THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Miscellaneous

Freedom and Libertinism in Culture. From José Ortega y Gasset to Eugenio Coseriu

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Abstract: In my paper I aim at discussing the problem of freedom in culture, in general, and in language, in special, by resorting to Ortega y Gasset and Coseriu's philosophical ideas. Both thinkers state that genuine freedom is opposed to barbarism or libertinism due to the fact that it is governed by a series of norms or rules freely consented by society/community. The same is valid, in broad terms, for language as well, only that, in this case, the norms (placed at different levels) present certain particularities.

Keywords: J. Ortega y Gasset; E. Coseriu; culture; norms; freedom; libertinism

1. The way in which I understood this topic is mostly tributary to Eugenio Coseriu's point of view. When I say (as it appears in the title) "from José Ortega y Gasset to Eugenio Coseriu", I mean treating this topic from a chronological perspective: Ortega y Gasset (1883-1955) had already dealt with it before Coseriu (1921-2002). However, mention must be made that the Romanian scholar discovered Ortega's work fairly late (seemingly, soon after the Spanish philosopher's death), that is after having shaped his own conception on such a subject[2]. Consequently, Ortega y Gasset's influence on Coseriu (where present) is a *confirmative*, not a *formative* one. But I will refer *in extenso* to all these cases in a special paper devoted to this issue.

2. First, we should explain the notion of *culture* and its relation with *freedom*. I will also resort to Coseriu for this purpose. By combining Hegel's perspective with Aristotle's, Coseriu considers that the cultural activity is, in its essence, *enérgeia* ('pure activity', in Aristotle's terms), similar to *Spirit* (as theorized by Hegel). Thus, *culture* is defined by Coseriu (in his conference *Deontology of Culture*) as follows: "Culture is the historical objectification of spirit into forms which last, into forms which become traditions, historical forms which describe the world specific to humans, the human's specific universe. What do we mean by spirit, what is objectified in history as culture? It is the creative activity, it is creativity itself, not something that creates, but creative activity as such, *enérgeia*, that specific activity which is logically previous to any dynamism, to any acquired or experimented technique." (Coşeriu, 1994, p. 173). And he continues with a very important remark: "The creative activity itself is a free

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[2] See Coseriu's discourse on the occasion of being awarded the title of *doctor honoris causa* by the University of Madrid (Coseriu, 1999, p. 41).

activity, in the philosophical sense of the word «free», that is an activity whose object is infinite." (Coşeriu, 1994, p. 173).

2.1. Once culture defined as a free activity, Coseriu tries to describe it from an ethical perspective, by referring to the implicit norms which such a human activity has to follow. At this point, Coseriu also resorts to Ortega y Gasset's conception, by providing a (rather approximate) short quotation from the latter's philosophical work (a quotation which I will identify, when appropriate, with more precision): "Then – we wonder – how should culture be? Each activity, any human activity has its own inner norm, a norm which involves a certain morality, a certain ethics of this activity. A free activity does not mean an activity without norms, and, as Ortega said when he was precisely talking about free activities, it is not the norm the one which limits freedom, but, on the contrary, the norm is accepted by freedom itself, by a certain organization of freedom: «The absence of norm is barbarism», as Ortega would say. Therefore, if we want to be civilized and educated, we have to understand that each activity, everything we do has its own inner norm, which we have to follow. This inner norm is not imposed, but it is an obligation in the old Latin sense of the word *obligatio*, which means 'a freely accepted norm'. In Romanian, this would equal with: *e un legământ* ['it is a vow']. Everything we do in culture and in any other form of activity contains, implies a vow; in the case of culture, always, the vow corresponds to the essence of this form of culture." (Coşeriu, 1994, p. 174).

2.2. As an essential part (even base) of culture, *language* follows the same fundamental norms. But, as we penetrate its complex reality, the norms become more and more, and refine themselves according to the levels of language. For this reason, some speakers (and even some linguists) tend to take the linguistic liberalism for the real linguistic freedom. In another Romanian conference, *Deontology and Ethics of Language*, Coseriu clarifies all these aspects, invoking Ortega y Gasset again: "That is why, the excessive linguistic liberalism is not really liberalism, but rather libertinism, for it does not admit the existence of these norms which interest all speakers. This liberalism does not promote, actually, freedom of language, which is always motivated freedom, but, on the contrary; the arbitrary attitude is not, in fact, a progressive, tolerant and democratic attitude, but, on the contrary, it is a reactive and anti-democratic attitude, because, by saying: «Everyone may speak the way he wants or thinks.», it means leaving every speaker in his own sphere and at his level of culture and denying his possibility and aspiration to contribute to the major culture of his community. When one says: «All right, if he/she makes mistakes while speaking, that is ok if we understand him/her; it doesn't matter at all.», it is inappropriate. It has great social, cultural and political importance, and stating that it doesn't have any importance is, in fact, arbitrary attitude and libertinism, not liberalism. We can conclude with the words of Ortega y Gasset, the Spanish philosopher, which also apply to linguistic norms, just as they apply to other cultural and social norms: «Lo peor no son las normas rigidas, lo peor es la ausencia de normas que es barbárie»." (Coşeriu, 1994, p. 171).

The same ideas are also present in a conference delivered by Coseriu in Spanish (*Texto, valores, enseñanza*), where Ortega is mentioned again: "Entonces hay que procurar que los alumnos asuman que todos ellos poseen esta dignidad simplemente por ser hombres y tener el lenguaje. Hay que intentar que respeten el lenguaje en todas sus formas y que vean los deberes intrínsecos que tienen respecto del lenguaje: hay que seguir unas normas que no son impuestas sino un compromiso, pues aceptamos ser libres y actuar libremente. Hay que hacer entender, en definitiva, parafraseando a José Ortega y Gasset, que lo malo no son las normas rigurosas: lo malo es la ausencia de normas, que es barbarie." (Coseriu & Loureda, 2006, p. 126).

3. We have already seen that Eugenio Coseriu resorted – in an approximate quotation – to Ortega y Gasset's words. At this point, we should identify the exact place in which the Spanish philosopher refers

to barbarism in relation to the absence of cultural norms. What is of interest to us is to be found mainly in his book, *The Revolt of the Masses* [*La rebelión de las masas*, 1930], which actually continues some ideas from a previous (partially historical) book, namely *Invertebrate Spain* [*España invertebrada*, 1921].

3.1. In the seventh chapter from *The Revolt of the Masses*, Ortega states that, unlike the mass-man, "the select man, the excellent man is urged, by interior necessity, to appeal from himself to some standard beyond himself, superior to himself, whose service he freely accepts." (Ortega y Gasset, 1957, p. 63). In fact, *nobility* itself "is defined by the demands it makes on us – by obligation, not by rights. *Noblesse oblige*." (Ortega y Gasset, 1957, p. 63). On the contrary, the so-called *mass-man* "would never have accepted authority external to himself had not his surroundings violently forced him to do so. As today his surroundings do not so force him, the everlasting mass-man, true to his character, ceases to appeal to other authority and feels himself lord of his own existence." (Ortega y Gasset, 1957, p. 63).

3.2. Taking *culture* in a broad sense, Ortega emphasizes the necessity that all activities included in the sphere of culture (and civilization) follow certain principles or norms, otherwise there will be no genuine culture: "Whoever wishes to have ideas must first prepare himself to desire truth and to accept the rules of the game imposed by it. It is no use speaking of ideas when there is no acceptance of a higher authority to regulate them, a series of standards to which it is possible to appeal in a discussion. These standards are the principles on which culture rests. [...] There is no culture where there are no principles of legality to which to appeal. There is no culture where there is no acceptance of certain final intellectual positions to which a dispute may be referred. There is no culture where economic relations are not subject to a regulating principle to protect interests involved. There is no culture where aesthetic controversy does not recognize the necessity of justifying the work of art." (Ortega y Gasset, 1957, pp. 71-72).

3.3. We finally reach that place in Ortega's work to which Coseriu used to refer, a fragment in which the Spanish thinker, when defining *barbarism*, had also in mind the worrying situation of Europe of those times: "When all these things are lacking there is no culture; there is, in the strictest sense of the word, barbarism. And let us not deceive ourselves, this is what is beginning to appear in Europe under the progressive rebellion of the masses. The traveller who arrives in a barbarous country knows that in that territory there is no ruling principles to which it is possible to appeal. Properly speaking, there are no barbarian standards. *Barbarism is the absence of standards to which appeal can be made*." (Ortega y Gasset, 1957, p. 72)[1].

4. Before ending this paper, I will underline some other aspects. We have already seen that both Ortega y Gasset and Coseriu state that there is no real culture in the absence of norms or rules. The same remark is valid in the case of civilization as such. Thus, the British philosopher R.G. Collingwood observes that there are two ways of being uncivilized: (i) *savagery* and (ii) *barbarism*. Whereas the former represents "a negative idea" ("It means not being civilized, and that is all."), the latter way refers to something more: "By *barbarism* I mean hostility towards civilization; the effort, conscious or unconscious, to become less civilized than you are, either in general or in some special way, and, so far as in you lies, to promote a similar change in others." (Collingwood, 1971, p. 342).

The condition named *savagery* involves, certainly, a natural state, that is (to a great extent) a pre-cultural state. Even so, it is worth emphasizing – along with I. Kant – that nature only functions according to

[1] Since Eugenio Coseriu reproduced (even if roughly) or paraphrased Ortega y Gasset's words in Spanish, I find it appropriate to quote here the original respective context: „Cuando faltan todas esas cosas, no hay cultura; hay, en el sentido más estricto de la palabra, barbarie. Y esto es, no nos hagamos ilusiones, lo que empieza a haber en Europa bajo la progresiva rebelión de las masas. El viajero que llega a un país bárbaro sabe que en aquel territorio no rigen principios a que quepa recurrir. No hay normas bárbaras propiamente. *La barbarie es ausencia de normas y de posible apelación*." (Ortega y Gasset, 1966, p. 189).

rules: "Everything in nature, whether in the animate or inanimate world, takes place *according to rules*, although we do not always know these rules. Water falls according to laws of gravity, and in animals locomotion also takes place according to rules. The fish in the water, the bird in the air, moves according to rules. All nature, indeed, is nothing but a combination of phenomena which follow rules; and *nowhere* is there *any irregularity*." (Kant, 1885, p. 1).

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Efficiency in Economical Approach of Work Place Security in an Industrial Plant

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Abstract: In this paper we made a research viewing the economically approach on main work place and their specific problems in an industrial plant. It shall also take into account aspects concerning the security of work place elements, in the context require of Europe Union. Is highlighted the scientific progress and the innovation in the field of risk assessment and environmental security. The structure and content of the paper are aimed to show the workers skills and abilities in the context of work processes specificity and necessary mechanisms that can avoid the risks in industrial activity. It takes in account the elements of risk assessment and tools of investigation and implementation in terms of work performance.

Keywords: work quality standards; risk assessment; security of work place elements

JEL Classification: J81

1. Introduction

Work place security shall be determined, taking into account the effects on health, safety of the workplace and the environment. It is necessary to collect a larger number of information in particular concerning the work place conditions or various chemical agents which are possible polluters of the environment.

Industrial investments develop two forms of risks: workplace risk and environmental risk, both having adverse effects on human health. Minimal risk level (MRL) represent, an estimated daily exposure, to dangerous work place or toxic agent inside of industrial sector.

Prospective study represents information about the exposure at insecure work place and response that is obtained after the study has begun. (Andrews & Moss, 2002)

Reference concentration is an estimate of continuous inhalation exposure, for humans, which can be without appreciable risk or non-cancer health during the lifetime of the exposed.

Risk means the probability of an adverse effect the results of a particular exposure.

Risk Factor is variable in a casual model that is related to a vast response. That variable may act with other factors or in some other way (multiplications)

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Risk Ratio is the ratio determine by the responses in which these risks are inter-related and therefore their approach must be carried out in parallel.

Uncertainty factor represent a whole number used in calculating the minimal risk level, the reference doze or the reference concentration from toxicological data, but not epidemiological results where standard statistical measure is used in stealth (Freeman, 2009). Monitoring risk work conditions, demands reliable methods not only for use within distinct countries, but also allowing exchange of environmental information from one country to another.

2. Research on Working Condition

In order to make a more accurate assessment of working conditions in an industrial sector, we collect a lot of data about work place and then we made a technical survey in function.

We must collect two categories of data for our research so: quantitative and qualitative data from evaluators that are placed in main work places.

This information represents a sum of analytical data and other information that should help the evaluators to express their own opinion in relation to the risk consequences on each work place.

We consider in our paper a case study that can be directly applying the theory in practice viewing the work place security and the risks that existing for each worker in the real context they occur. (Gheres & Serban, 2010)

Like case example we take in consideration a worker called “batch preparatory” that work inside of metallurgical section. His duty inside work area is to ensure the types and quantities of materials (iron ore, coal, dolomite, sunder and cinders), necessary to obtain the casting iron in the blast furnace.

2.1 The Work Process

The means of production like components of the system of work assessed

- Conveyor belts with rubber band, engine, reduction gear;
- Pomp for removed water (Ingress) of galleries;
- Installation of compressed air;
- Sheet feeders with metallic chains;
- Pneumatic hammer;
- Electrical panels (0.4 kV);
- Iron ore, manganese, dolomite, sunder, slag.

Work environment (test report No. 98/17-19.06.2017) is characterized by:

- Low air temperature in winter (when working outdoors);
- Air currents;
- Dust and coal dust;
- Mixed lighting (natural and artificial).

3. The Risk Factors Identified

First of all we identified the risk factors for batch preparatory palace of work due of means of production like:

3.1. Mechanical Risk Factors

- Machine parts in motion-the grip, the drive rollers conveyor, etc.
- Bumping of the automotive when made the transport of materials;
- Sliding parts, materials, stored without stability-in repairs.
- Rolling raw material to clean wagons, conveyor bands, etc.
- Flip pieces, parts, materials stored without stability-in repairs.
- Free fall of spare parts, tools, materials from the higher-odds at work under the catwalks, grills, etc.
- A lot of particles (dust, coke, coal) is involved in air currents or by compressed air jet to clean the trippers, using pneumatic hammers.
- The recoil of sledge hammer used for removing raw materials from wagons (mainly in winter).
- Contact with dangerous surfaces or contours (sparingly, slippery surfaces, abrasive, adhesive surfaces).

3.2 Thermal risk factors

- The lowered temperature of metallic surfaces achieved in cold season.

3.3 Electrical risk factors

- Electrocution through direct touch-current paths unprotected, uninsured by closing electrical panels;
- Electrocution through indirect touch or through the emergence of the voltage step-steel structure expanded, damaged, damp flooring protection.

4. Research on Risk Factors Identified In Work Environment

4.1. Physical Risk Factors

- High air temperature (>40 ^{0}C) in summer, in the control room;
- Low air temperature in the cold season-when working outdoors;
- Air currents-when working outdoors on walkways, technological goals, etc;
- Low-level lighting - no systems suitable lighting combined with escaping dust, in the gallery conveyor belts, etc;
- Natural disasters (earthquakes)-working continuously, regardless of the weather;
- Bacteria and dust present in the workplace atmosphere (according to the attached determination ballot no. 87/16-19.06.2017.

Forced or vicious postures to dislodge raw materials from wagons, cleaning grates (mainly winter) etc;

Dynamic effort - long way from the gate to the trippers, handling large masses etc;

- Execution of operations which were not anticipated in the work load or a different manner than the provisions of technical work.
- Trouble with teammates on / off conveyor belts or trippers;
- Starting equipment (electrically operated) without prior verification of the presence of workers in the plant.
- Movements, stationing in the danger areas - on the driveways auto, under/on the strips of transport, etc.
- Drop at the same level: by imbalance, slide, by tripping - rough terrain, wet, cold winter.

- Falls from height: by stepping into the void, by the high turn-over, through the slip-when working during the displacement to different points of intervention.
- Communication with the operator at the control desk.

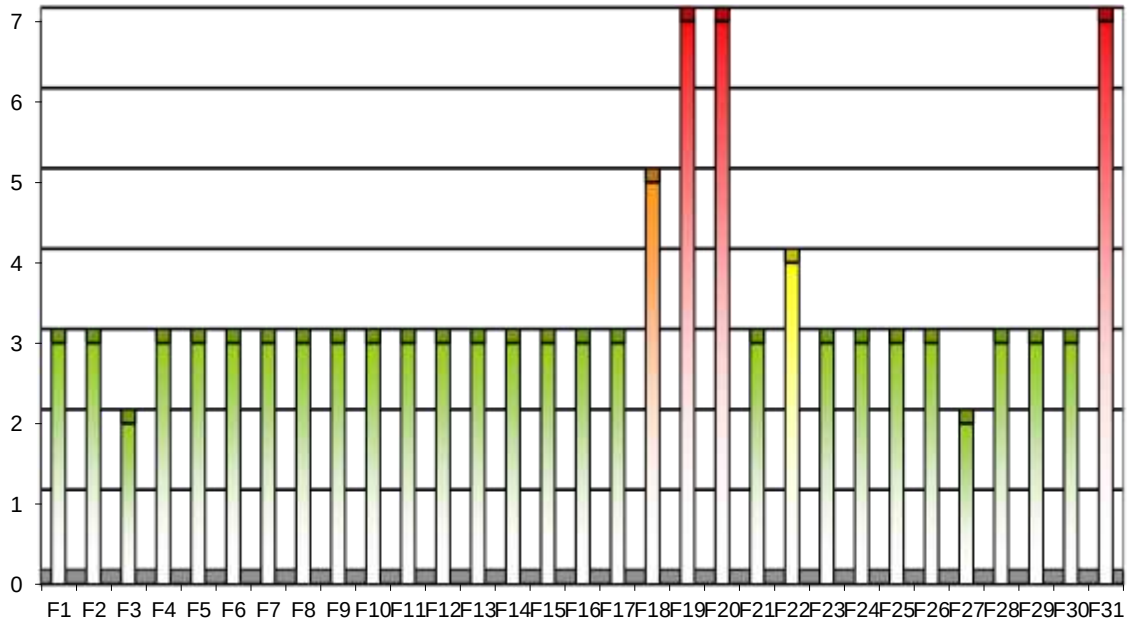
4.2. Chemical Risk Factors

- Carcinogenic substances present in the atmosphere of the workplace in accordance with the annexed determination ballot no. 87/16-19.06.2017.[4].

5. Evaluation and Calculus of Overall Risk Level of the Workplace

In the figure no. 1 are sowing the risk factors (abscise) in correlations with risk level (ordinate). This diagram shows the most dangerous activities for batch preparatory like the 18, 19, 20 and 31 activities.

Risk level



Risk factors

Figure 1. Risk levels and risk factors

Source: (Gheres & Serban, 2010)

The explications for these Risk factors are following:

F1- Machine parts in motion-the grip, the drive rollers conveyor, etc;

F2- Bumping of the automotive transportation or wagons;

F3- Sliding parts, materials, stored without stability-in repairs;

F4- Rolling raw material to clean wagons, conveyor bands, etc

F5- Flip pieces, parts, materials stored without stability-in repairs;

F6- Free fall of spare parts, tools, materials from the higher;

F7- the particles (dust, coke, coal) is involved in air currents or by compressed air jet to clean the trippers, using pneumatic hammers;

F8- The recoil of sledge hammer used for removing raw materials from wagons (mainly in winter);

F9- Contact with dangerous surfaces or contours (slippery surfaces, abrasive, and adhesive surfaces);

F10- The lowered temperature of metallic surfaces achieved in cold season;

F11- Electrocution through direct touch-current paths unprotected, uninsured by closing electrical panels;

F12- Electrocution through indirect touch or through the emergence of the voltage step-steel structure expanded, damaged, damp flooring protection;

F13- High air temperature (>30 ^{0}C) in summer, in the control room;

F14- Low air temperature in the cold season-when working outdoors;

F15- Air currents-when working outdoors on walkways, technological goals, etc.

F16- Low-level lighting - no systems suitable lighting combined with escaping dust, in the gallery of conveyor belts;

F17- Natural disasters (earthquakes)-working continuously, regardless of the weather;

F18- Bacteria existing in the workplace atmosphere (according to the attached determination ballot no. 98/17-19.06.2017);

F19- Carcinogenic substances present in the atmosphere of the workplace ;

F20- Technological process which does not provide a working environment in accordance with the provisions of the legislation in force;

F21- Forced or vicious postures to dislodge raw materials from wagons, cleaning grates (mainly winter) etc.;

F22- Dynamic effort that consist in handling large masses etc.;

F23- Execution of operations which were not anticipated in the work load or a different manner than the provisions of technical work;

F24- Trouble with teammates;

F25- Starting equipment (electrically operated) without prior verification of the presence of workers in the plant;

F26- Movements, stationing in the danger areas - on the driveways auto, CF, under/on the conveyor belt;

F27- Fall at the same level: by imbalance, slide, by tripping - rough terrain, wet, cold winter;

F28- Falls from height: by stepping into the void, by the high turn-over, through the slip-when working on the wagons or during the access to different points of intervention;

F29- Damage when the communications with the operator at the control desk are interrupting;

F30- Skip to operations which ensure his personal security;

F31- Non-utilization of other means of protection of the equipment provided.

For calculus of overall risk level we use the next formulas[2]:

$$\mathbf{N_{rg}} = \Sigma R_i r_i / \Sigma r_i \qquad (1)$$

$$\mathbf{N_{rg}} = \frac{3(7x7)+0(6x6) + 1(5x5) + 1(4x4) + 24(3x3) + 2(2x2) + 0(1x1)}{3x7 + 0x6 + 1x5 + 1x4 + 24x3 + 2x2 + 0x1}$$

$$\mathbf{N_{rg}} = 412/106 = \mathbf{3.89}$$

Global risk level calculated is equal to the value 3.89 and lead into the category of jobs with unacceptable level of risk.

For reduction or elimination of the risk factors (which is located in the field unacceptable), generic measures shown in the "Worksheet measures proposed" for the workplace.

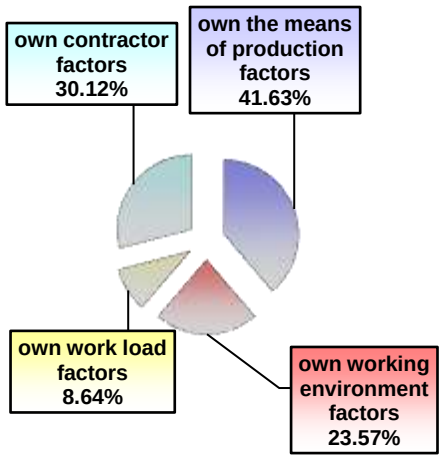


Figure 2. Share risk factors, identified by elements of the workplace

Source: (Negrei, 2016)

In terms of the distribution of risk factors on generating sources, the situation was as follows (see fig. no.2):

- 41.63%, own the means of production factors;
- 23.57%, own working environment factors;
- 8.64%, own work load factors;
- 30.12%, own contractor factors.

From the analysis of the evaluation data sheet, shows that 71.96% of the identified risk factors are likely to have irreversible consequences on the contractor's (disability or death).

The five risk factors which are unacceptable in the field are: Carcinogenic substances present in the atmosphere of the workplace; Technological process which does not provide a working environment in

accordance with the provisions of the legislation; Non-utilization and other means of protection of the equipment provided; Dust and bacteria present in the workplace atmosphere; constant and continue effort on long way.

6. Conclusions

In case studies selection, we considered, on one side, the uniqueness of each case study and his importance inside of an investment.

We considered study case taking into account that it might be a representative case for the important sector in Romanian metallurgical plant. Like the result of evaluation of the total of 31 risk factors we identified in our research the 18, 19, 20 and 31activities that exceed the average level of work risk factor. Number 3 is in the category of maximum risk factors, number 4 falling in the category of very high risk factors. Number 1 being, in the acceptable category of risk factors and the number 2 represent the average category of risk factors.

Using of new concepts of work security, our main goal is to pull an alarm signal for the work place creators, with potential dangerous activities in some industrial sectors.

These important ideas can be apply in the field of the work place security.

Research carried out are important because it gives us a real image of work place danger, viewing the life of the worker and allows us to find ways to avoid or minimize the risks faced by some jobs.

The system for the assessment of work place risk is a tool that helps in the taking of decisions regarding the protection of employees in case of the existence of problems with a work place.

Protection of the rights of the employees is based, first of all and the assessment of the risks and implementation of a policy of prevention adapted.

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Particularities of the Exonerating Causes of Liability of the Ship-Owner or the Maritime Carrier according to the Brussels Convention

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Abstract: The specificity of maritime trade confers a particular feature on exonerating liability of the carrier, the physiognomy of the causes that exclude the existence of liability is, as a result of the "sea risks", an entirely original one. Their regulation by the provisions of the International Convention for the Unification of Certain Rules of Mortgages concluded in Brussels in 1924 and the United Nations Convention on the Carriage of Goods at Sea, concluded at Hamburg in 1978, is characterized, despite similarities, non-unitary and non-systemic approach; if the provisions of art. 4 point 2, letters (a-q) of the Brussels Convention contain only a limited listing of 17 "exempt cases", the text of Article 5 (4) of the Hamburg Rules narrows the scope of the Brussels Convention by laying down four circumstances that hinder the employment responsibility of the carrier.

Keywords: shipping; liability of ship-owner and carrier; exonerating causes; Brussels Convention

1. Introduction

The Brussels Convention, known as the "Hague Rules", was amended by the Brussels Protocols in 1968 and 1979, becoming the "Hague-Visby Rules". After article 4 of the Convention where it provides that "the carrier nor the ship shall be liable for damage resulting from the lack of airworthiness unless this is due to a lack of reasonable diligence on the part of the carrier to make the ship navigable (...)", art. 4, pt. 2 indicates the following exonerating hypotheses: "a) the acts, negligence or mistake of the commander, sailors, pilot or caretaker of the carrier in navigation or in the administration of the ship; b) fire, unless it is caused by the fault of the carrier, c) dangers, jeopardy or accidents of the sea or other navigable waters, d) natural phenomena ("acts of God" in the metaphorical formula of the authors), e) states of war, f) acts of public enemies, g) decision or coercion of the state, authorities or people, respectively prosecution, h) quarantine restrictions, i) act or omission the name of the shipper or the owner of the goods or their agents or representatives; j) strikes, lockouts or impediments to work, in part or in full, regardless of the cause; k) riots or civil unrest; 1) rescuing or attempting to save lives or property at sea; m) decreases in volume or weight, hidden defect, special nature or own defect of the goods; n) insufficiency of packaging; o) insufficiency or imperfection of the marks; p) the hidden defect

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that escapes a reasonable diligence; q) any other cause not arising from the act or fault of the carrier or his agents".

The text of art. 5, point 4 of the Hamburg Rules, however, restricts their scope, establishing the following circumstances that do not attract the liability of the shipping carrier: fire, unless it is proved that the carrier has not "taken all measures that can reasonably be claimed to extinguish the fire and to avoid or limit its consequences"; in the case of the transport of live animals, "the special risks inherent in this type of transport"; damage resulting from "measures taken to save lives or reasonable measures taken to save goods at sea"; the existence of "other causes of loss, damage or delay in delivery".

2. The Specifics of the Exemption Regime Established in the Brussels Convention

Under what conditions does the presumption of liability take place? The Anglo-Saxon-inspired Brussels Convention established a true presumption of liability on the part of the shipping carrier for loss or damage to delivery, but paradoxically set a trap behind it in favour of the carrier, when invoking the benefit of exemption[1]. In order to remove the effects of the presumption, the absence of the fault of the carrier was insufficient, being required, necessarily, the administration of the proof of the existence of one of the exempted cases regulated by art. 4 of the Convention. Practically, in probative terms, the presumption of liability could be challenged subject to the fulfilment of two conditions: the existence of one of the exonerating causes allowed by the convention and the proof of the causal link between the invoked circumstance and the suffered damages[2].

Obstructing the carrier's success in relying on his disclaimer is, in fact, apparent, as the potential difficulties of proof are offset by the more than generous range of "exempt cases", the interests of the carrier being ultimately protected. Subsequently, the Hamburg Rules established a more balanced regime of liability, with the interests of the owners-shippers claiming their legitimate defence.

For reasons of rigor and legal accuracy, we preferred to adopt in our approach the French-inspired doctrinal concept that proceeds to the analysis of all exonerating causes by redistribution into three categories: exempt cases closely related to ship traffic and safety, except cases in connection with the cargo and, finally, that of cases in which the exemption is connected with external events, having their origin neither in the field of activity of the ship nor of the expedition. It should be noted that by their nature and content, conventions are less convincing legal documents, because they describe desirable obligations and not obligations of result and behaviour. (Cornea & Costache, 2018, pp. 72-90)

2.1. Excepted Cases closely related to the Ship

The circumstances belonging to this category are: the state of non-navigability and the hidden defect of the ship, insofar as they are not the consequence of the guilty attitude of the ship-owner, respectively of

[1] Curious enough is the fate of the Hague Rules, from a historical perspective; although their wording was born out of a desire to reconcile the interests of shippers with those of English ship-owners who dominated the maritime market, their content remained more faithful to the carriers, thanks to the extensive list of exonerating causes reproduced above. For details on the international conferences that preceded the elaboration of the Hague Rules, the subsequent implications of the application of the regulation and the need for amendments to the protocols of 1968 and 1979, respectively, see (Bibicescu, 1986, p. 398 and the next)

[2] C.A. Aix-en-Provence, 4 May 2004, Lamyline in the case brought before the court, the court notes that there is no causal link between the fire in the engine room of the ship and the damage suffered by the cargo during the voyage). The rule of double probation is reaffirmed in other more recent judgments, see Cass. com., July 10, 2001, in B.T.L. 2001, pp. 544, C.A. Versailles, April 5, 2001, *op. cit*., pp. 570.

the carrier, in the execution of his specific obligations; the fault of the captain, the sailors or of other agents in the performance of the technical operations imposed by the normal development of the navigation activity; finally, the carrier may invoke the removal of liability for damage caused by acts committed to save lives or endangered property at sea, as well as justified deviations from the usual route for the purpose of providing assistance at sea.

a) The notion of navigability. Under what conditions can non-navigability constitute as an exonerating ground of liability for the ship-owner, respectively the sea carrier? The navigability status of the ship must be analysed both from the perspective of the nautical skills involved in the safe maritime expedition (in the sense that the ship must have a solid and watertight structure to withstand without danger the specific natural conditions, respectively accidents inevitable to travel by sea, as well as to be equipped with adequate means of propulsion) as well as from the perspective of commercial requirements related to the adaptation and interior design of the means of transport depending on the type of transported goods.

In judicial practice, it was noted that the classification certificates do not always constitute irrefutable evidence, entailing only a relative presumption that the charterer has made all the necessary diligences in fulfilling his contractual obligations[1]. Thus, in a case-by-case decision, it was considered that the technical certificate issued a few months before the disputed transport and attesting to the verification of the ship's propulsion devices does not fully prove the good navigability of the ship, especially from the administered evidence it turned out that the deficiencies are the consequence of a failure of the engine of the means of transport[2]. As navigability is not necessarily an objective quality of the ship but the result of due diligence by the ship-owner, its existence being a matter of fact which can be proved by any means of proof, the purely technical documents issued by the specialized institutions may be corroborated, as evidence, and with other facts likely to provide objective indications as to the nautical qualities of the ship[3].

The exonerating effect is conditioned by the fact that the carrier is required to prove the fortuitous nature of the way in which the ship lost its navigability, the courts severely investigating the existence of conditions in the presence of which the removal of liability can be considered legitimate. Thus, judiciously, it was found that the damages were not the consequence of the events of the sea likely to determine the non-navigability but the consequence of the poor maintenance of the ship whose technical parameters are exceeded[4]; at the same time, it was considered that the prolonged interruption of the operation of the refrigeration system due to a malfunction of the control panel does not exempt the carrier from being liable for damages as long as the evidence shows that the deficiency could have been found, under due diligence. Even more so, even on the occasion of the usual checks that the ship-owner, in the exercise of the technical management on the means of transport, can undertake[5]. On the other hand, the circumstance in which a ship, traveling from Italy to Algeria, risked sinking while crossing the calm waters of the Mediterranean, being flooded in less than half an hour, at the limit of the physical possibilities of keeping afloat, was of a nature to conclude that the non-navigability occurred in

[1] Under the German law, the inability of the ship to carry out the contracted transport is a cause of nullity of the contract for the "objective impossibility" of execution, which can be invoked by the shipper under Article 306 BGB, see CA Hamm, 16 February 1995, cited after (Veriotti & Voicu, 2003, p. 200).
[2] C.A. Rouen, 15 November 2001, in B.T.L. 2002, p. 257.
[3] C.A. Rouen, 30 June 1972, in Gaz. Pal. 26-28 November, 1972, p. 7.
[4] C.A. Douai, 31 January 2002, in B.T.L. 2002, p. 151.
[5] C.A. Rouen, 20 June 1985, in D.M.F. 1986, p. 694.

fortuitous conditions, the solution of the carrier's exemption being justified by the argument that, prior to the event, the ship was no longer involved in incidents that would call into question its nautical skills[1].

b) The hidden defect of the ship is analysed as an exonerating case distinct from the one deriving from the inability of the ship to sail, the reason for its establishment being inextricably linked to the technical complexity that currently characterizes the modern shipbuilding industry. The above-mentioned differentiation sometimes appears in the doctrine as the consequence of the different contractual forms in which the transport of goods by sea is carried out, the legal regime of charter contracts (which, traditionally, is the specific legal instrument used to make occasional movements of goods by sea) being the particular value compared to that of the maritime transport contract actually practiced in regular transports. If the obligation to ensure the use of a ship fit for the voyage in good condition is specific to the ship-owner, regardless of whether he also combines the quality of owner of the means of transport, the classic obligation of the carrier[2], also known in land transport, is to do all due reasonable diligence so that the means of used transport corresponds to the specifics of the consignment (of course of interest to the ship's adaptation to the nature and weight of the goods transported as well as to other particular conditions required by the agreed itinerary).

Exemption is possible subject to the fulfilment, from a probative point of view, of two conditions: that of the existence of the "hidden" feature of the defect, the carrier being required to prove that the detection of the deficiency was impossible despite careful checks which, taking into account the degree of wear, understood to perform them periodically, as well as the fact that the hidden defect is the direct and necessary cause of the damages suffered by the cargo.

It has been established in jurisprudence that safety certificates issued to the ship-owner when the ship leaves and attesting good navigability do not release the carrier, when the ship-owner is not also the carrier of the transported goods, from the obligation to exercise proper supervision and maintenance of the means of transport and, consequently, he was held liable for the damage caused by thawing the goods as a result of the malfunction of the refrigeration systems[3]. The claim, even proven, that the ship is newly manufactured, complying with modern standards in the field, can only lead to a simple assumption that, at the time of departure, the technical installations were in working order and the defect could "escape" a vigilant control.

The case law retained the exonerating effect of the hidden defect in the following factual situations: interruption of the electrical supply in the refrigeration devices due to the dysfunction of an internal part, although during its disassembly no signs of premature wear or unsatisfactory maintenance[4] were found; cracking of a tank intended for the transport of wine in bulk which, being masked by a protective layer, could not be detected before the leakage occurred; thermal system malfunctions which, prior to departure, had just been checked by Veritas Bureau experts[5]. The carrier's defences were not received, keeping in mind that the leak that allowed water to enter the hold of the ship did not constitute a hidden defect since the proof of the technical aptitudes of the ship was not made by the carrier nor by the control certificates normally issued by the specialized personnel of the Veritas Bureau, nor by any checks it may undertake to test the ship's ability to navigate the rough seas; the corrosion of a refrigeration pipe due to

[1] C.A. Paris, 25 March 1993, Cass. corn., 27 June 1995, Lamyline.
[2] When the charterer concludes a contract of carriage with third parties, he and not the ship-owner is the carrier, a hypothesis in which we witness a dissociation between the role of ship-owner (in the sense of operator of the ship, i.e. the person in charge of nautical management) and carrier. In this sense see (Bibicescu, 1986, p. 128).
[3] T. corn. Marseille, 9 September, 1975, in Revue SCAPEL, 1975, p. 54.
[4] T. com. Seine, 21 April 1952, in D.M.F. 1953, p. 51, quoted by (Kerguelen- Neyrolles, Chatail, Renard, & Thomas, 2006, p. 377)
[5] C. A. Rouen, 8 November 1952, idem, p. 377.

the leakage of the Freon which, covering the entire cooling installation, could not be ignored by the ship's personnel[1]; damage to a part due to negligence with which the ship's engine maintenance operations were performed.

c) nautical fault, i.e. the mistakes of the captain, sailors or other transport agents committed in the performance of professional duties regarding the safe operation and movement of the ship is perhaps the most eloquent case in highlighting the particular features of the exoneration regime of liability of the carrier in maritime transport. The originality lies in the fact that the carrier is allowed, in defence, to invoke, practically, its own fault (!), which also explains the controversial debates that, over time, have led to the legitimacy of recognizing nautical fault as the ground for exemption.

Thus, if the set of "exempt cases" listed in the provisions of the Brussels Convention includes it, being expressly established in some national laws[2], the authors of the Hamburg Rules no longer understood to retain in the sphere of exonerating causes and nautical fault. Moreover, that is the reason why states representative for maritime trade, prefer not to denounce the Brussels Convention (in its original form or amended according to the Protocols of 1968 and 1979, respectively), they did not understand to ratify them.[3]

In the classical sense of the notion, the exonerating effect of nautical fault occurs only with respect to damages that are the consequence of the guilty behaviour of the commander of the ship in the execution of technical navigation operations, not for those committed in defective fulfilment of cargo obligations (related to maintenance, preservation and delivery of goods) and which are limited to the notion of commercial fault.[4]

To the doctrinal criterion of differentiating the nautical fault from the commercial one from the perspective of "locating" the damage, an additional condition has been added by jurisprudence, which establishes a restrictive conception of its scope. Thus invoking the exonerating character of the nautical fault will not be successful unless the navigator's misconduct was liable to endanger the ship's safety; so it is insufficient to prove the nautical fault as the cause of the damage to the goods, but it is necessary to establish with certainty that the same nautical error endangered[5] the ship, in the interpretation of this rule it was held that the delay due to a navigational error and consequent advanced deterioration of perishable goods cannot justify the exoneration of liability of the carrier under nautical fault.

The mistakes caused by the operations of handling the transported goods carried out on behalf of the sea carrier remain in the sphere of commercial fault, but the consequences regarding the involvement of his liability in the hypothesis in which the committed deeds may have the character of nautical fault by compromising the stability of the ship. Although the courts have ruled that even the fault of the carrier in the commercial management of the ship can be assimilated to nautical fault if its safety is endangered[6],

[1] C.A. Paris, 22 October 1986, Lamyline.
[2] See art. 27 letter b) of the French Law n ° 66-420 of June 18, 1966 regarding the chartering and maritime transport contracts.
[3] In comparison, we will list the states that have acceded to the Hamburg Rules, the economic potential of many of them being modest compared to the maritime powers found in the previous list: Albania, Austria, Barbados, Botswana, Burkina Faso, Burundi, Cameroon, Czech Republic, Chile, Egypt, Gambia, Georgia, Guinea, Hungary, Jordan, Kenya, Lesotho, Lebanon, Malawi, Morocco, Nigeria, Uganda, Paraguay, Romania, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Syria, Tanzania, Tunisia, Zambia.
[4] We note the opinion expressed by Prof. Dr. R. Rodiere who, in a suggestive wording, stated that "what matters is which part of the ship is subject to the adverse consequences of fault (...) If it is a part of the ship intended for cargo, the fault is commercial. If it is a ship in terms of its technical operation, the fault is nautical", quoted after (Kerguelen- Neyrolles, Chatail, Renard, & Thomas, 2006, p. 378).
[5] In the sense shown see (Paulin, 2005, p. 256).
[6] As an example, regarding the faulty stacking of cargo which is usually qualified as a commercial fault, it was held that it takes the form of nautical fault when it results in compromising the stability of the ship, see C.A. Paris, November 29, 1978, in D.M.F. 1979, pp. 80, Cass. com., July 17, 1980, in B.T. 1980, pp. 567.

recent trends are against such an orientation, emphasizing that we will maintain in the sphere of commercial fault any negligence committed in fulfilling obligations relating to the loading (loading, stowage, securing or unloading of goods) whether or not it involved a risk to the security of the ship. In considering the delimitation of the scope of commercial fault, we list some circumstances that we consider eloquent for the correct acquisition of its meanings: the use by the carrier of a ship in which, in the absence of a bridge, the goods were practically piled on the entire height to the bottom of the track, failure to supervise the shipment during the stationary occasion of the repair operations of the ship's technical devices, negligence committed by loading on deck - against the instructions of the shipper - of fragile goods and damaged, transport being damaged in December[1].

However, the coexistence of commercial fault with nautical error is not excluded, the hypothesis being characterized, from the aspect of interpreting the legal consequences that it entails, by an inconstant approach of the judicial practice; thus, in a decision of this case[2], the decision of the lower court was quashed, which, although it attributed to the captain's deed (consisting in the omission not to order the operation of the pumps at maximum capacity and favouring the failure of the ship) both nautical and commercial fault, obliged the ship-owner to fully repair the damage; The recent case solves the competition between nautical error and commercial fault in the way in which both the exonerating effect that nautical fault (materialized in the collision of a wreck) produces in favour of the carrier, and his responsibility for the commercial mistake of not taking all the necessary measures that could be taken to avoid aggravation of the damage; Specifically, through the pronounced solution, the ship-owner was obliged to repair a part of 60% of the entire damage, correlative part to the commercial fault, for the difference of 40% no longer being liable, given the nautical fault of the captain.

Judicial practice considered that the recognition of the exonerating nature of nautical fault was well-founded in various situations, of which, by way of example, we report the following: the failure of a ship due to an error of interpretation of geographical maps, the fact of deciding - after production on board the ship of a fire whose origins could not be established - the resumption of the voyage at sea, the total loss of a load of sugar which occurred during the piloting of the ship.[3]

In a general assessment, we can say that nowadays the reluctance to apply the exonerating effect of nautical fault becomes more and more evident; after the Hamburg Rules and the Geneva Convention on International Multimodal Transport (1980) understood to remove this ground for exemption; however, we cannot fail to point out that its prospects for entry into force feel far from optimistic, one of the reasons why it has not yet obtained the necessary number of accessions is that maritime nations have refused to ratify it precisely because of the elimination of nautical error among the exonerating causes. More recently, the 2001 task force established by the United Nations Commission on International Trade Law to draft the international rules on the carriage of goods by sea decided not to include nautical fault among the exonerating causes of liability of the shipping carrier.

However, this current of opinion formed in the international legal circles “cohabits” with a certain reaffirmation of the institution by pronouncing court decisions that understand to give it efficiency. Eloquent is, in the sense shown, the solution pronounced by the Court of Appeal of Aix-en -Provence in the Al Hoceima affair by which the nautical fault of the captain was retained, who, after the ship took refuge in the harbour, decided to resume the voyage at sea despite the “exceptionally serious” conditions, being engaged his personal responsibility, the ship-owner, who had also assumed execution of the

[1] C.A. Paris, 22 June 1987, Lamyline¸ C.A. Paris, 14 March 1985, Cass. Com., 2 June 1987, idem.
[2] Cass., 6 July 1954, in B.T. 1954, p. 627, quoted by (Kerguelen- Neyrolles, Chatail, Renard, & Thomas, 2006, p. 379).
[3] C.A. Aix-en-Provence, 23 September 1999, in B.T.L. 2000, p. 257.

transport, no longer being held liable[1]. The Paris Arbitration Court also ruled that we were in the realm of nautical error in the event that the master of the ship was traveling at excessive speed in bad weather, the danger being doubled by the accidental change of route, which placed the ship in the direction of the storm.

We list a number of situations in which judicial practice has held that nautical fault cannot be invoked: in the case of known damage to the ship's propulsion devices, the natural attitude of the carrier is to seek refuge in the ship as soon as possible in the closer port; malfunction of the control panel of the ship, due to a short circuit that was possible in conditions of inadequate maintenance of the ship, modification by the commander of the ship of destination against the instructions given by the transport commissioner due to the fact that anchoring in the agreed port of destination was more difficult, although not proven to be impossible; the loss, due to a very strong gust of wind, of some containerized goods as a result of the uninspired choice of the route by the commander who had also adopted an excessive speed of movement. Finally, the collision of two ships (the approach) does not constitute by the simple fact of the occurrence of the event a cause likely to allow the exemption of the maritime carrier on the basis of nautical fault.[2]

d) acts of assistance and rescue at sea justify the exoneration of liability of the carrier for the damage caused by them, stating that the maritime carrier is not liable for any loss or damage and an attempt to save lives or property by sea. The rule derives from the qualification of the legal nature of the obligation to provide assistance at sea, its application being nuanced in the situation where the ship-owner receives a correlative indemnity by the fact that shippers whose goods have suffered damage are still recognized the right to bring an action based on the principle of enrichment without just cause.

e) deviations from the initially agreed route may be invoked by the carrier in his defence under the condition of proving their justified character; whereas the text of the Hague Rules makes reasonable the deviation from the road which is committed for the rescue of human life or property at sea and in any other case where the interests of the sea expedition so require[3], the case law has extended the legitimate possibility of invoking the exemption in the following situations: modification of the maritime route to Barcelona bypassing the agreed port of destination (Sete) whose entry had been blocked by incidents arising from the actions of fishermen claiming simultaneously and in other nearby ports, diversion justified by the avoidance of passage through dangerous areas due to the Gulf War or civil disputes in the port of destination so as not to endanger the "ship, crew or expedition"[4]. The carrier will be held liable if the diversion became necessary due to the known nautical inability of the ship and occurred before it is to leave the previous port of unloading in spite of its defences according to which in this way the risk of damage or even loss of human life has been avoided.

2.2. Excepted Cases closely related to the Load

In a systematic interpretation of the provisions of the Brussels Convention on the Exemption from Liability of Sea Carriers, we find that the exonerating effect of liability can also be invoked in a number

[1] C.A. Aix-en-Provence, 14 May 2004, in B.T.L. 2004, p. 486.
[2] Ch. Arb. Paris, January 14, 2005, in D.M.F. 2005, pp. 562. C.A. Paris, March 14, 1985, in D.M.F. 1987, pp. 364. Cass. com., October 24, 1989, quoted by (Kerguelen- Neyrolles, Chatail, Renard, & Thomas, 2006, p. 379). C.A. Aix-en-Provence, January 19, 2001, in D.M.F. 2001, pp. 820. Cass. com., Feb. 14, 1983, in D.M.F. 1983, pp. 654.
[3] Doctrinally, the deviations committed in the consideration of assistance and rescue at sea are qualified as "legal deviations", while the rest of the deviations from the usual route supported on reasonable grounds are called "justified deviations", see (Bibicescu, 1986, p. 419)
[4] Cass. com., 13 June 1989, in B.T. 1989, p. 539. C.A. Paris, 8 March 1996, Lamyline. C.A. Paris, 29 September 1995, idem.

of circumstances having in common the influence of facts on the carried goods: "the hidden defect, the special nature or the own defect of the goods", the insufficiency or the defect of the packaging, respectively of the marking signs imputable to the loader[1]:

a) the existence of its own defect in the goods, in the field of maritime transport, has been recognized by jurisprudence in the following situations: the advanced state of ripening of fresh fruits, although the carrier has complied with the instructions on permanent air ventilation at 11°C, o disease specific to citrus grown in Florida caused by a pathogenic development of a species of fungus and favoured by the high temperatures common in tropical areas[2]. On the other hand, the carrier's defences in the sense of the existence of its own defect in the goods were not received with reference to the defect of fixing the transported vehicles since the lack of devices that would have ensured the stability of the shipment was found in most of the transported goods; the mere fact of harvesting the fruit at the end of the season cannot constitute a circumstance likely to lead to the carrier's exemption, just as the loading of the goods at the end of the recommended period is not sufficient to note that the goods were already damaged at the time of receipt of the transport.

The proof of the hidden defect is the responsibility of the carrier, the courts considering that the proof of the hidden defect cannot undoubtedly result from simple suppositions or hypotheses, especially in the hypothesis in which they are formulated on the basis of findings made after a relatively long period in relation to that written in the bill of lading or if it takes the form of conjuncture assumptions resulting from debates between experts who had found the damage of the expedition (exotic fruits). We note, in view of the pertinent arguments formulated, the solution in this case in which the court[3] considered the carrier's defences to be insufficient, mainly based on the conclusion from the expert report that the damages were mainly the result of the "heterogeneity of the fruits given for transport"; thus the extensive judicial investigation and other significant elements for the correct retention of the facts (abnormal prolongation of the journey in relation to the travelled distance, interruptions of electricity supply ordered as a result of transhipment of goods without periodically recording in the logbook the temperature differences) removed as unconvincing the superficial claims of the experts and, implicitly, of the carrier.

In maritime transport, the reserves registered by the carrier in the bill of lading on the occasion of receiving the goods have a special role in the evidentiary plan. Although, theoretically, the lack of reservations does not prevent the carrier from proving his own vice, in practice probation becomes very difficult and sometimes even impossible; in the sense shown, in judicial practice it was noted that the absence of reserves, the abnormal development of transport performed without respecting the contractual temperatures "make inadmissible the invocation of its own defect."[4] In the absence of reservations, the existence of its own defect cannot be deduced only because the goods (pineapple) was not accompanied by phytosanitary certificates, because such a "formal irregularity cannot mask the inconclusiveness of the evidence administered by the carrier" in proving its defect and, consequently, the presumption of the normal state of shipment cannot be ruled out.

b) the carrier will not be liable for weight or volume losses of goods which by their nature are exposed to losses. Courts must relate to the tolerances allowed in the port of destination[5] or to those required by

[1] See art. 4, point .2 letter m) of Haga-Visby Rules.
[2] C.A. Paris, 11 January, 1995, Lamyline.
[3] C.A. Rouen, 19 October 1995, idem.
[4] C.A. Aix-en-Provence, 19 January 2001, in D.M.F. 2001, p. 820.
[5] Thus, coffee is a product sensitive to air humidity, not excluding the finding of a different mass in relation to that entered in the bill of lading during delivery, taking into account the geographical area where it was harvested (tropical regions) or the atmospheric conditions suffered during travel. See T.com. Marseille, July 13, 1979, in Revue SCAPEL 1980, p.l. The normal

the practice of customs; the withholding or not of the exonerating effect is the exclusive attribute of the courts, which are granted the freedom to assess the circumstance that the damage was or was not the cause of some natural losses.

Moreover, quantitative tolerances and weight loss of the expedition were assimilated as a result of the breaking of more or less fragile objects, an orientation that we do not understand to share, based on a confusion: whether natural weight loss due to traits the goods themselves are a phenomenon as a result of which the goods remain intact, the breaking of an object is equivalent to the damage of the goods resulting from an accidental fact produced during transport (shock, brutal handling operations), the damage not necessarily involving changes in the mass of the object.

c) beyond the natural events that are usually assimilated to force majeure and produce exonerating effects regardless of the nature of the transport, we also remember events inextricably linked to the particular conditions in which a voyage takes place; is the case of "hold steam" that occurs by condensation of water on the walls of the ship or in the inner compartments of the hold, causing an increase in humidity and may result in damage. The phenomenon, usually associated with the passage of the ship from a warm area in a cold or sudden change in atmospheric parameters, it may lead to the exoneration of the carrier when it manifests itself as an extension of the effects of the goods' own defect or as a direct consequence of a sea event or other exonerating circumstance[1]. The carrier will not be able to be exempted from the effects of liability if the mentioned phenomenon is the result of a foreseeable decrease of temperature, of the sealing defect that allowed the water to enter the hold or of an inadequate ventilation system.

d) the lack or defect of the packaging as well as any other culpable act committed by the shipper in the execution of his contractual obligations: errors in the composition and distribution of consignments of goods, loading time too long in relation to the ripening period of transported fruits, non-adaptation of packaging conditions, respectively containerization, to the nature of the goods. On the other hand, the act of the shipper not informing the last carrier of the findings of the ship's hygrometric condition made by the first carrier did not preclude liability from being incurred as long as it was clear that the instructions regarding the temperature indicated during the voyage were not followed by the carrier[2].

e) the act attributable to the addressee, although not expressly provided for by the provisions of Article 4 of the Convention, may be limited to the "unnamed" exemption from the uniform rules consisting of "any other cause not arising from the act or fault of the carrier or his agents"[3].

3. Peculiarities of Exonerating Causes in the Conception of the Hamburg Rules[4]

If the provisions of the Brussels Convention established a true presumption of liability of the sea carrier for losses or damages found on delivery, the authors of the United Nations Convention on the Carriage of Goods by Sea signed in Hamburg in 1978, in an innovative desire to conceptually place the

percentage limits within which perishables can be established by conventional or expert means, see C.A. Rennes, October 10, 1985, in D.M.F. 1987, pp. 46, C.A. Rouen, November 24, 1988, in D.M.F. 1991, pp. 365.

[1] T.com. Seine, 4 July 1952, in D.M.F. 1953, p. 164 quoted by (Kerguelen- Neyrolles, Chatail, Renard, & Thomas, 2006, p. 387)

[2] C.A. Fort-de-France, 19 March 2004, in B.T.L. 2004, p. 266.

[3] Therefore, we do not understand the view expressed in French judicial practice that the fault of the consignee cannot be held as a cause for exoneration of liability of the shipping carrier only in view of the fact that it is not subject to explicit regulation as in other "cases of exemption".

[4] The Convention, ratified by our country by Decree no. 343/1981 (Official Monitor no. 95 of 28 November 1981), makes the status of State party conditional on the denunciation of the above-mentioned Brussels Convention.

responsibility of the sea carrier existing trends and in land transport, have nuanced the subjective basis of the liability of the sea carrier and have substantially "suppressed" the excepted cases established in the provisions of the Brussels Convention (Rodiere, 1978, p. 451). The relative presumption of guilt can be removed by proving by the carrier that he has submitted all reasonable measures to avoid the event and its consequences.

Conclusions

The Hamburg Rules System restricts the categories of exonerating causes, lays down particular rules for certain forms of transport and, finally, expressly stablishes the rule of "responsibility sharing" in the hypothesis, set out in a general wording with other causes (emphasis added) of loss, damage or delay in delivery; we should highlight, assuming the risk of repetition, the elimination of nautical fault and the reserve with which, as a result of this restriction of the exonerating regime, the convention was received[1].

Of the excepted cases listed in the Brussels Convention, the Hamburg Rules explicitly refer only to the consequences of a fire on board; the burden of proof is reversed, in the sense that according to the provisions of Article 5 paragraph 4 of the Convention, the shipper is required to prove that the carrier has not "taken all measures that can reasonably be required to extinguish the fire and avoid or limit its consequences."

In the case of the movement of live animals, it will not be possible for the sea carrier to be held liable for loss, damage or delay in delivery, as long as it is proved that, despite the fact that the carrier has complied with the shipper's instructions, the damage is due to the "special risks" of these transports. The carrier is exonerated for the damages appeared as a result of the transport on deck of the expedition since he had the express consent of the loader, found as such in the content of the bill of lading. Except in cases of common damage, the sea carrier shall not be liable for damage resulting from measures taken to save lives or property at sea. Finally, in the event that the fault of the carrier or his agents is competing with other causes of damage, he will not be liable unless the damages are imputable to him provided that the amount of loss, damage and delay to delivery that cannot be attributed to his fault or negligence.

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THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Regulation in Unimodal International Conventions on Land and Air Transport of Exonerating Cases of Carrier Liability

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Abstract: Prior to joining the European Union, the trend of domestic transport under the legal regime enshrined in the uniform rules was anticipated by the special regulation in the field of air transport where, taking the model of the French legislator (Article L. 321-3 of the French Civil Aviation Code), by art. 3 of Law no. 355/3003 established the rule according to which the liability of the Romanian air carrier, whether operating on domestic or international routes, as well as a foreign air carrier that operates flights on routes originating and destined on Romanian territory was established by the provisions of the Convention Montreal. After Romania became a member of the European Union, the law no. 355/2003 was repealed as a consequence of the incidence of Regulation (EC) No Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents and Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators.

Keywords: air and ground transportation; carrier liability; exonerating causes; international regulation

1. Introduction

The normative set of the Uniform Rules on the Contract for the International Carriage of Goods by Rail (CHIM)[4], the Convention on the Contract for the International Carriage of Goods by Road (CMR)[5] and the Montreal Convention[6] establish two categories of cases which may lead to exoneration from liability. of the land and air carrier: causes which practically coincide with the circumstances established by the common law in the matter of exoneration from liability and special causes, specific to the contractual relations in question[7].

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[4] It is one of the 3 annexes of the Berne Convention of May 9, 1980 (C.O.T.I.F.) ratified by Romania by Decree no. 100/1983. This is the result of a long process of improving the uniform norms in the matter, the first variant being the one adopted in 1890 which, over time, has undergone several modifications, respectively in 1924, 1952, 1970, 1980 and finally 1999. The protocol signed in Vilnius on June 3, 1999 was ratified by our country by GO no. 69/2001 (Official Monitor no. 538 of September 1, 2001).
[5] The Convention was concluded in Geneva on 19 May 1956, as amended and supplemented by the Protocol drawn up in Geneva on 5 July 1978; Romania ratified it by Decree no. 451/1972, respectively Decree no. 66/1981 by which it adhered to the previously mentioned modifications.
[6] The Convention was ratified by Romania by GO no. 107/2000 (Official Monitor no. 437 of September 3, 2000) approved by Law no. 14/2001 (Official Monitor no. 97 of February 26, 2001).
[7] Lately, it can be seen the proliferation of obviously more complex transport operations, generically called successive or multimodal transports. With regard to the particularities of the legal relations which may arise between the contracting carrier, the substitute carrier, the consignor and the consignee resulting from the analysis of international conventions on international transport law, see (Iorga & Costache, 2010, pp. 127-142)

1.1. General Causes of Exemption

According to the provisions of art. 36 point 2 of the C.I.M., art. 17 point 2 of the C.M.R., respectively art. 20 of the Montreal Convention may constitute grounds for exemption the following circumstances:

a) the loss, damage or exceeding of the transport term was determined by the fault or the order of the person entitled to dispose of the goods; from a legal point of view, we can assimilate the hypotheses evoked by the text of the conventions with the circumstance known in common law as the "deed of the contractor". Jurisprudentially, it has been ruled that the culpable attitude of the sender must constitute the main and direct causal event that caused the damage, the way in which the carrier understood to execute its service being treated severely[1]. Thus, the fact imputed to the consignor not to be accompanied by live animals was analysed as a distinct element of the damage caused as a result of a sudden shock of the wagon, consequence of a wrong technical manoeuvre, so that the fault of the transport operator was retained; to the extent that the origin of the damage could not be identified, being in the presence of what the French legal literature calls "hidden damages"[2] and the carrier has not proved the existence of any exonerating situation, he will be held liable[3], which means that "doubt always plays against the carrier". (Kerguelen- Neyrolles, Chatail, Renard, & Thomas, 2006, p. 529) Instead, the fault of the shipper who indicated too short a time to tranship the shipment between the two flights mentioned in L.T.A. was liable to exonerate the airline from liability; the sharing of responsibility, permitted by all international regulations and expressly established in the Montreal Convention[4]; applying the said rule, the carrier was partially exonerated for the damage suffered by a passenger who "by placing jewellery of considerable value in his luggage - which necessarily passed through several hands during the journey - favoured their disappearance, the risk being aggravated by the modest standard of living of the landing airport staff".[5]

b) the own defect of the goods defined as "a defect or insufficiency of the goods likely to damage it during transport" or as "the inability of the property to bear without damage the normal risk of a given transport" (Crauciuc & Manolache, 1990, p. 58) differs from the nature of the goods in that the damage does not result from the properties of the goods (fragility, sensitivity to cold, heat, perishability), but from other particular elements likely to affect its structure and functionality. An essential condition necessary to operate the exonerating effect is that the defect in the goods must exist from the date of receipt of the consignment by the carrier.

Finally, in the field of air transport, the 1999 Montreal Convention establishes the possibility of stipulating restrictive or exonerating liability clauses, stating that it is important to establish their legitimate extent, in the sense that their effect should not be permitted to the carrier to exonerate himself for the breaking of fragile objects or the theft of valuables, as long as it has not been committed by violent means. The regime established by the Montreal Convention, which is the last uniform regulation

[1] Thus, it was held that, although the consignor had defective loading of the goods, the railway carrier could not invoke the exemption unless the defect in the loading operations was not visible on normal examination, Cass. com., June 8, 1983, in B.T., 1984, p. 8.

[2] C.A. Paris, January 27, 1984, in B.T. 1984, pp. 584, in the present case, the cause of the spontaneous burning which destroyed the goods could not be established, and in the absence of any evidence showing the existence of an exonerating situation, the carrier was held liable.

[3] Cass., 15 December 1953, in BT1954, p. 134.

[4] See the provisions of art. 20 of the Convention, according to which "if the carrier proves that the damage was caused or favored by the negligence or other wrongful act or omission of the claimant or the person from whom his rights derive, the carrier is exempted in full or in part of liability to the applicant, in so far as such negligence or any other wrongful act or omission has caused or contributed to the damage.

[5] Aix-en-Provence, 3 April 1987, cited after (Kerguelen- Neyrolles, Chatail, Renard, & Thomas, 2006, p. 667) (in this case, the partial liability of the passenger was retained, up to 1/6 of the amount of the damage, for which difference the air carrier was obliged to pay damages).

in the matter, likely to favour the carrier, may create some controversy as to the current interpretation we should give to the notion of defective goods, in the sense that it would be a restrictive one, as we have shown before, or an extensive one. The question is pertinent because, depending on the position adopted, we could find ourselves in the presence of a non-unitary treatment, differentiated between the terrestrial and the air carrier and which is not justified. We believe, however, that the notions of the nature of the goods, respectively vice of the goods are different, and the distinction has certain consequences in the probative plan, in the sense that according to art. 17 point, 4 letter d) of the C.M.R. (which gives the nature of the goods an exonerating effect, being one of the special causes of irresponsibility) the carrier enjoys the relative presumption of irresponsibility that does not operate in the case of the provisions of art. 17 point 2 with reference to the defect of the goods.[1]

c) circumstances that the carrier could not avoid and whose consequences he could not prevent, a hypothesis that can be associated with the traditional notion of force majeure not without emphasizing certain particularities. Thus, the requirement of absolute unpredictability or absolute invincibility is not imperative, the judicial practice ruling on the exonerating character of the invoked circumstance according to the particular aspects of the state of fact deduced to the court.

Therefore, the liability of the carrier was not removed in the event of theft which, although committed by violence, could have been avoided if the driver, in compliance with the rules of professional conduct, had not been stationed in an unguarded area[2]. In another case, however, it was held that the carrier could not avoid the aggression of several individuals armed with baseball bats while, at night, he was in a specially arranged parking area and located near of frequented places[3].

In the field of air transport, no exonerating effect was attributed to the fact that the theft of the goods took place in the company's warehouses, which could have ordered additional measures to supervise the maintenance operations, which could have reduced, if not eliminated, any possibility of disappearance of the commodity; in other words, the jurisprudence rarely retains the exemption of the air carrier in litigation concerning damages arising from the theft of goods, all the more so if they are valuables and even if in this case the fault is also retained by the sender (traveller) or the consignee.

Remaining in the sphere of air transport, we remind that it is not obligatory for the invoked event to meet the requirements of force majeure, being necessary, according to art. 19 of the Montreal Convention, for the carrier to prove that "he, his subordinates or his agents have taken all reasonably necessary measures to avoid damage or that it has been impossible for them to take such measures."[4] Although the damage could not be determined, the exonerating effect in favour of the air operator was not retained in the following circumstances: destruction of packages due to a fire in the handling company's warehouses as long as the airline did not provide any information on the circumstances of the event administered any evidence that he had taken all necessary measures to prevent or mitigate the consequences, altering the shipment of perishable goods (fresh lobsters) if the carrier did not prove that his employees had complied with the instructions, mentioned in the consignment note, regarding the

[1] See for more details on the matter (Stancu, 2005, pp. 336-337).
[2] Cass. Com., 2 June 2004: Bull. Civ. IV, no. 115.
[3] Cass. Com., 30 June 2004: Bull. Civ. IV, no. 144.
[4] The text of the Convention takes into account the damages incurred as a result of the delay in delivery as opposed to the concept established by the previous regulation of the Warsaw Convention where it also applies in case of loss or damage. Under the latter convention, taking the necessary measures was defined as the "reasonable diligence" required of the air carrier in the performance of its obligations, being described as "a means obligation included in an obligation to perform", see (Kerguelen-Neyrolles, Chatail, Renard, & Thomas, 2006, p. 666). In the system of the Montreal Convention, reasonable diligence was replaced by the presumption of liability of the air carrier, being sufficient to prove that the event that caused the damage occurred during the air travel.

conditions during transport (5-7°C) or the existence of obstacles that could have been encountered in maintaining the temperature, when unloading the packages presenting temperatures of up to 20°C.

Extending the scope of the exonerating circumstances to the acts of public authority, we specify that the administrative pressure on the railway services, in the sense of draining a tanker transporting dangerous goods or closing the air traffic due to the flight ban decided by the authorities falls within the scope of circumstances inevitable and for which the railway or air carrier cannot be held liable. On the other hand, the conditions for removal of liability are not met in the event that the railway, faced with a striking movement of part of the staff preceded by a notification, still accepts the transport of perishable goods (pasteurized milk) delayed due to the change of initially agreed route; similarly, with regard to a strike by pilots serving a scheduled airline, the exemption effect could not operate unless the air carrier proved that it was unable to distribute the cargo to other aircraft belonging to certain airlines of foreign companies. However, the strike was attributed the character of an irresistible event when, being triggered without notice to the railway, its consequences could not be removed.

On the insurmountable character of the circumstance invoked, the courts, taking into account the concrete circumstances existing from one case to another, have an invocation right of assessment; thus, in the absence of proof that the carrier, due to the state of civil war in Beirut, was unable to deliver the goods to their destination within a reasonable time, the liability could not be removed, however, in a more recent example, the court noted that the "brutal and unpredictable invasion of Kuwait by Iraq" was the size of an irresistible event that could prevent airport services from taking the necessary measures to avoid damage.

2.2. Special Causes of Exemption

The originality of the exoneration regime of liability is conferred by the establishment of special cases likely to remove the liability and to form a specific legal framework in which the carrier can invoke in its defence the exonerating effect of certain circumstances expressly and limitingly provided by the text of the conventions. The reason for their regulation was to bring corrective, appreciated as welcome, to the severity with which the debtor is usually treated the characteristic obligation to the dangers inherent in travel. (Stancu, 2005, p. 338)

Known in the legal literature as "privileged causes of liability", and in the etymology of uniform rules entitled "particular risks", it is sufficient for the carrier to prove the existence of any of those circumstances in order to benefit from the exonerating effect. In conclusion, the role of the presumptions established by art. 36 point 3 of the C.I.M., of art. 17 point 4 of the CMR, respectively of art. 18 of the Montreal Convention is to alleviate the liability of the carrier, the doubt acting against the recipient. (Paulin, p. 253)

In the following, we will analyse in particular aspects of the special causes exonerating from liability:

a) the transport performed by using discovered vehicles is characterized by a higher incidence of being exposed to damages compared to shipments in closed means of transport. The presumption of irresponsibility of the transport operator produces its effects if the movement was made in such conditions as a result of the express agreement between the sender and the carrier. The exonerating effect occurs only if the loss or damage is the causal consequence of the fact that the goods were transported in uncovered means of transport, not when the damage occurred and if they were moved in covered means of transport, for example in the case of a theft. The benefit of irresponsibility may be invoked by the carrier who agreed with the sender to transport privately owned cars and the fire caused by flames from an incandescent object destroyed the goods or in the case of corrosion of steel pipes due

to chemicals installed in neighbouring wagons. Even if the goods, by their nature, could be transported only through the use of discovered means of transport, the railway remains entitled to invoke in its defence the particular risk analysed. A special problem, solved differently from judicial practice, is raised by the transport of goods in means of transport covered with tarpaulins (according to the uniform rules there are 4 modes of transport: shipments transported in closed, open means of transport, specially arranged wagons and wagons covered with tarpaulins), in the sense that they can be assimilated or not to closed means of transport? Applying the provisions of art. 36 of the C.I.M. 1980, also reproduced by art. 23 pt. 3 lit. a) C.I.M. 1999, we consider that the interpretation can only be that the wagons covered with tarpaulins are assimilated to the discovered means of transport, so that the carrier can invoke the exonerating effect. In the practice, indeed older, of other courts, the opposite solution had been adopted, which we do not adopt. On the other hand, the goods loaded in intermodal transport units or in means of road transport rolled in wagons are not considered to be under the incidence of art. 23 point 3 letter a) of the uniform norms.

b) the lack or effectiveness of the packaging in the case of goods which, by their nature, are subject to loss or damage. To the extent that the defect of the packaging was not the subject of reservations in the consignment note upon receipt of the shipment, it is assumed that the packaging irregularities did not exist in the shipping station, being the consequence of an event during travel. However, an apparent defect is likely to lead to the exemption of the carrier even if he did not proceed to insert reservations in the transport document; in the event that the defect of the packaging could be notified by the carrier at a regular examination, his liability will be incurred accordingly; it is the case of a car whose weight and height, although they required its proper fixing, were not carried out accordingly, the railway having the objective possibility to ascertain the insufficiency of the way of presenting the goods during transport. Judicial practice, sometimes quite severe, has ruled that the exoneration of the carrier can take place only if the packaging is the only cause of damage and not when the fault of the transport operator contributed to the consequences of the event; Consequently, the expert's findings regarding the "fragility of the packaging of the shipment due to the weight of the contents" were removed and, consequently, the airline was not exonerated, considering that "the traces left on the packages marked" fragile "prove the brutal manipulations airport employees".[1]

c) the loading or unloading operations of the goods have been performed by the consignor or consignee[2]; the fact that a parcel belonging to a group parcel shipment has been lost due to a classification error, given that the responsibility for the handling operations has been assumed by the consignee to whom the railway has made the goods available, will remove its liability. On the contrary, the burning of a wagon carrying crockery after it was made available to the consignee could not be considered a particular risk as long as the cause of the accident could not be established.

d) defective loading of the goods. Applying the provisions of art. 36, point 3 letter d) C.I.M., respectively of art. 17 pt. 4 C.M.R. the carrier may claim the benefit of non-liability for damages which are the consequence of a defective unloading to the extent that the legal liability for carrying out these handling operations has been assumed by the consignor. However, the carrier is required to provide pertinent, precise and unequivocal explanations for the causes of the loss of the goods because if the irregularities during loading could be observed with reasonable diligence, the railway carrier, all the less so in the

[1] C.A. Aix-en-Provence, 7 Januarye 1986, Lamyline.

[2] We specify that this case is no longer found in the enumeration of the special causes of exoneration contained in art. 23 § 3 of the C.I.M. 1999, although in the field of road transport, the uniform rules maintain it (see art. 17 pt. 4 letter c) with reference to "handling, loading, stacking or unloading of goods by the consignor or consignee or by persons acting in at the expense of the consignor or the consignee"). The Montreal Convention does not explicitly refer to the said exonerating case, but we can confine it to the deed of the co - contractor referred to in Article 20 of the Convention.

case of shipments departing from - a railway station, is not entitled to invoke this special cause of exemption.

In another case decision, it was held that the exonerating effect should not produce its effects as long as the report concluded by the carrier is contradicted by the conclusions of the expert report according to which "even if the loading was performed according to professional rules, the damage to which the car was subjected during transport could have caused the damage found on arrival at the destination."[1] The correlation that could be established between the mode of loading and the speed of movement of the means of transport was investigated in another case, noting that a load of goods which cannot withstand normal manoeuvres performed during transport at a speed of not more than 10-12 km/h must be considered defective and, consequently, the damage will be imputed to the consignor.

Finally, since, in fact, the carrier can participate in the performance of the loading operations, the question arises as to who is responsible for the damages caused as a result of its manoeuvres? If the sender has assumed responsibility for the respective service, he will be responsible[2], not being excluded that by the agreement of the parties, the control of the operations will be the responsibility of the sender and the carrier, so that the rules of common fault will become applicable.

e) the fulfilment of customs or administrative formalities was regulated by the C.I.M. 1980, no longer found in the cases listed in the latest version of the C.I.M. since 1999 nor in the text of the C.M.R. or the Montreal Convention, but we can confine it to the general cause of the act of the third party.

f) the particular nature of the goods subject to depreciation by the simple fact of transport; due to their specific properties, certain goods are exposed during travel to loss or damage by "leakage, rust, internal and spontaneous damage, drying, leakage, normal loss or by the action of insects or rodents"[3]. Considering a correct assessment, given that there is goods which normally lose weight during transport, regulated natural permissible percentages known as "perishability" or "inherent special risk" within which the carrier is not liable: 2% by mass for liquid goods and goods delivered for transport in the wet state, respectively 1% of the mass for goods delivered for transport in the dry state (art. 31 pt. 1 of CIM, 1999) In order to remove the liability it is not enough for the carrier to prove the physical condition in which the goods were handed over, but it is necessary to prove that the weight loss e is the causal consequence of the nature of the goods combined with the transport operation.[4]

At the same time, according to art. 41 point 2 of the R.U.C.I.M., respectively art. 18 point 4 of the CMR, the presumption of liability will operate if, depending on the factual circumstances, the carrier proves that it has taken all necessary measures regarding "the choice, maintenance and use of those arrangements and instructions given to it" for protecting the goods against variations in temperature, humidity, heat, etc.

g) the risk resulting from the irregular, inaccurate or incomplete naming of the goods excluded from transport or admitted to transport under special conditions. The provisions of art. 23 pt. 3 lit. e) of the R.U.C.I.M. 1999 refers, in particular, to goods prohibited or admitted for carriage under the conditions laid down by the R.I.D. which prescribes particular conditions for the packaging and loading of

[1] CA Paris, 28 March 1979, in B.T. 1979, p. 318.
[2] See also (Stancu, 2005, p. 339).
[3] It is the case of rusting the cast iron product (see C.A. Paris, November 18, 1942, in B.T.I. 1943, p. 104)) or altering the fresh pork ham (C.A. Paris, March 20, 1966, in B.T.I. 1969, p. 101); In contrast, the benefit of non-liability was not recognized for the transport of shelled hazelnuts packed in bags of vegetable fiber (C.A. Aix-en-Provence, 1 December 1982, Lamyline).
[4] Thus, it was appreciated that wine is not part of the liquid goods that normally lose weight during travel, see T. com. Seine, March 23, 1948, in B.T. 1948, pp. 597.

dangerous goods. Similarly, the provisions of art. 17 pt. 4 lit. e) of the C.M.R. refer to the insufficiency or irregularities of the signs and markings or the labelling of the notebooks.

h) the risk resulting from the transport of live animals to the extent that the transporter has taken all reasonable measures required by the specifics of these movements (existence of vents, ensuring hygiene and animal feed). For the carriage of liability of the carrier, it is sufficient to prove that the damage is due to a cause other than the excluded risk.[1]

i) the risk resulting from the absence of the attendant in case of funeral transports, live animals or other special categories of goods.

Conclusions

Special exonerating cases have their own mechanism of operation, in the sense that, regardless of the particular risk invoked, the presumption of liability operates only for damages resulting from loss or damage to the goods, not in case of delay as in the case of general causes. The carrier must prove that the damage could be the consequence of one or more of the circumstances expressly and exhaustively listed in the text of the uniform and detailed rules above. Given the relative nature of the presumption, the interested party will be able to provide evidence to the contrary resulting from the carrier's fault for the damage caused. Thus, in a case decision[2], the benefit of irresponsibility initially recognized to the railway for the fire of the goods transported in uncovered wagons was removed, proving that the damage is the consequence of some facts imputable to the carrier: improper adjustment of the locomotive burners, insufficient cleaning steam, the use of tanks without being protected by the fireproof layer and the poor placement of the wagon discovered right behind the locomotive. In the absence of evidence to the contrary by the consignor, the railway operator was not held liable for damage caused as a result of the train derailment, as long as it was considered that the damage was the consequence of a closing defect of the trailer loaded in the wagon during travel.

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[1] Trib. federall suisse, 21 February 1961, in B.T.I.1962, p. 116.
[2] Cass. com., 19 January 1970, in B.T. 1970, p. 166.

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REALITIES AND PERSPECTIVES

Controversial Aspects regarding the Provisions of Law No. 60/1991 on the Organization and Conduct of the Public Assemblies. Vulnerabilities on Generating Risk Situations at the Level of Public Order and Security

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Abstract: In the midst of complex global challenges, a firm approach is needed, in a context where European security is being violated, with terrorism and violence affecting North Africa and the Middle East, as well as Europe. In these difficult times, the European Union's overall foreign and security policy strategy[3] has helped to implement priority directions at Community level, the latter continuing to be a trusted global power and a strong security provider. The new security challenges, generated by the overlapping of phenomena such as globalization, fragmentation of some states, are added to classic forms of regional risks and vulnerabilities (emergence and development, respectively radicalization of movements that promote a nationalist ideology with extremist values). Thus, gaps between the levels of security assurance and the degree of stability of the states in the vicinity of Romania, the negative sub regional developments in the field of democratization, respect for human rights and economic development have highlighted a state of affairs that favored the translation into public space of some events whose materialization has led to the emergence of crisis situations, culminating in the escalation of dissatisfaction and the production of street confrontations, violent events in Bucharest on 10.08.2018, having destabilizing effects over a large area, in reference to the security of our country. In the light of the above, it should be noted that this new global strategy for the European Union's foreign and security policy has triggered a fruitful discussion in the field of security and defense, leading to a comprehensive approach to security policies involving Member States and EU institutions.

Keywords: democracy; new global strategy; security policy; European Union's foreign policy

1. Introduction

The continuity and speed with which the security and defense issues were elaborated was remarkable, as a result of migration, terrorism, political unrest, respectively of the armed conflicts in the neighboring regions, the perceptions changing in the last few years.

Thus, Europeans clearly expect that representatives of the governments of the EU Member States to take more responsibility for identifying and implementing viable solutions in terms of their safety and security. These expectations are also reflected in the new strategy, which stipulates that the European Union will promote peace and guarantee the security of its citizens and territory.

There is no doubt that the pace of defense cooperation and coordination between Member States and EU institutions has increased, as has the significant increase in the political will to deal with defense and security issues. At the same time, the UK's decision to leave the European Union has generated disappointment at European level.

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[3] Global Strategy of the European Union - Foreword by the High Representative of the Union for Foreign Affairs and Security Policy, Vice-President of the European Commission, Federica Mogherini.

This moment can be considered crucial from the perspective of the need to make every effort to maintain the momentum of organizing and homogenizing the actions of EU Member States that show their willingness to act towards the common goal of security of citizens and the territory of the EU.

In a more connected world, by assessing the opportunities, fears, challenges it produces, the European Union is ready to promote a participatory, interdependent approach, in order to avoid external threats, respectively to promote the security and prosperity of citizens and to protect democracies.

Also, in a more contested world, the European Union will be governed by a strong sense of responsibility, by engaging responsibly into Europe and neighboring regions, acting globally by addressing and assessing the root causes of conflict and poverty, i.e. drawing attention to the fact that the responsibility must be shared by the Member States, in pursuit of the set objectives, requiring the participation of regional bodies, international organizations, the deepening of partnerships with civil society and the private sector.

In this context, the need to ensure the security of citizens and preserve the EU's territory, by adhering to clear principles, in the context of perpetuating issues related to terrorism, hybrid threats, economic volatility, climate change and insecurity in the exploration and exploitation of resources, and ensuring an appropriate level of strategic autonomy, they represent an important aspect for Europe's ability to promote peace and security inside and outside its borders, with the intention of stepping up the efforts in defense, counterterrorism, strategic communications and energy domains.

It also becomes necessary to transpose, from the Treaties, into action by the Member States the commitments of mutual assistance and solidarity, the E.U. intending to intensify its contribution to Europe's collective security, in close cooperation with its partners (with NATO involvement) by pursuing the current policy of enlarging the Community space, a credible accession process based on strict and equitable conditionality, a vital feature for enhancing resilience; countries in the Western Balkans[1].

The implementation of the Joint Security and Defense Plan aims at improving the protection of the European Union and its citizens, providing support to governments with a view to building joint response capabilities and developing an effective crisis management mechanism.

In this regard, the European Union intends to strengthen states and societies by supporting good governance, responsible institutions and close cooperation with civil society.

Also, the maintenance of internal security is directly influenced by the need to manage security outside the EU borders, in this regard bearing in mind the following manifested action priorities:

- Strengthening its democracies, as well as respecting the values that determine credibility and external influence;

- Promoting a rules-based "concept of global order" and rules agreed to provide global public goods and contribute to a lasting state of peace (*an approach that integrates, as a key principle, the values promoted by the United Nations);*

- Application by the E.U. comprehensive approaches, *through the coherent use of all policies at EU level,* acting promptly at all stages of the conflict, in terms of prevention, responding responsibly and decisively to the effective resolution of crises[2] that may affect the public safety climate, in stabilization and coherence, respectively to avoid premature disengagement

[1] In a globalized world, local pressures and resistance, regional dynamics are at the forefront. Voluntary forms of regional governance provide states and peoples with the opportunity to better manage security concerns, express cultures and identities, and project their influence. This is a fundamental reason for the EU, in which regional cooperation commands will be supported worldwide (in different regions - in Europe, the Mediterranean, the Middle East and Africa; along the Atlantic, both north and south; in Asia, and in the Arctic).

[2] Conflicts with local, national, regional and global dimensions that need to be addressed/solved only through deep and lasting global agreements, regional and international partnerships, which the EU will promote and support.

A number of international human rights treaties and other instruments adopted since 1945 have given human rights a legal form and developed the international human rights body. Other instruments have been adopted at regional level that reflect the specific concerns of the region for the protection of human rights, providing specific response mechanisms. Most states have also adopted constitutions and other laws that officially protect fundamental human rights.

While international treaties and common law form the backbone of human rights protection at the international level, other instruments, such as declarations, guidelines and principles adopted at the international level, contribute to their implementation, development and understanding.

The respect for human rights requires the establishment of the rule of law at national and international level, and by participating in international treaties, states assume obligations under international law to respect, protect and fulfill the requirements related to the protection of these rights.

The *obligation to respect* means that states must refrain from intervening to prevent the exercise of human rights, and the obligation to protect requires states to protect individuals and groups against human rights violations, which also means that states must take positive measures in order to facilitate the defense and to guarantee the fundamental human rights.

The international approach to human rights was strengthened when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on December 10, 1948 designed as "a common standard of achievement for all peoples and nations".

The declaration, for the first time in human history, speaks openly about the fundamental civil, political, economic, social and cultural rights of all human beings, which they should enjoy. It has long been widely accepted as the fundamental human rights rule that everyone must respect and protect.

Forty-eight states voted in favor of the Declaration, none against, with eight abstentions. In a statement after the voting exercise, the President of the United Nations General Assembly stressed that the adoption of the "Declaration" was "*a remarkable achievement, a major step forward in the evolutionary process*".

Conceived *as a common standard of achievement for all peoples and all nations*, the Universal Declaration of Human Rights has become a *benchmark for measuring respect degree and for guaranteeing international human rights standards.*

Since 1948 it has been, and rightly so, continues to be the most important and comprehensive of all United Nations declarations and a fundamental source of inspiration for national and international efforts to promote and protect fundamental human rights and freedoms.

Thus, the direction was set for all further work in the field of human rights and provided the basic philosophy of many internationally binding, legally binding instruments designed to protect the rights and freedoms it proclaims.

The International human rights law provides for obligations that states must comply with, providing the basic philosophy of many internationally binding, legally binding instruments to protect the rights and freedoms it proclaims.

Becoming a party to international treaties presupposes the obligations of states to respect, to protect the fulfillment of human rights arising from international law. The obligation to respect means that states must refrain from interfering with or impeding the exercise of human rights. By ratifying international human rights treaties, governments are committed to implementing domestic measures consistent with the law and the obligations and duties of the treaty.

Where domestic legal procedures do not address human rights abuses, mechanisms and procedures, individual complaints or communications are available at regional and international level to ensure that compliance with international human rights standards is indeed implemented at local level.

Structural factors and the culture of entities with responsibilities in the field of public order, national security and safety also influence the civil, economic and social rights of staff, such as working

conditions/ working hours, social security, transparency and participation in the processes of communication and human resource management, managerial responsibility or training and education.

When carrying out the tasks entrusted to the personnel within the structures of public order, security and national security do not act as a private person, but as a body of the state. Thus, the state has an obligation to respect and protect human rights, therefore it has a direct effect on the choices of personnel who must respond to aggression.

The rights of law enforcement personnel who could risk injury or death during the execution of the tasks entrusted must also be respected and protected, and in this regard I reiterate the need to continue, firmly, the process of harmonizing the national legal framework with the one applied at Community level, amending normative acts in order to ensure action and decision-making transparency, from the perspective of carefully planning operations or implementing the preventive measures necessary to preserve the climate of public order and safety.

There are also cases when serious consequences are identified that resulted from the actions of law enforcement (*individually/ through different subunits*), but in these cases a clear individualization of responsibility is required (*for actions / inactions*), in deep respect for by the laws of the country, respectively other legal instruments resulting and which must be respected, in accordance with the responsibility undertaken in reference to international institutions and bodies.

In general, due to a *legislative void*, the leaders of the structures of which the aforementioned staff belongs, tend to make them responsible, being adopted various disciplinary measures within the organization.

To these are added a series of pressures materialized by creating the necessary framework for shaping and multiplying in public space, through various *communication channels*, issues that generate tension and increase the level of emotion in groups that form a "critical mass" or even of society, through subjective approaches, trying to propagate the feeling of restriction, by the so-called institutions of force, of the possibility of manifestation of some fundamental rights and freedoms.

In such cases, when law enforcement is confronted with allegations of ill-treatment or are accused of committing various acts / omissions in the performance of their duties, a vital conflict of interest arises: as every citizen has the right to make complaints regarding the procedural acts performed by the police, it must be borne in mind that the personnel within the structures of public order, security and national security have the right to a fair trial, including the presumption of innocence.

These conflicting interests must be balanced by considering the legal responsibilities as well as the concrete ways of fulfilling the entrusted missions, respectively by the principle of proportionality.

The year 2019 presents a series of challenges in terms of ensuring and restoring public order and safety, specific to an election year, which generates certain "expectations" among the population, amid the programs launched in public by major political parties, the lack of concrete solutions their implementation having the potential to outline "positions" of a protest nature, respectively the appearance of factors that can generate security degradation, a fact that can be materialized, most often, by committing acts of disorder that can take various forms .

Thus, the possibility of translating some vindictive actions from socio-economic aspects to some of a political nature is maintained, a state of fact favored by the continuous erosion of trust in state institutions, the feeling of dissolution of authority, all corroborated with increasing anti-EU feeling, or against other international bodies on the grounds that they impose national policies in conflict with the interests of citizens.

Therefore, in the midst of a complex challenge, it is necessary for the institutions of the national system of public order, defense and national security to act in an integrated system based on signaling threats and risks to preserve the climate of public order and safety, respectively an information system focused on collecting, recording, analyzing and processing data on actions, events and results specific to all areas of activity, aspects necessary for assessing the degree of fulfillment of legal responsibilities, monitoring performance and optimizing processes.

2. The Specific Situation and *de lege ferenda* Proposals

The *de lege ferenda* proposal addresses, in our opinion, two important aspects and aims at ensuring action and decision-making transparency at the level of the component structures of the national defense system, public order and national security, respectively at the level of courts called to solve various actions executed by the specialized structures of the state with attributions on the segment of preserving the climate of public order[1] and safety[2].

In this context, their implementation can support the promotion of some "legislative initiatives", tools through which there are ensured and strengthened the implementation of Community programs to ensure the security of citizens, defending their interests and upholding their values.

We also consider it appropriate the *de lege ferenda proposal*, the implementation of these legislative initiatives having, in our opinion, a competing role in establishing the main interests and principles to give Romania, in relation to other EU states, the implementation of the *Global Strategy for foreign policy and Security of E.U.* and a sense of common approach and direction, the current social context generating the expectation that the specialized structures of the Ministry of Internal Affairs will remain a reliable partner of the citizen and a strong provider of security, being necessary to think strategically, share the same vision and act as a unit.

Specifically, we bring to your attention a series of provisions of Law no. 60/1991 on the organization and conduct of public meetings, published in the Official Monitor no. 192 of 25.09.1991, maintaining them in their current form, being carriers of vulnerabilities likely to generate risk situations in terms of public order and security, leading to subjective approaches, trying to induce, through various channels of communication, of the feeling of restriction, by the so-called *institutions of force*, of the possibility of manifestation of some fundamental rights and freedoms.

Thus, starting from the provisions of Law 24 of 27.03.2000 *regarding the norms of legislative technique for the elaboration of normative acts*, art. 30 paragraph (1)[3], respectively art. 39 paragraph (1)[4] of the Romanian Constitution and art. 1[5] of Law no. 60/1991 on the organization and conduct of public meetings, in order to provide maximum efficiency to this mechanism, we propose the following legislative amendments:

2.1. Modification of the provisions of art. 6 of Law no. 60/1991 on the organization and conduct of public meetings which provides that applicants to address in writing to the mayor of the locality on whose radius the public meeting is to be held.

[1] Public order, as a component of national security, represents the state of legality, balance and peace, corresponding to a socially acceptable level of compliance with legal norms and civic behavior, which allows the exercise of constitutional rights and freedoms, and the functioning of state-specific structures of law and is characterized by the credibility of institutions, public health and morals, the state of normalcy in the organization and conduct of political, social and economic life, in accordance with legal, ethical, moral, religious and other norms, generally accepted by society.

[2] Public safety expresses the feeling of peace and trust that the police service confers for the application of measures to maintain public order and tranquility, the degree of safety of individuals, communities and property, as well as for the partnership between civil society and police, in order to solve community problems, the protection of the rights, freedoms and legal interests of citizens.

[3] Public safety expresses the feeling of peace and trust that the police service confers for the application of measures to maintain public order and tranquility, the degree of safety of individuals, communities and property, as well as for the partnership between civil society and police, in order to solve community problems, the protection of the rights, freedoms and legal interests of citizens.

[4] Rallies, demonstrations, processions or any other gatherings are free and can be organized and held only peacefully, without any weapons.

[5] The freedom of citizens to express their political, social or other opinions, to organize rallies, demonstrations, processions and any other gatherings and their attendance is guaranteed by law.
Such activities can be carried out only peacefully and without any weapons. Public meetings - rallies, demonstrations, processions and others alike - to be held in markets, on public roads or in other outdoor places may be organized only after the prior declaration provided by this law.

We consider it opportune to modify the respective article, as follows: "*For the organization of public meetings, the applicants will address, in writing, the Institution of the Prefect of the county on whose radius the meeting is to take place*".

2.2. Modification of the provisions of art. 7 of Law no. 60/1991 on the organization and conduct of public assemblies, which requires *the organizers of public assemblies to submit the written statement to the mayor's office, in this regard being provided a period of at least 3 days prior to the event, as well as other organizational issues*.

Thus, we bring to your attention the analysis of the opportunity for the respective article to take the form of "*The organizers of public meetings will submit the written declaration to the Institution of the Prefect of the county on whose territory they are to be held, at least 3 days before the event, where it should state the name under which the organizing group is known, the purpose, place, date, time of commencement and duration of the action, the inflow and outflow routes, the approximate number of participants, the persons empowered to provide and be responsible for the organizational measures, the required services on behalf of the local council, of the local police and of the gendarmerie, of the mayor's office, according to the model presented in the annex"*.

2.3. Modification of the provisions of art. 8 par. (1) of Law no. 60/1991 which stipulates *the establishment of the commissions for approving the applications at the level of the local councils, as well as their composition*.

Thus, we bring to your attention the analysis of the opportunity for the respective article to take the form of: the commission for approving the requests for organizing public meetings at the level of the Prefect's Institutions is established, consisting of: President-Prefect (legal substitute) and members: Mayor (legal substitute), Head of the Monitoring Service Deconcentrated Public Services, Community Services of Public Utilities, Situations Emergency, Public Order at the level of the Prefectures (legal substitute), representatives of the Police and Gendarmerie, each member having a concrete mandate within the Commission".

2.4. Modification of the provisions of art. 11 of Law no. 60/1991 on the organization and conduct of public meetings, which shall take the following form: "*The decision of the approval committee shall be communicated in writing to both the organizer and the institutions represented in the approval committee, showing the reasons that determined it, within 48 hours from the receipt of the written declaration"*.

In this regard, please allow me to present the following aspects of the decision:

• HCCJ Decision[1] (Complete RIL) no. 19/2018 (Press release): Article 3 thesis I, reference to the provisions of art. 26 para. (1) letters a) and d) of Law no. 60/1991 regarding the organization and conduct of public meetings, in the context in which the object of the appeal in the interest of the law was constituted by the provisions of art. 3 of Law no. 60/1991 **regarding the organization and conduct of public meetings, respectively art. 26 para. (1) letters a) and d) of Law no. 60/1991 on the organization and conduct of public meetings.**

Thus, by the HCCJ Decision (Complete RIL) no. 19/2018 admits the appeal in the interest of the law formulated by the Board of the Court of Appeal, and in this sense the High Court established that, in the interpretation and application of the provisions of art. 3 first sentence of Law no. 60/1991 on the organization and conduct of public meetings, republished, with reference to the provisions of art. 26 para. (1) letters a) and d) of the same law, *there is the obligation to declare public meetings in advance, when the meetings are to be held in squares or on public roads (public road, roads and sidewalk) or in*

[1] According to the official website (www.scj.ro), on October 15, 2018, the HCCJ met in the Panel on Appeals in the Interest of the Law, to solve several legal issues, including the interpretation and application of the provisions of article 3, first sentence of Law no. 60/1991 on the organization and conduct of public meetings, republished, with reference to the provisions of art. 26 para. (1) letters a) and d) of the same law.

other places provided by art. 1 para. (2) of Law no. 60/1991, located in the immediate vicinity of the headquarters or buildings of legal entities of public or private interest.

• According to the provisions of art. 1 paragraph (1) and (3) of Law no. 340/2004 regarding the prefect and the institution of the prefect, notes the fact that the prefect is the representative of the Government in the territory and the guarantor of the appliance of the law.

• According to the provisions of art. 5 of Law no. 340/2004 of the previously mentioned normative act, among the principles that govern the activity of the prefect, they mention ***the legality and the orientation towards the citizen***.

According to the provisions of chapter III art. 19 paragraph (1) of Law no. 340/2004, the prefect fulfills the following responsibilities:

a) ensures, at territorial level, the application and observance of the Constitution, of the laws, respectively of the public order;

b) *acts to maintain the climate of social peace, paying constant attention to the prevention of social tensions, the prevention of crime and the defense of the rights and safety of citizens*;

c) *verifies the legality of the administrative acts of the county council, of the local council or of the mayor*;

According to the provisions of chapter III art. 20 of Law no. 340/2004 regarding the prefect and the institution of the prefect "*The prefect may notify the competent bodies in order to establish the necessary measures, in accordance with the law*".

- According to the provisions of art. 19 paragraph (1) of Law no 60/1991 "*The intervention in force will be approved by the prefect or his substitute at the request of the commander of the gendarmerie forces who ensures the measures of public order at the place of public assembly*".
- According to the provisions of art. 15 point 4 of Law no 60/1991 "Municipal, city or communal town halls are obliged:

a) to establish by decision and to bring to public knowledge, within 5 days from the publication of this law, the places that fall under the provisions of art. 5;

b) to provide, for a fee, the services and technical arrangements required for the normal conduct of public meetings;

c) to prohibit the sale of alcoholic beverages in places intended for public meetings, in the immediate vicinity or, when it deems necessary, even in the entire locality, throughout their duration;

d) to undertake any other legal measures likely to ensure the peaceful and civilized nature of public assemblies;

e) to return the amounts advanced according to art. 12 paragraph (1) letter e, if the public assembly was prohibited for reasons other than those provided in art. 9 or which are not attributable to the organizers.

• **According to the provisions of Art. 61**. – par. (2) of **Law no. 215 of April 23, 2001 - Law on local public administration**, the mayor ensures the observance of the fundamental rights and freedoms of citizens, the provisions of the Constitution, as well as the implementation of prefect orders.

2.5. We need to highlight the opportunity to quickly ***adopt a normative act (Government decision or Order of the Minister of Internal Affairs-O.M.A.I.) regulating clear methodological norms for the full application of the provisions of Law no 60/1991 on the organization and conduct of public meetings, corresponding to a regulation on the organization and functioning of the approval commissions approved by O.M.A.I.***

In this sense, considering the social interest, the legislative policy of the Romanian state and the requirements of correlation with all internal regulations, as well as the harmonization of national legislation with Community law and international treaties to which Romania is a party, it is imperative

to adopt a Government decision with reference to the establishment of the norms for the application of the provisions of Law no 60/1991 which should detail and customize aspects of a procedural nature, taking into account, with predilection, the provisions of art. 8, respectively the provisions of art. 19-22.

Thus, in the application norms, with reference to the provisions of art. 8, the normative act to include the text "*The regulation on the organization and functioning of the commissions for approving the requests for the organization of public meetings will be approved within 30 days by Order of the Minister of Internal Affairs*". The regulation will consider the particularization of some actions, as follows:

- Appointment of full and alternate members of the commission;

- Deadlines for commission meeting;

- Commission quorum;

- The way to adopt and solve requests;

- The needed majority to solve the requests;

- The legal basis and the documents necessary to substantiate the decision;

- Documents prepared before/during/after the meeting of the commission;

- Any other aspect likely to compete in the legal and speedy settlement of the requests for approval of the organization of public meetings.

At the same time, in the application norms, with reference to the provisions of art. 19 and 22, the normative act to include the following text: "*The methodological norms for the application of articles 19-22 will be adopted by an order of the Minister of Internal Affairs, which will be published in the Official Monitor of Romania, Part I, in maximum 60 days after the entry into force of this decision"*.

Within this Order of the Minister of Internal Affairs, the particularization of some actions will be considered, as follows:

- *Conditions of form and substance of the document by which the commander of the gendarmes' forces that ensures the public order measures requests to the prefect the approval of the intervention in force;*

- *How to establish the appropriate time left for participants to disperse and how to determine it in relation to the number of participants, respectively the context and particularity of the place of public meeting (topographic aspect/roads/flow possibilities, etc.);*

- *Detailing the phrase used by the legislator at art. 20 paragraph 2 of Law no 60/1991, respectively the "imminent danger" in which the personnel of the structures that perform public order missions can find themselves, context in which the warning and summons in the perspective of using force are not necessary.*

2.6. We also consider it appropriate and necessary to introduce it: *O.M.A.I. methodological and procedural aspects that detail and customize aspects related to tactical rules on the use of force, equipment and weapons during the execution of missions to ensure and restore public order and safety, with constant attention to management at a superiority of the decisional and action transparency, respectively of the maneuver of forces and means, in reference to:*

- *Tactical rules regarding the use of force, means and weapons;*

- *The specific action device adopted during the missions of ensuring and restoring public order;*

- *Tactics and action techniques for ensuring and restoring public order (release of a means of communication in urban or rural areas, release of a market illegally occupied by protesters, crossing a barricade, replacement of a subunit, evacuation of an illegally occupied premises, reaction of a subunit*

when is fired on it by an isolated shooter, the use of vehicles in specific missions, the evacuation of supporters from inside a sports arena, the concrete certification of the run-off period, etc.);

- Action procedures for restoring public order.

3. Conclusion

The aspects presented above, in their entirety, represent premises and, at the same time, arguments for the continuous improvement of the national legislation, at the same time with the permanent accession with the European one and of human rights, to ensure the access of the social partners (effective within the system of defense, public order and national security, respectively the citizens) to the specific legislation, on the one hand, as well as their manifestation within the limits of the legal provisions, on the other hand. We consider appropriate our scientific approach, as it is required the need to preserve the balance and social values, the standards developed by the jurisprudence of international human rights courts, as well as a firm reaction of institutions and factors with legislative competence.

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The Autonomy of Cults and the Unassignable Character of the Goods Legally Owned by the Cults

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Abstract: The fact that the private property is one of the fundamental landmarks of mankind cannot be denied, as any physical or juridical entity can coordinate its activities without considering its relation to the goods, neither can it function in the absence of the right to property. The juridical relationship between the goods and the way they became the property of the churches by getting into their heritage represents an issue more and more analyzed within the field of the right to property. Although, at first sight, the juridical condition that we mentioned should not raise any difficulty of interpretation and putting into practice, especially within the context where the institution of property also benefits of a new civil approach, the way go36ods become the property of the churches is contested within the context of existence of certain opposite provisions that derogate from the norms of the essential civil right. We shall analyses certain statutory and legal provisions that impact only the ecclesiastic field by putting them into relation to the constitutional principles and those of the civil right that regard the right to property. Moreover, the issue was also presented to the court as an exception of no constitutionality. By intending to identify the characteristics of the laws that we mentioned above, we shall analyses and correlate the situations generated by their interpretation, by also expressing a personal point of view regarding the necessity of the harmonization of the civil law with the canonical law.

Keywords: goods; different rights of property ownership; action to claim the right to property; heritage; Church

1. Introduction

In the ample process of reshaping the Roman law, we consider that rethinking things, and especially the entire juridical construction of the civil law, including the contribution and valorizing of the role of the jurisprudence and a new theory in order to reach a consensus regarding the applying of the legal provisions and, in this way, getting the maximum of efficiency.

Since ages, the human state was associated to the idea of property. Any entity, either a physical or a juridical entity, adopts the desire to get goods. Sciences such as philosophy, ethics, economy, sociology, politics, law etc. elaborated numerous theories that revolved around the idea of property. From the point of view of the sciences mentioned above, the majority of them build approaches to property as the relation between the individual and the goods that make the object of the right to property, and here we may recall the consumerist perspective, the utilitarian one that it confers to the individual, but also its denial (the Marxist perspective). (Ryan, 1998)

The content of the present subject does not engage any theoretical ideology meant to make us theorize property. So, the discourse remains within the juridical context of the concept of property and the exercising of the corresponding right, underlining the juridical relationship between goods and their

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getting into the church patrimony, in the context of existence of opposite provisions that deny the juridical civil norms, and this is the case for which the issue of right was brought into attention and in front of the court, as an exception from the constitutional character.

After the Edictus of Thessaloniki in 380 after Christ, Christianism became the official religion in the state, the church got its juridical entity, and it was included among the juridical entities of public right. In Romania, the accepted cults are juridical entities of public utility, according to Law no. 489/2006 regarding religious freedom and the general regime of the cults[1]. Different than this, the Patriarchy, the Metropolitan Church, the Archiepiscopal Church, the Episcopal Church, the vicarage, the Archpriest ship, the convent, and the parish are juridical entities of private and public utility[2].

The Church resembles all the other juridical entities legally established as the compulsory characteristics of any society are met, according to the provisions of Article 187 of the civil law[3]: a certain number of members, a hierarchy, an authority and "certain means by which the objective for which society (church, here) was built." (Iorgu, 2014, p. 32) In exchange, by its objective and its spiritual means, the Church is fundamentally different from the other juridical entities[4], by its organization and the way it relates to the laws that are to be exclusively applied in the ecclesiastic domain. Although it is organized as an entity with norms of common right (the civil law), and it takes part actively in the life of any community, the circulation of goods, the Church has sometimes its own rules, and relates strictly to norms that are different from those of the civil law. Of course, these laws of its own are acknowledged by the Romanian state and subject of protection, of admittance, and defense in court when cases are solved by justice.

Apart from the spiritual means, the Church also uses material means, having a distinct patrimony and it can get the right of property for its mobile and immobile goods, the material, and immaterial ones, as any juridical entity, according to the provisions of the common law, namely Article 557 of the Civil Law, but within the limits of the special norms of the Statute of the Romanian Orthodox Church.

2. Aspects regarding the Legitimation of the Right to Property in the Romanian Law

Both the aspect and the content of the regulations when applying and implicitly defending the right to property are well defined by the Romanian law, starting from the rigorous character of the constitutional provisions, and continuing with the regulations of the common law of the Civil Code, as well as any other special laws that count on the matter.

As the fundamental law in the state, The Romanian Constitution[5] does not contain only norms regarding the state organization, but also rules regarding the rights and freedoms of the citizens. If we relate to its principles and values, the ensuring of the right to property of the individual also emerges from the provisions of Article 44 of the Constitution, as it is a fundamental right of the human being, included in

[1] Law no. 489/2006 republished in the Official Journal no. 201 / 21 March 2014.
[2] The statute of the Romanian Orthodox Church, text aproved by the Holy Sinod of BOR by Decision no. 4768/2007 and admitted on the base of Law no. 489/2006 regarding religious freedom and the general regime of the cults, by GD no. 53 of 16 January 2008, published in the Official Journal, Part I, no. 50 of 22 January 2008.
[3] Art. 187 Civil law: "Any juridical entity has to have an organization of its own and its own patrimony that is dedicated to a certain legal and moral scope, according to the general interest."
[4] The new conception regarding the juridical entities of public right, the function and the acts deriving from public power or authority do no longer have an exclusive ans absolute character, as some juridical entities having no working scope are considered by law of public utility, because they are not endowed with prerogatives of public power. For details (Tarsia, 2012)
[5] The Romanian Constitution as it was modified and added up by the Law that revises the Constitution no. 429/2003, published in the Official Journal no. 767 of 31 October 2003, that was brought into regulation on the 29th of October 2003.

the constitutional corpus[1] within Title II, named "The fundamental rights, freedoms, and duties", Chapter II, "The fundamental rights and freedoms". "The private property is equally guaranteed and defended by law, no matter its titular", mentions the constitutional text.

This constitutional right is correlated to ample provisions of the civil law, and the theory and actuality of the right to private property are inherent to the human nature. Article 555 of the Civil law[2] defines private property as "the object that belongs to physical persons, juridical entities, the state or the administrative and territorial units regarding any goods, except those that belong exclusively to the public property, such goods that the titular is in the possession of, that he/she can use or dispose of, of its own power and in its own interest, but within the limits of the law". In exchange, according to Article 136 (2) of the Constitution and Article 858 of the Civil Law, the public property is the right to property that belongs to the state or any other administrative and territorial unit over the good that, by its nature or by the law, are of public use and interest, on the condition that they are purchased by one of the ways provisioned by the law.

From the provisions of this legal text the juridical content of the right to property can be clearly concluded under the aspect of cumulating the three juridical attributes or prerogatives: possession, use, and disposition, and these attributes can be exercised in an absolute, exclusive, and eternal way, with the respecting of the material and juridical limits[3]. Possession allows the owner to own the good and dispose materially of it, while use allows the owner to use it within the limits set by the law, and to gather the benefits. Disposition consists in the prerogative of the titular to decide the finality of the good, (Bîrsan, 2017, p. 46) and it can be exercised in two different ways, namely the material and the juridical disposition.

The material disposition allows the owner to do anything with its own good, even to destroy it, but within the limits of the law, meaning that it cannot affect the life, body integrity of any other goods belonging to others, in such a way that the guilty can be punished according to the civil law regarding delicts[4]. The juridical disposition is realized on the right to property itself, and not on the good, and it allows the owner to sell its good or separate it or even juridical disjoint it.

Private appropriation does not reduce to the two texts presented above. As having a certain influence on the present matter, we also remind the special laws by which the juridical entity of the Church functions. As the titular of its patrimony, BOR benefits from the diversified legal context regarding the protection of the cultural goods, mobile or immobile. It was said that "in its rich activity, its goods are a reality for BOR's life and that of the Romanian people and, as a consequence, the development of certain activities of protecting, conserving, and valorizing its goods are an important coordinate for the mission that the Church had in the contemporary society" (The work of Father Ieronim Sinaitul, *Bunurile de Patrimoniu ale Bisericii Ortodoxe Române. Legislația în vigoare în România și prevederi statutare/Heritage assets of the Romanian Orthodox Church. Legislation in force in Romania and statutory provisions,* 2016, pp. 72-100).

Actually, the life and mission of the Church are legitimated by Law no. 489/2006 regarding religious freedom and the general regime of the cults, the Statute of the Romanian Orthodox Church, as well as other church regulations. (The work of Father Ieronim Sinaitul, *Bunurile de Patrimoniu ale Bisericii*

[1] The Romanian Constitution generally disposes on the right to property and within art. 136 named "Property" of the title "Economy and public finances".
[2] The provisions of the Civil Law are applicable starting with the 1st of October 2011.
[3] Regarding the right to property, see (Stoica, 2013, p. 99).
[4] Regarding a detailed analyse of the functions and principles of the civil delicts and punishments, see (Costache, 2013, pp. 497-517)

Ortodoxe Române. Legislația în vigoare în România și prevederi statutare/Heritage assets of the Romanian Orthodox Church. Legislation in force in Romania and statutory provisions, 2016, pp. 97). The goods belonging to the church can be gathered within the rigorous context of the norms of the legal provisions, especially through juridical mechanisms of civil right, regarding the way of purchasing goods, as well as the way of alienating them.

Of importance to the purchasing and alienating the goods is the juridical regime that can be applied to goods, on which we shall discuss in the next section.

3. Church Goods – Typology and Juridical Regime

According to Article 169 of the Statute for the organization and functioning of the Romanian Orthodox Church, the totality of goods belonging to parishes, convents, sketes, archpriest ships, vicarages, episcopacies, archiepiscopacies, metropolitan churches, and patriarchies, the associations and foundations built by the Church, the funds designed to church scopes, as well as the fortunes of the foundational churches make up the church patrimony that belongs to BOR, and its regime is regulated by the present statute.

When classifying the goods of the church, both the norms of the civil law and the church norms are of interest, as they are very important when it comes to the alienation or the purchase of goods in the juridical active regime. As well as in the civil law, the matter of the object derived from the juridical relation, the church goods are subject to a large classification that stops to the under category of sacred and common goods that interest us for the present research.[1] In the present context, the goods of the church classify as it follows:

- sacred (those destined exclusively for the religious service and consecrated by the archbishop or the priest);
- holy;
- consecrated.

Also, the Statute for the organization and functioning of BOR establishes in Article 170 (1) the following classification that has as a criterion the destination of the church patrimony, as it follows:

- sacred goods and
- common goods.

We call sacred goods those goods that by blessing or consecration are destined to the cult of the divinity. On their turn, the sacred goods can be: the sacred goods directly and exclusively destined to the cult, such as the churches, the ornaments, and the church clothing, the ritual books, the cemeteries etc., then the sacred goods that are not directly and exclusively destined to the cult. Sacred goods from the second category are the parish house and the monastery, the inside of the Bishopric Center, the cells of the convents, the precious goods, meaning those having either an artistic, or a historical value, or being valuable for the material they are made of that are consecrated to the divine cult. The same classification is to be found in Article 25 of Law no. 489/2006.

[1] For a rigurous classification of the goods, see (Harosa, 2011).

The right to property on such goods belongs exclusively to the church and enjoys the juridical character of the right to public property of the common right, meaning on the basis of the two special laws are inalienable, intangible, indefeasible.

On the other hand, the common goods are subject to the support of the church: church schools, religious museums, cultural, philanthropically and economical institutions, agricultural terrains, pastures, vineyards, gardens, patrimony rights, claims, funds, valuable papers, the fortune in cash etc.

Compared to the first category, the common church goods can be alienated, they are determinable and prescriptible, according to the common right, the Civil Code, in such a way that their alienation and purchasing is free and unconditioned, but under the juridical regime of some special conditions of the statute, that are to be found at Article 170 (10) "The transfer of any kind of the use or property oh the immobile goods that belong to parishes, convents, archpriest ships, and other church institutions that are juridical entities inside the eparchy (by selling, buying, rental, exchange etc.), as well as the burden of duties of the affecting of the goods from line (6) and (7) by such burdens is approved by the Eparchy Council, and the alienation of immobile goods (buildings and terrains) of the Eparchy Center by the Metropolitan Synod".

Regarding the administration of goods, a prerogative of the use, in such a way that the landlord may decide to master his own property (the individual administration of the goods) or to request someone else's help (the indirect administration of the goods). The goods that are of use are also part of the church patrimony and are managed according to the documents of purchase that are according to the provisions of the present statute. As it follows, the administration of the church goods has a double administration. On the one hand, the Orthodox Church units (parishes, convents, episcopacies, and archiepiscopacies) and, on the other hand, BOR; and in the situation of misunderstanding, BOR will make the final decision[1].

4. The Relation between the Church Goods and the Ways of Defending the Right to Property. The Role of Jurisprudence

In order to regulate the statute of its goods, the church has to continue the evangelical teaching according to the provisions of the civil right regarding property and the administration of the goods.

Goods are unalienable in the sense that they mean the interdiction to alienate some goods, and their intangible means the impossibility of legal seizure by the creditors on the titulars of the right to property (a good is intangible if it cannot be legally seized). Another juridical character specific to the goods of the public sphere, as well as to those considered sacred is their being indefeasible. The right to property on these goods does not vanish by their not being used, and the action of claiming one of the goods of the above can be at any time exercised by the titular of the right. Such restrictions of the juridical circulation of goods are traditionally provisioned by the Constitution or by law and regard the goods having certain particularities (goods of the public domain, goods of the cultural patrimony, church adornments).

[1] Ierom. Iachint Cătălin Vardianu, *Administrarea bunurilor Bisericii Ortodoxe Române potrivit reglementărilor ecleziale şi legislaţiei de stat din secolul al XV-lea şi până în present/ Administration of the assets of the Romanian Orthodox Church according to the ecclesiastical regulations and state legislation from the fifteenth century to the present,* abstract of doctoral thesis, Arad, 2018:
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=2ahUKEwiWit6g_-3kAhWC0KYKHRCzDFQQFjAEegQIBBAC&url=http%3A%2F%2Fuav.ro%2Ffiles%2Fdoctorat%2F2018%2Fsustineri%2FVardeanu%2Frezumat%2520teza%2520-%2520Vardianu.pdf&usg=AOvVaw06UP__K-oqUfD7HNJ2QM3T.

The right to property and the right to possession are based on the natural law, as well as on the divine one, as it cannot be contested by any eternal authority, as the church is admitted its juridical entity. Although it functions within the state, the church is independent from the state, and its activity is regulated by the laws, and some of them were discussed above.

The state as a type of law specific to independent organizations and institutions represent the proof coming from any cult that its independence is admitted as the State of Law. The state ensures this independence of the cults on the basis of the legal regime created on the basis of the fundamental Law and the Law of the cults.

More and more often brought into discussion is the issue of goods and the church patrimony. The way of purchasing goods, as well as their administration was of interest to many specialists in both civil and religious law. Such provisions of the statute are open to interpretation when it regards the harmonization of the civil law with the religious law. As an institution of private right, but of public utility, the church is associated with its educative and philanthropic role, less that of the administrator of patrimony. The scope for using the church patrimony was imposed from the very beginning by establishing the principle of the inalienability of its goods. Within the norms of the church we find this principle; such norms provide very hard sanctions regarding the maintaining of the destination of the church goods and the forbidding of their alienation.

By taking over these principles, the actual norms of the church statutes these sacred goods, and they become sacred by consecration and benediction, and are exclusively destined to the cult; they are unalienable, intangible, and indefeasible. The statute also provisions that "the property on the sacred goods belongs exclusively to the church, and the surrender of use can be given for a maximum of three years, with the possibility of renewal". By analyzing the special statute of church patrimony, as well as the possibility of alienating it in different ways, we see that it has to get the approval of the eparchy Council before wards, according to a well-established procedure". (art.172 al.10, 11).

In article 193 of the Statute of BOR, it mentions that "The goods of the monks and nuns that were brought by them or donated to the church when they entered the convent, as well as those purchased during their life in convent are completely the property of the monastery they belong to and cannot be claimed afterwards", regulated against the provisions of article 563 NCC regarding the action of revendication (1) "the owner of some good has the right to claim it form its owner or any other person that possesses it without being entitled to. He has also the right to be refunded, if it were the case. (2) The right to action in claiming the good is indefeasible, except the cases where the law establishes otherwise".

The same article 193 is added to the provisions of law no. 489/2006 regarding religious freedom and the regime of the cults which in article 31 says that: 1) "The goods that make the object of any kind of purchase, contributions, donations, successions, as well as any goods that entered legally the patrimony of a certain cult cannot make the object of later claim". 2). The persons that leave a cult cannot have claims on its patrimony", but apparently in opposition to the rights guaranteed by the fundamental law in article 44, line 1[1] and article 136 line 5[2].

[1] Art. 44 (1) of the Constitution: The right to property, as well as the state claims, are guaranteed. The content and limits of thsese rights are established by law.

[2] Art. 136 (5) of the Conctitution: Private property is untouchable under the conditions of the organic law.

Such an issue was also noticed by the court as a no constitutional exception[1] regarding article 31 line1 of the Law of the cults.

Actually, the matter of right under analysis starts with the observation of an exception of no constitutionality of the provisions of article 31 of the Law of the cults, whose content was previously mentioned.

In fact, the family Vasile and Elena Iovu donated 10.000 MP to BOR by contract no. 102/1996 made in order to build Vasile the Great skete in Bodesti, Neamt. It comes under the regulation of the actual civil law regarding the right of possession of a land by some contract of donation, as well as the special law of the cults. The material norm of donation says that it cannot be taken back, according to the provisions of article 985 of the Civil Law. But it can be revoked for ingratitude or for not executing without motif the duties that the receiver had, in the given example not being the case, as the convent was built. The givers adhered to some religious cult not officially admitted by the law of the cults and they requested to be given back the land they donated and that the donation should be revoked, the whole building for the religious group to be able to use it. As they tried all the ways of appeal to the court decisions that rejected the request, they brought in front of the court an exception of no constitutionality that was brought into court and motivated.

We underline the data when the calling into court was made, the entire convent already having been built, the imposed duty being realized within the limits of the donated good. Moreover, according to the church norms, the church was already established and church services were already being made for Christians. As such, the land already had become the exclusive property of the convent on the basis of the right to property of the juridical entity established according to the law (the convent). In relation to the category of sacred goods, by applying the provisions on the matter, the property of such goods belongs exclusively to the church and enjoys the juridical characters of public property of the common right, meaning on the basis of the two special laws, are inalienable, intangible, and indefeasible.

Out the motivation of the court, we mention the fact that the legal provisions that were criticized do not come against the right to property, as the critic according to which such goods do not enter the juridical regime of the public property as they cannot be claimed afterwards. According to the unalienable character of the sacred goods that entered the church patrimony, the court noticed that by establishing the inalienable character of these goods is supported by the legal character regarding the way goods enter the patrimony of such cults. The invoked article 31 criticized as such establishes exactly the equilibrium and the stability of the juridical relations in such a way that the provisions of article 31 (1) of Law no. 489/2006 does not break neither the provisions of article 21 (2) of the Romanian Constitution, nor those of article 6, paragraph 1 and article 13 of the Convention for defending the human rights and its fundamental freedoms.

5. Conclusions

As it is a sacred good, the land that makes the object of the present analysis belongs exclusively to church patrimony and enjoys the juridical characters of the right to public property of the common law, meaning on the basis of the two special laws, is inalienable, intangible, and indefeasible. The text of law that e invoked and that was contested as being no constitutional provisions expressly the impossibility

[1] Decision no. 686/2010 regarding the rejecting of the exception of no constitutionality of the provisions of the article 17 (1), art. 20 (1), (2) and (4), art. 21, art. 31 (1) and art. 49 alin. (3) of Law no. 489/2006 regarding the religious freedom and the general regime of the cults. The decision was published in the Official Journal no. 429/2010, starting 25 June 2010.

to claim a good that legally entered the patrimony of some cult. Moreover, the legal act was signed by fulfilling all the formal and essential terms, and the present situation is not under provisions that can make the convention null in any way.

Therefore, by maintaining the exception of the possibility that the acts between living persons as they acted freely can be revoked they cannot but make stronger the difference between inalienability and the observation that the document is null in an absolute sense. Regarding the no constitutional character of the provisions that were criticized by relating to the provisions of the Civil law, in its jurisprudence, the Court statutes that the non-conformity between the actual laws on the same matter does not represent a matter of no constitutionality, but one of applying these at the same time.

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The Romanian Civile Code.

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THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

Romania and the Armistice with the United Nations in International Relations

Stefan Gheorghe[1]

Abstract: Romania's changing sides on August 23rd to the United Nations would bring the Romanian state back into the "large team of democratic states" only for a short period of time. The international position of the newly established government in Bucharest would improve considerably, within the limits allowed by the inheritance of a military alliance with a Germany which although powerful at the beginning of the conflict, it was now on the verge of losing the war.

Keywords: armistice; military alliance; strategic initiative; external policy; volta-face

The years 1943 - 1944 marked the turning point of the Second World War, the United Nations armies succeeding in taking the strategic initiative on the front, to the detriment of Nazi Germany and its satellites.

The political and military disaster that Romania was facing would require the reorientation of its external policy, aiming at bringing the country out of the war as quickly as possible and signing the armistice (Baciu, 1996, pp. 103-104 & Onisoru, 1996, pp. 49-50). The considerable deterioration of the military situation on the Eastern Front, embodied by the tireless offensive of the Red Army, would contribute to the tightening of the relations between the leaders of the main political parties and to the achievement of the "united opposition", seeking, through various diplomatic channels, to obtain conditions as favorable as possible for Romania, for signing the armistice.

The diplomatic action of the opposition benefited from the support of King Mihai, but the peace signing initiatives were carried out simultaneously also by the Bucharest regime, which, through direct negotiations with the Allies, pursued the same political goals. In March, the Soviet troops had already reached the Dniester line in certain sectors, the Romanian authorities being more and more worried about the increasingly obvious possibility of transforming Romania into a war zone, the attitude expressing accurately the fears of both the civilian population and the political class. The National Democratic Bloc (B.N.D.) was established on May 20th, 1944, including the National Peasant Party, the National Liberal Party, the Social Democratic Party and, obviously, for strategic reasons, the Communist Party of Romania.

As early as May 24th, S.S.I (Secret Intelligence Service) was in possession of an information memorandum that predicted the status of the Communist Party in the future, given the political influence

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of the Soviet Union in the states "liberated" by the Red Army (Onisoru, 1996, pp. 48)[1]. Considering that during the negotiations with the Anglo-American allies on one hand and with the Soviet allies on the other hand, Marshal Ion Antonescu continued to "unduly postpone" the withdrawal of Romania from the war, the B.N.D. members would urgently prepare for the dismissal of the head of state and, taking advantage of the arisen opportunity, they would initiate the arrest of the Marshal and his government team on August 23rd, 1944.

The establishment of the new Sănătescu government would meet the adherence of all Romanian political forces who wanted to sign the armistice, so that the first concern of the new cabinet would be to establish direct diplomatic contacts with the Allies (Soviets) for the same purpose. The public opinion would be informed on Romania's exit from the war following to the broadcast of the King's proclamation at 22.25 hours.

The new political orientation of Romania, announced by Royal Proclamation, would benefit from the nation's total adhesion, because the natural consequence of that new situation gave the opportunity "to liberate the land of our Transylvania from the foreign occupation". Note that the army responded quickly and, more importantly, in the same key, to the contents of the Royal Proclamation. Asked by the commander of the "South Ukraine" Army Group, General Hans Friessner, if they would submit to the King and to the new Romanian government, the commanders of the II-nd and IV-th Romanian Armies, General Petre Dumitrescu and respectively Ilie Şteflea, answered "absolutely and clearly that they will totally assist the King of the Country and his Government"[2].

The Germans would try to limit the magnitude of the military and political disaster that was going to come, trying to gain time for the withdrawal of forces and for the repression of an "eventual rebellion"[3]. The cleaning and cover up operations were executed on the Great General Staff orders by all army's commandments and structures, the action of detaching from the German forces being considered a true success in the end, the German troops being taken by surprise and neutralized by the action of the Romanian army (Kirițescu, 1995, pp. 234-235).

The attitude of the former allies in relation to the Romanian troops would not materialize from the beginning in obvious hostility, both the Romanian and German troops suspecting each other. There were situations in which the separation between them was done "in a very warm atmosphere" (Dutu, 1997, p. 229), but in some cases the situation appeared quite tense, which would attract the energetic response of the Romanian troops.

The royal order would be executed by the Romanian troops on the front, namely by the III rd and IV th Armies, the Great General Staff taking care of its proper execution (Chirnoagă, 1997, p. 23), but the unfolding of the events would make the order achievable only in part, as the Romanian units found it was almost impossible to break contact with Soviet troops. Radio London (Buzatu, 1995, pp. 416-417)

[1] The political opposition would take shape around the personality of Iuliu Maniu and, as the events precipitate, the king would become more actively involved in the organization of the opposition, eventually assuming the risk of dismissing and arresting the marshal.

[2] Archive of the Ministry of National Defense, case 948, p. 81, p. 31. As a matter of fact, the orders of the German High Commandment addressed to the German troops stationed in Romania or to those on the Moldovan front would aim at the immediate arrest of all those who participated in the plot, of the King and, in case Marshal Antonescu is not to be found, the establishment of a new Romanian government led by a Germanophil General.

[3] Ibidem file no. 1559, f. 17. The German attitude was deceitful from the beginning, the case of General Alfred Gerstenberg being already known.

had broadcast "Romania's change of front" starting with 22.45 hours, statement which would be announced by all news agencies[1] in the next few days.

The Soviet troops would continue their fast advance to the South, surrounding and disarming many Romanian military units that had ceased fire according to the received Royal Order, the attitude of the Soviets producing stupefaction among the Romanian troops, which expected a proper treatment from an allied army. The existing situation would be convenient to the Soviet Military Commandment, which now saw the possibility of easily seizing the entire territory of Romania without a fight, making an important translation of fronts in military terms, threatening directly the entire German military formation in the Balkans and in the Hungarian Plain. The reorganization of the front by the Germans was now only "a theoretical probability", the Romanian army succeeding in neutralizing the main German forces left in the country (Dutu, 1997, pp. 226-227) with the intention of regaining control over the Romanian territory.

The conditions being favorable as "the chaos reached its peak"[2], the Red Army would continue the military offensive against the German and Romanian troops, the consequences being the most disastrous for the latter. Besides the military units captured by the Soviets on the Moldovan front, the Romanian troops represented by the crews of the Black Sea and Danube Delta Fleet would share the same fate, "being landed, disarmed and interned in the U.S.S.R."[3].

Taking office under very exceptional conditions, the new government led by General Constantin Sănătescu would proceed to quickly initiate the process of signing the armistice with the United Nations (the Soviets holding the priority role), by sending a delegation empowered for this purpose to Moscow on August 28th. The delaying of the negotiations by Soviet Foreign Affairs Commissioner, Viaceslav Molotov, and the postponement of signing the text of the Armistice Convention would further complicate the political and military situation of Romania which, on the date of signing the convention, would be de facto and de jure in the situation of a state actually occupied by an enemy army (Baciu, 1996).

Moreover, although they had managed to liberate the territory from the German forces without the allies' help, along with the military operations to neutralize the German army, the Soviet troops disarmed the Romanian ones, weakening Romania's operative fighting capacity. The bad impression given to Romanians by the Soviet troops entering the country was motivated by "the numerous incidents between civilians and Russian soldiers the bourgeoisie and the middle class being - in the opinion of a British observer - quite in a state of panic" (Quinlan, 1995, p. 107).

The coup d'état on August 23rd and the crossing of Romania to the United Nations side would in all respects be a very unpleasant surprise for the Germans and especially for the Soviets who were now ready to go into detail on that "segmentation of responsibilities" in the Balkans, insistently demanded by the British through the voice of their Prime Minister, W. Churchill[4]. The royal decision of the volte-face was a true general surprise for the international diplomatic environments, being mainly motivated by the need to avoid turning the country into a war zone, which would had had the worst consequences to the civilian population and the economy in general. The logic of the act itself had represented a very

[1] See (*România, marele sacrificat al celui de al doilea război mondial/ Romania, the great sacrifice of the Second World War,* Bucharest, 1994, pp. 255-256).
[2] Ibidem. The situation was obviously so, from the point of view of the German troops, but soon most of the Romanian officers and troops would have the same feelings after "establishing the first contacts with the soldiers of the Red Army".
[3] Archive of the Ministry of National Defense, case 381, p. 38, p. 31.
[4] Ibidem.

good initiative on short term, but the consequences resulting from it would be unfavorable in terms of Romania's internal and international politics.

Admittedly, Marshal Ion Antonescu's intention to resist had as declared purpose obtaining better armistice conditions, although it would have slowed down the Soviet offensive, but it is hard to believe that the Red Army could be stopped at the Carpathian Passes at that time, on Focşani, Nămoloasa and Maritime Danube fortified line. The pros and cons of the opportunity of the act of August 23rd, 1944, are countless and relatively truthful, but it must not be forgotten that Romania had already become a piece of a true puzzle game on the scene of international political relations at that time[1].

The benefits brought to Allies' cause were enormous, somewhat in inverse proportion - the critics say - with those acquired by Romania. Without neglecting the importance of regaining Northern Transylvania, we can say that the price paid by the army and by the nation was unjustly high, the sacrifices made being special, both on the front and in the country in the years to come.

From strategic point of view, for the German "ally", the capitulation of Romania in "rase campagne" (Nicolae Baciu, 1996, pp. 92-93) equated to a true military and political disaster - in the opinion of Field Marshal Keitel - materialized by "losing the territory not only of Romania, but also of Bulgaria, Yugoslavia and Greece, endangering the entire German army in the Balkans" (Ciachir, 1996, p. 316). Germany would therefore be forced to withdraw its entire military formation from the Balkans in danger of being surrounded by the Red Army offensive, the Soviets finally managing to occupy Bulgaria without any special battles[2].

Besides from the loss of important defensive positions represented by the Carpathians, Germany would be deprived of the food resources and especially of the Romanian oil, without which the combat force of the German army, a very technical one, would be worse-than-expected.

Other remarks show the courageous attitude of Romania which contributed to tip the scale in favor of the United Nations, "at a time when it was not known who will be victorious in the war", the military troops being counted at about 70 divisions which, by nature of the events, would be made available[3]. The services provided to the cause of the allies had cost the Romanian state important material reserves, not to mention the number of Romanian soldiers lost during the battles, the actual cost of Romania's participation in the antifascist war placing the Romanian state on an honorable fourth place in the hierarchy of the states participating in the war against Germany, before France, Yugoslavia and Australia.

These assessments are all the more important because they are also made considering the limited period from August 1944 up to May 1945, in relation to the total duration of the conflict, during which Romania participated in the conflict on the part of the United Nations. According to some of the analysist of the Second World War, the reduction of the war period for about six months wóuld be the natural consequence of turning the arms by the Romanian army on August 23rd, 1944, period when the lives of many Allied soldiers had been spared on all fronts. Even with all these considerations, Romania was

[1] With all the patriotism of the Marshal, and obviously, of the opposition grouped around King Mihai, we can say that both solutions adopted by the Power and opposition have proved to be totally uninspired, coming either too late or too early. Romania was no longer in a position to control its own destiny at that time, these prerogatives being long passed to the Three Great Powers (for the Central and Eastern Europe, please read the Soviet Union).

[2] Ibidem. Red Army troops would soon be able to make the junction with Marshal Tito's army of partisans, the military and political control over the Balkans belonging now to the Soviet Union.

[3] As far as the number of these military units is concerned, it should be specified that this is not just about the Romanian units engaged on the front against the Germans. We also considered in this category the Soviet divisions de-commissioned from the Romanian front, the Romanian divisions, as well as the many German military units neutralized during the military operations related to the August 23rd Act.

denied the status of co-belligerence by the Allies, the only thing being achieved was the recognition that the hostilities with Germany stated on August 24th, 1944[1].

The subsequent evolution of the military events on the front would equally condition the domestic situation of a Romania that even though it assumed the status of ally on the front, it was internally treated as a state under occupation.

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[1] As a result of the hostile behavior of the German troops, the Great General Staff would order, based on the war declaration of the Romanian government of August 25th addressed to the Reich, that "the German army has become our only enemy", urging all Romanian military commandments to urgently "disarm and banish them across the border".

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THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The Armistice Convention Dated September 12th, 1944 and the Repatriation of the Romanian Prisoniers from the U.S.S.R. in International Relation

Stefan Gheorghe[1]

Abstract: The differences of opinion between the Romanian government and the Soviet representatives from the Allied (Soviet) Control Commission would highlight the mistrust of both parties in the possibility of solving the problems deriving from their own application and interpretation of the Armistice Convention text.

Keywords: Armistice Convention; unconditional surrender; surrender conditions; Romanian prisoniers; allied prisoners

The Armistice Convention concluded between Romania, on the one hand and the United Nations, on the other hand, was not the document long waited by the Romanian authorities and opposition during the secret negotiations in Cairo, Ankara or Stockholm, according to many Romanian politicians. The "unconditional surrender" formula, adopted on January 24th, 1943, in Casablanca, would have as purpose preparing the governments of the states at war with the United Nations on the treatment and conditions their countries would be subjected to, regardless of the moment and causes that would lead to their exit from the battle.

The surrender conditions meant for Romania, among other things, the demobilization and disarmament, the handing over of war material, damages, etc., all of which would be imposed upon the will of the three Great Powers, being "mainly designed to ensure security and to continue the war against Germany, objectives that were considered to have important political implications"[2]. Romania's international political position in the first days after the palace coup on August 23rd and after changing sides against Germany was that of an "independent state that led a war against its former allies, on its former enemies' side" (Deletant, 1997, p. 40), having a share of the territory occupied from military point of view. When entering Bucharest, the Soviet army would find an independent government capable and willing to sign the armistice, having as its main strengths the neutralization of the German troops by their own means and the liberation of an important part of the national territory (Quinlan, 1995, pp. 98-99). If the Soviets had had some other plans (Şperlea, 1997, p. 47) with Romania (Duţu, Dobre & Loghin, 1997, pp. 198-201), they would be tangled by the action of King Mihai, who had managed to change the course of events by arresting the marshal himself. The intention of the new Romanian authorities was to sign the

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[2] See (23 august 1944. Documente/23 August 1944. Documents, vol 1, pp. 66-70).

agreement with the United Nations as soon as possible, in order to avoid placing the entire country under the control and military occupation of the Red Army.

The task of the new government was even more pressing as the Soviet armies, especially their leaders, treated the country as a territory occupied by fights. And the Soviets wanted, in a first phase, to speed up the end of the armistice, aware of the strategic advantage achieved through directly threatening Hungary in what was called "the most important translation of fronts in the history of the Second World War". Later on, when the situation would change, the Russian troops already occupying the entire Romanian territory, the Soviet government would realize the advantages of having military control over Romania and the Soviet rush to end the ceasefire would slow down.

The allied proposals of armistice was founded on the April conditions offered to Romania, reaffirmed on August 25th by Molotov's statement, the Foreign Affairs Commissioner of the U.S.S.R. Their discussion was to be held in Moscow (Quinlan, 1995, p. 102) the Soviets having the main say in the negotiations with the Romanian delegation[1].

Shortly after August 23rd, the representatives of the United States, Great Britain and the Soviet Union would urgently prepare for the completion and signature of the armistice, based on the text already approved in April 1944 (Bărbulescu, Deletant, Hitchins, Papacostea & Pompiliu Teodor, 1999, p. 469). The discussions would entail some clarifications and annotations of the draft (Deletant, 1997, p. 40) armistice agreement, therefore the final text would be ready to be made known to the Romanian party only on September 10th, 1944 (Ciachir, 1996, p. 314).

The Romanian authorities would prepare in detail for the signing of the Armistice, sending for this purpose a delegation to Moscow, composed of Lucreţiu Pătrăşcanu, Ghiţă Pop, Dumitru Dămăceanu, Ion Christu, specialists in economic and international law. Unfortunately, the contents of the discussions held in Moscow by the representatives of the Romanian and Allied governments was not in the least like a negotiation of the proposed conditions, the Romanian side coming up with objections to various problems, but which would mostly be ignored by the Soviet Prime Minister, V. Molotov, the Allied chief negotiator.

In spite of the Soviet refusal to make concessions, the Anglo-Americans would conclude that "the Romanians left with the feeling that they have escaped very easily", the more important problems seeming to be the way in which "the terms and conditions of the armistice will be interpreted and applied - by the Soviets". (Quinlan, 1995, p. 106) The practice of applying the Armistice Convention, signed on September 12th, 1944, would prove how well founded the concerns of the Romanian delegation were, which had been informed by that time, through the specific instructions sent by the Government of Bucharest, on the behavior of the Soviet troops, as well as the treatment applied to the civilian and military authorities or to the civilian population. Assessing the importance of Romania's participation in the war, the Romanian authorities would do their best to establish as soon as possible the bases of the future cooperation with the Red Army commandment structures. In this respect, the Romanian Great General Staff would issue a document entitled "Detail Rules for the Cooperation with the Soviet Army"[2].

Unfortunately, the signing of the Armistice Convention on September 12th, 1944, would formalize the subordination of the operative Romanian army, which provided in the first article that "the military operations of the Romanian armed forces, including the naval and air forces, against Germany and

[1] Ibidem. The discussions between the British, Russians and the Americans on the basis of the armistice project would extend far beyond expectations, the Allies hardly agreeing to some provisions of the Armistice Convention text.
[2] Archive of the Ministry of National Defense, case 948, p. 856, p 124.

Hungary, will be conducted under the general leadership of the Allied (Soviet) High Command"[1]. The supervision of the implementation of the Armistice provisions would be entrusted to the Allied (Soviet) Control, Commission, acting under the orders of the same allied commandment (Quinlan, 1995, p. 107).

The attitude of Sănătescu Government on discussing the issue of the Romanian prisoners and deportees during the war, on the occasion of the negotiation of the armistice, would be categorical, the instructions given to the members of the Romanian delegation who were to leave for Moscow, particularly beyond debate, aiming at making all the necessary steps for their release.

The Minister of Foreign Affairs, Grigore Niculescu-Buzeşti, told the Romanian Mission in Ankara on August 28th that "the Romanian government has taken note with satisfaction of Molotov's statement of August 25th", but a mandatory condition for the above was that "Romanian troops should not be disarmed and those disarmed so far be rearmed and made available to the Romanian government for its action against Germany"[2]. The indications of the Romanian minister also took into account the situation of the Romanian fleet in Constanţa port. The above had not been regulated even on September 1st, when the Romanian Foreign Affairs Minister telegraphed the same Legations of Ankara, informing the regime on the occupation established by the Red Army and on the delay in establishing a direct contact with the Soviet Commandments[3].

Regarding the situation of the Romanian troops, it was mentioned that "the disarmament, although it does not happen en mass, continues, however, in some places", the measures taken by the Red Army representing harm brought to the sovereignty and independence of the country[4]. The subject would be obsessively restored to the attention of and in the messages sent by Bucharest authorities to the Romanian delegation. While further illustrating the difficulties in establishing a positive dialogue with the Soviet army command structures that continued to impose an occupation regime, the Romanian government recalled its desire to make every effort to comply with the Soviet declaration of August 25th. Showing the importance of the role played by the Romanian army on August 23rd, it was urgently required to solve the problem of the Romanian soldiers captured on the Moldovan front after August 23rd, necessary for the joint war effort against the German-Hungarian troops which were going to develop an imminent offensive against Romania. Although the operative capacity of the Red Army was not to be questioned, the return of Romanian troops would give a new impulse and raise the morale of the Romanian soldiers and officers, this way Romania helping the United Nations more effectively. With regard to the disarmament of the Romanian troops, it was mentioned that "there was an agreement with General Tolbukhin, who said they would not be repeated". Unfortunately, the Romanian authorities' information highlighted the fact that these were still taking place, especially in some regions of Muntenia, the Romanian government expressing the hope that all these problems would be solved once the Armistice documents, ever deferred, were signed[5].

The commanding structures of the Romanian Army, namely the Great General Staff through its leader, General Gheorghe Mihail, would pay special attention to the issue in question, acting in the sense desired by the Romanian side shortly after the events of August 23rd. Through his representative in the Romanian Delegation, General Dumitru Dămăceanu, the Chief of the Great General Staff, would raise the issue of

[1] See the complete text of the Armistice Convention in Romania, marele sacrificat al celui de doilea război mondial. Documente/Romania, the great sacrifice of the Second World War. Arhivele Statului România (Archives of the Romanian State), Bucharest, 1994, vol I, pp. 311-314.
[2] MFA Arch., case 71/1920-1944, Turkey, Telegrams, Ankara, pp. 134-135.
[3] Ibidem, vol VIII, p. 186.
[4] Ibidem. Obviously, this parenthesis was nothing but a repetition of those stated in the telegram dated August 28th, the instructions on raising the mentioned problem remaining still valid.
[5] Ibidem, p. 241.

the delicate situation of the Romanian troops interned by the Soviet army in the Moldovan prison camps[1]. Summing up the steps taken by the Soviet military authorities in the period previous to signing the Armistice Convention[2], the Great General Staff would inform all Romanian troops that "it has made every effort to recover the officers and the troop disarmed after August 23rd and imprisoned by the Soviets in an arbitrary manner"[3].

The arrival of the Romanian delegation in Moscow would not automatically coincide with the moment of signing the armistice, its contents being presented in final form only on September 10th, 1944, unreasonably late, the preliminary discussions making possible the signing of the Convention only on September 12th (Ciachir, 1996, p. 319).

On the occasion of the Armistice negotiations, the Romanian side would address the issue of the Romanian POWs taken by the Red Army on the Moldovan front. The delegation requested on behalf of Bucharest Government to end the disarmament by the Red Army, arguing that on August 24th, at 4 a.m., the Romanian Great General Staff issued the cease-fire order against the Soviet army and the official state of war was proclaimed publicly by the Romanian government on August 25th (Duţu, 1997, p 227).

Although the armistice had not been signed until that moment, in the opinion of the Romanian representatives, the Romanian troops could keep their armament, effectively fighting against the German army at that time. The disarmament and the internment of the Romanian army soldiers and officers did not serve in any way to the common cause, so "the disarmed Romanian troops must be rearmed as soon as possible in order to allow them to participate in the operations against Germany" (Oşca & Chiriţoiu Mircea, 1995, p. 12). Of course, the Romanians also had in mind the Romanian crews from the Danube Delta and the Black Sea, bound to surrender after the Soviet fleet commandment's ultimatum[4].

Reasoning the validity of the Romanian proposals, the Romanian military representative, General Dumitru Dămăceanu, would insist upon the precariousness of the strategic situation of the Romanian army, which at that time had only "one armed division, the others being organized for inland and in what concerns the divisions withdrawn from Moldova, their weaponry was captured by the U.S.S.R."[5]. There were mentioned the cases of the 5th , 6th and 7th Army Corps disarmed by the Soviets after August 23rd, proposing the return of the armament, with the aim of arming again the 12 Romanian divisions required for the Western Front, according to the provisions of the Armistice Convention[6].

Concerning the Romanian prisoners found in U.R.S.S. from the beginning of the war and until the end of the hostilities between the Romanian and Soviet armies, the members of the Romanian delegation would propose concrete solutions for solving the problem. Although it admitted that it was not about a precise commitment on the part of the Soviet government to rearm them, the Romanian delegation pointed out that this would be in the interest of the fight against Germany and would help to more

[1] Archive of the Ministry of National Defense, Great General Staff case, Section III, p. 2876, p. 23. The instructions given to the freshly promoted in rank, General Dumitru Dămăceanu, issued since August 27th, aimed at "the restitution of the Romanian troops in an unoccupied area".
[2] Ibidem, case 948, p. 1478, p. 244.
[3] Ibidem, pp. 205-206.
[4] Ibidem.
[5] See (Stenograma şedinţelor de închiere a armistiţiului între Puterile Aliate şi România (The verbatim report on the meeting for concluding the armistice between the Allied Powers and Romania. România, marele sacrificat al celui de al doilea război mondial, Arhivele Statului (States' Archives)/ Romania, the great sacrifice of the Second World War, Bucharest, 1994, pp. 297-309.
[6] Ibidem.

effectively fulfil the provisions of the Armistice Convention by the Romanian side[1]. Declining its agreement, the Soviet side would consider that the problem lied within the military technicians' competence, not being timely, despite the insistence of the Romanian representatives[2].

From reading V. M. Molotov's conversation notes regarding the reception of the Romanian delegation on signing the armistice, it is clear that the Soviet side was aware of the fact that the Romanian servicemen were fully prepared to solve the military problems. This would be denied by the Soviet Prime Minister, who argued that "the war has been going on for three years, and now it takes a few weeks for moving to the new conditions"[3]. The Soviet dignitary reckoned that for military reasons, the proposals of the Romanian delegation would be analyzed and solved "as long as the Romanian government will engage in the battle against the Germans"[4].

Obviously, the Soviet position in the negotiations gave the possibility of blackmailing the Romanian party by repeatedly postponing the settlement of the Romanian demands according to the conditions that would follow from signing the Armistice[5], i.e. sine die (emphasis added, Ş.Gh).

The return of the Romanian delegation to the country, after signing the Armistice, would occasion virulent discussions both within the Council of Ministers and at political parties' level. While the Communist Party appreciated the "generous" conditions offered to Romania, the leaders of the historical parties were more skeptical about the Soviet Union's application and interpretation of the Armistice Convention text[6].

At the discussions held with the members of the Romanian delegation, General Dumitru Dămăceanu would confirm that he dealt specifically with the issue of the Romanian POWs. His proposals aimed at their delimitation into two categories: one of those captured from June 22nd, 1941, until August 24th, 1944, and the second category, of those captured after August 24th, 4.00 hours. The requests made by the Romanian serviceman were aimed at "returning the Romanian prisoners taken before August 23rd in a small amount of time and secondly, returning all Romanian units and formations, including the war ships from the Danube and the Sea, captured and disarmed after August 24th, 1944, 4.00 hours, with all the equipment, materials and their deposits" (Duţu, 1996, p. 47). The answers received by the Romanian from his military counterparts, Allies' representatives, also suggested that the problem would be solved "depending upon Romania's military cooperation in the fight against the German and Hungarian forces"[7]. As a result, the Armistice Convention dated September 12th, 1944, would contain no provision regarding the status of the Romanian POWs interned by the Soviet Union, referring only to the "return of allied prisoners" captured by the Romanian army. The Convention's role would be to destroy the

[1] The issue of repatriation or of the release of the Romanian servicemen captured by the Soviets before and after August 23rd would be the object of discussions from international law perspective during the Paris Peace Conference in February 1947 at the earliest, while Romania committed to return all Allied prisoners captured by the Romanian army by signing the Armistice. The goodwill gesture of repatriating the Romanian prisoners, requested by the Romanian side, would be made by the Soviet Union after the Communist-controlled government of Petru Groza took over the power March 6th, 1945.
[2] Ibidem.
[3] Misiunile lui A.I. Vâşinski în România. Documente secrete, Institutul Naţional Pentru Studiul Totalitarismului/ Secret documents, National Institute for the Study of Totalitarianism, Bucharest, 1997, p. 66.
[4] Ibidem. We mention that at that time, the Romanian government had been already fully involved in the war effort against the German troops stationed in the country, and moreover, the Romanian army had succeeded in neutralizing the main German forces alone, opening the road for the Red Army, while it disarmed and imprisoned the Romanian troops from the front line, troops that had ceased hostilities against the Red Army.
[5] Ibidem.
[6] See in detail the verbatim reports of the Council of Ministers of September 1st and 16th, 1944, on the discussions related to signing the Armistice Convention, Stelian Neagoe, pp. 57-77.
[7] Ibidem.

effects of the coup on August 23rd, 1944, which seriously threatened Kremlin's intentions with regard to Romania's future post-war status.

The differences of opinion between the Romanian government and the Soviet representatives from the Allied (Soviet) Control Commission would highlight the mistrust of both parties in the possibility of solving the problems deriving from their own application and interpretation of the Armistice Convention text.

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THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Current Trends in Maritime Insurance

Viorica Puscaciu[1], Stephanie Odubo Ebiere[2]

Abstract: This paper portrays relevant information about different aspects in maritime insurance with its history and we also emphasize on the principle of utmost good faith which is a very important principle that has to be noticed when making an insurance contract. We also refer to different types of maritime insurance policies offered by maritime insurance companies, as well as the P&I Club, together with their benefits. The different type of average and the maritime insurance Premium, and also Express Warranties are other topics which our work deals with. This analysis is based on qualitative methods and is addressed both to the specialist in this field and, also, to students and researchers which might be interested in. The aim of this research is to bring into attention this important problem of insurance – in any situation of life and, especially, in this area of the maritime activity. Our conclusion is that maritime insurance helps to spread risk and also makes provision for the share of losses as seen in the function of general average and it also indemnifies the assured of their losses or damages accordingly.

Keywords: risks; good faith; confidence; principle; P&I Club

JEL Classification: F5; J59; R41

Motto:

"New-York is not the work of men, but of the insurances…"

Henry Ford

1 Introduction

The globalization of trade has greatly enhanced global shipping of goods from one geographical region of the world to another. Thus, making shipping one of the efficient ways of transporting bulk goods across sea bound regions and through inland water ways as well.

The process of moving goods from a place of origin to a destination via the sea involves a lot of risk both for cargo owners, ship owners and the crew onboard. The occurrence of these maritime risk at sea has called for the need to insure cargo, vessel and crew in order to minimize and possibly recover the cost of losses or damages. Therefore, maritime insurance exists for this very purpose of providing a coverage for all such risks so that the assured maybe able to recover from any possible risk insured against during maritime venture.

This paper portrays relevant information about different aspects in maritime insurance with its history and we also emphasize on the principle of utmost good faith which is a very important principle that has to be observed when making an insurance contract and, according to the marine insurance Act, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

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Therefore, utmost good faith is needed to make valid maritime insurance contract that would not be rendered void subsequently.

2. Literature Review

Francis, (2013) provides readers with a fresh and up-to-date review of the modern law in the light of traditional principles and rules of underlying commercial law and the specific statutory rules of marine insurance as interpreted by case law, as moderated in practice by market practices and standard form marine insurance clauses. The author clarifies the law's underlying framework of principles and illustrates how it works in common contractual situations, explaining how the different components of the law interact.

Semark, (2013) offers comprehensive guidance on the complex area of P&I Clubs, a detailed but easy-to-follow account of the constitution, workings and daily practice of protection and indemnity clubs. It is a practical reference source for anyone who is in any way involved with mutual insurance.

Harvey, (2014) issued this book as an essential read for practitioners in maritime law and marine insurance.

Bugra, (2014) presents the delay in marine adventure, that is an important and frequent phenomenon of maritime transport which affects various parties and their interests under several types of marine insurance policies, including but not limited to hull and machinery, cargo, freight and loss of hire.

Schofield, (2015) provides a comprehensive overview of all aspects of laytime and demurrage, tracing the development of the law from its origins in the nineteenth century right up to the present day. The author delivers an in-depth analysis of both fixed and customary laytime clauses, the rules relating to commencement of laytime in berth, dock and port charters and discusses under which circumstances laytime can be suspended. Furthermore, it analyses demurrage rules and vital issues such as despatch, detention and frustration.

Dunt, (2016) expertly examines marine cargo insurance by reference to important English and foreign legal cases as well as the Marine Insurance, covering latest developments in the Enterprise Bill for damages for late payment of claims.

Harvey and Hudson, (2017) give us a book written from the perspective of the Average Adjuster and updated to include a detailed analysis of the new rules adopted in 2016. Their work is an essential read for practitioners in maritime law and marine insurance.

3. What is Maritime Insurance?

The maritime insurance was born in Italy, in Rome, to be more specific. During the Middle Ages, the maritime insurance was the brain child of Italian state-towns and the first occurrence of a marine insurance dates from the beginning of the 14th century[1]. Maritime insurance developed in England and was in full use there by the sixteenth century (Silliman, 2008).

Maritime insurance, the oldest form of insurance, protects shipping companies and cargo owners against the loss of a ship and/or cargo and it helps to manage risks in the event of an unfortunate incident like accidents, damage to the property and environment or loss of life. Also, in order to ensure that all the

[1] http://unsar.ro/en/istoria-asigurarilor/dezvoltarea-asigurarii-maritime.

risk can be properly handled without the insufficient funds when it is required, different Maritime insurances are necessary for ships and ship owners to take.

Furthermore, no one is allowed to enter into a maritime insurance contract unless they have an insurable interest and this is done in order to lower the incidence of gaming and wagering on the voyages outcome, a practice that renders a contract of marine insurance void.

Additionally, insurable interest exists when a person is involved in a maritime adventure because of the benefit he has by the safe or due arrival of the insured property, or the disadvantage he may have by its loss, or by damage. However, at all times the assured is required to conduct his business as though he were a prudent uninsured person and not indulge himself in accidents intentionally or be negligence in his duty to take caution. Maritime insurance is effected through a market for example the London Market, which is part of the much larger British Insurance industry, or markets in the USA, Japan, France etc. A contract of marine insurance is a contract based upon the utmost good faith and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party[1]. The utmost good faith is a principle used in insurance contracts, legally obliging all parties to reveal to the others any information that might influence the others' decision to enter into the contract[2]

Furthermore, a double insurance may be also done by the assured and this double insurance is when two or more policies are effected by or on Double behalf of the assured on the same adventure and interest or any part thereof and the sums insured exceed the indemnity required by the maritime Act and, thus, the assured is said to be over-insured by double insurance.

Captive insurance is an alternative to self-insurance in which a parent group or groups create a licensed insurance company to provide coverage for itself. The main purpose of doing so is to avoid using traditional commercial insurance companies, which have volatile pricing and may not meet the specific needs of the company. By creating their own insurance company, the parent company can reduce their costs, insure difficult risks, have direct access to reinsurance markets and increase cash flow[3]. Also, in this type of insurance, the company is indirectly able to evaluate the risks of subsidiaries, write policies, set premiums and eventualy make use of unused funds for further investment within the company or retain them as profit.

4. Types of Maritime Insurance Policies

There are different types of maritime insurance policies offered by maritime insurance companies some of these policies are listed below:

- Voyage Policies;
- Time Policies;
- Mixed policy (voyage and time policy);
- Unvalued Policies;
- Valued Policies;
- Floating Policies;

[1] https://moj.gov.jm/sites/default/files/laws/Marine%20Insurance%20Act.pdf.
[2] https://www.collinsdictionary.com/dictionary/english/utmost-good-faith.
[3] https://en.wikipedia.org/wiki/Captive_insurance.

- Blanket Policies;
- Block Policies;
- Single Vessel and Fleet Policies;
- Block Policies;
- Currency Policies;
- Annual Policy;
- Policy Proof of Interest (P.P.l.) Policies;
- Inland Transit Cargo Policy;
- Inland Vessel Policy;
- Package Policy;
- Free on Board Policy;
- Sailing Vessels Policy.

Voyage Policy: the voyage policy is a type of marine insurance policy which is designed for a specific voyage. In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable[1]. Furthermore, deviation or delay in executing the voyage under this policy is exempted

- where it is reasonably required for the safety of the ship, or cargo insured
- in order to save human life or assisting a ship in distress where human life is in danger
- where it is generated by circumstances beyond the control of the master and his employer
- where it is reasonably required in order to comply with an express or implied warranty
- where it is necessary for the purpose of accessing medical or surgical aid for any person on board the ship
- in the situation where it is authorized by any specified term in the policy
- where caused by the negligence or misconduct of the master or crew, if barratry be one of the perils that is insured against.

Nevertheless, when the cause exempting the deviation or delay ceases to function, the ship must be resumed back to her true course and executes her voyage, with reasonable dispatch.

Time Policy: this is maritime insurance policy which is signed for a specified time period usually, for a year.

Mixed Policy: this is a type of marine insurance policy which offers the insured the benefit of combining both voyage policy and time policy as a single policy.

Unvalued Policy: this kind of policy does not contain the value of cargo beforehand and compensation is eventually made only after the loss or damage to cargo is evaluated and then valued.

[1] https://moj.gov.jm/sites/default/files/laws/Marine%20Insurance%20Act.pdf.

Valued Policy: in this type of maritime policy, the cargo is valued and documented beforehand and the value of compensation is clarified in case of any loss or damage to cargo.

Period of insurance

The insurance policy will cover the subject matter (ship, crew, cargo etc) against loss or damage for a specific time. In the case of cargo, this will normally relate to the period over which the cargo moves enroute and with regards to ship, the insurance period may be extended to a particular voyage or a specified period of time. Usually, maritime insurance is divided into two divisions: hull and machinery and protection and indemnity. Other forms of maritime insurance are designed to cover other risks such as the cost of delays resulting from strikes and losses resulting from trading a vessel in regions affected by war.

Hull and Machinery Insurance

Hull and machinery insurance is a maritime insurance that protects the insured vessel or fleet from navigation accident caused by a peril of the sea, fire, theft etc, while the vessel is in transit over water and this is referred to as maritime risk. It also covers losses or damages caused by act of war which is referred to as war risk. Furthermore, it also covers a combination of maritime risks and war risk in a single policy.

Protection and indemnity (P&I) insurance

Protection and Indemnity Insurance is liability insurance for practically all maritime liability risks associated with the operation of a vessel, other than that covered under a workers compensation policy and under the collision clause in a hull policy[1]. This type of maritime insurance is covered by the P&I club, which is an association involving ship owners and charterers and is owned and controlled by the insured charterer or ship owner members. However, they operate on a non-profit mutual basis, as the members bring their premiums together and use it to spread the cost of an individual's loss or expense.

Loss in maritime insurance

A loss may be considered as:

- partial loss
- actual total loss
- constructive total loss.

Partial loss

A partial loss is any loss other than a total loss. If the ship or goods are damaged or only part of the freight is earned and, under the terms of the 1906 Act, if the assured cannot show that all is lost, the reparation will be based on a prorate payment of the sum insured. For instance, if a shipper losses 25% of the cargo due to a peril insured against, he will only receive payment on that amount (ie. 25% of the total value of the goods). Also, where the cargoes arrive at their destination, but due to obliteration of marks, they are unable to be identified, the loss if any will be considered as a partial loss.

[1] https://www.alignedinsuranceinc.com/protection-and-indemnity-insurance/.

Actual loss

Actual total loss occurs where the subject matter insured is destroyed, or so damaged as to cease being a thing of the kind insured, or where the assured is irretrievably deprieved of the subject matter (eg stolen).

Constructive total loss

Constructive total loss occurs where the subject matter insured is reasonably abandoned on account of the actual loss appearing to be unavoidable, or because it could not be preserved from actual loss without expenditure which would exceed its value had the expenditure been incurred.

Mainly, there is a constructive total loss:

- in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival
- where the assured is deprived of the possesion of his ship or goods by a peril insured against and it is unlikely that he can recover his ship or goods or the cost of recovering them would exceed their value
- in the case of damage to the ship, where she is so damaged that the cost of repairing the damage would exceed the value of the ship when repaired.

More so, where there is constructive total loss the assured may either consider the loss as a partial loss or abandon the subject matter insured to the insurer and treat the loss as it were an actual total loss.

Also, if he abandoned the subject matter he must give notice of abandonment to the insurer, in writing, or by word of mouth, with due diligence after receipt of reliable information of the loss. If the assured fails to give a notice of abandonment to the insurer, it will result in the loss being considered as a partial loss.

Ways of indemnifying a person at loss

There are four broad areas of indemnifying the person who has suffered a loss:

- Marine insurance
- P&I Clubs
- Ship owner's Liability
- General Average.

Marine insurance is covered, in the United Kingdom, by Marine Insurance Act 1906 and by the use of insurance policies, usually contracted with underwriters, the incorporate the Institute Clauses. Insurance is efected through a market for example the London Market, which is part of the much larger British Insurance industry, or markets in the USA, Japan, France etc.

P&I Clubs

P&I Clubs are organizations where ship owners join together to spread the cost of an individual company's loss or expense.

Benefits of P&I Clubs

Currently, only a very little portion of P&I insurance is underwritten outside P&I Clubs. This could be attribute to the fact that the P&I Clubs have the following advantages compared to commercial insurance providers:

- the P&I Clubs have no profit element and all premiums paid by the members will be used to cover the members' own risks and necessary administration costs hence, the premium could be controlled at the minimum level

- the P&I Clubs are owned and controlled by their ship-owner members and they will provide an insurance facility that is actually required by their members

- the P&I Clubs reserve the right to make additional calls on their members if there is a particularly bad claims experience for the Club as whole, and the Club is able to offer members cover with very high limits, unlike hull insurance, the value of shipowners' liabilities are always unpredictable and could be very substantial

- P&I clubs' letter of undertaking can be provided at minimum cost for provision of security and are generally accepted worldwide

- the P&I Clubs employ well experienced and highly qualified claims handling staff that can provide the members with free advice or assistance on a wide range of matters, whether or not the matter is covered by the Club or not. Meanwhile, the members can also benefit from the Club's worldwide network of correspondents to resolve the problems they face in a remote area

- The scope of cover of P&I Clubs is not limited to the listed risks in the published Club rules. In many circumstances, even the loss or damage are suffered due to an issue which is not specifically mentioned in the rules, the managers and directors are entitled to exercise their discretion to decide whether or not this claim should be covered.

Average

Frequently, in insurance, the word "AVERAGE" is used and in the context of this field of specialization, the term has the meaning of a loss. It is an equitable apportionment among all the interested parties of such an expense or loss[1].

General Average

General average is the apportionment of loss caused by an intentional damage to the ship, sacrifice of cargo etc and the expenses incurred to secure the general safety of the ship and cargo. It is covered by the York-Antwerp Rules 2004 and it involves contributions by all participants of a particular venture for a loss suffered by an individual for the common good of the voyage. The ship owner's liability can be classified into two distinct areas:

- Full liability
- Limited liability

In full liability, the ship owner is compelled to pay full compensation for the loss or damage that has been done.

In limited liability, the ship owner is allowed to pay a percentage of the compensation claimed and this is provided for by statute, convention or contractual clause.

Particular Average

This is partial loss or damage to a ship or its cargo that affects only the ship owner or one cargo owner[2]. Particular average is normally covered by a Marine Insurance Policy, held with a Marine Underwriter,

[1] https://en.wikipedia.org/wiki/Marine_insurance#Actual_total_loss_and_constructive_total_loss
[2] https://www.collinsdictionary.com/dictionary/english/particular-average

which extends to a total as well as partial loss. Some common examples of particular average on a vessel are heavy weather damage, damage caused by stranding, collision and fire.

Maritime Insurance Premium

Maritime insurance premium is the amount of money the assured pays for a maritime insurance policy. According to maritime insurance act, the duty of the assured or his agent to pay the premium and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions and the insurer is not bound to issue the policy until payment or tender of the premium, unless agreed otherwise[1]. Also, where a marine policy is initiated on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium and, then, the insurer is directly responsible to the assured for the amount to be paid with the regards to the losses or damages and/or the returnable premium.

Express-warranties

It frequently occurs that an express warranty will appear in the contract of insurance. Two factual examples are:

- warranted all tins to be code marked by manufacturers for verification of date
- warranted to sail in convoy.

In the first instance the ship did not sail in convoy and was lost in a storm. Regardless of the fact that the circumstance which caused the loss of the ship was not directly related to the express warranty, it was ruled by the Court that there was a breach of the warranty to sail in convoy and the underwriters were not liable to their insured for the loss of the ship.

However, in the second example some of the tins containing meat were marked and some were not. The unmarked tins were condemned whilst many of the remainder were sold off below market value. It was ruled by the Court that the policy conditions applied to the consignment as a whole and could not be made to apply to individual tins. Since there were a substantial number of tins unmarked it was held that there had been a breach of the warranty condition on the whole consignment and, therefore, underwriters were not liable to their insured.

It is important to know that express warranty in the policy must be complied with and the only exemption for noncompliance of a warranty is when by reason of change of circumstances the warranty itself ceases to be applicable to the circumstances of the contract or when compliance with the warranty results in an unlawful act. If any breach of express warranty is contemplated, for whatever reason, it would be prudent to seek underwriters' approval prior to the breach taking place.

Failure to observe a warranty absolves underwriters from any liability under the Contract of insurance from the date of the breach of warranty. Underwriters are not, however, absolved from liability under the contract for losses which took place prior to the date of the breach.

5. Conclusion

Maritime insurance helps to spread risk and, also, makes provision for the share of losses as seen in the function of general average and it also indemnifies the assured of their losses or damages accordingly. Having a vessel at sea without insurance would not be prudent, so, it is advisable for every ship owner to make a contract of insurance against basic risks if not all risk that could occur. In similar manner,

[1] https://moj.gov.jm/sites/default/files/laws/Marine%20Insurance%20Act.pdf.

cargo owners should insure their cargo as well to prevent complete loss in event of any peril at sea or any other risk covered by maritime insurance.

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REALITIES AND PERSPECTIVES

Online Infidelity Theoretical Background Contributing to Cyber-Related Intimacy Issues

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Abstract: The introduction of social networking sites such as Facebook, Twitter, and MySpace has provided a relatively new platform for interpersonal communication. a vital part of daily living and a popular way of initiating, establishing, maintaining, and enhancing existing as well as new relationships. However, certain problems and difficulties have arisen from this issue. The present research has been done to outline the four "As" related to cyber intimacy (anonymity, affordability, accessibility; approximation) as identified by King (1999), Cooper (2000; 2002), Ross (2002), and Tikkanen and Ross (2003) by outlining how these "As" are noted within the published literature. There have also been taken into consideration two more "As" (ambiguity and accommodation) as introduced by Hertlein and Stevenson (2010).

Keywords: cyber-related intimacy issues; couples; sex; online infidelity

Cooper's Online Infidelity Theory Contributing to Cyber-Related Intimacy Issues

Today's systems of communication allow people to interact with each other in settings that are not face-to-face. The Internet provides many opportunities for people to connect and relate to one another. To date, 1.7 billion people worldwide use the Internet (Internet Usage Stats, 2009). People access the Internet for a myriad of different reasons ranging from obtaining information to maintaining relationships. Some avenues include: Twitter (8 million users), Facebook (200 million users and 100 million log on daily), and MySpace (76 million users) which encourages people to connect to one another. This type of communication has made it easy to create new interpersonal relationships, get in touch with old friends, and maintain distant relationships.

The Internet can be a very powerful, positive tool for a couple's relationship. Couples can exchange instant messages or texts throughout a day, e-cards, and share links and music with a few short clicks of the computer mouse or taps on a touch screen. Long distance relationships also become easier to maintain in an age of instant communication because users (1) can find partners independent of geographic location, and (2) can share videos, photos, and messages instantly, enhancing the development of intimacy and progression of the relationship (Hertlein, 2008). Further, these relationships can be sustained rather affordably through an Internet service provider package and a monthly fee (Cooper, 2002). In seeking to understand the pros and cons of technology and couples, Henline and Harris (2006) discovered that people enjoy using technology to communicate with their partners or potential partners, and enjoy that technology provides a context in which relationships develop based on common interests rather than looks. Henline and Harris concluded that technology can

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help couples build connections, provide a base for developing a relationship, and assist with conflict resolution.

Defining Cyber-Related Intimacy Issues

In some cases, however, the Internet can facilitate problems for its users. Henline and Harris (2006) found that there were also negatives related to technology and couples in three main ways. First, they discovered that communication through technology can create problems accurately interpreting the true intention of the message. Clearly, such misunderstandings can disrupt the couples communication patterns both on- and offline. Second, participants who are continually connected to the Internet via phone or computer reported greater degrees of feeling "smothered" by their partners. Third, participants reported those who become over-involved in online activities may neglect household responsibilities or the maintenance of their relationship.

Other scholars also believe that the Internet can contribute to problems in other ways. Barak and Fisher (2002) believe that cybersex relations "will become a major factor in deteriorating marital relations and, therefore, a cause of relationship distress and divorce." (p. 270). This quote echoes results the work of Schneider (2003) who investigated how people (primarily women) had been affected by their partner's cybersex usage. She found that cybersex was a major factor in separation or divorce in addition to the problems it caused for the relationship, including: a decrease in desire for relational sex, comparing oneself negatively to the online partner, and feelings of betrayal. Likewise Ross, Månsson, Daneback, and Tikkanen (2005) conducted a study comparing men engaging in same-sex behavior online with a sample of men engaging in heterosexual behavior online and found that, as compared to the group of men who had sex with women, men who had sex with men reported more problems regarding: (1) their sexual thoughts and behaviors, (2) daily life related to their desire to have sex, and (3) maintaining commitments and responsibilities due to their sexual behavior.

Literature in the realm of couple therapy also seems to contend that couples can experience struggles related to the Internet. For example, couple therapists reported an increase in the number of cases with an Internet component (Cooper & Griffin-Shelley, 2002) and are struggle with appropriate treatment strategies (Nelson, 2005). Goldberg, Peterson, Rosen, and Sara (2008) found a majority (73%) of marriage and family therapists reported they were not trained in their program to deal with this problem in treatment. The majority of the sample of couple therapists reported they learned that cybersex could be a clinical issue from their clients, partners and families (58%), followed by the general media and educational sources both at 28%, friends, colleagues and supervision at 15% and lastly the Internet itself at 12%. Additionally, they report the average participant saw four clients per year who presented with cybersex related issues, with a range from 0 to 50. These findings accentuate the need for clinicians to be well informed when working and treating clients with these issues.

Clearly, there are many instances where technology (and the Internet) can complicate a couple´s life together. We have found, however, that many scholars have difficulty separating the treatment of Internet-related intimacy problems from other common issues a couple faces. In the case of Internet infidelity for example, therapists address the trust, communication, and loss of security brought on by the affair, but do not address the technology specifically other than to advise the couple to move the computer to another room of the house (Hertlein & Piercy, 2008). This finding suggests that couples therapists are aware the presence of the computer has an important place in contributing to and treating an Internet-related problem, but cannot articulate how it manifests within a couple's relationship or what to do about it. The purpose of this paper was to conduct a literature review to (1) identify support for the

previously identified five "As" to explain the seduction of the Internet into a couple's life, and (2) demonstrate instances of two other "As" contributing to Internet-related intimacy problems.

Literature Review Process

In order to identify possible contributing factors towards Internet-related intimacy problems, we conducted a literature review. While there is already an Internet-Related Problem Scale (Armstrong, Phillips, & Saling, 2000), as therapists, we were specifically interested the problems experienced by couples. We defined Internet-related intimacy problems as any Internet phenomenon which might cause a problem for a couple's intimacy. In general, we determined that most of the articles in the literature address exploring Internet-related problems focused on porn use (see, for example, Stack, Wasserman, & Kern, 2004), infidelity, (see, for example, Mileham, 2007; Miliner, 2008), and the development of relationships online (see, for example, McCown, Fischer, Page, & Homant, 2001).

We used several search engines including: PsycINFO, EbscoHost, and Academic Search Premier. Search terms we used included (but were not limited to): "Internet sex", "cybersex", "online intimacy", "internet intimacy", "online affair", "Internet affair", "Internet infidelity", "online infidelity", and "computer-mediated relationships". While our search initially included many articles describing characteristics of Internet users, our limited search focusing on investigations whose focus was on Internet-related intimacy problems published between 2000 and 2009, yielding a total of 62 unique citations. Of these 62 citations, 35 were scholarly articles. Of those 35, we did not include articles focused on addiction (eliminating two articles), were clinical/theoretical rather than empirical (eliminating eight articles), reviewed previous literature (eliminating two articles), or focused on the formation of a primary relationship online in the absence of an existing couplehood (eliminating six articles), resulting in a total of 19 articles.

This literature review was a semi-structured, discovery-oriented process. According to Tikkanen and Ross (2003), "The Triple A Engine (Cooper, 1998), with its fourth factor suggested by King (1999), seems to be accurate in understanding gay men's use of Internet chat rooms." (p. 131). Therefore, we began our search with the concept of the "Triple A Engine" (Cooper, 2002). We read the published research in an attempt to locate information supporting the existence of the three "As" (anonymity, accessibility, affordability) as well as for King's (1999) fourth A (acceptability) and the concept of approximation as discussed by Ross and Kauth (2002) and Tikkanen and Ross (2003). We also found that there seem to be two other "As" operating in cases where Internet usage can be problematic: ambiguity and accommodation. Each of these concepts in relation to their contribution to Internet-related intimacy problems are discussed below.

The Four "As" Cited Within the Published Literature

Anonymity

There are several known types of Internet-related vulnerabilities which contribute to Internet-related intimacy problems. Cooper (2000; 2002) identified three including: anonymity, accessibility, and affordability. Anonymity refers to the concept that the user is in control of their self-presentation. As Hertlein and Sendak (2007) stated:

...those engaging in online relationships can choose to present a detached attachment or absent presence characterized by features of oppositionality: distance/immediacy; anonymity/disclosure;

deception/sincerity…in one line of text, an individual can transmit confessional self-disclosure while remaining anonymous." (p. 2)

In face to face relationships, identities or other attributes about a person can be exposed through physical appearance, non-verbal communication signals, or other aspects. Such aspects might lend someone to being judged by the other person and have real consequences for the duration or development of the relationship. Internet users have the ability to manage what demographics are observed (i.e., ethnicity, gender, age, etc.) until they feel more assured that these aspects will not hinder the development of the relationship. In essence, the Internet "enhances one's ability to promote any chosen identity." (Hertlein & Sendak, 2007, p. 4).

The notion of the Internet being a place for anonymity is supported through published literature. Reitmeijer, Bull, and McFarlane (2001) found that those seeking Internet sex had more partners than those who did not look for sex online. Further, 65% of those who were looking for sex online had sex with their Internet partner. Within these cases, however, only 44% reported using condoms during their last sexual encounter. Because those on the Internet have more partners than those who do not meet partners online, the risk of spreading sexually transmitted diseases is greater (Elford, Bolding, & Sherr, 2001; McFarlane, Bull, & Reitmeijer, 2000; Klausner, Wolf, Fischer-Ponce, Zolt, & Katz, 2000). Therefore, the anonymity provided by the Internet can contribute to problems when the user decides to hide pertinent aspects of him/her in order to pursue a relationship.

Accessibility

Accessibility refers to the many locations for Internet access – from homes, workplaces, internet cafés, to PDAs and cellphones. The accessibility of these modes of Internet access provides affair partners the ability to sustain their relationship by corresponding throughout the day, sending erotic emails, and initiating a sexual encounter (Cooper et. al, 2000). All of these modes can be accessed without drawing too much attention from a partner, co-workers, and friends. This concept relates most similarly to the concept of opportunity, a core concept in related to one's likelihood to engaging in infidelity (Treas & Giesen, 2000). The access one has to the Internet is increasing daily, and potentially resulting in problems because of it. Social networking sites such as Facebook, Myspace, and personal webpages accelerate the accessibility one has to other connection and, consequently, the opportunities for engaging in an Internet affair. Underwood and Findlay (2004) found similar results when exploring the manner in which relationships develop online. While their respondents reported that their primary relationship was more important than their online relationships, the researchers found evidence to suggest that the online relationships do have the potential to interfere with an offline relationship intimacy is threatened.

Affordability

To facilitate a relationship online is also affordable (Cooper, 2000; 2002). For example, one merely pays a monthly service charge from an Internet service provider. This is certainly less expensive than paying for dinners, movies, or other outings with a third party. Further, the likelihood of the involved partner being "discovered" may be reduced, as there will likely be no receipts for outings, dinners, or other activities. The duration of time spent online engaging in sexual pursuits, whether a short amount of time or a long amount of time, does not make a difference in the bottom line of how much it costs a household per month, so tracking time spent online is not immediately obvious.

To date, we did not find any articles that spoke directly about the affordability component described by Cooper. While articles such as Schneider (2003) and Ross, Månsson, Daneback, and Tikkanen (2005) speak specifically to the problems in one's life related to the Internet, they did not specifically have to do with finances. We, then, suggest that this category be broadened to talk about the emotional cost to a relationship in the cases where the Internet use is problematic, or the emotional cost to the relationship when not using the Internet as a resource.

Approximation

After the development of the three "As", scholars began to consider how other factors about the Internet affect how people use it. Approximation, a fourth A, has been added by Ross and Kauth (2002) and Tikkanen and Ross (2003) in regarding online sex. It refers to the quality about the Internet which approximates real world situation. In other words, what can be viewed on the Internet is becoming more close to the physical world. One can engage in particular sexual acts without participating in them in the real world, thus blurring the line between fantasy and action (Ross, 2005). Applied to online infidelity, programs on the Internet approximate the real world better every day. Not only is the approximation of the behavior attractive, however, such an approximation also helps to enhance relationships.

In one of the studies that shaped the development of this concept, Tikkanen and Ross (2003) conducted a sociosexual survey among men who have sex with men in Sweden. The questionnaire did include items about communication with potential partners via chat rooms or other communities. The study was partially launched on a reputable website within the gay community hosted by the largest organization for gay people in Sweden. There was also a written portion which was distributed within the gay community. The participants were nearly equally divided, with 678 completing the Internet survey and 716 completing the written version, for a total of 1,394 responses. The data suggest that the interactions established via the Internet "may be a secure way to experiment with homosexual behavior or emotions without having to identify as homosexual or gay." (p. 131).

Support of this "A" is offered by Cooper, Galbreath, and Becker (2004). In a sample of 384 men investigating the Internet as a medium of men's sexual behavior, the researchers found men use the Internet for several reasons, among which are to simulate certain behaviors in which they may not be able to realistically participate. Further, Cooper et al (2004) found that men may be using the Internet to cope with stress and when this strategy is reinforced, usage around this reason continues. In this context, the quality of approximation of the Internet is used as a stress and conflict management tool in that it simulates a way to manage stress through sexual activity in which people may not feel comfortable realistically participating (Cooper et al, 2004). Whitty (2005) also explored how the perception of online betrayal affected offline relationships and concluded that Internet infidelity can be perceived as a real betrayal and can affect a primary relationship as much as an offline betrayal would, in part because of the ability of the Internet to approximate an infidelity scenario.

Mileham (2007) also was specifically interested in focusing research on the "synchronous, interactive" (p. 12) components of communication online and their contribution to online infidelity. Mileham conducted in depth interviews with 86 participants contacted via an Internet chat room. She concluded that there were three main concepts that were contributing to affairs: anonymous sexual interactionism, behavioral rationalization, and effortless avoidance. Relevant to the seven "As" is the concept of anonymous sexual interactionism. While the researcher identified the chat room experience as one that was interactive, the participants did not notice the interactional quality of the Internet, but rather viewed the chat room experience as watching a movie, thus removing themselves as active participants in the

process. It is this inability to take ownership of their own behavior which may diminish awareness and put one on the "slippery slope" toward an affair or other intimacy problems.

Acceptability

Acceptability means that much of the behavior on the Internet that has been deemed inappropriate in society has found a way to be an accepted way of life on the Internet. King (1999) discussed this in regard to Internet pornography, but it also applied to other Internet-related intimacy problems. The majority of the literature that addressed the acceptability component conducted studies examining the perceptions of Internet-related problems. For example, Daneback, Cooper, and Månsson (2005) found in a sample of 1,835 participants, 1,458 (or nearly three quarters) admitted to using the Internet for the pursuit of online sexual activities. In another study, Boies, Cooper, and Osborne (2004) found that 283 of their 760 participants did not use the Internet for sexual entertainment or information, thus suggesting that for a majority of their participants, using the Internet to access sexual topics was viewed as acceptable. Goodson, McCormick, and Evans (2000) looked at college student attitudes toward Internet use specifically focused on the creation of personal connections as well as using the Internet for the pursuit of sexual activities. In developing a survey, the authors asked undergraduate students to suggest potential survey questions. Once the items were developed they were refined by experts and submitted to a focus group of students. Finally, the researchers conducted intensive individual interviews with undergraduate students to understand the questions. In this process, they relied on the perceived acceptability of online behavior for young adults.

Ambiguity and Accommodation in Cyber-Related Intimacy Issues

Ambiguity

Two more "As" appear to Internet-related intimacy problems. The sixth A is ambiguity, and essentially means online behavior can be tricky to define as problematic. For some individuals, viewing porn online constitutes is problematic behavior; for others, the behavior becomes defined as problematic when it is characterized by the emailing or messaging of sexually explicit or sexually charged material. This is particularly true in cases of Internet infidelity. Quite often, each partner has an independent definition of what it means to be unfaithful in a relationship (Parker & Wampler, 2003). This may be the result of couples not discussing their relationship contract as it regards to betrayal and the Internet. With no clear behavioral definition of what is or is not Internet infidelity, one may be more likely to "cross the line" online than in other situations. This "A" was also noted in research on Internet infidelity treatment. The therapists surveyed reported that the definitional issues for couples around Internet infidelity were problematic enough to warrant a portion of treatment be devoted to reducing the ambiguity (Hertlein & Piercy, 2008).

Despite the contract that can be discussed by couples, the online behaviors which constitute one being "unfaithful" are relatively unclear. To some, it may mean exchanging sexual conversation or words with someone other than one's partner on the computer; to some, it may mean the viewing of porn; and still to others it may mean the development of an exclusive emotional relationship to the exclusion of one's primary partner. Parker and Wampler (2003) investigated whether the online sexual activities are considered affairs. The researchers asked a sample of 242 students at a Southwestern University to rate different scenarios to determine the extent to which each represented infidelity. In general, how problematic an activity was depended defined depended on that nature of the activity. While Internet sex was rated less of an affair than physical sex, but was still perceived as problematic. The researchers discovered that women viewed online sexual activities as more problematic than men. In their discussion

of the results, they acknowledge that the partners experiencing difficulty in defining the behavior as infidelity is also complicated by society's confusion regarding the definition of infidelity: "It then becomes necessary for clinicians to normalize the ambiguous feelings and assist the couple or partner in defining the seriousness of the behavior and to what extent it should be deemed as an affair." (p. 426). Parker and Wampler (2003) defined the partners' feelings as ambiguous, but stopped short of classifying the definition of Internet infidelity as ambiguous to the couple, thus creating problems. When the definition is diffuse, the involved partner's likelihood of being accountable for their behavior drops, thus maintaining the problem the couple is having (Ross, 2005). As Hertlein and Sendak (2007) stated, "The issue, however, is not so much the sharing of something considered private, rather it is the keeping private of something that should be shared (and shared only with the relationship partner)." (p. 10).

The ambiguity surrounding the definition of Internet infidelity is not limited to couples. Scholars, too, struggle with coming to agreement about the behaviors constituting infidelity (Whitty & Quigley, 2008). Whitty (2005) described the efforts of several researchers who have tried to address the threat that Internet interactions have on couples. Some researchers have said that Internet infidelity is behaviorally different from face to face infidelity where as others have not been able to define a specific category of what constitutes online betrayal. Whitty's (2003) study suggested that people perceive online acts of infidelity as genuine as those offline. In fact the author proposes that there may be little difference between the two because the feelings of betrayal do not come from the physical contact between the two parties, but rather from their partner desiring another person instead of them (Whitty, 2003). In another study, Whitty (2005) provided a projective story completion task to a sample of 234 psychology students at an Australian University. She found that some of the participants did not consider Internet infidelity a "betrayal", whereas others did. Such ambiguity might interfere with a couples' definition of problematic behavior and, consequently, their interactions with third parties.

Docan-Morgan and Docan (2007) discussed some assumptions people may have about people's perceptions of what is considered appropriate versus inappropriate online behavior. For instance, those who define infidelity in only physical terms may not believe infidelity can exist on the Internet because of the lack of physical contact, voice, or face to face interactions. In fact, Docan-Morgan and Docan's (2007) study reinforced Glass and Wright's conceptualization of infidelity such that Internet infidelity also operates on a continuum: ranging from superficial/informal behavior to involving/goal-directed behavior. These research findings emphasize the importance of addressing each couple's opinions about what comprises Internet infidelity thus eliminating any ambiguity.

Accommodation

Another observation in our clinical work and in the literature led us to the development of the seventh "A." As aforementioned, for many who seek companionship online, there may be a conflict between one's ideal and real self. One partner, for example, may have certain beliefs about how they should act and feel restricted in their day-to-day life, but when the opportunity arises, can exhibit the opposite behavior (Ben-Ze'ev, 2004). Many people feel the need for a secret life because they perceive their lives as rule-driven, confined, or constrained. Further, there are many who have the ability to risk or desire to seek out sensations which are now living routine (and by their report, "boring" lives). The Internet provides greater opportunity for one to act a certain way in "real time" but have a different persona when it comes to online behavior and activities, especially when there are no outward or obvious signs of this other, seemingly contradictory persona. We term this "A" accommodation, meaning that those individuals who have more difficulty settling the tension between the "real" versus "ought" self

(Higgins, 1987) will be more likely to be taking risks on the Internet, thus making their relationship vulnerable to affairs than those who do not.

While it appears that there is some overlap between accommodation and approximation, they are two distinct and separate vulnerabilities. Approximation refers to the specific qualities of the Internet which replicate/simulate the physical world; accommodation, however, refers to the qualities of the individual (specifically, the extent to which there is a discrepancy between one's "real" and "ought" self) which contributes to their Internet usage.

The scholarly literature also seems to support accommodation category. In Cooper, Galbreath, and Becker's (2004) study described earlier, men who went online in pursuit of sexual activities reported participating in activities they would not do in real time more than men who did not go online to participate in sexual activities. This can be a particular vulnerability for couples if both partners are struggling with the tensions between their "real" and "ought" selves and in couples with increased familiarity to alternatives and options available on the Internet for pursuing one's vision of self.

More evidence of the concept of accommodation is found in the research conducted by Aviram and Amichai-Hamburger (2005). In a study of 178 participants, they sought to understand to what degree personality variables and relationship satisfaction contributed to expectations within an online affair. Results indicated that personality factors are at play in terms of developing an online affair, concluding: "The therapeutic intervention should include, in addition to improving the dyadic communication, an individual inquiry into the person's hidden fantasies that may not be fulfilled in 'real life'.

A study by McKenna, Green, and Gleason (2002) supports the contention that people who do not have an adequate social network offline are more likely to use the Internet to express particular aspects of themselves (McKenna, Green, & Gleason, 2002). Specifically examining romantic relationships, Albright and Conran (2003) studied the process by which people meet and fall in love online through administering a 55-item survey to those looking for love online. This instrument was completed by 513 participants, with 366 of those choosing to also complete a narrative portion. Among the phases of relationship development, Albright and Conran classified one element as the "virtual mirror." The mirror was described as "where one throws out a best self and sees in the reflection another shaped to one's desires" (p. 48). In other words, one may be accommodating what you see in another in order to shape them into what you want to see.

There is also evidence of this concept within McKenna, Green, and Smith's (2001) study investigating whether one's expression of sexual activities via the Internet would result in a change in their sexual identity of their offline selves. Using a mixed methods approach, McKenna et al (2001) developed and tested a model of sexual identity demarginalization, which included: offline safety concerns, frequent and convenient sex, score on the Sexual Self Online instrument, score on the Importance of Online Sexuality to identify scale, benefits to self, and benefits to the relationship. The findings indicate that the more one looks for a sexual identity on the Internet, the more likely one is to incorporate those elements of identity in his/her general sense of self. These results are consistent with McKenna and Bargh (1998) in relation to Internet activities in general impacting the self, and McKenna, Green and Gleason's (2002) research, which discovered that people who develop meaningful relationships online integrate those relationships into their self-concepts. This is especially relevant when one considers that these findings were mediated by the extent to which people feel they were their "true selves" within the relationship.

The concept of accommodation is also displayed by Young's (2006) research, who discovered that due to the lower feelings of inhibition with online communication people are able to express their emotions more openly and honestly at a much quicker pace than in the physical world leaving people with a sense of deeper intimacy, sense of trust and acceptance (Young, 2006). Additionally, as a global tool, the Internet enables users to interact with more diverse people than they may have in their typical day to day life which may feel more glamorous to them (Young, 2006).

Conclusions

Cyber-related intimacy issues are determined by a confluence of factors, many of which may never be fully understood by couples or therapists. We, however, believe that an understanding of how the seven "As" operate in the development and maintenance of Cyber-related intimacy issues can provide a framework for couples therapists treating these couples and shape scholarly research in a direction which can benefit couples. Ideas for future research include the empirical testing of the seven "As" to determine to what extent they interact with each other as well as to better understand their contribution to the maintenance of Cyber-related issues. It might also include empirical testing of how and in what way the incorporation of these elements is effective for couples struggling with Internet-related problems.

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REALITIES AND PERSPECTIVES

The Use of the Quality Management Tools in Public Institutions

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Abstract: The purpose of this article is to analyze the stage of applying the legislation regarding the development and implementation of the internal management control system, taking into account the difficulties encountered in the process of elaborating the system and operational procedures at the level of some public entities. The Community legislation in the field of internal managerial control is made up, in large part, of general principles of good practice, also accepted internationally. The way in which these principles are transposed into the internal control systems is specific to each country, being determined by the legislative, administrative, cultural conditions etc.

Keywords: internal management control system; public entities; community legislation

Introduction

The internal management control system of any public entity operates with a variety of processes, means, actions, provisions, which concern all aspects related to the activities of the entity, being established and implemented by the management of the entity to allow it to have a good control over the functioning of the entity as a whole, as each activity / operation. The phrase "managerial internal control" emphasizes the responsibility of all hierarchical levels for keeping under control all internal processes carried out for achieving the general and specific objectives.

In order to ensure the achievement of the objectives, in an economical, efficient and effective way, the management of the public institutions must ensure the elaboration of the procedures for the processes and / or the activities carried out within the public entities and to inform the personnel involved. In this respect, both Romanian legislation and European recommendations must be respected.

1. The Romanian Legislation

Order 600 currently applicable, which amends the old ordinance 400 of 2015, legislates the Code of internal managerial control of public entities, through Standard 9 - Procedures, and specifies the importance of elaborating the procedures documented at the level of public entities. Moreover, since 2000, the White Paper - Part I, defines internal control as the totality of "policies and procedures

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implemented by the institutions, in order to ensure the achievement of the objectives, in an economic, efficient and effective way".

The procedures represent an internal control tool, which contributes to the improvement of the activities carried out by separating the tasks, functions, competences and responsibilities of the personnel within the public entity.

The coverage area of a procedure is determined both by the efficiency degree of the internal management control system within the public entity, as well as by the stage in which the process of computerizing the procedural activity is.

1.1. Types of Procedures

Operational procedure (working procedure) - a procedure that describes a process or activity that is carried out at the level of one or more compartments of an entity, without applicability at the level of the entire public entity.

System procedure (general procedure) - describes a process or activity that is carried out at the level of the public entity applicable / applicable to most or all compartments, in a public entity.

1.2. Analysis of the Implementation Status of the Legislation

A number of difficulties were encountered in the process of elaborating system and operational procedures at the level of the analyzed public entities, such as:

- the absence of an internal procedural framework regarding the elaboration, approval, verification and approval of the procedures, which also includes the way of codifying them;
- the procedures are not updated, when appropriate, as a result of the organizational and legislative changes that have taken place in the course of the procedural activity;
- incomplete and out-of-date records of the procedures documented at the level of the Monitoring Commission (structure comprising the heads of departments within the specialized apparatus of the mayor, respectively of the county council).
- the existence of confusion regarding the identification of the scope of the elaborated procedures;
- the job descriptions do not include the tasks related to the elaboration and updating of the documented procedures, which leads to the lack of awareness of the personnel regarding the transposition of the activities carried out in a formalized framework;
- the lack of a unitary codification of the procedures (on the two types of system and operational) at the level of the whole public entity.

2. International Good Practice

Within public entities, Internal Control has a considerable impact on the credibility of a government and its operations. Below are some milestones:

Year	Events
1992	In the United States, the Integrated Internal Control Framework was published by COSO; In the beginning, this framework referred only to private companies, currently being applied on a large scale, worldwide, in both the public and private sectors.
1996	The European Parliament has initiated the formation of a commission of independent experts to analyze how this body detects and treats fraud, practices in awarding financial contracts, mismanagement and the practice of nepotism.
1999	The Prodi Commission of the European Parliament introduces a number of reforms in the field of internal control.
2000	The White Paper on managerial reforms is published within the services of the European Commission; With the entry into the European Union of the new member countries and the allocation of funds to them, it was desired to respect the principles established by the White Paper and to put in place a unitary internal control framework, in all public entities, in order to analyze the way in which these funds are administered.
2001	Updating INTOSAI guidelines for internal control standards in the public sector; The Congress of the International Organization of Supreme Audit Institutions (INCOSAI) decided to introduce in the document all the evolution aspects in the field of internal control and to include a series of components of the COSO - Integrated Internal Control Framework.
2001	The European Commission has introduced 24 control standards, supplemented by a set of basic requirements, which define the practical actions that should be the basis of the internal control system.
2007	The European Commission has revised its internal control framework, reducing the number of standards to 16.
2013	The 2013 COSO framework introduced 17 principles that are necessary for the effectiveness of internal control.
2017	The European Commission updates its Internal Control Framework in order to align it with the Integrated Internal Control Framework - COSO 2013.

The use of common guidelines for the development of internal control standards allows nations to understand in a unitary manner the internal management control system.

"INTOSAI guidelines for internal control standards in the public sector", are part of the INTOSAI GOV category - Guide to good governance and are considered extremely useful both to managers in public entities who need to implement the internal control system and auditors external audiences, who need to know this system and evaluate it.

3. COSO Model

Figure 1. COSO Cube (2013 Edition)

The COSO model is a comprehensive framework for internal control (IC), developed by the Sponsorship Organizations Committee of the Treadway Commission.

The goals are grouped into the following categories of objectives:

• Operational - Effectiveness and efficiency of operations;

• Reporting - Reliability of reporting (financial and non-financial) for internal and external use;

• Compliance - Compliance with applicable laws and regulations.

Internal control consists of five interrelated components:

- The control environment is the foundation for an IC system. It provides the discipline and structure that affects the overall quality of IC.

- Risk assessment involves a dynamic and iterative process for identifying and assessing risks to the achievement of objectives. Risks to the achievement of these objectives from across the public organization are considered relative to established risk tolerances. Thus, risk assessment forms the basis for determining how risks will be managed. The precondition for risk assessment is the establishment of objectives, linked at different levels of the public organization. Management should specify objectives with sufficient clarity to be able to identify and analyze risks to those objectives. Management should also consider the suitability of the objectives for the public organization. Risk assessment also requires management to consider the impact of possible changes in the external environment and within its own mission and responsibilities that may render IC ineffective.

- Control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the IC system, which includes the public organization's information system.

- Effective information and communication are vital for a public organization to achieve its objectives. The management of a public organization uses quality information to support the IC system. The management needs access to relevant and reliable communication related to internal as well as external events.

- Monitoring activities is essential to ensure that IC remains aligned with changing objectives, environment, laws, resources, and risks. IC monitoring assesses the quality of performance over time and promptly solves the findings of audits and other reviews. Corrective actions are a necessary complement to control activities in order to achieve objectives.

Conclusions

The procedures represent useful tools, both for the heads of public entities and for the personnel responsible for their application; the main purpose of the procedures is to streamline the activities of the compartment and the public entity. The procedures must be clear, simple, specific for each significant activity or major repetitive process; the procedures must be updated whenever appropriate, informing all the personnel involved and understood by the latter. The procedures must be elaborated even if there are normative acts that regulate the activities or processes in the field; they complete the process as a whole with managers, deadlines, connections between activities and their sequentiality. The procedures must support the personnel of the public entity, by means of clarifications that are not specified in the normative acts and not only to be a reproduction of them. The procedures must implement the standards contained in the components of internal management control, respectively the control environment, performance and risk management, control activities, information and communication, evaluation and audit. The documented procedures must exist for all the important processes and activities and ensure a correct separation of the functions of initiating, verifying, approving and approving the operations. The procedures should be constantly updated and made known to the personnel involved. Each public entity specializes its system of processing activities according to the size and specificity of the entity, the types and complexity of the activities, according to its own system procedure, based on (mandatorily) the minimum structure provided in the Order of the Secretary General of the Government no. 600 / 2018, including in compliance with the provisions of Standard 9 - Procedures. For the proper conduct of the activities, each public entity adapts its separation of responsibilities and responsibilities to its size, by implementing additional control actions.

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Strategic Management Solutions - Accessing the Start-Up Financing

Manuela Panaitescu[1]

Abstract: In Romania, the focus is on environmental issues related to the threat of infringement proceedings for environmental deficiencies. As a result, companies are looking for specialists prepared to deal with environmental issues or want to improve their own staff. It is also necessary to increase the awareness of the population for the selective collection of waste. In order to set up a firm in this area, managers can adapt the solution to develop a business plan to obtain start-up financing, respecting the Financier's Guide. The newly established company addresses the segment of the market that includes companies with productive activities and which, by nature of the activity, also generates waste. Also, courses can be organized for the general public to get acquainted with the correct way of collecting waste. The research method consisted of applying an age group questionnaire to determine the interest in the type of services offered. On the basis of this survey, it is timely to request a service to contribute to the training of the specialized personnel responsible for environmental protection and environmental monitoring. The service is aimed especially at people who want to know how to manage environmental issues in a company. The service also addresses people who want to develop their environmental protection skills to get new job opportunities. Courses can also be addressed to the general public to familiarize themselves with the correct way of collecting waste.

Keywords: selective collection of waste; start-up financing; environmental deficiencies; environmental issues

Obtaining funding through the Start-up Nation Program, a government program to encourage and stimulate the establishment and development of small and medium-sized enterprises, is an important managerial tool to be used by young managers and beyond. Through the procedure of implementation of the program, the minimis aid scheme is established. The granting of the minimis aid within the Program will be done only in compliance with the criteria regarding the minimis aid provided by the Regulations of the European Union. The main objective of this scheme is to stimulate the establishment and development of small and medium-sized enterprises and to improve their economic performance, with priority in the less economically developed geographical areas, in which the density of SMEs is reduced compared to the European average, the creation of new jobs, the insertion on the labor market of disadvantaged persons, unemployed and graduates.

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Eligibility Criteria for Potential Beneficiaries of the Program

- the company established by natural persons who do not have or have not been the shareholder or associate in another small or medium-sized enterprise that carries out or has performed the same authorized activity for which it applies within the program in the year prior to the registration or in the year of registration until at the opening of the registration session;
- the company must have its registered office / business headquarters, carry out authorized activity on the territory of Romania (authorized CANE code), up to 249 employees and achieve a net annual turnover of up to 50 million euros;
- the company must not have debts to the general consolidated budget and to the local budgets;
- the company must create at least one full-time job for an indefinite period and keep the job occupied for at least 2 years after the completion of the project implementation.

Types of Financial Aid

The Program finances the implementation of the Business Plans, in descending order of the obtained scores, with the following condition:

- The Non-refundable Financial Allowance can be of maximum 200,000 lei / beneficiary, amount that can represent 100% of the value of the eligible expenses (including VAT for the non-paying companies) related to the project.

The purpose of the financing must be in one or more of the eligible categories:

- the equipment category includes equipment for playgrounds and gyms, fitness, x-body and force, drones;
- workspaces, production spaces, service and trade spaces are purchased within the program and the evaluation will be based on the expertise of an expert evaluator ANEVAR;
- the software required to carry out the activity for which financing is requested including licenses have an eligible value of maximum 60,000 lei;
- the cars to be purchased must be justified in the business plan and an eligible value of maximum 36000 lei (VAT included) and maximum 1 car / beneficiary.
- salaries, utilities, accounting services and expenses related to rents for workspaces are eligible. The amount of these expenses represents a lump sum of up to 30% of the value of the eligible expenses mentioned in the business plan;
- purchased assets, fixed assets or inventory items, must be new.

Case Study

Start-up Financing Strategy

General Information

For setting up a company in the field of environmental protection, the managers can adopt the solution of elaborating a business plan in order to obtain a start-up financing, in compliance with the Financing Guide. The newly established company addresses the market segment that includes companies with productive activities and which by nature of the activity generates implicit waste. Also, courses for the

general public can be organized, in order to become familiar with the correct way of collecting the waste of different types and at the same time with the ways of preventing the accidental pollution.

Vision, Mission

The newly established company will become representative in the niche segment for professional training in the field of environmental protection. The strategy that will be adopted will aim at promoting the activity among the companies that might be interested in training in the field of environmental protection and at the same time among the population from the individual households.

Management, Human Resources

The manager of the newly established company must have specialized knowledge in the field of environmental protection and at the same time minimal knowledge of business management. The human resources that can be attracted to the company are not very numerous, the activity can be carried out with a minimum number of employees until it becomes profitable.

Presentation of the Project

The project aims at obtaining financing in order to arrange and equip a space that will be used to organize training courses. As a result of the business plan:

- making the appropriate course supporting documents;
- promotion tools: database for potential clients / trainees, promotional leaflets, website;
- carrying out a minimum of 4 training sessions for a minimum number of 10 persons / session.

Activities required to implement the business plan:

- setting up the company;
- the empowerment of the company for the activity of personal trainer;
- providing an adequate space for offices and the conference / training room or, as the case may be, only the space for offices will be provided, following that for each training session, space is rented in other locations or at the client's premises;
- the arrangement of the space;
- the purchase of furniture, a sufficient number of computers and the corresponding license for their operation, a projector, a multifunctional print;
- staff recruitment and training;
- creating a website;
- carrying out actions to promote services such as (non-exhaustive): participation in various meetings of business groups, meetings organized by authorities, meetings of the Chamber of Commerce.

In order to achieve the business, the following acquisitions will be made:

- four laptops with a license - worth at least 2500 lei each,
- a multifunctional printer with printing, scanning, fax functions;
- video projector - 1500 lei;
- adequate furniture (offices, cabinets, tables and chairs for the classroom).
- a web domain for the site;

- a professional website creation service.

Market Analysis

The segment of vocational training companies is quite small, beomg observed the lack of companies organizing specialized courses in the field of environmental protection, which represents an advantage for the company.

Marketing Strategy

The service will be presented as a package of courses offered to the interested companies. For companies, but also for interested individuals, subscriptions will be offered on the web page, where they will also receive new or updated information regarding the courses made available, ensuring the continous training as well as consultancy services regarding the legislative news. Also, courses for the general public will be offered.

The prices are established according to the level of required training. For those interested in a continuous training program, monthly subscriptions and access to the database of courses and news are offered. For the loyal clients discounts will be offered for participating in courses of their interest. Also, if the course is held at the client's premises, a discount can be offered for a larger number of participants. Prices will be at an intermediate level, compared to the maximum and minimum prices of the competition on the market.

Potential customers are first and foremost among companies with productive, storage, medical, etc., waste generating activities.

The sale of the service will be achieved by punctual offer of the courses to the companies and the natural persons interested. Subscriptions will also be provided for companies wishing to carry out a continuous training program for employees, both specialists and non-specialists.

The promotion of services will be done through the web page, but also through the social networks.

Also, for promotion, participation in different business meetings, business seminars will be ensured.

Financial Projections

It is estimated that the grant requested for the implementation of this project will be of approximately 150,000 lei.

After calculating the projected revenues and expenses for the first two years of activity of the company (the period of implementation of the project), it is estimated that the company becomes profitable.

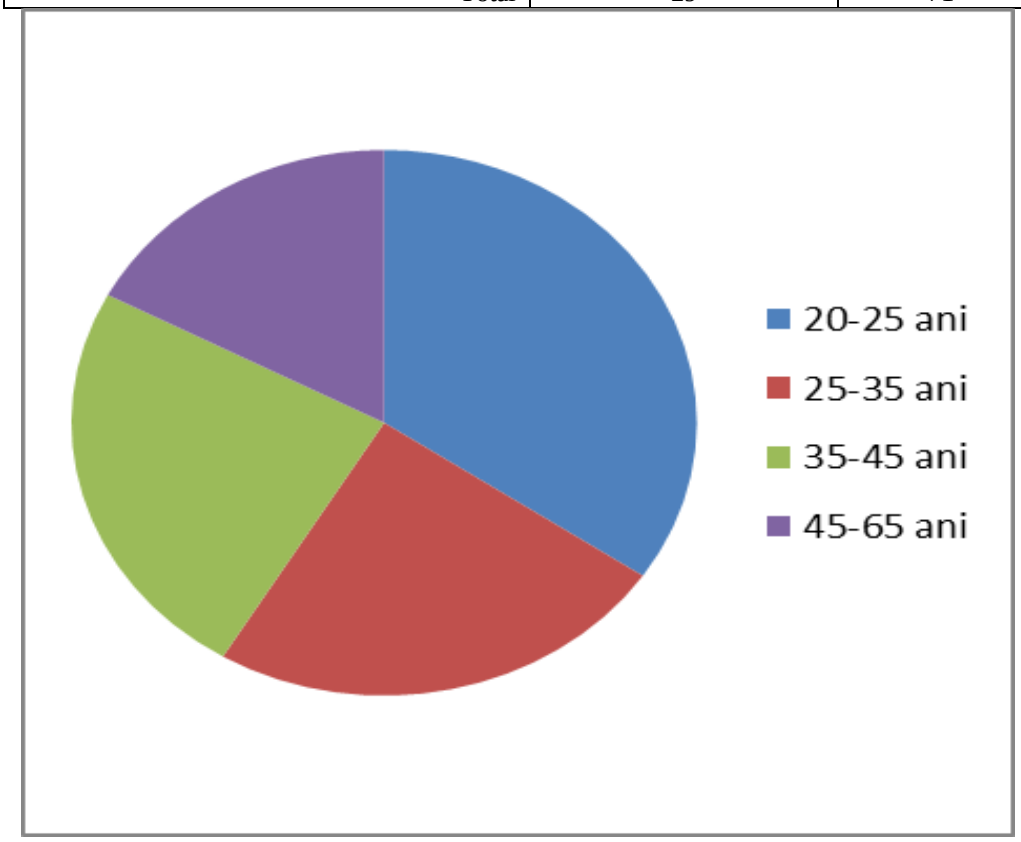
Justifying the Need to Finance the Project

In Romania it is the moment when great emphasis is placed on the problems related to environmental protection, in connection with the threat of infringement procedure for deficiencies related to environmental protection. As a result, companies are looking for specialists who are prepared to deal with environmental issues or want to improve their own staff. It is also necessary to increase the awareness of the population for the selective collection of waste.

The research method consisted of applying a questionnaire on age groups, in order to establish the interest for the type of offered services (table 1).

Table 1. Centralization of questionnaires

Number of persons	Age group/years old	Not interested	Interested
25	20-25	10	15
25	25-35	7	18
25	35-45	7	18
25	45-65	5	20
	Total	29	71



*Ani – years old

Chart 1. Distribution of the sample questioned by age groups

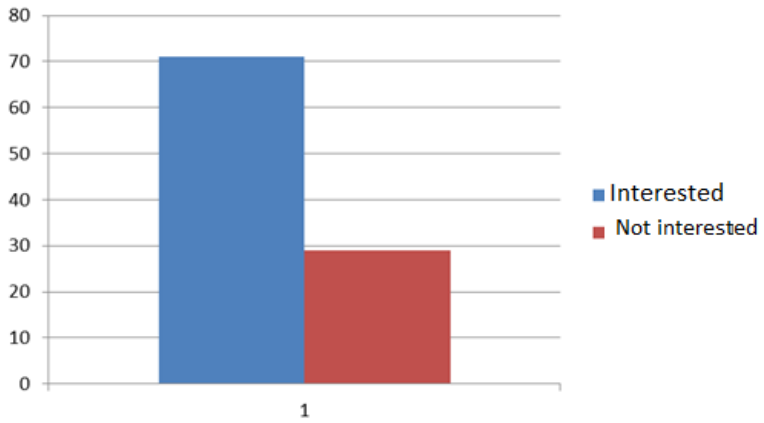


Chart 2. Distribution of the answers to the questionnaire

Conclusions

Based on the conducted survey, it is considered appropriate to create a service that will contribute to the training of specialized personnel responsible for environmental protection and environmental monitoring. The service offered mainly concerns people who want to know how to manage environmental problems in a company. The service is also addressed to people who want to develop their skills in the field of environmental protection in order to have new employment opportunities. The courses can also be addressed to the general public, in order to become familiar with the correct way of collecting waste.

The advantages of setting up the company are: developing the online or subscription based training system; organizing courses both at the headquarters and third parties; carrying out environmental audit missions to beneficiaries.

The positive influence of Start-up financing for the management of the company is also appreciated by the opportunities and benefits offered by a business that proposes innovative solutions in areas such as distance learning, environmental protection and waste reduction.

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Dilemmas of the Intermediate Level of the Administration

Valentina Cornea[1]

Abstract: The administration and the authority of the intermediate level are organized very different. The invoked reasons for creating this level are varied: for a better democracy, efficiency, effective, decentralization etc. But there are points of view which associate, especially the third intermediate level with bureaucracy amplification, corruption increasing, a bad management of the new structures created, the overlapping of the responsibilities in some technical, legislative or financial fields. The study systematized these points of view, as well as the initiated changes by the European Union on the organizational and structural aspects of the intermediate level.

Keywords: intermediate level; democracy; efficiency; effective; decentralization; management; responsibilities

1. Introduction

Without claiming to present exhaustively, several reasons make the administrative levels issue so susceptible of an obvious academic interest:

1. The administrative levels are determined by phenomena "it can be hardly stopped (globalization)", their functional organizations proved the essential economic and cultural integration in the international circuit.

2. There is a need for effective relay between local and global, avoiding downtime generated by the central bureaucracy (Groza, 2002, p. 338).

3. A backdrop of *political* and *emotional*, which feeds the idea of reform, rebalance of territorial systems;

4. Today, contrary to any constitutional rule which requires a permanent power, the administration is a force (Tofan, 2008, p. 128), (Alexandru, 2005)

2. What is Meant by Spatial Level of Decision and Administrative Action?

With the exception of the smallest states, consisting of a single human settlement, whose area does not exceed several square kilometers (Vatican, Monaco) each state has several human settlements which are the focus of polarization for surrounding rural areas. Thus the convergence centers of flows appear corresponding to the human settlements and areas of divergence (peripheral) which correspond to the areas of discontinuity. They make the state territory more or less homogenous in terms of natural and

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human resources to be crossed by all sorts of borders separating different departments within it. Thus a functional organization of the territory appears corresponding to the functional homogeneity of the social space (Bourdieu, 1989, p. 19) which has a dynamic, transient feature caused by human settlements development.

On the other hand, the state performs its authority over its entire territory manifested by three general aspects:

- *Plenitude* which means that the state performs the full power within its limits through its central and territorial bodies;

- *Exclusivity* which means that the state exercises freely its full authority on its territory. The intervention or interference of another state is excluded;

- *Opposability* against any other state resulting from the legitimacy and international recognition of a state in a given territory.

According to the contemporary doctrine the state power over the territory is a manifestation of the people right from the concerned territory i.e. an expression of the concerned people sovereignty. In such a way, the territory receives a political value, independently from economic or military value.

The need of exerting power throughout the state requires a political and administrative organization, so that within the state not to be privileged areas with extra-constitutional powers. This occurs also because it is impossible for the state central bodies to accomplish directly and promptly the tasks of satisfying all the population needs. Therefore it is necessary to create within the state territory a number of territorial-administrative units, having its own bodies, in order to exercise the public administration at the concerned communities and to ensure the smooth running of public life. Thus, the area structure is a result of two process categories:

- *Voluntary Processes,* resulting from the impact of politico-administrative decisions;
- *Processes of modest self-organization,* resulting from a permanent tendency to rebalance territorial systems against failures caused by exogenous factors.

These two categories of processes maintain the territory as Prof. Octavian Groza graphically expressed in a "territorial active tectonics" (Groza, 2002, p. 338)

Through the manifestation of the state will, according to the policy pursued in this domain, the territory is divided into administrative-territorial units and the power is spread at certain levels. Thus, the administrative-territorial unit becomes the spatial dimension of public administration and the human community from this administrative-territorial unit forms its social basis.

The term *administrative - territorial unit* means that part of the territory which has its own administration, its administrative bodies that are distinct from those of the state. The number and the types of administrative units will depend on the territorial size of the state, the form of organization, promoted state policy in this domain, on the existing traditions of the state regarding the territory organization and other factors.

Shaping on a certain number of administrative levels determines the classification of like so many types of settlements with administrative function. Generally, the types of administrative territorial units induced by politico-administrative function over geographical space are organized according to an initial level of spatial delimitation of the territory, also called primary, basic or local level and administrative-territorial units which are set at the levels ranging between basic administrative units and state. In

practice, they are more complex, depending on the political system of each country. G. Smith (Săgeată, 2004, p. 13): distinguishes seven territorial levels of administrative organization:

1. Central Government (authority);
2. Federal State Government (authority, in federal states);
3. Regional Government (Administration, in unitary states);
4. Senior Local Government (the authority, departmental)
5. Inter-regional Government Administration;
6. Lower Local Authority (municipal or communal);
7. Units under communal (parochial councils).

The intermediate administrative-territorial units, as well as the primary ones have different names in different countries, such as *comitats, departments, provinces, regions, principalities, counties, rayons, districts.* Depending on the size of the state, there are administrative-territorial systems with a single level (Cyprus, Estonia, Lithuania, Latvia, Luxembourg, Malta, Slovenia but also Bulgaria and Finland), Belgium being a notable exception to this rule. However, two-tier system prevails in the EU-27, being inclusively in some smaller countries which adopted this model: Czech Republic, Denmark, Ireland, the Netherlands, Slovakia. For larger countries it is typical the administrative-territorial model with three levels (including federal or regional), for exampl: France, Germany, Italy, Poland, Spain, United Kingdom (Osoian, 2010, p. 5).

In conclusion, the concept of administrative level is used as a expression of wielding local power in an administrative system. This concept includes the size (geographically), the types of organizational structures, the functions and its competences.

3. The Dilemma no. 1: The Optimal Number of Administrative Levels: More or less?

The discussions related to this dilemma should begin from a simple question, namely: what are the reasons for which states divide their territory into administrative levels? There are different answers to this question: for more democracy, efficiency, effectiveness, decentralization etc. But most of the reasons do not refer specifically to the intermediate level, as well as to the benefits that local authorities may have. Mostly, three reasons are emphasized:

- The intermediate level appears as a response to the request of the regional community, which requires a certain degree of autonomy towards the central government; the intermediate level can be created to counterbalance the central level;
- The need to establish an axis of unity among the central and local levels. This means that the intermediate level belongs to a scalar chain, where it acts as a tool of central administration control over local ones.
- The need to strengthen the production and market development and to appoint a coordinator and scheduler. The local community often is too small to provide various services, such as: hospital services.

Based on these considerations, the intermediate administration can be in different organizational forms: a) "Hands" of central government (when the ministries and agencies have their own intermediate administration which controls and completes activity done by local services; administrative tasks of various ministries are done by the services directed by a prefect appointed by the government; two or three ministries cooperate within an intermediary service that does not need the prefect control (for countries without prefectural system)); b) Administrative structures created by local communities

cooperation (municipal associations); c) directly elected bodies (the Assembly, the Executive with a certain degree of autonomy).

In the previous section we talked about the seven levels of territorial administrative organization. No state has all these levels of government instead it combines few of them. The most commonly used, in administrative practice, are *departmental* systems (characterized by three levels of administration: national, intermediate and local) and *regional* ones (with four administrative levels - two intermediate: departmental and regional). The *communal* system with a single lower level the basic one, is rarely used, being mainly specific to the small erritorial states (Săgeată, 2004, p. 13).

4. The dilemma no. 2: How is "built" an administrative level: the criteria problem

Three notions are essential to answer the above question: principles, criteria, tools.

Principles

They are disdainful called proverbs by H. Simon because for almost every situation which has reached the rang of principles can be formulate opposed rules (Simon, 1946, p. 53), the principles value must not be ignored in the space organization domain. The exercise of territory administration must be based on the following principles regardless of the spatial dimension of the administrative level:

- principle of coherence in the issues of territory administration – derives from the mode of unitary application of law in terms of territory;
- principle of territorial optimum – derives from ecological and economic laws, which decides and estimates the surfaces and the most suitable demographic quantity for exercising the administrative right;
- democratic principle (of the belonging willful) of the division and administration document of the territory, actors belonging to an territorial administrative entity are conscious creators of their own „territorial cells" (in many cases this principle is speculated by political leaders to build new power structures in the territory);
- principle of most suitable decisions – to the same administrative units shall be adopt different solutions depending on the nature, the dimension and the character, the implementation opportunity of issues and so on;
- principle of administrative document efficiency – it involves removing actors and embarrassing links in the issues of territory administration. This principle is based on a good knowledge of territorial reality, in all aspects, and on a good knowledge of the territory administration document;
- principle of economic document efficiency and maximizing through the territory administration system – any administrative division should extend to individual and collective well-being.

Criteria

The experience gained in global plan demonstrates the opportunity of using complex set criteria. This „complex set" consists of formulated criteria from sciences in the research area which is found the spatial frame delimitation of state in territorial – administrative units, administrative, legal, economic, social sciences.

The administration science formulates the following criteria (Sîmboteanu, 2001, pg. 78-79):

- *economic criterion* provides the analysis of territorial- administrative units possibilities to ensure the economic development of the territory through: rational location of the productive forces and the efficient use of natural resources and human; creation of taxable base which aims is to ensure the revenue side of territorial - administrative units public budgets; the development assurance in complex of the territory including social infrastructure which corresponds to decentralization trends; creating favorable conditions for economic cooperation with other territorial-administrative units in the country and abroad based on partnership and mutually beneficial relationship;

- *demographic criterion* is based on the analysis of the indicators on the number of people living in territorial-administrative unit, its density on one square kilometer, the social structure of the population by age, occupation and other indicators, forecasting on the dynamics of growth or decrease of population, migration processes;

- *geographical criterion* involves an emplacement in the same territorial-administrative unit of the compact communities deployed in the neighboring areas and the existence of communications ways between localities which are part of the territorial-administrative unit respectively;

- *historical criterion* provides the respect for traditions and ensuring the continuity in the territorial-administrative organization based on objective factors of historical belonging of the community given to a specific territorial-administrative unit;

- *ethnic criterion* involves the emplacement opportunity and utility in the same territorial-administrative unit of the compact placed community where the population of the same ethnicity live.

Beside these criteria, in the administrative organization of the territory can be used other criteria, such as: the consideration of public opinion; the combination of national and local interests; using the experience of other countries and so on.

The Sociology emphasizes rural-urban dichotomy. However, in view of some sociologists, it is an insufficiently analytical instrument to encompass territorial-local collectivities types. The German sociologists use socio-economic criteria, the structure of territorial-local collectivities is determined with help of economic sectors weight (Mihăilescu, 2003, p. 276). Based on structural triangle were established four main types of territorial communities:

1. Predominantly agricultural communities (the primary sector holds over 50%);
2. Predominantly industrial communities (the secondary sector holds over 50%);
3. Predominantly service communities (the tertiary sector holds over 50%);
4. Mixed communities (no sector exceeds 50%).

Each of these four types comprises four subtypes, resulting in 16 types theoretically possible. Since not all are found in the reality, typology diagram has been reduced to 8 main types:

1. Agriculture communities (the primary sector holds over 50%);

2. Rural communities (the secondary sector holds over 25-50%);

3. Urbanized communities (the primary sector has 10-25%)

a) industrialized communities (the tertiary sector hold less than 30%)

b) balanced communities (the tertiary sector holds 30-50%)

c) poorly industrialized communities (the tertiary sector holds more than 50%)

4. Urban communities (the primary sector holds less than 10%)

a) industrial communities (the tertiary sector holds less than 30%)

b) centralized industrial communities (the tertiary sector holds 30-50%)

c) metropolitans communities (the tertiary sector holds over 50%).

The focus is on the economy sectors. If a territorial-local collectivity has sufficient conditions to develop activities in the profitable sectors and to aquires revenue to maintenace administrative apparatus, it can be recognized as a moral person of public law, without a certain number of persons.

Probabilistic model of spatial interaction, formulated by researchers in geography, can be included in the category of socio-economic criteria. The model allows the consideration directly of the masses placed in interaction, of a distance that separates these masses and indirect of the masses relative position within the considered spatial system (Groza, 2002, p. 348).

Tools

Along with principles and criteria in dividing the territory is used and some technical tools. One such tool is the *Nomenclature of Territorial Units for Statistics*. Developed by the European Statistical Office (Eurostat), this tool is used in Community legislation characteristic of structural funds since 1988 (NUTS classification).

The NUTS system separates the territorial units in 5 interdependent categories(the I category is the upper) for creating a coherent and single structure of territorial distribution:

- Level I - the whole territory of a member state ;

- Level II - the territorial unit smaller than the state (exceptions: Denmark, Luxembourg, Ireland, Latvia and so on) where the Level II coincide with Level I;

- Level III - regions with their own territorial organization.

The other two levels aimed at local units LAU I and LAU II. LAU I is defined for many, but not all the member countries. Since 2017, only one level of LAU has been kept (NUTS classification).

For the implementation of EU regional development policy the existence of these territorial - statistic levels is required, but it is not mandatory that these areas to be territorial - administrative units. The NUTS acceptance is a condition of pre-accession, although European Commission does not openly insist on this fact. The NUTS instrument can be seen as a formal instrument for transposition of the EU's rules, norms and institutional templates (Hughes, J., Sasse, G., Gordon, Claire, 2005). The integration experience founds only that is more optional and efficient the bringing of territorial-administrative structures in accordance with measurement system of the NUTS system.

However, most Member States have realized an overlap of the two criteria (population and administration organization), thus ensuring a better efficiency in implementation of development programs. The effects of this standardization lies:

- consolidation of administrative or political-administrative regions, with their own regional identity,with an own regional identity, given by the historical bases and by the unit of cultural, ethnic, linguistic, economic factors (länders and kreize from German, regions and departments in France, regions and provinces in Italy and Belgium, autonomous communities in Spain etc);

- the creation of the regions of territorial-statistic reporting, artificial buildings, without regional personality, administrative function or historical antecedents, obtained by aggregation of lower territorial-administrative units, (ZEAT in France, regieungsbezirk in Germany, landsdelen in the Netherlands, the standard regions and groups of counties in the UK, amter groups in Denmark, the group development regions in Greece, groups of autonomous communities in Spain or groups with settlement finality in Portugal) (Săgeată, 2004, pg. 16-22)

Note that the functionality is the basic criterion regarding the individualization of the European regions, whether is about political-administrative regions with historical and cultural personality or territorial statistical regions arising from the economic considerations. As Professor O. Groza states that above all it must be considered the real and not symbolic effectiveness of administrative division even if the political and emotional context imposes certain "acts of diplomacy" (Groza, 2002, p. 348) caused especially by sensitivities of ethnic criterion.

5. Conclusion

Identification of the optimal structure of administrative-territorial organization represents for each state an important reason for increasing the efficiency of public administration. Dilemmas on establishing levels of administration can be overcome by an analysis of the three categories of factors: resources, administrative capacity of territory, scientific resources (in relation to the concrete situation of a given territory), the political will of decision makers.

The studies in this field show that extreme centralization is not the way by which it can ensure the stability of territory affected by a "active territorial tectonics." Territorial constructions manifest naturally strong space inertia, able to withstand the most rigorous strategy of voluntary territory shaping." (Groza, 2002, p. 337) For these reasons, researches on the "status quo" of a territory should prevail to the momentary political ambitions.

States are free and have the right to consolidate its political-administrative decisions on division of territory in administrative levels on certain principles, criteria and specific tools. It should be avoided such situations when a principle, a criterion or an instrument prevails. It is necessary to note that no absence or presence of an administrative level creates obstacles to the realization of development projects and programs, but rather the quality and legitimacy of the institution within an administrative system.

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THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

Irregularities Detected in Programmes with Non-Reimbursable Funding in period 2007-2013

Aurelian Constantin[1]

Abstract: Romania's accession to the European Union has opened new horizons for our country from the perspective of recovering the economic gaps that exist between us and the Member States. The 12 years have meant a lot of work, representing an effort made by both the governors and the direct beneficiaries. The absorption capacity of the European funds has gradually increased from one year to the next between 2007 and 2015. Thus, for example, in terms of the total amounts received from the EU budget the differences from one year to another are significant: 417.02 million euro in 2007; 641.92 million euro in 2008; 909.12 million euro in 2009, 505.73 million euro in 2010, reaching 2884.47 million euro in 2013, 3536.81 million euro in 2014, 2591.36 million euro in 2015 and 3663.96 million euro in 2016[2]. The question that arises is whether or not this money has contributed decisively to diminishing the gaps between Romania and the countries of the western European Union. The irregularities detected by the Managing Authorities and the Audit Authority in the procurement procedures carried out within the projects financed by these funds only confirm that this money has not always been directed where it is needed.

Keywords: European founds; irregularities; European Union; European absorption

JEL Classification: M42; R11; M48

1. Introduction

Romania's accession to the European Union has opened new horizons for our country from the perspective of recovering the economic gaps that exist between us and the Member States. The 12 years have meant a lot of work, representing an effort made by both the governors and the direct beneficiaries. The absorption capacity of the European funds has gradually increased from one year to the next between 2007 and 2015. Thus, for example, in terms of the total amounts received from the EU budget the differences from one year to the next are significant: 417.02 million euro in 2007; 641.92 million euro in 2008; 909.12 million euro in 2009, 505.73 million euro in 2010, reaching 2884.47 million euro in 2013, 3536.81 million euro in 2014, 2591.36 million euro in 2015 and 3663.96 million euro in 2016. The question that remains is whether or not this money has contributed decisively to reducing the gaps between Romania and the countries of the Western European Union. The irregularities detected by the Managing Authorities and the Audit Authority in the procurement procedures carried out within the projects financed by these funds only confirm that this money has not always been directed where it is needed.

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[2] https://cohesiondata.ec.europa.eu/2007-2013/SF-2007-2013-Funds-Absoption-Rate/kk86-ceun/data.

2. Theoretical Background

The paper is based on the statistical data communicated by the European Commission regarding the degree of absorption of the European funds and on the data communicated by the Managing Authority in charge with the management of the Sectoral Operational Program 2007-2013 regarding the detected irregularities.

Also, an important source of documentation was the Audit Report of the performance of the use of funds allocated from the state budget for the development of programs or projects financed by means of external funds for the intermediate period 2007-2013, of the Court of Accounts, as well as the annual reports of the Audit Authority within the Court of Accounts.

3. Methodology

In order to carry out the research, we used a deductive and inductive methodology, in order to identify opinions, criticisms and opportunities. In the first part we presented the research carried out so far in relation to the degree of absorption in Romania and in relation to the irregularities identified in the projects with non-reimbursable financing. In the second part we presented the main statistical data regarding the Operational Sectoral Program SOP Environment 2007-2013 and the irregularities identified by the managing authorities and by the Court of Accounts by means of the Audit Authority.

4. Findings

A. Previous Research

The absorption rate of structural and cohesion funds allocated to Romania in 2007-2013 stood at a low level compared both to authorities and people's expectations and the other EU Member States because of deficiencies within the funds management and accessing system but suffering also the impact from the outside factors (Zaman and Georgescu, 2014).

An important part of structural funds cannot be effectively utilized by the beneficiary countries in order to reduce disparities and achieve convergence are: an important part of structural funds is allocated, in fact, to the rich countries of the EU; concentration of funds for economic growth under the impact generated by internal taxation of various countries; failures of government policies that lead to improper spending of funds and unjustified personal or group earnings. (Zaman and Georgescu, 2009).

There is a direct relationship between financial corrections for European funds projects on the one hand, and irregularities and fraud which were discovered in this area, in Romania and reported by the European Parliament, on the other hand (Podoabă and Beatrice Oprean)

B. Case study. Irregularities identified in the procurement procedures carried out in SOP Environment 2007-2013

SOP Environment was approved by the European Commission on July 12, together with the Regional Operational Programme and the Sectoral Operational Programmes: Transport, Increase of Economic Competitiveness and Technical Assistance. From the moment of approval by the European Commission, the operations within the sectoral programmes become financeable.

SOP Environment had a budget of about 5.6 billion euro, of which about 4.5 billion euro represented non-reimbursable financing from the European Union by means of the European Regional Development

Fund (ERDF) and the Cohesion Fund (CF), and the difference represented the national co-financing (approx. 1 billion Euro).

The general objective of SOP ENV was the improvement of the living standards of the population and of the environmental standards, aiming mainly at respecting the community environmental acquis and aims to reduce the difference between the environmental infrastructure that exists between Romania and the European Union, both quantitatively as well as qualitatively. The implementation of the programme has resulted in more efficient and better public services related to water supply, sewerage and heating, considering the principle of sustainable development and the "polluter pays" principle.

SOP ENV was based entirely on the objectives and priorities of the European Union's policies on environment and infrastructure and was in accordance with Romania's international obligations and its specific national interests.

In order to achieve the objectives of SOP ENV, the funds were planned to be allocated to the environment sector in order to implement the following priority axes:

• Priority Axis 1 - "Extension and modernization of water and wastewater systems";

• Priority Axis 2 - "Development of integrated waste management systems and rehabilitation of historically contaminated sites";

• Priority Axis 3 - "Reduction of pollution and mitigation of climate change by restructuring and renovating urban heating systems towards energy efficiency targets in the identified local environmental hotspots";

• Priority Axis 4 - "Implementation of appropriate management systems for nature protection";

• Priority axis 5 - "Implementation of the appropriate infrastructure for the prevention of natural risks in most vulnerable areas";

• Priority Axis 6 - "Technical assistance".

To begin with, we analysed the value of the budget approved on priority axes:

	SOP ENVIRONMENT 2007-2013	
	Value of approved budget	Of which EU
PA1	3,149,423,956.00 €	2,776,532,160.00 €
PA1A	122,728,555.00 €	100,000,000.00 €
PA2	878,476,962.00 €	734,223,079.00 €
PA3	388,640,131.00 €	229,268,644.00 €
PA4	191,098,548.00 €	171,988,693.00 €
PA5	315,839,375.00 €	270,017,139.00 €
PA6	144,933,804.00 €	130,440,423.00 €
TOTAL	5,191,141,331.00 €	4,412,470,138.00 €

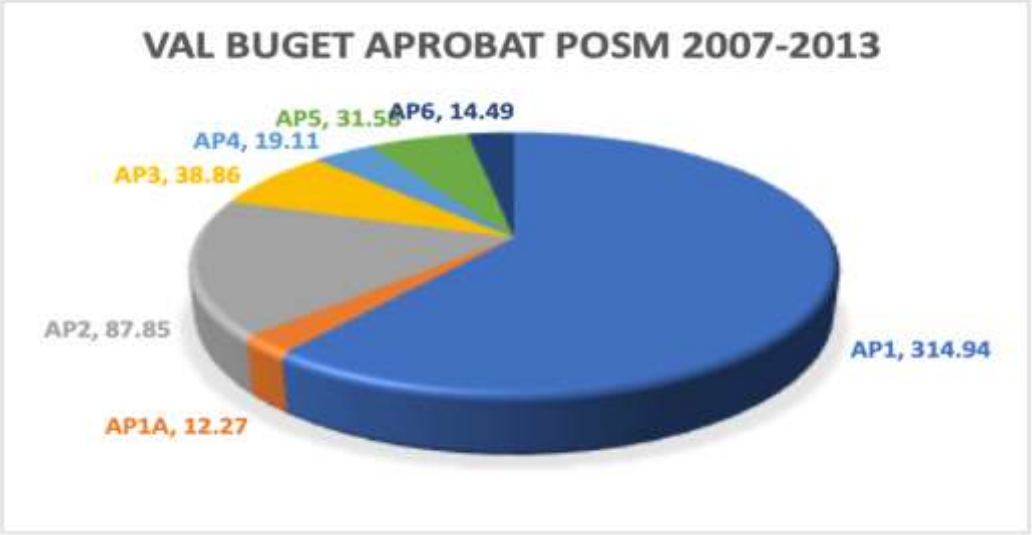

Figure 1.1. Approved Budget for SOP Environment 2007-2013 (Tens of Millions of Euro).
Source: Own Processing

Value of the Approved Budget sop Env 2007-2013

Following the approval of the budget for 2007-2013, the following financing applications were analysed and approved:

	Submitted projects			Approved projects		
	No. of projects	Value	Of whicb EU	No. of projects	Value	Of which EU
AP1	105	3,720,142,606 €	2,358,923,836 €	105	3,720,142,606 €	2,358,923,836 €
AP1A	24	82,184,948 €	54,003,465 €	24	82,184,948 €	54,003,465 €
AP2	42	1,121,961,658 €	689,031,257 €	40	1,070,507,591 €	649,122,650 €
AP3	7	382,900,084 €	153,118,539 €	7	382,900,084 €	153,118,539 €
AP4	395	514,678,996 €	379,137,649 €	223	233,912,223 €	175,236,416 €
AP5	47	512,475,684 €	402,437,846 €	42	459,623,284 €	365,443,339 €
AP6	170	140,375,682 €	113,201,422 €	170	140,375,682 €	113,201,422 €
TOTAL	790	6,474,719,658 €	4,149,854,014 €	611	6,089,646,419 €	3,869,049,668 €

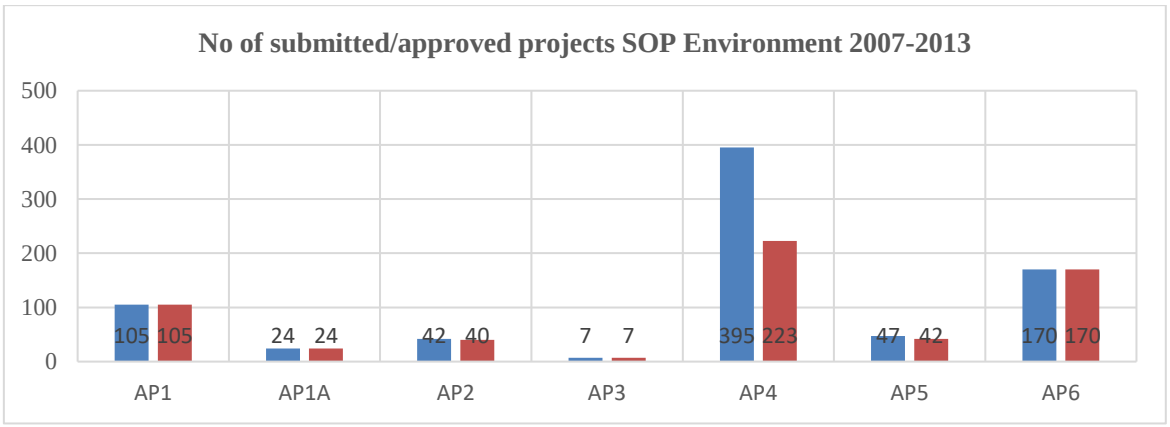

Figure 1.2. Comparison between Submitted Projects and Approved Projects for SOP Environment 2007-2013
Source: Own processing

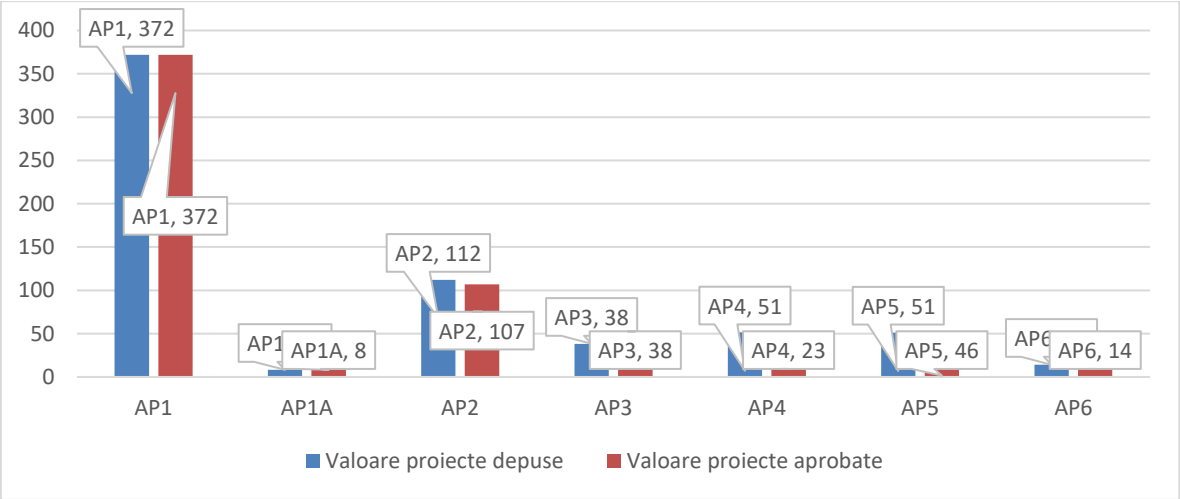

Figure 1.3. Comparison between Submitted Projects and Approved Projects (Values of Tens of Millions of Euro) for SOP Environment 2007-2013

Source: Own processing

Thus, for the SOP Environment a total of 790 projects amounting to 6,474,719,659 Euro were submitted, of which EU reached 4,149,854,015 Euro. In total, 611 projects worth 6,089,646,419.12 Euro were approved, of which EU reached 3,869,049,667.85 Euro.

Regarding the approved expenses, we made a comparative analysis between the expenses reported and approved in the 2 periods:

Programme	Value of declared expenses -lei-	Value of declared expenses-eur-	Value of authorized payments -lei-	Value of authorized payments -eur-
SOPE 2007-2013	20,415,430,883	4,308,143,598.36	16,845,872,803.22	3,554,881,574.07

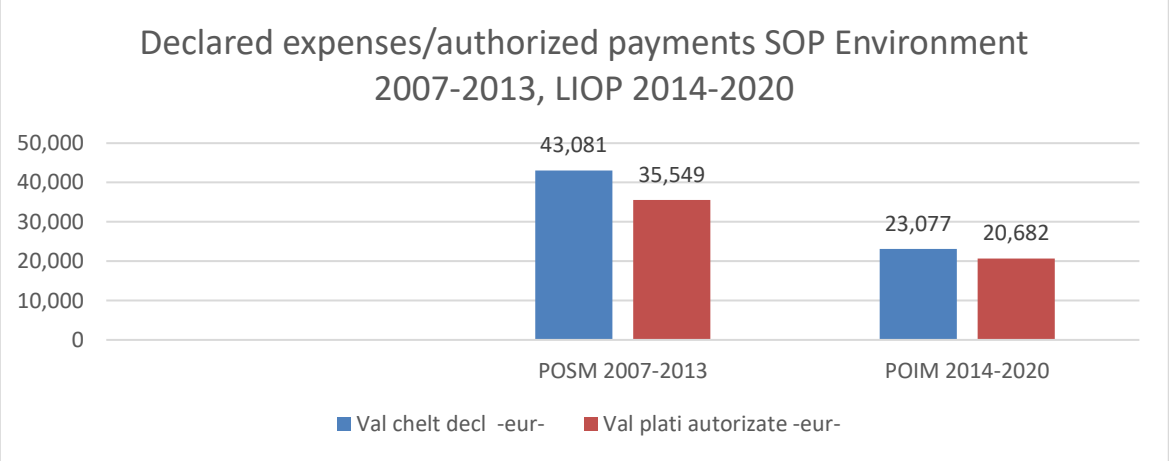

Figure 1.4. Comparison between submitted payment requests and approved payment requests (values of tens of millions of euro) for SOP Environment 2007-2013 and Large Infrastructure Operational Programme (LIOP) 2014-2020

Source: Own processing

We made a synthetic analysis of the irregularities found from the point of view of the priority axis, the type of Beneficiary and the type of error, specifying that we used the euro exchange rate of 4.7388 lei/euro:

Priority Axis	No. of approved projects	Value of approved projects	No. of projects affected by irregularities	% of total	The amount affected by irregularities	% of total
AP1	105	3,720,142,606	65	62 %	157,878,544	4.24 %
AP1A	24	82,184,948	4	17 %	412,963	0.50 %
AP2	40	1,070,507,591	33	83 %	34,423,213	3.22 %
AP3	7	382,900,084	7	100 %	15,240,809	3.98 %
AP4	223	233,912,223	55	25 %	6,705,010	2.87 %
AP5	42	459,623,284	28	67 %	43,766,635	9.52 %
AP6	170	140,375,682	7	4 %	9,798,840	6.98 %
Total	611	6,089,646,419	199	33 %	268,226,014	4.40 %

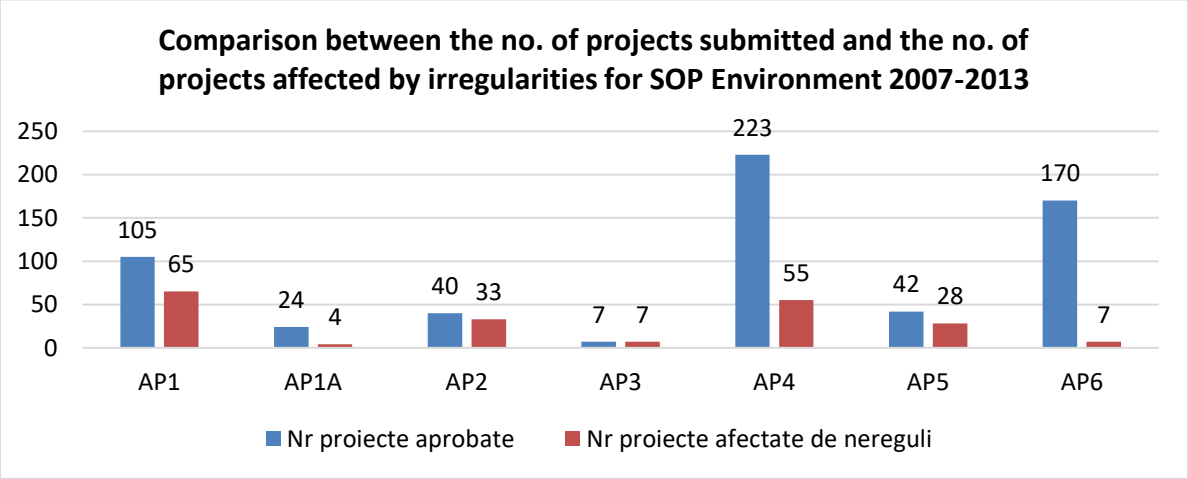

Figure 1.5. Comparison between the no of Projects Submitted and the no. of Projects Affected by Irregularities for SOP Environment 2007-2013

Source: Own processing

Comparison between the no. of projects approved/no. of projects affected by irregularities SOP Environment 2007-2013.

From our analysis of the irregularities identified by the Managing Authorities and the Court of Accounts by means of the Audit Authority, it follows that in case of Priority Axis 3 (Extension and modernization of water and wastewater systems) 100% of the funded projects are affected by irregularities. The amount of irregularities for this axis is of 15,240,809 euro, respectively 3.98% of the amount financed. All 7 projects funded were implemented by Local Public Authorities (City Halls and County Councils).

Within this PA3 the irregularities mainly concerned the use of restrictive selection criteria and in a certain case the contracting authority chose a negotiation procedure without prior publication of a call for tender and could not prove the existence of the unforeseeable circumstances that would have given it the right to use such a procedure.

The next priority axis in order of the number of projects affected by the irregularities of the total projects is PA 2 (Development of integrated waste management systems and rehabilitation of historically

contaminated sites). Thus, in this case 33 out of 40 projects were affected by irregularities (83% of the number of projects. The sum of the irregularities for this axis is of 34,423,213 euro, respectively 3.22% of the funded amount. The beneficiaries of the projects with irregularities are mainly local public authorities (87%), and the remaining 13% are central public institutions.

Within this PA2 the irregularities mainly concerned:

- use of minimum restrictive qualification requirements;
- using the negotiation procedure without prior publication of a call for tender without proving the existence of the unforeseeable circumstances that would have allowed it to use such a procedure;
- artificial division of works contracts (n.n. for which GEO 66/2011 provides sanctions starting from 25% of the contract value);
- the winning tenders did not fully meet the minimum qualification requirements;
- the breach of the principles of equal treatment and transparency in the award of public procurement contracts.

Regarding Priority Axis 5 (Implementation of the appropriate infrastructure for the prevention of natural risks in most vulnerable areas) we have the third axis in the order of the number of projects affected by irregularities out of the total projects funded on the respective axis. Thus, a number of 28 projects out of 42 were affected by the irregularities (67%).

The amount affected by irregularities on PA5 is 43,766,635 euro, respectively 9.52% of the funded amount, as it is the axis with the highest percentage of error in terms of the amount affected by the irregularities out of the total funded amount. The benefits of the projects which have irregularities are mainly national administrations (97%), while the remaining of 3% are national agencies.

Within this PA5 the irregularities mainly concerned:

- the winning tenders did not fully meet the minimum qualification requirements (the highest amount affected by the irregularities);
- use of minimum restrictive qualification requirements;
- the breaches of the principles of equal treatment and transparency in the award of public procurement contracts.

The next priority axis in order of the percentage of the projects affected by the irregularities from the total projects on the respective axis is Priority Axis 1 (Extension and modernization of water and wastewater systems). Thus, 65 out of 105 projects were affected by the irregularities, respectively 62%.

While in terms of the percentage of projects affected by the irregularities of the total of projects on the respective axis, PA1 comes 4th, and if we analyse the amount affected by error on this axis we find that from this point of view on this axis AP1 we have the largest amounts affected by irregularities.

Thus, the amount affected by irregularities on this axis is of 157,878,544 euro, 4.24% of the approved amount for projects financed on this axis, the largest amount of all priority axes. Of the projects affected by the irregularities, a number of 52 are projects carried out by Regional Water Operators, respectively 80% of the projects affected by irregularities. Another 18% of the projects affected by irregularities were implemented by local public authorities. Only one project out of the 65 affected by the irregularities was implemented by a national administration.

Within this PA1 the irregularities mainly concerned:

- the winning tenders did not fully meet the minimum qualification requirements (the highest amount affected by the irregularities);
- the use of minimum restrictive qualification requirements;
- incorrect assessment of the minimum qualification requirements;
- unjustified reduction of the deadline for submitting tenders;
- breach of the principles of equal treatment and transparency in the award of public procurement contracts;
- the award of additional works without the application of a public procurement procedure;
- the contracting authority amended the minimum qualification requirements by means of clarifications and not by publishing an erratum;
- the use of the negotiation procedure without prior publication of a call for tender without proving the existence of the unforeseeable circumstances that would have given it the right to resort to such a procedure;
- artificial division of works contracts (n.n. for which GEO 66/2011 provides sanctions starting from 25% of the contract value).

Regarding Priority Axis 4 (Implementation of appropriate management systems for nature protection) here we have the fifth axis in the order of the number of projects affected by irregularities out of the total projects financed on that axis. Thus, a number of 55 projects out of 223 were affected by irregularities (25%).

The amount affected by irregularities on PA4 is 6,705,010 euro, respectively 2.87% of the amount financed. The beneficiaries of the projects with irregularities are mainly private beneficiaries (31%). The rest of the beneficiaries are local public authorities (25%), research institutes (5%), central public institutions (18%), national companies (18%) and universities (3%).

Within this PA4 the irregularities mainly concerned:

- the winning tenders did not fully meet the minimum qualification requirements (the highest amount affected by the irregularities);
- positive adjustment of the contract, which was in the advantage of the provider, as the price was an evaluation factor;
- conflict of interest (to private beneficiaries);
- failure to comply with an adequate degree of transparency and publicity;
- use of minimum restrictive qualification requirements;
- incorrect assessment of the minimum qualification requirements;
- unjustified reduction of the deadline for submitting tenders;
- breach of the principles of equal treatment and transparency in the award of public procurement contracts;
- the award of additional works without the application of a public procurement procedure.

The sixth, and the last axis we analysed is PA 1A axis ("Extension and modernization of water and wastewater systems - additional). Thus, within this additional call, irregularities were identified in 4 of the 24 funded projects, respectively 17% of the total projects on the PA 1A axis. The amount affected by irregularities was of 412,963 euro, 0.50% of the amount financed by PA 1A. All projects were implemented by regional water operators.

Within this PA1A the irregularities mainly concerned:

- experts working on several projects in parallel;
- the contracting authority used illegal evaluation factors;
- use of minimum restrictive qualification requirements;
- incorrect assessment of the minimum qualification requirements.

5. Conclusions

The role of non-reimbursable financing, a role assumed by the European Union, is to reduce disparities between EU economies. Thus, it is extremely important that the European funds are directed to economic and geographical areas that are much lower than the European average. The role of the control authorities is to ensure an equal treatment regarding the implementation of the projects with non-reimbursable financing. There must be no Beneficiaries to consume the European Union money in their own interest. Whether we speak of Private Beneficiaries or of Beneficiaries that are public institutions, there is a tendency to consider projects with non-reimbursable financing as a means of easy enrichment. This is not the role of non-reimbursable financing. The moment when we are going to understand as a country the role of non-reimbursable financing it may be too late. It is true that progress has been made in all these years starting from the pre-accession period up to the time of writing this report but we can see around us countries that have progressed much faster than Romania, countries that have secured by means of non-reimbursable funds country objectives that could have never be achieved by means of their own budgets. The problem is that the money spent is not coming back, the European Union considers that the money has been directed responsibly by the national authorities and from one programming period to another it considers other and other country objectives. It is true that these non-reimbursable funds were considered an opportunity by the criminal organizations, but the Romanian state has the obligation to ensure that it imposes a strict control of these funds so that they reach only those who need it. As we have seen, in our case study, there were numerous situations in which certain suppliers were favoured. Of course, investigations are still ongoing and we cannot know at this time whether these have been confirmed or not.

From the analysis made, we found that there is a contradiction in terms of the need for addressing irregularities identified during the projects with non-reimbursable financing. The control and management bodies consider that, when they identified an irregularity and issued a correction decision, the problem was solved once the money was returned. Of course, a notification was also sent to the investigative bodies in order to establish the criminal liability of these culprits.

While in the case of Private Beneficiaries we agree to this approach, we do not agree to this approach in case of Beneficiaries which are public institutions.

Thus, we have not seen until now an approach of the Court of Accounts, which has the responsibility of the control in public institutions regarding the financial corrections on projects carried out by public institutions. From our point of view, if there are corrections on certain projects carried out by the public

institutions and the money is paid from the own budgets of the public institutions, this money should be recovered from the persons in charge of that public institution.

Of course, it was considered that as the works were performed, even if corrections paid from the budget of the institution were received, no damage occurred. We consider that there is a prejudice as long as the governing bodies, the Local Council, the County Council, etc. have approved only a certain percentage of co-financing and a certain percentage of ineligible expenses once the application for funding has been submitted. As long as there is no decision given by the LC, CC to approve the additional amounts with which the respective institution contributes to the fulfilment of the respective investment project, we are in the situation in which amounts were spent without the approval of the credit release authority.

We also found that a large part of the irregularities refers to creating an advantage for certain suppliers, economic operators. This means that higher amounts were paid as compared to the amounts which would have been paid if those providers had not had an advantage. So, a prejudice that must be recovered from the persons in charge exists.

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THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

Criminological Aspects Regarding the Crime of Smuggling

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Abstract: The object of this scientific study is the analysis of the modalities of fraudulent introduction into the country, by any means, of goods or merchandise, through customs or through places other than those established for customs control, in order to obtain illicit revenues and to prejudice the state budget by evading from the payment of customs duties and other fiscalobligations. The result of the study consists in the scientific proof of the differences between the commission of smuggling by natural persons and legal entities from the point of view of the particularities of modus operandi, respectively the export activity and the fraudulent crossing of goods across the state border. In order to achieve the result, I used the methods of observing the elements that confer a high degree of social danger of smuggling, as well as the analytical-comparative method of the elements of differentiation between the phenomenon of fraudulent import-export and that of smuggling in the proper sense. The conclusion is given by the need to diversify the punishment according to whether the active subject is a natural person or a legal entity.

Keywords: smuggling; Romanians; customs system

Smuggling is a culpable violation of the law in order to evade customs duties imposed on the crossing of goods across the border, prohibitions and import-export trade quotas (Tănase, 2003, p. 11).

For the Romanians, the formation of the medieval states, Wallachia and Moldavia in the 14th century determined not only an intensification of the development of their trading activities, but also the assertion of their own customs system, in which customs duties were the only source of income for royal treasuries. For this reason, they applied to all goods without distinction and regardless of whether they were imported, exported or in transit. In such circumstances aggravated by the *"thirst for profit of the merchants"* who bypassed the customs using *"secret and untrodden roads"* (*per vias occultas et insolitas*) harsh penalties were established for non-payment of customs duties, but also for the abuses of customs officers (Ceterchi, 1980, p 348).

After 1990, *smuggling* had an unprecedented magnitude, with people with high political and social positions being increasingly involved in committing this type of crime. It is almost impossible to assess the damage caused by *smuggling* to national economies. Between 1993 and 1998, the competent public authorities disc overed offenses of smuggling that damaged the state budget by over 1,000 billion lei (Tănase, 2004, p. 17).

After the time of 2000, keeping track of the damage caused by such crimes has become virtually impossible. A report by the EU Anti-Fraud Office shows that in 1997 European countries suffered

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damage from smuggling about 1. 5 billion dollars. After Romania's integration into the European Union and after the disappearance of customs barriers between EU countries, interest in this tax fraud diminished for a ceratin period of time, then statistics showed a new increase in the phenomenon in the area of borders with countries outside the European Community.

The current term *smuggling* means clandestine crossing the border with goods prohibited or evaded from the payment of customs duties (Language, 1984). Currently, the crime of smuggling is incriminated in art. 270 - 276 of the Romanian Customs Code adopted by Law no. 86/2006[1]. According to the provisions of art. 270 paragraph (1) of the Customs Code, the introduction or removal from the country, by any means of goods or merchandise, through places other than those established for customs control, constitutes the crime of smuggling and shall be punished with imprisonment from 2 to 7 years and prohibition of certain rights.

Although the text does not expressly indicate, there is no doubt that the criminalization of such offenses is intended to protect the economic, financial and fiscalinterests of the state. In other words, the persons who commit the offenses described by the incrimination text have in view a material benefit that is achieved by evading customs duties and other fiscalobligations (Tănase, 2014, pp. 42-45).

Considering the state of affairs, in order to correct the inaccuracies of the law, O. U. G no. 33/2009 for the completion of art. 270 of Law no. 86/2006 on the Romanian Customs Code was adopted[2]. The additions brought by this normative act did not have, however, the effect expected by the authorities, so that, in the following year, O. U. G no. 54/2010 on some measures to combat tax evasion was issued[3].

Although not a significant quantitative aspect of organized crime, business delinquency is qualitatively a particularly important segment of organized criminality, with jurisprudence dealing with complex cases involving networks of criminals with international ties. In the period 1990-1997, the police operative situation on the smuggling line presented some peculiarities. There was an explosion, a diversification of the forms and modalities of committing the acts of smuggling, committed both in the border areas and at the internal customs units or on the main routes of disc harge or inflow of goods from and towards ports, airports, railway stations with connection in international transports. All these findings led to a change in the concept with regards to anti-crime intervention, as well as the establishment of specialized structures, with well-defined responsibilities, to act effectively in order to prevent and combat this phenomenon. The statistical analysis of the smuggling phenomenon revealed the special magnitude of qualified smuggling, manifested by crossing the state border of goods and values through places other than those established for customs control, trafficking in objects and materials that by themselves present an increased degree of social danger.

When committing the crime of smuggling, more and more economic agents and officials of state structures were attracted, with whose help illegal capital transports were carried out abroad, transit of prohibited products on the Romanian territory, or the introduction and sale of objects from crimes committed in the territory of other countries. In the northeastern and southwestern border areas of the country, smuggling of goods and products resulting from the disintegration of industries and the dislocation of military units from the former Soviet countries, as well as of petroleum products (especially fuels and lubricants), has become a trade and the main means of achieving illicit income for entire masses of the population on either side of the border.

[1] Official Gazette of Romania, Partea I, no. 350 din 19 aprilie 2006.
[2] Official Gazette of Romania, Partea I, no. 226 of April 7th, 2009.
[3] Official Gazette of Romania, Partea I, no. 421 of June 23rd, 2010.

There was solidarity between Romanian smugglers and those in neighboring countries, who often reacted violently against customs authorities, border guards and police. The statistics revealed that the smuggling offenses were most often accompanied by acts of corruption of the customs personnel, even of the personnel guarding the state border or of the economic agents from which the goods were procured - material object of smuggling or by which the goods brought into the country by non-compliance with the customs legal regime were capitalized.

The analysis of the distribution of a report made by the customs units within which the smuggling offense were committed, led to the conclusion that from a quantitative point of view, most crimes were committed at the land customs units, then at the port units and finally at the airports. In terms of quality, however, from the point of view of the concrete gravity of the criminal offense of smuggling, the order is reversed. The social danger of smuggling offenses committed in airports and ports (especially Otopeni International Airport and the Port of Constanta) is much higher due to the subsequent consequences that some offenses contain in their structure.

This finding determines an orientation of the programs for preventing and combating the smuggling phenomenon taking into account the specifics of each customs unit. Also, from the point of view of the distribution of smuggling facts, most of them were registered at the border customs units and less at the internal ones, the latter presenting, however, an increased gravity.

Regarding the participants in the smuggling offenses, the vast majority belong to the second age (25-50 years), only about 10% coming from young people aged 18-25 years. By sex, female delinquency represents a minimum percentage (approx. 2%). From the statistical analysis of the participants in the commission of the smuggling offenses, it was possible to draw the conclusion regarding the belonging to a certain social category of those involved in the commission of the smuggling offenses.

The perspective of making significant gains without much physical or intellectual effort, even facing certain risks, has attracted people from all social strata, both economically disadvantaged people and people with a good or even very good financial situation. Given that the average crime rate in Romania had an increasing trend until 1995, showing after this date a trend of stability around 1000 crimes/hundred thousand inhabitants, the average rate of smuggling crime is well below this level somewhere around 21 smuggling crimes/hundred thousand inhabitants. However, reducing the average annual crime rate in customs will need to be a priority of criminal and customs policy, of the strategy to prevent business criminality in general and smuggling in particular. Smuggling has been on the rise since December 1989, reaching its peak in 1994-1996, when most crimes were committed, taking advantage of socio-economic chaos and legislative imperfections.

The entry into force of the new Customs Code (Law no. 141/1997) and the Regulation for the implementation of the Customs Code (H. G. 626/1997) had as an immediate consequence the apparent decrease in the number of smuggling crimes. The quantitative reduction of the smuggling phenomenon is due to the will of the legislator who understood to criminalize as statutory serial crimes (art. 177 the crime of using unreal deeds and art. 178 the crime of using forged documents at the customs authority) two of the important ways in which smuggling takes place, as this crime was regulated by art. 72 of Law no. 30/1978. In fact, however, the new customs legislation that entered into force overnight shook the customs system to the ground, regardless of the concrete reality faced by those involved in the conduct of customs operations.

The implementation of the integrated customs information system ASYCOUDA, designed as a step towards progress, towards a civilized, efficient and less bureaucratic customs, while the infrastructure and the training of the operators is deficient, is constituted in conditions and circumstances meant to

favour, to facilitate the crimes of smuggling. A natural consequence, an immediate consequence of the non-correlation of the entry into force of the new customs legislation with the lack of popularization of the legislation, will be the emergence of new possibilities for committing the crime of smuggling and qualified smuggling.

The analysis of business delinquency in the field of customs relations, in the period 1989-1997 revealed a diversification of illicit operations by which impressive quantities of products, consumer goods, drugs, weapons, precious metals, works of art, nuclear components are introduced or removed from the country, without complying with the relevant rules.

The legal modalities for committing the crime of smuggling provided by art. 72 of the previous Customs Code, covered several factual modalities. The first form of post-revolutionary smuggling detected was committed by passing the goods across the border, through customs points, in some private forms, not observing the customs legal regulations in force.

For the payment of customs duties and tax on the movement of goods, as well as for the practice of higher than legal trade surcharges, some private companies and individuals have forged the legal deeds of entry of imported goods by entering prices lower than the real ones, at Romanian customs points, the importers presented documents other than those issued by exporters, with purchase prices 4-5 times lower. Thus, between June and August 1994, the administrator of the company A. B. W. SRL Bucharest, brought to Romania 50 agricultural equipment of foreign origin, of which, during August, the defendant sold three combines to agricultural companies: U., with its headquarters in Ulmeni commune, L., with its headquarters in Slobozia Mândra commune, and P., with its headquarters in Comoara commune, all located in Teleorman county. The court of first instance also held on the basis of the evidence submitted that, prior to August 11, 1994, when the company A. B. W. SRL was registered, the defendant introduced in Romania a number of 50 agricultural machines, for sale.

Knowing that the legislation in force exempts from the payment of customs duties the agricultural equipment purchased by agricultural producers, the defendant prepared invoices in the name of individuals from Sibiu, Alba and Cluj counties, mentioning in these invoices that the agricultural producers bought the equipment from the IGM company, and the indicated prices were lower than the real ones, noting at the same time that the respective equipment is a donation for the Romanian farmers, the price being symbolic. The invoices thus drawn up were presented to the Sibiu customs, which, in relation to the recorded prices, collected the customs duties in the amount of 13,266,144 lei, the payment being made by the defendant. For the respective equipment, the defendant had to pay the amount of 905,698,208 lei, representing customs duties. Proceeding in the manner shown, the defendant evaded the payment of customs duties in the amount of 892,432,064 lei (905,698,208 lei-13,266,144 lei) (Tudor, 2011, pp. 1-11).

Known as the *double invoicing method* or the *sub-invoicing method*, this way of crossing the goods over the state border of Romania was committed especially for violating the provisions contained in Order no. 176/1996 of the General Directorate of Customs.

Another way very common in practice is to present forged customs declarations. This method involves two procedures:

Transit procedure - smugglers declare the goods in the means of transport as being in customs transit, but in reality, the goods are no longer taken out of the country, being capitalized without the payment of customs duties. This is what the smugglers who have committed the largest smuggling to date have done. Impressive quantities of illegally capitalized cigarettes were thus introduced in Romania without

the payment of customs duties and related excise duties; to cover these fraudulent operations, forged stamps are used which formally confirm the customs clearance operation.

The process of using shell companies or which is liquidated immediately after carrying out massive imports of goods, in order to evade the payment of customs duties, excises and profit tax. The smugglers enter the country by various means of transport, declaring at the entrance to the country that the goods are destined for these non-existent companies, and the customs clearance is to be done at the internal customs from the headquarters of the respective companies. Those who carry out transport in such conditions rent warehouses where the goods are unloaded and resold quickly, without paying the related customs duties and excises. When the control bodies verify the destination of the goods, they find the non-existence of these shell companies, of the documents and implicitly of the quickly capitalized goods.

In order to illegally benefit from certain customs facilities (established on the basis of bilateral or multilateral agreements or on the basis of reciprocity), some impostors submit export licenses obtained on the basis of forged documents. For example, for the contract concluded between Romania and Iraq, having as object the commercial invoice no. 3214486 of November 17, 1998, the defendant directed the goods to Nigeria, which was purchased by L. R. A. T Israel, represented by the defendant H. S.

The export license was obtained on the basis of the end-user certificate, counterfeited by the defendant, regarding the destination (Iraq) through SC A. A SRL with planes rented by the defendant M. I. The defendant mentioned Iraq in the flight documents and the same false destination in the customs declaration.

Moreover, defendant H. S. counterfeited a deed of receipt of goods by Iraq to R. SA. This acknowledgment of receipt from the Iraqi Ministry of Defense proved to be forged, in relation to the answer sent to the Romanian authorities by the Ministry of Foreign Affairs, which refuted this transaction and power of attorney given to the defendant (letter no. 51379 of April 20, 2000). In the same way, the defendant H. S., on March 16, 1999, exported 5000 submachine guns to Nigeria, exporter - SN R. S. A according to invoice C No. 43051 of March 4, 1999, and the purchaser was the defendant's company H. S., O. E. Similarly, the defendant forged the user certificate, showing that it was issued by the Ugandan authorities, being used to obtain the license and the A. W. B. documents. In the same way, the weapons also arrived in Lagos - Nigeria, although Uganda was listed in the documents.

Moreover, the application of the Ugandan authorities' stamp was made with the authorization of Uganda, which was refuted by the the letter C/295 as of May 9th, 2001 stating that the Ministry of Defense of the Republic of Uganda has denied the power of attorney alleged by defendant H. S. and denied that the end-user certificate came from the Ugandan Ministry of Defense. Between March 30th, 1999 - April 5th, 1999, 100,000 explosive bombs (5000 tons) were exported from Romania to Eritrea, under the contract AC 1/069/15/BD of March 26th, 1999: exporter - R, buyer - CDGI, a company represented by the defendant H. S. The defendant submitted for the license the end-user certificate B/9. 1999 of March 8th, 1999, which showed that the beneficiary is the Ministry of Defense of the Republic of Burundi, an unreal situation, according to letter E 5/1415 of July 27th, 2000, in which he stated that he did not empowered defendant H. S. to make weapons transactions on behalf of the Burundian authorities. The end-user certificate issued by R. A. R. was achieved by operations of scanning and drafting the text from the content of a document issued in favor of SC. C. I (Tudor, 2011, pp. 30-37).

Aiming to evade the payment of customs duties, natural and legal entities have introduced cars in Romania by presenting registration certificates belonging to another car. The legal aspects that are disc ussed are the passing of the goods by the border through the use of forged customs documents, or customs documents regarding other goods. Considering the provisions of art. 14 of the Customs

Regulation, approved by Decree no. 337/1981, the customs control of the means of transport at the border crossing is carried out at the border customs units, consisting in the identification of the means of transport based on accompanying documents. Among these accompanying documents is also the registration certificate (art. 5 of the same Regulation), the conclusion that is required is that this certificate is a customs document. In this regard, by presenting the registration certificate of another car, apparently the motor vehicle is registered in Romania, and the purpose pursued by the natural or legal person is to be exempted from customs duties (Tudor, 2011, pp. 12-13).

Smuggling by crossing the border with forged customs declarations and corrupting the customs officers so that they no longer carry out customs control. In this regard, we mention the case regarding the defendants of the R. M. and C. V., who between July 13th, 2001 and January 17th, 2002, carried out nine shipments through which they illegally introduced in the country 552,992 packs of cigarettes, presenting to the customs authority customs transport documents with unreal content. The illegal introduction of the goods in the country was facilitated by the defendants R. M. and C. V., customs controllers, who thus violated their duties, receiving therefor various amounts of money (Tudor, 2011, pp. 133-134). The customs officers were detained for committing the crimes of bribery and complicity in the crime of *smuggling.*

Another criminological aspect consists in the crossing of the border with customs documents of some goods, mentioning in the customs documents other goods by the "*cover procedure*". This procedure consists in recording in the customs documents that goods for which the customs duties are low are transported, in fact the means of transport being loaded with goods for which the customs duties are high. As an example, we note that on March 14th, 1998, the defendant G. A., as a representative of SC B. T. SRL Bucharest, presented customs transport and trade documents regarding L. chocolates, instead of A. cigarettes, to the defendant P. M. M. who, as a customs controller, carried out a formal physical control of the goods, after which, by exceeding his duties, granted customs clearance, causing, by evading the payment of customs duties, a total prejudice of 12,092,880,135 lei (Tudor, 2011, pp. 135-137). The customs officers were detained for committing the crimes of complicity in committing the crime of *smuggling*.

In order to ensure the expansion and diversification of the ways of conducting foreign trade, duty free zones for the international exchange of goods in the ports of Sulina, Giurgiu, Constanţa, Drobeta Turnu-Severin and the border areas of Arad and Timişoara are operating or are being arranged. In order to evade the customs duties, the smugglers conclude contracts for the import of goods with different foreign economic agents that carry out their activity in those duty-free zones on the basis of which the indigenization of the respective goods is requested and obtained. In this way the customs duties are reduced from 10 to 15 times. So did A. R. and L. S. partners within the company SC BG S. R. L., who, following the import of 4,000 boxes of cigarettes, reduced the customs duties by 4. 0 billion lei. Within this method, as a form of circumvention of the customs legal regime, the "*appeal*" is used, in which the acceptance of the value from the presented document is requested.

A segment with a higher degree of social danger is the evasion of customs operations committed by one or more armed or ganged persons. It has been ascertained a systematic attempt to organize groups of people crossing the border through places other than those established for customs control. This way of committing *smuggling* has known a special magnitude in the border areas on the border with Ukraine, the Republic of Moldova, Yugoslavia, but also with Bulgaria. The Romanian smugglers and those from the neighboring countries have grouped in various criminal groups and proceed to cross the border with goods that form the object of smuggling using the natural conditions offered by the border area. In order to commit the crime of *smuggling*, the criminal groups were equipped with adequate means of transport

- off-road vehicles, rowing or motorboats, proceeding to a direct exchange of goods by avoiding customs points. Many times, these criminal groups acted by force, retaliating with knives or even firearms when they were caught by border patrols. A special place in the case of the *smuggling* phenomenon is occupied by the way of committing the crime by corrupting the customs officers.

As an example, during August 2013, in order to obtain illicit income, the defendant J. S., with Romanian and Moldovan citizenship, together with the defendants L. A., U. A. D., U. G. C. and A. I. formed a transnationally organized criminal group for the purpose of committing the crime of smuggling with cigarettes of Moldovan origin, which were to be introduced into Romania across the water of the Prut River by Moldovan citizens. Within the group, the role of defendant L. A. was to organize together with defendant J. S. the fraudulent introduction into the country, across the Prut River of significant quantities of cigarettes of Moldovan origin, with the help of an inflatable boat by Moldovan citizens, to ensure the takeover and the transport of cigarettes, together with the defendants U. A. D., U. G. C. and A. I., to supervise the border area before and during the smuggling act, as well as to ensure the capitalization of the cigarettes from smuggling activity to various persons in Botosani County. The defendants U. A. D., U. G. C. and A. I. had the role of taking over from the bank of the Prut river the cigarette packages from the defendant J. S. who had the role of organizing the fraudulent passage of the cigarettes over the Prut river, by the instrumentality of some Moldovan citizens, determined to fraudulently cross the border of the Republic of Moldova in Romania and to introduce in the country significant quantities of cigarettes and to ensure their capitalization on the black market in Romania to various beneficiaries through the defendant L. A., in order to obtain important illicit material benefits[1].

In all these years, the business delinquency in the customs field was maintained by the complicity of some customs workers. Corruption among customs workers is not, however, a problem specific to the 1990s, but during this period it has become particularly widespread, which has led to special measures. There are many aspects regarding this modality.

Here are just two examples, namely:

On January 25th, 2001, defendant I. S. A., a customs worker at Borş Customs, was instigated by co-defendant D. M., an administrator at SC P. C. SRL Bucharest, by breaching his duties, granted the "customs clearance", by applying the stamp, thus facilitating the entry into the country of two trucks transporting 40 tons of chicken meat from Belgium, without carrying out the control and in this way, the payment of customs duties of 1,681,714,446 lei was evaded. Also, defendant D. M. used several fictitious fiscal documents, respectively, fiscal invoices and phytosanitary certificates for the sale of the goods. It was further noted that defendant D. M. forged official deeds, and the crossing of the state border of the goods was done through the places established for the customs control, and the transported goods were the declared ones (Tudor, 2011, p. 139).

The second example is that in July 2000, defendant D. S. asked the citizens of the Republic of Moldova: D. O., D. A., D. N., D. R., R. A., R. V., B. A., B. V., that, in exchange for the amount of 300 U. S. dollars and travel expenses, to come to Bucharest, in order to prepare the repatriation forms. After submitting the application for obtaining Romanian citizenship from the Bucharest Passport Directorate and obtaining the necessary address, the Moldovan citizens were taken by the defendant to the 23rd Police Station, where they were issued documents on establishing residence in Bucharest, the identity card and the certificate required for the exemption of customs duties. It should be noted that previously, the defendant D. S. brokered rental agreements with various homeowners in the August 23 neighborhood

[1] www.portal.just.ro.

area of Bucharest, in exchange for 100 U. S. dollars, so that repatriated citizens can prove the existence of a living space.

Repatriation certificates and identity cards were subsequently handed over by defendant D. S. for the amount of $1,000 to $1,100 to the defendant S. A. L., to use them in carrying out customs forms and registration of cars brought from abroad. Thus, after receiving the repatriations from the defendant D. S., the defendant S. A. L. forged the documents of origin, the transit customs declarations and a special power of attorney, whereby the said D. O. empowered the defendant C. I. to bring them to Romania and to carry out the necessary legal forms for two cars. To this end, the defendant C. I., along with the defendant S. A. L. went to the Gara de Nord Customs Office, carrying a set of documents, both in the name of the so-called D. O. Subsequently, the defendant S. A. L disc ussed with the defendant B. G. M., a customs commissioner at SC A. M. C. S. SRL, having an office next to B. V. O. Commodities, and asked him to ensure the performance of legal forms, in repatriation regime, with exemption from customs duties, for two G. C. cars, in the name of the repatriated citizen D. S. Defendant B. G. M. drew up the two customs applications on behalf of the repatriated person (thus forging them), after which he went to the B. V. O. Commodities, where he requested the defendant M. D. I. – a customs inspector, to draw up the forms of customs clearance, specifying that the two cars did not show up for verification and the repatriated citizen did not come either. This aspect was repeated, at which point defendant S. A. L. went again to the defendant B. G. M., requesting him to take the necessary steps to draw up the customs forms, on behalf of a repatriated person B. V., for two F. S. and F. D. cars. Defendant B. G. M. agreed and made the customs applications for both cars, on behalf of B. V., after which he went to the defendant M. D. I., a customs inspector, with the documents received from the defendant S. A. L., who, without checking the presence of the repatriated person and the two cars, drew up the necessary forms and issued the customs receipts in B. V.'s name. The customs officers were charged with committing crimes of abuse of office against public interests, intellectual forgery and forgery of an official deed on the occasion of its preparation (Tudor, 2011, pp. 149-159).

One of the most ingenious and at the same time most damaging smuggling activities in Romanian is related to the AMWAY products brought to our country on the Hungarian chain. Due to the small border traffic, huge quantities of such products have evaded any kind of customs duties and taxes. From 1995 onwards, an intense traffic with AMWAY products on the Hungary - Romania relationship started to run smoothly. There were two types of smuggling, some Romanian citizens smuggled into Hungary's own warehouses to the AMWAY warehouses where they refueled, returning home and placing their goods at random, charging much higher prices. Another category was that of Romanians registered as official distributors, under the real name but with an address from Hungary. Both have resorted to massive imports of products, benefiting either from the customs facilities of small border traffic or from direct agreements with customs personnel. Even after the registration of AMWAY Romania Marketing S. R. L. with its headquarters in Bucharest, smuggling of AMWAY products on the Hungarian line has not been stopped. AMWAY is not the only company that presents this way of distributing and selling its own products in Romania.

Among the numerous distribution systems illegally rooted in Romania are: NETWORK TWENTYONE USA, SCHWARZ system in Germany and more recently that of CALIFORNIA FITNESS company based in Timisoara.

Reporting this modality of committing the crime of smuggling requires taking effective measures to counteract a possible expansion of smuggling from Romania to Bulgaria, Moldova, Ukraine. Small-scale border trafficking, as a modality of smuggling, is a big deal, both for those who practice it and for customs officers and guides.

In general, the phenomenon of small border traffic is facilitated at the border between two countries between which there are differences in prices and products traded. Another cause of the phenomenon is the shortage of certain types of products in one country or another. The phenomenon of trafficking is also articulated on the differences in taxes levied on tobacco and alcohol in Eastern Europe.

In Romania, the phenomenon appeared in the early 1990s, immediately after the revolution. The goods that did not exist in Romania were brought from Turkey, some being sold on the Romanian market, and others left for Yugoslavia or Moldova. In principle, the unemployed and those who cannot support themselves from the low income they have are found for those who practice small border traffic. Everyone's work style is different.

From this business three categories of people gain: the first category includes those who go as mere travelers and take the products which they then sell in the market; there is a category of guides who are in contact with those who practice small border traffic, ensuring them, through certain commitments with customs officers, the possibility to cross the cargo across the border.

A more elaborate way of organizing is found in the case of companies that, through an agreement with companies in the neighboring country, employ a certain number of people to take over the goods. The employees cross the goods across the border in legal conditions, the customs officers not being able to confiscate their goods. In the west of the country, the embargo imposed on Yugoslavia has encouraged thousands of people to transport Romanian products to the country's market.

A particular case is what is happening on the border with Hungary. Here, food products have the largest share. Another characteristic of this customs is that those who buy from Hungary are Romanian citizens, while from Romania, Hungarian citizens do not buy anything, a detrimental situation for the Romanian state which thus loses currency. The fact that the Hungarian state grants 20% of the value of purchased products when they leave the country, if they exceed the amount of 25,000 forints, is a facility likely to encourage Romanians from the rest of the country to shop in Hungary.

The most used border point between Romania and Bulgaria is Giurgiu Customs. The traffic through Giurgiu Customs presents some particular aspects compared to other areas. Thus, half of the Balkan-European traffic is filtered here. The circuit is generally organized on international trains transiting Bulgaria from Turkey, and others coming from the neighboring country. The ingenuity of felons, manifested in the most diverse fields of crime is also reflected in the sphere of customs relations, objectifying in new methods and procedures for committing smuggling.

As a comparative law study, in the United States the crime of *smuggling* is governed by the provisions of Chapter 18, Chapter 27, Section 545 of the U. S. Code of Crime and Criminal Procedure, which provides that: "Anyone knowingly and intentionally, with intent to defraud, clandestinely introduces or attempts to smuggle or to clandestinely introduce into the United States any goods that should have been invoiced, or carries or passes or attempts to pass through, deposits any invoice forged, counterfeited or fraudulent, or other document or paper; or anyone who fraudulently or knowingly imports or brings into the United States any unlawful goods or receives, conceals, buys, sells or facilitates in any way the transportation, concealment or sale of such goods after importation, knowing the same thing was imported or brought into the United States against the law, shall be fined under this title or shall be imprisoned for a maximum of 20 years or both[1]".

Also in France, smuggling is a criminal offense under the Customs Code, and according to Article 414 of the Customs Code, this offense refers to any smuggling of goods in the category of those "prohibited"

[1] https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section545&num=0&edition=prelim.

or "severely taxed" within the meaning of the Customs Code and which provides that: "imprisonment shall be for a period of ten years and the fine can be up to ten times the value of the object of the fraud, where smuggling, importation or exportation relates to goods dangerous to health (…) or when they are committed in an organized gang[1]".

In this regard, Article 417 sets out three concepts of smuggling:

a) firstly, the smuggling itself (import or export of goods from customs offices, dumping or dispatch of goods to the coast.);

b) secondly, extension smuggling: any breach of legal or regulatory provisions relating to the detention and transport of goods within the customs territory;

c) finally, smuggling by assimilation: import or export without declaration of goods passing through a customs office, but reduced when visiting the customs service. Thus, hiding them in specially designed hiding places or in cavities or empty spaces that are not normally intended for the accommodation of goods are the practices of fraudsters. Articles 418 to 422 also present simple allegations of smuggling[2].

At the same time, the Italian Criminal Code, by Legislative Decrees no. 7 and 8 of January 15th, 2016, issued based on the delegation contained in Law no. 67/2014, several offenses were decriminalized, starting with February 6th, 2016. Specifically, regarding the customs area, the amendments were brought by the second of the two decrees mentioned and, namely by Legislative Decree no. 8 of 15. 01. 2016, which decriminalized all offenses, except those provided by the Criminal Code and those listed in the annex to the decree in question, for which the penalty was a fine or a fine, with the consequent transformation of the offense into an administrative offense.

In fact, art. 1 (1) of the said decree: "All infringements for which the only penalty is a fine or a fine shall be subject to an administrative penalty for the payment of an amount of money". In cases where, for aggravated cases, it is provided only custodial sentence as an alternative or common penlalty of the fine or fine, these aggravated hypotheses shall be punished, as autonomous crimes, with arrest.

Therefore, the decriminalized offenses also include those provided by art. 282 et seq. of the Testo Unico Leggi Doganali – Sole Text of the Italian Customs Law), or:

- smuggling with movement of goods across land borders and customs spaces (art. 282 TULD);

- smuggling with movement of goods into border lakes (art. 283 TULD);

- smuggling with movement of goods in the maritime movement of goods (art. 284 TULD);

- smuggling with movement of goods through the air (art. 285 TULD);

- smuggling in non-customs areas (art. 286 TULD);

- smuggling for incorrect use of imported goods with customs concessions (art. 287 TULD);

- smuggling in customs warehouses (art. 288 TULD);

- smuggling in cabotage and traffic (art. 289 TULD);

- smuggling with the export of goods admitted to the restitution of rights (art. 290 TULD);

[1]https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071570&idArticle=LEGIARTI000006615940.

[2] https://www.codes-et-lois.fr/code-des-douanes/toc-contentieux-recouvrement-dispositions-repressives-classific-b66b235-texte-integral.

- smuggling in temporary imports or exports (art. 291 TULD);

- diversified smuggling in the residual hypotheses from those described above (art. 292 TULD).

It should be mentioned that, in all the cases listed above, as provided by art. 1, paragraph 6, of the chapter, for which a proportional monetary sanction was provided, the fine provided by the respective criminal regulations was replaced with the administrative sanction from 5,000. 00 Euro to 50,000. 00 Euro. Finally, for the case of smuggling in case of failure or incomplete finding of the object of the crime (art. 294 of the TULD), for which a fine of up to 258 euros was provided (art. 1, paragraph 5, letter a) of Legislative Decree 8/2016), an administrative penalty shall be paid from EUR 5,000. 00 to EUR 10,000. 00[1].

Also, in Spain, the crime of *smuggling* is not regulated in the Criminal Code, but in a special law, Organic Law 12/1995 on the repression of smuggling, which contains a multiplicity of different behaviours and on various goods such as weapons, drugs, sealed products, pharmaceuticals, all of which are crimes and whose common denominator is a breach of the control exercised by the customs authorities. With its criminal classification, it is about protecting both the collection interests of the Public Treasury and public order, health policy or state monopolies, thus giving rise to a multiplicity of protected legal assets.

According to the provisions of Article 2 of Organic Law 12/1995[2], different behaviours are foreseen which constitute a smuggling crime. Unintentionally, in these brief notes, if they are exclusive, they consist mainly in the importation or exportation of goods of illicit trade without customs clearance, concealing them from the action of the customs administration or performing acts of trade, possession or movement of non-Community goods in lawful trade without proving their lawful import, as long as the value of the goods exceeds EUR 150,000. It is also smuggle the import or export of goods subject to commercial policy measures, without complying with the applicable legal provisions or when the necessary administrative authorizations for the said import are obtained, through false data or documents concerning the nature or destination of the products. Also, in order to be a crime, the value of the goods must exceed 150,000 euros.

Finally, it should be noted that in the Republic of Moldova, the crime of *smuggling* began after the proclamation of independence, on August 27th, 1991, with the entry into force of Presidential Decree no. 189 of September 3rd, 1991, on the subordination of customs institutions located in the country, being the first state structures created after the declaration of independence. The laws that regulate social relations in the customs field, for the purpose of crossing the country's border by natural or legal persons, the goods transported by economic agents, objects, goods or values is the customs and criminal legislation in force; other collections of laws establishing reports on customs activity and policy; decisions of the government of the Republic of Moldova, documents issued by ministries or departments and other normative acts and adopted in the field.

The current Customs Code, in accordance with the latest amendments and completions, published on 01. 01. 2007 in the Official Gazette of the Republic of Moldova, amended by LP 307 of 26. 12. 2012, Official Gazette 26/04. 02. 2013, regulates each of the offenses in a single article - *smuggling*. When adopting the law on the Customs Code of the Republic of Moldova, the legislator defined the notion of

[1] https://www.camera.it/temiap/documentazione/temi/pdf/1105596.pdf.
[2] https://www.boe.es/buscar/pdf/1995/BOE-A-1995-26836-consolidado.pdf.

"smuggling", which is recognized only as a crime, and it is usually sanctioned criminally, and included it in a separate rule of law in art. 224 of the Customs Code[1].

Thus, *smuggling* is to be considered the crossing of the customs frontier of goods, evading or concealing customs control, committed in large or particularly large proportions, either repeatedly or by a group of persons who are organized for the smuggling activity, either by a person with a position of responsibility who makes use of the service situation, or by fraudulent use of customs documents and other documents, or accompanied by not declaring or inauthentically declaring them in customs documents or other documents, of narcotic drugs, psychotropic substances with strong, toxic, poisonous, radioactive and explosive effects, harmful wastes, weapons, explosives, firearms and ammunition, excluding smoothbore hunting guns and cartridges, of cultural values, as well as the failure to return on the customs territory the cultural values from the country in case their return is mandatory.

The detection of crimes falls under the responsibility of the customs authorities. In this regard, the legislator indicates in art. 11 let. (c) the Customs Code, that the customs body has an important role to play, contributing within the limits of its competence to ensuring the economic security of the State and thus combating smuggling, infringements of customs regulations and tax legislation relating to the crossing of goods across the customs border, and according to the same article, letter (h), stops the illegal crossing of customs borders of narcotic substances, armaments, works of art, objects of historical and archaeological value, objects of intellectual property, endangered animal and plant species, other goods.

In the Criminal Code, the legislator created a broad framework for the crime in chaper II of the general part, art. 14-34, including the general provisions regarding the crime (art. 14-24; 28-31), the stages of criminal activity (art. 25-27), the plurality of crimes (art. 32-34). At the same time, the Criminal Code acknowledges and qualifies the smuggling action according to a separate norm of criminal law - art. 248 and 249 of the Criminal Code, included in the special part, chapter X, "Economic crimes", in a standard variant, three special variants and an aggravating variant. In conclusion, in the Republic of Moldova, it can be argued that in order to counter criminal actions and attempts by criminal elements, the state needs a coherent legislative basis, requiring its compliance with European standards, because customs legislation is typical of states in transition.

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[1] https://www.legis.md/cautare/getResults?doc_id=85852&lang=ro.

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Concerns of European Union Member States to Improve the Exchange of Information and to Eliminate the Threats to Public Security by Serious Violent and Sexual Offenders

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Abstract: The internal security of the European Union is a key issue for European citizens and one of the problems that could affect this objective is the risk of harm to bodily integrity and health by criminals who commit serious violent crimes or sex offenders, who can travel across the open borders of Europe. In this regard, it is very important that all law enforcement agencies or other national institutions and structures must involve in identifying the best policies and practices to manage this phenomenon. The European Commission initiated the **SOMEC Project- Serious Offending by Mobile European Criminals,** which succeeded in synthesize all the information provided by the Member States' authorities, resulting in a number of relevant conclusions and providing valuable suggestions. The agencies at European level- EUROPOL, or at international level- INTERPOL are deeply involved in combating serious violent or sexual criminality, which could threaten EU citizens, providing the expertise and resources needed for such an approach. Romania is part of this fight against cross-border criminality through its structures and actions taken. In conclusion, the risk of potential harm to children, in particular, has been raised by all the parties involved, both at country level and at Community level, with efforts for manage all these mobile offenders.

Keywords: information exchange; cooperation; sexual offenders; serious violent offenders; cross-border; crimes

The internal security of the European Union was a permanent and extremely important issue which assumes the involvement of all law enforcement agencies or other national institutions and structures in taking the best policies and practices to assess the existing risks that may pose threats to European citizens.

One of the issues has been identified as the risk of harm to bodily integrity and health by the perpetrators of serious violent crimes or sex offenders who could travel freely in a Europe without borders, as is the European Union now.

The opening of the European borders, which has allowed offenders to become extremely mobile, as well as the globalization of criminality of any kind, has been intensively analysed by the law enforcement authorities, but also by the specialized literature, in order to identify solutions to stop the mobility of the perpetrators. and in this way to reduce the risk of cross-border crime- *"... as in recent years, the phenomenon of general globalization has proved to be faster than the capacity of people to adapt to the new realities they face, cross-border crime has often managed to surprise the authorities of the states, both by the speed they have expanded and by the importation of new modus operandi... Awareness of these threats and having a constant pressure behind them as a result of the intensification of public opinion, law enforcement agencies have created, in time, regional units, based on cross-*

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border criminality, which have subsequently developed, acquired an international character, benefiting from an increasing political support, extending to a wide range of crimes and creating numerous bridges and channels of communication between the authorities of the states involved" (Vasile, 2016).

This shift in serious and organized crime, as a result of globalization, has been felt most acutely in recent years, regarding the child sexual exploitation. Sex offenders have become very skilled, encouraged by the current context at European level, by opening the borders, travel opportunities and the internet all over the world, so they have increased their travelling for sexual tourism, preferring countries in Asia but lately, also in European countries.

A number of serious cases with a significant emotional impact have happened in the recent years that came along the idea of the extremely high degree of danger posed by this type of crime, sexual abuse and serious violent crime, increasing concern in the European Union and strengthening the necessity for taking some measures in this regard.

Among these, a tragic example in The Great Britain, taken place in 2008, in Glasgow, when Moira Jones, a young Scottish girl, was abducted, raped and murdered by Marek Harcar, originally from Slovakia. Scottish Police were unaware of his prior criminal history (he had thirteen previous convictions, but four for violence) and he had entered Scotland unmonitored and this facilitate his recidivism.

Another significant example that illustrated this idea was the case of the criminal Robert Mikelson, originally from Latvia, who lived and worked in Germany, where he served a prison sentence in 2003 for distributing child pornography. On released he moved to the Netherlands and he hired at day-care centers, child care facilities and as a private baby sitter. The authorities and the employer were not aware of his offending history, because the convictions were previous in Germany, so gave him the opportunities to work in an environment with many children, to care about them. The perpetrator, Robert Mikelson went on to sexually assault many of the children in his care from 2007 to 2010. He was charged with sixty-seven counts of sexual assault and raping a minor and sentenced in April 2013 to eighteen years' imprisonment.

All these premises led to the conclusion that it is mandatory for the European country to improve the assessment of these high-risk offenders as well as improving the exchange of information and cooperation between European police forces.

These strict necessity and joint efforts were also supported by the European Commission that carried out the ***SOMEC Project– Serious Offending by Mobile European Criminals***, attended by representatives from all Member States, prestigious universities and specialists in this field, non-governmental organizations, etc. The project was coordinated by the Great Britain by National Offender Management Service (NOMS), as main partners- Latvia, The Netherlands and Spain (Catalonia), but also a lot of important institutions and agencies as The Home Office, ACPO- Association of Chief Police Officers, NCA- National Crime Agency UK, CEP- The European Organisation for Probation, London Probation Trust, Ministry of Security and Justice– Netherlands, Latvian State Police, State Probation Service of Latvia, De Montfort University, Department of Prison and Probation Catalonia– Spain and associated partners as Europol, Eurojust, Probation Chiefs Association.

During the period of two years, the project took place in several stages and different forms- assessment of the current situation and risks, as well as assessment of the information come up through international channels, a comparative study and analysis of current practice within the Union. European Parliament (using questionnaires that were provided to all Member States to be completed), working meetings,

conferences with focus groups, the final conference. The last stage was the conclusions and recommendations resulting from the closing conference of the project, followed by the dissemination of the results.

The objectives of this important project, SOMEC, are as follows:

- To assess the threat posed to EU citizens when serious violent or sexual offenders travel between EU Member States;
- To identify the most efficient methods and mechanisms used by EU Member States in the management of serious violent or sexual offenders travelling across EU borders;
- To analyses good practice and make recommendations to facilitate the improved exchange of information for the prevention of crime.

Specifically, related to the sexual and serious violent crimes, the aspects that have to be clarified within this project could refer to:

❖ How EU Member States identify and manage serious violent or sexual offenders;

❖ How EU Member States identify serious violent or sexual offenders who may travel to other EU Member States;

❖ Which are the methods of information exchange used in international cooperation for these perpetrators;

❖ What EU Member States manage the information received from another country about serious violent or sexual offenders entering their country.

Within the Project, a series of definitions or classifications of offenses were outlined, for a common understanding of the terms, for all member states, in order to achieve a common approach in taking the necessary measures to improve the exchange of information.

Offender– The person who has committed an offence and was found guilty by a judge for one or more specific sexual or violent offences and have served / are serving a sentence for those offence.

Serious violent offences- Intentional killing, Aggravated case of Intentional Killing; Unintentional Killing; Violence causing death, Grievous bodily injury, Disfigurement or permanent disability or torture.

Serious sexual offences– Rape, aggravated rape, sexual assault, rape of a minor, sexual assault of a minor.

Another important issue to be clarified was the type of data and information that have to be exchanged between each judicial authority:

- Personal data of identification;
- Previous convictions– the criminal record;
- Current allegation/investigation;
- Offender assessment about the risk of serious harm;
- Modus Operandi, circumstances of offending;
- Any other intelligence that could be helpful for the investigators.

By the questionnaires used, within the Project, there were identified all the methods used by the Member States to exchange information regarding this type of offenders: The analyses carried out following the responses from the participating country have identified a number of benefits in terms of how information exchanges take place, as well as certain challenges that need to be solved:

1 INTERPOL– dissemination channel

Through this dedicated channel I 24/7 (access restricted at the level of law enforcement authorities) different information is disseminated to one or more states; but some countries do not always respond to requests, and certain details required for sexual offenders are not provided through these channels;

2 Interpol Green Notices– Green Notice

Used as warning systems for a wide range of criminals who could travel the world; however, it is rarely used to disseminate information about sexual offenders; this is also due to reluctance of member states to use this channel, which is different from Europol;

3 Europol Information System– restricted analysis information system

Collects data and information from Member States, for analysis; is very often used by law enforcement agencies in Member States; however, they are more targeted at organized crime and terrorism.

4 Schengen ALERT SIS II

It is used for people who are supposed to commit serious crimes or who are a threat for public security; these are for discreet location and warning of the judicial authorities about a certain person; are widely used, with millions of alerts; also, in this case, they are not used for the sex offenders; the issue requiring an analysis and a decision at European level, in this regard;

5 ECRIS- European criminal record data base

This is the mandatory mechanism for the exchange of criminal record data, it is operational in all European states; but the system is limited to this kind of information and no operational data could be transmitted; it is also managed by various structures, not only police unit, which sometimes complicates the flow of data;

6 Prum Treaty– database for DNA, fingerprints, vehicle registration

This channel works only as an automatically database that provides sometimes, from an investigative point of view, a positive result (HIT / NO HIT), so that it can only support the investigative efforts of the police, and no data about their location; it is used for all kinds of crimes, but it is not yet operational in all the states;

7 The liaison officer and internal attaché

Embassy staff may have a role, as they are supposed to have some formal links with judicial authorities, but their role is usually post-event, to facilitate investigations and provide data and information;

8 Single Points of Contacts (SPOC)– within the international cooperation unit

Not all Member States have a single point of contact, which makes it difficult to exchange information and bureaucratizes the work of those structures, in order to know what is coming in and what is coming out, regarding the information flow;

9 Bilateral and multilateral arrangements

There are agreements between states that can provide support for sex offenders, but more on the investigative side or the establishment of certain rules or priorities between those states; however, they may also be used for the exchange of information on the sex or violent offenders;

10 Informal arrangements local or regional

Informal arrangements are often formed and driven by operational expediency and are often preferred by law enforcement personnel; could be a support tools for managing this issue.

It was concluded that none of the existing mechanisms is able to cover all the needs of managing the issues imposed by the mobility of sexual offenders.

At the end of the project, as the conclusions resulting from the studies carried out during the two years, there were identified by the project, some difficulties, operative, in the bilateral cooperation between some different country, such as lack of resources to identify all these traveling criminals, and cultural, social or ethnic differences. Although there are a number of information exchange channels, it has been found that this could be considered as a deficiency, taking into consideration a reluctance from some law enforcement agencies, in certain states, or even from specialized staff, due to ignorance or various principles.

These must be removed by finding unanimously accepted solutions at the level of each European country. The SOMEC project managed to synthesize certain conclusions from the analysis but also to propose some suggestions for improving the mechanism of information exchange and international cooperation, thanks to the strong participation of national authorities and specialists from academia.

They have been grouped into two categories, the first concerns proposals at European level, for the European Commission and the European Council:

- Creating a common standard for defining notions regarding offences, that would be agreed by all Member States;
- Regarding the list of serious crimes, the kidnap must be added, because this often leads to very serious consequences;
- Harmonization a common strategy for monitoring and supervising offenders convicted of sexual offenses or serious crimes, after released, at European level, both in terms of parolees and those without obligations;
- Establishing Single Points of Contact available for both institutions involved in the management of sex offenders, Probation and Police;
- Finding a solution for the exchange information about judicial proceedings against a person who has not been convicted yet, but the trial is ongoing, during these proceedings, by the request of interested states;
- Further promotion of the provisions of the Council Framework Decision no. 2006/960 /JHA, called the Swedish Initiative, for wide use;
- Extending the use of the SIS II Alert System, regarding the location and monitoring of sex or violent offenders.

For the second set of proposals, the Member States are targeted:

- Issuing a minimum standard for assessing these types of criminals, sex and violent offenders, for the next development of procedures, for their management;
- Creating mechanisms, protocols between the responsible authorities involved in monitoring sex offenders, who will collaborate better in this way;
- Training the staff of the law enforcement authorities in the Member States, related to the channel of international cooperation, for a better efficiency of data exchanged;
- Creating concrete mechanisms for information exchange and procedures for carrying out the activities of handing over / extraditing the criminals when they are located in foreign states;
- Organizing training courses or sessions to raise awareness of the importance of better knowing the channels of cooperation and exchange information.

The principles we must be guided by, are that international regulations protect fundamental human rights and freedoms, but also the belief that every European citizen has the right to be safe where he or she lives and that their state will do all that could be done to protect them, also the European Union citizens have the right of freedom of travelling across EU Member States borders, but without this right being violated by the rights of other persons.

It should be mentioned that, together with all Member States, the Romanian Police actively participated in this important project, through the specialists of the Central Directorates, who provided the necessary expertise to achieve its objectives.

Against these forms of child sexual exploitation of children, all specialized structures and specialist divisions within Europol, Interpol and other law enforcement agencies are joining forces to identify the best solutions to combat this type of crime.

Child Sexual Exploitation is one of the priorities of the **European Police Office– Europol**, so this issue is part of analysis made within **SOCTA 2017- Serious and Organized Crime Threat Assessment** (European Police Office, 2017) and Multi-Annual Strategic Plans.

Europol has set the Policy Cycle, who lasts four years, to optimize the crime priorities agreed by all Member States, and the Europol's priorities are relying on the analytical reports of the SOCTA, produced in these four-year cycles. As a consequence of SOCTA, assessments will be led to Operational Plans with a lot of operative activities for the next four years.

The EU Serious and Organized Crime Threat Assessment (SOCTA) is the product of systematic analysis of law enforcement information on serious and organized criminal activities, which assist the decision-makers in the prioritization of the threats on EU level.

As mentioned, Child Sexual Exploitation is considered as a threat to European Union, being one of the points in the analytical report- SOCTA 2017. It is important to mention that it was an increase in the volume of material of child pornography on the internet in the last period of time and the paedophiles used the coercion and sexual extortion for victimize the children and to obtain significant financial gains. Also, these are used to get physical contact with the minors.

One of the most efficient tools used by EUROPOL were the Analysis Projects– APs (these were known also as Focal Point- PF, Analysis Working File- AWF). These Analysis Projects are focused on Europol's priorities, an information processing system which facilitate the work of the specialists by prioritize and limit the resources for some significant operative activities in some specific moments. These Projects support EU law enforcement authorities and other partner organizations to tackle

organized crime through analysing and structuring the concrete information in the database, facilitating operational meetings between partners involved in cases, deploying Europol mobile offices to the field for operations for having live access to Europol's secure information exchange network and databases, providing expertise and training to national law enforcement authorities.

One of this Analyses Projects is about the prevention and combating of all forms of criminality associated with the sexual exploitation and abuse of children- **Analyses Projects TWIN** supports national law enforcements activities for identifying all the forms of creation and distribution of child abuse material through all kinds of online environments and other type of sexual abuse involving children.

Analysis Projects PHOENIX has some connections with this field because it deals human trafficking or other forms of exploitation like sexual and labour exploitation, begging, forced marriages, child trafficking and human organ trafficking.

Although there are no criteria for organized crime, Europol classifies these offenses as particularly serious due to injuries, physical and psychological, for the most vulnerable groups, the children. One of the reasons that increased this phenomenon of child pornography was definitely the widening of broadband internet, and the easy access to internet services for more and more people.

Another specific modus operandi in the matter of child sexual exploitation that was serious increased is so-called *"Live distant child abuse (LDCA)"*, which become a significant threat. LDCA means that a child is sexually assaulted being forced, usually by a family or a community member, to engage in sexual activities or even be sexually abused in front of a webcam. This abuse is live streamed over the internet to an offender who is paying to view and also direct the activities. After that, these images will be broadcast online for gaining big amount of money. This form of online child sexual abuse is common in South East Asia area.

Also, there are another modus operandi, very often used by the perpetrators, the activities that involved private filming and photos taken by children or teenagers themselves, so-called *"Self-Generated Indecent Material (SGIM)".* After that, they send those images or photos to their known people or supposed to be known, and then are accidentally or premeditatedly distributed on social networks.

Another important organization, **INTERPOL- International Criminal Police Organization**[1] is very involved in fighting against child sexual exploitation, in order to combating this type of criminality. The most important aspects that are monitored by Interpol are sexual abuse and exploitation, trafficking of minors, forced labour and abduction. Due to the fact that child exploitation is a priority for OIPC-INTERPOL, it was establishing a specialized unit - *Crimes Against Children Unit* who as the following competence: to identify and rescue children victims of sexual abuse, blocking access to sites with child pornography content, prevent sex offenders from travelling abroad to abuse children or escape justice.

One of the most relevant tools available to Interpol in this field is *International Child Sexual Exploitation image and video database- ICSE.* This tool provides the necessary premises for specialized investigators to identify victims by making comparisons and connections between victims, offenders, places and to share data and information with colleagues from other parts of the world.

Also, there is another tool used by Interpol's specialists– The YELLOW NOTICE, an identification tool, issued by Member state to help locate missing persons, especially minors, which support law enforcement agencies for preventing trafficking of human beings.

[1] https://www.interpol.int/.

Internally, the risk management of these offenders must be related both to the existence of clear and well-structured legislation and to the identification of the best mechanisms for cooperation between all the institutions involved- police, penitentiaries, probation- so that everyone could have a substantial contribution to preventing and combating the serious crimes or to eliminate the risk of reoffending. At the same time, it is necessary to consider and improve the mechanism for the exchange of data and information within the European country.

Romanian police have a very important role to play in this effort and has a dynamic participation in preserving a public security area in Europe, together with their action partners.

In Romania, the official channel of cooperation with the judicial authorities from the other states, both European and international, is represented by the **Centre for International Police Cooperation (C. C. P.I.).** This unit is the central national authority in the field of international police cooperation, all activities related to the exchange of operational information for combating criminality at the international level, are carried out through this single channel of cooperation. C. C. P. I. is organized as a central directorate within the General Inspectorate of the Romanian Police and is made up of several structures, which ensures the cooperation on the fields of interest[1]:

1 INTERPOL– National Bureaux Interpol– competence to do the police cooperation with the others bureaux from each Member States, for facilitate the exchange information at international level;
2 EUROPOL– Europol National Unit– assure the information exchange with EUROPOL and the participation to specific action and to information system at European level;
3 The Information System Schengen II- SIRENE– exchange the information regarding the alerts SIS II and take the measures in this field;
4 NATIONAL FOCAL POINT– cooperation with the liaison officer and internal attaché and exchange information for combating cross-border criminality through police assistance requests or other forms of cooperation.

As a conclusion, we can say that at the European Union level, there is an intense concern for combating all forms of sexual abuse of children, first of all, by improving the mechanisms for exchanging information, but also by providing effective tools to combat it. The project mentioned in the article, did not solve all the problems, but we consider that it played an important role, through the systematic analysis of the existing situation carried out with the support of all Member States, which highlighted the sensitive aspects and proposed certain solutions identified by the specialists. For the future, it is necessary to follow the evolution of the situation at European level in order to be able to observe and, at the same time, to support from the internal level, the Community's efforts to combat the risk posed by sex offenders or violent offenders.

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[1] https://www.politiaromana.ro/ro/politia-romana/unitati-centrale/centrul-de-cooperare-politieneasca-internationala.

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The Eastern Partnership and the Convergence with the Romanian European Policies

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Abstract: The Eastern Partnership (EaP) is a regional political, economic and security project of the European Union and represents a top strategic interest for Brussels. Created in 2009 with: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine reveals a bold initiative for sharing the European values in the former Soviet Union space. As main objective the Partnership is centered on increasing the quality of research in security for the people with great international visibility. The aim of this study is to present the importance of Eastern Partnership for the stability of the international relations and to define the Romanian relations with those states in the context of Security Strategy of the European Union.

Keywords: European Union; Eastern Partnership; Romania; cooperation; policies

1. The EaP– a Perspective for European Collaboration

The Eastern Partnership (EaP) was created on the necessity of developing a political and economic collaboration between the European Union (EU) and six independent nations having as goal the facilitation of regional cooperation and a better border management. Through this agreement the former Soviet States: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine are strengthening the possibility of improving the political meritocracy, the market freedom and are having the opportunity to reduce the economic imbalances in order to increase stability and regional socialization.

The EaP is a cooperation-based initiative of the European External Service in partnership with Member States of the EU and six states from the East (former Soviet Union Members): Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The main objective of this initiative is to strengthen the cooperation in the next strategic fields: economic development, democracy, travel agreements and regional stability. Poland initiated the project and Sweden showed also a great contribution in supporting this integrated border management cooperation. Presented in Brussels on 26 May 2008 by foreign ministers of Poland and Sweden, the EaP was officially launched in Prague on 7 May 2009 (European Commission, 2019).

The aim of EaP is to deliver performance-oriented results for the people across this region in accordance with European Commission and European External Action Service. This political initiative is a base for

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regional stabilization and for a better cooperation between the partners and European External Service identified 20 key deliverables for 2020 with four major areas:

- Stronger economy based on increasing the economic performance and the openness for new market opportunities;
- Stronger governance under the consolidation of democracy in public institutions;
- Stronger connectivity with supporting the environment through energy efficiency;
- Stronger society by promoting the mobility of the people and new contacts (European Neighbourhood Policy, 2019).

In support for this future development and with the aim to bring the partners close to communitarian values, the European institutions offered through European Neighborhood and Partnership Instrument (ENPI) important funds for: supporting the democracy, the decreasing of social disparities, economic integration. With high importance is the establishment of Eastern Partnership Assistance Trust Funds (EPTATF) in 2010, as promoting educational grants for the students who are nationals from: Azerbaijan, Armenia, Georgia, Moldova or Ukraine (EPTATF, 2018).

There is a positive, but fragile perception of the EU in the six states, the level of trust in European Institutions is higher than ever, and the Union it is considered by 61% of the citizens the most trustworthy foreign institution (Europa.eu, 2018).

The new Association Agreements replaced the basic elaborated Partnership and Cooperation Agreements and are in present more normative in security policy or trade regulations. Since the beginning of this dialogue it was considered as priority the process of full visa liberalization in long term for the citizens of Eastern partners (Boonstra & Shapolova, 2010).

One important challenge it is to develop a stronger economy by sustaining the business of small and medium-sized enterprises (SMEs) as transformational actors in supporting the traditional job sectors with a practical access to new markets. More than 50% of the European loans for the SMEs in the six countries are in the national currency, and this practical solution generated the increase of trade with the EU since 2016: by 24% with Ukraine, 20% with Moldova, 19% with Belarus, 17% with Azerbaijan, 15% with Armenia and 6% with Georgia (DG Trade Statistical Guide, 2019).

One focus it is addressed for the strengthening of good governance by improving the rule of law and the fight against corruption as preconditions for a collective long-term stability. The EU is demanding to a depoliticized civil service with paramount importance in the implementation of the real judicial reforms, regional conflict resolutions and protection against old and new threats: organized crime and cybersecurity.

The investments in transport infrastructure, in renewable energy and in controlling the greenhouse emissions are recommended as concrete benefits for the life of the citizens in an open future. The investments in energy efficiency will help the civil population and the SMEs in improving the standards of life and full accessibility to energetical projects as form of civilizational autonomy. According to the TEN-T Investment Action Plan until 2020 it is foreseen the improvement of 5,500 kilometers of railways and roads in the region and the development of an extra 4,600 kilometers by 2030. The role of transportation in EU it is crucial in exploring the free movement of goods, people, capital and services (Kiriazids, 2018) and the international cooperation with the Eastern Partners and a common approach in question of finance could better manage the existing transport system.

EU has a strong commitment in promoting the entrepreneurship by increasing the employability through transformational education policies with no political subjectivities. Following the tradition of Erasmus and The EU4Yyouth programmes in Tbilisi was launched the first Eastern Partnership European School which is supporting the employability and entrepreneurship among the Eastern partners. "All the countries are having full access to Horizon 2020 which is one of the European Union's major instruments for steering economic development" (Pollex & Lenschow, 2018) with high importance for an emancipatory regional prosperity.

EaP is still representing an opportunity in stopping the economic pressures, the migration flows, the security threats and regarding this aspect "EU policies in neighborhood has been essentially depoliticized" (Korosteleva, 2018) focusing more on promoting a good governance in the zone as a new opportunity for dialogue and cooperation among equal partners.

2. Political and Economic Considerations about the EaP Countries

Regarding the economic and political partnership with the Eastern Neighbors, the intention of the Union was clearly expressed on the fourth EaP Summit hold in Riga on May 2015 where have been presented the principles of differentiation and inclusivity regarding the economic cooperation. In the common declaration was presented the "sovereign right of each partner freely to choose the level of ambition and the goals to which it aspires in its relations with the European Union" (EU Council, 2015). This means that the EU will have a pragmatic economic relation with the six states with a valence for the partners with common industrial principles and political dialogism.

All the Eastern partners are republics with different languages and variations of the GDP, with the declared intention to strengthen the democratic institutions in the diversity of the former Soviet space (Table 1).

Table 1. General Presentation of EU and Eastern Partnership nations

Country	EU	Armenia	Azerbaijan	Belarus	Georgia	Moldova	Ukraine
Capital	Brussels	Yerevan	Baku	Minsk	Tbilisi	Chisinau	Kiev
Official languages	24 languages	Armenian	Azerbaijani	Belarusian	Georgian	Romanian	Ukrainian
Government	Supranational	Parliamentary Republic	Unitary dominant party Republic	Unitary presidential Republic	Unitary parliamentary constitutional Republic	Unitary parliamentary Republic	Unitary semi-presidential constitutional Republic
Area	4,475,757 km2	29,743 km2	86,600 km2	207,595 km2	69,700 km2	33,846 km2	603,628 km2
Population	513,481,691	2,924,816	10,000,000	9,491,800	3,723,500	2,681,735	42,030,832
GDP/total ($)	18.8 trillion	32.893 billion	189.050 billion	195 billion	46.055 billion	27.271 billion	408.040 billion
GDP/per capita ($)	36,580	4,446	18,793	20,820	12,409	7,700	9,743
Currency	Euro(eurozone)	Dram	Manat	Belarusian ruble	Lari	Leu	Ukrainian hryvnia

Source: adapted from: Europa.EU, Eurostat, EU Council, CIA World Factbook, International Monetary Fund

The EaP nations are developing the capacity to create a positive political and economic climate as base for a decent standard of living in a new market-friendly environment. Armenia is having European aspirations and in its political agenda we can notice the intention to strengthen the rule of law and combat corruption as top priority for the success of future reforms. The economy of Armenia has an excellent well-educated human capital, the business climate presents in the same time opportunities and challenges, and there is no legal discrimination between domestic and international firms.

The European support for this state is realized through the mechanism of EU Advisory Group who worked on reforms related to the low justice, the right to liberty for persons and gender equality. Armenia is having some advantages in consolidating the European partnership because the state is having a good public finance management and the human rights acceptance is an indicator of the national commitment to the democratic process (Pădureanu, 2013).

The relation between Azerbaijan and the EU is based on the respect for the national sovereignty and the Eastern state must respect the European principles related to cross-border cooperation and regional conflict resolution. The high-level corruption, the electoral reforms and the freedom of expression are priority areas for the democratic development of the state.

Even this state is having important problems as institutional corruption, bureaucracy and property rights, the economy of the state is functional due to the energy resources as oil, natural gas and mining products. The national Government seems to be interested in conserving the actual monopoly of power with no interest in sustaining the economic diversification. Russia it is considered an important strategic partner, but the country has a good partnership with the EU and is receiving technical assistance in order to facilitate its membership in World Trade Organization (Popescu, 2016).

The Republic of Belarus is internationally perceived as an authoritarian state with low democratic standards for the civilian society. The necessary reforms and a viable plan for the modernization of the nation are required by the European officials because the Government from Minsk is constantly failing in human right protection, the freedom of media and the respect for the political opposition. After the fall of communism, the country is still having an important industrial sector, a broad economy and a competitive economic management. The investment and financial activity are limited by the official institutions, but the nation is exporting chemical and industrial products, metals, machinery and textiles (Gramada, 2016).

Georgia it is the state with excellent relations with international partners and the cooperation with the EU is held under the principles of Partnership and Cooperation Agreement and European Neighborhood and Partnership Action Plan (2006). We can notice a real progress in facilitating the development of European standards of democracy, respect for human rights and close collaboration in the area of security, following the crisis management vision promoted by the European Security and Defense Policy. The legislation is protecting the foreign investors, the economic legislation is stable, and its labor force is among the best from the former Soviet Union. Georgia it is worldwide appreciated as a peaceful democracy, where the political transfer of power follows the democratic principles and the international commitment it is very close to the Western values. Even there is a strong gap between per capita GDP of Georgia and the countries of EU (Aslanishvili & Omadze, 2019), the constitutional reforms of the state, the Euro-Atlantic orientation, the implementation of freedom and rule of law are continuing to support Georgia`s integration in EU and NATO.

Republic of Moldova is having a long-term relation with the EU supported by the Joint EU-Moldova Action Plan which is offering technical assistance for achieving the progress in: border management, human trafficking, migration and economical efficiency. Moldova achieved a significative progress in

the implementation of European norms and the European assistance had increased by 30% in 2012 making this state "the best financially supported neighbor with 41 Euro per capita, and increasing the stood to Moldovan financial support five times since 2006 when it was 25 million Euro" (Pădureanu, 2013). The economy is still having a low diversification relying especially on wine industry, but the foreign companies are enjoying equal treatment as the national firms and the European foreign direct investments could be excellent incentives for the economic competitiveness.

The collaboration between Ukraine and the EU started with the Partnership and Cooperation Agreement including the possibility for this state to participate progressively in key aspects of EU regional programmes. Like in Georgia, the public sector is having an important role in monitoring the officials initiating campaigns based on integrity of the candidates and human rights monitoring. Ukraine is making important steps toward the implementation of European values aiming to improve the civil security, the inefficient management and the lack of trust in the public institution honesty. Russia it is not seen a strategic partner and the new business elite is treating the public institutions and political parties as tools, having an important impact on Ukraine`s economic growth (Popescu, 2016).

The EaP can offer for the six nation the possibility for achieving stability and to consolidate the fragile democratic regimes by facilitating substantial investments as support for a competitive market economy in the region.

3. The Interest of Romania for EaP in the Context of European Neighborhood Policy

The Romanian Presidency of the Council of EU in 2019 was an opportunity to bring closer the European values with the ambitions and long-term objectives of: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Georgia. It is officially stated that the Romania is having a policy architecture linked effectively with the principles of European External Action Service and there is no compromise in negotiate separately with independent political actors as EaP nations. As all the member states, the external powers of Romania are delegated to the European action Service Agent who aims to: "enhancing the EU`s relations with Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine in both multilateral and bilateral frameworks" (Kostanyan, 2018).

In negotiations with the above-mentioned states there is no intention to question the transfer of competences from the national Government of Romania to the European Institutions. According to the Treaty of Lisbon the EU acquired a "single legal personality" (Article 24,1) and in Bucharest it is a strong commitment in supporting the unitarian European decision concerning the external action in Eastern neighborhood. Romania is pursuing the economic progress in the region and the political dialogue by strengthening the people to people contacts under the competence of Deep and Comprehensive Free Trade Agreement as norm generator for the sectorial cooperation. Only through regular negotiations the Romanian state is expressing its position concerning every detail related to EaP partnership agreement according to the constitutional requirement, but in the same time respecting the directives of European External Action Service.

For Romania, the regional cooperation is interconnected with EU strategy in providing continental and international security, respecting the national interest of the partners and the importance of equal treatment among the participating nations. Cooperation in order to enhance the regional complementarity is one of the European aspirations at eastern frontier and it is associated with financial support for the neighboring states in order to consolidate a long-lasting common confidence.

The interest of Romania for growing the collaboration with EaP is having as core the promotion of the political and security space on its border as well as the preservation of cultural identity for the Romanian natives who are living especially in Moldavia and Ukraine. The officials from Bucharest are centered on the policy of "shared values" and on the acceptance of a set of pre-determined rules as the respect for the regional cross-cultural values. The mutual commitments between the partners must be guided by the principle of sovereignty as vital norm for the regional transformative cooperation.

The coherent understanding of the EU partnership with the Eastern neighbors is having a strategic interest because it is the best way in the dissemination of shared values as: preserving the democracy, the consolidation for the market economy and the respect for the national autonomy. The Romanian state is willing to legitimize the European engagement with its neighbors thereby offering an attempt to become an example and a norm-maker for the cooperation with all the Eastern partners. In this endeavor, through the official foreign policy, Romania is intending to learn more about the EaP partners and to attend properly to the individual needs of each state.

The strategy of Romania presented on the Eastern Partnership Anniversary Conference held in Luxembourg is not having a Eurocentric vision for this cooperation. For the consolidation of European role on the global arena there is a requirement for a stronger commitment between all the Member States in exporting stability and prosperity among all the regional partners. On April 2019 the Minister for European Affairs stated: The 10-year anniversary of the Eastern Partnership marked during the term of the Romanian Presidency of the Council of the EU is a good opportunity to boost the efforts to implement the material objectives set out for 2020. It is also a good opportunity to adequately reflect on the progress made, to communicate the benefits of this partnership and to set out objectives for our future cooperation" (Ministry of Foreign Affairs, 2019).

In our opinion the Romanian policy must differentiate every state in EaP according to its intentions and willingness to cooperate with the EU. For example, Belarus is engaging with EU only on equal terms and the perception in this state is based on the next principle: "the cooperation should be based on joint interests rather than political values" (Korosteleva, 2012). The Republic of Moldova is having a different approach regarding the European values and the relation with the EU is engaged in "a mutually beneficial exchange game… the EU wants stability on its external borders and consequently wishes to see Moldova among the ring of friends and in return for cooperation, Moldova desires the welfare that would stem, the Moldovan authorities believe, from an explicit membership perspective" (Danii & Mascauteanu, 2012).

According to the different above-mentioned approaches of Moldova and Belarus regarding the EaP, Romania must pursue balanced relations to promote general modernizations by acknowledging the differences in values and cultural heritage.

The security issues in the region (the conflict between Armenia and Azerbaijan, the crisis from Crimea, the Transnistria uncertainty situation), are for Romania core problems in the foreign policy related to EaP. According to the EU draft Romania is trying to share the general values as human rights and democracy as base for sustainable development in the conflict regions. This zone is a strategic one for Europe and the proximity with Romania is assuming the possibility of developing in the future a free trade area encompassing the mentioned states in a stable and conflict free international region.

The policy of Romania is not having diverging preferences in limiting the power of European External Action Plan in security problems. One national objective is to successfully ensure the preferences of the population for supporting Republic of Moldova in the context the multilateral framework of EaP. The Romanian preferences are also in line with the consensus established by the European Parliament, but

we can also note a national preoccupation, both public and political, which include the intention to grant an EU membership perspective for: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine.

The Romanian officials are working with all the Eastern partners collectively and, in our opinion, it will be beneficial for a better cooperation the establishment of a platform for exchanges data and project proposals between the Member States of EU and the six partners. The highly sensitive questions as human rights, political freedom or economic strategies could be debated through this platform affecting a better achievement of this partnership achievements. Following the enactment of Treaty of Lisbon, the intention of Romania in its regional proximity is to enable a dialogue-based environment for the civil society and regarding this aspect, the recent political changes which occurred in Moldavia and Ukraine are supporting the pluralism and the non-discrimination. The agricultural potential (Ukraine, Moldavia), the soil riches (Azerbaijan), the political stability (Georgia) are excellent premises for strengthen the intra-regional trade between the EaP and EU, and Romania is capable harmonize the coordination of the projects and to reduce the technocratic tasks.

Due to different approaches between the EU policies and some political strategies of Eastern Partners, the EaP it is in danger to be transformed in an obsolete bureaucratic process. For Romania this cooperation it is an opportunity to promote the EU foreign policy in its geographic proximity and to materialize the constant progress of its national Diaspora in the area. As a final negative observation, in Romanian political society, as in the former Soviet states, there is a real problem in implementing key juridical reforms, with negative impact in the reinforcing the public administration in accordance with the European Acquis. The developing of common educational policies is the best incentive for enhancing the cooperation in cross-cutting issues and enabling a positive relation between the partners.

4. Conclusions

The EaP is a new paradigm shift in EU foreign policy aiming a greater cohesion with the six neighbors by increasing the performative actions of common creative new projects. Europe is having a transformative effect, but the official promotion policies should be managed by the acceptance of cross-cultural differences and not under the promotion of a Eurocentric view.

The European model of development may have political subjectivity but is mostly promoting a communicative interaction with the neighbors by moving forward to a pluralist cooperation in a context of a post-communist world. This partnership it is an opportunity for the substantial transformation of the international relation at the crossroad between Eastern Europe and Western Asia without monopolizing the political framework of the region. There are still political problems to solve in the region, but a depoliticized partnership will foster a dialogical relationship in which the EU members and the six states could be engaged in a performance-oriented relationship on the continent.

The Romanian external policy regarding the EaP is flexible, open to debate and is focusing to solve, at least in part, some challenges that EU faces regarding the foreign policy. The complex relation of Member States and Commission regarding the European External Action Service demands a political dialogue as base for the cross-border partnerships.

To close the article in a positive note, the most important strategy is to develop a non-bureaucratical political partnership characterized by continental development and a competitive neighborhood policy encompassing the sovereignties of all the nations.

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THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

The Relocation of Real Estate under the Terms of Constituent Legal Advertising

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Abstract: With the new Civil Code coming into force, in the Romanian law system, an effect associated with land books which has often given rise to disputes in the case law and doctrine is reintroduced. This effect of particular significance in the area of real estate rights shall be called the articles of association or rights of entries in the land register. Advertising is the way in which certain information is brought to the attention of the interested persons. Similarly, real estate advertising is "all the legal means by which the material and legal situation of buildings is publicly disclosed in order to protect their civil circuit" (Ungureanu & Munteanu, 2008, p. 662). One way of making real estate advertising is the land book system. This method is also intended to be the only one in the sense of the new civil code, as a single, uniform system ensures that people concerned can become more easily aware of the material and legal situations. However, the application of this system throughout the country is a long-term process, involving the opening of land books for all buildings and the completion of land land-use operations throughout the country. From the perspective of tabulation rights, the completion of land registry works at the level of each administrative and territorial unit will be the moment at which the legal constitutive effect of the land is to occur, currently postponed by the provisions of Article 56(1) of L 71/2001 for the implementation of the Civil Code. Thus, in this Article, we intend to look at the mechanism of the transfer of the right to property under the conditions of the legal articles of association, with the sales contract, a pattern of translational documents of property, as a reference.

Keywords: Land book; real estate advertising; real estate; cadastre; tabulation

1. The Rights of Incorporation of the Land Book Entries, as Regulated in the Current Civil Code

Among the many functions that an advertising system can perform, such as information, opposability, proof, etc., the constituent or translative function can also be identified, which is also performed by the property advertising system through land books. Thus, under that function, the creation or transmission of rights in rem is subject to the fulfilment of certain appropriate formalities (Stoica, 2009, p. 416). In our system of law, the above-mentioned formalities are to be completed in the land book.

In the current rules, Article 885 paragraphs (1) and (2) explicitly enshrines the articles of association of land books in respect of the acquisition and extinction of real estate rights. This legal text States that: "*save as otherwise provided by law, rights in rem in the property entered in the land register shall be acquired, both between the parties and vis-à-vis third parties, only by entering them in the land register, on the basis of the act or fact justifying the entry. Rights in rem shall be lost or extinguished only by their removal from the land card, with the consent of the holder, given by a notarial authentic*

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instrument. Such consent shall not be required if the right is extinguished by the expiry of the period shown in the entry or by the death or, where appropriate, the termination of the legal existence of the consultant, if he was a legal person."

This effect is also reiterated in Article 886, which aims to amend a right in rem in immovable property: *'the amendment of a right in rem in immovable property shall be made in accordance with the rules laid down for the acquisition or extinction of rights in rem, unless otherwise specified by law'.*

At the same time, we also stress that it is not in all cases necessary to include in the land book real rights in buildings, and there are also exceptions provided for in Article 887 Civil Code. However, paragraph 3 of the same Article makes the acts of provision subsequent to the acquisition of rights in rem conditional upon entry in the land register. (12). Therefore, even if the holder has acquired certain rights in rem in immovable property in a way that does not require registration, in order to be able to dispose of them subsequently, he must be subject to the law of the land registry (13).

Otherwise, the principle of full advertising would no longer be respected. Moreover, the holder of the right not recorded in the land book has an interest in including him for the protection afforded by the land book. For example, if a person appearing as the holder in the land book, although not the beneficial owner, has this right, the bona fide third party acquiring for consideration shall be treated as the "holder of the right registered for his benefit" in accordance with Article 901 paragraph (1) Civil Code (14).

The transfer of the right to real estate in the current Civil Code regulation is one of many exceptions to the principle of consensus**.**

Thus, according to Article 1674 Civil Code, "except in cases provided for by law or where the parties' intention is not to do so, property shall be transferred from right to the buyer from the time the contract is concluded, even if the property has not been handed over or the price has not yet been paid". Furthermore, Article 1273 Civil code enshrines the right to transfer rights in rem by agreement of the parties' will, "even if the goods have not been handed over, if this agreement carries on specific goods, or by individualization of the goods, if the agreement carries on certain goods of a gender."

As regards the transfer of the right to immovable property, it follows from the read-across interpretation of Article 1676 Civil code with Articles 885, 888 and 881 Civil code that the tabulation of the right in the land register is necessary, which is possible only on the basis of the notarial authentic instrument, of the final judgment of the court, of the certificate of succession or under another instrument issued by the administrative authorities, where the law so provides. On the other hand, the form of the authentic instrument is not only a requirement for the right to be entered in the land register, but also a condition for the validity of the property sale contract.

We can say that in order to carry out the valid transfer of the real estate right from the seller's estate to the buyer's estate, double formalism is needed, which is the exception to the consensual transfer of law: the authentic material of the sale and the tabulation of the right in the land book of the building in question.

Under these circumstances, the way **in which the obligation *to give*** the seller manifests itself and what its actual content is.

The definition of sale provided for in Article 1650 paragraph (1) Civil Code: "sale is the contract whereby the seller sends or, where appropriate, undertakes to transfer ownership of a good to the buyer in return for a price which the buyer undertakes to pay."- The obligation on the seller to pass on

ownership of a good to the buyer is clear. The assumption that the seller does not submit, but undertakes to submit, takes into account situations where ownership is not transferred at the time of the agreement of will but at a later date, the date by which the facts or material which will complete the transfer will be produced or committed. However, this does not mean that the obligation *to give* into a must, since several operations must be carried out in order to carry out it, which fall within the legal nature of the obligation *to do* so.

We appreciate that the displacement of the property right is the best example of proving that there is an obligation *to give* the seller, and the complex content of the seller, the fact that it will be executed by means of benefits characteristic of obligations *to do*, does not distort the content of the obligation *to give*.

To support this idea, we refer to the existence of valid consent expressed on the transfer of ownership. In the absence of such consent, the mere handover of a good or the handover of documents for the purposes of the breach, without the intention of transferring the right, would be irrelevant and could not be interpreted as obligations the enforcement of which is itself manifested in the performance of the obligation *to give*.

All these obligations are subsumed and ancillary to the transfer, as it is essential to express consent to the transfer. The debtor's benefits follow all the same intent of transferring ownership and are intended to extinguish by enforcement not obligations *to do* but the obligation *to give*, on the basis of the consent originally expressed.

For this reason, Article 1650 Civil Code cannot be interpreted as applicable to a promise of sale, since a new consent is required to operate the transfer, but it can be considered to be a sale of the good to another, a sale with reserve ownership or a sale of immovable property by land book system in which the entry has legal effect.

Therefore, all the benefits specific to the obligations *to do* are component elements of a whole, which is the obligation *to give* and are executed by the seller to complete the transfer of ownership, and therefore, until the transfer of the ownership to the buyer's assets is completed, the buyer can only be the holder of a claim.

It is only by performing all the benefits necessary for the transfer of ownership and taking account of this transfer that the translational effect will occur.

2. The Role of the Material Act of Tabulation in the Obligation *to Give*

The completion of the transfer of the right to immovable property in the legal formation of the infringement involves the commission of the material act of the right registration, which can be obtained following the application for an infringement which is often requested by the buyer.

With regard to the tabulated action, the purpose of the action is only considered to be the handover of the documents necessary for the registration (other than the one by which the right in rem is transferred) because of the disapproval of the person against whom the entry is made. On the other hand, if a right in rem is removed from the land register, the express consent of the holder is required, which must be in genuine form in accordance with Article 885 paragraph (2).

Therefore, the legislator has no longer provided for the need for a separate agreement of the holder of the right to the transmission, constitution, or modification of a right in rem in immovable property, but such consent is necessary to put an end to the right by removing it from the land register.

From the above, we are to see what principles characterize the housing advertising system in the new Civil Code. First, the legislator has opted for the principle of tradition to be applied to immovable property, the transfer of property being postponed until the actual right is entered in the land register. Since the transfer is no longer split between two legal acts, but between a legal act and a legal fact, the principle applicable is this time that of unity.

When the seller shows his willingness to conclude the contract for the sale of a building, he creates the necessary prerequisite for the transfer of ownership to operate automatically on the date of entry of this right in the land book. The obligation *to give* the seller shall be the consent to the sale and the delivery to the buyer of the documents necessary for the tabulation. Consent to the tabulation shall be implicitly considered and be objective by providing the purchaser with the documents necessary to carry out the tabulation.

We do not believe that we can talk about a buyer's obligation to register his acquired right by sale (but rather a right of the buyer linked to the obligation *to give* the seller), but questions arise as to whether the seller's obligation to submit the right is considered as a matter of law once he has handed over the documents necessary for the breach. We consider that we cannot talk about full and final enforcement of the right to transfer property until the time when the property is transferred to the land register. The fact that this entry is requested by the buyer is justified by the fact that the seller, by consenting to the transfer of ownership, implicitly consents to the possession of the right in the land book.

At the same time, the vendor can request this entry himself, because it is the last stage of his obligation *to give*. The seller may not be refused an application for entry in the land book of the buyer's right on the grounds that it would not prove the existence of an interest. It is not only in the interest of the buyer to see the acquired valid right, but also in the seller's interest to fully enforce its obligation to transfer ownership, because until the date of the transfer, its property is in an uncertain situation, in the process of transmission and will not be able to dispose of it in any way, nor can it require the buyer to pay the price unless they have agreed otherwise.

According to Article 28 paragraph (5) of L7/1996: Entries in the land register shall be made at the request of the interested parties, except in cases where the law provides for registration by default; the application for registration shall be sent to the territorial office in which the property is situated." In addition, the following paragraph stipulates that "*the entry or provisional registration may be requested by any person who, according to the original document, the court ruling or the administrative authority decision, is to remove, constitute, modify, acquire or extinguish a tabular right".* Therefore, both the displaced and the acquirer of a right in rem are entitled to execute the substantive act of the registration.

The buyer, interested in completing the translational act, acquires by law the possibility to carry out the material act to which the seller would be obliged. At the same time, the notary public, as the instrument agent of the authentication of the sale contract, has the duty to ask for the buyer's right in the land book to be covered, thus avoiding the first's dependence on the last one in completing the execution of the obligation *to give*. However, this is possible precisely because the seller agrees to the tabulation.

There is no need for express and separate consent to the tabulation of the seller because the seller is intimately related to the obligation to transfer the property and is included in the consent to sale expressed in authentic form. The buyer's right, which is correlated to this obligation, is affected by an

uncertain period of time of a legal nature, which does not have its effect in the agreement of the parties but which the parties assume.

3. Uncertain Legal Term Affecting the Sale of Property in the Constituent System the Law of the Land Registration

The particular feature of this term is that the event determining the date of transfer of the property, i.e. the completion of the obligation to give, i.e. the time of entry, is not only carried out by the action of the seller but also by the buyer, personally or by means of the notary public, which by law, he is obliged to carry out the formalities relating to the advertising of property.

Thus, the obligation to transfer the property, which derives from the property sale contract in current Civil code is a genuine obligation affected by the form of the standstill period, so that any sales contract aimed at transferring the ownership of a building, given the legal effect of the sale in the land book, it will be a real legal act affected by the arrangements. We consider that this term is set in favour of the buyer, since until it is realized, the risk of forgiven loss of the good is not transferred to him. At the same time, the same term is a time-consuming one in favour of the seller, because the obligation *to give is* extinguished simultaneously with the transfer of the property.

We cannot consider the transfer of property until the time of the land book entry to be affected by an event with a suspensive status, as its production is anticipated and desired by the parties, and not unpredictable and independent of the will of either party.

If we considered the future event to be a suspensive condition, we would not be able to determine the date from which the condition would be deemed not to be fulfilled, when it would be certain that the event would not occur, whereas registration may continue to be required by either party or by the notary public, which would lead to a civil insecurity and would be contrary to the provisions of Article 1404 Civil Code. On the other hand, even if we accept that there is a possibility that the future event may no longer occur, we should accept that the act of disposal would be considered never to have been concluded, which would be contrary to the valid binding act that the parties have concluded.

As regards the nature of the buyer's right from the time the contract was concluded to the time of the infringement, as I mentioned, we believe that this can only be a right to claim, which only goes out at the time of the infringement in the land register and not at the time when the documents required for the infringement are handed over.

The failure to give the necessary documents for the infringement, gives the buyer the right to bring an action for tabulation in accordance with Article 896 Civil Code and to obtain the enforcement of the obligation to transfer property by entering the property right in the land book.

With regard to the order of performance of obligations by the seller and the buyer, we consider that in case there is no standstill period within which the price must be paid or the parties do not agree that the price should be paid at the same time as the contract of sale is concluded, the buyer will not be liable for payment of the price until the good is handed over to the buyer and the obligation to hand over the good cannot be due until the ownership is given to the buyer, i.e. entered in the name of the buyer in the land register.

Last but not least, the question of *bearing the risk of* forcible loss of the property until the time the right is entered in the land book, in accordance with the provisions of Article 1274 Civil Code placing this risk on the debtor of the obligation to surrender the property.

Bearing the risk of forced fouling of the immovable property presents some particularities caused by the steps taken to produce the translational effect.

If the seller gave his consent to the transfer of ownership at the time of the conclusion of the contract but did not hand over the property or the documents necessary for the sale, the provisions of Article 1274 Civil Code apply, the seller being still the debtor of the obligation *to give* and implicitly of the obligation to surrender, so that he will bear the risk of forcibly discarding the property.

When the property is handed over before the property is entered in the land book, the question arises as to whether the seller has to bear the risk of fortuitous loss of the property, since the seller has made available to the buyer all the instruments necessary for the transfer of the property. In this situation, we consider that if the parties agree that the acquirer should request the recording of the right in the land book, the failure of this material act by the buyer should not be interpreted against the seller who performed the benefits to which he was obliged to consider the transfer of ownership.

Therefore, in this particular situation, the risk of forced sale of the good is to be borne by the buyer. Only if the seller assumes toward the buyer that this last material act will be carried out, thus preventing the buyer from applying for an infringement, the seller shall bear the loss of the property until the right is entered in the land book.

In the event that the seller gave his consent to the sale (and implicitly to the tabulation), and the documents necessary for the sale were handed over but the property was not handed over, the res *per it debtors rule will apply* and the risk of the sale of the property will be borne by the seller.

Also, if the good is forgiven after the buyer's right of ownership has been entered in the land book but the good has not been handed over because the price has not been paid, we believe that the risk of forgiven loss of the good will have to be borne by the buyer, Since the non-performance of the obligation to discharge was due to the non-performance of its own contractual obligations, with the indication that it must have been delayed or become legally late, in accordance with Article 1525 Civil Code.

Conclusions

We can conclude that, in the current Regulation of Civil Code, the transfer of real estate is a real obligational act affected by the modality of the uncertain standstill period, which implies the application of the principle of unity in the transmission of real estate in a land book system. It is not the question of a second real act by which the parties' consent to an infringement, but of a single act, which obliges to execute, that is to complete the transfer of property by entering the right in the land register.

The obligation to transfer ownership consists of the authentic consent for sale, the obligation to hand over the documents necessary for the recording and the material document of the entry in the land register. Of these, the first two are performed exclusively by the seller, while the last act is no longer the exclusive attribute of the seller, because the law allows the buyer to complete the sale, and the public notary is obliged to do so.

Thus, ensuring the dynamic security of the civil circuit requires that the transfer obligation be enforced by any interested party, or by the notary public, ex officio. The notary does not replace an absent consent to the registration, but ensures that the transfer of property is completed, precisely on the basis of the agreement of the parties to the transfer, postponed until the completion of this formality.

The material act of the entry in the land book is, on the one hand, intended to mark the date on which the property of the alienator's estate is transferred to that of the acquirer and, on the other, to mark the time when the enforcement of the obligation *to give up* has been fully completed.

However, as long as we do not have a unitary cadastre throughout the country, it is impossible to apply the rights-based effect of the land book entries. We are therefore in a transitional situation, but it has not been overlooked by the legislator.

Thus, by the provisions of Article 56 of Law No 71/2011 for the implementation of Law No 287/2009 on the Civil Code, the rights-constitutive effect provided for by Articles 885 paragraph (1) and 886 Civil Code is extended until the land register works are completed and land books are opened for those buildings. Until then, the land registration is to have only an effect of opposability to third parties. But despite the heavy work of the cadastral works, it seems to see a happy end as well.

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The Responsibility of States in Contemporary International Law

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Abstract: This article examines one of the most pressing and complex issues in modern international law, which requires its scientific development - the issue of state responsibility. A very difficult issue that arises when considering liability for environmental damage is the issue of state fault, one of the most controversial in the doctrine of general international law, especially in international law on state liability for environmental damage.

Keywords: responsibility of states; loss, international law; environment; responsibility; perceived guilt

1. Introduction

The issue of international liability when it comes to environmental pollution is one of the most difficult in international law and has no clear-cut solution in the doctrine or practice of interstate communication.

There is a change in the natural environment, a decrease in natural resources, and restoration processes are extremely expensive.

The destruction of the livelihoods that underlie human existence due to environmental degradation is no less a threat than a military one, as a result of which environmental costs are difficult to estimate. In many cases, the damage caused to nature is irreversible. Thus, the problem of the environment is characterized by a planetary scale.

Even the high efficiency of nature conservation at national level does not mean a complete solution to the problem of ensuring environmental protection and the rational use of natural resources on the planet. The World Ocean, Antarctica, Space and other natural resources, which are heavily exploited and exposed to the influence of the world community, remain outside the limits of national jurisdiction. In addition, in the process of economic and other activities on their territory, states have a detrimental effect on the environment of neighboring states and international territories.

The survival of humanity depends on its solution. Success can only be achieved as a result of active cooperation between countries.

The cause of damage to the environment can be expressed by the implementation of any act that causes damage to health, human living conditions and any object of the natural environment.

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Thus, there has been damage to the natural environment, such as pollution, radiation, noise, explosions, vibrations, other energy, floods, fires, earthquakes, sand debris, other environmental calamities or other damage to human health and living conditions, natural resources and ecosystems as a result of any direct or indirect human impact on the natural environment.

For the emergence of international legal liability, the harmful consequences of the activities must go beyond the jurisdiction of the State carrying out such activities. That is, the damage should be cross-border in nature. Environmental damage is cross-border when the act, as a result of which it occurs, is committed in the territory of a State and the damage is caused in the territory outside the jurisdiction or control of that State (Bowman & Boyle, 2002).

The concept of liability emerged and developed in domestic law with the commission of the crime. The concept of liability for damages caused by legal activity that is associated with increased danger is relatively new but is recognized in most legal systems around the world. However, different legal systems use different concepts as a basis for this concept, such as "perceived guilt", "risk, "dangerous activity" and so on. But it is clear that liability for damages caused by legal activities is a general principle, its understanding and wording are similar, despite the difference in the specific application of this principle in different states.

2. Analysis of the Sources of International Law

An analysis of the sources of international law gives reason to believe that in modern international law a new principle is formed - the principle of protection of the human environment and also in international space law, the principle of protection of space and environment has emerged since the establishment of international space law.

The essential content of the international legal principle for the protection of the human environment and space is that the activities carried out by a State under its jurisdiction or control in the use and exploration of outer space should not prejudice the environment of other States and their interests in areas outside actions of the national court (Дубровник, 2018).

In our time, the degree of use and exploration of outer space by humanity is far from reaching this to strictly limit the limits of the responsibility of states for its actions on the pollution of outer space and specific space bodies. To date, the international community has focused only on the interaction of space exploration and environmental protection, i.e. humanity uses various positive conditions to protect the terrestrial environment that space practice offers to limit or prevent negative consequences on the terrestrial environment in the process of space exploration. In short, the protection of human space eliminates the real and potential threat from the space exploration process.

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Of course, the issue of state responsibility is one of the most urgent and complex in modern international law and requires its scientific development. The Stockholm Declaration explicitly states that "States shall cooperate in further developing international law on liability and compensation for victims of pollution and other environmental damage caused by the activities of those States under their jurisdiction or control over areas outside their jurisdiction... The adoption of preventive measures by states does not

yet serve as a guarantee against damage outside their borders. Such damage can occur both as a result of the imperfection of human knowledge about the relationships that exist in nature and its individual elements, as well as due to the impossibility of the states to coordinate sufficiently effective preventive measures due to the action of political factors. In the doctrine of international law, it is generally recognized that the liability of a State arises as a result of a violation of a rule of international law or, more specifically, of the obligations established by that rule, the international legal liability of a State arises in the event of a breach of obligations. Under international law (Sandrine, 2018) a State's international legal liability arises in the event of a breach of its obligations under international law. (Sandrine, 2018) a State's international legal liability arises in the event of a breach of its obligations under international law (Sandrine, 2018).

The issue of the responsibility of states to cause transnational damage to space and the terrestrial environment in the process of space activities, being part of a more general problem of international legal responsibility, has its own peculiarities. A particular difficulty is the insufficient development of the system of international environmental standards. In the international legal literature, there is no consensus on whether damage is an independent element of an international crime. However, there is no doubt that causing damage as a result of the impact on the natural environment of another state is one of the most important conditions for the emergence of the responsibility of the offending state. More, such damages will almost always have a material expression and will have an economic character. Ordinary, unfavorable "and be" serious "or" substantial (OECD, 2012).

It is known that the nature and extent of the damages depend on the types, forms and scope of liability of the State which committed an error. Therefore, the main type of liability for damage to the environment is liability, usually expressed, liability to correct the damage caused, ie to restore the situation that existed before the infringement or, if this is not possible, to compensate for the damage suffered by the injured state in the doctrine of general international law, especially in international space law.

The important principles of liability for environmental damage caused by legal activities in international law are the principles of the Stockholm Declaration of 1972 and the Rio Declaration of 1992. In these documents, states should cooperate in the further development of international law in relation to liability and compensation issues for the harmful consequences of environmental damage caused by activities under their jurisdiction or control in relation to areas outside their jurisdiction (International Court of Justice, 2010).

In 1969, an international convention on civil liability for damage caused by oil pollution was adopted. This convention addresses 4 important issues:

- Removing legal obstacles for coastal states to obtain adequate compensation;
- Harmonization of a liability regime, which has so far been based on some general provisions of tort law;
- Ensuring that the source of pollution pays adequate compensation for the damage caused;
- Allocation of costs in the light of the 1957 Convention on the Limitation of Liability of Ship-owners.

3. Results and Discussions

Because of the analysis of the relevant international legal norms, the following main features of the liability regime for environmental damage caused by legal activities can be highlighted:

The operator is obliged to carry out a permanent insurance of its activities or to offer other guarantees to cover the maximum compensation in case of damages;

The State of origin is obliged to respect the principle of non-discrimination;

Matters which are not directly governed by international legal treaties should be governed by national law and should not contravene the rules of international law;

Judgments of a court of a State must have equal force in the territory under the jurisdiction of another State.

However, in order to prevent or compensate for the damage caused, it is necessary to find out who is responsible for causing such damage. The responsibility lies with the person who controlled the activity, as a result of which the damage was caused.

In accordance with international space law, legal persons and natural persons are recognized as liable for damage caused by environmental pollution. However, these people may sometimes be unable to provide adequate financial compensation for the damage caused by pollution.

To this end, international agreements on civil liability for damage caused by pollution should include rules obliging the State to guarantee compensation for damage caused by pollution caused by legal or natural persons of nationality or belonging to that State, up to the limits established by the agreement. States should have the right, introduced in an international treaty, to take protective measures in areas beyond the limits of their national jurisdiction to prevent pollution of their territory, provided that such measures do not exceed the reasonable limits required to achieve this goal.

According to the rules of international law and international space law, states are obliged to adopt national legislation on the prevention of environmental pollution, considering existing treaties, as well as the decisions and recommendations of the competent international organizations in this field. In this regard, it would be very useful to develop a unified framework for such legislation.

In general international and space law, it is necessary to intensify the process of development and adoption by states of universal technical norms and rules which establish optimal criteria for the reliability of the design of technical means, as a result of accidents from which environmental pollution may arise, Equally important is the development and adoption by states of optimal rules and standards to ensure the elimination of harmful agents in the environment and space in safe quantities, in other words, so that such disposal does not have the nature of the pollution (International Law for Environmental Damage, 1997).

Of great importance for the successful solution of the problem of space and environmental pollution prevention is the control by the states over the correct implementation of the norms and regulations that forbid the pollution of space and the environment, as well as the control over the level of its pollution. Such control by states is becoming particularly important in areas that go beyond national jurisdiction. The need for such control has led to the development of special international agreements and the adoption of appropriate decisions by a number of international organizations.

The next important issue is the issue of the legal force of the judgment. The 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Dangerous

and Harmful Substances by Sea provides an exception to the rule on the impossibility of reviewing a judgment which has entered into force. Thus, 'any judgment shall be recognized in any Member State unless the decision was taken as a result of fraud or the defendant was not notified within a reasonable time and was not given the opportunity to defend his case in court.

Thus, the main precondition for the international legal liability of a state is the ability to choose a certain behavior option in objectively determined situations and to be responsible for the choice.

Today, the concept of responsibility is used in 2 ways. The term "liability" means liability for breach of international legal obligations, i.e. liability for illegal acts. This liability arises in the event of a violation of the rule of law. The term "liability" means liability.

The division of responsibilities into primary and secondary indicates a significant difference in terms of "responsibility" and "responsibility". If the damage was caused as a result of the consequences which the State should have prevented, such a State may be released from liability for unlawful actions (liability) if it proves that it has taken all possible measures to prevent the consequences. However, in this case, the state is not exempt from liability and will be obliged to compensate the damage caused (International Court of Justice, 2010).

The real basis of the responsibility of the states for the damages caused by legal actions is: a) the event; b) damage, and c) a causal relationship between them.

The event is associated with the legal behavior of the state, causing damage to another state.

The damages caused by the event can only be material. The event, which underlies the liability for the damages caused by the legal activity, causes material damages to the injured state. However, it does not violate the intangible interests of the state, which are protected by law. By virtue of this, the significance of liability for such damage consists in compensating for material damage and is not a consequence of a violation of the international legal order. It is compensatory in nature.

Special forms of liability for damages resulting from legal actions may be monetary compensation, services, technical assistance and the provision of different types of material values, etc.

Unlike liability for a crime, liability for damages caused by a legal activity fulfills a stimulus function, the nature and purpose of which significantly differentiate it from the preventive function performed by liability for a crime.

In our view, international legal protection of the environment in the process of space exploration should include a set of rules governing relations between states in the process of using the natural environment (space, atmospheric and terrestrial environment), as well as a set of rules that regulates relations between states on environmental management in the process of space exploration.

Activities that lead to harmful damage can be completely banned. This category includes some types of nuclear tests in the atmosphere, space and underwater. The reason for banning such activities is the extent of the harmful consequences arising from its implementation.

Activities harmful to another state may be carried out:

In the territorial jurisdiction or control of the state carrying out this activity or outside them;

On a common site, and the damage could be caused to another state, either on a common site or in the territorial jurisdiction or control of the affected state.

Environmental damage caused by activities that are not normally associated with risks, possibly as a result of unexpected events. Deterioration of the environment is also possible as a result of the normal course of business.

Given the current magnitude and intensity of anthropogenic impact on the environment, the concept of liability for a crime cannot always serve as an appropriate legal means of securing environmental interests. In this case, the damage to the environment remains. Consequently, a more flexible concept of liability for environmental damage is needed.

Recently, attention, both nationally and internationally, has focused on the concept of liability for damages caused by legitimate activities. In the literature, such a responsibility is called no-fault, strict, absolute, objective, compensatory liability. These concepts have their own characteristics, however, in fact, they are close to each other. The emphasis on this type of responsibility is due to the fact that (Дубровник, 2018):

Manufacturing processes have become more technically complex. It is therefore becoming increasingly difficult to demonstrate that the damage resulting from such activities is the result of negligence. Thus, it becomes necessary to relieve the applicant of the burden of proving the guilt of the defendant;

The damage caused by some types of activities can be significant and the consequences can be very serious;

When it is known that responsibility for environmental damage will have to be assumed, it can be assumed that additional precautions will be taken.

Thus, the concept of risk is of great importance for the concept of liability for damage caused by legal activity. This concept was formulated by the Organization for Economic Cooperation and Development.

The risk is the introduction by a person into the environment of substances or energy that lead to such destructive consequences that, by their nature, pose a threat to human health, harm living resources and ecosystems and create barriers or obstacles to recreational use and other legal uses of the environment.

The UN Commission on International Law stressed that the prevention of transboundary environmental damage should be carried out in accordance with the following conditions;

In most states, before starting to carry out risk-related activities, the operator is obliged to obtain the appropriate permission from the state authorities to carry out such activities;

Before obtaining an authorization, the state determines the degree and nature of the risk associated with the activity, including the impact on people, property, the environment, both inside and outside the state.

The status of the risk-related activity must provide the necessary technical and other information to States that may suffer cross-border damage as a result of the activity;

States of origin and countries which may suffer cross-border damage should hold joint consultations in order to take the necessary measures to prevent or minimize damage and to work together in this direction; In any case, the origin of the risk-related activity is obliged to take all necessary measures to prevent and minimize cross-border damage. Violation of this obligation by the state entails liability for illegal actions.

Activities that involve the risk of causing damage to the environment must have a physical quality, and its consequences must flow from that quality.

The International Commission of International Law has concluded that any type of human activity is associated with one or another degree of risk. It is impossible to quantify this risk. Therefore, it does not

make sense to create an exhaustive list of dangerous substances, the use of which is associated with one degree or another of risk. This conclusion can be drawn for two main reasons. First, there are 60,000 chemicals in the world, and it is impossible to know all the consequences of their use. Second, some substances, such as water, are not dangerous, but in some cases they can be dangerous.

4. Conclusions

Therefore, the list should be indicative, appear as an annex and complete the general definition of hazardous activities, which should be as detailed as possible.

Risk is the main component of dangerous activities. It refers to the probability that the harmful consequences will occur as a result of the related activity. The danger of a certain type of activity is determined by the degree of risk of damage and its amount.

Risk activities can be divided into 2 groups:

- Risk-related activities, i.e. activities that lead to an increased risk of causing cross-border damage;
- Activities with harmful consequences, i.e. activities that cause cross-border damage as a result of its normal implementation.

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