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Romanian Presidency of the Council of the European Union: Romania's Environmental Mission and Priorities

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Abstract: As holder of the Presidency of the Council of the EU, Romania will act as a true impartial mediator to generate solutions in view of advancing the European agenda. During its presidency of the Council of the European Union, Romania will act in a coordinated manner within the Trio of Presidencies along with Finland and Croatia, while ensuring continuity with the previous Trio in achieving the goals undertaken within the Strategic Agenda. Romania's taking charge of the Presidency of the Council of the European Union comes with a series of obligations for our country as regards the coordination of European actions to protect the environment, the Romanian Presidency having as its main objective the European citizens as both source and beneficiary of the European action, with their own aspirations and concerns; Romania is aware of its status of a transition presidency between two parliamentary terms, during which complex files will be discussed.

Keywords: Presidency; environment; European project; environmental mission

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As holder of the Presidency of the Council of the EU, Romania will act as a true impartial mediator to generate solutions in view of advancing the European agenda. During its presidency of the Council of the European Union, Romania will act in a coordinated manner within the Trio of Presidencies along with Finland and Croatia, while ensuring continuity with the previous Trio in achieving the goals undertaken within the Strategic Agenda.

The Romania, Finland and Croatia Trio will work together to set long-term goals and draw up a common agenda. Based on this programme, Romania will prepare its own agenda, a more detailed one, for the first six months of the trio. It is a unique opportunity to influence the EU agenda and guide the Council's

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efforts. The Ro2019 agenda will be drafted with the help of the General Secretariat of the Council, while also consulting the European Commission.[1]

2019 will conclude a chapter of the European Union and mark a new stage of the European project. Romania will take over the Presidency when it will have to officially put an end to the Brexit chapter (the UK's exit from the EU – 29 March 2019), as well as organise the elections for the new European Parliament (23-26 May 2019) and starta new chapter in the relaunch of the European project, and all these issues are believed to also have an impact in the vicinity of the EU, where 2019 comes with presidential elections in countries dominated by political instability.

Aside from these main priorities, there are secondary priorities that can be continued after the end of this mandate, as they are not intrinsically related to the Presidency (e.g. Green, sustainable and safe energy • Maintaining a united EU • Creative Europe and entrepreneurship).

The drawing up of the work agenda of the Romanian Presidency starts from the conviction that any vision of the future must be built around the main principles that have guided the evolution of the European Union over time.[2]

The priorities of the Romanian Presidency can be classified under four pillars of action: Europe of convergence, a safer Europe, Europe – a stronger global actor, and Europe of common values.[3]

Europe of convergence has four goals: growth, cohesion, competitiveness and connectivity. We consider that it is only by convergence and cohesion that we can ensure sustainable and fair development for all European citizens. All of these are essential to promote a united Europe and to enhance the competitiveness of the European Union worldwide.

The pillar "Europe of convergence" includes climate change and environmental protection. Given the European and international agenda, as well as the national context, the Romanian presidency will focus primarily on climate change, sustainable development, biodiversity and water management.

The European Union's environmental policy has become increasingly comprehensive and closely related to the other policies of the EU. Bridging gaps between Member States and the EU average in ensuring the transition to a circular economy, including through the investments of the cohesion policy in the waste sector, is a central aspect of the citizens' needs and expectations.

The EU has become a global promoter of sustainable development, as well as a leader in meeting the long-term goals of the Paris Agreement. The EU will ensure the move towards a low-carbon economy. Its priorities also include the endeavours to ensure the quality of drinking water, the efficient use of water resources and the promotion of biodiversity. Environmental and climate change policies shape Europe's future and new development trends, all of these priorities contributing to improving the quality of European citizens' lives.

Implementing the Paris Agreement[4]

The Romanian Presidency of the Council of the European Union will continue to promote the EU agenda in the area of climate change and contribute to implementing the Paris Agreement.

[1] http://www.europuls.ro/wp-content/uploads/2017/11/GhidRO2019-Final.pdf.
[2] https://www.romania2019.eu/wp-content/uploads/2017/11/ro_program_ropres2019.pdf.
[3] https://www.consilium.europa.eu/ro/council-eu/presidency-council-eu/.
[4] The Paris Agreement is a global climate change agreement reached in Paris on 12 December 2015. The agreement presents an action plan to limit global warming "well below" 2°C. It covers the period starting with the year 2020.

The efforts will focus on a sustained, coherent dialogue that will contribute to outlining a common vision within the EU as regards a long-term strategy, encouraging actions in the area of climate change and a sustainable transformation of the economy.

With regard to the legislative dossiers, the Presidency intends to complete the negotiations on the proposal concerning the setting of CO2 emission standards for new heavy-duty vehicles, a proposal meant to support Member States in reducing road transport emissions. In addition, the Romanian Presidency of the Council of the European Union will make the necessary efforts to advance as far as possible with the negotiations on the legislative proposal on monitoring CO2 emissions in the maritime sector. The Presidency will coordinate the active participation of the EU and the Member States at the Bonn International Negotiating Session (17-27 June 2019).

The Romanian Presidency will also focus on preparing the European Union's position for the Bonn International Negotiation Session in June 2019.

Climate change is a reality that cannot be denied. Last year was the third warmest year since 1901 to date. In Romania, the average air temperature in 2018 was 11.57°C, the third highest value since 1901 to date, according to the meteorological records of the National Meteorological Administration. The average air temperature in 2018 exceeded the current climatological norm – themulti-annual average of 1981-2010 –by 1.35°C.[1]

If we look at the list of the ten warmest years in the period 1900-2018, we can see that nine of them belong to the period 2000-2018.

Sustainable development[2] – implementing the 2030 Agenda for Sustainable Development[3] and enhancing the environmental dimension of sustainable development.

Romania will pay particular attention to the implementation of the 2030 Agenda for Sustainable Development[4] and the strengthening of the environmental dimension of sustainable development, the promotion of which is a general objective for the EU and the Member States.

The Presidency will coordinate the active participation of the EU and its Member States at the 4th UNEA4 – United Nations Environment Summit, to be held in Nairobi on 11-15 March 2019 under the overarching theme "Innovative Solutions for Environmental Challenges and Sustainable Consumption and Production".

The Romanian Presidency of the Council of the European Union will have the opportunity, together with the other Member States, to promote the Union's vision on sustainable chemicals management, as

[1] http://www.ecologic.rec.ro/articol/read/politici-economie/17465/.
[2] "Sustainable development is the development that aims to meet the needs of the present, without compromising the possibilities of future generations to meet their own needs".
[3] Romania joined the 193 UN Member States at the Sustainable Development Summit in September 2015, adopting the 2030 Agenda for Sustainable Development, a global action programme in the area of development promoting the balance between the three dimensions of sustainable development: economic, social and environmental. For the first time, the actions target both developed and developing countries.
[4] The 2030 Agenda is based on the 17 Sustainable Development Goals (SDGs), informally known as the Global Goals. They are: No poverty; Zero hunger; Good health and well-being for people; Quality education; Gender equality; Clean water and sanitation; Affordable and clean energy; Decent work and economic growth; Industry, innovation, and infrastructure; Reducing inequalities; Sustainable cities and communities; Responsible consumption and production; Climate action; Life below water; Life on land; Peace, justice and strong institutions; Partnerships for the goals.
Based on the Global Goals, an action agenda for the following 15 years is established, in view of eradicating extreme poverty, combating inequalities and injustice and protecting the planet by 2030.

well as the chemicals/waste interface at the meeting of the three COPs to the relevant Conventions (Basel/Rotterdam/Stockholm), to be held in Geneva from 29 April to 10 May 2019.[1]

The Presidency will coordinate the representation of the EU and its Member States at the 17th session of the Committee for the Review of the Implementation of the Convention to Combat Desertification (CRIC), which will be held in the Co-operative Republic of Guyanain January 2019.

Furthermore, the Romanian Presidency will start preparing the EU's position for the participation of the Union and its Member States at the 14th Conference of the Parties to the UN Convention to Combat Desertification.

Biodiversity

The Romanian Presidency of the Council of the European Union will promote the valences of biodiversity both at European and international level. Ensuring adequate funding of the measures aimed at protecting biodiversity is an extremely important element for meeting the EU goals, as well as the relevant goals under the Convention on Biological Diversity (CBD)[2] and the 2030 Agenda.

Given the importance of programmes to support biodiversity and combat climate change, another important aspect on the Romanian Presidency's agenda is the advancement of the negotiations for the LIFE programme in the context of the Multi-annual Financial Framework 2021-2027.

For Romania, the protection of biodiversity is extremely important also because 23% of our country's surface area is occupied by nature protected areas within the Natura 2000 network.

Based on the results of the 14th meeting of the COP to the Convention on Biological Diversity, the Presidency is to facilitate a ministerial debate on the consolidation of the biodiversity action plan for the post-2020 period, taking into account the challenge of achieving the Aichi Targets[3] and the need to do more in this area.

In addition, a conference on large carnivores will be held in Bucharest, to highlight the importance of the representative species on our territory and their conservation needs.

The Presidency will coordinate the active participation of the EU and its Member States at major international meetings to be held in the first half of 2019, including the 18th Conference of the Parties to CITES (Sri Lanka, 23 May – 3 June 2019) and the 7th plenary session of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES, France, 29 April – 4May 2019).

[1] https://www.romania2019.eu/wp-content/uploads/2017/11/ro_program_ropres2019.pdf.

[2] The Convention on Biological Diversity (CBD) is an international agreement adopted at the Earth Summit in Rio de Janeiro in 1992. It has three main objectives:

- conservation of biological diversity;
- the sustainable use of its components.
- the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

[3] The Strategic Plan for Biodiversity 2011-2020 includes 20 main targets for 2015 or 2020 ("Aichi Biodiversity Targets"), organised within five strategic goals. The goals and the targets include both: (i) aspirations for worldwide achievement; and (ii) a flexible framework to set international or regional targets.

Water Management

The Romanian Presidency of the Council of the European Union will focus its activity on advancing negotiations on legislative dossiers on water reuse and drinking water quality. The efficiency of water reuse and the high quality of drinking water will contribute to the European Union's achievement of the specific Sustainable Development Goalsin the context of the 2030 Agenda.

The Drinking Water Directive[1] is one of the most important instruments for ensuring the quality of drinking water in the European Union, and Romania considers it a priority to ensure a high level of protection of the environment and human health from the adverse effects of any contamination of drinking water. Romania considers that the legislative proposal will establish a common approach at EU level by introducing minimum standardisation requirements, as well as clarity, coherence and predictability for operators that wish to invest in wastewater reuse under comparable regulatory conditions.

The advancement of negotiations on this dossier in the Council of the EU is a priority for the Romanian Presidency, which will hold a political debate at the Environment Council in March, possibly attempting a general approach at the Environment Council in June. On the other hand, another priority for the Romanian Presidency will be the adoption of the Council Conclusions on the Special Report by the European Court of Auditors concerning the implementation of the Floods Directive, in the context of the overall assessment by the European Commission on the water regulatory framework.[2]

The implementation of the Strategy for the marine environment[3]and the measures taken to protect and conserve marine biodiversity are essential to achieving good environmental status in Europe's marine regions by 2020. One of the most significant threats to the quality of water and the marine environment, namely plastic and microplastic pollution, will be a topic of debate at the Informal Environment Council.

In addition to the above-mentioned dossiers, the Presidency envisages to complete the negotiations with the European Parliament for the proposal for a regulation setting CO2 emission standards for new heavy-duty vehicles,[4] as well as to finalise important legislative dossiers: the proposal for a regulation on the LIFE Programme and the proposal on the reporting and verification mechanism of the CO2 emissions

[1] The Drinking Water Directive establishes quality standards for drinking water in the EU for 48 parameters to be monitored and assessed regularly by the Member States.
On 1 February 2018, in response to the European Citizens' Initiative "Right2Water", the Commission published a proposal to renew the 20-year-old Directive. The recast directive would update the existing safety standards and improve access to safe drinking water in accordance with the latest World Health Organization recommendations. In addition, it would increase transparency for consumers with regard to drinking water quality and water supply, thus helping to reduce the number of plastic bottles due to increased trust in tap water. An EU-wide risk assessment of water safety should help to identify and address the possible risks to which water sources are exposed as early as the distribution stage.

[2] https://www.agerpres.ro/politic/2019/01/11/romania2019-eu-denes-managementul-apelor-o-prioritate-pentru-presedintia-romaniei-la-consiliul-ue--239846.

[3] It is the environmental pillar of the EU's Integrated Maritime Strategy (IMP), established to enhance the sustainable development of its maritime economy, while also protecting its marine environment. The goal of the framework directive is to reach good environmental status of the EU's marine waters by 2020, to continue the protection and conservation thereof and to prevent their subsequent deterioration.
It establishes the European marine regions (the Baltic Sea, the North-East Atlantic, the Mediterranean Sea and the Black Sea) and their sub-regions within the geographical borders established by existing conventions on regional seas. To achieve good environmental status by 2020, Member States must draw up ecosystem-based strategies for their marine waters, which are to be reviewed every six years.

[4] It is hoped that from 2030 onwards new cars should emit 37.5% less CO2 and new vans should emit on average 31% less CO2 compared to 2021 levels, in accordance with an agreement recently approved by the Member States. Between 2025 and 2029 both cars and vans will have to emit 15% less CO2. It is also desirable to decarbonise and modernise road transport in Europe.

generated by maritime transport, with the Romanian Presidency making every effort to make progress in this regard.

Among the most important environmental events during this period, Romania will host the meeting of the Informal Environment Council on 20-21 May 2019 in Bucharest, where the main themes will be climate change, biodiversity and water management. Three conferences will also be held in Bucharest: the International Conference "2030 Agenda: Partnerships for Sustainable Development" on 16 April 2019, the Ministerial Conference "The state of implementation of the Water Directives: Difficulties and Good Practices" on 21-22 May 2019, and the Ministerial Conference on "Large Carnivore Management – Challenges and Solutions" on 6-7 June 2019.

Let us hope that this stage, which Romania, as holder of the rotating Presidency of the Council of the European Union, will prepare with the other Member States and the European institutions will be a fruitful one, and let us be confident that the Sibiu Summit[1] on 9 May 2019 will be a milestone in the projection on the future of a stronger, more united, more cohesive and more democratic Union, this summit being an important moment for strengthening the foundation of the future of the European Union.

Bibliography

http://www.europuls.ro/wp-content/uploads/2017/11/GhidRO2019-Final.pdf.

https://www.romania2019.eu/wp-content/uploads/2017/11/ro_program_ropres2019.pdf.

https://www.consilium.europa.eu/ro/council-eu/presidency-council-eu/.

http://www.ecologic.rec.ro/articol/read/politici-economie/17465/.

https://www.romania2019.eu/wp-content/uploads/2017/11/ro_program_ropres2019.pdf.

https://www.agerpres.ro/politic/2019/01/11/romania2019-eu-denes-managementul-apelor-o-prioritate-pentru-presedintia-romaniei-la-consiliul-ue--239846.

[1] The Summit of 9 May 2019 will bring together in Sibiu 27 heads of state or government of European countries, 36 official delegations, 400 high-ranking guests and about 800 journalists. In addition, over 100 interpreters will come to Sibiu.

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Human Rights, International and Constitutional Guarantees - Concept and Evolution. Elements that Lead to the Need for Coding of Human Rights

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Abstract: The science of human rights is influenced by the other social sciences because the areas taken into consideration were and are in contact with other areas belonging to other disciplines, and they are not few in number. Thus, the chains of interference between disciplines have a high frequency. In our times, we are witnessing a continuous fragmentation of the social sciences in specialisations more or less narrow. Human rights are initially studied in parallel with two or more disciplines. Gradually, a new field was institutionalised, which, by emancipation, was recognised as independent. It has rightly been said that the history of science is the history of the multiplication and diversification of subdisciplines, which, by maturing, were recognised as disciplines. This is the case for the science of human rights. The field of human rights was created by successive contributions arising from researching the great principles in the field, of the normative provisions, of the institutions. However, as any other theoretical, pure and applied science, the science of human rights has progressed through the alternation of periods of brightness and others of obscurity.

Keywords: human rights; law; justice; human behavior; juridical rules; society

1. Introductory Elements

The origins or prefigurations of human rights are lost in the mist of time and looking for the sources, the regulations which govern them begins with studying the traditions, customs, archaeological traces, the first written testimonies. Human rights have evolved throughout history, reaching the forms which we know nowadays. (Miga-Besteliu & Brumar, 2010, p. 5)

In an international document (*Projet de plan a moyen terme pour 1977-1982* (19C/4) UNESCO Document, p. 7, par. 11-22) it is stated that *human rights are neither a new morality, nor a lay religion; they are much more than a language common to all mankind*. They are requirements that human beings must study and integrate in their culture according to their own rules and methods, no matter the diversity of their preoccupations.

Human rights have had a prodigious development after the second world war, and, through the magnitude they have achieved, they have become, as it has been observed, a real political, social, legal phenomenon, with implications in all the areas of human existence, the phenomenon the magnitude of which involves knowing the historical evolution of human rights, of their current status, as well as distinguishing their perspectives. Only thorough and objective works, with an interdisciplinary character, can shed light on them from a scientific point of view. That is why the United Nations

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Commission on Human Rights requested the United Nations Educational, Scientific and Cultural Organisation to examine *the opportunity of taking into account a systematic study and elaborating a distinct scientific disciplines regarding human rights, taking into account the main legal systems of the world, with a view to facilitating, at a university level and later, at other levels of education, the knowledge, understanding, study and teaching of human rights*. The study was performed by UNESCO and at the initiative of the International Institute of Human Rights in, being *a true scientific work on human rights*, which will have to progressively be promoted. As a result, throughout time, the bases of a genuine science of human rights have been set up.

2. Science of Human Rights

It should also be noted that in the field of social sciences, maybe more significantly that in other areas of science, the tendency towards specialisation, which involves a fragmentation of the realities of the contemporary society which we make up and in which we evolve, has become increasingly clearer.

The science of human rights is influenced by the other social sciences because the areas taken into consideration were and are in contact with other areas belonging to other disciplines, and they are not few in number. Thus, the chains of interference between disciplines have a high frequency. In our times, we are witnessing a continuous fragmentation of the social sciences in specialisations more or less narrow. We are also witnessing a recombination of such specialisations which give birth to new disciplines, initially as subdisciplines. (Badescu, 2013, pp. 14-17)

The proliferation of scientific disciplines is increasingly more pronounced, as each of them becomes richer. New areas are created, and the specialisation triggers new progress through their fragmentation, which, in turns, combines with fragments from other disciplines, creating new fields of study, developing their own heritage.

Human rights are initially studied in parallel with two or more disciplines. Gradually, a new field was institutionalised, which, by emancipation, was recognised as independent. It has rightly been said (Vanderbilt, 2016, pp. 372-375) that the history of science is the history of the multiplication and diversification of subdisciplines, which, by maturing, were recognised as disciplines. This is the case for the science of human rights.

The field of human rights was created by successive contributions arising from researching the great principles in the field, of the normative provisions, of the institutions. However, as any other theoretical, pure and applied science, the science of human rights has progressed through the alternation of periods of brightness and others of obscurity.

Thus, the individualisation of an independent discipline was achieved, having its own language and methodology for accumulating, interpreting and explaining information, with statistical techniques of analysis.

The science of human rights is a science the objectivity and rigour of which is guaranteed by the independence of human rights in relation to any school of thought or any interpretation of reality.

Specialists from the United Nations, regional and national organisations, teachers, lawyers, political scientists, specialists in sociology, anthropology, history, geography, economics, doctors, psychologists, etc., have contributed to outlining and developing this discipline.

A definition of this science was formulated during the works of the Convention organised on 5-6 March 1971 in Nice by the International Institute on Human Rights with the title: *The science of human rights:*

its methodology and teaching. On this occasion, among others, problems regarding defining the objects of the science of human rights and its method were debated.

It is a theoretical science made up of knowledge ordered in a logical succession, in a continuous search for new elements, which means increasing knowledge. This search has stimulated the human effort and has supported, throughout history, the aspiration towards freedom and progress; it has answered some present and potential, practical and intellectual needs.

Of course, it is necessary to know the history of human rights in order to understand the mechanism of formation and functioning of the science we are discussing, because only through such study, of other related disciplines, the science of human rights can define its object and the methods, in general, the knowledge which forms the system of human rights developed in a chronological order, later knowledge encapsulating that before it. The progress achieved had a linear development, with some stagnation, but also with leaps, all causing the ascending evolution in the formation of our science. It is a special science, with elements and interests of an encyclopaedical nature, with knowledge borrowed from myths, folklore, religious beliefs, traditions, customs, mentalities, social, political reality, etc.

3. The Concept of Human Rights

It may be observed how big the need of man to understand what is happening in his environment and why what happens happens was, that, in the absence of adequate descriptive and explicative information, human beings invented myths. Fire was given to humans by Prometheus, the founder of the first human civilisation; Antigone defended the unwritten rules of moral obligations against the false justice of the state; Gilgamesh, the legendary hero of the Summerian-Akkadian epic poems, looked not only for the rights to live, but the way to immortality; the goddess Proserpine governed the annual reproduction of vegetation, without which humankind could not have existed; these are just a few of the multitude of myths and legends. (Craiovan, 2010, pp. 168-183)

Gradually, they were replaced with concepts and theories that were reached through confrontation, through scientific research, in various areas, in history, in the political, social, legal, anthropological, philosophical fields, etc. The explicative systems are not provided as groups of definitive and undeniable conclusions, but rather as perfectible products of a continuous flow of research, which involves an inexhaustible application of the critical method. An example of such a process may be the succession of human rights in the three generations, their succession being otherwise open.

The scientific nature of human rights, as an interdisciplinary field of human behaviour, must therefore be understood in light of tradition, of the ideas of contemporary philosophy. It is a border, a contact science, as is, for example, the science of economic thinking, between economics, history, philosophy, geography, political science.

The science of human rights was formed and has evolved in the interdisciplinary field because it researches the individual and societal behaviours applicable to a group of disciplines which study the systems, structures and interactive manifestations in society, between the individual and the state, as well as the systems of relationships and interactions between different people or groups.

The careful study of the international, regional and national instruments regarding the fundamental rights and freedoms of man emphasises the interaction between the individual as a person and citizen and the institutions, as well as the numerous struggles to enforce them (Barsan, 2005, pp. 3-19). It is from here that the above mentioned need for studying the traditions in the field, basically a code of values passed down from generation to generation, according to which each person or institution has acted or acts

within the community contemporary to them arises.

4. Evolution of the Concept of Human Rights for Coding Purposes

Slowly, the idea of the natural equality of all, as well as the idea according to which the development, the progress of humanity depend on external connections, on contingent, in other words environmental, events, took their places in people's minds. This was explicitly formulated in the materialistic philosophy of Thomas Hobbes (1588-1679) and John Locke (1632-1704), according to whom the knowledge and even the principles for the organisation and functioning of the human mind come from experience, therefore from the interaction with the environment.

By observing the collection of ideas, rules and institutions, an author (Cassin, 1952, pp. 239-367) defined the science of human rights as being a distinct branch of social sciences which has as its object the study of the relationships between people according to human dignity, determining the rights and faculties the totality of which is necessary in order for the personality of each human being to flourish.

In this statement it is suggested (Marga, 2017, pp. 131-135) that the discipline of human rights as a distinct branch of social sciences meets and intertwines with the other humanistic sciences, such as law, sociology, political science, philosophy, psychology, history, moral doctrines, etc.

A specialist, Karel Vasak, specialist of great value in the vast problematic of human rights, formulated a second *inductive* definition of the science of human rights. The statement had as its basis *the study of the frequency of the terms in national and international texts dealing with human rights*. Namely, 50 thousand terms related to human rights were entered into a computer, and their highest frequency allowed the specialist to develop the following definition: *the science of human rights refers to the person and especially the working man who is living within a state and is accused of a criminal offence or is the victim of war, who benefits from the protection of the law due to the national judge and the intervention of international organisations (such as the authorities of the European Convention on human rights) and whose rights, especially the right to equality, are in harmony with the requirements of public order* (Vasak, 1978, IX).

The science of human rights has undeniable connections to all the branches of law: international, comparative, constitutional, penal, civil, administrative, etc. Even the language in which human rights and fundamental freedom use is the legal one, as they are first and foremost legal concepts. They are different, but complementary, branches of law, each answering the requirements for the protection of the human being with their own characteristics.

The science of human rights has a strong connection to constitutional law, because the constitutional laws containing human rights, rights which basically determine the relationships between the state and the person, seen as a citizen, are present in this branch of the law. These laws define the areas in which the state cannot intervene, in which the state has the obligation to protect them, to promote them, and the obligations of the citizen towards the state are also stated here.

The sources of the science of human rights derive from the interaction of human rights with the other humanistic disciplines it encountered. The diversity of these sources is especially complex: general and specific instruments, bilateral or multilateral treaties, general principles of law recognised by civilised nations, the national and international customs as proof of a generally accepted practice, the practice of organisms with jurisdictional attributions, the jurisprudence of the International Court of Justice and of the regional courts of human rights, decisions of international organs, the doctrine of specialists.

Within numerous international scientific reunions, conferences and congresses, well-known lawyers, specialists in comparative law, in public and private law have analysed the place codification occupies in the evolution of the sources of law.

Being a creation of modern law, some authors show reservations regarding the vocation codification may have for future development (Oppetit, 1998, pp. 73 and next), while other authors think that it has a future in the postmodern era, universalism giving it the vocation to participate in building the worldwide legal order (Decheix, 2000, pp. 5-11).

At one of the editions of the International University of Human Rights, attention was drawn to a frequent confusion between the work of elaborating a *code* and *codification*, the code being *a vague and at the same time prestigious word* (Zlatescu, 2008, pp. 25 and next), covering over five thousand years of legal history. The term has a technical aspect because it tends towards a better knowledge of law, a social one, because, often times, drawing up a code takes into account social and political antagonisms and therefore must contribute to their attenuation, serving the glory of the leader who attached his name to it, for example Hammurabi, or affirmed the independence of a new state.

Obviously, it is not enough to pass a text that contains numerous articles in order for the effect of the codification to be produced. Therefore, along with unifying dispersed laws, it is necessary to order a collection of rules out of which value is derived in connection to other rules, and a system is formed around the general principles, expressed or inferred.

Codification is a systematisation, an application of this philosophy, because it proposes *a common law for humankind*. It represents a special process of using the codes in the field of law. The body of law resulting from this process surpasses classical codes, a phenomenon which, as we have previously emphasised, is as old as legislation. They frequently represented mere compilations of law.

We mention, for example, that attempts for systematisation, and not mere unifications of regulations existed in the initial phase of the formation of the Roman-Germanic system of law (Zlatescu, 2012, pp. 15-24). Such attempts took place in the 5th- 7th centuries, but also in the Middle Ages. According to doctrine, systematisation attempts are found in Eastern Europe beginning with the 9th century, and in the West from the 11th century. As is emphasised in the specialised literature, the systematisation of regulations from canonical law in the 16th century had a major significance especially for the evolution of the systems of law in Western states.

Starting with the 18th century, remarkable works have appeared, that renounced the tradition of presenting the science of law and the simple interpretation of it in order to create a body of law which associated Roman law, local law and the spirit of nature (Zimmermann, 2004, pp. 77-81).

Actually, according to the dominant opinion of doctrine, codification became prevalent in the 17th and 18th centuries and was the work of the great lawyers of the time, who actually codified the law. *In non-Western countries codification was an instrument for modernisation. It was largely achieved in countries withouth common law influences in the 19th and 20th centuries, and, of course, in the Arab world*. (Deronssin & Garnier, 2004, p. 831) Codification desginates a body which refounds the law, terminating the plurality of sources. It especially represents the movement for the transformation of sources of law which takes place under the action of modern states by going from customary law to written law. This is an unusual event. It has as its effect the unification of customary law with the help of Roman law and its modernisation in contact with natural law. Of course, it is not reduced to an art or a mere technique for practising law and justice, as codes traditionally were before it, but is animated by the philosophy of the school of modern natural law, which thinks that positive law is an attempt to reveal the law of nature, a law common to all people, and that this revelation may be performed through a

simple exercise of reason.

A successful codification is thought to be that which corresponds to the traditions and wishes of the population it is addressed to. It should also be taken in account that a political discourse cannot be a source for interpreting codes as long as it is not materialised in a legal text. At the level of international private law, attempts are made for the international uniformisation of solutions through conventions, which can create many difficulties in practice. States codify internal rules, pushing them towards international custom, and, sometimes, they suffer from the sin of excessive nationalism.

It has been stated in doctrine that international public law has two sources of codification, namely: international custom, which does not have many rules, and treaties, which always contain treaty-law type provisions. The UN Bill is one example. It provides the development of international law, but it has imposed general conduct rules for member states. For example, they were prohibited to resort to force, unless, of course, it is a case of self defence. It may be observed that customary law is faithfully reflected, emphasising the importance of custom, and states can create entirely new rules through a treaty-law. Codification in international law represents stating the rules of international law in their entirety in writing, in a coherent, systematic way, or it may look at a specific matter, codification being always connected to the substance of the law. It transforms it, develops it, completes it through the agreement of the states adopting it. The International Law Commission of the UN ensures the representation of the great forms of civilisation and the main legal systems of the world.

Returning to the UN Bill, it may be observed that it provides the development of international law, but codification meets increasing obstacles due to the difficulty of reaching a consensus over the legal regulations regarding new areas, which are in transformation. That is why it is often difficult to differentiate between international custom and codified convention. The idea was also proposed that by a certain number of states accepting a conventional provision, an *instantaneous custom* would appear, however, custom involves, in its essence, the repetition of a behaviour for a certain period of time. This period may not be too long, an example in this respect being the work of the UN for the codification of human rights.

Obviously, there are several techniques of codification. A better result is ensured if the task of codification is attributed to a single author, observing that, when a committee is created, the effect is more reduced, even though the time for achieving the codification is shorter.

In the recent decades information technology has opened new horizons for codification. However, the major difficulty often consists in using the specific terms in different languages because the computer does not always link one term and its legal meaning. Of course, there is a movement towards decodification which emerged with the creation of new branches of law, as there also is the risk of destroying the codification through excessive power given to the judge, especially in the common law system.

In case we are referring to the codification of the fundamental human rights, we should mention that the international law on human rights only appears as a science at the end of the 19th century and the beginning of the 20th century. It is presented as a system, or, better put, as a microsystem, characterised by: a set of regulations, procedures and rules which identify, and, as a result, individualise it; communication links inside and outside the microsystem; internal and external adjustments related to the international and national environment, due to which the science maximises its objectives.

In these conditions, the science of the international law of human rights appears as a subsystem of the system of international law, which, in its turn, appears as a subsystem in the system of legal science, along with other subsystems which have become systems for their components, or, to use the same

language, for their subsystems. It should also be emphasised that in previous centuries human rights were only found in internal law, within constitutional law.

After the appearance of the UN, of the Bill of this organisation and adoption of the Universal Declaration of Human Rights, it is thought that we are in the contemporary era of human rights, characterised by the appearance of numerous regulations in the matter and by codifying fundamental rights. Thus, the UN Bill of Human Rights is a special type of codification. This Bill contains the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights and the Protocols to the two Covenants.

At the level of the member states of the Council of Europe which have revised their Constitutions or have adopted new Constitutions with the participation of the Venice Commission for Democracy through Law, in order to include the rights provided in the Universal Declaration of Human Rights in the fundamental law, thus giving it legal force through the constitutions of the states, and, if we take the example of Romania, due to art. 11 and 20 of the Constitution and the entire Chapter regarding human rights, the process for the internal codification of human rights has been initiated. Also, at the level of the European Union, the Charter of Fundamental Rights, which can also be found in the project for the Constitution of the European Union, and at the level of the Council of Europe, the European Convention on Human Rights, with the additional protocols, the Revised Social Charter and other regional instruments have opened the way to the codification of human rights at a regional level. (Micu, 2016, pp. 27-28)

5. Conclusions

In conclusion, it can be said that the notion of human rights claims to include some essential aspects for human evolution, the change in the perception by the society of the fundamental rights and freedoms of the individual, the adjustment of the national law norms to the international principles of human rights in the legislative and institutional practice of the country. Human rights are the rights of the human being endowed with reason and conscience, and whose natural law are recognized as inalienable and imprecise law. Given these conditions the process of codification of human rights at an international, regional and national level regards the era we are living in, therefore the contemporary one.

6. References

Badescu, M. (2013). *General theory of law*. Craiova: Sitech.

Barsan, C. (2005). *European Convention of human rights. Comments on articles*. Bucharest: All Beck.

Cassin, R. (1952). La Declaration universelle et la mise en oeuvre des droits de l'homme/ The Universal Declaration and the implementation of human rights. In Académie de droit international de La Haye: *Recueil des cours/ Academy of International Law, The Hague: Course Collection.*. Tome 2 en 1951.

Closca, I. & Suceava, I. (1995). *Tratat de drepturile omului/ Human rights treaty*. Bucharest: Europa Nova.

Craiovan, I. (2010). *Filosofia dreptului sau dreptul ca filosofie/ Philosophy of law or law as philosophy*. Bucharest: Universul Juridic.

Deronssin, D. & Garnier, F. (2004). *Passé et présent du droit/ Past and present of law*, no. 6, Compilations et codifications juridiques, t.3; V.S. Jahel, *Code civil et codification dans les pays du monde arabe, 1804-2004, Le code civil, un passé un présent, un avenir/ Compilations and legal codifications, t.3; V.S. Jahel, Civil Code and Codification in the Countries of the Arab World, 1804-2004, The Civil Code, a past a present, a future*. Paris: Dalloz.

Marga, A. (2017). *Justice and values*. Oradea. Romania: Ratio.

Micu, G. (2016). *European Construction*. Bucharest: Pro Universitaria.

Miga-Besteliu, R. & Brumar, C. (2010). *International protection of human rights. Curs notes*. 5rd Edition. Bucharest: Universul Juridic Publishing House.

Moroianu, Zlatescu I. (2008). *Human rights a system in evolution*. Bucharest: Romanian Institute for Human Rights Publishing House.

Oppetit, B. (1998). L'avenir de la codification/The future of codification. *Droits/Laws*, no. 24/1998.

Vanderbilt, A. (2016). Pre-Legal Education. *Studying Law*. Bucharest: Viga.

Vasak, K. (1978). *Les dimensions internationales des droits de l'homme/The international dimensions of human rights*. Paris: UNESCO.

Zimmermann, V.R. (2004). *Roman law, contemporary low, European law, the civilian tradition today*. Oxford University Press.

Zlatescu, V.D. (2012). *Great contemporary law systems*. Bucharest: Pro Universitaria.

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REALITIES AND PERSPECTIVES

The Right of Participation and Information in the Framework of Legal Process

Joniada Musaraj[1]

Abstract: The right of the parties to be present at the hearings and to be informed, even though there have been ongoing complaints before the European Court of Human Rights, for violations of Article 6 of the Convention, recent years continue to refer to court cases whose decisions are found to be irregular according to the procedure and states are fined with high financial costs. There is therefore a need to remind the obligation that the national authorities have to comply with these decisions and not to be repeated in the future. In support of this purpose, several issues of the Constitutional Court in Albania and ECHR decisions are addressed. The number of cases is growing year after year. As a result, we understand that remains the main duty and responsibility of the judicial authorities in the de facto implementation of the right to participate in trial and information of court proceedings. While a person should recognize this right and make use of the means made available by the right to exercise it. It is interesting to show the current situation in which Albania confronts the Convention and the ECtHR. We have we have over 50 cases so far adjudicated at the European Court of Human Rights, with the Albanian State party, subject to the violation of Article 6 of the Convention.

Keywords: Convention; Constitutional Court; violation

1. Introduction

The right of the parties to be present and the right to be informed about the judicial process are important aspects of the due legal process, both constitutional and European.[2] This right entrusts the authorities with the task of notifying, in sufficient time, their parties and their defenders of the date and place of the court proceedings to request their presence and not to unjustly exclude them from the trial. This is already a well-known and consolidated practice of the Constitutional Court of Albania and of the European Court of Human Rights, which would have negated the detailed description of the procedural

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[2] European Convention on Human Rights, Article 6/3 / a: 1. Everyone has the right to be heard fairly, publicly and within a reasonable time by an independent and impartial tribunal established by law, which will decide on disputes regarding his civil rights and obligations, as well as on the merits of any criminal charge under his custody. A decision should be made publicly, but the presence in the courtroom may be prohibited to the press and to the public throughout the process or during a part of it, in the interest of morality, public order or national security in a democratic society when this is required by the interests of juveniles or the protection of the private life of the parties in the process or to the extent deemed necessary by the court, when in special circumstances publicity would undermine the interests of justice. 2. Any person charged with a criminal offense shall be presumed innocent until his guilt is legally proven. 3. Everyone charged with a criminal offense has the following minimum rights: a. to be informed within a short deadline, in a language that he understands and in detail, of the nature and cause of the charge being raised against him; b. Provide appropriate time and facilities for the preparation of the defense; c. to defend himself or to be assisted by a defense counsel chosen by him, or if he does not have sufficient means to reward the defense counsel, be granted free legal aid when the interests of justice so require; d. to ask or ask to question the witnesses of the charge and to have the right to call and question the witnesses in his favor under the same conditions as the witnesses to the charge; e. be provided free of charge by an interpreter if he does not understand or speak the language used in court."

guarantees of the parties in the process if they do not, it was ensured that it actually enables them to respect these rights and that is information and participation in the trial.[1]

What is observed in Article 42 of the Constitution of the Republic of Albania and Article 6 of the European Convention on Human Rights is that the due legal process should be used in procedural and substantive terms, including rights such as access to the right to be heard and to participate in the proceedings, the right to be heard and to call witnesses, the right to a court hearing with an opposing party, a reasonable trial, etc.

The Constitutional Court of Albania and the European Court of Human Rights in their judicial practice have maintained that informing someone of all the proceedings against him is indispensable. The information and notification of all the procedures must be made in accordance with the procedural and substantive requirements, which should guarantee the effective exercise of the rights of the person. Getting incomplete and informally can't be enough. Known or known facts may constitute indisputable indications for the court that the accused is aware of the existence of criminal proceedings against him, the nature and cause of the charge, such as when the accused declares publicly or in writing that he does not will respond to court appeals for which it has been informed through various sources and not from the authorities, or when it saves an arrest warrant. The rules applied for notification and effectiveness of the applicant's notification by the authorities are evaluated by the court in function of the realization of the right to defense.[2]

2. Article 42 of Albanian Constitution and article 6 of ECHR

The requirements of Article 42 of the Constitution and Article 6 of the Convention taken in its entirety are intended to guarantee to anyone who claims that his rights recognized in the Constitution have been violated, in particular the prosecution of the case in court and participation in trial. This right is seen as reinforcement in the application of all the secured procedures. This includes the right to appeal to a higher court.[3] An important finding has been found in Deweer v. Belgium, where in paragraph 44 of the judgment, ECtHR states: "However, in a society known as democratic, the right to a fair trial prefers a fair trial rather than the court is obliged to look beyond the filing of the case and to investigate the reality of the proceedings in question. If we are to argue that the ordinary courts have violated the right to be heard in the courts, In the Decision No. 34, dated 03.10.2007, the Constitutional Court of Albania estimates that from the set of claims and causes raised in the request, the constitutional control should be focused on: violations that violate the due process standards. In the present case, the non-communication of the recourse has denied the request present the right of participation in trial and defense, which made the process irregular in the constitutional sense.

The deprivation of a party in the process from the opportunity, through representation to defend its interests in the trial, is considered a violation of the standard of the due process in many decisions of the Constitutional Court of Albania.[4] The Applicant VL, at the beginning of the first instance trial, on the claim of the plaintiffs, joined the case as a third person and as such was treated and participated in both stages of the trial, having all the rights parties to the trial under Article 195 of the Code of Civil

[1] Decision of the Constitutional Court of Albania, no.16, dated 19.04.2013, point 38 of the decision.
[2] Decision of the Municipal Court, no. 5, dated 25.02.2013, point 12 and 14 of the decision.
[3] Publication of the Council of Europe "The right to a fair trial" Collection Science and Technology of Democracy, no. 28, p. 64.
[4] Decisions of the Constitutional Court of the Republic of Albania no. 6, dated 16.02.2007; no. 13, dated 13.04.2007; no. 8, dated 02.06.2006, p. 76; no. 16, dated 08.06.2006, p. 153. Review of the decisions, year 2006; no. 11, dated 18.05.2005. Review of Decisions, 2005, p. 167; etc.

Procedure. With the decision of the Court of Appeals, given in his favor, was created a stability in the resolution of the conflict and at the same time a legal guarantee, which can be violated only under the conditions provided by law. The Constitutional Court of Albania found that the applicant V.L did not communicate the copy of the recourse exercised by the other party to the decision of Court of Appeals of Tirana. The recourse to the Court of Appeals decision must be notified to the interested party to give it the opportunity to participate in the trial of the case in the High Court of Albania and to defend itself. The Constitutional Court of Albania stated in another decision[1] that continuing the investigation for a period of 6 months, without a decision to extend the deadline by the prosecutor, brought violations of the rights of the defendant, guaranteed by the Constitution and the law. So the Constitutional Court found violation of the right to be informed and to receive notice of all court proceedings. According to this Court, pursuant to Article 323 of the Code of Criminal Procedure, within three months from the date on which the name of the person attributed to the criminal offense is recorded in the Notification Register, the Prosecutor must decide to send the case to court, or suspend it. Pursuant to Article 325/1 of the Code of Criminal Procedure, the defendant has the right to appeal to the court against the prosecutor's decision to extend the term of the investigation.

2.1. The Right to Choose the Defense

However, not always the presence of the parties in the process makes the court process irregular. The Constitutional Court of Albania deems that in a case, subject to a review of the decision, the appearance of the applicants to participate in the trial does not render the trial unreasonable in the constitutional sense. Pursuant to Article 494 et seq. Of the Code of Civil Procedure, the right to file a claim in the High Court of Albania for the revision of a final decision independently belongs to any person who has been a party to the trial of the case for which the decision is rendered and has a legitimate interest in its revision. This means that it is in the will of the person above to submit or not the request for revision, or to present it together with other persons who are parties to the same matter.[2] Also, Constitutional Court of Albania[3] has accepted in its decisions that "the lack of communication of the request for review of the matter in the counseling room without the participation of the parties" and "the ignorance of the facts and arguments of the opposing party are justified reasons to the right to a fair legal process".[4]

In one of the Unifying Decisions of the Supreme Court of Albania,[5] it is emphasized that the right of defense, in its essential meaning, is a fundamental right of constitutional character which belongs exclusively to the defendant and can't be transferred to relatives.[6] Another situation may result in the case of absentee judgments. In this sense, the High Court of Albania asks whether the sentence of imprisonment may be rendered in absentia and the execution of his or her suffering has not yet been committed. Is the relative legitimate to choose a defense counsel for a convicted person even if the

[1] Decision of the Constitutional Court of the Republic of Albania, no. 20, dated 10.07.2005.
[2] Decision of the Constitutional Court of the Republic of Albania, no. 2, dated 05. 02.2008.
[3] Decision of the Constitutional Court of the Republic of Albania, No. 17, dated 18.07.2005.
[4] "The grounds put forward by the applicant for an irregular process relate to the lack of communication of the request for review of the case to the counseling room without the parties' participation. These two alleged violations are inherent and interdependent and concern with the standards set for a fair trial in terms of the right to protection of participation in the trial and the principle of contradictory. Under the normal conditions of consideration of the case at a court hearing, according to the content of Article 447 of the Code of Criminal Procedure, it is mandatory the request for revision is a remedy and must be notified to the other party according to the general rules The right to a fair trial also includes the notion that both parties in the process have the right to have information on the facts and arguments of the party on the other hand, taking into account the nature of the case review in case of review which relates not only to the finding of the facts or to their assessment (letters a, b, and Article 494 of the Code of Criminal Procedure), then this assessment must be made by the court after having applied the principle of contradictoryity. This case is important, as decisions in the counseling room can not be broken by touching standards of due process."
[5] United Colleges, unified criminal case no. 1, dated 10.03.2014.
[6] United Colleges, Decision no. 1, dated 20.01.2011, p. 7; Constitutional Court, decision no. 30, dated 17.06.2010, pp. 15-16.

decision for the latter is given in absentia? Can a relative choose a defender for a person who is tried in absentia but has not received effective notice of charges against him? To answer the above questions, the Court analyzed Article 48 (3) of the Code of Criminal Procedure.

The opportunity provided by the lawmaker in the Criminal Procedure Code to allow relatives of a detained person, arrested or sentenced to serve as a defense counsel, has come as a result of the need to provide legal assistance to the defendant in the first moments of the criminal proceedings. In the "*ratione temporis"* aspect, the relative is allowed to choose the protector "until this person [the right holder] has made the choice himself". So the provision implies that this choice by relatives should be limited in time, and of temporary character. Although the lawmaker has not set a fixed deadline beyond which the defendant's relatives lose the opportunity to choose a defense counsel, what emerges from the purpose of the provision but also from the use of the term "until" is the prediction that the defendant's choice by himself the defendant will occur at a certain time of the criminal proceeding in which the latter will decide to elect another defender or to accept the continuation of the defense by the same defender previously elected by his relatives. Admission, on the contrary, of the possibility of extending the defense counsel's choice of relatives of the defendant for the entire duration of the criminal proceedings, without the defendant himself having the opportunity to make his choice, would undoubtedly translate into a violation of the right to defense and due process of law.

Moreover, the ability of relatives to choose depends on avoiding the "suggestion" of the names of the defenders within the detention and/or detention facilities. On the other hand, the relatives of the defendant, being "out", find it easier to do a thorough and complete search for the purpose of choosing the defenders they believe will give the right relatives assistance of them. On the contrary, as regards the defendants in the free, the fleeing, or who are not found, this need to "seek" and choose the protector can be accomplished personally, without the need of relatives. The United Colleges of the High Court conclude that the determination of the law that the relative of the defendant has the right to choose a defense counsel, in the sense of point 3 of Article 48 of the Code of Criminal Procedure, only in cases where the defendant is isolated, in the conditions of the limitation of personal freedom is clear and there is no need for unifying interpretation. In this case, the defense counsel chosen by the relative of the person in the conditions of the limitation of personal liberty shall be considered, for the purpose of law, as an elected defender.

Finally, we say that the choice of defense counsel from the defendant's family members, in the sense of Article 48(3) of the Code of Criminal Procedure, occurs in cases where the defendant is in a position to limit his personal freedom, that is to the availability of the justice and has sufficient knowledge of the conduct of a criminal proceeding under his custody.

2.2. The Right to be Present at a Trial

Concerning concealment from the trial, the European Court of Human Rights states that the mere fact that the defendant is not found does not serve to burden on state authorities to enable effective notification of the defendant's indictment. So, especially for the defendant not found, it can't be presumed that he has waived his right to participate in the trial.[1]

[1] The ECtHR has stated that "When a person charged with a criminal offense has not been personally notified, it can not be presumed simply by his status as an" escape, "which is based on a presumption in itself, insufficiently grounded in the facts the defendant has waived the right to participate in the trial and to defend himself (...). The ECHR has also had the opportunity to point out that, before it is acknowledged that the defendant, through its conduct, implicitly renounced an important right of Article 6 of the Convention, it must first be justified to prove that he had predicting the consequences of his choice (...)" Sejdovic k. Italy, parag. 87.

However, the Constitution, the European Convention of Human Rights but also the International Covenant on Civil and Political Rights (the "Pact")[1] do not in principle prohibit trials in absentia.[2] Regarding the waiver of the right to be present at trial, the European Court of Human Rights has held that the spirit of Article 6 of the Convention does not prevent a person from renouncing, voluntarily, directly or indirectly, by guarantees of a fair trial. However, in order to be effective in the sense of the Convention, the waiver of the right to participate in the trial must be proved in an explicit manner and accompanied by a minimum standard proportional to its importance. Moreover, it should not come up against any significant public interest.[3]

In any case, the burden of proof always belongs to the state authorities and not the defendants, who should not prove that he/she was not seeking to hide the trial, or that his/her absence was due to force majeure.[4] There should also be a possibility that, at the time of imprisonment by the law enforcement authorities, in order to execute the sentence in absentia, the latter should be allowed to resettle in time for the purpose of exercising his right to be protected, including the right to defend the defense.

One of the court cases with the object of the parties to be present and the right to be informed about the judicial process is the Degree against Albania.[5]

The complainant complained under Article 6/1 of the Convention that the decision of the Constitutional Court had deprived him of his right of access to the court. He further claimed that the criminal proceedings in absentia had no warranties of law as required by Article 6/1 and Article 3 of the Convention. The right to approach the court, from which the right to access is one aspect, is not absolute; it is subject to the limitations that arise silently, particularly with regard to the admissibility of an appeal, since it itself requires regulation by the state, which enjoys a certain limit of assessment in this regard. However, such restrictions should not restrict or diminish the access of a person to such a way or extent that undermines the very essence of the right; Finally, such restrictions are not in conformity with Article 6/1 if they do not pursue the legitimate purpose or if there is no reasonable relationship of proportionality between the means used and the purpose pursued.

The court noted that the Constitutional Court Act provides for a two-year term for filing a constitutional complaint. The deadline starts from the date of notification of the decision of the last instance court. She further noted that the Constitutional Court Act does not contain any procedural decision for the calculation of the 2-year term, and especially, in cases where the expiration of the term falls on holiday days or holidays. However, it provides that, when faced with procedural issues, the Constitutional Court must refer to other procedural decisions having regard to the legal nature of the case. Furthermore, the Court notes that the applicant's proceedings and the sentence were rendered in absentia. From the information in the case file it turns out that the complainant was acquainted with his sentence in absentia only on 14 June 2003, the date on which he was handed over to the authorities. The Court considers that

[1] United Nations, Treaty Series, vol. 999, p. 171, Approved by Law no. 7580, dated 08.08.1991.
[2] The ECtHR has often had the opportunity to state that: Although trials conducted without the presence of the defendant are not in themselves incompatible with Article 6 of the Convention, it would undoubtedly be considered a denial of justice if a person deprived of his/was able to demand from the court a reassessment of the allegations of the allegations, in cases where it is not proven that he has waived the right to participate in the trial and to defend or has been hiding the trial (...) Sejdovic k. Italy, Ap. no. 56581/00, ECtHR, [DHM], 01.03.2006, para. 82 (citing Colozza v. Italy, Ap. no. 9024/80, ECtHR, 12.02.1985, para 29, Einhorn v. France, Ap. no. 71555/01, ECtHR, 16.10.2001, para 33; Krombach v. France, Ap. No. 29731/96, ECtHR, 13.02.2001, supra 85, Somogyi v. Italy, Ap. no. 67972/01, ECtHR, 18.05.2004, para 66, and Medecina k Switzerland, Ap.no. 20491/92, ECtHR, 14.06.2001, para 55).
[3] Sejdovic k. Italy, para. 86. See also, Constitutional Court, Decision No. 30, dated 17.06.2010, para. 30; Constitutional Court, Decision no. 45, dated 10.10.2011, para. 18.
[4] Ibid, parag. 88.
[5] ECtHR, Decision on May 10, 2011.

the contested decision means unjustified denial of the complainant's right of access to the Constitutional Court. Consequently there has been a violation of Article 6/1 of the Convention.

The Court will further consider whether, in the absence of formal notice, the complainant may be deemed to have been aware of the criminal proceeding and his judgment so far as it may be considered that he has waived his right to appear in court. In previous issues relating to inadmissible penalties, the Court has argued that informing a person about a criminal proceeding commenced against him is a legal act of such importance that must be applied in accordance with procedural and substantive requirements capable of ensuring the effective exercise of the rights of the accused; Unclear and irregular knowledge is not enough. However, the Court can't rule out the possibility that certain facts may provide a clear indication that the accused is aware of the existence of criminal proceedings against him and of the nature and cause of the charge and does not intend to take part in the trial or wants to avoid criminal proceedings. This may be the case, for example, when the accused declares publicly or in writing that he does not intend to respond to requests for disclosure for which he has been informed by sources other than the authorities or follows he avoids attempting to arrest him,[1] or when the authorities come forward with material that clearly indicates he is aware of the pending proceedings against him and the charges he faces. The foregoing remains the main task and responsibility of the judicial authorities in de facto implementation of the right to participate in the trial and information of court proceedings. While the person should recognize this right and make use of the means made available by the right to exercise it.

References

Constitution of the Republic of Albania 1998.

Penal Code of the Republic of Albania, approved by law no. 7895, dated 27.1.1995, amended.

Civil Code of the Republic of Albania, approved by Law no. 7850, dated 29.7.1994, as amended.

European Convention on Human Rights, ratified form Albania by the Law No.8137, dated 31.7.1996.

United Nations, Treaty Series, vol. 999, p. 171, Approved by Law no. 7580, dated 08.08.1991.

Publication of the Council of Europe "The right to a fair trial" Collection Science and Technology of Democracy, no. 28.

Constitutional Court of Albania, Decision no. 17, date 18.07.2005.

Constitutional Court of Albania, Decision no. 8, dated 02.06.2006.

Constitutional Court of Albania, Decision no. 16, date 08.06.2006.

Constitutional Court of Albania, Decision no. 6, date 16.02.2007.

Constitutional Court of Albania, Decision no. 13, dated 13.04.2007.

Constitutional Court of Albania, Decision no. 2, date 05. 02.2008.

Constitutional Court of Albania, Decision no. 30, date 17.06.2010.

Constitutional Court of Albania, Decision no. 45, date 10.10.2011.

Constitutional Court of Albania, Decision no. 16, dated 19.04.2013.

ECtHR, Case Deweer v Belgium, no. 6903/75, 27 February 1980.

ECtHR, Case Ivarazzo v. Italy, no. 50489/99, 4 December 2001.

ECtHR, Case Sejdovic v. Italy, no. 56581/00, 1 March 2006.

[1] Ivarazzo v. Italy (dec.), no. 50489/99, 4 December 2001.

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Women's Rights as Part of the Individual and Fundamental Rights and Freedom

Brikena Buda (Dhuli)[1]

Abstract: Albania has undertaken important national and international legal commitments to combat discrimination and to promote and make gender equality a reality. In this context, governmental structures, in cooperation with civil society and international organizations, have particularly worked towards improving gender sensitive legislation and policies, building and strengthening structures in support of gender equality and preventing and fighting violence against women and domestic violence. Albanian governments through years have drafted several strategies that sustain and protect women's rights, with the support of several international organizations and various NGOs. Personal rights and freedoms recognized in the context of human rights include a wide range of rights. Analyzing such rights in general terms is a broad-spectrum issue, so in this paper we will only deal with some of them.

Keywords: combat discrimination; civil society; gender sensitive legislation and policies

1. Introduction

The principle of non-discrimination and equality between men and women, being particularly importance in the implementation of law, in addition to legislative and law enforcement institutions, there are other institutional mechanisms that ensure the enjoyment of women's human rights and above all that promote gender equality. (Gruda, 2008, p. 55). The State Gender Equality Mechanism, which consists of a set of state structures, has been set up to promote gender equality progress and ensure the enjoyment of women's rights (Picari, 2008, p. 38). In this analysis, we think that although legal projections and institutions are up and running, much remains to be done to create the right environment for the effective functioning of the institutional mechanism.

2. The Right to Private Property

Property right is a fundamental and very important one in a democratic state. The property right is explicitly provided for in some legal instruments of international and regional character. As far as this is concerned, the applicable legal provisions do not treat property differently. Property right, as one of the fundamental rights, is at any moment a worthy discussion and unrelated to the other rights of each individual and society both for men and women. The Civil Code of the Republic of Albania, Law No. 9235 of 29 July 2004 "On the Restitution and Compensation of Property" and the Last Approved Law no. 133/2015 "On the Treatment of Property and the Completion of the Property Compensation Process"

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treat equally all the entities of the law. The right to private property is guaranteed by Article 41 of the Constitution, also defining ways of gaining property (gifts, inheritance, purchase of property and others as provided for in the Civil Code). This principle is also dealt with in Article 153 of the Civil Code, which prevents the full or partial loss of legally acquired property (except for public needs, expropriations). Civil Code provides for the loss of ownership (Article 191) when it is acquired by another person or when it is abandoned (in this case a notarial act is required). Furthermore, immovable property must be registered in accordance with Article 192 Civil Code. Each co-owner has rights and obligations regarding the property, but they cannot sell their part without first giving the other owners the option to buy it.

3. Protection of Personal Data as a Right Recognized by the Constitution

The protection of personal data is subject to a special law. "Personal Data" means any data for an individual identified or identifiable by this data in a direct or indirect manner. The law also refers to "sensitive" personal data, such as race and ethnic origin, beliefs and political affiliations, religious and other beliefs, health status, sexual life and the criminal state. Treatment of data in the medical field is one of the most delicate moments and where the risk of the fundamental rights and fundamental freedoms of the data subject is greater, since the object of treatment is information related to the intimate sphere of a person, such as data on health status and sexual behavior. What connects the patient with the doctor is the fact that the physician, due to the exercise of his duties, becomes aware of the data related to the health condition of the patient. To correct this moment, the "Code of Ethics and Medical Deontology" was approved according to Law no. 8615, dated 1.6.2000 "On the Order of Physicians in the Republic of Albania". "Code of Ethics and Medical Deontology", in Chapter 2, entitled "Doctor's Tasks to the Sick", Article 21 defines the doctor's obligation to disseminate information related to the health of the patient. Protection of confidentiality. The information that a physician learns in the course of his duty is considered as medical secret. At the wish of the patient the physician is obliged to keep the secrecy even to the family members and other persons, even after the death of the patient, except in cases when it poses a risk to the health and life of others.

Given the strictly personal character of these data, their discovery also exempts close family members. There is only one exception to this obligation and it relates to a general interest, such as endangering other people's lives. Going beyond a personal interest when this can affect the general interest does not constitute a violation of private life.

Secret Disclosure. The doctor has the right to disclose the medical secrets of the patient in cases where their concealment risks the life of the patient or when required by a legally recognized body. When the doctor uses the medical records of a patient to publish them he is obliged not to reveal the identity of the patient.

4. The Right to Information

Listed under the constitutional rights, the right to information is regulated in a number of laws. The most important laws regarding this right are such as No. 119/2014 On the right to information. This law regulates the right of access to information produced or maintained by public authorities. Everyone has the right to know the public information without being obliged to explain the motives (Article 3). Everyone has the right to be familiar with public information, through the original document or by obtaining a copy of it in the form or format that enables access in full compliance with the content of

the document (Article 4). In accordance with Article 7 of the Law no. 119/2014 "On the Right to Information"1, the Transparency Program for the Commissioner for the Right to Information and Protection of Personal Data was prepared. This program defines the legal framework of the activity of the authority within the law no.119/2014 "On the Right to Information"[1]. The principle of equality regarding the right to information is fully reflected even in this law. While the Commissioner for the Right to Information and Protection of Personal Data monitors the implementation of the law on the right of information, promoting the principle of transparency in the work of public authorities, in particular by raising awareness and information on issues of the right of information, he makes recommendations for public authorities, regarding the conception and implementation of institutional transparency programs.[2]

5. Analysis of Political Rights and Freedoms. Active and Passive Voting Rights and the Right to Organize and Collectively Bargain Conclusions and Recommendations

The active and passive voting rights (the right to elect and be elected). These are guaranteed rights by the Constitution and the Electoral Code for all Albanian citizens without gender differences. The Albanian electoral code guarantees that every Albanian citizen, regardless of the race, ethnicity, race, gender, language, political belief, or economic status has the right to elect and be elected in accordance with the rules provided for in this Code. Article 3\2 of the Electoral Code clearly stipulates that voters are equal in exercising the right to elect and to be elected. Our country has ratified a number of instruments that guarantee women's political rights. But despite this legislation with strong anti-discrimination and international instruments, it is easy to find out that women's participation in public life is very limited (Representation and Quality of Democracy in Albania, a Gender Perspective, 2006, p. 14).

The right to collective bargaining. This right is also a constitutional right, which is regulated by the legislation in force. Women have played an active role in this regard through the creation of a range of NGOs, which in most of them provide services to the most vulnerable categories in society.

6. Economic, Social and Cultural Freedoms and Rights

In the framework of the group for economic, social and cultural rights is included the right to social security, the right to work, protection against unemployment and the right to equal pay for the same work, the right to a standard of living provides the health and well-being of everyone and the family and the right to insurance in the event of unemployment, illness, disability, old age, the right to education and the right to participate in the cultural life of the community.

7. The Right to Work and Employment

As noted above, the ban of discrimination stands as a fundamental right in both employment and employment relationships. The Labor Code prohibits any kind of discrimination in the field of hiring and occupation and clearly states the meaning of discrimination by, inter alia, classifying as distinction, exclusion or preference as a result of sex that infringes on the individual's right to be equal in

[1] http://www.idp.al/index.php/s.
[2] http://www.idp.al/index.php/sq/programi-i-transparences/programi i transparences-kdimdp.

employment and treatment, where such differences, exclusions or preferences should not be considered as discrimination. The Labor Code finds important principles of equality in employment and employment relations. As such we mention: equality in reward (Article 115 provides for the same pay as for women and for men who perform work of equal value), which makes our legislation in line with international standards and ILO Conventions in this field; prohibiting forced labor for everyone without exception; protection and prevention of personality violation and employee dignity as an obligation of the employer, including sexual intercourse; non-collection of information (Article 33) by the employer regarding the employee during the employment relationship (unless these information relate to the professional skills of employees or are necessary for the performance of the contract).

This means not receiving such information as to sexual orientation, marital and family status, and so on union freedom; registration of the employee in social security; the right to training and qualification.[1]

Law no. 152, dated 30.5.2013 For Civil Servants - amended by law no. 178/2014, dated 18.12.2014, also stipulates in Article 5, but also in other articles the principle of equality. According to this principle, civil service Administration is governed by the law and is based on the principle of equal opportunities, non-discrimination, merit, transparency, professionalism and political impartiality, as well as ensuring the sustainability of the civil servant and the continuity of the civil service. This law defines the same rules on the conditions and procedures of admission to the civil service, the way of starting and ending work relations, career development, guaranteeing the rights and duties of civil servants, with a view to establishing a civil service sustainable, professional and efficient.

Civil Servants are all employees of central or local public administration institutions, who exercise public authority in managerial, organizational, supervisory or executive functions. The civil service is built and operates on the basis of principles of professionalism, independence and integrity, political impartiality, transparency, service to the public, career continuity, accountability and correctness in the implementation of the legislation in force. The law does not contain discriminatory provisions regarding the requirements for admission to the civil service and the manner of admission to it through open competition based on merit.

Some of the civil servant's rights are: Guaranteed work in the civil service, in compliance with legal provisions, promotion and parallel movement, in accordance with the law, state protection, the right to work outside office and working time, if such a thing does not represent a conflict of interest with their official duty and does not prevent them from exercising it, union freedom regulated by a special law (Gerxhi, 2009, pp. 27-38).

[1] The Labor Code includes in its content an important chapter (10 / B) titled "Special Protection for Women", which contains legal arrangements that consider the special role of woman-mother in society. It is worth noting: the prohibition of work for pregnant women and new mothers (Article 104), maternity leave (Article 105 of the Labor Code and law no.7703, dated 11.05.1993 "On Social Insurance"), Article 106 of the Labor Code, see Law no. 7703, dated 11.05.1993 "On Social Insurance", amended), the invalidity of the termination of the employment contract by the employer during the period of maternity leave or the adoption leave (article 107), prohibition of night work for pregnant women (Article 108). So, in terms of work includes: the right to paid leave of 20 minutes every 3 hours for rent, the ban on holding weights above 20 kg for women. Regarding the difficult jobs, the Council of Ministers sets special rules for the duration and conditions of performing difficult or dangerous jobs for the elderly over the age of 16 and for pregnant women. Night work for pregnant women is prohibited but in other cases the Council of Ministers sets special rules for cases when women's night work is allowed. The right to pay wages (12 to 15 days a year) in the case of indispensable care for children as a right of non-discrimination of the mother and child of the child (Article 132).

8. The Right to Health Care and the Protection of Women's Health

In this context, a large number of laws are in place which aim at respecting and protecting the social rights and the health of women. As such we mention Law no. 8876 dated 4.04. 2002 "On Reproductive Health", Law no. 8045, dated 7.12.1995 "On Termination of Pregnancy", Law no. 7870, dated 13.10.1994 "On health insurance in R. Sh", Law no. 7703, dated 11.05.1993 "On Social Insurance", Law no. 8045, dated 7.12.1995 "On Termination of Pregnancy". These laws guarantee the respect of every human being at the very beginning of life, the right to information and counseling of women before termination of pregnancy, rules and procedures on termination of pregnancy and provision of health care services for termination of pregnancy and treatment of possible complications after the termination of pregnancy. Termination of pregnancy is permitted only when unwanted circumstances are determined in this law and in any case with the consent of the woman. The law gives the right only to the woman as the sole and sole subject in giving consent for termination of pregnancy.

While Law no. 8876, dated 04.04.2002 "On Reproductive Health", protects the reproductive rights of each individual and couple and ensures that each person's reproductive rights are protected in accordance with national laws and policies and international standards. The law often addresses women in a special way to a particular subject in this context. Thus, every woman, free and excluded from any form of discrimination, compulsion and violence, has the right to be controlled and to decide freely on all matters relating to her sexuality and sexual and reproductive health. The law underlines the principle of equality between men and women. It emphasizes the mutual respect of equal relationships between women and men during sexual intercourse and reproduction. This implies the respect, no impact of integrity of each, the guarantee of every individual in decision-making for the exercise of reproductive rights according to their will and interest free of discrimination, compulsion and violence. Men and women have the right to preserve sexual cells. The law shows special care in the protection of safe motherhood and deals with assisted medical reproduction techniques.

No woman should be forced to be pregnant. The woman is entitled to a safe motherhood and for the avoidance of unwanted pregnancy, which may threaten her life. Women's life should not be exposed to the risk associated with pregnancy, birth, and other barriers to gender inequality. Every woman has the right to health care during pregnancy, for maternity assistance and to benefit from the application of methods and practices that minimize the risk to her health or the health of the fetus, the newborn and the child. Motherhood and the child have the right to health care and special support. Pregnant women receive free medical coverage of pregnancy, maternity and postnatal pregnancies, particularly prenatal and postnatal examinations. Pregnant women have the right to perform compulsory examinations free of charge from the doctor and receive free personal pregnancy attendance.

9. The Right to Marriage and Family

Marriage, as the institute of law, relies on the moral and legal equality of spouses in a sense of love, mutual respect and understanding as the basis of unity in the family. Sound family and marital relationships are a contribution to the elimination of gender stereotypes. Everything begins in the family and is transmitted to society. For this reason, rightly, if we want to know how to respect the principles of non-discrimination and gender equality in a society, it is very effective to carry out this analysis for the family as well. Both the marriage and the family as very important institutions enjoy the special protection of the state. The general principles outlined by these institutions are: i) the principle of reciprocity of rights and obligations ii) the principle of equality of rights and obligations iii) placement on all the interests of: children, marriage, family iv) reciprocity: in faithfulness, for moral help, for

material help, for cooperation in the interest of the family and coexistence. The family code is divided into three parts. The first part deals with general principles, the second part is dedicated to spouses and the third part is dedicated to children. This Code regulates the marriage relationship by providing the same conditions and prohibitions as for the woman and husband, the invalidity, the termination of marriage and the consequences of its settlement, the rights and obligations arising from the marriage, the personal and property relations of the spouses, maternity issues and paternity, adoption, guardianship etc. The Family Code throughout its dimension is depicted by principles such as reciprocity in rights and obligations, equality of spouses in relation to one another, children, marriage and family, non-discrimination due to being a man or a woman.

Equality between spouses has been recognized as a social concept and as a principle of family law only as a result of great efforts for progress and development. Previously, this equality not only did not find legal sanction, but, on the contrary, both social morality and the legal provisions themselves justify the inequality and discrimination of women.

The rights and obligations between spouses do not violate and affect the essence of their human rights. Marital rights and obligations are of special importance also for guaranteeing the rights enjoyed by children born of this marriage.

Article 50 of the Family Code expressly states that "By marriage, both husband and wife shall enjoy the same rights and undertake the same obligations." In all legal provisions of this Code that deal with marital rights and obligations, we observe that they are treated as rights and obligations for each spouse, without distinguishing between husband and wife. Each of them has the right and the obligation to express free and full will in relation to the main issues of marital life, including issues related to children born of marriage, to provide assistance for the realization of coexistence and the family but even undertake legal initiatives to reverse the actions of another spouse that hinder his/her exercise of marital rights and obligations. For some rights and obligations spouses preserve some kind of autonomy, while others leave no such possibility. Given the importance of having a spouse's right or obligation, depends as well the spouses' autonomy. Marriage as a relationship makes married spouses of a status stemming from their being man and woman. This marital status gives them certain rights and certain specific obligations of a personal/non-pecuniary nature, such as: the obligation and right to loyalty, the obligation and the right to moral assistance, spouse's surname, child's name, obligation and the right to a common life, citizenship, representation as rights-obligations of a material nature/material we mention: Obligations for material assistance, spouse's contribution to the obligations arising from marriage - Their measure may be determined by the contract if there is one, or - their extent depends on the spouse's conditions and abilities. The family code is presented under a contemporary dimension in terms of equality, reciprocity and non-discrimination in order to protect marriage and family as well as the rights and obligations of all its members. Note Articles 52 and 54 of the Family Code: When spouses do not agree on the child's surname, then Article 52 of the Family Code orders that the child will receive the father's surname. According to Article 54 of the Family Code, spouses "... will contribute to the needs of the family in accordance with their conditions and capabilities". This means that if they do not have equal conditions and abilities, so will their contribution be. The mother of the child born out of wedlock has the right to ask for the recognition of the paternity of the child even when she has not reached the age of majority. It should be emphasized that these restrictions do not violate the essence of the right to equality between spouses because children and family are paramount.

Likewise, the Family Code has provided for the intervention of a public authority (court) (Articles 58-64) when one spouse does not wish to fulfill his obligations voluntarily. The court is put into motion at the request of another spouse. Such cases are: authorization by a spouse's court to carry out legal actions

in the interests of the family, in cases when the other spouse opposes or is unable to do so (Article 58); representation of a spouse in cases where he is unable to express his will by another spouse (Article 59), supplementing one's spouse with the urgent needs of the family, such as family retention, child-raising, family interests and the resolution of other urgent situations (Article 60), cases where one spouse does not meet the obligations of and endangers the interests of the family.

10. Protecting Women against Domestic Violence

Domestic violence is defined by Albanian law as "any act or omission of a person against another person resulting in the violation of the physical, moral, psychological, sexual, social and economic integrity exercised between persons who are or have been in a relationship family". In most cases, violence is directed at: women within the couple, children from parents, children, parents, parents to the elderly, people with disabilities.

For the first time, provisions on domestic violence are found in the Family Code. Indeed, the Code protects spouses from spousal violence, thus making a limited treatment of the protection of other family members. Article 62: The spouse against whom violence is exercised has the right to appeal to the court upon request for urgent removal of the spouse who exerts violence against the spouse. The importance of this provision of the Family Code lies in the fact that through it a standard was introduced which was followed by a thorough elaboration in a separate law, Law no. 9669\18.12.2006 "On Measures against Violence in Family Relations". The purpose of the law is to prevent and reduce domestic violence in all its forms, by appropriate legal measures, and to guarantee the protection of legal measures of family members who are victims of domestic violence by paying particular attention to children, the elderly and people with disabilities.

Violence is not just a symptom of a marriage or coexistence in a crisis, but generally an unacceptable behavior that a law has to deal with. Institutional responses to the situation of domestic violence against children have radically changed mainly due to the impact that derives from the concrete implementation of Law no. 9669 "On Measures against Violence in Family Relations".

Women are predominantly affected by domestic violence. Therefore, domestic violence is often seen as one of the forms of gender-based violence, as it is exercised against women precisely because it is a woman. Law no. 9669, dated 18.12.2006 "On Measures against Violence in Family Relations" is a law of an administrative, non-criminal nature. It functions as a tool more than the Criminal Code. There are two main authorities against domestic violence: "Administrative Authorities and Judicial Authorities".

The law provides for a full framework of protection measures against victims of domestic violence. In this way, this law goes beyond the measures provided for in the Family Code, providing high security and protection for the child and his/her relatives on the one hand and rehabilitation of the perpetrator on the other. The measures are of protection character, victim rehabilitation, and economic character. The courts shall issue, as the case may be, a protection order or an emergency protection order.

11. Conclusions

To implement a gender-responsive policy, a conscious institutional environment is required. Gender issues have already been put in a new institutional and legal perspective. States and key institutional actors have the potential to contribute to greater gender equality. Today, the dimensions of freedom have expanded, society is more aware of women's rights and the role they have in society. In the Albanian

society with a masculine orientation, with strong doses of the traditional mentality that legitimizes the power of men continues to survive and produce gender stereotypes, violence, discrimination and inequalities in the opposite sex. The still strong presence of gender stereotypes and domestic violence is the clearest evidence that the gender inequality problem is present, structural and complex. One of the causes of the slow movement on the path of social emancipation is the fact that many activities are perceived as an exclusive issue of women. Promoting women's rights and initiatives to improve their statute in society is often done from a feminist point of view. The fact that women's rights are legalized as an integral part of human rights is a progressive step in the path of democratic development of the country. But the pathetic rhetoric for the respect of women's rights cannot hide the gray reality, disadvantages, barriers and social problems faced by women in their efforts to participate and equal status in society. The transition process from a centralized economy to the economy of the market is accompanied by two trends that go against the analogous trends in developed industrial countries.

12. Bibliography

Law no. 184/2013, dated 28.12.2013. On Some Changes and Amendments to the Law no. 10383, dated 24.2.2011. On compulsory health insurance in the Republic of Albania, as amended.

Law no. 7703, dated 11.05.1993. On social security in the Republic of Albania, as amended.

Law no. 7870, dated 13.10.1994. On Health Insurance in Republic of Albania.

Law no. 7889, dated 14.12.1994. On the Status of the Work Invalidity, as amended.

Law No. 7995 dated 20.09.1995. On the Promotion of Employment. As amended by Law no. 8444, date 21.01.1999, with the law no. 8862 dated 7.03.2002, with the law 9570 of 3.7.2006, and with the Law no. 10137, dated 11.05.2009.

Law no. 7995, dated 20.9.1995. On the promotion of employment. As amended by Law no. 8444, date 21.01.1999, with the law no. 8862.

Law no. 8098, dated 28.03.1996. On the Status of the Blind, as amended.

INSTAT (2014). Gender Perspectives in Albania, gender analysis - Census 2011. Tirana.

INSTAT (2005). Women and Men in Albania.

(2010). Gender Integration in Policies and Strategies. Tirana.

(2007). Gender Integration in Practice. Tirana.

(2010). Gender equality in society. Training Package on the Law on Gender Equality in Society. Ministry of Labor, Social Affairs and Equal Opportunities. Tirana.

(2006). Gender Equality in Local Decision-Making. Tirana.

Anastasi, A. (2010). *Women's Rights in Albanian Legislation.*

Anastasia, Mandro-Balili & Shkurti, Bozo (2012). *Gender Equality and Non-Discrimination.* Tirana.

(2005). Gender Equality and Decision-Making. Summary of Articles. Tirana.

(2010). Gender equality in society. Training Package on the Law on Gender Equality in Society. Ministry of Labor, Social Affairs and Equal Opportunities. Tirana.

(2006). *Gender Equality in Local Decision-Making.* Tirana.

http://www.idp.al/index.php/sq/.

http://www.idp.al/index.php/sq/programi-i-transparences/programi-i-transparences-kdimdp.

THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

The Need to Set Up the European Public Prosecutor's Office

Liliana Niculescu[1]

Abstract: The idea of setting up a European Public Prosecutor's Office (EPPO) is old and has its foundation in the interest of the European institutions to protect their budgets, both in the pre-accession and post-accession phase. In the interest of protecting financial interests in particular, there was wanted a regulatory framework in criminal matters to generate results. The solution found at Community level, despite complaints from some Member States over the violation of the principle of national sovereignty, was this EPPO institution capable of investigating, judging and prosecuting offenses against the EU budget, such as fraud, corruption or serious cross-border VAT fraud. In Romania, the debate on this issue did not address issues of sovereignty, or elements related to the nature of the institution's appearance, its necessity, or how it will work at the level of the signatory, non-statutory or non-EU. In our country the discussion has reduced to who will lead the respective European body, the views being obviously shared. What the public opinion in Romania ignores is the fact that man does not make the institution, but the institution makes the man. Given these exaggerations on one side and the other at national level, which have not brought any concrete contribution to the development of a European instrument, I consider as necessary a cold analysis of this institution and its implications for the Member States and Europe overall.

Keywords: European Public Prosecutor's Office; fraud; corruption; cross-border fraud; European Union

1. How did the Idea of Setting up the European Prosecutor's Office Arise?

Starting from the intention to combat cross-border crimes as regards the evasion of European funds, EPPO has found a concretization through Art. 86 TFEU[2] on the establishment of a new body of the European Union with the primary objective of investigating, prosecuting and bringing before the national courts persons who affect the financial interests of the Union.

This European Commission proposal was followed by a resolution of the European Parliament stressing that the EPPO structure should be completely independent of national governments and EU institutions and protected from any political influence or pressure and that the rules governing the division of competences between EPPO and national authorities should be clearly defined so as to eliminate any uncertainty or misinterpretation.

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[2] https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX:12012E/TXT.

The Commission proposal was the basis for Regulation (EU) No. 2017/1939[1] of the Council from the date of 12 October 2017 implementing enhanced cooperation with regard to the establishment of the European Public Prosecutor's Office.

- The main arguments behind the desire to set up EPPO are that: OLAF, Europol and Eurojust (institutions currently dealing with European money fraud) have no powers to conduct criminal investigations, the power to prosecute offenses against the budget of the Union being the exclusive competence of the Member States;
- Member States' cooperation to secure the Union budget is precarious;
- and the fact that the rate of criminal prosecution for cases of fraud in the Union budget is low, and this is accompanied by a low level of recovery of fraudulent money. In 2015, for example - in addition to VAT fraud - national authorities reported frauds to the EU budget of around € 638 million, and annually, Member States lose at least € 50 billion in VAT revenue due to transnational fraud.

On these grounds, the role of the European Prosecutor's Office is seen as a solution to overcoming these shortcomings and to the repression of crimes affecting the financial interests of the EU.

2. Structure of the European Prosecutor's Office. Establishing Competence

Regarding the structure of the institution, in order to ensure the achievement of the established objectives, the Union envisaged a decentralized structure of the European Prosecutor's Office, which will function "according to the principle of indivisibility and solidarity" consisting of: The College, the Permanent Chambers, the European Prosecutor and his deputies, the staff supporting them in the performance of their tasks, the European Delegated Prosecutors established in the Member States.

The latter exercise their powers in those Member States that have agreed on the idea of enhanced cooperation for the implementation of EPPOs. Investigations and prosecutions of the European Prosecutor's Office are carried out by the European Delegated Prosecutors, under the direction and supervision of the European Prosecutor. There are at least two delegated European prosecutors in each Member State, who are part of the European Prosecutor's Office.

In order to establish the substantive competence of EPPO, the Explanatory Memorandum accompanying Regulation (EU) 2017/1939 implementing enhanced cooperation with regard to the establishment of the European Public Prosecutor, paragraph 11 states that the TFEU provides that the scope of EPPO's material jurisdiction is limited to offenses which affect the financial interests of the Union in accordance with this regulations.

EPPO's tasks should therefore be to investigate, perform the criminal inquiry and prosecute offenders against the financial interests of the Union. For other offenses, which would mean an extension of this competence, a unanimous decision of the European Council would be necessary.

The territorial and personal competence of the European Public Prosecutor shall be determined by applying the principles of *subsidiarity* and *proportionality*. By addressing the principle of subsidiarity, measures to counter tax fraud, especially cross-border, affecting the EU budget can be better achieved at the level of the European Public Prosecutor's Office.

In this respect, we take into account the fact that the current competences of the national institutions do not perform the criminal investigation phase in the most efficient manner. In terms of proportionality,

[1] https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32017R1939.

the EPPO provisions do not go beyond what is necessary to achieve those objectives and ensure that its impact on the legal systems and institutional structures of the Member States is least intrusive.

A special situation arises in the case of conflicts of jurisdiction when a European Public Prosecutor from a Member State may initiate an investigation into a case handled by another European Public Prosecutor, in compliance with the following criteria: a) the place where the suspect or accused person is habitually resident, b) the nationality of the suspect or accused person, c) the place where the main financial damage occurred.

Before a criminal investigative decision is taken and with the hearing of the European Prosecutors Delegated in the Member States, the competent Permanent Chamber may decide either to relocate the case to a European Public Prosecutor in another Member State, or to merge or divide the cases and, in each case, the choice of the European Public Prosecutor to pursue it, sense in which the above-mentioned criteria apply. Conflicts of jurisdiction may also arise between EPPO and a judicial authority of a Member State, in which case jurisdiction will be determined by national authorities.

Problems may also arise as regards the functional competence of the European Public Prosecutor, starting from his dual quality - as a European Attorney Delegate and a National Prosecutor. Paragraph 32 of the Explanatory Memorandum to Regulation (EU) No. 2017/1939 provides that "*The European Delegated Prosecutors (...) when investigating or prosecuting offenses within the sphere of competence of EPPO, they should act exclusively on behalf and on behalf of EPPO on the territory of their respective Member State*"; art. (6) of the same Regulation states that "*the European Public Prosecutors (...) shall not seek or accept instructions from any person outside the EPPO from any Member State of the European Union or from an institution, body, office or agency of the Union their duties under this Regulation*"; and. art. 132 of the Romanian Constitution on the Status of Prosecutors "(*1) Prosecutors carry out their activity according to the principles of legality, impartiality and hierarchical control under the authority of the Minister of Justice. (2) The position of prosecutor is incompatible with any other public or private function, with the exception of teaching functions in higher education*".

Given that Regulation (EU) No. 2017/1939 does not specify that the position of the national prosecutor would be suspended during the course of investigations within the EPPO, so implicitly the prosecutor concerned may carry out simultaneous inquiries both as a national prosecutor and as a European public prosecutor, we consider the idea that the European Delegate Prosecutor be suspended from office as a national prosecutor while exercising his mandate, which would also require a series of adaptations of domestic law regarding prosecution, trial and control.

3. Election of the European Chief Prosecutor

In order to be able to speak of the European Prosecutor's Office as well as a zero point from which it can become functional, we have to report fundamentally to the head of this institution, the Commission, thus setting the date of commencement of EPPO operations on the basis of a proposal from European Chief Prosecutor. In other words, we first choose the leader and then establish the Prosecutor's Office.

Currently, the procedure for electing the European Prosecutor is in full swing, among the candidates being also a Romanian citizen, with real chances of being appointed. Even if we do not yet know the elected person, what we know for sure is that it will ultimately be negotiated between the Council of the European Union and the European Parliament, which is likely to negatively affect the credibility of the appointment of the European Prosecutor, for, although we insist on the professional skills of the

candidates, on the remarkable results obtained by the candidates in the legal field, the final vote seems to have a pronounced political character.

In addition, the institution of the European Prosecutor's Office still raises many questions. What began as a coherent centralized structure was twisted and turned into a heavily and partially decentralized arrangement. This is largely the result of the compromises that had to be made to resolve the tensions between Brussels and the Member States, without losing the concept.

The effect is, however, to create a state of uncertainty, confusion and power struggles between the center and the national authorities in individual cases, which in turn may lead to delays and cases being abandoned or lost. It will also serve to shadow the functioning of EPPO, to the detriment of transparency and accountability.

There is also the likelihood of war of attrition between states and EPPO on jurisdiction in individual cases. There is also uncertainty about the relationship between EPPO and Eurojust and, more broadly, the relationship between EPPO investigations/prosecutions conducted by EPPOs and Member States not participating in EPPO.

In Romania, as expected, the Brussels moves to set up the EPPO and the election of its leader crystallized into a campaign for or against the Romanian candidate.

Against the backdrop of the lack of information, insufficient explanations by Romanian MEPs about the new institution, and in the context of media manipulations, social networking, we are witnessing street protests or heated debates in the social media and in the European Parliament on behalf of our representatives, exaggerations that contribute to the loss of citizens' confidence in an institution that has not even started its activity.

However, the really negative aspect of the whole discussion is altogether different: it reveals the incapacity or the ill will deeply rooted in society, in the public consciousness, namely that in Romania (in many cases) the head of the institution makes it possible to understand that it represents the institution in itself, the reality being quite different. The power in an institution, if it is built on a solid basis, does not sit with the person named or elected on the highest position, but with all the members of the team - appointed/employees/collaborators working within that institution.

In conclusion, I believe that, besides the doubts that may still exist on this new European body on the transfer of sovereignty, confusion over the competence of the EPPO at the level of the Member States, credit should be given to this "novelty", hoping that any deficiencies will be remedied and regulated right once the EPPO becomes operational.

EU funds should help boost growth, combat unemployment, support economic and social equality, strengthen education and research, and should not fund crime and if the European Parliament can better protect this objective in a fair and transparent way, then its establishment will certainly be a good thing for EU citizens.

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REALITIES AND PERSPECTIVES

The Right to Protest - A Constitutional Right Exercised on the Fringe of Law

Liliana Niculescu[1]

Abstract: The right to protest is fundamental to the health of a democratic thinking. It represents one of the way of expressing the freedom of thought, manifestation, and association. In Romania, the recent events regarding the protest actions, mostly against the political class, have been characterized by a series of distinct features compared to the traditional movements: the transformation of the cyber space into a public space of contestation, the use of social networks for organizing and mobilizing the persons involved in such actions called spontaneous, the absence of an assumed leadership - all these characteristics has established that this constitutional right to protest, recognized since the Antiquity, was exercised on the fringe of lawThis right represents one of the legal instruments by which the citizens can transmit to authorities their disagreement about their actions or interests.

Keywords: protest; democracy; action; freedom of thought; freedom of association

Introduction

Contesting and protest movements are indispensable tools for a functioning democracy. Before the right to vote, we had the right to protest. The protest is a means of report the government, a means of forming a community and having a voice that might be powerless by itself. But, together with other voices, this one voice becomes strong. This is a means of amplifying a message and, at the same time, represents a means of physical resistance. A strong

In Romania, the recent events regarding the protest actions, mostly against the political class, have been characterized by a series of distinct features compared to the traditional movements: the transformation of the cyber space into a public space of contestation, the use of social networks for organizing and mobilizing the persons involved in such actions called spontaneous, the absence of an assumed leadership - all these characteristics has established that this constitutional right to protest, recognized since the Antiquity, was exercised on the fringe of law. In this respect, the recent decision of the High Court of Cassation and Justice came out in support of the regulation of some slippages found on the occasion of the latest mass protest in August 2018.

In these circumstances, we consider appropriate to analyze the evolution of the protest in Romania, beginning with the events of '89 up to now, taking into account the legal regulation in the field and the great influence of the development of information technology in the recent years on the exercise of the right to protest.

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Evolution of the Protest in Romania

The protests represents forms of social movement the objective of which is to change the functioning of social and political institutions when they deviate considerably from the expectations of citizens. These protests can be moderate when they do not involve violence, radicalism and the replacement of a regime, involving violent manifestations and attacks on the existing institutions. The contestation denies a certain undesirable social and political order, a right is claimed or an obligation is denied. Any contestation is usually finalized with a demand aimed at changing or bringing the purpose of contestation to the bounds of desirability.

The trigger of the protests may be a gesture, a decision or a fact labeled and interpreted as an undesirable behavior of political leadership.

In the case of Romania, the protests in recent years have been triggered by the violation of the principle of good governance by the arrogance, lack of transparency and the lack of interest of political class shown for the fundamental rights of citizens (the right to vote, the right to be informed, consultations, etc.). Since the revolution in 1989, the evolution of protests in Romania were closely connected to the technological progress and the means of information dissemination.

If in the past (for example, in the June 1990 or the protests organized by trade unions) a leader had to assume the organization and the leadership of a far-reaching manifestation, the social networks have now wiped out the need for a revolutionary personality. The first moment when Facebook mobilized the people in the street was on the occasion of the protest against the Health Law in January 2012, when in our nation's capital and in other 51 cities in the country, thousands of Romanians went out in the street for 5 days. Violence, between protesters and law enforcement occurred in Bucharest. The protesters expressed their solidarity with Raed Arafat, the founder of SMURD and expressed their opposition against the new health system promoted by the Government. The effect of this event was a victory for the protesters: Raed Arafat returns to his position of Undersecretary of State at the Ministry of Health, and the new project regarding the Health Law was cancelled.

Another big protest in the autumn of 2013 took place over a month, against the Rosia Montana project when, in the name of General Solidarity, almost 200,000 people were chanting "Only being united we can save Rosia Montana" and "Leave your houses if you care!" The protest in October 2015, having a great emotional impact after the Colectiv tragedy, resulted in the resignation of the government at that time.

The series of protests cannot be concluded without mentioning the impressive street movements in the winter of 2017 against the measures taken by the government in the field of justice, when about 600,000 people manifested for several days throughout the country, the effect being again victory for the dissatisfied.

Until now, the common aspect of the protests in Romania was the generally absence of violence or peacefulness. Unfortunately, during the protest of August 2018, the diaspora against the government, the violence has degenerated, with confrontations between the protesters and the law enforcement, resulting in significant personal injuries in both sides.

This is the moment when the debate about the lawfulness of exercising the right to protest took place in the public space and targeting the so-called *spontaneous* protest and consequently, unassumed.

I believe that the answer this question requires to understand how these spontaneous protests arise, and the answer lies in the influence of the virtual environment in mobilizing the masses.

The Role of Social Networks in Organizing the Protest Actions

If 1989 was the year of the revolution on television, the protests in recent years are characterized by the mobilization through social networks. However, the televisions play the role of a resonant box, an amplifier of the message, but the force of protest lies in the ability of the virtual space to transform itself into a symbolical space of contestation and mobilization of citizens.

Under the shield of anonymity, the keystone of the protests is formed by social movement activists, with experience in organizing such events, well positioned in the nodes of social networks.

The key issue for the protests is centered on generating solidarity by linking the individual interests and emotions to the collective interest and emotion. The undesirable behavior of politicians has been defined and labeled as a generator of uncertainty, perceived as a real threat to the individual goals. The multiplication effect is based on the need to reduce the uncertainty by associating the identity with the participants to the movement and the dissociation from others. Thus, the phenomenon WE and THEY appears. The vulnerability of the system (the accused politicians do not communicate with them, the gendarmes do not react violently) amplifies the individual courage to define their virtual (on Facebook) or real (in the street) membership to the protest movement. This is the mechanism which favors the expansion, the diffusion and the institutionalization of the protest.

Then, the process of certification or recognition of the movement by authorities or the media takes place. In parallel, the public support or recognition by the silent majority takes place. As the critical mass is reached, the emotional effect is amplified and the mobilization of individuals in protests is much more likely.

The crowd generates the impression of collective force, a force that otherwise cannot be exercised individually. Therefore, the association with the protest crowd is an act of reducing the individual uncertainty. The normative pressure of society is diluted in the crowd, and the disobedience is much more likely under the anonymity and the protection of the protest crowd. The crowd led to de-personalization or loss of lawful restrictions on the deviant behavior. The feeling of belonging to a protest group can sometimes be strengthened by practicing a deviant behavior under individual conditions. Under the empire of the crowd, the communication of message often takes place peripherally (emotionally, based on credibility, dispositions and assignments) and not centrally (using rational arguments).

The spaces used by protesters such as the University Square or Victory Square have become symbolic spaces for contestations, which give legitimacy to the protest actions. This legitimacy attributed by the contestants is sufficient, in their view, to ignore the legal regulations in the field of protests. Practically, their right to protest, in any form and under any circumstances, is more important than other legal norms.

Therefore, most contestations are, at the beginning, on the fringe of law, but the violation of rules (lack of legal protest permits, blocking traffic on public roads) becomes for the protesters irrelevant compared to the legitimacy of their protest.

New Legal Provisions on Protests

Public meetings - the protest - alongside the right to vote - are considered the essence of the democratic rule of law. Over the years, people have become aware that public gatherings are one of the most effective ways to fight injustice.

If, in the long-forgotten centuries, the organization of a protest was not such a complex process, today, in today's Romania is important to know that the freedom of assembly and expression is guaranteed by Law 60/1991.

According to Law 60, the public meetings are authorized on the basis of application submitted by initiators, who are the organizers of the assembly (they are in charge of conducting the respective action in good condition, they cooperate with the authorities, communicate the directions of mass flow, etc.)

But not only Law 60/1991 regulates the right to protest, which is also guaranteed by the Constitution of Romania according to Article 39, regarding "The Freedom of Assemblies". The article clearly states that the public assemblies should be held only peacefully: "*Public meetings, demonstrations, processions or any other assembly shall be free and may be organized and held only peacefully, without arms of any kind*".

The novelty regarding the conduct of protests within the legal framework refers to the recent decision of the High Court of Cassation. If, prior to the Court's decision, Article 3 of Law 60/1991 did not provided the obligation to declare and assume in advance the spontaneous protest – "*Should not be declared in advance of public meetings whose purpose is cultural and artistic events, sports, religious, commemorative, the provision of official visits, as well as those taking place outside or inside the premises or property of legal persons of public or private interest*"- at present, after the last violent protest in August 2018, things have changed radically.

The High Court of Cassation and Justice decided that the spontaneous or announced protests in the virtual space, then organized in the street, should be declared illegal if not assumed by anyone. Anti-government protests in Victory Square, for example, will now be considered illegal unless they have been previously announced to the City Hall and implicitly are not assumed by one or more organizers.

"There is an obligation to declare in advance the public meetings when meetings are to take place in markets or on public roads or other places in the immediate vicinity of the premises or buildings of legal persons of public or private interest."

Obviously, the reactions of protest supporters against this decision emerged very quickly, as they considered that the decision affected their right to free expression, the protest being a part of free expression. The representatives of the association *The Institutional Evolution* also argue that the ICCJ has limited the right of citizens to protest spontaneously and offers the possibility of the Gendarmerie to practice abuses by large fines and by force intervention, even if it is a peaceful protest.

Leaving aside all the legislative burden, it would be ideal that all those taking part in a protest comply with three simple rules. The purpose of the meeting would already be half reached if the following rules would be understood and observed by everyone:

- No verbal violence;
- No damages;
- No provocation against law enforcement.

At the same time, it is important to note that the explicit regulation of the conditions for organizing, preparing and conducting the public assemblies does not represent an attempt by the state to limit a fundamental right of the citizen, but a plastic expression of the protection of public values.

I believe that a useful solution in this respect would be an update of the 60/1991 law by the government, in consultation with the parties and civil society, and the freedom of assembly to be doubled by assuming natural responsibilities in order to avoid hooligan incidents and anarchic manifestations.

Also, in order to have an ample and fair picture of public gathering issues, the competent authorities are required to take into account the requirements of those anonymous organizers working in the online environment responsible for mobilizing people in the street because their influence can no longer be denied. Social networks became so powerful they can change the political agenda of parties at some point. The case of the Government Ordinance on Pardoning and Changing the Criminal Code or the Rosia Montana Project are edifying.

Thus, the politicians need to be prepared to accept that they are no longer alone on the stage of power. Now, complementary power centers acting as regulators in the functioning of democracy appear, which represent not alternative but complementary means.

Bibliography

Sava, Ionel (2014). *Sociology of social movements*. Printing House Nemira

Law No. 60 of 23 September 1991 republished on the Organization and holding of public meetings, published in the Official Gazette no. 186 of 14 March 2014.

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Aspects of Good Administration in the Self-Government Reformation in Albania

Belina Bedini[1]

Abstract: In 2015 Albania introduced the Law No. 139 on "Self-Government in the Republic of Albania" as one of the most relevant reformations, in the framework of the integration of the country into European Union. Indeed the aim of law, is to provide a more effective, efficient and a closer local government to the citizens, introducing in this way the European concept of good administration. In this paper we intend to treat the promotion of citizen's participation in the decision-making process, as one the key elements of the good administration. Hence we will analyse if the citizens are involved to the decision-making process in local government, after three years of the implementation of the law. Thus, through the comparative methodology between the old and new legislation on local government, we will highlight what are concrete innovations, in terms of inclusion of citizens in the decision-making, in order to know what to expect from the law. Moreover, through the examination of the recent studies, we will try to figure out, how the most important municipalities in Albania such as Tirana and Durrës, are including the citizens in the decision-making processs. In addition we will look through the public hearings, as a tool of citizen's participation in the decision-making process, by analysing the published minutes at the municipalities' website. Therefore the results will induce to a comprehensive panorama of good administration at local government in Albania, in terms of citizens' participation to the decision-making process. Such outcomes will lead to some recommendations for future improvement which are addressed to the public administrators and to the legislators as well.

Keywords: good administration; self-government; local government; Albania

1. The Concept of Good Administration and the Self-Government Law in Albania

As the concept of good administration grown up gradually, it is developed in a wider set of values and principles regarding different aspects, which covers behavior, actions and decision-making processes (Kopric, Musa & Novak, 2011). In accordance to SIGMA, the good administration as European idea, that improved through different historical phases and combined with modern democratic governance, gave to the citizens the role of active members who can contribute for the development of the society. Therefore the participation in the decision-making is a condition for democratic and efficient governance (Sigma, 2012). In accordance to J. Rusch the good administration can be implemented only if the process of making decisions is promoting citizens' participation in the decision-making process (Rusch, 2015).

Without doubt, the most significant European document that defines how the self-government should deal with good administration and specifically with the inclusion of the citizens in the decision-making process, is the European Charter of Self Government of Council of Europe. Actually, Albania accessed

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it in 1998. Thereupon, the research question of this paper is "Is it really Albania determined to follow and apply the European principles of citizen's involvement in the decision-making"?

From the historical point of view, the local government reformation started in 1992 with the Law No. 7572 for the organization of local government, in accordance to which the territory was divided in 36 districts, 44 municipalities and 313 communes. The municipalities and the communes, are structured in local councils, head of communes or Meyers, which are elected by the respective population. In the same year, was introduced also the Law No. 7608 on the prefectures, in accordance to which 12 new prefectures were organized as entities directed by the prefects hired by the Council of Ministers. Every prefecture was including 2-4 districts in its territory. In the period of time between 1992 and 2000 some addition amendments were presented, but the territory division didn't submit further modifications.

In addition, Albania signed the Charter of Self Government of Council of Europe in 1998, which was ratified through the Law No. 8548 by the parliament and as a result, the concepts of local autonomy became part of the constitution (Co-Plan, 2018), which the population approved in 1998 through a national referendum. The next reform on local government, reformation started in 2000 by introducing the regions through the Law No. 8653, in order to fulfill requirements of local autonomy as the Charter requests. At this point, there were three levels of government: central, regional and local.

The territory was submitted to a new division in 2014 when the Law No. 115 "On the Administrative Division at the Republic of Albania" entered into force. The Constitution of Albania (art. 140, pt. 2) and the European Charter of Self Government, establishes that boundaries of territory can be completed only by asking the respective inhabitants of the territories. However, the population was not officially asked if agreed with the new separation. The drafting process was directed from a central group composed of local and foreign experts and other 12 groups peripheral groups for each region and all of them, were technically and financially assisted by an international projects, supported by USA, Swedish government, Swiss government, PNUD, Council of Europe, and OSCE etc. The entire drafting process consisted in analysis, round tables, research, conferences, seminars and consultations with the local authorities all over the country. Moreover, was conducted a survey on a population of 16.000 residents, where results that 67% of them, support the draft-law (Ministry of Local Affairs, 2014)

The opposite party filed a lawsuit at the Constitutional Court of Albania, who rejected the claim, arguing that, as a matter of fact the Constitution is not defining any specific methodology how the population should be asked (Constitutional Court: 2015). Likewise, the Charter of Self Government of Council of Europe, defines that changes in local authority boundaries should be done by prior consultation, possibly by means of referendum, where this is permitted by statute (1985, art. 5).

Afterwards, the reformation of local government continued with the approval of the Law no. 139 in 2015 "On the Self-Local Government in the Republic of Albania". Indeed the law aims to provide a more effective, more efficient and a closer local government to the citizens. The purpose of the law is to stimulate the effective participation of all citizens in the local government, intending here woman and man, without distinction. In addition, the law establishes that the transparency of the decision-making at the local government institutions is a legal obligation. Consequently, the administrative units should ensure the participation of the citizens through an ad-hoc coordinator for the public consultations, assuming here that the citizens' participation is a crucial element to implement.

At this point, it is fundamental to examine, how actually the self-government is being implemented in Albania after three years of new legislation implementation. Firstly, it is necessary the comprehension of how the new elements of citizens' participation are foreseen within the law, in order to envisage a probable reality. Secondly, by observing how the law is being executed in practical level, we can create

a panorama where we can conclude some aspects which worked and others that need some improvement. For this reason, we choose the Municipality of Tirana as the biggest in Albania, to see how the decision-making process is taking place. Afterwards, we will observe the public hearings as a mechanism of inclusion to the decision-making practice. We will analyze the reports and the information published in the website of the Municipality of Durrës, as the second most important municipality in Albania. In the same time we will review the last studies undertaken on this issue by different NGO's, think tanks and researchers in Albania.

Finally, we will make a general prospect on the self-government in Albania in the context of the European concept of good administration. Hopefully after having in consideration facts, results and legal instruments, the process will lead to some recommendations, on how the local government can be managed following the European concept of good administration.

2. The Legal Framework and the Novelty to Understand and Implement

Form a general point of view, the old and new legislations, do not have significant differences as both of them foresee in their missions the knowledge of the diversities, respect of rights and freedom, public serviced, and self-government. Likewise, the structure of the levels in local government are the same. The region as the middle level of government is still unclear, as there is not any specific competences recognized by the law. Moreover, functions of the municipalities are almost the same, because both laws charge the municipalities with competences such as the water supply and sewage, irrigation and drainage, local road infrastructure, forest and fire protection and pre-university education. Thus, the only difference is the classification of the competences in three kind of categories as: (i) own functions; (ii) common functions; (iii) delegated functions.

Anyway, the innovation of the law is the reduction of the administrative units from 65 municipalities and 373 communes, to 61 bigger municipalities, which included the 373 old communes, within their jurisprudence as units, reducing the number of units by 80%. Also the legislation introduced the regions (qark) without any clear competence and functions (Congress of Local and Regional Authorities, 2017). So, if previously the municipalities were mainly based on urban population, now have included some rural administrative units (former communes) becoming mixed administrative units, with urban and rural population to manage in the same time. Nevertheless, the reformation was supported largely by European Union (DEU, 2018), other international organizations and partners with the idea to bring a more efficient administration.

Conversely, on the other hand, it has avoided the representation of the rural population at the local decision-making process. For instance, in accordance to the old legislations the communes based on the number of inhabitants, could elect their head of communes and councils members. Actually, the rural units are governed by administrators which are hired by the meyers of the municipalities, and the decision-making process is centralized at the municipality councils. Even though, the constitution defines that the political representation is equal and based on the number of residents in terms of parliamentary elections, it does not define how this principle could be respected in local elections. In the same time, neither the electoral code, nor the law on self-government, is taking care of the equal representation of different units of the municipalities at the municipal councils. Actually, there is a legislation vacuum on the representation of the rural units at the Municipal Council, letting the rural population without representation at all. (Bedini & Allmuça, 2018) Such lack of legislation is admitted by the minister of local affairs too (Çuçi, 2015).

Moreover, there are suspicions from the opposition that the bounder of the territory served as a tool for the application of gerrymandering, assuming here electoral benefits as a result of redefinition of electoral zones. Nevertheless such claims are not yet confirmed (The Congress of Local and Regional Authorities, 2016).

The law was supposed to change the financing scheme of the local government, giving more autonomy to the municipalities, but such mechanisms are not regulated yet as by laws and additional regulations are still missed. For instance, the law on self-government foresees that automotive circulation taxes and 2% of the revenues from the income taxes, should be generated and administrated by the municipalities, but in order to apply such disposition, amendments to the tax law and income law are necessary, which the government is not undertaking up to this moment. In other words, local financing autonomy is not taking place and almost 90% of the revenues are coming from the central government (Guga, 2017). Moreover the delegation of additional competences are still missed (Council of Europe, 2016).)

Nevertheless, in terms of propaganda the minister for the local government emphasizes the successful performance of the law implementation, because the state has been able to gain 15 million dollars in addition in local taxes (Ministry of Local Issues, 2018), but this is not possible to translate it in a wider financial autonomy. On the other hand, the new intermediary agency Regional Development Fund is created to allocate grants to the municipalities due to competitions (Regional Development Fund, 2019), but these funds are decided by an ad-hoc commission leaded by the prime minister and composed by other minsters (VKM 1, 2018). Practically the municipalities are still depending from the government. Moreover, there are claims by Albanian Municipalities Association, that the government is using such fund as an instrument, to penalize the municipalities governed by the opposite parties (Albanian Municipalities Association, 2019).

3. The Decision-Making Process in Local Government

In accordance to the Constitution of Albania the decision making-process is an exclusivity of the municipal councils and communes, which are also representatives of the citizens (art. 113). In addition the law on self-government defines that the decision-making institution at the local government are the Municipal Council, composed of councillors elected by the citizens. In the same time, the institutions of local government are obligated to guarantee the public participation in the decision-making process as a law obligation (art. 16) and every unit should hire a coordinator for notification and public consultations, in order to accomplish such obligation. The law on self-government, highlights that the consultations are supposed to place in accordance to the law on the notifications and public consultations. But, the scope of action of the law on the notifications and public consultations, are all the public organizations, where are included also the local government organizations with administrative functions (art. 2, point 9) (Law 146, 2014). At this point, this law is not acting on the municipal councils which are decision-making and not administrative institutions. At a result, it is assumed that the municipal councils, which are contemporary the only decision making institutions, are not supposed to base their activity to law on public consultations, but only to the dispositions of the law on self-government.

If we look at law on self-government, in the successive article 17 defines that the meetings of the municipal councils are opened for the general public, which should be informed previously through public notifications. In addition, the consultations with the public are compulsory when specific decisions are undertaken like: local taxes, nomination of the secretary, organization of the commissions, internal audit of the municipality (art. 54 points a. dh. e. f), approval for the budget, alienation of

properties (art. 77, points a, dh, e, f, k). In other words, it results that within the same law, the public consultations are treated in two different ways. Firstly, in the article 16 where is defined that public consultations are obligatory in the decision-making process, in accordance to the law on public consultations. Secondly, in the article 18 where is established that the public consultations are obligatory only for specific issues like taxes, budgets, properties etc. As a consequence, the law itself is realising the councils from the obligation of consultations during the entire decision-making process. In addition, in accordance to the law, the concrete tools for realising the public consultations are defined by the regulations of the Municipal Councils (art. 18, point 2). Thus, in one hand the consultations are an obligation from two laws, but on the other hand the municipal councils can determine by themselves how. From the practical point of view the public consultations are de facto something defined by a sub law act.

In a study conducted by Albanian Centre for Issues of Public Information (here in after Infoçip) on the thematic evaluation of the law on self-government, it results that such kind of expression creates difficulties of interpretation. Therefore, even the implementation with be tough to realise. It would have been more acceptable if the article 18, should have come after the article 16, because this article express the pre decision – making process where the public consultation should take place (Infoçip, 2017).

In one hand, a new mechanism such as the local referendums (art. 18, point 2) is foreseen to enforce the citizens' participation in the decision-making process. But, on the other hand, the constitution of Albania defines that the self-government is expressed also by local referendums, which should take place in accordance to the specific law on the referendums (art. 151, point 2). As currently Albania is missing a law on the local referendums, such kind of mechanism cannot be beneficial at all.

Conversely, the law on self-government recognises the citizens' initiative, through a petition signed by at least 1% of the administrative unit's population, but the procedures on how such initiatives can take place are defined at the municipal council's internal regulations. Anyway, as Infoçip argues in its report, this mechanism can't take place as soon as there is not any legislative base. Indeed the constitution of Albania defines the citizens' initiative only regarding the national legislative process (Infoçip, 2017). Nevertheless, the Municipal Council of the Municipality of Tirana is still working with the old regulation based on the old legislation of 2000 (Municipality of Tirana, 2019) and the Municipality Council of Durrës is still working on the regulation of 2004. Actually, the Municipal Council of Vlora has approved the internal regulation, where is not defined any kind of public consultation outside the dispositions of the law.

It seems like the law of self-government, even though is introducing some European concepts of good administration, it is not able to guarantee all the necessary tools to implement an inclusive decision-making process.

But how is actually taking place the decision-making process in the municipal councils? In a previous study conducted at the Municipality of Tirana, through the interviews conducted with councillors of results that the decision-making process is organised in collaboration between the administration of the Meyer as the executive branch of the local government and the municipal council. It results that the administration prepare the draft-decisions, sent them to the municipal council's commissions. Afterwards the drafts with comments is addressed again to the administration which prepare them for the public sessions (Bedini & Allmuça, 2018). In practice there are not undertaken public hearings or consultations unless there are not on the mid-term budgeting or other decisions regarding the issues foreseen by the law.

4. The Public Hearings: What is Done, What is Left?

Generally the two most important municipalities of Albania, Durrës and Tirana have organized public hearings regarding the decision of the midterm budget. For instance the Municipality of Durrës has organised in 2017, 14 public hearings in all the administrative units with different thematic like: local taxes; economic and territory development; education culture and sports; social services; infrastructure; agriculture and forestry, in terms of budgeting. In a total of 14 public hearings, 493 habitats out of 323.147 attended in six administrative units (Municipality of Durrës, 2019), marking a week participation of 0.15% of the total population.

In accordance to a survey conducted with a champion of 246 citizens distributed in two rural units and two urban units of Durrës, it results that 124 habitants or 50% have enough information on the management of the municipality and 122 out of 246 do not know anything on the duties and responsibilities of the municipality. On the other hand, the interviewers have been asked if they are informed about the public hearings, and it results that only 60 out of 249 (24%) are informed about the public hearing. Likewise it fallouts that the rural population are more informed that the urban population. Moreover, the interviewers have been asked if they have been invited in electoral meetings during the local electoral campaigns and it results that 170 out of 246 (69.1%) have been invited and participated in different electoral meetings (Velia & Lata, 2019). Based on these results we can conclude that the information of the population is possible, but for public hearings seems somehow difficult to reach the citizens. Also the information and the participation of the citizens in rural areas is higher even in this case. Most of the interviewers have been asked to participate in public hearings

In addition, in accordance to a study in two rural units of Tirana, it results that there is a special connection between the population and the administrators of the rural units. People are active in electoral meetings and also in public hearings even because they do hope that their problems can be solved by political representations. In this case this can be interpreted with the primitive rural culture of the population (Bedini & Allmuça, 2018)

Nevertheless, there are also good practices, like at the Municipality of Elbasan where citizens are informed with fryers door to door about the time and place of public hearings and the participation is in considerable levels. In the same time the citizens have the opportunity to vote regarding the options for different decision. The weak aspect is that sometimes the citizens are not informed on the results of their involvement in the changes at the decisions, as a result of their activation (IDRA, 2017) and this is not helping the growing of citizens' confidence to the local government institutions.

5. Conclusions

Firstly, from the legislation analysis above it turns out that the new laws which are approved since 2014 are a step forward towards the good administration in terms of European concept. The reformation undertaken by the Albanian government seems an effort, but is not enough.

Since the beginning is obvious that the new legislation is not coordinated with the constitution. For instance the constitution still determine the communes and municipalities as administrative units, while the new legislations has abolished the communes.

Secondly, the constitution needs amendments regarding the citizens' initiative on local decision-making, because it is foreseeing it only for the national legislation. Moreover, Albania needs a law on the referendums, including here both national and local ones.

Thirdly, there are necessary some amendments to the Electoral Code, as the only legislative base that defines how the democratic representation is taking place in Albania. The code does not provide any form of equal representation of the habitats of administrative units as components of the municipalities at the municipal councils.

Fourthly, the law of self-government is not effecting properly as it is not completed with by-laws or internal regulations which could give a push to the self-government and autonomy.

Fifthly, the municipalities are not having concrete tools to be have more autonomy. Their financing is still depending from the government.

Sixth, the consultations which are the most effective mechanism to guarantee the participation of the citizens in the decision-making process are taking place only for the midterm budget. In order to have an all-inclusive participation it would be necessary to broader the spectre of consultations for different kind of decision-making. Moreover, the midterm budget is not fully comprehensive for general public which sometimes is not even informed on the results of their interventions. In addition the participation of the public in public hearings is still low.

Seventhly, there is a lack of compliance between the law on self-government and the one on notifications and public consultations. Indeed the law on self-government cannot be grounded on the law on public notifications and consultations, because its field of action fall only on the administrative institutions, where can be included only the Meyers, letting outside the municipal councils, which are de facto the only decision-making institutions recognised both by the constitution and the law in the same time.

6. Recommendations

Before taking in consideration the participation of the citizens in the decision-making process as part of the good administration, it would be necessary to regulate the political representation. It is assumed that there is not participation without representation. It is highly recommend appropriate amendments to the electoral code in order to fix up the representation of the citizens of different units in the local government. After the democratic participation in accordance to the democratic principles of equity, we can start taking provisions for the inclusion to the decision-making process.

Moreover, it would be beneficial for Albania to join the Protocol of the European Charter of Self Government of Council of Europe of 2009, because it clearly emphases the right to participate in the affairs of local authorities. Concretely, the right to seek, to determine or to influence the exercise of local authority (art. 1) as well as the right to participate as voters and candidates in the election of members of council (art. 1, point 4.1), is clearly highlighted in the Protocol. Moreover, the protocol established concrete measures and tools on how to implement the participation with consultative process, local referendum, petitions (art. 2, point 2), which Albania needs in order to complete the self-government legislation (Additional Protocol of the European Charter of Self-government, 2009).

Furthermore, it is necessary to inform the citizens on the new rights gained as a consequence of the law on self-government. As argued by the authors Solomon and Domide the authorities should find way and tools to educate the citizens with the new regulations (Solomon, Domide, 2013), otherwise they will never exercise their right to participate and the law will never effects in terms of good administration. Probably, such process can be realised by the activation of civil society as partners with the municipalities.

In addition the decision-making process can improve if new processes of consultations can be included as part of the decision making process. Therefore it would be necessary to determine public consultations as obligatory part of the decision-making practices, foreseen at the internal regulations of the municipal councils.

7. References

Bedini, B. & Allmuça, M. (2018). *The inclusion of women from rural areas in decision-making practices that directly affect the quality of life and that of their community*. Policy brief for the Municipality of Tirana, Swiss Cooperation, Perform. pp. 6, 18.

Guga, E. (2017). Local government modernization in Albania: Historical background and the territorial reform 2015-2020. *International Journal of Public Sector Management.* Vol. 13, issue 4. October, pp. 466-506.

IDRA. Institute for Development Research and Alternatives. *Udhërrëfyes për përfshirjen e qytetarëve/komuniteteve në qeverisjen vendore* 2017. IDRA/A guide for the inclusion of the citizens and communities in the local government) 2017. Retrieved on 1.4.2019 at https://www.levizalbania.al/images/UDHERREFYESI_IDRA.pdf.

INFOÇIP, Qendra për Çështjet e Informimit Publik. 2017. Vlerësimi tematik i lgjit për vetë qeverisjen vendore, monitorimi pilot i këshillit bashkiak Tiranë, Vorë, Kamëz. (INIFOÇIP: Center for the Public Information Issues. Thematic Evaluation of Local Self Government, Pilot Monitoring of the Municipal Council of Tirana, Vora, Kamza) retrived on 25.3.2019 at http://www.infocip.org/al/wp-content/uploads/2017/11/raporti-monitorues-INFOCIP-keshilat-bashkiake-zbatimi-i-ligjit-per-qeverisjen-vendore-leviz-albania.pdf.

The Congress of Local and Regional Authorities, Council of Europe. *Information Note on the Congress' Fact Findings Mission to Albania (24 to 26 February 2016)*. Retrived on 15.4.2019 at https://rm.coe.int/168071939a.

Koprić, I.; Musa, A. & Novac, G.L. (2011). Good administration as a ticket to the good administration space, *ZBORNIC. Collected Papers of Zagreb Law University*, (5/2011), pp. 1515- 1526.

Rusch, W. (2015). *Good administration thgrough general administrative procedures. Modernasing Administrative Procedures, Meeting EU Standarts*. RESPA (Regional School of Public Administration), p. 5.

SIGMA, Support for Improvement in Management and Government (2012). Good Administration through better system of Administrative Procedures, Retrieved on 15.3.2019 at http://sigmaweb.org/publications/Comments_LawAdminProceduresKosovo_JN_Oct2012_Eng%20%20.pdf.

Solomon, A.D. & Domide, G.S. (2013). *Transparency of the administrative act and the citizens' rights*. International Conference of Scinetific Paper AFASES.

Toska. M. & Bejko. A. *Administrative territorial reform and the decentralization strategy*. How close/far the desired objectives are we after a governing mandate. CO-Plan. 2018 available on

Velia, B. & Lata, K. (2019). Abuse of state resources in the Municipality of Durrës. *Conference Money in Politics: Reflection, Expectations and Solution*. IDM, British Embassy and Aleksandër Moisiu University, Durrës, Albnaia February.

European Charter of Local Government, Council of Europe. Retrieved on 15.3.2019 at https://rm.coe.int/16807198a3.

(1998). Kushtetut e Republikës së Shqipërisë/Constitution of the Republic of Albania.

Ligji 115/2014 Për ndarjen Administrative në Republikën e Shqipërisë/Law 115/2014 On the Administrative Division at the Republic of Albania.

Ligji 130/2015 Mbi vetëqeverisjen në Republikën e Shqipërisë/Law 139/2015 on the Self Government in the Republic of Albania.

Ligji 146/2014 Për njoftimin dhe konsultimin public/Law 146/2014 For the Notificaiton and Public Consultations.

Ligji 7608 dt. 22.9.1992 Për Prefekturat/Law no. 7608, date. 22.09.1992 for the Prefetures.

Ligji 8548/1998 Për ratifikim e Kartës Evrlpiane për Autonominë Vendore/Law 8548/1998 On the ratification of the European Charter of Local Government.

Vendim i Gjykatës Kushtetuese Nr. 19, 15.04.2015. Decision No. 19, date 15.04.2015 of the Constitutional Court of the Republic of Albania.

Rregullore e funksionimit dhe organizimit të Këshillit Bashkiak Vlorë/Regulation for the function and organization of Municipal Council of Vlora. Retrieved on 15.4.2019 at https://bashkiavlore.org/2017/03/31/rregullore-e-organizimit-dhe-funksionimit-te-keshillit-te-bashkise-vlore/.

Rregullore e funksionimit të Këshillit Bashkiak Tiranë/ Regulation for the function and organization of Municipal Council of Tirana. Retrieved on 10.4.2019 on https://www.tirana.al/artikull/rregullorja.

Rregullore e Këshillit BashkiakDurrës/Regulation for the function and organization of Municipal Council of Durrës. Retrieved on 10.4.2019 at http://www.vendime.al/wp-content/uploads/2014/09/Vendim-i-keshillit-Bashkiak-Durres-nr206-date-10.07.2014.pdf.pdf.

Bashkia Durrës, Përmbledhje e dëgjesav publike për përgatitjen e Buxhetit Afatmesëm 2018-2020. Municipality of Durrës, Overview of public hearings for the elaboration of Midterm Budget (2018-2020).

The Congress of Local and Regional Authorities, Council of Europe. *Information note on the Congress' facts-finding mission in Albania* (24-26 Feb. 2016) Retrieved on 26.04.2019 from https://rm.coe.int/168071939a.

Vendim i Këshillit të Ministrave No. 1, datë 10/4/2018 Për Miratimin e Programit Operacional Zhvillimi Rajonal 2018-2019 të Granteve të Fondit për Zhvillimin e Rajoneve/Decision of Council of Ministers of Albania, No. 1. Dt. 10.4.2018 For the Approval of the Operation Program of Regional Development through the Grants of Regional Development Fund.

http://reforma.idra.al/#harta.

http://sigmaweb.org/publications/Comments_LawAdminProceduresKosovo_JN_Oct2012_Eng%20%20.pdf.

http://www.reformaterritoriale.al/reforma/procesi-hartimit.

http://www.reformaterritoriale.al/reforma/pse.

https://aam.org.al/deklarate-e-shoqates-se-bashkive-per-projekt-buxhetin-e-vitit-2019.

https://eeas.europa.eu/delegations/albania/53730/putting-people-first-eu-supports-public-administration-reform-albania_en.

THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
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Verification of Data Resulting from Technical Surveillance by the Court

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Abstract: The present analysis aims to highlight the different methods of verification of the data obtained by judicial bodies through technical surveillance methods provided by the Criminal Procedure Code. Although the current legislative framework as interpreted by the Constitutional Court of Romania provides specific guarantees in order to prevent using forged evidences in the criminal trial, we believe that the court, after the indictment, needs to verify on its own the authenticity of such means of evidence. Therefore, the doctrine and the recent jurisprudence of national courts stated in this context the need for an independent expertise that can analyze the data obtained through technical surveillance in order to be used as evidence in a criminal trial. Also, the present context of the Romania legislative reform and the context in which several cooperation protocol between criminal investigation bodies and Romanian Intelligence Service were declassified, led to a stringent need for such an expertise. We tend to believe that without an independent expert that can assess whether the recordings are authentic or not, the court cannot in good faith decide to convict a person. Present paper is of interest to any law practitioner as it tries to highlight in a concise manner both the framework for such an expertise and the means to obtain it.

Keywords: technical surveillance; expertise; criminal trial

In the doctrine, (Gradinaru & Girbulet, 2012) several problems were raised regarding the legal conformity of these legal provisions with the European Convention. The European court considered that the national legal guaranties are to include the necessity of communicating all of the unaltered recordings (Kruslin v. France, Huvig v. France, Valenzuela Contreras v. Spain). There needs to be a legal substance regarding the unaltered and complete keepings of these recordings, so that the judge may examine them (Prado Bugallo vs Spain, Dumitru Popescu vs Romania).

According to par. 2 of art. 143 copies of the minutes shall be sent to the court, together with the copy of the support containing the technical surveillance activities, after hearing the case.

From this perspective, we believe that, in order to establish the truth and for a correct assessment of the evidence, it is very important for the support to contain the conversations entirely, not only fragmentarily, as is often the case in practice.

Moreover, the recording of communications on various media, as well as keeping them in conditions imposed by the Code of Criminal Procedure was regulated to ensure the possibility to be heard or viewed later, but, also, in order to be able to provide, if necessary, checking the correspondence between the content of the recordings and of the minutes (reports) (Gradinaru, 2012).

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We believe that an explicit legal regulation is required (especially in the court's internal procedure, but also regarding the prosecution's internal procedure), in order to correctly apply article 91^3 paragraph 3 of the previous Criminal Procedure Code: "After indictment, the copy of the records containing all the technical surveillance activities are kept in the court's registry, in a sealed envelope, at the judge's exclusive disposal". This legal change is also required in order to prevent information leaks and to assure that all the parties involved can access the case files, and that the special legislation regarding classified information is enforced.

The data resulting from the technical surveillance measures can also be used in another criminal case, if they contain conclusive data or information regarding the preparation or committing of another offense as provided by art. 139 par. 2 of the Criminal Procedure Code. It is appreciated (Dambu, 2007) that "this derogatory regulation is in line with European standards in the field of human rights protection, as it is only allowed in the preparation or commission of criminal offenses."

Moreover, in the doctrine (Mateut,) the opinion was expressed that "allowing the use of the intercepted conversation by overcoming the initial authorization may lead to discussions from the point of view of complying with the requirements of the European court", especially if the illegally obtained evidence obtained through prohibited means, unauthorized, unwritten, unchecked, uncertified, unverified, unsorted, not counter-signed, countersigned by unauthorized people, translated with the use of an unauthorized translator, unsealed, declared non relevant, obtained provisionally and left unchecked etc., cannot be used in criminal proceedings.

To this extent we believe that a first verification is to be done by the court, when the judge authorizes the technical surveillance warrant. There needs to be a correlation between the police reports and the digital recordings. Another reason to contest the recordings is the absence of the electronic signature.

We consider that the court invested with the case settlement requires visual viewing of audio-video recordings or listening to audio recordings, as they perceive the evidence directly, judges have a greater capacity to learn the truth than if they perceive them from the documents where they have been transcribed (Gradinaru & Girbulet, 2012).

A condition for which records can be challenged is the lack of electronic signature. Thus, the Chairman of the Information and Communication Technology from the Chamber of Deputies appreciated the fact that, if the telephone records have no electronic signature, if used as evidence in proceedings, may be appealed. Thus, the file can be edited so that with the voice that carried the conversation, with the words spoken by one who carried the conversation can be constructed other phrases. This can be avoided by the approval of devices that are used for recordings (Gradinaru, 2012).

In this context, we consider that it would be necessary to introduce a text of law providing for the obligation of the court, provided that the file contains such evidence, to dispose of their hearing and/or their appearance ex officio in the presence of the parties, prior to their hearing, in order to be able to clarify relevant aspects of the criminal matter at the hearing, provided that they are not disputed by the parties. Thus, when challenged by the parties, we consider that hearing or viewing them is only necessary after authentication has been established.

We notice that at the present time, the supreme court's practice regarding the viewing of the recordings is that the culprits, assisted by their attorneys, will view the recordings separately from the court. (Decision number 236/45/2007)

Disregarding the administrative difficulties due to the lack the technical support specialist's time and the space required for this activity, the goal for viewing these recordings is not reached. The parties

involved, when viewing these recordings, will find themselves in the impossibility of identifying the bearings that lead to the truth.

Since the recordings are kept in the prosecutor's office, during the prosecution, as well as the court phase, and at the legally invested panel's disposal, at its request (Crisu, 2007), the juridical literature (Gradinaru, 2018) claims that the court needs to have direct access to the original support of the recorded conversation. We also believe that the court needs to have direct access to the original technical support, in the context that present day technology allows with ease the forging of tape recordings. In the eventuality that such an suspicion arises, the prosecutor, or the parties may ask for or the judge may order a technical expertise of the recordings in order to verify their authenticity and continuity.

There have been countless cases in the judicial practice (Dolenciu & David v. D.N.A., Bolocan v. D.N.A.) when D.N.A. refused to provide the parties, the court or the experts, the original support of the interceptions and recordings, issues which were believed as hiding the possession of these interception, recording and processing equipments.

Even if the institution of certifying recordings was implemented with the purpose of attesting the authenticity of draft reports regarding the conversations and communications, in order to remove all possibilities of altering or counterfeiting these recordings, there are still cases in which doubt persists regarding the authenticity and reliability of such a recording.

The necessity of verifying the means of evidence by the court through the technical expertise is a requirement that derives from the principle of equality of arms and the right to defense that presents itself under the form of an a posteriori guarantee.

In this regard, alongside the support copy that contains the result of the technical surveillance, it is necessary to attach the copies of the qualified certificates to the case files, given the fact that these certificates can be suspended or revoked, namely the legal requirements regarding the use of the electronically signature are not met.

We also bear in mind the fact that S.R.I., an authority that has the competence to put into practice the warrants concerning the technical surveillance, are to put at the criminal investigative body either the original support, or certified copy of this support. Thus, the hypothetical possibility persists that before the appliance of the electronic signature, the data obtained could be modified.

Thus, if the parties make exceptions regarding the way of applying the electronic signature and the validity of the data resulting from the technical supervision or the qualified certificates, we consider that according to art. 8 of the Law no. 455/2001 stipulating that "if one of the parties does not recognize the document or the signature, the court will always order that the verification shall be carried out through specialized technical expertise", according to the procedure provided by art. 342 et seq. The court would have to verify the legality of this evidence.

For this purpose, as provided for in paragraph 2 of art. 8 of the Law no. 455/2001, the expert or specialist is obliged to apply for qualified certificates and any other documents required by law to identify the author of the document, the signer or the certificate holder.

Or, we find that we are in the presence of a legal incoherence, in the context of the incompatibility between the text of art. 172 of the Criminal procedure code on the performance of the expertise and those of art. 342 et seq., Which stipulate that the preliminary chamber procedure is a written one, carried out in a fast-track manner, the text expressly stipulating that the parties may formulate requests and exceptions as to the lawfulness of the taking of evidence and not provides for the possibility of new evidence (Gradinaru, 2018).

The multitude of regulations in this area, plus consecutive and uncorrelated changes in the legislative framework renders the internal rules not consistent, inaccessible and unpredictable. The lack of a clear regulatory framework in this area has generated various interpretations in doctrine and practice. Thus, it is considered that the legal provisions are applicable when performing specific intelligence activities and those of the Code when interceptions are authorized for criminal instruction, but, on the other hand, special laws regulations do not contain adequate and specific safeguards for the protection of privacy, and in most cases, intercepts thus obtained are retained as evidence in subsequent court proceedings, the latter being possible only if conducted according with the Criminal Procedure Code (Gradinaru, 2013).

Taking into account that the procedure for carrying out the expertise involves contradictory debate on the relevance, concluding and usefulness of this evidence, and the carrying out of an expertise presupposes the right of the parties to propose the recommended experts, as well as the provisions of art. 179 of the Criminal Procedure Code concerning the hearing of the expert, I consider that, in the absence of a provision expressly providing for the possibility of new evidence in order to establish the lawfulness of the evidence administered during the criminal proceedings, such a request is inadmissible at this procedural stage.

However, since the purpose of the preliminary chamber procedure is to verify the lawfulness of the taking of evidence, in the context in which it is necessary to carry out such an examination, the reasoning of that institution is not justified, since the judge cannot, for example, decide the exclusion of illegally administered evidence.

In this context, we propose completing the text of the law, respectively art. 345 of the Criminal Procedure Code with a new paragraph, providing for the possibility of new evidence, in order to analyze the legality of the evidence in the criminal prosecution phase.

The Constitutional Court of Romania, by Decision no. 802/2017 stated that there is the possibility to administer any evidence in the preliminary chamber procedure in order to prove the lawfulness of criminal prosecution. This decision is not enough since there are courts that deny this right to the defendant if the possibility to administer new evidences is not expressly regulated by the law itself.

The intervention of the legislator is mandatory, as the European Court stated in the Iordachi vs. Moldova case, with the purpose of ensuring the compatibility of the internal law with regards to the supereminence of the right which means that it is not enough that the internal law be only accessible, but it must also fulfill the request of predictability (lex certa), predictability which is expressed by the unequivocal definition of the mentioned concepts (Gradinaru, 2013).

The aspects stipulated in art. 8 of the Law no. 455/2001, regarding the possibility of carrying out an expert opinion, reinforces our view that although the Criminal Procedure Code no longer provides for an examination of the technical means of supervision, despite the guarantees established by the introduction of the electronic signature, the risk of data corruption cannot be eliminated.

Furthermore, it should be taken into account that certain cyber attacks may result in leaking the data linked to the electronic signature, and there is no absolute guarantee as to the integrity of a qualified certificate.

In conclusion, we believe that in the absence of the original storage media, the media that contain the data from the technical surveillance activity cannot be tested in order to meet the requirements of the European Court's practice, which requires such an "a posteriori" guarantee.

References

Bolocan v. DNA.

Crişu, A. (2007). *Criminal Procedure Law. General Part.* 2nd Ed. Bucharest: C.H. Beck Publishing House.

Dâmbu, D. (2007). Intercepting and recording of tephone conversation. In *Criminal Law,* Review no. 3/2007.

Dolenchi & David v. DNA.

Dumitru Popescu v. Romania 2007.

Gârbulet, I. & Grădinaru, S. (2012). *The Evidential Value of Audio Recordings or Video Recordings*. Juridical Current.

Mateuț, G., *Means of evidence obtained unlawfully*. In *Criminal Commercial Law Review*, www.mateut-budusan.ro.

Gradinaru, S. (2012). Checking Interceptions and Audio Video Recordings by the Court after Referral. Galati: Danubius University Press.

Gradinaru, S. (2013). *Aspects in Connection to the Interception and the Recording of Talks or Conversations Performed as per Law 51/1991 Regarding the National Security of the Romanian Country*. Galati: Danubius University Press.

Gradinaru, S. (2013). *Considerations regarding the Interception and Recording of Conversations or Communications Performed under Law no. 535/2004 on Preventing and Combating Terrorism*. Galati: Danubius University Press.

Gradinaru, S. (2018). Conditions Derived from the ECHR Jurisprudence for the Effectuation of Interceptions in European Union Member States. *Acta Universitatis Danubius Juridica*, Vol. 14, no. 3/2018.

Gradinaru, S. (2018). *Controversial Issues on the Requests and the Exceptions Invoked in the Preliminary Chamber Procedure - Jurisprudential Issues*. Galati: Danubius University Press.

Grădinaru, S. & Gârbuleț, I. (2009). Considerations on the application of the principle of non-mediation in criminal proceedings. In *Law Review,* no. 5/2009.

Gradinaru, S. (2012). *Playing full written records, an indispensable condition for carrying out certification*. Galati: Danubius University Press.

Huvig v. France 1990.

Kruslin v. France 1990.

Prado Bugallo v, Spain 2003.

Valenzuela Contreras v. Spain 1998.

Volonciu, N. & Barbu, A. (2007). *Commented Criminal Procedure Code.* Bucharest: Hamangiu Publishing House.

High Court of Cassation and Justice, Decision no. 236/2007.

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Legal Relationships between Public Service Operators, Users and Third Parties

Vasilica Negruț[1]

Abstract: In this article, we analyse the legal nature of the relations between the local public administration authorities or, as the case may be, between the intercommunity developments associations with the purpose of public utilities and users. Law no. 51/2006 on community services of public utilities establishes that they are subject to legal norms of public or private law, as the case may be. Therefore, the objectives of this paper are to identify the two categories of legal norms applicable to public utilities in the Community, as well as the modalities for regulating legal relations between public utility operators and users of these services, based on the analysis of legal texts, doctrine and jurisprudence.

Keywords: public services; users; legal relations; public service contract

1. Introduction

At present, the community services of public utilities are regulated by a normative act of general character, namely Law no. 51/2006, as well as by a series of normative acts of special character, among which: Law no. 101/2006 regarding the sanitation service of the localities; Law no. 241/2006 regarding the water supply and sewerage service; Law on the Public Power Supply Service no. 325/2006; Law no. 230/2006 regarding the public lighting service; Law on local public transport services no. 92/2007[2].

Public utilities[3] are organized and managed in accordance with the legal provisions, according to the decisions adopted by the deliberative authorities of the administrative-territorial units, given the degree

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[2] In November 2018, a draft Government Decision for the approval of the Preliminary Theses of the draft Community Services Code for Public Utilities "was launched in a public debate", able to facilitate the implementation of the Strategy for Strengthening Public Administration 2014-2020, approved by the Government Decision no. 909/2014, as amended." As stated in the project, "*The Community Services Code of Public Utilities will take into account:*
a) the definition of the community service of public utilities, taking into account both the national tradition and the legislation of the European Union and the jurisprudence of the Court of Justice of the European Union, as well as the definition of other fundamental concepts for the area concerned: services of general economic interest, obligations of public service, etc.;
b) regulating and defining the principles underlying the organization and delivery of public services (e.g. the principle of equal treatment, the principle of continuity, the principle of adaptability, the principle of accessibility, the principle of solidarity, the principle of regionalization, the principle of cost coverage, the principle of supportability, the principle of polluter pays, sustainability, etc.);
c) inclusion of details on the establishment and functioning of community services of public utilities;
d) regulating, in some chapters, the general aspects regarding the community services of public utilities, as well as the normative solutions applicable to each community utility of public utilities". See also (Negruț, 2008, pp. 99-104).

[3] According to art. 1 par. (2) of the Law no. 51/2006, through the community services of public utilities, it is intended to meet the essential needs of general social utility and public interest of the local communities with regard to: water supply; purge and

of urbanization, the economic and social importance of the localities, the size and degree of their development and the ratio with the existing technical infrastructure. Public utility services are provided / rendered through operators or regional operators.

If, by law, a public utility service operator is a "*public or private legal entity governed by public law, private or mixed, registered in Romania, in a Member State of the European Union or in another State which directly ensures the provision / performance of a public utilities service or one or more activities in the sphere of public utility services under the conditions of the current regulations*", a regional operator[1] refers to "*the operator of the company regulated by the Companies Act no. 31/1990, republished, with the subsequent amendments and completions, with integral social capital of some or all of the administrative-territorial units belonging to an intercommunity development association with the purpose of public utility services*".

2. Legal Relationships between Public Service Operators, Users and Third Parties

Law no. 51/2006 on community services of public utilities regulates the legal relations between the local public administration authorities or, as the case may be, between the intercommunity development associations with the purpose of public utility services and users[2].

According to art. 9 par. (1), these are legal relationships of administrative nature, subject to legal rules of public law.

The local public administration authorities have the following obligations towards users of public utilities: to ensure the management of public utilities so that specific public service obligations are respected; to develop and approve their own strategies for improving and developing public utility services, using the principle of multi-annual strategic planning; to promote the development and / or rehabilitation of the public-technical infrastructure related to the public utilities sector and environmental protection programs for the pollutant activities and services; to adopt measures to ensure the financing of the technical and public infrastructure related to the services; to consult user associations with a view to establishing local policies and strategies and ways of organizing and operating services; to periodically inform users about the state of public utilities and their development policies; mediate and solve conflicts between users and operators at the request of one of the parties; to monitor and control compliance with the obligations imposed on operators, including those assumed by operators through management delegation contracts regarding: observance of performance indicators and service levels, regular adjustment of tariffs according to the adjustment formulas negotiated upon the conclusion of management delegation contracts, in compliance with the provisions of the Competition Law no. 21/1996, republished, the efficient and safe operation of the public utilities or other assets belonging to the public and / or private patrimony of the administrative-territorial units related to the services, the realization of the investments stipulated in the delegation contract for the management, to ensure the

sewage treatment; collecting, channeling and evacuating rainwater; centralized heat supply; sanitation of localities; public lighting; natural gas supply; local public passenger transport.

[1] The regional operator, according to art. 2 letter h) shall be established on the basis of the decisions adopted by the deliberative authorities of the administrative-territorial units members of an intercommunity development association having the purpose of public utility services either by setting up a new company or by participating in the share capital of one of existing operators owned by an administrative-territorial unit, member of the intercommunity development association in accordance with the provisions of Law no. 31/1990, republished, as subsequently amended and supplemented.

[2] Users are natural or legal persons that benefit, under the conditions set by law, directly or indirectly, individually or collectively, by public utilities, that is, household users, physical entities or tenants / owners associations; economic operators; public institutions.

protection of the environment and the public domain, to ensure the protection of users (see Grigorescu, 2018, pp. 59-66).

Regarding the legal relations between the local public administration authorities and the operators, Law no. 51/2006 establishes that they are subject to legal rules of public or private law, as the case may be. As it can be seen, legal relationships between local government authorities and operators may also be subject to private legal rules, unlike legal relationships between these authorities or between intercommunity development associations for public utilities and users, which are subject only to the legal rules of public law.

In order to fulfil the above mentioned obligations, the local public administration authorities have the following rights in relation to the public utilities: to establish the requirements and the criteria for the participation and selection of the operators in the public procedures organized for awarding management delegation contracts; to request information on the level and quality of the service provided and on how to maintain, exploit and administer the assets of the public or private property of the administrative-territorial units entrusted to carry out the service; to invite the hearing operator to reconcile disputes with service users; approve setting, adjusting or, as appropriate, modifying the prices and tariffs of public utility services proposed by operators on the basis of methodologies developed by the regulators according to the competencies granted to them by the special law; to monitor and exercise control over the provision of public utility services and to take the necessary measures if the operator does not ensure the performance indicators and the continuity of the services for which he has been bound; to sanction the operator if it does not operate at the level of the performance and efficiency indicators it has been bound to and does not ensure the continuity of services; refuse, under duly justified conditions, to approve the prices and tariffs proposed by the operator; to terminate management delegation contracts under the terms and conditions set out in the contractual clauses (article 9 (2), second sentence).

If it finds and proves that operators have repeatedly failed to comply with their contractual obligations and that operators do not adopt programs of measures that comply with the contractual conditions and ensure that within the given timeframe the quality parameters are met, local authorities have the right to unilaterally terminate service delegation contracts and to organize a new procedure for the delegation of their management (article 9 (3) of Law No 51/2006).

The local public administration authorities also have obligations towards the operators / providers of public utilities, among which: to ensure equal treatment for all operators, regardless of the form of ownership, the country of origin, their organization and the adopted mode of management; to ensure a competitive, transparent and loyal business environment; to observe the commitments assumed by the operator through the decision to administer the service, respectively by the contractual clauses established by the contract for delegating the management of the service; to provide the necessary resources for the financing of the technical and public infrastructure related to the services, corresponding to the contractual clauses; to keep the confidentiality of data and economic and financial information on the activities of operators other than those of public interest (Article 9 paragraph (4) of Law No. 51/2006), according to the law.

According to art. 23 par. (1) of the Law no. 51/2006, the legal relations between the administrative-territorial units or, as the case may be, between the intercommunity development associations with the activity of the public utility services and the regional operators or operators, are regulated either by decisions regarding the administration of the provision of services public utilities to the public law operators referred to in art. 28 par. (2) letter a), respectively contracts for the delegation of the management of public utility services to the operators referred to in art. 28 par. (2) letter b) in the case

of direct management, or by delegation contracts for the management of public utility services, in the case of delegated management (Cătana, 2017, p. 213).

Regarding the legal relations between the operators of the public utility services and the users of these services, these are regulated by the contract for provision of public utilities concluded in compliance with the provisions of the framework contract for provision of public utilities, provisions (article 23 paragraph (2) of Law No 51/2006), the legal regulations in force, the regulations of the services and their specific tasks.

According to the administrative code, in art. 589, entitled "Public Service Obligations", defines the service obligations as "specific requirements and duties imposed on the service providers in each public service sector by the legislator or by the competent public administration authorities with the regulation, authorization or management of that public service". And which imply "mainly the provision of universal service, the continuity and supportability of the service, as well as the beneficiary's protection measures".

According to the Administrative Code, public utility services are part of the category of "non-economic services of general interest" which "represent activities that are not economic in nature and are conducted in order to meet a public interest need a public administration authority or public service bodies under its monitoring or control or mandated by it" (article 589).

3. Conclusions

Community public utilities are "tools to strengthen the public administration's capacity to effectively deliver high-quality public services for citizens". Therefore, the quality of life of those who receive them depends on how they are set up, organized, provided. As mentioned in the draft of the Community Utilities Code, from the studies carried out in the national and European doctrine, the improvement of the legislation in the field would also clarify the issues related to the legal relations between the public service operators, users and third parties.

4. References

Cătană, Emilia Lucia (2017). *Drept administrative*/ *Administrative Law*. Bucharest: C. H. Beck.

Grigorescu, Dan Răzvan (2018). Reglementarea serviciului public în Codul administrative/ Regulation of the public service in the Administrative Code. *Revista de Drept Public/ Public Law Review*, no. 3/2018, pp. 59-66

Negruț, Vasilica (2008). Regimul juridic al serviciilor comunitare de utilităţi publice/The legal regime of community services of public utilities. *Revista Transilvană de Ştiinţe Administrative/ Transylvanian Journal of Administrative Sciences*, no 1 (21)/2008, pp. 99-104.

Puie, Oliviu (2012). *Serviciile de utilitate publică/ Public utility services*. Bucharest: Universul Juridic

Observations on the Judicial Expertise of Devices that Contain the Results of the Technical Surveillance Activity

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Abstract: The present paper aims to analyze the judicial expertise of devices that contain the results of the technical surveillance activity from a procedural point of view. The constant evolution of technical methods to obtain evidences in criminal trials led to the development of new types of expertise in various fields. One of these is the expertise of any device or optical support on which recordings of intercepted conversations are stored. Statistical data from the courts shows that technical surveillance is very common in Romania, being used as proof for various crimes from white collar crimes such as abuse of office or bribery to violent crimes or drug trafficking. Yet, being electronic the recordings can be forged, fragmented, collated aspect that can lead to unlawful trials or abuses from judicial bodies.In order to prevent that, the doctrine and the jurisprudence stated that the court may order technical expertise of the recordings to verify their the authenticity and continuity. If it is found, after examination, the lack of authenticity of the records or interfering mixes in the text or removal of passages of conversation, they cannot be retained in the case and cannot be used as evidence. Furthermore, judicial expertise of devices that contain the results of the technical surveillance activity can prove to be of real value in different kinds of criminal trials, from corruption cases, to murder trials, drug trafficking, human trafficking, etc. The academic and practical interest of the present study lies in the fact that it addresses both law theorists and practitioners in the field as it analyzes how judicial bodies can use the judicial expertise in the criminal trial and how to corroborate such a report with the other evidences administered by classic methods.

Keywords: judicial expertise; probative value; criminal trial; technical surveillance

The need for verification of evidence by the court is a demanding one that derives from respect for the principle of equality of arms and the right to defense and is presented in the form of a posteriori guarantee.

Even if the probative procedures representing the technical surveillance measures are subject to strict conditions from the point of view of the provisions regarding the certification, the very strict observance of the steps provided by the law does not remove the possibility of altering the data resulted from the technical supervision by truncation or assembly.

We appreciate that the provisions of art. 142^1 C.pr.pen. presents in this perspective more guarantees than previous regulation, by making it possible to ensure the electronic signing of data from technical surveillance.

To this end, any authorized person carrying out technical surveillance activities has the possibility to ensure the electronic signing of the data resulting from the technical surveillance activities using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider.

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At the same time any authorized person transmitting or receiving such data may also sign the transmitted data or verify its integrity by following the same procedure.

In addition to this electronic signature warranty in article 142^1 par. 4 the legislator provided that every person who certifies the data under electronic signature is responsible under the law for the security and integrity of such data.

Although it operates with innovative notions, the legislator does not explain in concrete terms how these procedures are to be carried out, in which case the role of doctrine and jurisprudence will have to clarify these aspects.

Therefore, some appreciations are needed regarding these conceptual notions. In this respect, we emphasize that a Community framework for electronic signatures was established by Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999, this normative act being transposed into national law by Law no. 455/2001 regarding the electronic signature, respectively the norms for its application, regulated by H.G. no. 1259/2001.

In the absence of any specific clarification in the Code of Criminal Procedure regarding the way in which it should be done in concrete terms, we consider that the provisions of the aforementioned law constitute the general normative framework, defining the concepts of electronic signature, qualified certificate, certification.

Therefore, according to art. 4 of this legal act, an electronic signature represents the data in electronic form, which is attached or logically associated with other data in electronic form and which serves as an identification method.

In relation to electronic signature, the extended one, notion used by the provisions of article 142^1 C.pr.pen., must meet cumulatively certain conditions: it is uniquely bound by the signatory, ensures identification of the signatory, is created by means exclusively controlled by the signatory, is linked to the data in electronic form, to which it refers so that any subsequent modification is identifiable.

Article 4 of Law 455/2001, at point 11, also defines the notion of certificate as a collection of data in electronic form attesting the link between the verification data of the electronic signature and a person, confirming the identity of that person.

Thus, a qualified certificate is a certificate that meets certain conditions, namely, it contains the identification data of the certification service provider, the name of the signatory and other specific attributes of the signatory, if relevant, depending on the purpose for which the qualified certificate is issued; signature verification data, which corresponds to signature creation data under the sole control of the signatory, indication of the start and end of the period of validity of the qualified certificate, qualified certificate identification code, extended electronic signature of the certification service provider issuing the qualified certificate, where applicable, the limits of use of the qualified certificate or the value limits of the operations for which it may be used.

The Certification Service Provider represents any person, whether Romanian or foreign, who issues simple or qualified certificates or provides other services related to electronic signature.

We consider that the verification of the conditions on the application of the extended electronic signature are matters that need to be verified by the court, ex officio, during the preliminary chamber procedure. In this respect, together with the copy of the support containing the result of the technical surveillance activities, it is also necessary to attach to the case file copies of the qualified certificates, since they can

be suspended or revoked, respectively the legal requirements regarding the application electronic signature are not met.

If the case parties invoke exceptions as to how to apply the electronic signature and the validity of the data resulting from the technical supervision or of the qualified certificates, we consider that according to art. 8 of the Law no. 455/2001, which stipulates that "in case one of the parties does not recognize the document or the signature, the court will always order the verification to be done by specialized technical expertise", during the procedure provided by art. 342 et seq. C. pr. pen. the court would have to verify the lawfulness of this evidence.

For this purpose, as provided for in paragraph 2 of art. 8 of the Law no. 455/2001, the expert or specialist is obliged to apply for qualified certificates and any other documents required by law to identify the author of the document, the signer or the certificate holder.

Or, we find that we are in the presence of a legal incoherence, in the context of the incompatibility between the text of art. 172 C. pr. pen. on the performance of the expertise and those of art. 342 et seq., Which provides that the preliminary chamber procedure is a written one, carried out in a fast-track manner, the text expressly stipulating that the parties may lodge claims and exceptions as to the lawfulness of the taking of evidence and they had no possibility to request the administration of new evidence.

Nowadays, the Constitutional Court of Romania, by Decision no. 802/2017 stated that there is the possibility to administer evidence in order to prove the lawfulness of criminal prosecution, but in practice such an expertise has not been admitted so far.

Given that the purpose of the preliminary chamber procedure is to verify the lawfulness of the evidence administration procedure, in the context in which it is necessary to carry out such an expertise in order to achieve this objective, if the expert examination is rejected, the judge cannot pronounce a solution for the exclusion of unlawful evidence administered.

The aspects stipulated in art. 8 of the Law no. 455/2001, regarding the possibility of carrying out an forensic report, reinforces our view that although the Criminal Procedure Code no longer provides for an examination of the technical means of surveillance, despite the guarantees established by the introduction of the electronic signature, the risk of data corruption cannot be eliminated.

Furthermore, it should be taken into account that certain computer attacks may result in the stealing of data that generates the electronic signature, and there is no absolute guarantee as to the integrity of a qualified certificate.

The certification therefore has a triple dimension, the legislator operating in this sense with three notions: "Extended electronic signature based on a qualified certificate issued by an accredited certification service provider", "Certified copy of the support containing the result of the technical surveillance activities" "certified statement of authenticity by the prosecutor".

The previous criminal law did not define the notion of certification of audio or video recordings, relying on doctrine and jurisprudence on the role of formulating certain notional explanations.

Thus, in relation to the provisions of art. 91^3 of the previous Criminal procedure code, certification means an act of confirmation, to strengthen the accuracy of those established by a document. The notion comes from the Latin "certificare", meaning to prove the validity of a thing. From a legal point of view, the notion shows that all the requirements of the law for the validity of the legal act are observed.

Although the legislator did not define the notion of certification, it involved the following stages: the selection by the prosecutor of the intercepted conversations or communications relating to the deed that are the object of the research or the localization and identification of the participants; the selected conversations or communications are fully transcribed in the minutes by the prosecutor or the judicial police officer delegated by him; the report is certified for authenticity by the prosecutor conducting or supervising the prosecution; the minutes shall be accompanied, in a sealed envelope, by a copy of the medium containing the recording of the call (Julean, 2010).

In national jurisprudence (Decision no 141, 2009) it was stated that "besides initiating the procedure and controlling the persons called by the law to intercept the conversations (Articles 91^1 and 91^2 of the previous Criminal Procedure Code), the prosecutor is obliged to give a legality warranty, this legal operation being done by the certification of the recordings, according to Article 91^3 of the Code of Criminal Procedure. Therefore, certification is not a mere formality but an essential condition for guaranteeing the authenticity and compliance of the transcripts of the records, knowing that such evidence is only allowed when complying with the requirements of Article 8 (2) ECHR".

We notice a regression of the norms in force, by repeatedly using the concept of "certified copies of the original support" and by the fact that at art. 143 par. 2 of the Criminal Procedure Code it is mandatory for the original or the certified copy to be kept at the headquarters of the prosecutor's office, without specifying what happens to the original, if such a copy is made.

In the absence of the original, we consider that the media containing the data resulting from the technical surveillance activity cannot be tested in order to comply with the requirements of the European Court's jurisprudence, which calls for such an "a posteriori" guarantee.

We note the lack from the current Criminal Procedure Code of the former art. 91^6, which, as amended by Law no. 202/2010 gave the parties, the prosecutor or the court, ex officio, the possibility to expertise not only technically audio or video recordings, but also psychologically for the purpose of analyzing gestures, mimics, the tone of the voice, the rhythm of the discussion, the position of the parties involved.

Modification of the law norm provided for in Art. 91^6 par. 1 of the previous Criminal Procedure Code by Law no. No 202/2010, in that the legislator left open the way for performing any type of expertise, not just the technical one, was a novelty in the verification of this evidence, so that apart from a forensic technical expertise, the recordings of the conversations between the investigated subjects could be analyzed psychologically, from the perspective of language, mimics, gestures, in the situation of video recordings.

We appreciate the usefulness of such an analysis, given the fact that in practice there are situations in which the recorded discussion leaves room for interpretation, and in relation to the offenses for which it is possible to make this evidence, they presuppose their committing with a direct intent, as a form of the subjective side, conditions in which the opinion of some communication experts interpreting the used, mimic, gestural attitude, in the situation in which the explicit statements do not result with certainty, the committing of any act, is imposed for the elimination of the ambiguity.

According to the current legislation, such evidence may be requested on the basis of Art. 172 par. 7 of the Criminal Procedure Code, which states that "in the strictly specialized fields, if certain specific knowledge or other such knowledge is necessary for the understanding of the evidence, the court or the criminal investigation body may request specialists working within or outside judicial bodies. The provisions relating to the hearing of the witness are applicable accordingly ".

The fact that the legislator did not take over the provisions of art. 91^6 of the previous Criminal Procedure Code we consider it to be a legislative incoherency, having regard to the institution of the Preliminary Chamber, which the legislature provided for it to verify, after the indictment, the jurisdiction and lawfulness of the court's referral, as well as the lawfulness of the administration of evidence and the execution of acts by criminal prosecution bodies.

Thus, when it is found that the minutes in which the results of the technical surveillance activity are transcribed are based on material evidence (technical storage device such as CD/DVD, USB or hard drive) that has been altered, the parties have the right to request the court to verify this aspect on the basis of art. 100 of the Criminal Procedure Code regarding the administration of evidence and the following, art. 172 et seq., as well as based on the jurisprudence of the European Court.

It is appreciated in the literature (Tudoran, 2012) that nothing prevents the parties or judicial bodies from requesting, or having such a probative procedure, by virtue of article 100 of the Criminal Procedure Code.

Relevant in this respect is the Rotaru case against Romania, on the grounds that both the recording by a public authority of data on an individual's private life and their use and the refusal to allow them to be challenged constitute a violation of the right to respect for private life, guaranteed by art. 8 par. 1 of the Convention.

This regulation is a back-up guarantee for making interceptions and transcribing them, in the context of the expertise being carried out by an independent and impartial authority. Thus, the European Court of Human Rights has sanctioned the lack of independence of the authority that could have verified the reality and reliability of the registrations (Hugh Jordan v. The United Kingdom, McKerr v. The United Kingdom, Ogur v. Turkey).

Moreover, the possibility of carrying out such an expertise is also provided in Art. 3 of H.G. no. 368/1998 regarding the establishment of the National Institute of Criminal Expertise, modified by the Government Decision no. 458 of 15 April 2009 and the Order of the Minister of Justice no. 441 / C / 1999, which allows voice and speech expertise to analyze the authenticity of audio and video recordings, and whether the recordings may contain any alteration.

Considering that the National Institute of Forensic Expertise (hereinafter INEC) is a public institution with legal personality under the Ministry of Justice, we consider that this institution does not provide sufficient guarantees regarding its impartiality, also in view of the European Court's recommendation, in Prepelita v. Moldova, found that through the Republican Institute for Judicial and Criminal Expertise in the Ministry of Justice in Chisinau, the State is a party to the proceedings and declared the claim of the applicant as admissible.

We appreciate that it is not acceptable for the judicial bodies on the one hand to administer evidence and, on the other hand, to verify them, since the persons under investigation do not benefit from the principle of equality of arms, requiring the analysis of the evidence by the independent experts.

We refer, to strengthen our opinion, to the conclusions of an expert report (LIEC, 2011) conducted by L.I.E.C. in file no. 236/45/2007, where the expert finds that "the records are not authentic", but because of the lack of independence they still hold "without this meaning that these records are not duplicate copies of the original records or that the transfer was not carefully done".

In this sense, we propose as *lex ferenda,* that the National Institute of Forensic Expertise, a non-partisan authority, should be an autonomous authority or under the subordination of Parliament in order to present more guarantees of impartiality.

Besides the guarantee of verification of this evidence, by an independent authority, it is appreciated in the literature (Alamoreanu, 2004) that the introduction of provisions in the Government Ordinance no. 75/2000 which offers the parties the possibility to have a consultant expert alongside the official expert to represent them at the stage of carrying out the expertise is a step forward in the legislative evolution, although the way in which the participation of the consultants experts in the expertise is regulated is somewhat restricted, rather setting up a supervised system of expertise instead of a contradictory expertise.

We also notice that national legislation, through H.G. no. 368/1998, supplemented and modified by H.G. 458 /15.04.2009, Order of M.J. no. 441/C/02.03.1999, Regulations for the organization and operation of INEC, as well as O.G. no. 75/2000 regarding the authorization of forensic experts, stipulate that it is forbidden in cases where I.N.E.C. and the County Laboratory of Forensic Expertise (also known as L.I.E.C.) were invested with forensic expertise, the files/materials submitted by the judiciary body were made available to the forensic expert consultant appointed by the judicial body at the request of the parties. At the same time, if the judiciary ordered that some of the activities necessary for the forensic expertise to be carried out by the official forensic expert, the authorized forensic expert shall be notified in writing only at the disposal of the judicial body of the date, time and place where the forensic expert will perform activities (Decision no 3, 2011).

Relevant to this is the case-law of the Strasbourg Court, which held that "it is the judge's discretion to decide on the competence of an expert witness appointed by the party", noting that the expert party was only allowed to express opinions on the conclusions of the report drawn by the appointed experts to perform the audio expertise and was not allowed to participate directly in the performance of the expertise. (Mirilashvili v. Russia)

Thus, at present, in relation to INEC practice, the right of the parties to have a consultant expert is more theoretical, since it is not allowed to actually involve him in the realization of the expert report, which should be remedied by the provisions of the current Code of Criminal Procedure.

References

Alămoreanu, S. (2004). *Criminalistics - Course Notes*. Cluj Napoca: "Babeş-Bolyai" University of Cluj-Napoca, Faculty of Law.

Julean, D. (2010). *Criminal Procedural Law General Part.* Timişoara: West University Publishing House.

Tudoran, M.V. (2012). *Theory and practice of judicial audio and video intercepts and recordings*. Bucharest: Universul Juridic.

(2009). Court of Appeal Iaşi. Criminal Section, Criminal Decision no. 141 of March 5, www.jurisprudenta.org.

*** European Court of Human Rights, Rotaru v. Romania, Judgment of 29 March 2000, www.scj.ro.

*** European Court of Human Rights, Prepelitza v. Moldova, Judgment of 23.09.2008, www.justice.md.

*** European Court of Human Rights, Mirilashvili case against Russia, December 1, 2008, www.echr.ketse.com.

*** Criminal Forensics Report no. 194/18.11.2011, drawn up by the County Criminal Expert Laboratory of Iasi, file no. 236/45/2007 of the Iaşi Court of Appeal.

*** National Institute of Forensic Expertise, Decision no. 3/7.01.2011, unpublished.