





UNIVERSITY OF CRAIOVA  
FACULTY OF SOCIAL SCIENCES  
POLITICAL SCIENCES SPECIALIZATION

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**R** EVISTA DE ȘTIINȚE POLITICE  
**R** EVUE DES SCIENCES POLITIQUES

**No. 35 • 2012**



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**ISSN: 1584-224X**

<http://cis01.central.ucv.ro/revistadestiintepolitice/>

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## ORIGINAL PAPER

Mihaela Camelia BUZATU

### Aspects of the historiographical stages of 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 16<sup>th</sup>, 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 20<sup>th</sup> 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<sup>1</sup> 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”<sup>2</sup>. 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 10<sup>th</sup>/11<sup>th</sup> of February 1938 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 Călinescu<sup>3</sup>, 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 10<sup>th</sup>, 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<sup>4</sup>. 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 4<sup>th</sup>, 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<sup>5</sup>. 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”<sup>6</sup>.

Observing the provisions of this Agreement, the Saxons of Transylvania had filed requests for enrolment in the single-party<sup>7</sup>, 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<sup>8</sup>. The same document stated, however, the fact that “their action is going to be checked in this political body<sup>9</sup>, 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<sup>10</sup>; on January 14<sup>th</sup>, 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<sup>11</sup>. A new round of negotiations was held on January 17<sup>th</sup>, 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.”<sup>12</sup> Following the conclusion of enrolment agreements in the single-party of the two most important Romanian minorities, the newspaper “Romania” printed on January 21<sup>st</sup>, 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”<sup>13</sup>. 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<sup>14</sup>, 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<sup>15</sup>, and in the National Council of F.R.N. 9 representatives of this minority were sent<sup>16</sup>.

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.”<sup>17</sup> 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<sup>18</sup>: “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”<sup>19</sup>.

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 10<sup>th</sup>, 1939, of an agreement<sup>20</sup> 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<sup>21</sup>. Following this Agreement, three Bulgarian representatives were appointed in the Superior National Council of F.R.N. - Enciu Nicolof (agriculture and manual labour category)<sup>22</sup>, Gh. Toporov and Hristu Tancov (both in trade and industry category)<sup>23</sup>.

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)<sup>24</sup>; Poles, Russians and Turks (the latter sent in the Superior National Council Selim Abdulahim)<sup>25</sup>. 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<sup>26</sup>.

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 21<sup>st</sup>, 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”<sup>27</sup>; in the same document it was also stated that, if they will not be allowed to enrol, “Jews will suffer a great disappointment”<sup>28</sup>. However, there were Jews who, individually or through collective lists of the institutions where they developed their activity, joined the Front<sup>29</sup>; 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 20<sup>th</sup>, 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”<sup>30</sup>.

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.

**Notes:**

<sup>1</sup> For an overview image on the national minorities enrolment in the National Renaissance Front, see also Petre Țurlea, *Partidul unui rege: Frontul Renașterii Naționale*, București, Editura Enciclopedică, 2006, p. 85-103 și Radu Florian Bruja, *Carol al II-lea și partidul unic: Frontul Renașterii Naționale*, Iași, Editura Junimea, 2006, p. 71-75.

<sup>2</sup> Serviciul Arhivelor Naționale Istorice Centrale (S.A.N.I.C.), fund Frontul Renașterii Naționale, dossier 1/1939, f. 10.

<sup>3</sup> Petre Țurlea, *op. cit.*, p. 86.

<sup>4</sup> *Ibidem*, p. 87.

<sup>5</sup> 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 Renașterii Naționale fund, dossier 20/1939-1940, f. 22, 24-25.); see also Constantin Argetoianu, *Însemnări zilnice*, vol. VI, 1 ianuarie – 30 iunie 1939, ediție de Stelian Neagoe, București, Editura Machiavelli, 2003, p. 67.

<sup>6</sup> „România” and „Universul” from January 12<sup>th</sup>, 1939, apud Petre Țurlea, *op. cit.*, p. 88; see also Constantin Argetoianu, *op. cit.*, p. 28.

<sup>7</sup> In an informative note of the Legion of Gendarmes Târnava Mică, from December 24<sup>th</sup>, 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).

<sup>8</sup> *Ibidem*, dossier 2/1939, f. 55.

<sup>9</sup> *Ibidem*.

<sup>10</sup> Negotiations for the accession of Hungarians to the National Renaissance Front started on January 7<sup>th</sup>, 1939, in Cluj, taking place in the royal residential palace; to discussions participated Silviu Dragomir, bishop of the Reformed Church – János Vásárhelyi, bishop of the United Church – B. Varga, bishop of the Roman-Catholic Church – Aron Márton, Nicolae Banffy and Pál Szasz (Petre Țurlea, *op. cit.*, p. 90).

<sup>11</sup> Livia Dandara, *România în vâltoarea anului 1939*, București, Editura Științifică și Enciclopedică, 1985, p. 117.

<sup>12</sup> *Ibidem*.

<sup>13</sup> „Romania” from January 21<sup>st</sup>, 1939, p. 5.

<sup>14</sup> Constantin Argetoianu, *op. cit.*, p. 46.

<sup>15</sup> S.A.N.I.C., fund Frontul Renașterii Naționale, dossier 20/1939-1940, f. 22.

<sup>16</sup> „Romania” from February 8<sup>th</sup>, 1939, p. 5.

<sup>17</sup> S.A.N.I.C., fund Inspectoratul General al Jandarmeriei, dossier 2/1939, f. 54.

<sup>18</sup> Onisifor Ghibu, *Politica religioasă și minoritară a României* (reedited edition prime din 1940), ediție îngrijită de Mihai O. Ghibu, București, Editura Albatros, 2003, p. 758-759.

<sup>19</sup> S.A.N.I.C., fund Inspectoratul General al Jandarmeriei, dossier 6/1940, f. 2.

<sup>20</sup> 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).

<sup>21</sup> Petre Țurlea, *op. cit.*, p. 97-98; see also „Romania” from February 15<sup>th</sup>, 1939, p. 5.

<sup>22</sup> S.A.N.I.C., fund Frontul Renașterii Naționale, dossier 20/1939-1940, f. 24.

<sup>23</sup> *Ibidem*, f. 25; see also Livia Dandara, *op. cit.*, p. 138; Petre Țurlea, *op. cit.*, p. 98.

<sup>24</sup> Radu Florian Bruja, *op. cit.*, p. 74.

<sup>25</sup> Petre Țurlea, *op. cit.*, p. 99.

<sup>26</sup> Radu Florian Bruja, *op. cit.*, p. 74.

<sup>27</sup> S.A.N.I.C., fund Direcția Generală a Poliției, dossier 209/1938, f. 8.

<sup>28</sup> *Ibidem*, see also Petre Țurlea, *op. cit.*, p. 100.

<sup>29</sup> Radu Florian Bruja, *op. cit.*, p. 74-75.

<sup>30</sup> C.I.C. Brătianu, Carol II, Ion Antonescu, *Amintiri. Documente. Corespondență*, cuvânt înainte, note, îngrijire de ediție, indici de Ion Ardeleanu, București, Editura Forum SRL, 1992, p. 78; see also Petre Țurlea, *op. cit.*, p. 102-103.

## ORIGINAL PAPER

Veronica ANGHEL

### The Challenges of Liberal Democracy: a study of the reconversion of Romanian communist elites in transition to democracy

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**Abstract:** *Democracy as a form of government enjoys unprecedented, near-universal legitimacy in the world today. Contrary to some recent views which followed the social and political turmoil of 2011/2 professing the new global proletariat and the class struggle of the “99% against the 1%”, it is irresponsible to divert our trust from the superiority of liberal democracy. The movements of 2011 must be understood as a further step in the universal consolidation of the legitimacy of liberal democracy and not as protest against it. The moral responsibility of researchers in post-communist countries is to warn against all extremists and apocalyptic views on the fall of capitalism, of the advanced democracies, of the Western banks and the EU and revival of the “class struggle” rhetoric.*

*Looking at how in practice democracy-building is a permanent process in which numerous factors and actors are involved, we need to further supplement our knowledge of how democratic regimes come into being and why the moment of their birth and subsequent measures for consolidation define the many differing regime-products. What lessons can still be drawn from the year 1989 and how do they apply now? The path to democracy followed by the countries in Eastern Europe proves how different types of authoritarian regimes set the context for subsequent processes of democratization. (Stepan, 1986). As the need to analyze the relations between power and democracy and the way in which political power is practiced within states increases, revisiting the study of political elites in parallel with that of democratization becomes paramount. The present study will tackle these by casting an eye on Romania’s “unfinished revolution”(Mark, 2010) and especially over the reconversion of communist elites which cloaked themselves in the aura of modernity, modified by cultural difference.*

**Keywords:** *democracy, Romania, communism, elites, transition.*

### Introduction and Methodology

Critical discourses against the functioning of democratic institutions are flourishing both in older and newer European democracies. Every democracy gives rise to criticism. The democratic ideal now reigns unchallenged, but regimes claiming to be democratic come in for vigorous criticism almost everywhere.<sup>1</sup> The big problem democratic societies seem to face at this time is the lack of confidence of citizens in political elites and institutions. Recently, we have witnessed worldwide demonstrations which, although we cannot discuss all in the same terms, demand that they be recognised as a global vindication of *L'Homme révolté*. For a contemporary legitimization, *Time Magazine* has also named "The Protester" as Person of the year. However, contrary to some recent views which followed the social and political turmoil of 2011/2, professing the new global proletariat and the class struggle of the "99% against the 1%", it is irresponsible to divert our trust from the superiority of liberal democracy. For researchers in Central and Eastern Europe it is an even greater responsibility to constantly warn against the traps of the pseudo-humanist communist doctrine. The gap between the society and the elites that govern it must be understood in terms which exclude the rhetoric of "class struggle".

The present paper aims at revisiting the study of political elites in parallel with that of democratization with a special overview of the effects of the reconverted communist elites on the current relation between the society and its political leaders.

As such, the thesis that will be advanced considers the action of elites as the underlying mechanism (or process) that promotes, inhibits, or reverses democratization and the circumstances of a *consensually united elite* as vital for the possibility of a democratic outcome. In brief, we argue that the elites are the decisive factor in the process of democratization. They ensure the eventual success or failure of the construction of a democratic society. In the case of Romania, not having a negotiated revolution completed successfully meant a slow start to the democratization process and, as such, an imperfect democratic stabilisation.

The birth of Romanian democracy can be referred to as to an "unfinished revolution" mostly because of the reconversion of communist elites in key decision making positions which led to a slower democratization process. However, the trust in the essence of the post-communist institutions these elites created and in the need for the existence of representative political bodies must be supported by all means. Twenty years after the fall of communism in Eastern Europe, the early theories put forward by Ken Jowitt, who add to the analysis of the 1989 revolutions of Chirot, Ackerman, Eisenstadt, which predicted a slow and far from smooth development of liberal democratic governments, seem to have been, to a great extent, vindicated. The way in which the society was shaped before the revolutions and the manner in which elites acted at the moment of the transition set the path for the different democratization of these countries.

However, whatever the starting point and no matter how slow democratic development has taken place, criticism and public debate should be carefully directed towards the improvement of democratic institutions; but in a disillusioned society, this must be carefully and responsibly done, so as not to undermine the non negotiable essence of liberal democracy, democratic institutions and political governing bodies.

We will take for granted that the present is always linked to the past by some sort of inextricable wires. History is to be understood as a laboratory of the present and not just the way in which we light up the past and temporarily glance at its stories. Thus, by combining the historian's and the political scientist's research tools and perspectives, we have to find which are those inextricable wires and improve our understanding of the present.

The structure of this analysis encompasses the *rationale* for a comparative study of 1989 transitional elites by integrating the Romanian case into the larger Central and Eastern European region; a theoretical exploration of the *relationships between the terms liberal*

*democracy, elites, transition and society, an outline of the transition process and a statistical identification of the reconverted communist elites, an overview of the long term effects and a concluding support for constructive criticism, refraining from radicalism and the rhetoric which undermines the trust in fundamental democratic institutions (Parliament, parties, representative political class, elites etc).*

We will begin this research from a political theory point of view and briefly evaluate the existing conceptual framework of elite theories and of the steps leading to a nation's democratization. The link between these two concepts will be assessed and the results put forward. We will also define the moment of crisis when a certain group of elites takes hold of the power and see how through their actions they are the only ones who decide the future of their nation and if (and to what extent) they establish the foundations of democracy. In the next stage we will proceed to the analysis of the Romanian model (the reconversion of communist elites) which constitutes a good example for the study of the role and functionality of elites for the purpose of establishing a durable democratic state based on the rule of law. At this stage, we will also make the necessary comparisons with the other new democracies of 1989.

Methodologically, we will adhere to instruments related to rational choice theory since we will look at human behaviours as the result of rational individuals seeking to maximize their utility functions. The case of Romanian post-communist elites appears to fit the assumption of this style of analysis which assumes "that preferences over outcomes are not other-regarding, but rather are self-regarding. . . . Rational actors, in other words, care about their own income and wages relative to what they can do, not relative to what others receive."<sup>2</sup> However, we will admit that this ideal type of research school is not sufficient and as such we will enhance our analysis by also looking at types and clusters of attitudes. This will relate us to some extent to the culturalist approach in political sciences since we will also comment upon some patterns of common socialization in the Romanian communist and post-communist society and look at the shared understanding of politics connected to the period which makes our interest. Certain comparisons with other countries in Central and Eastern Europe with whom Romania has shared the starting point of the democratization process will also be made.

By the end of this research essay, it will have proven clear that we should subscribe to the academic endeavour of understanding how nations become politically stable and democratic and provide this topic with a central goal of political sciences and consider it a matter of obvious concern to policymakers around the world.

### **Theoretical Framework**

The three major proponents of classical elite theory – Mosca, Pareto and Michels – have provided a political theory of elites that they believed explains the nature and dynamics of power in modern society. Best exemplified in Mosca's characterization of the ruling class as the governing elite of full-time politicians in charge of the state apparatus and society in general, classical elite theory has argued in favour of a theory based on a conceptualization centered in bureaucratic organization, particularly in the sphere of politics, such that power, according to their view, resides in government and the governing elite.<sup>3</sup> Using the classical elite theories to study the report between the powerful and the powerless in society as being in favour of the elites, leads us to implications that the prospects for change and social transformation coming from the masses is not acceptable as independently possible.

Not wanting to dismiss this point, I would continue with a brief analysis regarding the power status of elites in classic theory. Elite theory grew up in opposition to Marxist class theory and is, as mentioned above, associated mainly with the names of German sociologist Robert Michels and the two Italian political sociologists Gaetano Mosca and Vilfredo Pareto. Both elite

and class elite theory argue that politics are dominated by a small number of people, but whereas Marxists argue that the ruling elite or ruling class reproduces itself by passing on its privileges and power to its children, elite theory claims that elites cannot perpetuate themselves in the long run. We will accept the latter. Elites change and circulate because they inevitably decay after a time in power, to be replaced by a new, more successful, vigorous elite. New elite groups rise to the top because of their superior political skills of cunning, force or popular appeal. There are different versions of elite theory, but all claim that mass democracy is impossible because a small group will always dominate politics. Michels casts his theory as the "Iron Law of Oligarchy", which states that minorities always rule organizations.<sup>4</sup>

Accepting the claims of elite theorists is a difficult, terrifying perspective. Once you admit that in any given situation there will always be those few who will rule over a majority you ask yourself if democracy – *the rule of the people* – is still possible, if the two frameworks can exist simultaneously within a society. Our discussion throughout this study is to acknowledge that it is fundamentally the elites who have the power to democratize a nation. Although some elites are incompatible with democracy, it is nevertheless they who are the only ones capable of laying the foundations of a liberal democracy.

Pareto, for example, viewed the capacity to exploit others as having been distributed disproportionately amongst elites throughout Western history. He also believed that the slow movement towards democracy and meritocracy which had taken place during the course of the nineteenth and even twentieth centuries had done little to change this. Democratic political systems (or *plutodemocracies* as he called them) were failing to reflect the will of the people because democratic elections merely provided mechanism for the co-option of new, more capable personnel into the political and economic strata.<sup>5</sup> Nevertheless, even though we acknowledge that there is just a hand full of people at the top of the decision-making process and that they are capable of crippling the future of the people they lead, they are also the only ones who have the ability to lay the foundations of liberal democracy.

The works of John Higley in the studies of elites is most representative for our case. Higley asserts that the sine qua non of liberal democracy is a well-articulated, internally accommodative, and relatively secure political elite – what we call a *consensually united elite*. No liberal democracy has ever emerged without the formation of such an elite.<sup>6</sup>

Another scholar whose work we must mention as an important reference is Mattei Dogan, the founder of the Research Committee on Political Elites of the International Political Science Association. We will again make use of his work when addressing the issue of crisis as the birth certificate of a new regime.

### **Crisis Theories and the Birth of Democracy**

Definitions of democracy, explanation of different paths towards democracy for different nations, the conditions for democracy, the different "shades" of democracy...these all make the main scope of political science and lead to extended studies and debates. It is no longer a question if democracy, as a form of government is desirable, we accept that it is. Nevertheless, it remains a most complex point of discussion. Its organic and transforming nature leads to continuing studies of its many shapes as well as to a strive to continuously promote and maintain such a state of governing.

All democracies have a starting point, ground 0. As such, 'democracy' is best understood not as a predetermined end-state, but as a long-term and somewhat open-ended outcome, not just as a feasible equilibrium but as a socially desirable and imaginary future. This constructedness means that there can be no single 'cook book' recipe for democracy applicable to all times and places.<sup>7</sup> While it is not our time and place to deliver full meditations and analysis of

scholarly literature on the subject of democracy, we will continue to briefly go through the concepts we will employ on this topic and see the extent to which they apply to the formation of democratic Romania, from the starting point of democratization to the conditions that made it up until today an “immature” democracy.

We might say that a crisis is the birth certificate of a new regime. Most political regimes, either authoritarian or democratic, are born following a spectacular crisis. Such a predicament implies considerable confrontations between antagonistic political elites and produces changes in their structure and way of functioning which eventually leads to a modification of the regime or to its severe alteration. Or, as Dogan and Higley put it “the theories that ignore the cardinal role that crises and elites play in the birth of regimes have limited validity.”<sup>8</sup>

Before getting to our case study, let us see what constitutes a *crisis*. We will admit that a crisis is a short series of events which damages the existing stability of a regime in an analyzable time span – weeks or years. So, what distinguishes a crisis from a non-crisis viewed from the perspective of a state is that a crisis is a situation with three necessary and sufficient conditions deriving from a change in its external or internal environment. All three conditions are perceptions held by the highest level decision-makers: (a) threat to basic values, with a simultaneous or subsequent (b) high probability of involvement in military hostilities and the awareness of (c) finite time for response to the external value threat.<sup>9</sup> In dealing with the analysis of a crisis and its subsequent management by the decision-makers, it would be a dangerous mistake not to address firstly the root-causes which led to conflict. As such, the “pre-crisis” situation is one to which the community might not wish to return. If post crisis reconstruction and reintegration efforts address the root-causes, they should not only improve the socio-economic situation of the affected people but also ensure that the pre-crisis situation will not return.<sup>10</sup> Such a moment, which we will consider the defining moment on the path of a nation towards democratization, we will continue to analyse in our investigation of the Romanian revolution, the pre-crisis situation with regard to the society - governing bodies relation and the reconversion of communist elites in the post-communist society.

In Eastern Europe, as the “path-dependence” school of political theory has fittingly proven, the way in which the “crisis moment” has been managed makes the difference in the outcome of the post-communist restructuring. Whether the transition has been made through negotiation, *coup*, popular revolt etc., it has given the context for the reshaping of the new state. The concept of “path dependence” appeals as a label for the simplest of policy dynamics: that past policy decisions act as a constraint on the options available to current policy makers.<sup>11</sup> In the cases where we have had a “negotiated revolution” completed successfully, there has been a relative stabilisation of democracy. Where this model failed or was inapplicable because of the considerable disproportional power status between divergent elites involved in the moment of transition, the democratization process has been (and continues to be!) slow and imperfect. This is the case of post-communist Romania.

### **The reconversion of Romanian communist elites**

There are two dimensions we can assume as guiding in this analysis of the transition to democracy in Romania. On the one hand, we have the transitional elites, who were communist elites incapable to offer alternatives to their policies in the early transitional phases. On the other hand, we deal with civil society, which in Romania was underdeveloped or fragile, to say the least. In this context, the true nature of liberal democracy continued to be misunderstood. We will continue to deal with these two units of analysis and assess the dynamics between them.

Elite settlements are relatively rare events in which warring national elite factions suddenly and deliberately reorganize their relations by negotiating compromises on their most

basic disagreements.<sup>12</sup> In Romania, there were no political actors who benefited from the sort of understanding of liberal democracy that would make them overtly negotiate a peaceful elite settlement. Unlike elsewhere in Central-Eastern Europe, the fall of communism in Romania was particularly violent: an estimated 1,104 revolutionaries died. Furthermore, hundreds of their bodies went missing, probably destroyed by the Securitate.<sup>13</sup>

As many observers of the 1989 revolutions have noticed, the relatively low level of violence in Central and Eastern European countries is evident in the fact that the old rulers, except in Romania, were pushed out in a bloodless way. They were rarely punished; few were tried. The ruling elite of these regimes (again with the exception of Romania) did not generally fight; they gave up, abdicating relatively easily. Many would certainly have tried to hold on to power had they been able to depend on Soviet tanks to support them.<sup>14</sup>

According to classic elite settlement theorists, elite settlements have two main consequences: they create patterns of open but peaceful competition, based on the "norm of restrained partisanship"<sup>15</sup> among all major elite factions and they transform unstable political regimes, in which irregular seizures of government executive power by force are frequent or widely expected occurrences, into stable regimes, in which forcible power seizures no longer occur and are not widely expected. However, Burton and Higley do admit that these changes in elite behaviour and regime operation do not guarantee the emergence of democratic politics.<sup>16</sup> Nevertheless, as the cases of Eastern Europe would exemplify, the inexistence of such negotiating behaviours leads to a slower development of democracy and requires other factors for the managing elite to change certain entrenched patterns of behaviour.

In brief, we will put forward some of the characteristics of the transitional elites in Romania. As in many other countries in the region, communists survived in large numbers within the political system. This fundamental characteristic has often led to a branding of the regime as "neocommunist", both within the country and from abroad. In scholarly analysis, Romania sits along with Albania, Belarus, Croatia Serbia and Ukraine as examples of how "holdover parties of power" from state socialism dominated politics and rode roughshod over their opponents during much or all of the 1990s, and acted only by changing communist for nationalist banners which ruled out any settlement.<sup>17</sup>

According to a report written for the Institute for the Investigation of Communist Crimes and the Memory of the Romanian Exile, of the 39 founding members of the Council of the National Salvation Front - the first transitional institution holding governing power - 11 people had held key offices in the communist party apparatus between 1945 and 1989.<sup>18</sup>

There are several reasons why this has happened. In 1989 -1990, in the political as well as in the economic, administrative and law enforcement fields there was practically no elite available to exchange. The return of emigrants and the arrival of specialists from the West could not satisfy the demand. In Romania, as in Bulgaria or the USSR, since the 1980s, the Communist Parties in power started to recruit heavily so as to try to encompass as much of the society as possible. After the 1989 revolution, the resultant power vacuum was not filled by opponents of communism but rather by lower-ranking *nomenklatura*, who formed the National Salvation Front (Frontul Salvării Naționale, or 'FSN'), a body that promised to guide Romania to its first free elections. As opposed to the "round-tables" between elites in Poland and Hungary, a two - day travesty of such a negotiation took place in Romania at the end of January 1990. On this occasion, relations were reorganized between the same elites who managed to blame only the leader, Ceaușescu, for all the wrongs in the society and the lower ranking communists, Ion Iliescu and Petre Roman, consolidated power.

The contradictions of these regimes explain some of the major characteristics of the civil society that developed within them and in this context it is essential to examine the processes

which became rooted under communism. At lower levels in the national administration, many of those who had often used the party as a social springboard before the fall of communism remained on their jobs in the new administration. Before 1990, they had executed the politics of the Communist Party, and now they did the same for the political powers which had established themselves since 1990, whatever their political color.<sup>19</sup>

As a result of the accumulation of power within the hands of the few mentioned, the transition in Romania was thus mostly guided by former middle- and lower-ranking members of the Communist Party, and this control both helped their successor party to victory at the first post-Communist elections and ensured that ex-Communist interests remained embedded within state bodies.

In this context, the true nature of liberal democracy continued to be misunderstood. Along with the survival of former communists at the top of the national administration, the endurance of mind-sets, practices and of the networks created within the society raises numerous problems for a successful transition to have suddenly take place. Or, to put it in the flavorful way of Timothy Garton Ash, "Perhaps the beginning of wisdom is to recognize that what communism left behind is an extraordinary mish-mash."<sup>20</sup>

According to statistics assessing the structure of state organisms at the time of transition, 74.2 percent of the members of the first Romanian government had also been former members of the *nomenklatura*. Of the 31 ministers, 23 had held prior to 1989 key positions in the structures of the communist parties or the communist state.<sup>21</sup> Moreover, according to other sources, more than a decade after the end of communism, 63 percent of the current political elite had held positions in the Communist Party prior to 1989.<sup>22</sup>

Another observation important to be made is that regarding the institutional framework which was used as the context for change in the early transitional phases. The changes of regime were made within the framework of existing political institutions and prevailing constitutions. Even the initial constitutional changes, including the most dramatic - the abolition of the monopoly of the Communist Party - were effected or ratified in the legislative frameworks of the preceding regimes, in the existing parliaments. There was no need to change the whole structure of government to create entirely new constitutional frameworks for this to be done. To no small degree, it was accomplished through processes prescribed by the existing constitutions, or by extra-parliamentary consultants later ratified by the parliament.<sup>23</sup>

As some scholarly typologies would suggest, in general, in post-communism, the political options were split between the political movements that later on transformed into political parties, reborn "historical parties" and reformed communist ones.<sup>24</sup> However, in Romania there had been no such democratic political movements prior to the fall of communism and no officially recognized reformed communist party. The ones who would have fitted the latter description opted to be considered as an anti-communist movement, but all they were was second-hand communist elites.

What is more, even in the following years of democracy building, the prominent parties, in order to cope with a practical lack of public policy options in major areas such as the economy, had little choice but to compete over operating 'styles,' rather than over substantive (ideologically based) programmatic alternatives.

As we have mentioned before, any analysis focusing exclusively on the negative effects of a lack of alternative to the enduring managerial structures in the aftermath of the fall of communism would prove limited. The other unit of analysis is the Romanian society and the legacy it had to deal with.

One typology for studying the social consequences of communist can be formulated under these broad headings: (1) legacies that flow from the tacit social contract between the

population and the state, (2) legacies that represent values, attitudes and behaviour that the state attempted to either instill or extirpate in the subject population and (3) the aftermath- that is, the unintended consequences of communist rule.<sup>25</sup>

People want radical transformation to occur peacefully in the shortest period of time without massive social costs and instability. Since this is not possible given the depth of social, political and economic transformation that is necessary to support a democratic civil society, people are growing impatient and believe that change is being blocked or delayed. The result is a high degree of alienation and anomie among people. The lack of ultimate values and ends reduces all social action to an instrumental level, especially action in the political system by elites. It is not surprising that crime, corruption, suicide rates and lack of adherence to governmental regulation are the accompaniments of the collapse of communist regimes.<sup>26</sup> Members of the post-communist power elite are among the big winners of the transition to capitalism in Central Europe. Some may accuse them, therefore, of being somewhat hypocritical, of demanding sacrifice from society while they enjoy the sunny side of post communism. Managers and technocrats can say very little to counter these accusations, but former dissident intellectuals have a credible defense against this kind of criticism. They can point to sacrifices already made during the late communist period. For this reason, former dissidents are invaluable to the new power bloc, since they can very legitimately ask that those who sat around the fleshpots of 'goulash communism', should now make sacrifices.<sup>27</sup> In Romania one cannot find a structured, organized dissident group to provide such services. And the few who can be identified have felt immediately after the changes in the 1990s what literature has coined as "disenchantment". It is the same feeling that bulks of the population have developed in the longer process of democratization.

This "reform fatigue" develops among the population of any country that is undergoing fundamental transformations. Many failed to adjust to the requirement of a new capitalist society, and many people had higher expectations than the reality turned out to be. As a result, disappointment, disenchantment and pessimism set in.<sup>28</sup> Connecting the two analyzed dimensions, the elites and the society in Romania, we can see how the two were on the whole unprepared to successfully transform the country in a short period of time into a consolidated, liberal democracy.

### Concluding Remarks

Making the connection with Pareto's classic theory, we can acknowledge that a revolution is above all a matter of elite transformation. The revolutions in Eastern Europe and particularly in Romania, should have brought on changes in government and a shift towards pluralist and democratic politics. For a long time, and to some, this is still not a closed chapter, many of these changes looked less decisive. According to one statistical study delivered yearly by Freedom House, Romania is still characterized as a fragile democracy.<sup>29</sup> We have tried to briefly state some of the reasons why both the transitional elites and the society have proved unable to secure thus far an unchallenged status of consolidated democracy. In the transitional phase, the Romanian case has proved to be a vindication of the hypothesis that the action of elites is the underlying mechanism (or process) that promotes, inhibits, or reverses democratization and that the circumstances of a *consensually united elite* are vital for the possibility of a democratic outcome. Since the conditions for such an elite settlement cannot be identified in the case of Romania, not having a negotiated revolution completed successfully meant a slow start to the democratization process and, as such, an imperfect democratic stabilisation.

Going beyond these considerations of recent history, the rationale for this revisiting of the subject of the transition to democracy from the perspective of the dynamics between elites and society has been more than explaining why the Romanian revolution can be considered an

unfinished one. It is also a case made for a different approach of the lack of trust in the democratic institutions and systems that are in place at the moment. Their imperfections and the need for continuous improvement is not a uniquely Romanian case. It is not even a specificity of Central and Eastern Europe. Recent years have shown that critical discourses against the functioning of democratic institutions are flourishing in older Western democracies. There is a responsibility for academics to speak against the diversion of trust in liberal democracy. The public rhetoric which continues to deepen the gap between elites and democracy can only lead to a damaged misunderstanding of representative rule, accountability and the non negotiable role of democratic state institutions. The challenges of this type of rule are continuous and we take for granted that democracy is an ideal which claims never ending efforts. However, the ideal of a democratic society as the realization of a perfect harmony or transparency must be relinquished for the sake of rational decision-making and effective rule.

**Notes:**

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- <sup>5</sup> Alasdair MARSHALL, *Vilfredo Pareto's Sociology: a framework for political psychology*, Ashgate Publishing, 2007, pp. 10-11
- <sup>6</sup> John HIGLEY, Michael G. BURTON, *Elite foundations of liberal democracy*, Lanham, Maryland: Rowman & Littlefield Publishers, 2006, pp.1-2
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- <sup>8</sup> Mattei DOGAN, *Comparații și explicații în știința politică și în sociologie*, translation by Ionela Baluta, Alexandra Ionascu, Ruxandra Ivan, Silvia Marton, Cristian Preda, Iasi: Institutul European, 2010, p. 185
- <sup>9</sup> In Michael BRECHER, Benjamin GEIST, *Decisions in Crisis*, International Crisis Behaviour Series, University of California Press, 1980, p.1 This definition is the typology employed by the International Crisis Behaviour Project – started in 1975 provides studies which deal with the analysis of destabilizing effects of crisis, the understanding of causes and their consequences through systematic investigation.
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- <sup>11</sup> Adrian KAY, *The Dynamics of Public Policy: Theory and Evidence*, Northampton, Mass: Edward Elgar Publishing, 20006, p.29
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- <sup>16</sup> HIGLEY, BURTON, "Elite Settlements", p. 295
- <sup>17</sup> HIGLEY, BURTON, *Elite foundations of liberal democracy*, pp. 89-90.
- <sup>18</sup> Raluca GROSESCU, "Conversia elitelor comuniste din România în perioada de tranziție: 1989-2000", study for the *Institute for the Investigation of Communist Crimes and the Memory of the Romanian Exile*, stable link: [http://www.crimelcomunismului.ro/pdfro/publicatii/conversia\\_elitelor\\_comuniste.pdf](http://www.crimelcomunismului.ro/pdfro/publicatii/conversia_elitelor_comuniste.pdf), last accessed March, 15<sup>th</sup> 2012
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- <sup>22</sup> MARK, p.72
- <sup>23</sup> S. N. EISENSTADT in TISMĂNEANU, p.92
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<sup>29</sup> These annual surveys appear on Freedom House's Web site: [www.freedomhouse.org](http://www.freedomhouse.org). A pdf file with all the rankings since 1972 is available at [www.freedomhouse.org/rankings.pdf](http://www.freedomhouse.org/rankings.pdf).

## ORIGINAL PAPER

**Marusia CÎRSTEA**

### **Great Britain and its Geostrategic Interest in the Down Danube – Black Sea Area (1930-1939)**

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**Abstract:** *The article entitled “Great Britain and its geostrategic interest in the Down Danube – Black Sea area (1930-1939)”, elaborated on the basis of several documents – published and unpublished – whose existence resides in the archives and studies of several historians, refers to the military and diplomatic relations between Great Britain and Romania in the 4<sup>th</sup> decade of the 20<sup>th</sup> century. I have analyzed especially England’s wish that a military harbor be build in Tașaul (Dobrogea), capable of “meeting the high standards for Europe’s safety”. Romania was also preoccupied with both building a military fleet and a modern military naval base. In order to accomplish these wishes, several negotiations were opened between the two states: Great Britain and Romania.*

**Keywords:** *Black Sea, Down Danube, Tașaul – military harbor, Britain Admiralty, King Carol II.*

## 1. Introduction

Located at the meeting point of three important areas – Europe, Middle East and Central Asia – the geopolitical region between the Down Danube and the Black Sea represents an important space of strategic interest (political, economic and military) for the Great European Powers<sup>1</sup>. So, the important status of the Black Sea, the Bosphorus and Dardanelles Straits as well as the Danube did not escape the attention of the great powers in the first half of the 20<sup>th</sup> century: the Conferences in London (1912) and the one in Bucharest (1913), subsequent to the Balkan Wars, meant the keeping of Turkish control over the Straits; after the 1<sup>st</sup> World War, the Armistice of Mudros (October 30<sup>th</sup>, 1918) confirmed the Anglo-French occupation of the Straits; the Peace of Sèvres made possible the circulation of all ships, both commercial and war ships – thus, the Black Sea became an open sea; after the Greco-Turkish war was over, the powers of the Entente held an International Conference in Lausanne, with the participation of 12 states (among which Romania too, with a delegation led by I.G. Duca – the foreign minister -, Constantin Diamandy, Constantin Coțescu and colonel Toma Dumitrescu), to establish, as the Parliament of Romania saw it, – “the first serious attempt to guarantee the freedom of navigation both in times of peace and war”<sup>2</sup>; but later, the Conference of Montreux (July 1936) accepted the remilitarization of the Straits and validated, in fact, the geopolitical and geostrategic gains obtained by the USSR; these negative evolutions were also completed by the severe limitation on attributions in 1938, concerning the European Commission of the Danube (between the 8<sup>th</sup> and 17<sup>th</sup> of August, the Conference on the change of the maritime Danube regime was taking place in Sinaia, establishing the International Status of the Down Danube)<sup>3</sup>.

In the 4<sup>th</sup> decade of the last century, the contradictions between the great imperialist powers became sharper, while the battle for markets, spheres of influence and a new world reordering became more intense. The danger of the birth of a new war started to take shape. More complicated was the situation in the Center and the South-East of the European continent. Most of the states – Romania, Czechoslovakia, Yugoslavia, Poland – were vitally interested in keeping the *status quo*, instituted at the end of war, while others – Hungary, Bulgaria – had a revisionist policy. But the states from this part of the continent were placed between Germany and the Soviet Union, two countries hostile to the Versailles system, so the security in this region depended primarily on Great Britain’s and France’s capacity to discourage the expansionist intentions of the two great powers in order to ensure the stability of the system.

## 2. Romania’s foreign policy towards the keeping of the interbelic *status-quo*

Within this international framework, Romania’s foreign policy aimed at<sup>4</sup>: organizing a security system; creating alliances with states interested in defending the Treaty of Versailles; establishing normal relations with ex-enemies; promoting an active policy both within the Society of Nations and the international conferences attended, in order to peacefully solve all conflicts and crises emerged.

In their turn, the Great Powers – France, Great Britain and the USA – made concerted efforts to befriend the governments of many peace-loving countries, to disapprove of war and to solve conflicts of interests by peacefully means. In this respect, they initiated a series of actions<sup>5</sup>: disarmament conferences; signing non-aggression pacts between Europe’s different countries; attempting to solve the problem of reparations and war debts; defining accurately the notions of aggressor and aggression; organizing a collective security system etc.

Unfortunately, the complications of interests between the Great Powers: the Franco-German conflict, the Italo-French dispute, the French-English misunderstandings, the American-Japanese contradictions, Japan’s aggression in China, Italy’s invasion of Ethiopia, as well as the

tolerant attitude of occidental powers – especially that of Great Britain and the USA – towards the demands of the revanchist militarists and imperialists (German, Italian, Japanese), finally led to the non-accomplishment of goals set to keep the interbelic *status-quo*<sup>6</sup>.

Starting with the '20s in the last century, Romania concluded a series of treaties of defense with the European states which wanted the compliance with the territorial status-quo in accordance with the Treaty of Paris-Versailles. These treaties were doubled by military conventions that would put them in practice and make them work. For the conclusion of these agreements, a series of officers from the 2<sup>nd</sup> Section of the Great Major State as well as military attachés took part in the negotiations. Hence, officers such as generals Ion Antonescu, Dumitru Strătilescu, Constantin Cristescu, Radu Rosetti, Al. Lupescu, Nicolae Samsonovici, Gh. Angelescu, Ion Gheorghe, Ioan Sichițiu, colonels Anton Iovanovici, Ioan Prodan, Ioan Oprescu, Petre Dumitrescu, mayor Gh. Rozin etc. would be involved in the military negotiations and discussions which took place in the third and fourth decades of the last century<sup>7</sup>.

After the Great Unification in 1918 – recognized by the great powers in the treaties of Paris – Romania, in order to put into practice its defense policy, opened new bureaus for the Romanian attachés in the USA and England (1919), then in Poland, Hungary, Czechoslovakia, Japan, France, Turkey, Belgium, Austria, Bulgaria, Serbia, Greece, Italy, having on the eve of the 2<sup>nd</sup> World War a total of 23 military attachés accredited abroad<sup>8</sup>. A major role in attaining the military objectives pursued by Romania within the interbelic period was the close connection between London and Bucharest. Between 1920 and 1939 the military relations between the two countries grew stronger<sup>9</sup>. Political and military personalities such as Nicolae Titulescu, Ion Antonescu, V.V. Tilea, Gh. Dumitrescu et al., along with the military attachés – Nicolae Arion, Costiescu Matila Ghica, Douglas Căpităneanu, Radu Rosetti, Nicolae Rădescu, Constantin Sănătescu, Gheorghe Niculescu, Ermil Gheorghiu, Cezar Marinescu, Gheorghe Iliescu<sup>10</sup> contributed to the development of these connections. It must be underlined that over time the two diplomacies – the one in Bucharest and the one in London – had not seen eye to eye on the importance of the Black Sea, but when their interests overlapped, Romania and England succeeded in finding communication ways, which strengthened the bilateral cooperation.

### **3. Romanian-English initiatives concerning the setting up of a naval base at the Black Sea**

With respect to the general strategy, Romania was important for the Great Britain because of its proximity to the straits of Bosphorus and Dardanelles, as well as to the oriental basin of the Mediterranean, and thus, in case of a major European conflict, its strategic value was incontestable<sup>11</sup>. Taking into account Romania's geostrategic position, at the beginning of 1930, the proposal for the building of a naval base at the Black Sea was being considered. Hence, R. Goodden – London's military representative at Bucharest – announced on the 13<sup>th</sup> of February 1930 that he had had a discussion on this topic with admiral Scondrea to build a modern port at Tașaul, designed also to be a military naval base. In this respect, the authorities from Bucharest underlined that "If a nation considers that its army and aviation are sufficient to protect itself against the invasion of the enemy and at the same time it does not depend on the supplies from outside, then it is not necessary for her to have a navy or a Naval Base. What is Romania's status? She must protect its maritime frontier of 180 miles with its single commercial seaport and a land frontier, of which three quarters of its length, surrounded by probably enemy countries and only one quarter surrounded by allied or neutral countries. The railways of the latter countries will be called to serve their own needs; at best these railways could serve only a small proportion of the volume of transports, but with long delays [...] *In consequence, Romania needs both a navy and a naval base*"<sup>12</sup>. This proposal was in accordance with the *Objective of the English naval policy*: "It is both the duty and the tradition of the Royal Navy to engage the enemy wherever there

is water to float a ship"<sup>13</sup>. Another proposal for building a modern harbor at Tașaul was made in 1934. In this respect, the commander Eugeniu Roșca stated: "Romania needs a navy as well as a naval base"<sup>14</sup>. The site for the new naval base had to take into account several factors: the position of the port had to cover any part of the marine coast that might have been threatened, as well as the main communication channels; the safety of the port in case of an attack by land; the construction and maintenance had to be economical; communications with the interior of the country had to be safe and rapid<sup>15</sup>.

Through a letter dated March 16, 1934 the British Admiralty confirmed that Lake Tașaul would be the right place to build the military naval port. Within the letter it was underlined that: "The project Tașaul serves the interests of Europe in terms of safety [...] and the time (for the construction) could not be better – i.e. now – because money is easy to find and also cheap thanks to this year's budget savings"<sup>16</sup>.

Under these circumstances, Romania's Superior Council of National Defense recommended that the government should assimilate the plans and suggestions of the English admiral R.G. Henderson from the British Admiralty "so that the rapid evolution of international events would not have a negative impact on London's current good mood – concerning the financing"<sup>17</sup>. The discussions between Romania and England regarding the Down Danube – Black Sea strategic area were resumed on the occasion of King Carol II's visit in London between 15<sup>th</sup> and 18<sup>th</sup> November 1918 during which he held several talks with N. Chamberlain, Halifax et al. During discussions, after the international political relations had been analyzed, the King inquired about Great Britain's economic policy in Romania.

Regarding the discussions on the topic of economy, the English press gave them a great deal of attention, underlining at the end that "Romania will receive financial aid from England, which *will allow her to oppose the growing German expansion*. It will be a new challenge for England to maintain its influences in South-Eastern Europe. The latest political events and Germany's economic expansion have seriously jeopardized England's position. Probably Romania will get a loan of 10 to 15 million pounds to buy English merchandise and to arm herself"<sup>18</sup>.

In answer to King Carol II's question, Chamberlain said that Romania's geopolitical position favored Germany to enjoy a good economic position, but that did not mean that the British government was not interested in Romanian commerce, and thus he ensured the Romanian sovereign that the rumor spread by German political circles, according to which in Munich he agreed with Hitler to treat Central and South-Eastern Europe as a space reserved to German monopoly, was false. As discussions were coming to an end, King Carol II conducted a review of the main economic proposals made by the Romanian government for the British government, i.e.: the naval base on the Lake Tașaul and issues related to the development of the Danube canal and the commercial marine. Chamberlain promised that the British government would examine the proposals submitted by the Romanian government through its King and stated that he would be content, if following a careful consideration, it could be possible to take action with respect to any of the issues on the agenda.

#### 4. Conclusions

Unfortunately for Romania this project did not materialize because the Romanian state opposed "the exploitation of Tașaul Port and Cernavodă-Tașaul canal, in this way leaving them in the hands of a foreign company that would impose conditions and taxes, thus, disfavoring the national economy"<sup>19</sup>.

Nevertheless, Great Britain sought – and not just a few times, in the forth decade – not to leave Romania completely isolated. As a matter of fact, Gafencu recognized the fact that Great

Britain was keen to keep its position and interests: "As long as Great Britain has maintained its positions and has been determined to defend its interests, Romania has always been able, just like the other countries from the Balkan Agreement, to pursue an independence policy and to resist pressures exercised on its frontiers in different ways, by the two partners of the Moscow pact"<sup>20</sup>.

Unfortunately, the period between the Munich Agreement and the eruption of WW II meant territorial changes and reviews of principles. For the Bucharest diplomacy it was no secret that Great Britain and France would engage less efficiently in defending the borders of Great Romania. In consequence, the position of the active neutrality was predictable, as it could be observed in the activity of both sovereign Carol II and some known diplomats<sup>21</sup> and politicians of those times: Armand Călinescu, Grigore Gafencu and Gheorghe Tătărescu.

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<sup>3</sup> Apud Mihail E. Ionescu, *Regiunea extinsă a Mării Negre. Privire istorică și evaluare contemporană*, în vol. *Manual de analiză a politicii externe*, coordonatori Iulia Motoc, Șerban Filip Cioculescu, Iași, Editura Polirom, 2010, p. 332-350. (In Mihail E. Ionescu, *Expanded Region of the Black Sea. Historical perspective and contemporary evaluation*, in the vol. *Handbook of foreign policy analysis*, coordinators Iulia Motoc, Șerban Filip Cioculescu, Iași, Polirom Press, 2010, p. 332-350).

<sup>4</sup> *Istoria Românilor*, vol. VIII, București, Editura Enciclopedică, 2003, p. 429-431. (*The history of Romanians*, vol. VIII, Bucharest, The Encyclopedic Press, 2003, p. 429-431).

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<sup>13</sup> *Ibidem*, f. 120.

<sup>14</sup> *Ibidem*, f. 93.

<sup>15</sup> *Ibidem*, f. 94-100.

<sup>16</sup> *Ibidem*, f. 182.

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<sup>18</sup> Arhiva Ministerului Afacerilor Externe, București, fond 71 Anglia, vol. 16, f. 318. (Archive of Ministry of Foreign Affairs, Bucharest, Editorial 71, England, vol. 16, f. 318).

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## ORIGINAL PAPER

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### The Contemporary Prison (The Second Half of the Twentieth Century-Present)

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**Abstract:** *The paper analyzes the legislative changes affecting the prison system from the communist regime epoch onwards. Even though prisons have come a long way and inmates are not being tortured in modern prisons and they can still complete their studies and have spare time, prison is far from being a vacation as some would think. Overcrowding, inertia, violence and the high risk of contacting a contagious disease such as AIDS or tuberculosis are the realities that define the prison system nowadays. Inmates are forced to quit their jobs and basically cut off family ties – instead of leading a productive life, non-violent individuals are just “doing time”, a punishment which proved to have little, if any effect on crime rates; in turn, citizens are the ones who pay taxes and support the massive investments needed for the ever expanding prison system.*

**Key words:** *criminal justice, prison, overcrowding, alternative sanctions, inmates' rights.*

*"A rehabilitated prisoner is not one who learns to survive well in prison, but one who succeeds in the world outside prison on release".<sup>1</sup>*

**Andrew Coyle**

The Second World War put the prison system reform on hold worldwide. Once the war was over however, prison conditions and inmates' rights came under scrutiny again.

Political changes in our country though, deeply affected the legislative system and human rights, having a tremendous impact on convicts' lives as well, who found themselves in a much worse place than before.

On 23 August 1944 King Mihai I (Michael I) launched the royal coup against the Antonescu government. The arrest of Ion Antonescu and the other members of the Government led the way to a series of political detentions which would last for the next 20 years.

The Royal Decree of general amnesty was issued soon after the royal coup.

Romania declared war against Germany and its supporters and took the side of the Allies. On 12 September 1944, Romania signed an armistice with Great Britain, the United States, and the Soviet Union. But things didn't go according to plans for Romania, as the Soviet Union imposed a political and economic regime that would suit its own interests.

Thus, the installment of the Petru Groza government on 6 March 1945, set the stage for sovietisation. In the following years the communists were favoured through electoral fraud and the National Peasants' Party (Romanian: Partidul Național Țărănist), was dissolved, and its leaders trialed. On 30 December 1947, king Mihai I was forced to resign.

On 2 February 1948 a new Criminal Code was published.

The prison system made a step back and the inmates' treatment became extremely harsh. Personnel in high positions were dismissed.

Fortunes were confiscated by the state on grounds of high treason and embezzlement of public funds.

Prison time and hard labour terms could be even tripled, with the approval of the minister of Justice, if the convict's behaviour was deemed a public menace and a threat to state security.

Similarly to previous codes, the Criminal Code of 1948 maintained provisions regarding the separation of convicts: women from men, repeat offenders from first time offenders and young offenders from adults.

Act no. 16 of 15 January 1949, regarding the punishment of crimes which posed a threat to state security and national economy, introduced the death penalty for crimes which seemed disproportionate and did not pose an extreme threat – for instance the capital punishment was to be applied in the case of instigation to destruction of telephone, telegraph, radio and television equipment.

Two sets of rules were issued between 1952 and 1955 – the Rules regarding the prison regime and the Rules regarding the reception, detention, security and inmates' regime, approved through an order issued by the interior minister. The role of prison was reduced to coercion and the rehabilitation of offenders ceased to be a main concern of the prison system.<sup>2</sup>

In 1952 labour colonies were established through Decision No. 1554/1952 issued by the Council of Ministers.

The new rules regarding prison regimes approved through Order No. 4045/20.11.1962 issued by the interior minister laid a stress on the importance of work, discipline, cultural and educational activities, as well as rewards.

The year 1964 marks the great amnesty of political prisoners.

The Criminal Code of 1968 comprised legal provisions which remained unchanged for the most part. The new code clearly stated *that criminal punishments are not to cause any physical harm or to humiliate the convict* – article 52, last paragraph. The death penalty was still being applied as *an exceptional measure, in the case of the most serious crimes* (article 54).<sup>3</sup> The capital punishment could not be applied however for crimes committed by underage offenders, or in the case of pregnant women or mothers of young children (till 3 years old) at the time of the crime/ the Court's decision. In this case, the death penalty was to be replaced by a 25-year prison term.

According to the new Criminal Code, prison was based on: productive work (for convicts who were capable of work); educational measures; the respect for work discipline and prison security, as well as rewards for those who worked steadily and proved they changed their behaviour.

A new act – Act No. 23 of 1969 and the Rules regarding its application, approved through the Government's decision No. 2282/1969 introduced new legal provisions in accordance with the Standard minimum rules for the treatment of prisoners, issued by the United Nations in 1955, with the exception of moral and religious assistance.

As stated in the new Criminal Code, male offenders who were 60 years of age or more, as well as women who were 55 or more, were not obliged to work, but could be permitted to upon request.

Work was paid, and the money was divided between the prison administration and the inmate.

Pursuant to Act No. 23, pregnant women did not perform work during the legal period of leave for employees (before and after birth) and they could neither perform work in a toxic or harmful environment. Likewise, women who had given birth and had children under one in prison with them, as well as juvenile offenders, were not to perform work in such an environment.

All inmates would perform work based on the approval issued by the prison's doctor.

Inmates could not work more than 12 hours a day, depending on production needs, save pregnant women, those who had given birth and had children under one with them in prison, juvenile offenders and those who worked in toxic or harmful environments, who could not work more than 8 hours a day.

Pregnant women and those who had given birth in prison and had the baby with them, babies brought up in prisons and juvenile offenders had a different diet, suited for their needs.

Work was to be performed according to professional skills for the most part; however, intellectuals could be used for unskilled labour if there was no better job available.

Other significant rights were granted as well: to right to rest, daily walks, medical assistance, the right to petitions, correspondence and visits, the right to receive packages with food, clothes or medicine, books, newspapers, magazines, cigarettes etc. The right to receive visits, correspondence, packages and cigarettes were granted based on the nature of the crime, the length of the punishment, criminal record, work performed and behaviour. The secret of correspondence was not yet granted. Minors could not be denied the right to receive correspondence as a disciplinary measure.

Uniform was compulsory for inmates.

Inmates who were difficult to deal with, could be isolated for a period up to 10 days (severe isolation), or even up to 20 days, with the approval of the prison doctor and the head of the General Administration of Prisons. Problematic inmates could even be transferred for a period between 3 and 12 months to another prison, where stricter rules were enforced. Such a measure could deeply affect family ties. Isolation and transfer were not applied to pregnant women, while

juvenile offenders were exempt from severe isolation. However, simple isolation could be applied to the latter for a period of up to 10 days.

Those under preventive arrest were held separately from convicts, juveniles from adult offenders and women from men.

In spite of the new modern provisions, the communist regime left a deep mark on the prison system. Re-education was the main concern, and not rehabilitation.

Prisons were associated with communist oppression after the Revolution.

A major step towards democracy was the transfer of prisons under the subordination of the Ministry of Justice in the majority of European states. Thus, a better protection of inmates' rights could be granted when prisons were transferred under the subordination of the minister responsible with justice, and not the police. In France for instance this transfer took place in 1945, whereas Romania adopted this measure only in 1990, one year after the Revolution, through Act No. 21/1990.

A great part of prison personnel was dismissed, being suspected of corruption. Political propaganda in prisons ceased and religious services were introduced in prisons in turn.

The year 1990 also marks the abolishment of the death penalty. Until then, according to Act No. 23/1969 the capital punishment was carried out by shooting.

The Council of Europe played a great role in the reform of Central and Eastern European states, through assistance in drafting new legal provisions, consultancy and elaboration of reports on the situation in these countries. Likewise, the effort of the European Committee against Torture and Inhuman and Degrading Punishments within the Council of Europe and its permanent dialogue with countries in question led to notable positive changes within the prison systems.

The Convention for the Protection of Human Rights and Fundamental Freedoms was implemented in our country through Act No. 30/1994, affecting prison conditions as well.

The Government Emergency Ordinance No. 56/2003 regarding certain rights of people executing custodial sentences introduced modern provisions regarding the execution of prison terms.

The prison system underwent an intense reform process as of 2004. Thus, prison personnel was demilitarized through Act no. 293/2004 regarding the Status of public servants within the National Administration of Prisons. The modern legal provisions, the improvement of prison conditions and the new courses for personnel considerably eased the lives of inmates and the functioning of prisons.

An important step in this direction was the coming into force of Act No. 275/2006 regarding the execution of punishments and of measures adopted by judicial authorities during criminal trials, which introduced new elements like the institution of the judge appointed for the execution of punishments.

In spite of these efforts, documents published by the National Administration of Prisons<sup>4</sup> reveal major problems of the system, like: the lack of funds, the authorities and citizens' indifference, the slow pace at which modern legal provisions are adopted, as well as the mentality of personnel which caused a setback for Romania, as compared to Western states, in the field of criminal law. Likewise, frequent administrative changes are bound to destabilize the prison system.

Another major issue is the difficulty in dealing with unpredictable mass events because of the lack of equipment and safety devices, inappropriate buildings design, insufficient personnel etc.; as a result the custodial environment cannot be safe and it constitutes a threat to personnel's and inmates' lives.

The inmates' rights cannot always be respected because of the lack of funds. Custodial conditions are problematic, there always being a high risk of contacting a contagious disease. Likewise medicine for inmates is not enough and an epidemic could always break out.

The lack of financial incentives for personnel makes it difficult to attract competent people.

Another problem is the collaboration with the public health system, which is usually reluctant to provide services for inmates. According to the Strategy issued by the Prison Administration for 2010-2013, there is an insufficient number of qualified medical personnel as compared to the number of inmates, given the fact that medical standards recommend 30 patients a day, there being cases where one doctor provides assistance for 500 inmates or receives more than 100 visits a day.

On top of that, prison personnel providing educational activities use out-of-date methods. Funds for these activities are also insufficient.

In spite of the common belief that prisons are able to rehabilitate the individual, statistics show that in reality, prisons play a minimum role in the process of combating crime, a great deal of inmates committing crimes soon after release. Hence, the large number of custodial sentences does not make community a safer place – high incarceration rates have more to do with a state's policy in the field of criminal law and do not necessarily lead to lower crime rates. Countries having a large prison population may or may not have high crime rates. For instance, a higher crime rate may mean that prison is applied for a great number of crimes or that the time served is extremely long. Likewise, a lower prison rate doesn't imply *per se* that crime rates are low as well, as it is possible that crimes are not being investigated efficiently or that the crimes/criminals are not discovered. Moreover, the state in question might not incriminate certain behaviours such as: substance abuse, rape committed against one's spouse etc. Another possible explanation for artificial low incarceration rates would be the large number of pardons granted.

Overcrowding is the most important issue faced by prisons worldwide. Society is more informed about crimes nowadays and sensational daily news cause unrest. As a consequence, people feel that punishments should be harsher. Over 10.75 million people were in some form of detention in May 2011<sup>5</sup>.

England was faced with serious overcrowding problems as of the seventies. In spite of strategies used to reduce the prison population, the situation got worse. The rising number of demonstrators and the proliferation of terrorists serving life sentences, only made things worse. Authorities and the general population were under the impression that a harsher system would make things right. However, the number of inmates grew at an alarming rate.<sup>6</sup>

Major problems were also faced at the same time by Scandinavian countries like Sweden, Denmark and Norway. Norway was even forced to put on hold the execution of custodial sentences for a while, due to insufficient space for new inmates. Finland was the only country where the number of inmates kept dropping..

Nevertheless, Nordic countries have the lowest incarceration rates in Europe nowadays and are characterized by social stability and a low rate of violent crimes. Thus, an effective social security system proved to have an extremely favourable outcome – if at the beginning of the twentieth century Scandinavian countries were among the poorest countries, now they are among the richest. An effective protection of children and the sick allows families to focus on productive activities for economy. The latest world report on prisons<sup>7</sup> (data available until May 2011) indicates that Finland, Denmark, Sweden and Iceland don't surpass 80 inmates per 100.000 citizens. Finland is well known for its successful system based on alternative sanctions.

According to the Prison System's Strategy of Development for 2010-2013, prison personnel in our country amounts to 12500 employees, there being 27.000 inmates.

There are multiple causes for overcrowding: the crime rates are on the rise, more deeds are incriminated, harsher punishments etc. Overcrowding limits the freedom of movement even more – inmates become more aggressive and agitated; they are more prone to starting fights against each other or personnel. Disputes among inmates pose a threat for inmates and personnel who might become infected with the HIV virus, if they come into contact with the infected person's blood. Although transmission this way is rare, the risk is nevertheless real. Likewise, fights can lead to destruction of prison goods.

Overcrowding also means limited intimacy and favours promiscuity among inmates.

Hygiene becomes a problem as well, and food has a lower quality, whereas medical assistance is inappropriate because there is an insufficient number of medical professionals.

Overcrowding also implies less time spent outside because inmates are difficult to supervise, and work and educational activities become difficult to organize. Likewise illegal drug trade in prisons is more likely.

Prison overcrowding is a major issue in our country as well. According to the report of APADOR- CH<sup>8</sup> on the situation of the prison system in Romania between 1995-2004, inmates were held in crowded rooms 23 hours out of 24 (or even more, outside activities lasting about 30 minutes in many prisons); cultural and educational activities within prisons were also drastically reduced (activities outside prisons are extremely rare, practiced only by some prisons).

Likewise, medical visits, phone calls and visits represent a real burden for personnel. It becomes obvious that unless more people are hired, any initiative of rehabilitation is unlikely.

More measures need to be taken in order to combat overcrowding. The maximal capacity of prisons should be indicated, even if they are overcrowded. Likewise, even though it is not possible to provide each inmate with an individual cell, under no circumstances should inmates be forced to share beds.

Hygiene should also be a major concern, in order to prevent contagious diseases, and appropriate food and medical assistance should be provided. Physical activities and sports, often neglected, must play a greater role, in order to maintain a healthy mind and body.

The prison population rate was 132 inmates per 100.000 of national population in 2010 in our country<sup>9</sup>, and in May 2011 the world report on prisons indicated 136<sup>10</sup> inmates, which represents a significant progress nevertheless, given the fact that in 2001 for instance the number was much higher – 223 inmates per 100.000 of national population.<sup>11</sup>

The prison population rate in Romania is high above European ones. Comparatively, the number of inmates in Finland was 67 per 100.000 inhabitants in 1993<sup>12</sup>, whereas in May 2011, the number was even lower – 59 inmates per 100.000 of national population.<sup>13</sup> The number of inmates in France was 96 per 100.000 inhabitants in 2011, whereas in Greece the number was 102 the same year.<sup>14</sup> According to the World Prison Population List of 2011, the prison rate in Japan was of 58 inmates, due to the high living standard in Japan, correlated with a high degree of conformity specific to the Japanese culture. Likewise, there are less minorities in Japan, the population being more homogenous.

Belonging to a group does not signify a loss of independence within the Japanese culture; it is not perceived as a sign of weakness; on the contrary the group signifies support, concern for people and strength – a person takes pride in belonging to a group as it signifies that the person is dignified and capable of self-control. As David H. Bayley<sup>15</sup> noticed, the typical punishment for Western youngsters would be sending them to their rooms – closing them inside, with their family, whereas in Japan it would be locking the child outside. Thus, the Japanese lay a great stress on integration within community.

At the other end of the spectrum, ex-communist countries have also come a long way in the field of human rights and the advancements of prison systems are obvious. However there are

still a lot of other problems, besides overcrowding that need to be solved: poor hygiene; the lack of funds; the high rate of preventive arrests and their lengthy duration; the small number of alternatives to prison (usually just fines); the great number of repeat offenders, the lack of work possibilities for inmates, the high number of inmates suffering from tuberculosis and other contagious diseases, the lack of adequate medical care, illegal drug trade in prisons, corruption caused by low salaries of personnel, difficulties regarding inmates' rehabilitation etc.

The Romanian prison system has also been through an important series of reforms like: the limitation of cases when people can be detained; the fact that an arrest warrant is issued based on the judge's order; the institution of appointed judges; the inmates right to complain against disciplinary sanctions perceived as unjust; the guaranteeing of the secret of correspondence; the possibility for inmates to be seen by health professionals outside the prison system etc.

Likewise, the new Criminal Code published in the Official Gazette, Part I, No. 510/2009 which has not come into force yet, introduced new provisions regarding day-fines and the execution of fines by performing community work, whereas the new Criminal Procedure Code introduced electronic monitoring.

People only take an interest in prison when negative events occur and they feel threatened – escapes, conflicts etc. The problem of inmates rehabilitation is not a minority's problem however – it affects the whole society, given the high number of convicts.

Prison *per se* does not analyse the cause of antisocial behaviour, thus crime rate is high. Without finding out the underlying causes for each crime, prison can only incapacitate inmates, who will commit new crimes upon release.

The so-called rehabilitation programs taking place in prison cannot be effective, not only because of the system's problems – insufficient personnel and resources, the limited offer of qualification courses that are not adapted to economy's needs, but mainly because rehabilitation implies a new way of life, where the individual is able to abandon anti-social behaviour. It is very unlikely that this process can take place by isolation and placement of the individual in the company of other people with serious anti-social problems. Reducing crime is mainly a matter of social and economic measures, criminal justice being used, as the Criminal Code itself states, as an *ultima ratio*, for the most serious deeds against the most important values of society.

International instruments such as the United Nations' Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45/110 or the Recommendation (92) 16 comprising the European Rules on community sanctions and measures also focus on alternative sanctions.

Prison may have been the best solution at the end of the eighteenth century, but society has changed and realised that incarceration does not always lead to positive behaviour changes. On the contrary, non-violent individuals are likely to become more aggressive and prone to committing crimes after being released from prison. We feel that introducing more alternative sanctions within the Romanian legislation as well is a salutary initiative. Like states such as Finland have proved, these sanctions can successfully replace prison in many cases, with positive outcomes on inmates' lives and communities, as well as on national economy, by reducing the costs associated with the prison system.

<sup>1</sup> Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, published by International Center for Prison Studies, King's College, London, 2002, 84.

<sup>2</sup> The National Administration of Prisons, *Scurt istoric al sistemului penitenciar românesc*, source: <http://www.anp-just.ro/frame.php?page=istoric.php>, accessed on 12 November 2011.

<sup>3</sup> The death penalty was abolished in Romania through Decree No. 6 of 7 January 1990.

<sup>4</sup> See, for instance: Administrația Națională a Penitenciarelor, *Analiză diagnostic a sistemului Administrației Penitenciare*, February 2009, source: <http://www.scribd.com/doc/12400841/Analiza-Diagnostic-ANP>, accessed on 15 October 2010.

<sup>5</sup> According to the International Center for Prison Studies, *World Prison Population List (2011)*, "detention" being taken into consideration *lato sensu*, comprising: preventive arrest, prison as a punishment, "administrative detention" etc. – International Center for Prison Studies, *World Prison Population List (2011)*, source: [http://www.prisonstudies.org/images/news\\_events/wpp19.pdf](http://www.prisonstudies.org/images/news_events/wpp19.pdf), accessed on 15 August 2011.

<sup>6</sup> Michael P. Roth, *Prisons and Prison Systems. A Global Encyclopedia*, Greenwood Press, Connecticut, 2006, 99.

<sup>7</sup> International Centre for Prison Studies, *op.cit.*

<sup>8</sup> The Association for the Protection of Human Rights in Romania, Helsinki Committee, *Sistemul penitenciar în România, 1995-2004*, source: [http://www.apador.org/publicatii/10%20ani\\_ro-2005.pdf](http://www.apador.org/publicatii/10%20ani_ro-2005.pdf), accessed on 2 September 2011.

<sup>9</sup> According to International Centre for Prison Studies, *Prison Brief for Romania*, source: [http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_country.php?country=161](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=161), accessed on 14 December 2010.

<sup>10</sup> International Centre for Prison Studies, *World Prison...op.cit.*

<sup>11</sup> The European Institute for Crime Prevention and Control, affiliated with the United Nations Helsinki, *Further developments in the prison systems of Central and Eastern Europe – achievements, problems and objectives*, source: <http://www.heuni.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURlappType=BlobServer&SSURlcontainer=Default&SSURlsession=false&blobkey=id&blobheadervalue1=inline;%20filename=28hnf5110.pdf&SSURlsscontext=Satellite%20Server&blobwhere=1266335656249&blobheadername1=Content-Disposition&ssbinary=true&blobheader=application/pdf>, accessed on 17 April 2011.

<sup>12</sup> *Idem*, *Criminal Justice Systems in Europe and North America – Finland*, 2001, source: <http://www.heuni.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURlappType=BlobServer&SSURlcontainer=Default&SSURlsession=false&blobkey=id&blobheadervalue1=inline;%20filename=mw1ahyvuylyrx.pdf&SSURlsscontext=Satellite%20Server&blobwhere=1266335656034&blobheadername1=Content-Disposition&ssbinary=true &blobheader=application/pdf>, accessed on 10<sup>th</sup> April 2011.

<sup>13</sup> International Centre for Prison Studies, *World Prison ...op.cit.*

<sup>14</sup> *Ibidem*.

<sup>15</sup> David H. Bayley, *Lessons in Order* in R. Heiner (ed.), "Criminology: A Cross-Cultural Perspective Criminology. A Cross-Cultural Perspective", West Publishing Company, St. Paul, USA, 1996, 3-15.

#### Acknowledgements:

*Investing in people! Ph.D. scholarship, Project co-financed by the SECTORAL OPERATIONAL PROGRAM FOR HUMAN RESOURCES DEVELOPMENT 2007 – 2013 Priority Axis 1. "Education and training in support for growth and development of a knowledge based society" Key area of intervention 1.5: Doctoral and post-doctoral programs in support of research. Contract nr.: POSDRU/88/1.5/S/60185 – "INNOVATIVE DOCTORAL STUDIES IN A KNOWLEDGE BASED SOCIETY" Babeș-Bolyai University, Cluj-Napoca, Romania.*

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## ORIGINAL PAPER

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### Cremation in Romania: Stereotypes and Communist Perceptions

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**Abstract:** *Our research aims to analyze the mechanisms by which the imaginary of communist death (focusing on the perception of cremation as a funerary practice) influence the reception of cremation in contemporary Romania.*

*From a historical point of view, the strong association between cremation and communism was inappropriate, leading to the wrong idea that such practices were typical to communism. In this regard, the inauguration of Crematorium Cenușa, in 1928, and the decrease of the number of cremations, compared to the interwar period, after the establishment of the communist regime are striking facts. The few Romanian communists that have chosen cremation (Bela Brainer corner of Cenușa) were rather an exception. Nevertheless, after 1990, people started to give communist interpretations to the practice of cremation; therefore a strong belief that the cremation is a communist practice started to emerge.*

*Once we outline the general framework of cremation in contemporary Romania, we focus on the interaction between communism (as a stigmatisation) and cremation, by investigating this interaction on the social and imaginary level. We discuss some of the major components of the current Romanian death imaginary: the orthodox death, the political death and the death as presented by mass-media. We insist on the orthodox explanations of death and of the bodily value, as basis of the rejection of cremation, on the proliferation of the correlation atheism-communism-cremation and also on the reflection of these issues in post-revolutionary mass-media discourse.*

*In a nutshell, our study strives to answer to a relatively simple question: why nowadays most of Romanian people assign communist meanings to the practice of cremation.*

**Keywords:** *cremation, communism, politics, imaginary, Romanian Orthodox Church, mass-media.*

## 1. Introduction: The State of Cremation in Romania

In the current Western world, cremation represents a way of „disposing of the body” which coexists with burial, as an option which is gaining in popularity<sup>1</sup>. It is regulated for every state and it is more frequent in Protestant countries than in Catholic ones. From a legal point of view, cremation in contemporary Romania is, like burial, an accepted funerary practice. However, from the point of view of the dominant Orthodox religion, we are dealing with non-recognition of cremation, as a Christian funerary practice, starting with the synods in 1928 and 1933, when religious services are denied to those who opt for cremation, cremation being, from an ethical point of view, very much similar to suicide<sup>2</sup>. Unlike the Orthodox Church, the Catholic Church accepts cremation, regarding it as equal to burial, starting with 1963.

The fact that cremation is not accepted by the Orthodox Church today is the result of very complex historical circumstances, which have determined that, on the imaginary level, many Romanians perceive cremation as being assimilated by communism, as a reality and as an ideology. This fact can be clearly observed, not just in articles in the Romanian press after 1989<sup>3</sup>, but also in recent events in Cluj, at the beginning of 2012, when there were public protests instrumented both politically as well as by the Romanian Orthodox Church. The protests were organised against RDK Cremation, the company which was supposed to build a crematorium near the Mănăștur cemetery<sup>4</sup>.

In Western space, cremation is currently defined as a funerary practice meant not just to answer spiritual needs specific to the era, modelled after values such as individualism, the freedom of choosing a post-mortem destiny, the special relationship with the body, the personalisation of funerary rituals, but also to solve difficult problems using different means, such as the lack of burial spaces and the unprecedented amount of mobility people have nowadays, people who, during their lifetime live in numerous cities and different countries but do not want to break ties with the remains of the beloved ones<sup>5</sup>. In this context, discussing the status of cremation in Romania, revealing the nature of the resistance against the implementation of a cremationist funerary system – building crematoria, placing cremation in a ritualistic frame and the frame of public perception of *normality* – it becomes an absolutely necessary matter, and an urgent one.

For Romania, cremation is not a widespread practice, there is only one functional crematorium in where there were 853 cremation in 2010, which represents 0,33% of total deaths<sup>6</sup>.

## 2. Aim and Methodology

The purpose of our research is to explain the social and historical mechanisms as well as the imaginary ones through which communist meanings are attributed to the practice of cremation. At the same time, we wish to analyse the way in which the transition is made between communist meanings and political meanings in general.

We will shortly discuss some historical facts which will point out the stereotypical quality of the tight association between communism and cremation and while also underlining, starting from an historical basis, the delicate position held by cremation within the current Romanian imaginary of death, with references to the more general problem of the insertion of cremation within the thanatic imaginary.

At this point it is necessary to mention that we do not claim and do not want to create an exhaustive endeavour. The reasons why cremation is rejected in Romania or at least frowned upon not only bind to the infiltration of communist meanings, mostly negative, within the semantics of cremation. To support this claim would be a waste from the point of view of cultural complexity of people in general, and the Romanian people in this case. Despite all of this, we consider the

investigation of the exaggerated link which is created at the imaginary and current public discourse level between communism and cremation, and politics and cremation, is capable to offer certain explanations regarding the Romanian apprehension regarding the possibility of extending cremation, putting it on the same level as burial, from a feasibility point of view.

### 3. Cremation from the Perspective of Romanian History

We will approach the relationship between cremation and Romanian communism by following three steps. The first one would be taking into consideration some prime historic realities, which question the strong association between communism and cremation. These are, according to Marius Rotar's 2011 book<sup>7</sup>, dedicated to the history of cremation in Romania, the existence of the Cenușa crematorium, since 1928 and the decrease in the number of cremations during the communist period, as opposed to the interwar period. So, it already seems obvious that the roots of Romanian cremation are not to be found in communism, but at least in the interwar period.

A second step is represented by a look inside the relationship between cremation and communism and establishing verifiable data regarding it. Through the law of nationalisation, the Cenușa crematorium becomes property of the state, Bucharest City Hall becomes its owner in 1948 which leads to the termination of the relationship between Romanian cremationists and the International Cremation Federation. *Eternity through ashes*<sup>8</sup> largely explains the mechanisms through which cremation starts to lose ground from the point of view of power and propaganda instead of being a cornerstone of the atheism spread by Communism, descendant of the Soviet model, as we could be tempted to imagine<sup>9</sup>. The Soviet model of cremation supposed the premeditated use and the encouragement, by the communists, of cremation and the crematorium (the edification, in 1927, of a crematorium in Moscow, near a cemetery of non-functional monastery) as an instrument for fighting against religion and dissolving the tradition of burial, perceived as a cultural effect of believing in a spiritual transcendence. On the contrary, the Romanian cremationist movement emerged, in the late 19<sup>th</sup>, as an autonomous movement aiming at implementing the idea of a hygienic way of bodily disposal.

The correlation between communism and cremation is not an invention of the post-communist period in Romania. We can find it ever since the interwar period, in the dispute between supporters and detractors of cremation. For example the archimandrite Luliu Scriban, one of the foremost adversaries of cremation, used this image in order to announce the bankruptcy of cremation in the USSR despite the intervention of the Soviet power in order to impose it<sup>10</sup>. On the other hand, Romanian interwar Romanian cremationists expressed their admiration towards cremation in the Soviet space, without looking for complicated explanations for such a reality.

Cremation continues to exist in communism, but it is not associated with it, in the large and ideological sense of the term. As a result, during the first decade of communism in Romania, the number of cremation at the Cenușa crematorium was lower than during the interwar period. No crematoriums were built in Romania during the communist period.

Even though there is a corner dedicated to Communists in the Cenușa crematory, the Béla Brainer, corner, or the red corner – a corner where there are, however, Christian markings – , none of the high ranking members of the Communist Party have been cremated. As an example, Nicolae Ceaușescu's parents were buried with an extremely sumptuous funeral service. Gheorghe Gheorgiu Dej or other prime-minister of communist Romania was not cremated. There are several explanations for this situation to be mentioned. Among these, two are very important: first, the rural roots of Communist leaders, and second the silent agreement between the Orthodox Church and the Communist Party, through a division of power, according to different fields of reality. The Church receives death and the Party receives life. As a matter of fact, this kind of agreement more

or less visible did not pass unobserved by the historians. For example, Alain Besançon<sup>11</sup> showed that the Orthodox Church as well as the Catholic Church is guilty when it comes to communism. One is guilty of silence<sup>12</sup> while the other is guilty for having tried to establish communication pathways with communism. These explanations are able to destroy the idea of the undoubtedly persecution of Orthodox people by Communists or the classification of cremation and Communism in the same semantic field with the same values. Thus, Mihaela Grancea's statement, in the beginning of her book<sup>13</sup>, according to which the Romanian communists leaders were atheists and only that secondary ones were buried needs to be regarded with much more than suspicion.

Of course we do not wish to support the fact the Romanian communists have used cremation as a practice meant to strengthen and demonstrate, in other people's eyes, the belief in communist ideas by defying tradition and religion. However these communists are less representative, from the second group. Cremation was generally preferred by the old communist guard – meaning the members of the party during the interwar period –, when it was outlawed.

A third step is represented by the investigation and the understanding of some historical facts with a high potential to create a negative image of cremation. We refer here to the events such as the *Trandafirul* (Rose) or *Vama* (Customs) operation. This operation consisted in the theft of 43 bodies of young revolutionaries from the morgue of the Timișoara County Hospital, two days after they had been killed, on December 17th, and their cremation at Cenușa Crematorium, under orders from Elena Ceaușescu. This operation only became known in January of 1990, but it had a negative impact on the imaginary linked to cremation, it can be compared to a wiping of traces done by an abusive and radical political power. Events such as *Trandafirul*, when cremation, viewed as a radical practice to getting rid of corpses, functions like a political instrument, are part of a more extended, geographically and temporarily socio-political paradigm, called the Evil Politics of Cremation<sup>14</sup>. Probably the best known form of the Evil Politics of Cremation is the cremation performed in the Nazi camps, during the World War Two.

#### **4. The Components of the Romanian Imaginary of Death and their Interaction with Cremation**

The imaginary cannot be taken away from the inner part of life, because such an action would result in a warping of human reality. Lucian Boia, one of the famous researchers on aspects and the philosophy of the imaginary remarks the simultaneous, social and imaginary character, of any human constructs of reality through the being tries to find a sense in the world: “man lives on two plains at the same time: reality and the imaginary, different plains, but between which there is a constant interaction”<sup>15</sup>.

We will discuss three significant components of the Romanian imaginary of death. The purpose is to better understand their characteristics and how they shape the current perception of cremation. We will talk about *political death*, *Orthodox death* and *death in the media*, each with powerful semantic configurations, which gather around the idea of death, determining a certain attitude towards the reality of death, and generating a set of pre-established ethical judgments regarding them. These configurations began some time before the facts and are continuously motivated by it, but do not conform to it because they have their own autonomy. We must however mention the fact that, from the beginning, in reality, in the effective social-imaginary dynamic, these components rarely present themselves in the pure form we depict, they combine with each other, in different proportions, or with other elements of the imaginary and, if it is the case, the personal.

The first imaginary structure of death, the political death is made up of communist death – more specifically the common perception on communist death, to which the current political

meanings are added, understood as a socio-cultural paradigm. In short, communist death can be viewed as, just like Lucian Boia<sup>16</sup> has shown, (pseudo)scientific, un-natural, anti-spiritual/atheist, a taboo. Communist death is an anti-natural death because it never arrives on time, melting in its imaginary substance the coercion and permanent threat of death and disappearance carried out by the secret police and their communist political prisons. A distinction must be made between what we have called political death and the way in which communism explains death. Because, on a prime level of discourse, communist philosophy defines death as something natural, belonging to nature, through its corporeality (according to the Marxist philosophic materialism) so that later it can be ideologically manipulated, meaning it will be inserted in the conceptual system of existence in and through the party<sup>17</sup>. Death transforms, under the sign of politics and excessive disturbed history – just as Camus has mentioned in his works<sup>18</sup> – from an internal component of beings, inseparable from them, into an exterior form of repression and torture. The fundamental mutation in keeping with the same line of thought of Albert Camus, is from death to murder. Political death, as a structure of the Romanian imaginary, earns, from the negative perception on communism, dark nuances and contains suggestions of unnatural, anti-religious, nationalized violence.

These characteristics are deepened in a negative way, by the meanings of the political in Romanian mentality. Almost everything related to politics seems to be considered to have a negative relationship with society<sup>19</sup>, just like during the communist period, even though it is not necessarily involving coercive power anymore<sup>20</sup>. But the political tends to be, in nowadays Romania, associated with corruption and with an artificial intervention upon the normal course of reality, whether is about economic problems, whether about social or cultural ones<sup>21</sup>. Thus, as we can observe in mass-media articles, many opposite constructions such as justice and politics, economy and politics, mass-media<sup>22</sup> and politics are formed, in the majority the political term being the negative one.

Cremation can only be placed in a negative way within such an imaginary context. This is due to the fact that it is trapped within a communist interpretation grid but also because of some problems of the imaginary related to cremation in general. Cremation is understood as an accelerated posthumous method of disappearing (through fire), meaning it is not natural and raises psychological obstacles from the point of view of the spatial-temporary imaginary of the body, of the way in which the living relate themselves to death<sup>23</sup>.

The orthodox death is an important component of the Romanian imaginary of death. Just like Marius Rotar, has pointed out in his book, there is a tendency to determine Romanians to see the Orthodox religion as an important part of the national being. So, forcing a little bit the meaning of all this, when a Romanian dies, that person dies both as a Romanian and as an Orthodox. This inseparability is also noticeable during funeral services, which do not compete against civil funerals, such as the ones in other countries. This is a partial explanation why, despite a massive Westernisation, the Romanian people still hold on to their religious tradition. In such a situation, cremation must not only compete against a religion, but also with a system of national values. Orthodox death is a positive death within the imaginary of death, especially because it is associated<sup>24</sup> with a contemporary value – we would say a hedonistic one, nevertheless, this issue needs to be studied further – which is very functional in profane space: the appreciation for the human body<sup>25</sup>. Despite all of this, Romanian cremationists have always fought in order to demonstrate that they are not anti-religious, they are anti-clerical<sup>26</sup>. Orthodox death becomes problematic through cremation, not just because of tradition, the attachment of the Romanian people towards the Orthodox religion, but also because of its contents<sup>27</sup>. Orthodox death is a refreshing death because it maintains the idea of a body which is not ravaged by death. It knows death, but not in a transitory sense because it will come out of it. We don't refer just to the doctrine of resurrecting the body, which, still valid in the Orthodox religion, could not be quite just as

functional in an Orthodox imaginary of death, but it could be with the idea that Christ inhabits the body, in a demiurgic form within the human body as ontological support<sup>28</sup>.

Death in the Media is a component of the Romanian imaginary, ambiguous, from an ethical point of view, of death, in a constant state of expansion. Excessive mediatisation of death involves the fortification of the same rituals and Orthodox norms and laying blame upon the ones which are different. In its own, it also values the body often<sup>29</sup>. Basically, it can be said that the orthodox death, as well as death in the media trigger a continuous slide of cremation towards the negative pole belonging to political death. It must also be said that the negative political imaginary of cremation in Romania activates the negative part of the Western imaginary of cremation, such as the relation war-cremation, problematic freedom and the manipulation of ashes<sup>30</sup>.

There are a few major errors which are being made in relation to cremation and its presumed communist nature. At their origin, they are logical mistakes. The fact that they are made continuously, their internalisation within the society determines the creation of clichés, and clichés lead to myths. A common mistake in approaching cremation as a communist practice is the transformation of the correlation into causality or into a bijective relationship. Communism is associated with atheism, but on the other hand, cremation is suspected to be an atheist practice, with a popularity owed to postmodernism (partially, this is an example of prejudice, it is enough to think that most of the persons cremated during the interwar period were Orthodox). Therefore, based on a common term, namely atheism, a false classification of cremation is made as belonging to communism, thus creating the idea that communism had generated/extended cremation. Other fundamental differences between communist ideology, fundamentally based on the idea of a community and the individualism specific to numerous cremationists are overlooked. The mechanism can be explained more easily the more the Orthodox Church stigmatises cremation, pointing out its unchristian aspects.

Another explanation for the correlation cremation-communism-atheism would be that in Romania a tradition of secular funerals is absent. This type of funeral, developed in other areas, in the second half of the nineteenth century, occurred for the first time in Romania during the communist period (often completed by cremating the deceased). However, in the climate of "explosion" of religiosity and orthodoxism after 1990 in Romania this correlation could easily be strengthened.

Another mistake is the exposure, largely in the media, to audiences which are not representative. Cremation is not what the press says it is, it is not the way in which it is illustrated by the press, as we will see when we will analyse the media discourse regarding this subject. All mass-media theories<sup>31</sup> have emphasised the fact that the reality captured by television – death included –, is superficial, constructed in a digestive way, and cannot be taken for granted.

One such example is an article published in 1994 in the *România Liberă* newspaper by Răzvan Bucuroiu, denouncing the fact that there was an Orthodox priest performing services at the Cenușa crematorium between 1928 and 1933 despite interdictions. Bucuroiu considers the crematorium to be a "pagan temple with an industrial touch", where "at the edge of the only room [...] the urns are full with communist activists and burned warriors, in a supreme eulogy for the victory of death and the barren world". He thought it was "the ultimate level of irony and shamelessness" the fact that there a Bela Brainer corner in the crematorium and even more than that he came to the conclusion that especially Jewish communists were burned there during the communist regime. In order to prove his point he would give quotes from the employees of the crematorium in that period, which would contain information about the presence of urns containing communists in the crematorium "Sir take these communists away from here! Next door at the mausoleum they have cleaned up. People get angry when they see them here. Look at them laying here like kings and they only have a plaque in the corner for the boys in Timișoara..."<sup>32</sup>

### 5. The Way the Media is Contaminating the Imaginary of Cremation with the Political One

Like it is shown in the article, the Romanian media tends to strengthen the bond between cremation and politics and it even exploits it in order to receive a larger audience. The rhetoric of the press is anti-cremationist, acid and it goes beyond the illustrative function, citizen information. We will especially analyse here the reactions generated by the desire of RDK Cremation to build a crematorium in Cluj. There are some important aspects regarding cremation in Romania that are reflected in the mass-media. Briefly and summarising, we can observe cremation is (re)associated with politics through its content and function. The content refers to the stereotypes of cremation as a political practice, and the function refers to cremation as a feared instrument used by the current political forces. There is talk of the toxicity of ashes – sometimes naming the Nazi root of this image (“the Auschwitz effect”), the necessity to remove children from the vicinity of crematoriums (death is not the only object of this prohibition, since the cemetery is just as close to them). Moreover, the myth of the existence of a crematorium in Cluj during the communist era is mentioned again and the idea of building a crematorium is attributed to UDMR politicians<sup>33</sup>.

The way in which the media tends to inseminate the Romanian imaginary of cremation with communist meanings, orienting Romanian expectations regarding the establishment of a crematorium by RDK Cremation in Cluj-Napoca is visible from the headlines they have chosen. Their neutrality is permanently undermined through a presentation that lacks values – from an ethical point of view, of the conformity with Romanian social and religious values – and the idea is introduced, not just through titles, but also through certain content elements, that cremation is a humiliating practice, which reduces a person to a cadaver instead of a dead body. Some of these titles are: „The Metropolitan Bishop: the Orthodox Church has never agreed with cremation”<sup>34</sup>, „RDK Cremation wants to cremate 10-15 human bodies every day and 48 in extreme cases in their Mănăstur crematorium”<sup>35</sup>, „The people of Cluj do not want a crematorium in Mănăstur!...”<sup>36</sup>, „The Mănăstur crematorium, mercury poison for the people of Cluj”<sup>37</sup>, „Crematorium for villains”<sup>38</sup>, „Human crematorium makes believers go out on the street”<sup>39</sup>, and examples can continue. It is obvious that, beyond the content, such article titles came out daily or frequently, as a reaction to the desire of RDK Cremation to establish the crematorium, people’s perception about cremation could only be damaged. Especially if each newspaper page dealt with this subject also published pictures meant to shed a negative light on the subject. As it can be seen by accessing the links supplied on the reference page, barren images, from the point of view of symbol density and component images, pale from a chromatic point of view of references to reality, it is important to notice that they give the idea of an industrialised world, a machine world lacking rituals. But, and this is an important fact, this is not about a hyper-technological world, cremation is not presented as a representation of technological sophistication, it is rather represented as a factory, full of machines, which is reminiscent of the communist factories and plants. We can see furnaces in an empty room, or workers feeding the fire, or when Andrei Andreicuț’s intervention is presented, his fatherly figure. There is nothing wrong to show a furnace in a crematorium at first. Manipulation, the lack of honesty comes from a mass-media preferential treatment of burial, as compared to cremation. If the furnace is a part of the crematorium, if the fact that it functions is a clear reality which cannot be negated, it is also true that gravediggers, often dressed inappropriately and uncaring towards the pain of their clients, prepare the spot for the new body and reveal human remains. These are all realities of the practice of burial. However, the ways in which the two ways of disposing of the body are presented in the media are vastly different. It is enough to search through online or printed newspapers, in order to find images of more or less famous funerals, in order to observe that burial is illustrated as being a stable practice, from a ritualistic and spiritual point of view, and also a „beautiful” practice which brings piece. Thus, it is not normal that cremation presents itself in a reductionist manner, through the limitation to some components of

cremation – such as the furnace, fire and, on the other hand in other circumstances, burial is still accredited culturally, through the way in which the press represents it using images.

The intervention of Metropolitan Andreicuț named the example of the Soviet Union where the political regime imposed cremation in order to impact tradition and especially the Orthodox Church. This fact, from a Historical point of view, was a real one, but the economy of the intervention had a well defined purpose: introduce the link between communism-atheism and cremation in the minds of parishioners. If by looking at the history of cremation in Romania the example is out of place, because it had omissions regarding references to the situation of cremation in Romania and which would have demonstrated that there is no such link.

The press has continued to portray cremation in a negative light and connecting it to politics, after the protests<sup>40</sup> which took place especially in the Mănăștur<sup>41</sup>neighbourhood of Cluj-Napoca, caused by the involvement of the church (Andrei Andreicuț, and the priests Dan Hognogi and Călin Popovici), politics (independent representative Mircia Giurgiu) and – it is arguable if it was in an autonomous manner – the civil society (represented by Emil Ștețco, the leader of the foundation „Părinți clujeni”(Parents of Cluj)). Any possible analytical and critical valence regarding the discourse of the press has diminished ever since the protests are being announced and their two very disproportionate sides. RDK Cremation on one side and the people mentioned above on the other. There however a certain political presence between the two sides, namely the counsellors which have voted for the establishment of the crematorium and who are institutionally associated with the company which is building it. The opprobrium of priests and the civil society represented by Emil Ștețco stand against this political structure, and also it is characterised by agglutination, an intensification of the political<sup>42</sup>. The press, when it can, sends out darts against the idea of building a crematorium in Mănăștur, ranging from subtle references to accusations: „A suspicious business deal, which will bring 5 million Euros to the company every year. The Cluj town hall has associated itself with this small company, has offered the space for the construction for the meagre sum of 3 thousand Euros a year. The people of Cluj have contested the association between the municipality and the company, and are getting ready for a trial.”<sup>43</sup> Thus, it can be observed how the political, in the most negative way, is associated with cremation. The same reporter who wrote the article mentioned above, also brings Emil Ștețco’s statement to the argument about how the crematorium would be guilty, in case it would be put into use, of an „Auschwitz effect”. It is obvious how the political glides into its normal image, characterised by the perception of corruption, its far darker historical background and entering the imaginary space of Nazi totalitarianism. This must not make us believe that the association between communism and cremation was made and put in the spotlight. In a letter addressed to the Cluj town hall from the Adormirea Maicii Domnului parish of Mănăștur, Dan Hognogi, a priest, talks about the „two great atheist bloody analogies, which have marked the world in the 20th century, the Nazi regime and Communism, which have amplified the disdain for human beings because cremation was used on a large scale in order to erase the traces of great genocides”<sup>44</sup>. The Orthodox priest is not the only one who talks about this relationship. Ionuț Țene, a reporter, displays the link between cremation and communism<sup>45</sup> as a very old and stable one. There is a subtle analogy between the way in which people are treated in the communist regime - considered insignificant, tossed into crammed apartment buildings, and the way in which the body is treated after death, prepared for cremation, tossed into an oven. Thus cremation becomes not just a funerary practice which is typical for communism, but a way to express communist social and cultural aspects. „I have lived during the communist period when the crematorium was operational much to the despair of the people of Cluj. I was a child when I saw the atheist communists building a structure made out of fake red bricks in 1978 on the hill where the Mănăștur cemetery is located under the order of prime-secretary Mocuța, this red satrap who erected the apartment buildings in the neighbourhood

so that as many workers as possible could be wedged in like sardines in the vast industrial bedroom. So it began: black smoke came out of the tower of the human crematorium, where atheistic communists burned their bodies". The reporter's condescension is ironic and edgy: „Of course there are people who want to be cremated like the communist atheists. They can be burned, but in a crematorium outside of the city". Moreover, it is not correct, because communists are not necessarily atheists, just like atheists do not necessarily have to be communists, and none of them develop a special bond to cremation per se. On the other hand, Ionuț Țene committed a wilful error, because there was never a human crematorium in Cluj.

The failure to build a crematorium in Cluj<sup>46</sup> does not just represent the failure of a company to complete its business plans. It is not a bad thing that people have rejected the possibility of disposing of the body which would not take anything away from their freedom. But the way in which they did that was not right. There was an absence of real freedom, of making decisions, a true chance to inform oneself regarding the problem. A determining absence, in part due to manipulation strategies from the media, strategies which, on the level of the social imaginary, build up the unnaturally close relationship between cremation and politics.

## 6. De-politicization of the Imaginary of Death, the Chance of a Free Cremationist Imaginary

The excessive use of clichés regarding cremation leads to the creation of myths. Making cremation political on the level of the Romanian imaginary is based on the identification of cremation as a funerary practice which is typical for communism. Attributing communist meanings to cremation is, however, just one of the Romanian anti-cremationist forms. The myth of cremation as a political form damages the imaginary of cremation. This happens because, as it has been proven, political myths can be characterised by a rarefaction of images and an amplification of the ideological discourse. It will be increasingly difficult for cremation to find ways towards a symbolic reconversion necessary for a free human imaginary. Cremation, just like any fact belonging to reality must be approached with a critical spirit, in order not to facilitate possible manipulation mechanisms.

### Acknowledgements:

This work was supported by the Romanian National Council for Scientific Research CNCS-UEFISCDI, grant number 54/2011 – PNII TE.

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<sup>8</sup> *Ibidem*.

<sup>9</sup> Ever since the Romanian interwar period, cremation has been viewed and criticised as not being typically Romanian, much like the affiliation of this practice with atheism and freemasonry. Among the people who have manifested a strong opposition towards cremation was archimandrite Iuliu Scriban. In the magazine of the Romanian Orthodox Church in 1923, the former name of the Cenușa cremationist society, namely *Nirvana*, can be found, a food reason to argument that cremation is a foreign, borrowed practice which damages the Christian Romanian spirit, which hides under the theoretical necessity for progress. Cf.: Iuliu Scriban: *Ce ne mai lipsea... Arderea morților. Însemnări mărunte (What We Were Missing... Burning the Dead. Short Notes)*, in *Biserica Ortodoxa Romana*, XLI, 5, March 1923, p. 389.

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<sup>12</sup> About the Silence of the Orthodox Church during the Communist period, and about its recognition by the Church, immediately during the Revolution, see Iuliana Conovici, *Ortodoxia în România postcomunistă. Reconstrucția unei identități publice (The Orthodox Religion in Romania after Communism. Reconstruction of a Public Identity)*, volume I, Eikon, Cluj-Napoca, 2009, pp. 71-77.

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<sup>23</sup> M.-F. Bacqué: *Pourquoi la crémation résiste sur le plan psychologique en France*, in *Etudes sur la mort*, 2007/2 (n° 132), pp. 47-54

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<sup>26</sup> The struggle of the cremationists for legitimating themselves in an autonomous manner not in a relational one, like the opposite of Christian religion, is portrayed and explain in Marius Rotar's book. Marius Rotar, *Op. cit.*

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<sup>28</sup> All the aspects presented in the paper can be further researched in various directions, because they are subjects located at the crossroad between various fields. This time, we are trying to offer a general image on methods of social and imaginary interaction between cremation and elements of a social-political imaginary of death.

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<sup>40</sup> <http://www.monitorcluj.ro/actualitate/9885-mars-al-tacerii-impotriva-crematoriului-uman;> <http://www.clon.ro/peste-300-de-clujeni-au-protestat-impotriva-crematoriului-din-manastur/1039143>

<sup>41</sup> For an updated journal on the way in which these protests were organised and have taken place see the page of the Amurg Cremationist Society. <http://www.incinerareamurg.ro/noutati-news-2>

<sup>42</sup> We are talking about the dynamic nature of politics, the fight between different parties, made possible by the theme of cremation: <http://www.ziare.com/cluj-napoca/stiri-actualitate/usl-cluj-cere-prefecturii-sa-revoce-hotararea-de-consiliul-local-care-face-posibila-amenajarea-crematoriului-din-manastur-2714012;> <http://www.ziare.com/cluj-napoca/stiri-actualitate/pdl-cluj-ii-acuza-pe-liderii-usl-ca-au-participat-pentru-voturi-la-mitingul-impotriva-crematoriului-din-manastur-2714384>

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**ORIGINAL PAPER**

**Petru Sorin DRĂGUȘIN**

**Beyond communism and capitalism.  
Epistemic establishments of social order**

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**Abstract:** *The present articles argues about the balance between power and knowledge identifying as a linking element for the two meanings of the order the knowledge order and the political order, the impartiality.*

**Key words:** *politics, power, communism, social order, human being.*

One of the constant challenges the human being faced and is still facing during the history is that of order, in the absence of which the human being fails as social being. On the other hand, the human being experiences his own freedom as fundamental dimension, to have and follow his own fate. This problem of order and freedom suffers many changes our interest being oriented towards the political expression and its epistemological one, terms that, through the development of socio-humans sciences, come more closely to the positive advise knowing for being capable.

We bring back, this way, in our critical discussion the balance between power and knowledge. In this approach we propose the context of dispute between the followers of axiological neutrality and its disputers on the background of an anomic globalisation that progressively slinks in the field of the ex Cold War.

In order to achieve this aim, we identify as a linking element for the two meanings of the order we referred to, the knowledge order and the political order, the impartiality. From this point we analyse two directions for assuming the impartiality.

The first is that which sustains that objectivity is the one that legitimates the speech of epistemic and political power at least at level of intention. In both cases, the power apparently lies in unsubjectivity, in the meaning of some objective decisions that go beyond epistemic subject and political one and they both represent the expression of an order that circumstances it. This is a normative – procedural order. Knowledge is nothing but applying the logical laws as democracy is just applying the principle of majority. In the social sciences plan we find the axiological neutrality thesis, initiated last century by the German socialist Max Weber that links the universal validity of science to the demand that the scientist be forbidden to project in his research his valuable judgements and his esthetical and political preferences. On the political power play, the sovereignty is the act of acknowledgement from the majority will.

- The second direction is that which through Ludwig Wittgenstein, doesn't discover a pure objectivity as long as "the basis of knowledge is faith" and furthermore "the basis of strong faith is weak faith"<sup>1</sup> Objectivity is, this way, circumstanced through the life world in which challenges are rarely expressions of a straight evolution and in which very often appears the anomy. This time, the axiological neutrality thesis becomes, according to Immanuel Wallerstein, a major obstacle because as she sustains, we cant make distinction between searching the truth or searching the good. The man of science is free because he carries a big responsibility that in the political power plan can be translated with what Carl Schmitt defined sovereignty: a sovereign is that who decides in special situations and his decision inevitably expresses a worthy option.

The relation between the two perspectives also becomes obvious in the field of debates on legitimating at international level, illustrated by Francis Fukuyama through Douglas – Lincoln "Douglas alleged he didn't care if the people voted for or against slavery as long as the decision reflects the people's will. Lincoln, on the other hand, said that slavery itself breaks the highest level of equality between people principle that is on the basis of the American System."<sup>2</sup>

In another way, the decisions made by sovereign liberal democracies are fair from procedural point of view but not guaranteed as being just and legitimacy is based on previous norms and rights that arise from a superior moral value to the legal order.

The hypotheses we intent to assume is that, in the circumstances of a world affected by globalisation, the risk of a generalised anomy following interpenetration between several cultures and traditions that assert multiple sides of the truth can only be tackled by a close correlation between knowledgement and the power exercise to assert the concise Imperative.

The disappearance of the iron curtain, as a succession of events lived in the intensity of a freedom capable to deliver more and more diverse promises, seems not to reduce, according to the etologist Konrad Lorenz the discrepancy between the amazing successes obtained by man

when controlling and domination of his extra specific environment and his serious incapacity to solve his own problems of his intra specific relations. In this regard, never were more faithful to the reality the comments of the philosopher Ortega y Gasset "We live times that are fantastically capable to accomplish but they do not know what to accomplish". This difficulty clearly raises the problem of responsibility of man of science in general, of the specialist in socio-human sciences in special and brings many questions, inclusively on the role of socio-human sciences. History brought us, through the means of the last century lessons the paradox of questioning the ideology through ideology which, for some thinkers, equalized with the end of any ideology and with the identification of the starting point from which a reinvention of politics should restart. Nowadays, after very short time, they speak about reinvention of ideology. Can we, in the field of socio-human sciences, find an answer?

To ask for clarification could mean to clarify the social utility of science or, as Evry Schatzman says, "it is an essential piece of our culture". The science utility can be analysed through reference to nature, man getting advantage because of it, which still leaves unresolved the problem of aims to whom it subdues, in the same time it is also necessary a reference to man on the field of socio-human sciences. In this case we point out along with Evry Schatzman some desideratums of sciences as they were created by Renan, Freud and Marcellin Berthelot<sup>3</sup>:

- "to organize humanity scientifically, that is the last word of human science, it is daring but legitimate claim" – Renan;
- "our best hope for the future is that wisdom-the scientific spirit, the reason – may establish a dictatorship in man's mental life" – Freud;
- "the discover of a spiritual chemistry capable to change the man's moral nature" – Marcellin Berthelot.

The scientific organization of humanity, the dictatorship of scientific spirit, the change of man's moral nature represent altogether aims towards which science becomes means. The aims aren't disclosed therefore timelessly released from any circumstanciarly as "men of science can't avoid being confronted with fundamental problems of human nature, as well as they can't avoid the choice between certain sets of values"<sup>4</sup>. And in this respect Schatzman's question is entitled whether "is there one or more perspectives on science?"<sup>5</sup> Or, other way, to whom do those perceptions belong? To human nature, to reason, to man, to unity or to diversity? The meaning of the question is related to the organising possibility, the justified dictatorship, clear or darken, to the chance for the better or worse and, finally, there comes the question: whose good or whose bad?

In these questions we can find as many arguments to define science as a threat: "the scientific research consists in the germs that bring into discussion the dominant ideology. The result of the issue is a value for the society's fundaments."<sup>6</sup>

Referring to the matter of sociology, Achim Mihu<sup>7</sup> synthesizes in five arguments the disputes brought permanently to it, to its possibility of being a genuine science:

- judgements of sociology depend on the experience of those that exert this subject;
- indexicality – the fact that speaking and acting mean depends on the social estate they belong, the phrases of sociology being therefore limited in their meaning by particular linguistic contacts;
- the relationship occurred between sociological theories and specific social groups, knowledge being placed into a relationship almost determinist with the social background where the sociologist is placed this happening just on the field of sociology by the advocates of sociology of knowledge;
- phonetical obligation to observations;

- the axiological commitment of person that also necessarily acts on the level of men of science even though they are not always aware of it.

This last argument represents the origin of that which is known in the socio-human sciences as the issue of “axiological neutrality” of the researcher preoccupied to discover social life, issue which is strongly linked to the imperative objectivity and this way, to the problem of possibly existing a social science, because, according to Immanuel Wallerstein, it faces us with a dilemma: “Is there an outer objective reality that can, eventually be known with the condition that proper means and necessary effort be made (altogether), or the so called truth is nothing but a simple mask for a certain ideological position that was long time ago defined, that could allow us to call it truth?”<sup>8</sup>

In his work *The American Power Decline*<sup>9</sup>, Immanuel Wallerstein, being interested to trace the outline of the situation the mankind lives, in general, and the scientist, in special, approaches the axiological neutrality thesis starting from three categories of issues that the follow of social knowledge involves:

- intellectual – which expects from us a critical and sober analysis of the reality;
- moral – which ends in the imperative to decide which are the values to whom we want to give priority;
- political – where it is important to decide “how we can support the possibility that the world which is to be born from the chaotic structured crisis of the world capitalistic system to be better appreciated than the present one”<sup>10</sup>.

Chapter eight – *The Intellectuals: a questioning axiological neutrality* – recircumstanciates the scientist in a globalised world where we should again wonder, as we used to in the last two hundred years, if the moral, political and intellectual aspects can and must be completely separate approached. Far from being a rhetoric question, interrogation on axiological neutrality is considered to be constructive for the structured crisis of the capitalistic system and it brings forward an assessment of the present members of our system of knowledge. The conception “of the two cultures” is taken into account, according to which there might be a huge difference between the scientific knowledge and philosophical-humane one, being considered as “not only inadequate to offer an explanation of the massive social transition we are going through, but also a major obstacle in the way of our capacity to solve the crisis in a clever way”<sup>11</sup>.

Wallerstein does not agree with this double meaning of the epistemic topic that he sees created symbolically in the same time when Socrates accepted to drink hemlock, to distinguish between searching the truth and searching the good. In this regard, the modern western world is very close to the civilization of the Ancient Greece, the topic being in fact that of the intellectual tolerance.

The 19-th and 20-th centuries marked two types of attitudes towards this one:

- a first way of accounting for it that has already imposed itself within the social sciences, has developed on the hypothetical distinction between science as a realm of truth and politics – deposit of values.
- the second perspective is rendered by Antonio Gramsci, who sustained that necessarily intellectuals are conditioned by the social class they belong to.

As we noticed the axiological neutrality thesis marks a clash between sphere of science and the public arena and by its affirmation is justified “the social and political toleration of social sciences”, according to Wallerstein. It represent a fundamental perspective within social sciences with which the work of the German sociologist Max Weber is associated strongly attached to the ideal of the objective science and its main idea is that both the researchers and the community as a whole, must carry on the mission of correlating and interpreting data regardless the confirmation or infirmation by these of shared values. According to Wallerstein, the difficulty of this option

consists in establishing at what level such a science without value has or not has value, because, if we accept along with Tolstoy that the only important question for us to be: "What are we going to do and how we are going to live?", then Weber's view – "the social sciences which are strictly empiric are the least appropriate to solve the difficult problem of formulating an option and therefore it shouldn't leave the impression they can do it"<sup>12</sup> – is one that the science risks to become illegitimate. Relatively, in the subject about intellectual tolerance, Weber's option would rather be a kind of attempt to get rid of the domination from the national intellectuals on the right in the German academic environment.

The second attitude, highlighted by Wallerstein through the Italian Marxist Gramsci position rejects the axiological neutrality thesis, being considered that intellectuals are organically tied with the social class they belong to. On its turn, this orientation is explained by the desire of getting rid of central liberalism domination which marked the Italian intellectual arena.

The tension spotlighted in the two options can be reduced to the distinction of Kant between "what is" and "what should be" and it appears as an important characteristic for the modern world system. On its field, the theoretical analysis seem to have a dual nature, as being realistic-descriptive and simultaneous prescriptive but finally they prove to be inaccurate. The competition, the sovereignty, the citizenship, the axiological neutrality – the main myths of the modern world system – are at the same time approached from the descriptive and prescriptive point of view but "none of them is, by far, an accurate description and the majority of world's populations along with the best defenders of the system, rarely practice what they are recommended"<sup>13</sup>.

The competition, in order to be accepted, must generate profit to the society but, in order to get it, the market must be somehow restricted so that the freedom of competition correlates with a certain role accepted to the state. Sovereignty is mutually promoted by the states but we can not speak about balance without the terms of *Realpolitik* and the ordinary impact of an organization like UN is quite relevant. Citizenship, as main gain of French Revolution, is faded by the study in the 19-th century of some binomials like: bread winner/house worker, productive worker/unproductive worker, civilized/uncivilized, honest citizen/offender etc.

At its turn, the axiological neutrality is not tangible despite what is proclaimed:

- devotion to abstract truth;
- selection of works and search methods, strictly as an expression of some scientific interests;
- resistance to any social, political or financial pressure that may be insinuated in order to change the results of the research;
- abstention from formulating conclusions used in the public arena.

That's why, as Immanuel Wallerstein claims, the axiological neutrality is rather "a concept created to restrict a turbulent, difficult and pseudo intelligent group of intellectuals"<sup>14</sup> and problems occur especially when the historical system we live in goes into a structural crisis. Eventually, the scientist of the community, especially for social sciences, may be legitimately asked: What is their reason to be from the contributor's point of view? Or, to reformulate: so you know, how it helps me that you know? Can the Weber's creed be accepted as "an empiric science will never have the mission to establish compulsory norms and ideals, on the basis of which instructions be made to practice"<sup>15</sup>?

The answer does not necessarily mean moving on Gramsci's side with the meaning of creating an ideological key of the social, as well as a recognition of limits to axiological neutrality thesis by demonstrating the impossibility of existence of moral, political and intellectual loneliness. It is not a matter of confusion of plans but accepting that debates happen simultaneously on the three coordinates all of them having the same importance, an intellectual appreciation of the

direction we are heading to, a moral appreciation regarding the direction we want to orient and a political one concerning the way we succeed to identify and adequate the means to achieve the target. Only in this way we can discuss about a social relevance of the specialist in social science.

We think that Wallerstein position is not completely different from the one that Weber created, the main difference being that the former creates interrogations focusing on a certain snapshot of the history evolution, the one in which our social-historical system (which is identified with the modern world system) is deviating from the balance being obliged to create a transition which may avoid therefore the chaos. At the same time, he adopts an analytical perspective on the world system, highlighting the possibility of existence of a temporary arrow, with many crossroads that come one after another which makes possible but not inevitable the progress. The role of specialists in social sciences becomes, this way, possible and, in the same time, necessary even though, due to the nature of changes, they will not be able to make predictions. They have to identify between cyclic pattern of the old system and what is really new, and for that “we need certain space in appreciation”<sup>16</sup>.

The crossroads that occur at the exit of a system have as only certainty the existence of some ways to follow but they do not tell us anything about what our choice should be, so that we find ourselves in a situation of anomie: “social state described by lack of cohesion and order, especially regarding norms and values”<sup>17</sup>. The impossibility of a formal reason leads to a substantial reason which implies choosing between aims, meaning “outlining fundamental values of the new historical social system we prefer to build” and this, also being a problem for all, can’t be avoided by the scientists, “because our decisions decide the way we are following our intellectual destiny”<sup>18</sup>. Substantial reason is, this way, the foundation of formal reasoning specific to the scientist that cannot avoid questions as: *what does a good society mean?*, questions that marked the biggest moments of social division in the modern world system - 1789, 1848, 1870, 1914-1918, 1968 or 1989 – and towards which we can say that an agreement can’t be identified, not even today.

This opposition between the substantial reasoning and formal reasoning is a supposition that Jurgen Habermas contests through his theory on communicative reasoning. Revealing religious and metaphysical beliefs about world does not deprive reasoning from any connotation of context from the possibility to interfere in the world beyond the simple organization of means reporting to the aims. On the opposite, “communicative reason – despite its strictly procedural character relieved from all religious and metaphysical hypothesis – is purely inserated in the process of the social life through the fact that acts of understanding get the role of a mechanism of the coordination of the action. The texture of communicative actions feeds from the life’s world resources and build in the same time, the *environment* through which the concrete life forms reproduce.”<sup>19</sup>

The same dispute of isolating value from the life’s practice on the field of epistemology is identified by Marin Aiftinca in Petre Andrei’s philosophy: “Man knows reality in order to use it in his own interest. Therefore, the theory unifies with the practice, because the former’s results, of knowledge, in general, are assessed, validated by the practice”<sup>20</sup>.

The axiological neutrality thesis can face difficulties in historical periods marked by anomie as the element in whose confusing, uncertain, affecting the scientist’s position and social science status. That’s why the question, concerning how we should organize in transition, must be a challenge to which they should respond on its field.

An withdrawal in the ivory tower, in the measure of which such a tower can resist during a transition, on the base of a proclaimed freedom in accordance with the values would make the scientist guilty and impossible. Science, in general, and social science, in special, must be lively, so that for Wallerstein could mean, in spite of uncertainty of the result, that “during the times of

transition no one can afford the luxury to stay away”<sup>21</sup>. It’s not about a “proletarian unification” of intellectuals, but, on the contrary, assuming the role of “interpreters among different movements”, of translating the priorities of a movement in the language of the other one and then in a common language, “that gives the possibility to all to understand intellectual, moral problems and then the political problems they face”<sup>22</sup>.

A recreation of politics undergoes therefore the human’s re-creation, of the social space and particularly of the other one as a play of perceptions and identities. Reality is socially constructed and social science can become architecture only if it allows itself to be penetrated by a new ethos, in the original sense, that makes reference to “house”. “To scientifically organize humanity”, the aim proposed by Renan, finally has an ethical colourness, ethics being nothing but, as Andrei Plesu says, “arranging the world in view of being lived, the founding of a new space in which the soul can feel itself as if it were at home” and social-human sciences objectiveness correlate with solidarity, thus it becomes a moral virtue. An epistemic foundation of social order would be possible only in a deontological norm system of the scientific community’s members in the horizon of the ethical Imperative, that always claims us to threat humanity inside us and inside our peers all the time as an aim and never as a means, with effects particularly on the relationship scientist – politician.

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ORIGINAL PAPER

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Arguing from Social Status in Public Discourse

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**Abstract:** *This paper presents a way of interpreting Brandom's „institutional” pattern of material inferences as a defeasible and presumptive argumentation scheme that can be used in analyzing and evaluating the practical arguments containing the arguer's claim that she or he is committed to a social institutional status as a premise, and intention (undertaking a commitment) to act as conclusion.*

**Key words:** *Practical material inference, argumentation schemes, public discourse, Brandom, Walton.*

The aim of this paper is to reformulate Brandom's suggestions (Brandom, 2000) referring to the role of the normative vocabulary and the attribution of patterns of practical reasoning to an agent, in order to make them suitable for the analysis and evaluation of the practical arguments containing the arguer's claim that she or he is committed to a social institutional status as a premise.

In doing this I shall consider Brandom's notion of "making explicit... the endorsement of a pattern of material practical inference" (Brandom, 2000, p. 90) as being more or less equivalent to Walton's notion of identifying and evaluating an argumentation scheme in a text of discourse (Walton, 1996; 2006; 2008), and treat Brandom's "institutional" pattern of practical inference as a defeasible and presumptive argumentation scheme with critical questions associated with it.

### **Brandom on the role of the normative vocabulary in logical analysis**

According to the "expressive" role Brandom attributes to logic, "normative vocabulary (including expressions of preference) makes explicit the endorsement (attributed or acknowledged) of material proprieties of *practical* reasoning" (2000, p. 89). In other words, "the broadly normative or evaluative vocabulary... is used to make explicit in assertible, propositional form the endorsement of a pattern of material inferences. Different patterns of inference should be understood as corresponding to different sorts of norms or pro-attitudes" (pp. 89-90). For instance, the use of the normative term "obliged" in

Bank employees are obliged (required) to wear neckties,

makes explicit the endorsement of the material practical inference:

I am a bank employee going to work, so I shall wear a necktie.

And the normative term "want" in

I want (desire, prefer) stay dry,

makes explicit the endorsement of the material practical inference:

Only opening my umbrella will keep me dry, so I shall open my umbrella.

Equally, the normative "ought" or "ought not" in the proposition:

It is wrong (ought not) to harm anyone to no purpose,

makes explicit the endorsement of following practical inference:

Repeating the gossip would harm someone to no purpose, so I shall not repeat the gossip.

However, in Brandom's view, propositions containing normative terms are not implicit or unstated premises in the inferences they license. The use of the normative vocabulary has the only role of making explicit "implicit inferential commitments, in the form of claims" (pp. 86-87). Such propositions do not contribute to the force of the inferential relation between premises and conclusion. In other words, they are "not required to make the inferences they explicitate *good* inferences" (p. 87). Since, according to Brandom's expressivist account on logic, "playing such an explicating expressive role is precisely what distinguishes some vocabulary as distinctively *logical*" (p. 87). Instead, the role of these propositions, that express or refer to norms is to make explicit "the *inferential* commitment that permits the transition" (p. 89) from premise(s) to conclusion. But, making explicit an inferential commitment means different things for different patterns of practical reasoning. For instance, proposition "I want to stay dry" makes explicit the

attribution of a preference to an agent, implicitly attributed through a material inference such "Only remaining in the car will keep me dry, so I shall remain in the car", the transition from the premise to the conclusion of which it licenses. But, proposition "Bank employees are obliged (required) to wear neckties" makes explicit the inferential endorsement that permits the transition from the premise to the conclusion in the following material practical inference: "I am a bank employee going to work, so I shall wear a necktie". Therefore, what authorizes the transition from the premise to the conclusion in this material inference is a norm "associated" with a social status (p. 91). To say that what authorizes the transition from the premise to the conclusion, in this case, is a social norm, is, from the point of view of Brandom's deontic scorekeeping model of discursive practice, to say that "[t]aking it that there is such a norm or requirement also just is endorsing a pattern of practical reasoning: taking ['I am a bank employee going to work, so I shall wear a necktie'] to be a good inference for anyone who is a bank employee" (Brandom 2000, p. 90). A special feature of this inference is that it is considered by the scorekeeper "to be a good inference for any interlocutor A such that the scorekeeper *undertakes* doxastic commitment to the claim that A is a bank employee" (Brandom, 2000, p. 91). Therefore, "[w]hether one has a good reason to wear a necktie just depends on whether or not one occupies the status in question" (Brandom, 2000, p. 91). And, more generally, such a "pattern, where what matters is the scorekeeper's undertaking of a commitment to A's occupying the status rather than A's acknowledgment of that commitment, corresponds to an *objective* sense of 'good reason for action' (according to the scorekeeper)" (p. 91).

The fact that what authorizes the transition from premises to conclusion it is not a premise is a consequence of non-monotonicity of what Brandom, following Wilfrid Sellars, calls "material inferences".

Non-monotonicity of material inferences, including those having this pattern, is what makes them defeasible inferences (Pinto, 2006, pp. 309, 312-313; Pinto, 2009, pp. 282, 289; Hitchcock, 2009, pp. 18-19; Godden and Walton, 2007, p. 275; Walton and Godden, 2007). Therefore, such models can be seen as argumentation schemes, with the meaning of "argumentation scheme" as it is in informal logic (Walton, 1996; Walton, Reed, Macagno, 2008). However, an argumentation scheme associated with Brandom's "institutional" model (Brandom, 2000, p. 91) is not to be found on the actual lists of argumentation schemes. In its implicit form, an inference having this pattern could be the following one:

I have the social status S

Therefore, I shall do A.

An inferential commitment to this material inference could be expressed through the proposition:

Generally, those who have the status S ought to do A.

So, the *explicit* form, which can be treated as an argumentation scheme will be:

In this case, I have the social status S.

Generally, those who have the status S ought to do A.

Therefore, I shall do A.

In this scheme, we will call the first premise Social Status Premise, and the second, Normative Premise.

### **Institutional patterns of inference as argumentation schemes for practical reasoning**

Walton treats patterns of practical reasoning in the way Brandom treats what he calls the “prudential pattern of material inferences”, that is, by considering them as attributing goals or intentions to an agent. For Walton, the basic scheme for practical reasoning and the scheme for value-based practical reasoning explicitly refer, in the premises, to the goals, intentions or preferences of the agent (Walton, 2007, p. 226). For Brandom, material inferences that contain such references are of the following kind: “Only opening my umbrella will keep me dry, so I shall open my umbrella”, or, “It is raining. Therefore, I shall open my umbrella”. According to Brandom’s expressivist approach to logic, proposition “I want to stay dry” is not a premise, implicit or unstated, of the inference. It only has the role of making “explicit in assertible, propositional form the endorsement of a *pattern* of material practical inferences” (Brandom, 2000, p. 90). That is, it only makes explicit “the norm implicitly underwriting the inference”, a norm that “is associated with... exhibiting a certain desire or preference” (p. 91).

But what if the scheme did contain reference to the social status of the agent, as in the Brandom’s institutional pattern of inference in which the norm implicitly underwriting an inference is associated with “having a certain status” (p. 91)? In both cases, the prudential and the institutional, “[t]o endorse a practical inference as entitlement-preserving is to take the doxastic premises as providing reasons for the practical conclusion” (p. 92). However, while in the prudential pattern doxastic premises or assertions refer to the agent’s goal or intention, as in the following example: “Only standing under the awning will keep me dry, so I shall stand under the awning”, in the institutional one the premises refer to the agent’s social status, as in “I am a bank employee going to work, so I shall comb my hair”. However, if Brandom’s approach is correct, then we have reasons to take into account, for the sake of analysis and evaluation of arguments, not only argumentation scheme for practical reasoning having the general form (Walton, 2007, p. 226):

#### *Basic Scheme for Practical Reasoning*

I have a goal G.

Bringing about A is necessary (or sufficient) for me to bring about G.

Therefore, I should (practically ought to) bring about A.

or (when values are involved) having the general form (Walton, 2007, pp. 226-227):

#### *Scheme for Value-based Practical Reasoning*

I have a goal G.

G is supported by my set of values, V.

Bringing about A is necessary (or sufficient) for me to bring about G.

Therefore, I should (practically ought to) bring about A,

but, also, schemes having the form

In this case, I have the social status S (or I am S).

Generally, those who have the status S ought to do A.

Therefore, I will do A.

Brandom's suggestion and the reason for taking into account this pattern of inference is that having a certain status is as good a reason for acting in a certain way (from the point of view of the agent) as to have a certain goal or intention. Given the non-monotonicity and the defeasibility of this pattern of practical reasoning, the inferences corresponding to it can be evaluated using critical questions. But what critical questions do match the institutional pattern of practical reasoning?

If, as Brandom suggests, the proposition making explicit the agent's inferential commitment, that is, the proposition "Generally, who has the status *S* should do *A*", is added, then the critical questions matching the argument (taking this proposition as a premise), that can be called (A) Argument from Social Status:

*Argument from Social Status*

In this case, I (*a*) have the social status *S*.

Generally, who has the status *S* should do *A*.

Therefore, I (*a*) will do *A*,

could be the following:

(A1) In this case, does *a* have the status *S*?

(A2) Should anyone having the status *S* do *A*?

The questions are general in character, but a comparative analysis taking into account other similar argumentation schemes, such as Argument from Commitment and Argument from Verbal Classification, can detail them. The argumentation schemes for these arguments are as follows (Walton, 2006, pp. 117-118; p. 129):

(I) *Argumentation Scheme for Argument from Commitment*

*Commitment Evidence Premise:* In this case it was shown that *a* is committed to proposition *A*, according to the evidence of what he said or did.

*Linkage of Commitments Premise:* Generally, when an arguer is committed to *A*, it can be inferred that he is also committed to *B*.

*Conclusion:* In this case, *a* is committed to *B*.

The scheme has two critical questions associated with it:

(I.1.) What evidence in the case supports the claim that *a* is committed to *A*, and does it include contrary evidence, indicating that *a* might not be committed to *A*?

(I.2.) Is there room for questioning whether there is an exception in this case to the general rule that commitment to *A* implies commitment to *B*?

(II) *Argumentation Scheme for Argument from Classification*

*Individual Premise:* *a* has property *F*.

*Classification Premise:* For all *x*, if *x* has property *F*, then *x* can be classified as having property *G*.

*Conclusion:* *a* has property *G*.

Two appropriate critical questions match the scheme:

(II.1.) What evidence is there that a definitely has property *F*, as opposed to evidence indicating room for doubt on whether it should be so classified?

(II.2.) Is the verbal classification in the classification premise based merely on a stipulative or biased definition that is subject to doubt?

The pattern (A) has in common with the scheme (I) the fact that in one premise a propriety is attributed to an individual, and the other premise is definitional in character. In terms of Brandom's institutional inferential pattern, the critical questions for the Argument from verbal Classification would be:

(II'.1) What evidence is there that the person who says that she or he has the social status, as opposed to evidence indicating room for doubt on whether it should be so classified?

(II'.2) Is the normative premise based on a stipulative or biased attribution of S?

As for the scheme (I), the critical questions for argument (A) can be:

(I'.1) What evidence in the case supports the claim that the person who said that she or he has the status S is committed to S, and does it include contrary evidence, indicating that she or he might not be committed to S?

(I'.2) Is there room for questioning whether is an exception in this case to the general rule that who is committed to S is also committed to doing A?

Questions (I'.1) and (II'.1) detail the question (A2). But, since the social status premise in (A) is, according to Brandom, a doxastic commitment or an assertion (from the point of view of the arguer), (I'.1) is a better particularization of (A1). Questions (I'.2) and (II'.2), referring to the normative premise, complete each other. (I'.2) questions whether commitment to S implies commitment to doing A, and (II'.2) questions whether the normative premise is a persuasive or stipulative definition. Therefore, both questions are necessary in evaluating arguments that have the form (A). Thus, A can be put in the following form:

*Argumentative Scheme for Argument from Social Status*

*Social Status Premise:* In this case, I have the social status S.

*Normative Premise:* Generally, anyone having the social status S should do A.

*Conclusion:* I will do A.

The three critical questions matching the scheme are:

(CQ1) What evidence in the case supports the claim that the person who says that she or he has the status S is committed to S, and does it include contrary evidence indicating that she or he might not be committed to S?

(CQ2) Is there room for questioning whether there is an exception in this case to the norm that who has S should do A?

(CQ3) Is the normative premise based merely on a stipulative or biased definition that is subject to doubt?

To answer the first question one has to identify pro and contra evidence for the agent's claim that she or he has the status S. The answer to the second question concerns the degree of generality of the normative premise, and the answer to the third question concerns the cases (if

any) in which what one having the status S should do is not defined through a definition that is generally accepted as norm or rule, but rather through a stipulative or persuasive definition. On account of the definitional character not just of the normative premise, but also of the social status premise, one further question can be added:

(CQ4) Is the social status premise based merely on a stipulative or biased definition that is subject to doubt?

The answer to this question concerns the cases (if any) in which attribution or self-attribution of statuses is rhetorical or arbitrary in character.

## Conclusions

I have presented here a way of interpreting Brandom's „institutional” pattern of material inferences as a defeasible and presumptive argumentation scheme. Four critical questions matching the scheme have been proposed by analogy with two defeasible argumentation schemes: argumentation scheme for argument from commitment and argumentation scheme for argument from classification. The analogy is authorized by Brandom's suggestion that we should treat as practical, i.e. exhibiting commitment to action as conclusion, not only inferences from goals, intentions, or preferences to intentions to act, but also from commitments to social statuses to intentions to act.

## Acknowledgment:

„This work was supported by the strategic grant POSDRU/89/1.5/S/61968, Project ID61968 (2009), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007 – 2013.”

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## ORIGINAL PAPER

Florin CORNEANU

### Regulating Moral Damages before and after the Communist Regime in Romania<sup>1</sup>

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**Abstract:** *This paper presents the legal aspect aspects of regulaiong moral damages before and after the communist regime in Romania. Furthermore, the article specifically argues about the normative acts which regulate moral damages after Communist Regime in Romania.*

**Key words:** *communism, Romania, moral damages, law, rights.*

The repair of moral damages occupy a extremely important place in the criminal and civil law process when such kind of damages are being created in a person patrimony, there for the legislation must contain efficient ways to repair and compensate moral damages.

Regulating moral damages existed in the communist period in our country existed this regime but we can say that the measures regulated and the measures existing were much more limited and not so precise than the measures regulated after the year 1989 after the clash of the communist regime in Romania. We can say that this small interest given to the moral damages by the communist regime is due to the fact that that regime gave little interest in protecting the person and her rights.

In order to understand the problem which I am going to analyse in this article, first I must define what moral damages notion means.

The definition of moral damage:

Civil prejudice, generally, is the result of a illegal act or the harm to a legal interest. If this negative result can be evaluated in money, this is a material prejudice. So the out come of the illegal act will affect that person patrimony (the destruction of a good or stealing a good.)

If the out come of a illegal act can not be evaluated in money, that prejudice is a moral prejudice. For example the physic or psychic sufferings, caused by harming the honour or reputation of a person. In this cases the out come of the illegal act concern some values that do not contain any economic value, and this values can not be evaluated in money.

In the attempt to define the notion of moral prejudice, in the juridical literature was said: "moral prejudice is composed from the moral values caused to the person (honour, dignity, social status, the liberty or her reputation as well as the ones that represent a infringement to the feelings of affection)". It was also said that "moral damages represent in reality physic or psychic sufferings but in not any circumstances they do not represent material losses."

In another point of view it was considered that "moral prejudice are the ones that result from the harm of unpatrimonial interest. They can't be evaluated in money.

In the foreign literature It was considered that "moral prejudice are the ones that express in a loss of money, because it prejudices a extra-patrimonial interest", that "the moral prejudice is the harm created to the extrapatrimonial right", and in another definition it is said that moral prejudice is "the prejudice that affects the personal interests of a person and which contains in physique or moral sufferings which affect the victim".

From all this definitions, we conclude the idea that the essential characteristics of moral damages are:

- moral prejudice is the result of illegal acts that affect some unpatrimonial rights;
- prejudice does not consist in material losses;
- moral prejudice manifest in physique or psychic sufferings which the harmed person feels;
- moral prejudice can not be evaluated in money;

In this delicate problem which the moral damages represent the courts<sup>2</sup> are the ones that have the right and the ones that have the legal powers to appreciate the value of the legal interests that are affected. The law juridical literature and the practice pointed out facts that make hard to solve not too much the problem of moral damages but the problem of the criterion and methods necessary to determinate the value of prejudice. We appreciate that if there are no legal criterion, the court is the one that must determinate the value of prejudice, by firstly applying unpatrimonial measures, secondly by applying some money sanctions, as well as the symbolic money repair of the moral damages.

### **Unpatrimonial rights which cause moral prejudice**

As we previously defined the moral prejudice, we said that it represents that right that can not be evaluated in money. It is formed out of those unpatrimonial values of a person which has the benefit of being protected by the law. So, the human's unpatrimonial values, protected by law, are represented by the subjective unpatrimonial rights.

In a concise classification, we can say that belong to the unpatrimonial rights the following rights:

a) unpatrimonial rights closely attached to the human person, recognized and guaranteed to all physic persons, such as: the right to life, physic integrity, the right to physic and psychic health, the right to freedom, the right of security, the right to private life, the right to protect our residence, the right to have a name, the right of honour, reputation, dignity and social status, the right to think free and chose your religion, the right to have personal feelings, the right to memories, the right to have honest judgement;

b) unpatrimonial rights that are closely related to the family life of a person: the right to get married and make a family, the right of parents to have bounds and raise, educate, and take care their children, the right of mutual help between the members of a family and moral assistance;

c) the unpatrimonial rights that belong to autors that create science operas, literature operas or artistic operas: the right to be recognized as a author, the right to make the opera public, the right of the inviolability of the opera, the right to demand any abuse brought to the use of the opera;

d) the unpatrimonial rights that belong to the legal person: the right of naming, symbol, firm, trade mark, the right of reputation, the right to a fair competition.

### **Regulateing moral damages during the Communist Regime in Romania**

During the Communist Regime in Romania the patrimonial measures necessary for repairing moral damages have been contested by the communist regime.

Right from the moment of the application of the Romanian Civil Code, at 1 december 1865, in the old jurisprudence it had been adopted a mixt system of repairing moral damages, repair represented by unpatrimonial measures and sum of money, sometimes being taken both of the measures the same time.

For example, there have been taken unpatrimonial measures for repairing moral damages, appreciate that " by the fact of publishing an article in a journal or a periodic magazine, the responsibility of a person for her actions can exist when the published article has produced an prejudice to a person. If the published article, as well as the conditions in which the publication was made, does not satisfies the conditions necessary for Criminal Law code specifications, the person to whom has been caused an prejudice has only the possibility of a civil action in front of the Civil Courts, based on article number 998<sup>3</sup>, having right of material compensations and the right of response" . This right of response, recognized to the person that registered a prejudice, was considered a modality of repairing the moral prejudice that has been caused. Most of the times, moral damages were reapaired by obligateing<sup>4</sup> the person which caused a prejudice to pay a sum of money in favour the harmed person.

During the Communist regime period, with the adopting the guideing Decizion number VII from 29 december 1952, by the Plen of the Suprem Tribunal , was adopted the settlement of not repairing moral damages with money compensations. As a fact, the Communist Regime adopted, by the Decree<sup>5</sup> which implicated civil person and moral person, a system of repairing moral damages only with unpatrimonial measures. This way our civil law system making possible the repair of moral damages only with unpatrimonial measures. It had never existed before, in our law system, such a settlement for defending unpatrimonial rights.

Article number 54 from the Decret number 31/1954 regulates that: "The person that has suffered a prejudice to her right of name or pseudonym, honour, reputation, the personal right of author of an scientific creation, artistic or literar, inventor or any other unpatrimonial right will be able to demand the Courts/Tribunals to put an end to the violation of the rights we have previously specified.

On the other hand, the one that suffered a prejudice to this kind of rights will be able to demand the courts to obligate the person that created the violation to fulfill any measures considered necessary by the courts, in order to re-establish the violated right".

Another Decret<sup>6</sup> regulates that: "if the person guilty for its facts does not fulfill, in the time established by the court, the obligations set by the court to restore the harmed right, the court will be able to oblige the guilty person to the payment, in the interest of the State (Communist Regime in Romania), of a daily fee paid for every day of delaying, considered from the expiring date given by the court. This fee can be also pronounced by the decision made as article number 45 regulates the situation".

This way, the unpatrimonial measures specified by this Decret for the protection of unpatrimonial rights, that can be taken by the court, at the demand of the prejudiced person, are:

- forcing the guilty person to stop doing the illegal facts that harm the unpatrimonial rights; (in the juridical literature of our times it has been pointed out that stopping for the future of the illegal doing does not reappear in any way the prejudice that has already been made). There for, it can not be considered to be a repairing measure because it can not bring any compensation to the suffering produced the person that was harmed in her rights.

- obliging of the guilty person to fulfill any measures considered necessary by the court, in order to re-establish the harmed right, but it is not indicated, specifically, which are those measures.

The legislator from that time did not specify which are that unpatrimonial measures capable to offer the harmed person on compensating satisfaction for the moral damages suffered. The legal regulating is so vast, general, that in the judiciary practice could not be identified specific measures in concret. When it was necessary to repair sever moral damages, the court gave patrimonial compensations instead.

- obliging the person that violated the rights to the payment of a daily fee, if he does not fulfill the obligations set to re-establish the harmed right.

Juridical literature tried to compensate the gap from the law: "measures considered necessary by the court, in order to re-establish the harmed right". It was considered that this should be the next measures:

- the sanction aplyed to the person that creates a violation to a unpatrimonial right, in case the law specifies a sanction and publishing the condemning sentence;

- publishing the condemning sentence in which has been established that a unpatrimonial right has been violate and which disposes the ending for the future of the acts that are violateing the unpatrimonial right.

- obliging the person that violated a unpatrimonial right, by writeing, in a publication to the demnity, honour, preputation to a person by making lieing affirmations, to retract her affirmations, the same way the harming was done (by writeing in the same publication);

- obliging the one that realized a work contract to an employee to eliminate form the content of the decision of cancelling, the consideration uncomform with the reality concerning the employes behaviour and which are capable of harming the degnity, honour, reputation, professional ability of that person.

- obliging the editure which published the article(work) of an author with modifications which the author did not accept, to withdraw the article in discussion.

- obliging the editure that published a article (work) without the authors name to complete this omission, etc.

All those repairing measures used in the communist period were considered to be in deficit. Only two have been considered to have reaping effects, which are:

- publishing the court decision which established that a unpatrimonial right has been violated and the decision that orders that the person guilty to fulfill some measures to re-establish the harmed right; (it is not specified of which measures is about);

- complying the person that makes a lying affirmation that creates damages, made by a person that writes a publication, to withdraw his affirmations in the same way they were done (writeing) in the same publication.

### **Normative acts which regulate moral damages after Communist Regime in Romania**

1) Normative acts which express regulate moral damages with money compensations;

After 1989, the year that the communist regime in Romania ended, a big number of new regulations apered on the problem of repairing moral damages and way of repairing this kind of ddamages.

New rights have appeared<sup>7</sup> such as the right for the persecuted persons on political discriminations criterias by the dictator regime established from 6 march 1945, as weel as to the deported persons abroad or made prisoners.

Another new right<sup>8</sup> and in compensation for the horrible regim was recognized to the magistrates that had been thrown away from the justice system during 1945-1952.

Although this tow new laws are about giving some money rights for the repair of some civil damages, the don't take place in the regulating of article 998, 999 Civil Code, because there are not satisfied the conditions necessary in this articles<sup>9</sup>, because there is no illegal act that belongs to the new state. There for, being no illegal act, there is no cause to link in the will of the new state.

By adopting this new laws, (Decree 118/1990, Law 51/1993), was closed for ever the dispute over the possibility of repairing moral damages with money compensations.

2) Normative acts which expres regulate moral damages without showing with what means or measures

Law 29/1990 concerning "Contenciosul Administrativ"

"Any person which considers that her rights<sup>10</sup> are violated, right recognized by the law, by an administrative act or by the unjustified response of an administrative authority to solve her demand concerning a recognized right by the law, can address to the court to cancel that administrative act, the recognition of the so called right and over the material and moral damages caused".

In case the demand in front of the court is approved, the court will also pronounce over the moral and material<sup>11</sup> damages demanded. It is considered<sup>12</sup> illegal competition " any act or fact contrary the legal doings in the commercial or industrial activity.

Article 4 of Law number 11/1991 regulate that are minor offences the following facts: the offer of services by the employed exclusive to a merchant rival or accepting such an offer; the disclosure of an employed merchant of some secret data concerning his activity, to a rival; contracting favourable contracts by an merchant, whit the condition for the client to bring other clients; contracting deals in which the buyer is going to have a prize, which chances of getting it are depending only luck ore election; the spreading in the public by a merchant of affirmations about his factory, in order to disorientate and put him in a favourable situation in the action with other merchants; putting other merchants in a unfavourable situation.

Article 5 of the same Law regulate that the fallowed facts are considered to be crimes: the use of a firm, of a symbol, of some special names or of some special packing in order to produce confusion with the ones used legal by others merchants; putting to sale or saleing goods that have false mentions concerning the inventors legal acts, the origin of the goods, the producers name, with the purpose of misteaking the others merchants.

If some of the acts regulated by article 4 or 5 from the Law causes patrimonial or moral damages, the person to whom the damages are done is able to address to the court with a civil action.

3) Normative acts which expres regulate the repair of moral damages with unpatrimonial measures

The Law of Audio-visual<sup>13</sup>, express regulates that that the repair of moral damages when civil law interfere for the damages caused by the broadcasted information. So, as article 4, alin. 1, of the Law of audio-visual regulates “the person that consider her rights to be harmed or a moral or material legal interest by a audio-visual communication, has the right, to demand to be made the changes to relate the real truth about the reality, and if the corrections are not made, the person has the right of response. The rectification and the reply will be broadcasted in the same conditions as the right or interest wore harmed.”

Law number 8/1996 regulates the right of author and connected rights, regulates the repair of moral damages which are the result of the abuse of author rights.

The problem of moral damages is also regulated at a international level, so the European Human Rights Convention<sup>14</sup> regulates that:” all persons have the right to be protected in their private and family life, their residence and correspondence”.

“A public authority can interfere in a persons private life just when this mixture is allowed by the law and if this consists a measure that in a democratic society is necessary for the national security, public safety, defending the order and preventing criminal acts, the protection of health or moral, the protection of rights and liberties of another person.”

Private life belongs to the moral patrimony of any natural person and the private life protection belongs to the category of rights that protect the rights of personality. There for, the prejudice brought to the respect of private life, by doing illegal acts, can cause sever moral prejudice, and the entitled person which right has been encroached is **entitled to demand moral damages**.

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<sup>1</sup> This work was partially supported by the strategis grant POSDRU/CPP107/DMI 1.5/SI/78421, Project ID78421(2010), co-financed by the European Social Found – Investing in People , within the Sectorial Operational Programme Human Resources Development 2007-2013.

<sup>2</sup> Drept Civil Procesual- Ph. D. Mihaela Tabarca, page 221; Editura: Univrsul Juridic Bucuresti 2008;

<sup>3</sup> Tratat de Drept Procesual Penal-Ion Neagu, page. 284, Editura: Global Lex, Bucuresti 2008

<sup>4</sup> Drept procesual civil/ Teoria generala-Ilie Stoenescu, Savelly Zilberstein, page 228, Editure: Didactica si pedagogica, Bucuresti 1977;

<sup>5</sup>Decret number 31/1954;

<sup>6</sup> Article 55, Decret number 31/1954

<sup>7</sup> Law nr. 118/1990;

<sup>8</sup> Law nr. 51/1993;

<sup>9</sup> Civil Code, art. 998, 999;

<sup>10</sup> Art. 1 alin. 1 law 29/1990;

<sup>11</sup> Art. 11 alin. 2 law 29/1990;

<sup>12</sup> Art. 2, law 11 1991;

<sup>13</sup> Law number 48/1992;

<sup>14</sup> European Human Rights Convention, article 8.

## ORIGINAL PAPER

Gabriel PRICINĂ

### Dynamization of the Social Amnesia Process under the Influence of Globalization

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**Abstract:** *This article is the result of extensive research on the transformations through which the Romanian rural environment under the influence of globalization. Association of rural traditions and cultural identity could be the result of inertia of thinking. In fact, people from rural areas is seeking to adapt to new changes in Romanian society, and reduced opportunities for social success resulting in higher pessimism in relation to the importance of traditions.*

**Keywords:** *values, globalization, rural environment, traditions, identity, social amnesia, culture.*

The present aspect of human societies, in which the economic factor is predominant, generates several questions about the future of humanity in terms of cultural identity. The globalization is one of the most complex phenomena of modern societies, with multiple influences on modern societies. The analyze of the globalization causes is scientifically difficult, due to the lack of a background placed in time and space of some perishable objective laws which governate it for short periods of time. The globalization process is originated in the development of the communication systems that have induced profound changes in the contemporary societies. The main element that has been modified and continues to readjust is the cultural system specific to every nation.

The systemic character of the values is revealed by the interdependence which is carried out in time between the existential frameworks underlying the kinds of the values: material, social, spiritual, emotional, etc. The values diversity and the importance that may have at some point in the attitude of the society members makes this topic to be difficult to deal with from a unitary perspective. In the conditions of the complexity and dynamism exacerbated which permanent changes in modern societies we are forced to resort to analyze the functions that the traditional values fulfil. The values carriers are the humans, and the internalization with priority of some social and cultural values in the detriment of others depends on the centrality that they have in the public attention. The centrality character of some values produces changes in their interdependence with others, generating various forms of relative ranking.

The traditions and values references implied by these are placed under the functions that they have achieved in the traditional societies and that functions that are currently recognized. The perpetuation of a value system is dependent on the number of the individual carriers that give them the same meanings.

The concept of amnesia belongs undoubtedly to psychology, setting out "unable to remind the past events or stored information."<sup>1</sup> In the psychology dictionary<sup>2</sup> is realized the difference between the amnesia, as malady of memory and forgetting, which is a normal phenomenon in certain limits. We note that amnesia is placed in relation to traumatic events which affect the memory processes: fixation, storage, reproduction. The transfer of this concept in social plan is due to many similarities with social phenomena whose existence can be explained by analogy quite enough. Such a perspective is justified by the uniformity of the meanings changes of value items among the human groups.

At the social level the amnesia understanding cannot be considered a collective disease and the significance of the term can be reduced to the loss of the collective memory of the meanings of some traditions that in the past had a regulatory role of the social relations. This concept is also found in some other analytical perspectives, such as Mircea Eliade, where this phenomenon is a signifier of the loss of the soul identity, "heading to the material and wanting to know the pleasures of the body, the soul forgets his own identity."<sup>3</sup> At Eliade, the reverse of amnesia is anamnesis, which means finding the self. Between these elements there is a dynamic relationship in which one of the elements is stable (the self) while the human individual (owner of the soul) is the dynamic factor. The transition from amnesia in anamnesis is not done coherently or linear and does not incubate we consider the condition to achieve. On this axis there are many disturbing factors that may slow or even discontinue the process, along with the predisposing factors that support them. From a sociological sense is necessary a reflection on the possible anamnesis when the social amnesia is a result of the remoteness of the specific cultural identity or at least for restructuring in the condition in which the external influences do not harmonize with the national and they have a puzzled effect over them. The historical analysis reveals that the traditional system was in the past affected continuously by this phenomenon, but the rebalance is done by giving some new meanings related to the formalized ritual functions. The complementarily

between the loss of the meanings and the reinvention of some new ones have a rhythmic that put the phenomenon in a discrete plan, without a significant disruptive influence. Increasing dynamics make it hard to recreate the new meanings. Therefore, at a great rate of losing the meanings is added the inconsistency to replace them. The mental area not covered by the meanings resulting from their own traditions and their own specific mental structures becomes the container of borrowed meanings. At this moment we can speak of a danger in the terms of Eliade: amnesia as a process can be eliminated by remembering, but the globalized present reveals the existence of a diffuse matter that is gradually replacing the forgotten meanings, because of the need to fulfil the social functions, making impossible to recall.

The analysis transformation of the Romanian traditions under the impact of the globalization is based on the definition of H.H. Stahl, for which this process is a failure of our memory which remember the forms only forgetting their meanings. Traditions are the cultural heritage inherited from previous generations. Their establishment and keeping in the public memory was a large extent due to the functions that they fulfilled in ancient communities. The traditions were based on the entire value system of the rural communities. The modernization has brought the need for a value system in which the functions performed by the traditional cultural heritage decreased in intensity and was not balanced by the new values assumed by the population. The records from the field of anthropology, ethnology and ethnography reveal a certain flexibility of traditions, but carried on their own rates under the impact of the traditional communities needs.

Currently, we are seeing considerable changes in how the traditions are seen. The traditional values system has social functions increasingly unimportant. In the most part of the cases we found nostalgia of the traditional village, compared with the increasingly alert rate of everyday life. This context raises questions of substance: the traditions loss is equivalent with the loss of the national cultural identity? The effects of this uniformity of the modern societies are a positive or a negative factor in the future development of each society? What is the cultural specificity of Romanians without the traditions? The social amnesia is the result of the loss of the traditional values system functions or is it the result of overlapping with the culture, in which the public memory remembers only the values that respond the best to the needs of the moment? What can be done to preserve the national identity in a world increasingly globalized?

This study aims to partially respond to some of the questions above. We believe that the identification of a general direction of action to preserve the national specific, in the context of the modernization and the globalization, it would be bodes well in shaping the principles of further development of Romanian society. The articulation of the traditional values in the present desires represents an objective way of maintaining their own identity and to associate the external values to their own. The simple replace of some values does not mean approximation to the original companies, rather gathering risks as well as disorientation, the collapse and the inadaptability of a significant number of Romanian citizens. The purpose of such a vision involves the identification of the favourite factors of development on a specific Romanian fund.

The research behind this article has an exploratory nature, without raising demands of generalization. To the questionnaire developed for this purpose answered 212 people from 21 family groups. All the respondents came for the four counties of Oltenia (Dolj Gorj, Olt and Mehedinti). The main rule of the interview was the membership of the countryside, even if currently the respondents live in the urban areas permanently or temporarily.

Information thus obtained this way allows the referral differences between the views of people who migrated to urban areas in comparison with those who remained in their original village. They can also be noticed the differences between of respondents from different counties or the opinions of those who are living in urban compared with rural dwellers.

The set of questions is divided depending on several sections relating to the beliefs, traditions, values, society, personal fears and confidence in public institutions. The collected opinions through this tool are suitable to an analysis required to develop of some explanations but also some working hypotheses for future research aimed at a broader area. The research results also allow the notification expansion and the social amnesia phenomenon, at least, the intuition underlying mechanisms appears.

In this article we will limit ourselves to the questions whose answers allow the consideration of the social amnesia

### **1. The hierarchy of the collected responses**

At the question *what do you think that a person mostly wants?* A rate of 42.0% of respondents said money, followed by those who believe that the main desire is peace in family life (26.9%), for those who want the respect of others (16.0%), ending with the options who think that people want power (11.8%).

The answers to this question are complemented by the expressed views at the question *you think money changes people's behaviour?* To this question 86.8% of respondents felt that money changes people behaviour, while only 7.1% believe that people remain the same regardless of the material possessions.

The questions set about traditions provides a structure of responses that correlate with their views on material values. Therefore, a rate of 85.4% of respondents said they know who are the main Romanian traditions, specifying the following: Easter (31.2%), Christmas (30.4%), Boboteaza (7.1%), St. Mary (6.2%), Rusaliile (5.0%), Floriile (4.6%), Inaltarea (3.9%), Dragobete (2.7%) Anul Nou (2.3%). Other options are mentioned less than 1.0% (most of the data from the Orthodox Calendar: St. John, St. Basil, St. Nicholas). This structure reveals that the most popular holidays are in fact the advertised and "the globalized" ones. The difference between the weights of the mentioned holidays is significant in understanding how the traditions are seen. Also note that the two holidays are not specific to the Romanians. Easter and Christmas are celebrations belonging to all Christianity and don't have a local character.

The share in which it is known the structure confirms the significance of of the above the holidays. The celebrations whose meanings are known mostly are Easter and Christmas, them awareness decreased in intensity depending on the local character. In grille the references holiday was introduced a highly publicized on the media channels to compare the dependence of the traditional holidays meanings compared to the media. The significances of this holiday (Valentine's Day) were known to a large extent by 28.8% of respondents. This percentage has surpassed the level of knowledge of some specific holidays (some local or regional character) like Sinzieniele (20.3%), Dragaica (13.7%), Paparudele (12.7%), Ruga (17.0%), and Armindenii (9.4%). In light of these answers we appreciate that a mediated holiday is more present in the collective memory than those absent or insufficiently promoted. The sociological reflection on the traditions and their importance for the public guides us, at least in this case, to the transmission analysis of the traditions. We believe that the way the information is taken was change and the replace of the oral transmission pathways with the modern ones marginalize or centralize some or others of the traditions. In the example provided we believe that the intensive promoting of this holiday, mainly because of the commercial issues, resulted in a higher knowledge to their meanings.

Regarding traditions role have been collected a series of disparate views, the question on this topic with a large dispersion. Consequently, the achieved percentages were low and very low. The conclusion resulting from the structure of the answers indicate a lack of unity of the interviewed group views on the traditions role. The precise identification of the traditions role and the specific Romanian values may be a way to bring in the first plan the typical Romanian

spirituality. In order to illustrate the above considerations we mention that in a percentage of 13.7% of the survey participants said that the traditions role is to preserve the national identity, 9.4% said keep the spiritual values, 7.1% said preserving the cultural values, same percentage mentioned by those who believe that the tradition role is to ensure the social cohesion, while 6.6% said that the tradition role is to ensure the family holidays. The remaining responses were combined under 5%. In total 11 responses were collected and the number of non-responses, which accounted for 40.4%, is significant for this analysis.

The Easter is the first celebration respected and preserved (23.0%), followed by Christmas by 22.3%. Other holidays have low percentages that are placed under 10.0%. Along with the mentioned holidays also appear some rituals subordinated of them: Pig slaughter (6.6%) and the Christmas tree (2.4%), specific to Christmas, egg painting (4.5%) specific to the Easter. These statements confirm the idea of social amnesia where they performed ritual is more important than the meaning of the accompanying holiday.

The pessimism about the future structure of the tradition is revealed by the answers to the question what do you think will happen in the future Romanian traditions? A percentage of 29.7% believe that they will be keep, 31.1% believe that they will be lose because young people no longer respect them, 21.1% consider them to be mixed with the traditions of other nations, and 14, 6% believe that they will be lost due to the external influences. The reporting to the social environment in which the traditions are likely to be kept revealed that 67.0% of respondents believe that rural areas offer the best chance of preservation, 25.5% think they will be kept both in the rural and the urban environment and only 2.4% believe that they will be kept in the cities.

Understanding the spiritual and moral traditions as a reference for Romanians is adopted by 65.1% of respondents, while 21.2% believe that they cannot provide such support. As a continuation of this question a rate of 33.5% of respondents believe that the Romania's must-heavily- preserve their cultural and traditional identity, 28.2% think largely the same, compared with 10, 4% who think the same thing in a small extent, and 1.9% think that this is a very little obligation.

For 43.0% of respondents the lost of the tradition do not generate social problems while 25.9% believe that a number of social problems are the result of the loss of the traditions. A percentage of 31.1% did not answer this question. The main social problems due to the loss of the traditions mentioned by the respondents are: the lack of a hierarchy of the values (24.2%), violence (15.2%), the lack of the respect for the other, the economic crisis and the lack of unity, all at a rate of 9, 1%, the lack of confidence in the state institutions and the increase of criminality, both at a rate of 6.1%.

The institutions that may have a significant influence on the revival of the traditional values are, according to the respondents in this study, the Church (38.6%), the school (13.3%), City Halls (9.6%), the Ministry of Culture (6.6 %), and the Parliament (4.8%). A significant percentage, 18.1% of respondents said that no institution has such a debt.

An explanation of the answers structure related to tradition is that given by the concerns and fears of population: 17.2% of respondents are concerned with obtaining higher incomes, 16.8% are concerned about the higher prices, 16.0% are oriented towards the care health, 11.2% are concerned about the job retention, 9.0% are concerned about securing the future of the children, 7.8% looking for a job, 7.2% looking to provide sufficient incomes for housing maintenance, 6.0% are interested in their personal and home security, 5.0% are concerned with providing the daily food, and 3.8% are concerned about the social unrest. The main concerns of the respondents are job losses (8.0%), a new economic crisis (8.0%), deterioration of the living standards (7.1%), economic instability (7.5%), the future of the country because of the political

class (4.2%) price increase (4.2%), lack of jobs (4.2%), the production of an earthquake (2.4%). A percentage of 20.3% said they are not afraid of anything.

In any society the predominance of some concerns directs the human actions to achieve them. The opinions collected in this study confirm the results of other research related to the Romanians issues. Unfortunately, most Romanians are overwhelmed with the daily problems and poor physical condition, the reflections about their own identity or cultural and spiritual membership crossing in the background. The general attitude towards this dimension of life is the result of the readjusting to a value system that includes the necessary main preoccupations. Add to this the formation of the attitudes based on the frequency of appearances in the media messages aimed at the adoption of behaviours by the public. Since most messages are advertised with a clear commercial purpose, we consider that there is a tendency to boost the social amnesia under the impact of the global phenomenon including the principles of modernization.

## **2. The respondents profile**

The correlations values resulting from the analysis of the responses are weak and mostly insignificant. The attitude of most individuals is influenced by several factors related to the social environment, the residence, the education, etc. In this article we noted the significant correlations between the social profile of the respondents and responses to the survey questions in order to provide answers about the factors influencing the social amnesia and their possible causes.

According to such a person it is shown a weak correlation with the questions about what people want and of the traditions future. The differences of opinion between the two categories of respondents is referring to men who reported a rate of 15.6% that people want power, while women reported this in a proportion of 8.7%. The second significant difference between the opinions of both sexes is related to the peace of family life. This was stated by 32.2% of women and 20.8% of men. The other two choice options were as follows: a person wants mostly money, where men responded in proportion of 44.8% and women in a proportion of 40.0% and one wants the respect of others where women responded at a rate of 17.4% and men at a rate of 14.6%.

In the traditions future, 27.8% of women think that they will mix with other people's traditions, while men have said this at a rate of 13.5%. The other differences are insignificant. We find that the respondent women at this question are more pessimistic about the future of the traditions compared to men.

The answers structure according to the respondent's residency was correlated with the most questions. There is the possibility that between urban and rural differences on the themes of this study. When asked "What is the role of the tradition in your opinion?" A rate of 13.6% of urban residents have said the keeping of the national identity, while those living in the rural areas mentioned in the proportion of 15.6% that they are a opportunity in family holidays. We mention a uniformity of responses depending on the environment of residence and not by the family group. This research was conducted within people from rural areas, whether they currently live in rural areas. Each family group have people from both areas. The answers structure to this question shows that the residence has a higher influence on the individuals than the family group.

For the participants at this study from the urban areas the traditions are important in a proportion of 81.0% and unimportant at a rate of 18.4%. For those in the rural areas these are important in a proportion of 59.4% and unimportant in a proportion of 40.6%. This structure raises questions about the answers to their perception importance, and these options can be related to the living standards and the lack of the economic solutions to most people in rural areas. The lack of the social functions is probably the main cause of the indifference to traditions. The profile of

the respondents to this survey indicate a rate of 56.3% of urban respondents providing an economic activity at present and 53.8% of respondents in the rural areas who do not perform any economic activity. The orientation to ensure a better standard of living and economic difficulties are the key factors related to the attachment to the traditional values.

The traditions observed by the respondents provide the research to confirm the hypotheses: Christmas is respected and retained by 33.4% of those in the urban areas and 23.4% of those in rural areas. Easter is respected and kept by 32.0% of respondents in urban areas while rural people have mentioned this holiday at a rate of 29.7%. Note that the main celebrations are preferred differently depending on the residence. Another option is pork slaughter with some significant responses noted in the proportion of 14.4% by those in the urban areas compared with only 3.2% of the rural people. Instead, the carol is mentioned by only 2.7% of the people in urban compared to 4.7% by those in rural areas. If the structure of answers to this question referred to two forms of social amnesia: the first refers to the preference of the holiday for the urban areas that Christmas may be associated with extended holiday celebrations, and numerous commercials and fun for longer period. All these play an important role in speeding the process of the social amnesia because of many meanings promoted by the media. One indicator of this attitude may be the shopping made during this period. In addition, a celebration in itself is considered the pork slaughter, which is a ritual of this holiday. Along the pork slaughter, another ritual is the Christmas tree, mentioned by 4.1% of the urban areas residents compared with 1.6% of the rural respondents. There is also the case of associations of the tree and Christmas gifts, often promoted in advertising clips. For the people in the rural areas is more important celebrating the Easter, which take place in the spring, during the better weather. In both examples, related to the first form of social amnesia, we mention the association with high effervescence Christmas images (now symbolized by a figure recognized worldwide) and aggressive marketing on all media, while Easter, actually quite aggressively promoted for commercial purposes, do not benefit equally for a holiday image associated with the custom of giving gifts. The different interpretation between the meanings of the two holidays depends on the residence and reveals that the loss of the traditional meanings was replaced in different meanings of modernity.

The second form of the social amnesia is given by the high dispersion of the responses, especially those national specific. The majority of them are associated with the commercial purposes and it don't enjoys of a constant and promoting through the media. In the same way we can explain the significant difference between the first two holidays (Christmas and Easter) against the other.

The answers structure questioning through the traditions existence of a moral and spiritual support for Romanians offered a new distinction between the two areas: for 68.0% of the respondents in the urban areas they are a support, while 24.5% don't provide such support. No answer to this question 7.5% of urban dwellers. Respondents residing in rural areas mentioned that there is a moral and spiritual support at a rate of 59.4%, other 14.1% it is no longer found, while 26.6% abstained. The differences between non-answers become significant in terms of this question. The conclusion of this question gives us a higher pessimistic picture in the rural areas compared to the urban area.

When asked about the extent to which Romanians are obliged to keep their cultural and traditional identity it identifies a more trenchant attitude in the urban areas compared to the rural ones. A percentage of 78.9% of urban residents consider a large and very large extent that this is an obligation, while the rural areas people have mentioned this obligation in proportion of 56.2%. And in this case are significant the non-responses of the people from the rural areas: 34.4% to 7.5% in urban areas.

Depending on the marital status there are some significant differences by reporting the options of the married one to the unmarried persons. Other categories of marital status are insignificant in this case.

According to the married people, the traditions role is to preserve the national identity (18.4%), the preservation of the spiritual values (7.8%), the social cohesion (6.8%), are an opportunity for celebration in the family (6.8 %), the preservation of the cultural values (5.8%). The other options meet a percentage less than 5%. In the case of unmarried persons, the traditions role is to preserve the cultural values (8.7%), the preservation of the national (7.6%), the social cohesion (6.5%), are cause for celebration in the family (6.5 %) and will transmit the Romanian values (5.4%). If this correlation it is a significant determination of those who provide answers: number of non-answers for the married persons is 32.0%, while for the married people, the non-answers rate is 54.3%. This structure and the share of the non-answers indicate a relationship between the marital status and the reflection about the traditional values. The married people are more concerned with the tradition than the unmarried.

The optimism or the pessimism towards the traditional values is shown by the fact that the married people are more optimistic about the future traditions. Therefore, 36.9% believe that they will be kept, 26.2% believe that young people are lost because they no longer respect, 17.5% believe that they will interfere with the traditions of other nations, and 16.5% think it will be lost due to external influences.

The pessimism is slightly pronounced in the case of the single people who believe that the traditions will be preserved only in a proportion of 25.0%. The most answers (35.9%) of this category of respondents are grouped in in the version it will lose because the young no longer respect, other 23.9% believe that they will interfere with the traditions of other nations, and 12.0 % think it will be lost due to external influences. Like the previous question there is a relationship between marital status and the optimism to the values.

The traditions importance for Romanians is valued differently depending on the marital status, where a rate of 73.8% of married respondents still believe that the traditions represents a moral and spiritual support for the Romanians, while this is mentioned by 54.3% of the unmarried respondents. Through these answers are confirmed the previous opinions, but also justified on the other side. Their views on a topic of reflection are actually related with the way in which the respondents relate to.

The Romanians obligation to preserve the traditions it is influenced by the marital status of the respondents: the married ones in a proportion of 40.8% largely believes that this is an obligation while the unmarried individuals, in a proportion of 42.4%, considered that the traditions preservation it is largely obligatory.

The level of the studies provides a structure of the answers depending on the main two categories represented in the random sample: the graduates of higher education and high school. Therefore, depending on this attribute of the respondents 33.3% of the respondents with higher education believe that people want in the greatest extent quiet in the family life, and 28.2% believe that the main goal is money. Among the high school graduates we notice a reverse view: 66.7% believe that money is the greatest desire of people 14.8% those who believe that peace in family life is the most desirable thing.

The importance of the traditions it is mentioned by 81.2% university graduates compared to 17.9% people in the same category who believe that these do not have any importance. The high school graduates have a pessimistic attitude towards the traditions: 70.4% believe that the traditions have some importance, while 29.6% believe that these have no importance.

As regarding the chances of preserving and perpetuating the traditions the collected answers were again refined based on the level of education: higher education graduates in a

proportion of 66.7% consider that these will be preserved and perpetuated only in the rural areas and 29,9% believe that it is possible both in the rural and the urban areas. The high school graduates said they will preserve and perpetuate the traditions only in the rural areas at a rate of 74.4% and 16.7% believed that it is possible both in urban and rural areas.

The answers to the questions about the importance for the Romanians traditions confirm their views on the personal attitudes. Therefore, 74.4% of the the graduates of higher education believe that traditions also provides moral and spiritual support for the Romanians, while 18.8% believe that this support does not exist. The high school graduates believe in the moral and spiritual support of traditions in a proportion of 57.4% and 25.9% do not believe that such traditions have utility.

The obligation to preserve the traditions is recognized as being important by the graduates of higher education. A percentage of 83.8% of them believe in a great and very great extent that this is mandatory, towards the 10.3% respondents which considered this is necessary in a small and very small extent. The high school graduates believe that this is necessarily in a proportion of 64.8% (in large and very large extent) and not an obligation at a rate of 16.7%. The share of the non-answers is again significant in terms of determining the difference between the two groups: 18.5% high school graduates did not answer this question compared to 6.0% university graduates.

The weights of the non-answers at all the questions show that the graduates of higher education have better opinions crystallized in relation to the importance and the need to preserve the traditional values.

### **3. Conclusions**

The conclusions stemming in this section of the study provides a perception of how the traditions are different based on the class structure and the factors that stimulates the the social amnesia. This process becomes a totalizing concept of loss of any kind, which formerly would have been associated with the national character, whether or not they are linked.

To illustrate this statement we remind the articulation of the social functions of customs and traditions, in essence of the traditional value system essentially the traditional value system, in a balanced and typical universe of some small companies in terms of size. Modern society, to which are added a significant urbanization has resulted in a mixture of behaviours based on the traditional system of values. Started in during the communism, the urbanization has led to the first changes of major structural behaviour based on tradition. Changing the social relations under the impact of the relations production and the gradual reduction of the rural influence, the appearance of some new generations of "townsmen" has reshaped the structure of the social values and interpersonal relationships. The traditions and customs functions have become increasingly more of a cultural role, becoming less important in social terms.

The democratic system established after 1990 was characterized by endless political and economic reforms and the Romanian citizens had as top objective the adaptation to the new living conditions. The gained freedom allowed free movement and connecting Romania to the modern means of communication. The rapid exchange of information and intensity of exchanges of any kind in the advanced societies (economic, social, educational, etc..) has overlay on a specific value system, located in a highly mobile, a catalyst system of values around the values incubated by the economic dimension . The success image, quantifiable by the material possessions, had unbalanced the size of individual existence. Today, we are witnessing at the hierarchy of the values based on the economic needs. In the present study there is an influence of the social profile of the respondents with regard to the commitment and belief in the necessity of

the traditional values. Also, there is a link between the personal attitude the opinion that the others members of society believe the same thing.

Against this background of understanding and defining the needs of the individual system of values, the social amnesia appears as an effect with an area increasingly higher coverage. In the last century this has emerged and developed in own pace with the development of residential structure, but after 1990, the supported modernization boosted the expansion of the globalization process.

#### **Acknowledgement:**

*This paper is supported by the Sectorial Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number SOP HRD/89/1.5/S/59758”*

*Title and intellectual and industrial property rights on the results of the post-doctoral research internship belongs Romanian Academy.*

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## ORIGINAL PAPER

Eugenia UDANGIU

### De-crystallization: from the Anthem of Punks to the Official Conviction of the Communism

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**Abstract:** *What we call "transition" actually includes three phases that psycho - sociology names: decrystallization - change - recrystallization. Decrystallization, therefore represents the first phase of attitudinal change and refers to the weakening and then abandoning the old acquisitions - beliefs, values, certainties, attitudes and habits - to replace them with others that reflects a new perspective on the situation. Another Weltanschauung, in other words.*

*This paper aims to point out a few events in recent history of the Romanian society in transition, focusing on the two mentioned in the title, for their particular factual and symbolic value. They are actually "markers" of the beginning and end of the "decrystallization" process.*

**Keywords:** *transition, change, attitude, Romania, society.*

## 1. Introduction

Sudden and dramatic collapse of a "world" as happened in December 1989, induces contradictory feelings in a large part of the population. On the one hand, is born the hope that the new "world" will be better, on the other hand, is born fear of the unknown. So, the individuals begin a "reconstruction" of representations and social identities involving both cognitive effort and emotional restructuring.

## 2. The transition to the new "world"

A symbolic universe as it was defined by Berger and Luckmann (1966/2008), is composed of theoretical traditions that integrate different areas of significance in a particular institutional order. So, a change of the political system can produce a change in the whole symbolic universe of the society. Year 1989 meant for Romania the beginning of transition from a dictatorial political system, with important para-religious features, to a system of specific meanings of a pluralistic society: there is a "basic" universe self-evident for everyone (i.e. democracy) plus "partial" universes which coexist in relative harmony.

The shift of a society from an embedded system of meanings to a new one is often a painful process that involves significant psychological and sometimes physical costs. This is because the transformation, even when physical violence is absent, involves the restructuring of attitudes and identity, accompanied by feelings of insecurity, anxiety and cognitive dissonance states, difficult to manage.

Changes of identity is an effort to build a new symbolic space, a new autobiographical narrative in which self and other representations articulate themselves to a coherent conception of existence. As an instance of reference between the imaginary and real, between subjective time, lived, and the objective, historical time, social identity is based on the feeling of belonging. It should have internal coherence, as response to the need of logic, and external consistency, enabling better articulation of self and *Lebenswelt*. (Chelcea, 2006; Neculau, 2004).

Transition to a new *Weltanschauung*, to a new definition of reality, includes, at micro level 3 phases: de-crystallization, change itself and recrystallization. De-crystallization, therefore represents the first phase of attitudinal change and refers to the weakening and then abandoning the old acquisitions- beliefs, values, certainties, attitudes and habits – and replace them with others that reflects a new perspective on the situation.<sup>1</sup> At the whole society level, this is put into practice through the implementation of two strategies:

1) To assign a negative ontological status of the old system, followed by physical liquidation (sometimes) and conceptual liquidation;

2) Translation: the attempt to explain the definitions of concepts belonging to the old system in the new universe of meanings. (e. g. the role of democratic left)

The first strategy to produce de-crystallization was developed over 16 years, and it was marked by a symbolic, opening event, and by a final one, which clear shows the undesirability of certain options. This strategy to produce de-crystallization (assigning a negative ontological status and "liquidation" of concepts was developed over 16 years, was marked by a symbolic, opening event, and by a final one, which clear shows the undesirability of certain options.

The opening event was the phenomenon of "University Square": the anticommunist demonstration started on April 22, 1990 and ended in May 20, 1990 after elections, when most of the participating associations withdrew. In fact, the protest was finally ended on 13 - 15 June 1990, when miners chased the hunger strikers.

This demonstration turned into a social phenomenon (revolutionaries, students, and intellectuals solidarity) and was the most radical anticommunist discourse since the fall of the

dictatorship. Demonstrators were labeled by future President Iliescu as "punks" or "hooligans" so that protesters have called themselves "Punks", living in a "neo-communism-free zone".

University Square was transformed into an *agora* where, for a month, there were speeches, happenings, songs, slogans. The place is marked by a double symbolism: there were dead people on December 21, 1989, while fighting for freedom, and *the university* as a link between cultural heritage of the past and the new perspectives of the future;

The refrain of "Anthem of the punks" ritually repeated, emphasize "the spirit of agora":

Better punk,  
Than traitor,  
Better hooligan,  
Than dictator  
Better punk,  
Than activist,  
Better dead,  
Than communist.

The second event under discussion here, is the final report of the Presidential Commission for Analysis of Communist Dictatorship in Romania. (<http://www.presidency.ro>) This Final Report was presented to parliament in December 2006, claiming "The Need for analysis, repudiation and conviction of the communist regime." This was the first clear, official affirmation of the need to judge and repudiate the previous regime. Here are some of the most suggestive titles in content:

- destructuring of civil society
- communist genocide in Romania
- chronology and geography of repression
- universe of concentration camps
- ideology and terror

### 3. Conclusions:

16 years passed between the two events. If political elites would have acted sooner, giving people a clear, unequivocal sign, the transition would have been shorter. The attitudes de-crystallization and the change of the symbolic universe would have been faster and less painful.

### Notes:

1. Neculau (2006, p.14) describes this process, but referring to the transition from communism to democracy in 1947: "Building social identity is thus a reorganization of human groups, a hierarchical resettlement, an operation of discriminatory polarization. Most effective strategy is triggering a split or a conflict, aimed at shifting resources (power, resources, moral prestige). Groups until then very well located are labeled negative (bourgeois exploiters) and placed on the periphery of healthy social life, while less well-situated groups become favored groups, expressing the moral health of society, normality. Belonging to the first category draws blame, discrimination, negative labeling, identification with another group means the inclusion, the healthy sharing of beliefs and faiths. Collective actions are then coordinated by collective identity, common to all social actors. What should be stressed is that identification with a group membership is not just proclamation, but a militant position of categorization, emphasis on contrasts and located away from the bad situated group."
2. Here is the whole song (Lyrics by Valeriu Sterian, <http://www.versuri.ro/> 26.02.2012; translated by Google Translate)

He was once like in the stories  
It was in Romania,  
A large gang of hoodlums,  
What drove slavery.  
We do not have confused ever before  
The "good people",  
Name and neo-communist  
With no shame.

R  
We want freedom  
Not communism  
And any changes to forms  
And, therefore, Intelligence,  
Let us not put the norm.  
We do not want neo-communism,  
No neoliberalty,  
"Democrats' original  
And no blatant lies.

R.  
We have asked what we want here  
But you know across the country,  
We support Section 8  
From Timisoara.  
Fall four to seven to three  
What you TVR,  
Chains linking  
Even the words!

R.  
Elections without the communists,  
Without nomenclature,  
And do not be afraid of punks  
Without coloration.  
Of those who died  
We returned ghosts  
Not be as  
Slaughter since.

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## ORIGINAL PAPER

Ligia NICULAE

### The “Fight” over the Former Romanian Secret Police Archive

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**Abstract:** *In May 2006, the Minister of Justice and the Prime Minister of Romania publicly asked that the former Securitate archive be transferred in the custody of CNSAS, although more than 1,2 million files had been received by this institution in 2005. This was not a smooth process, and was covered by huge scandals highly debated by the Romanian media. Through this media coverage, the whole process of transferring files from one institution to another was seen as a sort of “fight” over the archive, “fight” that resolved pretty much nothing since every year the institution receives part of the archive. Based on all the above mentioned, this current article underlines the history of Securitate’s archive after the fall of communism, with a strong emphasis on the period of time between 2000 and 2008, at the same time giving a particular attention to the 2006 events, also providing a line of analysis over this events.*

**Keywords:** *disclosure, CNSAS, lustration, archive, files.*

In 2000, the Council of Europe approved Recommendation No. R 13 of the Committee of Ministers to member states on a European policy on access to the archives that stated that the access to the public archives is a right<sup>1</sup>. This Recommendation of the Council of Europe came after most of the countries from East and Central Europe already gave access to the former secret police archive of the communist period<sup>2</sup>. Although the recommendation of the Council of Europe was for the whole Europe, not only for the countries that experienced a non-democratic regime, in our case the communist regime, we believe to be important for the evolution of the problem of the archives.

In Romania, the access to *Securitate*'s archive was given in 1999 through the law named Law 187/1999 on Access to Secret Files and the Unveiling of the *Securitate* as Political Police, law also known as "Ticu Law". Though there was mentioned that the files of *Securitate* will be transferred in the custody of the newly formed institution, this process was sprinkled with accusations and long lasting debates regarding this process.

The problem of the files culminated in May 2006, as we already mentioned in the abstract, after the Minister of Justice and the Prime Minister of Romania publicly asked the former *Securitate*'s archive to get in the custody of CNSAS<sup>3</sup>. Approximately 700 meters of files entered in the possession of the institution<sup>4</sup>.

Based on all the above mentioned things, in this current article we shall (1) present the process of transferring files to CNSAS, focusing especially on the (2) events of 2006. More, (3) we shall address the problem of the files through analyzing the data available in the annual activity reports of CNSAS. In order to sustain our point of view, and the arguments brought in this article, we shall briefly mention how the process of disclosure of the files in the former communist countries from East and Central Europe was done, especially in what it concerns the custody of archive. From the early beginning we can mention that at the East and Central European level was the (1) tendency to destroy part of the archive and after that (2) to secure it and later (3) to give the access to this archive.

*"Why was that process of transferring the archive in the custody of CNSAS done years after the institution was formed?" and "With what reason was created a "fight" over the archive?"* are the questions that we will try to answer in this article. These questions are in direct connection with other questions such as *"Why the process of transferring the files took such a long time?"* and *"Why SRI<sup>5</sup> held with its teeth the archive as long as the law foresaw that the files should be transferred to CNSAS?"*.

Due to the way in which the whole process of transfer archive in the custody of CNSAS was paved with problems, we underline the idea that *if the files arrived in time to CNSAS and if no strong opposition from SRI and from other archive holders were, then there would not have been a "fight" over the files*. The faulty process surrounding the archive makes us also underline the fact that *if the process was done clear and with no scandals, then the image of both institutions would not have suffered image loses*, meaning that the way in which the institutions were and somehow still perceive(d) suffered exactly due to this scandal. Also we can mention the fact that the image and the trust in CNSAS, if we can put it this way, was altered with no confidence, and even ignorance from the people mostly because of the scandals in which this institution was involved.

The problem of the files had different moments of in its evolution: (1) the first moment, which will only be briefly mentioned in our paper, that happened in after the fall of communism when files started to be destroyed, (2) was followed by a sort of *relax period* when lustration seemed to be more important and the archive seemed to get on an inferior spot, (3) was followed by an intense in interest due to the "Ticu Law", (4) the interest grew even more with the new institution formed – CNSAS, (5) saw a drop in interest from 2000 until (6) the 2004 elections when the candidates in elections were verified for collaboration with *Securitate*, when it grew, (7) again

saw a drop of interest after the elections ended until (8) 2006 when there was a tremendous fight over the process of transferring files to CNSAS, moment that we consider to be the most important moment. From here with a more broaden resource of files the results of the institution started to grow due to the findings (9) different cases of disclosure started to appear and this culminated with the 2008 events when the activity of the institution was stopped and declared unconstitutional. From that moment there were no longer headlines made by this institution in terms of scandals, the institution functioning in right terms. From the moment of 2006 there were no headlines made by the process of transferring files, although the institution grows in archive annually.

Considered by many as being a political tool for the ones in power, the institution and its activity saw even the declaration of unconstitutionality in 2008, event that is considered as being the most important since the birth of this institution.

In order to analyze the 2006 event we compiled the information available in the annual activity reports of the institution. Important resources for our paper were these reports because in each of them is shown the exact number of the files that were received by this institution. From the charts underlined in this article can be seen that the highest number of files were received in 2005, not in 2006.

The paper covers pretty much the period of time from 2000 to 2008, with a strong emphasis on the 2006 events. Also will be included events before 2000 and after 2008, but these events will be presented just to create a sustaining argument for the period taken into consideration. Also we decided to take as a starting point 2000 because is the year when CNSAS started to function and we stop in 2008 because it is the year when the institution faced the unconstitutionality decision.

#### ***How many files did Securitate produced?***

The question related to the number of files of Securitate is one of the most important questions from our article. "*How much did the secret police worked?*", "*How much paper saw ink?*", or "*Why so much/so little they produced?*" are in connection with our first question. The answer to this question is simple: many.

Just as a brief, as in other cases of other political police in East and Central Europe, the main weapon of *Securitate* was fear imposed at all levels. *Securitate* was formed in 1947 on the basis of *Siguranța*, the pre-communist intelligence, with the help of the NKVD's agents<sup>6</sup>. Although it tried to earn a sort of independence from the ruling party<sup>7</sup>, *Securitate* was seen as the main repression object of the party. According to the statistics, *Securitate* had more than 15 000 officers, employees and auxiliary personnel in 1989<sup>8</sup>.

After the fall of communism all this hate turned at the ones that were secret agents or collaborated with *Securitate* was more than obvious. The label of *Securist*, *Securitate* was at the beginning applied to the persons that had a opinion in the early 1990's. Also the employees of Miliția, Jandarmerie and Minister of Interior had this label. More to this, the label it is still used nowadays; most of the times is used for emphasizing dissatisfaction towards the people that do not do what you consider that they should do.

In 1993, Constantin Ticu Dumitrescu received a note mentioning the number of files/informative data available. According to Constantin Ticu Dumitrescu the note said:

**Table 1. Number of files in 1993 – according to Constantin Ticu Dumitrescu**

Number of Files on September 15 <sup>th</sup> , 1993, out of which:	1.901.530
- Fond Informativ (informative data)	1.162.418
- Dosare Personale (personal files)	507.003
- Mape Anexa (related maps)	154.911
- Jandarmerie (Gendarmerie)	47.917

**Table 2. Number of *Dosare Operative* (Operational Files) until 1989 events**

Dosare in lucru (files in work), out of which:	395.485
- Dosare si mape de urmarire (surveillance files and maps)	104.656
- Dosare Personale (personal files)	172.000
- Mape Anexa (related maps)	112.489
- Dosare de obiectiv problema si comuna (files on problem and general objectives)	5.938

Sources for tables 1 and 2: <http://www.revista22.ro/sri-se-desparte-greu-de-dosarele-securitatii-1606.html>

Out of this total number of files presented in the first table are missing 29.281 (based on our counts), and in the same article mentioned as a source of the previous tables, is mentioned that:

**Table 3. Missing/destroyed files - according to Constantin Ticu Dumitrescu**

Number of missing files based on our counts	29.281
Number of missing files based on the news article, out of which:	8.065
- Fond Informativ (informative data)	699
- Dosare Personale (personal files)	185
- Mape Anexa (related maps)	7.166
- Dosare Fond Penal (penal files)	15

**Table 4. Number of files missing from the *Fond de Retea* (Network Fund)**

- Fond Informativ (informative data)	46
- Dosare Personale (personal files)	1.071
- Mape Anexa (related maps)	4

**Table 5. Number of files destroyed from the *Fond Arhivistic* (Archive Data)**

Number of destroyed files based on the news article, out of which:	13.223
- Fond Informativ (informative data)	1.943
- Dosare Personale (personal files)	6.284
- Mape Anexa (related maps)	4.996

**Table 6. Number of files that disappeared in 1989 and that were in the possession of the Securitate's officers**

Number of files that disappeared based on the news article, out of which:	2.804
- Dosare si mape de urmarire (surveillance)	1.524

files and maps)	
- Dosare Personale (personal files)	802
- Mape Anexa (related maps)	419
- Dosare de obiectiv problema si comuna (files on problem and general objectives)	54

**Table 7. Number of files destroyed in 1989 and that were in the possession of the Securitate`s officers**

Number of files destroyed based on the news article, out of which:	75.423
- Dosare si mape de urmarire (surveillance files and maps)	19.867
- Dosare Personale (personal files)	27.306
- Mape Anexa (related maps)	27.526
- Dosare de obiectiv problema si comuna (files on problem and general objectives)	724

**Table 8. Number of files destroyed by the Militia and related organism**

Number of files destroyed by Militia and related organism based on the news article, out of which:	12.443
- Dosare si mape de urmarire (surveillance files and maps)	5.146
- Dosare Personale (personal files)	3.788
- Mape Anexa (related maps)	2.791
- Dosare de obiectiv problema si comuna (files on problem and general objectives)	718

Sources for tables from 3 to 8: <http://www.revista22.ro/sri-se-desparte-greu-de-dosarele-securitatii-1606.html>

Although might be argued that the above presented tables are useless in our research, we believe that these numbers are more than representative for the future “fight” over the archive. If we sum up the total number of files we see that Securitate produced around 2.5 million files. This is just a rough number of files, because the date is at the level of 1993 verifications and counting.

Despite the fact that this number may sound scary, compared with the other countries from East and Central Europe, Romania was not the worst case. According to the European Network of Official Authorities in Charge with the Secret-Police Files, in the custody of The Committee on Disclosure of Documents and Announcing Affiliation of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Army (Bulgaria) are almost 20 km of hard copy files. The Institute for the Study of Totalitarian Regimes and Security Archive (The Czech Republic) has in its custody almost 18 km, the Federal Commissioner for the Records of the State Security Service of the Former German Democratic Republic (Germany) has in its custody around 111 km of documents, the Historical Archive of the Hungarian State Security (Hungary) 3824.41 linear meters, The Institute of National Remembrance Commission for the Prosecution of Crimes Against the Polish Nation (Poland) 87.220 meters of record<sup>9</sup>.

Taking all the above mentioned things into consideration, easily can be said that these files made the interest of people in power and can be seen as a political tool. More, in the context of the 2006 events and even from the 2000 when CNSAS was formed, the “fight” seems to be logic: you have a large number of files that contain important information and that will be open and that important information will be made public.

### ***Destroying the files***

In a first stage, as was mentioned in the tables above, after 1989 and during the 1989 events, the files of the former secret police started to be destroyed. With this important problem being ignored, only in March 1990 Constantin Ticu Dumitrescu, the future motor for the process of dealing with the past (disclosure) was for a law that would protect the archives<sup>10</sup> and presented in CPUN (the interim council that governed Romania until the first elections) a number of confidential documents saved from the events of Valea Jietului<sup>11</sup>. This came after, on February 8<sup>th</sup> 1990, during the debate of the electoral bill in CPUN he expressed the idea of introducing an article where the *Securitate* officers, the activists of PCR and the “fascist organizations” were forbidden to run for an office, but the article was rejected by Ion Iliescu<sup>12</sup>. More, in 1991 information that files had been discovered to be burn, covered with mud and buried at Berevoiesti, Arges county, were spread in the media, although information from the files of that area were published since 1990<sup>13</sup>.

The case of Romania<sup>14</sup> was not singular for the area of East and Central Europe. In East Germany files started to be burned by the Ministry for State Security because there was the fear that important evidence may be compromised. A number of activists began, in December 1989, to occupy various offices in order to secure the files<sup>15</sup>. In the case of Poland the fact that the fall of communism happened smooth during the Round Table events, and that there was a sort of “agreement” between the old structures of the communist party and the new people in charge, the secret police, SB (Sluzba Bezpieczenstwa) was replaced in April 1990 with a new organization. This new organization having its roots in SB re-employed the former agents of SB after a test, and took in custody the files of SB<sup>16</sup>. What can be seen in this case is the fact that SB was in a sort of way kept and there process of creating a new institution was a sort of facade.

Going back to the Romanian case, can be seen that after the period 1990-1991 there was a sort of *relax period* when lustration seemed to be more important and the archive seemed to get on an inferior spot. We sustain this because there was highly debated the 7<sup>th</sup> point of the Proclamation of Timisoara (Proclamatia de la Timisoara)

### ***Disclosure of the Files***

Kaminski and Nalepa argue that the disclosure must be coordinated with the lustration process<sup>17</sup>. Usually the process of disclosure came after the lustration law was implemented; in the case of Romania, firstly was adopted the law that gave the access to the files and later in 2010 lustration law was adopted, law that shortly after its adoption was declared as unconstitutional by the Romanian Constitutional Court. Just as a reminder, this law that gave access to the files was adopted in the parliament, “defeating” George Serban’s lustration law<sup>18</sup>. George Serban’s idea was basically destroyed by that time president of Romania, Emil Constantinescu, that said that once that the Democratic Convention obtained the power, the problem of lustration seems not to relevant<sup>19</sup>.

At the opposite direction from the law of George Serban, Constantin Ticu Dumitrescu wanted to introduce in Romania a law that would give access to the *Securitate*’s archive. The law that ended up to be passed suffered numerous changes, and in the end, Ticu Dumitrescu mentioned that it is not the law that he wanted to pass. The law passed in 1999 and according to it, each Romanian citizen or foreigners that after 1945 were Romanian citizens has the right to

access its own file. This right shall be exercised upon request and lies in studying the file; copies of the documents on the file and supporting documents on the file may be issued upon request<sup>20</sup>. Also, if from the files is resulting that the person was surveyed by Securitate's agents, has the right, upon request, to ascertain the identity of security agents and collaborators who have contributed to the file<sup>21</sup>. In the same article is mentioned of this rights may benefit also the spouse and the relatives up to the second grade, unless the person otherwise ordered it<sup>22</sup>.

### **CNSAS and the files**

The next step after the *Ticu Law* passed, was to put the basis of the new institution – CNSAS (the National Council for the Study of Securitate Archive). At the beginning, the activity of this institution was quite faulty due to the settled headquarters, the working conditions and the small number of files. Still, with these conditions the institution was able to verify the candidates from the 2000 local election and to publish the names of the candidates in the Monitorul Oficial no. 573 from November 21<sup>st</sup>, 2000<sup>23</sup>. Like we mentioned at the beginning of this article, we identified various steps in this whole *fight* over the files and can be seen that after the 2000 elections the interest for the files – from the media perspective, not for what was discovered in the files that the institution already, dropped in interest until the 2004 elections when it grew again. To be mentioned the fact that the request for the files came constantly from the members of CNSAS so that the investigations would be properly done.

During this period of time, the institution only received a small number of files. most of the files being received from the Romanian Intelligence Service.

**Table 9. Number of files received by CNSAS from 2000 to 2004**

	Files (dosare)	Volumes (volume)
Total number received	9.655	20.575
From the Romanian Intelligence Service SRI (from here and after)	9.142	18.203
From the Foreign Intelligence Service SIE (from here and after)	110	236
From the Ministry of Justice MJ (from here and after)	403	2.136

Source: The Annual Activity Report of CNSAS for 2004

### **2006 – Crucial year for the files**

Although most of the files were sent in the custody of CNSAS in 2005, the problem of the archive intensified in 2006. With the new members of CNSAS named and the scandal surrounding the new appointed members of CNSAS, this scandal made CNSAS be the top priority of the media.

The main scandal that appeared was due to the new elected president. Corneliu Turianu, a Romanian jurist that published controversial books, especially the book where he sustained that people can be re-educated through work<sup>24</sup>, was elected the new president of the institution. Although Alianta D.A (Justice and Truth Alliance), the governing alliance, said that Constantin Ticu Dumitrescu was their choice<sup>25</sup>, Turianu was elected as president. Knowing that he has the support from the alliance and that there is a high chance of being elected as the new president of the institution, Ticu Dumitrescu was disappointed by the fact that he was not elected and in a sort of way betrayed. Based on this, Ticu Dumitrescu declared that all was a scam and that he actually

never had the support of the alliance and that Traian Basescu together with PD wanted to stop the disclosure of the files. He said that if the new president will not step out with a declaration, in 48 hours, he would resign as a member.

The prime minister of Romania told that Turianu had to resign not only as a president, but also from his position as a member due to his background. At the opposite part, the leader of PD, Emil Boc, said that there is no real reason why the new elected president of CNSAS has to resign and that the party will not make Turianu step back and made an announcement through Adrian Videanu in which they were asking Ticu Dumitrescu not to resign<sup>26</sup>.

In this scandal different accusations were done, especially oriented towards Corneliu Turianu from which worth be mentioned the one of Marius Oprea. Oprea said during a radio show, that there is an incompatibility for Turianu as being both the president and member of the institution because there is no possible way in his post 1989 career as a judge not to have known of the political done accusations and files, so he had a role in the political police apparatus<sup>27</sup>. Much to this, the employees of the institution protested against the new president of the institution. This protest of the employees of the institution made the scandal even more important. To be remembered the video images from the front of CNSAS where the employees were standing at the entrance stairs, surrounded by cameras, dogs, cars and passers-by people staring at the charade.

The scandal came to an end at the beginning of April when a new president for the institution was elected. Surprisingly neither Corneliu Turianu, nor Ticu Dumitrescu was elected as president, but Claudiu Secasiu whom was appointed as member by PNL. Through this the conflict was ended, another one started – the one of the archive.

Just as a brief mention, opinion polls had been conducted in 2006<sup>28</sup> and a BCS opinion poll showed that the 47% of the respondents do not know how to assess the activity of the president of CNSAS, while 46% had no idea if Constantin Ticu Dumitrescu's appointment of president is good<sup>29</sup>.

Not even the ink on the newspapers dried that within days the problem of the custody of the files arose. The Prime Minister of that time, C.P.Tariceanu sustained that CSAT should impose the secret service give files, microfilms and the filing cabinets must be delivered to CNSAS. The request of the Prime Minister was underlined and sustained by the new president of CNSAS<sup>30</sup>.

CSAT gave a deadline for the transfer at the end of May 2006, but this deadline was not respected. More, according to a Hotnews article from 2006 on 1<sup>st</sup> of June a number of files was to be sent to CNSAS together with the data base of Securitate<sup>31</sup>. According to the same article between May 15<sup>th</sup> and 26<sup>th</sup> 2006, CNSAS got into the custody of a number of files as presented in the second column of the below table:

**Table 10. Number of files received by CNSAS between May 15<sup>th</sup> and 26<sup>th</sup>, 2006, according to a Hotnews article**

Institution	Number of Files according to the news article
SRI	183 meters
SRI – (informant cards) fise informatori	210 meters
SRI – ( filling cabinet cards) fise de cartoteca	125 000
SIE	3 019
Ministry of Internal Affairs – General Direction of the State Security - MAI – Directia Generala a Securitatii Statului	724 (18 meters)

(from here and after)	
Ministry of Foreign Affairs – 5 <sup>th</sup> Security Department MAE – Directia a V-a Securitate si Garda (from here and after)	<b>8 meters</b>
The High Prosecutor’s Court of Cassation and Justice Parchetul Inaltei Curti de Casatie si Justitie (from here and after)	<b>12 222 (dosare penale)</b>

Source: <http://www.hotnews.ro/stiri-arhiva-1176509-expira-termenul-predare-dosarelor-cnsas.htm>

This information seems not to be quite eloquent for what really happened in 2006, because according to the 2006 annual activity report of CNSAS the institution received:

**Table 11. Number of Files received by CNSAS in 2006 according to the Annual Activity Report**

Institution	Files / Dosare	Volumes/Volume
SRI	<b>249 803</b>	<b>338 323</b>
SIE	<b>19 306</b>	<b>23 189</b>
M J	<b>168</b>	<b>737</b>
Ministry of Prosecution - M. Public (from here and after)	<b>14</b>	<b>20</b>
Ministry of National Defense – MapN (from here and after)	<b>24 844</b>	<b>24 844</b>
Total for 2006	<b>294 135</b>	<b>382 113</b>

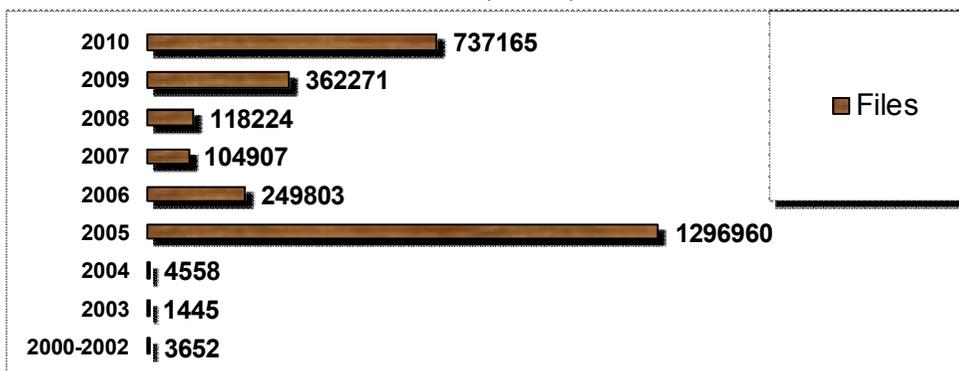
Source: 2006 Report, p.10.

If we consider the fact that in 2006, according to the report, were received 14 dosare (files) from the Ministry of Prosecution, and from the Parchetul Inaltei Curti de Casatie si Justitie 12 222 files, then either the files received for the Parchet were not all in the custody of the Ministry of Prosecution, which we tend not to believe, either there was made a mistake in writing down the article. In this case we tend to believe that the report is presenting the real situation of the archive. More, if we take the example that 18 linear meters equals 724 files and if we agree that 1 linear meter equals almost 40 dosare (files), then from SRI the institution got almost 7320 files, from MAE almost 320 files.

Leaving aside this matter, in December the problem of the files was not over. In a TV show the president assured that after the Christmas and New Year’s Eve Holidays he will verify the number of files sent to CNSAS<sup>32</sup>.

During the 2006 CNSAS was on everybody’s lips, although as at can be seen in the below chart, CNSAS received the highest number of files in 2005, one year before the whole “fight”. More, the decision of CSAT (The Supreme Council of National Defense) sustained that all the files had to be in the custody of CNSAS until May 30<sup>th</sup>, 2006, and can be seen that every year CNSAS receives files. More, in 2010 CNSAS received almost three times more files than in 2006. In this context, we ask ourselves why there were so strong arguments and debates in 2006? Was it just a political maneuver due to the fact that 2006 was sprinkled with past debates – new president of CNSAS, problem of the files, condemnation of communism by the President, the Institute for Investigating the Crimes of Communism<sup>33</sup>.

Chart 1. Evolution of files (Dosare) from 2000 to 2010

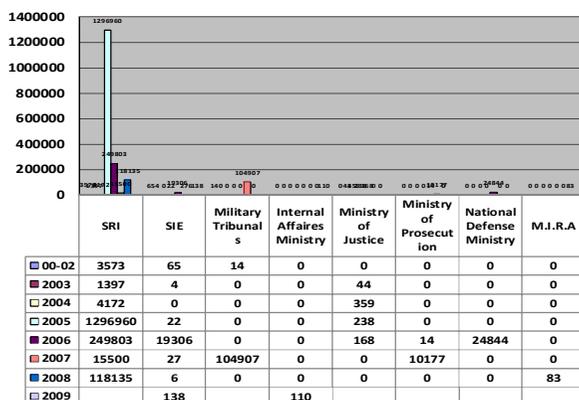


Source: the annual reports of CNSAS

More, the highest number of files that the institution received and still receives is from SRI. In the below chart are presented the number of files received from 2000 until 2009.

Chart 2. Files received by year from different institutions

Source: the Annual Reports of CNSAS



In order to end this part of our article we can mention the fact that the way in which the whole process of transfer of files was done together with the scandals of 2006 brought a lot of bad image to this institution, argument supported even by an opinion poll made by BCS in 2007.

At the question "*Credeti ca CNSAS a contribuit pana acum la:*" (Do you believe that CNSAS contributed until now at:) 47.6% considered that CNSAS covered the former members of *Securitate* and collaborators, 21,2% considered that CNSAS helped to disclosure the former members and collaborators, while 31.2% have no idea. More, at the question "*Cine credeti ca este principalul vinovat de ascunderea dosarului lui Traian Basescu de la Securitate?*" (Whom do you think is responsible for hiding Traian Basescu's *Securitate*'s file?) 11,9% considered that the file was hidden by certain employees of CNSAS<sup>34</sup>. Again if have to speculate we can mention the fact that this idea of employees of CNSAS hiding the files of Traian Basescu comes on the basis that in 2004 it was provided to the media the information that a previous member of the institution (that resigned a month before this information was provided to the media) extracted some documents from "Eterul" and "Culte efecte" files. Mihai Gheorghe, the former member of the institution, rejected the accusation and argued that the files of which he was accused of taking out of the institution were on his office desk and after his resign the documents were gave back by his secretary<sup>35</sup>.

These types of scandals affected the image of this institution and brought the idea of a strong political tool.

### ***What kind of access?***

This last part of this article underlines the problem of access to the secret police files. Knowing that the information that are in the files may be harmful, may be use to blackmail, or just end up one's career, the question that we put forward is what kind of access should be given to the files. Should the files be online so that everyone can see your file, should the third parties be erase, or should the journalist not be allowed to see the files?

In Romania, the journalists are not allowed to see the files. Here we can recall a TV news show from B1 TV that was aired a couple of years ago where Oana Dobre, a Romanian journalist, asked one of the members of the Collegium of CNSAS, Corneliu Turianu, why the journalists cannot access the files. the question is legitimate, but at the same time the answer of Mr. Turianu was that the journalists have the access to the files. We brought this example into discussion due to the fact that there are confusions made in what regards the access to the archive.

In Romania, the former secret police files are opened to the following categories of people:

(a). **The victims:** this category of people have the right to access the files and see, upon request, their files and what was written about they. The access to the victims is given in all the countries from East and Central Europe.

(b). **The personnel:** they are in contact permanently with the archive. As it can be seen on the site of CNSAS, the people working at the Investigations Department and at the Archive Department are in permanent connection with the files. This category of people has access to the files because firstly the files have to be certified and counted by the Archive Department. It is pretty much impossible not to look at the pages that you count and not to skim read what you see in those files. The people working at the Investigations read carefully the files. There is also the possibility that employees from the Research and Education Department read the files. Only in Germany, Romania and Slovakia the employees of those institutions have the right to access the files.

Working with the archive means not only work, but also dust. It means, firstly, knowing a part of our history and the true face of Securitate, but also a lot of stress and you may end up with skin disease. So, working with the archive means a constant exposure to germs, mold, dust and mites and to protect yourself you have to wear a mask and surgical gloves – the researchers and the addressers have to wear them also.

(c). **Researchers:** they are the last category of people that have access to the files. You become an independent researcher by applying to this position. You decide what you want to study, define clear the reasons why you want to do with your research and you forward your application. The Collegium decides whether you are entitled to be a researcher. If you get the approval, the information/files requested are searched and if there are findings you will be informed. Only Germany did not grant the access to the files for researchers.

In the end we tend to believe that the access to the files should be given also to the journalists. By not allowing one particular category to research and study the files, might be given the idea that you want to hide something. If you already have different categories of people that have the access, why would you not give the permission to journalists? Also, where is the difference if a journalist decides to become a researcher independently of his work and he motivates that the reason for his inquiry is just to do research and is interesting in writing a book – should you make him a researcher, or you do not approve? And if you approve him/her as a researcher and publishes a news article in a newspaper with references to the files, isn't there also a problem?

### **Conclusions**

In the end we would like to draw attention on the fact that from the early beginning the problem of the archive was debated and was the tendency to destroy part of the files so that the truth would not come to surface. The way in which CNSAS got the files and still gets, shows that there is no clear number of files, issue that also can be seen at the beginning of this article where we underlined the approximate number of files produced by *Securitate*.

Going further, if in 2006 was considered that all the files were transferred, why are still sent to CNSAS? More, in the line of analysis, namely to look from the early beginning until present times – in our case until 2008 – can be seen the fact that even the interest upon this problem saw ups and downs. If at the beginning files started to be destroyed later the files were in a sort of hibernation process until CNSAS was formed. Easily can be said that there was no interest to be disclosed the files and information to be spread in the media.

All in all can be seen that this fight was a double-edged knife; the institution was put in a corner of shadow, but at the same time gave more possibilities to the researchers and addressers/victims to find the truth.

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<sup>1</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 13 on the Committee of Ministers to member states on a European policy on access to archives, available online at <https://wcd.coe.int/ViewDoc.jsp?id=366245> last accessed on January 31st, 2012.

<sup>2</sup> In the Czech Republic the access to the files was given in 1996 and later expanded in 2004, but the names of the third parties are not disclosed. For the case of Germany and the Stasi's archive the access was given in 1992 through the Stasi Files Law. In the case of Hungary the access to the former secret police files was given in 1994 through the law XXIII. In Bulgaria the access to the former secret police files was given in 2006. The files that can be seen by the person on which the files was compiled on, but the files that touch the national security cannot be accessed. In Poland the access was given in 1997 and was broadened later. In Romania the access was given access to the Securitate's archive in 1999. In the case of Slovakia the access to the archive was given in 2002 after long debates regarding the issue of lustration and disclosure of the files. (Lavinia STAN (ed), *Prezentul trecutului recent Lustratie si decomunitizare in postcomunism*, Bucuresti, Curtea Veche, 2010.).

<sup>3</sup> The National Council for the Study of Securitate Archive – CNSAS, from here and after.

- <sup>4</sup> M.C. *In luna mai, SRI a predate CNSAS peste 81 mii de dosare*, available online at <http://www.hotnews.ro/stiri-arhiva-1175658-luna-mai-sri-predat-cnsas-pest-81-mii-dosare.htm> last accessed on January 20th 2012.
- <sup>5</sup> Romanian Intelligence Service.
- <sup>6</sup> Lavinia STAN, „Romania”, in: Lavinia STAN (coord.), *Prezentul trecutului recent Lustratie si decomunitizare in postcomunism*, Curtea Veche, Bucuresti, 2010, p.244.
- <sup>7</sup> Ibidem, p.245.
- <sup>8</sup> Ibidem, p.248.
- <sup>9</sup> European Network of Official Authorities in Charge with the Secret-Police Files, <http://www.cnsas.ro/documente/European%20Network.pdf> last accessed on January 31st, 2012.
- <sup>10</sup> Mihai TUDOR, Adrian GAVRILESCU, *Democratia la pachet: Elita politica in Romania postcomunista*, Compania, Bucuresti, 2002, pp.238-239.
- <sup>11</sup> Constantin Ticu DUMITRESCU, *Marturie si Document*, Vol 1, part 3, Polirom, Bucuresti, 2008, p.340.
- <sup>12</sup> Ibidem p.369.
- <sup>13</sup> Diana Rucinski, Andreea Cașcaval, Petru Zoltan, Scandalul „Berevoiesti”, available online at <http://istoriacomunismului.blogspot.com/2008/02/scandalul-berevoieti.html> last accessed on January 31st, 2012.
- <sup>14</sup> Here we refer to the problem of destroying files.
- <sup>15</sup> Johannes LEGNER, „Commissioner for the STASI Files”, in *American Institute for Contemporary German Studies*, The Johns Hopkins University, Key Institutions of the German Democracy #7, 2003, p9.
- <sup>16</sup> Lavinia STAN, Polonia, in: Lavinia STAN (coord.) *Prezentul trecutului recent Lustratie si decomunitizare in postcomunism*, Curtea Veche, Bucuresti, 2010, p.151.
- <sup>17</sup> Marek KAMINSKI, Monika NALEPA, “Judging Transitional Justice A new criterion for evaluating truth revelation procedures”, in *The Journal of Conflict Resolution*, Vol 50, nr. 3, Transitional Justice, June 2006, pp. 383-408, p. 384.
- <sup>18</sup> He was elected as MP in 1996 from the National Democrat Peasant Party (PNȚCD). George Șerban wanted screening and after his death in 1999, a number of MPs decided to introduce of the Parliament’s agenda a lustration law that was called „Legea George Șerban”.
- <sup>19</sup> Lavinia STAN, Romania, in: Lavinia STAN (coord.), *Prezentul trecutului recent Lustratie si decomunitizare in postcomunism*, Curtea Veche, Bucuresti, 2010, p.255.
- <sup>20</sup> Article 1.1, Legea Ticu.
- <sup>21</sup> Article 1.2, Legea Ticu.
- <sup>22</sup> Article 1.3, Legea Ticu.
- <sup>23</sup> The names of the collaborators are still published on CNSAS’s website.
- <sup>24</sup> He published this book during the communist regime.
- <sup>25</sup> HotNews, *Propunerea Aliantei D.A pentru sefia CNSAS: Constantin Ticu Dumitrescu*, available online at <http://www.hotnews.ro/stiri-arhiva-1186692-propunerea-aliantei-pentru-sefia-cnsas-ticu-dumitrescu.htm> last accessed on January 24th 2012.
- <sup>25</sup> Interview at Radio Mix of Marius Oprea, available online at <http://www.hotnews.ro/stiri-arhiva-1184843-marius-oprea-corneliu-turianu-facut-parte-din-aparatul-politie-politica.htm> last accessed on January 24th 2012.
- <sup>26</sup> HotNews, *PD ii cere lui Ticu Dumitrescu sa nu-si dea demisia*, available online at <http://www.hotnews.ro/stiri-arhiva-1184754-cere-lui-ticu-dumitrescu-nu-dea-demisia.htm> last accessed on January 24th 2012.
- <sup>27</sup> HotNews, *Ticu Dumitrescu: 48 de ore nu-mi depun demisia*, available online at <http://www.hotnews.ro/stiri-arhiva-1184845-ticu-dumitrescu-48-ore-nu-depun-demisia.htm> last accessed on January 24th 2012.
- <sup>28</sup> The opinion poll was conducted after the end of the mandate of Gheorghe Onisoru, before the new members be appointed.
- <sup>29</sup> Aniela NINE, *Sondaj BCS- Activitatea sefului CNSAS, necunoscuta*, available online at <http://www.jurnalul.ro/politica/sondaj-bcs-activitatea-sefului-cnsas-necunoscuta-27671.htm> last accessed on January 31st 2012.
- <sup>30</sup> Evenimentul Zilei, *Tariceanu cere CSAT sa intervina pentru cartoteci*, available online at <http://www.evz.ro/detalii/stiri/tariceanu-cere-csat-sa-intervina-pentru-cartoteci-500542.html> last accessed on January 31st, 2012.
- <sup>31</sup> C.N.A, *Expira termenul de predare al dosarelor CNSAS*, available online at <http://www.hotnews.ro/stiri-arhiva-1176509-expira-termenul-predare-dosarelor-cnsas.htm> last accessed on January 24th. 2012.
- <sup>32</sup> News from Antena 3, currently available on [http://www.amosnews.ro/2006/Antena\\_3\\_Basescu\\_Lui\\_Tariceanu\\_i\\_am\\_spus\\_multe\\_in\\_particular-198652](http://www.amosnews.ro/2006/Antena_3_Basescu_Lui_Tariceanu_i_am_spus_multe_in_particular-198652) last accessed on January 31st, 2012.
- <sup>33</sup> This institute was formed after the Government Decision no.1724/2005.
- <sup>34</sup> BCP opinion poll presentation, 2007, available online at <http://sociologie.dreamstyler.ro/assets/BCS1.pdf> last accessed on January 31st, 2012.

<sup>35</sup> Lucian GHEORGHIU, *Fost Membru CNSAS a sustras documente din arhiva* available online at <http://www.hotnews.ro/stiri-arhiva-1263258-fost-membru-cnsas-sustras-documente-din-arhiva.htm> last accessed on January 24th 2012.

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## ORIGINAL PAPER

Izabela BRATILOVEANU

### Historical and Comparative View on Human Dignity in Constitutional Law

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**Abstract:** *The consequences of the Second World War were catastrophic; after these events of a unique severity and distribution in human history, the belligerent countries emerged from the war ruined both from a financial and a moral point of view. Up to that point, being the attribute of philosophy and religion, the notion of human dignity was taken over by the main international documents on human rights and constitutional law. In this paper we intended to make a presentation from the historical point of view of this concept in the Romanian constitutional law and in the comparative constitutional law, focusing on the German, French, Spanish, Austrian, Italian and former communist states law. In the Romanian law, overcoming the communist period meant the development of a new Constitution, in accordance with which Romania has an axiological legal system, granting an important place to the values stated in Article 1 paragraph 3 of the Constitution, namely human dignity, the rights and freedoms of the citizens, the free development of the human personality, justice and political pluralism.*

**Keywords:** *human dignity, Romanian Constitution, supreme values of Romania, comparative law.*

## 1. Preliminaries

The Second World War represented the worst tragedy in the history of mankind, the countries using the latest technological discoveries, like the atomic bomb, and committing crimes the magnitude of which are without equal. The atrocities committed during this war were not seen in other crimes which have stained the history of mankind: the use of gas chambers, of crematoriums and other horrible tools from the Nazi concentration camps, mass exterminations, collective executions, thefts, cannibalism, sexual slavery, experiments with biological weapons. The belligerent countries emerged from the war ruined both from a financial and a moral point of view. The result was a devastating one, it was estimated that 3% of the world population at that time died. After these events of a severity and distribution unseen until that moment, spread the idea to reject everything that prejudices the quality of being human.

Given the importance of these events, in the Preamble of the Universal Declaration of Human Rights adopted on the 10<sup>th</sup> of December 1948 it is reminded that “the disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people” and also that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.

From this moment, the concept of human dignity has been introduced in the main international documents on human rights and in the constitutional law of the European countries, and not only in the constitutional law of these countries, dignity becoming “the pedestal on which the philosophy of human rights, and therefore the law of human rights, is built.”<sup>1</sup> Therefore, one of the main characteristics of constitutionalism after the Second World War is to raise the status of human dignity to one of constitutional axiological basis and, for the same reason, to establish it as a supreme value of the entire legal order, in a generalized manner, also in the socio-cultural fields as shown in the examples that we will give below<sup>2</sup>. Virtually, all the constitutions of the Western European countries (Sweden, Portugal, Spain, Greece, Switzerland) adopted after 1975 state human dignity as a basis for political and legal order<sup>3</sup>.

The reference to human dignity resulted in the fact that in the future, in the centre of the legal protection system will be the human being, taking into account both the physical and the moral dimension.

## 2. Difficulty in defining the concept.

In the legal doctrine, the uncertainty regarding the definition of human dignity continues, the difficulty of such an action being accepted quasi unanimously. Without proposing a definition, professor Gimeno-Cabrera states the idea that dignity is an untouchable constitutive element of the human nature because one cannot prejudice it and it must be imperatively protected, the concept involving two things: an interdiction to prejudice the dignity of another and an imperative obligation made by the individual to respect himself<sup>4</sup>. According to von Wintrech “human dignity represents the human being in one’s capacity of an ethical and spiritual being which can, through one’s own nature, in a conscious and free manner, define and form oneself and to act upon the world around”<sup>5</sup>. According to M.L.Pavia, human dignity will become a legal concept in order to define what is human in it<sup>6</sup>. Professor Feldman describes it as “a readiness to confront the realities of one’s circumstances, including talents and physical and mental limitations and make the best of them without losing hope and a sense that one’s life is worthwhile; to live according to a set of normative standards, whether accepted from outside or imposed from within, accepting

both burdens and benefits in full measure; and readiness to accept responsibility for the consequences of one's own actions and decisions"<sup>7</sup>. Also the author B. Maurer, in his work on the principle of respecting human dignity in the European Convention on Human Rights, states that, paradoxically, even though it is stated by numerous legal texts, the notion is never defined<sup>8</sup>. Also, B. de Béchillon refers to the fact that the concept cannot be defined, noticing that it is about the "the most vague abstract definition" because "nobody knows exactly what is it about but everybody knows what its absence represents: the reign of the bums, of barbarism, of misery and of deprivation. And, in this entirely negative manner, we can understand what human dignity means: it appears when it is ignored, ridiculed or despised – and the opportunities to do so do not lack. Therefore, law knows what human dignity is: through the prejudices on it"<sup>9</sup>. The same idea is repeated by Benoît Jorion, according to whom "dignity is undoubtedly first of all an intuitive notion, more easily to perceive than to define", "which is easily to define through the prejudices on it rather than as such"<sup>10</sup>.

The notion of dignity has a polysemy character, being sensitive to more points of view (types, approaches, dimensions)<sup>11</sup> as follows: firstly, dignity is a concept attached to a function, profession, institution, then, the holder of it is a human being and, finally, it may consist of defending the humanity of man. Also, we remind that dignity of peoples (The African Charter on Human and Peoples' Rights), dignity of nations (Declaration on fundamental principles concerning the contribution of information bodies in the strengthening of peace and of international understanding, to promote human rights and the fight against racism, apartheid and against incitement to war) and dignity of the country (Constitution of Romania of 1938) are mentioned in the international texts on the protection of human rights and in the constitutions.

### **3. First references to dignity in the fundamental laws.**

The first reference to human dignity in a Constitution dates from 1937 and it is the Preamble of the Constitution of Ireland, according to which "We, the people of Éire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, who sustained our fathers through centuries of trial, gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation and seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, do hereby adopt, enact and give to ourselves this Constitution".

The first disposition of the notion within a fundamental law is in the Constitution of Germany of 1919 during the Weimar Republic, which makes a reference to it in Art. 151: "The economy has to be organized based on the principles of justice, with the goal of achieving a life of dignity for everyone. Within these limits the economic freedom of the individual is to be secured".

### **4. Human dignity in the German constitutional law.**

The Constitution of Germany of the 23<sup>rd</sup> of May 1949 states in Art. 1: "1. Human dignity is inviolable. To respect and protect it is the duty of all state authorities. 2. The German People therefore acknowledge the inviolable and inalienable human rights as the basis of every human community, of peace and of justice in the world."

It is the only fundamental right from the Constitution of Germany regarding which the legislature can neither indicate its outlines nor limit its content. In the German doctrine, we can review three manners of understanding the concept: some authors have agreed with the thesis that every human being is endowed with a right according to which one's human dignity must be respected, regardless of the spiritual or moral conditions, this being "an essential feature of the individual" (Mitgifttheorie); some authors have considered that dignity depends on the possibilities

and capacities of the individual (Leistungstheorie) and other authors have understood the concept as a relational and communicational basis, in the basic sense of the mutual respect between humans in the social relation of communication<sup>12</sup>.

Starting from the well-known Kantian idea that man must always be treated as a purpose and not as means, the German jurisprudence developed the theory of the object (Objektformel), defining dignity in a negative manner, from the view of the prejudices on it, as follows: "it is not rare for man to be reduced (erniedrigt) to be the object of the social relations and evolution, but also the object of the law in that one must obey it without one's interests being taken into account. It is not enough to contain a violation of human dignity. For this to happen, the treatment in question has to insert into the discussion its capacity as a subject, or if it is the case, in a concrete case, an arbitrary breach of dignity. Therefore, the manner in which the human being is treated by the public law enforcement when one prejudices dignity – expression of the fact that this value is respected – which exists due to the human being, due to one's personal essence, must be in a contemptuous manner". However, the German jurisprudence stated that the prejudices on human dignity cannot be determined in a general manner and once for all „but only depending on each concrete case. The general expressions such as those according to which one must not be reduced to a mere object by the public authority, offer only one direction, which can be found in the concrete case of violation of human dignity"<sup>13</sup>.

According to Hans Carl Nipperdey, in the German constitutional law, dignity is not only a fundamental right, like the others, but "the main fundamental right (Hauptgrundrecht) of the Constitution", representing the concept from which all the other fundamental rights derive<sup>14</sup>. We need to mention that in the German doctrine the guarantee of human dignity by the text of the Constitution is connected with the manner in which the human being is conceptualized in a determined society, with „the constitutional image of the human being" (Menschenbild) which basically means "the limitation of the powers of the state to respect the human rights" and in "the timeless relation of tension between the state and the individual", "a position basically in favour of the human being"<sup>15</sup>. The manner of understanding it and the super eminent place given to the concept in the German fundamental law had a major influence on the other European Constitutions which were adopted afterwards.

## **5. Dignity in the French constitutional law.**

In the French law, the Constitution of 1958 did not include an explicit reference to the concept of human dignity. Therefore, it was missing from the text of the Constitution.

It was firstly introduced in the Criminal Code of the 22<sup>nd</sup> of July 1992 which entered into force on the 1<sup>st</sup> of March 1994. In the Second book, on crimes and offenses against individuals, it contained a Chapter V entitled "Prejudices on human dignity" inserted between the chapter on "Prejudices on the freedom of the individual" and the one which provides and sanctions the "Prejudices on the personality". The following crimes are provided: discrimination, human trafficking, procurement and the crimes that result from it, child prostitution and prostitution of people who are particularly vulnerable, exploitation of begging, working and living conditions contrary to human dignity, baptism, and prejudice on the respect due to the dead.

Article 16 of the French Civil Code states that: "The law ensures the primacy of the individual, prohibits any prejudice on one's dignity and guarantees the respect of the human being since the beginning of one's life".

However, in the public law, the principle has a completely different dimension, through the actions of the constitutional and administrative judges which have transformed it into a principle with a constitutional value and included dignity as the fourth component of the public order.

Through the bioethical laws of the 29<sup>th</sup> of July 1994, the French Constitutional Council has established dignity as a principle which has a constitutional value, stating that: "The Preamble of the Constitution of 1946 restated and proclaimed constitutional rights, freedoms and principles" stressing that "After the victory obtained by the free peoples on the regimes which sought to oppress them and sought to degrade the human being, the French people stated again that any human being has inviolable and sacred rights, regardless of race, religion or faith", which proves that "the defence of human dignity against any form of servitude and degradation is a principle which has a constitutional value" and that the bioethical laws "state a set of principles including the primacy of the human being, the respect of the human being since the beginning of his life, the inviolability, integrity and absence of the primary character of the human body, integrity of the human species; that the principles stated tend to ensure the compliance of the constitutional principle of protection of human dignity" (Decision of the Constitutional Council no. 94-343/344 DC on the Law relating to the respect for the human body and the Law referring to donations and using elements and products of the human body, to medical assistance, to procreation and to prenatal diagnosis).

#### **6. Human dignity in the Spanish constitutional law.**

The Constitution of Spain of 1978 states in Art. 10.1 "The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of the political order and social peace". Chapter II of Title I refer to the fundamental rights. We can conclude therefore that in the Spanish Constitution dignity is used in the sense of a value which guides the work of creation and legal interpretation, but without also being a fundamental right. The Spanish Constitutional Court has the tendency to always put the notion of dignity in connection with the fundamental rights, never as an independent concept adopting the function of the fundamental rights, which is the function of an interpretative tool<sup>16</sup>. The Spanish Constitutional Court defined dignity as an "inherent spiritual and moral value of the individual which manifests especially in the conscious and responsible self-determination of one's life and implies the respect of other individuals"<sup>17</sup> and that, therefore, it represents "a inviolable minimum that all the legal regulations must ensure so that the limitations of the individual rights which they can enforce not to contain the contempt for the esteem that the individual deserves, as a human being"<sup>18</sup>. Dignity was used in order to extend the area of applicability of certain fundamental rights; it also allowed the limitation of the area of applicability of some of them but it distinguished itself especially because it represents the foundation for individuals to respect their own rights, or at least those inherent to the respect of human dignity<sup>19</sup>.

#### **7. Human dignity in the Austrian constitutional law.**

In the Austrian law we can talk about an insertion through the path of constitutional jurisprudence regarding the establishment of dignity as an unwritten principle and as a general principle of interpretation of the legal order. The Austrian Constitutional Court has developed a complex jurisprudence regarding the concept of dignity, based on its understanding that the untouchable value which has to be protected by the public authority, especially regarding the prohibition of torture and of inhuman and degrading punishments and treatments<sup>20</sup>.

#### **8. Human dignity in the Italian constitutional law.**

The Constitution of Italy, which was adopted shortly after the end of the Second World War, in 1947, departing from the concept of the fascist society, refers to dignity in three of its

articles and states the human being as the main purpose of the social and elderly organization. Firstly, Article 3 refers to social dignity, stating that “all citizens have the same social dignity and are equal before the law, without regard to their sex, race, language, religion, political opinions and personal or social conditions”. Then, in Article 36 paragraph 1 it is mentioned that “Workers are entitled to remuneration commensurate with the quantity and quality of their work and in any case sufficient to ensure them and their families a free and honourable existence”. Finally, Article 41 paragraph 2 states human dignity as the limit of the private economic enterprise.

### **9. Human dignity in the constitutional law of the former communist European countries.**

The Constitution of Hungary of 1989 inserted Article 54 paragraph 1 at the beginning of the chapter entitled “Fundamental rights and obligations” which states that “in the Republic of Hungary, any individual has an inherent right to life and to human dignity. No one shall be arbitrarily deprived of these rights”, thus achieving the split from the previous socialist law and paying the foundation for a new constitutional order. An original element of the jurisprudence of the Hungarian Constitutional Court is represented by the establishment of an equality between the right to dignity and the general right to personality, which is one of its expressions<sup>21</sup>.

In the Constitution of Poland of 1952, dignity was not included, being mentioned in 1997, in Article 30 which states: “The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities”. The concept is also mentioned in the Preamble according to which the fundamental law enforcement should be done in compliance with human dignity. Thus, it is stated that: “All those who will apply this Constitution for the good of the Third Republic to do so paying respect to the inherent dignity of the person, the right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland”. Finally, the text adds the fact that is not permitted to limit this right even during a state of siege or a state of emergency.

The Constitution of Bulgaria of 1991 firstly states as supreme principles the rights of the individual, the dignity and security of the individual and that “all persons are born free and equal in dignity and rights” and in Article 32 paragraph 1 the notion is used in the context of the protection of private life, stating that: “The privacy of citizens is inviolable. Everyone is entitled to protection against any illegal interference in one’s private or family affairs and against encroachments on one’s honour, dignity and reputation”.

Also, in Slovakia, Art. 12 paragraph 1 of the fundamental law adopted in 1992 states that “People are free and equal in dignity and their rights. Basic rights and freedoms are inviolable, inalienable, secured by law and unchallengeable”. Then, the concept is put in connection with the right to life in Article 15 paragraph 1, which states that “Every individual has the right to life. Human life is worthy of protection even prior to birth” and in Article 19 paragraph 1 the concept is used in connection with the right to private life, stating that “Every person has the right to the preservation of one’s human dignity and personal honour and the protection of one’s reputation”.

Article 21 of the Constitution of Lithuania states that: “The person shall be inviolable. Human dignity shall be protected by law. It shall be prohibited to torture, injure, degrade or maltreat a person, as well as to establish such punishments”. Other two references to dignity are made in Article 22 and Article 25, according to which “The law and the court shall protect individuals from arbitrary or unlawful interference in their private or family life and from prejudice on their honour and dignity” and “Freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when

it is necessary for the protection of the health, honour and dignity, private life or morals of a person or for the protection of the constitutional order”.

The Constitution of Estonia establishes the principle of dignity in Article 10, according to which “The rights, liberties and duties stated in this Chapter shall not preclude other rights, liberties or duties which ensue from the spirit of the Constitution or are in accordance therewith and are compatible with human dignity and the principles of a society based on social justice, democracy and the rule of law”.

The Constitution of Latvia of the 10<sup>th</sup> of December 1991 states in its first article: “The individual, the life, freedom, dignity and rights of the individual represent the fundamental rights of Latvia” and in Article 3 it states that: “The state protects the individual, the freedoms, securities, dignity and property of the individual”.

Slovenia, part of the former Socialist Federal Republic of Yugoslavia until 1991, mentions this concept in Art. 34, according to which: “Everyone has the right to personal dignity and safety” and in Art. 21 it states that “The respect for human personality and dignity shall be guaranteed in criminal and in all other legal proceedings, as well as during the deprivation of liberty and enforcement of punitive sanctions”.

Finally, in the Constitution of Russia, it is stated that the protection of human dignity is guaranteed by the state.

#### **10. Other references to the concept of human dignity at the constitutional level.**

As can be seen, human dignity is a concept which was recognized in the constitutional law of most of the European countries. Many of them, freed from a totalitarian regime and in order to mark the split from the previous legal order, expressed their willingness to rebuild the political and legal order on the primacy of the human being, on the respect of human dignity.

As we will show in what follows, not only the constitutions of the European countries state the notion of human dignity, whose moment of occurrence in the constitutional law, manners of establishment, content and area of application depend on a number of very specific cultural, sociological and political factors and on the importance give to the values in different legal systems.

For example, human dignity is established as a value and right in the South African constitutional law. In this country, long faced with apartheid, the concept was not present until the entry into force of the temporary Constitution of the 27<sup>th</sup> April 1994, which states in Article 10 of Chapter 3 -“Fundamental rights” that “Every person shall have the right for and protection of one`s dignity”. The Constitution of 1996 in force firstly states in Chapter 1 - “Founding provisions” that the South African Republic is founded on human dignity, the achievement of equality and advancement of human rights and freedoms, on non-racialism, non-sexism, supremacy of the constitution and the rule of law, universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness. We will also mention Article 7 (1) of the Bill of Rights which states that human dignity, equality and freedom as being the values on which it is based. Article 39 of the Constitution which governs the interpretation of this Charta, contains paragraph 1 which states that the interpretation of the Bill of Rights must promote the values that underlie an open and democratic society, including human dignity. Article 10 specifically mentions the right of everyone to have their dignity respected and protected, this representing a right which cannot be derogated (Art. 37 al.5 lit. c). Finally, the Constitution contains certain provisions on the rights of prisoners in Article 35, paragraph 2 letter e, stating that they have the right “to conditions of detention that are

consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment”.

On the American continent, the Constitution of Peru of 1993, which is currently in force, states the belief in the primacy of the human being and in the fact that everyone is equal in dignity, has rights which have an universal validity, prior and superior to the state. The Constitution of Guatemala of 1985 states in Art. 4 that all human beings are free and equal in dignity and in rights; to add later that no one shall be subjected to any servitude or to another condition which can discredit or diminish one's dignity.

In Asia, we should point out the presence of this principle in the Constitution of Afghanistan of 1964 and in Article 38 of the Constitution of Cambodia.

In the case of the Islamic Republic of Iran, dignity is also present in the Constitution of 1979, which, after it states in Article 2 that the Republic is a fundamental system based on the supreme human values, it states that: “The individual, dignity, life, property, rights, residence and occupation of the individual are inviolate”.

Also, the Constitution of Japan of 1946 states in Art. 13 that: “All of the people shall be respected as individuals”. Article 38 of the Constitution of the People's Republic of China of the 4<sup>th</sup> of December 1982 states that “The personal freedom of citizens of the People's Republic of China is inviolable”.

Therefore, in all the areas of the world the concept of human dignity is mentioned, including in the Constitution of Cuba of 1976, where Art. 9 states that: “The State implements the will of the working people and (...) guarantees the freedom and full dignity of men” .

#### **11. Human dignity in the Romanian constitutional law.**

In the Romanian law, a reference to dignity is found in the Constitution of 1938, where, in Art. 4, included in Title II, Chapter I – “Duties of Romanians” it states that: “all Romanians, regardless of ethnic origin and religion, have to: regard the Country as the greatest purpose of their life, sacrifice in order to defend its integrity, independence and dignity; to contribute through their work to its moral elevation and economic prosperity; to perform the public duties required by law faithfully and to willingly contribute to the public tasks, without which the State cannot exist”.

In Article 13 of the Constitution of the Socialist Republic of Romania we encounter the first reference to human dignity at a constitutional level, this article stating that: “In the Socialist Republic of Romania, the entire activity of the state is for the development of its structure and for the flourishing of the socialist nation, for the continuous growth of the living and cultural standards of the people, for ensuring the freedom and dignity of the individual and for the multilateral fulfilment of the human personality”.

Article 1 paragraph 3 of the Constitution of 1991 states human dignity, the rights and freedoms of the citizens, the free development of the human personality, justice and political pluralism as the supreme values of Romania. Therefore, a transition is made from a strictly positivist system to an axiological one, marking the split from the prior judicial order and rebuilding the political order on the primacy of the human being and on the respect of human dignity.

The insertion of the value of human dignity in the fundamental law has an important role in adapting the Constitution to the evolution of the society because its implementation has an evolutionary character. As a supreme value, its implementation is not made independently, but together with another fundamental right or freedom.

In this capacity, it is a tool for the interpretation of all the legal standards, directing their development and implementation. The fact that human dignity is guaranteed by the Constitution does not imply its implementation in abstracto, its violation is analysed in specific cases, sanctioning the prejudices in question.

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Notes:

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<sup>5</sup>Von Wintrich, *Zur problematik der Greunrechte*, 1957, p.15, apud Ekkart Stein, *Lehrbuch des Staatsrechts*, Tübingen, 1968,

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<sup>8</sup>B. Maurer, *Le principe de respect de la dignité humaine et la Convention européenne des droits de l'homme*, P.U.A.M., 1999, p.32,

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<sup>13</sup>Laure Jeannin, *Le principe de dignité en droit allemande. L'interprétation et le renforcement de la valeur axiologique des droits fondamentaux*, in C. Girard, S.Hennette-Vauchez, "La dignité de la personne humaine. Recherche sur un processus de juridicisation", P.U.F., 2005, p.174,

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<sup>18</sup>STC 57/1994, 27 februarie 1994, FJ 3, BJC 155, p. 227,

<sup>19</sup>V. Gimeno-Cabrera, *Le traitement jurisprudentiel du principe de dignité de la personne humaine dans la jurisprudence du Conseil Constitutionnel français et du Tribunal Constitutionnel espagnol*, L.G.D.J., 2004, p.12, p.351,

<sup>20</sup>Alberto Oehling de los Reyes, *La dignidad de la persona. Evolución historico-filosófica, recepción constitucional y relación con los valores y derechos fundamentales*, Dykinson, 2010, p.314,

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## ORIGINAL PAPER

Ruxandra DIACONU

### Herta Müller – Between Two Worlds

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**Abstract:** *The goal of this paper is to analyze the work of Herta Müller, winner in 2009 of Nobel Prize. The article also presents comments about other volumes and comments focusing on experiences, attitudes and feelings lived between two worlds.*

**Keywords:** *Nobel Prize, attitudes, feelings, Romania, communism.*

Motto:

"At the flower-shop:

- Where are you from? Are you maybe French?

[...]

- No, I come from Romania.

She said:

- Oh, this means nothing.

And then she smiled as if she was suddenly having toothache."

(Herta Müller – "The King Bows and Kills", 199-200)

So many persons leave behind their hometowns, their country, and their people in order to head towards different worlds. Things are more complicated for them, because they are more introvert than the others and carry with them their souls, memories, thoughts of friends, and even their own homes, like the small snails. This withdrawal in their own world is a symbol for the refusal of an open talk and the preference for solitude. When this kind of person talks about herself with talent, sensibility and intelligence; then the result can be so impressive as to deserve the Nobel Prize in Literature.

In 2009, The Nobel Prize in literature was awarded to Herta Müller "who, with the concentration of poetry and the frankness of prose, depicts the landscape of the dispossessed." ("The Nobel Prize in Literature" 2009) After she received the prize, many critics began to voice their opinions about the author and her work; however few pertinent things were said. The enthusiast ones started praising her works; those who were more skeptical observed that she was just another writer complaining about the hardships of life in the communist times. Suddenly, Herta Müller was in the spotlights, she became a celebrity in a country where she could not find her place, where she never really could. Her work was banished in Romania in 1985; her first book, *Niederungen* ("Nadirs"), had only been published in 1982, and three years were not enough for the people in her native country to really know and fully appreciate her work. *Niederungen* underwent a powerful censorship in Bucharest, but in 1984 it was published in Berlin where it was a big success. The fact that the book was published in Germany, as well as the praise it received there, were counted among the aspects that led to the banishment of Herta Müller's books in Romania in 1985. Then, in 1987, the author immigrated to Germany and settled in West Berlin with her husband Richard Wagner who is a Romanian writer of German descent and had been Herta Müller's classmate in college.

In 1999 and then in 2008, Germany proposed Herta Müller for the Nobel Prize in Literature. The third nomination brought her the distinction, in 2009. Thus, the works of Herta Müller reached the spotlight of the Romanian cultural scene. Even though her works had been published after 1989, they did not make it to the mainstream, as they were rather addressed to people from cultural circles. In Romania, the writer was "the German one", whereas in Germany she became "the Romanian one". Herta Müller presents her isolation through the island metaphor. In her volume *Der König Verneigt sich und tötet* ("The King Bows and Kills"), in the story "The island is inside, the border is outside", the solitude is suggested through the image of a small mobile island on a big fixed one (Müller 2005: 180). The small piece of land is the individual, whereas the big one is the country. The Romanian communist state was just like an island in the European social and cultural context. The isolation was the less easy to bear, as the author felt lonely inside her own family as well. Sometimes "the fox was the hunter" and could hear what people said, thus the feeling of mistrust became an obsessive and difficult to live with pattern.

Herta Müller perceived the outer world as horrible, and her inner universe is the scene of linguistic parallelism. The fifteen years old girl who learns Romanian in the city lives through "the

linguistic hazard". Herta Müller personifies the language through the metaphorical image of the eyes. Every language has different eyes, and Mr. Lily, a masculine noun in Romanian, glances at you in a different manner from the German noun with the same meaning, a feminine noun (Müller 2005: 25). In her home village, people said "Der Wind geht" ("The wind walks"), in school she learned that "Der Wind weht" ("The wind blows"), and in Romanian people said that "The wind hits" (Müller 2005: 25-26). The author learns that the Romanian word for "sparrow" has more meanings than the German word "Schwalbe". The words can even alter the characteristics of things; language itself represents an entire world. Herta Müller was fascinated by this and talks more about the various meanings of words in different languages.

Dietrich Krusche said that "A reader whose mother language is different from the author's understands the text differently from a reader whose mother language is the same as the author's. The first one is situated further from the text, even when living in the same country where the text was born. But the main reason for this is not necessarily the language gap, but rather the cultural differences" (Krusche 1985: 203). Even the author has the same feeling when does not write in the mother language. Herta Müller uses her mother language, but she talks about a different culture. For her, the Romanian society is dark, and Romania was stranger even to the Romanians in those times. The consequences of this cultural gap have a strong impact upon Herta Müller. The German readers can perceive these cultural differences in her works, as she talks about situations that are characteristic to the Romanian mentality and society.

Dietrich Krusche also considers that "When a text presents aspects which are characteristic to German culture and society, a reader belonging to a different cultural context perceives the text as talking about alien aspects" (Krusche 1985: 203). Here, Krusche refers to the non-German reader who encounters a German text. But there is the same situation when a German reads "The King Bows and Kills", even though the book was originally written in German, because it presents aspects which are characteristic to the Romanian life. Herta Müller is very good at picturing the Romanian mentality; however she never could be a part of the Romanian society. She is only an observer of the Romanian problems, an observer belonging to a different culture, but these problems affect her as well as those who belong to the society.

In his article "Hermeneutik der Fremde" ("The Hermeneutics of Alterity"), Dietrich Krusche puts forward the idea of a strong unity of the European culture as a whole. It cannot be argued that there are major differences between the European culture as a whole and the Asian one, for instance, but even inside the European context there are many distinctive features of the culture of different people. Every country has cultural features that are characteristic to the people's mentality in its whole and it is sometimes difficult for individuals belonging to a different culture to understand and appreciate these realities. Moreover, even various communities from the same country display remarkable cultural differences and sometimes social distinctions. In Romania, the communist regime had a strong policy towards the German communities and the families belonging to this minority had to lead a bad life most of the times.

With a neutral tone and "with the frankness of prose" ("The Nobel Prize in Literature" 2009), Herta Müller often mentions her family in her works and talks about her childhood and adolescence. All the members of her family were in one way or the other oppressed by the communist regime, just as she and her close friends were later on. Her grandfather used to export cereals and to be famous all the way to Vienna, but the communists took away everything he had. The house became a depository for cereals and the members of her family could use only two small rooms out of it. All the land they used to own before 1945 was gone and so was all the successful trade with cereals. Her grandfather was left only with a box full of receipt books for the huge trains full with cereals. Where he used to write huge amounts of money, he now wrote only the small everyday expenses: matches, toothpaste, and mustard. He never complained about

anything, only wrote precisely everything; caught in his inner struggle against his downfall, he clung on to his dignity and tried his best to prevent his mind from "going rusty" (Müller 2005: 104). The socialist system took away from him everything he had: his land, his bank accounts, and his gold. Now he was short of money even to pay his hairdresser, but he still wrote everything down in his receipt books that were enough for another ten years of cereal trade. Those were everything he had left.

The grandmother experienced the horrible trauma of death. The burden of having lost her son in the war could never be lifted from her shoulders. Every day she was watching speechless her son's accordion and the box where this common instrument was laying acquired a high importance in her eyes, as if it were the testimony of the lost son's presence. The picture she received from the war with the news of her son's death was always in her prayer book and the old lady used to go to church only once a year: when the war heroes were commemorated. The young girl who became later the imaginative writer, used to see the accordion box as a coffin where the young man laid, the poor man buried on foreign land, nobody knew precisely where. Then the entire family was deported in work camps in Russia, along with many Germans from Banat and Ardeal.

Herta's mother lived for five years in a work camp in Russia, always endangered of death through starvation. She was nineteen when she was taken there, a young beautiful girl with long hair. Then her head was shaved; they used to do that to the prisoners for two reasons: lice and the theft of some potatoes from the fields just to keep the prisoners alive. She was guilty of both of these offences, and the guardians were sorry that a bald head cannot be shaved again, just as a beaten back can be beaten so many times again. The people there lived through hunger beyond imagination, animated only by the hope of returning home. In those times originated Herta's mother's obsession about wasting food: she thought that removing too thick a layer from the surface of the potatoes was nearly a sacrilege and she could not refrain from always reproaching this to her daughter.

"Memory has its own timeline: you can feel that things which happened a long time ago are closer to you than yesterday's facts", especially an unfair and pitiless society intruding in the lives of guiltless people who will always carry with them the painful memory of the atrocities they experienced. Fighting in the war and all the other troubles had a powerful impact on the author's father who very seldom used to come home sober. Looking at pictures of her from childhood, the author can deduce how much her father drank the previous evening by her braids made by her mother. If her hair was only a little asymmetrical, then her father had been just a little drunk, and her mother's sadness had been bearable. The braids were very seldom straight, and straight braids meant that her father had come home sober. Most of the times, the braids are very asymmetrical; this meant that her father had come home stone drunk, her mother was crying when making her braids and she was considering the child as a stone tied to her feet, the only reason for which she was avoiding a divorce.

Herta Müller's first volume, *Niederungen*, published in 1982, did not bring any reasons for happiness to the author and her family, in terms of their life in the native village. The hairdresser who had cut her grandfather's hair for years refuses to do this anymore, her mother is forced to walk many kilometers to the fields where she had to work, even though other villagers were brought there by buses, and the young Herta is told not to ever set food again upon the land of her childhood.

"Seen from the outside, writing may be similar to speech. But from the inside, it is something that belongs to loneliness." (Müller 2005: 117) The obsession with solitude, mainly triggered by the communist oppression, leads to the separate lives of the members of her family. "My father had to carry his own drunkenness, and my mother could not share her crying with

anyone. My mother used to cry because her husband was a drunken man who threatened her with his knife every time she reproached him something. While I used to cry because I wished to have a mom who sometimes cried for me – for a child that did not know why she had been born to such parents, since the father is too drunk to be a dad and the mother grieves so much that for her the child becomes a second-rate matter. Grandfather and grandmother had to carry their own burdens: he – the receipt books, and she – the prayer book with the picture of her son fallen in war." (Müller 2005: 117) Herta Müller grew up in a family where every member is lonely, every member carries his or her own grieves and thoughts, and they do not trust each other. The feeling of mistrust haunts the author's entire life, because the isolation felt inside her family is followed by the persecutions of the secret police. In a cold, mean, and hostile country, such as the communist Romania, "mistrust is always and everywhere the fundamental feeling" (Müller 2005: 187)

The author employs the metaphor of the island, as an allegory of the isolation. The individual is a mobile island, floating away from the others: "upon the large island that was the country, the small mobile island was you" (Müller 2005: 180). But Romania was also an island in the European landscape, a guarded and isolated country. Those who tried to cross the borders were bestially treated and many times were used as an example for the rest of the people; but it was in vain. The author describes how, during her work in the fields in her native village, close to the Hungarian border, she could see the dead bodies of those who tried to leave Romania. "People had been shot or killed by dogs, and sometimes both." (Müller 2005: 189) She describes how pieces of dead bodies were floating around on the Danube; those were people who had tried to swim to Yugoslavia, but they had been cut by the propellers of motor boats. (Müller 2005: 189) However, people's wish to run away from Romania was increasing.

The childhood traumas and the adolescence loneliness felt by the high school student who came to the city from her native village are followed by the conflict with the secret police during her college years. The words "The king bows and kills" encompass the obsession with fear, with the calculated repression meant to "break down the mind" (Müller 2005: 56). In the beginning, there was an exterior evil looming around her; she felt compassionate towards the people who were arrested, beaten, haunted by the specter of the secret police. Later on, the circle around her becomes more and more tight and it is her classmates who are tortured, questioned, expelled, and arrested. In this world where there was no openness and freedom, the author becomes target of all these oppressions after she refuses to spy on her classmates and to become collaborator of the secret police. Her refusal is followed by many questioning sessions meant to destroy her courage and mental strength. "What I had yet experienced as an oppressing atmosphere became then the fear of real dangers. My friends were torture, and I knew precisely where and how." (Müller 2005: 57). The author begins to experience the feeling of being always under surveillance, directly leading to the fear of death which seemed so close, a real threat.

In the questioning sessions, the secret police agents sought to destroy the endurance and the dignity of those questioned through fear, offences, and humiliation. "'Who do you think you are?' was the question that the agent used to ask me with contempt. It was not a real question, which made me even more eager to reply: 'I am a human being just like you are.' During the questioning he used to call me shit, garbage, parasite, and bitch." (Müller 2005: 58) These circumstances when her life is threatened, awake in the author's soul various contradictory inclinations. At first, tired and fearful of the never ending watch, questioning, and offence, she decides to kill herself, considering that death would bring her freedom and salvation. She even chooses a spot on the river bank where to drown herself, remembering her first trip to the seaside when she was seventeen and she almost drowned herself, but for an unknown man who saved her. The feeling of losing herself beyond the boundaries of this world and the panic she experienced then become now strife, a way to achieve freedom. She even finds two large and

heavy stones which she places in her coat pockets in order to hurry her drowning and death. Then she hides the stones on the river bank and sets her mind to remembering the exact spot.

But something inside her makes her analyze again her situation. She remembers the childhood question "What is my life worth?" (Müller 2005: 59) and in this context, the question leads to an opposite reaction. "This type of question can only come from the inside. When you receive it from outside, you become rebellious. You start to love your life even if only out of stubbornness. Every day becomes important; you learn to find pleasure in your life. You tell yourself that you are alive. It is only now that you really start wishing strongly to live. And this is enough: your life becomes more meaningful than you could have imagined." (Müller 2005: 59) The normal outcome is giving up the suicidal idea. She throws into the water the stones that she had chosen in order to hurry her death and this shows both liberation and fight. She is determined to fight stubbornly against the oppressive system that was always a part of the life of the people who tried to preserve their freedom of thought and dignity.

This psychological reaction is subtly analyzed in detail through the metaphor "the beast inside the heart". "Death was calling to me... I only needed to find my way to it. I was almost holding myself in the palm of my hand; there was only a small part of me that was out of my reach. Maybe it was the beast inside my heart." (Müller 2005: 79) Thus, the beast inside the heart becomes an independent entity, placed beyond the control of reason, which takes over in extreme circumstances. Under direct threats with death, "the beast inside the heart" warns the author away from the hypothetical suicide.

"The Beast inside the Heart" is also the English equivalent of the Romanian title of the volume *Herztier*, published in Germany in 1994. The novel is autobiographical and presents the life of five young students, the author included, who are accused of writing subversive poetry and become victims of the secret police. Lola becomes a member of the Communist Party, but she commits suicide before finishing her studies. Kurt finishes his studies and hangs himself shortly after. The narrator, Edgar, and Georg immigrate to Germany after their studies and repeatedly receive death threats, and Georg eventually kills himself. Thus, only two characters survive out of the five friends and classmates hunted down by the secret police. In 1994, Herta Müller received the Kleist Prize for this novel. Then, in 1998, Michael Hoffmann translates *Herztier* in English with the title "Land of Green Plums". Herta Müller achieved extended success, as she was awarded the International IMPAC Dublin Literary Award in 1998.

In a 2009 interview for *The Guardian*, Herta Müller stated that she wrote "Land of Green Plums" "in memory of my Romanian friends who were killed under Ceausescu regime" and that she "felt it was my duty" ("Herta Müller takes Nobel prize for literature" 2009). Maybe these are the friends that were tortured, and she knew precisely where and how. (Müller 2005: 57) In his article published in December 1996 by *The New York Times*, Larry Wolff, who teaches European history at Boston College, considers that "'The Land of Green Plums' is a novel of graphically observed detail in which the author seeks to create a sort of poetry out of the spiritual and material ugliness of life in Communist Romania." ("Strangers in a Strange Land" 1996)

On the other hand, "the beast inside the heart" is an equivalent of "the king", meaning the absolute power that sometimes is full of malevolence and sometimes beneficial. From this perspective, Herta Müller considers that the beast inside the heart is similar to the king from the title of her work "The King Bows and Kills", whom she sometimes fears to name. "This eagerness for life, which grows inside you despite all the exterior circumstances, is also a king. It is a rebellious king whom I know so very well. This is why I never mention him [...] I came up with 'the beast inside the heart' just to talk to the king without mentioning him." (Müller 2005: 59-60)

Another meaningful metaphor in Herta Müller's works is the one of the "strange glance" (Müller 2005: 145). The first decoding is represented through her arriving in Germany from a

foreign country and perceiving the realities around her from the perspective of the foreigner who still needs to integrate: "strange eyes that come to a strange land" (Müller 2005: 145). However, the author explains that "Even though for many people this explanation seems enough, for me it is not. I brought my glance with me from my native country, where everything I set my eyes upon was familiar to me" (Müller 2005: 145). But the "strange glaze" turns out to have an entirely different signification in the context of living inside the enclosed space of communist Romania where the never-sleeping eye of the secret police was always tracing all young dissident's actions. When she bought a bicycle, an agent hinted apparently pointlessly during a questioning session that "car crashes can always happen to anyone" (Müller 2005: 146), which makes her give the bike to a friend of hers. Later on, when she is accused of traffic with clothes, cosmetics, and foreign currency, the hairdresser asks her to buy some perfumes, as if somebody wanted her to own those proofs to the earlier objectless accusations, enough to justify the often threats with prison.

Her perception of the "strange look" (Müller 2005: 145) becomes real when the secret police agents begin to leave behind various traces of their search inside her home. She finds her personal objects in other places and these small changes initially bring insecurity, but then lead to the impossibility of "lucid reasoning" (Müller 2005: 150) about what happened when she was not at home. "And when you tried to reason lucidly about what had happened, you felt your brain to be one step from madness [...]. The Strange Look was born out of this everyday life. Step by step, silently, unsparingly – in the streets, inside your own four walls, and inside the things that are familiar to you [...] while your conscience always beams and burns inside you." (Müller 2005: 153) Thus, her own personality becomes external, strange, because the self experienced fear so painfully: "the objects belonging to the person watched started to personify the watcher." (Müller 2005: 155) The never ending watch leads to a feeling of terror that sometimes affects even the ability to reason: "your mind is seized by a madness as strong as the one through which the state tries to destroy you" (Müller 2005: 158).

Herta Müller writes with some kind of distance, as if she were not directly affected by the horrible things she lived during the communist regime. The author presents the facts directly and frankly; she does not try to impress her readers and does not play the victim. This is what happened, and it was bad. Her book, "The King Bows and Kills", has nine short essays about the life of the German community in Romania which was cold, communist, and foreign even for its citizens. However, when describing the communist atrocities, the author uses a totally unexpected style. Despite the sadness, the fear, and the direct threats from the secret police, the author's voice seems rather detached. Herta Müller is among the very few writers who depict the atrocities of the communist system without complaining. This is because her dignity, a characteristic feature of the Germans but which is seldom encountered in the Romanian nature. The author does not seek for the readers' pity, does not ask for compassion. She only describes the physical torture, the fear, the questionings, and death. The position she holds in all these can be expressed through the words: "I lived through those times: this is what happened and it was bad." Without other pointless whines.

The author presents feelings that are very familiar to those who lived in the communist period. She talks about the wish to escape the oppression, about the hope which each person held that someday they will leave the country, about the almost irrational attraction towards the Danube which was separating people from the much hoped for freedom. She also talks about the endless fear that someone is beside you watching every move and every word in order to find something that could incriminate you.

The main themes of her works are the obsession of the quest for freedom, the endless fight against the Romanian secret police and their methods of oppression, the forcing of

communist ideology upon people, and, these given circumstances, the dual character of death as freedom or death. In Herta Müller's works there is a perpetual balance between flight and fall, between heights and deep. The precipice is there, beyond any action. Herta Müller always says "under the open skies", even though the English translation of the Romanian idiom is "under the free skies". (Müller 2005: 223-224). But for the author the skies were never free.

As the years went by, Herta Müller was awarded various prestigious literary awards. It can be said that the Nobel Prize honors both the social themes that acquire more and more importance in the nowadays multicultural context and the fascinating language which is the product of bilingualism and of the old German dialect spoken by the Swabian communities in Banat. In this world of suspicions and questionings, the author becomes more and more introvert. She is left only with the subtle allusions, the play of ideas and words. However, after being a stranger in Romania, the author realizes that she does not belong in Germany either. Her books are written in German and depict Romanian facts and feelings; they address the European culture and values. Herta Müller does not belong to a single country, she is not the product of a sole culture, and her literary work is a very good example for the European cultural context as a whole. Beyond the impressive capacity to avoid the censorship and the oppression, her entire work must be seen as a testimony presenting the Romanian communist period. A way of saying "This is what happened and it was bad."

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## ORIGINAL PAPER

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### Impact of passing from communism to democracy over women' rights

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**Abstract:** *Once the communist period was over various social changes for both sexes were noticed in the society. The structure of society as a whole has experienced significant changes during the transition from communism to constitutional democracies. However, women seem to have had less to gain from the transition period because men were those who had the advantage both in terms of access to political and economical power. After the 90's different construction of individual identities were largely circumscribed to the limits imposed by existing ideologies. Since the beginning of the transition period it was intended to create in post-communist countries feminist organizations like those existing in Western societies in order to provide the necessary support for social, political and economic aspects of women. The reaction was characterized by a strong skepticism which shows remnants of the Marxist discourse in transition societies. Thus the social differences in both types of cultures, the communist and Western become obvious. The main objectives for feminist organizations are represented by the construction of a collective mentality sustained by specific organizations to ensure the premises for removing the existing violence and discrimination against women. Both at legislative and social level significant changes have occurred to make the difference between a communist and a democratic society. Still the question remains whether these changes have answered women' needs, who until then, had belonged to societies with a conscience deeply rooted in Marxist concepts.*

**Keywords:** *communism, democracy, women's rights, Romania, transition.*

### **1. Considerations on the situation of woman during the communist period**

The communist period was difficult, with an overwhelming impact on the most of the population. However, one cannot state that the transition period from communism to democracy was an easy one. The changes at the legislative, political and institutional level have affected most of the population. The ex-communist countries have hardly coped with the changes, the whole burden being felt by the disoriented population who accustomed with the party's doctrine had to adapt to the requirements of a society with democratic values. Democracy has brought opportunities, hopes, but also, in the same time, significant crisis at all the society levels. Certain categories of the population have benefited more or less than others. If we take into account a certain criterion when analyzing the changes and the impact of transition, namely the gender, then women had most of the time a more difficult position than men's. Although in western societies there are many works and programs that handle the problems concerning directly women, feminism, equality of rights and empowerment of woman, we can observe that in the ex-communist countries we could hardly encounter these kinds of subjects. Together with the changes which took place at all the society's levels, women's wish to assert themselves, to be politically, economically and socially recognized, slowly started to take shape. During the communism, although the idea that women are equal to men was stated in the political discourses, the situation of woman was far from being as it was wanted to be represented in different political, cultural manifestations and in the publications specific to that period. Women did not have the liberty to model the set of human rights within the debate of the problems caused by the degradations to which they were subjected in many cases. Thus, the infringement of woman's rights has directly prejudiced human dignity, as well as the defining right to life, freedom and security of person.

The discrepancy between the political theory and the society's reality has become obvious also in the case of discourses which raised woman at the level of society's basic factor, from this point of view during the communist period the problem of gender constituted a constant preoccupation of the ideology practiced by the party. The only problem of this aspect was the fact that the concern remained at the discourse level while the everyday life of women was an environment which wasn't easy at all for them. Their rights were infringed at the social, political level and at the level at individual freedom. The legislation that best exemplifies this situation is the Law anti-abortion entered into force in 1966 which undermined the right of women on their own body. The state's policy became thus imposed in the private life of people, in general, and especially of women, by denying their right on their body. Consequently, the personal will didn't matter anymore, the state's will was the only one that mattered. Another example of the discrepancy between the reality and discourse in the communist society could be observed in the role that the state should have played in a democratic society and the one it actually played in the communist society. Typical for a democratic society is the fact that the state is responsible of the supervision of the compliance with the whole set of rights, and it is also a mediator in handling the possible problems that may appear in case they are not complied with, so "Policies must be analyzed regarding the implications both for women and men, as women are affected by some specific infringements of their rights, in the same way they need laws to protect them, law specially designed to meet their needs"<sup>1</sup>. The state has the responsibility to implement the international regulations in the domain of human rights, to streamline the national legislation with the external one, as well as the role to directly intervene with specific measures in order to stop the abuses. The communist policy imposed state will instead of people's will. In these circumstances gender equality appeared only as an ideological construction meant to contribute to the political legitimacy and implicitly to the stabilization of the party's power. Although a constant practice of the political discourses was represented by the emphasis of woman's role within the

society, it should also be taken into account the reason of such position. The position of woman as human being who benefits from the rights of personal identity wasn't important, the position of woman as part of a society and, especially, as manpower was the one that mattered. Her role was important only when contributing to the productivity increase, to the achievement of the communist economic and political platform. Woman during the communist period benefited from the right of gender equality, but without benefiting from the right to difference. Another aspect of the situation of woman during the communist period represented the mandatory obligation of woman to work at her job, to have the productivity desired by the state, and then to play a double role, that of mother, a role that was most of the time imposed for the purposes pursued by the state through the policy of increasing the number of population. Woman's identity appears as one of a person responsible with the nation's increase by raising the population's number. Although she is demanded to fulfill all the roles considered necessary by the state, without taking into consideration her will – the most illustrative example being the law against the abortion - and on the production plan she had to be "equal" to man, but in reality the equality between sexes did not seem a problem for which a solution had to be found. In the democratic constructions, we can observe that equality represents one of the fundamental principles of human rights. The equality aimed at by democracy is not necessarily the general equality, but the equality of the individual in what his dignity is concerned. Equality represents one of the fundamental principles of human rights. Democracy does not automatically suppose all kinds of equality, but the equality of the individual in what his dignity is concerned<sup>2</sup>. "Equality is seen as a base of law, is granted to every person, being the cause of justice in the end"<sup>3</sup>. Although men are equal and have the same rights, but in reality, not all people are the same, there are differences between each person, but what characterizes every human being must be an intrinsic feature, namely, the right of every individual to dignity. Equality can represent an abstract notion which established that human beings are equal without making a difference between persons, and, furthermore, another dimension of equality, conferred as an inherent characteristic of all beings, which transforms, becomes material in order to be applied to every person according to the differences between individuals. Thus, we can conclude that, while the formal equality does not take into account the differences, the material equality becomes "a right to difference"<sup>4</sup>. If the equality can be achieved only by respecting the differences between individuals, the question arises in what measure this equality and the liberty of individuals exist in a necessary manner.

## **2. Democracy awareness and individualization**

The communist period passed, and at the level of the society different changes in social, political, economic plan have been registered. The structure of society in its whole has met significant changes during the passing from communism to the constitutional democracies. The transition period constituted a hard try for all the concerned states and, especially, for their population. The passing, although in theory it can be achieved, was proved as being an obstacle quite difficult to surpass. The changes became necessary not only at an institutional level, but also at a legal level. Every category of population wanted democracy to bring significant changes for the better, each of them aimed to achieve their own desiderata. After 90s, the various constructions of individual identities were circumscribed to limits imposed by the already existing ideologies. However, it seems that women are the ones who less benefited from the period of transition because men are those who have an advantage in what the access to the political, economic life is concerned. In the moment of passing from the communist to the democratic period, the issue of strategies arises, that can be used by women in order to make them heard in politics and to improve the social condition. In some cases in which the promotion, support and

progress in women's right cause didn't have the expected outcome, failure cannot be justified by the fact that these rights attack the existing and accepted social values.

Women marginalization has always had and still has devastating effects concerning the human, social and financial cost which proves that "false gender neutrality is by no means confined to the realm of theory"<sup>5</sup>. On the basis of the international conventions, states commit themselves to ensure, promote and sustain the equality of women and men rights. There have been and still are many expectations at the level of the post-communist societies, once with the period of transition, women's expectations concerning their rights as human beings and citizens increased. In the south-eastern, ex-communist countries an interest in an incipient form for the problem of equality between sexes was observed. Although in western countries this problem has been for a long time present at the level of the society, the application of these aspects couldn't have been done automatically at the level of a society influenced by a totally different ideology. When the transition is made, we have to take into account the characteristics and the necessities specific to that particular society. The same democratic principles specific to the west neither can be applied without taking into account the peculiarities of the society to whom it addresses and nor the equality can be obtained in this way. A subject of central interest of a democratic society is the way in which human rights are respected, consecrated rights at international level through many conventions. "Today, women's economic and social participation is considered a standard requirement for a nation's healthy democratic development"<sup>6</sup>.

If the transition to capitalism meant a plurality of existing economic strategies, political in the same manner and concerning the women's rights situation is characterized by a variety of patterns followed in the formation of an institutional framework to meet specific needs of group environment where they apply. A characterization cannot be unitary relating to the countries under communism and thus influence the situation or not women can apply the same set of rules. Even if the general situation of the society was relatively similar, within each individual was felt distinctly individualized by its own perceptions. Even when people belong to the same group this doesn't automatically imply that they have common or identical interest. "Just like national legal systems, international law is designed in a << public space >> (...) Development of legislation regarding human rights has altered certain limits between public and private international law allowing agencies to focus on violations of individual rights or group designated"<sup>7</sup>. The law regulations are applied in a general framework but shaped by religious and historical differences respecting national identity.

In Romania and other communist countries, the '90s brought changes both at legislative and to the level of mentality. Women have gained the courage to express their own opinion in both the personal and as part of society. If the communist period was one in which fear of having a separated from opinion hardly imposed ideology allowed women to fight for their rights, with the transition period have gained the right to express their beliefs. Maybe they are heard or determined to take measures in the direction desired by them but at least both women and the general population have the right to their opinion. In later years our country has followed the Communist accession to international organizations. Among the requirements to be met for a country to become a member of the European Union, significant attention was paid to human rights. In this way it gains great importance in the negotiation process to achieve the objectives and issues of equality based on sex. Considering the integration of our country into "European space" it became necessary to remove concepts, the influence of communist and stereotypes existing in society. Romania was among the first EU candidates who have passed the special legislation on discrimination. In 2000, our country adopted the Government Ordinance no.137 on preventing and sanctioning all forms of discrimination. In this way the national legislation complies with European Union's requirements.

A number of international conferences have drafted plans of action; World Conference on Human Rights 1993, The International Conference on Population and Development 1994 in order to promote women's rights and to stop abuses. Aspects related to domestic violence, harassment and equal access on the labor market are the object of international legislation regarding the protection of women. Romanian legislation in order to be aligned with the international law provides measures in this respect. The Romanian Constitution stipulates in Article 4 para.2 the equality of its citizens regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin and Article 16 being set the equality without discrimination with the focus on equality between women and men.

Although representation in decision-making process is encouraged for all social groups the number of women occupying positions in political life is undoubtedly lower than men's. One of the main reasons for this low participation in political life are the existing stereotypes in the society that lead to low credibility when it comes to women. Women have in general studies similar to those of man that occupy the same positions in politics and labor market but still are discriminated against when applying for a job.

Prohibiting discrimination and equal access to the labor market is provided in the Labor Code, Government Ordinance no. 137/2000, The Law nr. 48/2002 (section 9, article 7; section 10, article 8), Government Ordinance no. 77/2003 (section 3, article 9), Law nr. 202/2002 (chapter II – Equality of opportunity and treatment between men and women in labor). One of the most important aspects of gender discrimination in labor relations is the wage. The principle on which discrimination in wage income is equal work of equal value is one of the first principles of gender discriminatory provisions included in the Treaty establishing the European Community.

Even though the legislation is in place, women, according to European Commission's statistics and reports, are the social category who is paid less by 12,5% for the same amount of work. The main causes determining differences in wage income are predominance of male managers and male business owners and the role of women in the family. The possibility of taking the paternity leave for men in our country is a step forward in the process of achieving uniform rules in order to guarantee equal rights. The notion of parental leave is relatively new, representing an opportunity for men and women to decide according to their family needs. Due to the changes made in the Labor Code in 2009, both women and men are offered the possibility of an equity concerning the access to the social services. Thus, we talk no more about the situations in which women, although they had positions better well-paid than men's, were forced to take maternity leave to take care of the child. Situations of this type shouldn't be an exception in a society where the equitable sharing of tasks, both in family and in society, but it should be the rule. In democracy we are entitled to expect to live in "a society without gender- one in which sexual difference carries no social significance"<sup>8</sup>. Women are recognize the right to have the same opportunities, at least at the legislative level to that of men, is forbidden to discriminate determined by male or female.

However patriarchal mentality that prevails in the Romanian society was probably the main the cause of discrepancies still exist between the situation of women and men in terms of participation in the productive activities, between the income obtained one category and the other, professional segregation of women persist yet and is proven by the existence of gender-differentiated patterns of employment, resulting in disparities between incomes"<sup>9</sup>. In order to eliminate the discrepancies women should be encouraged to embrace nontraditional professions and not let stereotypes and traditionalism influence their present.

### 3. Legitimizing the feminism

In order to consolidate democracy, the societies in transition must ensure a balance between the changes occurred at an institutional level and the awareness of the specific, mentality and culture social processes<sup>10</sup>. If the ideological communist conception highlighted the political discourse aimed to indoctrinate, the capitalism emphasized more the economic market without giving a pressing attention to ideology. When the ex-communist societies, especially as it is the case of our country, the western thinking and the formations specific to it started to be adopted, the social communist model tried to be changed with one which would affirm the importance of the individual, the freedom of his development without discriminations between women and men. On the background of the social transformations women started to be aware that they can have control of their life, and the only method to obtain it was to participate effectively in decision making, in the society modeling in order to meet the necessities from their life. It was necessary to participate and to take positive measures both at the family level and at the community and institutional level. In the transformations plan that would occur after the fall of communism, women had a bigger chance to create a legislative framework that would contribute to the establishment of their autonomy and personal individuality. "In order to be efficient the regulations on human rights need to be applied not only at the level of normative regulation, but also to become an integrating part of the legal culture and of the society in its whole"<sup>11</sup>, observing that it is not enough to proclaim series of rights, rules upon which a society must function. This can represent only the basic step to achieve the purposes established when elaborating the organizing and functioning "rules" of a structure. In order to obtain efficiency in reality, the regulations must be appropriate by every individual, must be accepted as rules of society conduct, this should be the one which would give legitimacy to these norms by accepting them, because, otherwise, the process of creating new laws that will never be applied or complied with by the individuals of a society would be useless. Men's freedom can be defended through certain regulations only if all the people understand that the freedoms of every person can exist with "the only limitation of being without prejudice to the freedom of others"<sup>12</sup>. Equality of gender is not a desiderate which can be obtained only by enacting it, but it is also necessary that "the society enjoys the constructive contribution of all its members able to express a political will and to participate consciously in making the proper decisions in the community's interest"<sup>13</sup>. In order to benefit from the equality on all plans, it is vital to transform the institutions which still have a discriminating policy regarding women and contribute to maintain the inequality. On the other side, it is necessary to offer a higher efficiency and to increase the role of those organizations whose objective is to obtain the gender equality. The transition period is not a guarantee of the passing to a utopic society which would ensure women the integration in a society in which their rights will be respected and recognized. The problem which has constantly preoccupied most of the population which until that moment had been integrated in a communist society was what was going to come after the transition to democracy would have been completed. The post-communist society is characterized by a lack of organizations to support women against discriminations and violence. The society will not automatically become a more pleasant environment, with equal chances for everybody, because democracy ensured the prerequisite of equality of rights, but didn't guarantee the effective equality. Gender justice should be one of the main objectives of a democratic society. Women are not always the only ones fighting for gender justice, in many cases men want to change the system and to overcome the traditionalist concepts. By increasing the number of organizations and associations that can help women and advocate for their rights, gender justice can be a more reachable goal.

Nowadays, the notions of feminism and feminist theories<sup>14</sup> are interchangeable and used to support the notions, concepts and ideas which stipulates "women's empowerment"<sup>15</sup>, of the

movements which promoted and still promotes this notion, as well as of the persons who support these purposes and in the same time these movements that aim to stop the sexism, “sexual exploitation” and “oppression of women”<sup>16</sup>, reaching to consider the present a constant term of the modern society. At international level it is often said that we are living in a post-feminist era, feminism is the term associated with the comprehensive critical answer of the feminine masses to the imposed, systematic and deliberate subordination of women to men in a cultural group and environment specific to certain societies. Consequently, it can be stated that the feminism exceeds the borders of a society, group, assembly, as well as of a system of ideas, transposing at an international level movements for socio-political changes based on the refusal of privileges by men and subordination of women in any society. Feminism debates the balance of powers between sexes which disadvantages women and tries to renegotiate them. Thus, it can be understood that the feminism tries to rebalance women and men from the point of view of the social, economic and political power within a society, in the name of a common humanity, by respecting the differences between them. The change is fundamentally humanistic, raising problems in what the individual freedom is concerned.

Feminism was and is still a political provocation at the male hierarchy and authority. From an historic point of view, feminism can be seen as a critical system rapidly developed and thus incorporates a wide range of idea starting from the equality between sexes, educational opportunity, opportunities for creativity, work, and economic, social, cultural and political developments. Regardless the differences, the existing limitations between the public and private space, in general, the reference to the public space represents the association with the state, while the reference to the private space represents the family, household life. In consequence it is obvious that the objective of the feminist movements should focus before obtaining the equality on obtaining the autonomy of woman in her private space, “the arguments in favor of the autonomy of women are the echo of a deeper conception of the moral equality, which states that the interest and experiences of women should have an equal weighting in the construction of social reports”<sup>17</sup>. The social reports were and still are in many cultures dominated by men. The way on how these are build should be the expression both of women and men’s needs, wishes, because both sexes interact at the same level, not only in the public space, but also in the private space. In order to obtain equality in both spaces in which they live, first it is necessary to change the mentality, and then to make changes at the level of regulation. Only by surpassing the tradition imposed by the patriarchal society we can reach an equality which would signify for woman the independence from man. Although women obtained the freedom to individually express themselves, in many cases the society had a wrong perception on the manner in which the rights and the new acquired freedom should have been interpreted. In some cases women were the ones who adopted some influences which did not created a positive image. An example in this regard can be the image which is often presented through mass-media, namely, the one in which women use their sexuality in order to obtain economic advantages. This can also be mentioned as a negative example of the way in which population understood to express itself. In these hypostases, if the right of woman to expression is not used to obtain some beneficial values can lead to the reconsideration of their role in society and, automatically, the conception about woman as goods that can be “traded illicitly” can be formed in the public conscience. There is still no equal distribution of family tasks, especially in what the children care is concerned. The small category of women, who register realizations in politics, in business, remains insignificant in comparison to the high number of women who strongly fight to succeed in a society that is democratic at a theoretical level which gives equal chances, basically remains dominated by the patriarchal conception.

Being aware of the fact that they can fight to defend their rights gave women the power to fight for they wanted. The transition period and the democracy would not automatically the equivalent of a better situation for women, it can become only if they are aware of the fact that effort and implication are needed in order to transform the institutions which perpetuate discrimination and inequalities.

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This work was partially supported by the strategic grant POSDRU/88/1.5/S/49516, Project ID 49516 (2009), co-financed by the European Social Fund – Investing in People, within the Sectoral Operational Programme Human Resources Development 2007- 2013.

## ORIGINAL PAPER

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### **Freedom of Expression in Post-Communist Romania**

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**Abstract:** *In a free and democratic society, mass-media plays an essential role in assuring the right to be informed and express yourself in a free way. Political pluralism and – as a consequence – pluralism of ideas and concepts, tolerance and spirit of openness, without which no democratic society could exist, also involves ideas that can hurt, shock, disquiet the state or some certain population part.*

*The Romanian Criminal Code of 1969 did not provide special measures of media and press offenses, given the control exercised in the form of prior censorship, which has turned into official abolition of censorship along with it. Therefore, Law no. 3 of 28 March 1974 concerning press law of the Socialist Republic of Romania, abrogated, its exercise their activity under the direction of PCR, serving throughout its entire activity supreme interests of the socialist nation.*

*Press Law no. 3/1997 was abrogated by O.U.G. no. 53/2000, with the exception of art. 72 - 75 and art. 93, although the text Non-repealed make reference to the texts repealed. Since the Ordinance of repeal was rejected by Law. 45/2002, results paradoxical situation that the media is still governed by the Grand National Assembly of Socialist Republic of Romania.*

*In the absence of uniform and consistent national legal traditions, we try to answer that in a democratic society mass media can disseminate any information and ideas, anytime and against anyone. The limits of acceptable criticism are wider when criticism is addressed to certain people with a special status, such as politicians, magistrates, civil servants or government's actions, for all these persons are under control of public opinion as long as they inevitably and consciously expose themselves to a thorough control of their deeds and gestures, which comes both from mass-media and from the citizen.*

**Keywords:** *freedom of expression, media, the acceptable limits of criticism, public opinion*

In a free and democratic society, the mass media play an essential role in ensuring the right to information and the right to freedom of expression. The freedom of expression includes essentially two independent freedoms: freedom of opinion and freedom of expression. The protection of the freedom of expression offered by the European Convention is based in a large extent on the right of the public to know: *the press is not only in charge with disseminating information and ideas referring to issues of public interest; the public has also the right to receive them*<sup>1</sup>.

The freedom of opinion, a classical element of the freedom of expression, implies that no person should be touched in any way as a consequence of the expression of one's opinions, political pluralism, including pluralism of ideas and conceptions, being the foundation of the modern European society.

The importance of the freedom of expression for the state of law and for democracy, as well as its protection was guaranteed by laws starting with the "Bill of Rights" in 1689 and the First Amendment to the Constitution of the United States in 1789, but the freedom of press as a fundamental principle was conceptualised for the first time in the Declaration of Human Rights and of the Citizens of August 26, 1789, in the article 11<sup>2</sup> (*free communication of thoughts and opinions is one of the most precious rights of the human being; therefore any citizen may speak, write, print freely, provided he is answerable for the abuse of this freedom in cases established under law*) completed by article 10<sup>3</sup> (*no one should be anxious due to his opinions, even to the religion ones, provided their manifestation does not disturb the public order established under law*).

On the world level, this right was consecrated for the first time in article 19 of the Universal Declaration of Human Rights, proclaimed by the UNO General Assembly on December 10, 1948. (*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*)

The principle set forth by the Declaration has been developed in article 19 of the International Covenant on Civil and Political Rights<sup>4</sup>, adopted by the UNO General Assembly on December 16, 1966, and in article 10 of the Convention for the Protection of Human Rights and Fundamental Liberties<sup>5</sup>.

In our country, the first law of the press has been promulgated by Alexandru Ion Cuza on April 13, 1862, during the Catargiu Government, exercising control and watching over the "disreputable" printed matter and control over the activity of the owners of kiosks.

Article 24 of the Constitution of the United Romanian Principalities of June 30, 1866 guaranteed to everyone the freedom of communicating and publishing one's ideas and opinions by word of mouth, in writing and through the press, each being answerable for the abuse of these freedoms in cases established in the Criminal Code (...), without however restraining the right in itself or instituting an exceptional law."

According to the constitutional provisions, the press misdemeanours were judged by the jury, censorship being not allowed, as well as the previous authorization or backing of the journalists, secretaries, editors, printers and lithographers. At the same time, no publication could be suspended or suppressed, the author being answerable for his writings, and in his absence, the guarantor or the editor<sup>6</sup>. Nevertheless, the measure of preventive arrest of the journalists was popular enough.

Already since 1884, extensive parliamentary debates on the forms of responsibility took place in case the press went beyond its powers, set up in article 24 and 105 of the Constitution of 1866, under the form of responsibility in cascade, retaining especially the author's responsibility, and in his absence, that of the guarantor or the editor of the publication.

At world level, in this period there were three systems of responsibility: 1) the system of joint responsibility, set forth by the French Law of the Press of May 17, 1891, according to which everybody participating in the commission of the press misdemeanour was considered guilty and punished, as well as the author, the editor, the printer, the distributor; 2) the Belgian system of successive responsibility, or "in cascade", a system adopted afterwards also in France, after 1881, as well as in almost the whole Europe; 3) the mixed, German and Austrian system of sole responsibility, combined with the system of sanctioning the negligence<sup>7</sup>.

Article 25 of the Constitution of March 29, 1923 guaranteed the freedom "to communicate and publish one's ideas and opinions orally, in writing and through the press", the press misdemeanours being established according to the Criminal Code that could not restrain the right in itself. Censorship, previous authorizations, exceptional laws, security, warnings, suspension or suppressing of newspapers and publications were also forbidden in this measure, as well the interdiction of the preventive arrest. The responsibility depended on the type of publication, being periodical (the author, the director or the editor were in turn answerable) or not periodical (the author was responsible for the article, and in his absence, the editor or the owner of the printing house, if the first ones were not discovered).

The Criminal Code of 1969 did not foresee any special measure as regards the press and the press misdemeanours, taking into account the control practiced under the form of previous censorship, which changed into self-censorship, when it was officially abolished.

According to Law no. 3 of March 28, 1974 on the press law in the Socialist Republic of Romania, the activity was carried out under the leadership of the Romanian Communist Party, serving, by its whole activity, the supreme interests of the socialist nation<sup>8</sup>.

After 1975, when the foreign press was officially banned, the need of the population for uncensored and true information leads to the broadcasting of foreign broadcasts by illegal ways.

In 1977 were published the Decrees 473 and 474 on the press institutions. The first decree foresaw that the Romanian Radio-television should contribute by its whole activity to the achievement of the internal and external policy of the Romanian party and state, by informing the working people about the decisions of the party and the laws of the country for the socialist education of the masses and the formation of the new human being.

Starting with 1985, the regional radio studios were broken up, under the pretext of sparing electrical energy, actually intending to put into practice the strategy of liquidating the stations broadcasting in foreign languages, namely in Hungarian, and German, favouring the Romanian nationalism. The programmes of the Romanian Television were reduced to two hours a day, between 8.00 PM and 10.00 PM, on the ground that the working people had to wake up in good shape the next day, in order to be fit for work.

Thus, the television becomes the main pillar of the repression strategy, followed by the Radio. The information was lost, the public television becoming the real instrument for non communication, achieved by eliminating the receiver, by the strict surveillance of the communication channels and through a unique broadcasting centre. The same situation was found at the national Radio.

The mass media messages represented a method to indoctrinate with communist ideas, eliminating almost completely its role of information, of awareness and guidance of the public opinion to other mentalities. The linguistic phenomenon of manipulation, called also the wooden language and anticipated by George Orwell, represents the characteristic feature of the totalitarian regimes, used predominantly in view of hiding reality, transmitting false information and inducing the way of thinking in conformity with the communist ideology.

As regards the written press, during the communist regime, the most drastic measure was censorship. Any word, expression of an opinion, of an idea in contradiction with the

communist ideology was suppressed, even before its publication. These restrictive measures – censorship and the censors with various specialties - were applied also in cinematography, theatre, opera and literature, where no book, film or other kind of artistic creation could come to life unless it received the control visa.

The overthrow of the communist regime meant, first of all, recovering the freedom of expression, however unfortunately erroneously understood, even after more than 20 years. With the political revolution in Romania after the December revolution, also a revolution of the communication means took place, by freeing from the imposed and self-imposed servitudes. The first success of the television was considered the live broadcasting of the 1989 revolution. Consequently, appeared the political talk shows, or the entertainment shows, the number of the weekly publications increased, the press and the internet becoming accessible and important for the dissemination of the information to the public.

### **Romania mass media since 1989**

Although, starting with 1990, the need for new, liberal and democratic laws was felt, completely opposite to what communism meant, the new Constitution of Romania was adopted (1991), political pluralism and therefore the pluralism of ideas and conceptions appeared, the mass media developed chaotically in the post-communist period, mainly due to the fact that the trade of journalism was not known and practiced unprofessionally, as well as to the persistence of the wooden language.

Although two major laws have been adopted, namely the Audio-visual Law and the Radio and Television Law, which rule the granting of licenses for radio and television broadcasting, rules concerning publicity, treatment of elections, or joining or creation of networks, political direct or indirect manipulation from the forces in power still subsist. In 1966, OSCE – the Organization for Security and Cooperation in Europe, whose objective after 1989 was the recognition by the states of the same values – democracy, the state of law, the observance of human rights and market economy, criticized the State television TVR1 for “favouring the party in power.”

“The use of written press and the radio and television modified notably the style of the political campaigns made by the people and the political forces. The access to power is inevitably linked to the access to press and to the way it is used.” (R. Cayrol, 1990, p. 573, quoted by D.C. Danisor in *Constitutional Law and Political Institutions. Vol. I. General Theory, Treaty*, Publ. C.H. Beck, Bucharest, 2007 p. 285).

From the political point of view, the representatives of the Government frequently use in their speeches the phrase “general interest”, as a motive that does not require other clarification or justifications, in order to pass ordinances or other laws. Thus, it represents a means to establish authority, becoming a tool for legitimizing the actions of the political power.

At the same time, even in strong democracies, the governments tried to maintain the right of surveillance over the audio-visual, as it recently happened in the case of the press law in Hungary. The European Parliament, through the Resolution of March 10, 2011 on the mass media law in Hungary, invites the Hungarian authorities to involve all the interested parties in the revision of the mass media legislation and of the Constitution. The Commission expressed its concern and requested information from the Hungarian government about the conformity of the Hungarian legislation in the field of mass media with the Community Acquis in general, especially as regards the obligation to ensure an equilibrated account, applicable to all the suppliers of audio-visual mass media services, as well as for the appointment of a single person in the post of national authority for the mass media and the telecommunications and to observe the principles, on which the rules concerning the public radio broadcasting are based, specifying that the new

legislation undermines the pluralism of the mass media, annuls the political and financial independence of the public mass media, criticizing at the same time the fact that the Mass Media Authority and the Mass Media Council are homogeneous from the political point of view and exert a political and governmental control over the whole mass media.

The interference of the political authority in the freedom of expression has to be strictly limited and applied in a legitimate way, according to objective criteria, as it is wrong to generally prioritize one of the rights to the prejudice of another one.

The Press Law no. 3/1997 has been abrogated by the Emergency Ordinance of the Government no. 53/2000, except the provisions of article 72-75 and article 93, although the not abrogated texts refer to the abrogated texts. Since the Abrogation Ordinance has been rejected through the Law no. 45/2002, a paradoxical situation arises, because it means that the press continues to be ruled by the Great National Assembly of the Socialist Republic of Romania.

Leaving aside the judicial situation described above, the Constitution remains actually, on the national level, the only judicial basis in the absence of an organic law on information and opinion, although the press and the mass communication means are representative for a democracy.

The term of freedom of expression, consecrated presently by the Constitution of Romania in article 30, means the possibility of the human being to express by word of mouth, in written form, or through images, sounds or through other communication means, in public, the thoughts, opinions, religious beliefs and spiritual creations of any kind. At the same time, censorship and suppression of publications are forbidden, the freedom of press involving also the freedom to set up publications.

“*Jus respondendi*” is not expressly ruled by the provisions of the Constitution, but according to the Decisions no. 8/1996 and no. 55/1996, the Constitutional Court appreciates that *Jus respondendi* has the value of a constitutional right correlated with the freedom to express one’s opinions, irrespective of the form in which it is exerted.

As mentioned also in the specialty literature, our constitutional formula is restrictive, referring only to publications, understood as a media on a written support, appearing periodically, ignoring the editing activity, as provided in the 1923 Constitution. At the same time, it is provided in art. 30, paragraph 4 of the Constitution that no publication can be suppressed, opening a clear road for suspension, while the 1923 Constitution, in art. 25 provided that no publication or newspaper could be suspended or suppressed.

On the same line of ideas, the present Constitution does not mention censorship, while art. 25, paragraph 3 of the 1923 Constitution provided that beside censorship, no preventive measure for the appearance, sale or distribution of any publication could be taken, and no security could be pretended from journalists, writers, editors, printers, and lithographers, and that the press can never be subjected to the system of warnings<sup>9</sup>.

In article 30, paragraph 8 of the Constitution of Romania, the final thesis, it is foreseen that: “the press misdemeanours are established under the law.” The Constitutional Court, in the Decision no. 62 of January 18, 2007, analyzing the non constitutionality of the abrogation text of insult and slander set forth under art. 206 of the Criminal Code justifies its decision in the light of the inexistence of a special law of the press, as well as by the necessity to provide under law the press misdemeanours. However, as the norm foreseen under article 30 paragraph 8 is repressive, it has to be understood *senso strictum*, meaning that “the eventual press misdemeanours have to be established only under law, and not through a normative infra-legislative bill, particularly in order to better protect the freedom of expression against the authoritative tendencies of the executive or judicial power, and not to limit this freedom. But this does not mean that the press misdemeanours need to be ruled under law.”<sup>10</sup>

Although the penalties are sanctioned only by the competent national courts, the European Court of Human Rights considers that to impose the penalty of imprisonment for a crime in the field of the press is not compatible with the freedom of expression of the journalists, guaranteed by article 10, unless there are exceptional circumstances, particularly if other fundamental rights have been seriously affected, as, for instance, in case of dissemination of a speech inciting to hate or to violence. The typical causes for slander or insult cannot justify the sanction with imprisonment.<sup>11</sup>

As regards the confiscation of the publication, as well the interdiction to disseminate it, the European Court has found out often that the provisions of art. 101 of the Convention have been violated, not constituting a necessary measure in a democratic society.<sup>12</sup>

Mass media is not the fourth state power, otherwise the media would turn into "mediocracy" ("powers or counter-powers"), although it does not represent the public opinion, does not "have the special knowledge of the institutions" and is not subject to democratic control<sup>13</sup>.

The protection of the freedom of expression provided by the European Convention is largely based on the public's right to know: *not only that the press has the task of disseminating information and ideas on matters of public interest, but the public also has the right to receive them*<sup>14</sup>.

The freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and individual fulfilment. Subject to paragraph 2 of article 10, it is valid not only for information or ideas that are favourably received or regarded as inoffensive or indifferent, but for those that hurt, shock or disturb the State or any sector of the population. These will be the pluralism, tolerance and openness, without which no democratic society can exist<sup>15</sup>.

In our legislation, the constitutional text establishes the judicial liability on the abuse in exercising the freedom of expression as a civil liability and criminal liability. In this respect, the constitutional text provides for the liability of the publisher or producer, author, organizer of the artistic performance, owner of the copying device, radio or television station, according to the law. The criminal liability for press offences is left to be determined by the law.

The press plays the role of the watchdog of democracy, so that there can be no freedom of expression without an extended freedom of the press. The European court emphasized in many settled cases, that a democratic state's authorities must tolerate the criticism and when it is considered provocative or offensive, the public having the right to be informed in a different way, even when this is not agreeable to the authorities<sup>16</sup>.

According to the doctrine of specialty, the special restrictions under article 10 paragraph 2 of the European Convention on Human Right and Fundamental Freedoms, are classified into three categories: i) those designed to protect the public interest: national security, territorial integrity, public safety, prevention of disorder or crimes, protection of health and morals, ii) those designed to protect the individual rights, such as reputation or rights of others, prevention of transmission of confidential information; iii) those needed for maintaining the authority and impartiality of the judicial authority<sup>17</sup>. The application of limitations is left at the discretion of the states.

Article 30 paragraphs 6 and 7 of the Constitution expressly regulates the limits for exercising the freedom of expression, in agreement with the European Convention and the International Treaties, respectively not impairing the dignity, honour, life of the person and the right to his own image. "The law prohibits the defamation of the country and nation, the instigation to war of aggression, to national, racial, class or religion hatred, the incitement to discrimination, to territorial separatism or to public violence and obscene manifestations against morals".

The provisions of article 53 of the Romanian Constitution on the restriction of certain rights or other freedoms, provide this possibility only if required by the law and only if necessary in a democratic society, "if applicable, for: safeguarding the national security, public order, health or morals, citizen's rights and freedoms; conducting a criminal investigation; preventing the consequences of natural disasters, of a disaster or an extremely severe catastrophe (...). The measure must be proportionate to the situation that caused it, be applied without discrimination and without prejudice to the right or freedom". In this context, these provisions are required to be interpreted with extreme caution, not justifying under the exceptions a possible prejudice to the existence of a right.

### **The role and the limits of Media on informing the public opinion**

Given the strong capacity of influencing the public opinion, the social decision, the individual life, the media must be subordinated to the principle of observing the truth and honesty in views and comments. But do the press, television, broadcasting, internet and publications comply with these principles today?

The broadcasting channel has had a relatively new rise in the world of mass-media, namely at the end of the nineteenth century, but also a rapid growth, being associated with multiple and important functions such as information, entertainment, education, and significant dysfunctions, such as manipulation, excessively remote reception, ephemeral messages. *The key element that can counteract the negative effect of the broadcasting channel is represented by pluralism. This enables different currents of opinion to express, to live together and to confront in the public debate, leading to a representation of a diverse society and in a continuously changing process*<sup>18</sup>.

Meanwhile, the Internet is a double-edged sword because, on one hand, it transmits general information, and, on the other hand, it allows the accumulation and violation of confidential data by the commercial transactions which are carried out, many cards, computer operations or networks of banks, social security services or revenue authority. At the same time, the emergence and growth of the Internet have managed to break the barriers of time and distance by providing real time information, thus ensuring a global advertising.

Regarding the press, understood both as a written media and as an editing activity, the boundary between the public life and private life is often violated or challenged, increasingly claiming the commercial nature of the information and indiscretion. The public life deliberately maintains, as we might say, confusion between the concept of communication and information, although the two concepts aim at opposing realities. The information is the diffusion of elements of knowledge, views and arguments addressed to the recipient's intelligence, allowing him to issue his own opinions. On the contrary, the communication is synonymous with advertising or propaganda, not aiming at the reason or intellect, but the emotion, having as purpose the verb "to sell".

The information is the first item that knowledge requires. The information is an essential component of forming the attitudes that support or inhibit change in a society<sup>19</sup>. Article 31 section 4 of the Romanian Constitution provides: "the public and private mass media are obliged to provide the correct information to the public."

Media has an important role in informing the public opinion on matters of public interest and, therefore, should have some discretion when it comments upon issues of political or public interest. The European Court established that the more the expressions are closer to "the public discussions affecting the community's life", the more protection they require against any limitation.

There is, at the same time, the possibility that a state authority criticizes another state authority or system, such as those personal valuable judgments, often resulted from the President of the country. In such situations, it raises the question of public communications that would be constrained by legal techniques for limiting the excesses of public power, by the reserve liability. Thus, during their schedule, the public officials, in exercising their powers, must show neutrality, equal treatment, by abstaining from manifestations of freedom of expression. Off duty, they acquire the status of ordinary citizens, free to express themselves within the law.

To leave at the Court's discretion in relation to the opinion of the Constitutional Court by Decision no. 71/May 23, 1996, if a picture violates the public morals, to consider whether the limit of expression is violated or not, to determine whether it is art or not, would mean to convert it into speciality critics and even so it can not appreciate what is art or obscene for one or another.

A legal definition of the concept of public morality can not be received, the concept evolving and being analyzed according to the conditions, depending on the cultural space and time. It is also a procedural notion by right, not substantive in terms of morality, being an open and evolving concept on the rules of good behavior in private and public life, which evolves with traditions, being a mirror of society in general, of the mutual opinion at a time.

In an attempt to give a definition, the Belgian case law<sup>20</sup> said that good manners "correspond to a common moral, consisting of customs and traditions of a people which is constantly evolving in relation to the mood of a civilization."

By the judgment as of May 24, 1988, in the Case of Müller and others v. Switzerland, the European Court of Human Rights considers that "those who create, interpret, disseminate or exhibit works of art, contribute to the exchange of ideas and views absolutely necessary for a democratic society, hence the states's obligation of not infringing unlawfully the freedom of expression. There is no uniform concept of morality, and the paintings exhibited by the artist painter Felix Muller on sexual intercourse, especially between humans and animals, cruelly show the sexual intercourses. The conceptions of sexual morality have changed in recent years."

The limits of acceptable criticism are wider at certain people with special status, such as politicians, judges, civil servants, on some government's actions, as they are inevitably and knowingly exposed to the close scrutiny of their actions and gestures, both by journalists and the mass of citizens, being under the public control.

Regarding the measures taken by some national courts to prohibit the publication of photos of politicians associated with journalists' statements, the law of the European Court<sup>21</sup> is judiciously to find a violation of the provisions of article 10 of the Convention, there being no reason to justify this measure, as long as the published photographs did not aim at any aspect of the private life. However, the punishment by fine and seizure of copies of the publication, in which a call was made to strike and general resistance against unemployment and poverty, against the state authorities, respectively, without inciting violence, hatred, discrimination or acts of terrorism, constitutes a violation by the national state of the provisions of article 10 of the Convention<sup>22</sup>.

Also, in the case of Castells v. Spain, the judgment as of April 23, 1992, the Court considered that the provisions of article 10 of the Convention were violated if action was taken for the conviction of a person for injury to the government. The plaintiff published an article in which he drew the public attention to the killings and assaults committed by armed groups against Basque citizens, completely unpunished, the government bearing the responsibility for them. The Supreme Court sentenced him to one year in prison and suspended his right to exercise the

profession of lawyer and public service. The European Court also shows that the government can use the criminal means only with many reservations against critics, even unjustified. The facts related by the plaintiff were notorious, verifiable, but the court declared the proposed evidence as unacceptable.

At national level, we see a flagrant violation by the media representatives of the right to privacy, the protection of the reputation and honor, abusing the "freedom of expression".

Consistently<sup>23</sup>, the European courts have considered that the injurious terms (such as "family breakers", "mother neglecting her child") used by journalists, are expressed offensive value judgments. Also, the focus of publishing materials on some aspects of the "purely private" life of people, such as their emotional lives, their intimate, family photos, even if they have public positions, or in spite of their popularity can not be considered to contribute to any debate of general interest to society, affecting the rights of another person<sup>24</sup>.

In terms of the presumption of innocence, the requirements of the press freedom and the freedom of person can sometimes come into conflict, generating real media processes, called by the French literature as "media and legal phenomena", with negative consequences for the compliance with this presumption.

'The judgement' or issuance of value judgments of processes pending before the courts or investigative bodies, in the mass-media, without delivering a firm and irrevocable decision, is also a breach of the presumption of innocence and the finding of the infringement of the right to private life under the provisions of article 8 of the Convention.

Pursuant to paragraph 21 of the resolution no. 1003/July 1, 1993 passed by the Parliamentary Assembly of the Council of Europe on journalism ethics, in editing the information and opinions, "the journalists must observe the presumption of innocence (...) and refrain from making judgments" and pursuant to the resolution no. 1215/1993 adopted by the Parliamentary Assembly, the Committee of Ministers was recommended to "ensure that the laws guarantee the public media organization, to ensure neutrality of information, pluralism of opinions and gender equality, as the right to response of every citizen who made the object of an allegation, to adopt a declaration on the ethics of journalism and promote the application of these basic principles in the Member States of the Council of Europe".

"The Protection of the presumption of innocence requires that the suspects are not early handed over to the public for often permanent moral judgment. The so-called show justice, obstinately promoted in recent decades, has made that some processes are practically instructed by media, in the "public market", especially on television, in defiance of the basic guarantees of good justice and, in particular, the presumption of innocence"<sup>25</sup>.

In this context, these limitations are required to be interpreted with caution, not justifying under the exceptions a possible prejudice to the existence itself of a right.

Paragraphs 6 and 7 of the Constitution provide for limitations due to the protection of the individual and collective interests. Since these limitations are only exceptions to the rule of strict interpretation and application, the report of proportionality should be handled carefully in conflicts between different rights and freedoms, also protected by the Constitution, given our internal criticable practice according to which the limit of the freedom was validated almost automatically by the Constitutional Court, without any control of proportionality, considering that the mere provision of the possibility of such limitation is in itself sufficient so that the concerned law is constitutional<sup>26</sup>.

The provisions of Law no. 287/2009 of the Civil Code, published in the Official Gazette of Romania, Part 1, no. 511 as of July 24, 2009, Book I, Title V, The protection of non-property rights. The protection of human personality is discussed in respect of the freedom of expression,

freedom of the press respectively, in fact masking a press law, or at least an institutionalization of the press liability.

Although some rules are welcomed, such as privacy, article 75, however, the way of defence of the non-property rights, regulated by the new Civil Code, which were damaged or threatened by the exercise of the freedom of expression, is unclear in the abstract. Thus, article 75 provides the possibility to consider as prejudices: i) the interception without right of a private conversation, committed by any technical means, or knowingly use of such interception, ii) the collection or use of the image or voice of a person in a private place without his consent; iii) dissemination of images of the inside of a private space, without the consent of the person who lawfully occupies it, iv) keeping private life under observation by any means, except for cases stipulated by the law, v) dissemination of news, debates, inquiries or reports written or audiovisual on intimate, personal or family life, without the consent of the person concerned; vi) dissemination of materials containing images of a person on treatment in health care units and the personal data on health problems, diagnosis, prognosis, treatment, circumstances related to the disease and various other deeds, including autopsy results, without the consent of the person concerned, and if he is dead, without the consent of the family or entitled persons; vii) dissemination or use of correspondence, manuscripts or other personal documents, including the data regarding the domicile, residence, and telephone numbers of a person or his family members, without the consent of the person whom they belong to or who, where appropriate, has the right to dispose of them.

In French law, a person can consent to disclosure of his private life only for already occurred events, consumed or about to be fulfilled and not for undetermined and future events whereby he would waive the right of privacy. Since privacy is a right of personality, it is not capable of waiver. For example, the authorization given by a model to commercially exploit his photo can be given only for a limited time.

Also, the contractual obligation between the media trust to transfer an amount of money to a person for the disclosure of some sexual malformations, designed to be the subject of an article or a report, is an immoral case in French law<sup>27</sup>.

In terms of protecting the private life after death, the French law provides that only critics or historians can study the privacy of people who have played a role, large or small, in the history of the country and humanity.

Home is part of a private life, since this is the place of regular exercise. In French law, the definition of home is given by article 102 of the Civil Code, as being a person's main place, but also his secondary residence and even all of his settlements, covering many aspects of privacy.

An element of the private life and exterior aspects, such as the swimming pool, terraces, the space inside the home, even the place of burial, spaces that are not subject to information, or photos without prior authorization, form the home both to protect the public life and the goods, the patrimony respectively.

Privacy issues affecting the body, health, birth, death, malformations cannot be the object of the freedom of expression. However, family life events such as birth, marriage, death may not be communicated or disclosed without the consent of the individual concerned. The privacy also consists of a person's identity (surname, name, data), his property, profession, except for the performance of public duties, political, philosophical and religious opinions.

The French Criminal Division (Le Chambre criminelle), interpreting article 11 of Law as of May 11, 1868 on the press which punishes the publication in a newspaper of an act of private life, decided that the protection of private life extends not only to acts carried out

at home, but also to acts that are disclosed outside, if included in faith and if it relates to freedom of conscience<sup>28</sup>.

Also, many controversies will arise when implementing the provisions on the measures to be taken, regulating that the court may be required to cease the breach and to prohibit in the future, even if it lasts, the finding of the illicit nature of the offense, if the disorder, that it produced, is maintained. However, "one who has suffered a violation of such rights may request the court to order the author to perform any act deemed necessary by the court to get to restore the prejudiced right, such as: a) ordering the author, at his expense, to publish the sentence; b) any other measures to end the illegal act or to repair the damages" and compensations. What are those measures? May there be a possible suppression, seizure, destruction or confiscation? Thus, we are left to the wisdom of the court to give a correct application and interpretation of these provisions in line with the European practice and regulations and without prejudice to the right itself.

The public authority interference in the freedom of expression must be strictly limited and non-arbitrary applied, according to objective criteria, being wrong to generally give priority to one of the rights to the detriment of the other.

According to ECHR case law, in assessing the reasonability of an intrusion on the freedom of expression, according to article 10, it aims to fulfill three conditions: a) intrusion is prescribed by the law, b) interference aims at protecting one of the values specified in paragraph 2 of article 10 of the Convention; c) the restriction is necessary – a pressing social need, unavoidable in a democratic society. If the ECHR determined that all three interferences are met, the state's interference will be considered legitimate.

In conclusion, the restriction of the freedom of expression must be proportionate to the legitimate purpose and the justification for the restriction must be relevant and sufficient. In relation to the provision of the measure in domestic law, the Court takes into account not only the existence of a basis in law of the measure in dispute, but also the quality of domestic law which must be accessible and foreseeable. On the other hand, in determining the need for interference in a democratic society and the measures to be adopted, the national authorities have a certain discretion limit, limit which is subject to the European supervision of the Court in determining the compatibility of the restriction with the freedom of expression.

#### Note

\*Candidate for a doctor's degree of the Craiova University, Faculty of Law and Administration Sciences, through the project University Scholarships in Romania with the European Support for Candidates for a Doctor's Degree (BURSE DOC), Contract code: POSDRU/CPP107/DM11.5/S/78421, a project co-financed from the European Social Fund through the Operational Department Programme for the Development of Human Resources.

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<sup>1</sup>The European Court of Human Rights, the cause Handyside, ECHR Decision dated 07.12.1976, the cases Lander v. Sweden, Open Door Counseling and Dublin Well Woman Centre v. Ireland.

<sup>2</sup>"La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme ; tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi"

<sup>3</sup>"Nul ne peut être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi."

<sup>4</sup> "1) Everyone shall have the right to hold opinions without interference. 2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

<sup>5</sup>Art. 10. Freedom of Expression:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

<sup>6</sup>For more details see Victor Ducelescu, *Juridical Protection of Human Rights, Internal and International Means*. Publ.H. Lumina Lex, Bucharest, new revised edition with completions, p. 269.

<sup>7</sup>Victor Ducelescu, quoted work, p. 270 ff.

<sup>8</sup>Taking into account the social and political mission of the press for the achievement of the general policy of the Romanian Communist Party of building up the multilaterally, developed socialist society and edifying communism in the Socialist Republic of Romania.

Art. 1

In the Socialist Republic of Romania, the press fulfills a high social and political mission, serving by its whole activity the cause of the people, the supreme interests of the socialist nation.

The mission of the press is to permanently militate for the translation into life of the policy of the Romanian Communist Party, of the high principles of the socialist ethics and justice, to relentlessly promote progress, the progressive ideas in the fields of social life and activity.

Being the tribune of the public opinion, the press expresses the conception of the working class – the leading class of the Romanian human society, the aspirations of the whole people, disseminates in mass the valuable ideas and initiatives, contributes by its whole activity to the creation of the multilaterally developed socialist society.

Art. 2

The press develops its activity under the leadership of the Romanian communist party – the leading political force of the whole society in the Socialist Republic of Romania.

<sup>9</sup>I. Dogaru, D.C. Danisor, quoted work, p. 221 „ The guarantee set forth under art. 25, paragraphs 5 and 6 should have been taken over, stipulating that no security could be required from journalists, writers, editors, printers, lithographers, and that the press can never be subjected to the system of warnings.”

<sup>10</sup>D.C. Danisor, Comments on Decision no. 62 of January 18, 2007, the Constitutional Court

<sup>11</sup>The cause Mazare v. Romania, quoted work.

<sup>12</sup>Case of Cetin and others v. Turkey, ECHR Judgment as of February 13, 2003; Case of CSY v. Turkey, ECHR Judgment as of March 4, 2003; Case of Incal v. Turkey, ECHR judgment as of June 9, 1998.

<sup>13</sup>Sections 19-20 of the Resolution no. 1003/1993 of the Parliamentary Assembly of the Council of Europe, published in the Official Gazette of Romania no. 265 as of September 20, 1994.

<sup>14</sup>Cases of Lander v. Sweden, Open Door Counselling and Dublin Well Woman Centre v. Ireland.

<sup>15</sup>Case of Tammer v. Estonia, ECHR judgment as of February 6, 2001, Case of Prager and Oberschlick v. Austria, ECHR judgment as of April 26, 1995.

<sup>16</sup>Case of Erdogdu v. Turkey, Judgment as of June 15, 2000, paragraphs 63, 71, Case of Ozgur Gundem v. Turkey, Judgment as of May 16, 2000, paragraph 60, Case of Bladet Tromson and Stensaas v. Norway, ECHR Judgment as of May 20, 1999, Case of Thorgeir Thorgerson v. Iceland, ECHR Judgment as of June 25, 1992.

<sup>17</sup>See D. Bogdan, M. Selegean, *ECHR Jurisprudence-studies and comments-*, INM Bucharest, 2005.

<sup>18</sup>Ștefan Deaconu, *Freedom of expression in the public radio and television*, Legal Magazine, All Beck Publishing House, no. 1/2001, Bucharest, 2001, p. 11.

<sup>19</sup>Romanian Association for Transparency, *Access to public information in Romania*, Bucharest, 2001, p. 5.

<sup>20</sup>Court of Appeal in Liège, Judgement as of November 22, 1979, in „Jurisprudence de Liège”, 1980, 1.

<sup>21</sup>Case of Tammer v. Estonia, ECHR Judgment as of February 6, 2001; case of Krone Verlag GmbH & Co. KG v. Austria, ECHR Judgment as of February 26, 2002.

<sup>22</sup>Case of Seher Karatas v. Turkey, ECHR Judgment as of July 9, 2002.

<sup>23</sup>Case of Tammer v. Estonia, ECHR Judgment as of February 6, 2001.

<sup>24</sup>Case of Company y Diez de Revenga et Lopez galiacho Perona v. Spain, ECHR Judgement as of December 12, 2000.

<sup>25</sup>Mircea Dutu, *Freedom of the press and observation of the presumption of innocence in a criminal trial*, Law Year XVII, Series III, no. 1/2006, p. 233.

<sup>26</sup>Constitutional Court, Judgement no. 51/1999, Official Gazette no. 262 as of June 9, 1999.

<sup>27</sup>Paris, 1 ère Ch. Supp., 21 janvier 1972, Dame Thorel c. Ici Paris, 1972.I.375.

<sup>28</sup>Crim, 28.02.1874, Verdôt, S.1874.I.233.

## ORIGINAL PAPER

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### From the personification of the power to the discredit of political representation

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**Abstract:** *With the consolidation of power of Nicolae Ceaușescu, his regime has become increasingly restrictive and abusive after 1980, leading to increased impoverishing of the population and to the unprecedented deterioration of living conditions. Every moment of a romanian life was overseen by the institutions of the State, and political enlistment was established from a young age. Privacy was closely guarded by measures that often injure human dignity, as were those relating to births control. The main features of the change of political regime in Romania since 1989, as well as in other former Communist countries of Europe, consisted of a return to political pluralism, free elections, structuring and expression of unlimited civil society. The legislative foundation of new post-Communist developments was represented in Romania, by the Constitution of 1991 (subject to review in 2003).*

*The return to a democratic regime was not devoid of tense moments. If we look at the problem of informing public opinion from the point of view of the other organs of the State, we must not forget that the politicians are in a permanent political struggle, and the weapons used are sometimes not the most accurate. Thus, in addition to specific technical compromise, that is used in the political game, it is also used the one of discredit. Defaming the representative institutions by the President, as an actor of the political scene, may have as a purpose the decrease of legitimacy of the Parliament, especially in a situation where the President of the State affirm himself as the sole representative of the people and the only interested in its fate. The gradual reduction of the role of Parliament and the initiation of political measures in order to turn it into an annex used only to give the impression of a democratic face to the decisions generated solely by the will of the Chief of State is a way to discredit the legislature.*

**Keywords:** *power, politics, representation, communism, democracy.*

Communism, at the theoretical level, it was claimed to be a new civilization, bigger than the capitalist one that denied it completely. Thus, the goal of communism it was proclaimed to be the absolute embodiment of humanism, as represented by the disappearance of social classes and based on a complete freedom. Freedom is, after life (or beside it), the most priceless common good of the individual. And the border is so fragile, because it is almost impossible to imagine one without the other, almost impossible to get away to one in favor of the other. Yet history shows us, and not a few times, that man in extreme situations, chooses life. And that is not always because it cherishes most, but because it slides, because, being preoccupied with something else, does not understand or ignore the size of freedom and loses it. Political regimes in one form or another, are always appealing to the notion of freedom, promoting its features. The difference is noticeable, as if democracy struggling to maintain and develop the freedom of the individual, the autocrat regim keeps it only on paper. The reality contradicts it blatantly, but is too late; the individual is caught in the stir headquarters, unable to escape, a spectator to what is going on.

“Totalitarian regimes as long as they are in power, and as long as the totalitarians leaders are alive, order the masses and rest on them, and that until the end”<sup>1</sup>. It is about an attitude of sprayer and obedience of the individual who assimilated the doctrine in a manner that considers that it expresses only the truth and is willing to obey blindly. Of course, there may not be all the individuals of a State, it would be absurd to believe that, but it's those many, those “masses” that can be handled and managed in a direction wanted by the one that comply them. Autocrat policy “promises to release the fulfilment of the law of any human action and will; and promises Justice on earth because of the claim that it will make the very incarnation of law”<sup>2</sup>. Only that, “in the totalitarian regime's political body, the positive law is taken by the total terror”<sup>3</sup>. Thus, the individual is subject to comply with the law of fear, scary by the consequences that provides it otherwise.

Totalitarian regime has the immense capability to demonstrate juridical the laws that it issues, even if often deals with abusive, behaviors anti legal, which do not correspond to the needs and the specifics of the society in question. He always dispose of the laws needed, gives the impression that he is not acting outside the law, moreover, “claims that follows rigorously and unequivocally those laws of nature and of history, which is supposed to have derived all the positive laws”<sup>4</sup>. “The totalitarian law no longer ensures any service of stabilisation, it is just a law of action”<sup>5</sup>.

## **1. The political Communist regime**

The Communist Party was proclaimed as the holder of universal truth, having the right to define the modalities of “understanding of necessity”. Communism was a utopian concept rooted in the dream of suppression, at any cost, of private property and the construction of a universe of total equality. In Romania, the Communist regime has had a position of absolute domination on society, economy and culture. Like other totalitarian States, Romania took part in the organization of political power in a very cruel way. In the Communist period, security was part of a political system which allows recognition rule or/and requires an illegitimate and unpredictable application of coercive means prohibited by the legal order with respect to innocent people. Thus, the secret police (Security) maintained a very strict control over the media and the right to freedom of opinion and does not tolerate any opposition. Terror, rather more subtle protective after 1964, didn't meant an ease of the regime, but only the use of methods less shocking and cruel to control population. The crime of the system, began from his illegal and illegitimate nature, has not disappeared in the Communist period. Security was therefore an illegal istitution, illegitimate

criminal from the its beginning to its end. The bad side to this regime does not consist in the fact that political power is applied in this manner, but that behind this policy hides a whole new concept and without unprecedented of the policy<sup>6</sup>. Thus, “wherever totalitarian movements put their hand on the power, the entire group of sympathisers was shaking even before the schemes switched to their most horrible crimes. Intellectual initiative, spiritual and artistic is as perilous to totalitarianism as well as gangster plebeian initiative, and both are more perilous than mere political opposition”<sup>7</sup>.

Totalitarianism should not be confused with dictatorship, though certain features and effects are common. Thus, “dictatorship is a confused regim of the powers, usually in the hands of the Executive, his criterion is therefore the division of horizontal power, while totalitarianism is a way of delivering social purpose, the criterion being not the type of exercise did to the power, but the prevalence granted without limitation to the social detrimental to the individual”<sup>8</sup>. An authoritarian dictator acclaims an official ideology, but only on limited criterions or with a too low power of persuasion. Thus, “totalitarian leaders are actually free to do whatever they like and can count on the loyalty of their entourage, even if they decide to assassinate those who compose it”<sup>9</sup>.

## 2. The monopolistic single party rule

The main feature of the Communist system in Romania, which definitely qualifies it as an opponent of democratic principles, was the party's sole reign of the monopolistic, self-titled “party of the working class”. Ceaușescu's regime has made constant efforts to prevent the development of the romanian communism political culture toward a totalitarian post configuration, more lenient, where the monopolisation of power by the party would have been significantly limited by the rise of some groups and unofficial and off the record associations. Therefore, “the goal of the single party system is not only the forestall of governmental administration, but by capturing all the employment of all functions with party members, a complete blend of the state and the party, such that, after the conquest of power, the party becomes a kind of propaganda organisation in favour of the Government. The system is total only in a negative sense, namely in the fact that the party leadership will not tolerate any kind of other parties, no opposition and no political freedom of political opinions”<sup>10</sup>. In the field of intellectual life, the purpose of the communist party was to annihilate any form of genuine creativity: literature, history, art and philosophy were to be subject to ideological political sphere. This anti-intellectualism had its origins in the Marxist-Leninist concept who saw proletarian the revolutionary class predestined. Romanian communism was isolated by the currents of ideas and fundamental values from the interwar period. Also romanian communism was expressed by authoritarianism, bureaucratic centralism, factionism, intolerance and unconditional obedience towards Moscow, center of world communism. To all of them have been added the features of conspiracy experience from illegality, in particular the refusal of dialogue and perpetuating a climate of fear and suspicion. From the romanian national culture policy, Romanian Communist Party took over and developed a certain versatility in terms of principles and a temptation to nepotism and corruption. So, following the example of Gheorghiu-Dej, Ceaușescu took neo stalinism and autarhic policy, which included elements of nepotism and corruption at the state level. PMR dictatorship, then PCR (after 1965), was built after the soviet model and was enshrined in all the Constitutions after 1948 until the finale in 1989. Were banned and destroyed historical parties and all organizations that maintain alive the possibility of opposition in relation to the Communist despotism. In a political regime the totalitarian phenomenon occurs when one party holds a monopoly on political activity. This only party is animated with an ideology which gives it an absolute authority and becomes the official truth of the State. In a despotic State, most professional and economic activities are controlled by the State and become, to a certain extent an integral part of the State<sup>11</sup>.

This is true also in the case of Romania, where in the economy is desired a total control over enterprises. Thus, investments and the pace of development of the country were established as a result of Ceaușescu's personal indications. This economy centrally directed makes Romania a atomised society, no incapable of opposition and therefore beneficial to the political society and therefore to the State which directs in a sovereign way and tends to confiscate all the social activities (economic, political, cultural, religious, etc.). Gradually, this regim has become increasingly restrictive and abusive leading to increased impoverishing of the population and to the unprecedented deterioration of the living conditions as a result of the effort to pay the large foreign debt of the country. Nor the agriculture was in a better situation. Lack of manpower, insufficient mechanized, produced only so far as the soldiers, students and public officers could gather from the field. Within a short time from the market have disappeared the products of first necessity (but in behind the propaganda of the party was prepared a programme of rational nourishment of the population). This has happened because within a few years, it has reached the card for food and, implicitly, to rationalize them.

In reality, these measures have served little the romanian people and did not do than create a false nationalist euphoria and an illusion of a romanian pathway to a socialism different from the Soviet one.

### **3. Communist ideology**

The fundamental myth which was based on the ideology of the Romanian Communist Party in four and a half decades of totalitarian experiment was an image of the fortress under siege. For the Romanian Communists was so important to annihilate not only alleged foreign attempts which oppose the dictatorship, but mostly it was vital the liquidation of any internal opposition. They claimed that they create the divine fortress. Following logically the indictment of those that were criticising their plans of subversion, plotting and murder. Itself a conspiracy ideology, communism has seen everywhere signs of distress conspiracies against it.

One of the central aims of the regim was the annihilation of any form of opposition, resistance and dissident. Even in the relative period of radicalization of the regim, its aggressiveness in proportion with the potential questionable people remained unchanged. First they used the criminalization of democratic parties and of any other form of resistance from the intellectuals, unions that were not enrolled, students and intellectuals.. The number of victims of those frame-up was enormous.

Practices of the romanian communism originated from the leninism-stalinism model of social engineering<sup>12</sup>. Communist dogma is infallible claimed. People could possibly fail, but the party was omniscient. The supremacy of ideology was the key to understanding this system. The first generation of Communists in power in Romania has embraced with fervor bolshevik myths: the myth of revolution, of the party, of the working class, the classless society. In order to achieve these lofty goals, the romanian communists reportedly believed that it is allowed to use most abjecte means. At the outset, communism was based on lies, imposture, aliasing and transgression. Violence has been sanctified: the more brutal were the methods of fighting against the "enemy", the better was the intensity of hate propagated by ideological device<sup>13</sup>.

### **4. Deployment of elections in the Communist period**

"Elections, as a mechanism and specific process for the selection of political leaders, have not disappeared in the period 1945-1989, but were metamorfozate for the purposes that had all the political authoritarian or dictatorial regimes, with specific functions of reconsecration of the political legitimacy, for the purpose of proving the link between the party and the people, to

mobilize the masses for political-ideological projects, last but not least, to identify undesirable elements of society”<sup>14</sup>.

In the period during which Romania was dominated by the Communist Party ten polls were organized in which citizens were called to certify by vote the political offer proposed by the political structures led by the communists. They have never presented themselves in the election, even if they held the power in the political regime of monopoly. Taking after the Soviet model, they presented their offer in the context of electoral political fronts, specially designed to provide the illusion of a wider social representations.

Once the career of head of State began, Ceausescu enjoyed some popularity and adopted a political flow independent from the Soviet Union. He manages to attract the sympathy of his fellow countrymans for a while and the western world by refusing to allow the romanian army to take part in the invasion of Czechoslovakia with the troops of the countries member of the Treaty of Warsaw.

## **5. Communist Romania a controlled society**

Before 1989, the life of any inhabitant of Romania was supervised by State institutions, and political enrollment was established at a young age. An example in this regard was the political organization called the “The falcons of the motherland”, where children from kindergartens were educated in a spirit of devotion to the party and his leader. Students from the age of seven became members of the Pioneer Organization, that pursued the same purpose of manipulation and control. The trend of annihilation of the personality and uniformity of the members was indicated by the suits that they wear compulsory in organizations for children. At the age of 14 years, the pioneers passed into another social and political stage, becoming members of the Union of Communist Youth (U.T.C) getting ready to become people that the regim wanted to create. After the age of 18 years, adults could be members of the Romanian Communist Party or, depending on the work, were employed in organizations which were also under the control of the P.C.R<sup>15</sup>.

Also, privacy was closely guarded by measures that injure often human dignity, as were those relating to birth control. “Voluntary” work or “patriotic” for the benefit of the State was, in fact, being regulated to a certain number of days per year. All these measures introduced in the Communist period did nothing else but to limitate freedom. Thus, “the totalitarian domination seeks to exterminate freedom, even removal of any human spontaneity”<sup>16</sup>.

Morally, the condemnation of communism must be a political and social obligation for citizens of this country, and the romanian State may and can do this. The future of Romania depends on assumption of its past, so the condemnation of the Communist regime as the enemy of the human species, because the new generations has the right to know in what world their parents lived. So, what matters is to learn from the past and to part away from it.

## **6. The removal of the Communist regime and the step to democracy**

In 1989, the population of Romania began to rebel against the dictatorial regime of Nicolae Ceaușescu, being encouraged by the events occurring in the former Communist States of Europe. Thus, on December 16, 1989, at Timișoara, they began the first action against the regime, then continued in Bucharest on December 21. On 22 December 1989, Nicolae Ceaușescu was removed. Thus, the power was taken over by a provisional organism called the Salvation Council of the National Front, which was led by Ion Iliescu. From the outset this structure proposed restoration of democratic rules and building the rule of law in Romania, after five years of authoritarian and dictatorial regimes. What once was wanted with the change of political regime was: the return to political pluralism, free elections, structuring and expression of

unlimited civil society. Economically, however, they hoped to make the transition from centralized communist economy, to the market one, based on private property and the free initiative. The legislative foundation of new post-Communist developments was represented in Romania, by the Constitution of 1991 (subject to review in 2003).

Since the end of 1989 were reestablished the old political parties (the National Peasant Party, the National Liberal Party, the Social Democratic Party), and subsequently formed new political parties and formations such as the National Salvation Front, the National Unity Party of Romanian, the Democratic Union of Hungarians in Romania, etc. The first peaceful change of power, by vote of the voters, was held after the elections in 1996, won by the Democratic Convention of Romania, lead by Emil Constantinescu. In 2000, the elections were won by the party led by Ion Iliescu (the Party of Social Democracy in Romania, later Social Democratic Party), and following the elections in 2004, the Alliance Justice and Truth (formed by the Democratic Party and the National Liberal Party) led by Traian Basescu took the leadership of the country. The return to the democratic regime was not devoid of tense moments, but the progress made by Romania in the construction of this system has been recognized internationally by the country's admission to membership of the North Atlantic Alliance (NATO, 2004) and the European Union (EU, 2007).

#### 7. "The Democracy" of Traian Băseșcu

After the year 1989, Romanians have been released from the yoke in which they lived in and hoped in a democratic regime that they no longer had until then. However this has not been as we expected, because with the installation of Traian Basescu the situation of Romania has suffered.

In a democracy, the President is elected by the people in view of certain considerations which makes him a representative personality of the citizen. Thus, in a situation in which the President 'omitted' to keep the promises made during the election campaign and becomes abusive, the citizen needs an impartial tool to protect himself. "In a State of law, such a tool can only be the Constitution and the legal system as a whole. The Constitution establishes the limits within which the President may act and raised to the rank of supreme values those principles of state of law which confers on the stability and security of the citizen"<sup>17</sup>. But, not every Constitution ensures to the citizen the freedom necessary to ensure the durability of democracy, but only a Constitution compatible with the european values and with the international status of Romania can do this successfully, a Constitution providing a limit to the number of mandates and which provides the means by which the people can control the government, one in which the powers should be separated and balanced and to guarantee fundamental rights<sup>18</sup>.

In Romania, the State institutions sometimes use the role of the mass-media not to obtain the agreement of citizens, but to manipulate the opinions at least thematically. Such usage of information environment is evident in current Romanian society with regard to presidential institution, when performing certain media activities meant to discredit the institution of Parliament, by reducing its role. Thus, the President is presented as the supreme organ of the State, in a misinterpretation of its constitutional attribution to represent the Romanian State. Even if his powers are distinct from those of the other institutions of the State, there is a tendency for an increased role of the President, which exceeds by far the function of mediation between the powers of the State which the Constitution recognizes him. He has a constant involvement in the activity of other organs of the State, which tends to annihilate the role that they have. This overuse of powers is contrary to both the constitutional role of the President, and the principle of separation and balance of powers within the framework of constitutional democracy. Thus, according to art. 80 para. (2) of the Constitution, "the Romanian President shall ensure the proper

functioning of the Constitution and public authorities. To this end, the President shall exercise the function of mediation between the powers of the State, and between the State and society". Following this appearance, highlighted of by the content of the constitutional principle and of the separation and balance of powers in a State, is the fact that the President may not intervene in the decisions that the representatives take. In other words he has no right of interference in the activity of the Parliament, although a flawed interpretation of the constitutional provisions seems to confer this power. This circumstance is unfortunate, the more the media speculates the weakness of the collective mental, which tends to subaprecieze the work and role of Parliament, sends to the public certain information which tend to undermine and discredit the legisaltive organ. Creating, a series of skewed opinions with regard to the aims of the activity of the Parliament and expectations which the citizens should have from the organ that represents them.

*Why this discrediting and what are its goals?* In order to be understood, the problem should be seen in at least a few points of view. Thus, if we consider the interest of the mass media, discrediting the representatives can aume a more powerful impact among the public to the information presented. It is not less true that, sometimes, this information is not really important, but the way in which they are presented is the one that attracts the attention of its recipients. For Parliament, the means used to achieve the desired reaction from the audience involves the distortion and manipulation of the truth, by highlighting the secondary activity of representatives. Unfortunately for the state of law, this has become a common practice for a significant part of the mass media, who reports the activities of parliamentarians, highlighting their human and vulnerable aspects , spreading out in a grotesque mode some mistakes or weaknesses. Without a complete documentation or ignoring evidence, it is often said that representatives do not make anything other than to participate in meetings of the parliament sometimes to vote, seldom to speak and too few times to initiate draft normative documents. What is not accessible to the public is the fact that before carrying out parliamentary sittings which are made public, officials have studied and analysed normative documents that are subsequently discussed and voted, which enables this stance evolved towards meeting. But the press stating that hastens made theme is actually a proof of the lack of interest of the work which they must carry on, and do not forget to point out every time that the parliamentarians are also remunerated for this. In addition, it seems to ignore the fact that the initiation of legislative projects is a particularly complex process, and the mastery of many parliamentarians may deprive. However, we cannot desist not to ask what would happen with the legislative system and business administration if each of the 471 parliamentarians would produce endless such projects. Moreover, a bill requires solid specialized knowledge, and this should be the responsibility of a team of specialized parliamentarian. All these realities are forgotten by the media and the result is the creation of a distorted image of the Parliament, with the most dramatic consequences of the regim, representative of Romania. If we look at the problem of informing public opinion from the point of view of the other State organs, we must not forget that the politicians are in a permanent political struggle, and the weapons used are sometimes not the most accurate. Thus, in addition to specific technical compromise, used for the political game, there is also the discreditation. Defaming the representative institutions by the President, as an actor of the political scene may have as a purpose the decrease of the legitimacy of the Parliament, especially in a situation where the President affirm that he is the sole representative of the people and the only interested in its fate. The way in which the communication is made between the President and the public opinion is distorted by the mass media, because the Constitution establishes in article. 80 para. (1) that he is the representative of the Romanian State, and not of the people. The difference in nuance is extremely important, because the President is calling on to the people, substituting in the constitutional role of the Parliament, which only he is, according to art. 61. (1) "the Supreme representative organ of the

Romanian people". Giving in this way and emphasizing the special interest that he shows for the problems of the people, the President manages to replenish the enlightened despot of Romanians for nostalgia. In addition, it cannot be neglected another effect of this attitude, that of strengthening the position of the President on the political scene. It is undeniable that this is part of a political party that helped him win election struggle and under the influence which does not really stand out during the exercise of any public function. It is easy to understand that he could have an interest in imposing this party by any means, in order to continue their domination of the political space and upon completion of his mandate.

Appropriation by the leader of the role of unique connoisseur and defender of national interest can have adverse track on society as a whole.

The gradual reduction of the role of Parliament and the initiation of political measures in order to turn it into an annex used only to give a more democratic decisions generated solely by the will of the Chief of State is a mean to discredit the legislature. Such a measure has resulted in the romanian society by initiation of the President of a referendum that could easily be described as populist who has as a result the defamation and a significant reduction of the importance of an institution essential for the functioning of democracy. The President has "consulted" the Parliament to get his opinion on the modification of the Parliament, by introducing the unicameral system and on reducing the number of parliamentars. This consultation was one of the facade, which denotes the way in which the President has chosen to report to the Parliament, disdaining the constitutional obligation of consultation of the lawgiver and, in consequence, the role of the representative organ. This referendum translates itself into an attempt of the President to manipulate the citizens, speculating their hostile feelings towards representatives, perceived as part of an ineffective policy class. This is an extremely dangerous attack to democracy, trespassing the procedures that ensure its durability. It should be remembered the fact that most of the 12 referendums organised in Romania after 1859, three took place in the period 2007-2009, and two of them have coincided with the run-up to the europarlimentary elections of 25 November 2007, and another with the presidential election of 22 November 2009, proving once again that it has been an abused to the directly exercised Government. As a result of these findings, we can affirm that a referendum that aims at changing the balance between the powers of the State are hiding intentions of some authoritative leaders.

This practice of manipulation of the population through a referendum, even if we talk about a referendum whose results are advisory to the Parliament, lead to a shift of the center of balance of power by the presidential institution.

The consequence is undermining the principle of separation and balance of powers in the State and the constitutional order, thereby generating effects particularly dangerous for a country which has not yet arrived at a level of awareness and assimilation of democratic values and principles.

The consequences of the discreditation are devastating and are very important for citizens, since they get to form erroneous views about representatives and thus it causes a rift between the political class and the population, characterized by lack of trust. In that event, the presence of people in the public area is negligible and lacks consistency. For proper functioning, a democratic society requires the active involvement of people in politics, participation that is as free from the negative influence that entails discrediting political representation. Making a comparison between the two regimes can ascertain that Traian Basescu's regime is not a tyrannical regime such as that of Nicolae Ceaușescu, but taking into account the specifics of the historical and current political context can say that President Basescu develops a strong dictatorial side. The incentive for despotism and dictatorship exists but the President Traian Basescu betrays it in gestures and his deeds.

## Notes

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- <sup>1</sup> Arendt, H., (1994), *Originile totalitarismului*, Bucharest: first edition, Humanitas Publishing House, p. 382.
- <sup>2</sup> Idem. p. 570.
- <sup>3</sup> Idem. p. 572.
- <sup>4</sup> Idem. p. 583.
- <sup>5</sup> Pisier, É., (2000), *Istoria ideilor politice*, Amarcord Publishing House, p. 436.
- <sup>6</sup> Arendt, H., (1994), *Originile totalitarismului*, Bucharest: first edition, Humanitas Publishing House, p. 515.
- <sup>7</sup> Idem. p. 422.
- <sup>8</sup> Dănișor, D. C., (2007), *Drept constituțional și instituții politice, vol. I. Teoria generală. Tratat.*, C. H. Beck Publishing House, p. 49.
- <sup>9</sup> Arendt, H., (1994), *Originile totalitarismului*, Bucharest: first edition, Humanitas Publishing House, p. 478- 479.
- <sup>10</sup> Idem. p. 517.
- <sup>11</sup> [www.bogdancataragiu.ro/raportul/parteall- Partidul Comunist Român](http://www.bogdancataragiu.ro/raportul/parteall- Partidul Comunist Român), p. 14 –20.
- <sup>12</sup> Malia, M., (1994), *The Soviet Tragedy. A History of Socialism in Russia*, New York, Free Press, p. 136-137.
- <sup>13</sup> [www.bogdancataragiu.ro/raportul/parteall- Partidul Comunist Român](http://www.bogdancataragiu.ro/raportul/parteall- Partidul Comunist Român), p. 15-16.
- <sup>14</sup> Idem. p. 130.
- <sup>15</sup> Idem. p. 130-132.
- <sup>16</sup> Arendt, H., (1994), *Originile totalitarismului*, Bucharest: first edition, Humanitas Publishing House, p. 500.
- <sup>17</sup> Sperilă (Crăciunescu), M. D., *Răspundere și responsabilitate în cazul referendumului*, *Revista de Științe Juridice "Referendumul și democrația"*, vol. 20, nr. 1/2011, Universul Juridic Publishing House, p. 109.
- <sup>18</sup> Idem. p.110.

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This work was partially supported by the strategic grant POSDRU/88/1.5/S/49516, Project ID 49516 (2009), co-financed by the European Social Fund – Investing in People, within the Sectoral Operational Programme Human Resources Development 2007- 2013.

## ORIGINAL PAPER

**Georgiana POPESCU, Delia DUMINICĂ**

### **Political parties and the output of information**

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**Abstract:** *In the era of television, through the power of technology is an entirely new phenomenon: the media turns imperceptibly, from a careful witness, an actor who has contributed to their creation stories and taking part in policy making comments on them. Under the pretext of questioning politicians, political talk-show moderators turns provocative political event of the encompassing role of a witness who tells the facts about the action it produces politicians. The age of television promote the highest levels of ratings, which, although not elected by the voters (it's called the owner) makes policy alongside politicians, without, of course, to support their electoral risks. The relationship between media and political office must pass through the social body, which is the source of legitimacy of both. Trinomial politics - media - society, required in a normal society, has changed to make a lame formula "media-politics", where society, as a legitimate source for public opinion, has been eliminated.*

**Key words:** *political parties, media, information, electorate, public spirit.*

In 1787, Thomas Jefferson said: "It left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter".<sup>1</sup> In their relentless way, the founders determined that in the U.S. Constitution, for freedom of the citizen, the press is more important than government. Because we can do without a government or the press determined? What is the role of the media? Originally, the press was born with the vocation to be a witness. The media should provide truth and in the same time to contribute to the formation of public opinion, the opportunity given to people to make their views known. She was asked to form public space, informing the public spirit. According to her authority, the press had to report objectively about things that happen and provide a platform for free expression of opinions. It is clear that holding the truth of facts and interpretations controlling broadcasting, the press gets to incorporate the mechanism by which public opinion is formed.<sup>2</sup>

However, since any government relies on public opinion, the way of media works depends largely on the government itself. In democratic societies, where public opinion formation mechanism depends on media, it tends to lead the government. Normally, the media only serves to express opinions that concern the public, so you can finally turn, through its own power, in public opinion. The relationship between media and politics must pass through the social body, which is the both source of legitimacy. The press itself must not impose to government its own opinion, but also mediates the formation of a common opinion which should accurately reflect, the image of a democratic "the mirror of prince". Democratic media provide to the diversity of opinions only the mechanism by which they can be merged to become public opinion. As for politics, in order to remain democratic, it is obliged to take into account the public opinion, but not the views which the press publishes without ever becoming public opinion. This is roughly what traditional media means! On account of the obsession of politicians to make public image, television news tends to replace the parliamentary debate and to get all the public space: thus, as we already seen everywhere, the debate takes place only on television, and political acts seem to be caused only by TV journalists' questions.

Without the presence of cameras the reality does not actually exist, because without television there is no public space. These few observations are perfectly illustrated by the evolution of scandal "business note", the conflict between the two palaces (Cotroceni and Victoria) was extended by political reactions caused essentially by the press. The press has proved stronger than politics, contributing to building and strengthening the public opinion.

By the ubiquity and improper interference, television moderators were able to be in the spotlight, inoculating their viewers and politicians the idea that only they and their opinions are a true interlocutor of the political system: the first suggested they do not have to form an opinion, the last that they have no choice.

*Trinomial press-politics-society, required in a normal society has changed to make lame "news-politics" in society, as a legitimate source of public opinion, has been eliminated.* In this way, the source of politics legitimacy has become just press and media policy alone, the society ceased to be the subject of politics and media.<sup>3</sup> Only in this way could be reached last month at the unnatural alliance between the moderators of political talk- shows and politicians, employees together, over the head of the society, making and selling the policy. Presidents criticized media, but they are afraid of them. Candidates to presidential election require the favors, but they deny the influence. Other political officials want to be taken into account, but caused when they are not serving their interests. Interest groups are dependent on them to achieve their goals. Many are sick of the media, although they spend much of the day with them. Few actors in the political arena to enjoy a similar attention to that given to those working in the media. This would be due to

the fact that journalists practice their work in public. Furthermore, media influence has become a favorite topic of discussion for experts in politics, presidential candidates, for those who set government policy and even the general public. Part of the discussion lies in the nature of criticism - criticism of the tone and the media present politics. However, despite criticism there is no indication that the media's role would be diminished. In fact, there is evidence to support the opposite! We continue to watch and read the press regardless of what we believe about the media itself<sup>4</sup>.

This is because the media have an important function today unmatched by any other institution. Few people have alternative sources of information regarding the presidential candidates, the activity of a party or local, national or international events. The media and those who lead them have come to be our main window to the outside world, our own communities. In domestic policy, they are information. Different media have become so powerful in politics, just because we have allowed this. If we do not like the role of the press must not look for reasons only in the bodies of information, but in ourselves.

Causes that averaged media power in politics are extremely complex and difficult to establish. However, some of these cases come from the political system changes that have stimulated and increased the power of media. One of the causes for the media power became so great is the decline of political party institution. The main political parties have lost control over the nomination process. The emergence of preliminary elections as a means of selecting party nominees weakened party organization and limited its power over its own candidates. Candidates for official functions are now independent, which often come against party leaders rather than to ask his blessing.

Once in office, they do not owe too much allegiance to the party, which has not helped in getting the nomination nor gave him much help in the campaign or election. Moreover, campaign financing contributed to the dilemma of parties in terms of electoral politics. Political parties have not been the main beneficiaries of reform in the campaign but interest groups gained. At national level, parties are limited in the amounts that can finance their own candidates. Obviously, the candidates resort to interest groups for campaign financing, which increases the interest of these groups in the electoral process. As parties have lost power as a liaison mechanism between elected officials and citizens, especially as the organizational force in election campaigns, the media have filled this vacuum. Reporters now play a more important role in organizing election campaigns, especially at the presidential level. They put them in difficulty and presents news candidates accordingly. And this happens without the presence of experts and policy advice. However, some reporters could be considered fit enough for their own political experts.

From historically point of view, power in American politics has always been decentralized. The central government has long struggled to gain authority over the activities traditionally delegated to state and local government. The media have contributed and benefited from the tendency of American policy summary. The press became the main liaison mechanism between citizens and national government located far away. Municipalities and local authority premises remain accessible only to interpersonal communication. Legislators in some states, especially those with legislative districts reduced in size, are as close to their constituents. However, as power passed to the national, the need for mass communication has become increasingly pronounced. Those who conceived policies at the federal level, officials from federal agencies, members of Congress, the president - are far removed from most Americans. Many voters do not even know their senator or representative name in Parliament and even fewer have met directly. The greater the distance, the more the use of mass communication for personal interaction. But, unlike interpersonal communication, mass media have been almost exclusively unidirectional<sup>5</sup>. Information is forwarded to public officials and candidates, while the individual

citizen does nothing more than to receive some information. Some efforts were made to correct this imbalance. Organized groups do so through pseudo-events - demonstrations, marches and protests, which allow simultaneous transmission of information. Some groups gain their semi-legitimacy as sources of information. Experiments on mass democracy, which is another problem presented interactive capabilities that give it a balance. Also, information for public access channels offers what is called open access (nevertheless, it sometimes hears the question who pursues these channels). Thus, mass communication, as opposed to interpersonal communication, severely limiting two-way communication process inherent in the concept of democracy, nationalization of policy has the assurance that, in terms of representation at national level, mass communication will become the main liaison mechanism<sup>6</sup>.

Another reason that the media had become extremely powerful is the movement toward greater democracy in American politics. Throughout American history, democratic reforms designed to expand the role of voters - such as extending the right to vote a direct choice of public officials, party primary elections - have been successful. Aristocratic democracy was abandoned to the elements that were incorporated in the Constitution. We are dealing with a conception of democracy in which voters use elections to choose between competing elite groups. The society evolved from a social body, in which the elections determines the direction toward a model in which constant elections and reference to public officials are the guiding elements in function. Thus, democratization has enhanced the range of policy and media power<sup>7</sup>. By constant measuring and announcement of public opinion, and mention of it even was not measured, the imperative to know and respond to public opinion dominates American politics. Being the only communication tool capable of quickly and efficiently reach large mass of Americans, the media serve as a liaison mechanism between elected officials and public opinion. We expect the media to organize and mobilize public opinion. Extremely true during election campaigns, the media affects the processes of separating the candidates and determining the issues that are on the agenda, the public discussion of candidates and voters. True for non-electoral contexts.

Officials seek media to generate interest in certain issues. Interest groups hope to use the media to mobilize public opinion in attracting media attention in terms of their basic problems. In addition, the media had their own priorities. None of these participants did always win. And not even win something. But the mere assumption that the media is fundamental link in the political process can't be challenged. Taken together, these cases have helped to establish a position of power with an enormous potential for the media. The term "potentially" is noted. The power of media in American politics is based on the existence of certain conditions of the political system. Two of these conditions are the media's role in filling the vacuum of power in the political system and cover the available information needs to be transmitted<sup>8</sup>. One of these conditions is creating a political vacuum emerged in the institutions and political organizations, which the media come to fill. In other cases, some institutions do not assume any role that I have. Sometimes functions are amended in relation to public expectations and needs of the institution or organization. Political parties are a classic example. Damage based organizations, which includes a communicational extremely important function of media has increased the political disclosure by the party faithful. Also, lack of control over the party nomination process has given power of media, allowing them to perform their role in separating candidates. Presidential elections have become increasingly dependent on the media in pursuing these objectives. The decline has weakened the political parties supporting the president on that basis. But presidents have chosen to come out from under the parties that this independence gave them freedom from domination by party leaders. Presidents who sought a means to communicate directly with the American public, to mobilize public opinion to move beyond a recalcitrant and lethargic Congress have discovered in the media a very useful tool.

Theodore Roosevelt described the presidency as an "aggressive pulpit". Today, the presidency has become an electronic pulpit with "informal discussions" broadcast on national stations, broadcasts the call to participate in live interviews with one or more press conferences<sup>9</sup>. Public's expectation of the President has increased its dependence on activity against certain media. A vacuum created between the President's needs and public expectations on the one hand, and the means of mass communication, on the other hand, stimulates the media to fill this gap. Legislative function, including communication between voters and elected representatives from the federal government (and in many states), has become a process-oriented media, another example of a power vacuum in American politics. Members of political parties are no longer based on meetings of the constituency, but on information from press interviews and media coverage to communicate with voters<sup>10</sup>.

Direct meetings came to be occasional events, while communicating with the press has become a fact of everyday life<sup>11</sup>. Moreover, politicians engaged in a growing position in the means of mass communication it offers greater control over the messages. These officials use their own television stations and newspaper boxes to send messages that you want the home. What happens when public stations legitimate question is whether those items or if someone seeks someone reads these boxes. It is a concern about the effectiveness of communication to inform voters whether or not to use. Ironically, one factor for the occurrence of these alternative forms of communication could be to limit the use of ancient sources of alternative communication such as postal and mail boxes were free, which represented the main form of mass communication with voters. Another reason for the potential power of media is the control information. When media people experiencing poverty of information sources they need, they are more prone to manipulation than others<sup>12</sup>.

One of the advantages of the President interacting with the media is the definition of news - any says or does president is news. However, when supply exceeds demand information, the situation changes. When an entire army of information sources occurs that media want, then these sources reach to beg at the media doors to include their information. Office secretary, members of political parties and interest group leaders crave media attention. Even presidents are often reduced to this level, or when the press do not have the desired information, or when other events beyond the activities of their relevance in terms of information. A good example of this is initial period of the presidential campaign, when the opposition party candidates receive much attention from the media, compared with those in office, which faces no competition to the nomination. There are two factors that contribute to the establishment of media power in the equation of supply/demand<sup>13</sup>. On the one hand, a large part of the federal government acts as "a sieve". This prevents the formation of permanent information monopolies. Another aspect is the extent to which information sources are competing for rich media. And this is partly due network interaction between the Congress and the bureaucracy within it. The information is retained by the bureaucracy, wherever this is possible, but transmission of information is prescribed by law and facilitates relationships. Furthermore, it is used by the bureaucracy to achieve goals related general policies or personal goals. As a result, the press has usually more authoritative sources for obtaining the desired information in a particular issue. None of them control how the information will be sent or how they will be presented. Each reporter has this power in hand. Moreover, the existence of specialized networks in the political sphere requires the presence of interest groups, of teams of laborers and scientists are co-participants in possession of information and are potential sources for journalists. Variety of information sources increases the ability of reporters to "take over and choose" which will be news items and people will be part of the subjects discussed. The principle of supply and demand increases the power of mass media on attitudes and behaviors of mass politics. The more exclusive access to information which the

media has and hold, more people are addicted to information and their analysis. However, when individuals have alternative sources of information - such as personal experience or sources people - presenting the news is less important<sup>14</sup>. For example, news about inflation and unemployment are often tempered or exacerbated by personal experience or interpersonal communication. People noticed inflation when price increases for meat. They hear about unemployment when a local factory is closed and layoffs affecting their neighbors. National news does nothing to add to personal information acquired by the individual. But news about a political scandal or the development of diplomacy is usually the only information that a citizen gets to that effect. The media are important as the only source of information<sup>15</sup>.

A fundamental limitation of power of the press only as a medium of information is that most Americans are more concerned about issues that affect them directly (inflation, unemployment, education) than to issues and events far, far too distant from their lives. These are issues alternatives to disposal and which is based on too little on the media, as information base. But as increasing information needs of the public, increase the power of these media. When information which the press looks are extremely numerous, news reporters and analysts have control over the news and increase their power in the political process. But when demand exceeds supply and control falls to the owners want more information, media power decreases. Media power is not an exclusive creation of media organizations. She is also a product of systemic developments that have altered the political system functions in a way that led to the increasing role of the media. While created a unique role of the media for democratic systems. Public relations policy is a tool that organizations can organize all communication activities to achieve them. This policy does not say what to do, so they are dealing with strategic planning, but also indicates that the rules should be carried out by public relations activities.<sup>16</sup> According to Bernard Dagenais, "A public relations policy should first establish PICTURE organization. This image has two parts: the material and symbolic. Physical picture is the visual identification of the organization with its logo, colors, insignia branded header official papers, vehicles and business cards. Symbolic picture is expressed by an organization speech built upon his personality"<sup>17</sup>.

For a better relationship between the press and politicians there have been set a series of rules:

- Many people, in addition to media publishers have access to press releases via the Internet;
- Press releases can be a valuable communication tool, but only if they contain real news;
- Feedback from staff about the mass media press releases is that they are less well-prepared and timely than considered specialists in public relations.
- Internet access to press releases has advantages and disadvantages;
- Staff of the mass media assesses the extent to which communications are well written, accurate, complete and timely;
- To understand which are your favorite news-media, you have to study those media;
- You should know better their own institution, in order to find her news;
- Use the correct news and advertising information and be aware that the line between them is unclear;
- The lead is the most important press release;
- Local angle of approach is important to draw attention to the news editor
- Where's lead boosted, use concise phrases and make sure you take care of "who", "what", "when", "where", "why" and "how" in the first two paragraphs;
- The authors of texts for public relations can create their own quotes, which require the consent of individuals who will be awarded - an advantage not enjoyed by reporters;
- Press releases should be written in a simple, clear and direct style;
- Format is important, but some media have their own style;

- The news' suggestions are sent to mass - media communication to stimulate interest of editors to a subject;
- Press releases published notices, information about special events, breaking news, features and reactions to bad news;
- Some information must be submitted in a form other than a press release, for example, tablets, letters, reviews and photos of the boxes;
- All press releases used by traditional mass media are processed by them, and some can be denied<sup>18</sup>.

The main weaknesses of the media would be:

- Compliance deadline sites - information given shortly before the close of the deadline by a major political figure on an important fact as can be easily retrieved and later recounted in a non-critical view.
- Compulsory sources' mentioning – sources' mention it is a binding of the media. Often, sources are "undecided, unclear and inconsistent". Sources' mentioning creates a danger that the information is inaccurate. There is also a risk that, by such means, to be submitted rumors, negative effects on the veracity of the information, but effective in terms of a communication strategy aimed at political manipulator.
- Shortness, drama and viewing of news - politicians resort to listing the events in which journalists can't miss, spreading information through media agencies. Meanwhile, teams of politicians' counselors resort to PR tricks to make events more attractive.
- Accreditation scheme - an event that can't be made public, politicians often make provision that prohibits the participation of journalists.
- Breaking news - to get the maximum audience, politicians take advantage of the success of certain types of programs carried in prime-time to communicate proprietary information<sup>19</sup>.

Politicians are based on knowledge of rules and regulations of journalism, to influence (manipulate) media coverage: those who know the rules and norms of journalism have the opportunity to manipulate the press reports. Using the strategic needs and constraints of media, advisers in public relations and media managers, and various groups and individuals can determine what news is reported and how events are presented. In the view of Claudiu Săftoiu, "the cynicism of political journalism is knowingly message depreciation and political action, by installing the electoral public discontent with the political class continues anywhere in the world. The argument of this claim comes from the finding that the news media become more negative when covering political events, and search for more stubbornly than substance conflict. In that way, induce long-term, a keen sense of cynicism in the electorate and chronic state of delusion, as political action. (...) politicians themselves poisonous, contrast and conflict attitudes brought to the screens. In the political lexicon of the press, political opponents of wickedness and filth have become everyday expressions. Politicians have always chosen to be extreme attitude towards the opponents, that neither party will have such a good word to say about the other side. From this equation, bellicose, communication disappears. And with it, and the humanism of political character. The result is that the electorate has the impression that political battles do not concern him. Moreover, the electorate observes that those sent to public ignores it completely"<sup>20</sup>.

#### **Acknowledgement:**

\*\*\* This work was partially supported by the strategic grant POSDRU/88/1.5/S/52826, Project ID52826 (2009), co-financed by the European Social Fund – Investing in People, within the Sectoral Operational Programme Human Resources Development 2007-2013.

- <sup>1</sup> Doru Pop, *Mass-media și democrația*, Editura Polirom, Iași, 2001, p. 26
- <sup>2</sup> *Ibidem*, p. 129-131
- <sup>3</sup> Camelia Beciu, *Politica discursivă. Practici politice într-o campanie electorală*, Editura Comunicare.ro, 2000, pp. 36-47
- <sup>4</sup> Raoul Girardet, *Mituri și mitologii politice*, Editura Institutului European, 2005, p. 85.
- <sup>5</sup> Domenico Fisichella, *Știința politică – probleme, concepte, teorii*, Editura Polirom, Iași, 2007, pp.121-166.
- <sup>6</sup> Samuel Huntington, *Ordinea politică a societăților în schimbare*, Editura Polirom, Iași, 1999, p. 93.
- <sup>7</sup> Bernard Miege, *Societatea cucerită de comunicare*, Editura Polirom, Iași, 2000, p. 118.
- <sup>8</sup> Vasile Tran, Irina Stănciugelu, *Teoria comunicării*, Editura Comunicare.ro, 2003, pp. 155-169.
- <sup>9</sup> Doru Pop, *Mass-media și democrația*, Editura Polirom, Iași, 2001, p. 217-219.
- <sup>10</sup> Gabriel Thoveron, *Comunicarea politică azi*, Editura Antet, Oradea, 1996, p.45.
- <sup>11</sup> Andrei Stoiciu, *Comunicarea politică, Cum se vând oameni și idei*, Editura Humanitas, București, 2000, p. 153.
- <sup>12</sup> Jerard Gerstlé, *Comunicarea politică*, traducere G. Camara-Ioneși, Institutul European, Iasi, 2000, pp. 8-16.
- <sup>13</sup> Murray Edelman, *Politica și utilizarea simbolurilor*, Editura Polirom, Iași, 1999, p. 52.
- <sup>14</sup> Cristina Coman, *Relațiile publice și mass-media*, Editura Polirom, Iași, 2000, p. 68.
- <sup>15</sup> Michael Bland, Alison Theaker, Davis Wragg, *Relații eficiente cu mass-media*, Editura Comunicare.ro, București, 2003, pp. 91-104.
- <sup>16</sup> Jean Claude Bertrand, *O introducere în presa scrisă și vorbită*, Editura Polirom, Iași, 2001, p. 136
- <sup>17</sup> Jean Claude Bertrand, *O introducere în presa scrisă și vorbită*, Editura Polirom, Iași, 2001, p. 136.
- <sup>18</sup> Bob Carrell, Doug Newson, *Redactarea materialelor de relații publice*, Editura, Polirom, Iași, 2004, p. 223.
- <sup>19</sup> Claudiu Săftoiu, *Jurnalismul Politic*, Editura Trei, București, 2003, pp. 56-64.
- <sup>20</sup> *Ibidem*, pp. 161-162.

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**ORIGINAL PAPER**

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**L'émergence du régime politique roumain postcommuniste. La transformation du Front du Salut National en parti politique**

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**Abstract:** *The present article presents the evolution of the Romanian post-communist regime focusing on the transformation of the National Salvation Party. The paper also examines the main aspects and concepts of the democracy in transition: political actors, political discourse and political parties.*

**Keywords:** *Romania, National Salvation Party, democracy, transition, strategy.*

La définition ambiguë des acteurs de la Roumanie postcommuniste<sup>1</sup> est une question très révélatrice, enrichissante pour la discipline ayant comme objet d'étude la vie politique roumaine. Le travail présent veut s'ériger en contribution à l'effort de structuration et de conceptualisation des sujets majeurs de recherche ayant pour objet le processus de construction politique induit par l'inflexion fondamentale de la politique roumaine contemporaine. Le moment majeur qui détermine la configuration de la scène politique roumaine actuelle est situé en 1989. Cette année-ci, en décembre a lieu l'événement politique qui a permis l'inscription de la Roumanie sur la liste des pays démocratiques, en concordance avec les changements politiques qui s'opèrent dans toute la région de l'Europe centrale et orientale.

L'écroulement des régimes communistes constitue un événement très inattendu. La vague des réformes mises en marche se traduit par la formulation d'une perspective future de type constitutionnaliste pour ces régimes, orientée autour de la croissance du pragmatisme dans l'acte de gouvernement. Pendant que la constitutionnalisation<sup>2</sup> apparaît comme une option viable, la disparition n'est pas prise en compte, ce qui donne le caractère surprenante aux évolutions politiques que la période 1989-1991 va apporter.

Par conséquent, la dynamique évidente créée par l'irruption démocratique en cette région, l'oscillation constitutive de nouveaux régimes entre communisme et anticommunisme se manifeste en tant que piliers qui orientent l'intérêt agrandi des chercheurs pour cette région.

Ceux-ci sont intéressés par les fluctuations institutionnelles apportées par la mise en place des structures de nature différente dans le cadre politique et par les réminiscences du passé totalitaire, pesant sur la constitution des régimes démocratiques dans des proportions variées. L'Europe Centrale et Orientale est configurée alors par une mosaïque de pays dont l'individualité se constitue en caractéristique principale. Ce particularisme prégnant, reflété clairement dans les modes de structuration de l'environnement politique et social, invalide toute tentative de généralisation ou d'application des théories consacrées de la science politique, construites surtout pour l'Europe occidentale. En plus, la comparaison entre les régimes politiques institués après la chute du communisme est mise en difficulté parce que les démarches de saisir les points communs entre ces espaces peuvent s'avérer comme manquant de réussite. Cependant, il y a l'alternative des études de cas précis pour un certain pays, qui aboutissent par proposer des perspectives très cohérentes.

De point de vue des spécificités fondamentales qui encadrent politiquement la zone géographique de l'Europe centrale et orientale, la Roumanie pourrait facilement occuper la première place. Qualifiée par la littérature de spécialité sous l'espèce d'un particularisme accentué, celle-ci est capable de fournir un matériel riche et varié pour l'expertise en matière politique.

Individualisée par la révolution violente qui met fin au régime communiste et par le fait d'être la dernière qui commence la transition<sup>3</sup>, la Roumanie continue à affirmer ses spécificités dans l'installation du postcommunisme. Bien que la révolution ait été la plus violente, la plus sanglante de cet espace, elle peut facilement être considérée la moins définitive rupture avec l'Ancien Régime et qui prend fin par l'introduction d'un changement lent et peu visible.

Néanmoins, cet épisode révolutionnaire fournit le cadre pour le début de l'instauration de la démocratie en Roumanie, vu que par ses effets, celui-ci permet l'introduction du postcommunisme<sup>4</sup>. Même si la révolution de décembre a constitué le moment de tournure de la politique roumaine contemporaine et même si elle a ouvert la possibilité de la construction d'un régime démocratique, elle semble être tombée en désuétude en tant que sujet de recherche dans le domaine politique, elle s'est métamorphosée lentement dans une simple victime de l'oubli<sup>5</sup>, instrumentalisé « comme si c'est dans l'intérêt de tous »<sup>6</sup>.

Aujourd'hui, la tendance prééminente est que tout discours en matière politique ait une connotation notamment négative, approchant des dimensions qui témoignent des malaises, des dysfonctionnements du système politique roumain.

Pourtant, quelle que soit la vision sur l'environnement politique roumain, orientée dans une perspective positive ou négative, il est essentiel de chercher la source de tous ces aspects à travers une analyse de leur moment constitutif, respectivement, à partir de décembre 1989 et la période immédiatement suivante.

Il est impossible d'expliquer de manière plausible, d'appréhender, de formuler des hypothèses et de comprendre le système politique roumain en termes de mécanismes, stratégies de gouvernements, approche institutionnel ou du personnel politique sans opérer un retour aux origines du phénomène démocratique en Roumanie. Evidemment, la source est incapable de fournir toutes les explications nécessaires pour la compréhension des évolutions politiques, mais elle est élémentaire au moins comme point de départ dans une recherche et dans la description du fil logique du parcours ultérieure d'une réalité politique.

Ainsi, l'objet du travail présent renvoie au moment précis de la constitution du régime démocratique roumain actuel. Il faut souligner le fait que, dans cette perspective, la révolution de décembre, en dépit du constat qu'elle a été le mobile déclencheur du changement, l'initiatrice du postcommunisme comme ère politique aussi sur le territoire roumain, elle n'est pas analysée ici comme l'élément central de ce qui a signifié début démocratique ou transition en Roumanie. Clairement, il n'entre pas en question le refus du statut de la révolution, voire sa fonction primordiale dans la définition du postcommunisme, mais il s'agit tout simplement d'originer le noyau du développement de la vie politique démocratique dans la période immédiatement suivante à la révolution ( la révolution étant comprise dans le sens d'un mouvement violente, la révolte, les violences qui se déroulent dans la rue) à partir de la fin du mois de décembre et dans la première moitié de 1990, dans la perspective du fonctionnement de la logique partitocratique.

Plus précisément, le régime politique roumain se définit comme une « partitocratie »<sup>7</sup>, étant un type de régime qui gravite autour des partis politiques. Et c'est justement cette problématique des partis politiques, la configuration de l'univers partisan, les rapports et les tensions entre les partis qui encadrent l'existence de la vie politique.

Sans contester la signification du moment révolutionnaire, il est temps de regarder un peu plus loin et de déceler les significations que l'avènement de ce moment apporte pour la dimension partisane du nouveau régime politique. Dans cette direction, décembre 1989 manifeste une importance majeure : l'institution du pluralisme politique. Cette inauguration apparaît dans le premier document programmatique élaboré par l'organisme révolutionnaire qui organisait aussi le gouvernement provisoire - le Conseil du Front du Salut National. Celui-ci, dans son premier *Communiqué*<sup>8</sup>, annonce l'extinction du parti unique et l'introduction du pluralisme politique, qui permettra une véritable explosion des partis, parmi lesquels le rôle significatif l'a joué le Front du Salut National et les partis historiques revitalisés.

De cette manière, poursuivant l'observation de la dynamique partisane comme noyau dur de la constitution et du fonctionnement du système politique roumain, il est normal d'opérer ce déplacement de l'accent sur la composante partisane et sur le principal parti qui a structuré la transition en Roumanie et qui initialement a porté le nom de Front du Salut National (FSN).

Effectivement, l'intérêt de la recherche pour ce sujet se justifie dans une double perspective : premièrement, il s'agit de l'intention d'obtenir une explication concrète et pertinente de la logique interne qui a déterminé le FSN de se transformer en parti politique par l'inventaire de l'ambiguïté, de l'obscurité, de l'hétérogénéité des opinions élaborées relativement à ce sujet très sensible et deuxièmement, ce travail est fondé sur un thème qui réunit les deux objectifs énoncés antérieurement: la démarche de chercher l'essence, l'origine de la structuration de la vie partisane

postcommuniste, en se penchant sur son principal acteur, dans l'éventualité de l'obtention d'une vision valide sur le sujet à rechercher et ensuite, l'étude se propose d'être un essai de d'analyse de l'aménagement partitocratique initiale du régime post 1989.

La problématique de la partification de la scène politique, phénomène constitutif du régime politique est une essentiellement complexe et difficilement explicable même du point de vue juridique étant donné le fait que même l'organisation légale des partis politiques est très variable<sup>9</sup>.

Le 22 décembre est constitué la Conseil du Front du Salut National, organisme révolutionnaire ayant le rôle de s'occuper de la gestion de la situation politique et économique du pays jusqu'au moment de premières élections, témoignant son intention de ne pas participer à ces élections et ayant strictement une vocation politique provisoire. « Même si le 3 janvier 1990, le FSN a fait connaître l'opinion publique qu'il n'est pas et qu'il ne va pas se constituer comme parti politique, trois semaines plus tard (le 23 janvier), le Conseil Front du Salut National décidait (128 votes pour, 8 contre et 5 abstentions) la transformation du FSN en parti politique, fait qui a provoqué la protestation et la démission du parti des personnalités comme Doina Cornea, Ana Blandiana, Ion Caramitru, Mircea Dinescu »<sup>10</sup>. N'empêche, le Front s'inscrit le 6 Février au Tribunal Municipal de Bucarest comme parti politique, gardant le même nom –le Front du Salut National et étant présidé par Ion Iliescu.

Conséquemment, il est logique de se demander sur le pourquoi et le comment de cette décision de se transformer en parti politique, pour voir quelle a été la stratégie envisagée par le FSN, si cette transformation a été une action spontanée ou préméditée et de quelle manière elle s'est poursuivie si facilement. En plus, il faut se poser des questions sur la nature du FSN, prenant en compte la définition canonique d'un parti politique, qui est celle de représenter une faction, une partie de l'électorat. Essayant de retracer le parcours historique du terme, Pierre Bréchon remonte jusqu'au Moyen Age, période dans laquelle le *parti* représentait un groupe particulier dans le corps de l'armée : « Ce n'est qu'une partie d'un entier »<sup>11</sup>. Dans ces conditions, le FSN arrive difficilement à s'encadrer véritablement dans la catégorie des partis politiques, vu qu'il déclare et maintient la portée exhaustive.

L'idée postulée dans cette analyse est qu'il faut envisager la genèse du Front du Salut National comme parti politique en termes d'un devenir, d'un processus de transformation. La démarche est farouchement atteinte par une difficulté de qualification du sujet qui subit la transformation. Plus concrètement, il est important de rendre compte des variables de ce processus pour saisir comme objet intelligible le FSN antérieurement et ultérieurement à la transformation. Antérieurement, ce corps est difficilement qualifiable, gravitant dans un environnement multiforme, entre soit représentant de la nation, soit incarnation de l'Etat roumain, soit le cercle des personnes composant le Bureau Exécutif du CFSN. Aussi au niveau du FSN comme parti politique, cette difficulté de définition du son statut et de sa nature se préserve.

### **I. Interstices entre le Front du Salut National et la Révolution**

La révolution, telle décrite par Charles Tilly comme étant « le transfert par la force du pouvoir dans l'Etat quand au moins deux groupements distincts d'adversaires formulent des revendications incompatibles en ce qui concerne le contrôle de l'Etat et une partie significative de la population donne son appui pour les revendications de chaque groupement »<sup>12</sup> désigne un processus très complexe et difficilement perméable à l'encadrement dans une matrice définitoire. La notion de *révolution* a suscité l'intérêt d'un grand nombre de chercheurs du champ politique, donnant naissance à une riche littérature, mais ce qui est essentiel est le fait qu'il n'existe pas une formule universelle de la révolution, ce qui signifie que chaque phénomène de ce type a ses particularités et, par conséquence, il doit être analysé par le prisme de ce qui lui est propre.

L'analyse sera menée en partant de la relation qui existe entre le Front du Salut National et la révolution de décembre, plus précisément, il s'agit non seulement d'observer le rôle que cet organisme a joué lors de la révolution et dans la période suivante, mais aussi de regarder sa perspective sur le processus révolutionnaire.

Le choix de la dimension qui concerne les rapports qui s'établissent entre le Front du Salut National et la révolution se justifie simplement par le fait que celui-ci est l'acteur principal des événements de décembre, dont le discours et la pratique a déterminé l'avènement de la révolution et l'évolution ultérieure de la vie politique roumaine. Ici, s'impose la nécessité de parler du Front du Salut National partant d'une définition minimale qui peut lui être attribuée, respectivement organisme révolutionnaire qui a rempli le vide du pouvoir en Roumanie après la fuite du couple Ceaușescu et qui pour une période d'approximativement six mois, a gouverné le pays. Bien sûr, maintenant il est question de raffiner, d'analyser quelle est la pertinence de cette définition, quels sont les spécificités, les caractéristiques du Front du Salut National qui découlent de cette définition et finalement de proposer une définition plus englobante, plus précise et plus complexe de cet acteur politique.

Essayant d'arriver à une finalité dans cette tentative, une distinction fondamentale trouve sa place, celle entre le Front du Salut National et le Conseil du Front du Salut National, une séparation nette entre la fonction partisane et celle législative et exécutive, simultanément. C'est-à-dire, après le mois de janvier 1990, par Front du Salut National il faut comprendre exclusivement la formation partisane qui s'inscrit au Tribunal Municipal le 6 février 1990 en tant que parti politique, en vue de la participation à la compétition électorale. Le Conseil du Front du Salut National représente l'autorité législative et exécutive, qui a rempli le vide de pouvoir et qui s'est ultérieurement étendu au Conseil Provisoire d'Union Nationale.

Au sein de ce Conseil du Front du Salut National, organisme qui d'ailleurs se définit premièrement par une hétérogénéité accentuée, il est important de saisir au moins trois niveaux : le premier niveau, qui est le plus large et s'étend jusqu'aux structures du territoire, un niveau plus restreint (soit des intellectuels, soit des membres de l'Armée, soit des figures importantes de l'ancienne élite dirigeante) et le niveau le plus restreint, du leadership constitué dans le Bureau Exécutif du Conseil du Front du Salut National, incluant son président, Ion Iliescu, et autres noms sonores comme par exemple Petre Roman, Silviu Brucan, Ion Caramitru<sup>13</sup>.

La révolution roumaine se déroule d'une manière individualisée aussi à cause de la configuration antérieure du régime politique. Pour ce qui tient au contexte interne, la Roumanie présentait quelques particularités, parmi lesquelles une organisation du pouvoir et de l'appareil de l'État qui semblaient très structurée et efficace, très bureaucratisée, mais cependant il contrôlait une société statique, en état d'immobilité, manquée de vitalité pour laquelle l'uniformisation et le conformisme constituaient les mots d'ordre.

Sur le plan international, la Roumanie se tenait à l'écart de grandes puissances, phénomène justifié par le choix de Nicolae Ceaușescu de choisir l'éloignement des politiques d'ouverture lancées par le centre de Moscou et adopter une voie différente pour le parcours politique de son pays.

Cette situation trouve ses racines dans un processus qui a lieu dans les années 1980 et qui concerne des transformations successives dans la structure des élites communistes. Il s'agit de l'autonomisation<sup>14</sup> des élites dans chaque pays communiste, de la rupture de l'élite unique communiste, qui conduit à la fragilisation que la division apporte, à la perméabilité et finalement à la destruction de cette classe politique. Pour le temps que cette élite fût restée compacte, alors les révoltes des masses ne sont arrivées à aucun résultat, mais sans le pouvoir de l'unité les révolutions de 1989 ont atteint leurs buts.

## **II. Sous le signe de la continuité. Structuration de la problématique identitaire du FSN**

« F.S.N. = P.C.R. »<sup>15</sup> c'était écrit sur une pancarte des participants à la réunion électorale de Parti National Paysan Chrétien Démocrate (PNPCD) de 22-23 Avril, marquant par le signe de l'égalité mathématique une identité entre le Front du Salut National et l'ancien Parti-Etat du régime communiste.

Par conséquence, l'enjeu est de mesurer jusqu'à quel point cette équivalence est pertinente en partant de l'analyse de la structure identitaire du FSN. Pour cette raison, il s'agit de mettre en balance une autodéfinition du FSN telle qu'elle est réalisée dans les pages du journal « Dimineața » et la reconstitution de la trajectoire initiale de l'actuel Parti Social Démocrate (PSD) pour saisir ainsi comment la continuité avec le PCR, la légitimation révolutionnaire ou d'autres éléments s'encadrent comme étant des dimensions constitutives du premier parti gagnant aux élections libres de 20 Mai 1990.

Toutes ces perspectives gravitent autour de la problématique identitaire qui exige des clarifications, elle étant qualifiée comme jouant un rôle essentiel dans l'activité ultérieure du parti et dans la manière dont il se légitime en tant qu'acteur politique.

### **II. 1. Stratégie d'autodéfinition**

L'effort d'autodéfinition consacre dès le début la question de la légitimation révolutionnaire du FSN, en prenant comme critère primaire la mesure de l'engagement dans le déroulement des événements révolutionnaires. Du point de vue temporel, la Révolution de 1989 et la naissance de FSN sont des processus simultanées, l'organisation de ce groupe ayant lieu graduellement dans des conditions de violence, de terreur, dans le contexte de la crise générale de la société notant que « le FSN a été la première organisation qui a pris le message antitotalitaire et le souffle de la révolte populaire, en les transformant dans des actes décisionnels du premier organe du pouvoir révolutionnaire- CFSN »<sup>16</sup>.

En politique, la capacité langagière<sup>17</sup>, la manière d'exprimer des conceptions, des attitudes, des valeurs et des principes politiques sont essentielles.

En effet, la politique se construit à travers cet attribut, de parler ou de se parler, elle est en soi une activité consubstantielle à la communication. Faire de la politique (s'agissant ici de la qualité de la politique d'être fabriquée, construite, artificielle, elle n'étant pas une donnée naturelle, mais le résultat d'un travail de construction, de création et fondamentalement de communication) est un effort équivalant au fait de constamment partager des idées, discuter et .

Ayant en tête cette conception de la politique comme terrain spécifique du langage, le constat objectif et implicite est qu'il faut expliquer et comprendre les acteurs politiques à travers ce qu'ils expriment. Et en plus, ce ne sont pas essentielles seulement les idées et l'objet d'un discours, mais également importantes sont la stratégie qu'ils emploient, le comment de la construction de leur rhétorique, qui contient en elle toutes les explications et les justifications constitutives pour la manière d'agir de ces acteurs.

Conformément à l'article du journal Dimineața, dépassant l'obstacle de la grande implication dans l'atteinte des objectifs révolutionnaires, le FSN continue son parcours par des actions constructives. En effet, cette organisation révolutionnaire se fait remarquer par son dualisme : d'un côté, c'est l'activité révolutionnaire qu'il se donne comme tâche, qui suppose implicitement une action de destruction et ensuite, celle-ci est suivie par un effort de reconstruction étatique, un travail à la fois social et politique, éminemment à but constructif – de rétablissement, de remise en marche du fonctionnement normal du pays : « Le Front représente la seule formation politique sollicitée dès les premiers jours à mélanger le travail révolutionnaire-destructif avec celui constructif, les deux aux niveaux des paliers multiples et complexes de l'Etat »<sup>18</sup>.

Alors, après avoir conquis l'idéal de la Révolution de décembre, le devoir du Front a été celui de d'organiser au niveau politique cette nouvelle vie, en essayant d'avoir une approche optimisée et efficace dans le contexte politique si complexe, acide, trompeur et à la fois très sensible et facilement perturbateur.

Ces conditions étant données, le point-clé de la stratégie de FSN ne pourrait être qu'une seule : la transformation en parti politique pour continuer les démarches de réhabilitation du pays déjà commencées, transformation vue comme solution idéale, comme « clé de voûte »<sup>19</sup> mais aussi déterminée par les circonstances, considérée par celui-ci l'unique manière envisageable dans la perspective du redressement du pays.

En synthétisant les idées avancées par l'article de journal respectif, l'autodéfinition du FSN surprend les mêmes dimensions que ses leaders exaltent dans leurs discours, respectivement : légitimation révolutionnaire de la construction identitaire, la spontanéité absolue de l'organisation qui prend naissance dans un contexte de pression et dans l'atmosphère violente et tensionnée générale et puis la préoccupation unanime pour la reprise du fonctionnement normal de la vie sociale et politique en Roumanie.

Important à souligner c'est la stratégie, la tactique de l'approche, la logique argumentative employée dans la caractérisation du FSN par le FSN vu que cette rhétorique fait preuve d'une capacité d'adaptabilité significative à la dynamique souvent touchée par le radicalisme de l'environnement politique roumain dans les premiers mois de 1990 – il s'agit d'une reprise des argumentations des adversaires à laquelle s'ajoute une contre-argumentation solide, l'accent réussissant à être maintenu sur la dimension exclusivement positive de l'activité du Front.

De cette manière, le « certificat » de naissance du Front englobe l'élément révolutionnaire, l'engagement politique total et le comportement dévoué, la dimension constructive et la nouvelle légitimation qui envisage l'accomplissement des objectifs révolutionnaires à long terme. Une analyse minimale du vocabulaire utilisé dans le « certificat » rend compte de la primordialité des actions menées par le Front et de la vocation exhaustive de cette organisation (visibles à travers l'utilisation excessive des mots comme « le premier », « le seul » et par des adjectifs suggestifs : « multiple », « complexe », « plénière »).

Apparemment, dans le discours de FSN sur sa nature et sur sa constitution, doté de consistance et d'une logique argumentative parfaite, il ne se pose aucunement la question d'une continuité quelconque avec l'Ancien Régime, pas d'héritage de PCR, pas de lien avec l'avant décembre 1989.

Avec le souci constant de rendre compte de la distance souvent énorme qui existe entre le discours et la pratique politique, notre démarche suivra par l'élargissement de la perspective sur le moment constitutif du FSN pour élaborer à la fin une conclusion pertinente et justifiable, qui concerne le problème identitaire du principal parti qui a structuré la scène politique roumaine postcommuniste.

## **II. 2. Débat sur la question identitaire du FSN**

A l'opposé de cette rhétorique du FSN sans aucun rapport avec le régime communiste, il y a des thèses soutenant toute une autre vision, qui mettent en question une succession de PCR, sous le signe d'une continuité à un niveau tridimensionnel- institutionnel, du personnel politique et respectivement idéologique<sup>20</sup>, qui s'entremêlent créant une configuration particulière du système politique roumain au début de l'année 1990.

Visant à contrebalancer la conception singulière de l'autoreprésentation du FSN, plusieurs recherches se rendent utiles, toutes essayant de reconstituer l'histoire et le parcours du parti qui a dominé la vie partisane roumaine postcommuniste- le PSD. Alexandru Gussi se penche sur une analyse très détaillée de la relation de ce parti avec le passé totalitaire, sur le fait de

constater en quelle mesure ce passé est-il vraiment passé, vu qu'il faut parler du communisme en termes de « distinction et non pas rupture »<sup>21</sup> et toutefois l'auteur se propose de trouver les racines des malaises du système démocratique roumain dans l'analyse de ce parti par rapport à la période de transition et de l'ancien Etat communiste. Afin de clarifier la question identitaire, il faut expliquer les termes, l'identité étant « le résultat d'une production du discours de l'intérieur de la structure politique, notamment par le choix des dirigeants et de la doctrine »<sup>22</sup>. Mais dans le cas de FSN, l'auto-discours n'est pas suffisant pour fournir une image exhaustive de la réalité de cette organisation. Gussi trouve aussi une liaison très sensible entre l'héritage du PCR et le moment constituant de FSN, accentuant le fait que la question identitaire, qui dans le cas de FSN s'avère très problématique, est celle qui structure finalement l'essence du parti. L'actuel PSD apparaît comme étant très marqué, au moins à ces origines, par le phénomène de la personnalisation du politique (vu que Ion Iliescu, l'homme fort qui constitue le noyau du groupement, est plus qu'un symbole révolutionnaire, il est l'incarnation de tout ce qui représente la politique à l'incipit démocratique en Roumanie) et démontre une spécificité doctrinaire, vu que « le Front est la seule formation politique non- délimitée idéologiquement [ ...] ce qui découle de la manière de sa constitution même et de son évolution comme force politique »<sup>23</sup>.

Partout en Europe de l'Est le clivage constitué autour du passé communiste s'érige en thème central, mais de nouveau la Roumanie avance des spécificités en ce qui concerne la relation pluridimensionnelle, toutefois éminemment alambiquée entre le Parti Communiste Roumain et ses successeurs démocratiques. Le phénomène de l'apparition et de la consolidation des structures partisans dans les pays ex-communistes se fait délimiter par ces particularités. En cette perspective, ils sont à rappeler parmi d'autres les recherches de Daniel - Louis Seiler<sup>24</sup>, qui analyse la configuration des formations partisans européennes partant de la théorie des clivages fondamentaux élaborée par Stein Rokkan<sup>25</sup> et de Jean-Michel de Waele, auteur qui fait une radiographie générale de la configuration sociale et politique des pays anciennement communistes, en s'attardant aussi sur la théorie de D.L. Seiler sur les partis politiques.

L'Europe centrale et orientale est envisagée par Jean-Michel de Waele comme étant la cadre des « bouleversements »<sup>26</sup>, des dysfonctionnements qui affectent la scène politique et sociale, à laquelle s'ajoutent « l'absence de la tradition démocratique, l'apparition lente d'une classe politique compétente et professionnelle, les difficultés dans la modernisation de la justice, la situation économique et sociale »<sup>27</sup>.

Parmi les clivages structurantes de ces sociétés, le plus important est celui entre anticommunisme et néo-communisme, très manifeste et qui fait que « d'un côté, se trouvent les partis nés des mouvements de dissidence et d'opposition envers les régimes « communistes » et de l'autre, se retrouvent les formations qui ont hérité les structures du régime précédent »<sup>28</sup>. L'enjeu de l'auteur était de voir pour encore combien de temps ces deux versantes vont organiser la scène partisane, la réponse étant difficile à donner, tenant compte de la dynamique sociale et politique de ces espaces.

Dans la vision de cet auteur, le clivage communisme-anticommunisme est envisageable en Roumanie sous la forme d'une tension constitutive. Réalisant une très détaillée analyse de cette théorie en l'appliquant au cadre politique roumain, Cristian Preda observe « qu'en Roumanie, le postcommunisme n'invente et ne reconstitue pas des clivages »<sup>29</sup>, mais se fonde dans une temporalité bien définie sur deux tensions : celle entre *communistes- anticommunistes* et la tension *nationaliste*.

La ligne continue entre le PCR et le FSN est très visible au niveau du personnel politique, elle étant définie comme « le rôle joué dans un certain parti par des individus ayant des fonctions de leadership dans le Parti Communiste et l'appareil de l'Etat »<sup>30</sup>, même par la simple

observation d'un repositionnement de l'ancienne nomenklatura dans les nouvelles structures de pouvoir

Approcher la dimension des élites politiques s'avère être un instrument utile pour la recherche, parce que les révolutions de Roumanie et de toute l'Europe Centrale et Orientale gravitent autour de la question du rôle et de l'implication des élites une fois dans le moment révolutionnaire et ultérieurement dans la construction de nouveaux régimes politiques dans ces pays

Pour nuancer la notion d'*élite*, le sens précis de celle-ci et le rôle que les élites (et bien sûr, de quel type d'élite il s'agit) ont joué en décembre 1989, apparaît comme inhérente une analyse des actions des élites roumaines lors de la révolution et dans la période immédiatement suivante. Raluca Grosescu réalise une étude sur le reclassement<sup>31</sup> politique de la nomenklatura après 1989, en constatant que ces personnes se constituent avec aisance dans de nouvelles formations politiques. Représentatif de ce point de vue est l'histoire du Front du Salut National, qui non seulement renferme à son intérieur des noms importantes de l'ancienne élite communiste, mais il est forgé en tant qu'acteur politique par des personnalités-clé du régime communiste à côté d'autres partis politiques comme le Parti la Grande Roumanie, le Parti de l'Union nationale de Roumanie, le Parti Démocratique Agraire de Roumanie, le Parti Socialiste du Travail ou l'Union des Hongrois de Roumanie. L'auteur retient les chiffres de l'apparition de l'ex-nomenklatura dans les Parlements postcommunistes – pour 1990 et 1992, il s'agit d'une proportion d'environ 20% des membres de la nomenklatura qui se sont perpétués au pouvoir, 28% en 1996 et ensuite une réduction en 2000 à environ 14%. Pour les premiers deux gouvernements d'après 1989, quantitativement plus de la moitié des postes ministériels étaient occupés par la nomenklatura communiste, pour le troisième gouvernement la proportion connaît une diminution insignifiante jusqu'à 47% et en 2000, la chiffre est de 18%.

Conformément à l'analyse citée, la figure la plus importante est celle de Ion Iliescu qui sous le régime communiste s'était élevé sur l'échelle hiérarchique jusqu'au rang de membre du Comité Politique Exécutif, suivi par Alexandru Bârlădeanu et Dan Mărțian, devenus présidents des deux Chambres Parlementaires postcommunistes et aussi Silviu Brucan, conseiller du Front du Salut National jusqu'en 1991. La réapparition des figures de premier rang du régime communiste dans les nouvelles structures démocratiques en train de se constituer mène à la constitution d'une classe politique particulière que Daniel Barbu appelle *postnomenklatura*<sup>32</sup>. Ion Iliescu même parle de l'inévitabilité de la perpétuation de l'élite politique communiste dans le nouveau régime en affirmant que « La nomenklatura de l'Etat (les ministres, les ministres-adjoints, les dirigeants de différents départements ministériels, les présidents des conseils populaires) n'est pas complètement disloquée, mais elle ne peut pas être disloquée par décret sans laisser le pays en désordre »<sup>33</sup>.

Insistant sur une logique de continuité entre l'ancien régime, le FSN et ses héritiers, il est inévitable l'observation que « l'acteur majeur de la vie politique roumaine, le PSD a représenté le parti d'une conversion graduelle des anciennes élites communistes vers la socio-démocratie »<sup>34</sup>. Le FSN est qualifiée comme le tribun d'une évolution conservatrice par rapport au passé, d'une attitude sinon nostalgique au moins prudente, masqué par la théorie du consensualisme, ce qui l'encadre dans cette taxonomie dans la catégorie de réformistes minimalistes<sup>35</sup>.

Plus précisément, il s'agit d'une substitution de l'élite politique groupé autour de Nicolae Ceaușescu par une partie de l'élite communiste qui ne pouvait plus se contenter de rester dans l'ombre, le processus révolutionnaire s'érigeant ultimement en « modalité par laquelle le démantèlement d'une structure politique se substitue au changement de l'élite politique »<sup>36</sup>.

La continuité devient un élément d'autant plus important vu qu'elle est reflétée avec prééminence dans la nature, la constitution et le fonctionnement du parti qui a dominé la transition vers la démocratie en Roumanie, transition qui témoigne hautement de l'empreinte communiste qu'elle garde encore à travers les insuffisances, le déficit démocratique politique en Roumanie, le soutien populaire envers le communisme et l'héritage du régime communiste et de la Révolution<sup>37</sup>. Ce parti se fait éventailier par sa flexibilité et surprenante capacité d'adaptation à la dynamique de la vie politique, en poursuivant assidument ses objectifs électoraux.

Effectivement, la préservation de la dimension institutionnelle, partisane est la plus prégnante, parce que « si le FSN ne condamne pas le Parti Communiste, c'est parce qu'il envisage de la remplacer en tant que structure à la fois étatique et partisane »<sup>38</sup>.

La thèse de la continuité qui lie le PCR avec le FSN dans ce qui lui est essentielle, c'est-à-dire, la dimension institutionnelle, avance alors d'un rejet catégorique de tout rapport ou héritage du régime communiste entretenu par le FSN lui-même (groupement qui par ailleurs préfère de placer et maintenir son bagage idéologique et son héritage historique sous le signe de l'ambiguïté, étant incapable de produire un discours argumenté concernant ses origines) vers une « disposition tout aussi marquée de *recouvrement* et *reconversion* des instruments institutionnels d'action, de gestion et de production du savoir, fabriqués par le système précédent »<sup>39</sup>.

Pour ce qui tient à l'aspect idéologique, l'évolution du FSN est encore plus difficile à déceler tenant compte du fait que celui-ci n'adopte pas une orientation doctrinaire très claire, choisissant d'adapter constamment son discours aux réalités fluctuantes de la société roumaine. Et c'est justement cette adaptabilité l'ingrédient nécessaire à la recette du succès électoral, vu « qu'en Roumanie les partis politiques ayant des liens avec l'ancien Parti Communiste démontrent une flexibilité idéologique plus grande qui leur a permis d'occuper la majorité de l'espace politique dans les élections successives postcommunistes »<sup>40</sup>.

Fondamentale dans l'approche idéologique de FSN c'est la composante nationaliste de son discours, le fait que « le nationalisme postcommuniste est la principale forme par laquelle est assurée la succession de l'ancien parti unique »<sup>41</sup> qui fait « directement appel à l'univers idéologique de PCR, dont le principal trait était le culte de l'Etat national »<sup>42</sup>. Du moment-même de sa constitution étatique, la Roumanie a fondé sa construction sur l'élément nationale ; dans cet espace, avec l'écoulement des siècles, un nationalisme de type étatiste s'est progressivement développé, étant parachevé dans les décennies communistes, un nationalisme étatiste qui implicitement mettait à l'avant son essence ethnique et sa dimension xénophobe<sup>43</sup>, accentuant l'idée d'intérêt national, thème que le FSN reprend en 1990. Comme Gussi le remarque, à cette prééminence de l'Etat national, s'ajoute un autre élément qui fait appel à la figure de Ceaușescu et à son régime, qui est le culte du chef, du « Conducător »<sup>44</sup>. Cette stratégie nationaliste et simultanément xénophobe constitue de nouveau un critère de différenciation de la Roumanie des autres pays de l'Europe Centrale et Orientale, le discours sur l'intérêt national primordial, prévalant les autres principes, étant un point touché par le FSN visant à le légitimer et attirer le soutien des masses pour sa conception et action politique. De nouveau, le FSN et ses démarches témoignent de la dualité de sa perspective : dans une direction se trouve l'attachement à l'Etat national, comme fondement de la configuration de la nouvelle communauté politique, constitution d'un corpus de valeurs communes autour de l'unité étatique, ou plutôt autour de l'unité d'action politique qui entoure la vision et les principes du FSN dans le contexte du pluralisme politique institué par les accomplissements révolutionnaires. Dans l'autre direction, cette exaltation de l'Etat national comme thème prégnant qui circule dans l'environnement politique n'est qu'une autre manifestation du prolongement des idées communistes dans le postcommunisme et un signe de la continuité entre le PCR et le FSN de point de vue de l'orientation idéologique.

### III. Conclusions

Tout au long de cette analyse, notre intérêt s'est penché sur la transformation du Front du Salut National en parti politique. Prise telle qu'elle ou bien considérée comme dans une logique normale de préservation du pouvoir politique, cette transformation pose des questions qui renvoient à la configuration structurale du régime politique roumain postcommuniste. L'intention est celle de démontrer l'importance majeure d'un événement qui, dans le cadre de la complexité étonnante de la période décembre 1989 – mai 1990, a été probablement qualifié comme lieu commun et laissé tomber en désuétude.

L'étude, structurée sur trois paliers principaux d'analyse vise à mettre en évidence une construction identitaire spécifique, capable d'expliquer les conditions qui ont mené au processus de devenir qui pendule entre les deux coordonnées : organisme révolutionnaire – parti politique. Le sujet de cette restreinte recherche - le parti politique intitulé « Le Front du Salut National » est analysé dans des étapes successives : premièrement, l'investigation se penche sur son rôle lors de la Révolution de 1989; ensuite on passe de l'observation attentive de l'effort d'autodéfinition, de construction d'une image légitime aux yeux de l'électorat et de la société roumaine à une incursion dans le monde des débats scientifiques centrées sur la ligne de continuité existante entre l'ancien PCR et le nouvellement constitué FSN.

L'étroite liaison entre le CFSN et les événements de 1989 est incontestable, celui-ci prenant la responsabilité de gérer la situation du vide du pouvoir. En se rattachant à l'idée déjà énoncée de destruction de l'Ancien Régime - construction du paysage postcommuniste, le Front vise à se forger comme la seule alternative viable pour continuer le travail commencé dans le mois de décembre. Sa stratégie d'autodéfinition renferme donc principalement la légitimation issue de la participation révolutionnaire et le projet d'institution d'un Etat postcommuniste fonctionnel. Partant d'une perspective unidimensionnelle qui consiste dans un glissement dans la profusion du FSN comme parti politique, par le constat de la consistance interne de cette formation politique, la perspective s'élargit ayant comme but l'exploration des autres dimensions qui témoignent de sa complexité.

Le maintien par le FSN d'une visible ambiguïté autour de la question de ses origines et la manière de se rapporter au passé communiste contraste avec la suivante démarche, celle de l'introduction dans l'analyse des articles, des études appartenant au champ de la science politique qui proposent la version de la continuité évidente entre le FSN et le PCR.

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<sup>1</sup> Alexandra Ionescu, „Pluralisme et représentation”, *Studia Politica*, vol.VI, no. 4 (2006); le syntagme reprend le sous-titre de cet article « La définition ambiguë des acteurs de la Roumanie postcommuniste » ;

<sup>2</sup> Bartłomiej Kaminski & Karol Soltan, „The evolution of communism”, *International Political Science Review*, Vol.10, no.4 (1989): 371-391. Très peu avant la chute de l'URSS, la publication dans une revue scientifique internationale d'un article portant sur le parcours du communisme témoigne de l'imprévisibilité de la situation qui va débiter en 1989. Les trois étapes identifiées (communisme pure, communisme tardif, respectivement communisme constitutionnel) sont décrites d'une manière objective. La troisième étape, encore non matérialisée, est envisagée par les auteurs en tant que suite logique tenant compte de la tendance du communisme de s'ouvrir, d'opter pour une réforme institutionnelle ;

<sup>3</sup>V.Juan Linz & Alfred Stepan, *Problems of democratic transition and consolidation, Southern Europe, South America and Post-communist Europe* (The John Hopkins University Press : Baltimore and London, 1996); l'énumération de ces dimensions constitue une reprise des arguments de ces deux auteurs pour qualifier « l'exceptionnalisme roumain » ;

<sup>4</sup> Alexandra Ionescu, „La dernière révolution léniniste. Pensée et pratique d'une autorité révolutionnaire en Roumanie”, *Studia Politica*, vol.VI, no. 1 (2006) : 83.

<sup>5</sup> Cristian Preda, *Occidentul nostru* (Bucarest: Nemira, 1999), 156.

<sup>6</sup> Alexandru Gussi, „Le poids du rapport au passé communiste dans la construction identitaire. Le cas du Parti Social – Démocrate Roumain”, *Studia Politica*, vol.III, no. 3 (2003) : 713.

<sup>7</sup> Daniel Barbu, *Republica absentă* (București: Nemira, 2004).

<sup>8</sup> Le Communiqué Envers Le Pays (*Comunicatul Către Tară*) du Conseil du Front du Salut National, *Moniteur Officiel* no.1 ( 22 décembre 1989).

<sup>9</sup> Voir Cristian Preda, Les partis politiques dans le postcommunisme roumain in Jean Michel de Waele, (éd.) Les clivages politiques en Europe centrale et orientale (Bruxelles : Presses Universitaires de Bruxelles, 2004), 168.

<sup>10</sup> Stan Stoica, Dicționarul partidelor politice din România 1989-2003 (Bucarest: Meronia, 2003), 30.

<sup>11</sup> Pierre Brèchon, Partidele politice, trad. Marta Nora Țarnea, Adina Barvinschi, (Cluj Napoca: Eikon, 2004), 29.

<sup>12</sup> Charles Tilly, *Revoluțiile europene (1492-1992)*, trad. Victor Cherata, ( Iași: Polirom 2002), 20.

<sup>13</sup> Stoica, 30;

<sup>14</sup> Richard Lachman, *Catalizatorii revoluției. Mobilizarea maselor și conflictele între elite de la familia Medici la Elțîn* in John Foran ( ed.), *Teoretizarea revoluțiilor* (Iasi: Polirom, 2004), 87.

<sup>15</sup> Domnița Ștefănescu, 5 ani din istoria României (Bucuresti: Mașina de scris , 1994), 62.

Lors de l'assemblée électorale de PNPCD que Domnița Ștefănescu raconte, qui a eu lieu entre 22 et 23 Avril 1990, les sympathisants PNPCD ont choisi d'écrire sur leurs pancartes des devises de ce type;

<sup>16</sup> Dimineața, no. 4 (22 Février 1990) : 6; l'article est écrit par Nicolae S.Dumitru et a un titre très suggestif : « Quel est le certificat d'identité du FSN ? », essayant simultanément de formuler la réponse à cette question et donner à cette réponse le statut de légalité, de reconnaissance publique de la réalité de FSN, avancée expressément par le mot « certificat » ;

<sup>17</sup> Giovanni Sartori, „What is 'Politics'?", *Political Theory*, vol. I, no. 1 (1973): 5-26.

<sup>18</sup> Dimineața, 6.

<sup>19</sup> Dimineața, 6.

<sup>20</sup> Grigore Pop- Elecheș, „A party for all seasons : electoral adaptation of Romanian communist successor parties”, *Communist and Postcommunist Studies*, 41 (2008) : 467; l'auteur propose les trois paliers au niveau desquels la continuité avec le régime communiste s'est reflétée;

<sup>21</sup> Ionescu, *La dernière*, 83.

<sup>22</sup> Gussi, *Le poids*, 699.

<sup>23</sup> Gussi, *Le poids*, 699.

<sup>24</sup> Daniel Louis-Seiler, *Partidele politice din Europa*, trad. Eugenia Zainescu, Sorin, Bocancea, (Iași : Institutul European, 2000).

<sup>25</sup> Seymour Martin Lipset, Stein Rokkan (eds.), *Party Systems and Voter Alignments: Cross national Perspectives*, (New York et Londres : The Free Press , 1967); le concept de *clivage*, est dans la vision des auteurs, un élément structurant de la configuration politique dans chaque pays démocratique et à la fois le fondement de l'explication de la constitution et du fonctionnement du multipartisme dans les pays européens. Les auteurs proposent une division des clivages en quatre catégories : le clivage centre- périphérie, Etat- Eglise, rural – urbain et respectivement, capitalistes - travailleurs.

<sup>26</sup> Jean- Michel de Waele, „Consolidare democratică, partide și clivaje in Europa centrală și de est” in *Partide politice și democrație în Europa centrală și de est*, ed. Jean- Michel de Waele, (București: Humanitas, 2003), 180.

<sup>27</sup> De Waele, 180.

<sup>28</sup> De Waele, 190.

<sup>29</sup> Cristian Preda, Sorina Soare, *Regimul, partidele și sistemul politic din România*, (București: Nemira, 2008), 146.

<sup>30</sup> Pop-Elecheș, 469.

<sup>31</sup> Raluca Grosescu, „Traectorii de conversie politică a nomenclurii din România. Spre o taxonomie a partidelor create de foștele elite comuniste in Elite comuniste înainte și dupa 1989”, *Anuarul IICCR* (Iași : Polirom, , 2007): 199-231.

<sup>32</sup> C'est le terme que Daniel Barbu utilise pour rendre compte du fait que la scène politique démocratique en constitution est dominée par une classe dirigeante capable de s'adapter idéologiquement au changement de régime, décrivant un groupement politique de néo ou crypto- communistes qui se sont constitués dans un courant d'action politique cohérente ; *Republica absentă* (București : Nemira, 2004), 30.

<sup>33</sup> Azi, no.4 (14 avril 1990) : 1.

<sup>34</sup> Grosescu, 206.

<sup>35</sup> Grosescu, 206. Fondant ses affirmations sur l'analyse des doctrines des partis dirigés par les les anciennes élites communistes, de la relation de ceux-ci avec le passé totalitaire et de la manière de se rapporter aux principes démocratiques, l'auteur crée une taxonomie des partis politiques, prenant en compte la distinction de Daniel Louis Seiller entre maximalistes et minimalistes. Ainsi, en fonction de ces critères, elle arrive à identifier trois catégories de parties qui encadrent les organismes partisans constitués par des ex-nomenclaturistes : il s'agit des anti-réformistes nostalgiques, qui militaient pour la restauration du communisme, des réformistes minimalistes, centrés sur la pratique d'une politique de l'oubli par rapport au passé totalitaire, sur une transformation graduelle du cadre politique et économique et sur le message de réconciliation comme principe ultime du fonctionnement du nouveau régime démocratique. La troisième catégorie est celle des réformistes maximalistes, ayant comme but une transformation rapide de la société roumaine, l'adoption immédiate de l'économie de marché et qui en même temps a une attitude de condamnation par rapport au régime communiste ;

<sup>36</sup> Alexandru Gussi, „Décembre 1989. Prémises du débat sur le passé récent en Roumanie”, *Studia Politica*, vol. VI, no. 1 (2006): 118.

<sup>37</sup> Ce sont les trois causes que Grigore Pop Eleches identifie pour expliquer l'occupation de la place centrale par les héritiers du PCR dans la vie partisane, parlementaire et gouvernementale en Roumanie postcommuniste, 466-467 ;

<sup>38</sup> Gussi , „Décembre 1989”, 117-118.

<sup>39</sup> Ionescu, *La dernière* , 83.

<sup>40</sup> Pop- Elecheș, 469.

<sup>41</sup> Gussi , *Le poids*, 715.

<sup>42</sup> Gussi , *Le poids*, 715.

<sup>43</sup> Voir Silvia Marton, „Le sentiment national est une barrière plus forte que toutes les lois . «La question juive» dans les débats du Parlement roumain (1866-1871)\* ”, *Studia Politica*, vol. VII., no. 4 (2007); la xénophobie est visible du moment constitutif de la nation roumain par le mouvement antisémite de grande ampleur, puisque les juifs étaient considérés comme étant un véritable danger, un puissant ennemi pour l'unité nationale ; par conséquence, cette xénophobie indissociable de l'idée de *nation* et *nationalisme* dans l'espace roumain se transforme dans la période communiste dans ce nationalisme totalisant caractéristique aux régimes communistes pour enfin être continuée dans le postcommunisme comme facteur structurant du discours sur la constitution de l'Etat démocratique ;

<sup>44</sup> Gussi , „Décembre 1989”, 117-118.

## ORIGINAL PAPER

Elena CÎNCEA

### The evolution of Romanian electoral system in the post-communist period: illusions about strengthening democracy

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**Abstract:** *The events of December 1989 have led to major changes of the Romanian constitutional and political system in line with the new political, legal, economic and social realities. Establishment of political pluralism as a condition sine qua non of constitutional democracy, imposed not only organizing periodic, free and fair elections for designating members of Parliament, but also a reform of the Romanian political class. The new political order had to be based on truly democratic principles and state institutions had to be the expression of the electorate. All these exigences implied a change of the electoral system, as the old provisions were incompatible with the new political regime. Since 1990, the electoral legislation has undergone extensive changes that were aimed at building a genuine democracy in Romania. The process of society democratization was slow, gradual and, unfortunately, still uncompleted. This approach seeks to realize a radiography of the electoral reform in the post-communist period and to analyze the extent to which this reform has contributed to the strengthening of democracy. In this regard, we also consider the effects of the electoral system on political parties, on the configuration of representation and not least, on the behavior of voters. It therefore remains to be seen whether we can talk about a full-fledged democracy in Romania, or whether in the years that followed the fall of communism, we have witnessed just a simulation of the mechanisms of democracy.*

**Keywords:** *electoral system, post-communism, democracy, political parties, voting behavior*

## **Introduction**

The fall of communism in December 1989 generated important changes of the Romanian political life and also constituted a decisive step in the building of democracy. All the changes that took place were in accordance with the new political, legal, economic and social realities.

The Decree-Law no. 8/1989 marked an important moment in the evolution of the Romanian political arena, because it enshrined political pluralism and free formation of political parties. Thus, political pluralism became a condition sine qua non of democracy, which imposed not only organizing periodic, free and fair elections, but also a reform of the Romanian political class. The political class had to be formed on the basis of truly democratic structures and principles, which entailed a new electoral system.

Since 1990, the tortuous process of democratization has started with small and timid steps, an important factor which contributed to it being the electoral system change. Therefore, after the fall of the iron curtain, the electoral legislation has undergone many amendments that were aimed at building a genuine democracy in Romania. The question is whether the electoral reform has led to a full and authentic democracy in Romania. In order to answer this question, we shall address the main changes of the electoral system since 1990, the effects of these changes on the political party system and on voting behaviour, and also the contribution of the electoral system to consolidating democracy.

### **1. Main electoral changes in the post-communist period**

During the events of 1989 the National Salvation Front (FSN), which comprised the outstanding representatives of the Romanian Revolution, was created. FSN adopted the Decree-law no. 2/1989, on December 27, by which the National Salvation Front Council (CFSN) was formed. This Council had both legislative and executive prerogatives, as the president of the Council was also vested with powers of a head of state. The responsibilities of the National Salvation Front Council also included the competence to regulate the electoral system.

The first legislative elections, in 1990, were governed by the Decree-Law no. 92/1990, which was considered to be “a mini- provisional Constitution of the revolutionary government period”<sup>1</sup> because it restored bicameral parliament and introduced the principle of electoral-based representation of the will of the electorate. Both Parliament and the President were elected by universal, equal, direct, secret and freely expressed suffrage. In order to be elected in the House of Deputies a candidate had to be at least 21 years old, while for the Senate and the Presidency at least 30 years old. All people aged over 18 were entitled to vote, except for the mentally challenged placed under judicial interdiction, and also the persons deprived of election rights pursuant to a conviction to imprisonment. The type of ballot used for designating the members of Parliament was proportional representation. This type of ballot was in accordance with the features of the political spectrum in that period, considering the fact that political parties were still shaping and crystallizing their ideologies. Hence, at that time, political parties were unable to highly polarize the electorate. The electoral law also provided that organizations representing national minorities that didn't meet the required number of votes to achieve a seat in the Chamber of Deputies, were entitled to a mandate. However, the Decree-Law no. 92/1990 had some “distorted” effects regarding the nationwide distribution of seats<sup>2</sup>. Article 71 of the Decree provided the distribution of mandates at two levels: level I (county level): after checking the list of parties that scored a number of votes higher than the electoral coefficient, the Constituency Electoral Bureau assigned the seats at the county level according to the Hare formula; level II (national level): the rests of these operations and the lost votes were aggregated at national level using the

d'Hondt formula. The consequences of the second distribution of seats were quite strange, mathematically explainable, but difficult to be understood and accepted by the electorate. For example, UDMR (the Democratic Union of Hungarians in Romania) which is an ethnically based organization, won seats in constituencies where it scored less than 5.5 % of the votes.

The revival of Romanian parliamentary life was accompanied by the adoption of the Constitution in 1991 which regulated fundamental democratic principles, such as: political pluralism, the principles of equality and non-discrimination, separation of powers, rule of law, free and fair elections. The 1991 Constitution represented the cornerstone for building democracy in Romania.

Elections in Romania were held on three levels: local level (for local councils, county councils, city halls and General Council of Bucharest Municipality), general level (respectively for the Parliament of Romania) and presidential level. For each of the three levels, there were special provisions: Law no. 70/1992 on local elections, Law no. 68/1992 for electing the Chamber of Deputies and Senate and Law no. 69/1992 for electing the President of Romania.

Closed Party list system and distribution of seats according to the principle of proportional representation, provided by Law no. 68/1992, reflected the new political realities, i.e. : the active role of political parties in the transition to a democratic society and the desire of political leaders to enhance the prestige of political parties. The plurinominal system allowed political parties to define their strategies and political platforms and to build an effective structure at local level. The system for electing the president was and is still based on uninominal majority vote with two ballots, as in other democracies.

This legislative framework which was valid for the 1992 elections has undergone since then several modifications, in line with the new electoral demands and particularities of the political system. In 2000, a series of emergency ordinances (O.U.G.)<sup>3</sup> changed some aspects of the electoral system concerning the numbering of the constituencies, the number of deputies and senators, functioning of the electoral offices, proposals for candidatures, the possibility of association of parties and political alliances with each other only at national level and by protocol, provisions on permanent electoral lists, etc. One of the most important changes regards the electoral threshold, which represents the minimum number of valid votes required in order to get access to parliament. In 1990 the electoral law didn't provide any electoral threshold, which had as a consequence the emergence of an excessive number of political parties participating in elections (150) and also of parliamentary parties (12). For the 1992 and 1996 elections, the electoral threshold was 3 % and in 2000, it was raised to 5 % for political parties. The increase of the electoral threshold led to the decrease of the number of political parties (38 in 1996) and also of parliamentary parties (9 in 1996, 6 in 2000 and 2004). For political alliances, the threshold varies between 8-10 % depending on the number of members. The frequent changing of electoral legislation was determined especially by the fragile organization of political parties, by the volatility of their ideologies, the low level of political culture of the new political class and of the electorate and by the still hesitant character of Romanian democracy.

In 2003, the Constitution was amended in order to stabilize the political life and to ensure the compatibility of constitutional provisions with Romania's future accession to the European Union. Article 2, paragraph 1 of the Constitution enshrined the periodic, free and fair character of elections, which is essential for any fledged democracy, being guaranteed by the fundamental laws of different democratic countries and by a series of international treaties and conventions. Nevertheless, the electoral system didn't suffer substantial changes, the laws adopted in 2004 (Law no.370/2004 for the election of Romania's President, Law no. 373/ 2004 for Parliamentary elections and Law no. 67/ 2004 regarding local elections) only adjusted the old electoral provisions to the new realities. On 1<sup>st</sup> of July 2004, the Permanent Electoral Authority (AEP) was

set up with the aim of improving electoral management, by fulfilling the specific operations between the electoral intervals, monitoring the relevant activities of some state bodies and ensuring the uniform application of electoral legislation. The creation of this authority was also determined by some OSCE recommendations regarding the elections in 2000 and the deviations recorded at the previous elections<sup>4</sup>. On 1<sup>st</sup> January 2007, Romania joined the European Union and the first elections for the European Parliament were held on 25<sup>th</sup> November 2007. The organization of these elections is regulated by Law no. 33/2007, which provides that Romania's representatives in the European Parliament are elected through a closed-list proportional representation system. Romania is set up in a single electoral constituency and the distribution of seats is done in two stages<sup>5</sup>. In the first stage, the Central Electoral Bureau calculates the threshold and the national electoral coefficient and sets, in descending order of the number of valid votes, the list of political parties, organizations of national minorities, political alliances, electoral alliances and independent candidates who can be assigned seats. In the second stage, the mandates are distributed at national level between the political formations selected in the first stage, according to d'Hondt formula. Unfortunately, the European Parliament elections didn't get the proper media coverage and the election campaign focused mainly on national matters than on European issues, which resulted in a low turnout<sup>6</sup> and in the perception of E. P. elections as second-order elections.

The evolution of the political arena showed the need to reform the political class and to assure government stability. This led to the introduction of the uninominal vote for designating the members of Parliament and the County Council President. Therefore, in 2008, Law no. 35/ 2008 created a new electoral framework, modifying the provisions regarding the electoral constituencies, the organization of polling stations, the candidatures and the allocation of seats. The adoption of this system intended to generate an approximation of voters and elected officials and to raise the political accountability of the latter. It also aimed to encourage political parties to choose candidates on the basis of attractiveness to voters rather than loyalty to party leaders.

In accordance with article 5 of Law no. 35/ 2008, the deputies and senators are elected in uninominal districts by single vote, based on the principle of proportional representation. Each uninominal district is assigned one deputy mandate and one mandate of senator. The law provides the setting of 42 electoral constituencies nationwide (41 at county level and one for Bucharest metropolitan area) and one constituency for Romanians residing abroad. These constituencies are divided into uninominal districts (seats), with the ratio of 70,000 inhabitants for one representative of the Chamber of Deputies and 160,000 inhabitants for every Senator. The electoral rules retain a 5 percent threshold for parties seeking to be represented in parliament, and create an alternate threshold allowing for parliamentary representation of parties winning at least 6 seats in the House of Deputies and 3 in the Senate. Independent candidates need to win the support of at least 4 percent of the total number of eligible voters in their district in order to win a parliamentary seat. Ethnic minority parties that fail to pass the two thresholds for parliamentary representation are still entitled to one seat in the Chamber of Deputies provided they receive a minimum of 10 percent of the national average number of votes necessary to elect a representative to the Chamber.

The electoral system configured by the 2008 Law preserves some proportional elements in order to balance voter preferences, which allow, however, political parties to control to quite a large extent the electoral game. Thus, candidates who receive a simple majority (50 percent plus one vote) in a uninominal district will enter Parliament outright, provided their party passes either the 5 percent or 6/3 electoral thresholds. However, if no candidate manages to get a simple majority of votes in a given constituency, all of the votes obtained by the various candidates will be pooled by party affiliation at both the constituency and national levels. A "party list" will be drawn

up for each electoral competitor in a given constituency, comprised of all of the candidates listed in decreasing number of total votes received. Seats will go to the highest placed candidates from parties entitled to receive seats, based on an electoral coefficient. If all of the mandates in a given constituency are not assigned during this stage, remaining mandates will be assigned to parties based on their respective shares of the vote obtained nationally, again on the basis of party lists reflecting candidates' vote shares in their respective districts.

Law no. 35/ 2008 also modified Law no. 67/ 2004 concerning local elections. Hence, for the election of the County Council president, the electoral law provides a first-past-the-post single ballot, unlike the previous system which implied the election of the County Council president by the council members, after negotiations. Due to Romania's E. U. integration, the electoral law granted to Union citizens who are domiciled or resident in Romania, the right to vote and to be elected under the same conditions as Romanian citizens. Law no. 67/ 2004 provides limited access to local elective office, stating in article 4<sup>1</sup> paragraph 2 that Union citizens have the rights to be elected only as local or county councilors. There are also provisions aiming to ensure equality between men and women. Consequently, the electoral law stipulates that the lists of candidates should be drawn as to assure representation of both sexes.

It is argued that the introduction of the uninominal vote and the effects of the 5% electoral threshold solved to a certain extent the problem regarding the non-representativeness of the Romanian electoral system<sup>7</sup>. Thus, before the 2008 electoral reform, the votes cast to parties that failed to enter Parliament were redistributed – according to the higher rests system- to parties that exceeded the electoral threshold. So, in 2000 parliamentary elections, more than 20 % (more than 2.3 millions for the Chamber of Deputies and 2.2 millions for the Senate) of the electorate's options were redistributed to the parliamentary parties. In the 2004 elections, the number of wasted votes reached 11-12 % and, in the last elections, the percentage decreased to 7-10 % (depending on each chamber of parliament)<sup>8</sup>.

Supporters of the electoral system regulated by Law no. 35/ 2008 also claim that the rules will foster grassroots democratization by providing an opening for smaller, regionally-based parties with stronger ties to local electorates. It is also sustained that uninominal vote leads to a more rigorous selection of those who enter Parliament and, thus, contributes to the formation of veritable politicians. On the other hand, critics warn that this electoral framework will weaken the center and foster the breakdown of party discipline, creating an even more faction-ridden political scene. They also argue that through the uninominal vote, the political character of the Parliament is reduced, because of the emergence of new political elites<sup>9</sup>.

In our opinion, the main problem with the current electoral legislation is that despite the uninominal moniker, the system contains a number of elements from the old party-list system, including provisions that could mean that a candidate failing to meet the 50 plus 1 percent threshold might lose to rivals receiving fewer votes overall, but belonging to political parties with a larger national vote share. Therefore, even though the purposes of the electoral system provided by Law no. 35/ 2008 were noble, the system fails to accomplish the ideal of electoral justice.

## **2. Impact of electoral system change on political parties**

According to article 8 (2) of the Romanian Constitution, political parties contribute to the defining and expression of the political will of citizens. Thus, political parties must have an active role in order to ensure political participation of citizens which represents a fundamental value of democracy. Taking into consideration the important role played by political parties within a democratic society, we consider that it is crucial to analyze the development of the political system in the post-communist period.

In 1990, due to the free formation of political parties provided by the Decree-Law no.8/1989, the political life was dominated by effervescence and dynamics, 75 parties being registered at the start of the first democratic post-communist elections. The electoral law constituted an adequate mechanism for the explosion of multiparty system.<sup>10</sup> The replacing of the Decree-Law no. 8/1989 with Law no. 27/ 1996 on political parties, which imposed more stringent requirements for the establishing of a party<sup>11</sup>, had a strong reductive effect on the number of political parties. Hence, by the date specified by the law, namely 15<sup>th</sup> September 1996, at the Court of Bucharest there were 51 requests for registration, of which 8 were rejected, so that only 43 political parties were officially recognized<sup>12</sup>. The requirements for the registration of a party were further extended by Law no. 14/ 2003, which raised the minimum number of founding members to 25. 000, residing in at least 18 of the country's counties and Bucharest, but not less than 700 for each county and Bucharest. This condition is restrictive for national minorities who want to form a political party, considering that they are usually concentrated in certain counties of the country. For this reason, their organizations are assimilated to political parties (for example The Democrat Union of Hungarians in Romania), even though the condition regarding the 18 counties is not met. Currently, there are 47 political parties<sup>13</sup> registered at the Court of Bucharest.

At the first democratic elections, among the political formations which participated, there were historical parties (PNL- National Liberal Party, PNT- CD- National Peasant- Christian Democratic Party), new parties and a mass party- FSN (National Salvation Front). FSN was considered to be the unofficial successor of the Communist Party, as most of its members had been members of the Communist Party or had held offices in the communist regime. The elections on 20 May 1990 revealed the anti-communist attitude of the Romanian people and the desire to legitimise the new form of political organisation. The analysis of the 1990 elections underlined three main aspects<sup>14</sup>:

- the popular front (FSN) obtained the greatest legitimacy, being transformed afterwards into a political party;

- the historical tradition was not able, at least in 1990, to offer electoral support to the parties and candidates with political roots in the period between World Wars;

- the parties with ethnical support, as UDMR succeeded to gather almost in totality their ethnical supporters (7% for UDMR will be also found at the next elections).

The first democratic post-communist Parliament, who also fulfilled the mission of a Constituent Assembly, had a great impact on the future development of Romanian political, economic and social life. The return to the bicameral Parliament, in line with other European countries with long democratic traditions, was accompanied by a concentration of political doctrines and the emergence of many parties representing different social categories or even historical regions. Nevertheless, because of their fragile structure and still undefined ideology, many political parties didn't manage at that time to spur the electorate to vote for them.

In March 1992, few months before next parliamentary and presidential elections, a powerful scission took place inside FSN, dividing it into two formations of social-democrat orientation: FDSN (Democratic National Salvation Front, grouped around Ion Iliescu), which would later become the present-day PSD (Social Democratic Party), and FSN (led by the former Prime Minister, Petre Roman), which turned afterwards into PD (Democratic Party). The Romanian Party system was characterized for more than 15 years after the fall of communism by great instability and the dominance of the main successor of the communist party (i. e. FDSN, which became PDSR and then PSD after a merger with PSDR in 2001). The power of the Democratic National Salvation Front was also strengthened by the weakness, disunity and incoherence of the opposition. This allowed the dominant party to almost ignore the opposition parties, once in parliament. Therefore, in Romania, in the early 1990s, party competition wasn't robust at all, as

the communists still controlled the transition, the electoral alternatives were initially unclear and the opposition did little to monitor and constrain the governing parties<sup>15</sup>.

The robustness of the political party competition is vital for any democracy, because it enhances democratic legitimacy and accountability of the elected officials. There are several factors that have an impact on political party competition, such as electoral thresholds, district magnitudes and the type of ballot. A low threshold and a high district magnitude favor party proliferation, but may diminish the ability of political parties to polarize the electorate. On the other hand, higher thresholds and lower magnitude reduce the number of competing parties and promote the stabilization of the axes of competition at the price of greater disproportionality<sup>16</sup>. Regarding the type of ballot, it is argued that closed party lists give parties a greater control over candidate nomination, limiting the possibility of choice of the electorate. Conversely, open party lists combined with low thresholds and high district magnitudes may lead to a plurality of alternatives, that may not be differentiable to the electorate. However, the effects of these institutional mechanisms are not particularly straightforward in post-communist democracies and consequently, they don't have such a big influence on party behavior.

In our opinion, an important factor that has implications on political party competition is the existence of strong electoral cleavages. This point of view is also sustained by other scholars<sup>17</sup> who argue that strong electoral cleavages lead to stable and robust competition. Unfortunately, Romania like other post-communist countries, is characterized by the low development of social cleavages or even by the lack of such cleavages. This is the reason why Romanian political parties haven't manage to transmit the proper impulse to civil society, in order to determine people to get involved in the electoral process. After the 1989 events, even though there was an exacerbated manifestation of political pluralism, the emerging parties just copied the names of the political parties from Western Europe, without trying to identify the existing cleavages in the Romanian society and reflect them in their doctrines<sup>18</sup>. Thus, there is no wonder that Romanian political parties don't have stable ideologies and are unable to provide adequate electoral incentives. Moreover, if we analyze the development of political parties in the post-communist period, we remark that their ideological flexibility and political pragmatism paved the way not only for governing alliances, but also for electoral and political ones. However, despite the fact that Romanian political background is sprinkled with political and electoral alliances, history shows that these alliances didn't last for long after achieving their electoral goal. A possible explanation for this phenomenon is the excessive personalization of Romanian political scene, the alliances being organized around a pivotal personality. Hence, in a striking majority of cases, electoral and political alliances were created as "anti" to a certain political figure. Another explanation for the lack of sustainability of these alliances could be the fact that they focused more on criticizing the political figure against whom they were created, and less on offering to the electorate a viable alternative to government.

The first pre-electoral alliance after December 1989 was constituted in 1991, under the name of the Democratic Convention of Romania, on the basis of the powerful adversity towards FSN and its leader, Ion Iliescu. The alliance comprised three of the most important historical parties (PNȚCD, PNL and PSDR) and other political formations. The Convention presented and supported a unique platform and a single candidate for the presidential elections, Emil Constantinescu, who won the elections in 1996 against Ion Iliescu. On 7<sup>th</sup> November 1996, the Convention signed an agreement of electoral, parliamentary and governmental cooperation with USD (Social Democratic Union- comprising PD and PSDR) and on 6<sup>th</sup> December CDR signed another agreement of governmental stability with UDMR. This represented the first peaceful transition of power in Romania, in the post-war period. Because of internal conflicts and the economic crisis, the popularity of CDR eroded and this led to its disintegration. In the 2000

elections, the Convention (without PNL) didn't manage to pass the electoral threshold, in order to enter parliament. On 20 January 1995, after difficult negotiations, PDSR (led by Ion Iliescu), PUNR (National Humanistic Party), PRM (Great Romania Party) and PSM (Socialist Worker's Party) signed a protocol of political cooperation, which was called the "Red quadrilateral". In 1995, another electoral alliance for the 1996 elections was created, USD (the Social Democratic Union), comprising PD (former FSN, conducted by Petre Roman) and PSDR (Romanian Social Democratic Party). USD disintegrated and PSDR formed in 2000 with PDSR and PUR the Pole of Social Democracy of Romania, which won the 2000 parliamentary and presidential elections. Afterwards, PDSR and PSDR merged, creating PSD (Social-Democratic Party), which became the most important left-wing party.

On 28<sup>th</sup> September 2003, PNL and PD signed an agreement and the political alliance "For Justice and Truth" (DA alliance) was born. The "Justice and Truth" Alliance aimed at creating a powerful and coherent opposition against PSD and its candidate for the presidential elections, Adrian Năstase. The alliance didn't win the parliamentary elections, but succeeded in winning the presidential ones, Traian Băsescu being elected as president. After the 2004 presidential elections, the fervent supporters of the new president sustained that the new government, under the leadership of Traian Băsescu, may be the one that finally breaks with the post-communist trend of "simulated change" and radically engages in the long-delayed, proactive fostering of a democratic political culture in Romania<sup>19</sup>. In spite of the initial enthusiasm and belief that the alliance would bring the so much desired change in Romania, the alliance fell apart unofficially in 2007, when prime minister Călin Popescu Țăriceanu reshuffled the Government, without including the PD ministers. The disintegration of the alliance was also determined by the many conflicts between prime minister, Călin Popescu Țăriceanu, and president Băsescu, which were perceived as a source of governmental instability. Nevertheless, we must not forget that democracy doesn't mean uniformity and unanimity, but maintaining the balance between the three authorities (legislative, executive and judicial) and avoiding that one of them exceeds its powers. So, the eventual conflicts between a president and a prime minister should not be regarded in every situation as a sign of political crisis and instability, but as a normal democratic mechanism which averts the abuse of power of the two representatives of the executive branch.

After the dissolution the "Justice and Truth" alliance, PDL (the Democratic Liberal Party) was created by the PD and by former members of PNL. In order to counteract the alliance of PNL and PD, in 2004 PSD also formed an electoral alliance with PUR (Humanistic Romanian Party) and succeeded in winning the parliamentary elections. After a series of negotiations, PUR left the alliance and entered government with D. A. alliance and UDMR until 2006. After PD passed into opposition, PSD supported the PNL government till the 2008 elections. In 2008, PSD created a political alliance with PC (Conservative Part, the former PUR), PSD-PC, and won the parliamentary elections, entering to government with PDL. This alliance signed on 14<sup>th</sup> December 2008 a governing agreement with PDL (Partnership for Romania), which lasted till October 2009, when the alliance joined the opposition. The PSD-PC alliance lasted until February 2011, when PC formed another political alliance called the Centre-Right Alliance (ACD) with PNL. Nowadays, the government alliance consists of PDL, UDMR, PUNR (The National Union for the Progress of Romania) and the National Minority Group. On 5<sup>th</sup> February 2011, ACD formed with PSD the Social Liberal Union (USL), which is an alliance opposing PDL and president Traian Băsescu. It remains to be seen if USL will manage to convince the electorate and win the 2012 elections. The only political party which enjoyed a satisfactory progress was UDMR, taking into consideration that it succeeded to be in government for the most part of the post-communist period, playing the role of a pivotal party. This is due to the fact that UDMR has a loyal electorate, managing to pass

the electoral threshold, and that all the parties that have governed the country since the fall of communism, have needed UDMR to form a stable governing coalition.

As one can see, the evolution of Romanian political arena after December 1989 is quite bewildering, as it is marked by opportunistic reorientations of political parties and alliances between parties with apparently conflicting doctrines. Consequently, it seems that in Romania, political ideologies have no importance whatsoever, electoral success prevailing over voters preferences. Moreover, there are political parties (such as PDL) that have acquired a catch-all profile. For all this reasons, Romania is considered to be among the ex-Communist countries with greater partisan policy swings<sup>20</sup>.

In consequence, we remark in post-communist Romania a cycle feature of the electoral process that has an impact upon the behaviour of political parties. The link between the electoral process and behaviour of the parties is expressed mainly by<sup>21</sup>:

- enhancing the party activities, ideological restructuring and even political regrouping before the period of elections;
- expressing highly the political interest by possible candidates and abandoning the party ideology in favour of greater opportunities to accede into the Parliament;
- a coagulation around the political formations of business men and supporting them in a privileged way related to their electoral chances;
- constituting pre and post electoral alliances for accessing or exerting the executive power;
- intensifying the popular speech and strengthening the dialogue with the citizens.

Besides of the proportional representation system and the increasing of the electoral threshold, the activity of the political parties during transition period was strongly influenced by the communism legacy, more precisely, by the persistence of a deep post-communist/anti-communist cleavage that was kept alive by a powerful, unreformed successor communist party<sup>22</sup>. Not even the introduction of the uninominal vote produced significant changes on party behaviour. Because of the fact that communists never really left power, the official successor of the communist party (FSN) had the power to shape both the institutional framework and the substance of competition that took place within it. Therefore, the successor communist party was in position to control the political party competition and to make sure that the opposition remains feeble, which affected the process of the democratization. In the next section of our paper, we shall address the effects of the evolution of political parties and electoral legislation on voting behavior.

### **3. Voting behavior after the fall of communism**

After the fall of the communist regime, one could perceive the enthusiasm among voters, turnout in 1990 elections being almost 86 %. Since then, voter turnout has dropped significantly (58.5 % in 2004, 39.2 % in 2008<sup>23</sup>), which shows not only lack of interest in politics, but also discontent with the Romanian political class. There are, of course, several factors that influence voting behavior, such as education, socio-economic status, intensity of party identification, the type of electoral system, the level of satisfaction regarding the development of democracy and also, the performance of the governing parties. In our approach, we shall focus on the impact of the electoral legislation and the activity of political parties on turnout and voter preferences. Nevertheless, we shall not neglect the other factors, some of them being important predictors for voting behavior.

It is argued that electoral systems based on proportional representation (PR) favor voter turnout, because they ensure an equitable representation of the will of the electorate. Hence, PR tends to stimulate voter participation by giving the voters more choices and by eliminating the problem of wasted votes- votes cast for losing candidates and for candidates that win with big

majorities- from which systems using single-member districts suffer<sup>24</sup>. We agree with the fact that PR has an incentive effect on the electorate, but we consider it to be a weak predictor for voting turnout. To support our point of view, we invoke the case of Romania, where even though, the electoral system preserves elements of proportional representation, voter turnout continues to be low. Despite the electoral system change in 2008, which aimed to “personalize” voting and to create a rapprochement between voters and politicians, Romanian political parties still have fragile doctrines and fail to polarize the electorate and to determine citizens to get involved in political life. Moreover, studies show that because of the fact that Romanian party system is in a process of realignment, voting continues to be partisan to the same extent as before 2008<sup>25</sup>.

Voting behavior was also influenced by the staggering of parliamentary and presidential elections, which generated a shift from a soft semi-presidential system to a stronger semi-presidential one. The aim of the lengthening of the presidential term in 2003, when the Constitution was amended, was to make presidential elections less partisan and to diminish their influence over government and political life. However, for Romanians presidential elections have become first order, while the parliamentary ones have become second order elections. This fact is proven by the difference in voting turnout for the two types of elections. Hence, in 2008 voter turnout for the parliamentary elections was 39. 2 %, while for the presidential elections turnout was 58. 02 %. Romanians manifest disinterest for the European Parliament elections too, voting turnout being just 27. 67 %. This attitude of indifference towards elections for the European Parliament is understandable to a certain point, considering that the election campaign is focused mainly on national issues rather than on issues of European interest and the poor knowledge of Romanians about the UE institutions and their functioning<sup>26</sup>.

Howbeit, the major problem in Romania remains the lack of strong social cleavages that could strengthen and define party ideologies. The frequent changes of party policy make political parties untrustworthy and confuse the electorate. Besides, differences between political parties started to blur, as most of them tend to become catch-all parties. For these reasons, voters find it difficult to identify themselves with a certain political party and to choose between electoral platforms. Another factor that creates the perception of a high instability for the voters is political migration. In an attempt to stop this phenomenon, Law. No 393/ 2004 was adopted, which imposes politicians to declare their political membership by written statement, under the sanction of ceasing their mandate.

In other democratic countries, party system is shaped by the level of socioeconomic development. Romania, like other post-communist countries, is no exception: in the first decade after its transition to democracy, the main line of social cleavage is best portrayed as a democratic class struggle between the haves and have-nots<sup>27</sup>. Thus, it is argued that electoral choice depends heavily on the financial status of each voter. Scholars studying advanced democracies have attempted to demonstrate that changes in economic conditions under a given government affect an individual's decision whether to vote for the ruling party again at election time. To explain the manner in which economic conditions influence voting behavior, researchers use notions like pocketbook/sociotropic voting and retrospective/prospective voting<sup>28</sup>.

Pocketbook voting means that voting is influenced by individuals' assessments of their personal financial situations. Hence, if an individual feels that his or her personal financial situation worsened under a given government, he or she will be less likely to vote for the ruling party in the next election. Conversely, if the individual perceives that his personal financial situation improved, then he is more likely to reward the incumbent government by voting for that party in the next election. Sociotropic voting refers to the situation in which citizens take into account larger national economic conditions when determining for which party to vote. However, sociotropic voting is not necessarily some sort of altruistic calculus of the individual voter looking out for the

economic needs of the entire country, but instead may be based on the notion that a better national economy benefits the individual. Retrospective/prospective voting deals with the issue of whether individuals vote based on evaluations of the past or expectations for the future. So, it is sustained that the economic performance of the incumbent government will have an important effect on voters choice.

Considering these four notions in the study of voting behavior in several post-communist countries, scholars have found that even though voters have engaged in both retrospective and prospective pocketbook/sociotropic voting to some extent, personal financial status and assessments of government performance are rather weak predictors for voting behavior<sup>29</sup>. In addition, it is argued that the level of satisfaction with the development of democracy is statistically significant. Thus, people who vote according to their perception of the degree to which democracy has developed, reflect a type of sociotropic economic voting. Analysing the cases of some former communist countries<sup>30</sup>, it has been discovered that voters who felt dissatisfied with the development of democracy in their countries were inclined to vote for the ex-communist parties in opposition, and that those who believe that the establishment of a free market economy is right and those who were satisfied with the development of democracy, supported the pro-reform parties. If we consider the case of Romania, we notice that voting tended to be negative, being used as an instrument of punishment for ruling parties which didn't manage to fulfil the electorate's expectations. This fact reveals that voting in Romania was and is mainly retrospective, voters choice depending on government performance. Financial status also has a strong impact on voting behavior, but in Romania an important predictor is the attitude towards the functioning of democracy's mechanisms. The protests that took place in late 2011 and early 2012 showed the deep dissatisfaction of a large part of the Romanian people with the anti-crisis measures taken by the state and with malfunctioning of democracy. For the first time in many years, Romanian people dropped the passive and contemplative attitude and made its voice heard.

Consequently, for the Romanian people it doesn't matter whether politicians are the result of an uninominal vote or of a party list system. What counts for the electorate is that the decisions taken by the elected officials serve people's interests. Hence, Romanian political class must use its best endeavors to find viable solutions for people's problems, in order to gain voters' trust and to attract as many votes as possible. We shall see in the 2012 parliamentary elections if political parties are able to face the new challenges, and if their electoral platforms live up to people's expectations.

#### **4. The contribution of the electoral system to the strengthening of democracy. Conclusions**

The electoral system forms the core of Romania's transition towards an authentic democracy. Stressing the importance of electoral law, author Elena Simina Tănăsescu stated: "The quality of electoral laws is of great importance, as it may be a more important factor in determining a civic attitude of citizens than any system of penalties, however harshly. A genuine democratic electoral system, inspired by the real intention of those who hold the power, is likely to provide the basis for citizen's civic attitudes and to enjoin an electoral conduct on political parties and electoral alliances which participate in elections<sup>31</sup>".

Even though, important steps towards a veritable democracy have been made, there is still to be done. The evolution of Romanian electoral system in the post- communist period is part of the tendency to unify the political markets<sup>32</sup> at the European level, by increasing the electoral threshold and reducing the number of parliamentary parties. The changes of the electoral system, especially in 2008, were intended to reform the political class and to incite people to participate in the electoral process. Unfortunately, it seems that Romanian political parties are not able to gain

the confidence of the electorate and to engage in a robust party competition. The major drawback to the process of democratization was the persistence and dominance of the communist party's successors. Thus, the Romanian FSN (National Salvation Front) neither exited from power, nor transformed into a true moderate democratic party, staying in power although the communist regime had formally collapsed. This fact heavily affected the robustness of party competition and the existence of a strong and coherent opposition. The lack of a stable and clear opposition to the ruling party results in a lack of policy differentiation, which impacts on voters' ability to distinguish between different political programs. As stated before, the existence of a powerful opposition, a robust party competition and active involvement of voters in political life are crucial for any democratic society. Therefore, if the conditions for their existence are not met, we cannot talk about a genuine democracy in Romania.

In conclusion, improving the electoral system is not enough in order to build a full-fledged democracy, but must be accompanied by the existence of political parties with clearly defined ideologies and by a greater participation of citizens in the electoral process. So, political actors must not spare any effort to educate voters, to arouse their interest in politics and to engage them in the consolidation of democracy. Building democracy after decades of simulating elections is not an easy task, but Romanians must accept and learn from their communist past in order to create a better and brighter future for their country.

#### **Acknowledgement:**

„This work was supported by the strategic grant POSDRU/CPP107/DMI1.5/S/78421, Project ID 78421 (2010), co-financed by the European Social Fund – Investing in People, within the Sectoral Operational Programme Human Resources Development 2007 – 2013.”

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<sup>1</sup> Claudia Gilia, *Sisteme și proceduri electorale (Electoral systems and procedures)*, C.H. Beck Publishing House, Bucharest, 2007, p. 143, quoting Antonie Iorgovan

<sup>2</sup> For further details, consult the Pro Democracy Association's Report, *Istoria unui dezacord: Unionismul (History of a disagreement: The Uninominal Vote)*, pp. 16-17, available online at [http://www.apd.ro/files/publicatii/brosura\\_uninominal.pdf](http://www.apd.ro/files/publicatii/brosura_uninominal.pdf)

<sup>3</sup> O.U.G. no. 63/ 26<sup>th</sup> of May 2000, O.U.G. no. 129/ 30<sup>th</sup> of June 2000, O.U.G. no. 140/ 14<sup>th</sup> of September 2000, O.U.G. no. 154/ 10<sup>th</sup> of October 2000, O.U.G. no. 165/ 13<sup>th</sup> of October 2000

<sup>4</sup> Office for Democratic Institutions and Human Rights (OSCE) Romania- Presidential&Parliamentary Elections, 26 November and 10 December 2000 Final Report, Warsaw, 15<sup>th</sup> January 2011, p. 5-7, available online at <http://www.osce.org/odihr/elections/romania/16256>

<sup>5</sup> Article 21 of the Law 33/2007

<sup>6</sup> According to data provided by the IDEA, in 2007 only 29.47 % of Romanians participated in elections and in 2009, voter turnout was 27.67 %. [http://www.idea.int/vt/country\\_view.cfm?id=189](http://www.idea.int/vt/country_view.cfm?id=189)

<sup>7</sup> For an analysis concerning the 1992-2004 elections which illustrate the non-representativeness of the electoral system, consult Cristian Preda, Simona Soare, *Regimul, partidele și sistemul politic din România (Regime, parties and political system in Romania)*, Nemira Publishing House, Bucharest, 2008, p. 96-98

<sup>8</sup> See Anca Parmena Olimid, *Tendința de unificare a piețelor politice. Aspecte legale și politice privind evoluția reformei electorale în România (1990-2008)- The tendency of unification of political markets. Legal and political aspects regarding the electoral reform in Romania (1990-2008)*, Revista de Științe Juridice no. 3/ 2009, pp. 100-107, Craiova, p. 106-107, available online at <http://drept.ucv.ro/RSJ/Articole/2009/RSJ3/A11OlimpParmena.pdf>

<sup>9</sup> For an analysis on the advantages and disadvantages of the plurinominal and uninominal systems, consult Claudia Gilia, *Reformarea sistemului electoral românesc. Considerații privind noile reglementări în materie electorală (Romanian electoral reform. Considerations on the new electoral regulations)*, Revista Studii de Drept Românesc, an 20 (53) No. 3-4/2008, July-December, p. 303-305

<sup>10</sup> Cristian Bocancea, *Meandrele Democrației. Tranziția politică la români (Democracy meanders. Political transition in Romania)*, Polirom Publishing House, Iași, 2002, p. 163, quoted by Alexandru Radu in *Alegerile RP și multipartidismul în România. O confirmare a teoriei duvergeriene (Proportional representation elections and multiparty in Romania. A confirmation of Duverger's theory)*, available at <http://www.sferapoliticii.ro/sfera/162/art01-Radu.php>

<sup>11</sup> Article 17, paragraph 1, point c) of Law 27/1996 provided that the constitutive act of a political party had to contain the signatures of at least 10.000 founding members, residing in at least 15 of the country's counties, but not less than 300 in each county

<sup>12</sup> Data mentioned by Alexandru Radu in the work cited previously

<sup>13</sup> See <http://tmb.ro/index.php/partide-politice>

<sup>14</sup> Consult Lucica Matei, *Democracy and Politics. Romanian mechanisms, realities and electoral developments*, *Verejna Sprava a Spolocnost*, Nos. 1 & 2, 2008 & 2009, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1588141](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1588141), quoting Niță, M., *Marketing and electoral management*, Ed. Universitas XXI, Bucharest, Romania, 2000, p.53.

<sup>15</sup> Anna Grzymala-Busse, *Authoritarian determinants of democratic party competition. The communist successor parties in East Central Europe*, *Party Politics*, Vol 12. No.3 pp. 415–437, Sage Publications, 2006, p. 420

<sup>16</sup> Idem, p. 421, quoting Moraski and Lowenberg

<sup>17</sup> Herbert Kitschelt, *The Formation of Party Systems in East Central Europe*, *Politics and Society* 20, 1992, p. 7–50, Peter Mair, *Party System Change: Approaches and Interpretations*, Clarendon Press, Oxford, 1997

<sup>18</sup> For arguments supporting this fact, consult Dan Claudiu Dănișor, *Despre cauzele și soluțiile impasului sistemului constituțional românesc (About causes and solutions of the Romanian constitutional system deadlock)*, *Noua Revistă de Drepturile Omului nr. 2/2009*

<sup>19</sup> Peter Gross, Vladimir Tismaneanu, Alina Mungiu-Pippidi, *The End of Postcommunism in Romania*, *Journal of Democracy*; Apr 2005; 16, 2; ProQuest Central (pp. 146-162), p. 160

<sup>20</sup> Grigore Pop-Eleches, *A party for all seasons: Electoral adaptability of Romanian Communist successor parties*, *Communist and Post-Communist Studies* 41 (2008) 465-479, p. 478

<sup>21</sup> See Lucica Matei, *work cited previously*, p. 6

<sup>22</sup> Florin N. Fesnic, Oana I. Armeanu, *Party System Change in Romania: Institutional versus Structural Explanations*, Prepared for delivery at the Annual meeting of the American Political Science Association Washington, D.C., September 4, 2010, p. 3

<sup>23</sup> Data provided by the Institute for Democracy and Electoral Assistance (IDEA) [http://www.idea.int/vt/country\\_view.cfm?id=189](http://www.idea.int/vt/country_view.cfm?id=189)

<sup>24</sup> Arend Lijphart, *Unequal Participation: Democracy's Unresolved Dilemma*, *American Political Science Review* Volume 91(1), pp. 1-14, 1997, p. 7

<sup>25</sup> Florin N. Fesnic, Oana I. Armeanu, *work cited previously*, pp. 8-9

<sup>26</sup> For details regarding the factors that influence voter turnout in Romania for the EP elections, see Elena Cîncea, Ciprian. I Cioroianu, *The importance of electoral education in the context of Romania's E. U. Membership*, International Symposium „ Performance and Innovation in Education”, 28-29 October 2011, Dimitrie Cantemir University of Târgu Mureș, Risoprint Publishing, Cluj-Napoca, 2011, pp. 77- 84, available at <http://ssrn.com/abstract=2011738>

<sup>27</sup> Florin N. Fesnic, Oana I. Armeanu, 2010, p.12, quoting Lipset

<sup>28</sup> For details, consult Marcus A. G. Harper, *Economic Voting in Postcommunist Eastern Europe*, *Comparative Political Studies*, November 2000, 33: pp. 1191-1227, Published by Sage, p. 1198; the online version of this article can be found at: <http://cps.sagepub.com/content/33/9/1191>

<sup>29</sup> Idem, p. 1211- 1219

<sup>30</sup> Lithuania, Bulgaria and Hungary, Marcus A. G. Harper, 2010, p. 1218

<sup>31</sup> Claudia Gilia, 2008, p. 307

<sup>32</sup> For details regarding the contemporary trend of “unification of political markets”, consult Anca Parmena Olimid, *work cited previously*, p. 100.

## ORIGINAL PAPER

Irina Marina LAZĂR

### Considerations on the democratic values of public administration in Romania before and after the fall of communism

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**Abstract:** *Initially perceived as “a Leviathan representing a threat to the citizens”, the public administration in Romania has undergone a complex process of reform and modernization, followed by the transition from an administration with discretionary powers regarding the “administered ones” (during the communist regime), towards an open and transparent administration, involved in the process of protecting citizens’ rights (as has been attempted in the past two decades).*

*In the first stage of this study, we shall undertake the task of paying special attention to the organization of state power during the communist period, using the democratic values (utopian or not!) guaranteed to the citizens by the state and the public administration as a frame of reference. The analysis of the democratic values of that period betrays an irreconcilable duality between, on the one side, the political speeches and the party’s propaganda and, on the other side, the reality experienced and perceived by the citizens through first-hand experience. The 1989 Revolution came as a catalyzing solution to both realities, dividing the former means of structuring the relation of power between the citizens and the administration.*

*The second part of the study will analyze the way in which the democratic achievements in Romania have evolved, on the aspect of implementing of certain principles and values which would characterize a good administration, from an European perspective. The modernization of the public administration has been a difficult accomplishment, made through conquering hostile redoubts of the rigid and corrupt structures of the system, of the collective mentality and furthermore, of deficient policies, following long delays and sinuous evolutions. Far from being over, the reform process is merely a rough sketch as the project of the Administrative Code of Romania has been formulated at the end of the year 2011. The natural question that follows is what has been the degree of transformation of Romania’s public administration, in terms of viewing it as an ally of the citizen?*

**Keywords:** *democracy, values, public administration, Romania, rights.*

***I. General view on the “democratic values” of public administration during the communism period***

By nature, the public administration is indestructibly tied to the political power, with “political power being the head, and the administration the arms”, as Francois Vivien stated in 1845. That is why we can express, in a broad sense, that the organization of power in the state and the way in which the law establishes the relation of power between the authorities and the citizens represents the foundation of democratic values of any state and implicitly, the frame upon which the democratic values of public administration will be layered.

***A. The utopian version of the protection of the citizens’ fundamental rights, as seen from the slope perspective of state authorities***

The functioning of a totalitarian state is a never ending subject, which can be approached from many perspectives: political, sociological, demagogical, psychological, etc. That which constitutes the subject of the present research is the perception of the public administration concerning its relation with the citizens and the way in which they were involved in the public decision making process and the valorizing of so called principles of socialist democracy.

The demagogic creed of the state authorities before the 1989 Revolution was brought on by the fact that the base of socialist democracy was the power of the working class, in alliance with the working peasantry and other social categories. The doctrinaire speeches and the political acts of the time emphasized with great enthusiasm the attachment towards the values of an authentic democracy in which the socialist public opinion reflected the concordance between individual and group interests and the general social interest and foreshadowed the transformations that would follow in the context of edifying the multilaterally developed socialist society, during its advancement in the communist direction<sup>1</sup>. In relation to the perpetuation and the consolidation of democratic traditions, it is stated that “the historical experience has proved that the role which the expression of public opinion and the participation of the citizens to the administration of public problems constitute the change factor influencing the state power, there lying the roots and the implications of democracy”<sup>2</sup>. This statement is especially applicable nowadays, but the context of its emergence gives it purely a declarative value, even utopian.

The evolution of socialist democracy highlights the active role of the masses, and the appearance and development of the socialist public opinion was seen as a conscious process, unfolding under the direct leadership of the party, which became the engine for mobilization and participation of the masses to the local and national decision making process. “The party rules the society during a long and permanent dialogue with the masses of working people, along which a continuous flux of ideas and experiences is produced, both from the party towards the masses, and from the masses towards the party”<sup>3</sup>. Under such a vision, the public opinion represented “a fundamental element in exercising the functions of the political system, as well as an important means of political and ideological education”<sup>4</sup>, which will play the part of mobilizing element of the masses’ conscience.

Once the mass had been educated and stuffed with the ideology of “communist democracy”, then came the need, with the scope of preserving democratic values, for an imposing actor to play the father and guardian part, both in regard to the public relations of power between the authorities and the citizens, and to the private and family relations of the individuals. Paradoxically or not, this actor was the entire Communist Party, and the “existence of such a power and decision core ensured a gnoseological component of the political decisions, as it concentrated all the decision factors, thus ensuring a scientific governing of the country”<sup>5</sup>.

For the recollection’s sake we will show a paragraph from Nicolae Ceaușescu’s speech, given at the 50th anniversary of the Communist Party: „ in the context of our customs – as natural – in the conditions of political and socio-economic life of all fields of activity, the communist party

occupies a central part. The Party has the task of uniting the efforts of the entire people with the aim of accomplishing the socio-economic development program of the country, of unifying and crystalizing the scientific view on the evolution of our society. The Party has the task of organizing all the categories of the nation with the purpose of reaching the established goals, thus ensuring the most judicious use of the human and material potential of the country as possible. With this purpose, the party endlessly perfects the categories of organisation and social leadership, at pace with the changes that take place in the society, with life's demands, taking the measures which are needed to eliminate all that may hinder the progress of the socialist construction"<sup>6</sup>.

Not only the political speeches of the leader of the Communist Party praised its role and importance in the life of citizens, but also respected public law authors of the time: „directly leading the process of development of socialist democracy, our party insists upon the intensification of participation of all the members of our society at the debate and elaboration of the internal and external policy, at the adoption of the most important decisions and measures which perfect society, so that the progress of society may be, in an increasingly manner, the result of wisdom, of collective contribution to the state of the entire nation. Not only is it an aspect of deepening democratism in the life of the state, but also a proof for the evolution of civic responsibility – in all of its valences: juridical, moral, political – of all members of society, including the state organs.”<sup>7</sup>

The conducted meetings which the party organized both at a central and local level, in order to promote a so called debate with the popular masses on certain political, economic, scientific issues, or those of socio-cultural life, etc. were considered ultimate proofs of the socialist society democratization. It was thought that „these manifestations shall create the conditions for the active and effective participation of the working people to the creation and accomplishment of the general leadership policy of society, for the increasingly wider valuing of the creative experience and wisdom of the masses, for the affirmation of the creative capacity of all the citizens in the name of a flourishing socialist country.”<sup>8</sup>

The meaning which socialist democracy gained regarded the valorification of human potential, through imposing a process of perfecting socio-human actions, through the polyvalent involvement of society members, which lead to the „multilateral development” of individuals, but also of society, in its entirety. The multilateral evolution of the new man whose creation was sought after the assertion of his part in constructing social progress, the elevation of his level of conscience define him as a complex personality, revolutionary educated, capable to actively participate to the leap that society will take on its firm path towards communism<sup>9</sup>. Through his continuous perfection and his participation to social progress, both as an agent and as a subject, the new man represented the axis of social growth.

From the party's perspective, „socialism and democracy are unseparable; starting from this vision, from the idea that the new society is called upon to ensure the widest rights and democratic freedoms for the working people, their active participation to the governing of the country, of the entire political party, our party acts consistently for continuous perfecting of the ways and methods of organization and leadership of the entire society, for the deepening of socialist democracy in all the areas of social life”<sup>10</sup>.

The participation of the citizens, the essential attribute of democracy, is established in the fundamental document, and also in the time's legislation. Hence, the 1965 Constitution stated in article 27 the participation of popular organizations to political, economic and social life, as well as to the community control, and Article 34 established the right to petition of the citizens, which was – in theory – a way in which they could pressure the authorities of central or local administration. The constitutional provisions are followed by legal regulations, which established more means of popular control on the activities of state administration organs. As an example,

there are the notices which the citizens' organizations could issue for different administrative actions, or the fact that they could inform the competent state organs to take the necessary measures when they observed wrong doings of the public activity<sup>11</sup>. However democratic these provisions may sound, their „little” flaw was that in practice they became futile and at the most, they would coagulate the individuals in a shapeless mass inside the public space.

Consequently, the democratic values of society and democracy itself was built starting from the „masses”, and the individuals had no rights except by virtue of their affiliation to the groups that were controlled and manipulated by the state through the central party. Equality, in the name of which the equalization and destitution of the individual represented the essence of socialist democracy, the foundation of man's juridical and political position in society and the guaranty of his rights and freedoms<sup>12</sup>.

Although the political and social projects proposed by the socialist and communist doctrine have led to the rise of social solidarity, the historical experience has proved that this situation has been, in fact, an illusion made to hide the individual alienation to which the citizens had been subjected for some decades. The method of the communist propaganda, which displayed humanist principles of justice, equality and multilateral fulfillment was seconded by the practice of intimidation, constraint, blackmail and terror<sup>13</sup>. A totalitarian regime was enforced and consolidated, where dictatorship had, formally, the face of a „popular democracy”, and the citizens had freedom, but only inside the boundaries established by the state. The citizens, whose rights were „respected”, from the socialist point of view, were they were obliged to strictly respect the official ideology, „any deviation being counteracted with a wide array of means, according to the intellectual condition of the oponent, to his endurance and, sometimes, even to his status/ social relations – sign of the fundamental corruption characterizing the system”<sup>14</sup>.

### ***B. The citizens' perception of having their fundamental rights protected by the public administration***

Beyond the emphatic speeches on the democratic values of the communist society, the characteristics of real communism have led to the disappearance of the multi-party system, the seizure of political power by the Communist Party, the destruction of social, juridical and political traditions of the states where a soviet type government was enforced, to the displacement of the center of power from the army towards the police<sup>15</sup>, nationalization of economy and of all categories of private property, as well as the use of terror and repression against its own population, with the goal of enforcing a strict organization and preventing and punishing any possible social dissatisfaction of the people. Repression was therefore used as an instrument of peace and equality among the citizens<sup>16</sup>.

One of the ideals of communist “democracy” was set upon the evolution of social solidarity, “accounted for as a mandatory result of the removal of class exploitation which would be continuously perfected by the conscious efforts of all members of society”<sup>17</sup>. The communist society excelled by proclaiming the well-being of the community, which would have the precedence on individual rights. The citizens had got used to having a submissive attitude, or at best, a passive attitude in relation to the authorities, with the latter growing more and more apart from the problems they were obliged to solve<sup>18</sup>. The obedient and passive position was not the reflex that came from a lack of civic spirit, but as a consequence of the fact that the communist method of establishing social well-being and the powerful propaganda which sustained it (and constantly invoked democratic principles such as equality, justice, multilateral development, individual or group participation, either spontaneous or organized<sup>19</sup>) was reinforced by the practice of intimidation, constraint, blackmail, and “proletarian dictatorship”.

Subsequently, this so-called „popular democracy” ended up being a burden, endowing citizens with freedom solely within the strict and restricting boundaries enforced by the state, coercing them to „rigorously abide by the official ideology, any deviation shall be repressed through a wide range of means, depending on the intellectual status of the offender, his resistance and, on occasion, even on his social status and/or liaisons”<sup>20</sup>. This led to the development of an outright social schizophrenia, forcing individuals to unconditionally accept and defer to censorship and to the constant restrictions of their fundamental rights, which were dictated, ironically, in the name of democracy. The infrequent hints of democratic values (such as freedom of expression or of conscience) were expressed solely in private, under the constant fear of surveillance by the political police (a department of the State Security), who could impeach an individual for any remark against the regime.

In order to harbor this atmosphere of widespread schizophrenia and alienation devised in the name of democracy, countless institutions intended to provide the masses with the means to engage in the organization of social life emerged and, implicitly, the influence to form an efficient public opinion. E.g. : institutionalizing general assemblies of laborers into the leading forum of socialist unions; establishing councils and committees of laborers as deliberative bodies of the socialist unions, centers and ministries; creating workers’ councils meant to supervise the economical and social activity; establishing economic planning committees in every county and in Bucharest, founding authorities with a double association (both to the party and to the state), representative democratic forums, whose main support was the collective contribution of laborers; introducing the practice of subjecting the main bills and resolutions to public debate; meetings between the General Secretary of the Party and the leaders and workers from different fields; regular deliberations/discussions between specialists and other workers organised locally and nationally; the expansion of the role and functions exerted by the supreme government body in the state, The Great National Assembly ; establishing The Socialist Union, the largest permanent political body, which had a revolutionary, democratic and representative character and also acted as an organizational/bureaucratic means of uniting the political and social forces which drove our socialist nation; increasing the attributions of collective organizations and enacting laws in order to include their representatives in the governing bodies of the socialist unions, of centers, ministries and committees or executive offices of socialist unions – on a higher level, this is achieved through admitting some of these representatives into the government; expanding the functional autonomy of popular councils and extending their jurisdiction in solving local issues; founding the congress of representatives of popular councils and the conferences of presidents of popular councils<sup>21</sup>.

The immediate consequence of these actions, apart from the establishment of so-called democratic values and expressing general interests/concerns, was (the emergence of) „social atomisation and interpersonal wariness ( both an inability and an unwillingness to cooperate), along with the virtually complete dissolution of civil society”<sup>22</sup>. It is not less true that this social atomization can be regarded as a natural consequence of the terror fostered by the communist regime, but also as an abnormal, but real/undeniable nevertheless, consequence/effect of democracy, as Alexis de Tocqueville<sup>23</sup> points out. He reckons that individuals, having confidence in their capacities and in their right to seek social accomplishment, tenaciously pursue their own personal aims, fighting within legal boundaries for their public recognition. Conversely, this amplified/misrepresented individualism can/may lead to selfishness/self-centeredness, preventing individuals from attending to anything besides their own self-interest and scaling down communication and solidarity to mere hollow concepts, serving the sole purpose of fostering a crooked and faulty democracy<sup>24</sup>.

## **II. *The transformations underwent by the public administration in Romania during democratization***

The accomplishments of Romanian democracy, in regard to the implementation of certain principles and values inherent to a proper administration, were achieved with some difficulty, through conquering the hostile redoubts of the system's rigid and corrupt structures and of the collective mindset and, above all that, through overcoming faulty policies, after a long period of delays and convoluted evolution. The Romanian political elite did not prove itself flexible enough to ensure the swift development of democracy.

One fact that should be clearly understood is that „democracy is a mere component of the process of evolution, something that becomes a goal towards which people aspire and not something that is spontaneously achieved. In this context, the law is a regulator, not an engine, of social life, which helps in creating social realities, especially in a democratic society”<sup>25</sup>. The process of democratization depends on certain defining variables and on the intervention of public institutions, which need to properly function in order to allow society to achieve its aspiration towards freedom through a reinforced political and administrative system<sup>26</sup>, and these institutions need a functioning state, capable of managing democracy. This is the main peril which stems from the democratic values of the state as a whole and of the public administration specifically : they are not established or proclaimed through speeches and abstract principles circumscribed by laws, but are experienced in the daily lives of citizens, on every level.

### **A. *The modernization steps of public administration during the post-communist period***

In the aftermath of the events in December 1989, the entire Romanian society entered a legislative and institutional labour, which aimed, first of all, to remove the consequences of communism and only afterwards, by means of reforms, the implementation of values for a positive administration was intended. The public administration reform started in the 90's (still in plain process today), tries to engrave the European understanding of public administration not only on a declarative level, as principles and abstract values, but especially in a practical sense.

In Romania, the process of assimilating the values imposed by a good administration, is divided into three time frames: first step, between 1990 and 2000 was characterized by a state of uncertainty and confusion, especially during the first years after the fall of communism. In this period, the attempt of creating the pillars of a democratic society was made. The initial reforms for renewal of public administration were both of structural and functional nature, and they peaked, as professor Ioan Alexandru used to say, in a „change of genotype”<sup>27</sup>. The most important law passed during this period of time, with the „democratization” of public administration in mind, was Law no 69/1991, the frame law of public administration.

The second stage, beginning with the year 2000 to 2007 (the year of adherence to the European Union) was marked by a galloping intensification of public administration reforms, with the purpose of calibrating it to the European requirements. During this time, the statutory law regarding openness and transparency: Law no. 544/2001 concerning the free access to public interest information, Law no. 182/2002 concerning the access to classified information, Law no. 52/2003 regarding decisional transparency and G.D. no 564/2006 regarding the participation of the public to the decisions concerning the environment, as well as the Law of administrative contentious no. 544/2004.

Finally, the third step comprises the period of time following the adherence to the European Union, which was characterized by a slowing down of the reform processes rhythm, with the recent years lacking substantial improvements to the already existent laws regarding transparency and free access to public interest information. The specific alterations which some

bodies of law have undergone, have not given a unitary sense to the initial reforms from the preceding period.

Professor Ioan Alexandru analyzed the reforms in public administration by periods of five years, in the following manner: „during 1995-2000 in Romania we can speak of a sieged state, during the years 1998-2000 we can speak of sub-administration or non-administration, and beginning with 2001 we can speak of a weak administration”.<sup>28</sup> The analysis stops at the years 2004-2005, when, in the context of Romania's adherence to the European Union, the wheels of the administrative machine started turning. Therefore, the 2004-2007 time frame can be considered (by the same reasoning) as a time of mobilization, characterized by legal adjustments, with the aim of harmonization with the *acquis communautaire*. Unfortunately, the period of time following the adherence was characterized by a stagnation of the administration “reform” process, and even further, doubled by the effect of the economic crisis, the administration's crisis got deeper. In spite of the actual progress achieved through the initiated reforms and in spite the fact that, formally, the Romanian legislation comprises all the values and the principles of a good administration, there are a number of problems which survive in the practice of public administration's institutions.

A part of the Romanian doctrine consider that “the public administration reform is founded on solid principles, such as: separation of political and administrative positions, creation and reinforcement of a civil servants core selected on criteria of carrier, professionalism and political neutrality, decision making by the authorities closest to the citizens, decisional autonomy, decisional transparency, simplification of administrative procedures, respect towards the citizen, delegation of certain prerogatives, decentralization of certain services and the protection of the citizens' rights and freedoms<sup>29</sup>.”

Contrary to this opinion, we are of the opinion that, to state that Romanian law answers to the requirements of a good administration, from the European perspective, it does not suffice for the principles and values that it puts forward to be provisioned by certain bodies of law. Moreover, the laws must be observed and applied in order to gain substance, to the contrary the principles of good administration being mere shells devoid of content.

## **B. Conclusions and prospects**

After more than two decades of reforms underwent in order to democratize public administration, one could concede that this process is far from being over. Moreover, some progress which has been made was merely formal and points out to the discrepancy between political power and civil society, this dissonance being even more conspicuous when it comes to public administration. Generally speaking, democracy might be defined as the balance between political power and civil society, so it is only natural that, when one of these two forces is feeble, the other one becomes prone to excess and abuse. This is easy to notice through observing the evolution of the distribution of power during periods of reformation, which is the most accurately depicted through the social perception of public administration. Polls and various warnings coming from the media reveal the fact that Romanians have little confidence in public administration, which can only worsen its crisis. The fact that, in many cases, people tend to develop an attitude of „tolerance towards bad administration”<sup>30</sup> is even more disquieting, since citizens end up getting adapting to this situation, ceasing opposition, this stance being in itself dangerous, since it is easily adopted and defines the political and administrative culture of a state<sup>31</sup>.

The current state of Romanian administration, defined by a lack of professionalism and by insecurity, has led to „the downfall of administration, which had been already tainted by centralism and bureaucracy”<sup>32</sup>. There are certain authors<sup>33</sup> who have pointed out that the goals of the reform of/in public administration were, in many cases, merely strategic or political objectives,

and that the entire process of reconstructing the local public administration boiled down to simply „embellishing” it through adopting certain normative acts in accordance with the European model of public administration. Despite this, the core issues in the matter of Romanian public administration remain critical, since neither institutions/authorities, nor citizens have expressed responsiveness or receptivity towards the thorough reformation of some institutions and (legal) procedures.

In order to properly function, the administration needs the citizens' support, in the same way that the citizens depend on the services provided by the administration. So as to best of consistency, quality and efficiency upon the measures taken to support the reinforcing of democracy of administration, one must first of all work on adjusting the balance of power between the citizens and public administration<sup>34</sup>. This readjustment must be made through education, since excessive power acquired by the public administration during the process of democratization can only be genuinely subdued, restrained and even censored by well-informed, educated citizens. This crucial solution towards a solid and viable reform may seem abstract, but it embodies the plague inflicted on the collective mind of the Romanians by the communist regime. Without overcoming ignorance, obedience and even the enmity towards actively contributing to building and expressing the citizens' best interest, we shall keep establishing an unstable ground work and we can expect, at the most, only feigning the process of reforming and reinforcing democracy. Weary of simulating democracy under the communist regime, but even more weary of the degenerate results of misunderstood and poorly applied democracy, we are finally coming to understand that democracy primarily, and, more specifically, administrative democracy can be attained only through education<sup>35</sup>.

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## ORIGINAL PAPER

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### Influences of the transition period on administrative-territorial organization of Romania

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**Abstract:** *Territory is an important criteria in the definition and operation of a state. The state does not exist outside and does not work well with an underdeveloped area. Administrative division of the state interests equally, as both state power and local communities, there by taking a load of social and political importance. State seeks primarily to the administrative-territorial structures that create them can more easily manage and govern society. This was exacerbated during the communist era when power was concentrated in the hands of one person (dictator) and the company subject to one-party doctrine. It is a truth with axiomatic value that in a state can't exist only central government agencies. This is relevant when talking about democratic states because the communist experience has shown us otherwise. Although public administration included both central bodies that watch over the general interest, that interest is merged with the Communist Party, were listed various organs of local administration, however, the authority of the central competency were enslaved. State control and manipulate the entire administrative apparatus. Changes that have occurred in the Romanian communist regime once their imprint on the administrative-territorial state. During the communist regime tried to organize the territory in terms of administrative regions, districts and communes, copying the Soviet model, but this model was quickly abandoned, being reintroduced counties, cities, towns and villages, the organization has continued to today. After two decades of transition, the administrative organization of the Romanian territory issue raises many issues including the introduction of regions as administrative territorial units. They are regarded with scepticisms, is correlated with the communist period, although experience has shown that European countries impose regions is the path to progress.*

**Keywords:** *territory, administration, Romania, organization, regions.*

Any territory to be controlled must be divided. The division is an attribute of the exercise of power. Changing political code was almost everywhere accompanied by new rules and territorial divisions<sup>1</sup>. Administrative division of a country, achieved through legislation, is an element of the superstructure of cardinal importance, because the system brings the subsystems of state and local government, within politics and organize territorial, economic and social life of the nation. Administrative organizational models adopted are always imposed by concrete historical conditions, geopolitical, economic and social<sup>2</sup>.

Administrative-territorial structure, once created, acquired during a relatively homogeneous character are becoming economically and mental spaces of belonging. They are tools of statistical operation. Therefore, the economic and recorders, creating new administrative-territorial division frames usually generate economic rebound in the early stages of implementing tedious situations according to statistical information and regional comparisons<sup>3</sup>.

### **1. Administrative-territorial organization of Romania's communist period**

Established Communist Party to power in Romania in 1945 attempted seizure followed all state institutions of itself overthrow the existing constitutional, facts that led eventually to take over control of the entire political, administrative and economic.

The organization imposed by the Communist Party was not the original one, a result of concerns the improvement of the country, but rather was offered by the Soviet model, so that the new constitutional regime inaugurated in 1948 and 1952 Constitutions were just to copy organizational structures of the Soviet Union.

Introduced new principles, on which was intended functioning of state institutions, had nothing to do with constitutional rule, claimed constitutional provisions stipulating showing interest obligations and civic rights and to ensure effective control of the Communist Party administration<sup>4</sup>.

In 1950, the communist authorities decided to change the root administrative organization of Romania, copying the Soviet model, with a structure on three levels: regions, districts and communes. Urban cities were divided into interest republican, regional or district<sup>5</sup>. These provisions were contained in Law no. 5 of 8 September 1950<sup>6</sup>.

Region represents the economic administrative unit delimited territorial, on which the state bodies were support directly, being subordinate. The region was composed of district and regional subordination cities.

District was a territorial unit, operative economic, political and administrative, which consists of subordinate district towns and villages. District was directly subordinated to region.

Common represented administrative and economic unit delimited territorial and this consists of one or more villages close. The village was directly subordinated to the district.

Attitude changed at the mid 60's, the communists said the independent political PCR against the Communist Party of the Soviet Union amounted to a true statement of independent Romanian state against Sovietics. One of the many consequences of this transformation was the internally return to traditional territorial administrative units, this is ruled by Law no. 2 of 16 February 1968<sup>7</sup>, which restore county, town and village as the basic unit of territorial administrative organization of the country.

Return to the administrative tradition not only resumed but the reintroduction of counties, as in terms of territorial organization of communes, Law 2/1968 has undertaken a dramatic territorial restructuring for rural inhabitants. Thus, under the pretext of a systematic planning and localities, mainly aimed at increasing the efficiency of agricultural production were abolished many traditional villages, their inhabitants being displaced forcibly the territories of other localities<sup>8</sup>.

Essential motivation to create new administrative-territorial structure was to create a more equitable and balanced distribution of productive forces in the territory.

In the explanatory memorandum of the law, the development was considered the need to harmonize the administrative-territorial qualitative changes occurred in economic development throughout the country and the changes that have taken place in the population structure, profile, extent and the life of towns and villages. In the terms of name of counties, were considered historical traditions and current importance of geographical areas or cities.

Article 1 of the Act<sup>9</sup> states that the Socialist Republic of Romania is organized in the following administrative territorial units: county, town and village. The counties are composed of cities and towns.

Bucharest, the capital city, is organizing on 8 sectors. The law established cities being municipalities, 45, which were added in June 1968 Ramnicul -Valcea.

Law no. 57 of 26 December 1968 local government regulated activity by the end of 1989.

With the general collapse of the socialist statist economy, after 1989, new counties established in 1968 have fallen sharply as economic, especially industrial. In contrast, traditional industrial districts and high-level central office, and know generally prospered relative demographic pressure from the concentration of investments, the fund urban infrastructure and traditions have generated and generate highly qualified workforce.

## **2. The main trends in European territorial administration**

From the 60's, the general trend in European countries is to merge small towns larger local government units. Almost all countries in western and northern Europe have reduced the number of municipalities in the second half of the twentieth century.

Many European countries have opted for grouping developed towns and villages in the larger municipalities.

In most cases, this process took not the form of single episodes, number of administrative units gradually decreasing over the past 50 years. In some countries this process has been guided by economic objectives to increase efficiency of public services by channeling resources into public investment, opposed to subsidization of small municipalities. In others, territorial amalgamation was the result of reforms promoted by the central authorities. The few countries, although they encouraged fragmentation usually favored municipal cooperation for service on larger areas. Most studies on issues related to the size and efficiency of local government administrative units using population as the primary unit for analysis.

This is mainly due to the inevitable link between the level of local government revenue and service delivery costs per capita. Administrative-territorial area and population density and residential settlements, also influence the effectiveness of local authorities, but not to the same extent as the population.

According to traditions, geographical conditions, political interests and other important factors, average population size of administrative units of the first level in EU countries varies between 1510 (Cyprus) and 150 000 people in the UK.

Average population of a territorial-administrative units in the European Union is less than 5530 inhabitants what the optimum size often (5000 inhabitants), which allows achieving maximum efficiency in service delivery.

It is quite clear that to determine whether the general European trends in territorial governance can be applied in a particular country is necessary to analyze deeply the situation of that country. Even in a country the same factors that encourage or discourage building in different regions can vary greatly depending on the circumstances of each region.

Solutions to problems are always territorial fragmentation and adapted to specific country needs and implementing recipes from outside, even in apparently similar circumstances, is difficult. Such geographical, economic and political, such as size, shape, topography, altitude, the

ethnic and economic profile of the country and the national settlement structure always have an impact on its administrative-territorial division.

### **3. The period of transition**

After the collapse of communism in December '89, Romania has faced serious difficulties in adapting to the realities of capitalism.

First, the past, the economic, but also social and political, had a say in determining the course of transition. Of the former communist countries, Romania and Czechoslovakia had the most centralized organization. Romanian state control 95% of the economic sector, unlike other countries with the same political system. Second, Romania hasn't benefited from structural changes after the fall of communism. A radical transition model would have two advantages: pressure to capitalism and training institutions needed to prevent the formation of interest groups. A radical transition and promote rapid growth and ensure the maintenance of a reasonable level of inflation.

Unfortunately, in Romania the transition to a capitalist society has encountered a lack of information and people concerned about the change. At the same time, the shared political resistance to change. This is because included former Communist Party members and employees of state companies or members of trade unions, for which the previous regime was one comfortable. Propaganda slogans such as "we do not sell our country" and the nation by easing restrictions to attract support before 1989 had contributed to the adoption of a gradual transition program.

The opposite was the other former communist bloc countries, where liberalization was done suddenly. Although a gradual program of transition was more acceptable to public opinion as cost, even if high, would appear in a long period of time.

Last Romania's administrative reorganization, decided in 1968, was the result of two years of study. At least that Communist leaders in official documents of the time, even daring them to propose redistribution of Romania from day to day.

Counties were to include a territory smaller providing direct links to cities and towns that goes into them, thus creating conditions for the solution of operational tasks and authority of incumbent local governing bodies.

It was intended that each county to be a political subdivision of the complex economic, social and cultural, including cities, industrial centers, commercial and cultural routes of communication, they argued.

The current regime decision was taken quickly though that measure administrative-territorial reorganization is not recommended without a substantial analysis of the socio-economic impact. Characteristic of this period is the tendency administrative division of the communes and the promotion of new cities, political decisions have a great impact on urban development.

The tendency of the rural administrative division occurs amid a decline in rural population in 1998 compared to 1966 has reached alarming levels: decrease of 30-50% in 26.2% of the total number of common and decreases above 50% in 5 % of all common according to Law no. 351/2001<sup>10</sup>.

The abuse promotion of new cities is the result of local political ambitions desire composing the central level to improve the current statistics, the large share of population living in rural areas placing Romania on the last places in Europe.

Between 2002 and 2004 a series of communes with some level of economic development and urban facilities were converted into cities. Most of them however are far from the standards imposed by law for urban areas.

We believe that this issue should be regarded with great reserve at least from three respects: first, from a budgetary perspective, the current fragmentation of some of the counties would be an expensive step.

Territorial reorganizations are usually in times of economic boom for the complex problems that appear to be supported financially.

Secondly, the question is how functional units would be newly created. Some local pride are masked by arguments which are not present, because the relative stability of the current administrative divisions, led to changes in time the relationship between administrative units, so it is questionable whether the return to the old territorial divisions would provide more rational solutions of administrative organization.

Third, the current debate about the favors higher territorial division, one of the regions, the current fragmentation of districts, as part discordant.

On the other hand, approaches a point outside the long-term strategic plan, risks generating administrative territorial units ephemeral and unsustainable.

The project on administrative-territorial reorganization of Romania is a very controversial project, which displeases the local government representatives in the territory.

Currently, about 2,100 are communes in Romania who are under 5,000 residents. This means that under the project, the joint would be about 2,100 villages subordinated to larger towns. It would not have mayors, deputy mayors, councilors and any budget. It depends on so-called common centers that would establish prefect.

The draft states that the mayor of the future will belong to villages will appoint one representative for each village belonged, would follow to issue various certificates and centralize the problems of citizens.

In terms of cities and municipalities, there is now one of 320, 117 are under 10.0001 inhabitants, so it should become common, according to the project. Other almost 60 municipalities are under 50.0001 inhabitants, so they should become cities.

Cities and villages in Romania have increased over the past 20 years, and in some areas close taxes come from people not even to pay salaries of the municipalities. In the last eight years have appeared over 200 cities, towns and villages. Number of cities increased very much and the joint too.

#### **4. The current state administrative-territorial**

The current administrative configuration of the country consists of 41 counties, plus Bucharest, 320 cities, 97 towns, 2860 communes and 13,089 villages.

The county is run by a prefect, who is central power territory. Economic power, in turn, is controlled by the County Council led by a president. This county council building and adopt budgets and coordinates the county investment policy. In the villages and towns mayor returned to the institution. It is directly elected by voters mass voting of the administrative unit. Local Council is the deliberative body composed of elected councilors.

More recently (after 2000), following a sharp fall in urban population, population decline due to general (process compensatory) was amplified the practice of declaring the "new cities". These are former municipal centers, which have some superior infrastructure, but are far from reaching qualitative parameters imposed by the rigors of contemporary urbanism. They are more the product of political influence of the ground.

Administratively, the capital, Bucharest city is divided into six sectors, each sector being led by a mayor and city council.

Given the complex issues facing urban municipalities, especially those of large cities, their work is carried on special commissions.

In addition to dividing the counties, Romania is divided into eight development regions corresponding to NUTS-2 divisions of the EU, but without administrative responsibilities. Developing regions refer to Romania's regional subdivisions created in 1998 and are used mainly for coordination of regional development projects. Developing regions are not administrative units, not having legal personality, the result of an agreement between the county council and local council. Development regions of Romania, named after geographical position in the country, are: Northwest, Northeast, Southwest, Southeast, South, West, Centre, Bucharest and Ilfov.

### **5. Legal administrative-territorial reform**

Administrative division of Romania is provided for both the Constitution and other laws. Article 3 (3) of the Romanian Constitution<sup>11</sup> establishes an exhaustive list of forms of spatial Romania administratively as: common, city and county. Article 18 of Law no. 215/2001<sup>12</sup> establishes, as well as common forms of territorial organization, city and county. Where to deduce that the only way possible administrative-territorial arrangement in Romania are set by the constituent and the only constitutional way to introduce new forms of organization of the territory consists of a revision of the Constitution. This review may take place following the procedure provided for in art. 150-151 of the Constitution<sup>13</sup>, which invariably involves completion of certain stages. With this procedure initiated by the competent authorities (President of Romania, at least one quarter of the deputies or senators or at least 500,000 citizens with voting rights), Parliament adopted a law review by a qualified majority, which must be doubled later by a favorable vote by the electoral body consulted by the referendum<sup>14</sup>.

Law no. 3/2000<sup>15</sup> on organization and holding of referendum states in art. 2 (1) (a) that the national referendum is the form and means of direct consultation and expression of the sovereign will of the Romanian people on constitutional revision. Also, in art.6 (2) provided that the organization and holding of a referendum on constitutional revision are bound by its outcome.

Use of any other techniques such as adopting a constitutional ordinance, government accountability, adoption of an organic law on the amendment forms of territorial organization and means violation of the Constitution is unconstitutional<sup>16</sup>.

The administrative-territorial reorganization process, namely the administrative-territorial delimitation, in addition to legal criteria, mandatory, must take into account the compliance criteria and objective factors<sup>17</sup> such as:

- A geographical basis - a key element of administrative-territorial boundaries is the configuration of the landscape and water;
- Economic criteria, covering material and financial resources necessary for development
- Demographic, administrative unit of population, its structure and employment potential;
- Historical criteria - administrative boundaries is envisaged that the joint work or the city over its history and economic results of social, cultural and spiritual achieved over time;
- Criterion specificity administrative unit, reflected particularly common traditions and customs.

### **6. Administrative “reform” or political strategy?**

Administrative division of a state achieved through legislation, is an element of crucial importance, because the system brings the subsystems of state and local government, fall, territorial politics and organize economic and social life of the nation<sup>18</sup>. Thus, territorial and administrative modernization is an extremely important process whose implementation requires a long time. Detailed studies are needed on the impact it could have a reform on population, on balance society, on the relationship between the representatives and those who are represented.

Also, it must be taken into account all advantages and disadvantages would require a reform in this respect. In politics, the media and in the literature are circulated many models regarding reorganization or improving the administrative-territorial system of Romania.

According to a model proposed by the current political class in charge of the State, administrative-territorial reorganization should be done by reducing the number of existing counties. Keeping counties as administrative-territorial entities, but their numbers decrease would constitute a "genuine reform administrative". Arguments in support of this proposal is based on economic issues, among which is invoked attracting grants offered by the European Union in support of Member States. This, however, was denied by the European Commission on regional policy Romania considers that the reorganization will not cause changes in current flow of grant funds. This is due to the time when advanced development programs. Urgency is needed for effective implementation of development programs 2007-2013 in Romania.

It is expected to focus efforts on the successful implementation of operational programs in the current period, the current structures for these programs were designed and agreed between the Commission and Romania. Interesting arguments were represented by the fact that the current division of the territory in 42 counties would not meet the efficiency criteria required, it would encourage a ratio of non-subordination between central and local (as required by law) or not a suitable medium for local economic development<sup>19</sup>.

"Reform" administrative-territorial should include widening the main objectives of local autonomy, distribution of powers within the local administrative units and creating the appropriate framework for their development. Political discourse finally skipped the whole process of reform, citizen. Is discussed constantly about the area and administrative units but there is no public consultation in this regard. Why omit the substance, core, the whole process? Also, decoupling administrative reorganization of constitutional revision was a successful strategy as reconfiguring a map, take into account, beyond doubt, the dominant political color of the current districts and new districts, higher will be configured so as to obtain desired color apolitical government as a whole new administrative territorial units<sup>20</sup>.

Or maybe the question of reorganization, a torch was designed to disturb the public attention from real issues facing our country effectively.

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<sup>10</sup> Law no. 351/2001 *Approving the National Spatial Plan - Section IV of network locations*, published in Official Gazette no. 408/2001;

<sup>11</sup> Article 3(3) of the Constitution: "... territory is organized administratively into communes, towns and counties. according to law some towns are declared municipalities ";

<sup>12</sup> Article 18.

(1) Towns, cities and counties are administrative units for the exercise of local autonomy that is organized and functions of local government authorities;

<sup>13</sup> Article 150

(1) Revision of the Constitution may be initiated by the President on the Government proposal, at least a quarter of the deputies or senators and at least 500,000 voting citizens.

<sup>14</sup> George Gîrleşteanu, *Political government and administrative-teritoriale reorganization of Romania*, in volume Participatory democracy and informing local citizens, Universul Juridic Publishing House, Bucharest, 2011, op.cit. pag 31;

<sup>15</sup> Law no. 3/2000 on organization and holding of the referendum published in the Official Gazette no. 84 of 24 February 2000;

<sup>16</sup> George Gîrleşteanu, pag 31;

<sup>17</sup> Codrin Dumitru Munteanu, *Territorial government*, Universul Juridic Publishing House, Bucharest, 2010, op. pag. 118-119;

<sup>18</sup> Nicoleta Miulescu, *Contemporary theories of organization and functioning of public administration dimensions*. Special on the European system, developed at the international conference study public administration at the beginning of the II millennium. Dissemination of best practice Japanese in Romania, Bucharest, 2005;

<sup>19</sup> Anca Ghinea, *Republic of Moldova closer to the European Union in regional development. Example Romania*. Paper published in the Public Policy Institute of Bucharest, the site [www.ipp.md](http://www.ipp.md);

<sup>20</sup> Dan Claudiu Dănișor, *Administrative reorganization of Romania - a successful diversion*, in Pandectele Române no. 7/2011, Wolter Kluwert Publishing House, Bucharest, page 15.

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This work was partially supported by the strategic grant POSDRU/88/1.5/S/49516, Project ID 49516 (2009), co-financed by the European Social Fund – Investing in People, within the Sectoral Operational Programme Human Resources Development 2007- 2013.

## ORIGINAL PAPER

Ileana NICULA

### Behavioral changes – From compliance to ethical values in the banking industry

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**Abstract:** *From the working people government to corporate governance, the management science has been experienced changes of appearance and substance. As the crisis has been extensively analysed, a new idea has emerged, that is a "more" ethical behaviour should be adopted by the corporations, especially the financial ones. How has been recently discovered, the organizational culture isolated by social responsibilities and appropriate control mechanisms can lead to unwanted drifts, and even outstanding entities have practiced such a behaviour. Of course financial entities must observe a web of laws and regulations for their operations; this activity is known as compliance. Moreover, their staff ought to attend periodically training courses. However these are not concerned with ethical aspects. One could argue that there is Code of Ethics in each and every bank, as they are part of professional bodies (Bank Associations). Ethic and compliance might have some connections, but there is no overlapping. Could corporate governance bring together ethical values and compliance? The paper work launches a glance over the specificities of corporate governance within the banks in connection to their obligation to observe laws and regulations, and the fact that good governance (self regulation) leads to a right functionality of the markets. Thus the entities, the state, the whole economy and people should benefit.*

**Keywords:** *corporate governance, agency and network theory, principal-agent, depository entities, compliance, ethical values.*

### Conceptual framework

The analysis of the banking industry emphasise some peculiar characteristics and in my opinion, first, it provides *public services* (just like schools) and therefore it must be regulated for the clients' benefit and the economy as a whole. Recommendation of the Committee on Banking Supervision (Basel I, II and III) are intended to cover almost every aspect related to banking activities and therefore the Corporate Governance (CG) of these institutions is a matter of national and international interest. The corporate governance should bring under the same umbrella the *compliance* and *ethical standards*, which result both from enforced regulations and from self regulation. The credit institutions (CIs) as defined by UE Directive 48 are *depository entities*. These play a crucial part in the economy, mobilising the liquidity on the market and using it effectively in economic development (granting different loans). The continuous flow of resources is vital to the system operation and nowadays crisis has fully demonstrated. In almost all jurisdictions and periods of time, the collected resources (with some exceptions) are guaranteed by various schemes and depository entities must comply with strict regulations (especially concerning the capital and the liquidity).

In order to play their part, the CIs should maintain intact their reputation, but also to please the stockholders (who are periodically called to increase the bank' capital) and the employees (whose frauds and errors destroy the confidence in the system). The shareholders are interested to obtain the desired performance, to keep under control the *moral hazard*<sup>1</sup> and the *adverse selection*<sup>2</sup> problem. The supervision and the regulation play also the part to maintain the public confidence in these entities and in economy as a whole, other ways occurring a phenomenon called „flight of banks”, a systemic risk with serious implications. The operations of the CIs generate an unstable equilibrium between (a) funds raising (generally on short-time basis), (b) granting loans (generally on long time basis), and (c) on-demand reimbursement of funds. These elements have a specific impact on the banks, namely a high degree of leverage (higher than in other type of business). In terms of risk, CIs bear systemic risk. Therefore the banks must comply with prudential rules on liquidity and risk management. As the bank is granting more credits, this process will require a *capital increase*<sup>3</sup>. The shareholders will want higher return on their investments, so there will be an acceleration in lending operations (where the main profit is obtained), together with the identification of the low cost resources (mainly from the depositors). Thus banks increase their degree of risk, leading to the increase in the capital level, in order to comply with the *leverage ratio*. The investors are concerned to maximise their profit, but also to define equilibrium between risk and yield (risk/yield profile) for each and every investment.

The agent-principal theory (discussed in depth by Spencer&Zeckhauser 1971, S.Ross 1973, a part of the behavioural economics) examines the conflicts of interest amongst the individuals bearing different interests in owning the same assets. The main conflicts are between: (a) shareholders and company managers, (b) shareholders and stockholders (depositors for banks). In other words there is a conflict as old as mankind, namely between *rights* and *duties*.

"A (investment) bank has a *right* to utilise its own intellectual property and market capabilities. At the same time it will have a *duty* to act ethically towards other market participants, notably its clients...- a duty of care..... Although we would argue that on a purely rights-based approach to ethics, a bank should be able to profit from its intellectual property, the implications of the duty of care vary according to the different activities. The right to utilise intellectual property must be constrained by the duty of care to clients"<sup>4</sup>.

The principal agent theory on the credit institutions identifies four conflicts of interest, namely:

- "between the shareholders (principal) and the management (agent);
- between the bank (principal) and its employees (agent);

- between the bank (principal) and its debtors (agent);
- between the depositors (principal) and the *bank (agent)*<sup>5</sup>.

The conflict between rights and duties could be solved by designing standards and it is the role of corporate governance to deploy this activity. Thus the corporate governance principles should not only focus on the financial matters (much profit), but also on the ethical issues (within the organisation and in its relations with the economic and social environment). Furthermore corporate governance could limit the abuse of power on the employees' activities and on the resources inside the organisation throughout the mechanisms of supervision of managers' behaviour. A new development in the corporate governance has occurred with the process of conglomeration of various entities into a single organisation. In such situations the operations within the holdings could cover unethical and questionable practices.

Concerning the banks, the corporate governance become into the light after the Asian crisis in 1997 when a good practice code is considered to be crucial for the company survival. Herein the central banks have involved in this matter issuing some guidelines for the corporate governance standards and the World Bank Group developed a methodology for assessing the legal and regulatory framework for banks' corporate governance. Mass media stressed out the banks' remuneration policy as a Gordian knot, being too much oriented on short term achievements and on volume.

#### **Corporate governance - between the compliance and ethics**

Concepts such as financial management, strategic management and further development of analytical techniques and models for financial decisions have led to a huge demand for financial managers, known as a prerequisite for a good financial performance, a kind of Guru. A necessary but not sufficient condition, as demonstrated the crisis.

Perhaps more than in other types of businesses, the managers of the financial entities have got exorbitant revenues, even for the richest countries with relatively high average wage income. And this happened in the periods when the financial statements have disclosed important losses. In terms of financial management, the risk was only supported by shareholders and was not reflected in the managers' payrolls. The CEO compensation has become more important than the objectives set by shareholders.

For the financial entities there is vital enforcing good corporate governance, which should take into account the whole aspects of this business type, where the risk is a day by day characteristic, and the correct assessment of their assets and liabilities should be a continuous process. In term of funding, the depositors have an important share of the banks' liabilities, so the credit institution should define its duty towards them. Even during the crisis (2009 -2011), the nominal value of the deposits in the Romanian banking system have ranked into a minimum of 45.2% (Jun. 2011) and a maximum of 47.1% (Mar. 2009) (% from all the liabilities)<sup>6</sup>.

Almost all over the world the banks are strict regulated. Therefore their corporate governance should have structures, requirements and common goals, regardless of the size, type or geographical area in which they operate. In its turn, EU is stepping up its issuance of a common regulatory concerning framework in the field. Our country has aligned to these recommendations and has a relatively new law on credit institutions (OUG 99/2006 modified by the law 227/2007).

Brief, the history of bank regulations looks like. There was a separation between different types of banks: investment banks, thrift institutions, building societies, saving and loan associations – in UK and USA area, Baussparkassen – in the German area, and Cooperative de Credit in the French area, commercial banks etc. The regulation authorities have enforced specific requirements on liquidity and on capital, especially for the depositary entities (not all the banks are

depository entities). The Central Banks have enforced also various schemes for the deposits guarantee. The commercial banks had a monopoly position on the financial markets, few competitors for money collection and thereby the liquidity risk was minor. As a result the management type was determined by the shareholders, focusing mainly on financial performances. Of course the monetary authorities have regulations on duties and the responsibilities of the directors. The Central Banks issued certain recommendations on internal policies and structures.

Once the financial markets became more deregulated (80 years), new controlling principles on banking supervision have come, namely *the oversighting* and *the monitoring*. Thus the corporate governance was used as an internal instrument to manage the banking operations (including risk management). Of course the key regulations on liquidity and capital adequacy ratios have been improved. But the banks have found out new mechanisms to diminish the liquidity level, to offload the risky assets in order to comply with the capital ratio and to support the deposits withdrawals and the old model of banking has been covered by new models. The banks consolidated into holdings (the idea was "too big to fall", and the governments have covered their losses at the expense of taxpayers), have started to manage hedge funds, granting credits within the group (becoming their own clients). The responsibilities were dissipated into such complex organisations.

But what is Corporate Governance? "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined"<sup>7</sup>. An important objective of the corporate governance within the economy is to build the confidence into an efficient system of markets.

A shorter definition: "Procedures and processes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making"<sup>8</sup>. The responsibilities impose strongly the implementation of a set of ethical standards.

The Basel Committee objective "is to enhance understanding of key supervisory issues and improve the quality of banking supervision worldwide. It seeks to do so by exchanging information on national supervisory issues, approaches and techniques, with a view to promoting common understanding"<sup>9</sup>. Apart the above role of the committee, it recognises the critical importance of a good corporate governance and therefore published a guide in order to give assistance to the supervision authorities to lay down a set of corporate governance standards for the banking system. This set can be seen as the best practice in the field and it is periodically enhanced. The guide contains eight groups of principles.

*The first:* "Board members should be qualified for their positions, have a clear understanding of their role in corporate governance and be able to exercise sound judgment about the affairs of the bank"<sup>10</sup>. The ethical values refer to the compliance with their duties, *duty of loyalty* and *duty of care*, and to observe national laws and supervisory regulations, avoiding any conflict of interest, "commit sufficient time and energy to fulfilling the responsibilities"<sup>10</sup>. This principle points out the fact that in state-owned credit institutions (CEC Bank and Exim Bank are the only two state-owned banks) the government should not be involved in the day-to-day management, as the board carries the responsibilities of acting independent of the political influence. In Romania, once the elections change the parliament configuration, these two banks change their boards. Political influences have not been revealed lately (by mass media), but some

members of parliament have tried periodically to impose some regulations concerning the banks' line of business (in fact trying to make themselves political propaganda). The Romanian politicians consider the financial entities and their regulation bodies as a *warm and prestigious place* to retire after leaving the parliament. From the competences point of view, it is better not to discuss.

*The second:* "The board of directors should approve and oversee the bank's strategic objective and corporate values that are communicated throughout the banking organisation"<sup>10</sup>. The corporate values refer to the timely and correct communication for all the issues within the organisation, and the employees should have the right to communicate their work issues without being punished or persecuted for having revealed *unethical or questionable practices*. The ethical aspect means also that within the organisation there are settled methods to protect employees' confidentiality, and the possibility to communicate directly and, in some cases, indirectly their concerns. A specific topic is the communication to clients or potential clients in order to avoid misleading information, sophisticated phrases and too many references to various articles of law, as it happens in Romania (confusing the client and giving the bank a high degree of switching the situations in its interest).

*The third:* "The board of directors should set and enforce clear lines of responsibility and accountability throughout the organisation"<sup>10</sup>. Here there are established guidelines for the banking holdings or for banks which are part of non-financial groups, where every entity should comply with its own specific laws, requirements and standards and where the conflicts of interest could be a critical issue.

*The fourth:* "The board should ensure that there is appropriate oversight by senior management consistent with board policy"<sup>10</sup>. In respect of ethics, this principle outlines the example of so called „star employee” (either protégée or generating unexpected returns, especially within investment banks) and the importance of „four eyes principle” (the system of internal controls should be appropriate and the decision process should be based on a group of unbiased individuals).

*The fifth:* "The board and senior management should effectively utilise the work conducted by the internal audit function, external auditors, and internal control functions"<sup>10</sup>. Here it is about the *real* independence of the internal control and the compliance with its recommendations. This problem is in fact on the border of the compliance/observance with the internal control standards and the ethical behaviour of the management. It must act "in a timely and effective manner" to solve the problems, to correct the issues pointed out by the auditors' reports. The managerial behaviour should be conducted to enhance the independence of the internal control, avoiding any abuse of office. In addition the board and top managers should improve continuously the compliance function not only for laws, regulations and procedures, but also for corporate governance codes. The Basel Committee recommends that "the independent directors to meet in the absence of bank management at least annually with the external auditor and the heads of the internal audit, compliance and legal functions"<sup>10</sup> in order to enhance the risk control, the business strategies, the supervision policies and to line up these issues to the bank's board targets.

*The sixth:* "The board should ensure that compensation policies and practices are consistent with the bank's corporate culture, long-term objectives and strategy, and control environment"<sup>10</sup>. In order to comply with this principle, the performance evaluation should be achieved on sound, unbiased standards by independent individuals, in order to avoid the conflicts of interest and the ethical values to be observed. Here I would mention that "short-termism"<sup>11</sup> brings huge damages to the financial entities, especially when the staff evaluation is based mainly on the volume, without any concern for long time consequences concerning the risk. The staff is stimulated by different bonuses to get quick results generating "excessive risk-taking"<sup>11</sup>.

*The seventh:* "The bank should be governed in a transparent manner"<sup>10</sup>. This concept (transparency) matches to all economic, social and political activities and could be considered an ethical value of great importance. Basically it could significantly reduce the level of corruption. The transparency in banking management could be endlessly discussed. Practically it refers to informational asymmetry reduction, the disclosure of relevant information for all the interested parties, in order to diminish the adverse selection. Moreover, once the relevant information becomes public, it contributes to better functioning of markets, stimulates corporate governance improvement, refining ethical values and social responsibilities. The Basel Committee presents a list of recommendations on items that might be part of a transparent management and to be disclose: board structure, qualification and experience of the top management, structure of voting rights, shareholders participation in the entity management, organisational structure, business lines, main element of the corporate governance (including ethical values and the way how they are applied), etc. Even if this principle is not focused on financial disclosure, they should be made available to interested parties, completing the financial portrait of the entity. Usually there are national regulations concerning the degree of depth of public disclosure of the financial statements.

*The eight:* "The board and senior management should understand the bank's operational structure, including where the bank operates in jurisdictions, or through structures, that impede transparency (i.e. *know-your-structure*)"<sup>10</sup>. The compliance with the regulation should go further and the bank should settle specific step to monitor that the product/services available to customers will not be used in illegal activities or in activities deemed inappropriate for the bank values (legal and reputational risks control).

These principles are not meant as statements of intent and good practice methods, but should be legislated, enforced by defining and implementing appropriate policies and highlighted by reports and decision making process that reflects them.

### **The case of Romania**

In our country corporate governance came once the international banks established their offices in Romania and has been continuously improving, as the National Bank of Romania has been enhancing the regulatory and legal framework.

Researching some foreign banks with offices in Romania, ING catches my eyes concerning the communication of its good codes to the public.

"ING sells financial products and services, not only in the Netherlands but all over the world. We aim to pursue a profit, but not at any cost. For instance not at the cost of the environment and biodiversity, nor at the expense of people or human rights. Wherever we operate, we endeavour to take part in society in a positive and responsible way - be it in India, Mexico, Australia or the Netherlands.

So how do we do this? It goes without saying that ING complies with national and international laws and regulations. But we do more. In many of the countries where we operate, laws do not provide answers to important questions on issues like deforestation, pollution, child labour and weapons. That is why it is important for us to form our own opinion on these issues. ING will not invest in cluster bombs, for instance, despite the fact that practically no country prohibits their production.

We have our own vision on ethical topics, the environment, people and society. This vision is translated into the policies we apply all over the world. By promoting continuous dialogue with our stakeholders - ING's employees, customers and shareholders, but also organisations engaged in issues concerning human rights or the climate - we are able to constantly evaluate our policies and adjust them where necessary"<sup>12</sup>.

First the bank stresses on its social responsibilities and then a short part on the ethical issues ("We have our own vision on ethical topics"), pointing out the dialog with the interested parties and the fact that it is not driven by "profit at any cost". There is an important remark to be done, that the statements of intent are posted on the group site, not on Romanian site ([www.ing.ro/ing/ro.html](http://www.ing.ro/ing/ro.html)).

At BCR, the ethical code is posted in pdf format, along with the principles and policies on corporate governance. The ethical values are listed on topics such as: human rights, confidentiality, professional competences, social responsibilities, environment protection, conflicts of interest, relations with different authorities, staff conduct, compliance with the law against money laundering and terrorism financing, political activities and s.o.

At CEC Bank (with Romanian shareholders) the browser search did not find any "corporate governance" headline, but there is a short list of the company' values: *fundamental values* (honesty, confidence, stability), *functional values* (safety, accessibility and simplicity), and *representative values* (tradition, national symbol).

In respect of corporate governance communication, there are large spectrums of the way in which the Romanian banks deal with this crucial issue. It is obvious that corporate governance has been not assimilated by the society and a negative role is played by the universities, even if they have in their curricula some courses on this topic. The financial institutions behave accordingly to the level of the social awareness of this concept, highlighting the fact that in ethics issues organizational cultural has a tremendous impact on the entities' conduct at least at communication level.

As for the other types of Romanian entities, only in 2001 a code of good practice was adopted for the companies which wanted to be listed on the *Plus* category (Plus for transparency - the best for Bucharest Stock Exchange). Next, the Bucharest Stock Exchange (BSE) created the Corporate Governance Institute, "a foundation specialised in providing training to companies, especially listed ones and market participants in corporate governance and sustainable development"<sup>13</sup>.

In Romania there are "fundamentals inconsistencies:

- the lack of a deep analysis concerning the relations between the owners and managers;
- the weak implication of the participating parties in the decision making process;
- the lack of a conceptual framework in respect of an efficient market and its implication on the social level;
- a questionable implication on the external auditors in promoting enterprises' governance;
- the failure of IFRS (International Financial Reporting Standards) implementation according to the international evolutions;
- the weakness of the control mechanisms for an appropriate, relevant, intelligent, comparable and significant financial disclosure"<sup>14</sup>.

The PNII –IDEI project (code 1859/2008, contract nr. 837/2009, CNCSIS–UEFISCSU) researched this problem publishing the paper work<sup>15</sup>. The research found out that the code is voluntary applied by the companies listed on the BSE, they must send annually a Compliance Declaration (based on "comply or explain" principle), they must explain the implementation methods and the ongoing status of the recommendations. The Code is similar to those adopted by the other EU countries especially on the issues concerning the boards and the top management, but the BSE considers that this code is a *supplementary* provision to the Companies Law, Accounting Law and Capital Market Law. The financial entities were excluded (for the homogeneity of the data) from the analysed sample.

### Conclusion

The proper functioning of the globalised economy, adequate protection of depositors and shareholders, and, in essence, of the liquid wealth can be achieved not only by regulation and guarantee schemes. An important role should be played by corporate governance, as noted above, bank-depositors relationship changes (the former is the agent, the latter the principal). Therefore the interests of both sides are somewhat divergent. Only at first sight, because do not forget that the financial entities may operate only if they enjoy public confidence. Thus through the right decisions of corporate governance, moral hazard in managing the assets and liabilities should be avoided.

The Basel Committee recommends to monetary authorities to supervise on a regular basis the corporate governance of the financial companies according to their size, complexity and the risk profile. According to the committee the matter is not only to comply internally with some codes of conduct. The corporate governance should be enforced not only by the boards and senior management, but also Central Banks and other regulatory entities should promote it. The involvement of other parties is also important: shareholders, clients, banks associations and other self regulation entities, financial advisors, employees, etc., as good corporate governance brings a social health in the economic activities (reducing corruption and bribery, lining up all the market' operators to the same sound principles).

Some steps in corporate governance improvements have been made in other financial sectors, such in insurance, where the Insurance Core Principles have been under review by the Association of Insurance Supervisors (IAIS). IAIS and the Basel Committee will cooperate to monitor the standards implementation. "The financial crisis has underscored how insufficient attention to fundamental corporate governance concepts can have devastating effects on an institution and its continued viability. It is clear that many banks did not fully implement these fundamental concepts. The obvious lesson is that banks need to improve their corporate governance practices and supervisors must ensure that sound corporate governance principles are thoroughly and consistently implemented (quote from Daniele Nouy, Chair of the Corporate Governance Task Force and Secretary General of the French Banking Commission)".

Any regulation and guarantee schemes exist, only a strong, fair and transparent policy, the understanding of the social responsibilities, the respect for ethical values can protect the liquid wealth within financial organisation. The Basel Committee notes that a good corporate governance should define the manner in which the management (the board and top management): (a) determines the organisation objectives, (b) operates day by day, (c) meets the obligations to shareholders and other parties holding debts instruments (stakeholders) and maintains their trust, (d) lines up the activities and organisational behaviour to the sound and safe standards, (e) complies with the laws and regulation (the compliance activity), and (f) protects the depositors interests. But what would be the best bank managers, for example? How is it built the board of directors? Of course it is difficult to analyse in detail this issue, but the *network theory* helps us (its principles were analysed by Wellman 1983). The studies have identified that in many organisation (not just financial ones) management people belong to a so called *network*, depending on culture and regional customs. The base of network can be ethnic, religious, or relationships created in the university (certainly it is not the place to identify less normal networks, such as political affiliation, relatives and place of birth). Dangerous is the fact that the network prevails in establishing the management (even if there are quality people). The dangerous is the fact that the independence of each may be affected, so the decision making is hard to relay on correct reasoning, in respecting the responsibilities and the rights of all the interested parties, as defined itself corporate governance. Moreover incorrect connections lead to lower ethical values. Many analysts of the crisis found its origin in greed.

**Notes:**

- <sup>1</sup> When a party maximizes its utility on the expense on another party, due to the information asymmetry.
- <sup>2</sup> There is a phenomenon arising from the information asymmetry (a party has access only to a minimum level of information, whilst its contractual partner is better informed).
- <sup>3</sup> Simply put *Leverage ratio* = (Capital/risk adjusted assets) > 10%
- <sup>4</sup> John Reynolds, Edmund Newel, *A balancing act*, Journal of International Compliance Association, issue 5/ autumn 2011, pp. 12-13
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- <sup>6</sup> National Bank of Romania, *Stability Report*, 2011
- <sup>7</sup> OECD Principles of Corporate Governance, [www.oecd.org/dataoecd/31/55/7724.pdf](http://www.oecd.org/dataoecd/31/55/7724.pdf), pp. 6
- <sup>8</sup> <http://stats.oecd.org/glosary>
- <sup>9</sup> <http://www.bis.org/bcbs/about.htm>
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## ORIGINAL PAPER

**Alina-Maria VĂDUVA**

### **Banking in Romania during and after socialism**

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**Abstract:** *The main objective of this study is to provide an overview of Romanian Banking Market during socialism, in the period of transition until the integration in the European Union and the period after the integration in the EU until nowadays. The study shows the transformation and main reforms in the Romanian banking industry in the last sixty years.*

*To achieve this objective, it has been conceived a comparative study of banking in Romania using available literature, critical analysis and professional experience of the author.*

*The originality and value of the article comes from the analysis of the evolution of Romanian banking and of both positive and negative implications of attracting foreign capital in banking.*

**Key words:** *evolution, reforms, centralized banking, foreign capital in banking, financial crisis.*

### **Introduction**

Banks play many important roles in the financial system. The efficiency of the process through which savings are channeled into productive activities is crucial for growth and general welfare. Banks are an important part in this process.

Banking activity in Romania has always been under the influence of foreign banks. This fact had a positive effect in developing Romanian banking, but there were also periods when it had negative implications such as the facilitation of leakage of the country's financial resources, the deterioration of financial stability due to exists of foreign banks from Romanian banking market, bankruptcies or contagion effect. (Căpraru B., 2011). Until World War II, there was a competence for supremacy between Romanian and foreign capital, while during crisis time the foreign capital was more involved in the development of the economy. During socialist era, there were foreign banks that opened branches in Romania, while Romanian capital took part in opening branches abroad. There was an intense concentration of the banking system that was composed of only of the following institutions whose role will be explained in the next pages: Banca Națională a României ( Romanian National Bank), Banca Agricolă ( Agricultural Bank), Banca de Investiții (Investment Bank), Banca Română de Comerț Exterior ( Romanian Foreign Trade Bank), Casa de Economii si Consemnațiuni ( Saving and Placement House). ( Dărac N., Vascu T., 2010).

After 1989, Romanian banking system has known a new stage of development and foreign capital has become more and more present in the Romanian banking system in several forms: as result of privatization, by acquisition of private banks or as *Greenfield* investments. Foreign capital contributed both to reforming banking system and to the economic growth as a whole. Nowadays it holds 80% of the market share.

In this context, the study of the evolution of banking in Romania becomes a necessity for understanding both the causes and effects that defined Romanian economy in the last sixty years.

### **Objective**

This article focuses on realizing an overview of the Romanian banking system from socialist times to nowadays. Through its contents, this work summarizes a large range of aspects from the structure of banking system in different times to current issues that are of general interest, from relevant literature to practical experience of the author, launching some debate topics, especially regarding future trends.

The article is aimed, by its gradual and accessible content, to arouse the interest of a large audience.

### **Methodology**

To achieve the objective mentioned above, it has been conceived a comparative study of banking in Romania using available literature, critical analysis and professional experience of the author.

The top moment of the Romanian banking system was in 1934, when there were 1204 banks in Romania. The period after World War II was very difficult for Romanian banking system. Under the surveillance of The National Romanian Bank, more banks grouped in order to be able to sustain public loans.

In January 1<sup>st</sup> 1947, The National Bank of Romania has become a state owned institution. That could be considered the end of the capitalist banking system in Romania. The number of banks has gradually decreased.

The Monetary Reform from August 15<sup>th</sup> 1947 imposed the withdrawal of banknotes, coins, treasury bonds, deposit certificates and all other monetary signs. These were replaced by

new banknotes issued by The National Bank of Romania and divisionary coins issued by The Minister of Finance. The New Leu valued 20000 Old Lei. The farmers could exchange maximum 5 million Old Lei, while individuals could exchange maximum 3 million each if they were employed or retreated and only 1.5 million if they were without profession or unemployed. Private enterprises could only exchange the equivalent of salary for July, while commercial enterprises could not exchange any amount of money being obliged to sell their stocks. From 48.5 billion old lei only 27.5 billion have been changed, the rest being blocked and the monetary mass in circulation being restricted to 1377 billion lei.

Next year, in June 11<sup>th</sup> 1948 the following institutions have become property of the state: National Society of Industrial Credit and National Saving House. One month later, the capitalist banks and other loan institutions were dissolved and liquidated.

In September 1948, Bank of Credit for Investments has become Investment Bank (after 1989, Romanian Bank for Development). In 1967 two new banks were created: Bank for Agriculture and Food Industry and Romanian Bank for Foreign Trade. Before these two institutions the banking operations were concentrated by State Bank. The State Bank was functioning as center for cash deposits and cash control. After 1967, The National Bank of Romania was reorganized, the changes being followed by a certain degree of opening, but the system remained centralized.

During communism, the Romanian Banking system was strictly specialized and state owned. It consisted of the following banks having different roles (Dărac N., Vascu T., 2010):

1. **Banca Națională a României (National Bank of Romania)** had the role of issuing currency, but also had attributions in internal trade operations.
2. **Banca Agricolă (Agriculture Bank)** had the role of financing agriculture and complementary activities.
3. **Banca de Investiții (Investment Bank)** had as main activity financing investment programs of the state owned enterprises.
4. **Banca Română de Comerț Exterior (Romanian Bank for Foreign Trade)** had the monopole of Romanian export operations.
5. **CEC (Saving and Deposit House)** attracted the economies of the population, participating also in the activity of giving loans for the individuals when buying a house.

A more complex role was given to **Romanian Bank for Foreign Trade (BRCE)**, created in 1968. According to the functioning law, this bank had the following attributions:

- Payments and encashment of import and export operations
- Buying and selling foreign currencies, trade operations and foreign titles for trade
- Authorizing in established limits of exchange operations
- Giving and taking loans abroad
- Administrating foreign currency deposits
- Issuing and accepting trade effects
- Receiving and issuing guarantees for external payments
- Administrating financial means of enterprises and external trade organizations
- The possibility of participating to international organizations in the financial and banking field
- Cooperating with financial institutions for Romania and from abroad in banking issues.

**BRCE** contributing to the creation of mix banks with Romanian capital:

- **Banque Fraco-Roumaine** – established in Paris in 1971 together with Credit Lyonnais and National Bank of Paris

- **Anglo-Romanian Bank Ltd.** registered in 1973 in London under the form of a consortium between Barclays Bank, JP Morgan Chase and BRCE
- **Misr Romanian Bank**, with headquarter in Cairo, established in 1977 together with Banque Misr
- **Frankfurt Bucharest Bank**, established in 1979 together with two large German banks: BHF –Bank AG and DG Bank Deutsche Genossenschaftsbank with headquarters in Frankfurt and afterwards in Bucharest in 1980
- **Banca Italo Romena**, established in 1980, with headquarters in Milano, together with an Italian Bank.

In 1980, Société Générale established a branch in Bucharest.

After 1989, the Romanian banking system has been reorganized to meet the principles of market economy. The banks owned by the state were transformed into commercial banks having state but also private capital. An important step in reforming the Romanian banking system was the creation of the Romanian Commercial Bank (BCR) which overtook the trade banking operations of the National Bank.

In 1992 Romanian Bank of Export-Import EXIM Bank was created as a joint stock company, having the state as main share holder. This institution was meant to address the specific needs of exporters and then to small and medium companies as well as to companies that develop projects in the priority fields of the Romanian economy.

In this period several foreign banks open branches in Romania: Chemical Bank (1992), ING Bank N.V. (1994), Chase Manhattan Bank (1992), National Bank of Greece (1996), United Garanti Bank International N.V. Amsterdam (1998), Banca di Roma SpA Italia (2000), Bank of Cyprus Public Company Limited Nicosia (2006).

In 1998 Bancorex has become the main stock holder of Anglo-Romanian Bank Ltd. (ARBL) and in September 1999, after the absorption of Bancorex by BCR, BCR becomes the only owner of ARBL. In 2004 ARBL purchased the European subsidiaries from Germany (Frankfurt Bucharest Bank) and France (Banque Franco Roumaine).

The dynamics of creating new banks was consistent after 1990, but afterwards the rhythm decreased. At the end of 1999 there were 40 banks and branches of foreign banks in Romania plus CEC, reorganized as a banking institution. In that period, the Romanian banking system was mainly controlled by the state even if the number of private banks was higher than the number of state banks.

In October 2005, Blom Bank took 12.53 % of MISR Romanian Bank shares for 11.82 Egyptian Lira per share. Afterwards in December, the Lebanese bank Blom had majored its participation in MISR Romanian Bank after buying 84.24 % of the shares, the amount paid being of 97.8 million dollars. When undertaken, MISR Bank had branches in Egypt but also four branches in Romania – in Bucharest, Brasov and Constanta. (Căpraru B., 2011).

Between 1990 and 1993 the Romanian banking system has become an important resource of capital for Romanian economy. Interest rate, if correlated to inflation, was negative, which contributed to the recapitalization of the banks. The quality of banks portfolio was affected by the low performance of loans, generated by not restructuring companies and the lack of privatization.

After 1994, even if the interest rate was positive, the insufficient sustaining of monetary policy in the same rhythm with structural reforms has lead to even more problems for the banks. The fact that the state still owned most of banks, unfortunately gave the state the opportunity to finance the losses of the system. The lack of financial discipline and the fact that loans were correlated to structural reforms brought even more nonperforming loans. From this point of view

the banking system was confronted to serious issues, nonperforming loans becoming 2/3 of total loans between 1996 and 1998.

The process of privatization of the Romanian banks has started in 1999 when the majority share package of Romanian Bank for Development (BRD) was undertaken by French group Société Générale. Also in 1999, The State Own Found (Fondul Proprietății de Stat) has sold 45 % of Banc Post to General Electric Capital Corporation (35 %) and Banco Portugues de Investimento (10%). The total amount of the sale was 42.7 million dollars and 50 million investments in the commercial activity of the bank.

In July 2001 RZB Austria and Romanian- American Investment Found (FRAI) have taken 98,84 % of Banca Agricolă. The total value of the transaction was of 50 million dollars of which 37 million were capital investments and 15 million was the price of the shares.

In 2003, the process of privatization of BCR has advanced by the purchase of 25% of the social capital of the bank by BERD and CFI. A package of maximum 8% was afterwards purchased by the employees of the bank. In October 2006, the majority package was sold to Erste Bank from Austria. The Austrian bank bought also 7.29% of the shares owned by the employees offering them a good compensation for their shares, thus having 69.15 % of BCR capital.

The increasing presence of private capital could be visibly noticed. If in 1998 was of 47.9 % in 2006 was of 85.1%. This result was due to the consolidation of the position of foreign banks on the Romanian market as well as to BNR measures which established the social capital to the value of 370 billion old lei (Norm no. 16/2002). As we could notice from Table 1, the dominance of foreign capital is to be remarked also in the aggregate capital, it has increased from 35.8% to 78.8 % in 2006.

It is also interesting to analyze the structure of the banking capital from the point of view of the country of origin. If in 2001 at the end of 2001, the first three places were occupied by: Greece (8.5 %), France (6.8 %) and Turkey (6.4%), at the end of 2006, Austria was the leader (23.9%), followed by Greece (16.4%) and Netherland (7.4%).

In 2006, Millennium Bank has been registered as local branch of the Portuguese Bank Millennium BCP, being the first example of *Greenfield investment* on the Romanian banking market.

In January 1<sup>st</sup> 2007 Romania becomes member of the European Union. The integration gave foreign banks the possibility to access even easier Romanian market. Table 2 shows that in 2010 foreign capital becomes 86.1%.

At the end of 2010, the structure of the banking capital from the point of view of the country of origin was: Greece (33.79%), Austria (21.89%), and Netherlands (14%).

Until the end of 2009, 207 foreign institutions have notified BNR of their intention to enter Romanian market. Several foreign banks opened branches in Romania: Fortis Bank SA/NV, Caja de Ahorros Y Pensiones de Barcelona ( La CAIXA), Blom Bank France, The Royal Bank of Scotland NV ( 2008), Citibank Europe plc, Dublin (2009).

The financial crisis showed its effect on Romanian banking system at the end of 2008. Several foreign banks didn't obtain financing from mother-banks in the same conditions or the same amounts.

The reduced possibilities of attracting resources from abroad and the new rules imposed by the national bank for loans given to individuals brought to a significant decrease of retail banking in Romania.

In 2010, there have been several capital infusions from abroad having as objective the strengthening in terms of solvability of Romanian subsidiaries or the increase of market share. The total value was of 572 million Euros.

Romanian banking system, presently made of 41 banks, succeeded to pass well through the tough years of financial crisis, increasing its assets by 3.5% and reducing its losses from 515 million ( in 2010) to 430 million at the end of 2011. Still there are worries about how correctly the banks have provisioned their loans.

**Table 1. The share of banks and branches of foreign banks in the aggregate volume of capitals (%; 1998-2006)**

		Capital %									
		1998	1999	2000	2001	2002	2003	2004	2005	2006	
<b>Banks having major Romanian capital, of which:</b>		64.2	58.3	46.2	39.4	35.1	33.7	30.7	31.1	21.2	
- having state owned capital		52.2	41.1	38.4	35.6	29.9	25.7	4.8	12.0	14.9	
- private owned capital		12.1	17.2	7.9	4.8	5.2	8.0	25.9	19.1	6.3	
<b>Banks having major foreign capital:</b>		24.3	38.2	46.6	55.6	57.8	58.2	63.2	61.9	71.0	
I. Total commercial banks		88.5	96.4	92.8	95.0	92.9	91.9	93.9	93.0	92.2	
II. Branches of foreign banks		11.5	3.8	7.2	5.0	7.1	8.1	6.1	7.0	7.8	
Total number of banks having major private capital including branches of foreign banks		47.9	58.9	61.6	65.4	70.1	74.6	95.2	88.0	85.1	
Total number of banks having major foreign capital including branches of foreign banks		35.8	41.8	53.8	60.6	64.9	66.3	69.3	68.9	78.8	
<b>Total Banking Sytem</b>		100	100	100	100	100	100	100	100	100	

Source : Annual Report of National Romanian Bank (BNR) , 2000-2007

**Table 2. The share of banks and branches of foreign banks in the aggregate volume of capitals (%; 2007-2010)**

		Capital %			
		2007	2008	2009	2010 trim II
<b>Banks having major Romanian capital, of which:</b>		20.4	21.9	22.7	n.a
- having state owned capital		12.7	11.4	12.2	n.a
- private owned capital		7.7	10.5	10.5	n.a
<b>Banks having major foreign capital:</b>		72.5	71.2	71.6	n.a
III. Total commercial banks		92.9	93.1	95.3	n.a

<b>IV. Branches of foreign banks</b>	<b>6.1</b>	<b>6.0</b>	<b>3.9</b>	<b>n.a</b>
<b>Total number of banks having major private capital including branches of foreign banks</b>	<b>86.3</b>	<b>87.7</b>	<b>87.0</b>	<b>n.a.</b>
<b>Total number of banks having major foreign capital including branches of foreign banks</b>	<b>78.6</b>	<b>77.2</b>	<b>76.5</b>	<b>86.1</b>
<b>Total Banking Sytem</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Annual Report of National Romanian Bank (BNR) , 2007-2009, Capraru B. pag 19

#### **Discussions and conclusions**

If before the financial crisis, foreign capital had a positive effect on the Romanian banking system in terms of its modernization and development, nowadays the effect is rather negative because of the decrease in financing from mother banks as well as because of contagion effect- the majority of western economies being affected by the crisis.

The challenge for the banks in the next years will be to make profit from the same mass of customers or even less customers, considering the fact that the Romanian economy will not have a significant increase. Everybody is looking for new solutions for the future as analysis show that there are too many banks for the amount of business that can be produced.

The Romanian banking system is very vulnerable and quite hard to predict. 2012 will be a difficult year and there will be significant changes in today banking system structure as many small banks will have to find solutions to survive.

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## ORIGINAL PAPER

Silviu Dorin GEORGESCU

### The Romanian Market of Postal and Courier Services – Monitorization and Control

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**Abstract:** *In Romania, the transition from centralized economy to market economy following the Revolution of 1989, has led to major changes as regards the management of society, both at the level of economic agents and at national level. The decisions which in the past were adopted by the macro-systems the firm was part to are at present adopted by specialized managers in a market economy. A company's success stands in a powerful, solid management, capable to understand both the clients desires and the needs of its employees, to accomplish a company's object and mission within high quality and performance standards. The subsequent paper aims at presenting the evolution and dynamics of postal and courier services in Romania, a statistical analysis of the evolution of indicators Number of employees and Number of authorized suppliers.*

**Keywords:** *services, courier, monitorisation, control, indicator*

Although the literature on services has identified the characteristics in detail we are interested in more than that, we wish to highlight the manner in which services enter the aggregate good produced and delivered, the manner in which provide differentiation as regards the competition's products (Gary Akehurst, 2008).

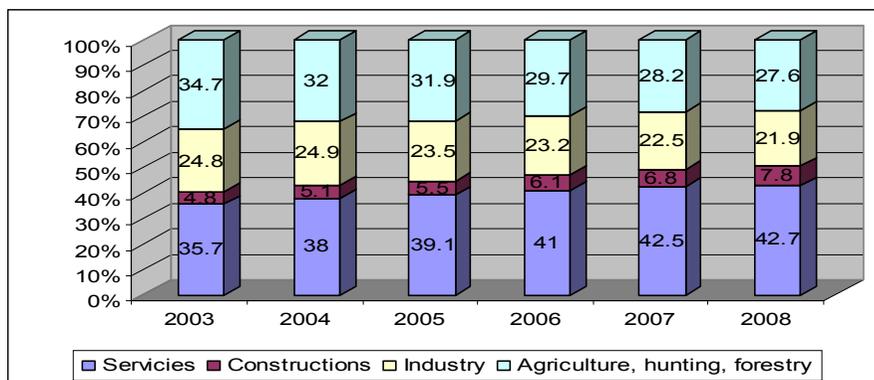
The market of good scan be split in two: on the one hand, the market of physical, material, tangible products (automobiles, construction materials), on the other hand the market of imaterial products (services, informations). Services belong to the second cathogory.

According to the American Marketing Association, services represent activites, benefits and utilities offered on the market or provided in association to the sale of a material good "(Commitee on definitions of the American Marketing Association, 1960, apud, Ion Criveanu, 2007, p.8). Services are defined as „ any activity, idea or performance provide by a part to another, without the existence of property transfer, but having, in essence, an intangible character”(Militaru Gheorghe, 2010, p.1).

At present, as services sector is in a continous change, diversification, theoretical and practical approaches are difficult. Services have complex forms of manifestation, been involved in all comparments of economic and social life, they have an etherogenous character. The evaluation and measuring of services sector is done through some indicators such as: occupied population (quota towards total) and its evolution in time, services participation to the creation of gross domestic product.

The occupied population indicator highlight the fact that the more a country is developed, the more its third sector holds an important part from the total amount of work force. In the developed countries over two thirds of the occupied population is hired in services sector while in countries with a medium or low level of development this indicator shows as that around 30 to 50 percent of the occupied population works in services. An analysis of the third sector at international level shows as that services have growth trend, the work force moving towards the activities in this sector.

In Romania, the occupied population in sector services has grown during 2003-2008 reaching 42%.



**Figure 1 The civilian employed population, on the main activities of national economy**  
 Source: National Institute of Statistics, Romanian Statistical Yearbook, Edition 2010.

Another indicator used to dimension the services sector is represented by their participation to the creation of the GDP. As in the case of occupied population, one observes a growth tendency of services as against material production, services having an enhanced share to the creation of GDP. In Romania, although in relation to other East-European countries and

developed countries where the share of the third sector to the creation of GDP is greater, one still observes an increase in its contribution to the creation of the GDP.

**Table 1 The contribution of main activities to GDP in 2007**

Country	Agriculture, hunting, forestry, fishing	Industry including construction	Services
Austria	2	31	67
Belgium	1	24	75
Bulgaria	6	32	61
Croatia	7	32	61
Denmark	1	26	73
Switzerland	1	28	71
Estonia	3	30	67
Finland	3	32	65
France	2	21	77
Germany	1	30	69
Italy	2	27	71
Norway	1	43	56
Netherlands	2	24	74
Portugal	3	24	73
United Kingdom	1	23	76
Romania	7	41	52
Spain	3	30	67
U.S.A.	1	22	77
Hungary	4	30	66

Source: Romanian Statistical Yearbook, 2010, p.1029

### **Coordinates of the appearance and evolution of postal and courier services in Romania**

The courier market is the one that perceives most rapidly the evolution and fluctuations of the economy, the courier services suppliers are strongly influenced by these modifications. Following the appearance of the first courier companies in Romania until the present moment, the national and world economy has known periods of growth but also periods negatively influenced by the world crisis from last years.

If in the 1990 – 2000 period the courier companies did not make their presence felt on the Romanian market, after 2000, with the economic growth in Romania, courier companies have experienced an ascending evolution, favoured on the one hand by Romania's accession to the European Union, growth of the foreign direct investments in Romania but also by the technic and technological progress of economy. The economic crisis started at the end of 2008 has influenced the activity of courier companies. Some companies were strongly affected by this crisis, thus the migration of courier companies' clients was much more accelerated in relation to the preceding years. The courier companies with a solid position on the market have the opportunity to attract new clients even in this period.

Although the Romanian Post has represented for a very long time the only provider of postal services, as a consequence of the more rapid development of this sector, of the need to communicate, of the greater requests, private courier companies have appeared powerful competitors for the Romanian Post.

At present, in Romania, there are numerous companies that offer divers services of courier characterized by flexibility, speed, efficiency, transparency etc.

Companies such as TNT România SRL, DHL International Romania SRL, DPD, Fan Courier strive to offer a package of services as complex and attractive as possible to answer the greater requests of clients.

In Romania, the courier services market is regulated by the National Authority for Administration and Regulation in Communications (ANCOM), institution with the role of applying the national policy in the field of postal services. In its activity, ANCOM follows the protection of the final users' interests, stimulation of investments, as well as the promotion of competition, a priority objective in the context of the postal services' market liberalisation in Romania. In our country, G.O. no. 31/2002 regarding postal services, approved with later ammendments through Law no. 642/2002, with later ammendments, establish the conditions for providing postal services and ensuring the access to the universal service, in order to create a competition market and to promote the users' interests.

The evolution of the number of postal services providers during 1999-2010 is represented in the next figure.

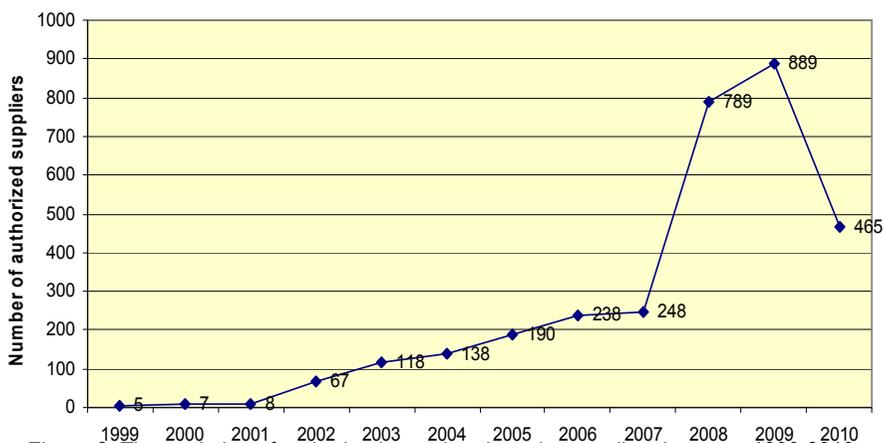


Figure 2. The evolution of authorized postal and courier suppliers between 1999-2010

Source: Author's own analysis based on data gathered by the ANCOM

Analysing the manner in which the postal services suppliers' process of authorization occurred in the last years, we have to point out the following:

After 1999, when the market of postal services liberalised, one has to take into account an evolution of the number of suppliers, reaching 248 in 2007.

In 2008 an increase in the number of authorised suppliers occurred (from 248 to 789) of 218,14% as against 2007. This spectacular increase was due both to the economic development at national level, to the national growth strategies of courier companies through the franchise system and contractors and to the change in the conditions of granting functioning authorizations as supplier of postal services through Decision no. 2858/2007.

In 2009 the rhythm of growth was slower, the growth being of about 12,67% as against 2008 (889 related to 789). However, the year 2010 outstands through a significant decrease in the number of postal services suppliers to 465, with 47,69% less than in 2009. This fact was due on the one hand to the economic crisis of 2009-2010, and, on the other hand, to the decrease in the

number of suppliers which hold a mandate to provide postal services in the name of other suppliers from 611 in 2009 to 138 in 2010.

According to the data collected by the ANCOM, in 2009 83,46% of the postal services suppliers (889) have effectively provided these services (742), compared to 2008 when their share was of 90,11%.

The human resource employed in the postal sector experienced an ascending evolution, both in the private and within the universal supplier.

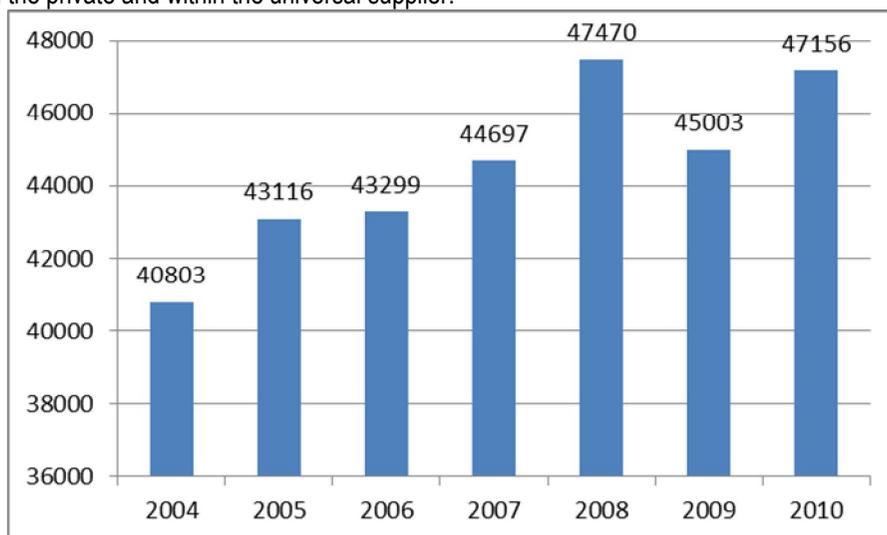


Figure 3 Evolution of the total number of employees in the postal sector 2004-2010

Source: Author's own analysis based on data gathered by the ANCOM

The work force employed in the private postal sector at the end of 2010 was of 10662 employees, **8179** employees being hired full-time (representing 76,71% of the employees in the private postal sector), and **1442** being hired part-time.

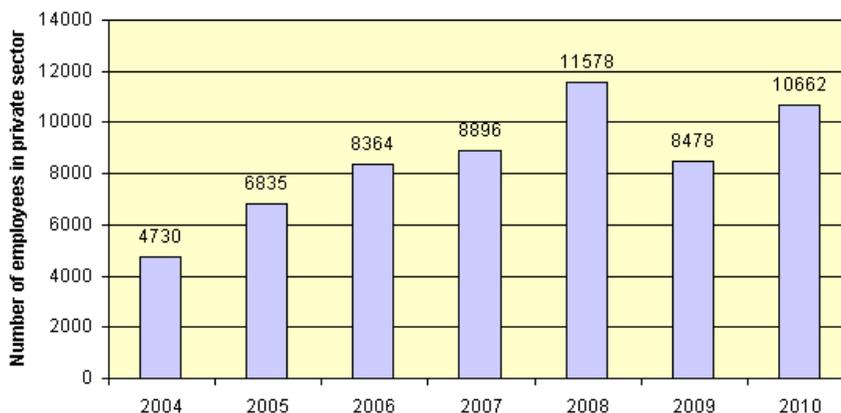


Figure 4 Evolution of the number of employees in the private sector 2004-2010

Source: Author's own analysis based on data gathered by the ANCOM

The number of employees in the postal sector has increased in 2010 in relation to 2009 with 4,78%, although the number of employees of the Romanian Post (the universal service provider) has decreased with 0,08% while in the private sector the number of employees increased with 25,76%. The main private companies in the sector experienced a growth in their turnover, confirming the fact that the courier services sector is one of the few sectors of activity which marked increases during the economic crisis begun in 2009.

Following 2007 when the postal services market experienced the highest value in Romania, the 2008-2009 period was characterised through a decrease in traffic, in 2009 experiencing a decrease of the market of over 30%, the decrease being due to the low traffic of the universal sector provider, especially to its internal traffic which decrease with almost a half in relation to the previous year.

### **Conclusions**

Courier services market is an extremely dynamic field having a positive evolution in the last couple of decades since its appearance. This positive evolution was determined by several factors: the economic growth, Romania's integration to the European Union, the market liberalisation, the entrance of foreign investors, the development of the IT&C sector. Postal and courier services sector remains an important source of jobs provider. According to the reports disseminated by the European Commission, this sector comprises 0,75% of the number of employees in EU Member States.

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**ORIGINAL PAPER**

**Cristina MANOLACHE**

**The Role Of The Romanian Constitutional Court in Solving the  
Conflicts Between Public Authorities**

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**Abstract:** *The present paper presents the role of the Romanian Constitutional Court in solving the conflicts between public authorities. The article is focused on the theoretical framework as well as on the empirical analysis of the political affiliations of the heads of the public authorities, the prerogatives of the Constitutional Court and the consequences of its decisions.*

**Keywords:** *Romania, Constitutional Court, conflict, public authorities, politics.*

It is well-known that, among its provisions, a Constitution “sets the formal structure of a state, denouncing the powers and the authorities of the central government, as well as the subsequent relationships between them and other levels of government”<sup>1</sup>. As such, it is obvious that the Constitution bears two dimensions: both a legal and a political one, or in other words, it is the “legal foundation of a state”. Being the supreme guardian of the Constitution and at the same time, founding its activities and competencies on its provisions, the Constitutional Courts should also be analyzed from a dualistic perspective, as they are both political and judicial institutions.

Nonetheless, before proceeding to such an analysis of their role, it is well-worth noting that the newly-established Constitutional Courts are the result of a desperate attempt of the former communist countries to distance themselves from the previous regime. One of the main reasons for this assertion is that during the communist rule, the judiciary was neither independent, nor active. It was merely “an instrument of the government [which was] used as a coercive force”<sup>2</sup>. Needless to say, there was no form of judicial review needed, as “the state was the embodiment of the people and a formal division of powers was unnecessary”<sup>3</sup> – the party-state was always right. Hence, when the new Constitutions were established after 1989, relatively clearly dividing the public authorities and seeking to determine the exact relationships between them, the Constitutional Courts in the former Soviet space were perceived as guardians of the newly democratic regime, as supreme and independent authorities, as judicial independence was openly proclaimed in the Fundamental Law, although not always entirely respected by the political actors.

An example in point is the case of the Russian Constitutional Court which was altogether suspended in 1993 by the President Boris Yeltsin after it had sided with the Parliament in a dispute between it and the President. Another example is that of 1996 Moldova’s conflict between the President and the Minister of Defense, when the Moldovan Constitutional Court was asked to settle their dispute and “although the Court ruled in the Defense Minister’s favor, the dispute escalated to the point that both the President and the Minister of Defense threatened to use force”<sup>4</sup>. Consequently, the former case clearly illustrates that the independence of the Constitutional Court was not taken seriously by the political leaders who used their authority to dismantle it when it did not rule in its favor, whereas the latter exemplifies how unimportant the decisions of the Constitutional Court were to the political authorities involved in the conflict since, even with the Court’s rule which was theoretically supposed to end their argument, the two sides involved decided to continue their dispute as if nothing had happened. However, even in spite of such unfortunate incidents, the role of the Constitutional Courts in the newly democratic states remains complex and fundamental to the establishment and consolidation of a strong democracy.

First of all, Hans Kelsen has envisaged the role of the Constitutional Courts to be that of a negative legislator<sup>5</sup>, which would “limit itself only to sanctioning those pieces of legislation which are not in accordance with the Fundamental Law, as opposed to the Parliament, which stands as a positive legislator”<sup>6</sup>, because it is entitled to enact laws.

Secondly, it is important to note that the Constitutional Courts are not a part of the branches of power in a state because they are not a part of the judicial branch. As Louis Favoreau has put it, the Constitutional Court is different from the American model of the Supreme Court which represents the top of the judicial system and is therefore, part of it, because “the Constitutional Court is an independent institution which would more rather resemble an additional Parliament Chamber”<sup>7</sup> emphasizing once more its dualistic nature of both a political and a juridical institution.

Nevertheless, a political role has been assigned to Constitutional Courts, because they are that “public authority which is meant to ensure the well-functioning of the public powers in the framework of the constitutional relations of separation, balance, cooperation and mutual control”<sup>8</sup>.

In other words, the Constitutional Courts are not only the safe guardians of the Constitution, but they also “stabilize the democracy itself”<sup>9</sup>, ensuring that the balance of powers is preserved and that the public powers are functioning within the constitutional limits. Consistent with and having in mind precisely this role, perhaps, many Constitutional Courts throughout Europe have been recently assigned with a new prerogative, namely that of solving the judicial conflicts of a constitutional nature between the public authorities. That is to say that, given the circumstances when such conflicts would arise between the public authorities of the state that they are impossible to settle through peaceful means or that they may lead to political, institutional or even economical blockages, the Constitutional Court is able to solve those blockages by taking into account the Constitutional provisions, thus ruling impartially and in accordance with the democratic values and principles.

Nevertheless, such an extended power with significant implications in the political sphere is not necessarily a positive one, as I will further explain. One of the main reasons for my argument is that the possibility of appealing to an independent institution in order to solve conflicts of a political nature which are quite frequent in any democratic state is likely to “turn the Constitutional Courts into mere watchdogs and divert them from their original purpose – that of ensuring the judicial review”<sup>10</sup>.

Secondly, this role of solving the conflicts between the public authorities is more relevant either in a federal framework or in a context in which the political distribution of powers appears to be uncertain or unbalanced (as is the case of the countries at the beginning of their transition period). One of the reasons for which Constitutional Courts are established is to solve the potential conflicts between the federal and the federate authorities, as would be the case in Germany and in Austria. Similar to this reasoning, Constitutional Courts are useful in order to solve the conflicts between the state authorities and the authorities of the autonomous regions/collectivities, as would be the case with Spain and Italy<sup>11</sup>. However, this is not the case in the Central and East European states. So, then, what would be the purpose of assigning such a role to the Constitutional Courts?

### **Theoretical Framework**

In order to answer this question, it is necessary to explain what are the “juridical conflicts of a constitutional nature” that the Constitutional Courts are entrusted to solve. Steaming from the judicial practice rather than from an established doctrine, the Romanian Constitutional Court has offered two conceptual delimitations of what a juridical conflict of a constitutional nature is: a positive and a negative definition.

According to the positive definition, a juridical conflict of a constitutional nature between various public authorities presupposes “concrete acts or actions through which an authority or several authorities grants itself powers, attributions or competencies which, according to the Constitution, belong to other public authorities or b) the omission of public authorities consisting of the decline of competence or in the refusal to fulfill certain acts which are part of their obligations”<sup>12</sup> and further specifying that such a conflict “exists between two or more authorities regarding the content or the extent of their attributions deriving from the Constitution, which means that these are conflicts of competency, either positive or negative, which may create institutional blockages”<sup>13</sup>.

The negative definition maintains that the opinions, judgments or statements of the owner of a mandate of public dignity – such as the Romanian President, as a unipersonal public authority or the leader of a public authority – regarding other public authorities do not constitute juridical conflicts between public authorities by themselves. The opinions or suggestions “regarding the manner in which a certain public authority or its structures act or should act,

although critical in content, are not likely to generate institutional blockages unless they are followed by actions and/or inactions of a nature to forbid the fulfillment of the constitutional attributions of those public authorities. Such opinions or suggestion remain within the limits of the freedom of expression of political opinions<sup>14</sup>.

Therefore, it appears that the positive definition specifies what a juridical conflict of a constitutional nature is and what are the conditions for certain disputes to be considered to belong to this category, whereas the negative definition clearly specifies what type of disputes – albeit, more frequent – are not classified as juridical conflicts of a constitutional nature, but mere personal and/or political disputes which do not infringe on any Constitutional rights of other public authorities. Once more, as previously mentioned, it is also important to note that these definitions are not widely-employed nor are they theoretically consolidated from any doctrines, but they are the result of political practice and the experience of a given country. From this perspective, it can be argued that the introduction of such a provision in the 2003 Constitution was the result of a perceived political tension, but also that the mere existence of such a role of the Constitutional Court stimulated the political authorities to make use of it.

Another relevant issue as to determining the purpose of assigning such a role to the Constitutional Courts is that of establishing the public authorities which may be involved in a juridical conflict of a constitutional nature. Again, the Romanian Constitutional Court has decided that only the public authorities mentioned in the third title of the Constitution may be involved in a juridical conflict of a constitutional nature and that, therefore, political parties<sup>15</sup>, “parliamentary groups as they are structures of the Parliament Chambers”<sup>16</sup> or “juridical persons of public law which, according to the provisions of art. 8, second paragraph of the Constitution contribute to the definition and the expression of the political will of the citizens”<sup>17</sup> are not considered to be public authorities.

Also important to note is that the Court has emphasized that it does not deal with the conflicts between the legislative and the executive power on the one hand, and the judicial power on the other, as long as it does not refer to any of the following public authorities: the Parliament – either the Chamber of Deputies or the Senate – the Romanian President, as a unipersonal public authority, the Government, the organs of the public central and local administrations as well as the organs of the judicial authority – the High Court of Cassation and Justice, the Public Ministry and the Superior Council of Magistracy<sup>18</sup>. Therefore, it appears that the Romanian Constitutional Court has decided to adopt a narrower definition of the public authorities, meant to prevent an overwhelming quantity of claims of a juridical conflict of a constitutional nature which was quite likely to be generated by the political parties or the parliamentary groups pertaining to this category.

Finally, an exception to these theoretical delimitations which came to be through practice is the statement according to which a juridical conflict of constitutional nature cannot exist between the judicial branches, including between the High Court of Cassation and Justice, and other public authorities, as the courts would need to analyze and solve their general competency *ex officio*<sup>19</sup>. However, practice and experience have dismantled this perception in 2008 and in 2009, when the Romanian Constitutional Court admitted and subsequently solved two cases of a juridical conflict of a constitutional nature which involved the Romanian President and the High Court of Cassation and Justice (2008)<sup>20</sup> and another one involving the High Court of Cassation and Justice on the one hand, and the Romanian Parliament and Government on the other (2009)<sup>21</sup>.

### **Empirical Analysis**

Given the provisions of art. 146, paragraph e) of the Fundamental Law of 2003<sup>22</sup>, the Romanian Constitutional Court has been granted the prerogative to solve the juridical conflicts of a constitutional nature between the public authorities, a power which follows the model of other European states, such as Poland<sup>23</sup>, for instance. The main difference is, however, that the Polish Constitutional Court has not been, up to date, required to solve such a conflict, whereas the Romanian Court has progressively increased the number of cases in which its intervention is necessary during the past years.

The empirical analysis that supports the previously-presented ideas regarding the topic of this paper is actually based on the decisions of the Romanian Constitutional Court regarding the juridical conflicts of a constitutional nature between the public authorities that have been taken from 2005 until 2010, namely the Decision No. 53/28.01.2005, Decision No. 435/26.05.2006, Decision No. 356/5.04.2007, Decision No. 97/7.02.2008, Decision No. 270/10.03.2008, Decision No. 1222/12.11.2008, Decision No. 838/27.05.2009, Decision No. 1559/18.11.2009, Decision No. 1560/18.11.2009, Decision No. 1431/03.11.2010 and Decision No. 1525/24.11.2010<sup>24</sup>. Each of these decisions have involved representatives of the public authorities that often had different political affiliations and, even though most of them have not been admitted by the Constitutional Court, they all had significant contributions to the subsequent conceptual and practical delimitations that were required by the new attribution of the Court, with which the newly democratic Romanian state had no experience.

#### **A. The Political Affiliations of the Heads of the Public Authorities**

Although not particularly excessively numerous, the decisions of the Romanian Constitutional Court regarding the cases in which it was required to solve the supposedly juridical conflicts of a constitutional nature between public authorities have gradually increased<sup>25</sup> and, on the whole, they are more numerous than in other European states in which the Constitutional Courts have the same attribution – the best example in point being that of Poland, which is also a post-communist state. On the other hand, the experience of these cases has provided a clearer, more coherent theoretical framework in what regards the conflicts that can be considered to be of a constitutional nature, in what regards the public authorities which may be involved in such conflicts and, ultimately, in what regards the impact of the decisions of the Constitutional Court in preserving the separation and balance of powers because, in all of these cases, the main issue is that one of the political powers is perceived as attempting to take on the attributions of another political power(s) and therefore alter the balance of powers in the state.

Hence, by analyzing all of the cases brought to the Constitutional Court from 2005 until 2010, it appears that the Parliament has been involved in most of the juridical conflicts of a constitutional nature – 8 times, followed closely by the President and the Government, with 7 conflicts each.

However, it is important to keep in mind that the Constitutional Court does not necessarily need to be notified by one of the parties that are involved in the conflict, thus implying that any public authority can refer a case to the Court<sup>26</sup>. In addition, no distinction between the Chamber of Deputies and the Senate is made, as the Parliament is taken together, irregardless of the different stances its Chambers may adopt in the conflicts, which strongly biases the institutional perspective – especially since these differences are most likely the result of a mere political configuration.

Then again, when analyzing the political affiliations of the public authorities, at a first, basic level, I took into account only the political color of the heads of these offices, as they are the only ones who can constitute a party involved in the conflict. Respectively, the political affiliations

presented below are, in the case of the Government – restricted to that of the Prime-Minister, as the head of Government; in the case of the Parliament – they represent those of the Presidents of the two Chambers, namely that of the President of the Chamber of Deputies and that of the President of the Senate; and finally, in the case of the judicial branch, there is no political affiliation, whereas the President has been, since 2004, affiliated to the Democrat Party/ The Democrat-Liberal Party.

Finally, to put all of these data together, a chronological analysis of the specific conflicts is in order, as follows:

In 2005, the first juridical conflict of a constitutional nature was between the President and the Romanian Parliament and therefore, in terms of their respective political affiliations, between the Democrat Party and the Social Democrat Party which was represented both in the Chamber of Deputies and in the Senate by Adrian Năstase and Nicolae Văcăroiu;

A conflict of a similar nature emerged in 2006, this time between the judicial authority on one side, and the Romanian President and Prime-Minister on the other, due to certain slanderous accusations of a political nature. Basically, on this occasion, the conflict was between a public authority with no political affiliation and the Democrat Party and the National Liberal Party on the other hand;

The third constitutional conflict was that between the Romanian President and the Romanian Government, as chiefly represented by the Prime-Minister at that time Călin Popescu Țăriceanu, in a numerous series of political conflicts that occurred during 2007. On this occasion, the political affiliations of the parties involved were the Democrat Party – the President – and the National Liberal Party – the Prime-Minister;

A rather complex conflict which was brought to the Court by three distinct notifications in 2008 was that between the Romanian Government and the Superior Council of State Defense, between the Romanian President, the High Court of Cassation and Justice on the one hand, and the Parliament on the other and between the Public Ministry and the Parliament – namely the Chamber of Deputies. In essence, this complex constitutional conflict was between the politically neutral judicial branch as represented by the High Court of Cassation and Justice and the Democrat Traian Băsescu on the one side, against the National Liberal and Social Democrat Parliament; and then it was between the neutral Superior Council of State Defense and the National Liberal Government and finally, it was between the non-politically affiliated Public Ministry and the National Liberal Chamber of Deputies.

A third conflict that occurred in 2008 was between the President and the judicial power, as represented by the High Court of Cassation and Justice, so ultimately, between the Democrat Party and an authority with no political affiliation;

Moreover, in 2009, the High Court of Cassation and Justice, as representative for the judicial branch was involved in another constitutional conflict, this time against the Romanian Parliament and Government, thereby from a political perspective, the conflict was between a non-politically-affiliated authority and the Democrat Liberal Government and Parliament;

In another conflict that same year, the Romanian Parliament was involved against the President, albeit it was only the Social Democrat Senate that acknowledged the dispute with the Democrat-Liberal President, while the Democrat-Liberal Chamber of Deputies sided with Traian Băsescu and denied the existence of such a conflict;

A final conflict in 2009 occurred between the President and the Parliament, although once more, it is important to note that the Chamber of Deputies, represented by Roberta Anastase of the Democrat-Liberal Party, sided with the President and denied the conflict against the Senate, as represented by the Social Democrat Mircea Geoană;

Last but not least, in 2010 the first juridical conflict of a constitutional nature was between the Parliament and the Government and centered around the bill on the national education and later that same year, another conflict ensued again between the same public authorities. On this final occasion, the main dispute was actually between the Senate on the one side, against the Government and the Chamber of Deputies which supported it, on the other. Or, in other words, between the Social Democrats and the Democrat-Liberals.

In essence, it appears that the political affiliation which was most actively involved in constitutional conflicts was the Democrat-Liberal one (or the Democrat, prior to December 2006), mainly through the Presidential authority and the post-2008 Government. In addition, when correlating the political affiliations of these public authorities, it is obvious that most of the conflicts are between opposing political parties that hold those offices of authority, namely the Social Democrat Party and the Democrat Party/Democrat-Liberal Party, confirming Isabel de Madariaga's view that the principle of checks and balances has, during the recent times of democracy and political pluralism, come to refer mainly to the majorities in power and those that oppose them or, as Jean Gicquel put it, "the political separation now regards the division between the majority and the opposition"<sup>27</sup>.

### **B. The Constitutional Prerogatives Which Were Violated in the Conflicts**

The second important variable in analyzing the role of the Romanian Constitutional Court in safeguarding the checks and balances principle is, naturally, that of the constitutional prerogatives which were presumably violated in the conflicts. Thus, in the following lines I will present and synthesize the Constitutional articles<sup>28</sup> which were presumably broken by the public authorities in an attempt to see in what respects is the principle of checks and balances most frequently tempered with.

The first juridical conflict of a constitutional nature was brought to the Court's attention by the President of the Chamber of Deputies on the 8<sup>th</sup> of January 2005, claiming that the following Constitutional provisions had been broken: that of art. 1, paragraph 4)<sup>29</sup>, that of art. 8, paragraph 1)<sup>30</sup> art. 61, paragraph 1)<sup>31</sup>, art. 64 <sup>32</sup>and art. 80, paragraph 2)<sup>33</sup> as well as the second paragraph of art. 82<sup>34</sup> in a conflict between the Parliament and the President – so the legislative and the executive branch, over certain slanderous accusations made by the latter in the mass media.

On the second conflict, which was dismissed through the Court's Decision No. 435/26.05.2006, the President of the Superior Council of Magistracy considered that the Constitutional stipulations of articles 1, paragraph 4)<sup>35</sup>, 80, paragraph 2)<sup>36</sup> and 133, paragraph 2)<sup>37</sup> had been disregarded by the behavior and public declarations of the President Traian Băsescu, the Prime-Minister Călin Popescu Țăriceanu and several members of his Cabinet – in brief, this was a conflict between the judicial branch and the two parts of the executive, over certain political statements made by the latter.

Then, in 2007, the Prime-Minister Călin Popescu Țăriceanu notified the Constitutional Court on a constitutional conflict in which the President was accused of refusing to fulfill his duties with regard to nominating a new minister at the proposal of the Prime-Minister and as such violating a series of constitutional provisions on this matter under articles 80, 85, 86, 87, 91, 103, 106 and 107 on which I will not further develop at this point<sup>38</sup>, but basically, this was a negative juridical conflict of a constitutional nature, in which the President refused to fulfill certain attributions regarding the approval of the nomination of Ministers, fact which led to an inter-branch conflict in the dual executive of the Romanian political system.

In 2008, in the case of the supposed conflict between the Superior Council of State Defense and the Government, case which was brought to the Court by Traian Băsescu, the

following legal provisions of the Fundamental Law were supposedly broken: art. 16, paragraph 2)<sup>39</sup>, art. 115, paragraph 4)<sup>40</sup> and art. 119<sup>41</sup>.

Later that same year, in the most complex decision of the Romanian Constitutional Court which compiled three notifications of presumed juridical conflicts of a constitutional nature which, nonetheless, all dealt with the same issue in the matter of the criminal investigations of four Cabinet members who were also Parliament members, art. 109, paragraph 2)<sup>42</sup> was brought under discussion and debates – basically, the approval of the criminal investigations of the members of Government who were also Parliament members was disputed in this case between the executive branch and the legislative.

At the end of 2008, in the conflict between the President Traian Băsescu and the High Court of Cassation and Justice as representative of the judicial branch, there was just one constitutional provision, namely that of art. 94<sup>43</sup>, disputed – in essence, the fact that the President is the only authority competent to make military promotions, and this prerogative cannot be distributed by individual decisions of the courts, so a conflict between the judicial and the executive branch.

In addition, the first conflict of 2009 between the judicial authority, on the one hand, and the Romanian Parliament and Government on the other disputed the supposed violation of the following Constitutional provisions: art. 1, paragraph 4)<sup>44</sup>, art. 126, paragraph 1)<sup>45</sup> and art. 126, paragraph 3)<sup>46</sup> – in short, the conflict was centered on the principles of separation of powers and that of the independence of the judiciary branch, as these articles referred to the judicial authority.

Then, the Romanian Constitutional Court's Decisions No. 1559 and 1560 which were both taken on the 18<sup>th</sup> of November after analyzing a presumed conflict between the Romanian Parliament and the Romanian President, the following Constitutional provisions were breached (in both cases): art. 85, paragraphs 2)<sup>47</sup> and 3)<sup>48</sup> and art. 107<sup>49</sup> -- basically, the dispute was over the fact that the President had extended his prerogatives in what regards the appointment of new ministers to the detriment of the Parliament's power in this respect, so a conflict between the executive and the legislative branches.

Finally, a similar situation occurred in 2010, when two juridical conflicts of a constitutional nature between public authorities shared the same articles of the Fundamental Law in their dispute – that between the Parliament and the Government on the bill of the national education – respectively art. 1, paragraph 4)<sup>50</sup>, art. 61, paragraph 1)<sup>51</sup>, art. 102, paragraph 1)<sup>52</sup> and art. 114, paragraph 1)<sup>53</sup> and art. 147, paragraph 4)<sup>54</sup> – in essence, conflicts over the constitutional attributions of the legislative branch and the exceptional circumstances in which the executive branch, namely the Government, can exercise the legislative function as well.

Therefore, after an overview of the constitutional provisions which were violated in the juridical conflicts of a constitutional nature between public authorities and which were brought forth to the Romanian Constitutional Court, as well as of the parties involved in these conflicts, it appears that most of them occurred between the President and the Parliament (3), followed closely by the conflicts between the President and the judicial authority (2) and those between the Government and the judicial authority (2). Hence, the cases in which the principle of checks and balances needs most reinforcement are those between the executive and the legislative branches, as well as those between the judicial branch and the executive/the legislative.

Furthermore, when analyzing the actual constitutional provisions disputed between these public authorities, I found that most of them were centered on the fourth paragraph of article 1 of the Fundamental Law, which refers to the principle of separation of powers. This implies that the explicit theoretical formulation of the principle does not seem to be enough for its actual implementation in a newly democratic state. From this perspective, the role of the Romanian Constitutional Court in safe guarding the principle of checks and balances – which, first and

foremost, requires a clear separation of powers – appears as crucial in the Romanian landscape if it is precisely the constitutional provision stipulating it that is allegedly violated most often.

Moreover, the most frequently broken constitutional provisions are those regarding the Parliament's competency – or so they are perceived by the Parliament – when the President is the one breaching them and, quite paradoxically, the ones in which the judicial authority disputes its independence and competency over certain rulings with the dualistic structure of the executive branch – a total of 4 cases. I contend that the reasons these conflicts occur is precisely because the constitutional provisions disputed are not sufficiently clear and hence, they are arbitrarily interpreted by the authorities involved in the conflict, as each of the holders of political power normally seeks to expand their own attributes. Consequently, the role of the Romanian Constitutional Court in safeguarding the principle of checks and balances between these institutions which, basically, have all sort of legal and even political mechanisms to counterbalance each other is to clarify those Constitutional provisions that are disputed and, precisely because the Court's decisions are binding and have legal power for the future, they will serve as a reference point for other similar cases of constitutional conflicts.

On a final note, I believe that the analysis of the constitutional prerogatives presumably broken and disputed in the juridical conflicts of a constitutional nature between public authorities are also those provisions which need a terminological improvement and thereby, the Romanian Constitutional Court is the only authority competent to carry out such clarifications. In addition, because in most of the cases, the constitutional principle of separation of powers is considered to be broken by the various authorities involved in the conflict, I believe that the Constitutional Court has a tremendously significant role in safe guarding the supremacy of the Fundamental Law and, implicitly, the principle of checks and balances which is inherent to any constitutional democracy.

### **C. The Clarifications Made By the Court in Its Decisions**

Before proceeding with the analysis of this next variable, it is important to note that not all of the cases implying juridical conflicts of a constitutional nature which were brought to the Romanian Constitutional Court were automatically admitted as such. In fact, the situation is quite the opposite: most of the alleged constitutional conflicts or, even worse, institutional blockages between the public authorities were dismissed by the Court, after a thorough analysis of the factual and legal dimensions they posed.

On this note, from a total of 11 Decisions on juridical conflicts of a constitutional nature between public authorities, the Romanian Constitutional Court decided that 4 of them were not cases of such conflicts<sup>55</sup>, 5 of them were indeed admitted as constitutional conflicts and reglemented accordingly, whereas 2 had a special status<sup>56</sup> – they were recognized as being juridical conflicts of a constitutional nature, but they were perceived to have already stopped before the Court's ruling so no legal clarifications were made in those cases. In this section of the analysis I will present and analyze the clarifications made by the Romanian Constitutional Court in the Decisions it had admitted as constitutional conflicts, namely the Decision No. 270/10.03.2008 which was published in the Official Gazette No. 290/16.04.2008, the Decision No. 1222/12.11.2008 which was published in the Official Gazette No. 864/22.12.2008, the Decision No. 838/27.05.2009 which was published in the Official Gazette No. 461/03.07.2009, the Decision No. 1431/3.11.2010 which was published in the Official Gazette No. 758/12.11.2010 and the Decision No. 1525/24.11.2010 which was published in the Official Gazette No. 818/07.12.2010.

To begin with, the Decision No. 270/10.03.2008 which was subsequently published in the Official Gazette No. 290/15.04.2008 admitted the existence of a juridical conflict of a constitutional nature between the Public Ministry and the Parliament regarding the procedural aspects employed in the prosecution of the Cabinet members who are also Parliament members.

Therefore, the Court decided that the Public Ministry has to notify the Chamber of the Parliament to which that respective person who is also a Parliament member belongs to in order to ask for the approval to proceed with the criminal investigation, as is to be understood from art. 109, paragraph 2) of the Fundamental Law. In addition, the Court also decided that the Public Ministry has to notify only the President in the cases in which those members of the Government are not also members of the Parliament and that his approval is sufficient in such a matter.

Secondly, after admitting the existence of a juridical conflict of a constitutional nature between the President and the judicial power, as represented by the High Court of Cassation and Justice regarding the disregard of the latter to enforce the Decision No. 384/4.05.2006, published in the Official Gazette No. 451/24.05.2006 of the Constitutional Court. Hence, by its Decision No. 1222/12.11.2008 which was subsequently published in the Official Gazette No. 864/22.12.2008, the Romanian Constitutional Court decided that the prerogative to award a military promotion pertains exclusively to the President, as is stipulated by art. 94, paragraph b) of the Constitution and that no court can take on itself this attribution.

Later on, in 2009, the Court admitted another case, in its Decision No. 838/27.05.2009 which was published in the Official Gazette No. 461/03.07.2009, regarding the constitutional conflict between the judicial authority, as represented by the High Court of Cassation and Justice and the Parliament and Government on the other hand, the Court decided that the former "does not have the constitutional competency to establish, modify or repeal the juridical norms with legal power and neither to do the judicial review of the legislation"<sup>57</sup>. In addition, according with art. 126, paragraph 3) of the Fundamental Law, the High Court of Cassation and Justice has "to ensure the unitary interpretation and enforcement of the law by all of the courts, thereby respecting the fundamental principle of separation and balance of powers prescribed by art. 1, paragraph 4) of the Romanian Constitution"<sup>58</sup>.

Moreover, another juridical conflict of a constitutional nature was acknowledged in the Court's Decision No. 1431/3.11.2010 which was published in the Official Gazette No. 758/12.11.2010, involving the Parliament and the Government, over the bill of the national education. After a thorough legal analysis, and after assessing that the fact that the Government had assumed its responsibility in front of the Parliament was an unconstitutional act which triggered the constitutional conflict, however, in this case, the Romanian Constitutional Court did not offer any further clarifications. The situation is all the more intriguing, as the Court had already ruled, through its Decision No. 1557/18.11.2009 published in the Official Gazette No. 40/19.01.2010 that this procedure of the Government should be taken only under exceptional circumstances and that it is, otherwise, unconstitutional.

Last but not least, the Decision No. 1525/24.11.2010 which was published in the Official Gazette No. 818/07.12.2010, once more in a paradoxical manner, ruled that there was another conflict between the Parliament and the Government on the same matter, only that this time, the public authority causing it was the Parliament – namely the Senate – which refused to debate the motion of censorship that followed after the Government had assumed its responsibility, claiming that, in the light of the previously presented decision of the Constitutional Court, the Prime-Minister Emil Boc had to take back that respective act. However, the Court decided that, taking into account the Constitutional provisions, such a procedure of the Executive cannot be stopped once initiated and that the mere fact that the Parliament had already adopted a calendar for the unfolding of this procedure prior to the Court's ruling implicitly means that it had accepted it and now, the only solution is to let it continue.

On the whole, the clarifications which were made by the Romanian Constitutional Court in the five decisions on which it had accepted the existence of a juridical conflict of a constitutional nature between public authorities serve as instruments in preserving the principle of balance and

powers, because they offer clarifications and binding interpretations that are independent from the political powers involved to certain constitutional provisions.

#### **D. The Impact of the Rulings of the Romanian Constitutional Court**

According to article 147, paragraph 4) of the Fundamental Law, “the decisions of the Romanian Constitutional Court shall be published in the Official Gazette of Romania. As from their publication, these decisions shall be generally binding and effective only for the future”<sup>59</sup>. Starting from this legal stipulation and taking into account the previously analyzed decisions of the Court with regard to solving the juridical conflicts of a constitutional nature between public authorities, in this final section I will briefly assess the impact of the rulings of the Romanian Constitutional Court.

Firstly, it is important to emphasize that what are basically *inter partes* conflicts which would concern only the parties involved, are to become *erga omnes* decisions, opposable to all parties involved in such situations in the future. On the one hand, the advantage of such an impact is that it offers the system of interaction established between public authorities a certain sense of predictability, irregardless of the political configuration adopted. On the other hand though, it cannot be denied that the primordial nature of these juridical conflicts of a constitutional nature is, most of the times, a political one. As I have previously demonstrated, such conflicts tend to appear more frequently between opposing political affiliations in power, whereas different branches of power with similar political affiliations tend to ally in political conflicts – an example in point being the recent stance taken by the Chamber of Deputies, which is headed by the Democrat Liberal Roberta Anastase and which never sides with the Senate in these constitutional conflicts, but with the President or with the Government with which it shares the same political affiliation. As such, it is rather unpractical to rule with *erga omnes* decisions those conflicts which are mostly political and therefore, essentially contextual – *inter partes*.

Secondly, the rulings of the Romanian Constitutional Court are “effective only for the future”<sup>60</sup>, which means that irregardless of the gravity and the impact of the conflict they solve, these decisions do not have retroactive effects and by consequence, cannot undo any acts, actions or inactions that occurred prior to its publication in the Official Gazette. This principle is fundamental to the legal doctrine and promotes the stability and the predictability which should be inherent to any legal system. Nonetheless, it also greatly limits the effective impact of the decisions of the Constitutional Court, which are rendered as mere acknowledgments of the political realities rather than legal tools through which the principle of checks and balances can be enforced.

Furthermore, as I have previously mentioned, the decisions of the Romanian Constitutional Court serve as instruments which clarify those disputed constitutional provisions which enabled one of the public authorities to attempt to attain more political power at the expense of another authority. From this perspective, the role of the Romanian Constitutional Court in preserving the principle of checks and balances is of an utmost importance – its strengthens it by ruling in its spirit, it renews it by clarifying the constitutional provisions that were until then disputed or used in different purposes and finally, it places it at the centre of the dualistic dimension of the juridical conflicts of a constitutional nature, namely in between the juridical and the legal dimension of such conflicts.

Finally, through its decisions, the Romanian Constitutional Court also appears as a safe guardian of the principle of checks and balances, as an independent, unique authority which rules only in the spirit of the Constitution, and as a readily-available juridico-political instrument which can be effectively employed by either one of the public authorities. Because none of the public

authorities has the absolute power and because they all have different constitutional tools of checking that neither one of the other branches exceeds their prerogatives (one of these tools, recently becoming the Constitutional Court), the public authorities remain balanced and in case that balance is altered or perceived as altered, the authorities may resort to the rulings of the Constitutional Court. On the other hand, nevertheless, it can also turn into a watch dog of the Constitution and of the actual implementation of the principle of checks and balances, which would ultimately render it ineffective.

### **Conclusions**

To conclude, it appears that the Romanian Constitutional Court is more and more frequently called to rule upon cases of juridical conflicts of a constitutional nature between public authorities, especially when those holding the head offices are of opposing political affiliations and when the constitutional provisions allow interpretation.

This paper in itself was constructed in a juridico-political manner, as the primary sources used in my research were legal documents such as the Constitutions and the Decisions taken by the Court in solving the constitutional conflicts between public authorities and at the same time, in analyzing these sources, I have also looked at the political factors and contexts which strongly influenced them – naturally, since these conflicts are, to a great extent, political.

Consequently it is obvious that the political affiliations of the heads of public authorities do matter and the more contrasting they are, the more will increase the number of conflict they engage and hence, the role of the Constitutional Court in safe guarding the principle of checks and balances shall also increase.

In contrast, and yet following the same logic, the conflict between public authorities which were headed by persons with the same political affiliations are inexistent. An example in point is also specific to the post-2008 political landscape, with the Parliament taking a divided stance in these juridical conflicts – if the Social Democrat President of the Senate would notify the Court on constitutional conflicts with the Government or with the President, the Liberal-Democrat President of the Chamber of Deputies would claim that there is no such conflict, thus siding with the executive branch of the same political affiliation, rather than with its own legislative complement. Consequently, I found that juridical conflicts of a constitutional nature are most likely to occur when the heads of the public authorities involved are of different political affiliations, therefore underlining the political inherent character of such disputes.

From this perspective, the role of the Romanian Constitutional Court in safe guarding the principle of checks and balances seems evident. If the constitutional provision most frequently broken is that referring to the separation of powers itself, it follows that the Court acts as the guardian of this principle, called to remedy the disputes of separation and balance the powers once more, according to the Constitution, as the solely legitimated authority to do so. In addition, precisely because the Constitutional Court has this official attribution that no other authority possesses, it follows that the Court appears as a juridico-political instrument in enforcing and preserving the checks of the political system, as the public authorities have the possibility to check the extent to which other public authorities are fulfilling their attributions and, when not correspondingly, they can appeal to the Constitutional Court.

Moreover, another important role of the Romanian Constitutional Court in safeguarding the principle of checks and balances refers to the clarifications it makes on various constitutional provisions, in the rulings it gives. On this note, being the only institution which can perform the judicial review and consequently interpret the Constitution, the Court settles the disputes in which it actually recognizes the existence of juridical conflicts of a constitutional nature by setting straight and clarifying the constitutional provision which led to those conflicts in the first place. By

consequence, given that the interpretation of the Court is the official interpretation, the principle of checks and balances is enforced, as the powers become once more separated and balanced.

On this note, an important reference has to be made with regard to the impact of the decisions taken by the Court – they are “generally binding and effective only for the future”<sup>61</sup>. Hence, the Constitutional Court re-enforces the constitutional provisions by the clarifications and interpretation it makes, and at the same time, given the mandatory, *erga omnes* effect of its decisions, the principle of checks and balances is enforced in such a manner that ensures the already settled conflicts will not be re-disputed by different holders of functions of public authority. Although it has been criticized that this final role is not quite beneficial given the political underlying dimension of the juridical conflicts of a constitutional nature, which consequently implies that on most occasions, these *inter partes* conflicts are contextually driven by the political configurations in power at that respective time, I believe that the effects given to the Court’s decisions are beneficial. They have a positive role in safeguarding the principle of checks and balances because, irregardless of the political context, if certain constitutional provisions reglementing the competencies of public authorities are not sufficiently clear or susceptible to interpretations, I believe that at some point in time, one of the heads of a public authority will interpret it in a manner that is favorable for themselves. As such, clarifying those constitutional provisions disputed, and further granting an *erga omnes* legitimate effects to those interpretations acts as a catalyzing factor, ensuring that the powers within a state remain clearly separated.

On the whole, as I have shown throughout this paper, the Romanian Constitutional Court has been actively involved in safeguarding not just the supremacy of the Constitution as a negative legislator, but also the principle of checks and balances, ever since it was endowed with such a function in 2003<sup>62</sup> as an authentic arbiter of constitutional democracy. Initially inspired from the European model of countries such as Poland and Hungary, which have had legitimated this attribution since 1996 and never used it, the Romanian case proved the deterrent effect of reglementing such an attribution is not sufficient. Nonetheless, through the practical exercise of it, the positive effect is that the principle of checks and balances has been preserved and efficiently enforced whenever necessary.

#### Notes:

<sup>1</sup> Cristian, IONESCU, *Drept constituțional și instituții politice*, vol I, Teoria generală a instituțiilor politice, ed. a II-a, ed. Lumina Lex, București, 2001, p. 39

<sup>2</sup> Erik, HERRON, Kirk, RANDAZZO, “The Relationship Between Independence and Judicial Review in Post-Communist Courts” in *The Journal of Politics*, vol. 65, No. 2, May 2003, pp. 422-438, p. 429

<sup>3</sup> Idem, p. 430

<sup>4</sup> Andras, SAJO, Norman, DORSEN, Michel, ROSENFELD, Susanne, BAER, *Comparative Constitutionalism – Cases and Materials*, Thomson West Publishing, U.S., 2003, p. 117

<sup>5</sup> Hans, KELSEN, *Doctrina pură a dreptului*, translated by Ioana Constantin, Humanitas, București, 2000, p. 41

<sup>6</sup> Constanța, CĂLINOIU, Victor, DUCULESCU, *Drept Constituțional și instituții politice*, ed. a IV-a, Lumina Lex, București, 2008, p. 163

<sup>7</sup> Louis, FAVOREAU, *Les Cours Constitutionnelles*, P.U.F., Paris, 1986, p. 93

<sup>8</sup> Gheorghe, IANCU, *Proceduri constituționale. Drept procesual constituțional*, ed. Monitorul Oficial, București, 2010, p. 4

<sup>9</sup> Rod, HAGUE, Martin, HARROP, (eds.), *Comparative Government and Politics. An Introduction*, 3<sup>rd</sup> edition, Palgrave Macmillan, Hampshire, 2004, p. 221

<sup>10</sup> Martin, SHAPIRO, *Courts: A Comparative and Political Analysis*, University of Chicago Press, Chicago, 1981, p. 274

<sup>11</sup> Bogdan, DIMA, “Conflictele juridice de natură constituțională dintre legislativ, executiv și puterea judecătorească” in *Sfera politicii*, No. 141, nov. 2009, p. 4

<sup>12</sup> According to the Romanian Constitutional Court’s Decision No. 53/28.01.2005 which was published in the Official Journal No. 144/17.02.2005

<sup>13</sup> According to the Romanian Constitutional Court’s Decision No. 838/27.05.2009 which was published in the Official Journal No. 461/03.07.2009

<sup>14</sup> According to the Romanian Constitutional Court's Decision No. 435/26.05.2006 which was published in the Official Journal No. 576 of 04.07.2006

<sup>15</sup> According to the Romanian Constitutional Court's Decision No. 53/28.01.2005 which was published in the Official Journal No. 144/17.02.2005

<sup>16</sup> Ibidem

<sup>17</sup> Ibidem

<sup>18</sup> Ibidem

<sup>19</sup> Bogdan, DIMA, "Conflictele juridice de natură constituțională dintre legislativ, executiv și puterea judecătorească" in *Sfera politicii*, No. 141, nov. 2009, p. 3

<sup>20</sup> Decision No. 1222/12.11.2008 which was published in the Official Journal No. 864/22.12.2008

<sup>21</sup> Decision No. 1560/18.11.2009 which was published in the Official Journal No. 824/30.11.2009

<sup>22</sup> According to it, the Romanian Constitutional Court is entitled "to solve legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, one of the Presidents of the two chambers, the Prime Minister or the President of the Superior Council of Magistracy

<sup>23</sup> Granted to the Polish Constitutional Court by art. 189 of the Polish Constitution, since 1996.

<sup>24</sup> All of these decisions have been taken from the Romanian Constitutional Court's website, at [www.ccr.ro](http://www.ccr.ro)

<sup>25</sup> Bogdan, DIMA, "Conflictele juridice de natură constituțională dintre legislativ, executiv și puterea judecătorească" in *Sfera politicii*, No. 141, nov. 2009, p. 4

<sup>26</sup> Examples in point are the Decisions No. 356/5.04.2007, published in the Official Gazette No. 322/14.05.2007, Decision. No. 838/27.05.2009, published in the Official Gazette No. 461/03.07.2009, or Decision No. 270/10.03.2008, published in the Official Gazette No. 290/15.04.2008

<sup>27</sup> Op. cit. in Victor, DUCULESCU, Constanța CĂLINOIU, și Georgeta, DUCULESCU, *Drept constituțional comparat. Tratat*, ed. Lumina Lex, București, 2007, p. 50

<sup>28</sup> Please note that all of the following excerpts of articles from the Constitution were taken from the English version of the Romanian Constitution of 2003, which can be found at <http://www.cdep.ro/pls/dic/site.page?id=371>

<sup>29</sup> "The State shall be organized on the principle of the separation and balance of powers – legislative, executive and judicial – within the framework of constitutional democracy".

<sup>30</sup> "Pluralism in the Romanian society is a condition and guarantee of constitutional democracy".

<sup>31</sup> "The Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country".

<sup>32</sup> Within its 5 paragraphs, refers to the organizational structure of the Parliament

<sup>33</sup> "The President of Romania shall guard the observance of the Constitution and the proper functioning of the public authorities. To this effect, he shall act as a mediator between the powers in the State, as well as between the State and society".

<sup>34</sup> Regards the validation of mandate and oath-taking of the President of Romania

<sup>35</sup> Idem 84

<sup>36</sup> Idem 88

<sup>37</sup> Regards the role and the structure of the Superior Council of Magistracy

<sup>38</sup> In essence, these articles refer to the role of the Romanian President to appoint the Government, to consult with the Government, to participate in meetings of the Government as well as the investiture and the cessation of membership of the Government.

<sup>39</sup> "No one is above the law".

<sup>40</sup> "The Government can only adopt emergency ordinances in exceptional cases, the regulation of which cannot be postponed, and have the obligation to give the reasons for the emergency status within their contents".

<sup>41</sup> "Regards the attributions of the Superior Council of National Defense to unitarily organize and co-ordinate activities concerning the country's defense and security".

<sup>42</sup> "Only the Chamber of Deputies, the Senate and the President of Romania have the right to demand legal proceedings to be taken against members of the Government for acts committed in the exercise of their office. If such legal proceedings have been requested, the President of Romania may decree that they be suspended from office. Institution of proceedings against a member of Government entails his suspension from office. The case shall be within the competence of the High Court of Cassation and Justice".

<sup>43</sup> "The President of Romania shall also have the following powers: a) to confer decorations and titles of honor; b) to make promotions to the ranks of marshal, general and admiral; c) to make appointments to public offices, under the terms provided by law and d) to grant individual pardon".

<sup>44</sup> "The State shall be organized on the principle of the separation and balance of powers – legislative, executive and judicial – within the framework of constitutional democracy".

<sup>45</sup> "Justice shall be administered by the High Court of Cassation and Justice, and the other courts of law set up by the law".

<sup>46</sup> "The High Court of Cassation and Justice shall provide a unitary interpretation and implementation of the law by the other courts of law, according to its competence".

<sup>47</sup> "In the event of Government reshuffle or vacancy of office, the President shall dismiss and appoint, on the proposal of the Prime Minister, some members of the Government".

<sup>48</sup> "If, through the reshuffle proposal, the political structure or composition of the Government is changed, the President of Romania shall only be entitled to exercise the power stipulated under paragraph (2), based on the Parliament's approval, granted following the proposal of the Prime Minister".

<sup>49</sup> Regarding the attributions of the Romanian Prime-Minister.

<sup>50</sup> Idem 99

<sup>51</sup> "The Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country".

<sup>52</sup> "The Government shall, in accordance with its government programme accepted by Parliament, ensure the implementation of the domestic and foreign policy of the country and exercise the general management of public administration".

<sup>53</sup> "The Government may assume responsibility before the Chamber of Deputies and the Senate, in joint sitting, upon a programme, a general policy statement or a bill".

<sup>54</sup> "The Decisions of the Constitutional Court shall be published in the Official Gazette of Romania. As from their publication, decisions shall be generally binding and effective only for the future".

<sup>55</sup> Decision No. 53/28.01.2005 which was published in the Official Gazette No. 144/17.02.2005, the Decision No. 435/26.05.2006 which was published in the Official Gazette No. 576/04.07.2006, the Decision No. 97/7.02.2008 which was published in the Official Gazette No. 169 of 05.03.2008 and the Decision No. 1559/18.11.2009 which was published in the Official Gazette No. 823/30.11.2009

<sup>56</sup> Decision No. 356/5.04.2007 which was published in the Official Gazette No. 322/14.05.2007 and the Decision No. 1560/18.11.2009 which was published in the Official Gazette No. 824/30.11.2009

<sup>57</sup> Decision No. 838/27.05.2009, published in the Official Gazette No. 461/03.07.2009, p. 8

<sup>58</sup> Idem, p. 9

<sup>59</sup> <http://www.cdep.ro/pls/dic/site.page?id=371>

<sup>60</sup> See art. 147, paragraph 4) of the Constitution

<sup>61</sup> According to art. 147, paragraph 4) of the Fundamental Law

<sup>62</sup> See article 146, paragraph e) of the Constitution.

## ORIGINAL PAPER

Alexandra FLORESCU

### Juridical Security after 1989 – Predictability of Normative Changes<sup>1</sup>

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**Abstract:** *Legal certainty is a social and political complex process maintained by active political, economic, social, informational, legal, ecological, social, military, which has as its purpose the security status based on the order of law. As regards changes in the legal security which have occurred with the passage of the post-Communist period, we can say that the security of legal acts in general two categories of rules: those relating to the quality of the over constitutional law (law and ensure a certain quality requirements), and those aimed at ensuring the legal stability (non – retro activity of legal norms and normative change, predictability of State action, and respect for the legitimate confidence). Legal security of person is guaranteed by all the means of achieving the rule of law and how the rule of law is normative in increasingly more constitutional systems including the Romanian (art1. para. 3 of the Constitution) is the legal certainty they make.*

**Keywords:** *juridical security, settled law, principle, availability and predictability, legal stability.*

### **The guarantee of juridical security for individuals**

Security is the condition of being protected against or not exposed to a danger. The definition of legal certainty into the concerns of the decision-makers in the Euro-Atlantic States during the "cold war". Under the new approach, certainty has become a concept intended to define, defend and promote the values, interests and needs of the security of Nations, communities, and social national States and their citizens. In the last two decades, thanks to deep changes in regional, zonal and international actors and which constitute a majority in these spaces, the national, democratic States have reconsidered its doctrines, policies, strategies and laws in matters of security.

The European Court considered the principle of legal certainty as a key element of the rule of law so that compliance and enforcement with specific consequences under Article 20, of the Constitution that matters qualified constitutionalism. Moreover, we can say that violation of this principle of legal certainty requires breach of Article 6 of the European Convent.

Initially, juridical security has found expression in non retro activity of law, classical consecrated for instance in art. 2 of the civil code Napoleon (1804): the law is silent except for the future; She has no retroactive effect. From the moment it was noticed that the law is not able to adjust all of these occurring in practice, was invoked the principle of security juridice<sup>4</sup>. Basically, the requirements of this principle is not limited to prohibition law, those of retro activity being much broader including: access to applicable law and the foreseeability of this legislation. Juridical security of person is guaranteed by all the means of achieving the rule of law and how the rule of law is normative in increasingly more constitutional systems including the Romanian (art1. para. 3 of the Constitution) is the legal certainty they make. Also the principle actually has a supra constitutional value for that article 152 of the Constitution prohibit all revisions that would result in the abolition of these values<sup>2</sup>.

The Constitution provides in paragraph 2 of the art. 15, a principle of law, topical and indisputable tradition, namely that the Justice Act provides only for the future, a principle known as the expressive forms of non retroactive law.

It is without doubt recognized that a law once adopted produces legal effects only for the future. For the simple fact that this law addresses the subjects of law, allowing or forbidding deviant attitudes and of course punish deviant behaviors. It is therefore absurd to claim a right to answer for behaviors and conduct which had previously coming into force of a law governing the conduct off.

The subject of law could not foresee to what will lead his behavior and the legislature is normal and natural as if it takes place within the rule of law in force. Another legislative practice, or another interpretation would be likely to seriously affect legal certainty and stability and confidence in the law. The principle of juridical security acts in general two categories of rules: those relating to the quality of the law (law and ensure a certain quality of prescriptions using authorized) and which aims to ensure juridical stability (non retroactivity of legal norms and normative change, predictability of State action, called the legitimate expectations and respect).

Regulation of the constitutional principle of the law is to protect nature, to ensure that private interests against the changes and any shortcomings of legislative change, because "in a more or less high, the new law is always contrary to juridical stability.

Paradoxically when stability and legal certainty the legislator needs do not seem sufficient to justify the refusal of the application of the new law, these contracts are increasingly demanding more and more often the cause of the survival of the old law<sup>3</sup>.

According to a generally accepted view, you must not confuse the juridical stability with the juridical security. The difference which exists between the security of the individual within the state, the national legal community and the security of the state (as the security of individuals) consists in the fact that the former is guaranteed by national law, the so-called law of the state, and hence may be properly called national security.

Ensuring legal certainty about the consequences of the acts investigated, so that the individual can act in the case of consciousness. This implies the rule of law so accuracy in regard to guaranteeing results about and give preference to formal sources of law, while legal stability is a necessity which occurs once the situation is created<sup>4</sup>.

For example, with regard to tax, the taxpayer should have first access to the regulations shall apply to take the knowledge of their contents.

In this context, European law is in talks about an advertising tax matters in life, which is its nature considerably tighten security law in this area and to improve relations between the Administration and citizens.

On the other hand, the applicable law must be predictable. The taxpayer has unambiguously the right to be informed in advance of the consequences of acts it performs in a manner that would enable them to behave in full knowledge of the case. In this sense the obligation incumbent on the tax administration to define clearly and in order to comply with the commitments entered into.

Under this aspect, the principle of legal security as some aspects are identified with the principle of legitimate confidence. The principle of legitimate expectations may be considered a form of expression of the principle of legal certainty, and it in turn is indisputably a rule of law.

For instance, in the jurisprudence of the Belgian taxpayer's right to legal security has been consistently affirmed: By decree pronounced by the Court of Cassation on 27 March 1992 in the case of Van Apers decided in favor of the taxpayer who explained the behavior on behalf of the apparent born behaviors towards the administration.

Also, by Decree of 3 June 2002 in case of C.M. and H.F. decided that after the tax administration has accepted character of certain accounting evidence documents, it cannot return "a posteriori" on this solution without prejudice to the General principles of good governance that involve the right to legal security. The citizen should have confidence in what you would charge otherwise than a fixed rule of conduct public services, being held to honor forecasts justified by whom have given birth themselves.

Availability and predictability of law are certainly some of the most common grounds for conventional and constitutional control, not only because these legal requirements stand for fundamental premises of regulating and self-regulating social behavior being a democratic society, but also because, inevitably legal regulation always maintains a paradox, apparently insoluble. Case law of the European court and the Romanian constitutional litigation Court on the availability and predictability of the law is already sufficiently relevant to justify at least a synthetic outline in this area.

### **Accessibility and predictability of law in the context of legal**

Availability and predictability of social conduct rules and legal requirements are conditions of its immanent, without these denying its purpose. Moreover we say that an unpredictable legal norm introduced in the social life is more damaging than its absence, since a non-existing legal norm cannot attract liability and one that exists but cannot be understood represents an official way to harm<sup>5</sup>.

Accessibility is a requirement to provide predictability, but in order to predict you must have sufficient access to relevant and understandable information. Lack of predictability of the rule

or insufficient predictability invalidates the affordability of accessibility standard rule, therefore does not automatically imply its predictability. In one of the European Court of Human Rights, the court considered the expression "prescribed by law" found in the Convention, requires compliance with two conditions: time to be sufficiently accessible, that the addressee may have given sufficient information circumstances of the case and the second condition means that the text of the law must be precise to allow the recipient rule to regulate social behavior. Regarding the first condition relating to accessibility law of the Strasbourg court and courts often have transposed this condition as an overriding principle, a reason for their decision that was applied in several relevant decisions (Kokkinakis c . Greece, Rotaru v. Romania, Lupșa v. Romania).

The second condition relates to the accuracy, this term refers to predictability that should not be absolute but must offer their recipients, its actual consequences of ignoring or violating them. Without offering a clear definition of this term, in the grounds of a recent decision the Constitutional Court can see that attributes are used as clear, precise, predictable and dependable to evoke the same phrase. the contrary, unpredictability and inaccessibility were invoked as reasons of unconstitutionality, quite frequently, but not but not unique. In this sense, the law was deemed not to have a clear form and thus generating confusion and uncertainty<sup>6</sup>.

We also mention that the Court considers that the lack of predictability and consistency of rules led to inconsistent application of laws. "Quality of law" was determined by the Court following its decisions under Article 7 of the European Convention of human rights and fundamental freedoms. To assess the quality of law, Court refers to three criteria: predictability, accessibility, precision<sup>7</sup>. However, the notion of law has a European sense, autonomous. Law covers not only the legal basis of law but also the quality of law. That means that law, by its qualities, guaranteeing the rule of law, explicitly mentioned in the preamble of the European Convention human rights and fundamental freedoms, and provides some protection against arbitrary violations of European rights Convention. The qualities of law analyzed by the European Court for this purpose are availability and predictability<sup>8</sup>. The law should be primarily affordable adequately that citizens should be able to understand it appropriate in the circumstances of the legal regulations applicable to a particular case. Second, the law should be predictable, that is to be formulated with sufficient precision in order to enable anyone to shape their conduct. This requirement of predictability of the provision of law is intended to protect the legal and security principle, being respected "if the person might know the applicable content and on necessary provision, with courts interpreting its actions and omissions that make him criminally liable".

Therefore it's about a flexible conception of the principle of legality of criminal offenses and penalties, which opens jurisprudential interpretation, that has the obligation to ensure predictability of law. Extent of the concept of foresee ability depends largely on the content in question that was legal provision for its scope and the number and quality of the recipients. The predictability of law does not preclude the person concerned to be forced to rely on advice to review reasonable to the circumstances of the case the consequences that could result from some kind of action. It happens, especially with professionals used to have to show great caution in their work.

The European court found that the term "right" used to Article 7 corresponds to the law, which is found in other provisions of the Convention. It contains the rules of law "legislative origin" and the law, and implies the fulfillment of conditions namely the quality of foresee ability and accessibility.

In fact the provisions of Article 7 confirms the principle that legal dispositions affecting individual rights must be sufficiently accessible and foreseeable and formulated with sufficient precision to enable adjustment of the interested. It is prohibited conduct in particular, the

extension of application of existing offenses criminal law to the facts that previously were not crimes. However, the European Court acknowledged that, because of the generality of the laws, their writing cannot have an absolute precision. In connection with the notion of predictability in the law, the Court found that it depends largely on the text content in question, the area in which they apply and the recipients.

The French doctrine speaks of a need for a material content of the law that ended up being subordinated to the Constitution and international conventions.

### **International character of the principle of juridical security**

In the European human rights law, the principle of legal security is analyzed in the context of the usual right of access to a court, and is considered by the European Court of human rights one of the core elements of the right rule. It was decided that the civil legal certainty requires that the solution in definitively by the Court a dispute should not be called in question.

Finally, some national courts have made an explicit recognition of the principle of legal security. The French Constitutional Council recognized the existence of the principle of legal security by default, by decision No. 455/2001.

In Belgium, the Court of arbitration declared this principle by a decision of 11 February 1993, the Court of Cassation has confirmed this orientation. In this ambience, we appreciate that the principle of legal security should be enshrined in tax matters, in Romania, in a future amendment of the tax code. In a very clear, if the legislature would not proceed to the express recognition of this principle, it is for the courts to be connect to the guideline of the European judiciary and to consecrate him.

Thus, at Community level, the European Court of Justice has pointed out that the principle of legal security is part of the community legal order and must be observed as comunitare<sup>12</sup> institutions and by the Member States when they exercise the powers conferred by Community directives.

Legal security for the principle to be respected, it is appropriate that, in the absence of a provision to the contrary, any situation actually to be appreciated in the light of the rules of law that are contemporary

The Court held that constantly, in general, the principle of legal security as a Community ban, as to produce effects before publishing them. In exceptional case the Court decided that may derogate from this rule when the purpose of use so require, and if confidence legitimize those interested is respected. This jurisprudence is applicable even when it is not expressly stipulated retro activity of the Act in question, but is the result of applying the content of the Act.

The Court also indicated that a Community measure must be hassle, unequivocal, and its implementation must be predictable for those who are targeted. The delay comes into effect as a measure of general application, although the initial date of coming into effect of the past, is able to undermine this principle. If your order was postponed to deprive the particulars of legal remedies which have been conferred by the entry into force of the legal regulation, the validity of the law problem even that amends the provision of home page.

The European Court showed that the term "law" used in article 7 of the Act, which is to be found in other provisions of the Convention, includes both the legal rules, including "home", as well as on the jurisprudence and qualitative fulfillment of assumed conditions, namely predictability and accessibility.

In fact, article 7 confirms the principle that laws affecting individual rights must be sufficiently accessible and predictable and formulated with enough accuracy to allow tuning to the conduct of those interested. It is prohibited in particular the extension of the application of the existing legislation on the criminal offend in facts that previously weren't infractions.

However, the EU Court has admitted that due to the character of the generality of the wording of this law, may not have a absolute precision.

In connection with the notion of predictability of the law, the Court has shown that it depends in great measure, the content of the text in question, of the field in which they apply and the recipients.

In the doctrine of French speaking of a need for the content material of a law which ended up being the Constitution and international conventions. It should be noted that in most cases the legal security of the Court of Justice has found that it is closely related to the authority of a final decision, which is in fact a corollary principle. This principle of the authority of a final decision is a judicial system that provides security and legal relations final decisions for the proper administration of Justice<sup>9</sup>.

More than the Court of Justice considered that the principle of legal certainty is not absolute and its application must be accompanied by the principle of legality. The force of "res judicata" should be weighted with legality.

### **The requirements of legal certainty**

In agreement with the Romanian Constitution, the principle of legal strategy aims at building security for Romanian people by providing fundamental values such as democracy, freedom, equality and rule of law, respect for human rights and fundamental freedoms, national identity, seen in the context of Romania, by Treaty of Accession to the European Convention. One of the security compliance of legal requirements, means providing the Romanian state with the tools to prevent and to remove cases which affect administrative or judicial organs by internal rules of Community law regulations stipulated by the Convention and its protocols. Breach of the principles of legal attracts mainly state administrative responsibility before international bodies, with power to exercise control over the legal acts adopted by jurisdictional bodies in the law enforcement procedure. In this context, it is proposed to investigate the scientific point of view, the principle of legal security as part of Romania's national security, new construction in the context of regional security. The research proposes the principle of legal security with the following components: 1) Component of legal security of the state administration; 2) security component of legal res judicata entered in the final decision taken by the state courts. Regarding the first principle component in ensuring administrative provisions of the administration, were pronounced by the ECHR more decisions, of which we mention and affirm applicable texts in law, as follows: By decision of 3 June 2002 in CM and H.F. published in the Journal des tribunaux 2002, p 788, the Court held that "after tax administration accepted the evidential nature of accounting documents, it can not subsequently return to this solution without prejudice to general principles of good governance involving right to legal certainty" and citizen should have confidence in what would be perceived as other than a fixed rule of conduct of government, public services are held to honor the justified expectations to which they have given birth themselves." Security component on legal documents entered in the final ruling „res judicata” ordered by the courts in the state, security is a legal principle of Community law, with immediate application and prevalence of intern law. States are called to provide the necessary legal instruments to just comply with the statutory provisions set forth in art.6.1, 6.3, 13, 14 of the Convention and in art. 1 of Protocol 1 and Article 4 of Protocol 7 to the Convention.

The notion of legal certainty is the essence of the right and in this sense it can be appreciated that reflects the fundamental need of clarity, stability and understandability of the right. The principle of legal certainty is a very broad concept that appears as axiomatic to democratic societies.

It is axiomatic that in a State governed by law you must provide stability, and legal system must be predictable<sup>10</sup>.

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<sup>1</sup> This work was partially supported by the strategic grant POSDRU/CPP107/DMI 1.5/S/78421, Proiect strategic ID78421(2010), co-financed by the European Social Found –Investing in People, within the Sectorial Operational Programme Human Resources Development 2007-2013.

<sup>2</sup> D.C.Danisor, Constitutia Romaniei COMENTATA-Titulul I.Principii generale,ed. Universul juridic,2009,Bucuresti,pag.38.

<sup>3</sup> F.Dekewer Deffosez, Les dispositions transitoires dans la legislation civile contemporaine, Paris, 1977, pag.129-130.

<sup>4</sup> B.Starck,H.Roland, Introduction au Droit-5 edition,ed.Litec,Paris,2000,pag.48.

<sup>5</sup> I.Deleanu, Accesibilitatea și previzibilitatea legii în jurisprudența Curții europene a drepturilor omului și a Curții constituționale române, Revista Dreptul nr.8/2011, pag.53.

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## ORIGINAL PAPER

**Mădălina Cristina PUTINEI**

### **The Criminal Policy after the Communism – between Liberal Reform and Communitarian Fundamentals**

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**Abstract:** *One of the domains on which the transition from the totalitarian regime to the liberal democratic one had a deep impact, is the domain pertaining to the criminal policy of the state. The criminal policy measures represented, together with other measures taken by the state, one of the most effective mechanisms that the state could make use of. The decomposition of the civil society and the creation of an amorphous mass of citizens was also accomplished by means of preventive measures, rehabilitation and coercion measures under criminal law.*

*The establishment of the liberal state had and still has to face socialist mentalities and methods regarding society. Thus, the change in the perspective on the objectives of criminal policy should take into account the purpose of the state established after the Revolution of 1989, i.e. the freedom of the individual. Although the field of criminal policy has been subject to numerous legislative and institutional changes meant to make it adapt to the new state framework, there are reminiscences from the former regime, more precisely the institutions referred to in the Criminal Code of 1969, which have survived on the transition way to democracy.*

**Keywords:** *criminal policy, communism, liberalism, social danger, new criminal code .*

One of the domains on which the transition from the totalitarian regime to the liberal democratic one had a deep impact, is the domain pertaining to the criminal policy of the state. The criminal policy measures represented, together with other measures taken by the state, one of the most effective mechanisms that the state could make use of. The decomposition of the civil society and the creation of an amorphous mass of citizens was also accomplished by means of preventive measures, rehabilitation and coercion measures under criminal law.

The establishment of the liberal state had and still has to face socialist mentalities and methods regarding society. Thus, the change in the perspective on the objectives of criminal policy should take into account the purpose of the state established after the Revolution of 1989, i.e. the freedom of the individual. Although the field of criminal policy has been subject to numerous legislative and institutional changes meant to make it adapt to the new state framework, there are reminiscences from the former regime, more precisely the institutions referred to in the Criminal Code of 1969, which have survived on the transition way to democracy.

One of the major challenges that criminal policy has to confront with is that of criminal conducts, considering that the juridical institution of "social danger", specific to the socialist state, still represents the basis of the criminal liability structure. From this standpoint, this paper is an attempt to answer the question whether the Romanian state has managed, after the communism, to find a balance between individual freedom and the coercive power of the state, especially from the perspective of the adoption of the new Criminal Code which is intended to be the first liberal alternative to the communist code.

## **I. The new Criminal Code<sup>1</sup>: between liberalism, communitarianism and lack of philosophy**

### **A. On the necessity to adopt a new Criminal Code from the philosophical standpoint**

The reality of adopting a new code<sup>2</sup> at the criminal substantial level determines the necessity to analyze the consequences of the proposed amendments with regard to the criminal policy of the state. The new Criminal Code, which cannot be analyzed without making reference to the new Code of Criminal Procedure, represents a restructuring and rethinking of the position of the state in relation to the criminal and criminal procedure aspects, from the standpoint of the philosophy guiding these amendments. The deep impact on certain institutions involving the monopoly of the state in the field of criminal coercion renders vital the philosophical research lying at the basis of these changes. Therefore, it is important to see whether those involved in the work of reconfiguration of the criminal policy were urged by certain ideas, whether these ideas belong to a distinct philosophical sphere and especially whether and to what extent the former view on the role of the state in this domain has been abandoned or not.

The Criminal Code and the Code of Criminal Procedure still in force are permeated with a certain philosophy extracting its fundamentals from the epoch when they were adopted and the political interests that they served. From this perspective, the adoption of new codes is fully justified, since the action of the state in a field involving the highest degree of coercion must be reconsidered on new political desiderata, instituted along with the new democratic and liberal state.

It is important to notice from what perspective the communitarian philosophy still influences the criminal policy of the state and if, with the adoption of the new code, one can talk about the primacy of liberal philosophy in the criminal field. It is first necessary to analyze these two philosophies, considering the impact they have on criminal policy and later tackle the issue of the philosophical basis of the changes brought by the new Criminal Code.

### **A. The abandonment of communitarian philosophy**

The social purpose that the new Criminal Code assumes is similar to the one considered by the Criminal Code in force, i.e. the protection of certain social values against the commission of criminal acts. Despite this fact, it is obvious that there is a change of philosophical perspective, since it is no more about 'rescuing' certain social values for their own sake. One can notice the abandonment of a communitarian perspective in favour of a liberal one, due to the fact that the protection of certain social values is no longer an aim, but the means by which one can attain the actual objective of criminal policy, the protection of a sphere characterizing the individual, his rights and freedoms.

Another feature of the Criminal Code in force is the affirmation of certain values privileged by society, that the criminal law serves, i.e. the values enumerated under art. 1 of this Code, which reveals a criminal policy based on the supremacy of the good over the just. In the new Code, such an *a priori* consecration of values is abandoned, these values making the object of criminal protection for a much more liberal approach of the way in which certain conducts will be included in the criminal sphere.

Renouncing the attempt to define the purpose of the criminal law may be considered as translating the attachment that the present society shows to liberal values. Unfortunately, the members of the commission drafting the new Criminal Code do not seem to be totally aware of this change in the philosophical perspective, trying to prove that this change meets the requirements of a democratic state. This priority that the democratic character of our state acquires is valuable, but it would be better that any alteration should rely on the affinity with liberal philosophy, since the mechanisms characterising a democratic society are not fully capable of protecting society from totalitarian practices. Only by understanding democracy as being completed by liberal philosophy, can persons be protected, by way of a democratic majority, against the constraint of a moral view concerning a certain type of good, which should prevail when criminal conducts are incriminated.

Philosophical indecision, or negligence with regard to the selection of a philosophy, which would find itself throughout all the changes proposed by the new Criminal Code, may lead to a lack of coherence of the proposed changes.

### **B. The indecision regarding liberal philosophy**

Although a certain philosophical indecision can be noticed sometimes, one should appreciate the fact that, in certain respects, the new Criminal Code is full of liberal precepts. Such a consecration is visible with regard to the much more detailed regulation as compared to the one contained in the Criminal Code in force, of an essentially liberal principle, that of legality of incrimination and punishments<sup>3</sup>.

The concern of the legislature for this liberal principle can also be noticed in the express consecration of the prohibition to retroactively enforce the criminal law, for acts that it did not govern in the past.

Another amendment introduced by the new Criminal Code comes to support the predilection of the initiators of this Code for liberal philosophy, thus renouncing the communitarian one. It is about the reconfiguration of the concept of "offence", by creating a new definition. The definition stipulated in the Criminal Code in force provides that an offence is the act which implies a social danger, act committed with intent and provided under criminal law<sup>4</sup>. In accordance with the new Criminal Code, an offence is the act provided under criminal law, committed with intent and imputable to the person who committed it<sup>5</sup>.

The change in the priority within the hierarchy of values protected by the criminal law is obvious in the special part of the new Criminal Code as well, supposing another manner of

systemizing the offences. Thus, considering the primary role of the individual in relation to the state, the choice aims at the original regulation of offences against individual rights and freedoms, in order to consecrate in the end the acts prejudicing the functions of the state. Such a systematisation was absolutely necessary for the new objectives of the criminal policy of the state.

The purpose of redefining an offence consists of a new view on this legal institution, and the philosophical grounds leading to this change of perspective should not be overlooked. One should appreciate that they abandoned the definition of the offence by means of the social danger that the committed acts imply, but it is regrettable that the only arguments supporting this amendment are of a historical nature, also making reference to comparative law. In the presentation of the arguments regarding the new Criminal Code<sup>6</sup>, a point of discussion tackles the tradition of the Romanian criminal law between the two world wars and the European regulations defining an offence. The return to tradition is a strong argument favouring a criminal policy measure, especially since it concerns a period of the history of the Romanian state characterised as democratic and liberal. Such an option is strengthened by the adoption of a similar solution regarding the definition of the offence by other European states. But these relations are not enough to justify the new view on this important criminal law institution. They must be accompanied by a reliable philosophical basis, otherwise what remains is the nostalgia for a historical period which was perfect for the promotion of human rights and the eternal local need to import tendencies and functional institutions from other legal systems.

It is true that the aspiration for a legal system similar to those in other European countries can be nothing but beneficial. But the concrete way of reaching certain aims is different from one spatial-temporal plan to another, there are numerous variables, from one type of structure of social relations, to the capacity of a society to assimilate and to put into practice certain measures. The experience acquired by other states is not to be overlooked, especially those which did not know, or knew to a lesser extent the totalitarian phenomenon. But these very differences must be taken into account when importing certain legal institutions or ways of normative circumscription of reality, because, besides the criminological phenomena that it has to manage, the state has to deal with the political and juridical specifics of its own society.

It is important to emphasize that, by renouncing the criterion of the social danger degree for the incrimination of criminal conducts, they discussed the need for the existence of a juridical instrument used to filter, *in concreto*, the antisocial behaviour, by placing only those bearing this feature within the scope of criminal law. The members of the Commission for drafting the new Criminal Code and Code of Criminal Procedure concretely accomplished a correlation between the offence, as an institution of substantial law, and the procedural law provision, also amended, which regulates the principles governing the competence of prosecutors with regard to the criminal action. Thus, they are given the possibility of expressing their opinion on the opportunity<sup>7</sup> of the prosecution, as the means by which they establish the criminal character of a certain conduct.

*In concreto*, the prosecutor has an alternative solution, to cease the prosecution<sup>8</sup>, which can be used when, " in relation to the conduct of the defendant, to his conduct previous to the commission of the offence, to the content of the action, to the way and means of committing the offence, to the purpose of the act and the concrete circumstances regarding the commission of the offence, to the efforts of the defendant to remove or diminish the consequences of the offence, he finds out that there is no public interest in the prosecution of the defendant"<sup>9</sup>.

The consecration of the opportunity of the prosecution as a principle of the criminal trial is in conformity with the aim of the state: to perform a criminal policy in accordance with liberal principles. This change represents the meeting of the practical requirements, more than the assumed application of the liberal philosophy. The inconveniences caused by the use of some

concepts supporting a communitarian ideology have been noticed in practice. Therefore, since not all actions which *in abstracto* put in jeopardy the society, as far as the values protected under criminal law are concerned, can be considered as offences, a normative disposition was introduced to regulate the way in which the degree of social danger of the act and doer can be established in a concrete form, as contained in art. 18<sup>1</sup> of the Criminal Code in force.

By adopting the principle of opportunity of the prosecution, the legislature actually understood how to respond *a priori* to the constraint of certain social and moral values by means of criminal law.

### **C. A clear consecration of liberal philosophy – penalties under criminal law**

The tendency arising out of the analysis of the criminal policy carried out by the state in the last years, as far as penalties are concerned, reveals a constant increase in the proportion of these penalties. In this way, the criminal policy has become an instrument the main purpose of which is the neutralisation of the persons who commit offences.

On the contrary, liberal philosophy welcomes the low involvement of the state within the sphere of individual liberty, which cannot be translated as a total failure to get involved. The new orientation of the Criminal Code with regard to the rethinking and readjustment of penalties represents one of the most important changes. The necessity to reconsider the role of penalties in the present society has often been emphasized in the doctrine<sup>10</sup> and it has constantly been demanded by practical reality<sup>11</sup>.

Along with the new amendments of the Criminal Code, the role of the penalty is reconsidered as well. Therefore, the component referring to the neutralisation of offenders is no longer insisted on, on the contrary the focus is on prevention, rehabilitation and social reintegration. A neutralisation policy will result into the decrease of the criminal law addressees' trust in its capacity to control criminality.

The decrease in the penalty limits for certain offences, as well as the elimination, from the special part of the new Criminal Code, of certain circumstances in the presence of which the penalty was aggravated, are accompanied by a corresponding alteration of the provisions in the general part of this code, referring to the plurality of offences<sup>12</sup>.

It is worth mentioning the care, in the new Criminal Code, arising out of the argumentation, for a clearer and more coherent systematisation of the provisions referring to the aggravating or mitigating circumstances. In this respect, the option was for the compliance of the dispositions of the special part of the code concerning these circumstances with those of the general part, in order to avoid overlapping and difficult wording. Consequently, a general circumstance will not be resumed in the special content of the offence, another desideratum of the state governed by the rule of law being thus fulfilled, that of clarity and concision of legal provisions.

The new Criminal Code does not alter the hierarchy of punishments, therefore the first place within main penalties still belongs to the liberty depriving punishment, either life detention or imprisonment. This constant attitude is the fair one in the evolution of society at this moment, due to the fact that a prevalent fine punishment<sup>13</sup> would not be effective in our legal system<sup>14</sup>.

The progress accomplished by the new regulatory framework is emphasized with regard to fines, the scope of which has been significantly enlarged, as well as with regard to the method for calculating this punishment, implying the system of fine-days. These amendments prove the change in the perspective on the purpose of the punishment, which is mostly intended for the limitation of the harmful effects of the liberty depriving penalty, for the reintegration of the offender in society, and less for the wish to punish and neutralise. From this standpoint, the fine sanction is

provided for a higher number of offences, either as a single punishment, or as an alternative to the liberty depriving penalty.

The main advantage of the calculation system of fine-days is obvious when the punishment is individualised. This calculation allows to obtain a strict proportionality relation between the act committed and the punishment inflicted, as well as a materialisation of the punishment in accordance with the patrimonial situation of the convicted person.

The risk of the substitution of the financial sanction for failure of execution is always present and depends on the material status of the person committing the offence. Traditionally, the failure to pay the fine entails its transformation into a liberty depriving punishment. But this cannot reduce the damaging, sometimes irreversible consequences of liberty deprivation, as is the case of repeated offences or loss of contact with the society, consequences which were pursued from the very beginning by establishing the sanction of the fine. In order to avoid this result, which would render the financial punishment inefficient, the new Criminal Code stipulates the possibility of paying the fine by providing some work for the benefit of society, by the person for whom it is impossible to actually pay the fine. The substitution of the fine sanction by the imprisonment penalty is a last measure, in the case of the insolvable convict in bad faith.

## **II. The new criminal policy of the legislature – a security drift?**

A constant element of this policy is the danger that offences generate on society as a whole. The measures rely on the individuals' fear of the lack of morality of their fellows and the institutionalised reaction to the jeopardy residing in the breach of conduct norms.

The adoption of the new criminal substantial and procedural codes announce an important change in the perspective, at least at the declarative level, regarding the relation between criminal liability and the social danger of the action and of the doer.

### **1. The philosophical inconsistency of the new Romanian Criminal Code**

After the analysis of the amendments proposed by the Criminal Code, a conclusion arises, i.e. the philosophical inconsistency lying at the basis of the distinction between offences and contraventions. One of the vital amendments refers to the elimination, from the legal definition of the offence, of the degree of social danger which determines, in accordance with the Criminal Code in force, the qualification of an act or action as offence<sup>15</sup>. This change is welcome, since the use of social danger as a standard for incrimination under criminal law, does not meet any longer the requirements of a liberal and democratic state, the actions of which should be mainly headed towards the protection and promotion of individual rights and freedoms, and in subsidiary, as a normal consequence, towards the protection of abstract social values.

#### **A. A change in the perspective on the definition of the offence<sup>16</sup>?**

The elimination of the notions of "social danger" and "degree of social danger" from the legal definition of the offence stands for only one of the stages that the Romanian legislature has to complete, if they want, as the initiators of the new Criminal Code express, to overcome the aims specific to a totalitarian state.

The first step is absolutely necessary for the envisaged process, but this reconfiguration of the very position of the state towards the criminal sphere cannot be completed without a coordination of all legislative activities coming within the scope of criminal policy. Thus, although formally the degree of social danger was abandoned as an element determining the introduction of certain actions into the criminal sphere, in reality the distinction between contraventions<sup>17</sup> and offences has been maintained, based on this very concept of social danger. Art. 15 of the new Criminal Code stipulates that the offence is the act provided under criminal law, committed with

fault, unjustified and imputable to the person who committed it, representing the only ground for criminal liability. In accordance with the logical thought adopted in this domain, the offence is an criminal act, whereas the contravention is and remains an act of an administrative nature.

The distinction between the two categories is made starting from the seriousness or gravity that the action can have against certain social values, which makes social danger remain a constant element of legal liability, under both criminal and contraventional law<sup>18</sup>. In order to respect the philosophy they proclaim, the initiators of the new Criminal Code should go on and reconfigure criminal liability on a different basis. In this respect, the liberal philosophy imposes that the distinction between contraventions and offences should no longer rely on the degree of social danger of the act. A really liberal criterion implies the distinction between actions in conformity with the type of sanction attached to them. Thus, if the social danger of the act was abandoned due to the fact that, in the view of the former criminal policy, it based criminal liability on the degree of involvement of certain abstract social values by antisocial behaviour, the new liberal orientation of the criminal policy should move criminal liability from the protection of the society to the protection of the individual.

#### **B. Criminal or contraventional, according to the nature of the sanction**

The nature of the sanction is a criterion for the distinction between acts, by means of which certain conducts will be considered as coming within the criminal domain, and others, on the contrary, will exceed this sphere<sup>19</sup>. The proposed criterion is much closer to the pursued purpose, due to the fact that it makes out of criminal liability an issue decided on by reference to the person. In this way, a certain conduct will trigger a criminal penalty only if a strict proportionality relation is thus established between the prejudice suffered by the victim and the liability<sup>20</sup> of the doer as a consequence of this prejudice. Criminal liability is the link element between the rights or freedoms of the injured party and the limitation of the freedom and rights of the doer. The core of the analysis moves towards this proportionality relation which transforms the punishing activity from a subjective, potentially arbitrary decision of the bodies meant to perform it into a procedural rule, able to objectively attain the aims of a rational criminal policy. Going beyond the socialist philosophy implies the substitution of some abstract concepts the meta-judicial content of which is hard to determine and which depends to a great extent on the one making the determination, under a procedure that does not make use of such notions any longer, because it is not dependent on the philosophical and moral affinities of the interpreter.

The aforesaid relation of proportionality implies a value judgment of the act committed and of the prejudice suffered by the victim, but it brings a considerable contribution to this analysis, since criminal liability is determined by relating it to the victim and to the doer of the action, the society becoming a subsidiary element.

#### **C. The autonomous notion of "criminal charge" – between offence and contravention**

The criterion regarding the nature of the sanction cannot annul the distinction between offences and contraventions<sup>21</sup>, but on the contrary, it implies maintaining it on a different basis. The delimitation will be made by considering the nature of the sanction attached to the actions triggering legal liability. From this standpoint, the sanction may, according to its purpose, be either a remedy or a repressing and dissuasive measure. These features are analyzed and detailed by the European Court of Human Rights in its jurisprudence, which decides, according to this nature, on the terms of "criminal charge". "The European Court adjudicated in the sense that the eminent place that the right to a fair trial occupies in a democratic society imposes to consider a "material", not "formal" meaning of the notion of "charge". This is due to the fact that judicial decisions are always applicable to persons (...)"<sup>22</sup>. The meaning of the syntagm was determined by the

jurisprudence, as it has often happened in the case of the instrumental notions used by the Court, which showed that the criminal charge represents the official notification issued by a competent authority of the fact that the commission of a criminal act is imputable to a person, with important consequences regarding the person thus suspected<sup>23</sup>. In order to establish whether a person is "charged" with the commission of a criminal act, the Court has established three criteria in its jurisprudence: the qualification of the act as an offence in internal law; the nature of the offence; the nature and seriousness of the applicable sanction<sup>24</sup>.

The Court in Strasbourg established as a sanction resulting from a criminal charge in the sense of art. 6 §1 of the Convention, "the measure (...) which also embraces a sanctioning and dissuasive character and therefore represents a punishment (...)"<sup>25</sup> (translation from Romanian). This happens regardless of the qualification of this act as an administrative one in internal law. Thus, if the sanction has a dissuasive purpose and aims to repress a conduct, exceeding the preventive purpose and the simple request for a remedy against the prejudice caused by the doer, it is "a criminal charge" beyond any doubt. Consequently, all the limits imposed to the legislature by art. 6 of the Convention are applicable.

There is a need for reconsidering the delimitation of actions, by placing them within the administrative scope of contraventions or within the scope of offences. Starting from the new premise, both offences and contraventions will be part of the criminal sphere, if the type of sanction involves the punishment and repression of a conduct. The European Court is not opposed to this delimitation, specifying that "the dispositions of the Convention undoubtedly allow the states, in the exercise of their public order protection function, to maintain or establish a distinction between criminal law and disciplinary law and fix their delimitations, but only with the observance of certain terms"<sup>26</sup> (translation from Romanian). The sovereign action of the states is confined, since if they could, by their own appreciation, qualify a certain action as a "disciplinary offence", not a criminal offence, the fundamentals of the texts of the Convention would be subject to their sovereign will, which would risk leading to results incompatible with the purpose and object of the Convention<sup>27</sup>; "the Court has the competence to make sure, on the basis of art. 6, that the *disciplinary* does not unjustly deprive the domain of the *criminal*"<sup>28</sup>.

As for the classification involving contraventions and offences, it survives in the consideration of the rights and freedoms of individuals, as well as of the social values that they have to protect, not because the former would be less serious and less dangerous than offences with regard to these rights. Actually, such a distinction is typical for other legal systems too, for instance the French legal system. Art. III-1 of the French Criminal Code disposes that: "Criminal offences are classified in accordance with their seriousness, into crimes, delicts and contraventions". It is true that the criterion of gravity is introduced so as to make the distinction between the three subcategories of actions, but only after characterizing them as criminal acts, so within one and the same category, that of criminal offences.

The abovementioned distinction is also found in the Swiss legal system, subject to the same classification of crimes, delicts and contraventions within the legal category of offences. Art. 10(1) CPS (Swiss Criminal Code) makes the distinction between crimes and delicts according to the seriousness of the punishment applicable in the case of offences, only to establish as crimes, in the next two paragraphs, the offences for which a liberty depriving punishment of more than 3 years is applicable, and as delicts, the offences for which a liberty depriving punishment of less than 3 years or a financial sanction is applicable. The third category of criminal acts is regulated under art. 103-109 CPS, and as far as the definition is concerned, art. 103 establishes that contraventions are the offences for which a fine sanction is applicable<sup>29</sup>. The gravity of the act and of the applicable sanction is relevant only after the criminal nature of an act was established, thus including it in this category.

Strongly connected with what was previously mentioned, the new perspective on criminal liability is suitable for the effective protection of human rights. By introducing a contravention in the field of criminal law, the person suspected of having committed it will take advantage of all the rights under any recognized procedural law, guaranteed and ensured by the state, if we consider an act for which the sanction depends on the qualification of "criminal charge". All the aspects regarding the right of defence shall be guaranteed to the person suspected of having committed an act qualified as a contravention, but whose sanctioning regime denotes the intention to repress a conduct. The consequences are extremely important in the Romanian legal system, since the guarantees provided under art. 6 of the European Convention on Human Rights, concerning the right to a fair trial<sup>30</sup>, are recognized only in the event of the commission of an act qualified in internal law as a criminal act, with the exclusion of the contraventional ones. Therefore, although sometimes certain administrative sanctions, applicable to contraventions, can entail certain consequences with regard to the freedoms and rights of individuals, consequences more restrictive than a criminal punishment<sup>31</sup>, the persons having committed a contravention are exposed to the action of the state, without appropriate protection. These persons cannot invoke the infringement of the reasonable time for deciding in the case, they do not enjoy, as a matter of legal principle, the presumption of innocence<sup>32</sup> and cannot make use of all the aspects involving the right of defence, the right of being informed about the charge against them, to be assisted by a counsel for the defence, the right to lodge claims, defences, to raise exceptions, to contest the decisions of a court.

The European Court, in the abovementioned decision, made this distinction according to the nature of the sanction, overlooking the fact that in internal law, it is of an administrative nature. With a view to the sanction of withdrawing the points for the driving licence, qualified in the French law as an administrative sanction, the Court decided that "the withdrawal of points may entail, at the end of the term, the loss of validity of the driving licence. Or, it is undeniable that the right to drive a motor vehicle is of great use in current life and the exercise of a profession. The Court, in agreement with the Commission, infers that, if the measure of withdrawing the points has a preventive function, it also embraces a punitive and dissuasive form and it so stands for an accessory punishment. The will of the legislature to dissociate the sanction of withdrawing the points from other punishments established by the judge competent in criminal matters will not change its nature"<sup>33</sup>. In conclusion, the seriousness and nature of the sanction are the elements determining the Court to find the existence of a "criminal charge" in the case .

#### **D. The legal regime of contraventions in Romanian law**

##### **a. The legal situation of contraventions**

The legal situation of contraventions<sup>34</sup> in Romanian law raises a big question mark with regard to ensuring the conventional guarantees under art. 6 and the constitutional ones contained in art. 24, from the perspective of their qualification as acts of an administrative kind. One of the aspects concerning the right of defence, which is infringed on the occasion of reporting the commission of a contravention, deals with the presumption of innocence. The report on the contravention, the minutes drafted by the competent body, stands for evidence. It is true that the one who committed a contravention has the possibility of bringing an action to court so as to contest this act. But an overturn of the burden of proof intervenes this time, since the findings in the report are considered to be true until this presumption is overturned by the evidence that the author of the contravention has to produce. Thus, in the administrative domain, although the nature of the sanction may belong to a "criminal charge", the state adopts a passive attitude, not having the obligation to prove the facts imputable to the author of the contravention, whereas the latter has to adopt an active attitude in order to prove his innocence.

**b. The legal nature of and the evidence in the report on the contravention**

With regard to the juridical nature and the force of the evidence in the reports on contraventions, it was claimed that they represent “real acts of administrative law, since by establishing a state of fact, the administrative body of the state also manifests its will to determine the application of a sanction”<sup>35</sup>. Moreover, the report is, except for some situations expressly stipulated by law, the only procedural act establishing the commission of a contravention<sup>36</sup>.

Most judicial practice brings arguments that the quality of an administrative act of the report on the contravention makes it enjoy the presumption of legality specific to these juridical acts<sup>37</sup>. Thus, the Constitutional Court qualifies the report on the contravention as an administrative act establishing the contravention, the effects of which can be removed by the exercise of appeal procedures provided by law. Yet, it is considered that “the report does not enjoy the force of the evidence in an administrative act, which, being assimilated to a deed, makes the proof until a false writing is proven, but it only enjoys, with regard to the state of fact, a relative presumption of authenticity and truthfulness until otherwise proven”<sup>38</sup>. Since it is an act meant to provide evidence, any kind of proof provided by law is admitted before the court<sup>39</sup>.

As for proving the contravention, the report is “fully reliable about the acts and actions it refers to, no other evidence being necessary”<sup>40</sup>. The applicable procedure comes under civil law, completing that provided by the Code of Civil Procedure. This feature is also valid in the case of the burden of proof, pursuant to art. 1169 of the former Civil Code. Thus, it is asserted that “due to the fact that the initiative for the judicial action belongs to the contesting party who lodged the complaint against the report on the contravention, the burden of proof is incumbent on him, in accordance with the general principle under civil procedure”<sup>41</sup>.

Taking into account the fact that the report has the advantage of a relative presumption of truth, proving the state of fact<sup>42</sup>, “the overturn of this presumption is often almost impossible for the claimant, especially in the event of instantaneous contraventions directly noticed by the agent, when there are no eye witnesses”<sup>43</sup>. It is obvious that this is a violation of the claimant’s right of defence and of the presumption of innocence with regard to which the European Court established the infringement when the person suspected of having committed a contravention is required to prove his innocence.

The solution proposed in the doctrine for the observance of the presumption of innocence is of a normative nature. “Under the procedure regarding the contraventional complaint, the ordinary law in this matter should provide the overturn of the burden of proof, (...) and that the presumption of legality of the report on the contravention or the obligation of the contesting party to prove its nullity should no longer exist, but on the contrary, that the obligation of the administrative body to prove the solidity and legality of the contraventional sanction should be expressly provided by law, which is equal to proving the fault of the contesting party”<sup>44</sup>.

This manner of perceiving things is welcome from the perspective of the author who rightly establishes that the one who files a complaint with a court, so the one having to prove its solidity, is the reporting body, not the one contesting the report. The reporting agent makes a statement regarding the fault of a person, which entails, on his part, the obligation to provide evidence in order to support it. The solution is yet incomplete, since the author remains in the same register, the administrative one. Actually, in order to avoid the problems referring to the infringement of the right to a fair trial from all standpoints, the court before which a report on a contravention is contested should judge in terms of a “criminal charge”, since this is the only domain in which the aforementioned presumptions are recognized to the contesting party. The solution of the burden of proof overturn which exists, according to the author, in the matter of employment litigations, can be adopted in order to prove the legality of the disciplinary sanction in

various domains, as a protection for the contesting party, but only after it is found that it exceeds the scope of criminal law.

<sup>1</sup> Law no. 286/2009 on the Criminal Code, M. Of. (Official Gazette of Romania) no. 510 of 24 July 2009.

<sup>2</sup> George Antoniu, *Noul Cod penal si Codul penal anterior, privire comparativa. Partea generala*, RDP n° 4/2004.

<sup>3</sup> For a more detailed argumentation of this principle, see George Antoniu, *Comentariul Capitolului I. Principii generale of the new Criminal Code*, pp. 19-39, in G. Antoniu (coord.), *Explicații preliminare ale noului Cod penal. Vol. I Articolele 1-52*, Universul Juridic, București, 2010.

<sup>4</sup> Pursuant to art. 17 par. (1) of the Criminal Code in force.

<sup>5</sup> Art. 15 par. (1) of the Criminal Code.

<sup>6</sup> For the presentation of arguments, see [www.just.ro](http://www.just.ro).

<sup>7</sup> Art. 285 par. (1) of the new Code of Criminal Procedure.

<sup>8</sup> Art. 318 of the new Code of Criminal Procedure.

<sup>9</sup> The presentation of arguments with regard to the bill on the Code of Criminal Procedure, p. 17, [www.just.ro](http://www.just.ro).

<sup>10</sup> Valerian Cioclei, *Despre nevoia de echilibru în justiția penală*, *op. cit.*, p. 3-13.

<sup>11</sup> In accordance with the presentation of arguments with regard to the bill on the new Criminal Code, it is noted that the offences of theft and qualified theft best reflect the excessive rise of the punishment limits, therefore judges inflicted liberty depriving penalties, most of which do not amount to 5 years, which proves that the practice does not need increased liberty depriving penalties in order to reach the aims of criminal penalties.

<sup>12</sup> In this respect, see art. 37-44 of the new Criminal Code, regulating joint offences, repeated offences and intermediate plurality of offences.

<sup>13</sup> The financial punishment is the first on the list of main punishments under Swiss criminal law, along with the amendment of the general part of the Criminal Code, in 2007.

<sup>14</sup> In order to understand the premises and consequences of such a hierarchy of punishments, see P Nicolas Queloz, *A quoi servent les peines pécuniaires? Prix du crime ou nouvelles taxes publiques?*, in J.L. Bacher, N. Capus, F. Vogler, *Justice pénale: des prétentions aux résultats*, Stämpfli, Berne, 2010.

<sup>15</sup> For an analysis of the features of the offence, see Costel Niculeanu, *Definiția și trăsăturile esențiale ale infracțiunii în reglementările noului Cod penal*, *Dreptul*, no. 7/2010, Uniunea Juriștilor.

<sup>16</sup> George Antoniu, *Unele reflectii asupra conceptului de incriminare si conceptului de infractiune*, RDP no. 4/2010.

<sup>17</sup> One of the aspects making the distinction between these two categories of acts is related to the regulation level. Regarding the competence of the executive power to regulate the contraventional matter, see *Ch. crim.*, 26 February 1974, *Schiavon*, obs. A. Varinard, in Jean Pradel, André Varinard, *Les grands arrêts du droit pénal général*, 3rd ed., Dalloz Paris, 2001, pp. 34-43.

<sup>18</sup> For the meaning of the notion of legal liability, see Antonie Iorgovan, *Tratat de drept administrativ*, Vol. 2, ed. 4, Ed. All Beck, București, 2005, p. 329-345.

<sup>19</sup> In the doctrine, the sanction is considered the only distinctive criterion, de lege lata, between contraventions and offences. V. Mircea Ursuța, *Procedura contravențională*, 2<sup>nd</sup> edition, Universul Juridic, București, 2009, pp. 73-76.

<sup>20</sup> For an analysis of the theories on fault, see Mioara-Ketty Guiu, *Criza dogmaticii penale și teoria vinovăției*, *Revista de Drept Penal* no. 2/2010, Asociația Română de Științe Penale, pp. 48-60.

<sup>21</sup> Alexandru Țiclea, *Reglementarea contravențiilor*, 4th edition, Lumina Lex București, 2006, pp. 18-20.

<sup>22</sup> Corneliu Bîrsan, *Convenția Europeană a Drepturilor Omului. Comentariu pe articole*, 2<sup>nd</sup> edition, C. H. Beck, București, 2010, p. 410, no. 130.

<sup>23</sup> ECHR, 20 October 1997, *Serves c/France*, § 42 ; 16 December 1997, *Tejedor Garcia c/Espagne*, § 27 ; *Deweere c. Belgique*, 27 February 1980, series A no. 35, p. 22, § 42, et p. 24, § 46; *Eckle c. Allemagne*, 15 July 1982, series A no. 51, p. 33, § 73; <http://www.echr.coe.int/>.

<sup>24</sup> ECHR, 23 October 1995, *Grandinger c/Autriche*, § 35 ; 29 August 1997, *A.P., M.P., et T. P. c/Elveția*, § 39, 23 September 1998, *Malige/c./France*, § 35; 21 October 1997, *Pierre-Bloch/c./France*, <http://www.echr.coe.int/>.

<sup>25</sup> *Malige c France*, § 39, <http://www.echr.coe.int/>.

<sup>26</sup> ECHR, 21 February 1984, *Öztürk c/Allemagne*, § 49, <http://www.echr.coe.int/>.

<sup>27</sup> ECHR, 21 February 1984, *Öztürk c/Allemagne*, § 49, <http://www.echr.coe.int/>.

<sup>28</sup> C. Bîrsan, *op. cit.*, p. 411.

<sup>29</sup> With regard to the new law applicable to contraventions, see Yvan Jeanneret, *Légalité, contravention et nouveau droit: des surprises?*, RPS 122, 2004, p. 21 and the next.

<sup>30</sup> On the coming into being of the fair trial, see Denis Salas, *Du procès pénal*, PUF Paris, 1992, pp. 81-97.

<sup>31</sup> As an example, the court disposed the conviction for the commission of an offence, but it considered that a liberty depriving sanction was not necessary, awarding the benefit of conditional suspension of the punishment or suspension of the punishment under supervision, which excludes the possibility to deprive that person of liberty.

<sup>32</sup> A reliable analysis regarding the presumption of innocence in the jurisprudence of the European Court is made by Mihai Selegean, *Dreptul la un proces echitabil*, Institutul Național al Magistraturii <http://www.inm-lex.ro/>, pp. 57-63.

<sup>33</sup> Malige c France, § 39 <http://www.echr.coe.int/>.

<sup>34</sup> The legal situation of contraventions occurs in special laws. For example: Government Ordinance no. 2/2001 on the legal regime of contraventions, M. Of., no. 410 of 25 July 2001, as subsequently amended and completed by Law no. 180/2002, subsequently amended and completed; Government Emergency Ordinance no. 195/2002 on public road traffic, as amended and completed by G.E.O. no. 63/2006, M. Of., no. 729 of 20 September 2006.

<sup>35</sup> Tudor Drăganu, *Actele de drept administrativ*, Ed. Științifică, București, 1959, p. 92.

<sup>36</sup> Mircea Ursuța, *Procedura contravențională*, 2<sup>nd</sup> edition, Universul Juridic, București, 2009, p. 126.

<sup>37</sup> *Idem*, p. 211.

<sup>38</sup> Mircea Ursuța, *op. cit.*, p. 215.

<sup>39</sup> *Idem*, p. 224.

<sup>40</sup> Mihai Adrian Hotca, *Regimul juridic al contravențiilor. Comentarii și explicații*, C.H. Beck, București, 2006, p. 216.

<sup>41</sup> Corneliu-Liviu Popescu, *Comentariu la Hotărârea CEDO din 4 octombrie 2007, Anghel c/România*, Curierul Judiciar no. 10/2007, p. 12.

<sup>42</sup> Mircea Ursuța, *op. cit.*, p. 227.

<sup>43</sup> *Idem*, p. 229.

<sup>44</sup> Corneliu-Liviu Popescu, *op. cit.*, p. 13.

## ORIGINAL PAPER

**Adriana-Florina BĂLĂȘOIU\***

### **Opinions regarding the fiscal system and the referendum**

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**Abstract:** *The present paper presents the regulation process of a fiscal system specific to a State in transition towards the market economy was initiated after the year 1989. The article also argues about the fiscal field functions, taking into account two of its vulnerable points: the modality to trigger it and the conditions of exertion, circumscribed to the principle which should be respected in any democratic society, that of the separation and balance of powers in the State.*

*Keywords:* fiscal system, transition, referendum, state, citizens,

A regulation process of a fiscal system specific to a State in transition towards the market economy was initiated after the year 1989. The transition process in Romania was slow and unstable. It was also the result of a hesitant approach and of a poor implementation of the structural reform as well as of a lack of continuity of the macroeconomic policies.

An attempt was made to institute a coherent, efficient and fair system, but only at declarative level. The frequent operated modifications within the fiscal system of a State have as an effect the difficulty of knowing and unitary application of the fiscal provisions as well as the non-confidence of the tax payers in the system and in its stability.

In this context, the institution of the referendum would be a tool by which problems at the level of society could be fixed. But, this can be a tool handy for those who have the possibility at some given point to be able to use it for an entirely different purpose, that of manipulation, the uninformed electoral mass in a matter subjected to voting procedures. This last aspect is due, on one hand, to the lack of juridical knowledge, at least at minimal level in schools and high-schools, and on the other hand is caused by the mass-media action, a true power in the State, but that sometimes does not fulfil its function of correctly and justly informing the population in accordance with the requirements of a democratic society. However, „information is not knowledge” and even if those who need to make a decision are entitled to a fair presentation of arguments to sustain or reject a referendary question, in the technical matters in general, as it is the case of taxes and fees, they express themselves impulsively with respect to the functioning of a public policy.

So, it is interesting to notice how a referendum in the fiscal field could function, taking into account two of its vulnerable points: the modality to trigger it and the conditions of exertion, circumscribed to the principle which should be respected in any democratic society, that of the separation and balance of powers in the State.

#### **I. The limits of the referendary initiative in the fiscal field**

The fiscal sphere is very sensitive due to the multitude of relationships dependant on it. We take into account the whole „life” a of the state and the fulfilment of its role in the field of health, education, economics, public order and justice as well as in other areas, one of the main objectives of the state being the institution of a system of social fairness in redistributing the national income. These clarifications are necessary because the present endeavour targets the identifications of problems which can be submitted to a referendary procedure in the fiscal field.

A problem which is at the basis of this analysis is the possibility for the Chief of State to submit, to the decision of the electoral body, by a national consultative referendum foreseen by art. 90 from the fundamental law, a series of issues he considers of “national interest”. They should not be a part of such a procedure because they are an exclusive attribution of the fiscal apparatus, to solve them being necessary to have specialty studies, not a perception of a majority who has the possibility to decide at a certain moment. The reference to the term perception includes that part of subjectivity that one person, the Chief of State, may induce to those who must vote. They are forced, as in the case of a referendum, to opt for one of the variants which they have at their disposal. At the same time the concept of majority should be carefully considered as a real understanding of the finality of a vote of the demos, in the sense of a politically determined majority, by the fact that by this decision can be also affected those who are not numerically represented or those who cannot express their option, but must undergo the consequences of such a procedure.

**a. the relativity of the principle of solidarity between citizen in regards to the fiscal tasks**

The concept of solidarity is also found at art. 4 paragraph (1) from the Constitution, and by a correlation with the principle of equality (by the latter is by no means wanted the institution of a material equality) we reach the conclusion that solidarity cannot be generic and unlimited, but only “punctually and restrictively interpreted”<sup>1</sup>.

In this context, it is appropriate to remind the notion of “fiscal sovereignty”. Maxime Chrétien is one of the first authors who reflected upon these matters. He sustains that the State „is the absolute master of the creation and application of taxes”, being the only one able to limit its own fiscal sovereignty.<sup>2</sup> As a consequence, the fiscal competencies only belong to the State. The present conclusion is a consequence of admitting the fact the holder of sovereignty is the State, “the electoral body being an organ of the State”, and the exercise of sovereignty is achieved by the representatives bodies of the people and by the electoral body, due to the referendum.<sup>3</sup> This aspect should be correlated to the art. 74 paragraph (2) from the Constitution, according to which „the fiscal issue cannot be the object of the legislative initiative of the citizen (...)”, which can entitle an opinion according to which a referendum regarding the fiscal problems should be carefully instrumented. The fiscal policy modified upon the initiative of the citizens may affect the fulfilment of the functions of the State. From this point of view, a referendum regarding the modality of taxation would be a problem which would modify an entire system and would require a detailed study of the implications of an occurring change, experiments not being allowed.

The limitation of the power of decision of the people in the fiscal field is also imposed by the difficulty of making value statement about the fiscal equity. It is necessary to make the distinction between the apparent equality of the fiscal tasks and their real or effective equality. Hence, for achieving a real fiscal equalities between two people with the same absolute income, one must take into consideration the family's situation of each person separately and the social tasks which influence the contributing capacity.<sup>4</sup> The tax must observe the equality of chances, not of conditions.

**b. the conditions of the limitations of fiscal order to the fundamental rights with patrimony content – the power of appreciation of the state in this domain**

Any limitation to a fundamental right must comply with the conditions stated at art. 53 from the fundamental law. Hence, the progressive taxation of revenues is only possible for the achievement of one of the objectives foreseen in paragraph (1) of this article, „the defence of the national security, order, health (...)” not in any case for covering the losses, for example of a commercial company from the state budget. We may find outlined, in the doctrine some decisions of the Constitutional Court, the modality of respecting article 53 as well as the theory of the margin of appreciation (also from the perspective of the European Convention of Human Rights ). This „sovereign power of appreciation” is limited by the principle of the proportionality between the measure taken by the State and the purposes it pursues. In this way, the Constitutional Court shows that „fiscality must be not only legal, but also proportional, reasonable, equitable ...”.<sup>5</sup> Any fiscal limitation brought by a law must be subjected to a multiple control of necessity and adequacy, that is to be apt *a priori* to attain the purpose in question and not to have been possible the choice of another measure less constraining.

**II. The critic of the constitutional referendum and of the purely formal control exerted by the Constitutional Court on the revision proposals in the fiscal field**

The constitutional referendum appears in the moment of the adoption of the Constitution or of its revision. In art. 150 paragraph. (1) from the fundamental law it is shown to whom may belong the initiative of the revision ( of the President at the proposal of the Government, the

deputies or the senators- at least one quarter of their number, as well as at the proposal of the citizens having the right to vote if they are at least 500.000). In the following articles rules regarding the stages and limits of its revisions are stated. We must underline the fact that the revision is final upon its approval by referendum. But until that moment it is of interest what may be subjected to a referendum and in which variant. Here it is where the Constitutional Court steps in. Its role is by art. 146 let. a) and i) from the fundamental law, by which it is shown that the court analyses and is passed ex officio on the revision initiatives, respectively it oversees the modality in which the referendum procedure is organized and developed, after which it confirms its results..

The participation of the citizens to establishing the fiscal normative framework is linked to the honesty character it must embrace. It supposes a minimum of interaction (otherwise also suggested by the provisions of the Fiscal Code and of the one of fiscal procedure - art. 4, art. 3 - according to which their modifying laws are linked to terms relatively long of 6 month of promotion before the date they come in force). The promotion of an efficient policy in this field is of the essence of the representative democracy, it should not be the responsibility of the citizen to whom should correspond the correlative obligation of such a decision of fast, correct, concrete and precise information, fact which is less likely to happen in the case of such matters, not just subtle, but also delicate sometimes.

The preliminary control performed by the Court on the revision law is a preventive one. Hence, after the verification of the compliance with the formal requirements, the material control of the revision proposal must be a well-argued one. Hypothetically, if in the normative content of the proposal would be established not to pay taxes anymore, it would come to an unacceptable situation. Maybe in an utopian society, such a thing would be possible. As a consequence, we must establish how can the Constitutional Court sanction such a hypothesis when it comes to the strict act of revision. Its validity can be determined by art. 152 paragraph (2) from the Constitution by which it is stated that the revision cannot have as a result the suppression of the fundamental rights and freedoms of the citizens or of their guarantees. Thus, a limit in the fiscal field it is rendered in this article. The Constitutional Court is entitled to exert not only a formal control on the revision proposals, but to correctly apply the understanding of the supreme values of the fundamental law. It is the only one able to justify or not a fiscal intervention by a correct interpretation of the conditions of a proportionality of the measure which is intended, taking also into consideration the instrumental and conjectural character as one of „combination and balancing of other constitutional values or principles”.<sup>6</sup> The Court has at its disposal the control procedure on the revision initiatives and must use it responsibly, as a guarantor of the correct expression of the people. The latter one is thus controllable, and this is the way it must be as it exerts by the referendum the legislative power, a fact to which are owed the self governing principles resulted from the will of the constitutive power.<sup>7</sup>

Just as the eventual punitive measure by excessive fiscal burdens can be avoided by the analysis of the constitutionality of a law and not by the use of the referendum, a heavy taxation does not require such a procedure. As a consequence, the leading part should not be played by the people but by the Constitutional Court by means of the *a priori* exerted by it, which should not be a purely formal one.

### **III. The consultative referendum and the conditions of using this procedure by the President in the field of taxes**

In art. 90 from the Constitution the consultative referendum is stipulated and it is stated that „The President of Romania, after having consulted the Parliament, may ask the people to express, by referendum, its will regarding problems of national interest.” As a consequence, there are two matters which bring about questions: a. if the fiscal problems can be brought into such a

discussion; b. in which modality is achieved an adequacy between the result of the referendum and the already existent. In the moment of the launch of the referendum procedure, it is considered that there is a problem at the level of the society and to solve it the respective measure is taken, that of consulting the people. The optimization of the decisional process by referendum also imposes the respect of the principle of the proportionality between the appeared situation and the used method to solve it.

***The steps of exerting the control by the President in respect to the qualification as being of national interest for some fiscal problems in the sense of art. 90 form the Constitution***

Launching the consultative referendum is a prerogative granted exclusively to the chief of State,<sup>8</sup> and under the incidence of the notion „problem of national interest ” a missing link in the legal provisions may be noticed, which can easily be used by the governing people at some point, possibly with the purpose to satisfy other wishes than those of solving the nation’s difficulties. The non-existence of some limits in this respect gives the chief of State a discretionary power and in the fiscal field this is a dangerous path to follow for a State in its entirety. As we have shown previously, the choice in this case does not have to belong to the electoral body. However, if by the decision of just one man, the President, the character of some fiscal problems fits into the one of “national interest”, then his action should be able to be controlled, for the principle of the divisions of powers in the State should really be of some substance. That is because this principle supposes also a mutual control of powers and the constituent legislator in the moment of writing art. 90 must have had in mid the gain of a concrete result. Reporting ourselves also to the finality of the Constitution, that of defending the fundamental rights and freedoms, the decision of the President regarding the referendum should not be taken outside of control. It is not less true that a certain control is exerted by the people but this one is insufficient from the perspective of the rule of law, of its essence being the limitation of the arbitrary by the juridical framing of power.

For example, the modality of taxation is a national problem and eve if it is admitted that it may be the object of a referendum as it is stipulated by art. 90 form the Constitution, it is necessary that the initiator be submitted to a control whose steps of exertion are: consulting the Parliament, pronouncing of the Constitutional Court regarding the grounds of the referendary question. In this line of thought, the approval form the Parliament should be given a finality, not to remain just a notification from the President of his intentions. Such an interpretation is preferable to a simplistic one by which the Chief of State is not retained by the opinion of the legislative body. Thus, in case of a negative response from Parliament , the President should solidly motivate his persistency in his decision. Afterwards, the Constitutional Court should perform a control not only regarding the formal conditions but also substantive issues as far as the referendary procedure is concerned.

By art. 146 let. i) from the fundamental law it is shown that “sees to the compliance with the procedure for organizing and developing the referendum...”. through its practice, the constitutional court of law restrains its competencies in this domain, although it should make a control of constitutionality also in the case of the consultative , by analogy with art. 146 let. a) form the Constitution by which it has as an attribution the pronounciation „ex officio, on the initiatives of revising the Constitution”. This is imposed in matters of fiscal domain because the standardization from art. 74 paragraph (2) according to which the fiscal problems cannot be the object of a legislative initiative of the citizen, suggests a precarious mode of their knowledge to be able to decide on the theme of such a subject. The constitutional provisions do not punctually make a distinction of what kind of fiscal problems should not be submitted to a legislative initiative, but all. Or, the referendum launched by the President could refer to some problematic aspects to which, however should correspond a qualified control, not the indirect one, of the

people. Anyway, the action of the demos in the referendary framework must be limited by the mechanism of the Constitutional Court. By analogy with the constitutional referendum, in the case of the consultative one as well, the Court should perform a control of the substance of the referendary question to make sure of the supremacy of the Constitution, because this is the juridical regime applicable until the revision of the fundamental law by which might be changed the order of the validity conditions of the eventual issuance of normative documents.

Thus, the remedy of a fiscal problem is to be solved by means of the initiative of the revision, variant presented above. Indeed, the signalling of the problem would no longer belong to the President. But that is exactly the essence: if 100.000 citizens with voting rights cannot issue a reasoning in this domain, then, is less likely for one single person to do that, even if that person benefits from specialty counselling. This point of view is also supported by the idea that the referendum, as it is stipulated, is reduced to addressing a question which divides the electoral body in two extreme halves. There is a big probability that the answer to the question to be a ambiguous one also because of the intervening emotional factor for example in the case of the simultaneity of the developing of the referendum with other elections. In this respect it is eloquent the referendum of November 22<sup>nd</sup> 2009 when some of those who voted agreed to the idea of the presented message and while others sympathized with the person who initiated it. The corruption of the result of the referendum is also given by the annihilation of an intermediate position of the electoral body. Hence, such a hypothesis in a fiscal matter would mean to add to the Constitution because the modality of regulation and the modality of arranging the tasks are already foreseen (art. 56, 137, 139 paragraph. (1) in the Constitution – „the citizens have the obligation to contribute through taxes to the public expenses”, „forming (...) the control of the financial resources (...) are stipulated by law”, „the taxes and any other income to the state budget (...) are established by law only”).

It is an illusion to avoid these constitutional provisions with the argument that the referendum initiated by the President is a consultative one, which does not create obligations in the sense of the modifications of the juridical order. Then this initiative would be proved to be a complete waste of resources, the social and material costs not being justified if there is no compulsory character of the results of the referendum. In the case of a responsible law system, the opinion of the electoral body when manifested in such manner creates a pressure on the Parliament in the moment of the legislation with respect to the problem debated by referendum. This happens because it represents a legal standing of a decision. Its effect cannot be just one equivalent to the opinion surveys and a delay of the application of the result would mean a sideslip of the mechanism of balance which was probably intended by art. 90 from the Constitution, the control of an eventual excesses of power of the government bodies. Once its will expressed or, according to the case, the people's opinion, this one should materialize in a way. The repercussions of decision made on grounds of a damaged reason are also on those which are in that intermediate position. Accepting such a risk is not in the nature of the representative democracy where the minority will obey the decision of the majority, but, only in the fields where the two are interchangeable. There, a wrong decision can be sanctioned by means of other elections, while the possibility of repair in case of experimentally noticing that by the referendum a wrong situation is reached, it supposed to have a procedure burdened by a cumulus of several factors.

Thus, a possible referendum by which the taxation of the pensions over a certain value would be requested in the name of a so-called solidarity goes beyond its framework. Such a thing, as well as the possibility that form pensions to retain the contributions to the health social security can be the object of a law whose constitutionality however can be easily analyzed. In conclusion, such structural problems are of the competency of some specialty state bodies as it is not

conceivable to elaborate and apply the monetary policy through a referendum, its development being the attribution of the National Bank of Romania.

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\*Ph. D. Candidate at the University of Craiova, Faculty of Law and Administrative Sciences, through the Project POSDRU/88/1.5./S/49516 "Increase of the quality and competitiveness of the doctoral research by granting scholarships".

<sup>1</sup> Dan Claudiu Dănișor, „Constituția României comentată. Principii generale”, Publishing House Universul Juridic, Bucharest, 2009, pg. 167.

<sup>2</sup> F. Quérol, G. Sébastien, G. Tournié, M. Boubay-Pagès, V. Dussart, F. Rueda, J.B. Geffroy, Sous la direction de Sophie Raimbault de Fontaine, „Doctrines fiscales: À la redécouverte de grands classiques”, Ed. L'Harmattan, Paris, 2007, pp. 190-191.

<sup>3</sup> Dan Claudiu Dănișor, *op.cit.*, pp. 120-121.

<sup>4</sup> Dan Drosu Șaguna, „Tratat de drept financiar și fiscal”, Publishing House All Beck, Bucharest, 2001, pg. 609.

<sup>5</sup> Decision no. 6/1993 published in the Official Journal no. 61 from 25.03.1993.

<sup>6</sup> D.C. Dănișor, Ion Dogaru, Gh. Dănișor, „Teoria generală a dreptului”, Publishing House C.H. Beck, Bucharest, 2006, pg. 369.

<sup>7</sup> Dan Claudiu Dănișor, „Drept constituțional și instituții politice. Vol.I. Teoria generală”, Publishing House C.H. Beck, Bucharest, 2007, pg. 364.

<sup>8</sup> Decision no. 567/2006 published in the Official Journal no. 613 from the 14th of July 2006 regarding the unconstitutionality of art. 12 paragr. (1) from Law no. 3/2000.

## ORIGINAL PAPER

Simona VRÂNCEANU

### Approaches in analyzing the European migration and immigrant's integration within the EU

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**Abstract:** *The propensity towards migrating of the South-East Europe nations in the past two decades was a natural phenomena triggered by the political changes of the 1990s, when the process of democratization caused an inherent border-opening, and the economically developed states played a role of pull factor, especially for the ancillary sector of labor market. In the past few years, however, there's been greater demand for highly qualified labor force coming from the countries that have in the meantime become European Union member states. The 21st century challenges, however, call for analyzing migration from a different perspective, taking under consideration: its volume and extent, the today's dynamic and diversification of migration, the people's increasingly relying on migration, and the social concerns caused by immigrants. The purpose of the present article is that of scrutinizing today's approaches on the European phenomenon of migration, and of the issue of assimilating and protecting the immigrants.*

**Keywords:** *migration, European Union, immigrants, integration, protection.*

## Introduction

The question of migration has deeply concerned the political decision makers of the EU ever since the early 1980s. Not once since then, the over-politicization of the phenomenon, led to a over-publicizing and ultra-dramatizing of the people's from throughout the world migration (Martiniello 2006:298). As a matter of fact, the presence of immigrants and the migration flow are being perceived as a possible cause of insecurity or even a threat to the endogenous population (Martiniello and Bousetta, 2001). While in 1990 there were, worldwide, 120 million people living in countries different from their home countries, in 2000 there were 175 million, 159 million out of which were considered international immigrants, about 16 million were acknowledged as refugees, and around 900,000 were asylum seekers (Faist 2004:3). Concerning the European community, in 1998 there were around 19.1 million people from countries other than the 15 at that time member states. More recently, in 2005, 8.85% of Europe's population had been born elsewhere, and the estimations show that up until 2025 one third of the population shall be exogenous to the European mainland (Brettel și Hollifield 2008:1). The question of protecting minorities resulting from immigration within the EU is defined by contradiction, yet at the same time by a substantial potential for development. Whilst in the pre- Maastricht period, as Gabriel Toggenburg once noticed, the interest for preserving the linguistic heritage of minorities was high, the EU expansion eastwards brought into light the political side of protecting minorities. Following the treaty of Maastricht, the focus shifted towards the concept of cultural diversity, yet only later, the post- Amsterdam evolutions encouraged the "internalization" of minority-related subject-matters (Toggenburg 2003:25). Among the provisions of the Constitutional Treaty, regarding the notion of European citizenship, with all its incurring rights and freedoms, there is the right to vote and to be elected in the European Parliament, and in the local elections within the state of origin and of residence, having equal rights with all the other citizens of that state.

## New perspectives in analyzing migration within the EU

Cunningham and Heyman are employing the *mobility–enclosure continuum* concept for highlighting the tension between processes that allow and generate mobility, and borders, that confine and limit the movement of ideas, persons and commodities.

Borders are continually re-shaping in the context of mobility, exerting influence upon the shaping and manifesting of social identity (O'Reilly 2007:279). Nina Glick Schiller, as well as other authors, are employing the term of *trans-migrants*, applied to those individuals who maintain affective and instrumental ties beyond national borders (Basch et al. 1994, Schiller et al. 1992).

On one hand, the mere fact that immigrants do not break all ties with their countries of origin, does not necessarily make them different from their precursor immigrants, and on the other hand, the ongoing necessity for adapting to a life befitted to their expectations, values and identity feelings is not to be neglected. The concept of trans-nationalism explains the migrants' identity and communities in a manner suited to the challenges of the present day.

*The trans-national elites*, a concept that describes highly-qualified professionals (Beaverstock 2005), are the archetype paradigm of the trans-migrant, embodied by the employee always on the move for a job, and who represents the quintessence of the flow of knowledge, skill, information, and who populates the segregated trans-frontier communities (Castells 2000).

Peter Kivisto (2001) maintains that there's no reason to assume that all modern-day migrants are trans-migrants.

The paradigm of trans-nationalism, that emerged in the late 1980s, is a critical response to the *melting pot* American model, and to the theories regarding assimilation and multiculturalism, as well as to the theories of migration incapacity of explaining the new form of immigrants' settling in several "national spaces". That paradigm amends three directions for analysis: (1) the

elementary and anti-historic concept over culture and society (2) the methodological nationalism (3) studies on migration that make use of "assimilationist" and "multiculturalist" paradigms (Cotoi 2009: 175). In the first case, the studies undertaken by the School of Manchester regarding the Central Africa population migration, show that migrants originating from rural tribes preserve the characteristics of their originating environment (Mitchell 1969). The paradigm of trans-nationalism does not exclude the chance of employing the false argument of "*men of two worlds*" (Ferguson 1999: 102, apud Cotoi 2009: 177). The methodological nationalism appears in the form of an intellectual orientation, in which the process of shaping national states is a trans-national process (Glick Schiller 2007: 452 apud Cotoi 2009: 178).

Concerning the studies upon migration based on the assimilation, or multiculturalism model, the approach is one that does not place enough significance upon the importance of the trans-nationalism paradigm over ethnicity. David Riesman is among the first to advocate the term *ethnicity* (1953) aiming at eliminating discrimination on language, color, and religion grounds of some USA ethnic minorities (Hermet 1997:23) so that later on, Wallerstein (1960) and Gordon (1964) would attribute new features to this concept: that of belonging to a certain people (*sense of peoplehood*) or that of loyalty (*feeling of loyalty*) (Poutignat, Streiff-Fenart 1995:24). Herbert Gans employs the concept of *symbolic ethnicity* to shed light upon an "emotional tie" that defines the identity feeling of the individual, based on a "tradition that can be felt without having to be applied to day-to-day behavior". (Gans 1979: 146 apud Cotoi, 2009: 179).

Accepting the proteiform features of the concept of migration and bringing invariably together the content of various theories that sprung starting with the 1960s, one must admit the fact that no valid theory that explains every migratory situation is in place to this day. In this sense, one cannot overlook the fact that migration implies approaching globalization from a political anthropology point of view that brings along new global cultural flows, flows that can no longer be explained based on the worldwide system theory (Wallerstein), theory that emerged in the late 70s, and the early 80s.

A likely solution pointed at a proper understanding of migration in the post-modern era comes from Arjun Appadurai (1996), who identifies 5 dimensions to global flows: ethnic landscapes (*ethnoscapes*), media landscapes (*mediascapes*), technological landscapes (*technoscapes*), financial landscapes (*financescapes*), ideological landscapes (*ideoscapes*).

Randall Hansen (2004), in his paper *Migration to Europe since 1945: Its History and its Lessons* presents the two major migratory waves of post-war Europe that led to the emergence of multicultural and multilingual societies. The author presents Great Britain, France and Germany as the three illustrative examples of countries that did not succeed in providing the necessary social changes to cope with the challenges of migration and suggests a few lessons to be learned and applied to the present day. The first one points out to the fact that temporary migration will become permanent in the case of asylum seekers, yet not also in the case of skilled migrants. That is why public opinion and especially politicians play an important role in the society. Throughout history, there were times, the author explains, when public opinion backed immigrants, yet only if no major political party had an anti-immigration platform. The second lesson is that the main objective of integration is guaranteeing success on the labor market, considering that many migrants of economic-boom times do not possess the experience and the ability to cope with subsequent economic depression periods.

Therefore it is desirable that the immigrant selection process be based on professional skill and capacity of adapting to a flexible labor market. The lesson learned from asylum seekers shows that most of those that succeeded in settling in Europe shall stay in Europe. European countries need immigrants and for that reason, the author infers, a coherent migration policy should be developed collectively, if possible, and unilaterally, if required.

### **Integration and protection of the EU immigrants**

The integration of immigrants is a very hard to define concept, considering that its analysis entails answering questions like: *from what?, into what?, by whom?*

Michael Banton (2001:151) introduces the term *integration* as a *treacherous metaphor*, which means that the interaction between groups resembles the mathematical process of creating integers, yet it does not offer clear algorithms for integration. The integration of minorities formed through migration depends on the society's attitude towards ethnic and racial groups, on diminishing prejudice, and on accepting cultural diversity by the indigenous population. The integration process has a triple justification, economic, social, and political. The economic justification means the benefits expected from a prolific population; the social justification-solidarity with the poor, one of Western's Europe major values; political justification is based on the basic human rights principle of equal treatment. The hosting countries being socially heterogeneous, integration cannot come in the form of social insertion, though, in any case, its purpose should be eliminating legal, cultural, linguistic obstacles, etc. The European Commission focused on measures aimed at protecting human rights, indiscrimination of minorities and minorities rights, the acknowledgement of Europe's cultural diversity, economic and social cohesion built through intercultural cooperation.

According to Giuseppe Vedovato the past few years have seen the rise of the danger of a deliberate volition - yet "discretely hypocrite" - that of establishing an absolute control over migratory flows, as well as that of setting procedures to be followed, all in the absence of a proper technology and proper financing. Geographically, the danger is that of witnessing the emergence of *absolutely immunized* world regions (of controlled and selected migration, regardless of the method in use) and that of *transit* and *retention* world regions (exported and de-localized migration control), and the emergence of one-way hermetic frontiers, North-South for instance (Vedovato 2011:2). The author moreover estimates that the European countries' models of integration are facing a crisis: "the proclaimed failure" of the German cultural pluralism (that of the integration model based on recognizing a certain level of cultural diversification within the public space, related mostly to the presence of Islam in Europe), the multicultural models of the Great Britain and Holland, whose premise is *ius soli*, the French model of yielding sovereignty in exchange for giving up on identity particularisms.. etc. As far as the Italian model is concerned, "nominally asimilationist" in Rezo Guolo's conception, and whose watchword is- observe the Italian laws and traditions, in the spirit of the Lombard League's "metoda forte" , is defined as "assimilationisme bancal" (meaning that immigrants have to give up on their cultural, ethnic and religious identity, to stay hopeful of attaining citizenship). The Italian model, deemed an essentially disciplinary one, is an oftentimes uneven relationship, based on *ius sanguinis* (right of blood) that prevents most aliens from acquiring citizenship. "That assimilationism without real assimilation, that negative multiculturalism, that is, in fact, reused in its most hostile version, that of the identity enclave, and it is, at the same time, liable to cause future conflicts" asserts Vedovato (Vedovato 2011:4-5).

In his work "Demography and population sociology", Traian Rotariu describes the integration of newcomers in both "universalist societies, based on cultural unity" and "comunitarian societies, based on multiculturalism", as a process whereby the newcomers become "members of the new society, not only with the same formal rights, but also with real chances of attaining any social status, with an access to economic and cultural assets, with real opportunities regarding occupation and education, of political involvement at every level" etc. (Rotariu 2009:190). Observing that, however, there's a great difference between being aware that getting integrated is a necessity and the actual degree of integration, W. A. Cornelius and other authors name this phenomenon "the hypothesis of difference" (Ciobanu, Elvick 2009:95-96).

As concerns public debate, one may identify two major features that define the discourse on the European and international migration question. On one hand, there's the political and legal initiatives, aimed at maintaining the actual or potential migration flows at minimum levels, taking into account, obviously, the refugees question, which became a major priority on the European political agenda, particularly in the event of the recent North African revolutions. On the other hand we observe a more radical position from groups that view immigration on the European continent as a dangerous phenomenon, that must consequently be stopped: "Immigration is therefore portrayed as a dreadful plague that must be rapidly vanquished, before it's too late"(Martiniello 2006:298). The "economic threat" in particular, attributed to immigrants, is most frequently presented as an "imminent fault" of the migratory process, in both the scientific discourse and public proclamations. The immigrants and their descendants are oftentimes held accountable of the fact that they steal the indigenous people's jobs, and that they benefit unjustly and in some cases even through fraud of the developed countries' systems of welfare. The "social threat" is also considered an important consequence of the migratory act, and it is deemed to be conducive to trans-frontier crime. The latter is a characteristic mostly associated with the next generation of immigrants, that commit crimes in populous urban areas. Violence demonstrations in major European cities, such as London, Berlin, and Zurich in 2011, are strengthening that perception.

Regarding the evolution of immigration policies, they went from labor force recruitment by the Northern and Western European countries in the 1950s-1970s, that represented an immediate response to market pressure, to efforts of stimulating the recurring migration, or of integrating migrants, throughout the 1970s and the 1980s. Migration policies are mostly classified according to types, rather than taking a more discerning approach upon the notion of migration. Some forms of migration, such as that of skillful, highly qualified workers, are often stimulated, upheld and even made easy. Thus, after the 1990s, the European countries showed greater interest in workforce migration as a means of meeting the demand for skillful, specialized laborers and to counteract the negative demographic growth. Such forms of migration, as are asylum seekers, are oftentimes the target of restrictions coming from the EU countries.

In his book, *Managing rapid and Deep Change in the Newest Age of Migration*, Demetrios Papademetriou explains why governments encounter difficulties in implementing their migration policies. In the circumstance of negative population growth and of economic demand, it is interesting to notice how politicians are adjusting their arguments to present-day social realities, jumping from an anti-immigration discourse to a immigration- supporting one. Even though in the aftermath of the Sept 11 attacks both the United States and the European countries shut their doors on migration, that did not diminish the pressure exerted by the latter. Demetrios G. Papademetriou, who presents migration as a priority issue on the domestic and international agenda, also considers that countries should: regain control over migration from the demagogic politicians who make use of the subject to reach their own political goals, and from the multinational corporations' unions who represent the economic interests of their countries of origin; be more candid and more transparent; explain to the public what they're doing and why they are acting in a certain way, seeking to launch a public national debate aimed at identifying migration policies that would maximize benefits and minimize cost; establish robust management systems properly financed and continuously re-assessed and re-adjusted; to understand and tackle the phenomenon in its complexity; to come up with proposals concerning immigration in connection with other questions and responsibilities, such as: social welfare, public order, education, development; to become market-oriented and civil society-oriented turning heated critics into partners in the effort of dealing with migration in a *win-win* situation (Papademetriou 2003: 39-56).

## Conclusions

A study by the European Foundation for Improvement of Living and Working Conditions (2007), called *Factors Determining International and Regional Migration in Europe* was coming to the conclusion that, in the near future, the highest level of interest in migration would be pointed at countries like Estonia, Lithuania, Leetonia, Poland, Czech Republic, Slovenia, Hungary, Slovakia, Cyprus, Malta.

The EU role in developing migration policies is a particularly important one. The policies regarding immigrants, that in the past were merely assessed by the society's capacity of integrating or excluding newcomers, now involves institutional characteristics analysis, and the respective institutions' actually taking actions (Geddes, 2003: 4-5).

The question of migration itself made the object of European, international and domestic legal regulation; European Council reports and conclusions, European Ministers Council meetings concerning immigration, conventions, additional protocols, resolutions, decisions, etc. National regulations differ, however, from country to country, especially as concerns the citizenship attaining legislation.

On July 20th 2011 The European Commission adopted the European Agenda for Integration of Third-Country Ressorissants. That would facilitate the immigrants' integration within their adoptive countries through participating in local communities daily activities. Well-adjusted immigrants are one of Europe's strengths "through added economic and cultural value to the society" is Cecilia Malmstrom's, the European commissary for internal affairs, opinion.

Access to jobs and education, their socio- economic capacity of supporting themselves, a good command of their adoptive country's language, are all foundations for immigrants' successful integration.

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## ORIGINAL PAPER

Cristina ILIE GOGA

### Evolution of Romanian migration to Spain since 1989 up to the Present

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**Abstract:** *The first wave of Romanian immigrants to Spain came in 1990 after the fall of communism in 1989. They immigrated to this country as tourists, as holders of Schengen visa immigrants or asylum seekers and main part of their migration was permanent. Their establishment in Spain was mainly achieved in a period when the state had not observed this phenomenon, when the jobs were held without work card, when the residence was made without documents. The boundaries between legality and illegality were very sensitive. In 1998, only 3543 Romanians were registered in Spain. The latest wave of Romanian immigration, established Spain as a major destination.*

*For the spectacular evolution in the number of immigrants from Spain, an important role was held by the economic conditions in this country and the permanent institutional development.*

**Key words:** *Romania, immigrants, Spain, migration waves, statistics.*

Romania is a passive actor in front of the migration phenomenon, regarding it as positive aspect in social evolution, so the Romanian citizen becomes the main actor, active in the emigration process, being under the necessity to comply with legislation, rules and restrictions of the destination states. The Presidential Administration, through the Presidential Board for Social and Demographic Risk Analysis in Romania very explicitly presents in the report "Risks and social inequities in Romania" dated September 2009 the immediate advantages of Romanian emigration: GDP increase<sup>1</sup> through the large amount of transfers into the country, mentality changes and unemployment export<sup>2</sup>.

The number of Romanian emigrants becomes more difficult to estimate due to the emphasis of the circulating character of this phenomenon. The percentage of people frequently travelling between Romania and another European Union country and the ones who stay for short periods outside their country is increasing<sup>3</sup>. Permanent emigration from Romania has a relatively reduced level (approx. 11 thousand people each year, after 1998)<sup>4</sup>. The predominant is temporary migration for labor. Taking into consideration various data sources and corroborating them, we can estimate a number comprised between 2 and 3 million Romanian who are abroad, approximately 2,800,000 emigrants in 2008<sup>5</sup>. However, the provisional results of the Census of the population and houses in 2011 shows that only 910,264 Romanians are long term emigrants and 658,887 are short term emigrants, thus resulting a number of only 1,569,151 who are abroad at the end of the year 2011<sup>6</sup>.

We can estimate the number of Romanians who are outside the country for labor abroad, especially in Spain, by taking into account two information sources: the official data of the organizations and institutions in those states (Spain and Romania) and the opinion surveys made in Romania and in Spain.

According to the communication "Foreigners with valid residence permit" issued by the Ministry of Labor and Social Affairs in Spain<sup>7</sup>, on December 31st 2006, in Spain at that moment there were 211,325 Romanians, while across the whole UE there were approximately 1,052,000 resident Romanian workers and 1,244,052 worldwide<sup>8</sup>. These numbers increased dramatically since 2007. A large part of these Romanian emigrants in Spain can be found in the Madrid area.

The most recent situation of the work force migration from Romania towards Spain, starting with 2007 (forth migration wave), is totally different from the ones in the years 1990 - 1996, 1997 - 2001 or 2002 - 2006. In each of these periods migration progressed differently, being characterized by a different dynamics and dimension, through a particular composition of emigration flows.

If after the 1989 Revolution, in the first wave of Romanian migration, on top of the destination countries of the emigrants we found countries like<sup>8</sup> Turkey, Israel and Hungary, starting with 1997 in that classification there were states like<sup>9</sup> Germany, Italy and Hungary. Spain was not in that period a destination favored by Romanian emigrants, only 5 % of them opting for this variant.

The first wave of emigration of Romanians was characterized through an emigration rate of 3 persons at 1,000 inhabitants and the second wave through a rate of 7 persons at 1,000 inhabitants.<sup>10</sup> Till 2001, the emigration process was extremely selective, "with a prevalence of men leaving as opposed to women, townspeople as opposed to countryside people, Moldavians and Transylvanians as opposed to Walachians and people from Oltenia, with an emphasized regional differentiation"<sup>11</sup>. After the year 2001, there was increasingly reduced the selectivity in migration. "The structure of emigration flows and, implicitly, the structure of Romanian emigrants abroad approaches more and more the structure of the country's population. Men and women, townspeople and countryside people, for example, come to be in close percentages in the structure of the new Romanian diaspora built after 1990"<sup>12</sup>.

Unfortunately, in Romania, the official statistics regarding the situation of the emigration are not updated, largely underestimating the real situation, because there are numbered only the persons who have settled their residence abroad. Thus, according to the Statistical List dated in 2007 issued by the National Institute of Statistics, between 2002 and 2006 there have emigrated from Romania only approximately 55,000 people when, in fact, the number of Romanians who left abroad for work in that period was much higher.

The third wave of Romanian emigration (2002 - 2006) was characterized through an impressive increase of abroad departures due to the fact that the visa regime was lifted for Romanians by the Schengen space countries, on January 1<sup>st</sup> 2002. The migration in this period can be characterized as being temporary and circular and most Romanians choose Italy and Spain as destination countries. Thus, 40 % of the co - nationals chose Italy, 18 % opted for Spain, 6 % for Israel and 5 % for Germany and Hungary.

Therefore, in order to illustrate as exact as possible the current situation of the Romanian migration towards Spain, we must use the official statistics of Romania and of the destination country as well as the opinion surveys.

A sociological research of the community of Romanians in Spain is of interest due to the large number of Romanian citizens, about 33 % of the total who left abroad, temporary for labor or permanently (over 901,435 Romanian immigrants who left for Spain at the end of the year 2011).

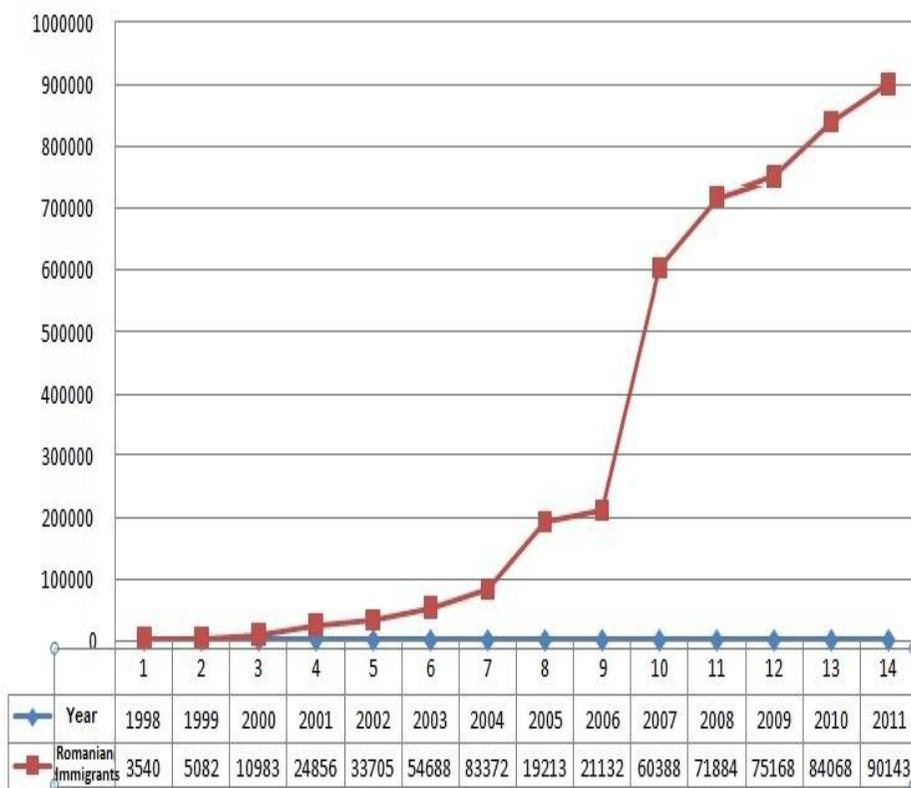
For the spectacular evolution of the number of immigrants in Spain, a very important role was held by the economic conditions in this country, but also at the same time the permanent institutional development. Firstly, the possibility to obtain the status of legal resident by the repeated legalization of procedures, has encouraged a lot of immigrants to obtain permanent residence. Thus, the extent of the number of immigrants without legal forms, is relevant when consulting the statistics and observing, a sudden increase of the number of immigrants in certain points, like for example the sudden increase of the number of Romanian immigrants in 2006, following the mass amnesty. (see table no. 1 and figure no. 2).

**Table no. 1 - Romanian immigrants in Spain between 1998 - 2011**

Year	Number of Romanian immigrants
1998	3.540
1999	5.082
2000	10.983
2001	24.856
2002	33.705
2003	54.688
2004	83.372
2005	192.134
2006	211.325
2007	603.889
2008	718.844
2009	751.688
2010	840.682
2011	901.435

*Data collected from the statistics of the "Permanent Observer of Immigration"- Spain (1998 - 2011)*

Figure no. 2 - Evolution of Romanian immigrants in Spain between 1998 - 2011



Data collected from the statistics of the "Permanent Observer of Immigration"- Spain (1998 - 2011)

This proves the fact that the number of Romanian immigrants in Spain until 2006 was much higher, but since they were not registered, we cannot have an exact image on the evolution migratory flow coming from Romania.

Secondly, the demand to have a visa for visiting EU member states, was lifted on January 1<sup>st</sup> 2002 for Romanian citizens. The Romanian citizens, afterwards, only had to prove the possession of some economic resources, an invitation from an European citizen or from an institution willing to guarantee for them, a hotel reservation and a return ticket, for visiting any country in the Schengen space for a period up to three months<sup>13</sup>.

Also, the increase of the number of transnational transportations and interpersonal connections created between Romania and Spain have allowed a lot of people to make journeys more easily. Natural persons could live there for three months, time in which they worked without legal forms before returning to Romania and the family members and friends could share a place of work, giving it one to another the moment when they had to leave the host country.

Thirdly, the supranational institutional evolutions like the one of Romania's and Bulgaria's adhesion to the European Union in 2007 implied the granting of EU citizenship for the citizens in these countries. Romanian citizens were given the right to free movement between the member states, the right to residence, to use the public services and the social benefits and to be treated equally with the native - born population (article 17 in the ECT). The EU extension process and Orient integration, therefore, has played a key role in the arrival of Romanian nationals to

Spain, because it facilitated the possibility to travel beyond the national frontiers and to settle in any Union member state.

Currently the Romanian community has the biggest percentage within the foreign citizens in Spain (901,435 on September 30<sup>th</sup> 2011).

The departure of such a large number of Romanian citizens on Spanish territory, leads to a series of serious problems for Romania. Analyzing, the long - term social and economic effects of the massive emigration of Romanian citizens are negative:

- the decrease of the number of taxpayers to the state budget,
- work force deficit, demographic decline through the deterioration of the age structure of the population,
- the absorption of the possible emigrants returned in the country in the illegal or informal sector,
- the increase of divorciality and nuptiality,
- the emphasis of community and regional disappearance on Romania's territory, the poor villages and counties becoming more poor in comparison to the ones that benefited from the money sent home by migrants,
- the decrease of the volume of remittances following the more frequent reduction of the connections with the country, after the whole family has been moved abroad,
- areas seriously affected by the massive migration of work force, like health, education and research.

In the last decades, Spain has rapidly become one of the countries with the highest absorption rate of immigrants, in the European Union: till the '80s Spain had been a country of net emigration, while today it has almost five million foreign residents, apart from the immigrant population that does not have papers and that can be found on Spanish territory (according to the statistics made by the "Observatorio Permanente de la Inmigración" - OPI and the "Instituto Nacional de Estadística" - INE). The most significant contribution to this number belongs in the last years to Romanian citizens, who represent the largest group of migrants in the country<sup>14</sup>.

Regarding the immigrant Romanians in Spain, González Aldea has brought into notice the fact that "in Spain the image that predominates over Romania is one of the most disappointing ones: criminals specialized in thefts, papers' falsifiers, beggars and prostitution"<sup>15</sup>. There has been pictured, in the Spanish society's perception, an image that presents Romanian immigrants as a group that brings problems, social tensions and where criminal activities prevail.

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<sup>1</sup> In 2008 GDP increased with 6% due to the remittances. In 2007 and 2008 the volume of remittances was of 9 billion dollars each year, according to the World Bank and of 6,2 billion Euros in 2007 and 6,3 billion Euros in 2008 according to NBR.

<sup>2</sup> Presidential Board for the Analysis of Social and Demographic Risks „Risks and social inequities in Romania”, (Bucharest, 2009), 276, [http://www.presidency.ro/static/CPARSDR\\_raport\\_extins.pdf](http://www.presidency.ro/static/CPARSDR_raport_extins.pdf) (accessed on January 9<sup>th</sup> 2012)

<sup>3</sup> *Ibid.*, 266

<sup>4</sup> *Ibid.*

<sup>5</sup> Iris Alexe (coord.) et al., *The fourth Wave. Migration of brains on the path Romania - Occident* (Bucharest: Soros Foundation - Romania, 2011), 43 and the Report made by IOM - "Migration in Romania: A country profile 2008", 17

<sup>6</sup> Central Board for the Census of the Population and Houses, *Press release, regarding the provisional results of the Census of the Population and Houses - 2011 - February 2<sup>nd</sup> 2012*, 3, [http://www.recensamantromania.ro/wp-content/uploads/2012/02/Comunicat\\_DATE\\_PROVIZORII\\_RPL\\_2011.pdf](http://www.recensamantromania.ro/wp-content/uploads/2012/02/Comunicat_DATE_PROVIZORII_RPL_2011.pdf) (accessed on March 18<sup>th</sup> 2012)

<sup>7</sup> The Ministry of Labor and Social Affairs (Spain) was reorganized and is currently named the Ministry of Labor and Migration

<sup>8</sup> According to the study "Temporary habitation abroad"

<sup>9</sup> According to the official data of the *Census of the Population and Houses in Romania - 2002*: Germany - 21%, Italy - 17%, Hungary - 15%, Spain - 5%, Turkey - 5%

<sup>10</sup> International Organization for Migration, *Migration in Romania: A country profile 2008* (Geneva: International Organization for Migration, 2008)

<sup>11</sup> Presidential Board for the Analysis of Social and Demographic Risks (2009), *op. cit.*, 267

<sup>12</sup> *Ibid.*

<sup>13</sup> Tim Elrick, Oana Ciobanu, *Migration networks and policy impacts: insights from Romanian - Spanish migrations* (Global Networks, 9:1, 2009), 100 - 116

<sup>14</sup> Instituto Nacional de Estadística, 2010

<sup>15</sup> Silvia Marcu, *The magazine Comunicación y Hombre*, nr. 3: 131 - 132 apud. Gonzalez Aldea Patricia, *Ficha del libro: "Rumania territorio olvidado. Procesos de transición 1989-2005"* (2007): 132

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## ORIGINAL PAPER

Alexandra PORUMBESCU

### East European Migration Patterns<sup>1</sup> -Romanian emigration-

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**Abstract:** *The aim of this paper is to highlight certain aspects that describe the characteristics of migration processes occurring in most East European states, by reference to the example of Romania. It is known that after the fall of "Iron Curtain" in 1990, a significant percentage of the population of Romania (figures vary between 2 and 5 million) chose to emigrate, mostly to Western European countries in search of a better lifestyle. It is therefore very important for both sociological and economic reasons, to conduct a meaningful analysis of this phenomenon, trying to find ways to control it.*

*First, when discussing this topic, it is important to conduct a theoretical and methodological clarification on migration. The work will be based on the socio-economic study of national conditions and the influence they can have upon the decision to emigrate. Moreover, the main types of migration and types of migrant population in Romania will be presented in an attempt to identify specific aspects of migration from Romania to the European Union which can afterwards be applied to other countries facing similar problems.*

**Keywords:** *migration, demography, employment, social, Eastern Europe.*

The human society, on a global analysis, is dynamic, and the history of the continents was marked by significant migratory movements. International migration is an extremely complex issue, which includes several types of movements of people conditioned by a number of reasons and forces with very different causes and consequences.

This diversity leads to the conclusion that the determinants and consequences of international migration should be assessed in various contexts, depending on the countries and specific migration patterns involved. On a global scale, both Romania and Bulgaria were noted as countries of emigration until now, being rather transitional areas for those wishing to reach Western Europe in terms of immigration.

They both have a series of common features when talking about migration patterns. However, integration into the European Union has had direct effects on the structure of this phenomenon; they became attractive for immigration. Migration is often a result of economic and social development, being able to help develop and improve social and economic conditions, or, on the other hand, perpetuate stagnation and inequality. These things depend on the nature of migration and the actions of governments and other stakeholders involved.

The economic and social development of Romania in the last twenty years, marked by the increasing loss of national economic potential and, therefore, decrease of the income of a large part of the population, along with the liberalization of labor markets worldwide, has prompted large number of Romanians to turn their attention to finding jobs in developed European countries<sup>2</sup>. The impact of the demographic trends on social risks is complex and in many situations, difficult to identify, because in most cases, the action of the demographic factor is being associated with influences from other factors.

By leaving the country for work, returning and immigration to Romania major national economical and social processes are being conditioned. Migration is a complex phenomenon, in which opportunities, problems, history, present and future on a national level can be identified. Many of the problems still unsolved by the transition towards open market economy and a welfare state have been approached by a large number of Romanians on their own, by temporary emigration. We may refer to it as a type of social transition through migration, which, on the short term, has proved successful, but on the long term might have multiple implications, including major risks, worthy of being considered.

Speaking of risks in the area of demography is somewhat inappropriate, because of inertia, stability and rigidity of demographic events and changes that occur and their effects are slow, displayed over time and largely predictable. The changes that have been experienced by population and demographic phenomena in economic and social transition are profound, with a strong economic and social impact, but more important is the size of prospective developments and implications.

The main patterns of the demographic evolution after 1989 can be summarized to the following characteristics<sup>3</sup>:

1. rapid and massive decline in birth rates in early 1990s and maintaining it at a low and relatively constant in subsequent years (almost 40% lower than 1989);
2. impairment of health of population and life expectancy at birth recoil during 1991-1996;
3. reduce of mortality by age and consistent rise in life expectancy at birth since 1996 but no positive effect on overall mortality (deaths per 1000 inhabitants), due to the increased number and proportion of the elderly, where it produces most of the deaths (80% of deaths held annual population aged 60 and over);
4. installation of natural population decline (since 1992) due to the above-mentioned developments of birth and mortality

5. restructuring of internal migration flows between urban and rural economic crisis of the 1990s that hit especially urban population, increasing unemployment and housing costs;
6. a veritable explosion of external migration, the major component being temporary migration.

In recent years Romania was primarily a source country or country of transit for the migration flows. Membership is correlated with increased EU income levels and wages in Romania are likely in coming years to lead to a change in this situation. In the first phase, Romania will be both source and destination country, then the number of immigrants is expected to exceed those of migrants. This development took place in countries like Spain, Portugal or Italy, and is currently producing in the countries that acceded to the EU in 2004 (Slovakia, Poland, Hungary etc.). Examples of countries like Spain (which has negotiated bilateral agreements on migration time and developed internal policies flexible to accommodate the immigrants) and Italy (who did such things) show that rational and coherent approach allows the phenomenon of social and economic mitigation negative (human trafficking, informal economy, violence, ethnic conflicts, rampant radical attitudes, effects on social security systems, etc.), without affecting the positive effects. Recently, due to the position of EU membership, Romania has started to develop some policies in this area, but developments are currently strongly slowed by permanent political changes.

Until the advent and expansion of economic and financial crisis in countries where there is poverty Romanian migrants risk to children left home could not be assessed as major. However, there are other issues that generate concern and refer to a particular vulnerability of these children psychologically affected by the absence of parents or their divorce, raised under poor supervision, in some cases exposed to the fragility of abandonment and delinquency perspective.

The economic crisis in countries where Romanian migrants are fully struck and some of them have lost their jobs. Some of them are still in those countries, unemployment or rendering activities to ensure their survival in the economic recovery hopes. Economic situation of children left at home is also deteriorating. From another perspective, the massive return home of these migrants could increase the number of unemployed in an economic context in which economic deterioration in the country looming large layoffs.

One cannot know now how the external migration will affect the size of this population of working age. If the economy requires a workforce that offers superior digital declining demographic imbalances will reflect upon the entire economic and social system. The worst facet of imbalances will be the ratio of economically active population and the elderly, the funds required by the rapid growth of the latter population and financial resources that society can provide drastic reduction of the population under age work from which these resources.

The employment increase in economic activity will only be able to cover part of the potential labor shortage. The problem of attracting foreign labor should not be neglected only strategies will require decisions well weighed all aspects, to avoid negative effects. Sectors such as construction, textiles and medicine, already clear labor shortage due to migration<sup>4</sup>.

What part of this deficit can be resolved through return migration, the migration or training of new specialists in the country, is a problem whose solution enters at least three parameters. In the first place there is the matter of specific wage offer in Romania, compared with those of immigration (the Romanian) or abroad (for immigrants coming from other countries). Secondly the relative cost of living in Romania compared with countries coming or returning migrants.

For the Romanians abroad who could decide to return there also matters a third factor related to the quality of public services and institutions in Romania.

They have left Romania for economic reasons but will return not only based on financial and economic arguments, but also institutional. Corruption, excessive bureaucracy and lack of

regard for the public service may be reasons for us to return home.

The Romanian society has a predominantly positive perception of migration: 55% of the Romanian believes that "it's good that some go to work abroad". Highest dissatisfaction related to the situation of remaining at home, children, parents or husband / wife. Maximum concern about the situation especially parents home. Of course, family is a natural concern in relation to those left behind. In this area of concern with is very likely, and families in the emigration from the country which produced negative consequences.

We have no quantitative estimates for any of the phenomena associated with temporary migration: divorce, mental illness for children, antisocial behavior of children left alone, emigration of unaccompanied minors, elderly, etc. no help.

Starting from the general and particular causes that generate population mobility in the territory, one can get the following overview of the migration phenomenon.

On the one hand, we can discuss about individual migration, determined primarily by economic factors. Depending on their range, the period of travel and means of travel, they are subdivided into seasonal migration and final long-distance travel. They can often become final (forced migration, limited-range free migration, industrial or agricultural migration). The most common form of migration of this type is known as rural exodus, primarily aimed movements within countries. There are also known periodic movements unrelated to the type of work - the type of tourism and pilgrimage type.

On the other hand, we can discuss about conducted migration organized in groups, which can be final (warlike migrations - some of the great invasion, colonization - migrations of hunters, livestock farmers, farmers after exhausting their land).

They can also be rhythmic; the ones that took place in a defined space (pastoral nomads, nomadic fisherman, hunter, picker, farmer with seasonal rhythm) or have a seminomadic character - agricultural and pastoral life in the mountains or so. Such movements are determined by a way of life, shaped for centuries to come.

Migration is a phenomenon with implications for the community and has a strong effect upon family and community networks. One of the most important effects of migration is felt in the community. Changes occur in the mentalities caused by contact with foreign countries, increased active social criticism and entrepreneurship. These are positive effects to be included in local policies and promoted in the community. However, there are strong demographic changes, depopulated and aging communities living mainly from remittances. On the other hand, there appears the strict question about the impact of remittances on the need and production of public goods.

In its early stages, until 2001, Romanian emigration was highly selective, with a predominance of men towards women departure, townspeople against peasants, Moldavia and Transylvania from Wallachia and Oltenia, with a strong regional differentiation.

After 2001, there appeared a widespread tendency to reduce the selectivity of migration. Structure of migration flows and, consequently, the structure of Romanian emigrants abroad are getting closer to the population structure. Men and women, city dwellers and villagers, for example, reach weights close to the Romanian Diaspora in the new structure established after 1990.

The number of people who left Romania  
Gender distribution

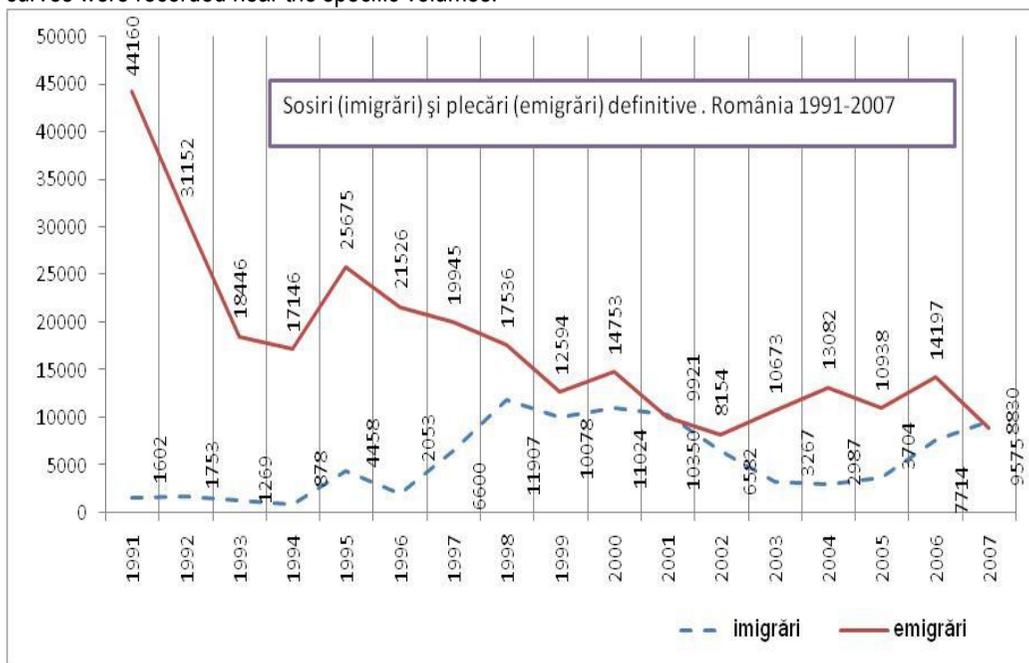
Anul	Numărul persoanelor			
	Bărbați		Femei	
	Date absolute	Pondere (%)	Date absolute	Pondere (%)
1990	46.335	47,80	50.594	52,20
1991	21.211	48,03	22.949	51,97
1992	16.085	51,63	15.067	48,37
1993	8.751	47,44	9.695	52,56
1994	7.886	45,99	9.260	54,01
1995	11.478	44,70	14.197	55,30
1996	10.079	46,82	11.447	53,18
1997	9.423	47,24	10.522	52,76
1998	8.460	48,24	9.076	51,76
1999	5.858	46,51	6.736	53,49
2000	6.798	46,08	7.955	53,92
2001	5.011	50,51	4.910	49,49
2002	3.700	45,38	4.454	54,62
2003	4.413	41,35	6.260	58,65
2004	4.934	37,72	8.148	62,28
2005	4.110	37,58	6.828	62,42
2006	5.341	37,62	8.856	62,38
2007	3.088	34,97	5.742	65,03
2008	3.069	35,12	5.670	64,88
2009	3.768	36,90	6.443	63,10

The figures indicate that, in recent years, over 60% of the total number of persons who left Romania to establish in another state is represented by women. The situation can be explained by the higher prevalence of job for them in most European countries. Regarding the influence of gender distribution of the Romanian citizens living abroad who establish their families left behind on the course and, especially, the children noted that the growing number of women who leave Romania cause a bad reaction, all more pronounced among juveniles who remain at home. This is determined primarily by the fact that in our country, women are dealing, in general, with the growth and education of children<sup>5</sup>.

Many of the features of the Romanian mass migration are derived from it's family and employment construction of mostly men and women in the household or home care for the elderly. In terms of employment, the typical Romanian immigrant is a provider for the household, no matter if it's male or female. Migration for employment is associated with a significant migration

of school-age children accompanying their parents abroad. In only three years, 2006-2008, approximately 30,000 children dropped out of school in Romania, in order to continue abroad.

Romania is a country of emigration not only in terms of temporary migration. Even at low volume of arrivals and departures of the final report is in favor of leaving. In the early 90s there was the massive departure of the Saxons in Germany that helped emigration, which proved to be much stronger than permanent immigration. Later, especially after 1998, the two territorial mobility curves were recorded near the specific volumes.



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The economic crisis brought a kind of "shrinkage" by reducing the number of Romanian emigration departures to work abroad and increasing the number of returns. The share of Romanians abroad with structured intentions to return home in the autumn of 2008 were estimated, as part of survey data, at less than 30% of those living abroad. Two other surveys conducted in late 2007 and first half of 2008 with the migrants in Spain and Italy showed a higher potential for recovery in the country. Thus in Spain 44% claimed to have seriously thought about returning to Romania in the next three months, while their share in Italy was 38%. In both cases, however, it records the state of mind at the time when the crisis was not so marked, both in Romania and in host countries, and in late 2008 or early 2009<sup>7</sup>.

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<sup>1</sup> Această lucrare a fost finanțată din contractul POSDRU/CPP107/DMI1.5/S/78421, proiect strategic ID 78421 (2010), cofinanțat din Fondul Social European – Investeste în Oameni, prin Programul Operațional Sectorial Dezvoltarea Resurselor Umane 2007 – 2013.

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## ORIGINAL PAPER

**Alina Măriuca IONESCU, Dan Dumitru IONESCU**

### **Aspects regarding quality of work and employment in Romania in the first decade of the 21<sup>st</sup> century**

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**Abstract:** *The paper aims to analyze the changes that have occurred in the quality of work and employment in Romania starting with 2000. The analysis is focused on Romania, but comparisons with other EU member states are also made in order to identify certain disparities between East and West. The assessment of quality of work and employment considers both jobs characteristics and aspects of the wider work environment regarding how the labour market works as a whole. Data sources used to describe the various aspects of quality of work and employment are European Working Conditions Survey (EWCS) and European Working Conditions Observatory (EWCO). Data was extracted from Eurofound database. Working time is an indicator of quality of work that creates important differences between the countries located in South-eastern Europe and those located in Western and Northern Europe. In Romania, the proportion of people that usually work more than 40 hours per week in their main paid job was in 2010 significantly lower than in the previous surveys EWCS 2000 and EWCS 2005. However, it is still one of the largest shares (over 40%) within European Union. Work in Romania is also characterized by high percentages, even if declining over the past 10 years, of the workers who believe their health or safety is at risk because of the work they do and of those whose health is negatively affected by their work.*

**Keywords:** *quality of work, working time, work intensity, work-life balance.*

## Introduction

The issue of quality of work and employment has been officially put in the agenda of European policies since the European Council in March 2000 when the so-called Lisbon Strategy was launched. As the Social Policy Agenda states, "quality of work includes better jobs and more balanced ways of combining working life with personal life"<sup>1</sup>.

According to Pena<sup>2</sup>, there are two conceptual frameworks currently in use in EU concerning the issue of quality of work and employment.

The first of them has been developed by the European Foundation for the Improvement of Working and Living Conditions (Eurofound), which identified four dimensions as essentials to promote job and employment quality<sup>3</sup>: ensuring career and employment security; maintaining and promoting the health and well-being of workers; developing skills and competences; and reconciling working and non-working life. Eurofound continues to develop studies in these areas, as well as in other areas such as occupational health, absenteeism, stress and violence and harassment.

The second conceptual framework results from the institutional approach in the context of European Employment Strategy. It was proposed by the 2001 Commission Communication which identified two broad categories of elements of quality of work (*job characteristics* and *the work and wider labour market context*) and ten dimensions of quality of work (*intrinsic job quality; skills, life-long learning and career development; gender equality; health and safety at work; flexibility and security; inclusion and access to the labour market; work organisation and work-life balance; social dialogue and worker involvement; diversity and non-discrimination; overall work performance*). A list of key indicators linked to these 10 dimensions were approved by the Council and communicated to the Laeken European Council in December 2001<sup>4</sup>.

More recently, the European discourse on quality of work and employment has emphasized four broad dimensions of quality of work in EU while stressing the importance of *good work: workers' rights and participation, equal opportunities, safety and health protection at work and a family-friendly organisation of work*<sup>5</sup>.

In an effort to monitor the quality of work and employment in Europe, Eurofound has been conducting the European Working Conditions Surveys (EWCS) since 1991. Starting with 2000/2001 the Foundation included the then acceding country Romania among the range of countries covered in these surveys.

Based on the EWCS findings for Romania, along with a range of other research and literature, this paper aims to analyze the changes that have occurred in the quality of work and employment in Romania starting with year 2000 and to provide a dynamic insight into the development of and current situation regarding working conditions and employment in Romania. The analysis is focused on Romania, but comparisons with other EU member states are also made in order to identify certain disparities between East and West.

## Data and method

The assessment of quality of work considers both job characteristics (number of working hours, work intensity, job satisfaction) and aspects concerning the functioning of the labor market as a whole (working conditions, training, career prospects, and access to employment).

Data sources used to describe the various aspects of quality of work and employment are the *European Working Conditions Survey* (EWCS) and the *European Working Conditions Observatory* (EWCO).

EWCS was launched in 1990, when workers in the EC12 were surveyed, and took place every five years since then. Its geographical coverage was extended over time. Within the third EWCS in 2000 the EU15 and Norway were surveyed in a first phase, the survey then being

expanded to cover the 12 “new” Member States in 2001 (including Romania), and Turkey in 2002 in a second phase. The fifth EWCS covered EU27 member states, Norway, Croatia, the Former Yugoslav Republic of Macedonia, Turkey, Albania, Montenegro and Kosovo<sup>6</sup>.

The survey aims to provide an overview of working conditions in Europe, assessing and quantifying working conditions of both employees and the self employed across Europe on a harmonised basis. There are 13 topics covered today by the survey questionnaire, each topic being assigned between 5 and 12 questions.

Within this paper data on answers to 13 questions covering 7 dimensions of quality of work were extracted from EWCS database available on *Eurofound* website. Table 1 presents selected themes and questions and their response categories.

### Findings and discussions

This section presents descriptive findings concerning the indicators of the general job context, working time, work intensity, access to training and career prospects, pay, satisfaction with working conditions, work-related health risks, work-life balance and financial security, along with an elementary bivariate analysis of the relationship between gender (male, female), age (under 30, 30 to 49, 50+), employment status (employee: permanent contract, employee: other arrangement, self-employed), activity of organisation (industry and services), and type of occupation (high-skilled clerical, low-skilled clerical, high-skilled manual, low-skilled manual)<sup>7</sup> and these various measures (see Tables 2-5 and Figures 1-15).

**Table 1 Elements for the assessment of quality of work and employment**

Dimension of quality of work and employment	Question	Response categories
Job context	Q77A How much do you agree or disagree with the following statements describing some aspects of your job? I might lose my job in the next 6 months.	Agree; Neither agree nor disagree; Disagree
Work intensity	Q51G For each of the following statements, please select the response which best describes your work situation. You have enough time to get the job done.	Always or most of the time; Sometimes; Rarely or never
	Q45B And, does your job involve...? working to tight deadlines.	Less than a quarter of the time; At least a quarter of the time
Working time	Q18 How many hours do you usually work per week in your main paid job?	Less than 30; 30 to 40; More than 40
	Q19 Provided that you could make a free choice regarding your working hours and taking into account the need to earn a living: how many hours per week would you prefer to work at present?	Less than current; Same as current; More than current
Health and wellbeing	Q66 Do you think your health or safety is at risk because of your work?	No; Yes
	Q67 Does your work affect your health, or not?	Yes, mainly positively; Yes, mainly negatively; No
Skills, training and career prospects	Q77C How much do you agree or disagree with the following statements describing some aspects of your job? My job offers good prospects for career advancement.	Agree; Neither agree nor disagree; Disagree
	Q61A Over the past 12 months, have you	No; Yes

	undergone any of the following types of training to improve your skills or not? Training paid for or provided by your employer or by yourself if self-employed.	
Job fulfilment	Q77B How much do you agree or disagree with the following statements describing some aspects of your job? I am well paid for the work I do.	Agree; Neither agree nor disagree; Disagree
	Q76 On the whole, are you very satisfied, satisfied, not very satisfied or not at all satisfied with working conditions in your main paid job?	Very satisfied; Satisfied; Not very satisfied; Not at all satisfied
Work-life balance and financial security	EF12A Do you agree with the following statements? If I had a long term sickness, I would be financially secure.	No; Yes
	Q41 In general, do your working hours fit in with your family or social commitments outside work very well, well, not very well or not at all well?	Very well; Well; Not very well; Not at all well

Source: Based on information extracted from Eurofound website

**Table 2 Changes in respondents' perceptions of job security in relation to statement "I might lose my job in the next 6 months", during 2005-2010, in Romania and EU27 (%)**

		2005			2010		
		Agree	Neither agree nor disagree	Disagree	Agree	Neither agree nor disagree	Disagree
RO	Male	21,6%	13,6%	64,8%	25,6%	20,5%	53,9%
	Female	14,8%	14,7%	70,5%	22,5%	19,0%	58,6%
	Total	18,5%	14,1%	67,4%	24,3%	19,9%	55,9%
EU27	Male	13,8%	11,8%	74,4%	16,5%	15,8%	67,7%
	Female	13,5%	13,1%	73,4%	16,3%	16,0%	67,8%
	Total	13,7%	12,4%	73,9%	16,4%	15,9%	67,7%

Source: Data extracted from EWCS 2010 database available on Eurofound website

In terms of job security, over 20% of respondents expressed fear that they might lose their jobs within 6 months after the investigation. The share of these people increased in 2010 compared to 2005 with 5.8 percentage points, from 18.5% to 24.3%, being 1.5 times higher than EU27 average and 2.5 times higher than the value of the indicator in countries such as Luxembourg, Denmark and Norway.

Although the mistrust of job security is more prevalent among men, its increasing occurred more obviously among female active population, the share of women that agreed that they could lose their jobs in coming months after the investigation being of 22.5%, which is almost 8 percentage points above the 2005 value.

Just over half (55.9%) of the active population of Romania considers at the moment of investigation that they will not lose their jobs in the next six months, which represents a share of about 1.5 times lower than in Norway, Denmark or Luxembourg, countries with shares above 80%.

The evolution of the phenomenon of mistrust of job security in Romania largely follows the average trend shown in the EU27 in the analyzed period.

The proportion of the respondents that always or most of the time have enough time to get the job done increased in Romania, from 71.8% in 2005, to 84.9% in 2010. Our country is surpassed only by four of the other 33 countries considered in the analysis: Latvia, Bulgaria, Macedonia and Hungary.

Romania has also one of the lowest percentages (4%) of the active population who rarely or never have enough time to get the job done, after Latvia (2.1%) and Portugal (3.1% ), amounting to 2.3 times the average share at EU27 level. This percentage decreased in 2010 to more than half of the value recorded in 2005. The average value of the indicator for EU27 also decreased between the two surveys, but more moderately.

**Table 3 Changes in respondents' perceptions of time pressure in relation to statement "You have enough time to get the job done", during 2005-2010, in Romania and EU27 (%)**

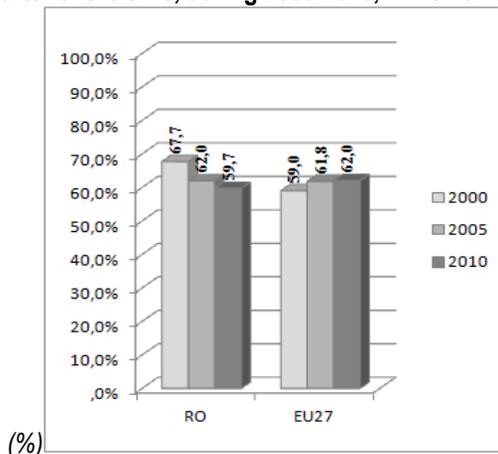
		2005			2010		
		Always or most of the time	Sometimes	Rarely or never	Always or most of the time	Sometimes	Rarely or never
RO	Male	68,7%	21,5%	9,8%	85,5%	10,8%	3,7%
	Female	75,6%	15,8%	8,6%	84,1%	11,5%	4,4%
	Total	71,8%	18,9%	9,2%	84,9%	11,1%	4,0%
EU27	Male	68,8%	19,4%	11,8%	75,8%	15,3%	8,9%
	Female	70,6%	17,3%	12,1%	76,0%	14,8%	9,3%
	Total	69,6%	18,4%	11,9%	75,8%	15,1%	9,1%

Source: Data extracted from EWCS 2010 database available on Eurofound website

The most affected by the lack of necessary time required to perform their tasks seem to be those who work in Turkey, 21.5% of them stating that they rarely or never have enough time to get the job done. Just over half (55.9%) of the active population in Turkey has always or most of the time enough time to complete their tasks.

Austria, Sweden, Cyprus and Denmark are also among countries where over 12% of the workers have rarely or never sufficient time to get their job done.

**Figure 1 Changes in proportion of workers whose job involve working to tight deadlines at least a quarter of the time, during 2000-2010, in Romania and EU27**



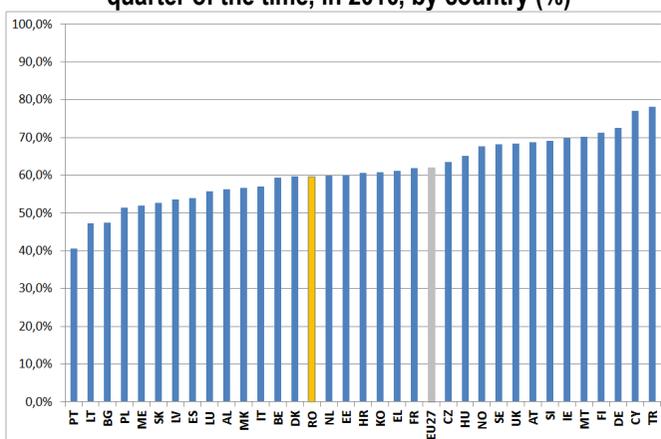
Source: Based on data extracted from EWCS 2010 database

The share of people facing tight deadlines within their job in at least one quarter of the time decreased in Romania by 8 percent (from 59.7%) in the period between EWCS 2000 and EWCS 2010, the new value being below the EU27 average (62 %).

While Romania reports a decreasing tendency in the share of people working to strict deadlines in at least one quarter of the time, the value of the indicator increased at the level of EU27 from one survey to another during the period 2000-2010.

The states where less than half of the working population is facing tight deadlines within job in at least one quarter of the time in 2010 are Portugal (40.6%), Lithuania (47.3%) and Bulgaria (47, 5%). By contrast, in Turkey, Cyprus, Germany, Finland and Malta, its share exceeds 70%, reaching almost 80% in the first two countries.

**Figure 2 Prevalence of workers whose job involve working to tight deadlines at least a quarter of the time, in 2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

As regards Romania, the following categories of workers account for the highest proportions of people facing tight deadlines within their job in at least one quarter of the time in 2010: those being in the age group 30 to 49 years (61.6%); employees having a permanent contract (67.8%, comparing to other categories, with weights around 61%); workers in industry (64.8% versus 53.2% of those working in services sector); high-skilled individuals (with weights over 64%, compared to low-skilled workers, which record weights under 58%).

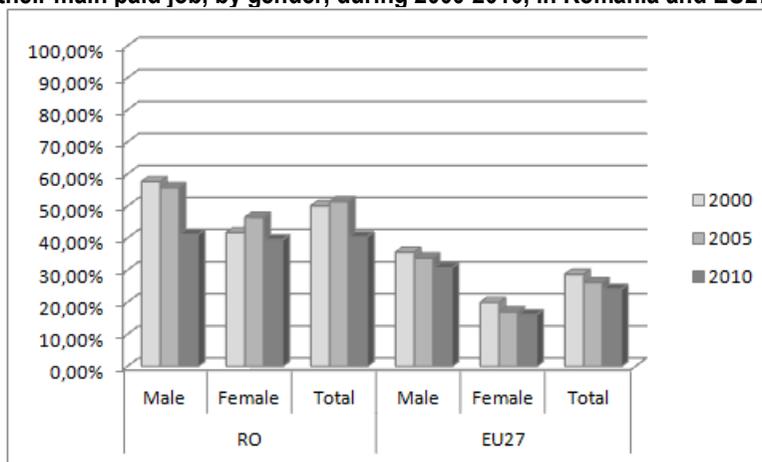
Working time is a critical element in the working conditions of all workers which has received considerable attention in EU policymaking discussions over the last 20 years. The EU has intervened through legislation such as the 1993 Working Time Directive, and its subsequent revisions in order to make working time more flexible and facilitating shorter working hours, both as a way of making jobs available to more citizens and to assist in balancing work and private life<sup>8</sup>.

**Table 4 Evolution of the distribution of workers who usually work more than 40 hours per week in their main paid job by gender, during 2000-2010, in Romania and EU27 (%)**

		2000	2005	2010
RO	Male	57,6%	55,8%	41,1%
	Female	41,7%	46,5%	39,5%
	Total	50,1%	51,4%	40,4%
EU27	Male	35,6%	33,8%	30,7%
	Female	19,9%	17,0%	16,1%
	Total	28,7%	26,2%	24,0%

Source: Based on data extracted from EWCS 2010 database

**Figure3 Changes in proportion of workers who usually work more than 40 hours per week in their main paid job, by gender, during 2000-2010, in Romania and EU27 (%)**



Source: Based on data extracted from EWCS 2010 database

Working time is an indicator of quality of work that creates important differences between the countries located in South-eastern Europe and those located in Western and Northern Europe.

In Romania, the proportion of people that usually work more than 40 hours per week in their main paid job is in 2010 significantly lower than in the previous surveys EWCS 2000 and EWCS 2005.

However, our country together with Greece, Czech Republic and Slovakia account for the largest shares (over 40%) of population with a working time longer than 40 hours per week among European Union countries. By contrast, in countries such as Finland, Norway, France, Austria, Netherlands, more than 17% of the workers exceed 40 hours per week in their main paid job.

The longest actual working week for full-time employees in their main jobs in 2010 was in Romania (41.3 hours); the shortest was in Finland (37.8 hours); while, in the EU27 as a whole, the actual working week was 39.7 hours<sup>9</sup>.

The following categories of workers present in 2010 the highest percentages of people working more than 40 hours per week in Romania: 51% of those aged over 50 years; 48.5% of those working in industry compared to 30.2% of those working in services; over 44% of those in high-skilled categories compared to less than 37% of those in low-skilled categories.

An important factor in the overall duration of working time is the amount of paid annual leave to which workers are entitled. The combined total of agreed annual leave and public holidays varied across the EU in 2010 from 40 days in Germany and Denmark to 27 days in Romania – a difference that equates to around two-and-a-half working weeks<sup>10</sup>.

Shorter working hours – 30 hours or less – appear to be much more common in Western Europe than in Eastern Europe. In the western countries, part-time work is undertaken for a variety of reasons, an important one being the way in which women combine employment and family life<sup>11</sup>. Part-time work is less common in Eastern Europe, where it is not necessarily seen as a way of balancing work and family life; more often, it is used as part of a pre-retirement or post-retirement strategy or constitutes part of a company's policy for avoiding mass redundancies<sup>12</sup>.

In Romania, part-time work is not viewed favourably by trade unions because it generates a lower income, therefore the trade unions' opinion is that the law and the decision-makers should treat part-time work as an exception, not as a rule<sup>13</sup>.

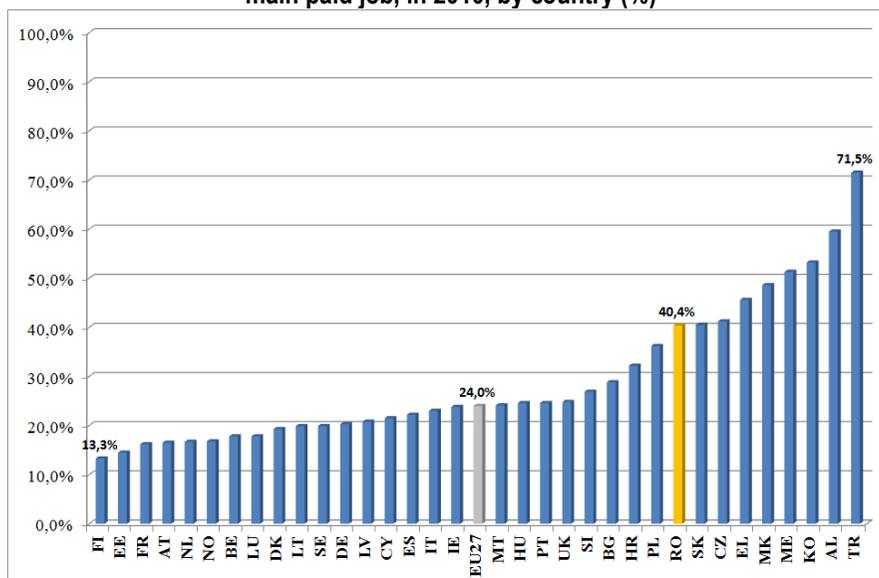
Despite the many working hours performed, no more than 21.4% of the workers in Romania would like this number to be smaller. Only Bulgaria and Lithuania present smaller percentages (17% and 19%) than Romania among the other surveyed states. In countries like Turkey, Sweden, Greece, Montenegro, Denmark and Albania, the share of those who would prefer to work less than current exceeds 40%.

Romania even shows a share (14.7%) above the EU27 average (13.9%) of those who would like a greater number of working hours.

The phenomenon is the most obvious in Latvia, Ireland and Lithuania, where the proportion of those who would prefer to work more than current exceeds 20%.

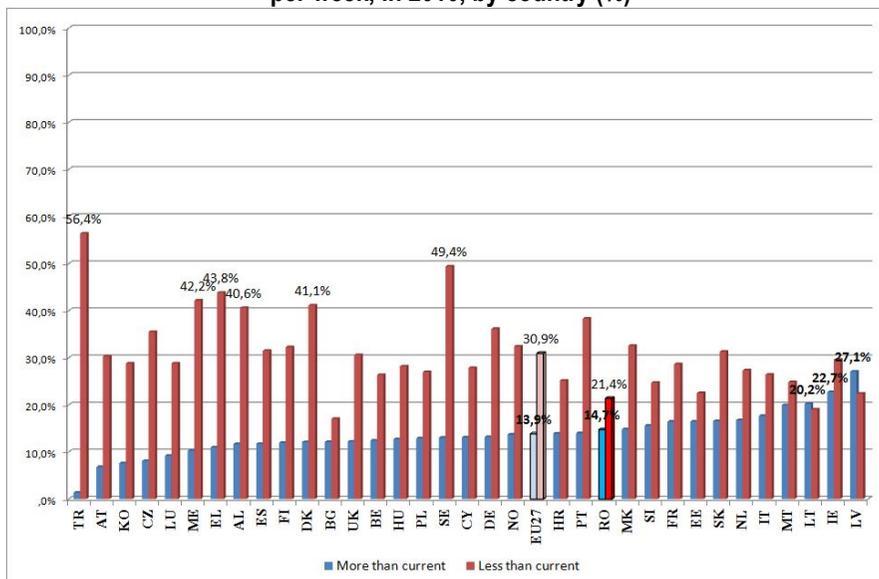
Among those who would prefer to work more hours in Romania, we may notice the following categories with higher weights in 2010: people over 30 years old (22.7% compared with around 13% of the other age groups), workers in services sector (17.6% compared with 12.2% of those working in industry) and low-skilled individuals (proportions of 17-22%, which are twice higher than for high-skilled categories).

**Figure 4 Prevalence of workers who usually work more than 40 hours per week in their main paid job, in 2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

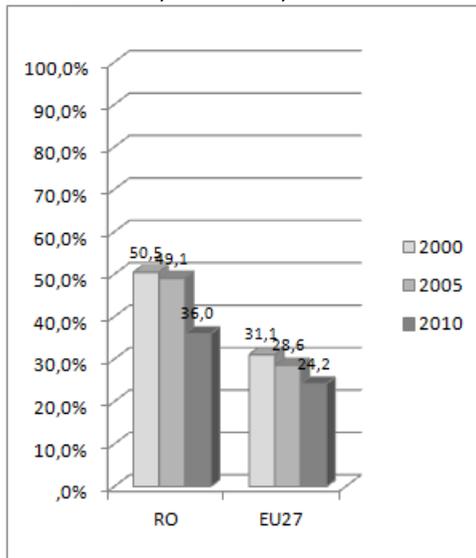
**Figure 5 Respondents' working time preferences in relation to number of working hours per week, in 2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

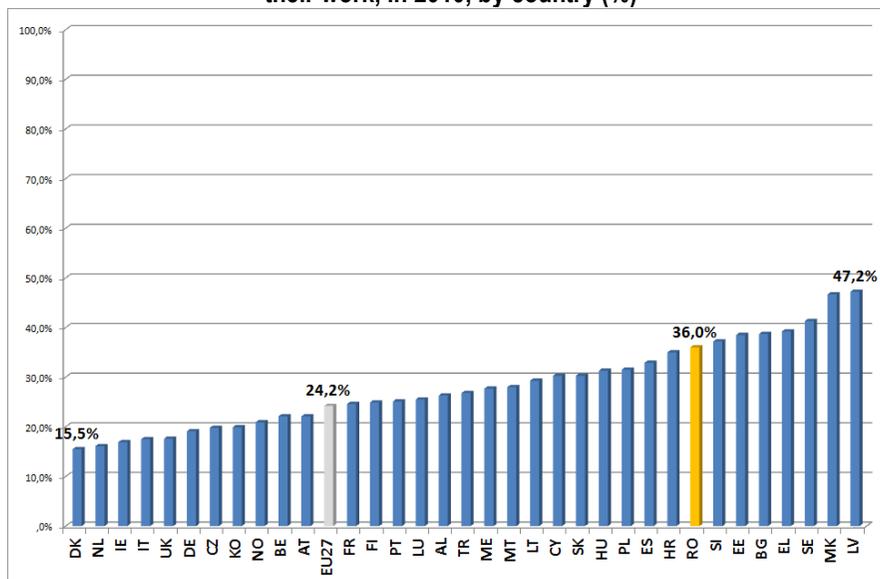
People that would like to work less than current in Romania show quite similar percentages across the various categories of socio-demographic variables considered.

**Figure 6 Changes in proportion of workers who think that their health or safety is at risk because of their work, 2005-2010, in Romania and EU27 (%)**



Source: Based on data extracted from EWCS 2010 database

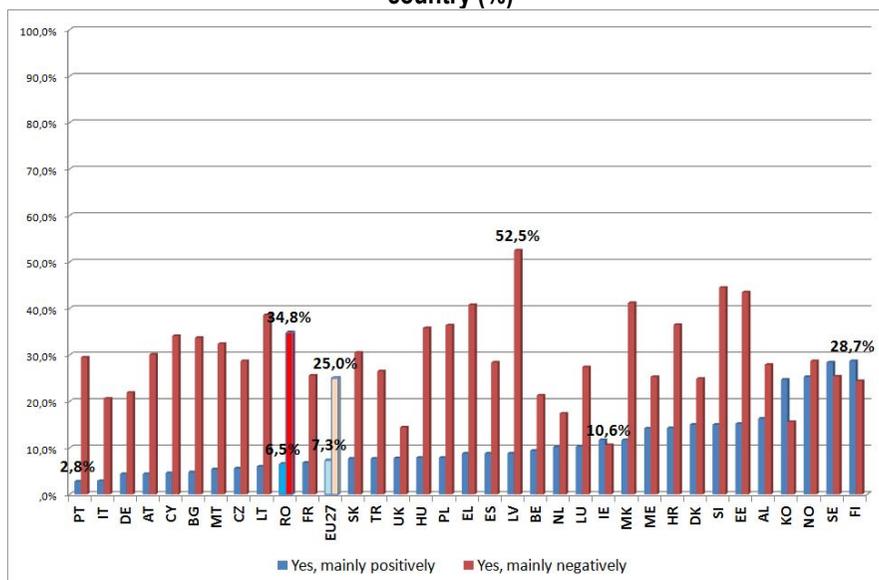
**Figure 7 Prevalence of workers who think that their health or safety is at risk because of their work, in 2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

The share of workers who think that their health or safety is endangered because of their work decreased by 14.5 percentage points between EWCS 2000 and EWCS 2010 investigations. However, Romania finds itself among the top seven Member States most affected by this phenomenon.

**Figure 8 Respondents' perceptions in relation to impact of work on health, in 2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

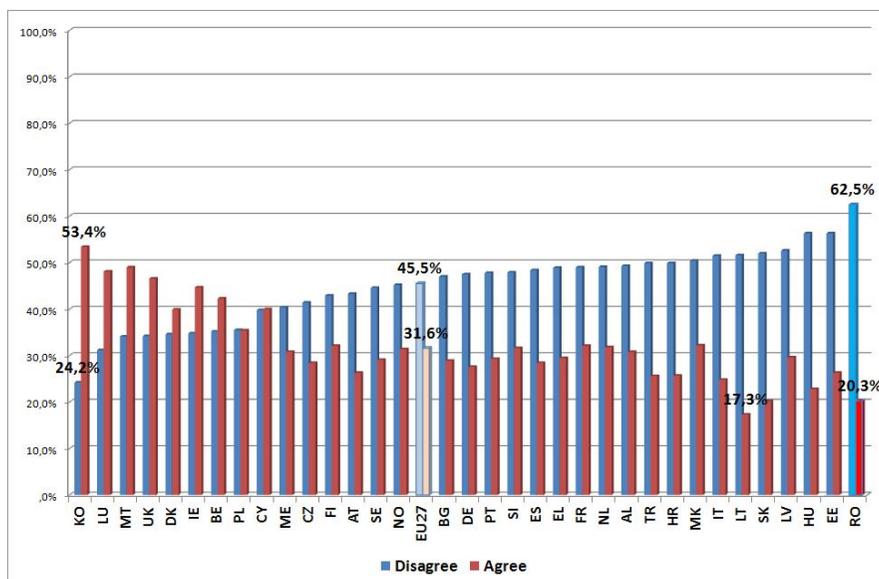
With regard to the impact of work on health, Romania is among the first ten EU countries with the highest percentages of workers whose health is mainly negatively affected by their work (these weights are exceeding 34%) and among the first nine states whose workers' health is the least positively affected (with weights not exceeding 6,5%).

**Table 5 Changes in respondents' perceptions in relation to statement "My job offers good prospects for career advancement", by gender, during 2005-2010, in Romania and EU27 (%)**

		2005		2010	
		Agree	Disagree	Agree	Disagree
RO	Male	19,6%	65,5%	19,5%	62,5%
	Female	<b>16,9%</b>	63,9%	<b>21,2%</b>	62,3%
	Total	18,4%	64,8%	20,3%	62,5%
EU27	Male	33,1%	43,8%	34,1%	42,8%
	Female	28,3%	50,1%	28,5%	48,8%
	Total	31,0%	46,6%	31,6%	45,5%

Source: Data extracted from EWCS 2010 database available on Eurofound website

**Figure 9 Respondents' perceptions in relation to statement "My job offers good prospects for career advancement", in 2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

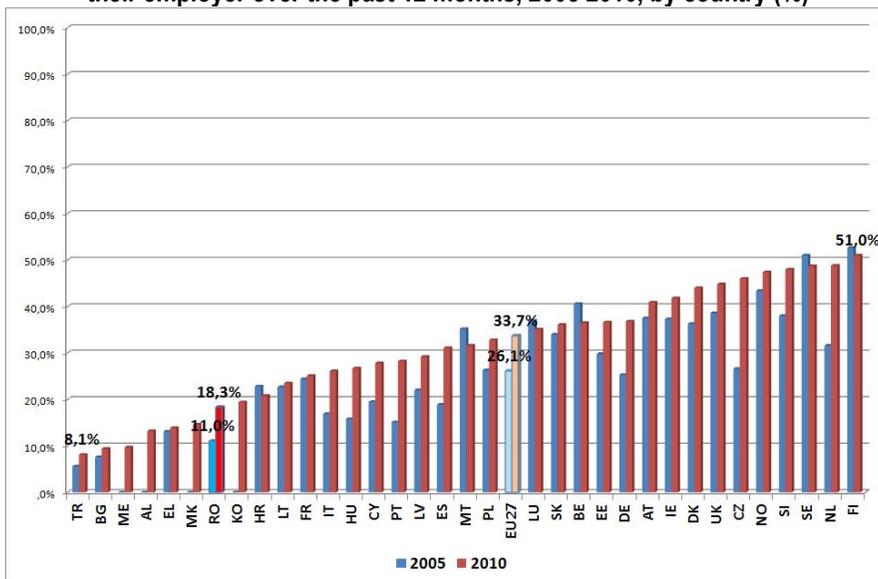
The share of respondents who agree that their job offers them good prospects for career advancement has significantly increased in Romania during the period 2005-2010 particularly among women.

Despite the improvement in this aspect between the two surveys, Romania is the European country in the considered sample with the highest percentage (62,5%) of the workers who disagree with the fact that their job offers them good prospects for career advancement.

An important increase was recorded in the proportion of the people who received training paid for or provided by their employer over the past 12 months, from 11% in 2005 to 18.3% in 2010.

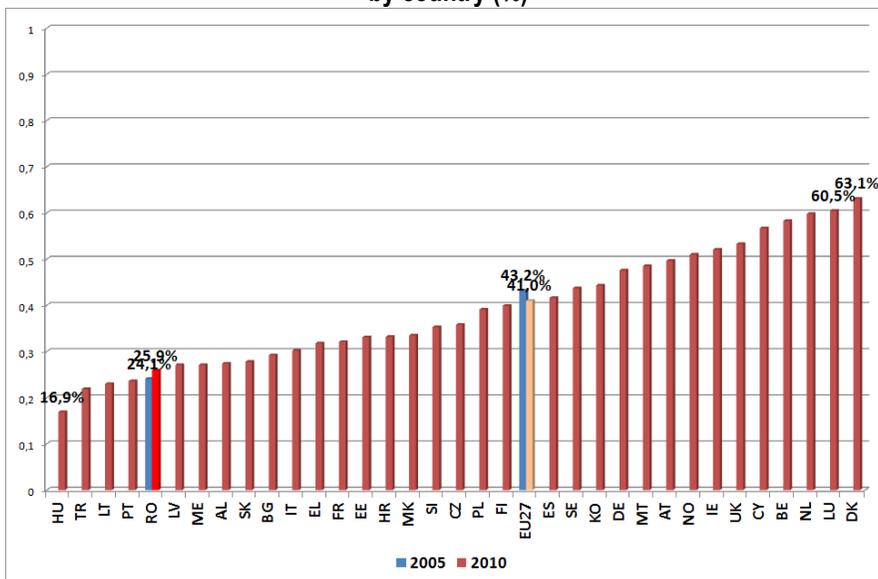
Romania stands, however, in the bottom of the ranking, while the EU27 average is 33.7%, and in countries such as Sweden, Netherlands, and Finland, the proportion of those who have been professionally trained by the means of their employer is about 50%.

**Figure 10 Changes in proportion of workers who received training paid for or provided by their employer over the past 12 months, 2005-2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

**Figure 11 Prevalence of workers who agree they are well paid for the work they do, in 2010, by country (%)**

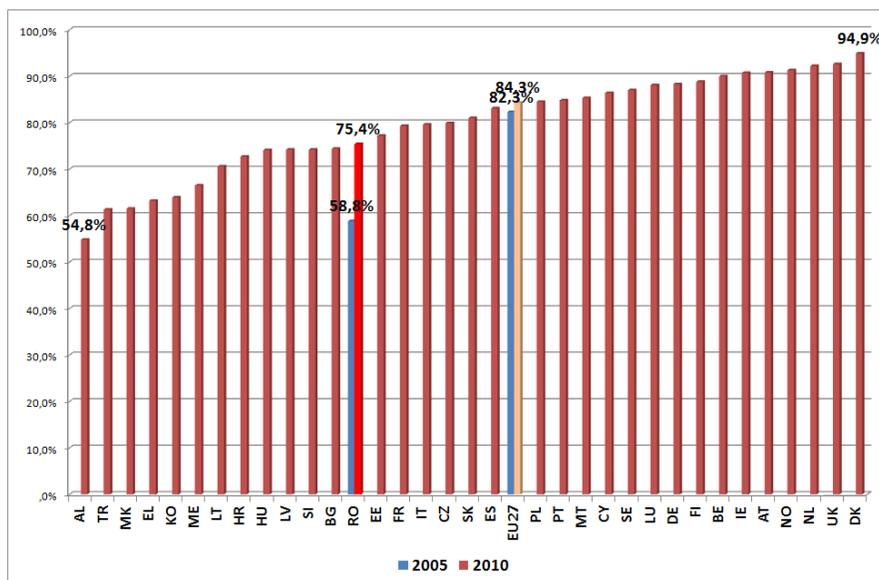


Source: Based on data extracted from EWCS 2010 database

As regards the payment of the work, Romania lies in 2010 among the countries in the sample with the lowest shares of workers who agree that they are well paid for the work they do.

Surprisingly, while the proportion of those who believe they are well paid fell at the EU27 level by over 2 percentage points from the previous survey, in Romania it increased with almost two points.

**Figure 12 Prevalence of workers that are very satisfied and satisfied with working conditions in their main paid job, by country (%)**



Source: Based on data extracted from EWCS 2010 database

Romania shows a significant increase in the share of people who feel very satisfied or satisfied with working conditions in their main paid job during the period 2005-2010, from 58.8% to 75.4%.

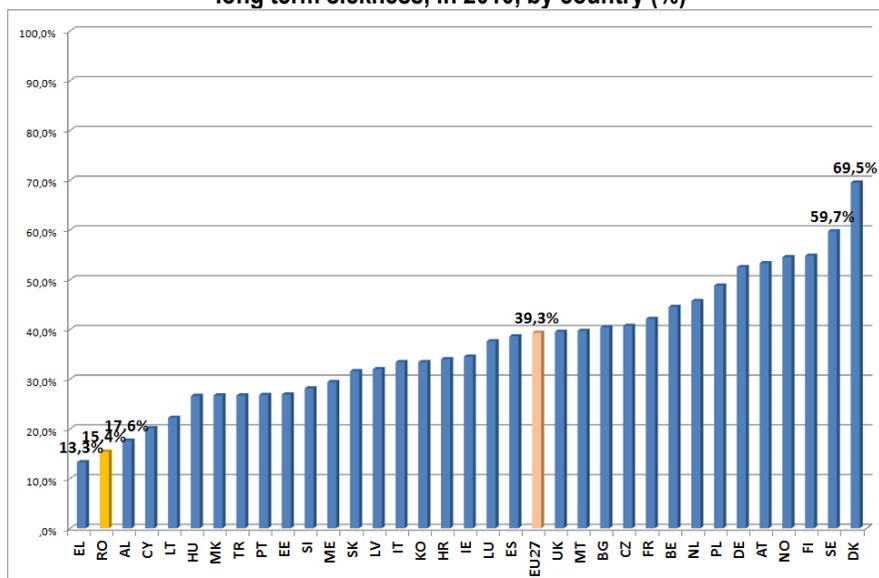
Despite this important lift, our country remains below the EU27 average.

Only 15.4% of workers in Romania would be financially secure in case of a long term sickness, which means a percentage 2.5 times lower than the EU27 average and 4.5 times lower than in Denmark.

Young workers seem to be the most exposed age category in Romania in case of a long term sickness, as 0% of those under 30 years agreed they would be financially secure.

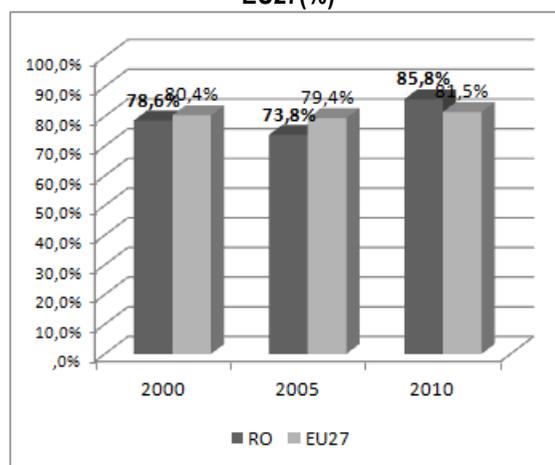
As to the type of occupation, 24.2% of the high-skilled clerical workers, only 9.5% of those high-skilled manual and 0% of those low-skilled would be financially protected in case of a bad health condition.

**Figure 13 Prevalence of workers who agree they would be financially secure in case of a long term sickness, in 2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

**Figure 14 Changes in proportion of workers whose working hours fit in very well or well with their family or social commitments outside work, during 2000-2010, in Romania and EU27(%)**



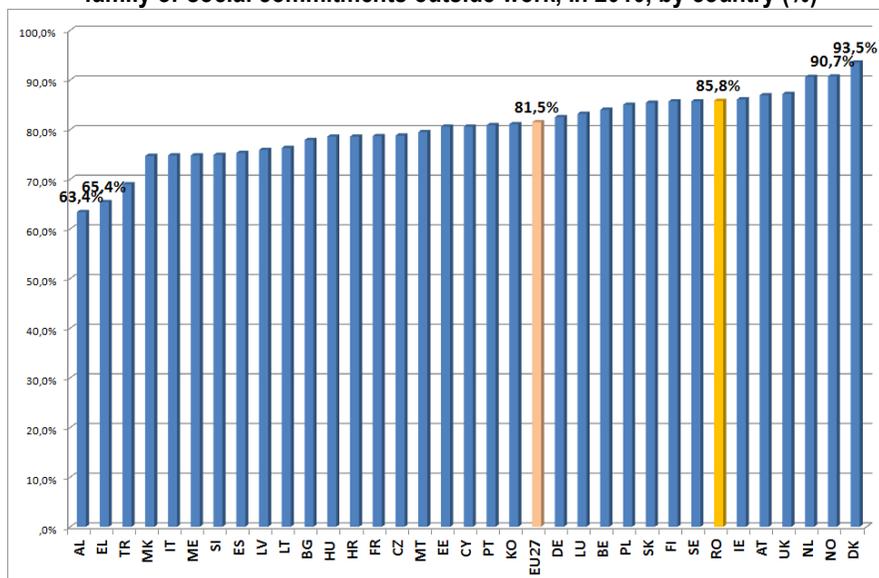
Source: Based on data extracted from EWCS 2010 database

Reconciliation of work and private life is a key element in quality of work and employment. It continues to be an important concern of the European debate, being mentioned in the Europe 2020 Strategy for Smart, Inclusive and Sustainable Growth<sup>14</sup>. Almost one fifth of European workers are having difficulties achieving a satisfactory work-life balance, which means a slight decrease since 2000.

With regard to this aspect, Romania is among European countries with the highest proportions (85.8%) of workers whose working hours fit in very well or well with their family or social commitments outside work.

The highest percentages are specific to: those in the 50+ age group (92.3%, compared to only 79.9% of those under 30); the employees having other arrangements than a permanent contract (89.6%); the high-skilled clerical workers, which account for 93.2% while the other categories record weights of about 85% or below this value.

**Figure 15 Prevalence of workers whose working hours fit in very well or well with their family or social commitments outside work, in 2010, by country (%)**



Source: Based on data extracted from EWCS 2010 database

### Conclusions

To summarize, the results of the analysis lead to the following conclusions on the quality of work and employment in Romania:

- High percentage of those who feel job instability;
- Significant share of those who work a high number of hours;
- High proportion of those who would like to work more than current compared to the other European countries;
- High percentages, even if declining over the past 10 years, of the workers who believe their health or safety is at risk because of the work they do and of those whose health is negatively affected by their work;
- A certain relaxation in terms of tight deadlines and time pressure at work compared to most of the other European countries;
- The highest share of those who don't believe that their job offers them good prospects for career advancement;
- Young workers, those working in services and high-skilled workers are the categories most likely to have the opportunity for career advancement within their jobs;

- Among the European countries with the lowest percentages, even if increasing over the past 5 years, of the workers who received training paid for or provided by their employer and of those who consider themselves to be well paid for the work they do;
- A significant increase in the share of people who feel very satisfied or satisfied with working conditions in their main paid job over the past 5 years;
- None of the young workers or of the low-skilled workers are financially secure in case of long term sickness;
- One of the most balanced work-life relationships in Europe.

<sup>1</sup> Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Employment and social policies: a framework for investing in quality*, Brussels, 20 June 2001, COM(2001) 313 final; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0313:FIN:EN:PDF>, pp. 3-4

<sup>2</sup> Ramon Pena-Casas, *More and better jobs: conceptual framework and monitoring indicators of quality of work and employment in the EU policy arena*, Working Papers on the Reconciliation of Work and Welfare in Europe, REC-WP 06/2009; [http://www.socialpolicy.ed.ac.uk/\\_data/assets/pdf\\_file/0013/30073/REC-WP\\_0609\\_Pena-Casas.pdf](http://www.socialpolicy.ed.ac.uk/_data/assets/pdf_file/0013/30073/REC-WP_0609_Pena-Casas.pdf)

<sup>3</sup> European Foundation for the Improvement of Living and Working Conditions (Eurofound), <http://www.eurofound.europa.eu/areas/qualityofwork/index.htm>

<sup>4</sup> For the detailed list of key indicators, see Ramon Pena-Casas, *op. cit.*

<sup>5</sup> European Council, *Presidency Conclusions of the Brussels European Council*, 8-9 March 2007, doc. 7224/07, p. 3

<sup>6</sup> European Foundation for the Improvement of Living and Working Conditions (Eurofound), <http://www.eurofound.europa.eu/surveys/ewcs/index.htm>

<sup>7</sup> For more about the breakdown for these variables, see *EWCS 2010 methodology* on <http://www.eurofound.europa.eu/surveys/ewcs/2010/methodology.htm>

<sup>8</sup> European Foundation for the Improvement of Living and Working Conditions (Eurofound), *Foundation Findings: Working time in the EU*, 2012, p. 3, <http://www.eurofound.europa.eu/pubdocs/2011/45/en/1/EF1145EN.pdf>

<sup>9</sup> *Ibidem*, p. 19

<sup>10</sup> *Ibidem*

<sup>11</sup> European Foundation for the Improvement of Living and Working Conditions (Eurofound), *First European Quality of Life Survey: Quality of work and life satisfaction*, Luxembourg: Office for Official Publications of the European Communities, 2007, p. 18, <http://www.eurofound.europa.eu/pubdocs/2006/95/en/1/ef0695en.pdf>

<sup>12</sup> *Ibidem*

<sup>13</sup> Luminita Chivu, *Working time in the European Union: Romania*, Publication date: 17-11-2009, <http://www.eurofound.europa.eu/ewco/studies/tn0803046s/ro0803049q.htm>

<sup>14</sup> European Foundation for the Improvement of Living and Working Conditions (Eurofound), *Foundation Findings: Working time in the EU*, 2012, [www.eurofound.europa.eu](http://www.eurofound.europa.eu), p. 4

## Acknowledgements

This work was possible with the financial support of the Sectoral Operational Programme for Human Resources Development 2007-2013, under the project number POSDRU/89/1.5/S/49944 with the title *Dezvoltarea capacității de inovare și creșterea impactului cercetării prin programe post-doctorale*.

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## ORIGINAL PAPER

Dragoș Lucian IVAN<sup>1</sup>

### Problem Statement to the Dynamics between geographical and maybe cultural peripheries of the European Continent

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**Abstract:** *But where is the future of Eastern Europe within the European Union? Are these “developing countries” missing their chance of bringing their so desired contribution to the European Union? The potential role of the Eastern countries in the European Union has received very considerable attention in the past, both from the critical perspective of policy makers and from those concentrated on economic development research. Yet, it is still the case that very little is known about the impact of the European Union on these countries and the negative impact it had on their potential for development. We can not deny the major part played by the European Union in the development of the new countries, but we wish to investigate the degree of problems imported from the West into the East. It might be hypothesized that the lack of proper cultural security from the part of the Eastern countries might have damaged their economic development, being exposed to western trends which were dangerous in many different kinds. We are particularly interested in the demographic development and the demographic relationship that is being established between East and West. This point of view may bring less optimism than the original hopes in a powerful and healthy economic development. We are interested to research whether the relationship between East and West has an inherit design of built-in and consequential threats, potentially damaging to the social order.*

**Keywords:** *Europe, dynamics, cultural peripheries, East, West.*

What about Europe? Many are now undoubtedly concerned with the Asian continent or with the big giant countries of the planet. Through the meeting of technology with population, in a process of globalization countries that benefited from a large population caught the spot light in all aspects, even in research. It is our belief that Europe still is an important player on the world map and we believe that only through adequate and honest research regarding its strengths and weaknesses can it develop into a major player on the world stage. We agree with the author that states Europe has been the continent that built the first economical region of the world. An economical edifice raised gradually, with a purely pragmatic attitude in mind, so much so that its allure grew in time<sup>2</sup>. We have also taken into consideration the importance of demography in power and geopolitics. Chesnais (2000) notices that population growth and size played a major role in the geopolitics of power. Europe was favored due to demographic evolution up until the 1940's, but right now it seem its 500 years demographic supremacy over the world is challenged from within. The EU has been created in order for Europe to have the power to continue being an important global player. The moment of adhesion to the EU of the Eastern countries was the moment in which the potential of Eastern Europe has been acknowledged. Among the advantages brought about by an EU expansion was also the population. At the moment of adhesion, Eastern Europe and Romania presented certain demographic characteristics that demonstrated a high potential for the future. Lutz and Wilson (2006) underline this specific EU method of population growth through expansion. The only way in which the European continent would be able to compete at the global level would be to experience population growth.

The focus till now has been mainly on the demographic transition in the West, less attention has been centered around the possible demographic evolution in the East. Regarding the West part of Europe, Caldwell (1999) takes into consideration the importance of socioeconomic change and demography. He researches not only these characteristics separated, but also the relationships that are being established between them. Caldwell (1999) considers the interaction between ideologies, cultural model, policy means and socioeconomic change taking a historical perspective of this analysis. This view received further contemporary support "Must be the relationships between the actors themselves, and not only the actors' relationships to the whole society<sup>3</sup>." Cox (2008) underlines the difficulty of understanding demographic change without taking into consideration other disciplines: economics, economic geography, agronomy, social policy, biology, history, geography, sociology.

We consider imperious the need for a study of this magnitude upon the Eastern side of Europe, but not by excluding the obvious cultural and demographic transfer that exists between East and West. Lesthaeghe (1983) underlines the nexus between social and economic, considering that this relationship should not be underestimated. We adhere to this opinion, considering that the social has been put aside in the majority of contemporary analysis, being slip from the economic, which has become primordial. More recently, EU researchers based in Western Europe have started to become aware of the demographic crisis in the East, at first seen as a way of rapid population growth. Leeson (2009) noticed that the demographic crisis is not only in the UK and started working in parallel studies.

Differences between the former socialist countries of the East and Western Europe were to a certain extent based at the level of the economic and at the level of policy making. We agree with Bauman (1994) who admits that any form of political change is followed by social change "All political revolutions involve a change in the way in which the style of political rule affects the politically administered social system.<sup>4</sup> " We also consider that this political change, although it could be followed by institutional change it is not sufficient "One of the important experiences acquired during the years since the 1989 revolution suggests that the institutional basis, while indispensable, is by no means a sufficient condition for creating a genuinely robust civil society.<sup>5</sup>

Notably, after going through a lot of scientific literature we had to acknowledge an over-literal acceptance by the majority of commentators of a polemic acceptance on the nature of differences that separate former socialist countries of the East and Western Europe. We believe this a misunderstanding of the depth of the needed societal transformation needed in both regions. We believe that demography without proper research and understanding can become a threat, as it was said in the words of Easterlin (1973). He focused on the example of the baby boom generation and context. He concluded that in times of low fertility the reality is a lot more complex. In the presence of proper policies and encouragement, a low fertility rate can be beneficial. Less competition on resources may lead people to start families at an early age, while during a baby boom period marriage rates and even fertility rates could fall. As we see from this example, demography is closely linked with different social and economic evolutions. One might say that with this way of thinking we can understand demography at any time in history. That would be wrong to assume. Demography wins new features and new influences as Kaa (1987) observed. Kaa (1987) notices that demography till his moment was influenced by the structure and behavior of the family nucleus. He observes that his period brings about a new influence on demography, the need of the individual for personal development, self-fulfillment and rights.

1		Direct Contact between West and East										Population	
2		1960	1970	1980	1985	1990	1995	2000	2001	2006	2010	2012	
3	Year	1960	1970	1980	1985	1990	1995	2000	2001	2006	2010	2012	
4	Country												
5	Romania	18.319	↗20.139	↗22.137	↗22.687	↗23211	↘22712	↘22455	↘22430	14%	↘21469	↘19600	
6	Hungary	9961	↗10322	↗10709	↗10598	↗10374	↘10336	↘10221	↘10200	↘9985			
7	E. Germany	17285	↗17074	↗16740	↗16660	↗16433	↘15531	↘15217	↘15120				
8	Bulgary	7829	↗8464	↗8846	↗8971	↗8767	↘8427	↘8190	↘8149	15%	↘7364		
9	Czech Republ	9637	↗9789	↗10272	↗10333	↗10362	↘10333	↘10278	↘10266	18.07%	↘10664		
10	Estonia	1209	↗1351	↗1472	↗1523	↗1570	↘1448	↘1372	↘1367	12.20%	↘1340		
11	Latvia	2104	↗2351	↗2508	↗2570	↗2668	↘2500	↘2381	↘2364	13.20%	↘2067		
12	Lithuania	2755	↗3118	↗3404	↗3528	↗3693	↘3643	↘3512	↘3487	12.40%	↘3199		
13	Netherlands	11417	↗12957	↗14091	↗14453	↗14892	↘15424	↗15864	↗15987	30%	↗16722		
14	Austria	7030	↗7455	↗7545	↗7574	↗7689	↗8039	↗8102	↗8121	28.90%	↗8419		
15	W. Germany	55257	↗61194	↗61439	↗62456	65478	↗66569	↗66946	↗67140	29%			
16	Belgium	9128	↗9669	↗9855	↗9857	↗9947	↗10130	↗10239	↗10263	29.90%	↗10274		
17	Italy	50025	↗53685	↗56388	↗56588	↗56694	↗57268	↗57679	↗57844	26.60%	↗59715		
18	France	45468	↗50528	↗53731	↗55157	↗56577	↗57752	↗58748	↗59038	32%	↗63601		
19	Ireland	2835	↗2943	↗3392	↗3544	↗3507	↗3597	↗3776	↗3842		↗4231		
20	Iceland	174	↗204	↗226	↗240	↗253	↗267	↗279	↗283	23%	↗312		
21	Spain	33513	↗37241	↗38353		↗38826	↗39196	↗39733	↗40121		↗46777		
22	Slovenia	1580	↗1719	↗1893	↗1948	↗1996	↗1989	↗1987	↗1990	23%	↗2050		
23													
24													
25													
26													
27													

Figure 1

This table is very important when considering the evolution of demography in Romania. As we can see the population has shrunk visibly and with it the economic potential of Romania within the context of the European Union. Thus, differences between the potential attributed to Eastern countries and the present day reality, at the level of effectiveness, are based on mutual misunderstanding of a far more complex process that involved more than just policy change and economic reform, just in the Eastern countries. We see a purely economic view upon demography evolution even in contemporary analysis. We understand the need for an economic analysis as also Schindlmayr (2004) considers, but we see that it does not offer the proper tools to understand the complex transition that we are dealing with. Another shortcoming of Schindlmayr (2004) is that he still views present day society as purely an industrial one, misunderstanding it and not fully spreading his view on the information technology as we are living it right now.

We agree with the following statement “For E.U., the freedom’s advantage, its flexibility and tolerance for change, does not ensure that the recovery will be long and satisfying.”<sup>6</sup> and we understand the need for further study upon the complex reality newly created.

Another misunderstanding, as we have understood from extensive literary research is the fact that change, societal change is expected to be implemented just in the former socialist countries of the East. These misunderstandings have been perpetuated by the tendency of researchers and policy makers on both sides of Europe to examine only the impact of Eastern Europe integration within the greater EU and by focusing only on policy and economic concerns, seen as a societal transformation meant to make the Eastern countries be a like more like those in Western Europe. Arguable, the economic factor is quite important, also stressed by Lethaeghe (1983), but it alone can begin to explain the complex tapestry that is our society, past, present and future. Ironically, Eastern commentators have also argued the need for change and we also understand this need, realizing that economic reform and policy change play a strategic role in reinforcing dominant economic and social norms that are meant to legitimize the system. We agree that purely looking from this point of view, the intentions behind the need for economic and policy change, there is no inconsistency.

Consider, for instance, the veritable vexed variable of population, of demographic potential. This question has been approached early in the admission process as a strong suit for Eastern countries. This issue has been used to legitimize Romania’s aspirations of becoming an EU member and has help built consent for the extension, or enlargement if you will of the EU.

The power of population lies in its ability to renew, amplify, sustain and extend the existing economic predispositions that constitute the dominant potential of a country. To some extent one can even argue that it plays a role in creating them. The impact of an active population is thus conceived as having the potential of reinforcing political values and reinforcing the economic potential of a country. The power of population can be fully exploited once it presents deeply engrained values, supported as well as maintained by a flexible network of a social nexus nature and powerful institutions actively implicated in the development process. It should not come as a surprise that from such a perspective on population a demographic model of influence emerged. It is inherent in the way in which population influences and comes into relation with the other paradigms of society.

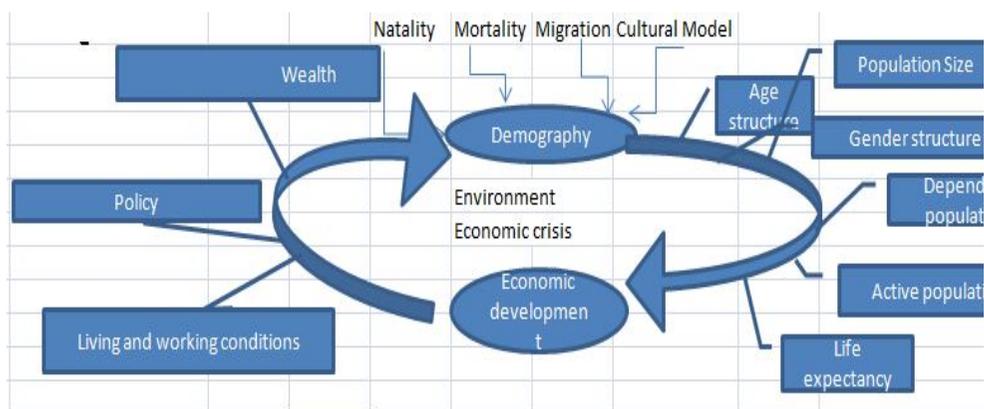


Figure 2

Many of the elements present in the above graphic have to do with the “identity matrix”<sup>7</sup> accurately described in another article. As we see, it is our understanding that we can capture the relationship between economy and demography in a dynamic of many factors. Apparently, seen out of the context we can easily exclude some of them, considering that the nexus is impossible to explain, but put into connection, we understand their place. Off course, the relationship can be described and exists without one, two, three variables, but it will never be complete or able to portray reality. By excluding one element, we do not destroy the relationship, but we deny a vital part of knowledge and understanding. Perhaps, this made a lot of researchers exclude some of the terms, considering that they can do without.

$$\text{GDP} = \text{Working Age Population} \times \frac{\text{Labour Force}}{\text{Working Age Population}} \times \frac{\text{Employment}}{\text{Labour Force}} \times \frac{\text{GDP}}{\text{Employment}}$$

| Participation Rate
 | Changes in the Unemployment Rate
 | Labour Productivity

Figure 3

It is not difficult to recognize that Romania’s economy can be identified from the point of view of population with the economic effort of several generations. Seen in this light, the economic effort and economic dependence is constructed out of the constant overlapping of generations. Second, in alienation, we have to acknowledge that these ex-ante persons have a life span equal with Z1 generations. Thus, the economy is described at any point by a total number of Z1 generations that are alive and either work or consume. But, we have to separate the population into two categories. The first one is the active population and dependant population. Children are considered children and dependant till the age Z0. They do consume, but they seldom produce or work. It is not difficult to realize that the other category that makes up dependants, which are those that surpass the age at which are able to work, they can be fitted in the category Z2. They also consume, but their ability of being part of the active economy is severely limited.

As an observer of these trends we suggest that as further theoretical and empirical evidence is gathered it is time to admit that there are several statements that should be argued. One direction, the presence of competing interpretations and the evidence deployed by policy makers and researchers entitles use to take this direction, is that the societal transformation taking place and needed in Eastern and Western EU countries is far more complex and goes deeper than just policy and economic change. Thus, we agree that some parts were privileged in scientific exploration, such as economic development and policy re-structuring, but we genuinely believe that we need to go further with research. The commitment to explain the present day economic crisis and the post-revolution societal transformation merely by referring most of the time to economy and policy making leaves out important variables. We may even tentatively conclude that the changes taking place after the 1990’s are conflictual and present prolonged effects. A second direction has an extra-eastern focus, and examines the relationship between former socialist countries in the East and Western cultures. Societal transformation do not take place only in the East, but also are needed and take place in the West, as a result of the clash between the

two parts of Europe. The implication is that of a sort of equality in transition obtained between Eastern Europe and Western Europe. Both are being locked into the societal transformations that are taking place right now, and consequently as acting largely in tandem with society. In both geographical areas different as well as similar questions can be raised and different conclusions emerge one this way of researching is deployed. Such is the case when attempts are being made to describe and perhaps even define, for example, the demographic relationship that is being formed between the two regions of Europe. One of the key issues here revolves more around the degree in which Western and Eastern European countries are being regarded as either being involved passively or actively in the demographic transition that is taking place through the population dynamics established between the two. In the shaping of this demographic transition we have passive transmitters and active interveners, as we like to call the two regions that form a demographic couple.

A third direction that has guided our research is that the last two decades marked a period in which the effects of long-term variables such as population transition arose as a more important factor in the internal development of a country than of pint point circumstances such as regime change. The influence of the evolution of long-term variables such as population on the over-all direction of society's development has been important not simply as an addition to existing variables, but also due to recognizably changes that it has brought about in the society. Recent developments have meant that strategic characteristics such as the population size, human resources, natural resources, level and kind of industrialization, structure of economy, infrastructure, proximity to the developed world are now posed in debates around current economic crisis and future policy making. Increasingly, however, little attention was paid to the specific relationships established between population and strategic characteristics. The effects of population were seen as discrete and measurable. Changes in this view should be triggered by current internal developments but also because of the influence on other characteristics. It is worth examining not only the impact, but the relationship between population and major characteristics, in a sense, it is around this region of convergence and contradiction that it is possible for us to built the plot at the base of our current contemporary reality. A relationship, unlike an impact presupposes both convergence and contradiction and by analyzing from this non-limited point of view we can understand the distinctive changes which currently have started to characterize our society.

A comparison of population evolution, say, from the 1990's, with that of the present day, is instructive. We are not talking only in terms of following the see-sawing estimates, but also in terms of dominance of certain points of view. Valuable though this research may be, such a problematic such as demography can't be research as easily as cutting out history, starting from the 1990's. A historical perspective in policy can be use as base and structure for understanding the demographic transition in Eastern countries. The theoretical alignments of policy prior to the 1990's came into empirical consequences in time. The event of the falling of the Eastern countries can be placed on the timeline of history, but the consequences and processes started before that moment display their impact beyond that moment. The incorporation of the evolution of the masses is an issue that can't be ignored being vested with the responsibility of imposing change to other of society's characteristics. We believe that part of our scientific contribution will stand in the emergence of demographic research used to furnish the economic and social structure, being able to breath life into dry policy and economic analysis. If the demographic transition of Romania is what it is today, it is also because the wide range and wide variety of policy measures taken before the 1990's. Those policies constituted the bedrock our social structure being in the position of either augmenting or limiting our potentialities. Population assumed in our opinion a silent and

pervasive position of preponderance in the relationships that were established between other characteristics of our society.

The three directions that we have identified here are meant not only to help in characterizing the change that has taken place, but also to build a sort of research arena for both disagreement and constructive debate around any issue. To put it bluntly, the case of transition analysis and meeting between West and East is different now. As a fourth direction we would like to point out that it is difficult to construct general research upon the entire region as a whole, this demonstrates the importance of country-based region and even region focus research. The central and even we would like to consider substantive concern was to the processes taking place in Romania. We believe that determination in the last instance by only the economic is a necessary but not sufficient explanation for today's contemporary society. By largely suspending a major characteristic as population from explanations regarding the nature and existence of our contemporary and most importantly future prospective society in favor of a focus on economic relations we would be unable to form the theoretical and empirical space needed for detailed research. The research projects viewing everything from an economic perspective, whatever their limitations, brought a positive advance over approaches purely theoretical. On the other hand, a demographic approach to the study of present economic and social crisis incorporates a stress on the actual authenticating experience bringing into focus a humanist emphasis and side of the issue. Where the economists had focused on the articulation of the economic and purely numerical aspect of the current crisis, we seek to place the current processes and transitions within a society conceived by us and other researchers as a complex of expressive totality. Demographics and population obviously plays a part in the combination with other primary characteristics which are in turn definers of a society (human resources, market size, investments, environment, infrastructure, culture, security, political representation, foreign policy, community and state building). Population's powerful structured relationship to established powerful indicators of a society's stability and development has the effect of giving it a crucial role in constructing and shaping the definers of a society. Demography is a partner in the over-all development spiral that is society, preventing or augmenting local, regional, national and continental problems. Many of the primary indicators and determiners of a society are pulled together by population and demographic transition. The expressive inter-connections that are formed between demography and primary determinants of a society realize the contemporary framework. There are still, off course, some unresolved issues in this approach. We understand that we are facing conceptual difficulties and problems could arise. Paradoxically, we believe that the approach in itself represents thinking through categories that are very difficult to be placed neatly in just one category. Hence, such a research could be said to stand in an uneasy atmosphere due to its innovative approach. It stands opposed to economic reductionism and to reductionism all together when studying a complex society such as ours.

This perspective is vital in understanding our development and what potential do we still master. In truth, at the beginning of the 1990's the potential for capitalist economic development was high in Romania. Put it simply, capitalism could survive in Romania because Romania had an ongoing system sustained by a demographic evolution comparative with that found in Western Europe. This perspective was sustained by the presence of a large population which constituted a promising market for both foreign and native producers. The purely economic process could develop within Romania because it benefited from a low number of dependants, people that might need financial support from the state, and a high number of workers. Furthermore, Romania had an establish cultural behavior that was based on intergenerational exchange of social protection and welfare through a family system in which wealth was passed to the young and the young provided security for those no longer young. In turn, families were close together and those no

longer involved in economic activities could help support the new family. The fact that the vast majority of population was of working age meant that they will rather invest in personal belongings and save money which in turn would help the economy and the development of the service sector and banking sector. The health of the population was at an all time high, which meant that the state will not have to spend too much investing in a welfare state. The vast majority of the population had been schooled in higher education or a minimum of high-school education being able to support industry and services. Be this as it may, the crucial role of population can be observed in facilitating the significant development of the entire society in all of its aspects. The approach to population studies should not be underestimated. The autonomy of population, in the sense that it constructs limited relations of power with other structured determining the development of the state can be challenged. Its autonomy is purely nominal and its action is not entirely subservient for the requirements of a stable and developed society.

We must not forget the relationship established between the economic and population. This approach could also be used in explaining negative aspects of the current financial crisis. This insight can be the basis for understanding national saving patterns. Now consider the restriction on financial capital, as a consequence of demographic transition. Therefore, the presupposed break between economy and demography due to the introduction of technology in the formula does not exist, or at least it is not a complete break. Here and now, population came back into the question. The presence of demography should no longer be viewed as merely reflecting and sustaining other trends, but rather as a trend setter in the current society, be it technological. Demography helps to produce current reality even on the economic and policy realm. The critical point for us is that, just like in any theory that wishes to explain the diffusion resulting from relationships established at the level of the system we do not wish to fall in the trap of seeing demography as pivotal, but rather as a variable quasi-omnipresent. We believe that the research present so far on current and past issues regarding our society, including the financial crisis were not so much wrong, as incorrectly or perhaps, even better said, inadequately posed. This is often the case with any configuration meant to explain complex processes. An inadequate premise, such as the ignoring of population while focusing on economy and technology, can lead to unexamined conditions on which the system rested. We believe this is an important point, to protect our research from falling in the trap of being interpreted as overlooking other variables or becoming too general.

The connection between demographic evolution and society's development is a systemic one. We believe that demography manifested through population manifests itself in other vital parts of society and has the most power at the level of overlapping and coinciding systems and structures, of any nature, be it economic, social or political and policy wise.

We do not want to conclude by saying that the critical paradigm is finished at this time. The critical paradigm is by no means fully developed. What cannot be doubted is the profound nexus that is between demography manifested through population dynamics and the entire contemporary society, being a part of any explanation regarding economic and social aspects. It has the potential of setting sociological studies on a new problematic. We believe in the rediscovery of demography as a significant variable in current research regarding contemporary evolution and crisis. We believe it would be more appropriate to say – the return of demography as a variable that can't be easily put into control or turned into an unimportant element. Demography is a function of society. The potential reach and power of demography is greater now due to the over proliferation of technology and knowledge, used in the past to give an edge in front of population. Globalization has been possible the interlinked between population and technology, bridging the gap between developed countries and developing countries. Once this gap has been

bridge the flow took shape also in the form of problems. Freedom of movement means also freedom of change and freedom of problems.

We can see now, from within the debate it emerges the fact that development of a country should be discussed starting with the incorporation of the abundance of production labor into the analysis. The bedrock of economic development lies also in population, which if presents a contracted labor force, a decrease in active population, an increase in skilled migration, an increase in the ageing population it can constitute a constraint which can't be ignored. Population once viewed as the purveyor of economy it also becomes responsible for the level of investments. Basically, this amounts to saying that investments, direct investments depend also on the labor force and its age structure. The label for a developed country is also placed by taking into account the level of direct investments into the country. As we are aware, the level of direct investment in Romania has been constantly shrinking, one explanation being also the age structure of population. Given this absence attempts to launch economic development can be under serious constrain. Attempts at constructing a balanced and investment friendly environment should also involve a more careful look at population perspectives.

Population of Romania	All ages	Age over 55	Age over 65	Age over 75	Age over 80
1948	15.843				
1956	17.512				
1966	19.123				
1977	21.501				
1990	23.207	4987	2.414	0.944	0.41
1995	22.681	5.308	2.721	0.837	0.475
2000	22.435	5.281	2.986	0.999	0.401
2005	21.624	5.407	3.191	1.194	0.525
2007	21.538	5.545	3.201	1.277	0.587
2010	21.469	5.787	3.194	1.384	0.675
2012	≈19.042				
2025	≈17.501	≈6.501	≈4.501	≈3.001	≈0,734

Within the economic fabric a society, the next important element in development is the population's level of saving and spending. The moment in which a country is dominated by the presence of an ageing population it is deprived by a balanced between consumption and saving. Population savings are yet another important factor in the development of a country. The lack of a proper consumption/saving balance can become a threat by inhibiting national direct investment. True, consumption is important, but right now the majority of authors regard it as being virtually almost a "wholly" thing, taking out of the picture the side of savings. Quite contrary to the optimists that view an increase in consumption as a way of saving the economy, consumption based on debt or forgetting the saving part can lead to the lack of financial flows towards direct investments. At the same time savings usually stand at the base of intergenerational financial flows, ensuring future prosperity or being used in helping the initial family to invest in family structures, education or acquiring physical goods with a long lasting characteristic and usage. Distinctively, it can be easily argued that consumption patterns have invaded and even subverted the economic world, making it more widely acceptable not to save or put money aside, depriving the economy of precious financial resources. The separateness between economic development and prosperity and savings has been exacerbated in favor of consumption. How one chooses to assess the importance of consumption over saving depends on the perspective from which one chooses to view things. We remarked that the age structure of a population determines the balance between

consumption and savings. The consequences of a demographic transition can be also viewed on a household's own division of what we can name disposable income. The centrality of population in calculating economic developments lies also in the fact that the structure and age of a population also play a part in altering both the scale and the product composition in a final demand scenario. By adopting a position devoid of the presence of demographic change it can be argued that an analysis is deprived by an important nexus with reality, whereby being unable to either connect with contemporary reality or perhaps change it. Thus "In the general context of the economic downturn, internal problems of the European Union have generated a constant decrease of trust and enthusiasm towards the European project, especially in the new member states."<sup>8</sup> which makes this research even more important.

We believe that current research focuses on mainly political issues or even economic ones and less emphasis is being concentrated on things that have are a little elusive, such as demography. We agree with the author "When we debate Europe, we are accustomed to debate the big issues (and most probably those regarded as traditional): trans-Atlantic relations, the diplomatic relations with Russia, China and with Asia as a whole. In other words, we debate the links with the major players. Less attention is directed towards the future tendency, the reality of tomorrow which will certainly become more important; a tendency that will most likely become permanent and will exercise a powerful influence that can't be measured today."<sup>9</sup> The reality of tomorrow is strongly linked with demographic transition and current realities "have begun to shatter"<sup>10</sup> leading to new realities which have to be investigated. We are of thinking that globalization is a process "through with the center, the West, America displays dominance upon the periphery, seeing that modernity wins in face of tradition, experiencing the victory of capitalism"<sup>11</sup>, which represents my own translation of an interesting passage. It is interesting that this perspective is being changed or may be change through demographic transition. We are witnessing the struggle of the periphery to gain advance in the meeting with the center.

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<sup>1</sup> Beneficiary of the „Doctoral Scholarships for a Sustainable Society” project, co-financed by the European Union through the European Social Fund, Sectoral Operational Programme Human Resources and Development, 2007-2013; assistant professor PhDc, The National School of Political Studies and Public Administration of Bucharest ([i\\_dragos\\_lucian@yahoo.com](mailto:i_dragos_lucian@yahoo.com))

<sup>2</sup> Paul Dobrescu, *Geopolitica*, Editura Comunicare.ro, Bucuresti, 2008, p. 122

<sup>3</sup> Jiri Musil, *Exit From Communism*, pp. 190

<sup>4</sup> Zygmunt Bauman, *International Political Science Review / Revue internationale de science politique*, Vol. 15, No. 1 (Jan., 1994), pp. 15-24 Published by: Sage Publications, Ltd.

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## ORIGINAL PAPER

Costela IORDACHE

### Intra-regional development in Oltenia

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**Abstract.** *The temporal correlation of physical-geographical factors and social-economic ones generated a series of spatial disparities, both in Romania and other European countries. The regional development politics is carried out in order to diminish these territorial differences. The aim of the present study is to identify the territorial disparities of the South-West Development Region and to point out to what extent intraregional policies should be put in practice in order to diminish these inequalities. Hence, we have characterized the region from the point of view of its physical-geographical and human characteristics after primarily presenting the historical evolution of the regional development policy in Romania. The SWOT analysis regarded the human capital, the settlement system and the infrastructure of the territorial system South-West Oltenia.*

**Key-words:** *South-West Development Region, regional development policy, intra-regional policy, territorial disparities, development poles.*

### Introduction

The regional development policy emerged in Romania from the need to correct the imbalances and align to the regionalization trends appeared at European level.

In an early form, in some Western European countries, the regional policies history begins after the economic crisis of 1930s and it is generalized in the whole western continent in the last half century. According to Bachtler J. and Yuill D. (2001) the new approach to regional policy has four important characteristics: it has a broader scope, actions and measures, covering several areas: human resources, infrastructure, tourism, environment, etc.; it addresses to all regions; it requires a proactive approach; it responds to regional challenges; it is developed and implemented in partnership, involving all relevant actors from the public, private sector and from local and regional communities.

The legal basis for the regional development policy is regulated in the European Community Treaty. Thus, Article 158 states that the European Community "should contribute in order to reduce the disparities between the development levels of various regions and lagging of the less developed regions, or islands, including rural areas". After two articles there is stated that "the European Regional Development Fund is intended to help redress the main regional imbalances in the European Community by participating in the development and structural adjustment of regions which are lagging and the conversion of industrial regions which are at low ebb".

In our country, the first measures of a regional economic policy have been adopted since 1992, but without being part of a coherent notion of regional development. Three years later, there was developed the "*Socio-economic development strategy of the counties and of Bucharest municipality for the years 1999 – 2004*" and "*the Strategy for the preparation of Romania's EU accession regarding territorial planning, urbanism and public works*".

The year 1996 marks the start of the regional development policy with the implementation of the PHARE program. Within this program there were made regional disparities analyses and there were formulated the basic principles for regional development in our country in the document named "the Green Paper on Regional Development in Romania" appeared in 1997.

The *Law no. 151/1998 on regional development* established the objectives, institutional framework, specific skills and tools necessary to promote the regional development policy. The *Law 315/2004* brings the necessary corrections to the prior regulations, adapting the Romanian regulatory and institutional framework to the EU provisions and requirements. *Romania's EU accession in 2007* has meant also the accession to the structural and cohesion funds, through the use of which the imbalances between regions can be reduced.

The regional development concept emerged as a new vector of the economic policies in Romania, proving to be, increasingly stronger, an effective tool of control, prevention and controls the differences that encumber the Romanian integration and economic development. The regional development aims to boost and diversify the economic activities, to stimulate the investments in the private sector, to contribute to reducing the unemployment and improving the standard of living.

At the base of the design and implementation of regional development policies stand the following principles: the decentralization of the decision-making process from the central level towards the regional communities; the partnership between all the actors involved in the regional development; the planning of using the resources through programs and projects; co-funding.

From the above it results that the regional development policy is an essential element of Romanian reform, having as main objective the reduction of economic and social imbalances

accumulated over time, preventing the emergence of further malfunctions and support the overall development of all regions of the country, the cross-border cooperation etc.

The implementation framework of the regional development policy is represented by *the development region*, established as a voluntary association of neighbouring counties.

Based on these considerations, we conducted a mesoscale analysis, which revealed the existence of imbalances in the territorial system of Oltenia.

### **Objective**

The objective of the present study is to investigate the social-economic reality of the South-Western Development Region; it pursues the identification of territorial disparities regarding several demographic, habitat, economic and infrastructure-related indices. Also, it aims at emphasizing some elements of the territorial organization which are relevant for the intra - regional development.

### **Methodology**

For the present study, we have used the data published in the Statistical Yearbook of Romania, elaborated by the National Institute of Statistics, Bucharest. These data refer to a series of indexes and correspond to the year 2009. Based on the values of the established parameters, we have elaborated cartographic materials reflecting the situation at the level of the administrative-territorial units, the towns and the communes. The research methodology was based on statistical-mathematical methods, statistical correlations, graphical correlations, analysis and synthesis

### **Results and discussions**

*The natural potential.* The South-West Development Region lies in the south-eastern part of the country. Regarding the spatial dimensions, The South-West Development Region lies in the south-west of Romania and mostly overlaps the Oltenia historical province. It is formed of 5 counties (Dolj, Gorj, Mehedinți, Olt, Vâlcea) and covers an area of 29,212 sqkm, being the smallest one of the development regions, except for Bucharest.

*The complex, varied physical-geographical framework* is well represented and belongs to the Carpathian area and the related subunits. Thus the South-West Development Region's relief has a relatively balanced distribution: the Carpathians and the Getic Subcarpathians in the North, with interesting landforms, covered with forests, pastures and hay fields, the Getic Piedmont and the Oltenia Plain in the south, with plain landforms, adequate vegetation and a great agricultural potential (Fig.1).

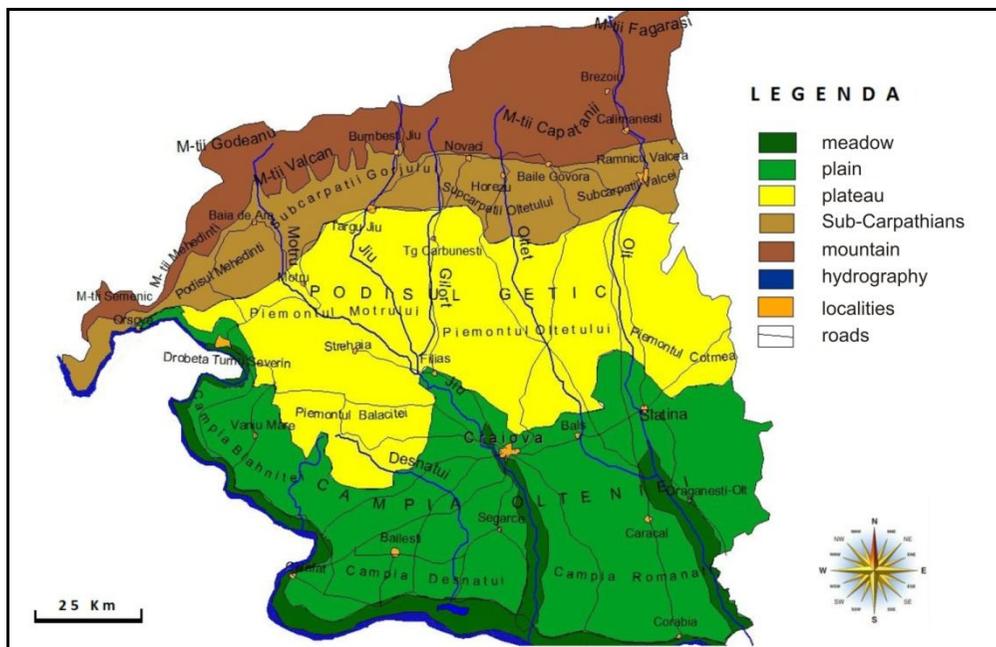


Figure 1. General geographical map of Oltenia Region

Taking into consideration the general temperate continental of transition *climate*, there are subregional differences imposed by the geographical position, altitude and local factors. The Mediterranean influences, a lower annual thermic average, more abundant rainfall and a more obvious climatic range in the South-West represent the elements of differentiation as compared to other regions in the south of the country.

*The hydrographical network* formed of the Jiu, the Olt and their tributaries, and drained by the Danube ensures the first position in the national energy production for the South-West region (over 70% of the total hydro-energy production). The natural and anthropic lakes, together with the abundance of the underground waters, complete the hydrographical potential of the analyzed regions.

*The biological-pedological-geographical cover* develops according to the geomorphological, climatic and hydrographical conditions.

*The human potential.* In 2009 (according to the Statistical Yearbook of Romania, 2010), the human resources of the South-West Development Region counted 2,279,849 inhabitants (10.6 per cent of the national population), with an average density of 78.0 inh/sqkm (below the national average) (Fig.2).

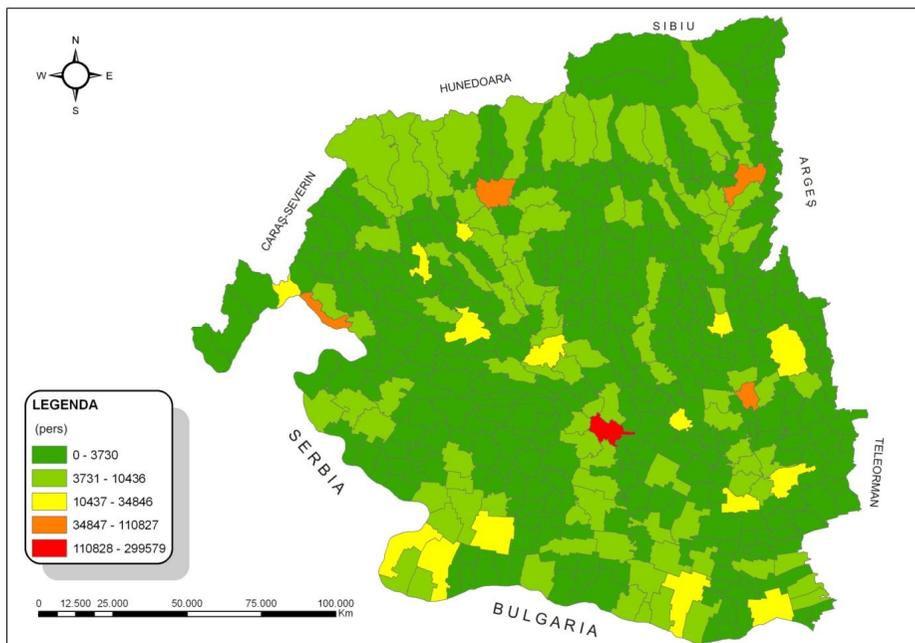


Fig. 2. Geographical distribution of population in 2009 (on administrative territorial units)

Considering *the natural dynamics*, the region is characterized by a general descendant trend, a tendency which is constantly manifesting during the last period. In the reference year of analysis (2009), the average birth rate was of 8.5‰ in the South-West Region. The following counties should be emphasized as registering a low birth rate: Olt (7.8 ‰) and Mehedinți (8.1‰). Having an average *mortality rate* of 12.7‰, the South-West Region occupied the second position at a national level, the highest rates being registered in Mehedinți county (13.9‰), Dolj (13.7‰) and Olt (13.5‰).

*The infant mortality* in the South-West Region is similar to the national average (12‰), but within the counties, there are significant differences: 10.1‰ in Gorj county and 17.3‰ in Mehedinți county.

*The natural population increase* is negative with values of -3.7‰. In some administrative-territorial units, the values of this index are alarming, as in the case of Mehedinți county (with -5,8‰) and Olt (-5,7‰).

*The ethnic structure* is relatively homogeneous, the number and the percent of the minorities within the overall population being significantly lower, except for the Roma community, which registers 2.6% of the region's population, respectively 4.3% of Dolj county's population and 3% of Mehedinți county's population.

*The structure of the population on urban/rural areas.* In Oltenia, the percent of the urban population registers 47.7% (below the national average), the most rural counties being Olt (59.5%), Vâlcea (54.6%) and Gorj (53.0%).

*The economic structure of the population.* The percent of the active population is of 64.1%, and the occupied population represents 59.3%. At the level of counties, Vâlcea and Gorj counties have the highest occupancy rate, while Olt and Mehedinți have the lowest occupancy rate. 40.6% of the active population work in agriculture, forestry and extractive industry. 34.8% of

the active population work in the tertiary sector, while ¼ of the active population works in industry and constructions.

The settlements network is formed of 40 towns, out of which 11 are municipalities and 408 communes, comprising 2,070 villages, with a different territorial distribution (Table 1, 2). The most important towns are: Craiova (299,579 inh.), Râmnicu Vâlcea (110827 inh.), Drobeta Turnu-Severin (106,237 inh.), Târgu Jiu (96,235 inh.) and Slatina (77,350 inh.). By their position, these cities perform the role of a "central regional place".

**Table 1. The regional system of settlements**

Territorial level	Surface (sqkm)	Cities and municipalities	Municipalities	Communes	Villages
Dolj	7414	7	3	104	378
Gorj	5602	9	2	61	411
Mehedinți	4933	5	2	61	344
Olt	5498	8	2	104	377
Vâlcea	5765	11	2	78	560
Reg.Sud-Vest	29212	40	11	408	2070
România	238391	320	103	2856	1295

Source: Statistical Yearbook of Romania, 2008, p. 16

**Table 2. The settlements density by type of locality**

Territorial level	Cities/1000 sqkm	Villages/100 sqkm	Communes no./hour	Villages no./communes
Dolj	0.9	5.1	14.9	3.6
Gorj	1.6	7.3	6.8	6.7
Mehedinți	1.0	7.0	12.2	5.6
Olt	1.5	6.9	13.0	3.6
Vâlcea	1.9	9.7	7.1	7.2
South-West Region	1.4	7.1	10.2	5.1
Romania	1.3	5.4	8.9	4.5

Source: Statistical Yearbook of Romania, 2008, own calculation

In terms of geographical distribution, the localities of the region are relatively well-balanced spread within the territory, excepting the Gorj and Vâlcea mountain areas, uninhabited, distinguishing two more important concentrations in the northern median area of the Sub-Carpathians and in the area between the Jiu and Gilort rivers and the escarpment between them in the central-north-south axis of the county, that groups the most urban centres, the major communication infrastructures and economic activities. Another important concentration of localities is in the centre of the Vâlcea county, overlapping the Vâlcea Sub-Carpathians. A feature of the territorial distributions of human habitat is represented by its development along the main rivers: Olt, Jiu, Olteț, Motru, Gilort, Bistrita, etc.

The physical infrastructure. The transport infrastructure of the South-West Development Region is relatively well-developed, the territory of this regions being crossed by the European roads E70, E79, E81 and two of the three priority axes of the trans-European transport network TEN-T that cross Romania (7 and 8 axes). The region has a road network of 10,645 km (13.2% of the total national roads), out of which 2,061 km are national roads and 8,584 km are county and

communal roads. In what concerns the density of public roads, the region is slightly situated over the national average, the highest densities being registered by Gorj (39.8 km/100 sqkm), Mehedinți and Vâlcea counties (37.6 km/100 sqkm). The density of railways per 1000 sq km has the lowest national value (33.8 km/100 sq km), the main railway junction being represented by Craiova. Craiova International Airport could constitute a real impulse for the economic development, the current traffic being rather reduced for the moment. The naval transport is only practiced on the Danube. The European roads ensure efficient connections with the 5 harbours of the region: Drobeta Turnu-Severin, Orșova, Calafat, Bechet și Corabia; the traffic is relatively reduced, the harbours' installations being quite modest and highly worn out.

*The public utilities* are quite modest, the region having a weak endowment with drinking water distribution network (only 10% of the overall settlements) or sewerage system (3%), below the national average. In the entire region, only 57 settlements were connected to the gas distribution system at the level of the entire region (in Mehedinți county, there was no settlement connected to the gas distribution system). Only 63% of the 2.584 km of urban streets were modernized, all counties exceeding the national average, Mehedinți county having only 82% modernized roads, followed by Gorj (74%).

*The territorial equipping.* The general level of equipping the territory is according to the presence of the technical-urban public networks and of the socio-cultural equipment. In terms of utilities the region has electricity, communication networks, and, to some extent water supply and sewerage systems, at local level. *The socio-cultural equipments* are relatively well represented if we consider the education, health and culture. The preuniversity *educational infrastructure* is formed of 537 general schools and 153 highschools, some with nationally recognized performances. The upper education system comprises 4 institutions and 42 faculties, with over 52,000 students. *The sanitary infrastructure* comprises 43 hospitals, 33 polyclinics and 28 health units; medical services in the rural areas lack quality as a consequence of specialized staff and medical apparatus; this also generates an average span of life of 72.49 years (75.78 years for women and 69.33 years for men). *The cultural heritage* is very rich, Oltenia is a region of ancient traditions and customs, with traces of ancient habitation, with historical and unique art monuments, many listed by the Ministry of Culture and National Heritage.

*The territorial discontinuity* of industrial activities and the connection to agricultural and tertiary activities (commerce, services, tourism) is characteristic for this region. In this region there are significant differences regarding the development between the high industrialized areas within Craiova and Râmnicu-Vâlcea municipalities and the areas that use especially the local resources, particularly the agricultural ones. The areas where the development level is the lowest include the south of Olt County, the north-west and south of Dolj county, the central and north of Mehedinți county and the west of Vâlcea county.

There is still in the region a major development difference between urban and rural area. The rural area is characterized by the problems caused by the lack and quality of infrastructure facilities (transport, health, education, etc.) and accentuated by the phenomenon of migration of young population to the cities, especially big cities, but also the population migration abroad.

We identified the elements of the territorial structure relevant for *the intra-regional development*: the settlement system, features of human capital and infrastructure. All three have strengths, weaknesses, opportunities and risks.

We present the strengths regarding the *settlement system*: the relatively high level of urbanization expressed as an appropriate number of regional cities; the presence of an urban centre of 1<sup>st</sup> rank, with complex profile, which provides services and modern activities in the region; the existence of rural centres with over 5000 inhabitants and trends of diversification of activities; the functional diversity of poles. As weaknesses, we can mention: the imbalanced

mono-centric character; the negative effect of the presence of a major centre (with approx. 300,000 inhabitants) on the capacity of polarization of the other cities; the weak polarization in Mehedinți county. As opportunities, we can mention the intensification of cross-border relations that could favour the dynamism of the border cities. The recent establishment of institutional structures for revitalizing the rural centres may be also the premise of the increased polarization of local centres. There are also risks related to the increased disparities between the major centre and other centres, or that foreign investments are to be reduced in the current localities if more favourably opportunities emerge.

*The human capital* is characterized by a high degree of specialization of the labour force, a strong initiative spirit and a large number of students. On the other hand, it is worth underlining the high level of aging and feminization of the rural population and the existence of some demographic divergence areas. The continuation of the definitive migration to urban and abroad centres and the acceptance of poverty as inevitable in the underprivileged areas constitute possible risks.

*The infrastructure* has a high density and includes sections of European and national roads. As weaknesses we state the lack of links of Rapid type and belt highways. There is the opportunity of cross-border connection and the increasing risk of deterioration of the existing infrastructure by perpetuating the decline of the peripheral areas.

#### CONCLUSIONS

Justified from the political, moral and economical point of view, an intra-regional policy is required due to the following reasons: there are intraregional imbalances, which are considered unfair and unacceptable; the system functioning fails to remove them without say.

The intra-regional policy goals are: the economic development and investment planning not only in terms of the need to promote the regional economic progress, but also in terms of the needs and the potential of various sub-regional assemblies and the distribution of labor force; to reduce the differences between the sub-assemblies of the region regarding the distribution of the economic activity and the level of income, wealth and welfare; the maintenance and encouragement of the cultural and social bases of the regional population life, including the protection and the judicial use of natural, cultural and attractive resources; the planning of the built areas in accordance with consistent and clear regional, intraregional goals and viable economic resources.

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## ORIGINAL PAPER

**Maria PESCARU**

### **EU influence on Romanian sovereignty. Cultural effects of globalization and modernization**

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**Abstract:** *The European Union system has left its mark on the states that joined in a greater extent than they have managed to change the system. The logic of the European system was that the states should adopt the communitary acquis. There were also cases where a State has succeeded in imposing a norm, an EU institution or a concept, if there were no European legislation or better, more practical, coherent and democratic in the legal system of that state. The political consequences of globalization and modernization in the EU's impact are ambiguous, because it gives rise to Euroscepticism and openness. EU integration has assumed an attitude, a process that was delayed by the lack of direct experience with the social reality of the Community.*

**Keywords:** *sovereignty, traditional culture, interculturality, multiculturalism, globalization*

### 1. The manifestation of the cultural diversity in Romania before the 1989's events

a) **Official policy.** The communist policy and Marxist-Leninist ideology concealed or hid the ethnic and religious issues in order to minimize or mitigate the existing identities. At the state policy the self-contemplative or ethnocentric perspective was promoted, manifesting itself as self-satisfactory and narcissistic. The totalitarian ideology is found impregnated including problems related to ethnic, religious, linguistic, cultural relations. Sometimes the most authentic intellectuals were analyzed from the perspective of the cultural archeology, making a plea broad for the Romanian culture, in order not to disturb the political bodies. The history which was taught in schools presented realities in a triumphant historical, the cultural identity oversized the artistic production at the expense of its otherness.

b) **Concrete realities.** Parallel and contrast with the official policy requirements of dilution diversity, there is a current manifestation of clandestine, concealed diversities by the bearers of the spiritual differences. The homogenization will consider the disappearance of the particular features, unique thought. But during the communist period there is a double discourse and behavior: one official, declaratory and other private and well hidden. The informal relationships between people were natural and self-sufficient and the autarkical thought has not ceased to be present. These aspects were observed in the common language and speech in which ambivalent, polysemantic expressions, words with double meaning "permissive" and "subversive" were present. The truth was told between the lines, with a strong attitude of concealment. Through poetry, literature, in general, some artists became fierce and anti-feared fighters in the civil society, this is not a very productive way, and it was one possible at that time.

#### After the events from 1989

The stereotype met, usually in analyzing Romania's image, said that Romanians have a great opinion of themselves and a critical one about those who came in contact with, which is the usual mechanism of self-perception formation of others in social psychology. But stereotypes are not only a simple way, and external negative stereotypes do not remain without impact on the self-perception plan. Negative perception of Romania in the EU was created based on the last years of Ceausescu and the violence of the early years of transition: Ceausescu's trial, the events in Timișoara and Bucharest, the miners, violence against traditional parties and the former monk, problems caused Romanian by immigrants in West.

The transition from a totalitarian society to a democratic society led to a state of crisis, the anomaly caused by the annihilation of the state and Communist Party, of their repressive apparatus, of the loss of protective paternalism powerful state, the paradoxical coexistence of both new with the old social and structural remnants of capitalist forms of social control.<sup>1</sup>

After the fall of communism, in Romania there is an explosion of the differences, different and contradictory discourses which sometimes can not be controlled. Minorities are manifested to claim their rights. Research on interculturality becomes more and more frequent. The transition is characterized by the appearance of some phenomena of crisis:

#### *The phenomenon of difficulty of finding the identity*

During the transition we are witnessing a rude awakening and a change of the values that determines the phenomenon of identity confusion, hardly accepting of their limitations and weaknesses in the approach to one that is different. Getting used to what is homogeneous in communist times, led to a hardly accept of something that is more or less than ourselves. Many individuals are guilty of supporting open attitude of the old communist regime. In finding the exact identity the following conduct manifests:

- masking compromised identity and construction of a cleaner identity;
- rejection of their own values, even the genuine ones just because they are old;
- refusal to return to universal values and local values, quartering in nationalism;
- to behave opportunistically;
- acceptance of values that we match the desire for change;
- appearance of a large number of existence models, often contrasting valuation systems;
- fear of dialogue, closing egocentric individualism and fall in individualism.

*The phenomenon of inertia*

Manifested by the tendency of many individuals to return to the past, because of the theme of change and narrow understanding of reality.

*Identity exotic phenomena*

Manifested by fleeing after an identity that can be built in another part of the world. Many individuals believe in the lure of emigration, as a result of building an enchanting picture of the West as opposed to the communist reality, believing that there find happiness and everything is permitted. This view was justified in the past, in this period shows an ignorance of contemporary world issues, personal irresponsibility and ignorance.

*Excessive self- closeness and multiplication phenomenon of the cultural groups or entities*

After 1989, the groups multiply indiscriminately sometimes, and this shows the lack of maturity or even naive. Freedom generated a multitude of divisions: political parties established criteria undue to cultural groups that promote the same rights, but do not recognize each other. This brings the excess and overflow, creating a chaotic and multicultural society, intercultural dimension not functioning this way.

### **Cultural diversity in Romania**

*Causes of historical order*

In the Carpathian-Danubian-Pontic space one can speak about ethnic, linguistic multiplicity because of the cultural interactions through time, mutations of populations or dependence, leading different cultural adoption, other than the local culture. The essential foundation of an intercultural dialogue is the Latin, linguistic and cultural substrate, because of its given extent of diffusion throughout Europe.

*Causes of geographical order*

Cultural interactions in Romania can be characterized as follows: in the north there are communities that have the culture of their neighboring peoples like Ukrainians, Czechs, Poles. In the east there are communities of Tatars, Turks, Greeks and Albanians. In the east there are many localities that have Hungarian population. The presence of ethnic groups can be explained by geographical proximity, population movements over long distances in certain historical periods due to economic, historical, religious, military, events etc... Currently there are considerable cross-border movements in the east to the population of Moldova and westward to the people of Hungary.

*Causes of cultural and spiritual order*

Culture of the majority population in Romania, but also a number of minority populations such as Judeo-Christian, joining in the European symbolic space. Grammatical structure of language and most of the vocabulary is Latin, but there are words in Romanian vocabulary and assimilated words from the linguistic minorities.

Even if the language and culture are Latin, there are heterogeneous elements of foreign cultures. This impurity must be seen as a potential wealth to help us easily understand others and to enter

into a quite different cultural dialogue. This original blend between East and West is an advantage for us because we are able to absorb the contrasting cultural elements.<sup>2</sup> This mix is the foundation of success further cultural enrichment.

*Causes of social, economic and political order*

They have been especially after the fall of communism. Switching from a homogenized society to a democratic and liberal society has led to a variety of behavioral styles, the mentality, the differences artificially hidden under the old regime. Socio-economic diversity is very difficult to accept or managed by most of the population. The myths of economic equality, the Marxist-Leninist ideology, the distribution according to need and not merit, still persists in the minds of Romanians, after 1989. The emergence of economic disparities, the Marxist-Leninist ideology, the distribution according to need and not merit so between Romanian are increasingly evident. In the future there are emphasized these differences resulting in the need to prepare for the acceptance and management of the differences between people.

## **2. European integration and cultural pluralism**

European space must be understood as a place of fruitful confrontation between several different cultural codes. This confrontation may have dysfunctional effects at certain times when it is not well managed. Therefore people need to put into these realities and institutions, must be prepared to receive people wearing value particular carrier codes. Marginalized subcultures are claimed otherwise necessary than ever before, due to national entities recomposing the whole Europe, in contrast to centralized nationalist ideologies.

Universalistic ideologies or cultural leveling considered distinct cultural entities will disappear, and a unique, world culture will result. These ideologies are ethnocentric, attractive and very simplistic and do not take into account the cultural dynamics and contradictions that arise in cultural developments. Relativistic ideologies that promote cultural pluralism explain the idea that each culture develops separate world views, value systems and beliefs. According to this explanation there is no genuine communication between cultures.

Modern society requires new types of organizations, associations and connections of production activities. A production structure has become a transcommunitary, transnational and transcultural form to achieve the exchanges. Labor reorganization and integration in a global economy leads to new relational skills between people. Economies are competitive to the extent that their authors relate to others. Sometimes jobs become intercultural and intercommunity learning opportunities.

The European countries have passed through all the moments of intolerance at the beginning of modernity. Alain Touraine considered that "the problem of multiculturalism acutely arises today because the republican, politics, West model is in decline or decay. The substantively Universalism of the law and of the right was replaced by instrumental rationality of economy, production, first of all, and consumption: thus the need for communication"<sup>3</sup>. The economic life has internationalized, leading to overflow national sovereignty, a phenomenon called globalization. Technology development, market and new consumer type destroyed the political mediation capacity and the natural order diversity between cultures. Rationalization and globalization of production, international exchange and cultural diversity led to the emergence of a new type of contemporary civilization. „Each of us belongs to a sudden instrumentalized world of the economic trade and cultural origins of many groups and increasingly causes a double, public and private, economic and cultural life ... Most of us constantly combine in different, fragile and volatile ways, the participation in industrialized production and consumption, with an increased care to our identity, privacy and our origins. Individual personality, and the society are sprayed..."<sup>4</sup>

The cultural pluralism protects not only the diversity, but also promotes the dialogue of cultures beyond their differences, help enrich the human experience. The multiculturalism and universalism are united by their common will to place a culture of power over the state or social group interests.

The European cultural diversity is the product of long and continuous history, which is based on the acceptability of the other, tolerance, coexistence of plural, and the chance to assert their positions. "There is a European identity and it consists of history and common experience, settling thousands of years the Roman Empire, Christianity, Enlightenment, Industrialization."<sup>5</sup>

This spiritual pluralism is explained by some "fundamental elements of culture: religious currents, which were always transnational, scientific thinking, which circulated freely in the early modern era, artistic patterns and trends, ideologies, production techniques".<sup>6</sup>

The today situation in the EU perfectly illustrates the shared sovereignty. Achieving national sovereignty of member states is best achieved through collaboration that ensured a high degree of interdependence. The Union was created through a series of treaties, improved and modified several times, joined by almost all Western European countries. The Union has established policies, their own institutional commitments. The shared sovereignty is the key to future European construction, does not mean total loss of national sovereignty attributes, but seek for the development of external and interdependent capabilities of the national sovereignty. Once entered into the Union, Romania had to learn the European consensus on issues of national and European level. The Romanian governments had to learn to work with European institutions, restore the macroeconomic efficiency and better control the phenomena. The knowledge of the discussions in the European Union is a condition of leaving the isolation of Romanian domestic debate, the state of national fortress designed to protect the cultural frontier. The history of postwar Western and the concrete experience of transition in neighboring countries are very important. A liability in this regard, it is mass-media together with the civil society. This may present advantages and disadvantages of EU objective. Civil society should contribute to European, active and responsible citizenship, so that Romanians are integrated into a civilization of work, respect for property and labor of others, respect for self and national dignity.

The new configuration of Europe in the early third millennium, led to reformulations and new visions in almost all scientific fields. International Association for Intercultural Education uses the term "intercultural" when referring to education and the term "multicultural" in reference to various companies in terms of multicultural. Assessing other efforts require considerable resistance to the tendencies of discrimination.

### **3. The actual traditional values of the Romanian people**

The study was conducted on a sample of 265 respondents, Argeș și Vâlcea counties, in urban and rural. The questionnaire was open and had multiple answers or closed questions, followed by open questions with multiple answers. The sample composition was chosen in view of family groups, they were chosen so as to have a different level of education and culture. It was conducted following the documentation of work performed on the sociology of culture and philosophy, with concern for values and cultural functions, for communication of historical values and modern values, continuity and cohesion in culture, the phenomenon of crossing the current world crisis and globalization processes.

*The objectives of the research were :*

A sociological survey on the cultural values of urban and rural population of Romania.

Identification of economic, technical, scientific, social and political modernization which lead to a radical transformation of traditional structures;

Identifying beliefs, values, ideals learned and shared in the Romanian society;  
Identify optimum model of behavior and action in the community, the Romanian cultural activities, social, cultural and national realities;

Establishing the plateau of the research, relevant criteria for selection of towns and villages where they will conduct the research, establish sample building survey, a questionnaire.

Making a social investigation, the main research method in sociology causal relations methodological principles of conduct.

*Assumptions:*

1. Romanians have the perception that respect for traditions and cultural identity is important.

2. The cultural traditions are observed mainly in rural areas, which constitute the spiritual support and Romanians obligation to preserve cultural identity.

3. Current social reality, integration of Romania into the European Union, social issues, the current youth migration can contribute to alternating Romanian traditions and cultural values.

Public opinion about the different traditions of Romanians was different, 12, 9% of respondents believing that family ties in current conditions maintain or increase in current conditions, 11.6% felt that Romanians keep their national identity and traditions and it is a sign of patriotism, 8.7 % believe that respect for traditions is a cause of relaxation, joy and happiness; 3.7% of respondents consider that they retain ancestral rites, 3.7% believe that the traditions transmitted purification, peace, 2.9% think that traditions are maintained and transmitted exactly, 0.4% of respondents say that they have an educational role. A large number of respondents, representing 39.1% did not know what to answer, and 9.1% chose other answers. The answers to this question have concluded that Romanian traditions have undergone, there are modernist elements, their cultural message is not the same, many are unaware of their significance, there was little interest in preserving the traditions exactly, but most respondents have a positive opinion about the value of Romanian cultural traditions.

**Table 1. Public opinion about traditions**

Variants	Rate
Maintain family relationship / increases communication	12.9
Maintain national identity / patriotism	11.6
Celebration (relaxation, joy, happiness)	8.7
Maintain the faith/contact with God	5.8
Maintain ancestral rituals / memories of past	3.7
Purification, peace of mind	3.7
Maintain and transmit the traditions ( respect them)	2.9
Knowledge / understanding / training (educational role)	0.4
Others	9.1
Do not know/Do not answer	39.1
<b>Sum up</b>	<b>100%</b>

Asked if the Romanian traditions are important, 90% of respondents said yes, 6.6% believed that transmission of these traditions is important and compliance, and 2.2% gave no answer.

Although Romanians have no very clear opinions about the significance of respect for tradition, the answers are different, and 48.2% did not express any opinion, the most respondents considered the Romanian traditions widespread.

**Table 2. The tradition importance at the Romanian people**

Variants	Rate
Yes	90.5
No	6.6
Do not know/Do not answer	2.9
<b>Sum up</b>	<b>100%</b>

Ask what they think that "it will happen with the traditions in the future" 28.6% of respondents believe that national traditions will be preserved, 27.4% say that our traditions will be lost because young people no longer respect them, 7.1% of them think that an important reason is that the Romanian traditions could be altered by external influences, 25.3% believe that Romanian traditions should be mixed with traditions of other nations, will receive as a result of cultural influences of globalization and will not be authentic. The economic, technical, scientific, social and political phenomena leading to the modernization and transformation radical structures will affect traditional cultural values. 11.6% did not know to answer this question.

**Tabelul 3. The opinion about the Romanian traditions**

Variants	Rate
These will be kept	28.6
These will be lost because of the youth who don't take them into consideration	27.4
These will be lost because of the foreign influence	7.1
These will be mixed up with the traditions of other people	25.3
Do not know/Do not answer	11.6
<b>Sum up</b>	<b>100%</b>

Preservation and perpetuation of Romanian traditions will be possible, especially in rural areas, according to 65.6% of respondents, 28.2% consider that the environment is not so important, and not affect the chances for Romanian traditions to just keep finding that both preserve and perpetuate it is possible in rural and urban alike. 0.8% thinks that Romanian traditions will likely be observed, further, only in urban areas.

Responses led to confirm the first assumption: Romanians have the perception that the respect for traditions and cultural identity is important.

**Table 4. Preservation and perpetuation of Romanian traditions**

Variants	Rate
In rural areas	65.6
Both in rural and urban areas	28.2
In urban areas	0.8
Do not know/Do not answer	5.4
<b>Total</b>	<b>100%</b>

The motivation for cultural traditions should be preserved and perpetuated for 74.3% of the respondents is that they are the spiritual support of the Romanian people, transmitted from their ancestors the beliefs, values, learned and shared attitudes, ideals in the Romanian society, however a percentage of 14.9% do not think that the Romanian traditions send this message to the Romanians, and 10.8% had no opinion on these issues.

**Table 5. The spiritual support of Romanian traditions**

Variants	Rate
Yes	74.3
No	14.9
Do not know/Do not answer	10.8
<b>Sum up</b>	<b>100%</b>

More than half, namely 51.5% think that the Romanians must keep their cultural identity, 22.4% considered that this requirement should be met in a large extent 18.3% in a small extent and 1.7% in very small extent. This is the optimal model of behavior and action identified in the community, the cultural activities of Romanians, in social, cultural and current national reality.

**Table 6. Romanians obligation to preserve cultural identity**

Variante	Rate
In a very great measure	51.5
In a great measure	22.4
In a small measure	18.3
In a very small measure	1.7
Do not know/Do not answer	6.2
<b>Sum up</b>	<b>100%</b>

41.5% of the Romanians believe that they will have a better life in the future, while 31.1% believe they will live as now, only 16.2% believe that their lives will improve significantly. Generally, the forecasts for the Romanians living in the future are optimistic, or the same, although 11.7% of respondents believe that everyday living is improved, even believe that it will be lower, much lower or they do not know what assumptions to make about their lives.

The second hypothesis about the cultural traditions are observed mainly in rural areas, which constitute the spiritual support and Romanians obligation to preserve cultural identity is confirmed following the results of the survey.

**Table 7. Opinion of the Romanians about their living level in the future**

Variants	Rate
Better than now	41.5
As good as now	31.1
More better than now	16.2
Lower than now	7.1
More lower than now	0.4
Do not know/Do not answer	3.7
<b>Sum up</b>	<b>100%</b>

Half of respondents find one explanation at least, 49.7% in the absence of funds and the current economic crisis. The other part of respondents, 47.7% think that living in the future decrease may be due to the lack of employment, unemployment, poverty.

**Table 8. Motivation for lowering the living standards in future**

Variants	Rate
economic crisis / lack of funds	49.7
lack of jobs / unemployment / poverty	47.7
Do not know/Do not answer	2.6
<b>Sum up</b>	<b>100%</b>

Presently the respondents are concerned about problems they think important for them: 14.9% health, 12.9% price increase, 9.3% for keeping a job, 8.9% obtaining of high income, 8.6% of finding a job, 6.9% for securing the future of children, 2.1% of the personal security of housing, 0.7% of social unrest which take place, 0.6% of home maintenance expenses. Social and economic problems of the Romanians are different, but prevalent are those of health care, rising prices and job retention. But a number of 31.4% refused to give their opinion on what issues concern them and their existence in present.

**Table 9. Issues concerning Romanians now**

Variants	Rate
Health care	14.9
Rising prices	12.9
Job retention	9.3
Obtaining higher incomes	8.9
Finding a job	8.6
Providing daily food	6.9
Ensuring the future of children	4.1
Personal and home security	2.1

Social disorder	0.7
Dwelling expenses	0.6
Do not know/Do not answer	31.4
<b>Sum up</b>	<b>100%</b>

Regarding the positive effects the integration into the European Union had on the economic, social, cultural contexts, only 12.0% of respondents consider that integration into the European Union had a very positive effect on all levels, while 32.8% believe that the positive effect has been felt broadly. 55.2% of respondents say that EU membership has meant a small gain for Romania, very low, it was felt the positive effect of this phenomenon, while 17.4% were not expressed on it.

**Table 10. Romanian view on the positive effects of EU integration**

Variants	Rate
In a very great measure	12.0
In a great measure	32.8
In a small measure	24.9
In a very small measure	7.9
Not at all	5.0
Do not know/Do not answer	17.4
<b>Sum up</b>	<b>100%</b>

Romanians fear in proportion: 15.4% of job insecurity (unemployment), 13.7% of the country's crisis-economic instability, 13.3% have no fear that their lives could be worse, but a concern would be for government and current policy 4.6%, 4.6% for the hard life and low living standards, for 3.7% the rise in prices, fees and daily expenses. However, 44.4% respondents have not shared their fears about living in the future, yet believing in the possibility of increasing living in a not too distant future.

**Table 11. Why the Romanians fear that in the future**

Variants	rate
Job insecurity (unemployment)	15.4
Crisis / economic instability of the country	13.7
Of nothing	13.3
Government / current policy	4.6
The difficulty of life / low standard of living (poverty)	4.6
Rising prices / fees / daily expenses	3.7
Others	0.4
Do not know/Do not answer	44.4

Regarding the chances of success of Romania's youth, 29.9% of respondents felt that they are reduced, while 19.1% considered them very small, and 7.1% as non-existent. 5.8% of them believe that by studying young people can increase their chances of success for the future, while 1.7% say they will increase opportunities for young people because of their perseverance

and commitment. 1.7% have other views on the chances of success for young people, and a rate of 34.8% have not expressed a clear opinion.

**Table 12. Chances of success for young people in Romania**

Variants	Rate
Low	29.9
Minimum / very small	19.1
Missing / invalid	7.1
Through study	5.8
Perseverance / involvement	1.7
Others	1.7
Do not know/Do not answer	34.8
<b>Sum up</b>	<b>100%</b>

For 29.5% of Romanians, the emigration is one way to escape poverty, 3.3% consider an alternative of not getting unemployed in Romania, for 12.4% of respondents emigration is the possibility to live in a right society, 33.4% think that this phenomenon is the way to earn money.

In general, the emigration for the Romanians is the source of life and opportunity to the welfare of the family, this phenomenon is accepted by the most Romanians. Only 10.0% of respondents do not want to leave the country and 11.2% were not able to give an answer, the latter percentage is influenced by the prosperity of the family or that respondents were integrated in the work.

**Table 13. Romanians opinion about emigration**

Variants	Rate
It's the only way to escape poverty	29.5
It is the solution to unemployment	3.3
It is the possibility to live in a just society	12.4
It is a way to earn money	33.6
I don't	10.0
Do not know/Do not answer	11.2
<b>Sum up</b>	<b>100%</b>

The main causes that lead the Romanians to leave the country are for more than half of the Romanian, namely 56.7% poverty, lack of money and low wages they would earn in the country. 11.6% of respondents would be determined to leave the country if they did not have a place to work or be unemployed, 7.1% could be determined by the crisis and economic instability in Romania, 2.9% would go abroad to improve their standard of living, while 1.7% are considering the bad governance, corruption, bureaucracy in Romania as the main cause. 4.4% respondents believe that the Romanians had as the motivation to emigrate, the lack of a job or to earn money, while 19.9% had other opinions or did not think of the causes for Romanians to emigrate.

**Table 15. Reasons for Romanians leaving the country**

Variants	Rate
Poverty / lack of money / low wages	56.4
Lack of employment / unemployment	11.6
Crisis / economic instability	7.1
To improve living standards	2.9
Bad governance / corruption / bureaucracy	1.7
For a job / earn money	0.4
Others	0.4
Do not know/Do not answer	19.5
<b>Sum up</b>	<b>100%</b>

Influences of Romanians who have immigrated to foreign countries is reflected for 10.8% of respondents on high living standards for higher wages by 8.3% and 7.1% by changing the mentality. Only for 5.4% of the respondents it is possible that those living abroad to lose their traditions and to dispose of their country, 1.7% of these believe that they could change their personality, 8% think that they find a job. However more than half, 59.8% are unable to give a clear answer on the departure abroad influences for the Romanians who left.

**Table 15. The influences of foreign countries on migrants**

Variants	Rate
Higher living standards	10.8
Higher wages	8.3
Change of mentality	7.1
Loss of traditions / alienation	5.4
Change of personality	1.7
To have a job	8
Others	6.2
Do not know/Do not answer	59.8
<b>Sum up</b>	<b>100%</b>

Romanians view on immigrants and their cultural identity is a percentage of 70.5% for maintaining their cultural identity, values, norms, traditions, customs and Romanian language. Only 12.4% of respondents said that the Romanian migrants no longer fully preserve their cultural identity and 17% have not exhibited any opinion.

**Table 16. Immigrants and preserving the cultural identity**

Variants	rate
Yes	70.5
No	12.4
Do not know/Do not answer	17.0
<b>Sum up</b>	<b>100%</b>

40.2% of respondents believe that social problems are those that cause loss of traditions and cultural identity, while 34.0% said that the social problems are not those that influence. 25.7% did not say any point of view.

**Table 17. Social problems lead to loss of traditions and cultural identity**

Variants	rate
Yes	40.2
No	34.0
Do not know/Do not answer	25.7
<b>Sum up</b>	<b>100%</b>

Through the main social problems 26,5% identified emigration, 12,2% said that an important issue is the social alienation, 8,2% of respondents considers that the loss of national identity is a social problem, for 7,2% the loss of integrity as a social problem which causes loss of traditions. 3.0% said that unemployment, poverty, lack of jobs is an important cause in this respect. It confirms, to some extent, the third hypothesis that: the present social reality, integration into the European Union, social issues, the current youth migration can contribute to impaired Romanian traditions and cultural values.

**Table 18. Social problems that lead to loss of traditions and cultural identity**

Variants	Rate
Emigration	26.5
Alienation / estrangement	12.2
Loss of cultural identity	8.2
Loss of integrity	7.2
Unemployment, poverty, lack of jobs	3.0
Others	7.2
Do not know/Do not answer	35.7
<b>Sum up</b>	<b>100%</b>

The sample consisted of 45,2% female persons and 54% male persons.

**Table 19. Sex**

Variants	Rate
Female	45.2
Male	54.8
<b>Sum up</b>	<b>100%</b>

51,0% with age between 19-25 years old, 12,% between 26-30 years old, 5,8% between 31-40 years old, 12,9% between 41-50 years old. 3,3% between 51-60 years old and 0,4 over 61 years old. The chosen population is represented by younger respondents 63% between 19-30 years old considering the opinion of young people important, as they represent the future of Romania.

**Table 20. Age**

Variants	Rate
19-25 years	51.0
26-30 years	12.0
31-40 years	5.8
41-50 years	12.9
51-60 years	3.3
over 61 years	0.4
Do not know/Do not answer	14.5
<b>Sum up</b>	<b>100%</b>

As area of residence so we chose people who come from families both in rural areas (50,6%), and in urban area(46,1), the ratio between the two areas is approximately equal.

**Table 21. Residence**

Variants	Rate
Rural	50.6
Urban	46.1
Do not know/Do not answer	3.3
<b>Sum up</b>	<b>100%</b>

63,9% of respondents are married, 30,7% are married, and 2,5% are divorced. Because most of the respondents are young, they are unmarried.

**Table 22. Marital status**

Variants	Rate
Married	30.7
Not married	63.9
Divorced	2.5
Do not know/Do not answer	2.9
<b>Sum up</b>	<b>100%</b>

Respondents have 77,6% medium studies: 68,9% - highschool, 6,2%- professional school, 2,5%- post-secondary school. 3,7% graduated primary school, and 15,4% respondents have higher education. We found that representativeness is given by the average education, the most Romanians have.

**Table 23. Graduated school**

Variants	Rate
Highschool	68.9
Superior studies	15.4
Professional school	6.2
Primary school	3.7
Post-secondary school	2.5
Do not know/Do not answer	3.3
<b>Sum up</b>	<b>100%</b>

We chose a sample of people with different occupations: students, workers in different sectors of activity, unemployed, officials, administrators, technicians, housewives, traders, distributors, doctors, engineers, teachers, officers, owners, managers, pensioner, educators, teachers, nurses.

**Table 24. Profession**

Variante	Procent
Pupil/Student	34.9
Worker	18.7
Unemployed	10.8
Officer, manager, technician	10.4
Housewives/ unemployed	4.1
Trader, distributor	4.1
Doctor, engineer, teacher, officer	2.5
Owner / manager	2.5
Pensioner	2.1

Educator, teacher, nurse	1.2
Do not know/Do not answer	8.7
<b>Sum up</b>	<b>100%</b>

### Conclusions:

Culture, as a set of norms and values, appears as a reaction of a group of people to specific needs that arise in different existential perimeters. It balances the needs and possibilities for everyone, on the one hand, and society, on the other. Culture arises from an exchange between community which prescribes and requires, and the individual that supports, has a set of desirable values. Culture is the synthetic expression of real knowledge and our positioning to it.

This helps us to grasp, class and do the hierarchical groups of items that are similar in appearance but not decisive, contributes to operations of categorization, by individuals, internal and external realities.

Culture profile development occurs on the individual, his affirmation, his self-attitudes or skills. This proves especially important to young people through interaction with the culture and family that occurs in different ways. In addition to theories of culture, a direct entourage has certain developments of the individual, through the cultural compliant environmental practices.

Formal values and norms established in society have a cultural genesis and etiology. How many companies are many the more cultural systems are. Diversity generates multiplicity of systems of law firms. Some acts are prescribed in some companies, others are condemned everywhere, etc... Legal internationalization raises new problems. Communities have their own regulatory systems, and globalization requires legal unification. Common problems require common resolution. Bioethics issues, crimes against humanity, xenophobia require common positions, consistent solutions in terms of international law.

These problems have different meanings from country to country. This is the obstacle to be removed through international intercultural strategies.

### Acknowledgements:

This paper is supported by the Sectorial Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number SOP HRD/89/1.5/S/59758.

Title and intellectual and industrial property rights on the placement results belong to the Romanian Academy postdoctoral research.

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<sup>1</sup> For many details see Birzea, Cezar, 1994, *Les politiques éducatives dans les pays en transition*, Council of Europe Press, Strasbourg, p. 17-19

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<sup>4</sup> ibidem, p. 299-300

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## ORIGINAL PAPER

Gabriela ZANFIR

### “Big Brother” in a Post-communist Era. A Radiography of the Protection of Private Life in an European Romania

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**Abstract:** *Reducing privacy to an insignificant value is one of the main faults of totalitarian regimes. It is maybe their most frustrating feature for the inner comfort of the individual who is being surveilled. The suspicion that his or her every move could be reported any time, registered and afterwards kept in a file to be judged by the arbitrary mechanisms of such a regime annihilates the manifestations of free will in all of its facets – freedom of speech, economical freedom, freedom to socially interact.*

*The feeling of being constantly surveilled creates psychological discomfort and produces mutations in behavioral decisions. Maybe it is the annihilation of free will of the individual which decisively contributed to the fall of totalitarian regimes in the late '80s, as the individual desired to regain his or her privacy, to freely develop his or her personality, to fully enjoy his or her inherent liberties.*

*But the development of society paradoxically made privacy more threatened in a present dominated by democratic values, due to the spectacular development of technology. The Surveillance Society is more present in academic and social discourses than ever. But is it actually malefic in a democratic context? Is it not useful and necessary for preventing destructive actions such terrorism?*

*The answers to these questions are not at all simple. They should start with a few ideas, such as considering the democratic context as the one adding value to privacy. This time around, we are not evaluating privacy, but a right to privacy, guaranteed to individuals by established legal instruments. This paper aims to analyze the mechanisms of protecting private life in a post-communist Romania, underlying also the features of a new type of Surveillance Society.*

**Key-words:** *Surveillance Society, privacy, totalitarian regime, democracy.*

## 1. Introduction

In an essay named "The origins of modern claims to privacy"<sup>1</sup>, Alan Westin explains briefly the two major traditions on privacy in the modern world, both having a global impact, and both springing from two ancient civilizations. In his view, the first tradition resides in ancient Greece and afterwards in English Protestantism and common law traditions. It presupposes a "trend to place limits on the surveillance powers on governmental, religious, and economic authorities in the interest of privacy for individuals, families, and certain social groups in each society"<sup>2</sup>. The competing tradition finds its roots in the Roman Empire, Sparta, the medieval Church and the continental nation-state, and it "continued very broad powers of surveillance for governmental, economic, and religious authorities. The socio-political balance in the second tradition created a restrictive setting and instilled a competing set of values in its citizenry"<sup>3</sup>.

Other researchers believe that these two traditions are territorially circumscribed, one to America and the other one to Europe, and that the main difference defining them comes from two different philosophical fundamentals – liberty staying at the basis of the American concept of privacy, and dignity at the basis of the European concept of privacy<sup>4</sup>. These differentiations are mainly linked to the applicable law on invasions of privacy.

The main framework for such invasions consists of surveillance, which appears in societies under several dimensions. It was indeed recognized that "each society sets socially approved machinery for penetrating the privacy of individuals or groups in order to protect personal and group rights and enforce the society's rules and taboos"<sup>5</sup>. But this view has only a partial value of truth, as the scope of surveillance mechanisms is not always the protection of personal and group rights. It seldom is. History shows that surveillance is a powerful tool in the hands of political regimes, especially when used for determined purposes such as controlling masses and the cultivation of fear. Hence, before starting an analysis on privacy from the applicable law and the legal mechanisms of its protection, it is perhaps more useful to scrutinize the clash between individual privacy and surveillance, as it stands at the common core of every society, regardless of the philosophical fundamentals of law or the origins of history.

Which are the dangers of an unbalanced privacy/surveillance relationship? To answer this question, we should first note that individual privacy loses its value in this context and becomes more of a "public privacy". "A public value of privacy derives not only from its protection of the individual as an individual, but also from its usefulness as a restraint on government or on the use of power... Privacy in this sense is not important just to individual liberty but also to civil or social liberty because it helps to establish the boundaries for the exercise of power"<sup>6</sup>.

When analyzing surveillance and privacy, the discussion is always developed under the metaphor of Big Brother. The Orwellian concept is more connected to the idea of a surveilled society as a whole than the much older philosophical theory of the Panopticon<sup>7</sup>. Nevertheless, the latter first detailed the idea of controlling behaviors under surveillance. Both of them developed around one omniscient center of power which had the ability of always knowing what the subjects of surveillance are doing. These works of literature and philosophy marked the social conscience of the modern world. And not only the conscience.

Current Western societies are defined often as Surveillance Societies, due to the technological developments which allow several types of surveillance of individuals. A plethora of studies were published in the last three decades on this subject. Nevertheless one aspect of the idea of a Surveillance Society is neglected or insufficiently studied in such papers: the factual and too-Orwellian Surveillance Society created under totalitarian regimes. I consider it is paramount to establish the coordinates of this kind of societies, as Surveillance Societies, in order to

consciously set the limit of acceptable surveillance and intrusion in privacy under a democratic regime.

I chose to make such an analysis on the case-study of Romania, a former communist country which now is a Member State of the European Union.

This paper will continue with (2) the concept of Surveillance Society and (3) The clash between Surveillance Society and individual privacy, where I will first analyze the mechanisms and effects of surveillance in communist Romania, followed by a study of the means of surveillance in democracies in general and, in this view, the special case of post-communist countries. I will continue with an overview of the (4) legal safeguards for privacy in post-communist Romania, looking at the European level of the protection of privacy as a human right, the constitutional right to privacy, the right to privacy in the new Civil Code and the special case of the right to data protection. The last section will contain the conclusions of this paper.

## 2. The concept of Surveillance Society<sup>8</sup>

### 2.1 Shaping the Surveillance Society from classic and modern scientific views

Surveillance Society has been described as a society characterized by a significant increase in investments in technology, and bureaucracies devoted to promoting domestic security and gathering intelligence and surveillance using all of the devices that the digital revolution allows<sup>9</sup>. This definition, in fact, encompasses a general, abstract view of the society as a whole, and one can imagine it was given by an observer placed somewhere above the factual society. Being mostly a legal definition – it was used in a Constitutional Law article, it's not surprising that it misses the subjective touch. For I consider that we cannot talk about the Surveillance Society ignoring the intimate dimension of the concept.

By intimate dimension of the concept I mean the effects such a society has on the person and his/her sense of privacy. I consider these effects as being quintessential in defining the Surveillance Society. Before sketching a proper definition of the concept, I will analyze some of the views already expressed regarding the Surveillance Society.

It has been shown that in academic literature, the term "Surveillance Society" has been used in a plethora of political science studies already since the 1980s in order to describe a computer-based society where information plays a crucial role within the bureaucratic control exercised by the national state<sup>10</sup>. It appears that the idea of a surveillance society started cropping up after the first wave of computerization of organizations in the 1970s. By the 1980s a number of serious studies was building on those of the 1970s and some started to use the term "Surveillance Society"<sup>11</sup>. Gary T. Marx<sup>12</sup> in 1985 was the first social scientist who wrote about the computer-based "Surveillance Society" and Oscar Gandy<sup>13</sup>, in 1989, also used this notion to describe the "bureaucratic social control".

Nevertheless, it is not important who first scientifically described the Surveillance Society, but which is the meaning academics gave to the concept.

It was considered useful to first determine what surveillance is, and then integrate it in the broader concept of the Surveillance Society. One of the most prolific observers of the field, David Lyon, starts the process of defining surveillance from the origin of the word, noting that it is rooted in the French verb *surveiller*, which means literally *to watch over*. Hence, surveillance refers to processes in which special note is taken of certain human behaviors that go well beyond idle curiosity<sup>14</sup>.

Thinking of curiosity, Alan Westin also considers it is inextricably linked to surveillance, but it explains the linkage with a more individual-oriented touch. He writes that an essential element of privacy<sup>15</sup> is a tendency on the part of individuals to invade the privacy of others, and of

society to engage in surveillance to guard against anti-social conduct<sup>16</sup>. He continues by arguing that at the individual level, this is based upon the propensity for curiosity that lies in each individual, from the time that as a child he seeks to explore more than he learns casually about what is “really” happening to others<sup>17</sup>.

The mere social existence of an individual requires the invasion of his/her privacy through surveillance means, which differ from era to era. Nevertheless, this sociological truth does not explain the concept of the Surveillance Society. There are two points that we should keep in mind. First, every society hosts a type of surveillance, as a pre-condition of its existence. Second, not every society is a Surveillance Society.

For this to happen, I consider there are two conditions to be fulfilled: surveillance has to be a key factor in the functioning of that particular society and surveillance has to “sculpt” in particular ways, that I will detail later, the individuals of that society.

Lyon defines surveillance as the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction<sup>18</sup>. He explains that surveillance directs its attention in the end to individuals, therefore it is focused; it is systematic, as the attention to personal details is not random, occasional or spontaneous, but deliberate and depending on certain protocols and techniques; it is routine, as it occurs as a normal part of everyday life in all societies that depend on bureaucratic administration and some kinds of information technology. But the author himself states afterwards that most of these characteristics have exceptions, which must also be taken into account when explaining surveillance, especially in the context of the Surveillance Society. Hence the need for another type of definition, which would be able to include the rules, as well as the exceptions.

The authors of a comprehensive report on the Surveillance Society in 2006<sup>19</sup> used Lyon’s definition and changed “purposes of influence, management, protection or direction” with “the sake of control, entitlement, management, influence and protection”<sup>20</sup>. They defined surveillance and preferred to describe the Surveillance Society, instead of giving a clear definition to this latter concept.

There are also authors who opt for the more sophisticated expression “surveillant assemblage”<sup>21</sup>, instead of the commonly used Surveillance Society. They build their concept countering it to the “Panopticon” in a comparison with the modern society. Jeremy Bentham, the British philosopher, published his plan for the Panopticon penitentiary in 1791, describing a building on a semi-circular pattern with an “inspection lodge” as a tower at the centre and prisoners’ cells around the perimeter. The cells were open to watch by the guards from the tower – “the inspectors”, but the prisoners were unable to view their watchers. This concept was used and reinterpreted in the 20<sup>th</sup> century by Michel Foucault<sup>22</sup>, who “illuminates the connections between the Panopticon and modernity by showing that it forms the watershed between punitive and reforming disciplinary practices”<sup>23</sup>.

Panopticism is considered by Haggerty and Ericson<sup>24</sup> too monolithic in its approach, as it disregards the developments with a social and a technological nature that have changed the surveillance landscape considerably. They explain that an assemblage is “a multiplicity of heterogeneous objects, whose unity comes solely from the fact that these items function together, that they work together as a functional unity”<sup>25</sup>. In other words, an assemblage is not a discretely bounded, structured and stable whole, but is made up of a multitude of interrelated parts<sup>26</sup>. How is this concept related to the surveillance society? Haggerty and Ericson believe that surveillance is driven by the desire to bring systems together, to combine practices and technologies and integrate them into a larger whole<sup>27</sup>. Therefore, unlike Orwell’s Oceania (the fictional totalitarian state he imagined), this assemblage operates across both state and extra-state institutions<sup>28</sup>. But

what is truly significant in the “surveillant assemblage” is that this theory incorporates a vast dimension of effects upon individuals, in that it presupposes

“the formation and coalescence of a new type of body, a form of becoming which transcends human corporeality and reduces flesh to pure information. Culled from the tentacles of the surveillant assemblage, this new body is our *data double*. Data doubles circulate in a host of different centers of calculation and serve as markers for access to resources, services and power in ways which are often unknown to its referent”<sup>29</sup>.

It can be observed that the authors already consider the transformation of “flesh” into “pure information”, which can hint into the direction of certain effects upon individuals that the Surveillance Society might have.

It is obvious that behind the mechanisms of such a society, behind the public and private forms of surveillance and the different means used to achieve it, what matters the most is the purpose of such practices and which are their effects upon individuals. The simplest way to think of surveillance is that it always implies a watcher and someone being watched.

Admitting that the modern world is a Surveillance Society, it is vital to think of it from a personal perspective, in order to protect fundamental freedoms, such as liberty, dignity and privacy.

## 2.2 The tridimensional effects of the Surveillance Society upon “the watched”

I will show in this section which are, in my opinion, the three main effects that the Surveillance Society has on the individuals who are being watched. I am referring both on public and private forms of surveillance – by which I mean both surveillance performed by the state and surveillance in the workplace, customer loyalty programmes or any other type of surveillance conducted by a private entity.

A) *The individual is depersonalized, becoming more of a statistical data.* If we consider the quantity of information collected about an individual during his/her lifetime, we cannot honestly think of a limit. In modern societies there is not one individual who does not have assigned a unique number which can represent the American social security number, the Personal Numerical Code used in some countries in Europe, the passport numbers, the ID numbers – and these are only the compulsory numbers that “translate” in the language of information each individual and that are without exception collected in state driven databases.

But there are also PIN codes, credit card numbers, telephone numbers, registration plates, customer numbers, user names and it appears to be a rule that the more complex the society gets, the more numbers are assigned to each individual, numbers that are collected and stored in all sorts of databases, for easiness to keep track of actions and to control. Therefore, no wonder that instead of surveillance, academics started to draw attention to “datavveillance”, which has been described as “the systematic use of personal data systems in the investigation or monitoring of the actions or communication of one or more persons”<sup>30</sup>. Roger Clarke notes that datavveillance is significantly less expensive than physical and electronic surveillance, because it can be automated. As a result, the economic constraints on surveillance are diminished and more individuals and larger populations are capable of being monitored<sup>31</sup>.

B) *Ultimately, the individual loses the liberty to action, to interact.* Before introducing the concept of Surveillance Societies in social sciences, some parts of the world have known an almost Orwellian surveillance, non-metaphorically speaking. Such is the case of the former communist countries from Central and Eastern Europe, where surveillance became the principle means of preserving the power in the hands of the totalitarian regime, as I will further describe in the next section of this paper.

Most of the theoreticians of the Surveillance Society concentrate on societies that face surveillance under its modern facets, limiting thus naturally their analysis of all the concept's dimensions. As I argued in the introduction of this paper, a study of a totalitarian Surveillance Society is extremely important in order to limit the effects upon democracy of an unbalanced surveillance/privacy relationship.

The question is "Which is the difference between the Surveillance Society known in former communist countries and the modern Surveillance Society?" And the answer is that there is a significant difference and that difference can be summarized in one word: democracy. The political and judicial framework in which surveillance takes place is different, the repercussions of surveillance are different and it is difficult to make a comparison, as the only common denominator between the two societies is surveillance itself.

C) *The individual becomes isolated.* This last effect is rather a secondary one, as I consider it derives from the previously discussed one. "Isolation" is a strong word, but it describes the best the phenomenon of one's tendency to keep his actions and thoughts for himself/herself. The acute need for privacy in a 24/7 surveilled society persuades individuals to go beyond what is necessary to keep their "business" private. Anthropological literature documents the increased physical and psychological opportunities in modern societies to gain privacy through anonymity, mobility, and economic autonomy<sup>32</sup>. That happens as greater population density, technological advances and increased governmental power all undermine an individual's ability to maintain a private space within a broader social community<sup>33</sup>.

Can we also think of material or physical isolation by taking into account the amount of surveillance centered on traveling? It is a question to think about. Mobility characterizes the modern world, and it grows from year to year. But as it becomes denser, the means of surveilling it become greater. Evidently, such a surveillance cannot be rendered as all around negative, but it exists and it is intense. According to Lyon, surveillance is oftentimes a necessity due to the way we structure our political and economic relationships in a society that values mobility, speed, security and consumer freedom<sup>34</sup>.

Just take into consideration the Passenger Name Records, the PNR agreements between countries which make PNR available to governments worldwide, and the scanners from airports. A traveler has almost nothing private regarding his or her travel. Nevertheless, as highlighted above, mobility has the tendency to grow, so it seems that the complete loss of privacy regarding one's travel does not influence this phenomenon. Moreover, it is generally considered necessary, especially after 9/11.

Two conclusions can be drawn from here. The first one is that surveillance is too complex of a phenomenon to categorize it as good or evil. The second one is that isolation as an effect upon individuals of the Surveillance Society refers to an endeavor in the intimate sphere of a person, as a result of what one considers necessary to protect as being private, as opposite of what one considers in place to give away from his private life, often for the sake of security.

### **2.3 A new definition of the Surveillance Society**

The concept of Surveillance Society is a multilevel one. It implies several categories of watchers - public and private, intelligence gathering, complex means and technologies to gather information, a constitutional reform in progress, promotion of domestic security, government investments in technology, an increased bureaucracy and an omnipresent administration.

However, besides watchers and the procedural framework of watching, in describing the concept of the Surveillance Society is compulsory to also look towards the watched. Because these are the three elements of the Surveillance Society. As a result of the complex and constant means of surveillance, individuals of such a society are depersonalized, becoming more of a

statistical data, they are in the process of losing liberty to action and to interact and they become more isolated for the sake of protecting their privacy.

Therefore, it can be summarized that the Surveillance Society is a society which functions on an infrastructure of multilevel and multipurpose surveillance, performed by public and private entities, in an over bureaucratic state, depersonalizing, isolating individuals and also censoring their liberty to action and interact.

In the next section of the paper I will present the case study of Communist Romania regarding the coordinates of the Surveillance Society of that era. It will be followed by a brief inventory of the mechanisms of surveillance in democracy. The last subsection will analyze the special case of post-communist countries, by making a comparison between the effects of totalitarian surveillance and the impact of modern day surveillance in a democratic society.

### 3. The clash between Surveillance Society and individual privacy

#### 3.1 Communist Romania – a case study

“Freedom is slavery, war is peace, ignorance is strength” were the three principles Orwell used to describe the society in his “1984” novel, “a world striking similar to the one in which people under soviet-communist occupancy still lived in the year which gave the title to the British writer’s novel”<sup>35</sup>.

In 1948, after the Communist Party had taken the control over the whole Romanian society, a new movement developed in Romania: the elimination of all the military, internal affairs and intelligence structures – the Safety (“Siguranța”), the Police, the Gendarmerie, and the Special Service of Intelligence, followed by their replacement with other structures, created in accordance with “class” criteria – the Security (“Securitatea”) and the Militia, which are the first institutions that implemented the rule of compromise and accepted, under the direct command of soviet counselors and NKVD/NKGB agents, to unconditionally promote the interests of the totalitarian regime<sup>36</sup>.

An analysis of the internal orders and directives of the Security clearly shows that one of the tools for legitimating repression in Romania was “the organization and development of the informative-operative activities of the Security organs (verification, surveillance and informative tracing, trailing, operative technique, interception and secret censorship of the correspondence, warning measures, perquisitions, investigations etc.), according to documents such as *The Directive on the organization and the management of informative work in the villages, 1951*; *The Directive on the informative work for investigations of the State Security Ministry, 1953*; *The Directive on the secret censorship of correspondence No. 80 from 20 March 1954 (...)*”<sup>37</sup>.

Basically, every action and thought which was not in accordance with communist principles and rules was “turned in” to the Security. Surveillance was accomplished by mechanical and non-mechanical means, transforming half of the population of communist countries into “watchers” and the other half into “watched”, all of them being actually surveilled by one organ of the state – the Security, which took action every time a “watched” was considered not to comply with the state’s rules.

Irrespective of the means used – trailing, investigations, punishment or informational censorship, surveillance activities of the “enemy-individual” or the “potential enemy-individual”, the Security was relying on the multitude of “eyes and ears”, especially recruited to be hyper-vigilant and which constituted “agentura” or the informative network<sup>38</sup>.

In 1948, the budget of the Security contained funds for 4.641 employment positions, of which 3.549 were already occupied by February 11, 1949. The number of job positions within the

Security organs increased gradually, reaching over 20.000 employees in 1989, which were coordinating an apparatus of 400.000 informers<sup>39</sup>.

Other data indicate that in 1965, in the general archives of the State Security organs there were about 7 million citizens registered (under the category of “watched”), which represented one third of the country’s population<sup>40</sup>.

According to an official document from that era - “The order regarding the work of the informative network No. 13/00088405 from November 30, 1972”, issued by the Ministry of Internal Affairs, “The informers are the most important source of information from the informative network and, as a consequence, there should be a continuous focus on the recruitment of certain persons capable to enter in the intimacy of the surveilled elements, to acknowledge their illicit plans and intentions, in order to counter them with maximum operability and efficiency”<sup>41</sup>. This phrase could stand as the quintessence of the Surveillance Society created by the communist regime in Romania. The organs of the state, using informers as a tool, broke constantly into the intimate sphere of its citizens (“surveilled elements”), hunting even their thoughts (“intentions”), which were against the arbitrary and oppressive principles and rules of the regime (“illicit”), with the scope of bringing upon citizens terrible consequences (“to counter them with maximum operability and efficiency”) in order both to eliminate the possible resistance and also to create the constant feeling of fear which ultimately self-censored thoughts and actions.

The soviet model of evidence, even though based on compliance with strict rules of conspiracy, became efficient through the *dossier technique* – a modality to gather, store and process information, with an evaluative-demonstrative purpose of the dominator – unique, powerful and omnipresent, which had the possibility to blackmail and compromise at any given time<sup>42</sup>.

It is considered that the communist regime “holds the record of looking askance at anybody, no matter his or her social or individual particularities. A general suspicion is the rule, thus contributing to the maintenance of an environment of fear”<sup>43</sup>.

A very powerful image is created by a Romanian author<sup>44</sup> who describes the phenomenon of “waiting in line” during the communist era. *Waiting in line* was a part of the daily life in communism. The generalized lack of merchandise on the market – be it food, clothes or hygiene products, transformed all the citizens into waiting in line practitioners whenever there was a rumor that “something” is soon coming to the corner shop or to the supermarket. Young and old were gathering starting late in the night and waited for several hours, sometimes only to find out the “something” was “nothing” or it was already exhausted. But they would do it again the next day if the same rumor were to be heard in the neighborhood.

The Security officers, who were specialized in staying in line in front of shops and markets along with the people waiting for food or different other merchandise, were a diffuse category of informers. “Most of them were only ordinary collaborators, *out of envy*, a lot of poor and mean pensioners, as many as the blades of grass. Some of the Security officers’ kids, more often than their parents, would also wait in line, at the beginning of it, out of courtesy. They would eavesdrop to report home later what they would hear, just as they were taught. The rumors’ starters were launching provocations to see who bites the bait; they would complain for a while and afterwards they would apply the double bind strategy: *Oh, madam, we are coming to a stiff end... But it’s not The Comrade’s*<sup>45</sup> *fault. He doesn’t know, poor guy, the dogs around him wouldn’t let him now*”<sup>46</sup>. The author believes the Security officers were testing the collective psychology by being the first ones who told political jokes, who complained and talked about “Europa liberă” (Free Europe) radio only to see how people would react. “Any agglomeration, any human concentration had to be infiltrated massively, surveilled, intoxicated and processed, like a giant social experiment on lab rats”<sup>47</sup>.

Under such circumstances, the “daily fear” developed naturally. The psychological dimension was overwhelming in this direction. In a study conducted under the exact title “The Daily Fear”, a psychologist evokes how constantly knowing they are surveilled and being aware of the possible consequences had influenced the behavior of Romanians in the communist era. He analyzed the period of the ‘80s, especially during winters, when Romania dealt with a massive lack of food and also a generalized heating problem in the blocks of flats. “Not only the fear of an external nature is unconsciously hidden, or, more generally, developed inside the psychological apparatus, but the society could influence such a transformation. The risks of discussion, let alone criticizing, the food and heating problems were greater than the hunger and the feeling of being cold themselves”<sup>48</sup>. He concluded that “the terror has as possible source the risk of expressing different opinion in a social space where only the version of the single Party had the right to exist”<sup>49</sup>. He also observed that “the limits of the creation of close relationships were important. The fear of informers imposed the avoidance of certain discussions, eliminated certain subjects”<sup>50</sup>.

A part of the effects of the Surveillance Society upon the individual I underlined in the previous section (the individual becomes more isolated, he or she loses the liberty to action and to interact) are confirmed by analyzing the concrete situation of such a profound Surveillance Society perfectly developed in a totalitarian logic, as communist Romania. Regarding the assignment of more and more numbers to one individual – this feature better defines the modern days Surveillance Society. Nevertheless, it can still be found in an incipient form in the totalitarian surveillance society, taking into account the enormous number of files with personal data stored by the Security forces.

As one can easily conclude, privacy almost did not exist. It was replaced with fear, generated by the constant feeling of being surveilled. It is interesting though that the Romanian Constitution of 1952, in art. 88, provided that “the law protects the inviolability of the domicile and the secret of correspondence”, which represent two of the facets of privacy protection by the state. The Constitution of 1965 contained similar provisions. In art. 32, it stated that “the domicile is inviolable” and art. 33 that “the secret of correspondence and of telephone conversations is guaranteed”. Such provisions were irrelevant, as the institutions of the state never applied them. The same constitutions provided a whole set of human rights, including the freedom of thought and of religion – which, in reality, were only utopian in the communist state.

Even though totalitarian regimes in Europe disappeared in 1989, the coordinates of a Surveillance Society are still present. The differences between the current society and the one I described in this section are, nevertheless, huge. To better understand the nature of these differences, and also why we can still talk about a Surveillance Society, the next section will deal with the surveillance mechanisms in democracy.

### **3.2 Surveillance mechanisms in democracy**

“We live in a surveillance society. It is pointless to talk about surveillance society in the future tense. In all the rich countries of the world everyday life is suffused with surveillance encounters, not merely from dawn to dusk but 24/7. Some encounters obtrude into the routine, like when we get a ticket for running a red light when no one was around but the camera. But the majority are now just part of the fabric of daily life. Unremarkable”. This is how “A Report on the Surveillance Society” put together by the Surveillance Study Network for the UK’s Information Commissioner begins. And it was made in 2006. In the time that has passed since then, the surveillance capabilities of the state and of private entities developed without taking a break.

But what differentiates the two kinds of Surveillance Societies and, more importantly, how can the current one be stopped to turn into a totalitarian one? This section will answer both

questions, after a short analysis of two current Surveillance Societies considered as such by academics – the European Union and the United States of America.

### 3.2.1 The United States of America<sup>51</sup>

In a paper titled “The Processes of Constitutional Change: From Partisan Entrenchment to the National Surveillance State”<sup>52</sup>, J. Balkin and S. Levinson make a thorough analysis of the American society, in the general framework of Constitutional legal and political institutions. They describe “an emerging regime of institutions and practices” that they call “the National Surveillance State” and that they think “represents the major constitutional development of our era”<sup>53</sup>.

The authors underline that the National Surveillance State responds to particular needs of warfare, foreign policy and domestic law enforcement in the twenty-first century. In their rationale, Balkin and Levinson argue that the significant changes in the judicial doctrine – which can be traced in the recent American legal system, reflect larger institutional changes, like the growth of the administrative state, and broader political forces. They explain a set of mechanisms, with concrete examples from the social, economical and judicial sphere, which led to “the rise of the National Surveillance State”<sup>54</sup>. It is not, however, solely a product of the September 11 attacks, as its becoming started before that.

“Equally important to the rise of the National Surveillance State are new technologies of surveillance, data storage, and computation that arrived on the scene in the latter part of the twentieth century. These would have been produced whether or not the United States was attacked on September 11, 2001”<sup>55</sup>. Basically, the authors argue that the current state of invasion of privacy by the US government existed in incipient ways before the normative acts emerged after 9/11.

For instance, administrative warrants were already authorized in a small number of cases, but “the 2001 USA PATRIOT Act expanded their use and authorized a system of National Security Letters that the FBI has employed with increasing frequency in a wide variety of situations with only remote connections to the goal of preventing terrorism”<sup>56</sup>. Balkin and Levinson draw attention on several dangers the National Surveillance State may produce, among which they also analyze the loss of civil liberties protections, checks and balances in the criminal justice system.

Therefore, they also take into consideration effects of the Surveillance Society on individuals. But they define the emerging National Surveillance State as a state being “characterized by a significant increase in government investments in technology and government bureaucracies devoted to promoting domestic security and (as its name implies) gathering intelligence and surveillance using all of the devices that the digital revolution allows”<sup>57</sup>.

One can add to the findings of academics analyzing the political state mere recent facts, connected both to the private and the state sectors. For instance, only recently a Stanford University study discovered that more than half of the 185 high traffic websites looked at for the purpose of the research, shared a consumer’s username or user ID with another site<sup>58</sup>. The author of the study summarized the results using a reference to 1984: “Click the local Home Depot ad and your email address gets handed to a dozen companies monitoring you. Your web browsing, past, present, and future, is now associated with your identity. Swap photos with friends on Photobucket and clue a couple dozen more into your username. Keep tabs on your favorite teams with Bleacher Report and you pass your full name to a dozen again. This isn’t a 1984-esque scaremongering hypothetical. This is what’s happening *today*”<sup>59</sup>.

In a famous case from early 2012, a father found out about his young daughter’s pregnancy after she received a handful of personalized ads and coupons selling merchandise for

pregnant women, sent by Target, a supermarket chain<sup>60</sup>. US media wrote that “for decades, Target has collected vast amounts of data on every person who regularly walks into one of its stores. Whenever possible, Target assigns each shopper a unique code — known internally as the Guest ID number — that keeps tabs on everything they buy. *If you use a credit card or a coupon, or fill out a survey, or mail in a refund, or call the customer help line, or open an e-mail we’ve sent you or visit our Web site, we’ll record it and link it to your Guest ID*, Pole (a Target employee – n.) said. *We want to know everything we can. Also linked to your Guest ID is demographic information like your age, whether you are married and have kids, which part of town you live in, how long it takes you to drive to the store, your estimated salary, whether you’ve moved recently, what credit cards you carry in your wallet and what Web sites you visit.*”<sup>61</sup>.

Private companies are not the only ones expanding surveillance mechanisms. For instance, US’s Federal Bureau of Investigation was supposed to launch in early 2012 a nationwide facial recognition system, with the goal of combining biometric identifiers like fingerprints, palms, iris and scans in order to match unknown faces in photos with identified persons, called the Next Generation Identification system<sup>62</sup>. The system was set to launch in four US states for tests. By 2014 it is expected that the new tool will become available to criminal justice professionals in all the US.

### 3.2.2 The European Union<sup>63</sup>

The European Union is maybe a good example of a sort of “surveillant assemblage”, as it can be described as a Surveillance Society, which has an existence of its own, but which is also composed by several Surveillance Societies driven by common rules to them all and also unique rules for each of them (the 27 Member States). In an article called “The EU as an emerging Surveillance Society: the function creep case study on challenges to privacy and data protection”<sup>64</sup>, Maria Tzanou explains that the European Union has placed over the past years on the creation of an extensive toolbox for the collection, storage, and exchange of information between national authorities and other European players in the area of freedom, security, and justice.

She exemplifies with the European Commission’s Communication of 10 June 2009 on an area of freedom, security and justice serving the citizen, where the Commission notes that “security in the EU depends on effective mechanisms for exchanging information between national authorities and other European players. To achieve this, the EU must develop a European Information model based on a more powerful strategic analysis capacity and better gathering and processing of operational information”<sup>65</sup>. The author also analyzes the Stockholm Programme, which is the EU’s five year plan (2010-2014) for Justice and Home Affairs, considering that it endorses an even more powerful vision of Surveillance Society elements.

“While the Stockholm Programme is drafted very subtly, with 'catchy' titles, and contains numerous references to the need for respect of privacy and data protection principles, it nevertheless sets out a number of policies to be adopted and implemented in the area of freedom, security and justice that demonstrate quite clearly that the EU’s surveillance related aspirations are even more serious than before”<sup>66</sup>. Tzanou also analyzes several European regulations regarding the exchange of information between Member States, such as VIS<sup>67</sup> and EURODAC<sup>68</sup>.

Tzanou concludes that the EU is an emerging Surveillance Society, as it is characterized by the following three elements: “1) the increased engagement in intelligence gathering and surveillance activities 2) the use of new technologies and technological devices, and 3) the overall goal of enhancing security in the EU’s actions after 9/11 and especially after the Madrid and London terrorist attacks”<sup>69</sup>.

### **3.2.3 Totalitarian vs. democratic Surveillance Society (the privacy paradigm)**

The first significant difference between the two kinds of the Surveillance Society are the purposes of the surveillance each of them had. The purpose of surveillance in a totalitarian state was unidirectional and intense, so were the means and the above mentioned effects on individuals. The state used surveillance to maintain its power, to annihilate any resistance of the individuals and to manipulate behaviors. The main idea was "control" towards the preservation of the totalitarian state and its rules, by the elimination of freedom of thought, of speech, to interact and so on. The same does not apply in modern surveillance, where the purpose of surveillance is diluted and the legal web of guarantees of fundamental freedoms is strong.

One can identify several types of purposes for the current mechanisms of surveillance: anti-terrorism purposes, commercial purposes, state security purposes, public safety purposes, judicial effectiveness purposes. Nevertheless, a tendency of state control can also be observed. However, it is mainly directed to safety and security purposes.

Another significant difference is the source of surveillance, "the watchers". Whereas in a totalitarian Surveillance Society, there is only one, omnipresent, watcher – the state, through its main surveillance organ (in Romania's case, the Security), in democratic Surveillance Societies the watchers diversified a lot, as private entities tend to become more of a Big Brother than the state itself. Additionally, the state surveils through different institutions, each with a different purpose.

A third difference can be traced in the institutionalization of fear in the totalitarian Surveillance Society and the lack of it in the current Surveillance Society. People are not afraid of the terrifying consequences, mostly physical, of speaking up under current surveillance, instead they tend to be concerned about the loss of privacy per se, phenomenon also linked to interferences in human dignity.

Privacy safeguards are the last difference evoked here, at the current state of my research. As mentioned in section 3.1, even though the communist regime of Romania inserted provisions in the Constitution regarding the protection of certain dimensions of privacy, this did not mean they were also effective. In the democratic type of Surveillance Societies, effective privacy and data protection safeguards play a central role in the preservation of democracy. In order to demonstrate this is the case, Part 4 of this paper will also analyze Romania as a case-study for such safeguards. At this point, suffices to say that the Surveillance Societies studied in this section have a web of privacy safeguards, more accentuated in the European Union and more dispersed in the United States. Nevertheless, both entities thrive to protect the private life of the individuals. The European Union introduced two different fundamental rights in the Charter of Fundamental Rights of the European Union envisaging such safeguards (art. 7 – respect for private and family life and art. 8 – protection of personal data).

The second layer of protection of privacy in the EU is provided by EU's normative acts, among which the most important is Directive 95/46, The Data Protection Directive. It covers the processing of all personal data by whatever means, and it's not limited by business sector or field of use. Instead, it provides exceptions for public security, state security and criminal law. According to Article 6 of the Directive, Member States shall provide that personal data must be processed fairly and lawfully, collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes.

The Directive provides several guarantees for persons in Article 7. For instance, it establishes that personal data may be processed only if the data subject has unambiguously given his consent. According to the Data Protection Directive, individuals have the right of access to data and the right to object to the processing of personal data relating to him. The second layer of protection is completed with Regulation 45/2001 which is addressed to the EU institutions and

bodies and with Directive 2002/58 for the processing of personal data in the electronic communications sector. It is important to mention the European Data Protection Supervisor, an omnibus-like institution created by Directive 95/46 which has the general objective to ensure that EU institutions and bodies respect the right to privacy and also to advise the European Commission and European Parliament on proposals for new legislation in this field.

The third layer of protection can be considered the national legislations of Member States. Each Member State implemented the Data Protection Directive and created national data protection authorities. It is hard not to observe the bureaucratic structure of the protection of privacy and personal data in the EU. But maybe a systemic problem requires a systemic solution. Moreover, the European Commission publicized recently<sup>70</sup> a reform package regarding data protection in the EU, which contains a proposed Regulation for the protection of personal data and also a Directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities. These normative reforms started their path in the European Union legislative process, which is a long and complicated one. They are expected to come into force no sooner than two years.

In the United States, recent global events, the specter of terrorism since 9/11, and the consequent passage in the US of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), have combined to strengthen American concerns that privacy must be protected, first and foremost, from “Big Brother” government<sup>71</sup>, as opposite of the protection from private entities. Some authors believe that Americans are more concerned about protecting their privacy from the government than from private entities due to sourcing the need for privacy in the fundamental value of liberty, and not in dignity (as Europeans conceive it)<sup>72</sup>. The legal framework for privacy in the United States has been described as “disjointed and piecemeal”<sup>73</sup>. Privacy provisions exist in common law, in the federal and state constitutions and in a variety of statutes addressing specific issues that have arisen in different sectors and jurisdictions<sup>74</sup>. The US Constitution does not provide specifically the protection of privacy, but the Fourth Amendment and the Fourteenth Amendment have been interpreted as sources for some facets of privacy. The Fourth Amendment protects citizens from “unreasonable searches and seizures” by the government in the private sphere of an individual, while the Fourteenth Amendment provides that states shall not “deprive any person of life, liberty or property without due process of law”. These two Amendments have been used by the Supreme Court to protect aspects of privacy<sup>75</sup>.

The US also has a “quilt” of statutes that protect specific aspects of privacy, such as *The Privacy Act* of 1974 that protects informational privacy and applies only to data processing by the federal government, *The Electronic Communications Privacy Act* of 1986, that requires government officials who wish to obtain electronic communications to seek and receive permission from a federal judge (it was amended by the PATRIOT Act), *The Privacy Protection Act* of 1980, that, despite its name, prohibits government from searching or seizing any work or materials held by a person intending to disseminate it to the public, *The Driver’s Privacy Protection Act* of 1994, *The Right to Financial Privacy Act* of 1978 – all of which are protecting citizens from government’s intrusion in their private sphere. There are also statutes that protect privacy in the private sector, such as *The Fair Credit Reporting Act* of 1970, *The Financial Modernization Act* of 1999 which requires the financial institutions to have a privacy policy and to bring it to their customers’ attention, *The Identity Theft and Assumption Deterrence Act* of 1998, that criminalized the unauthorized use for a felonious purpose of another person’s identity, *The Videotape Privacy Protection Act* of 1988 that prohibits video stores from disclosing customer record without their consent, and *The Children’s Online Privacy Protection Act* of 1998 that

protects children's personal information from collection and misuse by commercial websites. And these are just to name a few.

Only if one looks at the above (incomplete!) enumeration, one can acknowledge the need for general provisions to protect all aspects of privacy and informational privacy. In an effort to accomplish such a goal, the White House published on 25 February 2012 The Consumers' Privacy Bill of Rights, containing the definition of personal data and a set of seven principles to be applied on the processing of the personal data of consumers. The provisions are not directly enforceable, but mere guidelines for future legislation.

Therefore, taking into account all the outlined differences between the two types of Surveillance Society, the answer to the question of how to prevent the current Surveillance Society to turn into a totalitarian one should be structured as follows: keeping the purpose of the state surveillance diffuse in the framework of public safety and state security, always have regard on human dignity for both state and non-state surveillance, and, most importantly, enforcing an effective legal and judicial framework for the protection of privacy and personal data. It would be an easy solution to simply answer that keeping the political regime in the framework of democracy would be enough to also have a non-totalitarian Surveillance Society. Unfortunately, the problem of losing privacy in the detriment of constant surveillance is too complicated to only be dealt with in these general terms.

Just to give an example, there is no reason to believe that the ultimate effects of surveillance as it has been known in state socialism – which can be translated into loss of liberty to action, could not have a correspondent in modern surveillance. Maybe it is transposed in a conscious or unconscious auto-censorship, but it is clear that knowing to be constantly surveilled influences one's process of decision making, which affects the liberty to action and to interact. To give an example, recently, UK's Information Commissioner's Office launched a privacy awareness campaign centered on the results of a survey according to which 42% of British students are concerned that personal information available about them online might affect their future employment prospects<sup>76</sup>. Therefore, students are afraid that their previous actions, recorded on diverse online databases, will affect their future employment, imprinting thus the need to refrain from certain actions.

In fact, there are authors that consider the ambiguity in Orwell's novel regarding the actual location of the *Nineteen Eighty-Four* society represents a hint into believing that Orwell could also have aimed the Western societies. "While many considered his work as a critique of state socialism (and the old communist countries behind the iron curtain or Eastern Europe), Orwell did not let Western liberal democracies off the hook so easily. It is clear that his work sees totalitarian tendencies – among which state surveillance would figure prominently – as immanent within any bureaucratically organized nation-state. This has become an abiding theme of surveillance studies, that it is precisely within liberal democratic nation-states where record-keeping, monitoring and observation become routine and technologically augmented that restrictions on liberty – and especially post 9/11, mobility – may be anticipated"<sup>77</sup>.

### **3.3 The special case of post-communist countries**

All the above-mentioned mechanisms of surveillance in democracy have a different impact on societies that experienced communism, such as the Romanian one. After the fall of communism, individuals felt the urge of over-expressing their recently gained freedom. "Freed from oppression, they took over public spaces that used to intimidate them; celebrated new unthreatened opportunities for visibility and free movement; packed new shopping centers and embraced the freedom of the internet. They felt released from the menacing eyes and ears of the

system. Yet modernity was already passing them by. The Western world was venturing into the novel realm of post-modernity, with its omnipresent, de-territorializing, digital surveillance<sup>778</sup>.

I consider that the specific of new surveillance mechanisms in post-communist societies is defined by several factors, such as: the carelessness of providing personal data to explore the freedom of expressing thoughts and acting accordingly, as well as enjoying the benefits of a pluralist market; the tendency of state institutions to use action models and instruments partially inherited from the communist era; an overwhelming ignorance of individuals regarding legal and judicial mechanisms to protect one's privacy and personal data.

Other authors have also underlined that "the new surveillance culture fuses two very different control paradigms, merging a seductive market based menu culture with a belligerent securitization culture of the state/private security apparatus. In post-communist societies, this process is additionally infused with the persistent legacy of the totalitarian surveillance culture. The enduring policing potential of the secret file is but one aspect of this legacy<sup>779</sup>.

The next part of the paper will sketch the limits of the concrete protection of privacy in Romania, continuing thus the case study in section 3.1 with aspects of the post-communist era, facilitating clear conclusions.

#### **4. Legal safeguards for privacy in post-communist Romania**

##### **4.1 The European level of protection with an impact on the Romanian legal system**

Several international provisions have a direct impact in the Romanian legal system, all of which contain safeguards for the protection of private life in its diverse dimensions.

The first one is the European Convention on Human Rights (ECHR), Romania being a signatory of it since 1994, which states at Article 8 that „(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. Due to Article 20 of the Romanian Constitution, the provisions regarding fundamental rights and freedoms enshrined in the Constitution shall be interpreted and applied in accordance with the Universal Declaration of Human Rights and with the international pacts and treaties that Romania is a signatory of. Moreover, if the protection offered by them to the individual is stronger, they apply with priority. Hence, Romanian courts are bound not only to apply the internal law in accordance with the provisions of the ECHR and the principles outlined in the case-law of the European Court of Human Rights (ECtHR), but also to give priority to the provisions of the Convention when necessary.

Moreover, the individuals who consider that their fundamental rights were infringed also by the national courts when giving their decisions, they can file a suit against the state at the European Court in Strasbourg. As regards the right to private life, there have been several ECtHR decisions against Romania, of which the most significant for the purpose of this paper is *Rotaru v. Romania*<sup>80</sup>. Mr. Rotaru, who in 1948 had been sentenced to a year's imprisonment for having expressed criticism of the communist regime, brought an action in which he sought to be granted rights that Decree no. 118 of 1990 afforded persons who had been persecuted by the communist regime. The Ministry of the Internal Affairs used in the proceedings a letter from the Romanian Intelligence Service (RIS) which contained the information that Mr. Rotaru had been a member of the legionnaire movement. The applicant affirmed that the information is false and brought proceedings against the RIS, claiming compensation for his moral damage and also the erasure of

the false information from the file. The Court of first instance and the Court of Appeal dismissed the claims, based on the fact that they had no power to order amendment or destruction of the information in the letter of 19 December 1990, as it had been gathered by the State's former security services, and the RIS had only been a depositary. After the RIS officially admitted due to further investigations that Mr. Rotaru was not a part of the legionnaire movement (but another man with the same name), the applicant attacked the first decisions and the Court of Appeal admitted the claim to erasure of the false information from the file, but not the compensation claims for the moral damage. Hence, Mr. Rotaru filed a complaint to the ECtHR on the grounds of Articles 8, 13 and 6, arguing he faced a lack of an effective remedy before a national authority which could rule on his application for amendment or destruction of the file containing untrue information and of the courts' refusal to consider his applications for costs and damages, which he said infringed his right to a court.

Among other findings, The European Court held that even though section 8 of Law no. 14/1992 regarding the activity of the RIS provides that information affecting national security may be gathered, recorded and archived in secret files, the domestic law does not lay down any limits on the exercise of those powers. Thus, for instance, "the law did not define the kind of information that may be recorded, the categories of people against whom surveillance measures such as gathering and keeping information may be taken, the circumstances in which such measures may be taken or the procedure to be followed"<sup>81</sup>. The Court noted that this section contained no explicit, detailed provision concerning the persons authorised to consult the files, the nature of the files, the procedure to be followed or the use that may be made of the information thus obtained. The Court decided in favor of Mr. Rotaru, providing also for compensation for his moral damage.

Therefore, arbitrary decisions and actions of the state institutions can be intensely tempered and individuals are able to gain compensation for any kind of damaging actions surveillance-related using such a judicial mechanism.

The European level of protection of privacy with an impact on the Romanian legal system also contains the provisions of the EU law, which I detailed in section 3.2.3. They are relevant for the Romanian legal system mainly due to the principle of primacy of EU law, according to which, if a provision of EU law is directly effective, domestic courts must not only apply it, but they must do so in priority over any conflicting provisions of national law<sup>82</sup>. The European Union, as seen previously in this paper, has a significant web of provisions for the protection of privacy and also personal data, starting with Articles 7 and 8 of the Charter of the Fundamental Rights of the European Union and also with Article 16 of the Treaty on the Functioning of the European Union, which states that "Everyone has the right to the protection of personal data", imposing an obligation to The European Parliament and the Council to "lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by Member States when carrying activities which fall within the scope of Union law, and the rules relating to the free movement of such data". Even though the European Court of Justice had not have the chance to pronounce yet a decision on Article 16 (the Treaty entered into force in December 2009 and this article is one of its innovations), academics already consider it has the necessary characteristics for being directly effective in the legal systems of the Member States<sup>83</sup>.

#### **4.2 The Constitutional right to privacy**

Article 26 of the Romanian Constitution provides that "(1) Public authorities respect and protect intimate life, family life and private life". The doctrine considers that the enumeration is somewhat ambiguous. "The Constitution utilizes three notions: intimate life, family life and private life, which it does not define, but it obliges the public authorities to respect them and to protect

them against any intrusions of any entity, be it public or private”<sup>84</sup>. Nevertheless, such a provision is of a great importance, as “the free development of human personality and human dignity, values enshrined in Article 1 of the Constitution, cannot be conceived without the protection of and respect for intimate, private and family life”<sup>85</sup>.

Legal writers have underlined that it is without doubt the right to private life belongs to the wide category of fundamental human rights, however, its definition is not clear at all. “In a literally interpretation, one can say that the Constitutional provision, in reality, envisages a general notion – intimate life, which contains two components: intimate family life and intimate private life”<sup>86</sup>.

It is thus understandable why Article 8 ECHR is a very volatile one, being a basis for new rights developed by the Court in Strasbourg in its case-law, such as the right to the protection of personal data and the right to a healthy environment.

From a procedural point of view, Article 26 of the Constitution contains two types of obligations for the state, the interpretation of which can be realized with the help of the ECtHR case-law on Article 8 ECHR. Hence, the first obligation is a negative one – the state authorities must not act in any way as to obstruct the exercise of the right to private and family life. “In essence, the provision of the right to respect for private and family life aims at the protection of the individual against any arbitrary intrusion of public power in the exercise of the prerogatives of this right”<sup>87</sup>. The second obligation is a positive one, “without which the realization of the rights provided for would be impossible”<sup>88</sup>. This obligation implies “the necessity of adopting legislative measures of protection of private life, including norms envisaging solely private parties”<sup>89</sup>. This obligation was significantly accomplished by the Romanian legislator with the occasion of the adoption of the new Civil Code, as section 4.3 will detail.

One of the cases in which the Romanian Constitutional Court effectively applied Article 26 was the decision that Law no. 144/2007 on the creation, organization and functioning of the National Agency for Integrity is not constitutional. The Court held that “the obligation enshrined in this law to publish the declarations of assets and interests on the web pages of the institutions where the persons obliged to write such declarations work, as well as their delivery to the National Agency of Integrity in order for it to display the declarations on its web page, do not comply with the right to the respect for and the protection of private life, enshrined in Article 26 of the Constitution and in Article 8 of the European Convention of Human Rights, through the unjustified exposure from an objective and rational point of view on a web page of data concerning the assets and the interests of the persons who are obliged by law to write such declarations”<sup>90</sup>.

#### **4.3 The right to privacy in the New Civil Code**

The New Civil Code (NCC) of Romania entered into force on 1 October 2011. Among other revolutionary provisions in several civil matters, such as contracts and family law, it also brings a new approach on the human rights – *droits subjectives civiles* relationship. The NCC introduces a chapter named “The respect owed to the human being and his/her inherent rights” where it provides for a set of personality rights enforceable in civil procedures, such as the right to life, health, physical and mental integrity of the person, the right to the respect for private life, the right to one’s own image and the intellectual property rights. There is a special section of this chapter dedicated to “The respect for private life and human dignity”.

Legal writers have already saluted the new provisions. “A welcomed option is the introduction of Chapter II – The natural person, of Book I, and Title II – The protection of non-patrimonial rights, which, on one hand, replace the completely outdated previous regulation with the conclusions of ECtHR case-law, and on the other hand complements the insufficiency of the Criminal law means to protect the intimate life of the individual, which are in a state of transition and confusion of the jurisprudence, including the Constitutional one”<sup>91</sup>.

The right to private life is the most detailed personality right in NCC, being regulated in Article 71. It has a wide content, including all the three recognized aspects of privacy in most of Western legal systems: territorial (“intrusion upon seclusion”), informational privacy and one’s likeness. Analyzing the NCC norms regarding privacy, one can conclude that the informational self-determination has an essential part in the protection of private life.

The right to informational privacy – or the right to informational self-determination as it is recognized especially by the German legal system, is highly present in the norms providing the respect for private life. Article 71(3) prohibits the utilization of “correspondence, manuscripts or any other personal documents”, as well as “information from the private life of a person” without his/her consent. I consider that these provisions are the roots of a right to informational self-determination in the Romanian legal system, especially in the civil law.

This right is further detailed in Article 74 NCC which established that the following situations infringe the right to private life: “g) the publication of materials containing images regarding a person benefiting of health treatment in medical institutions, as well as personal data regarding the health condition, diagnostic, prognostic, treatment, disease circumstances and other facts, including the results of an autopsy, without the consent of the subject or his/her family”; “i) the publication or utilization of correspondence, manuscripts or any other personal documents, including data regarding domicile, residence, telephone numbers of a person or his/her family members, without the consent of the data subject or the person who has the right to control them”. These provisions are mainly concerned with the publication and distribution of different types of information. On one hand, there are sensitive data, such as information regarding health condition and images of a patient, and on the other hand, there are personal data with general applicability – data regarding domicile, residence, telephone numbers, as well as data regarding correspondence, manuscripts and other personal documents.

As for “intrusion upon seclusion”, Article 74 provides that it is an infringement of the right to private life “a) the entering or unlawfully remaining in a house or taking objects from it without the consent of the person legally occupying the house” and also “d) publication of images which represent interiors of a private space”. Regarding the protection of one’s likeness, the provision from the NCC is also linked to seclusion, as it prohibits “c) taking or using images or the voice of a person in a private space”. The seclusion dimension of privacy law is specific to the common law systems, especially the American one. Unlike in the civil law systems, in common law tradition the territorial aspect of private life is especially accentuated by building up distinct delimited spaces in which intrusions in privacy are accepted and are not accepted, be it by authorities or by private entities<sup>92</sup>.

It is expected that with such detailed provisions Romanian courts should start to protect more effectively private life, also with the help of other new provisions of the NCC regarding “The protection of non-patrimonial rights” which establish certain rules for civil liability when the personality rights are infringed.

#### **4.4 The right to the protection of personal data**

The enforcement of a right to the protection of personal data would have been unimaginable during the communist regime when collecting huge amounts of personal data was the main instrument of preserving the power for the Communist Party, allowing the thought of severe consequences and the appearance of the omnipresent feeling of fear. If certain aspects of privacy were protected by the communist constitutions, even though it was a mere virtual protection, personal data were definitely out of the radar.

In fact, the concept of data protection appeared as late as 1970 in the German land of Hesse, where the first data protection legislation was enforced. National legislations protecting

personal data emerged in the next two decades in Germany, Sweden and France. In 1981, the Council of Europe adopted the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which was adopted by Romania through Law no. 682/2001 for the ratification of the Convention.

The European Union became a global leader of data protection after enforcing Directive 95/46 in 1995, establishing concrete principles for the processing of personal data and a set of enforceable rights of the data subject. Romania transposed the directive through Law No. 677/2001. Moreover, NCC provides in Article 77 that “any processing of personal data using automatic or non-automatic means can be done only in the conditions enshrined in the special law”. Hence, data protection is already formally a part of the Romanian civil law and its provisions can be effectively relied upon in courts.

For instance, in *X v. the Municipality of the 1<sup>st</sup> Sector of Bucharest*<sup>93</sup>, X received 10.000 euro as a civil penalty paid by the municipality after it published on its website an Annex of a Local Council Decision containing personal data of beneficiaries of public transportation facilities due to their health condition. However, this decision is an extremely rare one in Romanian courts, which are still reluctant in confirming civil compensations for moral damage when the right to the protection of privacy, or the right to the protection of personal data are infringed.

## 5. Conclusions

There are a lot of lessons to be learned from the communist experience and the avoidance of a destructive type of Surveillance Society is one of them.

I have showed in this paper that currently the concept of Surveillance Society means a society which functions on an infrastructure of multilevel and multipurpose surveillance, performed by public and private entities, in an over bureaucratic state, depersonalizing, isolating individuals and also censoring their liberty to action and interact. To better understand both the differences and the likenesses of the current Surveillance Society and the totalitarian kind of a Surveillance Society I analyzed some features of the society in communist Romania, concentrating on the role of the Security services and the impressive surveillance apparatus it used to control the people. I have showed afterwards why current Western societies, such as the EU and the USA, are deemed as being Surveillance Societies and I outlined the specific mechanisms of surveillance which can be found in each of them.

As an intermediary conclusion, after analyzing all of the above, it became clear that the answer to the question of how to prevent the current Surveillance Society to turn into a totalitarian one should be designed taking into account the following factors:

- keeping the purpose of the state surveillance diffuse in the framework of public safety and state security,
- always have regard to human dignity for both the cases of state and non-state surveillance;
- enforcing an effective legal and judicial framework for the protection of privacy and personal data.

In the following section I underlined how the protection of privacy is in fact a paradigm of the democratic/totalitarian Surveillance Society opposition, showing how current Surveillance Societies have a well developed web of legal safeguards for protecting privacy and personal data. In order to effectively underline the opposition, I developed the last section of the paper as a case-study on Romania in its post-communist era, showing how developed the web of privacy guarantees is.

One subsection of the paper is somehow individualized among the others – the one referring to the special case of modern Surveillance Societies in post-communist countries. Their system of institutions, as well as the social system, were severely distorted under communist

surveillance and both had to face abruptly electronic, modern-day surveillance mechanisms, while thriving at the same time to regain their normal, functional shape. I believe this is the quintessential issue of Big Brother(s) in post-communist countries. While this issue is in the process of elimination by continuous reforms, the individual must be protected so that the effects of a new Surveillance Society are as minimized as possible. Efficient privacy and data protection safeguards play a surprisingly important part in this matter.

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This work was supported by the strategic grant POSDRU/CPP107/DMI1.5/S/78421, Project ID 78421(2010), co-financed by the European Social Fund – Investing in People, within the Sectoral Operational Programme Human Resources Development 2007 – 2013.

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<sup>1</sup> Privacy, an Anthology, Edited by Ferdinand D. Schoeman, Cambridge University Press, 1984.

<sup>2</sup> A. Westin, "The origins of modern claims to privacy", in Privacy, an Anthology, Edited by Ferdinand D. Schoeman, Cambridge University Press, 1984, p. 70.

<sup>3</sup> Ibidem.

<sup>4</sup> See J. Q. Whitman, The Two Western Cultures of Privacy: Dignity versus Liberty, The Yale Law Journal, no. 113/2004, p. 1151.

<sup>5</sup> A. Westin, supra, p. 69.

<sup>6</sup> B. Goold, *How Much Surveillance is Too Much? Some Thoughts on Surveillance, Democracy and the Political Value of Privacy (2010)*, Overvakning i en rettsstat – Surveillance in a constitutional government, Fagbokforlaget, 2010, p. 42.

<sup>7</sup> J. Bentham, The Panopticon,

<sup>8</sup> This section restates a part of the conclusions of the author from the paper „How Literature Anticipated the Emergence of the Surveillance Society. Is There Any Privacy Left?“, presented at the „Human Rights, Literature, the Arts and Social Sciences“ International Conference, at the Central Michigan University, in Mount Pleasant, Michigan, 11-13 November 2011. The next sections of the current paper will explore these conclusions, building on the main ideas presented herein.

<sup>9</sup> J. M. Balkin and S. Levinson, "The Processes of Constitutional Change: From Partisan Entrenchment to the National Surveillance State" (2006). Faculty Scholarship Series. Paper 231, p. 520, available online at [http://digitalcommons.law.yale.edu/fss\\_papers/231](http://digitalcommons.law.yale.edu/fss_papers/231).

<sup>10</sup> M. Tzanou, *The EU as an emerging "Surveillance Society": the function creep case study on challenges to privacy and data protection*, International Constitutional Law Journal, Vol. 4, No. 3/2010, p. 408.

<sup>11</sup> *A Report on the Surveillance Society, A Report on the Surveillance Society*. For the Information Commissioner by the Surveillance Studies network, September 2006, [http://www.ico.gov.uk/upload/documents/library/data\\_protection/practical\\_application/surveillance\\_society\\_full\\_report\\_2006.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/surveillance_society_full_report_2006.pdf).

<sup>12</sup> G. T. Marx, *The surveillance society: the threat of 1984-style techniques*, in The Futurist, 1985, p. 21-26.

<sup>13</sup> O. Gandy, *The surveillance society: information technology and bureaucratic social control*, Journal of Communication, 39:3, 1989.

<sup>14</sup> D. Lyon, *Surveillance Studies. An Overview*, Polity Press, 2007, p. 13.

<sup>15</sup> In the last chapter of this paper we will have a deeper look in the connection of privacy with the surveillance society.

<sup>16</sup> A. Westin, *The origins of modern claims to privacy*, in Privacy, an Anthology, Edited by Ferdinand D. Schoeman, Cambridge University Press, 1984, p. 67.

<sup>17</sup> Ibidem.

<sup>18</sup> D. Lyon, cited above in note 14, p. 14.

<sup>19</sup> *A Report on the Surveillance Society*, cited above in note 11.

<sup>20</sup> Idem., p. 4.

<sup>21</sup> K. D. Haggerty and R. V. Ericson, *The surveillant assemblage*, British Journal of Sociology, Vol. No. 51, Issue 4, 2000, p. 605 – 622.

<sup>22</sup> M. Foucault, *Surveiller et punir: Naissance de la prison*, Gallimard, Paris, 1975.

<sup>23</sup> D. Lyon, *The Electronic Eye: The Rise of Surveillance Society*, University of Minnesota Press, Minneapolis, 1994, p. 57-80.

<sup>24</sup> Cited above in note 21.

<sup>25</sup> K. D. Haggerty and R. V. Ericson, cited above in note 21, using a definition from P. Patton, *MetamorphoLogic: Bodies and Powers* in A Thousand Plateaus, Journal of the British Society for Phenomenology, 1994.

<sup>26</sup> B. W. Schermer, *Software agents, surveillance, and the right to privacy: a legislative framework for agent-enabled surveillance*, Leiden University Press, 2007, p. 39.

<sup>27</sup> Cited above in note 21, p. 610.

<sup>28</sup> Ibidem.

<sup>29</sup> K. D. Haggerty and R. V. Ericson, cited above in note 21, p. 613.

<sup>30</sup> R. Clarke, *Introduction to Datavallance and Information Privacy*, 2006, available at: <http://www.rogerclarke.com/DV/Intro.html#DV>

<sup>31</sup> Ibidem.

<sup>32</sup> J. Wagner DeCew, *In Pursuit of Privacy. Law, Ethics and the Rise of Techonology*, Cornell University Press, 1997, p. 13.

<sup>33</sup> Ibidem.

<sup>34</sup> D. Lyon, *Surveillance Society, Monitoring Everyday Life*, Buckingham: Open University Press, 2001, p. 3.

<sup>35</sup> M. Oprea, *Securitatea și moștenirea sa [The Security and its Inheritance]*, in *Comunism și represiune în România. Istoria tematică a unui fratricid național [Communism and Repression in Romania. The Themed History of a National Fratricide]*, coordinated by Ruxandra Cesereanu, Polirom, Iași, 2006, p. 26.

<sup>36</sup> C. Anisescu, S. B. Moldovan, M. Matiu, *Partiturile Securității. Directive, ordine, instrucțiuni (1947 - 1987) [The "vocal scores" of the Security. Directives, orders, instructions (1947-1987)]*, Nemira, Bucharest, 2007, p. 7 – 8.

<sup>37</sup> Idem., p. 10.

<sup>38</sup> M. Oprea, cited above in note 35, p. 17.

<sup>39</sup> Idem., p. 25. This information was made public in 1997 by Virgil Măgureanu, the president of the Romanian Intelligence Service (RIS), and Florin Pintilie, the head officer of the RIS archive.

<sup>40</sup> C. Anisescu, S. B. Moldovan, cited above in note 36, p. 52.

<sup>41</sup> Idem., p. 66.

<sup>42</sup> Idem., p. 44.

<sup>43</sup> R. Clit, *Frica de zi cu zi* (The Daily Fear), in "Viața cotidiană în comunism" ("The daily life in communism"), Polirom, Iași, 2004, p. 65.

<sup>44</sup> P. Cernat, *Cozi și oameni de rând în anii '80 (Staying in line and ordinary people in the '80s)* in "Viața cotidiană în comunism" ("The daily life in communism"), Polirom, Iași, 2004.

<sup>45</sup> "The Comrade" was used as a nickname for Nicolae Ceaușescu.

<sup>46</sup> P. Cernat, cited above in note 44, p. 195.

<sup>47</sup> Ibidem.

<sup>48</sup> R. Clit, cited above in note 43, p. 65.

<sup>49</sup> Ibidem.

<sup>50</sup> R. Clit, cited above in note 43, p. 57.

<sup>51</sup> This subsection is based on the author's findings in the paper mentioned at note 8.

<sup>52</sup> J. M. Balkin and S. Levinson, cited at note 9.

<sup>53</sup> Idem, p. 489.

<sup>54</sup> Idem, p. 520 et. seq.

<sup>55</sup> Idem, p. 522.

<sup>56</sup> Idem, p. 525.

<sup>57</sup> Idem, p. 520.

<sup>58</sup> A study conducted by Stanford University's Computer Security Laboratory. The US Federal Trade Commission used the results of the study to urge companies and brands to implement a *Do not track* policy.

<sup>59</sup> J. Mayer, *Tracking the trackers: where everybody knows your username*, available online at: <http://cyberlaw.stanford.edu/node/6740>.

<sup>60</sup> The story is available online at <http://www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/>.

<sup>61</sup> C. Duhigg, *How companies know your secrets*, in The New York Times, 16 February 2012, available online at [http://www.nytimes.com/2012/02/19/magazine/shopping-habits.html?pagewanted=1&\\_r=1&hp](http://www.nytimes.com/2012/02/19/magazine/shopping-habits.html?pagewanted=1&_r=1&hp).

<sup>62</sup> Details available online on the official FBI webpage: [http://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/ngi](http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/ngi).

<sup>63</sup> This subsection is based on the author's findings in the paper mentioned at note 8.

<sup>64</sup> Cited above in note 10.

<sup>65</sup> COM 2009 (262) final, p. 16.

<sup>66</sup> M. Tzanou, cited above in note 10, p. 412.

<sup>67</sup> The Visa Information System, which was established in June 2004 by the European Council decision 2004/512/EC for the creation of a database containing information, including biometrics, on visa applicants by Third Country Nationals requiring a visa to enter the Schengen group.

<sup>68</sup> Council Regulation No. 2725/2000 of 11 December 2000, which enables EU countries to help identify asylum applicants and persons who have been apprehended in connection with an irregular crossing of an external border of the Union.

<sup>69</sup> M., cited above in note 10, p. 426.

<sup>70</sup> On 25 January 2012.

<sup>71</sup> A. Levin, M. J. Nicholson, *Privacy Law in the United States, the EU and Canada: the Allure of the Middle Ground*, University of Ottawa Law and Technology Journal 2:2, 2005, P. 359.

<sup>72</sup> For a better understanding of the two sources of privacy in USA and the European Union, see J. Whitman, *The Two Western Cultures of Privacy: Dignity v. Liberty*, Yale Law Journal 113, 2004.

<sup>73</sup> A. Levin, M. J. Nicholson, cited above in note 71, p. 361.

<sup>74</sup> *Ibidem*.

<sup>75</sup> For a complete discussion, see M. Rotenberg, *The Privacy Law Sourcebook: United States Law, International Law and Recent Developments*, Washington, EPIC Publications, 2003.

<sup>76</sup> The launch of 2011 Student Brand Ambassador campaign, ICO's press release available at [http://www.ico.gov.uk/news/latest\\_news/2011/students-concerned-that-information-online-might-affect-their-careers-26102011.aspx](http://www.ico.gov.uk/news/latest_news/2011/students-concerned-that-information-online-might-affect-their-careers-26102011.aspx)

<sup>77</sup> D. Lyon, cited above in note 14, p. 53.

<sup>78</sup> M. Los, *Case studies in the dynamics of surveillance and democracy*, in *Surveillance and Democracy*, edited by Kevin D. Haggerty and Minas Samatas, Routledge, USA and Canada, 2010, p. 190.

<sup>79</sup> *Ibidem*.

<sup>80</sup> Judgement from 4 May 2000, Application no. 28341/95.

<sup>81</sup> *Rotaru v. Romania*, cited in note 80, paragraph 57.

<sup>82</sup> On the principle of primacy of EU law, see J. Steiner and L. Woods, *EU Law* (10th ed), OUP 2009, Chapter 4.

<sup>83</sup> For details, see H. Hijmans, A. Scirocco, *Shortcomings in EU data protection in the third and the second pillars. Can the Lisbon Treaty be expected to help?* in: 46 Common Market Law Review, pp. 1485–1525 (2009).

<sup>84</sup> I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice [Constitutional law and political institutions]*, vol. 1, 12th edition, All Beck, Bucharest, 2005, p. 169.

<sup>85</sup> I. Muraru, E. S. Tănăsescu, *Constituția României. Comentariu pe articole [Romanian Constitution. Commentary on articles]*, CH Beck, Bucharest, 2008, p. 246.

<sup>86</sup> *Idem.*, p. 247.

<sup>87</sup> C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole [European Convention of Human Rights. Commentary on articles]*, Vol. I. Drepturi și libertăți [Rights and liberties], CH Beck, Bucharest, 2005, p. 594.

<sup>88</sup> I. Muraru, E.S. Tănăsescu, cited in note 85, p. 249.

<sup>89</sup> C. Bîrsan, cited in note 86, p. 595.

<sup>90</sup> The Decision no. 415/2010 of the Constitutional Court of Romania, published in Monitorul Oficial No. 294/5 May 2010.

<sup>91</sup> M. Duțu, *Noul Cod Civil: etapă importantă în dezvoltarea dreptului privat român [The New Civil Code – an important phase in the development of Romanian Private Law]*, Revista Română de Jurisprudență, no. 5/2011, p. 19.

<sup>92</sup> For details, see K. Eltis, *Can the Reasonable Person Still Be 'Highly Offended'? An Invitation to Consider the Civil Law Tradition's Personality-Rights Based Approach to Tort Privacy* (20 November, 2008). University of Ottawa Law & Technology Journal.

<sup>93</sup> File no. 19326/299/2008, sentence of 16 March 2009, Court of first instance, the 1st Sector Bucharest, confirmed by the Tribunal of Bucharest in February 2010.

## ORIGINAL PAPER

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### Democracy with no Decentralisation

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**Abstract:** *Transformations occurred in Romania after December 1989 at political, economic and social level have naturally determined essential changes also at the level of organisation and running of the public administration. The traditional Romania's Constitution from the year 1991 set up, at the level of the local public administration, as per norms of art. 110-122, a specific administrative regime, having the value of a constitutional principle<sup>1</sup>.*

*In the current mentality, decentralisation represents the indispensable attribute of democracy and implies the idea of autonomy<sup>2</sup>. The constitutional basis of administration organisation on the current date is represented by the following traits from the Constitution<sup>3</sup>: art. 120, which establishes that the administration from the territorial-administrative units is set up according to the local autonomy principle and of public services decentralisation; art.123 (2), which establishes that the Prefect, in his capacity of Government's representative at the local level has got the obligations to lead the deconcentrated public services of ministries and of the other bodies of the central public administration from the territorial-administrative units and art. 102 (1), which establishes that the Government provide the achievement of the country's both internal and external politics and exert the general leadership of the public administration.*

*Analysing these traits we can stress out the fact that the administrative regime from Romania is a decentralisation regime based on which it is provided to territorial-administrative units the possibility of appointing own leadership bodies of which duties are exclusively applied under the laws. These authorities have particularly enhanced competence, they are not in any subordination relationship with any other authority, being instead under the Government's authority, which can take steps so as to dismiss or dissolve the mentioned authorities only in exceptional situations and after a very complex prior procedure. Such an extreme measure of the Government is submitted to the judicial check because it is only in this way that the administrative regime can be protected against decentralisation and local autonomy.*

**Keywords:** *administration, Romania, local autonomy, decentralisation, Constitution.*

### **I. Preliminaries**

The analysis of the public administration in our country, in point of decentralisation requires the detailing of aspects of this phenomenon, considering the current reform process of the public administration in Romania, the passage from a strongly centralised structure of the public administration to a decentralised one.

The decentralisation of the public administration represents an administrative organisation system, which enables human collectivities to administrate themselves, under the state's control, which provides them with legal status, enables them to set up their own authorities and endows them with the required means.

By decentralisation, the public administration becomes more efficient and more operative, the problems which population is interested in are no longer filed in ministerial offices, but they are settled at local levels, in fast operativeness conditions.

The modern form of expressing the principle of decentralisation is represented by the local autonomy, principle established through the Constitution and the Law of Local Public Administration<sup>4</sup>, which confers to local collectivities the right and ability to settle and manage, within the law frame, under their own responsibility, to the interest of their population, an important part of the public affairs<sup>5</sup>.

Local autonomy concept manifests within the limits of material and territorial competence established by the law, but especially, through the free initiative of local administration authorities to settle collectivity problems in their capacity of civil legal entities, of goods owners from the private field and of public law legal entities, of goods owners from the local interest public field.

The multitude of social requirements raises before the administration a variety of problems that need to be solved. The society knows a continuous process of multiplication and diversification of administration's tasks that require permanent improves in the administration's structure and activity, by using modern methods and techniques.

Administrative doctrine considers that, in the complex contents of the administration there are included the following requirements: to provide, to organise, to lead, and to control. It is required that this contents of the administration should be developed on scientific basis.

The perfecting of the structure and administration's activity is possible through application of scientific principles and criteria of the field that researches the whole contents of the phenomenon, for the purpose of optimisation, using sociologic investigations and other modern forms of knowledge.

For a better understanding of the complexity of the researched process, the administration science is not limited only to studying the legal aspects of the administration, but it also examines the interferences of the public administration subsystem with the other elements forming distinct subsystem and which together compose the social environment or framework of the public administration. Knowing relationships between the public administration and the other elements of the social system, especially of mutual influences between them, allows the shaping of the public administration role, of its missions.

Public administration is, at the same time, a social environment and a part of the social environment<sup>6</sup>. Its purpose consists in serving the society which created it, in satisfying its general interest.

Being a whole within a set of social structures, it holds a primordial place within the overall society<sup>7</sup>, where it is inserted, as compared with other structured and hierarchised organisations or human groups.

The social environment exerts a considerable influence upon structures, upon form and contents of activities of public administration bodies, upon individual and collective psychology and behaviours of the public administration personnel.

The social environment of the administration is the set of outer factors influencing the structure, the form and contents of its action, the psychology and behaviour of the clerks and of its inner bodies<sup>8</sup>. It can be stated that any administration is the result of the social environment.

More than that, the relationship is mutual, the social environment determines its administration and the latter influences the very social environment<sup>9</sup>. The Administration together with its institutions are imaged as a structured set with clerks and associated bodies, which communicate with the other social structures through cooperation, subordination or even constraint relationships, so that, taken in relation with the social environment, the administration within a given society should be able to appear either in harmony or in opposition with the whole social environment or with certain structures of it<sup>10</sup>.

Social dimensions of the administration can be established based on ample remarks and deep checks. For this purpose there can be used some criteria that concern the adjustment modality of the public administration to the social environment. These are deduced from the exteriorisation of the administrative phenomenon in time and space<sup>11</sup>. These criteria concern the duration and the rhythm, the mobility and the dispersal of the public administration in relation with the social environment.

By its nature, the administrative fact has got the mission to provide a certain continuity and stability of the social environment in which it is achieved.

And yet, changes occurring in the social environment can trigger changes also in the public administration, in its structures or within the personnel they use. This type of administration is characterised through plasticity, since it manages to adapt to changes occurred in the social environment. But, there is also another type of administration, characterised through rigidity and insularism in relation with modifications taking place within the social environment.

The action of the public administration structures has got a certain rhythm, which can be related with the rhythm of the social activity. Thus, the rhythm of the public administration action can be supple and can coincide with the alert action of the social environment. Or, on the contrary, the administration action is complicated by ample procedures; therefore the administration rhythm is rigid and slow in relation with the social environment rhythm.

The period of time in which the public administration action is achieved is a problem of rhythm, but also of the administration action duration. The period of time in which administration action is achieved coincides or not with the social time. For instance, the working time of a service of the public administration can coincide with the time that its beneficiaries has got available, or there can occur the disagreement between the time of this service and the social time. This is why it is required that the public administration should permanently adapt to modifications taking place within the social environment, as compared with the social life rhythm.

## **II. Local Autonomy Concept**

Local autonomy<sup>12</sup> is the modern form of expressing the principle of decentralisation. Indeed, administrative decentralisation represents a principle claimed by the doctrine and by a tendency in the evolution of the public administration so as to achieve the local autonomy. At the basis of any decentralisation there lies the idea of a certain local autonomy<sup>13</sup>.

Local autonomy principle is the basic principle governing the local public administration consisting of *"the right of territorial-administrative units to satisfy their own interests without the intrusion of central authorities, principle that entails administrative decentralisation, the autonomy being a right, and decentralisation a system that implies autonomy."*<sup>14</sup>

The notion of “*autonomy*” can only be righteously understood if it considered the fact that within a modern society there is a hierarchy of juridical standards depending upon their legal force either larger or smaller. Starting with this diversification of the juridical standards, the degree of autonomy of the body issuing them shall be able to vary in their turn, as authorised, to issue laws or normative instruments subordinated to the laws.

Thus, there shall be “*a legislative autonomy*”, in the case in which there is acknowledged to a human collectivity the right to exert itself or by its appointed representatives the legislative function. This is the case of the member states of the federal states, in the structure of which the own legislative bodies are authorised to pass laws in all fields, except the already passed ones, through the Constitution text, in the competence of the federal legislative body. If a human collectivity is acknowledged only the right to adopt, either directly or through representatives, juridical norms having a juridical power subordinated to laws, we shall find ourselves in the presence of “*an administrative autonomy*”.

The competence area of local collectivities shall be established by constitution or by law, and the initiative within these competences cannot be limited.

Regarded exclusively from the administrative perspective, local autonomy appears as a last step of development of the administrative decentralisation, a form of expression of this principle.

According to the opinion of an author<sup>15</sup>, local autonomy consists in assigning decision power between the government, on one hand and local agents, on the other hand (*mayors, local councils*), that, to a certain extent, they are independent of the central power, having the right to take certain steps, without asking for the Government’s approval or being censured.

The specific contents of the local autonomy concept manifests within the limits of the material and territorial competence established by the law, but especially through the liberty to settle collectivities problems, in their capacity of public law legal entities, owners of goods form the public field of local interest.

Local autonomy manifests at several levels<sup>16</sup>, juridical, institutional and decisional. Thus, at the level of the juridical capacity, local territorial collectivities are distinct law subjects, having their own public interests; at the institutional level, they have available their own administrative authorities, external to the central administrative apparatus and at the level of the decisional autonomy, these authorities have their own competences and make decisions for the best interest of the collectivities they represent. At the same time, the local autonomy cannot be effective, autonomy presence being felt at the level of the human, material and financial means.

Local public administration authorities are autonomous, but not sovereign. On one hand, autonomy manifest only at the administrative level, not the legislative one, as not being a political autonomy, as it is the case of federalism.

On the other hand, the local public administration authorities are submitted to a specific administrative control, the administrative trust control, on behalf of the central public administration, control aiming at protecting state’s public interests, laws abiding by, being a legality control not an opportunity one. The administrative trust control is a special control, which can be exerted only if the law expressly sets it up and only in the forms, with the procedures and by the effects expressly established by law.

An important aspect of the local autonomy concerns the right of local collectivities of associating with other local collectivities for the purpose of carrying out joint interest tasks under the laws. Also, they can cooperate with other state’s collectivities.

Legal protection of the local autonomy is achieved through the right of local collectivities to resort to judicial bodies so as to provide the free exercise of responsibilities and to follow the rights conferred by the Constitution and by the law.

### III. External Dimension of the Local Autonomy

The external, cross-border dimension of the local autonomy has evolved together with the traditional dimension of the local autonomy and has in view the local collectivities capacity represented by their own administrative authorities, to establish juridical relationships with public law subjects which are located outside the borders of the country to which they belong. Mainly, the monopoly of relationships with external political societies is held by the state. Local collectivities, in capacity of infra-state political societies cannot participate in the classical international relationships<sup>17</sup>. The over-border relationships problem of local collectivities is relatively recent.

After the Second World War, over-border relationships concerned the union between localities. But, under the influence of numerous factors, such as geographic conditions, economic, cultural exchanges, local collectivities began to establish direct relationships with their foreign homologues and international organisations<sup>18</sup>.

The over-border relationships of local collectivities can only be conceived within the frame of local autonomy. To satisfy local public interests, the administrative authorities of local collectivities can act not only at the internal level, but also at the external level. Their external action can only concern local public interests<sup>19</sup>; it has to comply with state's international commitments<sup>20</sup> and it should not to be detrimental to conditions of exercising state's sovereignty.

In the foreign specialty literature it has been underlined the double legitimacy of the external activity of local collectivities. It is about, on one hand, a political legitimacy, written in the local democracy extension, and, on the other hand, a functional legitimacy which reveals the effectiveness and responsible exercise of local business.

It is to mention that the external activity of local collectivities should not be misinterpreted as being the participation of federal states in international relationships, according to constitutional provisions, which is a classical situation in the public international law.

### IV. Conclusions

Analysis of constitutional provisions regarding the local public administration<sup>21</sup>, of local public administration law provisions<sup>22</sup>, of those of local elections law, as well as of some opinions expressed in the Romanian doctrine, stresses out the main features of the local public administration, as follows: the local public administration has at the base of its organisation and operation the local autonomy principle and that of public services decentralisation, representing the expression of the administrative decentralisation regime applied at the level of the Romanian public administration; it includes within its area the autonomous administrative authorities; communal, town and county areas – local councils and town halls, county council and public services organised in the suborder or under the authority of these local public authorities; the relationships between the public administration organised at the level of communes and towns and that at the level of the county have as basis the following principles: autonomy, legality and cooperation in settling joint problems, their relationships are not subordination ones; they settle local public affairs and achieve public services of county interest, through elected administrative authorities and also local referendum, under the laws.

There can be appreciated that the role of public administration consists in settling public affairs and providing interests of local collectivities, in accordance with their needs, tightly related to the specificity of the territorial administrative unit they belong to.

It cannot be denied the fact that meeting national community's general interests can only be entrusted to the central public administration. In this way, villages' unity is provided by their administration which develops a rational activity, discouraging any hostile tendency from inside or outside the country<sup>23</sup>.

Decentralisation means to acknowledge local interests; its purpose is to create own life of local collectivities, the only ones able to appreciate their interests and to naturally meet them. This regime has got clear advantages, thus, through decentralisation, legality acquires its plenitude and the administration becomes more juridical. Only through decentralisation the state can fulfil its two large responsibilities: nation's preservation and progress.

More than that, decentralisation provides the favourable climate so that local interests should naturally develop, in accordance with natives' habits and in accordance with their real requirements. No one can know any closer and in more detail the needs of a locality than the very local authority and, also, no one can know the most adequate means to satisfy them. In this manner there can be settled in much better conditions local interests, local public services being conducted more efficiently by local authorities, in a regime in which they do not have the obligation to obey the orders and instructions from the centre.

Another advantage is that electors' participation in the appointment of local authorities stresses out its responsibility character and initiative spirit for the public life of the locality and makes them look for and find themselves solutions to problems they encounter<sup>24</sup>. Decentralisation generates the individual initiative spirit, while centralisation reduces the role of inhabitants to only that of administrated people.

From the subjective perspective, decentralisation appears as a special means for citizens' political education. "*They shall know that they must rely on their own forces*", "*developing their liberty and solidarity feelings, as well as their initiative spirit*"<sup>25</sup>.

By its nature, decentralisation can provide advisable administration of localities, since it only uses the strictly required number of clerks to satisfy local interests, while in a centralised regime the number of clerks is much larger, and their working time is consumed in order to draw up materials required by the central authority and to enforce the orders they are to receive from it. In the administrative decentralisation regime, public clerks remove, to a higher extent, bureaucratic and routine-like phenomena in the local activity.

On the other hand, under the decentralisation regime, taxes acquire the character of "*contributions*", being returned to the taxpayer as a benefit of different public services<sup>26</sup>. Local collectivities have available by themselves their budget under the control and guidance of the state's representatives and their own responsibility. At the same time, in the decentralisation regime, the local authority can operatively settle and meet local requirements, unlike the centralised regime, in which the central authority act from a distance, slowing down on purpose problems settlement, asking for explanations through administrative mailing.

Decentralisation generates the feeling of local liberty, the interest for the locality well being, fact that determines a special development of human collectivities from the administrative-territorial units. Despite all these mentioned advantages, it is to note the fact that decentralisation has got certain limits and even disadvantages. Regardless of the form it gains, decentralisation is a problem exclusively of administrative nature, unlike federalism, which is a problem of political nature, implying the existence of a constitution and powers separation. No matter how wide the elected local authorities' competence would be in settling local problems, they perform their activity within a unitary state not outside it<sup>27</sup>. There are two distinct aspects that is: the nature of authorities which are autonomous to the state of local authorities, by which it is achieved administrative decentralisation and the state's limits of their activity<sup>28</sup>.

If this limit was not admitted, and which is given by the Constitution, by the law and by the documents of the specialised central authorities, the autonomous local authorities would turn into political authorities, just as in the case of a federation, evolving within genuine independent state's structures, having evil consequences at both the national and the international levels<sup>29</sup>.

With regard to the disadvantages of decentralisation, from the political perspective, being a principle of autonomy, it diminishes the force of the central power. From the administrative perspective, since it is a system designed to defend local interests, it gives priority first to these specific interests, prevailing over the country's interests. In a clean decentralised regime, the central power action is much loaded since not in all cases it is fully connected with the local authorities' actions. According to the opinion of an author, electing decentralised authorities introduces into the local administration the party's politics which sizes and vitiates everything.

With regard to the management of patrimony and finances, decentralisation enhances the number of authorities having their own patrimony and budget, fact that makes difficult the achievement of an efficient control over the public money use and the shaping of an outlook on the country finances as realistic as possible.

Regardless of the specific forms under which it is practiced in different countries, public administration decentralisation represents a trait of both the present and future society, with important implications both at the economic and social level. Advisably applied, it can contribute to a significant improvement of efficiency of resources allotment and of administrative function quality of the state.

**Notes:**

<sup>1</sup> J., Vermeulen (1946), *Evolution of Administrative Decentralisation in Romania*, p. 30 and the following.

<sup>2</sup> Anibal, Teodorescu (1926), *Administrative Law Treaty*, vol. I, Bucharest, p. 286.

<sup>3</sup> Romania's Constitution of 2003 revised published in the Official Journal no. 767 from October 31<sup>st</sup> 2003.

<sup>4</sup> Law 215/2001 of the local public administration updated and republished in the Official Journal no. 123 from 20.02.2007. The most recently updated by: Law no. 59/2010 – to amend art. 55 of Local Public Administration Law no. 215/2001 April 11<sup>th</sup> 2010 Official Journal 222/2010 and Law no. 375/2009 – to amend paragraph (2) of art. 53 of Local Public Administration Law no. 215/2001.

<sup>5</sup> Art. 3 from the European Charter of Local Autonomy signed in 1985 in Strasbourg and drawn up on the initiative of the permanent conference of local and regional powers from Europe. Article 1, a 1 in. 2 of Law no. 69/1 99 I establishes: "Autonomy concerns both the organisation and operation of the local public administration, and the management, under own responsibility, of interests of collectivities they represent".

<sup>6</sup> Mihai, Oroveanu (1996), *Administration Science Treaty*, Bucharest, Cerma Publishing House, p. 41.

<sup>7</sup> G., Gurviteh (1962), *Sociology Treaty*, ed. II<sup>nd</sup>, vol. I, Paris, P.U.F.,

<sup>8</sup> Claude, Goyard (1966), *Le milieu social*, in *Traite de science administrative*, Paris, Mouton, p. 146.

<sup>9</sup> Traian, Herseni (1982), *Sociology. General Theory of the Social Life*, Bucharest, Scientific and Encyclopaedic Publishing House, p. 658.

<sup>10</sup> Alexandru, Negoită (1977), *Administration Science*, Didactic and Pedagogic Publishing House, Bucharest, 1977, p. 28.

<sup>11</sup> Claude, Goyard (1966), *Le milieu social*, in "Traite de science administrative", Paris, Mouton, p. 152 and the following.

<sup>12</sup> The word "autonomy" derives from the Ancient Greek, in which the prefix "auto" means alone, by oneself, independent, and "nomos" -law. As etymology, by the notion of "autonomy" there shall be understood the liberty (the right) of governing oneself by own laws.

<sup>13</sup> Andre de Laubadere, Jean, Claude de Venezia, Yves de Gaudemet (1983), *Treaty of Administrative Law*, vol. I, L.G.D.J., Paris, p. 104.

<sup>14</sup> Anibal, Teodorescu (1935), *Treaty of Administrative Law*, vol. II, Bucharest, Institute of Graphic Arts, E. Marvan Publishing House, p. 286.

<sup>15</sup> Cristian, Ionescu (1997), *Constitutional Law and Political Institutions. General Theory of Political Institutions*, vol. I, Lumina Lex, p. 70 and the following.

<sup>16</sup> Paul, Negulescu (1925), *Roman Administrative Law Treaty*, edition III<sup>rd</sup>, vol. I, Charter I, United Typographies, Bucharest, p. 563-564.

<sup>17</sup> Jean-Marie, Auby, Jean Bernard Auby (1996), *Droit public. Droit constitutionnel. Libertes publiques. Droit administratif*, tom. 1, 12-eme edition, Sirey, Paris, p. 13, taken over from Corneliu-Liviu, Popescu (1999), *Local Autonomy and European Integration*, All Beck Publishing House, Bucharest, p. 226.

<sup>18</sup> Corneliu, Liviu, Popescu (1999), *Local Autonomy and European Integration*, All Beck Publishing House, Bucharest, p. 226.

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<sup>20</sup> Andre de Laubadere, Jean, Claude de Venezia, Yves de Gaudemet (1983), op. cit., p. 156-157.

<sup>21</sup> III<sup>rd</sup> Section chap. V of III<sup>rd</sup> Title of Constitution of Romania, art. 120-122.

<sup>22</sup> Law no. 69/1991, published in Official Journal of Romania, I<sup>st</sup> part, no. 238/28.11.1991, reissued in the meaning of art. III<sup>rd</sup> from Law no. 24/13.04.1996, published in Official Journal of Romania, I<sup>st</sup> part, no. 76/13.04.1996. 1 Law no. 70/1991, published in Official Journal of Romania, I<sup>st</sup> part, no. 239/28.11.1991, reissued in 1996 in Official Journal of Romania, I<sup>st</sup> part, no. 77/13.04.1996, amended by Emergency Ordinance no. 28/2000, published in Official Journal of Romania, no. 153/13.04.2000 and Emergency Ordinance no. 63/2000, published in Official Journal of Romania, no. 240/31.05.2000.

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## ORIGINAL PAPER

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### Is the European Welfare architecture possible?

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**Abstract:** *It is obvious that the existing economic crisis influenced the decline of the welfare state, which appeared at the end of the '80s. More and more voices, autochthonous inclusively, question the viability of the European social architecture and suggest a significant reduction of the state role within economy and society. More than that, there have been debates not only upon a possible cessation of the providential state, but also connected with the necessity of a rapid transformation of the European Union into a federation similar to the U.S., following exclusively libertarian policies. In this abstract, we want to prove that, although we have stepped into an era of serious confrontations between powerful rival forces, the idea of launching out a new type of welfare society is increasingly up-to-dateness. Therefore, our debate is not based on the idea of abandoning the social assistance programs, but on the efficiency of the existing ones, which are completely discordant with the challenges of the advanced economies of the 21<sup>st</sup> century. In fact, we must not forget that the most valuable resource which is needed to a great extent in order to provide a dynamic and competitive economy of knowledge, is the human being.*

**Keywords:** *the welfare state, the European Union, the social Europe, the welfare state crisis, the European welfare architecture.*

### I. A brief history

Since antiquity, philosophers attempted to discover how a better and more righteous society could be achieved. Plato was the first one who was mainly preoccupied with this topic, being followed by others, starting with his disciple, Aristotle, and going on with the moderns Hobbes, Rousseau, Mill and our contemporaries Robert Nozick, John Rawls, Amartya Sen and others. Most of the philosophers thought that the achievement of a good society can become possible only by putting into practice of an infallible rationalist project. This "myth of the rationalist policy" had simply unhappy consequences, just as, for instance, there was the communist project, launched during the 19<sup>th</sup> century and carried into effect one century later, in many states worldwide, especially in the Eastern European countries.

The welfare state idea is not new, it appeared at the same time with the advance of the capitalist society in the west of the European continent. In the beginning, many believed that the mere appearance of capitalism would definitely solve the problems, too. For instance, the founder of the modern economic science, the Scottish Adam Smith, considered, in his famous work "The Wealth of Nations" that in order to reach to the general welfare first we need to get the economic one. The latter can be achieved by means of the action of the natural law of "invisible hands", specific to the free market, which can lead to a collaboration between the individuals who target at its own interests.

Gradually, mainly since the second half of the 19<sup>th</sup> century, more exactly during the period when the modern national states appeared, people came to the conclusion that a self-acting compatibility of capitalism with democracy, on the one side, and with general welfare, on the other side, could not be possible. From this reason, it is quite necessary that someone, mainly the state, should be the one that begins and coordinates the accommodation of the economic profit, aimed at by capitalists, with welfare, security and harmony sued by the whole society.

As Frank Field stated, "one of the best ideas of the 19<sup>th</sup> century was, if it is possible, to establish a minimum income at the national level beyond which no member of the society could low". Unfortunately, "this is an ideal still waiting for being accomplished" (Frank Field, 2001: 82). The increasingly involvement and concern of the state for stepping up the welfare and social security were sometimes considered, especially by the Marxist thinkers, as being the most ingenious method of extending the lastingness of the western capitalist society. In conclusion, it is considered that the welfare state is that whose desires are to establish the lowest level of unemployment, if possible, the minimum income guaranteed for all workers and employees, the access of the population to food, house, education, medical assistance and other social services.

During its advances, the welfare state went through more stages.

The debut stage lasted approximately four decades, since 1883 till the end of the First World War, and the most imposing political figure related to this project was Otto van Bismarck. He carried into effect an old idea promoted by Condorcet in the last decade of the 18<sup>th</sup> century, launching the first firm European social settlements, which regarded the protection of the employees at the work place, the limitation of the daily working hours, women's and children's work, health insurance, etc. For the founder of Germany, the state of social assistance represented only "the way to pacifying the lower classes and strengthening the Kaiser's reign" (Krugman, 2010: 45). But, "since Bismarck, the social protection... is no longer a marginal activity, becoming step by step one of the essential targets of the public authority" (Vanderborgh and Van Parijs, 2005: 9). The type of state which assumes the role of protecting the disadvantageous classes of the society was taken over, in the first decade of the 20<sup>th</sup> century, by Great Britain and France, and later by other states of the world.

In interwar years, the welfare state strengthened itself, but this thing happened mainly in the U.S. The Great Recession (1929-1933) determined the administration of the president Franklin D. Roosevelt to suggest a coherent system of social reforms known under the name of The New Deal Project. This revolutionary project consisted in founding more governmental agencies<sup>1</sup> and promoting a series of legislative acts, such as *Social Security Act*<sup>2</sup>, *National Labor Relations Act*<sup>3</sup> or *Fair Labor Standards Act*<sup>4</sup>. The policies introduced by The New Deal Project led to a significant increase of the American life standard and to a real democratization of the society across the Atlantic.

After the Second World War, the welfare state knew, for over three decades, a real Golden Age. Inspired by the economic theory of John Maynard Keynes, the governments abandoned the old neoclassical theory of keeping the salaries at a low level. Thus, there were drawn up policies of redistributing the incomes to increase the need for consumption within society, especially among the poor people, who tend to consume more. The “lowly” incomes redistribution, the development of social systems and the increase of the state investments became the main policies applied by all the developing capitalist states in the first decades after the war.

Paul Krugman states that, as a result of “the lowly incomes and wealth” redistribution, caused by applying the New Deal policy before the war until the ‘50s, it was increasingly reduced the gap between wealthy people and working class, and there were lowered the salary differences between workers, this process being known under the name of “The Great Compression” (Krugman, 2010: 50). And, contrary to the Conservatives’ statements, “not only that the economy was destroyed by this redistribution, but the Great Compression paved the way for a huge outburst of economy which lasted for a whole generation” (Krugman, 2010: 51).

The greatest development of the welfare state was noted in the western part of Europe, where the integration movements were increasingly active in the first years after the war. Marshall Plan led to a rapid reconstruction of the European economies affected by the war and to a rehabilitation of social and political institutions meant to defend the values of the western democracy. OEEC was the first European organization created in order to assure a strong and lasting cooperation of the states which benefited from the American financial aid, for their raising after the war damages and for the re-establishment of the population’s prosperity. Then, the social preoccupation can be found in the first treaties of the European Union, being also assumed by the European Council. Although in the text of the Treaty of Rome, of founding the Common Market, in Section III, they refer to the community social policy, the signatory states did not rush to modify the internal legislations for adjusting them with the necessities of the community. However, the welfare architecture still can be found in the internal political-administrative application of all the western European states, many institutions being built and a series of national programs being diffused with the aim of reducing the social inequalities and of helping the middle class.

## II. Towards a Social Europe?

From the signing of the Treaties of Rome to 1972, the steps made by the community in the social field were rather hesitating. The first measures aimed at the settlement of the circulation of the work force, the improvement of work and life conditions and the attunement of the system of education and professional formation. But it lacked the firm desire of the six CEE member states of engaging themselves in a convergence process in the social field, with the view of carrying out the welfare state architecture at the community level. During this time, *the European Social Fund*, founded in 1960, represented the main financial instrument of action controlled in the area of the common social policies.

Even if “the mineral oil impact” between 1973-1974 made the Europeans to reflect for the first time at the possibility of the outburst of a new major economic crisis, similar to that in 1929, the political measures for strengthening the state and for creating a common architecture in this field went on within the European Economic Community. The beginning of the economic recession determined the European political leaders to agree, in 1974, upon the First Program of Social Assistance meant to assure the protection of the workers’ rights, the equality between men and women, the improvement of social dialogue between employees and companies, and the protection of workers’ health and security. The economic crisis and the problems which appeared after the CEE’s extension with three new states, Great Britain, Ireland and Denmark, placed the social aspects on a secondary plan.

The European Unique Act, signed in 1986, included very few settlements of the community “social space”. However, after Jacques Delors had taken over the leadership of the European Commission (in January 1985), the social dimension of the European Union was balanced, during a period when the governments of the western states were, largely, social-democratic.

The community began to amplify the programs of social assistance, especially those referring to the improvement of work conditions, the protection of workers’ health and security, the equality between men and women, the social dialogue and the protection of the employees’ rights. In December 1989, under the form of a declaration, it was adopted *The Social Charter (The Charter of the fundamental social rights of employees)*, by eleven states of the European Organization. The act defines the fundamental social rights of the European Union citizens, especially those of the employees, no matter their economic domain and status. Here, there are established rights already mentioned in *The European Social Charter*<sup>6</sup>, such as the right to travel freely, the right to hire, the right to improve the work and life conditions, the right to social protection and security, the right to the freedom of the community association and negotiation, etc.

Mentioned in the text of the Treaty of Rome, the concept of ‘social cohesion’ will be explained hardly within the constitutive act of the European Union, signed at Maastricht, in February 1992. Here, it will be mentioned that the Union aims at establishing a high level of employment and social protection, the increase of life standards and quality, as well as at amplifying the social and economic cohesion between the member states. In order to strengthen the assumed social commitments, the member states, except Great Britain, signed “a protocol upon the social policy”, which will be added to the Treaty of Maastricht, whose main aim was to extend the sphere of competences of the Union in the social field. One year later, in 1993, the European Commission published an act entitled *The Green Charter upon the social policy*, in order to challenge a series of common discussions as regards the policies in this field. Altogether, the rapprochement of the social legislation of the member states with the view of gaining the long-expected ‘social cohesion’ within the community remained knotty because of the differences between the national traditions and practices, and the abstentions of certain governments which desired to preserve their competences in these fields.

In spite of all the efforts made by the Delors and Santor Commissions for reuniting the member states while negotiations, upon topics referring exclusively to the employment within the Union, the latter ones accepted major changes only after the years 1997-1998, when in 13 (out of 15) western states, the leadership was taken over by the left-wing parties. The new political leaders decided to act all against the unemployment and, as they stated, to form a “Europe closer to citizens”. The first significant step in this direction was recorded when the British Prime Minister accepted to include in the Treaty of Amsterdam a series of social clauses, and France required the official acknowledgment of the necessity of achieving the social Europe equally with the currency Europe. Immediately after that, Paris summoned an extraordinary European Council, on

21<sup>st</sup> November 1997, at Luxemburg, exactly for materializing the application of policies upon the employment. Here, it was adopted *The European Strategy for Employment*, whose objective was the coordination of the national policies within the European Union.

For the first time, it is decided to be introduced certain instruments of real action at the community level, such as: 1. the management lines and deals, 2. the national plans of action, 3. the recommendations of the Council, 4. the common report upon the employment. ESE will also inaugurate a new method of action at the European Union level, known under the name of “the open method of coordination”, based on the principles of convergence, management in terms of objectives, control of the member states and complete approach. Among the priorities established within “the process of Luxemburg”, we mention the following: the promotion of certain active and preventive measures for the unemployed and inactive persons, the promotion of the private initiative and the leadership spirit, the development of human capital for the entire life, the inducement of the increase of work attraction, the modernization of work organization, the decrease of illegal employment, the increase of chances equality between men and women, the decrease of the regional differences as regards the employment and unemployment, etc.

The slack part of these agreements, inclusively of the Social Charter, was that there were not exactly stipulated any kind of sanctions for the states which refused to obey, as well as any financial means necessary for their achievement, taking into account that, from this point of view, the structural funds could be used only within limits. The only significant advances in the field of the use and protection of work force would be recorded also within some national states, such as Germany, ruled by the social-democratic government of Schröder. His coalition, consisted of socialists and greenhorns, internally fought against the unemployment and externally pleaded for the signing of an European social pact through which they should achieve the coordination of the salary policies, they should encourage the internal demand and they should achieve investments which will increase the number of work places.

A real agenda of European social policies was redacted at the same time with the signing of the Treaty of Nice (2001), respectively that of Lisbon (2007). But, in spite of the efforts made by the leaders of the European Union during the years, this organization did not manage to achieve its targets in the social field. Alongside of the outburst of the economic crisis, in 2008, all the assistance programs stipulated in the community acts were seriously affected.

### **III. The crisis of the welfare state**

Further on, we shall analyse the causes of the welfare state’s failure, especially of the European one. Alongside of the appearance of the first economic crises in the ‘80s, the interference theory of Keynes sustains a powerful decline, being gradually replaced by ultraliberal and monetary deals.

The best-known liberal was Friedrich Hayek, a severe critic of the state’s interference in the social and economic life, an upholder of individualism and completely free market. He considered that the state’s interference in order to transfer resources towards different disadvantageous social groups only contributes to the systematically destruction of the exchange procedures specific to the free market. Moreover, he was convinced that, although the free market “causes inequalities and sufferance for those who lose”, these are necessary for increasing the power of the discipline adaptability within the market. Hayek sustained that long-term inequalities could have a therapeutic effect, bringing those in this situation “to do their utmost to improve their condition and get into the winners’ team” (Valier, 2009: 128). Accordingly, the state of interference and assistance acts to derogate from the individual freedom and self-sufficiency, as well as from the supremacy of the right.

The monetary trend, whose impact seriously increased after the '70s, is also a liberal one, promoted by the Nobel Prize's laureate in economy (in 1976), Milton Friedman. The monetary belief and its extent, the so-called theory of "the economy of the supply", debated by Arthur Laffer<sup>6</sup>, had a powerful influence upon the economic and social policies promoted by the American administration of the president Ronald Reagan. The mighty increase of the influence of these neo-liberal principles, their more and more frequent appearance within the national policies practiced by certain member states of the European Union, especially Great Britain, coincides with the severe weakening of the trust in the possibility of the state of interfering in order to solve the serious problems caused by the capitalist system. At the European Union level, it occurs a clear disruption between the real economic life and the political-administrative decisions assented at Bruxelles. Despite the fact that it was mentioned in the founding treaties, the coordination of the economic and social policies at the community level was at least inefficient. The Union couldn't even cope with the changes within the labor market, which brought about the increase of the unemployment. The stale educational systems could not manage to surpass the obsolescence of the professional qualifications, therefore an increasingly number of graduates were unable to hire. The percentage of accepting the new technology was also relatively low, an aspect which brought about a gradually reduction of productivity in almost all the states of the European Union, even if, generally, Germany was an exception in many cases.

Further on, we shall broadly analyze the causes which led to the abridgement of the state of providence within the European Union. Some of them were identified on the occasion of the meeting of the state and government heads at the European Council in Lisbon (March 2000), where there was adopted an act entitled *The Lisbon Strategy* (or *The Lisbon Agenda*). Thus, the political leaders found out that the E.U. can offer less jobs to the future employees compared with the U.S., that the percentage of employment among women is much lower than the one existed across the ocean, the long-term unemployment is significant, the percentage of employment for the persons after 55 is low, and from the economic point of view, it is observed a mighty imbalance between the markets in the centre and north, and those situated in the south and south-east of Europe. The Lisbon Strategy stipulated a series of ambitious measures in order to solve such imbalances. In spite of these, while evaluating how the measures established at Lisbon had been carried out, in 2004 ("The Kok Report"), it was observed the aggravation of the economic and social situation within the European Union. Among others, this showed that the population of the Union grows older and the systems of social assistance are totally in crisis. Therefore, The Lisbon Strategy was completed and extended for the following period. A new analysis of the actions deployed in 2007 indicated both certain advances and the weak involvement of some member states to carry into effect proper reforms within those areas with problems. As we all know, the capitalist world was stricken by crisis, first in the U.S., then extending over the states of the European Union.

Such dramatic change within the European economy, meaning the trust's decline in the possibility of the providential state to achieve the Keynesian ideal of obtaining the thorough employment must have deeper causes than those referring to the inefficiency of the deployment and weak coordination of the economic and social policies within the European Union. Among these, we mention the most important:

1. *The continuous growth of the differences between low and high salaries* causes the break of the balance at the social level and brings back the old confrontation upon the socio-economic differences;

2. *The increasingly immigration of the low-skilled workers* contributes to the maintenance and emphasis of the income differences within the western society. Thus, the accomplishment of the capitalist need with the view of increasing the profit can be preponderantly achieved on the

basis of decreasing the salaries, which provokes a diminution of the interest for the technological developments and leads to the decrease of the resources obtained from taxes. We should also take into account the fact that the low-qualified workers represent the first payees of the tax transfer system within the state of assistance, but joining the natives with similar qualifications manage to bring more political pressure upon the taxes increase and the “lowly” transfer of supplementary income. “Consequently, most of the low-qualified immigrants can rather weaken than consolidate the political-economic balance of fees and taxes.” It is true that this outcome is somehow diminished by “the low percentage of taking part in voting of the low-qualified immigrants”, combined with the cohesion of the high-qualified employees, who plead for decreasing the taxes and reducing the rate of social transfer. (Razin and Sadka, 2005: 30) A further explanation for admitting the existence of a negative correlation between the level of taxes and that of immigration refers to the attitude of certain states provided with advanced systems of social assistance which decided to reduce the rate of immigration, especially as regards the low-skilled employees. We mention here the case of Canada, which has a permissive immigration policy only for the high-qualified employees, these being, in general, less interested in the social transfers specific to the welfare state.

3. *The tendency of aging of the population (the increase of longevity) associated with the decrease of birth rate* (especially in Europe) causes serious problems to the systems of pensions, the accelerated increase of social expenses, as well as the reduction of the income derived from taxes, affecting in this way the resources of the providential state and leading to the imbalance between workers and payees (especially the pensioners) of the welfare state. The consequence is the same in the case of the low-qualified immigrant workers. Moreover, if the aging population with a highly life hope is combined with the low-qualified immigrants, can result in a wide “pro-fees coalition”, these being “the payees of the transfers derived from the employees” (Razin and Sadka, 2005: 36).

4. *The intensification of the international competition, alarmingly increasing, taking into account the globalization* also leads to the reduction of the resources of the state of assistance, resources which derive from the capital and sells tax. Today the capital presents a great international mobility, being always in search of conditions proper to improving its profitability, namely, states with taxation and a low rate of the profit tax, possibly other fees and taxes exemptions, etc. At the same time, the international competition brings about the increase of productivity and the demand for high-qualified employees, concluding that the number of low-skilled unemployed persons tends to increase, which brings pressure on the resources of the welfare state.

5. *The de-industrialization, occurred as a consequence of the migration of the industrial capital* from the developing western countries to other regions of the world, especially to the emergent countries, leads to the increase of social expenses and the collapse of the resources being in the possession of the capitalist welfare states.

6. *The introduction of new technology*, alongside with a gradual abandonment of the old industrial traditions can have positive effects on a general economic scale and negative ones upon some work places (causes the structural unemployment), upon the professional qualifications (moving towards service sector), the local communities, etc.

7. *The reduction of the rate of the globally economic increase*. The causes of this crisis consist in the break of the fundamental laws of economy and the change of the operation of the market (the illogical increase of the credit, the inducement of the consumption, etc.; the crisis severely diminishes the possibilities of the states of making social expenses.

8. *The aging of the education and training systems and their misalignment to the new objectives of the economic development*. In many western European states, provided with

decentralized systems of education, the unsound bureaucracy of the government, the lack of efficient instruments designed for permanently improving the education in the idea of its adjustment to the requirements of the advanced knowledge-based economy and the deployment of certain programs of professional formation having no connection with reality led to a market saturated with graduates unable to cope with the new challenges of economy, therefore, automatically to the increase of the unemployment expenses, landing once again the welfare state in difficulty.

#### **IV. Is the European Welfare architecture possible?**

Lately, we've noticed a concerted attack of the right-wing European politicians towards the state of providence, considering that, no more no less than, this is the one to blame for throwing Europe into the present recession. As a solution to this matter they propose the reduction of the size, role and power of the state, the revival of the individualism and the assurance of the free market supremacy. As we already have noticed, the comeback of the ultra liberalism and monetarism implies rigid control measures of the monetary supply, inflation and deficits through the blocking of credits, reduction of the population's income and automatically of the consumption, a decrease to a minimum of the social expenses, a decrease in the sums allocated for the education and medical assistance etc. The idea of a "Social Europe" does not pass by the critiques of the liberalists either. Therefore, they consider that the excessive preoccupation for the social is wasting the Union's financial resources, leading to the super bureaucracy of the Brussels institutions and the exacerbation of the interventionism. The well-desired European "social unity" is nothing but a dead end, as long as its realization demands an overwhelming taxation policy, which nullifies its increase and economic competitiveness and throws the Union into an irreparable recession.

All these been said, there are numerous voices which sustain that the today problems cannot be offered by no means by the neo-liberalism, but they consist of the welfare state reconstruction so that this will become, as the Lisbon Strategy stipulated "a state of the active and dynamic welfare", based on a profound solidarity and equity commitment and on the belief that "social justice can contribute to economic efficiency and progress"(Hemerijck, 2002: 173). Actually, after 1990, "the notion of social active state has become the renewed social-democracy banner, from Anthony Giddens to Ulrich Beck, from Tony Blair to Gerhard Schröder" (Vanderborght and Van Parijs, 2005: 88).

The reconstruction of the welfare state, so that this will efficiently respond to the actual world's challenges is a necessary and expected thing, as it is hard to believe that the European citizens could forget the "social commitment" that the founding fathers of United Europe have taken when the social edifice which is called today European Union started. As it is impossible for someone to offer us an *ab initio*, a miracle and functional formula of the future welfare state architecture, we can only deal with the actual European formulae of the state of providence, and with the causes which determined its downfall, in order to discover the directions which this can follow in order to become viable without getting into conflict with the economic competitiveness and the free market's laws. As we don't really believe there are many more out there who sustain the viability of a socialist welfare state!

In the literature of specialty there are being particularly analysed three formulae of providence state, the liberal, the social-democratic and the corporatist-conservator.

Anton Hemerijck presents briefly the traits of the three types of state of providence that exists presently in Europe. He analyses the "Scandinavian model", the "Anglo-Saxon" and the "European Continental" one. The Scandinavian model has a more generous social transfer rate, a broader social services offer, beyond those of education and medical assistance, an active policy

regarding the gender equality, encouraging thus the women integration into the labor market, a higher level of employment protection, corporatist-industrial relationships, stronger trade-unions and a higher level of coverage of the collective labor contracts. From the Nordic countries, "Sweden stands out as providing one type of societal system based on high employment rates with only a small gender gap, a high incidence of dual-earner households, extensive and generous family politics, strong welfare support systems both for childcare and parental leave, and egalitarian wage structures, including low gender wage inequality" (Anxo, 2010: 104).

On the other hand, about the Anglo-Saxon model (which is a liberal one) he says that it is a strong one guided by the utilitarianism's principles, being characterized by a lower transfer rate towards the social programs, a social services offer that aims more at the basic needs, a weaker development of the public social services, besides the education and health ones, services more for the poorer families, lower level of employment protection, mainly limited to the assurance of the fair labor contracts, with no active labor market politics, in the professional formation field and education, trade-unions with moderate power and lower level of coverage and negotiation of the collective labor contracts. The Continental European model is mostly corporatist-conservator, being found especially in Germany, Austria, France, Italy, Holland and Belgium. This represents a mixture of etatist, corporatist and familial influences, being characterized by: unequal levels of transfer towards the social programs (for example: high pensions and poor unemployment benefits); poor public social services levels, besides those for education and health, and a considerable dependency of the private labor conscription; maintains the traditional familial model (in which the husband is the family's supporter); the employment is bound by the social security services; the politicians passivity towards the labor market; strict level of employment protection, but with a stress on the masculine gender; wide systems of education and professional formation, especially in Germany, Austria and the Netherlands; strong social partnership, which extends into the administration of the social security services, reasonable-powered trade-unions and a high level of coverage and negotiations of the collective labor contracts" (Hemerijck, 2002: 179).

The future architecture of the European society welfare should combine viable elements of social justice from the three existent models, thus efficiently converting, as Amartya Sen demands, a free economic development, but removing those aspects that can limit the free labor manifestation and the economic profitability, only these can guarantee the existence of the resources for the support of the social equilibrium and investments. The efficient reforming of the European welfare state is only possible under the circumstances in which political leaders of the EU will reach to a common vision regarding its necessity and future design.

In the following paragraphs we are going to analyze, in short, a few aspects which we believe play a key role in the realisation of a new design for the welfare state at the European community level:

- *The welfare architecture of the European Society has to be made in a way that the cost of its functionality must not reach that level where the competitiveness and efficiency of the market economy is lost.* Such a case is the Swedish system. Even if it has noticeable results, being admired and wanted by all European citizens, it is becoming harder to finance and at community level it is still unsustainable, for many reasons, as follows: the political decision for the unification process at the European Union level has many more steps to follow until it is complete; the community is not unitary from the point of view of the economic performances of the member states; the integrationist process, still unfinished, generates a high mobility of capital and labor; fiscal and budgetary constraints will be imposed for a period of time which is still hard to determine; the politics of equalizing the dynamics of the private economy and the public one have not been clarified yet at the community level; the complementarities

between the welfare state and the free market have not been regularized yet at economic, social and demographic dimensions, as the European Union ones etc.

In a recent article, Joseph Heath investigated three normative types of the welfare state, stopping at institutional-redistributive model, communitarian and the one he named "public-economic". His conclusion was that "the public-economic model is the only one able to provide a rationale for public provision of the "big ticket items" – health, education, pensions – as well as to explain the dynamic that produced the extraordinary expansion of state activity over the course of the 20th century" (Joseph Heath, 2011: 41). Unlike the first two models, which focus on the accentuation of importance of equality, community and the assurance of the basic needs, as the welfare state's basic requirements, the public-economic model stresses also the decisive role of the economic efficiency in order to develop a plausible state.

- A European society of welfare, which is getting close to its central purpose, which is that of a higher labor degree, must resolve efficiently the equation: *investments-productivity-employment-salary costs*. The key of this equation is within the increase of the economic competitiveness strategy, which succeeds at the same time the maximization of employment (through preventive measurements, limiting the elimination of the labor from the system) and increasing the labor productivity through the assurance of a higher level of professional formation and education" (Hemerijck, 2002, 186). Here it seems to be a trap: the productivity maximization determines new employment reductions and implicitly higher social expenses. Still, if we analyse the unemployment structure at the European Union level, taking into consideration the age factor, we notice that it is very high among youngsters and those above 50's. The first one is indeed very worrying! The huge unemployment among young European people shows us that the continental school does not succeed in preparing in a significant percentage specialists for the economy based on advanced knowledge<sup>7</sup>. In comparison, Singapore, a small state with an advanced economy and with a rate of unemployment under 3% in 2011 is the country about OECD says that it has the most advanced and elitist system of education in the whole wide world.
- The promotion of a more efficient policy of distribution of the existent resources among the markets, government and citizens. The continuing increase of markets, the tighter binding of the income of employment and initiative, as well as a slightly "relaxation of the employers protection for the basic and stable jobs combined with an increased protection for the precarious and secondary jobs" are just a few examples of measures that can lead to the reaffirmation of the social welfare state. (Hemerijck, 2002: 197). In return, Europe's leaders should not sustain the new policies of some member states, that of "flexibility" and "deregulation" of the labor market, as a solution of getting out of the recession. The flexibility of the labor market leads only to a temporary higher percentage of employment, continuing unemployment and marginalization, while deregulation (specific to England) will generate higher and higher differences between wages, inequality, poverty and social exclusion. The economic research show that the flexibility and deregulation will determine the maintaining of consumption at lower rates, the decrease of the budgetary incomes, the reduction of the welfare state resources and the delay of getting out of the recession.
- The future of the welfare state must be an integrative and active one, not passive, one that comes into action only after the social exclusion has happened. This assumes a consolidation of the labor benefits and especially, of an investment in the human capital. Therefore, a higher attention must be paid to entrepreneurial education, education throughout the whole life, the assurance of opportunities of professional formation for those workers that

are in danger of being marginalized, the creation of new part-time jobs for the older generation, the inclusion of the immigrants in the system of professional formation etc.

- The European Union must become, to a greater extent, a society of the conditioned welfare, its final purpose being that of associating, to a certain extent, the public measures with those of the individuals in order to realise a welfare society. By "conditioned welfare" Daniel Shapiro understands: "a program or a policy of welfare which stipulates that someone has to act or behave in a certain way to receive some help or a certain level of help, but also to take plausible measures to secure the fulfillment of the task. On the other hand, the unconditional help does not impose such behaviour. (Shapiro 2007: 199). The most practiced way of unconditional help is represented by the granting of a minimum basic income under any circumstances. A shifting towards the unconditioned welfare state is obvious in USA, Canada and New Zealand, but rather little in the Continental Europe. Actually, here it has been found a certain circumstance: even if the states have stipulated financial penalties for the unfulfilled conditions which come with the granted social security benefits, they are not put into practice very often, which, as a matter of fact, it is equivalent to their functionality as states of the unconditioned welfare. The unconditional help is the one that weakens the individual's responsibility for his one existence and creates a culture of dependency.
- Europe should stimulate the increase of the percentage for the non-governmental service support and the formation of a quicker authentic charitable culture, as it is happening over the Atlantic. Actually, on our continent there is no authentic charitable culture, numerous organizations of this kind function more under the "shadow of the welfare state", which means that they are actually the receivers of the state's subsidies. (Shapiro 2007: 201) Therefore, the next question is truly justified: could this type of social institutions function without the welfare state? The lower level of this culture is perceivable at the level of those who donate goods to the charity organizations, their internal culture, but also at the level of the beneficiaries, where most of the time the social security benefits get to those who least need it.

Rethinking of the welfare state, with its all social protection and investment in people systems, does not only represent a pure expression of the left-wing politician's wishes, but also an essential condition of the revival of confidence of the European citizens in the process of unification. Generally speaking, Gøsta Esping-Andersen underlines that "people are Europe's main asset and should be the focal point of the Union's policies. Investing in people and developing an active and dynamic welfare state will be crucial both to Europe's place in the knowledge economy and for ensuring that the emergence of this new economy does not compound the existing social problems of unemployment, social exclusion and poverty" (Esping-Andersen, 2002: 18).

**Notes:**

<sup>1</sup> Among these we mention: *Works Progress Administration* (a coordination system connected with public interest works), *Reconstruction Finance Corporation* (an agency of the American states governments whose role was to offer financial aid to the poor people, as well as to the debtor companies which desired to invest), *Farm Credit Administration* (a federal agency for financially supporting the farms being on the edge of bankruptcy, as they had no money to pay back their debts to the banks).

<sup>2</sup> *Social Security Act* – founded the first American national system of pensions. The workers had to monthly contribute to a federal retiring fund and each American state had to draw up a plan in order to introduce the payment of some contributions to the unemployment insurances.

<sup>3</sup> *National Labor Relations Act* – this act obliged the employees to deal with the trade-unions. Also, they got the right to form their trade-unions or to join the existing ones, as well as to take part in the collective negotiations. Concomitantly,

the act stipulated that a council should be formed whose role was to investigate and punish the managers who disobeyed the settlements established by NLRA.

<sup>4</sup> *Fair Labor Standards Act* – introduced the work week of 40 hours and the minimum salary of 40 cents.

<sup>5</sup> *The European Social Charter* is an act of the Council of Europe, adopted in 1961 at Torino, completed with additional and improvement protocols, and revised in 1996.

<sup>6</sup> Arthur B. Laffer (1941) proved (“The Laffer Curve”) that the taxes decrease represent an efficient stimulus for the increase of the workload and of productivity, which leads to the increase of the budgetary income.

<sup>7</sup> The unemployment rate among young Europeans was in March of 2011 of 47,8% in Spain, 45,8% in Greece, and the overall rate for the whole European Union was of 21,6%. This was about 9% in Japan (where the national overall rate was around 4,5%).

See: [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Unemployment\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Unemployment_statistics)

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## ORIGINAL PAPER

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### **E-government – a gateway to the future**

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**Abstract:** *The paper highlights the concept of "e-government", which is define as "the use of the internet and electronic services in order to transmit public information to citizens", as one of the essential elements of sustainable development. The authors demonstrated the direct linkage between e-government implementation and sustainable development. Thus, an international survey has been conducted with the main goal of evaluating the perception that representatives of the public, private, academic and non-government have on the sustainable development, the level of implementation and use of electronic public services. It has been emphasized not only the theoretical aspects regarding the e-government concept, but also the analysis of survey results and appropriate conclusions and measures for Romania in order to promote the usage of e-government tools for administration and citizens.*

**Keywords:** *e-government, internet, Romania, sustainable development, public information.*

### I. E-government concept

The "e-government" is already a well-known concept, widely widespread in the world, which promote the implementation of advanced information systems, based on the internet in order to support informational integration and to provide qualitative services.

The concept of "e-government", or electronic government, or government based on new technologies, is assigned to a specific set of public management systems and resources which aim to optimize the administrative actions by using new information and communication technologies (Banciu, 2002).

The electronic government (e-government) is an increasingly important component of knowledge based society. In the recent years, the e-government has had an exponential worldwide evolution, especially in Europe. This fact is confirmed by the followings:

- a) An increased number of citizens which take part in the on-line process of decision making;
- b) Internet has a central role of as a public information source;
- c) More efficient and effective governance as the number and quality of government services available online have increased;
- d) Increased local, national and international cooperation and also the development plans within areas, such as e-Europe initiative.
- e) Diminished digital divide, based on international statistics.

According to academic research e-government concept is defined as "E-government is a digital interaction between Government, Parliament, public authorities and citizens. Information about legislative projects under discussion and opinions issued by citizens, tax payment, completion of complaints and on-line petitions represents the efficient means provided by the government in order to exercise the fundamental rights of citizens (Government to Citizens)." - Alilioaie, Hera, Kertesz, (2001).

From a top to bottom pattern to a bottom to top approach: this is the way in which, exploiting the knowledge, the citizens develop consistent politics, offer support for the economic and social-local development and promote the sustainability (Rodriguez 2002). One of the main impact that the informational and communication technology has on the relationship between the central and local administration and its users (citizens, companies etc.) is, in fact, the potential shift of power towards e-users. Through TIC, the administrations can transform based on efficiency standards or can expand the participation of the stakeholders involved throughout the construction of web sites and user oriented services (Gronlund, 2002).

The idea of an electronic government is also proposed and advocated by the Bertelsmann Foundation (2002), which emphasizes the "balanced electronic government" concept as a result of an efficient electronic administration and the online participation of the citizens. Providing online services and improving the administration using the network technology represents only a half of the entire process. The other important step is the marketing of the participating products, the involvement of the citizens and of the local actors in the opinion forming process.

The e-government reunites three basic patterns (Chilic-Micu, 2002):

- technical approach - refers to the utilization of the new electronic technologies in communication;
- the management approach - with the help of which new information management methods are applied;

- functional approach – which implies the growth in the degree of political participation from citizens' part and the increase in the administrative device's efficiency.

For the appliance of the electronic government concept, a country has to have adequate substructures of the data systems, of the both institutional and technological systems, a compatible legislative environment, human resources properly trained and, not in the least, a strategic thinking and coordination, and most important open mentality of all stakeholders.

Functioning as a communication system between the government, the citizens, the business environments and services' providers, the e-government would permit to administrative structures to sustain the growth of the informational accessibility, centralization and the data and applications integration the efficiency of the decision process in the public activity, the growth of the proceeds and the reduction of the cots (Coleasca 2004).

All the developed countries have worked out and implemented sustained governmental politics referring to the research, development and the adoption of the new informational technology, the consolidation of the national informational substructure, the consolidation of the national informational substructures, the training and the attraction of the specialist in the TIC field, the education of the population, the co-operation with the individual sector, the marketing of e-government projects. E-government uses the information technology as a source in providing public services to the citizens and for increasing the efficiency of the central and local governmental entities.

Various studies (OECD, 2001, Burley-Gant et al., 2002, Sava, 2007, Cristescu, 2010) presented the objectives of the e-government, such as:

- The decrease of public expenses, fighting the bureaucracy and the corruption from public institutions.
- Providing the access to information, consultation and participation.
- The growth of the transparence degree in which the public funds are used and managed.
- Providing all services 24 hours/day, 7 days a week.
- Optimization of the direct contact between the office workers and the citizens or the economic agent.
- Providing relevant content and quality public services through electronic means,
- Strengthening the administrative capacity of public institutions to fulfill their role and objective and to secure the supply in a transparent manner.
- Reshaping the citizen-public administration relationship and the business environment-public administration relationship in order to facilitate them the access to information and public services, using TIC.
- Promoting the usage of the Internet and of the today's technologies in the public institutions.

Many authors (Chilic-Micu, 2002, Colesca, 2004, Vasilache, 2008) emphasize the main components of the electronic government, as follows:

- **G2G** (government to government), including the sub-category **G2E** (government-governmental employees);
- **G2C** (government to citizens);
- **G2B** (government to business).

The **G2B component** (government to government) implies the communication between various different public institutions to satisfy the citizen's requirements. This type of communication is often undetectable by the citizen and implies the change of data at various

security levels between the informatics systems of those institutions. A study from July 2000, from "The Economist" magazine judged that "one of the basic reasons of the inefficiency in the public sector is – the bureaucracy - it is due to the fact that the vertical organization of the public institutions makes sometimes that the problem solving requires the collaboration between the departments". It is considered that the appliance of G2G would solve a big part of these problems and, most of all, would lead to the limitation of the bureaucracy. This process, however, depends on the interest and determination of each department to create the inter-institutional "bridges".

The sub-category G2E (government-governmental employees) implies the online management of the government - employees relationship using the Internet and new electronic technologies.

The **G2C component** (government-citizens) summaries bringing the government closer to the citizens. First of all, the aim is to transform in digital format all information, this way the government-citizens relationship becomes interactive. Another feature is that the government services can also be provided online - on the internet web pages of those specific institutions by global governmental browsers. Finally, a very important application of the G2C is the public involved in decision making process.

The relationships between the government and business sector, the **G2B component** (government-companies) - are one of the most debated relationships from the electronic governmental field. The main cause of the special attention that is given to this type of relationship is, on one hand, the fact that the individual companies represent the engine of the economic growth of a country. On the other hand, the governmental acquisitions and auctions are moving more towards the internet, this fact meaning transparency and low costs.

Using these components, the e-government services have an effective cost benefit ratio in providing public services both to the citizens and to the companies. The e-government services can reduce the costs and save time for the public administrations, citizens and companies, offer a transparent alternative to the administration process and ensure sustainable development. This type of services implies saving of the material resources used by the traditional methods, promoting the use of the green technology, eco-friendly.

## II. E-government at European level

Nowadays, despite the high level of the availability of the e-government services in Europe, still exist differences between the member countries, and the access rate in terms of this type of services is low. In 2011, only 38% from the EU citizens used the internet to access the e-government services, in comparison with 72% of companies. The general adoption of the internet will rise if the use, the quality and the accessibility of the online public services increases.

On the European level, as far as the best practices in e-government field are concerned, one could count: HELP - the virtual guide of the Austrian institutions and authorities ([www.help.gv.at](http://www.help.gv.at)), initiative of the federal office from Austria which received in 2003 the e-Europe award for e-government, on the section " a better life for the citizens". The browser offers the citizens information about administrative procedures, caring out terms and its fees, and provides the fill in formularies. The services and information available refer to 150 daily situations.

Another relevant example is the engine of a development plan citizen oriented approach of the Danish government DanmarksDebatten – [www.danmarksdebatten.dk](http://www.danmarksdebatten.dk). The objective was the development of a common platform for all the debates that took place in the public sector, independently if they are on a local, regional or national level, to which can participate the citizens, the public administration and the politicians.

As far as the **G2G** component is concerned, the most relevant example is REACH- the data exchange infrastructure for intergovernmental cooperation. Reach is an agency founded by

the Irish government for the development of the substructure aiming to integrate and improve the public services, in a way that only one access point has to be used. For this matter, Reach has implemented the IMAS service Inter-Agency Messaging Service ( [www.reach.ie/iams](http://www.reach.ie/iams)) which allows the electronic data exchange between governmental agents. The first service launched took charge of the data exchange for the birth register between the general register office (GRO), the department for social problems and family and the central statistics office.

Analyzing these best practices it can be summarized that in the European politics' opinion; the digital technologies are used to introduce new ways of thinking, to transform the organizations and work process and to improve the efficacy and quality of the services. They are means of increasing the satisfaction and opportunities of the individuals and of the companies aiming to grow the quality of the life.

As far as the future vision is concerned, by Europe 2020 Strategy the European Committee establishes three priorities that can constitute from fundamental principles of the European construction in the next decade: intelligent growth, sustainable growth and the advantageous growth of the inclusion.

Also, by Europe 2020 Strategy, seven emblematic initiatives are taken into consideration to be developed (pilot-programs, on one sector but with transversal bent, aimed to ease the achievement of the objectives, by special and concentrated actions, developed in key-domains of the economic and social process). The emblematic initiatives include directions and recommendations of actions at European Union level but also at the level of its members. One of the seven initiatives is « a digital agenda for Europe », which aims: the sustainable obtaining of both economic and social advantages from the unique digital market based on fast and ultrafast applications on the Internet and on the interoperability. From the list of the directions in which the EU is aiming, it can be counted: the promotion and the introduction of accessible use of the modern on-line services (such as health), the assurance of a stable legal background to stimulate the investments in the open, competitive and fast paced infrastructure of the internet and of the services related to it, the development of a true unique on-line market.

On a UN level, within UNPAN (UNPAN – United Nations Public Administration Network), works the United Nations Group E7 “e-government for sustainable development”. This group aims to sustain the e-government for a sustainable development by using informational and communication technologies, new technologies and eco-friendly technologies. The objectives of the UN group are the following:

- The e-Government strategies worldwide should have a component of sustainable development;
- Efficient exchange of best practices in public administration systems for sustainable development;
- Sustainable development and e-Government as method of reducing bureaucracy and saving the time and reducing costs related to the citizen;
- Development of e-Government for an efficient sustainable economy (efficient governance of health services and protection of the environment).

The foreseen impact as regards the achievement of these objectives is the following:

- The growth of the international cooperation in the field of using the electronic services for a sustainable development;
- Strengthening the online international system for public sector procurements, that will help to save significant resources;
- Reduction of bureaucracy and vulnerability of the systems and better protection of personal data and more efficient handling of sensitive information;

- Developing an energy-saving system based on new technologies in order to help the citizens and reduce the carbon footprint of the administrations worldwide.

In order to highlight the strong relationship between e-government and sustainable development, UN subgroup conducted a national and international survey. The study was based on the given information by filling in a questionnaire.

The study objectives were:

- The evaluation of the present perception as far as the necessity and the acknowledgement of the sustainable development is concerned;
- The measuring of the degree of development and use of the electronic public services, the way it is perceived by citizens, by the business sector and by administration;
- The evaluation of the expectancies regarding the interconnection and interoperability of the TIC systems the national and international cooperation, the involvement of the central administration, the transparency of the governmental actions, and the alignment to the principles of lasting development.

The study took place in May 2011 by filling in a 25 questions questionnaire. The questionnaire was bilingual both in English and Romanian, and it was an online questionnaire. There were 674 respondents from different target areas such as:

- NGOs
- small businesses
- big companies
- public local and central authorities
- R&D institutions.

The results analyses emphasized four important elements:

- stable legislative framework,
- resistance to change,
- transparent usage of public funds,
- the indissoluble link between e-government and sustainable development.

Taking into account the results, it can be noticed that a stable legislative framework is the most important requirement for a strong foundation of sustainable development. Furthermore, the access to CDI infrastructure and the usage of electronic services came on the second and on the third ranking position.

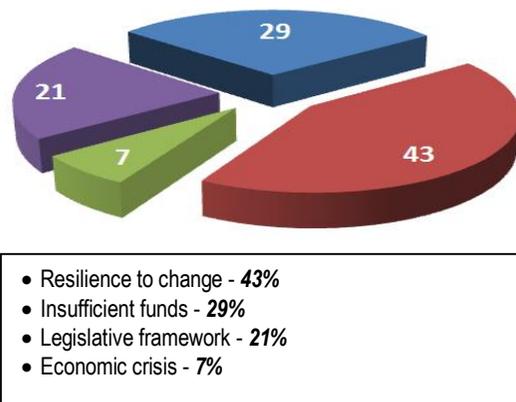
**Figure 1 Stable legislative framework - Hierarchy of the sustainable development elements**



- Stable and predictable legislative framework - **27%**
- Access to CDI infrastructure - **21%**
- The usage of electronic services in the relationship with government - **21%**
- Aligned tax incentives DO - **19%**
- The usage of Green IT - **12%**

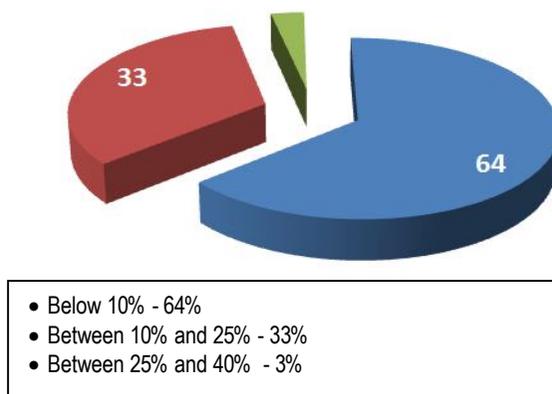
Last, but not at least, an overwhelming majority believe that the resistance to change can be most important barrier in implementing sustainable development policies.

**Figure 2 The elimination of the resilience to change – The most important barriers in implementing sustainable development policies**



According to the results, almost half of the respondents have considered that the most important factor which has conducted to an unsuccessful implementation of sustainable development policies was the represented by the resilience to change. As it is believed by many authors, the ground for a lack of implementation was not the economic crisis and legislative framework, but the insufficient funds and the people attitudes regarding changes.

**Figure 3 The effectiveness of public funds - The percentage of total budget invested in developing and supporting the electronic public services**

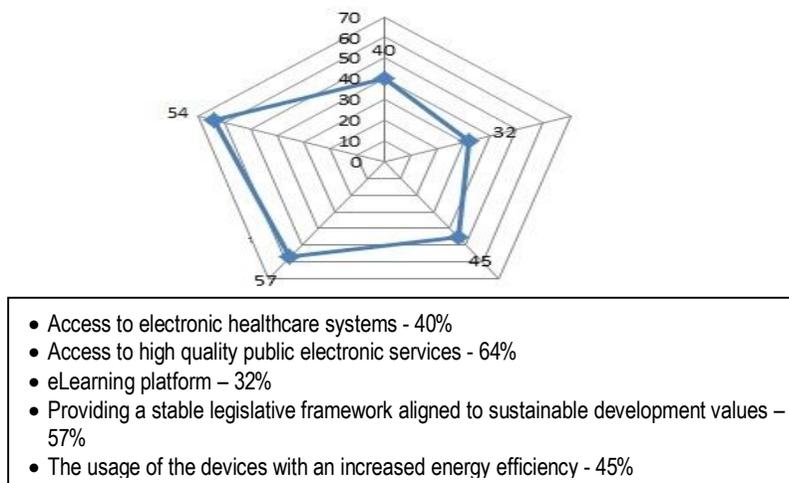


The amounts allocated by the authorities for developing and supporting electronic public services are significant, but their advantages are more important than the required investments. One of the most relevant benefits which have been obtained through electronic services implementation is represented by transparency.

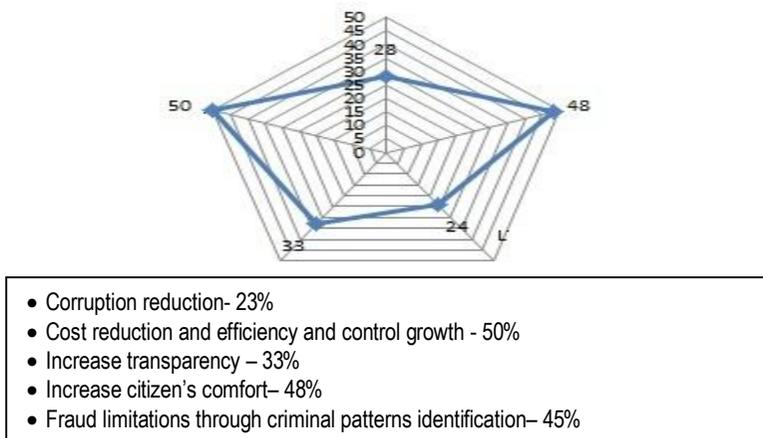
The results pointed out huge differences between the citizens' opinions and the real rate of public investment within electronic services. This fact demonstrates the efficiency of e-government services.

On the other hand, in order to underline the direct relationship between e-government and sustainable development, the paper analyses the correlation between these two variables. The results were based on the following questions: “Which are the relevant features of sustainable development?” and “Which are the positive results of intense usage of electronic public services?”.

**Figure 4 The relationship between E-Government and sustainable development - Rank the relevant features of sustainable development as perceived by the citizen**



**Figure 5 The relationship between E-Government and sustainable development - Rank the positive results of intense usage of electronic public services**



The above charts underline the relationship between e-government and sustainable development. On the one hand, the e-government services have improved the lifestyle and society's standards. Most of the improvements are highlighted in the following fields: health, education, energy, and more others. On the other hand, the e-government services have played a central role in the supporting process of the sustainable development.

In order to summarize the results for the citizens the most important things in terms of sustainable development are the stable legislative framework, the resistance to change and the transparent usage of public funds. The access to public electronic services is vital for sustainable development; and the cost reduction, the control and the efficiency growth are essential for the e-government.

### Conclusions

The electronic services are one of the key elements in both social and economic development related to the information society/knowledge based society. This phenomenon brings together public authorities private organizations and, nevertheless, the citizen. The e-citizen is directly implicated in political, cultural, civic and economic life. The orientation towards the quality and accessibility of the electronic public services is a vital element in e-Government. The development and the quality of e-government applications is directly connected with Internet infrastructure. Education is also vital – digital literacy is one of the most supported principals in all relevant global and regional strategies. The perception of the case study respondents comply with the strategy works both national and international, some of the most relevant conclusion of the survey are as follows:

- The results pointed to the **correlation and dependence** between e-Government and sustainable development.
- There is a strong need to **interconnect** isolated electronic systems, at local, **regional and international level**, in order to deliver integrated e-services.
- Key "resources" (such as databases) have to be shared, or at least, it has to be **increased the level of access granted, in order to enable international cooperation** on various issues.
- **Security is a major issue**, able to either attract or limit the interest of users in e-services, since e-services use personal and private data and information.
- **Resistance to change** instead of economic crisis proved to be the major barrier for e-services' development.
- **E-services are seen as a solution for cost cutting and increasing the quality of life.**

All these are essential principals of sustainable development, the citizen and its needs should constitute the foundation of all strategies and operational changes.

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## ORIGINAL PAPER

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### Recent Evolutions of the Political Environment in Transnistria

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**Abstract:** *After 900 days of interim, in March 2012, the Republic of Moldova has succeeded in getting a President. Due to this harsh period of time, mentioned above for the Moldavian political arena, the events from Transnistria seemed that have been almost, ignored. In this, self-proclaimed republic, have taken place parliamentary and presidential elections, and the most important, Igor Smirnov has lost the presidency. The aim of this paper is not to establish a series of scenarios that suppose to follow the election of the 45-year old leader in the breakaway republic, but to embed the relations of this controversial political actor, as Transnistria is, with Kishinev, Moscow, or Brussels. "5+2" meetings for the conflict's resolution were resumed, where many actors have been implied, while the political environment from Transnistria is being watched very carefully by EU, Russian Federation, United States or other political actors.*

**Key words:** *Transnistria, Republic of Moldova, 5+2, Shevchuk, Smirnov, Russia*

Until the successful election of the President of the Republic of Moldova in March 2012, the political environment from Kishinev has been submitted for over 900 days to the instability caused by the interims of this function. The economic objectives have been doubled by the election at Kishinev of a full right president and these have been the main concerns both of the internal and the external press. However, in this paper I wish to deal with what has been regarded as marginal lately, namely the political situation in Transnistria. During the whole period of the political crisis in Kishinev, important parliamentary and presidential elections have taken place in Tiraspol as well-even if they have only been recognized at the level of the self-proclaimed republic. The outcome of the presidential elections is the more spectacular that, for the first time, from the proclamation of independence, Igor Smirnov has no longer been supported by Russia, managing only to rank third in the first election round, which dropped him out of the competition. Moreover, his family is now in conflict with the Russian authorities because of evidence of embezzlement of some funds allocated to Russia in form of aids for the Trans-Dniester population. It would be still premature to pronounce on the later evolution of these elections, the aim of this paper being only to outline some aspects preceding the significant political changes of lately.

The applied methodology is the analysis of the events that have occurred in the last years, of speeches and meetings that have taken place between the main actors involved in the resolution of the frozen conflict or merely of those involved in the development of the political life in Transnistria, as they appear in scientific papers, but mostly in the media monitoring.

The main supporter of Smirnov's regime-which was not only of political nature, but also economic, social, and even cultural - was Russia beyond any doubt. Considering the repeated abuses and the embezzlement of some funds coming from there – at least as on the record explanation – after two decades was desired the removal of this family and the imposition of some other character. The fact that the one supported was not nominated as winner arises some new questions: was it not so important after all for Russia who would succeed to Smirnov? Did it not have any longer the real capacity to impose its favourite? The new elected leader will make the politics that Russia wants or may prove to be an uncomfortable leader?

### **Who dominates the political spectrum in Transnistria?**

The political life in Transnistria has almost exclusively been dominated by the Party of the Trans-Dniester Republic of Moldova – Respublika – of Igor Smirnov ever since 1990. During the years 2006-2007 were registered a series of other parties (Renewal/ *Obnovleniye*, Republic, Trans-Dniester Patriotic Party, Popular Will, Only Republic, Liberal Democratic Party, Communist Party etc.) centred more or less around the politics made by Smirnov and its fellows. The Patriotic Party<sup>1</sup> is lead by Oleg Smirnov, Igor's son. Most of them assume an orientation of centre-left or left, but the business their leaders and the top of their leadership develop, most of the time through illegitimate and controversial means, show the fact that the political activity is nothing but a cover to hide the true actions and orientations of the already existing regime.

A notable case is that of the Renewal Party (*Obnovleniye*), a political party oriented to business development and which formed the majority in the Parliament from Tiraspol after the elections of 2005 and those of December 2010. It is presented as an opposition party in regard to that of Smirnov, but the objectives that it assumes<sup>2</sup>, in full compliance with the Constitution of the unacknowledged Trans-Dniester Republic of Moldova, among which also that to propose and candidate to the presidency of the Republic, does not indicate a position embodying a democratic party in all its aspects. Also, the State Department of the USA affirmed<sup>3</sup> that the Sheriff Company virtually controls this party.

The only party in Transnistria, that has overtly a pro-Moldavian orientation, a union with the Republic of Moldova, in which Transnistria may have an increased autonomy, is the Social Democrat Party<sup>4</sup>, registered in 2007 by Alexander Radchnko, former member of the Supreme Soviet in Transnistria. The assumed orientation is of centre-left. Its existence does not represent the multi-party and democratic character of a society, but it is a subterfuge of presentation of these features in proclaiming a rule of law state professed by the authorities in Tiraspol.

The political parties in Transnistria emerge and resist through the financial aid coming from Moscow, either directly or indirectly. For instance, Oleg Smirnov, the leader of the Patriotic Party, ever since its appearance (2006), declared that he would use the resources of Gazprom for the regime propaganda and the union with Russia, which can be found in the party platform.<sup>5</sup>

The NGO *Proriv* ("Through-Separation") – later on registered as political party, a contested and violent movement, that acclaim the independence of Transnistria, appeared in 2005 among the Trans-Dniester youths, with the support of the authorities from Tiraspol. The symbol that it uses is a portrait of Che Guevara. Its President is Dimitri Soin, sociologist and officer of the Trans-Dniester Ministry of the State Security.<sup>6</sup> These indoctrinated youths, "the children of the sun", fuelled by slogans such as: "Transnistria-Che Guevara-Proriv!", are and consider themselves strong under the protective eyes of Moscow, which offer them military, economic and political safety.<sup>7</sup> In their propaganda, this movement proclaim its existence from the coloured revolutions and declare itself pro-Western, but according to Freedom House reports, *Proriv* is the only NGO (independent of the statute of party) which could be considered as embracing extremist views and which promotes social troubles and separatism.<sup>8</sup>

The majority of the parties, either communist, so-called liberal or labours, may also be considered nationalist, in the way in which their leadership – we do not know up to which extent those which are or should be represented – assume Russian citizenship given by passports. It is not assumed a different Russian identity, that of the Great Russia, with which to wish the union, that would mean, as it was often compared, a new Kaliningrad. Smirnov has often evoked the fact that 120.000 persons have Russian citizenship (out of those a little over 500.000 inhabitants of the territorial autonomous Unity at left from Nistru). Obviously, the Ukrainian population, numerically almost equal with the Russian one, does not wish this union with Russia, or even with Ukraine, which surround the Republic of Moldova at the North, East and South.

A simple calculation of the birthplace of the deputies from the Trans-Dniester Parliament, for the 2005-2010 legislature, show that out of the total of 42, five (11,9%) were born on the right bank of Nistru, 13 (30,95%) in Transnistria, 9 (21,43%) in Russia, 8 (19,05%) in Ukraine, the rest being born in other parts or not having specified their birthplace on the official site of the Parliament.<sup>9</sup>

From the point of view of the ideology embraced by the leaders or the parties that they rule, it is difficult to make a precise framing. Although having maintained as much as possible the emblems and traditions inherited from the soviet period, Igor Smirnov cannot be considered a pure, atheist communist, (the same way as Vladimir Voronin who worshiped before the Patriarch Alexei II of Russia in 2005), as long as he awarded to the Patriarch Kiril the distinction "65 years from the Victory of the Great War for the Country Defence".<sup>10</sup> It is known the fact that Igor Smirnov is the person with the most distinctions awarded by the Russian Church. His tight relationships with it and the mutual support stay in place. The Mayor and a counsellor from the commune Corjova, district Dubăsari, were arrested in 2011 by the Trans-Dniester militia. The Metropolitan Church of Kishinev and of the whole Moldova addressed a letter to the Patriarch Kiril of Moscow and to the whole Russia in order to mediate the misunderstanding and intercede at Tiraspol for the release of the two. Contrary to the practices of publishing the received letters, in this case, the benevolence of the Russian Church was null.<sup>11</sup>

The whole Trans-Dniester political spectre is, *volens nolens*, a product of the quasi-isolationist politics (excepting the relationship with Russia and Ukraine, through which it resists), but also of the rejection of any form of political pluralism and democracy that it would have had within the Republic of Moldova, this latter one being itself a country with many problems. The political leaders in fact also control the internal affairs, the security service, the economic activities, as well as their implications in the traffic with weapons, drugs, persons, money laundering. Within the rigid environment of the authorities from Tiraspol could not develop a healthy embryo of the democratic character and of minimal respect for human rights. All those who are part of the leading structures of the newly created parties, being or not into the Parliament, have a common past at least through the party of Smirnov, if not directly through the leadership structures of the communist party and the KGB, ever since the time of the Soviet Union. Any submission in a fair way to the politics lead by the Republic of Moldova or by the European Union, would affect their semi-mafia statute that they acquired and many of them would lose their liberty if they would be submitted to a righteous justice. For the severe abuses that they have committed and for the privileged relationship of dependence on Moscow, it is generally hard to believe that a statute of enlarged autonomy in itself could be accepted, as long as they are still more or less supported by the Kremlin. As long as Russia has the interest to maintain its troops and armament on the left bank of the river Nistru, and through this, to ensure the regime through continuity, it is difficult to identify a real will to stay within the Republic of Moldova.

#### **Who interferes in the political life at the left of Nistru?**

Referring to the organisation of the parliamentary elections in November 2010 from the Republic of Moldova, the analyst Vladimir Socor denounces the overt intervention of Russia, through the Chief of the Presidential Administration, Sergei Naryshkin, who has paid more visits to Kishinev and hosted several meetings at Moscow, watching the future governing coalition.<sup>12</sup> Unlike the subtle imposition and support through various means used regarding the Trans-Dniester regime, which guarantee a pro-Russian orientation, it was more difficult for Moscow to administer a calm political climate among the authorities in Kishinev as well. If the time of some Moldovan politicians listening obediently to Moscow has set, it is preferred now to keep an expectative and counter position in regard to what the European Union may offer to Moscow.

Altogether, the inhabitants' right to vote at the left of Nistru at the general elections organized in Kishinev is almost completely missing. At the parliamentary elections from April, 5<sup>th</sup> 2009, in the region beyond Nistru were registered 4437 voters, that is less than 2% from the total of those appearing in the records, because on the day of the elections took place unprecedented actions of intimidation, persecution and control<sup>13</sup>, situation that was not to be improved at the next elections either.

Russia overtly remains partisan to sustaining the separatist, pro-Russian regimes from the ex-Soviet space. The politics of granting Russian passports to the inhabitants from the secessionist regions, the long term economic and military support, "including the patronage over the smuggling activities that take place on large scale in these regions" (Transnistria, Abkhazia)<sup>14</sup>. Under the repeated interdictions on the imports of wine from Georgia and Moldavia or of meat and dairy products from Ukraine (to which add those of wine, under the accusation that they also come from the Republic of Moldova, with the sole distinction of having applied different labels) from the last years, Russia continued to import without any "concern" wine from Abkhazia and Transnistria, well known for the smuggling activities.<sup>15</sup>

Transnistria, with a population of 15% from that of the Republic of Moldova, consumes 50% from the volume of natural gases contracted by the country. A brief, but comprehensive

analysis, on the dependence of the part of territory between Prut and Nistru on Transnistria and of the complete dependence of Transnistria on Russia (through the Gazprom supplier) and Ukraine (as transit state) appeared in the *European Energy Policy Observatory*<sup>16</sup>. Any solutions foreseen to resolve favourably the interests of all parties implied in the Trans-Dniester file has to take into account the truly thorny factors that Moldavia still confronts:

- "Dependence on imported energy, amounting to 98%;
- Large-scale dependence on one or a limited number of fuel suppliers;
- Natural gas share in total energy consumption balance exceeds 50%;
- 85% of electric power is installed on the east bank of the river Nistru;
- Almost all import routes of fuel pass through one country (Ukraine)."<sup>17</sup>

The Republic of Moldavia does not have the financial capacity of other resources that may allow it a politics of total independence in respect to Russia and Ukraine, and thus, no strong voice in regard to Transnistria, which feels much better under the current statute (discretionary powers regarding the politics, economy and social aspects of the area) than in a subordination to some authorities from Kishinev unable to offer it the same comfort.

Uncoordinated statements of some leaders in Tiraspol take place periodically, any action being manipulated in order to launch new worries regarding Romania or other entity which – in their discourse – would target the integrity of the unacknowledged republic. The position of submission to Moscow of the Trans-Dniester leader, Smirnov, has once more been exposed after the publicity of the possibility of establishing some defensive missiles on the territory of Romania by the United States: this one offered to host on the territory he controlled the establishment of some Iskander Russian missiles, an idea rejected by Russia.<sup>18</sup>

### **Who holds the key to the resolution of the frozen conflict?**

The European Union, through its mission of assistance at the Moldavian-Ukrainian border, EUBAM, started on December, 1<sup>st</sup>, 2005, made use of the following resources, in figures: budget - € 44.2 million (December 2005-November 2009), € 12 million (December 2009-November 2010), over 450 persons involved, all the EU states (excepting Ireland, Luxemburg, Malta, Spain and Sweden) plus Georgia, Kazakhstan, Tajikistan. All these resources are deployed in order to diminish the traffic of human beings, organs, weapons or drugs that develop on this border segment not controlled by the regime in Kishinev, and to increase the security of the European Union at the so closed point to the Eastern border.<sup>19</sup>

An option that the European policymakers envisaged, as way of action to follow by the European Union in order to resolve the Trans-Dniester conflict is the transformation of the Republic of Moldavia into an attractive entity for the TMR.<sup>20</sup> Mutually, the Special Representative of the EU for the Trans-Dniester conflict, Kalman Mizsei, urged the politicians from Kishinev that they have to learn how to make an attractive country for the EU (as a reaction to the divergent and not at all constructive opinions from the politic environment), in order to truly benefit of its attention and involvement.<sup>21</sup>

However, obviously, the EU actions are not well-received by the authorities from Tiraspol, and beyond these, through the propaganda they made in the last two decades, of the lack of information, in the whole Transnistria the initiatives of the European Union to resolve the conflict are considered as hostile actions and having the purpose to destabilise the regime.<sup>22</sup>

The press subject to the regime in Tiraspol present in a propagandistic and hostile manner the approaches of the Republic of Moldavia to get closer to the Euro-Atlantic structures. Attributing false approaches to the authorities in Kishinev, there are allegations regarding the fact that when the retreat of the Russian troops is required on the territory of Transnistria, it is invoked

the statute of neutrality foreseen by the Constitution of the Republic of Moldavia, but, it is deplored at the same time, the fact that the perspective to accede to the EU is conditioned by the preceding accession to NATO. Romania appears in an inappropriate light as well since it would allegedly play on the NATO and EU membership card in order to intercede in the relationships of the Republic of Moldavia with these organisations in view of the adhesion process.<sup>23</sup>

The European Union involved in the last four years in the resolution of the Trans-Dniester conflict through the Special Representative for the conflict in Transnistria, who ended his mandate on the 31<sup>st</sup> of January 2010. Making a review of the four years in the matter of Transnistria, that he defined as a sad place, in which the 500000 inhabitants do not have any other guilt but to be caught into this “geopolitical controversy”, Mizsei claims that “if someone would manage to resolve the Trans-Dniester conflict, this would bring him/her fame. And it is solvable”<sup>24</sup>, referring to the High Representative of the Union for Foreign Affairs and Security, Catherine Ashton, who may obtain this desideratum through an active politics in this purpose.

The visit on May, 17<sup>th</sup> 2010 to Kiev of president Medvedev ended with a common Ukrainian-Russian declaration on the conflict from Transnistria. Medvedev and Yanukovich highlighted the “major role in *maintaining the peace* that the stationed, Russian troops have”<sup>25</sup>. Seeming to agree the notion of retirement of the *peace maintaining* troops, Russia launched now, attracting Ukraine as well into this game, the idea of existence on the territory of Moldavia of some troops *guaranteeing peace*, the two countries assuming the role of *guardians* of political stability and security of Moldavia and Transnistria.<sup>26</sup> The date of May 17 also coincides with the creation of the Ministry of the State Security in Transnistria (1992), whose anniversary the general-lieutenant Antyufeyev, the one who also created this structure with Igor Smirnov described Transnistria “as a Slavic fist at the Western border” (of Russia) and this ministry as a “dignified successor of some of the best traditions of the Soviet Checkist”<sup>27</sup>.

A meeting took place in Meseberg, on June, 4<sup>th</sup>-5<sup>th</sup>, 2010, between the German chancellor Angela Merkel and the Russian President Dmitri Medvedev, which ended with a Memorandum foreseeing the creation of a EU-Russian Political and Security Committee, at ministerial level (the High Representative Catherine Ashton – Ministry of Foreign Affairs Sergei Lavrov). Out of the five points of the Memorandum, which define the action frame of the Committee in political and security matters, point 4 explicitly refers to Transnistria: “the EU and Russia will cooperate particularly for the achievement of a resolution on the Trans-Dniester conflict, with the aim to obtain a visible progress in the format “5+2”. This cooperation could include a common EU-Russian commitment, which would guarantee a tranquil transition from the current situation to a final level.”<sup>28</sup>

A new meeting of the two political leaders, including N. Sarkozy this time, took place on the occasion of the French-German-Russian Summit from Deauville from October 2010. Coming with this initiative, that position the European Union a step before the United States (together with the EU has the same statute as observer, in the format 5+2), Germany wishes to exceed the limited possibilities of cooperation of the NATO-Russia Council. Some analysts see in this German initiative too cheap a ticket offered to Russia to enter into the forum of decision making regarding the European security, and which should not happen at all before observing some concrete action of Moscow to resolve the conflict<sup>29</sup> (beginning to retreat the stationed troops, for instance). Resuming the negotiations in the above-mentioned format took place almost after 6 years, in November 2011 at Vilnius, followed by a meeting in Dublin at the end of February 2012. The results are not spectacular, firstly because of the limited points accepted by the Trans-Dniester party as topics of negotiation. The round of June 2011 from Moscow did not resolve into anything concrete.<sup>30</sup>

As regards the European appreciations, the European Parliament appeared satisfied by the efforts and the outcomes obtained by the Republic of Moldova until now, both in which regards the beginning of the negotiations of the Association Agreement between the EU and this country, and in which regards the initiatives and resuming the meeting for the resolution of the Trans-Dniester conflict.<sup>31</sup>

On the other hand, the European Union Council, although it salutes the opening of the authorities of the self-proclaimed republic to come again to the table of negotiations in the "5+2" format, continues to observe the hostile actions that the Trans-Dniester regime deploy regarding the Moldavian schools in which the Latin writing is used and the restrictions on the liberty of movement of the citizens. For this, the Council decided the extension in February, 2010 with 12 months of the interdiction imposed to some Trans-Dniester leaders to enter into the common space<sup>32</sup>, extended again until September, 30<sup>th</sup>, 2011, through another Decision.<sup>33</sup>

### **Which are the resolution perspectives?**

A recent analysis of the evolution of the resolution processes of all the frozen conflicts in Eastern Europe (Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh, although more and more specialists consider that Transnistria is the "only" frozen conflict in the region), present the European Union and Russia as crucial actors that could manage the resolution of the conflicts.<sup>34</sup> A declaration of the Ambassador of the Russian Federation in Kishinev, referring to the stationed troops, raises questions on the sincere will to solve the conflict: "Russia cannot retreat its army from Transnistria, such as the agreement signed in 1999, at the OSCE Summit in Istanbul stipulates, because the times have changed"<sup>35</sup>. The President of OSCE (Lithuania's Minister of Foreign Affairs), Andrius Ažubalis is also convinced by the importance and the decisive will of Russia to resolve the conflict, who declared that "without the Russian contribution, the resolution of the frozen conflicts shall not move at least a millimetre (...) and each millimetre values as gold."<sup>36</sup> The approach of stopping the payment of the retirement pensions in February last year that Russia imposed to the Trans-Dniester people<sup>37</sup> still cannot be concretely analyzed, but assumptions can be made that the even greater poverty of the retired, who do not receive other incomes, is not more beneficent than would be the stopping of the financial aids granted to those that are still in the labour field and are still in power in a way or another.

The EU partner in the "5+2" format, the United States, from the same position of observer, following the reports of the State Department on matters of respect for human rights, accuse the elections fraud, the aggression of the political opponents, the lack of media independence, the discrimination of some religious groups or of some Romanian language speakers. In the support of the achievement of the political and economic reforms in the Republic of Moldavia, the USA allocated in the last years \$15,574 million (2009), \$20,7 million (2010) and it is estimated an amount of 22, 65 millions for 2011.<sup>38</sup>

The American Senator Richard Lugar, who supports a greater involvement of the USA in to the resolution of the Trans-Dniester problem, even proposes the reintroduction of the Jackson-Vanik trade barrier, with which the Republic of Moldavia agreed.<sup>39</sup> These restrictions were used by the USA in their relationships with the USSR, and conditioned the trade on the respect for the human rights. The measure, although affecting the export of the Republic of Moldavia in the USA, also concerns directly the authorities in Tiraspol, as long as they use the stamp of the Republic of Moldova in order to trade its products. It is a measure that could bring closer the parties in dispute so that both of them could have a benefit.

The think tank organizations from Moldova, as well as the Association for the Moldavian Foreign Policy (APE) have achieved at the end of 2010 an analysis of the involvement and the

role of the EU in the resolution of the conflict at the left of the river Nistru.<sup>40</sup> This report shows a series of actions in 2010 which could constitute the bringing closer of the parties for the effective realisation of the improvement of the situation: there took place meetings between the Deputy Prime Minister for the Reintegration of the Republic of Moldova, Victor Osipov, and the Minister of Foreign Affairs of the self-proclaimed Trans-Dniester Republic, Vladimir Yastrebchak; two meetings between Filat and Smirnov (known under the name of “football diplomacy”), in which the agreements regarding the trade on the Kishinev-Tiraspol-Odessa railway improved; decisions of the Kishinev Government to support the economic agents at the left the river Nistru; signing of the agreement regarding the border between the Republic of Moldova and Romania, interpreted as coming in the support of the diminution of the allegations to Romanize Moldova, that the Trans-Dniester people have made along the years.<sup>41</sup>

The declaration of January 2011 of Igor Smirnov: “We can no longer have the same way with the country that until now considers itself a part of Romania. The people of Transnistria continues to build a life together with the Great Russia”<sup>42</sup>, continues to give the image of the conflict resolution from the perspective of the Trans-Dniester authorities. From the point of view of the state organization, we are in an incipient phase of the project of change of the TMR Constitution, through which the function of Vice-President would be dissolved and that of Prime-Minister would be established, the harmonization of this Constitution being achieved through the model of the Russian Federation.<sup>43</sup>

From the 1<sup>st</sup> of February 2011, the function that Kalman Mizsei had detained for 4 years was replaced by that of senior official of EU for the post-Soviet countries and the Western Balkans, and offered to the former Minister of Foreign Affairs of Slovakia, Miroslav Lajcak.<sup>44</sup> After the first rounds of consultations within the framework of the Trans-Dniester conflict resolution “5+2” (OSCE, the Republic of Moldova, Transnistria, Russia, Ukraine plus the EU and the USA, as observers), which took place at Vienna on the 14<sup>th</sup> of February 2011, Lajcak felt the existence of a “positive dynamic” at the level of all the parties involved in the conflict resolution, which may beneficially contribute to regulate meetings, that could take place once every two months.<sup>45</sup>

If we are entitled to consider that the hope to resolve this conflict lays in the will of the European Union and Russia, we can only follow the evolutions of the relationships between all the actors involved, who fluctuate according to everyone’s major geopolitical interests. Considering the last presidential elections organized by the Trans-Dniester authorities from December, 2011 and the fact that Russia’s favourite as an alternative to Smirnov, Anatoliy Kaminski, has lost to Yevgeny Shevchuk, it is to see which would be the latter one’s position respect to Russia from now on and what would be like the discussions with Kishinev. Anyway, nobody expresses to great expectations, and as the elections winner himself claims, there will be no major changes in the “external” politics of the Trans-Dniester Moldovan Republic in respect to the previous period.

#### Acknowledgement

\* Beneficiary of the project “Constructing and implementing an interdisciplinary innovative doctoral programme concerning Roma issues”, co-funded by the European Union through the European Social Fund, Sectorial Operational Programme Human Resources Development 2007-2013

#### Notes:

<sup>1</sup> Official site <http://www.patriot-pmr.org/>, accessed on 07 July 2011. In February 2012 this is not longer accessible.

<sup>2</sup> View official site <http://eng.obnovlenie.info/text.php?cat=3>, accessed on 17 January 2012.

<sup>3</sup> USG (United States Government, Department of State). (2009) *2008 Human Rights Report: Moldova*, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119093.htm>, retrieved 3/24/09, p. 9, *apud* Jeffrey Daniel Owen, „Neopatrimonialism and Regime Endurance in Transnistria”, Thesis submitted to the faculty of the Virginia Polytechnic Institute and State University in partial fulfillment of the requirements for the degree of Master of Public and International Affairs In Government and International Affairs, Alexandria, Virginia, US, p. 73.

- <sup>4</sup> Kimitaka Matsuzato, „Cultural geopolitics and the New Border Regions of Eurasia”, *Journal of Eurasian Studies*, Hokkaido University, Japan, available online 23 December 2009, 42-53, p. 50.
- <sup>5</sup> Socor, Vladimir. (2006) Russian Organizations in Transnistria Campaign for a Second Kaliningrad. *Eurasia Daily Monitor*, 3 (156), available at [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=31970](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=31970), retrieved 3/19/09, *apud* Jeffrey Daniel Owen, „Neopatrimonialism and Regime Endurance in Transnistria”, Thesis submitted to the faculty of the Virginia Polytechnic Institute and State University in partial fulfillment of the requirements for the degree of Master of Public and International Affairs In Government and International Affairs, Alexandria, Virginia, US, p. 58.
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- <sup>7</sup> Patrick Griesser, „Proriv – Childern of the Sun”, *Moldovarious.com*, 27 February 2010, available at <http://www.moldovarious.com/politics/128-proriv-children-of-the-sun.html>, accessed on 08 October 2011.
- <sup>8</sup> George Dura and Liliana Vitu (2008), „Moldova” in: Nations in Transit 2008, Freedom House, Budapest, p. 396 *apud* George Dura, „The EU and Moldova’s Third Sector: Partners in Solving the Transnistria Conflict?”, *MICROCON Policy Working Paper* 14, Brighton: Microcon, 2010, p. 6.
- <sup>9</sup> Oleh Protsyk, „Representation and DEMocracy in Eurasia’s Unrecognized States: The Case of Transnistria”, *European Centre for Minority Issues (ECMI)*, Flensburg, June 2010, p. 12. Also, this study seeks the political and professional background of the leaders from Tiraspol.
- <sup>10</sup> Vlad Cubreacov, „Patriarhia Moscovei recunoaște și susține regimul ilegal de la Tiraspol. Guvernul Republicii Moldova tace în așteptarea Patriarhului Rusiei la Chișinău”, 23 April 2010, personal blog of Cubreacov, available at <http://cubreacov.wordpress.com/2010/04/23/patriarhia-moscovei-recunoaste-si-sustine-regimul-ilegal-de-la-tiraspol/>, accessed on 09 November 2011.
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## ORIGINAL PAPER

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### International context and Romanian causes in the initiation and affirmation of the Revolution of 1989

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**Abstract:** *The year 1989 started in Romania by announcing the completion of foreign debt payment, an event that was to be “exploited” politically at the XIVth Congress of the P.C.R. (R.C.P. - Romanian Communist Party) in November the same year. In Eastern Europe, the events were in an accelerated progress of abandonment the totalitarian communist system. Hungary and Austria already abolished the border restrictions, so that people of German DR could pass tens of thousands in the Federal Republic of Germany. In Poland, the union “Solidarity” gain ground against the communist government, accepting since summer the appointment of the first non-communist prime minister in a State of the Warsaw Pact.*

**Keywords:** *revolution, Romania, Ceausescu, communism, securitate*

The year 1989 started in Romania by announcing the completion of foreign debt payment, an event that was to be “exploited” politically at the XIVth Congress of the P.C.R. (*R.C.P. - Romanian Communist Party*) in November the same year. In Eastern Europe, the events were in an accelerated progress of abandonment the totalitarian communist system. Hungary and Austria already abolished the border restrictions, so that people of German DR could pass tens of thousands in the Federal Republic of Germany. In Poland, the union “Solidarity” gain ground against the communist government, accepting since summer the appointment of the first non-communist prime minister in a State of the Warsaw Pact.

The fall of Berlin Wall on 9 November 1989, followed by the wave of revolutionary changes in Central and Southeast Europe (The *Velvet Revolution* in Czechoslovakia, the change of T. Zhivkov in Bulgaria etc.) led to rise up of the dissatisfied population in Romania, too, where the government remained in position until December 22, 1989, when the Revolution won across the country.

Broke out in Timisoara in December 16th, the Romanian uprising was brutally suppressed by the regime’s repressive forces, causing thousands of victims, people killed, injured or arrested. In a desperate attempt, Ceausescu held a large public demonstration in Palace Square in Bucharest (21 December 1989) hoping for a reprint of the atmosphere of August 1968. The political rally, prepared in haste and amid a climate of concern, turned against its originator; after a night of real street fights – which resulted in many more dead and wounded - dictator was forced to leave and, despite the opposition of his anonymous supporters, was arrested, convicted and executed on December 25, 1989.

After the proclamation of Romanian People’s Republic on 30 December 1947, the Romanian communists have had three constitutions in 1948, 1952 and 1965, by which was adopted the Soviet model of development of the Romanian society. By 1953, the power was mainly held by Communists approved by Moscow. In the first years after accession to governing, within the Communist Party was triggered a fierce struggle for power between a group of national communists and, respectively, a group of leaders come from Moscow after 23 August 1944. After Stalin’s death (1953), the *national communists* completely took control of the party led by Gheorghiu Dej. He took advantage of the crisis in P.C.U.S. after taking the lead by Nikita Khrushchev, who exposed Stalin’s abuses, the cult of personality and the control over the parties of satellite countries. Cautiously, he managed to escape the strict control of Moscow, but also to eliminate a new grouping of leaders cynical about it. After his death, Nicolae Ceausescu being elected first secretary, called the IXth Congress of the RCP (1965), which regulated the party’s name change of RMP in RCP and country’s name into the Socialist Republic of Romania, launching into the race for total control over power.

In 1974, he was elected President of the Socialist Republic of Romania, imposing a neo-Stalinist regime orientation. He focused the levers of power in his hands and of a close group, excluding and marginalizing the members of Gheorghiu-Dej team and removing those who expressed their opposition to his plans. After entering Elena Ceausescu into the government, Nicolae Ceausescu continued a program disconnected from reality, to build a *socialist structure*, estrange from people and subjecting it to privations of all kinds.

Because of the regime’s rigidity could not be constituted an active dissident, many critics preferring to leave the country and to urge Western governments to find a solution to stop the regime’s tyranny. The Miners’ strike in 1977 and Brasov workers Rebellion of 1987 were limited as objectives and actions, their leaders being arrested and even made to disappear by the repressive organs of the state.

Mikhail Gorbachev ‘s coming to Soviet Union leadership in 1985, was followed by his attempt to reform the Communist regime by applying the concepts of *perestroika* and *glasnost*.

Amply debated by the media in the West, but also in other communist countries, they have been known to Romanians, in a way, which we can call subversive, listening to Radio "Free Europe", and watching Bulgarian, Russian and Yugoslavia television. How much Romanians wanted to know *perestroika* is evident from the fact that in the summer of 1989, when preparations for the National Day - 23 August and to honor the XIVth Congress of the RCP (which was to be held in November 1989) were in full swing, at the Agency AERO FLO T (soviet air transport company) was formed a queue to buy books with official Soviet documents of the process of *perestroika*<sup>1</sup>.

This was the context in which the Romanian intellectual circles hoped that the forthcoming Congress, Nicolae Ceausescu could withdraw in favor of his son Nicu, first secretary of RCP în Sibiu county<sup>2</sup>. The central leadership of the party and state, composed of devoted to Nicolae Ceausescu, has found a solution to counteract the speculations in this regard by proposing the designation of the future general secretary to be discussed in each party organization so that the things to be clear at the Congress. It became obvious that Nicolae Ceausescu will be unanimously reelected for the party's supreme position, which actually happened in November 1989. It should be noted that Nicolae Ceausescu stated that he will proceed, in the event of anti-Romanian destabilizing actions, in the same way as "Chinese comrades", referring to the suppression of demonstrations in Tiananmen Square in Beijing, when it was intervened with tanks against protestors.

The only opposition to a Congress of the Communist Party, had been the declaration of Constantin Parvulescu, old party member, who in 1979, at the XIth Congress, criticized Ceausescu, whom he accused of seeking to impose to the party and the state his glorification. His action had no effect internally but externally was appreciated by the media in Western Europe. Persecuted by Ceausescu, Parvulescu also will sign "Letter of the Six"<sup>3</sup>.

However, this construction with announced final has awakened a sense of dissatisfaction, especially among teams on large industrial sites, which wanted another leader for the following five years and did not agreed the top imposition of the leader. The Security (*Securitatea*) (which launched, controlled, some rumors on possible replacement of Ceausescu, or his health problems) and the party's bodies have managed to settle the grievances, especially since they were seized in talks between party members<sup>4</sup>.

Both before and after the Congress remained a state of confusion. A foreign dignitary accredited to Bucharest was even arrested because from his car were spread fly sheets against the regime (later turned out that they were spread by a Romanian anticommunist that riding a bike put fly sheets on cars in traffic). A notable event, regarding the analysis of the situation in Eastern Europe, was the meeting of Mikhail Gorbachev's with the President of the US A, George Bush, in Malta, on 3 December 1989 which Ceausescu considered it as taking place to hit the interests of socialism, including those of Romania, subject first raised in discussions with secretaries of counties in the period 17 to 21 December 1989.

An element that shown how subservient were those of Ceausescu's entourage was the fact reported by Ion Dinca, that at the last meeting with Gorbachev, the Soviet leader embraced the Prime Minister Constantin Dascalescu, while he shook Ceausescu's hands coldly, incident interpreted by the dictator's entourage as an obvious alienation of Dascalescu! However, General Constantin Olteanu denied the information in an interview given for Lavinia Betea in the "National Journal" of December 4, 2009. In the same interview, Constantin Olteanu, at that time secretary of the CC of RCP of International Relations, said that Gorbachev strongly criticized the situation in Romania, Olteanu personally being convinced that Ceausescu's regime will collapse.

Fly sheets containing texts like "Down with dictatorship!", "Down with Ceausescu's tyranny", "Death to the dictator!" had begun to be spread in Timisoara, Iasi, Suceava, Sibiu, Cluj-Napoca, Bucharest yet from 10 to 11 December 1989. On this background, on 16 December

1989, in Iasi, the Popular Front (National Salvation Front) unknown to authorities, constituted a "Call" - a program that required to the people of the city to gather at an anti-Ceausescu demonstration in front of the Palace of Culture: "To put an end to hunger, cold, fear and darkness that master for 25 years "... "It is only in our power to get free from the hateful yoke that our country ever had."<sup>5</sup> Authorities have managed to impede the demonstration, investigating and operating arrests.

On 16 December 1989, a protest erupted in Timișoara, although authorities stopped the flow of information about the action from Iasi. Almost all historiography of events from Timisoara in 1989 held that the pretext of the action was the solidarity of some Reformed believers and occasional passers-by with a reformed pastor, Laszlo Tokes, which his Bishop decided to move him and which the Romanian authorities evicted him acting with undue important forces against him.

Nicolae Ceausescu, as we can see in the stenographs of CPE x of teleconferences with the county first secretaries in the country, from 17, 20 and 21 December 1989, in his speeches from radio-televized in the same period, said that the disturbances were the exclusive result of anti-Romanian actions handled by Western and even Eastern European countries to destabilize Romania and to diminish its international prestige<sup>6</sup>.

For him it was convenient to throw the responsibility of these actions on behalf of a person (Tokes) who disobeyed the laws of the country and engaged in provocative actions against the authorities, but to recognize that the source of all people's grievances from Timisoara were himself and his inhuman regime that starved people and isolated the country internationally. In fact, to show that he was not afraid of challenges during the crisis in Timisoara, made his last visit to Iran, where he was received with honors. On his return to the country, the leader of the regime was surprised to find that Timisoara was the first city declared free from communist dictatorship and the community's leadership was assumed by the Romanian Democratic Front. A brave team secured the leadership of a new political formation: Lorin Fortuna, Claudiu Iordache, Ion Chis, Traian Vraneanțu, Mihaela Traistaru etc. Some historians have tried, starting just from Ceausescu's assertions (including those relating to the appointment from Malta) to outbid the involvement

of external factors in the Romanian Revolution of 1989. Actions of individuals or groups directed against the totalitarian regime previous to December 1989 can be assimilated to the concept of events to go, according to the historian Alexandru Oșca, because they have not reached the level of mass demonstrations, such as that of Timisoara on 16 December 1989<sup>7</sup>.

The rhetoric of demonstrators evolved in those days (16-22 December 1989), from demands to improve living conditions, addressed to the local authorities, to the specification of some political clauses and negotiating them with the representatives of central authorities sent to clarify the situation.

Analyzing slogans and catchwords launched at that time we can conclude that people did not use explicitly and excessively anticommunist slogans to express the desire for regime change. The documents reveal that "Down with Communism" slogan appears sporadically before and after December 20, 1989 and is not found in the Romanian Democratic Front proclamation of December 21, 1989. After December 22, 1989, began to emerge at the forefront of the political scene more political and civic groups, so after entering on the path of political democracy, either as a group or through active figures in the revolution, which become formers of opinion, was explicitly formulated the eradication of communism as a system.

Thus, some works devoted to the analysis of revolution have issued opinions full of contradictions, claiming that *anti-communist revolution broke out later*, in December being only a social rebellion. The best known civic organization from Timisoara, the "Timisoara Society", on 11

March 1990 in front of 400,000 people published a radical program, similar to those presented by political formations, civic groups, between 26 December 1990 and 20 May 1990, categorized by the *Presidential Commission for the study of Communist Dictatorship*, as *the real document of the Romanian revolution*.

However, it is difficult to accept as a fundamental document to be issued by the leaders of the Revolution, about three months after the deployment of the most important events of its. Heroic resistance of Timisoara people, but also of Banat people in general, in those crucial moments legitimized *de facto* the anticommunist character of their movement. Returning to the Romanian Democratic Front Proclamation and the documents to negotiated by the revolutionaries with the Prime Minister Constantin Dascalescu, in which for tactical reasons was not mentioned the term anticommunism (in 1848, the revolutionaries of Moldova demanded *holy guarding of the Organic Regulation*, although they raised against the regime imposed by this), the anticommunist character emerges clearly from the request for free elections, respecting human rights, freedom of movement and consciousness, which hit the foundation of the communist regime<sup>8</sup>. Revolution from Timisoara was anticommunist and through the context of 1989, when the communist regimes in other Eastern European countries had been replaced with democracies. As of 1848, when the revolution was called “the great surprise of this times”, in 1989, in Timisoara there was the fight against the communist regime. The difference between them is essential. In 1848, the requirements were fulfilled in the Romanian space within three decades after the revolution, while in 1989, the change was made in about a week.

Journalism, memoirs and historiography about events from Timisoara and generally from Banat gives us today the certainty of the anticommunist purpose of the revolution from Timisoara. Within the party, an isolated dissident was brought by the former communist dignitaries excluded from public life by the dictator Nicolae Ceausescu. Finally, some former activists have sent in the West a letter, known in historiography as the “Letter of the Six”, addressed to Nicolae Ceausescu, by which he was asked him to reconsider the party’s policy, allowing the regime’s reformation, to stop the demolition of villages and destruction of national cultural values. The document was signed by former high-ranking communist dignitary Gheorghe Apostol and other five former leading members of the Romanian Communist Party: Alexandru Barladeanu, Corneliu Manescu, Grigore Răceanu Constantin Parvulescu and Silviu Brucan. The letter was read on BBC radio and Europe on 11 March 1989<sup>9</sup>.

Signatories of the letter have been observed, questioned and placed under arrest at home. The authors of the letter proclaimed themselves ad devoted to socialist ideas, recognizing that endangered their “freedom and life” by their gesture. In the letter, Nicolae Ceausescu was accused of:

- failure to comply with the Helsinki Final Act and the Constitution;
- systematization of villages;
- prohibiting contact with foreigners without legal support;
- construction of the civic center of the capital, without a transparent budget;
- diversion of Security from its intended purpose as defender of “socialist order against the exploiting classes” in the instrument of intimidation of party members and honest intellectuals;

In other sections of the letter is criticized the imposition of forced labor, violation of correspondence and failure of planning policy. The letter criticized the agrarian policy, which led to starving of population, massive emigration of minorities in Romania, the country’s international prestige collapse, fact evidenced by the closure of embassies in Bucharest by Denmark and Portugal, the withdrawal clause of the most favored nation by the U.S. and blocking the economic relations with the Common Market. The authors of the letter asked<sup>10</sup>:

- discontinue systematization of villages;

- restoring constitutional guarantees regarding the rights of citizens;
- food export ban.

Although radical the letter did not question the communist system, the old communist militants - attentive to developments in the Soviet space still under Communist control - were convinced that this could and should be reformed even by Nicolae Ceausescu. From this point of view, we can say that the letter is a document inspired by Soviet perestroika, launched in 1985 by Mikhail Gorbachev. At the hearing on March 13, 1989 the Executive Political Committee of CC of the RCP had on the agenda the discussion of this protest. Nicolae Ceausescu, approved by his wife, was the only one who spoke demanding tightening the conditions Romanian citizens could communicate externally and qualifying the signatories' of the letter gesture as treason. Gheorghe Apostol and Silviu Brucan were imposed house arrest. In an interview given for Rompres Agency in May 2003, Gheorghe Apostol said: "Ceausescu found out and convened a group of comrades from the party's secretary to investigate me and make me deny what I wrote in the letter. I was beaten black and blue at the party for a month. They called my wife and daughter, to convince me to give up the contents of the letter. I was expelled from the party and handed over to Security. I was investigated from May 1989 to December 1989. I was arrested at home, I was not allowed to talk to anyone, no one was allowed to come to me, the phone was blocked. They took me in the morning at 8-9 and I was sitting in Rahova jail until about 11 to 12 at night".

Subsequently, he was never involved in politics, entering into conflict, especially with Silviu Brucan. On December 22, 1989, the authors' of the "Letter of the six" were lifted up the domicile arrest they involved in the Revolution. On the same day, Silviu Brucan appeared on television, where he made a statement condemning the old regime and was cooped by Ion Iliescu into the new Power, National Salvation Front (NSF) Council. Alexandru Barladeanu took part in drafting the Communicate for the country from the Council NSF and become the President of the Senate of Romania after the elections of 20 May 1990. Corneliu Manescu was also a member of the NSFC and was elected the President of the Foreign Affairs Committee, Senate of Romania. Constantin Parvulescu appeared on television, where he shared his memories of "Letter of the Six" and his conflicts with Nicolae Ceausescu.

Analysis of documents that have emanated from the revolutionaries in 1989 allows finding that there is a link between them and the "Letter of the six" except the Manifest of the hypothetical Romanian Popular Front in Iasi (16 December 1989). The manifesto, entitled "Call to all Romanians of good faith" called on the people from the city to come to a demonstration at the Square Palace of Culture against Ceausescu dictatorship system. There was also a call of police to prove "patriotism and political insight" and support the action<sup>11</sup>.

Another letter, more radical and critical of regime in Romania and the dictator was made in mid-March 1989 by Ion Iliescu, then Director of Technical Publishing House. The letter was to reach the West, at the Radio Free Europe, through Virgil Magureanu teacher at the Academy of Political-Social Sciences "Stefan Gheorghiu". For various reasons, they failed to send it to the radio in Munich. The content of the letter was made public much later, Ion Iliescu saying that because it was not notified on time, he found it unnecessary to insist on it later. However, this time the author was not addressed to Ceausescu, but to "fellow-citizens", including party members and denounced the clan policy that the dictator imposed it. The letter demanded his removal to enable progress and modernization of Romanian society<sup>12</sup>.

Documentary basis for deciphering the content and the sense of the Revolution of 1989 is still incomplete and further research will certainly find other documents. The most important documents used by historians who study this phenomenon milestone in the History of Romania, we consider to be:

- Romanian Democratic Front Proclamation of 21 December 1989, Timișoara;

- Final Resolution Popular Assembly from Timisoara on the establishment of true democracy and freedom, December 22, 1989, Timisoara;
- Communiqué of the country from the National Salvation Front Council of 22 December 1989, Bucharest.

These documents we consider essential in understanding the causes, the objectives, the means and the will of revolutionaries who rose up against the regime in December 1989.

Another group of documents consists of the Executive Political Committee meetings stenographs, of teleconferences of the regime leader with the first county secretaries from the period of 17-21 December and Nicolae Ceausescu's speech from television and the meeting of December 21, 1989. The analysis of those documents allows finding that the leaders of the Communist Party and supreme bodies of state were in a jam that could not be overcome even in the conditions if where turned to a huge political manipulation (threat of country aggression) and especially the force of repression structures.

Directly related to these documents that reflect the mood and behavior of the political factor are documents issued by the state specialized structures on security, the *Militia (Police)*, Defense and Patriot Guard. They are constituted of provisions, decisions of Board Councils, orders of ministers and military officers at various hierarchical levels, sending secret indicatives, informative notes and reports about the situation and implementation of the decisions taken by the dictator, his wife and Prime Minister.

Although they are not the objective of our analysis of these results a foregone conclusion: the security and defense forces were surprised by the strong reaction of revolutionaries in Timisoara (16-20 December 1989) and Bucharest (December 21 to 22, 1989), and subsequently the methods of action of the "terrorists" who, after December 22, acted for re-imposing the old regime authority.

A final group of documents relevant to the complex interpretation of the revolutionary aspirations is represented by the Romanian diplomatic corps accredited in different countries, send at the Central of Foreign Ministry in Bucharest, declarations of Western politicians and diplomats and from former communist bloc countries, broadcasts of Radio Free Europe, BBC and the National Televisions from European Community countries and the former USSR.

After the execution of Ceausescu, among documents of interest to carry out the revolutionary events are imposed:

- Decree-Law no. 2 of 27 December 1989 on the establishment, organization and functioning of NSFC and territorial councils of NSF;
- Decree-Law no. 8 of 31 December 1989 concerning the registration and operation of political parties and public organizations in Romania;
- Decree-Law no. 10 of 31 December 1989 on the establishment, organization and functioning of the Romanian Government;
- Decree-Law no. 81 of 9 February 1989 on the Provisional Council of National Unity;
- Decree-Law no. 82 of 13 February 1990 which brought some changes of CPU N;
- Decree-Law no. 92 of 14 March 1990 on parliamentary elections and the President of Romania;
- on November 21, 1991 the Constituent Assembly adopted the final text of the new Constitution,
- December 8, 1991 approved by referendum.

**Notes:**

<sup>1</sup> M. Bărbulescu, Dennis Deletant, Keith Hitchins, Șerban Papacostea, Pompiliu Teodor, *Istoria României (History of Romania)*, Editura Enciclopedică (*Encyclopedic Publishing House*), Bucharest, 1998, p.540.

<sup>2</sup> Alexandru Oșca, *Revoluția română în Banat (Romanian revolution in Banat)*, Editura Sitech (Sitech Publishing House), Craiova, 2009, p.126.

<sup>3</sup> Costin Scorpan, *Istoria României. Enciclopedie (History of Romania, Encyclopedia)*, Editura Nemira (Nemira Publishing House), Bucharest, 1997, pp.572-573.

<sup>4</sup> Alexandru Oșca, *op.cit.*, p.127.

<sup>5</sup> Ion Calafeteanu (coord.), *Revoluția Română din Decembrie 1989. Documente (The Romanian Revolution of December 1989. Documents)*, Cluj-Napoca, Editura Mega (Mega Publishing House), 2009, p. 111.

<sup>6</sup> Alexandru Oșca, *op.cit.*, p.128.

<sup>7</sup> *Ibidem*, p.14.

<sup>8</sup> *Ibidem*, p.15.

<sup>9</sup> Florin Constantiniu, *O istorie sinceră a poporului român (An honest History of the Romanian People)*, III<sup>rd</sup> edition revised and enlarged, Bucharest, Encyclopedic Universe Publishing House, 2002, p. 504.,

<sup>10</sup> *Ibidem*.

<sup>11</sup> Ion Calafeteanu (coord.), *op.cit.*, p. 111.

<sup>12</sup> *Caietele Revoluției*, <http://www.jurnalul.ro/stire-special/martie-1989-ioniliescu-scrisoare-impotriva-lui-ceaurescu-146289.html>. (Ion Iliescu - Letter against Ceausescu)

## ORIGINAL PAPER

Cosmin Lucian GHERGHE

### The evolution of constitutionalism in Romania beyond 1989. Case study: The Constitution of 1965 and the Constitution of 1991

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**Abstract:** *Revolution in 1989 drew after self loss of any legitimacy of constitutional order imposed at 1965. Through the analysis of two Constitution notice the character antidemocratic, totalitarian, of the Constitution of 1965 in comparison with the Constitution of 1991. In Constitution of 1965, the principle of separation of powers in the state it was replaced with the principle of cooperation in state and the political system based on the single-party monopoly.*

**Keywords:** *Romania, constitution, 1965 and 1991, democracy*

The December 1989 Revolution has brought the loss of any legitimacy of the constitutional order instituted on August 21st, 1965. The necessity to adopt a new Constitution in Romania was determined by the character of the fundamental, structural changes that occurred on the Romanian political scene in December 1989. These changes regarded not only the political regime reflected in the 1965 Constitution, but also the political institutions that can ensure government, more precisely: the parliamentary institution, the presidential institution, the State Council, the Govern, local administration organisms. Attached to some of these public authorities, there were specialized institutions, some with a preponderantly state character, such as: the Legislative Council, the Supreme Council for Economic and Social Development, the Council for Economic and Social Organization, etc. These institutions automatically ceased to function, thus amplifying the dissolution of the state structures.

There was a need for a new Constitution, one that would reinvigorate the Romanian tradition of parliamentary democracy and would reflect the constitutional principles – the principle of separation of powers, that of representation, that of sovereign power of the people, pluralism, equality of rights – mechanisms of a state subject to the rule of law.

The new Romanian Constitution entered into force after the referendum, on the 13th of December 1991; on the same day, the Constitution published on the 21st of August 1965 was completely repealed.

The 1991 Constitution comprises:

- 152 articles grouped in 7 titles, some titles have chapters and sections;

The 1965 Constitution, published in the Official Bulletin of the Socialist Republic of Romania no. 1 from the 21st of August 1965, comprised:

- 121 articles systematized in 9 titles.

Article 1 of the 1965 Constitution proclaims Romania as a Socialist Republic. Considering that the country had reached a high stage of development on its way to communism, with a socialist economy (art. 5), with socialist property (art. 6) as a base for any property, and with state monopoly on external/foreign commerce (art. 8), it was proclaimed S.R.R.<sup>1</sup> The passage to a socialist stage of organization does not mean the abandonment of the laborers-peasants alliance, but the extension of the sphere of inclusion for working men, and first of all of intellectuals.<sup>2</sup>

The 1965 Constitution consecrated the republican form of the state, its sovereignty and independence, the indivisibility and inalienability of the territory. The 1991 Constitution preferred to relate the indivisibility of the state to the principle of sovereignty (art. 2, par. 2), to the unity (indivisibility) of the people (art. 4), to the indivisibility of the territory (which was not explicitly provided by art. 3) and to the unity of the electoral corpus.<sup>3</sup>

If we limit ourselves to the provisions regarding human rights, the 1965 Constitution was, in this regard, democratic. In fact, the socialist political regime was incompatible with the real and effective exercise of such rights and liberties. The 1965 Constitution invested with juridical force the communist vision on liberty. A vision that includes a vast territory, varying from officializing planning to regulating the housing space and indicating the goods that are subject to personal property.

The constitutional contract codifies the social one: that which the working man receives, as reward, in the area of social protection and security (a guaranteed workplace, the right to rest, paid vacations, medical assistance), affects the substance of political liberty. The latter can no longer mean, as in the “bourgeois” case, free association in parties or contesting authority in writing, by manifesting or through strikes. Political liberty, in the new constitutional order, is synonymous to safeguarding the interests “of those who work”. “State subject to the rule of law”,

“democratic and social state”, “political pluralism” (art. 8, par. 1 – Pluralism in the Romanian society is a condition and a guarantee for constitutional democracy) represent international standard of constitutional democracy that can only be found in the 1991 Constitution, while in the 1965 Constitution, the political regime was based on the exclusion of political and ideological pluralism, on the monopoly of the one party (art. 3 – In the Socialist Republic of Romania, the leading political force of the entire society is the Romanian Communist Party), which exercises the leading role in all society and leads the activity of all social organisms, including the state organs. Through article 26, the 1965 Constitution creates a class of privileged citizens, thus the members of the R.C.P. were considered “the most advanced and conscious citizens of society”, although they were not recruited on criteria of value, but on adherence.<sup>4</sup>

Title II of both the 1965 Constitution and of the 1991 Constitution established the fundamental rights, liberties and duties of the citizens. Individual freedom represents the essential element, the condition for the existence of the other fundamental rights of the citizen.

The 1991 Constitution establishes:

- Social, economic and cultural rights and liberties;
- Exclusively political rights (right to vote, right to be elected, right to choose);
- Social and political rights and liberties (freedom of thought, conscience and religion – these liberties are protected by the Romanian Constitution through art. 29, which is entitled „Freedom of Conscience”, and by the European Convention on Human Rights through art. 9, which is entitled “Freedom of Thought, Conscience and Religion”; freedom of speech, right to be informed, freedom of meetings, right to associate, inviolability of the home, secrecy of correspondence).<sup>5</sup>

As far as the Constitution is concerned, there are several articles that also regulate aspects of private life: art. 26, entitled “Intimate, Family and Private Life”, art. 27 – “Inviolability of the home” and art. 28 – “Secrecy of Correspondence”. In the view of the European court, even the right to a healthy environment is related to the private life of the person. The regulation of this right in the Romanian Constitution can be found in art. 35, entitled “Right to a Healthy Environment”.<sup>6</sup>

In the 1965 Constitution, art. 28 guarantees citizens the freedom of speech, of press, of meetings, of rallies and of demonstrations, but later, art. 29 drastically limits this right: “The freedom of speech, of press, of meetings, of rallies and of demonstrations cannot be used for purposes opposed to the socialist order and to the interest of the people who work”. Formally, the 1965 Constitution guaranteed the inviolability of the person (art. 31), of the home (art. 32), the secrecy of correspondence and of phone calls (art. 33); however, the State Administration, and especially the organs of the Security Services, made such guarantees illusory.<sup>7</sup>

The 1991 Constitution, in its first title, “General Principles”, comprises regulations concerning the unitary structure of the state, its republican form of government. The Romanian state is characterized as a state subject to the rule of law, democratic and social, in which national sovereignty belongs to the people, who exercises it through its representative organs or through referendum. The Constitution recognizes and guarantees the right of persons belonging to national minorities to maintain, develop and express their ethnic, cultural, linguistic and religious identity. The 1991 Constitution also consecrated certain “supreme values” guaranteed by the state through article 3, par. 3 (i.e. “the dignity of man, the rights and freedoms of citizens, the free development of human personality, justice and political pluralism”), that were not present in the 1965 Constitution. The right to association in political parties, in trade unions and other forms of association, a right which is included in the 1991 Constitution, constitutes the basis for political and ideological pluralism in the Romanian society (art. 8).

Political parties contribute to the definition and expression of the citizens’ political will, respecting national sovereignty, territorial integrity, lawful order and the principles of democracy.

Thus, art. 8 of the Constitution ensures a supplementary guarantee, alongside the constitutional regulations that impose separation of powers and decentralization of the state.<sup>8</sup>

The 1965 Constitution structures the state organs into four large categories:

1. Organs of state power (the Great National Gathering, the State Council, the President of the Republic, the People's Councils);
2. Organs of state administration (the Council of Ministers, ministries and other central organs of state administration);
3. Judicial organs (Supreme Court, county courts);
4. Attorney organs (Attorney General, Attorney General's Office, county attorney offices, militia).

The Great National Gathering was the supreme organ of state power, leading the activity of all other state organs (art. 4); it was the only legislative authority. However, the legislative activity of the Great National Gathering was limited through the competence awarded to the State Council, supreme organ of state power, which was permanently active. By means of article 64, par. 2, the State Council had the ability to establish "norms with the power of a law" between the sessions of the Great National Gathering; this led to the governing of the country through decrees.

The constitutional mechanism of 1965 is defined, thus, through the transfer of all of the "responsibility" of the Council of Ministers onto two permanent state organs, both of whom resulted from a choice process at the level of the Great National Gathering: the State Council and the President are the two institutions to which the Government must answer. Subordinated, from a strictly juridical point of view, to the Great National Gathering, by which it is designated by vote, the State Council intervenes in the composition of the Council of Ministers, according to article 64, through prerogatives of "naming and revoking" the Prime Minister.

Once the function of President was instituted in 1974, the control function that the Great National Gathering had over the government is limited even more, as it is the head of the state who presides over the State Council, and his prerogatives include the right to appoint and revoke the deputy prime ministers and other members of the government, upon initiative of the Prime Minister.<sup>9</sup>

As far as the judicial functions are concerned, the 1965 Constitution, in art. 102, states that judicial courts must protect the socialist order, while in art. 111 it is formally stated that judges are independent and only abide to law. The suppression of the irremovability of judges and of the administrative court in the 1965 Constitution determined the interference of the executive power in the judicial activity.

The right of county People's Councils and of the People's Council of Bucharest to chose and revoke judges (1965 Constitution, art. 87, par. 6) consecrates the total dependency of judges to the local state power. Through the 1965 Constitution, the principle of separation of state powers was replaced by the so-called principle of collaboration between state powers, which, in fact, consisted in the subordination of all state powers to the leading force of the country, the Communist Party. The public authorities established in the 1991 Constitution are, among others, the Parliament (art. 61) which has a bicameral structure – the Deputies' Chamber and the Senate, the President of Romania (art. 80), the Govern (art. 85), the Public Administration, the Judicial Authority, the Constitutional Court, etc.

The 1991 Constitution consecrates a legitimacy of the legislative that is superior to that of the executive. The legislative has the competence to establish the limit between legislative power and executive power.<sup>10</sup> The constitutional structure of the executive is made up of: the Government, as collegial organ that "ensures the accomplishment of internal and foreign policy of the country and exerts general leadership over the public administration" (art. 102, par. 1). The Public Administration is made up of ministries, other organs instituted by the Government or the ministries, autonomous local administrations and organs of local public administration; the

depoliticization of these structures constituted one of the monitoring criteria before Romania joined the European Union.

Article 21 of the 1991 Constitution guarantees free access to justice: "...any person may refer to the courts in order to defend his or her legitimate rights, freedoms and interests"; this demonstrates that anyone may file a complaint should they consider that their legitimate rights, freedoms and interests have been violated. Free access to justice, as any fundamental right consecrated by the 1991 Constitution, is legitimate only as far as it is exercised in good faith, respecting the equally respected rights and interests of other subjects. While the 1965 Constitution, in article 42, stated: "The Great National Gathering, the supreme organ of state power, is the only legislative organ of the S.R.R.", the 1991 Constitution, in article 58 (1), states: "The Parliament is the supreme representative organ of the Romanian people and the only legislative authority of the country".

The two texts are identical, but just as illusory. In the 1965 Constitution, as we have seen, the executive power, the State Council, governed the country by decrees, completely ignoring "the only legislative organ", just as in the 1991 Constitution, the executive power, the Government, has numerous possibilities to elude the only legislative power of the country, by engaging responsibility on the project of a law, thus turning it into a law without any voting, as well as by emergency ordinances/decrees (art. 114).

The attributions of the President of Romania (art. 80 par. 1 – The President of Romania represents the Romanian state and guarantees national independence, unity and territorial integrity of the country; art. 100 par. 2 – The decrees issued by the President of Romania in exercise of his attributions stipulated by art. 91 par. 1 and 2, art. 92 par. 2 and 3, art. 93 par. 1 and art. 94, letters a, b and d, are countersigned by the Prime Minister), as stipulated by the 1991 Constitution, are also slightly re-elaborated forms of the prerogatives of the President of the S.R.R. as stipulated by the 1965 Constitution (art. 74 – The President of the Socialist Republic of Romania is the supreme commander of the armed forces and the president of the Defense Council of the Socialist Republic of Romania; art. 75 – The President of the Socialist Republic of Romania fulfills, in accordance to the Constitution and the laws, the following main attributions: 1. he presides over the State Council; ... 3. he establishes the measures of extreme importance regarding the supreme interests of the country, which are to be subjected to the consultation of the people, by the Great National Gathering, through referendum; 4. he appoints and revokes, upon proposal of the Prime Minister, the Deputy Prime Ministers, the ministers and the presidents of other central organs of the state administration that are part of the Council of Ministers; 5. During the period when the Great National Gathering is not reunited, he appoints and revokes the president of the Supreme Court and the Attorney General; 6. he grants the titles of general, admiral and marshal; 13. he signs international treaties in the name of the Socialist Republic of Romania; in this regard, he can depute the Prime Minister or other members of the Council of Ministers, or diplomatic representatives; 14. in the interest of defending the Socialist Republic of Romania, of ensuring public order or state security, he proclaims, in case of emergency, the state of necessity in some localities or in the whole country. In fulfilling his attributions, the President of the Socialist Republic of Romania issues presidential decrees and decisions). In Romania, nobody is responsible for the application of laws, because the president cannot be held responsible for his actions – art. 82 (2), and the ministers are not responsible for the laws, even if they elaborate them, because they do not bear their signature; this represents a great fault in the 1991 Constitution.

Through the 1965 Constitution, the entire commercial activity is controlled by the state (art. 6 – Socialist property on means of production is either state property – on goods which

belong to the entire people, or cooperative property – on goods which belong to each cooperative organization); this applies especially to foreign commerce, which is state monopoly (art. 8).

Although both the 1965 Constitution (art. 12) and the 1991 Constitution (art. 44) stipulate that the expropriation of buildings can only take place in cases of public interest/public utility and only after just and previous compensation, the manner in which such constitutional dispositions have been executed is completely different. Thus, expropriations made on the grounds of the 1965 Constitution did not include just compensations and did not necessarily involve public interest. On the other hand, since the 1991 Constitution states that the right to private property is guaranteed, the expropriation would only be made in the case public utility and after just compensation.

The 1991 Constitution brings two new institutions, the People's Advocate and the Constitutional Court. The People's Advocate (Title II, chapter 4, articles 58-60) guarantees the citizens' rights and freedoms, although there is no mention of the institution's constitutional status and of its attributions.<sup>11</sup> Considering it is an innovation, the functions of People's Advocate is inspired by the Swedish Constitution<sup>12</sup>, and was instituted on the 20th of March, 1998.

According to the regulations of the 1991 Constitution (Title V, articles 140-145), the Constitutional Court is inspired by the French Constitution; it also exists in other European Constitutions and has the role of control over the constitutionality of the laws before they are promulgated.

A serious problem of the 1965 Constitution was that it could be modified by the Great National Gathering, according to article 43, paragraph 1: "to adopt and modify the Constitution"; this has led to no less than ten modifications and six republications, more than any other Romanian fundamental laws from 1859 until 1965.

Furthermore, through the 1965 Constitution, the Great National Gathering replaces the Constitutional Court, becoming the only institution that could decide on the constitutionality of the laws (art. 43, par. 15). This control over the constitutionality of laws was a formal one, since the laws were issued by the same Great National Gathering, an institution which lacked autonomy.

The 1965 Constitution legitimizes a regime that is based, declaratively, on the power of the people, a hypothesis that makes irrelevant the reference to separation of state powers or guarantee of individual freedoms. The constitutional mechanism lacks weight in the political space, and the decisional process involves the Great National Gathering as a ratification organism lacking any independence.

The 1991 Constitution, ratified by the nation, through plebiscite, resolved in a definitive manner the matter of the form of government, in as far as its text, following an European precedent, introduced as a limit of revision exactly the republican form of the state, ignoring completely a basic reality: in the Romania of 1947, there was no people's consultation that could compare, from a democratic point of view, with the Italian one from 1946. Thus, the post-revolutionary referendum validated, indirectly, a constitutional change that is made in absence of confirmation by the nation. The affirmation of the republican character of the Romanian state and the exclusion of its review (through art. 152 par. 1), are made, or so it seems at first glance, in order to prevent the restoration of the monarchic form of government.<sup>13</sup>

The Constitution itself represents the will of the people and defends its general interests (*dura lex sed lex*).<sup>14</sup> After an authoritarian and totalitarian censorship, the Romanian Constitution adopted in 1991 faithfully reflects the political, social and economic, national, religious relations of the country, generated by the process of crossing of the Romanian society from a socialist society to a civil society and a state subject to the rule of law.

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## ORIGINAL PAPER

Anca Parmena OLIMID

### Struggle for Sacred after EU Integration. Coverage of Religion in Four Daily Newspapers: Ekathimerini (Greece), Cyprus Mail (Cyprus), National Journal (Romania), and The Sofia Echo (Bulgaria) (II)\*

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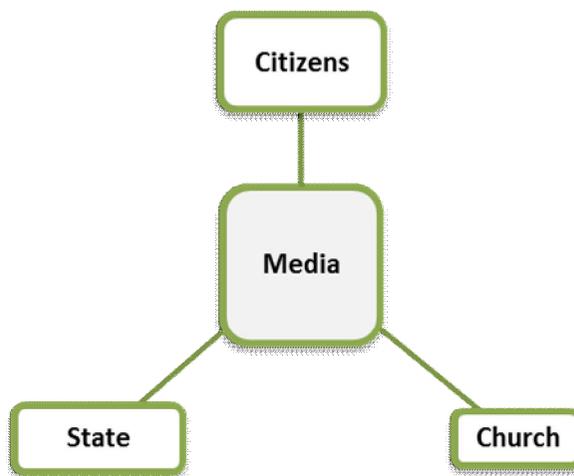
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**Abstract:** *Recently, a great deal of specialized literature, namely legal and political periodicals, has debated over the constitutional dispositions of law and religion in four majority Orthodox countries of the European Union: Greece, Cyprus, Romania and Bulgaria. Even so, these studies reflected just a “cross-fertilized” political, social, and cultural research. In this connection, the present study attempts to articulate the “arena” of ideas and concepts within the context of media coverage illustrating a complex understanding of church, media and politics in the context of the European integration.*

**Key words:** *media coverage, religion, EU, politics, integration.*

Taken alone, the four items (state, religion, media and politics) are merely “words on newspaper”, but analyzed as a “complex vision”, they explain the foundational individualism of the conservative Orthodoxy in the European Union. Social or political controversies related to the role of Church in public life dominate the press coverage between January 2010 and March 2012.

Much of the coverage is focused on the status of Orthodoxy in the context of the European integration. The essential idea of the research is the dependency relation between church, media and politics as a result of a traditional function: *the organizational identity* in moral, religious and ethnic life in Orthodox countries acting with a triple effect (in the interest of political actors, the state and the church)<sup>1</sup>.



In the current crisis of secular religiosity in European systems, the spirit cannot be separated from the political arena. Furthermore, the paper proposes, under the old scholastic adagio "distinction per union" or "ex Pluribus Unum", that, in the challenging context of the beginning of the third millennium of the Christian history, to rediscover the relationship between media-politics-religion monitoring the following topics and subtopics in written press during the past two years: religion, Orthodox, politics/ religion, interfaith relations, religion in the European Union, Christian Europe, religious liberty and legal regime for religions.

More than usual, these topics attracted between 2010 and 2012 more coverage than in other periods in the following periodicals: Ekathimerini (Greece)<sup>2</sup>, The Sofia Echo (Bulgaria)<sup>3</sup>, National Journal (Romania)<sup>4</sup> and Cyprus Mail (Cyprus)<sup>5</sup>. This study on newspapers is concerned primarily with quantity of coverage in the four daily newspapers. In other words, the starting point is the following: "political monopoly" twofold conditioned: in the first sentence by *cultural and religious identity* in the space of the four countries and in the second sentence by the *state* who knows how to take benefit from the confessional unity and stability of the Orthodox Church occupying a dominant position.

Therefore, we need to reconsider the influence of media in establishing a relationship between state-religion-politics. The option of the research to study the frequency of specific topics is based on the following working hypothesis: a simple social, theological, political, legal investigation, or a "general" and "universalistic" study of religious systems would not cover the entire area of investigation, so the justification of the research is to reconsider the factual knowledge of historical, cultural and religious specificities of each nation through media coverage

of specific topics. Thus, the motivation of this research is not only to present the political, social and cultural European reality of Christian Orthodox majority in EU countries, but also a response to the attempts of the scientific community regarding the definition of the role Orthodoxy and the perspectives of religion as a step forward in the relations established with the state over the last decade. However, currently we must admit that there is no religious regime or a code of religions in the European Union, so the European integration reveals different cultural and religious experiences where any comparative approach requires knowledge, research and understanding of state-religion relations in each member state.

Unlike Western societies that diminished the traditional role of religion as a consequence of papal absolutism, since 1989 in Eastern Europe (Romania and Bulgaria for our research), the political awareness of the relationship between media-religion revealed a relational-personal vision not only God, but also about man and society.

Since 2007, most of the political or theological analyzes marked a different stage of the post-communist evolution characterized by the tendency to unify political and religious markets. In this context, in recent decades, the literature has noted the identification between the political actor and the party who proposed him. This has led to a "custom power" and to a structural change in society through the moral and spiritual rediscovery of the potential of the religious factor role in public and political life.

Also, the polls argue that citizens prefer candidates with experience in the political arena and with a discourse connecting the religious factor and the popular expectations. According to a conceptual scheme, the Church has become in recent years the main actor in the process of "return of the religious" in the new stage of the European construction changing the strategic equation from economic unification to spiritual identification<sup>6</sup>.

The meaning and consequences of state action in religious policy differs from one context to another, from one democracy to another. In this context, European integration opened the road to democracy and political pluralism firmly guaranteed by the European option<sup>7</sup>. Targeting research to a wider context of scientific research (research of several concepts) avoids political determinism focused on 2007.

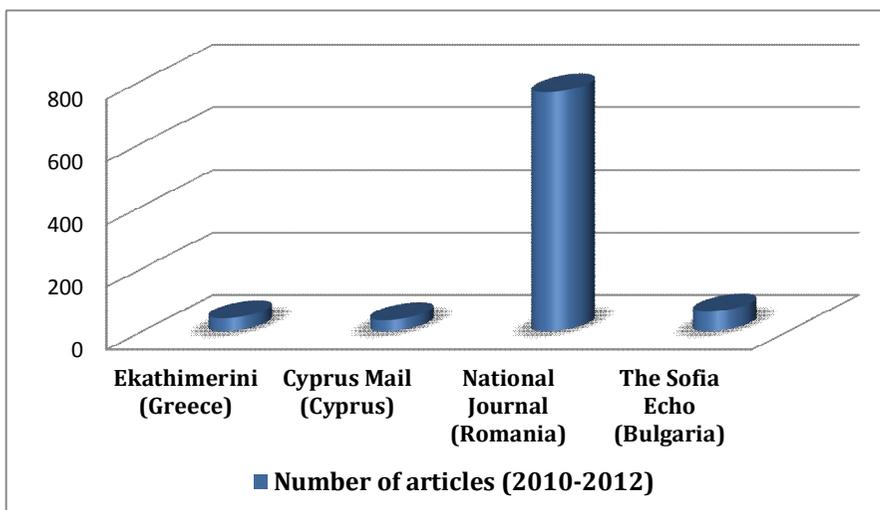
For specialists, European integration and the perspective of the European religious space seem to be the most relevant context for the organization of moral identity and ethnic life. European integration has become a challenge for state and also for denominations. In this context, Orthodoxy, the moral reconciliation and spiritual potential of the integration, was seriously affected by confessional and religious controversies that divided the continent during the last years.

Thus, the comparative research of the frequency of the topic "religion / religious" in the four newspapers shows that the topic appears in 902 newspaper articles between 2010 and 2012: National Journal (764 articles), Ekathimerini (41 articles), Cyprus mail (35 articles) and Sophia Echo (62 articles).

**Table 1. Percent of mainstream written press coverage devoted to "religion", 2010-2012**

<i>Country</i>	<i>Journal</i>	<b>Period</b>
		<b>2010-2012</b>
<b>Greece</b>	<b>Ekathimerini</b>	41
<b>Cyprus</b>	<b>Cyprus Mail</b>	35
<b>Romania</b>	<b>National Journal</b>	764
<b>Bulgaria</b>	<b>The Sofia Echo</b>	62
<b>Number of articles (total)</b>		902

**Chart 1. Percent of mainstream written press coverage devoted to “religion”, 2010-2012**



That the frequency of "religion" differs from one journal to another, from one country to another means that we are dealing with different contexts and not with different concepts. In other words, this research should be considered unitary, but operationalizing in different contexts.

Furthermore, it is easy to object to such an identification system based on the construction of a theoretical and conceptual research regarding media-politics-religion relationship, saying that the levels of the frequency of different concepts may vary at different stages. Thus, each level of research provides a potential visibility of the religion in the media space. Religious factors depend on this level as well as on a number of other variables to integrate in the public life. For example, a simple comparative research of the legal status of religions in constitutional provisions of all four countries shows, that:

- the Constitution of Greece specifically creates the role of the Orthodoxy by the issue of the “prevailing religion”, interpreted in terms of religious tolerance and conscience required by international legislation<sup>8</sup>;

- the Constitution of Cyprus did not organized a new legal regime regarding the complex arena of religions in this country, but according to article 110 § 1 of the same Constitution, the Autocephalous Greek Orthodox Church of Cyprus is recognized to have “the exclusive right of regulating and administrating its own internal affairs and property”<sup>9</sup>;

- currently, in Bulgaria, it was established a balance system “between the guarantees for the freedom of religion and the position of the Orthodox Christianity”;

- in Romania, the symbiotic system of relations between Church and State is based on the constitutional provisions provide generous legal protection for religious freedom guaranteeing the autonomy of religious cults from the State and rights for minority religious groups.

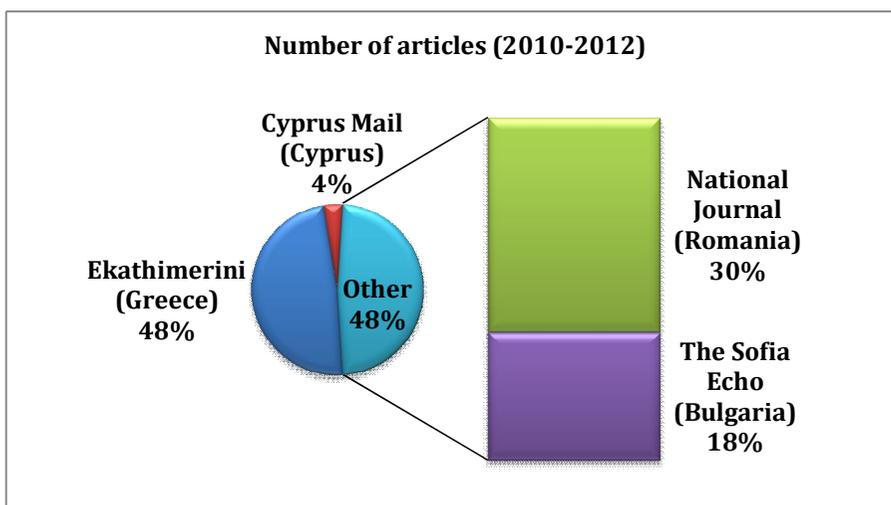
The research of the frequency of the topic "Orthodox" reveals that the topic appears between 2010 and 2012 in 554 newspaper articles. Percentage, the number of occurrences of the Greek daily is 48% of the total. Comparatively, the Greek daily frequency of the topic "Orthodox" is equal to the percentage frequency in National Journal and The Sophia Echo. The explanation is

the fact that, in the particular case of Greece, the collective and also symbolic approach, that joined this country recently, has fueled new impulses and the sense of an "unification of state-church cleavage" mixing religion and politics in a sui generis combination of "secular religion" and "ecclesiastical politics".

**Table 2. Percent of mainstream written press coverage devoted to "Orthodox", 2010-2012**

Country	Journal	Period
		2010-2012
Greece	Ekathimerini	268
Cyprus	Cyprus Mail	20
Romania	National Journal	166
Bulgaria	The Sofia Echo	100
Number of articles (total)		554

**Chart 2. Percent of mainstream written press coverage devoted to "Orthodox", 2010-2012**



In many ways, increasing the influence of mass media was simultaneously a product of several factors that contributed to the decline of political actors. Simultaneously, media have increased its influence over the relationship between public space-privacy and religious factors in the electoral process. The number of articles published in Ekathimerini focusing on political messages based on the "Orthodox way" outnumbered the number of articles devoted to the same topics in National Journal and The Sophia Echo by 268 to 166 and 100).

In all newspapers, as indicated in Table 2, the number of articles published in Ekathimerini accounted for 48 percent of all articles. Although Ekathimerini had by far the highest number of articles devoted to the "Orthodox" topic, the number of articles in Cyprus Mail devoted exclusively to the same topic was below 4 percent in all four papers examined. As Table 2 demonstrates, the total number of articles indicates that there is a huge statistical difference in the quantity of articles relying more on the involvement of political actors and Orthodox Church as the

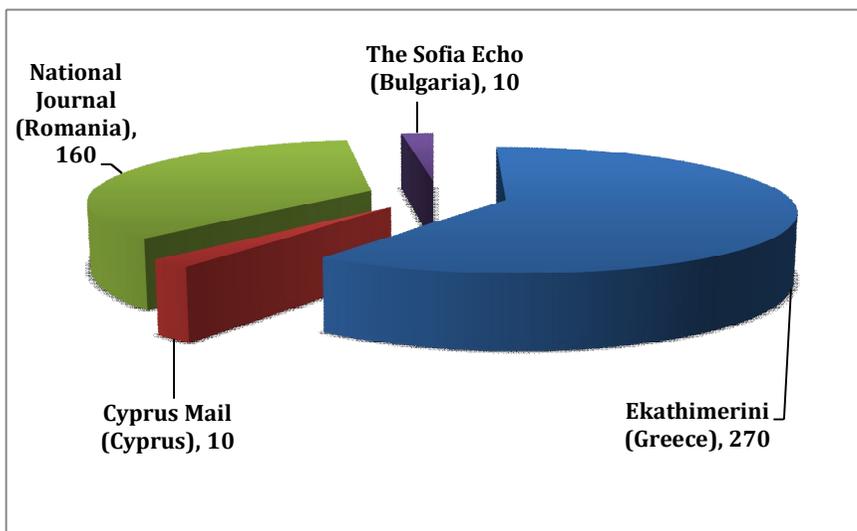
main source of information about the candidates and the issues raised by them. Thus, in recent years political practice has shown an "extraordinary importance of the press" as the "dominant power" in the political game.

Mainly, religious factor became the central key of the "dialogue" between state and its citizens. To appreciate the role of the media in politics we have to analyze the frequency of the conceptual couple "policy and / or religion" in the four newspapers. Our research reveals that in Ekathimerini and National Journal, this conceptual couple enjoys frequent occurrence in not less than 270 and 160 articles. The explanation for this result in two newspapers should be understood in the context of the emergence of a vision of a "politics of the person", based on the complementarity between the theological dialogue and the vital connection between religious freedom and the neutrality of the state in the context of redefining the role of the Orthodox Church in public life.

**Table 3. Percent of mainstream written press coverage devoted to "politics and/ or religion", 2010-2012**

<i>Country</i>	<i>Journal</i>	<b>Period</b>
		<b>2010-2012</b>
<b>Greece</b>	<b>Ekathimerini</b>	270
<b>Cyprus</b>	<b>Cyprus Mail</b>	10
<b>Romania</b>	<b>National Journal</b>	160
<b>Bulgaria</b>	<b>The Sofia Echo</b>	10
<b>Number of articles (total)</b>		450

**Chart 3. Percent of mainstream written press coverage devoted to "politics and/ or religion", 2010-2012**



As tables 2 and 3 indicate, in this type of research of public agenda, topics and themes are initiated by media, political actors, but also by public opinion (such as "religion and integration into the European Union", "religious life in the European Union or "interreligious relations"). The research of these specific topics reveals a dynamic frequency and a boom of the "religious matters in the media" in 184 articles: 74 articles in Ekathimerini, 21 articles in Cyprus Mail, 87 articles in National Journal, and 2 articles in The Sophia Echo.

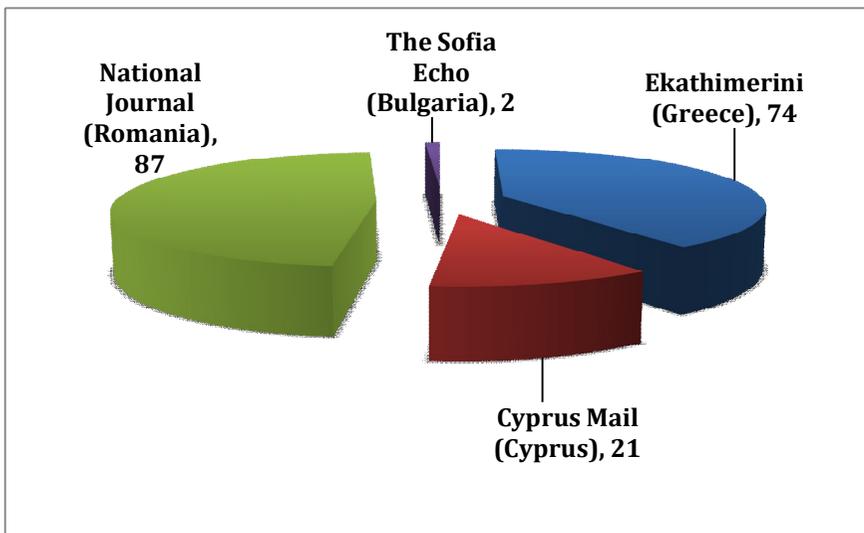
The reasoning behind this result is the dominant position of Orthodoxy in these countries where the Church is not only a community based on religious identity or substantial similarity of religious beliefs, but rather an institution enjoying the highest rate of values of confidence in the public perception. This vision is grounded in the particular case of Romania where the new legislation upon the entry into EU expressly guarantees freedom of expression and person<sup>10</sup>.

This also maintains a permanent dialogue with the authorities of church representing a way of organizing the relationship between church and state according to a double aspect: the guarantee of freedom of expression of persons and the freedom to manifest of religious communities. For example, the constitutional separation between church and state in Bulgaria is expressly stipulated in Section 13 para. 4: "Neither religious communities, religious institutions nor religious convictions shall be used for political ends".

**Table 4. Percent of mainstream written press coverage devoted to "religion in European Union", 2010-2012**

<i>Country</i>	<i>Journal</i>	<b>Period</b>
		<b>2011-2012</b>
<b>Greece</b>	<b>Ekathimerini</b>	74
<b>Cyprus</b>	<b>Cyprus Mail</b>	21
<b>Romania</b>	<b>National Journal</b>	87
<b>Bulgaria</b>	<b>The Sofia Echo</b>	2
<b>Number of articles (total)</b>		184

**Chart 4. Percent of mainstream written press coverage devoted to "religion in European Union", 2010-2012**



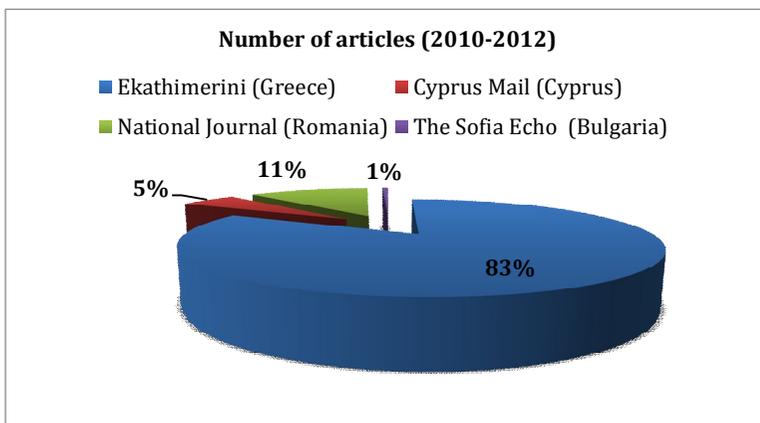
It is evident, therefore, that this legitimacy of freedom is grounded under the principle of the common good intervention more or less interested in the equation state - religious life - European integration<sup>11</sup>. The historical and political circumstances assumed a new role for the Orthodox Church as a figure "ad extra" generating the so-called "Orthodoxy of the people". If Orthodoxy always manifested a temporal presence, EU integration generated a specular revilement of religiosity<sup>12</sup>.

Given the conditional basis of state-religion relations in Greece and Romania, we find that, in general, the topics of "religious regime" or "interfaith relations" must be integrated into the social and cultural realities of each country. In this sense, as table 5 indicates, our research revealed that the topics of "interfaith relations" / "legal regime of religions" occurred in no more than 192/239 articles such as: 159/162 articles in Ekathimerini, 10 / 1 articles in Cyprus Mail, 22/74 articles in National Journal and 1/2 articles in The Sophia Echo.

**Table 5. Percent of mainstream written press coverage devoted to "European religious arena (interfaith relations)", 2010-2012**

Country	Journal	Period
		2010-2012
Greece	Ekathimerini	159
Cyprus	Cyprus Mail	10
Romania	National Journal	22
Bulgaria	The Sofia Echo	1
Number of articles (total)		192

**Chart 5. Percent of mainstream written press coverage devoted to “European religious arena (interfaith relations)”, 2010-2012**



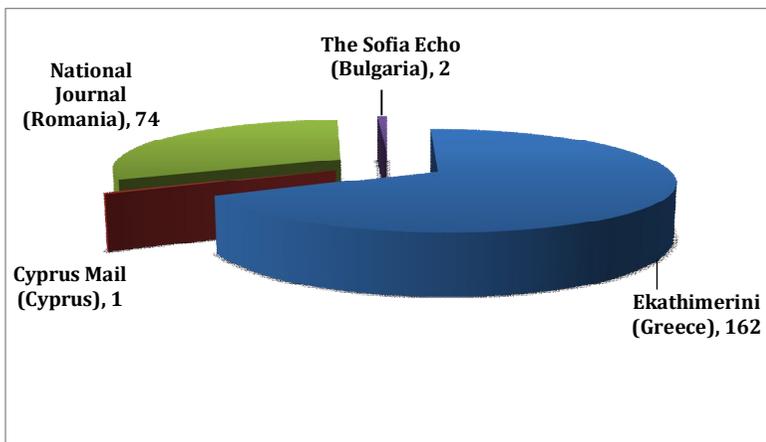
So, there are rather important differences among these countries concerning the topic of interfaith relations or religious liberty. This new perspective marks the difference between various legal issues and the particular status of Orthodoxy<sup>13</sup>. Moreover, the results of such research explain the change in focus from institutions to the experience of each selected case.

In this context, a more likely explanation is that the role of the media changes following a real public/private mechanism of roles, positions and attitudes that exerts a profound impact for Greece and Romania. The research also shows that the Orthodox Church gives a pervasive feeling in its ability to use the media as a key support and recognition of its status in society.

**Table 6. Percent of mainstream written press coverage devoted to “religious liberty” / “legal regime of religions”, 2010-2012**

Country	Journal	Period
		2010-2012
Greece	Ekathimerini	162
Cyprus	Cyprus Mail	1
Romania	National Journal	74
Bulgaria	The Sofia Echo	2
Number of articles (total)		239

**Chart 6. Percent of mainstream written press coverage devoted to “religious liberty” / “legal regime of religions”, 2010-2012**



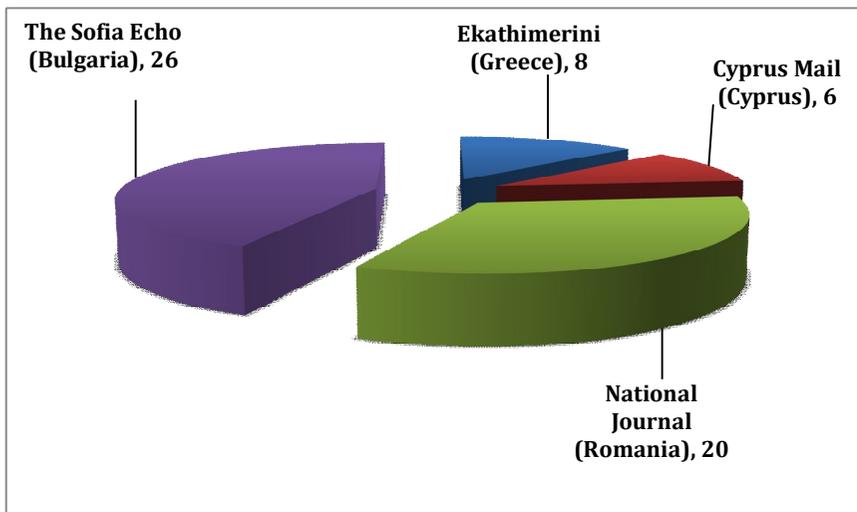
Thus, since 2007 the equation of the European societal experiment in all four countries becomes simple: Church confidence plus media influence is equal to the public confidence in the status and position of the Church.

However, the distinguishing key of this research is the frequency of the topic of "Christian Europe." Our research shows that in 2010-2012, the differences are: 8 articles in Ekathimerini, 6 articles in Cyprus Mail, 20 articles in National Journal, and 26 articles in The Sophia Echo. The frequency of the topic of "Christian Europe" in all four newspapers excludes any partisan discussions on religious policy negotiated at "local" level in these countries.

**Table 7. Percent of mainstream written press coverage devoted to "Christian Europe", 2010-2012**

<i>Country</i>	<i>Journal</i>	<i>Period</i>
		<b>2010-2012</b>
<b>Greece</b>	<b>Ekathimerini</b>	8
<b>Cyprus</b>	<b>Cyprus Mail</b>	6
<b>Romania</b>	<b>National Journal</b>	20
<b>Bulgaria</b>	<b>The Sofia Echo</b>	26
<b>Number of articles (total)</b>		60

**Chart 7. Percent of mainstream written press coverage devoted to "Christian Europe", 2010-2012**



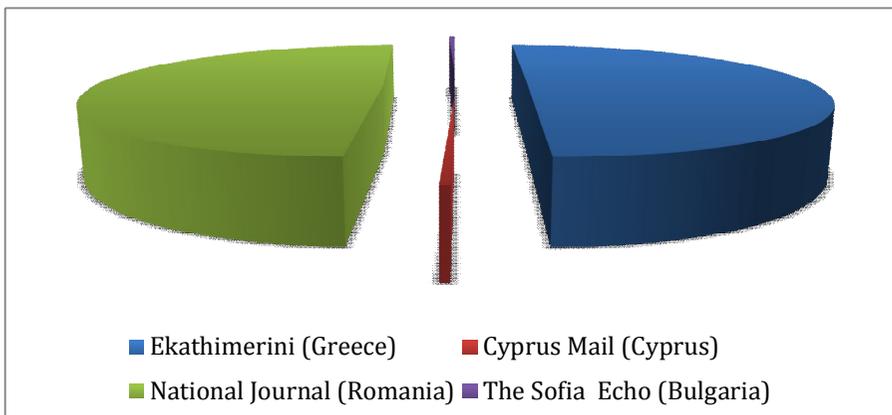
Finally, since 2007, the so-called “religion in the media action” becomes ideological and it involves European legal requires, public feeling and political issues. Religion becomes it-self a topic of public interest providing a new model of the national project in line with the dominant religion<sup>14</sup>.

Due to some changes caused by the economic or political crisis, a higher segment of the media converged to Orthodoxy and its status in society. Finally, while interest in Church and religious matters becomes among journalists and media experts more strengthened, the research over the articles strictly referring to the idea that politicians use church in campaign identified 476 articles in total.

**Table 8. Percent of mainstream written press coverage devoted to the idea that politicians use the Church in order to make electoral campaign, 2010-2012**

<i>Country</i>	<i>Journal</i>	<b>Period</b>
		<b>2009-2012</b>
<b>Greece</b>	<b>Ekathimerini</b>	240
<b>Cyprus</b>	<b>Cyprus Mail</b>	1
<b>Romania</b>	<b>National Journal</b>	235
<b>Bulgaria</b>	<b>The Sofia Echo</b>	1
<b>Number of articles (total)</b>		<b>477</b>

**Chart 8. Percent of mainstream written press coverage devoted to the idea that politicians use the Church in order to make electoral campaign, 2009-2012**



### Conclusions

So, the European context should be analyzed with the national context and with the fact that the integration into European Union articulated people expectations and the building trust in the Church linked to political and media omnipresence. Likewise, the research focused on the level of media coverage of religion above mentioned countries and how political life in times of crisis touches upon religious key topics and spiritual values.

The results of the research explain the higher the percentage of the population from a religious majority, the more relevant mass media coverage will be about that religious majority. At this juncture, the topic of "religion" gained a founding value mixing political arbitrariness and public interest.

### Acknowledgement

"This work was supported by the strategic grant POSDRU/89/1.5/S/61968, Project ID 61968 (2009), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013".

### Notes:

\* Parts of this paper have been presented at the Second International Conference *After Communism. East and West under Scrutiny*, 2-3 March 2012, Craiova, House of the University under the title Anca Parmena Olimid, *Struggle for Sacred After EU Integration: What Church-State Relations Are or Are Not in Eastern Europe (A Media Coverage of Religion and Nationhood in Balkan Orthodoxy)*.

<sup>1</sup> More about the role of religion in European politics and the perspectives of transnational religion in an expanding Europe in Peter J. Katzenstein, Timothy A. Byrnes, *Transnational Religion in an Expanding Europe* in "Perspectives on Politics", December 2006, Vol. 4, No. 4, pp. 679-694.

<sup>2</sup> Ekathimerini official website: <http://www.ekathimerini.com/>.

<sup>3</sup> The Sophia Echo official website: <http://www.sofiaecho.com/>.

<sup>4</sup> National Journal official website: <http://www.jurnalul.ro/>.

<sup>5</sup> Cyprus Mail official website: <http://www.cyprus-mail.com/>.

<sup>6</sup> More about the current debates over the relationship between the critical practice of religion and the nation-state in Ananda Abeysekara, *Identity for and against Itself: Religion, Criticism, and Pluralization* in "Journal of the American Academy of Religion", December 2004, Vol. 72., No. 4, pp. 973-1001.

<sup>7</sup> For more about freedom of opinion and freedom of religion as essential preconditions for political democracy, see Jochen Frowein, *Religion and Religious Symbols in European and International Law* in Winfried Brugger and Michael Karayanni, *Religion in the Public Sphere: A Comparative Analysis of German, Israeli, American and International Law*, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Volume 190/ 2007, III, pp. 243-252.

<sup>8</sup> Kyriakos N. Kyriazopoulos, *The "Prevailing Religion" in Greece: Its Meaning and Implications* in Journal of Church and State", Vol. 43, No. 3/ 2001, pp. 511-536.

<sup>9</sup> For a detailed research on the legal status of religions in Cyprus, see Achilles C. Emilianides, *Religion and the State in Dialogue: Cyprus* in Richard Puza, Norman Doe, *Religion and Law in Dialogue: Cooperation between State and Religion in Europe* (Proceedings of the Conference, Tübingen, 18-21 November 2004), Leuven-Paris, Dudley, MA, 2006, pp. 19-24.

<sup>10</sup> For more details about the impact of EU competences over human rights matters on the implementation of anti-discrimination Legislation in the member states see Cătălina Maria Georgescu, *The impact of EU competences over Human Rights Matters on the Implementation of Anti-Discrimination Legislation in the Member States* in "Revista de Științe Politice. Revue des Sciences Politiques", no. 16/ 2007, pp. 25-29.

<sup>11</sup> See also Galia Valtchinova, *Orthodoxie et communisme dans les Balkans : réflexions sur le cas bulgare* in "Archives de sciences sociales des religions", Numéro 119 (juillet - septembre 2002), pp. 79-97.

<sup>12</sup> For more explanations on religious vitality in Western and Eastern Europe in a comparative perspective see Detlef Pollack, *Explaining religious vitality: Theoretical considerations and empirical findings in Western and Eastern Europe* in Manuel Franzmann, Christel Gärtner, Nicole Köck (Hrsg.), "RELIGIOSITÄT IN DER SÄKULARISIERTEN WELT", 2006, Part 2, pp. 83-103.

<sup>13</sup> For a general overview see also Cătălina Maria Georgescu, *op. cit.*, p. 27.

<sup>14</sup> In this context, a current approach for analyzing religion in international politics using moral action to avoid the essentialization of religion is developed by Cecilia Lynch in Cecilia Lynch, *A neo-Weberian approach to religion in international politics* in "International Theory", Vol. 1, No. 3/ 2009, pp. 381-408.

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## ORIGINAL PAPER

**Delia DUMINICĂ, Georgiana POPESCU**

### **The relationship between media and violence**

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**Abstract:** *The upwards trending of violence in various countries, including Romania, especially in the last decades of the last millennium. This is a social reality whose negative and destructive effects and consequences cannot be ignored by lawyers, criminologists or sociologists or institutions with a role in prevention and social control.*

*The recrudescence of violence, the increase of the intensity and the extent of crimes against persons and properties, multiplication of facts of corruption, bribery, fraud and organized murder in Romania have aggravated the social problems existing in the sphere of our society. To analyze the televisual discourse in order to see if it includes a violent language, on what period of time, on what kind of TV programs. To see if TV spectators were warned about the violent content of one programme.*

**Keywords:** *violence, television, behavior, aggressive language*

In general, the sociological orientation of analyzing violence leads to the conclusion that its roots can be found in the social structure, particularly the nature and quality of community (improper housing conditions, marginal areas, inadequate recreational facilities, low income family) and even its economic system. According to Clifford Shaw and Henry McKay (Sorin Radulescu, 2001), delinquency is more common in urban areas characterized by physical deterioration, population decline and disintegration of the "culture and neighborhood organization, which prevents the exercise of social control function of the community, generating juvenile delinquency as a manifestation of social disorganization. The solution consists in developing such measures in social and not individual, focus on improving social and economic conditions.

For many authors only "remodeling" environment that develops individual can influence crime and crime reduction, treatment consists not so much coercion and punishment, and especially in rehabilitation. For this reason, the proper definition of the social danger posed by crime and other criminal events calls for a proper definition of the existing social situations. Thus, children assimilate "rules" and "values" of a community group or delinquent by nature they tend to become delinquent. This however does not explain why other children in the same environment and they are not criminals and that children in environments characterized by economic, social and cultural good, and they can commit delinquent acts. Thereby, the etiology in this area concerns the direct causal influences and the existence of covariate, acting through a network of other factors (family, school, other institutions with socialized role).

One can appreciate that most theories or views expressed in the sociological literature on the causes and conditions of occurrence of deviant behavior and crime are major divisions within the theories of disorganization, anomie and social pathology. Numerous theories in this category, showing the difference between cultural patterns (values and purposes) - offered by legitimate means to achieve their social organization, considered as a cause of delinquency and crime "blood" or "mismatch" between cultural structures (understood as values for rules) and social structure, inconsistent with the models and societal values do not appear to be determined by social organization, but they will almost absolute autonomy with respect to social relations and human individual. Among the factors considered in the composition of typologies and case law on violence, most theories mentioned stop mainly on the cultural and highlights the dissonance that occurs between cultural values and aspirations on the one hand and the rules and legitimate means on the other hand, without But to make necessary and logical correlation with other aspects and social phenomena such as social relations, economic and social structure. Thus, social problems are circumvented those delicate could discuss, in one way or another, the nature and essence of society, structure and hierarchy of categories and social groups, the constitution, distribution and access to social goods , the social changes taking place in that society and other social factors criminogenic effects.

Criticism of these theories have not overrated by denying any theoretical and practical merits deserve to be taken into account. This is particularly so as, in recent decades, violence has become a touch more radical, although the ideological positions generated, brought into the center of debate many social problems caused by poor social organization. Representatives of the "new criminology" critical-radical, including Jan Taylor, Paul Walton and Jock Young (Sorin Radulescu, 2001, p 113) have developed a model explaining, in which the criminal act is regarded as the product of conflict between different states social groups and political and economic structures of society. In this perspective, any deviant or criminal act is essentially the manifestation of individuals or social groups refuse to align conformist demands of a social system based on discrimination and social inequality. Since the stock of accumulated research studies to date show that domestic violence in the same social structure can give rise to both normal

behavior and the deviant and criminal, is increasingly accepted hypothesis that the phenomenon of violence can not be understood and explained in generator based on a single factor (either company or individual), but the ratio dynamic interaction between these two factors constant.

To explain and share their special impact on the small screen messages on the public, should be considered on its own merits, unique media landscape: the amount of the message, ability to reach and penetration, spreading, transmission speed and extraordinary impact. According to the National Commission for Statistics, Romania TV is one of the most desired goods by the population. Since 1990 leisure practices have increased more than the most spectacular growth in this light, had a tracking TV stations. With a low cost subscription to watch television after 1990 saw an impressive increase in audience reach today to take first place in the Romanian leisure budget.

After 1990 about 53% of families have bought a TV color, representing 78% percent of all families owned color televisions in Romania. Message broadcasting has two major advantages: does not depend on broadcasters (like print media) and arrive first at the receptors. TV broadcasting is non-stop, any event can be reflected in its importance in three ways:

- To be processed, introduced and presented in the newscasts a day, morning noon or night (main journal).
- To be broadcast as soon as information came to our office by interrupting of normal at the time and the introduction of "Flesh" or Special edition information.
- Running event to be broadcast live on television. This made connecting large numbers of people to live "live" of facts and events.

TV message is in addition to the radio (volume, covering power and penetration, speed of movement), a major asset: the image. Involving all those characteristics produce a message type audiovisual show, acting not only on the human capacity to learn and understand rationally, but rather the emotional landing, sparking a wide range of feelings. This information itself is at least doubled the power of persuasion through direct emotional impact of the spectator. This creates the appearance of television stars who get popular because they are close to receptors. Sometimes certain characters, even strangers, can become legendary, can enter the public consciousness through the small screen capability to connect a mass of people in the same event. Power, influence and fascination of the small screen is so large that they were lead stories in newspapers, no news to print journalists do not have the same impact if not reversed, promoted by television. Image production is specific so-called real effect, that picture makes us see and believe in what show. Television meet the needs of people of leisure, disconnection or catharsis.

Because today, broadcasting message can be received in almost any public or private place in the world, is spreading its maximum capacity. in broadcasting this message is part of the aggressive type of message, which implies not only the individual's leisure, but also at work or in the privacy of his habits up close and creating dependency. Another indicator that shows the impact and importance of small screen on the individual is the average daily telereceptiei that in our country, according to recent polls, stands at 5 hours per day (Listening, November-December 2004). Spread and attention is given to audiovisual message is due to other factors: not depends on a televised message broadcast network as wired and Satellite TV has internationalized message. Because sound broadcasting message can be received concomitantly with other activities, labor, household.

Broadcasting message can be received by anyone, regardless of its biological and physical characteristics, including the handicapped, elderly or who can not read. Message TV receiver creates the feeling of being in the middle of the event or that is with his favorite characters. Because teletext individuals can find useful information in various fields, even if not constantly watched television programs or information found in the section you want to schedule

viewing certain programs. (Corina Crisan, Lucian Danciu, 2000, pp. 11-15). "Goods" sold by media outlets is airtime. If the advertisement is placed where the program schedule should he draws attention to potential customers and increase its advertising sales number. Transmission time is sold per second, for intervals between 30 and 60 seconds, but are possible spots of 10 seconds, cheaper. highest rate is charged for prime time - when the largest audience. Depending on the customer can sell intervals larger capitalized advertising moments that make demonstrations and presentations of qualities.

On the basis of sponsorship can be marketed and hourly segments within programs. sales strategies aimed at commercial exploitation of available time to achieve maximum profit. An element in determining advertising costs Aste audience. "A product involved in two separate markets and the market's behavior affects the behavior of other market." (M. Balasescu, 2003, p). Why media outlets undertake its study. Audience research can be done through several ways: the log, the phone, interview coaching and method "metric" (Madalina Balasescu, 2003, p 42). "Programming is land that is built to be content to attract audiences." (Madalina Balasescu, 2003, p 33).

Baby-sitter's television and supervise our children, but who is to supervise the baby-sitter? Sure, it's primarily audiovisual regulatory authorities - in this case, in Romania, the National Audiovisual Council. CNA introduced in this respect, to protect children and adolescents viewers, the warning and signaling of TV programs. Ideally, broadcasters would have to classify, to signal and correct place suitable TV hours and children and parents should follow these guidelines. Let's see which is the case in reality! The higher risk of adversely affecting children and adolescents through various TV programs recommended / prohibited for their age category, the focus is increasing compliance and NAC on signage: thus, TV programs with a high risk are most properly classified and marked. At the same time, filter time (time of broadcast TV, especially programming as "temporal demarcation line") remains the most respected and applied for protection of small viewers. If compliance is relatively assimilated signaleticii on TV in Romania, the same happens regarding Romanian children and adolescents. Overall, many children and adolescents completely ignore signage: more than a fifth of children 7-10 years (22.2%), more than one third of children 11-14 years (39%) and almost three quarters of adolescents aged 15-18 years (72%) watch the TV recommended / prohibited for their age category. Ignoring signaleticii could increase with increasing age. Also, with increasing age, weight loss discussions with parents to obtain their approval before watching a TV program recommended / prohibited (almost 5 times: from 38.5% for children 7-10 years only 7, 8% for adolescents aged 15-18 years).

Customizing televisual consumption is a risk factor, reducing parental control: for example, in Britain, two thirds of children and adolescents (6-16 years) have their own TV in their room can look so alone on TV. In Romania, if existing audio-video equipment are not yet possible at the level of individual televizionarea the West, at least in terms of desire, the trend is present: most children and adolescents aged 11-14 and 15-18 and would like to look for themselves on TV. Moreover, the desire (pronounced with age) is performed for patients: 53.7% of adolescents aged 15-18 watch TV on their own. Discussions about TV programs usually occur within the group of friends and / or colleagues (all ages): 57.4% (children 7-10 years), 73.5% (children 11-14 years) , 76.2% (adolescents 15-18 years). Family involvement in such discussions is relatively weak: discussions with family members are usually less frequent and are reduced with increasing age: from 26.8% (children 7-10 years) to 11% (adolescents 15-18 years).

Role of schools in evaluating TV programs (through discussions with students) is almost nonexistent: only 0.5% of students (regardless of age group) discuss TV programs with teachers. (Www.cna.ro, accessed on May 27, 2007) In these circumstances, the responsibility of both parents, children and educational institutions is a key issue on the protection of children from

violence televisual. CNA should not only be "policeman" and supervise television. With minimal effort awareness and involvement, new parents in Romania, watching television, we can baby-sitter, first by watching TV with our children and discussions with them. To supervise rather than a simple "traffic agent" but rather "undercover", entering the "gang" of friends of children and sharing our televisual experiences. The media landscape, television holds a special place especially because of their high accessibility against new media and high level of attractiveness that can be attributed to the combination of sound and picture what is specific. These two features make the kids TV to be preferred over other means of mass communication, especially over books, considered a more "elevated" information transmission and perpetuation of social norms. These data contrast with lower rates of televised exposure of children in western countries, proving that in our country - in higher proportions than in European countries - children are a massive contingent of "general public" television, they are exposed to Grebner what George called "telereality" and likely to be strong and deeply imbued with the television. (Www.cna.ro, accessed on April 15, 2007) The same research shows that most children aged 7 to 10 years rather be watching TV in the range between the hours of 1:17 p.m., ie between the time they return to school until parents return from work. (38.06% 28.10% on weekdays and weekends). Note that outside the specialized channels, in these hours there is no - or very few - programs for this age group. It also should be noted that in prime time, the percentage of children in front of the TV is relatively close to the average percentage of adults, which is within what is called "televisionarea family". This finding explains a more general - about 80% of programs watched by children are for adults, while only 18.97% of children say they most often watch cartoons and only 0.36% preferred programs for children and teenagers. (Www.cna.ro, accessed on April 15, 2007)

Following studies in 2004 on "televisual representations of violence" to analyze the presentation and re-presentation of violence in Romanian electronic media, aiming to measure the violence (the indicators of timing and frequency) and typology and contextualization it. As a first typology used in these studies, was divided between real violence (most of the news, reports, surveys, talk shows, etc..) And fictional violence (most of the films, serials, soap operas, sitcoms and generally, all the entertainment tied to their implementation scenario / script), depending on the type of program analysis. We are interested primarily generalist channels transmitted fictional violence and fictional violence broadcast channels for children, the cartoon shows. Thus, research results show that in one hour film, the child sees an average of 12.24 sequences of violence, which is to say that every five minutes, the child and / or young viewers are exposed to a scene of violence. If cartoons, the situation is much worse, the average exposure to scenes of violence is more common, specifically a scene less than a minute (on average 66.18 scenes / hour). Scenes of violence per hour during the show is higher for films, which have, on average, 8.24 minutes of violence per hour, while Cartoon meet 6.15 minutes of violence per hour . (Www.cna.ro, accessed on April 15, 2007)

The explanation for these reversals of numbers, in terms of two indicators of televisual violence, is present in different types of violence in movies and cartoons. Thus, the cartoons have to do with violence short, we might even say jerky, averaging one second - the most relevant example being Tom and Jerry type designs in which strikes are short and repetitive. In contrast, the violent scenes in movies longer, which binds, such as fighting (whether it is an armed struggle or wrestle, strikes are not jerky, disparate, but binds the scene containing Such unity and internal consistency). It results that, although the share is more violence in movies than cartoons, the number of scenes of violence, the latter far surpasses movies. Perceptual level, the amount of violence in the televisual genres is however, quite different than the target level. Thus, this study indicates the following perception issues that children and adolescents (aged 7-18 years) have on violence in movies and cartoons: most children, 43.70%, believes that too much violence in

movies while a similar percentage, 44.02%, believes that the cartoons is little or no violence. (Www.cna.ro, accessed on April 15, 2007)

The theoretical assumption that founded the assessment and categorization of scenes and acts of violence advertised by televisions was the idea that televised violence has primarily an economic motivation which is characteristic to the assembly of media industry that capitalizes in a spectacular dramatized register addressed especially to human emotiveness, elements, facts, traits belonging to the real-world of the individual and of social groups. But this dramatized capitalization of violence and aggressive inclinations that constitute an exaggerated deformation of some elements from real life is being realized in more and more sophisticated forms that mobilize fully artistic, narrative, linguistic and iconic resources of the televisual discourse. In order to see how fictional violence occurs in the frame of the main televisions from the country we have undertaken in April-June 2011, a press review for the following TV channels: ANTENA1, NATIONAL, PRIMA, PROTV, TVR1, PROCINEMA, BOOM. Monitoring time interval was 19.00 to 24.00. Monitoring and evaluation time included:

- the Prime Time interval from 19.00 to 23.00
- the Prime Time interval from 23.00 to 24.00

We have followed the identification of violent movies according to the recommendations and indications from the magazine TV Mania. Mention must be made that in the classical scheme of the indicators for measuring the televisual violence, the famous American sociologist of mass communications, George Gerbner, calculated the following indicators: the number and the percentage of violent sequences within an hour (during one day), the number and the percentage of the main actors involved in acts of violence of various kinds (homicides, robberies, fights, etc.), actors as the hero/false hero, the aggressor/the victim, the generous or the tolerant, the arbiter, as well as the distribution according to ethnic groups and socio-cultural categories.

We cannot speak about fictional violence without taking into account the degree of presence of:

- violence;
- consumption of alcohol;
- consumption of drugs;
- consumption of cigarettes;
- sexuality, sexism, eroticism, pornography, pedophilia, prostitution;
- licentious and obscene language.

All these data were correlated with the results of a focus-group, applied for a number of 107 subjects, students that study the specialization Journalism within the Faculty of Socio-Human Sciences, from Pitești, in order to evaluate the way in which they perceive the fictional violence. The analysis, taking into account the recommendations and the indications from the magazine TV Mania, revealed that in the monitoring time interval from 19.00 - 24.00 ANTENA1, NATIONAL, PRIMA, PROTV, TVR1, PROCINEMA and BOOM promote violent movies, this style being found in the recommendations for the TV spectators. BOOM TV has a particular status, in the analyzed period April-June 2007 four movies with a high degree of violence ran on this channel, followed by PRO CINEMA with three, PRO TV with two, PRIMA TV with two also and NAȚIONAL TV with the same number of exaggerated violence films.

From a total of 338 movies with violence, most of them are to be found on PRO CINEMA – 81, that is 25,44%, then on PRO TV - 61, that is 18,04%, on ANTENA 1 – 52, that is 15,38%, followed by NAȚIONAL with 39, that is 11,53%, then by TVR 1 with only a movie difference (11,24%), PRIMA with 35 – 10,35% and by BOOM with 32 – 9,46%.

Remarkable is the fact that PROCINEMA and PRO TV, two channels that belong to the same owner are on the top of the media channels that present the most violent films. Moreover,

although BOOM TV has the fewest violent films from all the analyzed channels, it is obvious that it has the highest appetite for exaggerated violence, on this channel having run four movies with a three stars violence.

The time of broadcasting reveals that the Prime Time interval from 19.00 – 23.00 is favored for violent movies, in this interval being 273 from the total of 338 analyzed movies that is a percentage of almost 81%.

In the Post Prime Time Interval from 23.00 to 24.00 were only 65 violent movies that represent only 19 % from the total of the analyzed movies.

Neither the titles of the movies are inferior in terms of violence. Words that clearly express facts, actions, conditions or consequences directly related to violence: death, murder, war, hell, evil, crime, horror, blood, revenge, vampire, power, attack, fatal, do not miss.

An application of a focus-group on a sample of 107 subjects, students that study the specialization Journalism within the Faculty of Socio-Human Sciences revealed that these watch with interest dramas and films, but on the first place remain the comedies. 45 of the interviewed students claimed that they watch comedies very much, but the number of those who watch dramas or action movies is not far – 32.

Although youngsters want to see comedies most of all, televisions offer more action movies and dramas than comedies. What is interesting is the fact that only 4 from 107 students said that they are attracted to violent scenes in a very small extent, which means that for the majority, violence represents a habit and not a random topic. It is possible that the fast rhythm of contemporary life and the fact that violent movies are advertised participated to their becoming part of everyday life and people receive them with open arms as part of their everyday life, without analyzing the message they promote.

Out from 107 subjects, most of them, 43 – 40,18% are disturbed by sexual violence, followed by the economic one, then the verbal and physical violence, on very close positions, and at a considerable distance is the psychological violence.

Moreover, 72 subjects, that is 67,28% admitted that they are influenced in a great extent by violent scenes that appear in movies, but on the other hand, only 5 would give up watching movies that contain violence. Regarding the over dimensioning of the fictional violence, opinions are at the positive pole, 34 stating that we can speak of this phenomenon to a great extent and 43 to a large extent. Almost half of those who were interviewed declared that the measures imposed by the National Audiovisual Council regarding the restrictions applied to children in terms of the access to watch some violent movies are welcome and encouraged deserve.

In terms of violence, television is on top. Programs with high audience have plenty of verbal violence, often accompanied by adequate gestures and pornographic allusions. Spreading violence in the mass consciousness is undoubtedly the most acute risk factor in the awaking and exacerbation of atypical aggressiveness in the subconscious of the human being. We could argue, having good reasons, that, with intention or not, the society produces and cultivates among many "poisons", fear, anguish, terror, which are nothing but forms of psycho affective aggression, modern man being forced to learn and live the aggression throughout his life.

#### **Acknowledgment**

\*\*\* This work was partially supported by the strategic grant POSDRU/88/1.5/S/52826, Project ID52826 (2009), co-financed by the European Social Fund – Investing in People, within the Sectoral Operational Programme Human Resources Development 2007-2013.

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## ORIGINAL PAPER

Wedad Andrada QUFFA

### The evolution of the freedom of the press: the transition from the communist regime to democracy

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**Abstract:** *The press is considered the fourth power in the state and the "watchdog" of democracy and represents a controversial constituent of the society even in the XXI-st century. The freedom of the press, the lack of its subjugation to some particular interests, is one of the clues that can be used to figure out how democratic a country is.*

*Before the revolution from December 1989, the press was subject to the interests of the party and of the head of state. Communist media was censored, subjected to a rigorous control of the party organizations, being suppressed any idea, opinion which came into conflict with the communist regime. After 1989, the Romanian society suffered a series of transformations - and the press was one of the things that have changed considerably; it suddenly became free, having the possibility of not being subdued to a party, an idea or a personality, but however developing chaotically. After the revolution, the Romanian journalists faced many new challenges for which they were too little prepared.*

*The freedom of expression was increasingly protected in Romania after the fall of the communist regime, the media came to "attack" even the President of the country, the Prime Minister or any other public figure, currently not being subject to a single interest. An important step which lead to increased media freedom was the abolition from the Criminal Code of offenses of insult and calumny, considered crimes against the dignity. However, the new Civil Code has brought relative restriction to the press freedom, being "prohibited any damage to the honor and reputation of a person without his consent or without compliance with the limits provided in the article 75". The press, although free, must not injure the dignity and the private life of a person.*

*Even from a sociological point of view it can be seen that a free press creates a society where people feel they can share their ideas, opinions, without being punished for it, this issue being a big plus in any state.*

**Keywords:** *freedom of expression, mass-media, censorship, communism, democracy.*

In a broad sense, the term “press” means any means of mass communication, whether it’s about journals or periodicals (written media), or radio or television (audio-visual media). The press is the most appropriate and also the most used field for expressing the freedom of expression.<sup>1</sup>

The press plays an essential role in a democratic society, having as purpose the communication, complying with its obligations and responsibilities, information and ideas on all matters of public interest. In carrying out its tasks, the press must not overstep certain limits, especially regarding the reputation and the rights of others and the need to prevent the disclosure of confidential information.<sup>2</sup>

The press freedom undoubtedly varies depending on the political regime established in the respective state. If in a democratic state, the press freedom is a basic pillar of the society, in a communist state, things are totally different.

The few books on press freedom during Ceaușescu’s regime, actually all written after the 1989 Revolution, point us out one thing: there’s no press freedom in fact.

The word that can best define the press status in that period is censorship; there’s no opposition mass-media, regardless the form of expression, it is subject to the leader’s interest and the sole party.

Cultural programs were broadcasted sometimes, theater performances, but including these were controlled in order not to transmit people ideas or even negative cues that would have harmed one way or another image of Nicolae Ceaușescu and his family or would have caused people to revolt against the regime.

The language of wood (or wooden language) is the characteristic of the press in the communist period – especially regarding the political speech before 1989, language using almost exclusively petrified forms, devoid of content and expression.<sup>3</sup>

But Andrei Pleșu gives the best explanation on the language of wood: “A sort of the language of which the speaker is absent is called “language of wood”. Since its message and formulation are entirely predictable, “the transmitter” is only a place of passage, a headless instrument, which doesn’t participate in what’s transmitted. The proliferation of the language of wood sets off a multiple and irreversible necrosis: words dry, ideas freeze, people petrify. Communication becomes meaningless, the practice of thinking is suspended. The effect is, simultaneously, funny and scary: life falls into stereotype, the microphone devours the speaker, the stage swallows its actors. The language of wood is the expression of “the object” in us, the speech of that part of our formation in which death has settle down. The champions of the language of wood don’t live in the language being, but in its spectrum: sneaky strained in the inanimate body of words, they periodically adopt a gesticulation for which they have no substance; word, this apotheosis of substance, becomes impersonal.”<sup>4</sup>

As noticed, the language of wood was present not only in the period before 1989, but appears even in the post-revolutionary period, but in a much stylized form.

During the communist period, the language of wood is used to put aback reality and impose individuals ways of thinking that had to obey the party’s ideology.

The Romanian Communist Party, along with Nicolae Ceaușescu, have successfully taken advantage of the power they had over the press, regardless of its form, and have used it especially to indoctrinate people. As long as at that time the freedom of the press didn’t exist, the right to information was also absent, because the individuals received as news only the things agreed by the leader, actually not having an accurate and solid information

The press law during the communist period provided even that there must be a strong connection between the press and the party, the entire activity of the press was undoubtedly subordinated to the party.

However, press existed before 1989, but its role was to praise the regime, but also Ceaușescu, who was considered "the best son of the Romanian people", praising his works, achievements.

Therefore, the mass-media represented only a method to control population as well as possible, this changing due to the Revolution. In the months that followed December 1989, for the first time journalists could write without a political order, not being forced to censor text or information. The press felt released and approached various fields, such as: political, economical, social, but gave great importance to the years they spent under communism, debating them both in books and articles.

In 1994, Romania ratified the Convention on Human Rights and Fundamental Freedoms and the Additional Protocols to this Convention, implicitly undertaking the obligation to comply with the freedom of expression regulated by article 10.

This article specifies: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. This article does not prevent the States from subduing the broadcasting, cinema or television companies to an authorization regime".

A fundamental freedom - the scope of freedom of information tends to widen, the notion of information is broadly understood, expanding beyond the political, philosophical or religious field. In any case, information must be provided by all available technical means. This freedom must be effective, which doesn't prevent taking some precautions to protect the various interests in attendance. Like this, difficulties can occur on the balance to be found, whether by the general mass-media framework or the particular framework of justice.<sup>5</sup>

Therefore, freedom of information must be exercised without any interference by public authorities, censorship not being allowed in a democratic society.

Nevertheless, press is also used from the political point of view, even informing the population about its chosen people, but also about the things they have done before or during their term of office.

Even the Court has noted with justness that the freedom of the press provides the public opinion one of the best means to get to know and judge the ideas and attitudes of leaders. More generally, the free play of political debate is found the very heart of the notion of a democratic society, which dominates the Convention altogether. Press freedom is so important, that the Court admits that the journalistic freedom also includes the possible use of a certain amount of exaggeration or even challenge. After all, the national appreciation power comes against the interest of democratic society, which must provide and maintain the freedom of the press: in other words, the appreciation margin of the contracting countries shall be small. Nevertheless, even though the European Court must certainly value to the limit the freedom of the press, since it is an essential principle of democratic society, it must also avoid deviations and promote debate of ideas to the detriment of the journalistic "sensational". This freedom is more precious and fragile as the professional journalists do no longer hold the exclusivity of means, even though this is less important. Thus, both the general rules and the particular cases express the concern about the effectiveness of the freedom of information.<sup>6</sup>

Romania had many cases to the ECHR for violations to freedom of expression. The best known case is *Cumpănă and Mazăre against Romania*. The Court decided that the imprisonment sentence for the plaintiffs was too much, mainly considering that the article 10 was not violated in the cause.

The European Court considers that such sanctions are obviously very serious. Therefore, there is a risk that the investigation journalists to refrain from expressing on matters of

general interest – such as the alleged irregularities in awarding some public contracts to trading companies if they might be convicted, when the law provides for such sanctions for insubstantial attacks against the reputation of others, such as the imprisonment sentence or the security measure of forbidding the exercise of profession (this measure is provided in the art. 115 of the Romanian Penal Code).<sup>7</sup>

This case is particularly special since the appeal entered by one of the plaintiffs was recorded, the cause being presented even before the Grand Chamber. On December 17<sup>th</sup>, 2004, it adopted a solution against the Chamber, considering that it infringed article 10 of the European Convention on Human Rights.

In the case Dalban against Romania, the European Court found that there wasn't any proof that the facts described in the articles were entirely false and that were intended to fuel a defamation campaign of G.S. and the senator R.T., the articles of the plaintiff referring to the conduct of R.T. and his attitude in capacity of an elected official of the people and not aspects of his particular life. Therefore, the European Court considered that in proportion to the legitimate pursued purpose, the plaintiff's criminal conviction by the Romanian law courts to a prison sentence represented a disproportionate violation of the right of freedom of expression of a journalist.<sup>8</sup>

Another controversial case is the case Sorin Roșca Stănescu and Cristina Ardeleanu against Romania, which considered that the article 238 of the Penal Code represents a threat to their activity as journalists; the Court rejected that petition as inadmissible, considering that, due to the internal decision, the two journalists no longer have the capacity of victims under the Convention.

If in the written press there isn't a control body, things are different in broadcasting.

The National Audiovisual Council (NAC) is an autonomous public authority under parliamentary control and guarantor of public interest in the field of audio-visual communication. The NAC provides:

- compliance with the pluralistic expression of ideas and opinions in the programs transmitted by the broadcasters under Romanian jurisdiction.
- a balanced report between the national broadcasting services and local, regional or thematic services
- defense of human dignity
- protection of Romanian culture and language, the culture and language of minority groups.
- transparency of mass communication means in the audio-visual field.<sup>9</sup>

A step forward taken for the freedom of the press in Romania is the abrogation from the Penal Code of the offenses of insult and calumny. Still, journalists can be punished in civil terms. Should this matter represent an advantage to the press or a disadvantage for the individual rights and liberties, being even an attack to privacy?

The Court showed that an objective and balanced account on facts and activities of public interest can be made by journalists or other people in different ways, depending, among others, on the used means of mass communication; neither the European court nor the national jurisdictions have the role to replace press to indicate the accounting technique that journalists are to adopt.<sup>10</sup>

The freedom of expression plays an essential role in a democratic society: this is why it is consecrated with such force, even though it shouldn't exceed certain limits, being about in particular to defend the reputation or rights of others. In this regard, the European law has evolved: after having favored for such a long time the freedom of expression to the detriment of this protection, the solutions are now more diversified and are characterized by searching for a

“fair balance”. The mass-media, in compliance with their duties and attributions, must communicate information and ideas on all ideas of general interest. In other words, the freedom of expression involves duties and attributions of which press is not exempted and who take a particular form when the rights of others are at stake: so, a journalist can be sentenced for calumny without infringing the article 10, but the applied sanctions shouldn't be too severe<sup>11</sup>.

Even in the new Penal Code the offenses of insult and calumny are abolished, but things change in terms of the new Civil Code.

Art. 74 of the Civil Code considers, subject to the provisions of the art.75, as privacy attacks the following:

c) capturing or using the image or voice of a person in a private place, without its consent

e) keeping private life under observation, by any means, except for the cases provided for by law

f) broadcasting of news, debates, investigations or written or audio-visual reports on private, personal or family life, without the consent of the concerned person

g) broadcasting of materials containing images of a person undergoing a treatment in the medical units, as well as the the personal data on the health condition, diagnosis issues, treatment, circumstances related to the disease and other various deeds, including the result of the autopsy, without the consent of the concerned person, and if the person passed away, without the consent of the family or entitled persons.

h) using, in bad faith, the name, image, voice or resemblance to another person

i) broadcasting or using the correspondence, manuscripts or other personal documents, including the data on the domicile, residence, as well as the phone numbers of a person or the members of his family, without the consent of the person to whom they belong or who, depending on the case, has the right to dispose of them.

The paragraphs stated in art. 74 refer to the press, wanting to increasingly protect the private life of the person. Journalists have written various articles on this topic, even saying that the new Civil Code would undermine the freedom of the press. If a person's freedom ends when another person's freedom begins, then what kind of freedom is it, when it undermines the private life?

If insult and calumny represented for journalists a highly explored small door, the Civil Code which came into force on October 1<sup>st</sup>, 2011, aims to limit the tabloid press, but especially to eliminate the discussions on marital or extramarital life of an individual, insulting statements against a person. Is this a step ahead for a more democratic society or not? Some journalists even consider that the art. 74 shall massively affect the journalism of investigation.

Even the Minister of Justice, Cătălin Predoiu, said that: “in Book I, relating to the person, a number of provisions are entered about the protection of fundamental rights, including the right to image, the freedom of the press and the restoration of patrimonial and non-patrimonial damage as a result of some wrong information published in audio-visual press, including the right of reply. These rights have been introduced as a result of some international conventions”.

The Internet shall certainly represent the source of new difficulties and even challenges for human rights: the difficulty is that one should act to promote information society, an instrument of transparency and consolidation of democracy, at the same time taking precautions to prevent the possible abuses.<sup>12</sup>

Reporters Without Borders publishes each year a report on the freedom of the press worldwide. Its purpose is to show the states facing difficulties in this field, but also the states in which this right is highly respected.

According to the latest statistics, in 2011-2012, Romania ranks 47, after countries as: Namibia, Tanzania, Papua New Guinea, Slovenia, and even after China.

Although time should put a favorable mark on the development of society and implicitly on rights, according to the study from 2002, Romania ranked 45, after countries as: Peru, Chile or even Paraguay.

Although it generally keeps a position around 50, in 2004 and 2005, Romania ranked 70, highly due to the political regime of that time, which tried to control the freedom of the press.

If we analyse Romania in terms of freedom of the press we can say that it has evolved significantly; from the absence of this right during the communist period to its exercise during the period after 1989.

Although after the Revolution, things started clumsily, we can say that in 2012 we can consider Romania a democratic state, in which the freedom of the press is respected, even though currently there are publications that are subject to the interests of certain parties, a matter that is found in many European states.

#### Notes:

<sup>1</sup> Sebastian Rădulețu, *Fundamental freedoms. Revised and enlarged II-nd edition*, Didactică și Pedagogică R.A. Publishing House, Bucharest, 2008, pp. 248-249.

<sup>2</sup> Mihail Udriou, Ovidiu Predescu, *European protection of human rights and Romanian penal suit – Treaty*, C.H. Beck Publishing House, Bucharest, 2008, p. 264.

<sup>3</sup> *Explanatory Dictionary of the Romanian Language*, II-nd edition, Univers Enciclopedic Publishing House, Bucharest, 1998.

<sup>4</sup> Andrei Pleșu, *Faces and masks of transition*, Humanitas Publishing House, 1996, pp. 325-325

<sup>5</sup> Jean Francois Renucci, *European Treaty on Human Rights*, Hamangiu Publishing House, Bucharest, 2009, p. 178.

<sup>6</sup> Idem, p. 180.

<sup>7</sup> Mihail Udriou, Ovidiu Predescu, *European protection of human rights and Romanian penal suit – Treaty*, C.H. Beck Publishing House, Bucharest, 2008, p. 292.

<sup>8</sup> Idem, p. 266.

<sup>9</sup> <http://arhiva.cna.ro/despre/cna/rolsimisiune.html>, last entered on February 29<sup>th</sup>, 2012.

<sup>10</sup> Corneliu Bîrsan, *European Convention on Human Rights, Comment on Articles – Vol I. Rights and freedoms*, All Beck Publishing House, Bucharest, 2005, p. 744.

<sup>11</sup> Jean Francois Renucci, *European Treaty on Human Rights*, Hamangiu Publishing House, București, 2009, pp. 184-185.

<sup>12</sup> Idem, pp. 194-195.

## ORIGINAL PAPER

Xenia NEGREA

### Fact and Opinion in the Romanian Written Press during the 90s

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**Abstract:** *In this article we are going to compare the way in which the Romanian press presented the Romanian Revolution in the 90s and the historical events that changed Romania, as the history studies show them. Speaking about the press, the 90' are recognized as the rebirth period of the journalistic profession and the Romanian contemporary press.*

*All the references to this period converge in words such as „euphoria”, „dynamism”, „partisanship” etc. Through our study we try to point out those ways to build credibility and, therefore, the expression of subjectivity, amid growing centres of semantic polarization<sup>1</sup>. Even the subjectivity signs there are not explicitly present, they can be recomposed through the events selection, information staging, through its setting in the pattern of certain journalistic styles.*

*Our study will follow two levels: the linguistic level (and we will see here the interferences in between the opinion style and the information one) and the factual level, we will compare the events table as it can be find in the papers with that one from the scientific level. We will point out the main discursive structures and what we might call today the archetypes. The features are built today starting from these items. We will use Angela Phillips's theory from Good Writing for Journalists. Narrative, Style, Structure.*

*The study will focus on the daily Romania Libera, because, beyond the publication longevity, we found in its pages not only signatures that lasted until today, but a journalistic style, a representation of profession defining the era. Through the type of topics cultivated, especially through the opinion pieces, the publication managed to gather a coherent community, bringing together select intellectuals and audiences loyal to the ideology promoted by the publication.*

*The study can be used in any discussion about the relationship between journalism and history and also can provide guidance to discover the identity of Romanian journalist.*

**Keywords:** *opinion, event, history, credibility, subjectivity, post-Communism.*

This study is part of a larger personal research project, to study the mechanism of creating the credibility effect in the press, print and online. Although circumstances may psychologically explain the Dionysian writing, we can't fully credit to this issue, because the press has indicated its intention to tell the truth (*Romania Libera*) or to inform correctly (AGERPRES).

At the beginning, our intention was to study a larger segment – several years and several publications. Studying the effect of the transition of the Romanian press from communism to freedom of expression we found unexpected academic challenges.

Sudden shift, sudden and violent, from a communist model of representation of the press to one of almost absolute freedom revealed not only the public desire for information, not just the absolute necessity of a press free of censorship, but also the pitfalls that must be overcome by virtue of a credible speech not only *de jure* but also *de facto*.

The international press faced a similar situation, so referring to '89, but it was repeated when the economic crisis triggered (and it was accepted in the public discourse). Then, as Western journalists declare (we found about that in the paper of a colloquy about the crisis), events exceeded the adaptive capacities of journalists to unpredictable realities, both in terms of their training and also below the ability to properly inform the public. For example, Martine Maelschalck<sup>2</sup>, speaking on the topic of „financial crisis” to *L’Echo*, used words like „shock” and „difficult relationship”.

We find the same type of problems in the Romanian press, both in '89, as during the economic crisis.

As Martine Maelschalck noted in her speech at the colloquium from Louvain-la-Neuve, 7-8 May 2009, the financial crisis „has changed our way of understanding and make our job as journalists”. For, in a crisis like this, all our automatisms, all our certainties are questioned” (tr. n., X.N.).

Dramatization, the continuation logic, a strong negativity characterize the stylistics of features about crisis (economic, ideological etc.). Studying the behaviour of media discourse in crisis moments may reveal new emergency of professional training, and a new stylistics and a new vocabulary.

Through mass media perspective the moment of December 1989 isn't sufficiently explored or, as our bibliographic information show, it is far from being known in its depths.

„The first live revolution”, „revival of the Romanian media” are some of the labels that have made this period. Studies were made also for more than even a decade that has synthetically pursued the evolution of the post-Revolution Romanian press.

Those studies may give the illusion of epistemological exhaustion. We believe we are far from well knowing the discursive, linguistic, stylistic, rhetorical phenomena that caught in the page a historical event so important as the Romanian Revolution is, especially as, in a cross pan, we can see that the phenomena evolved largely until today. The narrative structures that we were able to detect, the tone, the approach, all this can be found in the current release. Therefore we chose to stick strictly to this period also because we found in the publication pages not only the process of reinventing frame by frame of the Romanian press, but, especially, the reinventing of its speech.

The similarities don't come, as one might think, from the stylistic gestures characteristic for journalistic language, but we could talk about something specific, about a continuity, about an identity of the Romanian press, not only being given by the theme and geography, but also at the stylistic level and in what we could call a mechanical approach to reality.

Beyond classical, canonical, didactical differences between information, fact and opinion, in print (our case) there are – between the two main textual lines – communication

channels extremely busy by different types of fusion, some already in use (we think at the opinion texts which must cover a verifiable reality, and to provide information), others complained of standards (case of the elements of subjectivity present in the pure text information).

Remaining strictly to our objective to study the press during the events of December 1989, we find that we are dealing with what Murrey Marder called „the acid test for freedom of the press”, test occurred both during peace, but mostly, in times of war, the secrecy and democracy “to collide head”<sup>3</sup>.

### **History. Oral History. Press**

For a starter, we compared the summary of the publication with what history has retained the event-series in December 1989. About the relation between media and history, Philip Graham (*Washington Post*) said that “Journalism is the first draft of history”, and Mark Feldstein saw a familial relation between history and the media: “Journalism and oral history always will be cousins, not twins; but their similarities help showcase their very unique differences”<sup>4</sup>.

The events progress in Romania in December 1989, in the literature, starts with November 23, 1989, when there was a tentative of demonstration of the workers from Mechanical Plant Timisoara. Security cancelled attempt. Events are precipitated in December, but the press barely develops signs on December 20th. The signs consist of messages for solidarity around the Communist values, messages coming from various industrial points.

Until then, on December 14th is produced another attempt to organize an anti-Ceausescu demonstrations, this time in Iași. On December 15th there is “the first peaceful demonstration” in Timisoara, where dozens of believers, as studies show, gathered to prevent the discharge of Reformed pastor Laszlo Tokes. On December 16th occurred the first clash between demonstrators and police in Timisoara.

On December 17th, the Central Political Executive Committee of P.C.R. approves repression. Minutes of the meeting appears in the press. In *Romania libera* we find it on the first page. The next day media and history records the departure of Nicolae Ceausescu in Iran. The visit is presented in detail in subsequent editions of the newspaper, until 22th December. On 18-19 December in Timisoara uprising repression continues, but many companies triggers strikes. On December 20th the city centre is occupied by demonstrators and the police began to fraternize with them.

The same day, the Romanian Democratic Front constitutes in Timisoara, the first lists of claims shall be made on which will be decant the first Program of the Revolution. Demonstrations spread to the rest of the country, and Ceausescu returns from Iran, condemns public and media events in Timis and proclaims state of emergency. On December 21th peaceful demonstrations take place in Arad, Sibiu, Targu-Mures, Brasov.

At lunch time, there is Nicolae Ceausescu’s ordered meeting and his speech will appear in the press the next day, on December 22th, without being recorded, however, any incidents that triggered national revolution which led to discontinuation of radio emission and television. Historians now retain this moment as the psychological key time that caused the extension of the Revolution.

On the night of 21 to 22 December there were clashes with the police. The barricade in front of Hotel Intercontinental is broken and several arrests have been made. Events take place in Cluj, Targu-Mures, Resita, Fagaras. *România liberă* of December 22 published on the front page a call to unity: “Great gathering of working people in the capital took place into the decision to do everything to defend firmly the revolutionary working people and building peace, independence and national sovereignty”. The message is a paratext to the publication of Ceausescu’s speech, the previous day. On the following pages are published the same kind of messages of unity and

solidarity. On December 22 events take place leading to Ceausescu family's leaving the RCP Central Committee building. Events are transmitted by radio and television.

In *Romania libera* Romanian Revolution find its place on December 23. The first free number is a presentation of events that culminated on December 22. History<sup>5</sup> records the events of December 22 measured in hours and minutes. Thus, at 7 a.m. there are recorded large enterprises demonstrations in downtown Bucharest. At 9.30 is recorded the suicide of General Vasile Milea, the defense minister. At 10.40 General Victor Stanculescu ordered the withdrawal of military units deployed in Bucharest. At 10.45, radio and television transmitted a press release announcing the suicide of "traitor" Miles and the establishment of the state of emergency throughout the country. Between 11-12 the Palace Square is occupied by revolutionaries, and by 12. 06 Nicolae and Elena leave by helicopter the RCP Central Committee building. At 12, national radio and television transmit the collapse of the Ceausescu regime and the victory of the Revolution. In the afternoon the same day the revolutionary committees take the power. At 14.50 the Ceausescus are arrested, and on 18. 20 the first shots are heard in the Palace Square and starts fighting the „terrorists” (quotes belong documents). At 23 Ion Iliescu reads Proclamation of the National Salvation Front Council on the national radio and television, announcing the end of the communist regime and the transition to a democratic, pluralist state.

*Romania Libera* appears Saturday, December 23, with four pages, with the frostispace: „Daily of all patriotic and democratic forces in Romania”.

Regarding the event's record, the release from prison of journalist Petre Mihai Bacanu is announced on page two. On the same page, under the title „How the first day of fighting after the overthrow of the dictatorship took place yesterday (Dec. 22 note) into the areas of the country” is a review of events from December 21 to 22, with the single source TV broadcasts. Story published on page three is signed by Emil Munteanu and Marius Georgescu: „Watches of hopes”. The topic of the text is the moment December 21, and the presentation of the events following the technique is direct observation: “what we see as witnesses”. On page four, under the heading “International Echo”, the title page: “Today the world knows us / Romanian says, brave says,” are recorded reactions of the international press and countries and “the withdrawal of foreign titles and awards granted to Ceausescu's clan”.

The next issue of the publication appears on December 25th, when history records the process and execution of Ceausescu.

Regarding the events recorded in the publication, this is achieved as the story. For example, Victor Dinu in the article “Destruction gorilla mercenary” records collisions on the night of December 23 to 24 “surroundings Ministry of Defense”: “Fights of an unparalleled drama were given surroundings in the Ministry of Defense. Late after midnight on December 23-24 2 API type tanks not in our Armed Forces have tried to enter by forcing the entrance of building using the flag as coverage. (...) Seven mercenaries employed in the service of the tyrant, were killed instantly. Three of them have succeeded, for now, to escape, hoping for a miracle escape. Vain”. Article does not cite any source.

A similar article on the same page 1 (continued 3) is written by Dragomir Horomnea too. And he describes (also by direct observation, we infer) the battles on the streets of Bucharest. Source cited is his wife: “PS: Later a call from his wife: meanwhile the three terrorists from the block near the house had been caught”. The article is accompanied by a box with an editorial note, which is quoted Dr. Cristian Pecek invited to present the situation in hospitals. At the end of the note is introduced a possible dialogue with “terrorists”, the reader not knowing the source of this band is the doctor: “NR: the story of Dr. Cristian Pecek at the phone: ‘Terrorists agonizing and even recovered from the emergency roof, still alive, defiant said that they hadn't done enough, when asked „why are you shooting?’”.

**“Overcoming evil”**

Until December 27<sup>th</sup>, the publication organizes its summary on key word “terrorist”. We name now the centre that dominated semantically the publication bias in this period. Journalists select the conclusive units: an aggressor (the Ceausescu family and lengthen, terrorists), a victim (the Romanian nation, they are included explicitly), a type of action (war). According to them, is selected a certain type of information and apply some reality grid. Summary subdivisions are fighting against aggressors, new hierarchical peaks perception of facts in the external environment.

Angela Phillips<sup>6</sup> has revealed a series of archetypes, the patterns that generate articles in the press: “overcoming evil”, “transformation”, “tragedy”, “romance”, “coming of age (rags to riches)”.

From the theory of Paul Cornea, we detected in our study a functional class, of the above mentioned, namely overcoming evil. Articles generated formula “overcoming evil” are built on *good - bad* opposition, and the story itself must be remembered that good will triumph. Evil is represented metaphorically (snakes, storms, giant) or people who have prevented the heroes to invade the body of society. “But the news do not know if good wins,” concludes the researcher.

In our corpus of texts, however, we see that each edition itself is built on this principle. The good part is the Romanian people, on the other hand, members of the communist apparatus and “terrorists”. The word “terrorist” appears in the events of 1989 in Romania in the press since December 21 in Ceausescu’s speech: “No answer, even when soldiers and officers were hit, but only when the situation has reached such that they were attacked by terrorist gangs”<sup>7</sup>.

Repositioned opposite the axis of the conflict actors (population - power) terrorists even get the main characters of the publication of the December 22 edition.

Phrases that describe terrorists	Phrases that describe Ceausescu family	Representation of Romanians
mercenary gorilla <sup>8</sup>	dictator’s false phraseology <sup>9</sup>	Sacrifice, courage, bravery, suffering
beasts with human face <sup>10</sup>	“Warriors” from the balcony of the presidential run as partridges <sup>11</sup>	
These beasts are not only capable of anything, and commit anything <sup>12</sup>	The gilded den of the tyrant <sup>13</sup>	
the terrorists are shooting in everything that moves, kidnap children and brutally kill them, enter the house and the whole family mercilessly riddle <sup>14</sup>	dreadful terror <sup>15</sup>	
„Poisonous wasps have rained volleys of death”, „beasts who sent the bullets from their dark corner” <sup>16</sup>	odious dictator (...) to defend heir and „the little prince” Nicu offspring royal family, installed there as strap and full <sup>17</sup>	
With hatred, disgust, sorrow, say still infiltrating reactionary elements, which, in a gesture of great „humanity”, gives cigarettes as sleeping pills, very damaging their health. They also, these professional criminals, raised and taught in school crime, bring wounded dying a drop of water ... poisoned <sup>18</sup>	tyrants and pack of followers led a life of ease <sup>19</sup>	
infernal robots <sup>20</sup>	Antihuman <sup>21</sup>	
bands of terrorists are becoming more violent, indiscriminate attacking various targets <sup>22</sup>		

ghosts of dead <sup>23</sup>		
professional killers still struggling here and there as the serpent who was crushed head. Still struggling to sunset <sup>24</sup>		
beasts bred to kill have not yet submitted weapons <sup>25</sup>		

### Emotion - structuring principle

Following the same theory of John Hartley, we see in these pages, a staging of panic. *Romania Libera*, number by number, edits information about the status of waters, which are given assurances that are not contaminated. Sometimes journalists are dominated by panic and over determined articles by emotion.

Monika Bednarek proposed a theory of evaluation in the news<sup>26</sup>. The researcher established 12 ways, intentionally or not, a journalist discloses its subjectivity and evaluates the information they submit. These categories are: comprehensibility, emotions (positive-negative evaluation), predictability (expectedness), credibility (genuineness), the importance, necessity, possibility, the level of certainty (reliability: how likely or how does it appear unlikely that will this happen?), causality (why and with what consequences), sources (of which we know), citing (as told by sources), mood (in that state of mind are the actors of news).

In our corpus of texts, journalists seem totally emotionally involved in stories that are, hence the motive of our study, credibility and journalistic material involving subjective. Although graphics are isolated texts of opinion, most texts in each of the numbers we found are built exclusively on subjective perceptions.

However, since the first issue, journalists published a text in which apologize for complicity with the communist government assume the journalist provided free, so she tells the truth: "With downcast eyes to the Romanian nation we apologize for printed untruths and decide that from this number to appear as the frontispiece... We want to serve from now on and only the truth, serving in the most honest and dignified way the country and people"<sup>27</sup>.

Emotive evaluation is dominant:

→ The huge success of people<sup>28</sup>

→ Myopic policy that leads to isolation and self closure<sup>29</sup>

→ Fights of an unparalleled dramatism<sup>30</sup>

Regarding the treatment of sources, their presence is ambiguous or do not occur. With the exception of press releases and news notes published as such, all other materials have editorial external sources, or where they are, their presence is ambiguous. For example, there is the case of information provided by Dr. Cristian Pecek, any dialogue between doctors and „terrorists” it does not clearly assigned to him.

Journalists assume “we”: „No one can snatch the ultimate victory from us”<sup>31</sup>. Otherwise, journalists ask to be believed on the word. Narrative constructions lose any intrinsic sign journalistic text. Read narratives presented as facts and the information release: “Fights of an unparalleled drama were given in the surroundings Ministry of Defence. 23-24 after midnight on December 2 API type tanks not in our Armed Forces (to) have tried to forcibly enter the building using the coverage flag. (...) Seven mercenaries employed in the service of the tyrant, were killed instantly. Three of them have succeeded, for now, to escape, hoping for a miracle escape. In vain!”<sup>32</sup>. There is no source cited. Or: “In Bucharest battles with terrorists continue. Endless indignity of these elements, educated in a spirit beyond Ceausescu backstage ... Yes, these beasts are not only capable of anything, and commit anything (...) they are infiltrated according to a carefully prepared script, long before, the terrorists are shooting in everything that moves, kidnap children and-kill them brutally, enter the homes and riddle entire families with no mercy”... “Look at this very moment, with the machine next to me”<sup>33</sup>.

A report from an emergency hospital brings in the following page opinion and emotion as facts: "The hatred, disgust, sorrow, say that still permeates the reactionary elements who, in a gesture of great 'humanity' gives cigarettes as sleeping pills, very damaging their health. They also, these professional criminals, raised and taught in school crime, bring wounded dying a drop of water... poisoned. It is impossible to believe that I relate the truth"<sup>34</sup>. The photo that accompanies the story shows a man on a stretcher, the lobby of a hospital. None of the facts mentioned above have no other source than the testimony of the issuer.

Under the title, „Hot Seconds on the Country Renaissance Front,” a journalist tells from province, also without citing any source: "terrorists troops are becoming more violent, attacking indiscriminately various economic objectives, social-cultural, people [...] ghosts of dead were detected in the last 24 hours, immobilized and the Armed Forces handed the garment factory roof of the three blocks of School street in the crankcase Viziru"<sup>35</sup>. The same situation under the heading "witnesses": "Yes, it is shooting from the eighth floor! Assassins as desperate as paranoid as one who has paid them up yesterday. Today, however, it seems, they are doing overtime... We learn from residents that the apartment where the rats were sheltered remained unoccupied since the commissioning unit in use, becoming, as I was to receive immediate confirmation, safe house"<sup>36</sup>.

The writing captures the Dionysian enthusiasm (as we called in another study). In the information materials journalists exclaim, cry, mourn, wonder, empathize, creates allegories, parables, allegories, and metonymy - stylistic freedom that they have their opinion text only.

An example is found in the issue of December 23, when the entering in a house of the Ceausescu family is presented. Technical documentation is the direct participatory observation. Argerpres journalist seems to extend quality of an object (a frame) to the whole building (house). From the title a house is announced where most items are gold or gold containing „In the tyrant's gold den...". But only one object is related to this semantic area: "At the entrance, with a gilded frame (...) animal fur clothes protected by law in all civilized countries".

Journalists find necessary to refer as in a ritual not only to the communist dictatorship, but, to take over a phrase of the time, "stigmatization" of the terrorists, even if that article was not necessarily the subject of street events. For example, a journalist wants to send a message of calm, trying to make a survey of grocery stores. Of the four paragraphs of the material, take the first two elements of review in reviewing the years of communist dictatorship, bloody battles on the street: „Yesterday, Christmas eve. Today is Christmas. After years and years of dreadful terror against us"<sup>37</sup>.

Official information is dry presented as press releases and notes. Summary gathers information mainly clashes revolutionary terrorist groups.

### **Panic's Stylistics for a surprised journalist**

We call this type of writing euphoric, Dionysian. Formally, we can think of, although it may seem surprisingly, but the theoretical tools of today, and that speech style when the press came from what today is called infotainment, the meaning decanted by John Hartley: "the concept is often used to lament the loss of 'traditional' news values (...) over time news has borrowed characteristics from non-news formats. Narrative, spectacle, personality presenters, non-narrative soundtrack and personalised address are all now central to the broadcasting of news in entertaining ways. The term infotainment then could be said to recognise the porous nature of television and its genres rather than a decline in the absolute values associated with journalism".

Speaking about how the economic crisis was presented in the press, Martine Maelschalck spoke about the need to rethinks, even reinvent the profession of journalism, and about a „forced entry into the 21st century". *Mutatis mutandis*, the Romanian press has more violent reinvented itself.

The transition from the absolute absence of signatures to the almost absolutely freedom, from the monothematic to the very large opening, from a dependency to the inability to define their one role and their own social position, all these cases have led a style of panic, and which we do not believe that is obsolete today.

Partisanship, ethical opposition structures (especially the material on those days) decides the textual development. Absence of assumed identity, absence of professional norms still brings this type of writing in pages.

**Notes:**

<sup>1</sup>Paul Cornea, *Interpretare și raționalitate*, Polirom, Collegium, Iași, 2006, p. 452

<sup>2</sup>Martine Maelschalck (editor in chief, *L'Echo*) - speech at the colloquium on financial and economic crisis, in Louvain-la-Neuve, 7-8 May 2009), published under the title "Avant-propos" in Vincent Dujardin, Yves Cordt, Rafael Costa & Virginia Moriamé (dir.), *La crise économique et financière de 2008-2009. L'entrée dans le 21<sup>e</sup> siècle ? Relations financières internationales*, no 3, PIE Peter Lang SA, Editions scientifiques internationales, Bruxelles 2010, Brussels 2010

<sup>3</sup>*What happens when journalists don't probe?*, Marder, Murrey, *Nieman Reports*; Summer 2003; 57, 2; ProQuest Central, p. 73: "In war no less than in peace, the acid test for freedom of the press is the critical crossroad where secrecy and democracy collide head-on".

<sup>4</sup>*Kissing Cousins: Journalism and Oral History*, Feldstein, Mark, *The Oral History Review*; Winter 2004; 31, 1; ProQuest Central, p. 1, Phillip Graham (Washington Post): "Journalism is the first draft of history", p. 22

<sup>5</sup>*Caietele Revoluției*, nr. 2/ 2005, pp. 7-8, Institutul Revoluției Române din Decembrie 1989

<sup>6</sup>Angelei Phillips în *Good Writing for Journalists. Narrative, Style, Structure*, SAGE Publications, London, 2007

<sup>7</sup>p.1

<sup>8</sup>Monday, December 25th, "Nimicirea gorilelor mercenare", Victor Dinu, p. 1

<sup>9</sup>"Ceasuri de speranțe" – Emil Munteanu, Marius Georgescu, 1, p. 3

<sup>10</sup>idem

<sup>11</sup>idem

<sup>12</sup>Monday, December 25th, „Bandiții n-au viață lungă”, Dragomir Horomnea, (1)

<sup>13</sup>Agerpres, p. 3

<sup>14</sup>idem

<sup>15</sup>„Viața se normalizează”, Eugen Sasu

<sup>16</sup>Viorel Chiurtu, „Bande de teroriști apărute la Brăila sunt lichidate”, p. 3

<sup>17</sup>„La Sibiu, vigilența mereu trează”, Virgil Lazăr, p. 2

<sup>18</sup>„Zămbetul va înflori și pe fețele răniților din spital”, Cristina Popescu

<sup>19</sup>„Minunata solidaritate umană”, C. Vrânceanu, p. 2

<sup>20</sup>„Luciditate împotriva roboților infernali”, Ștefan Niculescu-Maier, p. 2

<sup>21</sup>idem

<sup>22</sup>„Brăilenii își apără cu eroism puterea cucerită”, Viorel Chiurtu

<sup>23</sup>idem

<sup>24</sup>„IAȘI: Viața se așează în matca ei firească”, Vasile Iancu

<sup>25</sup>„În unitățile industriale, activitate normală”, Bogdan Ficeac, p. 2

<sup>26</sup>Evaluation in the news. A methodological framework for analyzing evaluative language in journalism, Monika Bednarek, *Australian Journal of Communication*, Vol 37 (2) 2010

<sup>27</sup>December 23, p. 1

<sup>28</sup>Ion Pavelescu, Bogdan Ficeac, p. 1, December 23

<sup>29</sup>Idem, p. 3

<sup>30</sup>„Slăvită virtute ostășească”, Traian Gânju

<sup>31</sup>Dragomir Horomnea Sâmbătă, 23 decembrie, Editorial de Dragomir Horomnea

<sup>32</sup>„Nimicirea gorilelor mercenare”, Victor Dinu, p. 1

<sup>33</sup>„Bandiții n-au viață lungă”, Dragomir Horomnea, p. 1

<sup>34</sup>„Zămbetul va înflori și pe fețele răniților din spital”, Cristina Popescu

<sup>35</sup>„Brăilenii își apără cu eroism puterea cucerită”, Viorel Chiurtu

<sup>36</sup>„Fanatismul în acțiune”, Emil Munteanu

<sup>37</sup>„Viața se normalizează” de Eugen Sasu, 25 decembrie, p. 1

## ORIGINAL PAPER

Gabriela RUSU-PĂȘĂRIN

### The History of the Regional Public Audiovisual Broadcasting since December 1989 – Between the Communicational Ethos and the Audimat

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**Abstract:** *Over time history has determined the development and adaptation of the means of mass communication. The communist dictatorship in Romania was followed by democracy (the post-December period), which led to a new dimension of the media impact, coming up to the new expectations of the media consumers. The hereby study analyzes some of the changes that the transition period has produced with regard to receiving the audio-visual message, while stressing the stages of this phenomenon, at the level of the community and the media.*

*The performance of radio and television spaces has become a necessity in the post-revolutionary conditions of media competition. A relationship based on emotional, accessible communication between the radio and television has been developed today, as opposed to the distant relationship that existed before 1989. The frequent appeal to interplay, to talk-shows in which one is addressed directly, has assured a genuine market success and has created the feeling of teleparticipation, radioparticipation. However the tendency to exaggerate has led to the derisory to the detriment of the informational contents. The hierarchy of the browsing behavior (Tom Weir) and the specifics of the media ritual (Pascal Lardellier) have come to be the coordinates of the regional audio-video performance in creating a connection between the social function and the one arraying ritual events. Audiences have proved that proximity journalism and the establishment of a dramatizing context are the guarantees of the importance of information and of perceiving the symbolic and subjective reality, as a manner of social reconstruction, hereby evincing media expedience. Our communication will therefore be supported by audience surveys of the public regional radio and television, as well as by the performance pointers that set up the creative strategy – a vector of the performance climate.*

**Keywords:** *democratization, public audiovisual broadcasting, communicational ethos, audimat, liberalization of licenses.*

### **I. An illustration of the European audiovisual and an imperative: the liberalization of licenses**

One can approach the issue of the Romanian regional public audiovisual broadcasting from two perspectives of history, which in turn define two operating systems on the social stage: the period before 1989, the period of communist dictatorship in Romania, when only regional radio studios existed (however, they were dismantled in 1985), and the period after 1990, when the regional radio studios resumed their activity and regional television studios were founded. In Europe a specific phenomenon occurred: when television broadcasting reached the technological level of becoming a communication tool across Europe, the state took over the radio and television organizations, on the pretext that there was a shortage of frequencies and that new media could not be given to private groups. The liberalization of licenses of the private radio and television services has been a long process and has reflected the degree of democracy in Europe. Britain liberalized these services in 1955, Luxembourg in 1969, Italy in 1975, Germany in 1984, France in 1986, Belgium, Sweden, Denmark in 1987, Norway in 1988, Greece and the Netherlands in 1989. They were followed by Spain, Turkey and Yugoslavia in 1990. In 1991 Hungary and Slovenia liberalized these services. Croatia, Latvia, Lithuania, Macedonia, Russia and Ukraine joined them in 1992. The Czech Republic, Estonia, Poland and Finland achieved this dual system in 1993, followed by Bulgaria a year later and by Belarus in 1995. Since 1996, Latvia and Slovakia also started the liberalization process. The last countries to liberalize these services were Albania, Ireland, Switzerland in 1998, Moldova and Bosnia-Herzegovina in 1999, and Kosovo in 2001. After 1990, in Romania, private radio stations were set up, followed by private television stations, the next year. They received licenses and have mapped the Romanian public and private broadcasting since 1993.

On July 30, 1992, C.N.A. adopted Decision nr.2/04.08.1992 on the frequencies made available to radio and TV broadcasts, frequencies that were to be part of the licensing competition in the 1992 session. On July 27, 1992 the National Audio-visual Council issued its first Communication on the timing and allocation of airtime during the election campaign taking place in the fall of 1992, as an argument towards supporting pluralism and the freedom of expression in a democratic society:

Decision 7/1992 centers on the license competition organized in 1992 session, whereas Decision 9/1992 refers to the adoption of "Rules of procedure concerning the emission of broadcast licenses by the CNA (the National Audiovisual Council)". Highly important in the context of the evolution of this process is Decision 31/1992 which focuses on the possibility of granting broadcasting licenses in terms of frequency partition. By the end of 1992, 128 license requests for radio stations, 73 for television stations and 51 for cable television were publicly examined and the following were granted: 31 radio licenses in 9 cities, 20 television licenses in 10 cities and 51 cable television licenses in 35 localities. In 1993, one can mention the appearance of Law no. 62/22.09.1993 for amending art. 43, paragraph. 1 of the Audiovisual Law no. 48/1992, as well as that of the Romanian Government Ordinance no. 9/04.08.1993 on the taxes for issuing permit decisions in the audio-visual area. After one year of activity, the C.N.A. reported the release of 62 local broadcasting licenses for television stations, 92 for local radio stations and 227 broadcasting licenses for radio / cable television transmissions ([arhiva.cna.ro](http://arhiva.cna.ro) / [despre.cna.ro](http://despre.cna.ro) / [arhiva.html](http://arhiva.html)). This alert process highlights the interest in diversifying the media offers, but also in producing a "boom" of information due to stations which had a meteoric existence. The year 1994 is important in this historical perspective, as Law 41 was voted. It centers on the functions and organization of the Romanian Radio Society and of the Romanian Television Society, stating that the public service broadcasting is set under the authority of the Parliament, that elects the Board

of Directors. Reforming the Romanian Radio Society and the Romanian Television Society has been an unabating process. There have been moments of reform trends in both institutions, with internal actions specific to the resettlement of programs in grids, according to the public radio and television status, which was based on editorial competence. Another argument for this process: in 2000, the National Audiovisual Council organized a seminar in collaboration with the European Institute for Media in Dusseldorf, which was structured around two major themes: "The allocation of frequencies in Romania - A European perspective", and "Mass Media and Elections"; it was held in Bucharest, between 23 - 27 June. It was a milestone in the history of Romanian media, as evidence of the action of synchronization with European democratic countries, by focusing on the essential value in a democracy: the liberalization of broadcasting, the dual public-private status of the media.

These are just a few markers on a map of reflection for what is the process of democratization, liberalization of licenses, at a national and European level.

## **II. The Romanian public broadcaster - a story of how to earn the public's loyalty**

In this ferment of post-December Romanian journalism (often questionable due to the poor training of those who will call themselves journalists and will ease compromise quality to ratings,) a public service was needed for democracy and diversity, in order to inform and educate the public, entertaining and enlightening them at the same time. However, it is a well known fact that private companies can adapt more quickly to the concept of European integration, that they are able to come up with an effective, persuasive marketing strategy. The Romanian society needed to adapt quickly to the rigors of autonomous, polymorphous landscape in which the presence of public stations could be seen as a landmark of professionalism and accountability. The role of public services in the developing countries is particularly important; the public agenda must coincide with the media agenda, and according to their status as a public the public radio and public television should mainly broadcast public information. At any rate, they had a faithful audience, who had already reached adulthood and old age, a supporter of information and not so much of cheap entertainment. This phenomenon occurs due to the monopol of the media market for decades which has generated the public loyalty.

The absence of the private radio from the media market before 1989 contributed to creating this public loyalty, because of the lack of alternatives (hidden and sporadic listening to foreign radio stations, of "Free Europe" was an undeclared option). The "subtext" game saved the radio speech from censorship and imposed a game acknowledged by the listener, a pact to survive beyond the text and the decoding within a cultural grid.

During the communist dictatorship the Romanian radio and television underwent the rigors of designing and developing programs, the rigors of timing (television only had two hours / day airing time in the last period of the dictatorship) and rigors of thematization, with a focus mainly on the cult personality. Yet, beyond the informational programs that were supposed to convey the image of an epoch that had reached a paroxysmal form the manipulated image, some shows went on and they are still an emblematic reminder of the that time: „Teatrul ca microfon” ("Theater as a Microphone") or "The Teleencyclopedia" (Teleenciclopedia), cultural and musical entertainment ,art, cinema. The rest is history. The Romanian television called itself "the Free Romanian Television" for several months after the events of December 1989. After a tumultuous history of thirty years of operating under the totalitarian communist regime, during which time it had been a government and party broadcast station, the Romanian television would have to face new historical challenges that have left their mark on informative programs. The repeal of Decree 473/1977, by which Television was declared a party and state institution was one of the requirements of the protestants in University Square. It was only in May 1990 that Ion Iliescu

repealed this decree and subordinated the Radio and Television to the PNUC Executive Office, that would also appoint the chairman. Nevertheless, it was mentioned that the institution is protected by law from any interference on the part of the government or the state, from the influence of any parties, social-political or pressure groups at home and abroad ("Baricada", 08/02/1994, 4).

The Romanian public audiovisual sets up its leading position on the media market, although the media landscape has diversified, the offer of programs is becoming more and more attractive. History records that media competition as a way to anticipate the expectations. Positioning public television in the media market is an obvious reflection of the prolonged transition towards a democratic public service media: "If in 2005 the market share (24 hours, at national level), was 18.9% for TVR1, in 2006 the same station had a national market share average of only 16.7% according to a survey conducted by the TVR Department of Analysis and Research, based on data provided by TNS-AGB International (site www.tvr.ro)" (Nicolau, 2009).

A qualitative research conducted in February 2003 shows that Radio Romania News station is the best known station in Romania (top of mind awareness of 44%), whereas the main private radio stations recorded 9.8% - Europe FM and 7.0% - ProFM (according to the Romanian Society of Broadcasting: "Managing the media", 2004, 17).

The same study confirms that Radio Romania News ranks first in the listening habits (62%), followed by the private stations of Europa FM (30.9%), ProFM (22.4%), Radio Contact (20.8%) and Radio 21 (10.6%).

In 2003 the National Public Television achieves ratings that place it at the top of televisual media market, a result of the professionalism of television specialists that have changed the public perception of its image, shifting from a subservient position under government power to an equidistant national public broadcaster position.

This is confirmed by the IRSOP survey of April 2003.

	It is true	It is not true	I don't know
	(%)	(%)	(%)
Informative	91	8	1
Serious	90	10	-
Educational	90	10	-
It is meant for all categories of citizens	87	12	1
It is interesting	84	16	-
Relaxing	74	26	-
It has a high rate of programs	74	25	1
Entertaining	72	27	1
It's „on the spot“	68	31	1
It avoids airing violence	66	32	1
Politically objective	63	36	1
Old-fashioned	40	59	1
Boring	23	77	-

**Figure 1. The Romanian Public Television -Source: IRSOP, apud Rusu-Păsărin, Gabriela, 2005, 158**

The image of the public station, is supported in both cases by the impact of the local radio and television broadcasting stations. The former have existed for over half a century, whereas the latter is a product of the democratic era (TVR Cluj -1990, TVR Iasi-1991, TVR-1994 Timisoara, TVR Craiova, 1998). Article 32 of the Law on the organization and function of the

Romanian Television Society states: "territorial studios are assigned zonal coverage frequency , under the law ". It thus creates a center of interest and it earns the loyalty of a public that is eager to perceive the specific regional culture and the proximity information.

Recent studies (2009) confirmed the comfortable position of regional radio stations: regional radio (Oltenia) had a 24.5 Market Share during May 4 to August 16, 2009 (at the same time Radio Romania News had 9.3, Kiss FM 23, 2, Europe FM 12.8) and the Daily Reach (%) was 16.6 for Oltenia Radio, Romania News - 8.6, Kiss FM - 19.5, Europa FM - 8.6.

During 31 August-20 December 2009:

The Market Share for the regional public radio: 23,0; Kiss FM: 31,7; Europa FM: 12,4; Radio România News: 8,6.

The Daily Reach (%): regional public radio 14,7; Kiss FM 19,4; Europa FM 9,2; Radio România News 6,7.

The regional public television has lower ratings than the public regional radio (television generates a media consumption of 45 – 46% in prime time(20:30 – 21:50) (internal sources).

The process of reconfiguring audiovisual public stations has been a difficult and controversial one.

### ***III. The public Romanian audiovisual performance – between the audience and the audimat***

The performance of radio and televisual space has become a necessity in the terms of post-Revolution media competition. The distant relationship, specific to public broadcasting before 1989, was countered by a persuasive- emotional type of relationship (specific to the regional only) accessible (in language and audio-visual explanation). The hierarchy of the browsing behavior (Tom Weir) and specifics of the media ritual (Pascal Lardellier) were defined as coordinates of the regional broadcasting performance, the one to create a connection between the social function and the one arraying ritual events. The use of the presence effect (Joannes, 2009) either televised or radio broadcasted has the main role in generating emotional involvement and in producing the phenomenon of loyalty.

Presenting the audiovisual product impact (market share) and structuring the performance process to obtain the satisfaction of reception (consumer sample) were established as reference axis to reach the most sensitive subject: value of radio and televisual creation in a period of transition when consumption motivations vary according to the evolution of the social agenda. The behavior of media product consumer must meet the standards of value-orientation. These guidance standards are classified: a standard system for cognitive problems; a subsystem for solving assessment issues, a subsystem of "moral" standards for the integration of different units of various system processes (see Talcott Parsons Edward Shils). These sub-standards must be met as they outline the production performance by means of systematic references to the values that they support in order to reconfigure the range of values depending on the changes occurring in the socio-economic and political area.

The dominion of everyday life as the main interest in a transitional period focuses on the relationship between proximity information (and journalism proximity) and cultural information (ie cultural journalism). It is the ratio of the "immediate" and the "in time", of the daily consumption (necessary) and the cultural foundation of the universe of concerns (long term effects, over generations).

It is more difficult, and therefore commendable to specifically configure everyday life which raises the question of social, economic, political and cultural security necessity (sometimes it is similar to the concept of "stability") and to create cultural productions that can achieve value in time due to specialized public segments from different backgrounds and in various geographical

areas. It is the case of the regional radio and television production which broadcast through their own channel and through the national channel (TVR3 and regional radio multiplex, or those productions rebroadcast on national and international niche channels: TVR Cultural - Radio Romania Cultural, TVR International - Radio Romania International).

The validity of the message in terms of different transmission and reception contexts involves complex audiovisual messages that require a professionalization of human resources, other than creating notoriety. The audience has proved that the proximity journalism and the establishment of the dramatization context as well as drafting messages with a dense context are the guarantees of information primacy and perception of reality, a social reconstruction mode, proving the effectiveness of media.

A SWOT analysis of the changes in the organizational culture in public broadcasting highlights specific aspects of the transition period in Romania, in comparison to the reception processes in Switzerland (Radio Suisse Romande) and France (Radio France).

During the transition to a market economy, organizations operate in a changing external environment that offers both threats and opportunities.

The main threats, which are valid for public broadcasting as well, are:

- an unstable economic environment, with currency fluctuations,
- an incomplete and contradictory legislation in many areas,
- the culture of the population is inadequate to the market economy and performance.

External conditions are equally difficult for all organizations and they are not the only threats in the Romanian environment, other threats may occur in the public media microenvironment. The Romanian environment, however, is not deprived of opportunities.

The Institute Manager firm conducted a SWOT analysis of the management system of the Romanian Radio Broadcasting in September 2002. A number of features within the Romanian Radio Broadcasting Society have been set as values:

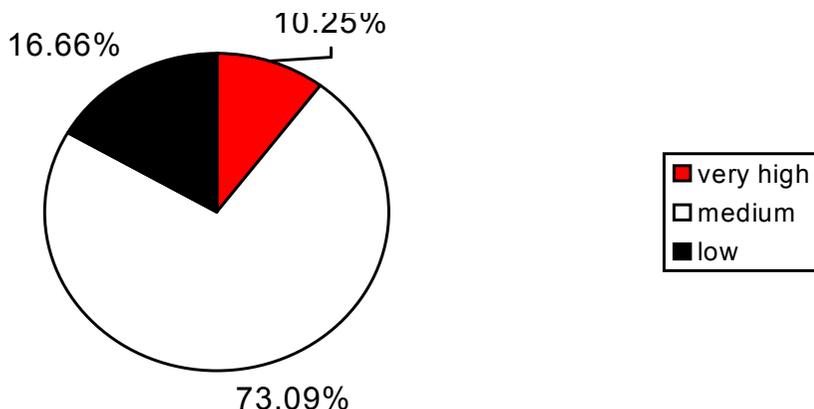
- % -

Characteristics	Managers				Executers			
	FM	MA	ME	R	FM	MA	ME	R
1. Attachment to the Society	57,69	42,31	-	-	19,23	41,02	39,75	-
2. Sense of responsibility	53,84	46,16	-	-	8,97	61,55	29,48	-
3. The incentive for effort and performance	19,23	41,02	39,75	-	10,25	-	73,09	16,66
4. The desire to work in teams	17,94	35,9	46,16	-	8,97	50,02	29,48	11,53
5. Conscientiousness at work	19,23	73,08	7,69	-	11,53	38,48	29,48	20,51
6. Optimism about the future of the Society	11,53	70,53	17,94	-	7,69	53,83	38,48	-
7. Usability of professional potential	16,66	73,09	10,25	-	10,25	41,02	48,73	-
8. The spirit of initiative at work	10,25	80,78	8,97	-	-	53,84	46,16	-
9. Desire and efforts towards development	21,79	69,24	8,97	-	8,97	71,80	19,23	-
10. Resistance to change	-	-	82,06	17,94	-	29,48	60,27	10,25

**Fig. 2- SRR – Characteristics of the management system**

Note: FM – Very High; MA – High; ME – Medium; R – Low

In terms of attachment to the institution, at manager level, 57, 69% of respondents believe that there is a high attachment, and the rest, that is 42, 3%1, considers that it is high:  
 Foarte mare – very high  
 Mare – high



**Figure 3. The attachment of managers to the Romanian Radio Broadcasting Society.**

On the other hand, 19.23% of the executers show a great attachment and 41.02% - a higher level, while 39.75% - only average. In terms of motivation and organizational culture, this positive aspect should be noted.

The sense of responsibility is an important characteristic of activity, which indicates the responsibility of the organizational staff, for their specific activities and also concerning the involvement at a higher level in the organization.

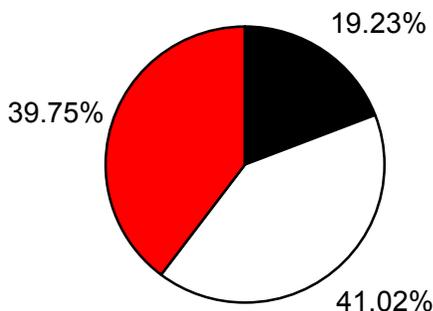
The values shown here are higher for managers: 53, 84% of respondents feel that sense of responsibility of the the managers is very high, while the other 46.16% see it as being high.

With regard to executers, there are lower values of intensity in the sense of responsibility, as follows: 8.97% of the executers are associated with the very high value, 61.55% with the high value, while 29.48% are credited with an average score .

The aspects listed above fall into the general situation, concerning the significantly higher accountability of managers compared to the executers in public and state firms in Romania. The incentive for effort and performance is one of the most important factors, ensuring the trigger for the energy and the creative potential of employees and the competitive development and performance achievement.

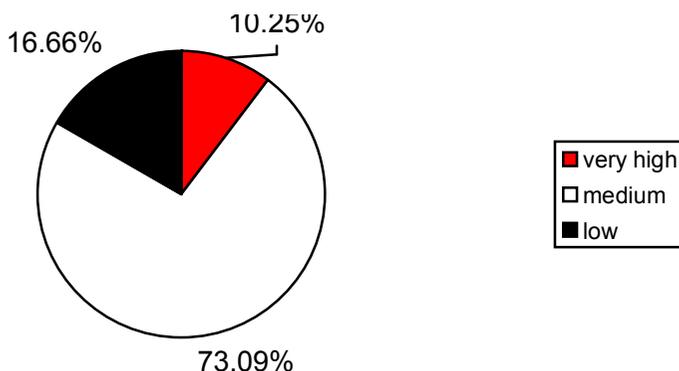
*The staff that was investigated believes that 19, 23% of the Society managers are very highly motivated, while 41.02% think that they only have a high motivation for their effort and performance. Another opinion is that of the 39.75% of the respondents which believe that managers only have an average motivation and, as such, there is much room for improvements in this area.*

As for the executers, the analysis has highlighted the following: only 10, 25% of them are



highly motivated carry out their duties, 73.09% have an average motivation, whereas for 16.66% the degree of motivation is low. As a result, the involvement of the executers may not be the one that is required, in which case it is a review of the motivation system is recommended, as well as intensifying preparations and reshaping the organizational culture.

**Figure 4. The attachment of executers.**



**Figure 5. The incentive for effort and performance of the executers of the Romanian Radio Broadcasting Society.**

The incentive for effort and performance - one of the most important factors, ensuring the trigger for the energy and the creative potential of employees and the competitive development and performance achievement- is regarded as very good or good for 60.25% of managers and 10.25% of executers.

The history of the Romanian regional public broadcasting has recorded an increased stability in the organizational life, a sense of belonging to the community, representing its interests.

Regional studios are anchored in the immediate reality of the social space that falls within their coverage area. The proximity journalism and the promotion of cultural values specific to this area are axes of interest to the regional public's expectations. The permanent connection to the social, political, economic, cultural novelty, and the supply of important information to citizens in due time, ensures the primacy of information and, accordingly, it increases the ratings.

It can be considered that the regional television belongs to the community, as it is framed in the terms of strengthening local communities and getting involved in maintaining the local identity and culture: "The local social issues and community news are the backbone of community television productions. *Community television* can be seen as a communication tool intended to strengthen the local culture and identity in a growing multi-media environment"(Casey, C., Casey, N, Calvert. B, French L, Lewis J, *Television studies*, Routledge, London, p.28).

Determining the number of shows in a week for each of the five regional local television stations shows the involvement in community life through the dissemination of public information.

Most programs are included in the TVR Iasi grid (131), as this is the studio with the longest airing time - 16, 5 hours / day. The second position is held by TVR Craiova, with 117 programs broadcast during 101, 5 hours. Although having different emission spans, TVR Cluj and TVR Timisoara air the same number of programs a week - the differences are related to the space held in the grid.

The main source of TV programs in a regional station is their own production, 50.8% of programs aired during a week are broadcast for the first time, while 33% are re-runs. A percentage of 16.2 includes programs undertaken from other TVR posts. The high percentage allocated to its own productions illustrates the fact that regional television is rooted in community affairs, trying to turn their attention to its coverage area. The Romanian television society has developed and supported a channel specialized in broadcasting broadcasts which reflect the regional spirit.

TVR 3 is the central interface of regional programs. Within each regional television station some programs are undertaken, sunsequently offering an integrative picture of regional conditions, the possibility of regional cultural knowledge as part of the national culture, a way of information and literacy with emphasis on regional specificities.

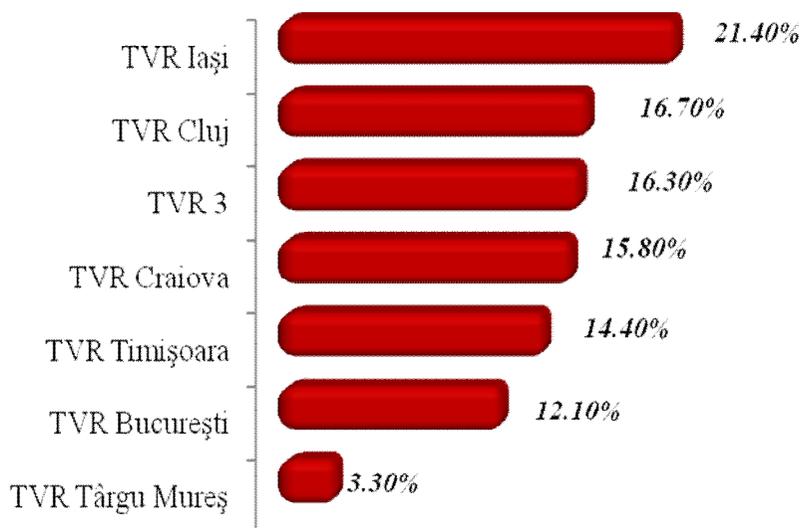


Figure 6. TVR 3

As a result of monitoring the TVR 3 program grid over a week, we find that most programs are undertaken from the TVR Iași, and from TVR Cluj - 16.7% of the programs belong to this regional studio. TVR 3 gives 16.7% of the airtime to its own programs (especially news programs). The smallest airing space is allocated to television programs from Targu Mures (3,

3%). This configuration shows the share of the specific local programs in the grid structure and therefore the visibility of each regional station.

#### **IV. Regional Public Broadcasting - horizon of expectation**

A radio or television station has two choices when addressing the public :

- To meet people's expectations and to make the most of it (knowing their preferences beforehand, through surveys),
- To try to change the public's expectations, to create a new horizon of expectation.

It is the duty of the public station to choose the second way: to create a horizon of expectation, knowing that private stations exploit the public's expectations. The private station can only inform, whereas the public station is bound to educate, even if this means the loss of ratings.

The public radio and television service should be considered from a historical perspective, it is the most important institution of democracy and it is based on a fundamental datum: that there is no society without communication. It is a social binder. Culture should be included in mainstream programs, it is a center of interest for regional public studios. In 1996, The Committee of Ministers in Council of Europe adopted a legal instrument on the guarantees of the independence of public radio and television and stressed that a public service also has the responsibility to ensure good regional communication. For example, in order to create the public's horizon of expectations, France Television Group increased its impact to the public by developing a program structure around major events and their analysis, by largely producing and distributing documentaries and sports events. They have created such a proximity offer and have developed a general offer. It is a perspective that places information in a favourable position, as well as education and the promotion of regional cultural, the golden trio of maintaining cultural identity in a world of multiculturalism and of ensuring a place in a unity within diversity.

#### **V. Culture and communication – the media product reception axis of loyalty**

An important role of the regional public audiovisual broadcasting is to create the spiritual bond with the communities surrounding the borders. It is the retrieval of the part in the whole and of the whole identified in the part. The content of programs specifically designed to support this feeling of belonging to a culture must consider two types of contexts that promote culture reception and its sedimentation in the collective mind.

Edward T. Hall has developed fundamental studies of anthropology which support the assertion "culture is communication and communication is culture" (Hall, 1984, 219). These studies are based on the research on the relationships between the individual, his environment and the other people on the one hand, and his perceptual and cognitive schemes on the other hand.

In his paper „Au delà de la culture”, Hall also defines two types of contexts, which generate two types of messages: " high context communication " and " low context communication ". Extending this classification we state that in the case of the regional audiovisual production with an impact in Romanian communities in the country and beyond its borders, high context messages must be advanced so that their recipients may be able to identify their own story in the high context of the message and to use their own grid of cultural selection (acquired outside the geographical area, but within the same cultural space) with the grid of the sender, as proficient exponents of the national culture.

"High context" leads to the "stability of culture". "Cultures that are born from high context communication act as a force of expression and cohesion, remaining durable and resistant to change" (Caune, 2000, 100). This helps preserve the cultural identity within globalization, thus an area and the regional media "voice" can be identified, advocating in favour of "being together with

..." and not just "being with ...", that is in favour of the emotional involvement amid a culture that is identified within a community space.

From our point of view this is an essential role of the regional audiovisual broadcasting, a prominent role highlighted in recent years, with an evident history during the last two decades.

The audience has proved that establishment journalism proximity and context of dramatization and elaboration messages are dense context and reception of information guarantees the primacy of reality, a social reconstruction, demonstrating the effectiveness of media.

Audiences have proved that proximity journalism and the establishment of a dramatizing context as well as the expression of high context messages are the guarantees of the primacy of information and of perceiving reality, as a manner of social reconstruction, hereby evincing media expedience.

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## ORIGINAL PAPER

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### Argeș County Cultural Press during the Post-December Period

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**Abstract:** *The present article analyzes literary press, which has become lately an object of study little exploited, probably because the investigation is more erudite than the critical commentary. Permanently it has preserved an unusual sensitivity to the great imperatives of historical time. Beyond the realm of literature itself, it continued to pay particular attention to defining the specific element in culture and not to dispose of people's aspirations. Literary press was not only the nourishing soil of literature, but also vast stage on which all the turmoil of national existence was cast.*

**Keywords:** *cultural press, post-communism, literary press, Argeș county, media*

A cultural magazine aims landmark, and also has the power to synthesize ideas and values to create opinions, to foster conditions or motivation for a viable hierarchy, even if it appears that the public interest to print media has declined in the last decades. Unlike newspapers, in culture magazines the message must adapt to a reader located in an uncertain time.

In this meaning, the word sent to a reader (about whose situation in time is limited because a magazine can be read upon issuance, but certainly it is also read later, it is read only fragmentary or browsed), especially needs to primarily preserve functions to restore a viable link. Cultural media is focused on emotive language and grows poetic function of speech.

Literary press has become lately an object of study little exploited, probably because the investigation is more erudite than the critical commentary. Permanently it has preserved an unusual sensitivity to the great imperatives of historical time. Beyond the realm of literature itself, it continued to pay particular attention to defining the specific element in culture and not to dispose of people's aspirations. Literary press was not only the nourishing soil of literature, but also vast stage on which all the turmoil of national existence was cast.

Media directly links us with the vivid movement of literature, with what is likable and detested, with tastes, prejudices and myths characteristics to each era. It gives us unretouched images, pictures of authors caught in the awkward gesture of onset, smile to the posterity of the winners of the ephemeral moment, the exchange of ideas and goodwill between the various aesthetic barricades, transactions, lamentations, prattels and nonsense, in short – everything which is glory and misery of literary life.

Press research releases us from the burden of our ready-made judgments, borrowed to earlier authors, which always give us processed facts, not facts themselves. By its terms, the past literature appears us before it has been classified, labeled and structured, as if we didn't know what followed, as if we were actual contemporaries, living among the unapproved values and unpredictable opportunities. Information that we gain, sometimes important, often insignificant, return us, by aggregating, their sense of daily life, so the atmosphere, the environment in which literature is born and unfolds.

Naturally, contact with a chaotic past, which has not yet defined the passable roads and uncultivated fields, involving danger of us getting lost. Looking too close we risk to mistake talent for mediocrity and loose ourselves in detail. As with painting, perspective is matter of distance, just after present turns in history, development lines outline their landscape and informal literary movement acquires a meaning. Yet nothing is more necessary for a serious literary history, which is not content to tremendous narcissism and want to discover (to the limit permitted to human powers) the real dialectical development, than to rely on a broad, as broad a accurate facts infrastructure.

As literary magazines are ideological points, always showing, even under the most eclectic appearances, a certain solidarity of interests, preferences and affinities, to reconstruct a picture of the literature development is tantamount to pursuing a dialogue between them (in time - from one generation to another, and space - from one barricade to another). For us, the specific weight of this dialogue is even greater than elsewhere, because the literary press, especially in the first half of the nineteenth century, has exceeded purely fiction. It fulfilled an eminently political and cultural role: it increased through all means the self-consciousness the Romanian people, it pushed it to engage in vibrating motion of history, to assert its personality and his way to an independent existence.

By 1860, the magazines were actually newspapers, containing literature, education, history and politics into a inseparable conglomerate. They compensate for the lack of other instruments of culture, centralizing some of the main ways of asserting the Romanian spirit. This

explains why, before literary history determined the research and the tools, yet in the heroic pioneering stage, leading scholars of nineteenth century have repeatedly stressed the exceptional importance of the literary press in Romanian society.

Convincing modes for conveying the written word have become more important than his power to establish links between the originator and receiver. In respect of culture magazines things are quite different, even if it exists the utmost care to communication channel. Illustration, layout, different ways of impressing the reader is still in the background, the text message is the essential key.

Often, emotional stress is situated in the connotative plane, the text establishing the emotional link with the reader by artistic thought or aimed at a mind prone to contextual analysis. By emotional effects, language proposes shorter routes to the reader and the poetic function of the message creates lasting effects, making these two attributes of communication to prevail in written culture media.

If it is news, background and circumstance place information in a plan not only for general interest, but also entertainment. But not only. As is known, the reportage has become a species of literature (by Geo Bogza for example), and short prose often resort to publishing reportage method. Authentic fact is converted into subjective writing both in notation reportage and in the literature reportage. But if the main concern of the journalist is to inform, then the writer is to transfigure reality in a truthful manner.

Artistic writing, even in the reportage, is clearly subjective by its details, in particular denotative, and uncovers in a fragmented way the author's mentality, education and complexes. Moreover, the literary writing is not obsolete, and it is able to generate aesthetic emotions that are not strictly related to the history in which the writing stems, essentially, a literary text is written for eternity.

The literary press is the prerogative, specifically of writers. But a culture magazine includes not only strict pages of literature (poetry, prose, essays, literary criticism), but other species such as synthetic article, short story, surveys, interviews, news, events, interviews, tablets, reviews, commentaries, editorials. All in one place aligned with the direction that magazine management imprints to the literary publication. This direction may have (and had, as we shall see further, in many cases) or not, a social impact. It may cause a literary fashion, and can decisively influence attitudes of an era - beyond literary frameworks - can create of trends which, sooner or later, may cause revolutionary changes of social system.

Events and moments that set a glorious literary tradition in Arges are connected to Ion Pillat' origins, printing of five issues of the journal *Kalende* in Pitesti, to Liviu Rebreanu' presence in Valea Mare, the birth of Ion Barbu and Tudor Musatescu in Muscel area, emergence of publications especially in Campulung, where Vladimir Streinu debuted as a poet and literary critic or to Curtea de Arges where Urmuz saw the daylight.

Motivations that led to the scientific approach of Arges cultural media history are multiple and justified. Except for a *Dictionar al presei argesene*, made by Ilie Baranga which appeared in two editions (2003 and 2005), in the context of local and national editorial landscape there are sporadic scientific concerns for analysis and presentation of Arges media from interwar period to the present.

It is known that there are two possibilities for analyzing any cultural phenomenon: inside it when the researcher has an insider status or outside it, through the eyes of outsiders. It is ideal to be able to reach halfway between the two, so that things can be understood by the uninitiated, and realistically observed by those inside the target group which need strong studies, substantiated scientifically, especially that in Romania there is not up to this time a full and

comprehensive volume devoted to media history of our country nor a special museum, providing information on this subject.

Recovery of the past literary journalism of Arges County is a unique and difficult step, because many publications collections were destroyed by the vicissitudes of time or are incomplete. Thus, I realized that what matters is the recovery of time, recorded as an act of saving what is left of media life of an area of major importance in the national publishing environment. Bringing into subject these observations, I outlined the main point of articulation in architectural thesis: if we want to discuss with respect we have to reconstruct and bring into present the passed cultural values, but also to lean more carefully on the contemporary. A strong argument was just the present especially that during the post-December period there was an exacerbated appetite for media consumption, which has made its mark on both cultural products and the reader profile.

Arges has known throughout its history over 400 publications, with longer or shorter period, all depending on the country's political and economic change. The first newspaper appeared locally was **Desceptarea**, political, literary and commercial newspaper (1876), which campaigned for mandatory public instruction, development of industry, women equality with men, emancipation of the Romanian people, **Salvarea**, political, literary and commercial newspaper (1876) has called for fairness and social rights. Other important publications were: **Cultura** 1878-1882), around which were grouped a number of intellectuals, **Muncitorul** (1883), **Țăranul** (1881-1884), among the first publications in the country to deal with the peasant problem, having as editor the young teach of Musetesti, Constantin Dobrescu-Arges, **Gazeta țăranilor** (1892-1931), who took his political program. Papers have appeared: **Piteșteanul** (1882-1883), **Curierul mărcilor poștale**, **Țândărică**, **Scorpionul**, **Facla Argeșului**, **Școala poporului**, **Viitorul satelor** and others.

In Campulung-Muscel the following publications were issued: **Vocea Muscelului** (1888), weekly newspaper which promised "to fight to remove sickness and enthronement of good" for the peasants, but also with economic information, **Drapelul Muscelului** (1888-1891), weekly which praised the Liberal government, **Viitorul Muscelului** (1905-1908), **Muscelul** (1907-1908), which address "people from our area", published new and old songs, legends, anecdotes and unusual but genuine faith, not manufactured, **Prietenul nostru**, led by outstanding personality in folklore Constantin Radulescu Codin, in which we find moralizing stories **Gazeta Muscelului** (1909), **Democrația Muscelului** (1912-1914).

Publications of literature and culture were, on average, 4 per year until 1900, and 10 per year after 1900, many with a brief experience. The first literary publication of Pitesti and also the most representative was **Țândărică**, released between February 23 and April 14, 1887. The editorial articles published in **Țândărică** ironize unscrupulous struggle for power. Newspaper published jokes, satirical epigrams, all signed with pseudonyms such as: Satan, Șantan, Grinduș.

As nationally, after the Great Union of 1918, the cultural life in Arges and Muscel intensified, a fact demonstrated by the appearance of a large number of cultural magazines. Media's role consisted more in spreading culture among people, this work being performed by teachers and educators.

Among the most important interwar publications in the current Arges county are the following: **Muguri**, **Prietenul nostru**, **Provincia literară**, **Literatură**, **poezie**, **artă**, **Cronica**, **Revista noastră**, **Solidaritatea**, **Facla Muscelului – Foaie pentru luminarea poporului**, **Argeșul**, **Avântul**, **Buna Vestire**, **Calendarul – revistă a gospodarului**, **Crezul nostru**, **Curierul**, **Curierul nostru**, **Dă-i cu bățul**, **Ecoul**, **Ecoul muncii**, **Episcopia Argeșului**, **Eroina**, **Gazeta argeșenilor**, **Gazeta tineretului**, **Glasul țării**, **Idealul nostru**, **Îndemnul**, **Junimea**, **Lumină**, **Muscelul nostru**, **Muscelul studentesc**, **Piatra Craiului**, **Presa**.

The present county of Arges, Campulung city was an important center for culture and media. Socio-economic and cultural development of Campulung and Muscel in the second half of the nineteenth century determined here also more and more the need for newspapers. Undoubtedly, the emergence of the press would not have been possible without the existence of cultural figures, which were abundant in Campulung, to create this release.

Cultural potency of Campulung and of Muscel is emphasized and over 90 newspapers, magazines, directories, newsletters, almanacs a.s.o. that occurred here between 1875 and 1950, last year representing the date when Muscel County was abolished.

The first publication was **Sama de administrație**, published in 1875 due to the Prefecture of Muscel need to publish data on instruction, worship, population, agriculture, postal services, roads, income and so on. Also in 1875 the printing house „Maria Gh. Sarbu” of Campulung, publishes **Calendarul perpetuum**, just as the title shows, is calculation of the Julian calendar and the moon phases. In 1886 the first specific newspaper appeared, **Muscelul**, it seems, political, but unfortunately was not preserved, as reported by **Familia** magazine on 29 June/11 July 1886 in Oradea. Thereafter multiply publications occurred, registering a range of periodicals, newspapers, magazines, directories, newsletters, financial exposure, almanacs, monitors and others.

A special place in our press of Muscel had **Muscelul nostru** magazine, Association of Teachers of Muscel. Association establishment was possible because of two normal schools in Campulung, one for boys and another for girls, of which over the years have left thousands of teachers, who dedicated his life and work of enlightenment and progress of villagers. The magazine director was Ion G. Nicolaescu, fourth president of the Association of Teachers of Muscel, the first three being Ion Mihalache, the founder of the Association, Ion C. Petrescu, and George G. Marinescu.

Pitesti city, together with Campulung has become an important press center between the two world wars. Among publications of Pitesti, we mention: **Lumina pentru toți – Foaie pentru popor** appeared in March 1930, published monthly by “Sfânta Episcopie a Argeșului” in Curtea de Arges. The magazine was published by the printing house „Română” Ștefan Voiculescu of Pitesti. It included a missionary page, household tips, examples for life, a section for health, religious-themed stories, prayers, advice, quotes and famous peak.

One of the magazines kept on „Dinicu Golescu” County Library is **Anuarul Eparhiei Argeșului**, in which cultural information is presented: religious books, cultural, literary activities supported by the church. The publication was edited by „Librăria și tipografia Artistica P. Mitu” in Pitesti.

**Buletinul Eparhiei Argeșului** was a Christian culture magazine and „Foaie oficială a Eparhiei Argeșului” who appeared under the supervision and with the blessing of His Grace Bishop IOSIF.

Also in the interwar period in Pitesti **Anuarul Liceului I. C. Brătianu** was issued, under coordination of the Ministry of Public Instruction, which in 1924 was published in Campulung by „Gh. N. Vlădescu și Fiul” printing house and library, in 1931 by „Tipografia Artistica P. Mitu” in Pitești, and in 1933, by „Transilvania” – I. I. Șreier”printing house. These publications contained information of secondary school, special education performance, school reviews, parts of the work of teachers and artistic cultural activities carried out within the educational institutions.

Kalende, monthly, literary and scientific, magazine appeared in Bucharest on 10 November 1928 to March 1929, led by a steering committee composed of Tudor Soimaru Vladimir Streinu, Serban Cioculescu, Pompiliu Constantinescu. Editor and administration were on Calea Victoriei, the Continental Hotel in Bucharest, and the magazine was printed in “Tipografia „Artistica” P. Mitu of Pitesti.

Some contributors have included: Tudor Arghezi, Tudor Soimaru, Vladimir Streinu, Serban Cioculescu, Pompiliu Constantinescu, Tudor Vianu, C. Radulescu-Motru, Dan Radulescu, N. Davidescu, Radu Dragnea, M. Ralea, Simion Stolnicu, Em. C. Grigoras, Paul Zarifopol.

On December 30, 1947, the Romanian People's Republic was proclaimed and the communist regime ended freedom of thought and expression, the activity of Arges culture magazines being deeply marked.

After 1990, local media has seen a significant diversification and increased number of publications. Thus, after consultation of *Dicționarului presei argeșene*, made by Ilie Barangă and of *Dicționarului presei literare românești*, owned by Ion Hangiu, we found that after 1990 and until 2003 93 publications were set up in Arges County, of which 75 only in Pitesti. Note that the number of cultural publications amounted to 14. After 1990 came the following cultural publications: **Argeș** (new number in 1990), **Cafeneaua literară** (January, 2003), student magazine **Juventus** (new number in 2003) and **7 seri** edition of Pitesti; **Calende** quarterly publications (cultural magazine founded in 1928, Bucharest, by Vladimir Streinu, Șerban Cioculescu and refounded by Miron Cordun, Nicolae Oprea and Calin Vlasie in 1991), **Buletin cultural argeșean** (formerly **Cultura**, cultural information and views magazine, 1998 - Sergiu Nicolaescu I., appears in January 2005); **Antarg SF** (2002), **Restituiri** (quarterly journal of Armand Calinescu History Club), **Agora**, **Satul natal**, **Argeșul pe rime**, **JAR-Jurnal Artistic Rebreanu** (journal of „Liviu Rebreanu” literary circle, with onset in 2004 ).

Press up to December 30, 1947 had accustomed the reader with well-defined programs, disclosed, usually by a printed text in the first issue of the publication, on the first page. Later, of course, the program announced grandiously was not respected, media following up earthly distinctions of promises and reality. However, to speak of a program, if only declarative. Related to literary and artistic sheets the program gave way to ambitions of separate existence of a literary and artistic group. If the publication declared itself independent, the article exposed lines of action undertaken by the owner or manager, equidistant from political combatants, to place it at the reader's service, heading towards democracy.

Publications after the Revolution are not lacking programmatic articles. On the contrary, especially in the case of immediate post-Revolution publications, the need to bring up the program is more than obvious. Newly established journals are hardly tested by the need for justification of appearance: why such a title, who we are and what we want, how we are different than others.

One can meet indeed, in the publications of the first months of 1990, in particular, program-articles, but it's not programmatic articles in the true sense of the word. Texts with such claims are strikingly similar in the infinite reiteration of several blocks which, moreover, belong to immediately post-December period: denunciation of preceding period by strongest terms: odious dictatorship, criminal regime, sinister couple, cold, starvation (Ceausescu name, the Romanian Communist Party name are written in small letters); enthusiastic welcoming of the new times, singing and worshiping of December Revolution of 1989, polemics about the oppression of the media in previous years (programmatic article reveals how much the editors had suffered, especially chief editors, under dictatorship) solemn pledge to do, finally, a real press, brought into the nation service.

Virtually, all cultural magazines are in politics. Each piece has an editorial. Also, literary productions or articles of literary criticism and history are printed. Creations themselves are made, usually into previous persecution. Living authors, some even prosperous during the former regime, republish prose and poems, some claiming that they had been chopped by chopper censorship, a metaphor, preferred by many authors.

Politics runs the numerous confessions taken from magazines written more or less in secret during the years of the dictatorship, confessions about the suffering endured by some

authors, but also promoting a new hierarchy of values: some second-hand writers, are glorified, because they would have been marginalized or even dissidents and others, really important, are pushed on the background, under the pretext that they were collaborators.

Before 1989, the Romanian written press, as the entire media in Romania had as editor the Romanian state. Nothing is published without strict control of the totalitarian power through specialized bodies of the Central Committee. After the revolution of 1989, Romanian journalists were faced with a freedom they didn't know what to do with. It is true that they must operate in a fragile society in which the press has fulfilled throughout the year 1990, the role of substitute for the different structures absent of Romanian society: a power substitute, an opposition substitute, a substitute for a weak and inefficient justice.

Whatever role the media played in the Romanian society, in 1990, Romanians have shown "greed" in terms of post-revolutionary reading. It was a time when a reader read several cultural journals, some of them had collected with great frenzy. Computer layout, page conversion in a small screen and information diversity that was something new compared to communist propaganda delighted the reader.

It is true that people are not reluctant to express opinions on matters which they know very little. This is true for post-revolutionary cultural media, in search of new directions. It was a training period of a pluralistic press and each acted as conscience dictated. The researcher Paul Marinescu said that how many parties would be returned to the Romanian people after revolution it have left the communism, mentally, poor. This was effective in all the Romanian society structures not only in media segment.

It is true that plenty of messages does not mean from itself a better information, but one that gives the feeling of non-cultural marginalization; but this was a good thing because the Romanians were able, after many years of forced media reading, to choose what they wanted to read or if they wanted to read something. Comparing with what was happening before 1989, it was a huge step for the Romanian people.

Researcher and writer Mihail Octavian Sachelarie believes that local media is neither better nor worse than the national, „the modern style, no help to inform and educate the public and lack of cultural events in newspapers eliminate one of the media' functions of public education and literacy”.

Although major European journalists as domestic ones considered local press did not operate in the same correlations as the one in major cities of Europe, namely of the country, notes, seeking information about old publications published in various regions, both of Romania and other countries, and testimony about old publication from diverse regions, that they form a "whole" with the great and important national and international publications. An interesting point, observed by the great professionals of media phenomenon is their tendency to trade and transformation of unprofitable cultural institutions into profitable economic institutions, with adapting to the requirements of a wide public. But the public is not homogeneous as demonstrated; therefore marketers adopt new strategies for publishing and marketing of the perishable product – „information”. Hence the trend of increasingly large new market appearance of specialized publications on a specific audience.

Razvan Theodorescu has made an objective characterization of the press of Arges, which deserves to be reproduced at the end of this analysis: “The Arges media is the space of correspondences, the meeting of literature with arts, social, economics, civilization. Magazines printed in this cultural area constitute the keeper of experiences and destinies, forms and images of Arges and national world, which seem to complement each other, reinforcing and maintaining the differences, while proposing an art of dialogue coming out of the boundaries of what is devoted to journalism.”

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## ORIGINAL PAPER

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### The world seen through a lens. Copernican perspectives in modern television

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**Abstract:** *In this article we analyzed the structure of modern television, through its similarities to Copernican world. The point of view we based on consists into the following elements: Copernican system and modern journalism rely on what is hidden by observer and human eye; the `object` of both is independent by observer and journalism (the opposite is available too – the observer and the journalist claim to be independent); the Copernican and the journalism system are both dependent by the mediation of techniques, which it means the reality is interpreted through an object and not directly. We show in this article how television changes in practice these similarities and built its own world in itself. The mediation of television technique transformed the way we see the world and the reality.*

**Keywords:** *Copernican world, modern television, independency, technique, mediated reality.*

On the year 1533, the German jurist Johann Albert Widmanstadt was explaining the Pope Clement the 7<sup>th</sup> the principles of Copernic theory upon planetarium system. That took place into those nice gardens of Vatican, during a nice walk of both personalities. We would expect of a vehement reaction of the Pope, but instead of this, the later is highly relaxed, listening carefully and totally absorbed by such theory. We would imagine, furthermore, that the persuasion used in explaining the theory to Pope contained a very modern tool, not because it is pre-established, but it is also open to any new perspective, if a new premise will be asserted. In brief, both were aware of nothing is definitively closed due to Copernic's vision, even thins theory seems to be astonishing and absolute<sup>1</sup>.

What is the connection between Copernic's theory and the structure of 21<sup>st</sup> century television? We sustain here a hypothesis that combines structural elements that had linked these two centuries (the 21<sup>st</sup> and the 16<sup>th</sup>): the Copernic's theory is formed literally behind the lens, as same as the (tele)vision in nowadays, which is given through motion picture camera, which has its self a lens, but more complexly due to its implication, on the one hand, of journalist, and, on the other hand, of viewer (or a distant viewer, a tele-viewer, accordingly to the Greek word τήλε, distant). And of course, the constitutive elements of analogy are several<sup>2</sup>. Among them we mark out the followings:

First of all, it is explicit for all that there is a analogy between Copernican pointing investigation to hidden reality and `indiscretion` of motion picture camera or picture camera, which both intermediate between the inquisitive eye of viewer, greedy of finding secrets of any nature, and the distant(*tele*) `reality`.

Second of all, the Copernican's objects of theory and those of journalism are both (apparently) sitting of the fence. If the Copernican perspective keeps its object isolated, exterior and independent by the observer, no matter what it would bring, then it corresponds to modern journalism (television), where the object pointed by camera is never completely assumed, even it has an explicit video-morphic structure, who would allow the journalism to be seen analogically to acting (in movies, theatre etc.). Thus, motion picture camera `looks` at the specific time exactly when its object lies into paroxysm, into the edge of the existence, but in a mood that is very important to the watching eye. The object of journalism has been made accordingly with its own image of the TV display.

Third of all, the Copernican system had built the possibility of stepping into the era of mediated reality, by technique, different tools and instruments. In this view, Copernic symbolises now men's mediated sight. Similar, men, as observer, or the TV viewer lose their direct judgements in front of the mediate ones.

Forth of all, for the sake of objectivity, the Copernican system asserts that men is not in the centre of the Universe, or the stars changing their position, while other stars may vanish or appear (considered before Copernic an optic illusion), thoughts congruent with the fact that human subjects of modern television would be free – isn't it? – in their motion, even when nothing happens (as TV reality shows which display daily life of a popular family).

Copernican revolution allows the sight a residual function. Similar, although the distant viewer has based on sight, the later is a small part of a wider frame. He does not see as an expert, but as an individual who admits<sup>3</sup> from beginning the fallen of importance of sight. He does not observe the object, but the way of how it is seen by the cameraman, or journalist. The later is similar to an androgynous organism (its originary part is recovered through technique) of modern world. Providential, Copernican, new ageist, technical, in short, heterogeneous, he abandoned his self in the `modesty` of the lens, an object used to be blamed when talking about an undesirable reality. The journalist does not assume the role of mediating the sight, but the role of mediating – in an objective manner – the reality. Such reality is profoundly marked by motion picture camera,

as a reality of reality, a `true` tautology deep to its last nuances (and of course, it is difficult to see such nuances). The high speed circulation of the information is made today on the pretext of duplicating the reality. This information not only is sent through huge distances, but it is also mediated by technique and journalists, and this leads to well-known conflict of media objectivity. The circuit Television – Civic sphere (whatsoever evasive sounds) is almost in total a unidirectional circuit, the vector of circulation of ideas, values, judgements etc., is pointed from the media to consumer. Current usage of language is a clue on this state of facts – the media occupies a main place in our (global) life, as a vast amount of expressions found in any language shown. In Romanian, for instance, there can be found expressions such as `The *episode* happened 25 years ago`, or `The *story* happened 25 years ago`, or `The story was *playing*<sup>4</sup> 25 years ago`, or `The things are seen on a good *light*<sup>5</sup>.

Regarding the state of consciousness and its intentionality, the big change of `public sphere`, due to the way of practicing the journalism, is given by the `aestheticization` of the intentionality, as the later would have an aesthetic function on a photography or on TV display. Thus, we have to deal nowadays, for the first time in history, with a photographic perception of the world and of the self, whereas the static imagine controls our reality and projections. For this reason, it is little wonder that we see today such a success of so-called social networks, where these static imagines communicate between them.

The analogy we displayed above asserts, as we asserted already, on the mediation of those relations by a technical structure (telescope, motion picture camera etc.). In contrast with Copernic's *spirit*, in journalism the reality is – or it seems to be – ultimate. The Univers is *similar* to its images, and the the image of our world is the image of motion picture camera<sup>6</sup>.

On a philosophic basis, the implications found here lie from the followings: space and tautology (duplicating reality) items.

First of them comes from the state of relation between telelens and TV display, which are connected almost symbiotically, the clue is the fact that nothing changes when the image travels across the distances. The TV display is a reality itself, namely a *tele-visual* one, where the distance finally is denominated. Consequently, we are able to speak here about an overlapping of *here, there, somewhere* etc. The Iraq war, broadcasted by all world televisions, it is a war located *on the rim of the world*, totally off the map, for all of us. The television delocalises the reality, getting the spatiality of the latter. The Iraq war happens<sup>7</sup> *there*, namely *nowhere*.

The passive viewer's perspective<sup>8</sup> leads to idea that the viewer is not complementary to a specialist, due to his condescendence to `brains` and `experts`, who are able to think. The viewer (*tele-viewer*) – for instance the Romanian viewer – had abandoned himself in the reverence to specialists. Whatever we may think, the ordinary viewer is fixed (by spatial coordinates) and he spend his life into the limits of his family. The general anomy makes himself to build his own universe (the family), which excludes all critics. Thus, consequently, it may claim that the denomination of space (from the televisions) is analogical, in a sort of way, with geographical denomination of viewer, as long as he is isolated himself into the private sphere, an illusive space, mobile, indefinite<sup>9</sup>.

Nevertheless, what interested us here is not the anthropological perspective, used in television, but the implications of the second item from above, of the tautology display-reality, namely duplication of reality. This so-called identity between facts, is given here not by anthropological, or psychological hypotheses (of viewer's state of total expectancy), but it results from the *way of being* of human individual during the time he is filmed. It is well-known the fact that any person changes the behaviour in from of a camera. We do not speak here about a behaviour associated with a role, but a *filmogenic* behaviour, whose main attribute is the ultimate absolutism. In front of a motion picture camera, human acts as a simplified being (in a negative

meaning), going up to the ultimate state of being final. To represent better the image of such ultimate-being, we refer again to the anecdote from the beginning, where the jurist Widmanstadt explains to the Pope Clement the 7<sup>th</sup> the theory of Copernic.

Considering this, but adding an imagination exercise here, the anecdote could have another aspect if it was `assisted` by a camera: the religious head of Christianity either would be extremely formal, either he would lost himself into an ultimate mood of being, where everything is lost and nothing can be made.

In these two hypotheses, both associated with ultimate absolute state of being, as long as the formalism normally is a delay of the absolutist final mood, we recognise that the man has lost his time, his space, gaining instead of this one *last* (final) chance to tell your story and to be judge for it by the `public opinion`. This single chance is structural built around the conflict between (*tele*)localism, used by camera (as long the *story* happens in a determined space), and the temporal dimension, which requires a specific length in time and a complex chain of events.

This conflict makes the human being to act not by his relation with the natural state (walking through the garden and trying a better understanding of the theory), but instead it makes the individual to act irrational, impatient etc. No doubt, considering the relation between the motion picture camera (or journalist) – individual (the subject of the camera) – viewer, it is probable to exist interferences and interdependences: the camera takes to its subject the space horizon, offering back to him the space (even a contextualised one); the human subject may reject the localism to the camera through formalism<sup>10</sup>, but he borrows instead the immanency (the individual, who used to be a transcendental one, able to empathize and to have a projective thought, becomes barred into localism, contextual time of filming, helpless in transcending his locks); the third `element`, the viewer, takes passively his `reality`, using it in a manner proper not to him, but to the camera (or to the display in this case) and he ends up into simplicity, reduction to nothing of everything (a specific form of relativism).

The viewer becomes gradually the passive actor, the consumer, who transforms himself into what he eats, namely into *that reality*. Once the game settled, he feels he has no choice then changing the reality. But he can do this only if he get into another reality, if he changes the channel. He thinks he is a sort of king with a powerful weapon: the remote control. Ultimately, he learned from TV he is the master as a master consumer. And he is right. The remote control is a weapon, but with a single real button. Which is...

#### Notes:

<sup>1</sup> the anecdote can be also found on Blumenberg, Hans, *The Genesis of the Copernican World*, The MIT Press, Cambridge, Massachusetts, London, England, 1987, p. 125.

<sup>2</sup> We do not intend to claim that the analogy here is at the same time a genealogy, displayed historically by some certain elements; we only remark that some correspondence points between modern journalism (television) and the vision which influenced modern time started with Copernic; if someone intends to attend the genealogies between the journalism and any other instance, see Negrea, Xenia, *Arhetipul renasterii in imagine publicitară. Studiu de caz*, în: *Revista de Științe politice*, nr. 27, 2010.

<sup>3</sup> the shape of a given imagine of TV as a final imagine in spectator's point of view and understanding the role of the sight as secondary does not consist into an paradox, as long as a distant TV viewer admits does not criticize *what he sees*.

<sup>4</sup> The Romanian expression `a se derula` refers to a situation as it would be *recorded* by a viewer, and for this reason the verb `a derula` in Romanian expression is analog to the verb `to play` (a video cassette) in English.

<sup>5</sup> similar to the light of camera, or the one of a movie's scene.

<sup>6</sup> Cf. Adorno, Theodor, *The Culture Industry, Selected essays on mass culture*, Routledge, London, 2005, pp. 165-170.

<sup>7</sup> In contrast with this, claims a well-known theory, if the war takes place next to us, then we are aware of it. The consistency of the space goes up in direct ratio to our care about us (not about *them*).

<sup>8</sup> See Sartori, Giovanni, *Homo videns. Imbecilizarea prin televiziune și post-gândirea*, Editura Humanitas, București, 2005.

<sup>9</sup> Cf. Kracauer, Siegfried, *The Mass Ornament*, Harvard University Press, 1995.

<sup>10</sup> The formalism or wooden language can be both seen as a evidences of delaying.

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## BOOK REVIEW

**Claudia Maria Udrescu, *Universitate și politică în România postcomunistă (University and Politics in Post-Communist Romania)*, București: Editura Universității din București, 2011, ISBN 978-606-16-0013-7, 272 pages**

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**Claudia Maria Udrescu, *Universitate și politică în România postcomunistă (University and Politics in Post-Communist Romania)*, București: Editura Universității din București, 2011, ISBN 978-606-16-0013-7, 272 pages**

“Is education a priority for post-Communist governments?” professor Claudia Maria Udrescu, Ph. D. asks herself in the introductory part of her book *Universitate și politică în România postcomunistă (University and Politics in Post-Communist Romania)* published at the University of Bucharest Publishing House in 2011, part of the publicly defended doctoral thesis *University’s politics. University politics in post-Communism*, thus clearly indicating the efforts to identify the role of the University and of education policies in the transition towards democracy as the key in which one should read this excellent paper.

The volume is a thorough analysis of the manner in which politics penetrates the realm of

education through its elites, an aggregate portrayal of the relations between politics and university in Romania since the fall of communism polarised on three levels of analysis: “*the University*”, “*the Political Elites and the University*”, “*the State and the University*”.

The first chapter *Political elites and university* is dedicated to the investigation of the relations between political elites and education, with a specific accent on the Romanian postcommunist parliamentary elite training and specialization and the relation between professions and political career. In order to answer the research question regarding the degree of education of the Romanian post-Communist parliamentary elites, the author engages into a complex research on the profile of the Romanian post-Communist political elite using as indicators the level of studies, the field of studies and the university graduated by members of parliament for each of the five legislatures 1990-2008. The idea according to which the “*university career legitimizes the political career*” (p. 11) stands at the basis of the analysis of the “*academization of the parliamentary elite during the post-Communist period*” phenomenon (p. 12).

In the second chapter *Who rules (us/our university)?* the author combines elements of qualitative and quantitative research in order to thoroughly analyse the transition from the academic career towards the political career. Moreover, the author carefully explores the valencies of the concept of “*academization*” in order to create a model of analysis on the migration phenomenon of politicians in the university field (p. 100). The research is guided by the research hypothesis launched at the beginning of the chapter according to which “*the University of Bucharest represents a recruitment pool for political parties during the post-Communist period*” (p. 91) which further suggests political career as a new option for the academia career (pp. 94-97). The points of interest of the research include the analyses of the recruitment process of the new elites by political parties, of the profession or competences necessary to ensure the success of the academia in the political career, and of the precise moment in the university/political career in which one makes the transition towards the other type of career through the use of the *capital of university power* indicators, the *capital of power and scientific prestige* indicators and the *capital of*

*political or economic power indicators (pp. 97-146). Thus the author found necessary the launching of a second research hypothesis which claims the existence of the reverse migration process because of tradition, consolidation of position or civic spirit, or in the authors words: "university professors become involved in politics for the following reasons: a) tradition (mainly observed during the interwar period), b) trend (especially after 1992, when politicians receive chairs in private universities or in extensions of state universities in towns with no university tradition), c) critical spirit put in the service of the problems of the city (in the case of university professors with no political affiliation with consulting functions)" (p. 99).*

The relation between the State and the University is objectively depicted in the third chapter in which the author presents the results of an accurate research on the regulating process of the higher education since 1912 until 2011 on two pillars: on the one hand, by building a framework to the university autonomy and organization, and the didactic position, and, on the other hand, by trying to assess state's and the political parties' involvement in the adoption and implementation of public policies addressed to education.

As an alumni of the University of Bucharest and as a researcher interested in the relations between politics and public organizations/politicians and public managers I found in the present volume a critical and coherent contribution to the research on the politics-university relation and recruitment/migration of political and academic elites. This well-documented research is in fact a statement on the mechanisms and incentives which explain the *academization* of the parliamentary elite and the access to power of the academia. It is a crucial step forward for the research on the University-politics relation in post-Communism, a time marked by the efforts to shed light over a difficult question: *"Is education a priority for post-Communist governments?"*

**Cătălina Maria GEORGESCU**