating book that students of politics, philosophy or law should read.

Moreover, the purpose of this work is to contribute to an enrichment of the knowledge concerning the normative basis of liberal multiculturalism, the theoretic analysis of societal fundaments, the interpretations of the principles of religious liberty and the relationship between stat-citizen-society of the past two decades. This volume is not only an introduction in the analysis of the current European spiritual reality, but also an inter-disciplinary study accessible to both students, researchers, and all interested.

Aurel PIŢURCĂ