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

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RSP • No. 47 • 2015

European Governance, Europeanization and Peace-Building in the New European Democracies: Regulations and Self-Assessments

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EDITORS' NOTE

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

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

Welcome to the third issue of 2015 of the *Revista de Ştiinte Politice. Revue des Sciences Politiques* (hereinafter **RSP**). The content and the thematic of the journal provided since issue 41/2014 are dedicated to encounter the East and West political challenges recently debated by the academic community and scientists.

The content of issue 47/2015 is set out to focus on the Europeanisation and European governance as a source and factor of the new democracies in the Balkan and Baltic states. The functionality and common characteristics of these states launch the discussion of the essence of democracy after the fall of the totalitarian system. Furthermore, the scientific debates related to Europeanisation and European governance involve academic, experts, professionals and scientists arguing that the regulations and self-assessments mark the beginning of enriching the democratic framework for transition demonstrating that the individual examples often develop "political and security self-assessments" in the post-communist period. Moreover, "scaling" and excavating the post-communist developments also challenge "Europeanization" and "the difficult road of transition", "peace-building" and "state-building", "elections", "freedom regime in the traditional Romanian villages", "review of the special protection of persons with disabilities", "the right to honour, reputation and image of the natural and legal person" and "the right to private life" ,"social integration" and "youth employment", "religious

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press", "country image", "local self-government", "regional interets" and "government empowerment".

Further, the articles within the latest issue of **RSP** – 47/2015 – guide the reader and enhance the collective perception on Europeanization and European governance related to: the national identity and peacebuilding process, the comparison of the process of establishment of the communist regime in Central European countries, European practices for the integration of immigrants, policies, programs and prospects related to national and regional interests, post-communism and security, media theory and media systems, traditional Romanian villages etc.

The authors of the articles of **RSP** issue 47/2015 consider that the main task of the journal to assess the relative connection between European governance and Europeanization leads to the essence of democracy.

We would like to salute the presentation of innovative solutions and to present our sincere thanks to all the authors of our journal in all its 47 issues!

Sincerely,

RSP Editors

RSP • No. 47 • 2015: 11-20

ORIGINAL PAPER

National Identity and European Unity: a Symbolic Approach

Ștefan Viorel Ghenea*

Abstract
A symbolic approach of the European Unity takes us to the main European symbols. Some of them already officially recognized by the European Union (the flag, the anthem, Europe Day and the currency) originate in the national symbols. These were designed to strengthen the national unity and the sense of belonging to a large community like the nation, but at the same time generating a differentiation from the others, members of other national communities and thus leading to the alterity or even violence. The issue that I will address in this study is whether it can be a European identity based on symbols originally linked to national identity without creating new alterities and differences. Are they compatible with the values of tolerance, of equality of chances or with the ideal of unity in diversity promoted by the European Union? We will argue in favor of an affirmative answer, while warning about the dependence of European symbols on their national substrate. The paper will be divided in two parts. In the first one, after a general introduction to the problem, I will focus on the European flag and anthem/hymn and in the second part I will analyze the meanings of the European currency, the Europe's Day and of some religious symbols and places.

Keywords: *national identity, European unity, European symbols, flag, anthem*

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Introduction

Currently, Europe finds itself in the middle of a political, economic and institutional construction. The basis of this process is an idea rooted in European consciousness, that of *European unity*. This idea has a rich and nuanced history with important implications for the present and the future of this continent. But a collective idea like this cannot be only the product of a cognitive or rational process, its roots going deeper in the collective unconscious. In his way of relating to reality and to the others, the human being is building a full network of images, symbols, myths and utopias. A symbolic approach of the European Unity takes us to the myth of the nation. In the nineteenth century, the myth of the nation and the national state captured the historical and political imaginary. The nationalism was to mark the strong historical consciousness. Nowadays, one of the reactions to the European paradigm would be that by Europeanization nations would lose the cultural meaning, would remove their traditional fund, generating the sense of national identity. To counter these tendencies it should be understood that having a European identity does not conflict with having a national identity.

European identity is based, however, on national identity. The European Union has selected its symbols on a national model. The flag, the anthem, the national day, the currency became symbols of a wider community than the nation, but at the level of imaginary they fulfil the same role: to bring people together; strengthen the sense of belonging to a community. But often the national symbols have led to conflict with people of other nations, people have died for defending the national flag, the national day commemorates an event that often means a victory over other nations, independency from a particular oppressing nation or achievement the national unity, which often was done by appealing to force and violence. National currency symbolizes both national unity and unitary national exchange but it is at the same time and support to depict the faces of emblematic figures of national history and culture. Will these symbols serve European unity without having the same effects as the national symbols? We will answer to this question and others related, through an analysis of the major European symbols, referring to the national symbols, and we will analyse the possibility of creating a European identity compared with national identity. We will start with the link between national identity and European unity and continue with that of the national symbols and of European unity.

National Identity and European Unity

Anthony D. Smith states that "the concept of *national identity* is both complex and highly abstract". As determinant factors he recalled: "the territorial boundedness of separate cultural populations in their own « homelands»; the shared nature of myths of origin and historical memories of the community; the common bond of a mass, standardized culture; a common territorial division of labour, with mobility for all members and ownership of resources by all members in the homeland; the possession by all members of a unified system of common legal rights and duties under common laws and institutions". (Smith 1992: 60). Based on these factors/dimensions nation is "a named human population sharing a historical territory, common memories and myths of origin, a mass, standardized public culture, a common economy and territorial mobility, and common legal rights and duties for all members of the collectivity" (Smith, 1992: 60; Smith, 1992, 2001). National myths and symbols play an important role in building identity (Nicoară, 1999; Nicoară and Nicoară, 1996). The nation is built historically,

socially and politically but also in the imaginary. It acts as a factor of cohesion and strengthening the sense of belonging to the community. Myth unity acts both at European and national identity construction. European identity is closely linked to the myth of European unity (Girardet, 1997; Boia, 2000, 2002, 2005, 2013). The idea of European unity can be traced back to Sully, Podiebrad (that of some kind of European federation controlled by a central council made up of representatives of all is component states), perhaps even Charlemagne and the Holy Roman Empire. Since the project of European integration began, at issue has always been whether a European identity could develop to support the political unification. Is a genuine European identity possible? Both supporters of supranational integration and those of state sovereignty defended their position with economic and political arguments, but also by means of symbolic expression and communication (Smith, 1992; Tartler, 2006).

A Vocabulary of Symbolism

The literature indicates that there were significant variations in the use of the term *symbol* (Durand, 1999, 2000; Evseev, 1983; Benoist, 1995, Todorov, 1983; Ricœur, 1998). It is therefore necessary to define the most appropriate of those figurative forms, which have in common the fact of being signs and not exceed the intellectual meanings. In this respect are useful the terminological distinctions made by Jean Chevalier and Alain Gheerbrant: "the emblem is a visible figure, conventionally adopted to represent an idea, a physical or a moral entity; flag is the emblem of the country, the laurel of glory"; (Chevalier, Gheerbrant 1994: 22); "the attribute is a fact or an image that serves as a distinctive sign of a certain character, a community, and a historical or legendary figure: the wings are an attribute of an air navigation company; the wheel of a railway company, the club is the attribute of Hercules, the balance of Justice"; (Chevalier, Gheerbrant 1994: 22); the allegory is a representation in a human, animal or plant form of a proverbial deed, of a situation, of virtues or of abstract beings. A winged woman is an allegory of victory; cornucopia is an allegory of prosperity." (Chevalier, Gheerbrant 1994: 22); the symbol represents the "heart imaginative life", "the cipher of a mystery", the only way to tell what cannot be said otherwise. The symbols are not arbitrary or fruit of conventions; they introduce values and individual and collective patterns of behaviour. Each social group and every age have their symbols. Symbols express self-identity and the sustainability of values (Durand, 1999).

National Symbols and the Symbols of European Identity

Political and cultural symbols together contribute to national identity. Specific to political symbols is that they were created by rulers or political leaders (that is why we call them symbols from top to bottom). Flag, anthem, currency were accepted by the people becoming cultural symbols. They can have a powerful effect on people, but they will decide whether or not to accept them. For example, the Soviet symbols were rejected in the former communist countries (Tartler, 2006: 80). After the establishment of the European Union was considered necessary to introduce new symbols to increase the visibility and contribute to the creation a European identity. For that citizens of different countries can identify with Europe and the European Union has called on political symbols specific to national identity.

The Flag

The flag or the banner is one of the strongest and most visible national symbols. The flags are considered by some authors as *condensed symbols* (Turner, 1967) or *key symbols* (Ortner, 1973), which encompasses many meanings and are rich in aesthetic and emotional connotations (Eriksen, 2007). The most prominent visual symbol of the EU is its flag with twelve golden stars in a perfect circle on a blue background. This is probably also the most familiar of these symbols to most people inside and outside Europe, since it is widely visible both on flagpoles and in various print and electronic materials related to the EU. In this way, it is a kind of logotype that fulfils a quite traditional role of flags (Fornäs, 2012). Its heraldic description declares that it shows "on an azure field, a circle of twelve golden mullets, their points not touching" (the flag was designed by Arsène Heitz, an employee in the CoE's Mail Service), and with an official symbolic description stating that "it features a circle of 12 gold stars on a blue background. They stand for the ideals of unity, solidarity and harmony among the peoples of Europe. The official description also states that "the European flag symbolizes both the European Union and, more broadly, the identity and unity of Europe", and "the number of stars has nothing to do with the number of member countries, though the circle is a symbol of unity". Regarding the adoption of the flag it is stated that "the history of the flag goes back to 1955" when "the Council of Europe - which defends human rights and promotes European culture – chose the present design for its own use. In the years that followed, it encouraged the emerging European institutions to adopt the same flag". Lately, in 1983, "the European Parliament decided that the Communities' flag should be that used by the Council of Europe. In 1985, it was adopted by all EU leaders as the official emblem of the European Communities, later to become the European Union" (http://europa.eu/about-eu/basic-information/symbols/flag/).

The history of adoption of the European flag is not so simple, but I will mention only that were proposed several alternatives by various European organizations before they reached an agreement. One of these was the one proposed by the Pan-European Union which contained a red cross on a blue background with a yellow sun. Visible here is the idea of Christian unity, but at the same time exclude other religions in its field. The fact that they finally reached a more abstract, but also more inclusive image, may suggest that even then there was a need to build a Europe as an unity in diversity. In 1951 in a memorandum of the Secretariat General of the Council of the European flag were discussed a number of proposals. Some remained emblems of various private organizations with failing to require official status in all European institutions. The need to find a generally accepted standard is obvious, because it realizes the role of tool or instrument capable at making Europe's citizens more aware of their unity. None of the already existing variants were not been used, since it was not a wise thing, the memorandum argued. It had to realize a completely new flag that meet the following basic requirements: a sufficient symbolical significance, simplicity, legibility, harmony, pleased appearance, o an orthodox heraldic design (Fornäs, 2012: 117).

The history of decisions on the European flag is suggestive for its significance. They proposed a series of symbols such as "E", a white star in a circle, more stars equivalent to the number of Member States of the Council of Europe (white stars on a red background, a constellation of stars on a gold background suggesting European capitals, the cross the Pan-European Union which we have discussed and which was among the most controversial because it literally excluded Muslims etc.

Initially it was chosen neither the blue background nor the number 12, which under the current interpretation symbolizes perfection (Fornäs, 2012: 118). In June 1985 the European flag was adopted as the emblem current official European Community by Council of Europe, and in 1993 became the European Union Despite some expectations, number of stars remained the same, unlike the European Coal and Steel Society, whose number of stars that represent the number of Member States increased to 1986 when the expansion remained fixed at 12 (Miller, 2008: 3).

We will analyse briefly the main symbols it contains flag, irrespective of the arbitrary or conventional nature of their choice. J. Fornäs argues that the golden on blue colours choice is far from arbitrary, because, first blue is traditionally considered the colour of Europe and secondly, seen from the Earth, blue is the natural background of the stars (Fornäs, 2012: 120). According to the *Dictionary of Symbols* (Chevalier and Gherbraant, 1994: 148), the stars "take the qualities of transcendence and light that characterizes the sky, tinged with inflexible regularity, also imposed by a natural and mysterious reason". Their arrangement in the sky also has symbolic connotations, because the stars are animated by a circular motion, which is the sign of perfection. Regularity and permanence are also involved: the stars are symbols of perfect behaviour and regularity and of a distant beauty of that knows no withering". The following text clearly expresses the symbolic complexity of the circle:

"The circle is an extended point and belongs to perfection. Therefore the point and the circle have symbolic common properties: perfection, homogeneity, no distinction or division ... The circle can symbolize if not the mysterious perfections of primordial point, at least the effects created; In other words, the world, as far as it differs from its principle. The concentric circles represent grades of being, created hierarchies. Together they form the universal manifestation of the unmanifested and unique Being. [...] The circular motion is perfect, immutable, without beginning and without end, without variation; therefore the circle can symbolize that time." (Champeaux, Sterckx, 1966: 24). The blue background, beyond that it symbolize heaven, it has its specific meanings. It is considered the most immaterial of colours and "nature does not portrays it, generally, only made of transparency, i.e. an accumulated vacuum." Furthermore, "affixed to a blue object relieves its forms, open them, and loosen them. A blue coloured surface ceases to be a surface; a blue wall is not a wall" (Chevalier, Gherbraant, 1994: 79).

The Anthem/Hymn

The term *hymn* comes from the Greek *hymnos* which refers to a song of praise or glory, an ode to gods or heroes. It may be related to the term *hymenaios*, "wedding song" and Hymen, the Greek goddess of marriage. Since the Middle Ages got a touch of sacredness, having the meaning of religious song. The term *anthem* derives from Greek *antiphona*. The first hymn/anthem is considered the national anthem of Great Britain: "God Save the Queen / King" used since 1745 (Fornäs, 2012: 149). According to information from the official site (http://europa.eu/about-eu/basic-information/symbols/anthem/index_en.htm) "the melody used to symbolize the EU comes from the Ninth Symphony composed in 1823 by Ludwig Van Beethoven, when he set music to the *Ode to Joy***,** Friedrich von Schiller's lyrical verse from 1785[*]. The poem *Ode*

[*] Unlike the flag, for which was avoid the use of emblems or images already known or used (even if the symbols used have a rich tradition, the composition is new), in the case of the anthem they deliberately

to Joy expresses Schiller's idealistic vision of the human race becoming brothers - a vision Beethoven shared". Although it was adopted by the Council of Europe in 1972 and in 1985, became the official anthem of the European Union it is assumed that the anthem belongs to Europe in a wider sense, both EU members and other European countries. "The anthem is played at official ceremonies involving the European Union and generally at all sorts of events with a European character**".** Even if the melody and the title remained the official anthem differs from the original version, being reduced to two minutes and Beethoven's composition elements being readjusted and renouncing at lyrics. The official explanation is as follows: "**t**here are no words to the anthem; it consists of music only. In the universal language of music, this anthem expresses the European ideals of freedom, peace and solidarity**".** The idea of unity is present in the reporting to the national anthems: "**t**he European anthem is not intended to replace the national anthems of the EU countries but rather to celebrate the values they share".

Even though the formal presentation stated that the European anthem does not replace the national anthems, the question arises: what role does it have? Or more precisely: European anthem meets a similar role with the national anthems at the national level? Grete Tartler notes that "national anthem has a history similar to the flag". Its role was to be used in times with liberating, emotional and commemorative character, to achieve a strong nationalist impact. While the European anthem (Ode to Joy from the Ninth Symphony by Beethoven) is a tribute to "human, freedom and spiritual communion", national anthems as the British and German are in the cited author's opinion "clearly against unification with other peoples". For example, the German anthem, *Deutschland, Deutschland über alles*, remained in the memory of those who listen deeply nationalistic meaning. So is the British anthem, which is written before the French Revolution. In this case, "no wonder that in the Germans and the British subconscious there was some reluctance to expand the European Union and NATO". (Tartler, 2006: 84-85)

According to Lucian Boia, German anthem, which originates in a poem by Agust Heinrich Hoffmann von Fallerslebe, *Das Lied der Deutschen* ("Song of the Germans"), suffered as a remarkable distortion of meaning. It is now almost universally accepted that "Deutschland über alles" would mean "Germany above all", when in reality meaning was "Germany above all else" or "first of all". (Boia 2005: 93) While the first sense would assume primordiality and superiority of the German people over other nations and thus justify the expansionist tendencies, the second, but the original meaning, would assume primacy of the nation over any other values; primordiality should be in the field of options, not of any hierarchy with other nations. Of course, the primary meaning has a deeply nationalist character, but not imperialist. It would not incite violence and intolerance. However, the double meaning of the mentioned phrase led to the elimination of the first stanza of the hymn. We could say that although the later accused was not the original meaning, he was involved in the ambiguity of the phrase, the national socialist ideology contributing to this shift of meaning. Boia considers that "this little poem, of an idyllic nationalism" that does nothing more than to draw the borders of the country and to provide a list of national values such as "German women, German faith, German wine, and German chant" reached through undue interpretation, to be considered of "a kind of

sought for a song that is known to the general public and possibly have a rich tradition. The creation of a composer regarded to be a genius was considered more than adequate. The idea of unity present in Schiller's text had a big say.

monstrosity" (Boia 2006: 94). Not the same with the French anthem. Rather, it came to a completely different route. Linked to this, Boia says that "although it is perceived as a song of freedom, democracy and human dignity", it is primarily a war song ("Allons enfants de la Patrie,/Le jour de gloire est arrivé!/Contre nous de la tyrannie,/L'étendard sanglant est levé,/Entendez-vous dans les campagnes/Mugir ces féroces soldats?/Ils viennent jusque dans nos bras/Égorger nos fils, nos compagnes!/Aux armes, citoyens,/Formez vos bataillons,/Marchons, marchons!/Qu'un sang impur/Abreuve nos sillons!")[*]. Therefore, *Deutschland über alles* is a more reasonable hymn than *La Marseillaise.* However, censorship is not justified because the intentions with which a hymn was originally written (Boia, 2006: 94-95).

We do not intend here to compare national anthems and to establish hierarchies of their "nationalist" character but to analyze the European anthem with possible references to national anthems. The question is: whether the European anthem, designed to operate on the national anthems model, aims to create attachments to gather the masses together in some kind of unifying solidarity, which creates, at the same time, alterity? Or, though, based on the national model (for the simple fact that it is an anthem), it is designed for another purpose, to create nonviolent solidarities, to open the citizens of Europe both to one another and to non- Europeans, to promote a European identity built on the "unity in diversity"? And what characteristics would get it closer to one or another of the alternatives?

According to Grete Tartler, "the anthem - which mobilize crowds against each other - has an overwhelming emotional charge". We could say, in other words, the attachments that it creates have a major potential to lead to, what we might call a "unity into hostility", that brings people together only to send them against others, against foreigners or enemies. However, the author cited expresses its optimism regarding European unity as follows: "However, I believe that here Europeanization will have the best chances, in comparison with the rest of the symbols, because Beethoven's music exceeds qualitatively the national anthems and most certainly will impose as it is already a part of the collective memory" (Tartler, 2006: 87). The main reasons for Tartler's optimism are the superior musical quality European Anthem and its prior existence in the collective consciousness. While the second reason may have played a role, still uncertain, in building a European identity, the first may seem, at first glance, downright naive. The powerful attachment to national anthems were not due, most likely, to the musical quality of the songs themselves, but rather to the emotional message, simple and direct, both musically and at the level of meanings. But however Grete Tartler might be right. The aim of the European anthem is not same as that of the national anthems. In other words, its benefits may derive precisely from these differences. The musical quality could generate an attitudinal quality, it would reach higher levels of spirit, and the optimistic and relaxed message would lead to openness and tolerance, at acceptance of diversity. It remains to be seen which will be the long term effects of the anthem's musical quality. For now, we will refer to some issues related to its text. Although, they later renounced of the lyrics, their connection with the anthem remains. In fact, from the beginning, although the song was generally accepted, Schiller's lyrics were an obstacle (Fornäs, 2012: 156). One objection was that any lyrics would favor a particular linguistic community, even contradicting the

[*] „Arise, children of the Fatherland,/ The day of glory has arrived!/ Against us tyranny's/Bloody banner is raised,/ Do you hear, in the countryside,/ The roar of those ferocious soldiers?/ They're coming right into our arms/To cut the throats of our sons, our women!/ To arms, citizens,/ Form your battalions,/ Let's march, let's march!/ Let an impure blood/Water our furrows!"

stated unifying purpose of the anthem. It is clear that this objection hide a particular type of linguistic or ethnic nationalism that tries to eliminate the very text of a particular language. Who believes that the universal message of music could eliminate language barriers, he believes that these barriers exist. Another objection referred to the fact that the text has a Universalist or global character, not sufficiently linked to Europe (it was about union of the entire humanity) and European identity. This type of objection shows an attachment to a nationalist view over the anthem. It must gather, but also to separate, to distancing the people, implying, therefore, the idea of alterity. Removing the lyrics was the easiest way, but it was far from solving the issue: the mentality behind these objections remains.

In 2008, in the European Parliament, Jim Allister was one of those who opposed the adoption of both flag and anthem: "Ode to Joy which we are going to purloin may be a very nice tune, but so is Jingle Bells and like Jingle Bells it heralds a fantasy, the fantasy that the EU is good for you. But unlike Jingle Bells, it will damage your national sovereignty and the right to control your own destiny. More, like code to destroy, than Ode to Joy". (Miller, 2008: 8; Fornäs, 2012: 180).

Some Eurosceptics have used the European anthem to support the idea that the project of European unification is a failure. For example, Žižek (2007) claimed that the European anthem "is a true *empty signifier* that can stand for anything". Consequently, it would be the expression of an ideology of unification and of the elimination of the inequalities, but with no real basis. This is evident in the attitude towards the situation of those who cannot adapt to this unification. Žižek is using, therefore, the European anthem as an argument related to the obstacles encountered by the project of European unity, especially on the eastern border (Fornäs, 2012: 170). As regards the consequences of waiving the anthem lyrics, Johan Fornäs considers that: (1) at the semantic level, this eliminates a component which Beethoven himself considered it necessary, thereby reducing the force expressiveness of the anthem; (2) on a pragmatic level, it contradicts the original motivation to choose an anthem able to be sung in common, that could help, through its interactive character, to strengthen the feeling of belonging to the European Union (Fornäs 2012: 177-178).

Conclusions

We note that national flags attachments sometimes lead to fetishism, to idolatry; flags are preserved and defended the sanctity, and people die for the flag just as they die for their country. We cannot ignore these issues that generate deepen alterity and under the sign of the defending of the country they hide ardent opposition, hostile passions which often constitute the base for conflicts between nations or ethnicities. In summary, the European flag symbols refer to unity, perfection, mobility, openness, permanence or durability, close the gaps. In other words, even the key elements of European unity. Flag symbolically reflects European values and ideals. His arbitrary or conventional character is compensated and we could say cancelled by the complexity of its symbols. But, the flag is still the state emblem, for which many have given their lives; is hard to believe that someone would give his life for the European flag. As regarding the European Anthem, the national model is also visible. Even if its purpose is to express the European democratic values, to consolidate European unity and strengthen the feeling of belonging to a wider community than the nation, it is still bound to the tradition the national state. Removing the anthem from the original context in which music and lyrics were created,

eliminating the lyrics to just let the music speak, shows that the European officials intend to detach from the national model. But precisely this posting attempt proves that the national model still works. Nevertheless, the hymn is linked both through his music and by Schiller's verse, to the non-violent values of the brotherhood, of the joy to be together for higher ideals than those related to purely national context. So, the anthem still has chance of being an element of European unity, in the spirit of tolerance and acceptance of diversity, without directly involving an imaginary of alterity.

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Peace-building, Europeanization and Local Self-Government Empowerment. A Cross-Country Constitutional and Democratization Indices Analysis in the Balkans

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Abstract
The literature on the Balkans' post-conflict reconstruction and democratization processes is enriched with studies centered either at presenting the post-conflictual political reform, the international organizations' intervention in domestic affairs and the quality of local self-government, or the democratization process and institutional guarantees of the rule of law, the processes of federal disintegration and government decentralization, or the European enlargement and Europeanization processes. This paper aims at correlating synthetic analyses of the Balkans' legal systems starting with the constitutions and statistical analyses of democratization indices gathered and calculated by international observers. The comparative analyses will focus on five dimensions – citizens' voice and public accountability, control of corruption, political stability and absence of violence and /or terrorism, government effectiveness, rule of law and regulatory quality –, applied to three Western Balkans states selected according to the European integration status criterion: Member States (Croatia), candidate countries (the former Yugoslav Republic of Macedonia) and potential candidates (Bosnia and Herzegovina).

Keywords: *Constitution, democratization, historical institutionalism, local self-government, post-Communism, Balkans*

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Peace-building, Europeanization and local self-government empowerment as major themes in academic debates

The transition dynamics of the Balkans towards democracy and the rule of law is a well-debated and seminal theme of discussions. Researchers in the field contended on the possibilities of the former Yugoslav Federation for democratization and the installment of free market institutions. Instead, history has shown us a darker picture, with the region drown in secession ethnic and political wars, shattered by ethnic-cleansing throughout the 1990s. The international community has reacted to these clashes, however, its intervention succeeded rather late to prevent the volatility of this region. The peculiarities of this space were analyzed throughout multiple dimensions.

A first relation can be drawn among post-conflictual political reform, international organizations' intervention in domestic affairs and the quality of local self-government. This relation was assessed in studies which aimed at outlining the discrepancies between international projects for democratization of the Western Balkans and the degree of self-government by civil society observance. Thus, it was argued that there is an indirect correlation between international involvement and the internalization of democratic institutions and citizens' participation in government (Pickering, 2007). In a similar view, Attila Agh (1999) discusses sovereignty-related issues and "forceful international intervention" before the fall of East Central and South-Eastern European (Balkan) communist regimes and during European accession (Agh, 1999: 163-279). The approach is comparative as the author discusses the cases according to four categories of states: (a) newcomers – the most democratized countries in the region during the post-communist transition phase include the Czech Republic, Hungary, Poland and Slovenia, (b) belated states – relate to Bulgaria, Croatia, Romania and Slovakia, (c) "*semi-protectorates*" – the author discusses the external intervention in Bosnia & Herzegovina and Macedonia, and (d) conflict unrest states – the cases of Albania and Serbia.

Within this line of thought and supported by intensive direct observations and interviews, Paula M. Pickering (2007) attaches a more profound meaning to the concept of peacebuilding by showing the manner in which this process has to be translated in people's perceptions and actions. The means to proceed with this process include international aid for the reform of political institutions and to create a sound infrastructure of democratic civil participation through non-governmental organizations. The idea behind this research is that ordinary citizens' outputs might differ the vision of internationally dwelt strategies for post-conflict reconstruction and democratization through the construction and imposition of formal institutions (Olimid, 2014: 73-84).

This idea is soundly attached to that of existing loopholes in the European forces capacities for conflict resolution and military intervention (Belloni, 2009). The researchers discuss the case of the boundaries of the "dual key command channels" in Bosnia and Herzegovina and the limitations they imposed to actions under the command of NATO and the UN, but also the EU's unpreparedness and inexperience to act both politically and militarily in the area (Belloni, 2009: 314-315). Thus, the literature asserts the Western Balkans bloody experiences as an incentive for the EU to develop its conflict management mechanisms and institutions together with its political conditionality force claiming the countries in the Western Balkans as "potential candidates for membership" (Belloni, 2009: 317).

European integration was assessed as a means for ensuring "peace, stabilization and development" for the EU neighborhood, thus countries passing through violent systemic change exploring their post-communist possibilities opted for "their return to Europe". Aspiring to membership status, Europeanization impacted the countries exiting the communist bloc in Central and Eastern Europe guiding them towards a successful union with Europe. The Balkans, however, had multiple streams in their transformations, and the outbreak of the civil wars derailed the countries from democratization and market liberalization (Demetropoulou, 2002). For some states, democratization and enforcing institutional guarantees of the rule of law, establishing and consolidating economic development and market institutions within the whole process of federation dissolution, the establishment of sovereign and independent regimes, decentralization of civil services and local self-government had to be correlated with the end of the Yugoslav wars (Soyaltin, 2013: 599-601). Through its democratization conditionality, gaining EU membership thus became a vector for triggering systemic transformations (Keil, 2013: 343-353). The CEE countries' transitions from centrally-planned economies and state socialism towards market-oriented liberal democracies and rule of law were closely monitored by European bodies. The Western Balkans had to assume a peace-building stage (Hlavackova, 2013: 81-106), to safeguard their people and their countries from the ravages of war and extreme nationalism (Dyrstad, 2012: 817) before coming to terms with adaptation to the conditions imposed for their European integration (Avdic, 2013: 67-79; Veremis, 2008: 121-128), the "rule transfer" towards the membership aspirants (Renner, Trauner, 2009: 449-465; trainer, 2009: 65-82). This is why one has to correlate the economic, political and social "confining conditions" that characterized the Balkans in the early post-conflict years. In this key we have to read the fundamental laws of those countries and the amendments that were adopted several years after (Elbasani, 2008: 293-307; Pranger, 2011: 1-14). The structural configuration of Balkan societies in the interwar period (Bărbieru, 2014: 106-115), during communism and post-communism, after the civil wars, the challenges of the transitions towards market economies and rule of law (Cabada, 2013: 29-50; Șerban, 2012), the relations between national minorities and the majority as forged by the juridical framework within the social and political system within the wider context of international recognition of the new sovereign and independent republics (Kentrotis, 2010; Bauerova, 2013: 51-65). Democratization theories sometimes use explanations on democratization arguing in favor of political actors (Mungiu-Pippidi, 2003; Mungiu-Pippidi, 2006) versus structural components, such as history, culture, religion and geography/ proximity, or the old center-periphery paradigm (Petrovic, 2008).

Launching hypotheses and preparing case-studies

Through the hypotheses we subsequently launch we plan to test the existence of a causality relationship between the constitutions' claims of the principles in question and the actual resonance and manifestations measured as citizens' perceptions. The methodology behind the study implies content analysis of the constitutional articles brought in view through the Constitute Project (https://www.constituteproject.org), while the democratization indices were quantified using data correlated from the Worldwide Governance Indicators database (http://info.worldbank.org/governance/wgi/index.aspx#home).

Citizens' Voice and Public Accountability

Through this hypothesis we aim at validating the idea of voice and accountability as interrelated concepts that enforce the establishment and consolidation of democratic institutions. Citizens are thus empowered to participate while the democratic establishment is enhanced (Olimid, 2014: 73-84).

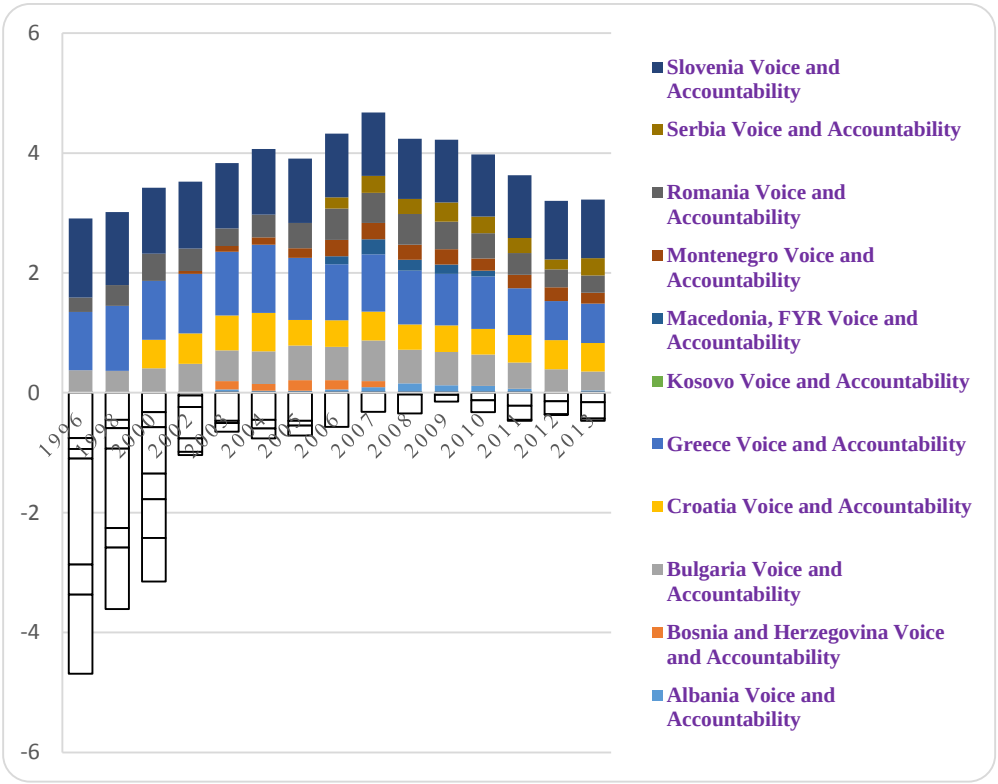

Figure 1. Reflections on citizens' voice and public accountability for the Balkan region
Source: Author's analysis based on data from database: Worldwide Governance Indicators

Consequently we outline the first work hypothesis *H1: The empowerment of citizens through voice and accountability mechanisms lead to greater government responsiveness and deeper democratization.* The indicator deals with citizens' reflections on the legality of general and local elections, the provisions of direct democracy, the *de facto* exercise of the freedom of expression and of the means of information, of the right to associate and of the right to form political parties aggregated in values ranging within the interval –2.5 to 2.5. In this sense, the constitutional analysis will address the interpretation of articles through which the law-maker ensured the strengthening of voice and accountability, thus providing the selection of government, the regulations of general and local elections, direct participation through referendum, citizens' initiative, or other instruments, the guarantees for the freedom of expression, freedom of association, freedom of assembly, freedom of media, freedom of thought, opinion and conscience, and the right to form and join political parties.

Political stability and absence of violence and/or terrorism

The political stability and absence of violence and/or terrorism variable accounts the reflections on the domestic security climate, on the perceived possibility of unconstitutional government change. The indicator is calculated within the interval -2.5 to 2.5. Thus the hypothesis can be outlined as *H2: The more secure, politically stable and violence and/or terrorism free a country is, the closer it is to a stable democracy.* The constitutions' content analysis surprises the constitutional provisions that guarantee government stability and establish a legal framework for the address in case of (violent) demonstrations, social and political conflicts and unrest, external conflict and terrorist threat. The next figure outlines the situation for countries in the Balkans.

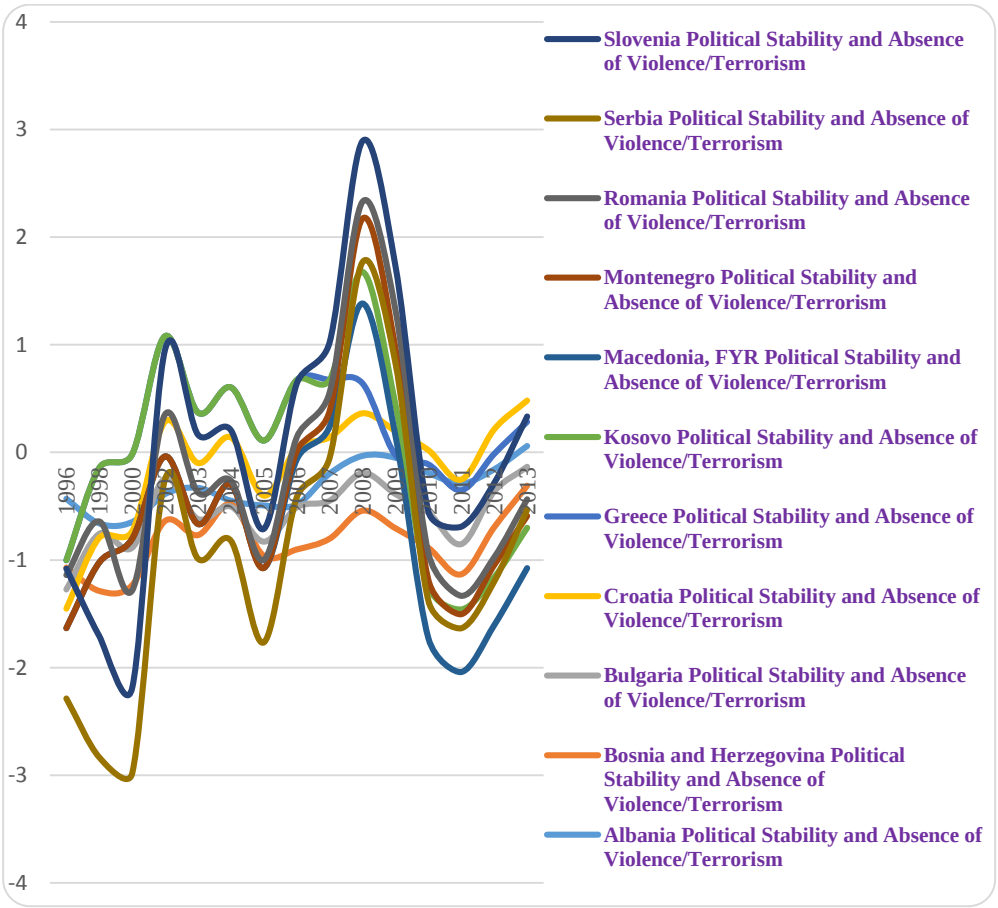

Figure 2. Reflections on political stability and absence of violence and /or terrorism for the Balkan region

Source: Author's analysis based on data from database: Worldwide Governance Indicators

Government Effectiveness

Democratization relies heavily on the central and local authorities' organization and functioning according to the rule of law and democratic principles, to their capacities to enforce legislation and provide quality public services. Thus, the decentralization of government and the consolidation of local institutional structures

serve the purposes of democratization. Consequently, we will rely on the fourth hypothesis H3: *the deeper the decentralization process, the higher the government effectiveness.* Government effectiveness variable renders the citizens' reflections on public services provided at local and central levels of government, on the politics-administration relations, on the issuance and implementation of decisions, legislative initiative, relations between parliament and government and parliament control over government. As in the other cases, the interval in which the value of the calculated indicator varies is -2.5 to 2.5. Aimed at validating the democratization as decentralization thesis, the constitutional content analyses deal with the constitutional recognition of the rule of law and the guarantee of local self-government, the claim of local governments' financial de-centralization, guarantee of competences transfer to local communities, the claim of subsidiarity, and the right of local communities to associate.

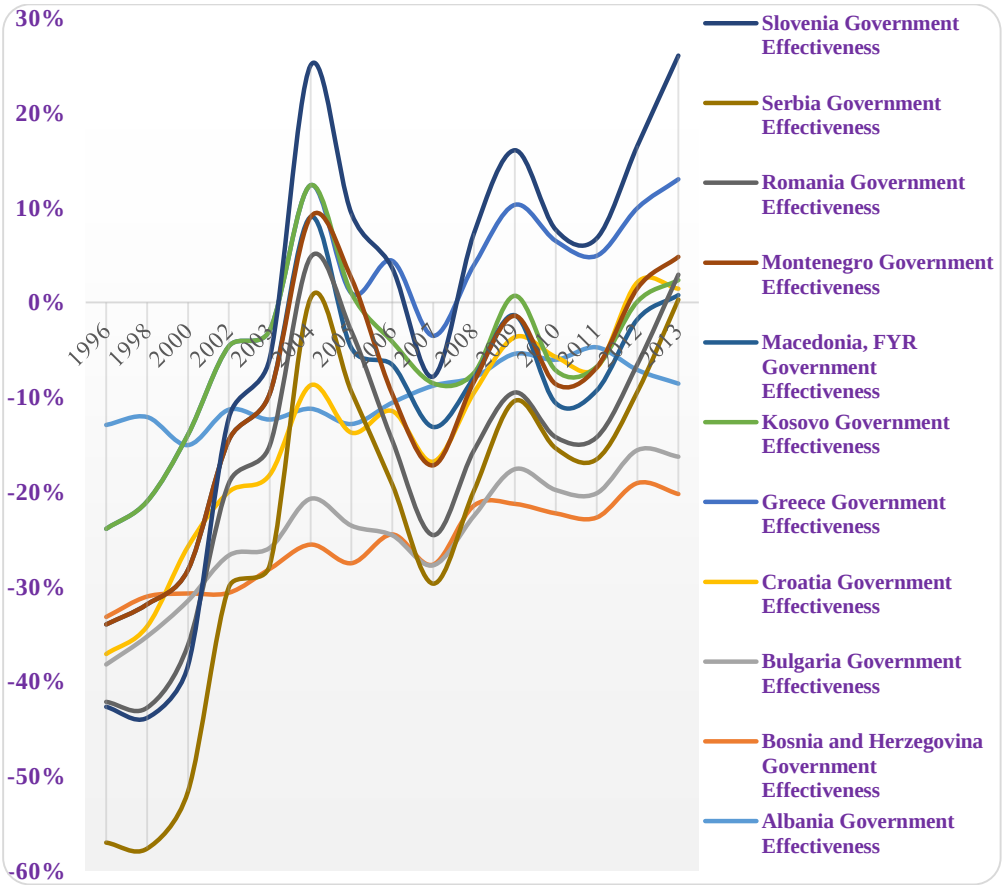

Figure 3. Reflections on government effectiveness for the Balkan region
Source: Author's analysis based on data from database: Worldwide Governance Indicators

Rule of law and regulatory quality

Rule of law and regulatory quality aims at gathering reflections of civil society on government ability to issue and implement public policies directed at private sector growth within the legal framework making a clear statement on the relations between

the constitutional guarantee of the rule of law and regulatory quality. The correlated value of the aggregated indicator varies between -2.5 and 2.5. The constitutional articles content analysis seeks the provisions directed at favoring economic growth (i.e. guaranteeing economic rights, economic initiative, fiscal relaxation etc.).

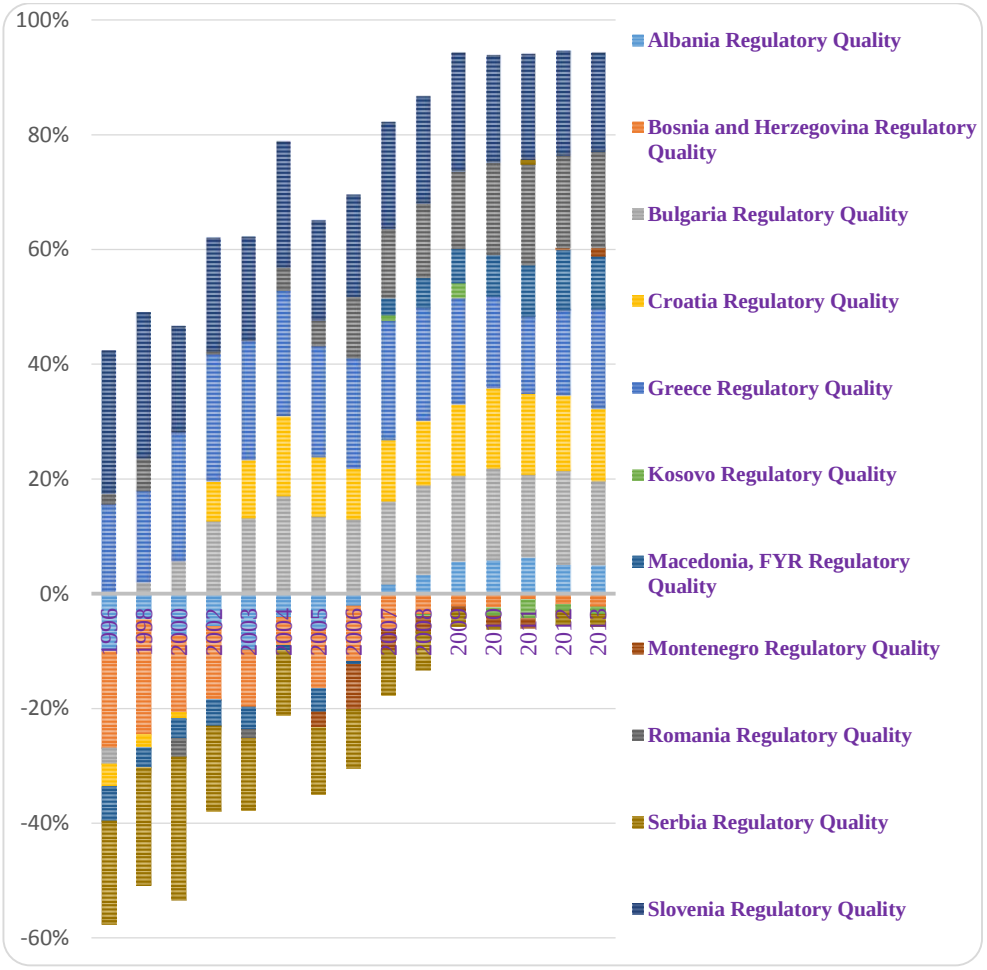

Figure 4. Reflections on rule of law and regulatory quality for the Balkan region
Source: Author's analysis based on data from database: Worldwide Governance Indicators

Control of corruption

Control of corruption variable addresses the legal bounds to integrity and transparence. This is why we outlined the fifth hypothesis *H5: The more institutionalized anti-corruption mechanisms are, the more likely is for the corruption indices value to shrink.* Control of corruption outlines the society's reflections on corruption discretion calculated as an aggregate indicator correlated within the interval -2.5 to 2.5.

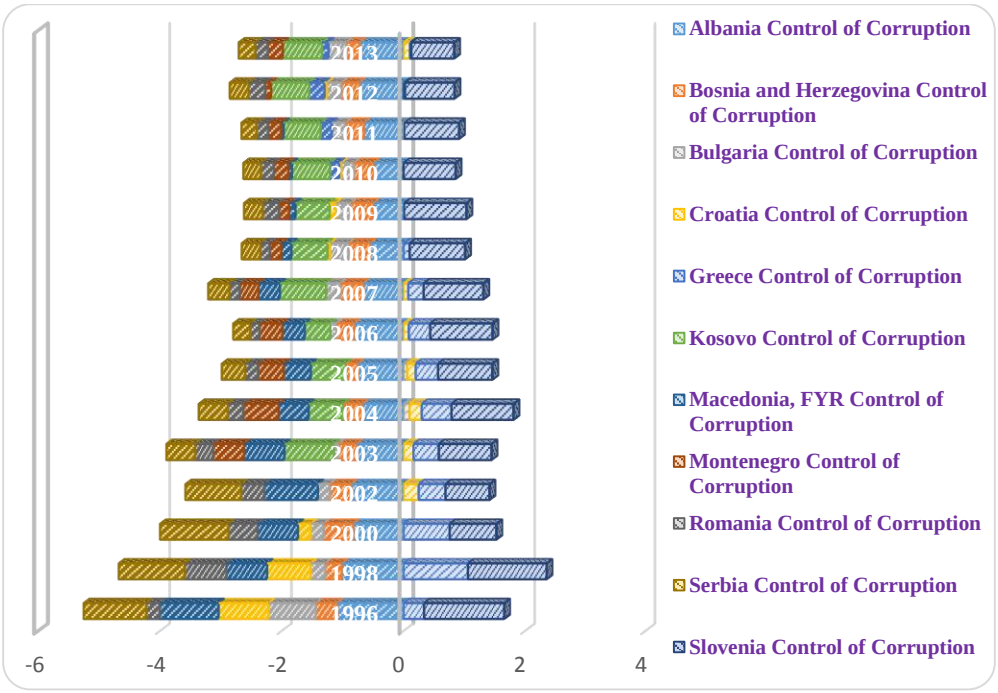

Figure 5. Reflections on control of corruption for the Balkan region
Source: Author's analysis based on data from database: Worldwide Governance Indicators

The case of Croatia

The Croatian Constitution (1991, amended in 2010) lays the basis for its democratic transformation laying its legitimacy to claim the state sovereignty by invoking the historical legacy and democratic traditions of the Croat people since the nationhood formation until the context within which the new post-communist legal system was established based on the first democratic elections held in 1990 and propelling Croatia's "Homeland War" (1991-1995) as "the just, legitimate and defensive war of liberation".

Citizens' Voice and Public Accountability

The Croat Constitution recognizes as national minorities the "Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Rusyns, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs, Albanians and others who are its citizens and who are guaranteed equality with citizens of Croatian nationality and the exercise of their national rights in compliance with the democratic norms of the United Nations and the countries of the free world". Article 11 explicitly points out the equality of all national minorities in Croatia. Out of the three Constitutions under analysis, the Croat fundamental law is the only one that makes explicit reference to secession and accession, though this option has to be understood in the wider historical civil war context of its sovereignty and self-determination right gain. As regards the structure of the state, the

constitution claims that "the Republic of Croatia is a unitary and indivisible democratic and social state" (Article 1), power being exercised indirectly through representatives designated in universal, secret, equal, directly expressed ballots (Article 45) called by the President (Article 98) and "through direct decision-making" in national referenda. In fact, the Constitution reserves the participation in general elections (legislative, presidential, European elections and in national referenda) on grounds of nationality and age (Article 45). As regards direct participation, the Croatian fundamental law recognizes the possibility of citizens to be consulted and directly decide through national referenda initiated by the legislative (Article 81) "on a proposal for the amendment of the Constitution, on a bill, or any other issue within its competence" (Article 87), however, the Constitution does not provide citizens' competence to initiate legislation. The Constitution also provides that the issuance of constitutional laws "or any other issue which he [the President] considers to be important for the independence, unity and existence of the Republic of Croatia" is conditioned by citizens' support through national referenda called by the President as a Government initiative backed by the Prime Minister (Article 87). Constitutional guarantees of citizenship are introduced in Article 9 which bans the exile, deprivation of citizenship and extradition "except in case of execution of a decision on extradition or surrender made in compliance with international treaty or the acquis communautaire of the European Union".

Freedom of expression is provided by the fundamental law in Article 38 which expressly invokes the freedom of all media and institutions of public communication, free access to information and to public expression, including the right to manifest one's convictions as provided in Article 40 and minorities' right to express their cultural identity as provided in Article 11. However, the Constitution invokes limitations to these democratic rights provided that firstly, the measure is proportionate and secondly, that is "necessary in a democratic society". Still the fundamental law guarantees freedom of thought and conscience regardless the size of the "threat to the existence of the State" (Article 17). Moreover, the Constitution bans press censorship (Article 38) and any form of hate speech or instigation to war or violence (Article 39). The fundamental law also provides freedom of assembly (Article 42), freedom of association (Article 43) and does not restrict in any way the formation of political parties provided that their internal establishment respects the fundamental Croatian constitutional democratic principles and that their sources of financing are made public. The right of petition is also guaranteed by the fundamental act which introduces in Article 93 every person's right to file a complaint to the Croatian Ombudsperson if they believe that their "constitutional or legal rights have been threatened or violated as a result of any illegal or irregular act by governmental bodies and the civil service, local and regional self-governmental bodies and bodies vested with public authority" (Article 93).

Political stability and absence of violence and/or terrorism

The constitutional provisions that secure the (constitutional) government are introduced in Article 42 which explicitly claims citizens' right to protest peacefully. The nature and activities of political parties is verified by the Constitutional Court of the Republic of Croatia that is empowered to rule on their constitutionality (Article 129) and consequently suppress their existence in case "their programs or violent activities aim to demolish the free democratic order and endanger the existence of the Republic of Croatia" (Article 6). This provision is further strengthened in Article 43 which provides a limitation to freedom of association in case "of any violent threat to the

democratic constitutional order and independence, unity and territorial integrity of the Republic of Croatia".

Government effectiveness

Although, as we previously mentioned the Croatian Constitution does not provide citizens' legislative initiative, the fundamental law recognizes the right to local and regional self-government exercised directly through "meetings, referenda and other forms of direct decision-making meetings" and indirectly "through local and/or regional representative bodies, composed of members elected in free elections by secret ballot on the grounds of direct, equal and general suffrage" (Article 133). Recognition of the transfer of competences to local communities and the subsidiarity principle is a major theme of reform in accordance with the organization and functioning of democratic public administrations as prescribed in the European Charter on Local Self-Government. The Constitutions thus prescribe regarding the relations between national and local legislation and lawmaking powers. Self-government and fiscal decentralization are introduced in Article 138 of the Constitution which states that "units of local and regional self-government shall have the right to their own revenues and have them on their free disposal in performing affairs within their jurisdiction" and provides the correlation between local and regional incomes and Constitutional and legal competences. The Constitution regulates in Article 135 municipalities and towns as units of local self-government, while regional self-government is established at county level. Moreover, in Article 135 the fundamental law prescribes the competence areas of local administrations: "localities and housing, area and urban planning, public utilities, child care, social welfare, primary health services, education and elementary schools, culture, physical education and sports, technical culture, customer protection, protection and improvement of the environment, fire protection and civil defence". Another measure of local self-government is the Constitutional provision to allow, along with the Croatian language and the Latin script, the *official* use of "another language and the Cyrillic or some other script" certain local units according to special conditions provided by the law (Article 12).

Rule of law and regulatory quality

The Croatian Constitution fundaments the whole establishment of the democratic state unto the values of "Freedom, equal rights, national equality and equality of genders, love of peace, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the *rule of law*, and a democratic multiparty system" (Article 3). It also introduces in Article 4 "the principle of separation of powers into the legislative, executive and judicial branches, but limited by the right to local and regional self-government guaranteed by the Constitution". Moreover, the Croatian Constitution recognizes the autonomy and independence of the Croatian National Bank reporting to the Croatian legislative and guiding its establishment according to the law (Article 53). The principle of separation of powers can be also mentioned with the introduction of the National Judicial Council which "ensures the autonomy and independence of the judicial branch in the Republic of Croatia" gathering eleven members, out of which "two members of Parliament, one of whom shall be from ranks of the opposition" (Article 124). Another autonomous and independent body is the Ombudsperson commissioned by the Croatian Parliament to deal with "the promotion and protection of human rights and freedoms enshrined in the

Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Croatia" (Article 93).

Control of corruption

As regards incompatibilities, the Constitution bans in Article 123 cumulating a judicial office with an office or work "defined by law as being incompatible with his judicial office".

The democratization indices for the period 1996-2013 show the Croat society's perceptions on the variables we outlined above. We observe that 1996-1998 marked the period of the Croatian Democratic Union (HDZ), President Franjo Tudjman's supporting popular movement shifting towards the extreme right. Following the urges for reform from the international community – between 1998 and 2000 – Croatia adopted the Constitutional Law on the Freedoms and Rights of National and Ethnic Communities or Minorities (2000, amended 2002), laws on litigation and court procedure, electoral legislation (especially amending regulations regarding different treatment for national minorities electorate) - Law on Amendments to Parliamentary Election Law (April 2003), Law on Constituencies (1999), Law on Elections of Representatives of the Croatian State Parliament (1999), Law on Local and Regional Self-Government (2001), Law on the Election of Members of Representative Bodies of Units of Local Self-Government and Units of Local Administration and Self-Government (2000), Law on the Election of the Representative Bodies of Local and Regional Self-Government (2001), Act on National Statistics (2003), legislation on the control of corruption as the Act on preventing of the conflict of interest in exercise of public office (2003, amended in 2004 and 2005), Civil Servants Act (2005), the Criminal Code and the Criminal Procedure Code (1998, amended in 2003).

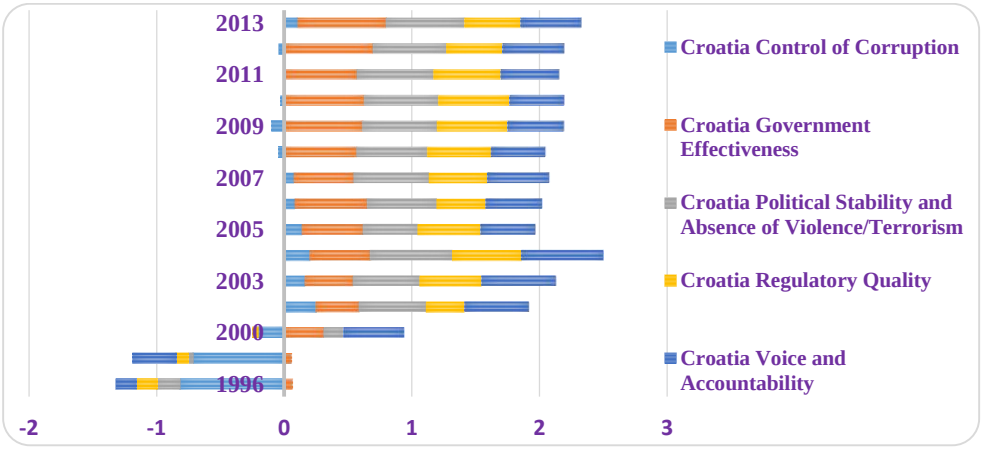

Figure 6. Reflections on democratization indices. Case-study: Croatia
Source: Author's analysis based on data from database: Worldwide Governance Indicators

The case of the Former Yugoslav Republic of Macedonia

The Constitution of the Former Yugoslav Republic of Macedonia (1991, amended in 2011) introduces the principles of sovereignty ("indivisible, inalienable and non-transferable"), independence, democracy and social in relation to the Macedonian

state (Article 1). The constitution recognizes in its Preamble the "Albanians, Turks, Vlachs, Romanies and other nationalities living in the Republic of Macedonia" as "co-existing with the Macedonian people".

Citizens' voice and public accountablity

According to the Macedonian fundamental act, citizens are entitled to politically participate in state affairs either directly, or indirectly. Direct participation of citizens is ensured through referenda (Article 2) and citizens' initiatives (Article 71). In this case we have to note that legislative initiative belongs "to every Representative of the Assembly, to the Government of the Republic and to a group of at least 10,000 voters". The Constitution does not discriminate among minorities, "group of citizens, institutions or associations". The indirect participation requires the election of representatives in free elections using secret ballots. The access to general and local elections is "equal, universal and direct", still the Constitution limits this right on grounds of citizenship, age (18 years) and court rulings; in this case "persons deprived of the right to practice their profession by a court verdict do not have the right to vote" (Article 22). Moreover, citizens can directly participate and express their political will: at least 150,000 Macedonians can initiate a referendum by directly applying their initiative to the Assembly (Article 73). "The freedom of personal conviction, conscience, thought and public expression of thought" are stipulated in Article 16 which also provides the interdiction of censorship and the freedom of the media. Moreover, the Constitutional Court of the Republic of Macedonia "protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation" (Article 110). The fundamental law also guarantees citizens freedom of assembly by stating in Article 21 that "right to assemble peacefully and to express public protest without prior announcement or a special license". Moreover, the Constitution also guarantees freedom of association and the right to form political parties (Article 20). This right can only be limited provided that the activities developed through these forms of association are directed against the constitutional order of the state. The Constitution provides the protection of "the constitutional and legal rights of citizens when violated by bodies of state administration and by other bodies and organizations with public mandates" by the Public Attorney elected by the legislative meeting the majority votes of national minorities for a mandate of eight years renewable once (Article 77 Amendment XI).

Government effectiveness

In order to label the FYROM political system and analyse the constitutional leverage that would ensure government effectiveness we will focus our analysis on Article 68 which introduces the role and functions of the Assembly of the Republic of Macedonia. The Assembly was rendered the competences in the Macedonian political system to issue and amend the fundamental law, to issue laws, to issue the quantum of taxation, to adopt the state budget and approve the budget exercise. The Assembly also "ratifies international agreements", "decides on war and peace", has competence to decide to modify the Macedonian territory, and decides on association or secession on com-unions with other states. We have to note that the Article also introduces the Assembly's political and monitoring control in relation to the Government. In this

respect, the relations between the Assembly and executive are regulated by authorizing the Assembly to call referenda by majority vote (Article 73), to "elect the Government of the Republic of Macedonia", "carries out political monitoring and supervision of the Government and other holders of public office responsible to the Assembly" and proclaims amnesties (Article 68). In relations with the judiciary, the Assembly offers the juridical meaning by interpreting legislation in case of conflict, "elects judges to the Constitutional Court of the Republic of Macedonia; [and] carries out elections and discharges judges".

Political stability and absence of violence and/or terrorism

The interdiction of political violence is introduced in Article 20 which bans all activities of political parties "directed at the violent destruction of the constitutional order of the Republic, or at encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance". Moreover, the same article bans "military or paramilitary associations which do not belong to the Armed Forces of the Republic of Macedonia". Issues between minorities are regulated by a Council for Inter-Ethnic Relations elected by the Assembly and presided by the President of the Assembly (Article 78). Amendment XII of the constitution introduced a mandatory composition of the Council granting seven mandates each to the Macedonian and Albanian parties in the Assembly and "a member each from among the Turks, Vlachs, Romas, Serbs and Bosniaks". Constitutional guarantees of citizenship are prescribed in Article 4 which bans extradition, expulsion and deprivation of citizenship, in Article 9 which expresses constitutional guarantees of the equality principle and non-discrimination, in the Constitutional Preamble which establishes the foundation of the democratic, independent and sovereign republic on the historical legacies of the integration of ethnic communities. Article 48 further guarantees national minorities' right "to express, foster and develop their identity and national attributes" and safeguards "the ethnic, cultural, linguistic and religious identity of the nationalities".

Government effectiveness

Relations between national and local legislation and local lawmaking powers are provided in Chapter V of the Constitution recognizing the principle of local self-government and fiscal de-centralization in Article 114. Moreover, citizens' direct and indirect participation is introduced in the fields established by the fundamental law: "particularly in the fields of urban planning, communal activities, culture, sport, social security and child care, preschool education, primary education, basic health care and other fields determined by law" (Article 115). The Constitution also recognizes the subsidiarity principle in the relations between the central level and the municipality (Article 115) and stipulates that the Constitutional Court has the right to rule on issues of authority between the two levels mentioned above (Article 110). The capital city of Skopje was initially granted a special status deemed "autonomous in the execution of its constitutionally and legally determined spheres of competence" (Article 117). Later on, this special status was removed through the constitutional amendment XVII.

Institutional guarantees of local self-government are also granted through the possibility provided in the Constitution that a second language spoken by a national minority be *officially* used in the administration besides the official Macedonian language and Cyrillic alphabet. In order to further secure national minorities' rights as guaranteed through the Constitution, the law-maker introduced Amendment XVIII

which required a double supermajority in the legislative: "a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to the communities not in the majority in the population of Macedonia".

Control of corruption

Constitutional guarantees over the independence of central agencies and commissions are a means of ensuring the integrity foundation of civil services. Thus the fundamental law introduces the autonomy of the National Bank of the Republic of Macedonia (Article 60), the functioning of the Republican Judicial Council, an apolitical elected body initially by the Assembly for a mandate of six years renewable once (Article 104) authorized to nominate judges for election and discharge in the Assembly and to evaluate the issues attracting legal liability in judges' positions (Article 105). The apolitical nature of the Judicial Council was preserved, still, the fundamental law was amended in order to safeguard the independence and autonomy of the judiciary by introducing the provision that part of the judges to be elected by the judges, part by the Assembly "insuring that equitable representation of citizens belonging to all communities shall be observed" and one member elected by national minorities (Amendment XXVIII). Other measures to counter private interests against the public good are the claims of incompatibilities; thus the position of President of the Assembly is "incompatible with the performance of other public offices, professions or appointment in a political party" (Article 67). The same prescriptions must be met by the President of the Republic (Article 83), the members of the Republican Judicial Council (Article 104), judges (Article 100) and judges of the Constitutional Court (Article 111), the Public Prosecutor (Article 107). The law further interdicts members of Government, including the Prime Minister to occupy "other public offices or professions" (Article 89).

Rule of law and regulatory quality

The rule of law principle is explicitly laid down in the Preamble of the constitutional law "as a fundamental system of government". This formula was not repeated in the Constitutional amendments, still Amendment IV highlighted the supreme purpose of the new establishment to consolidate the rule of law. Rule of law was further enlisted as one of the "fundamental values of the constitutional order of the Republic of Macedonia" among civil rights, separation of powers, economic and social rights, and local self-government (Article 8).

Legal reform was directed towards laws on litigation and court procedure - Law on Academy for Training of Judges and Prosecutors (2006), Law on Courts (2006), Law on the Judicial Council (2006) and the Law on the Public Prosecutor's Office (2004). In terms of electoral reform we have to note the adoption of the Electoral Code, the Law 45/2004 on Local Elections (25 June 2004), the Law No. 42/2002 on Election of Members of Parliament, the Law No. 46 on Local Elections (1996), the Law on Presidential Elections in the Republic of Macedonia (2004), the Law on Electing Representatives in the Assembly of the Republic of Macedonia, the Law on Election of MPs, the Law on Electoral Districts, the Law on Local Elections, the Law on Political Parties, the Law on Polling Stations, the Law on Referendum, the Law on Voters List, also administrative law - Act on Citizenship (1992), Act on Movement and Residence of Aliens (1992), Law 45/2004 on Local Elections (25 June 2004), the Law On General

Administrative Procedures, the Law on Administrative Fees, Law on Amending and Supplementing the Law on State Aid 70/2006, Law on Asylum and Temporary Protection (2003), Law on Denationalization, Law on Foreigners, Law on Protection of Cultural Heritage, Law on Protection of Cultural Heritage Changes and amendments 115/2007, Law on Public Procurement 136/2007 and the Law on Public Procurement 19/2004, Law on Secondary Education, Law on State Aid 2003, Law on prevention of conflict of interests, the Ombudsman Law (2003), Law On Public Administration, the Public Procurement Law, Rulebook on Procurement Plan, Rulebook on Public Bid Opening, Rulebook on Single Procurement Registry, Rulebook on Solvency Document, Rulebook on appointment of experts, Rulebook on estimating the value of procurement, Rulebook on the Type and Manner of Using the Electronic System for Public Procurements. In terms of criminal law we have to mention the adoption of the Criminal Code and the Code of Criminal Procedure, the Law on execution of sanctions, the Law on misdemeanours, the Law on money laundering prevention and other proceeds from crime and the law on preventing corruption.

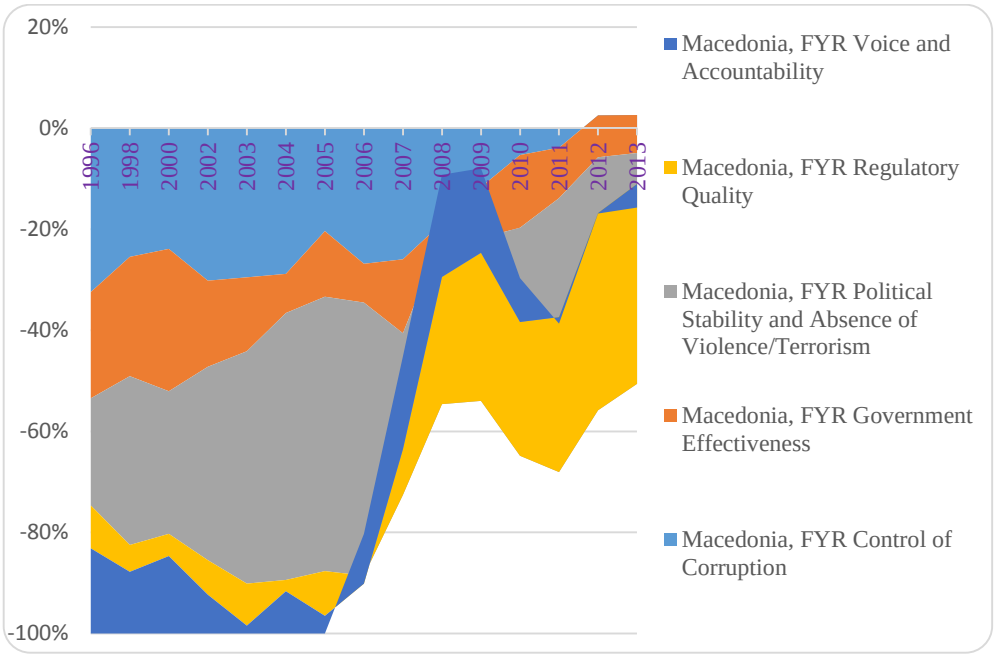

Figure 7. Reflections on democratization indices. Case-study: FYROM
Source: Author's analysis based on data from database: Worldwide Governance Indicators

The case of Bosnia and Herzegovina

Structure of the state

Following the end of the civil conflict through the Dayton Agreement which also serves as the state's fundamental law, Bosnia and Herzegovina (BiH) has a complex and unique political system uniting two top administrative structures (Federacija Bosna i Hercegovina and Republika Srpska) and one "internationally supervised district" with special regulated status (Brcko Distrikt) according to its Constitution which forcefully

ended the hostilities began in 1991 (The Dayton Agreement, 1995). The State of Bosnia and Herzegovina is run according to a political and ethnic principle: at central level the political system brings together the bi-cameral parliamentary assembly (the House of Representatives and the House of Peoples), the rotating tripartite presidency, and the council of ministers. The constitution provides the allocation of seats for both chambers according to the ethnic criterion (for Bosnians, Serbs and Croats). Both the Federation and the Republic have their own national assembly, a president and a vice president and the government chaired by the prime minister. The Federation has institutions at the entity level, canton level (10 units), and municipal level (73 municipalities). However, the Republic has only two levels; at local level the Republika Srpska recognizes the right of the 64 municipalities to issue local legislation. Notwithstanding the basis for local self-government, the Constitution also provide the necessity that all important matters must be coordinated at federal level and with EU representatives. The structure multiplies for each municipality, the Constitution acknowledging their right to form free assemblies and administrative institutions. The area distribution between the Republic and the Federation is 49% to 51%. Still the constitution provides for the Parliamentary Assembly two thirds of the elected seats in the House of Representatives and also two thirds of the designated seats in the House of Peoples to the Federation, the remaining one third from both chambers being granted to the representatives and delegates of the Republic (Article IV).

Citizens' voice and public accountability

Constitutional guarantees of citizenship preclude the denial by the state to recognize Entities' citizenship, and the denial by Entities of the states' citizenship, no matter the grounds raised (Article 7). At the same time, the Constitution claims the equality principle and non-discrimination for all people regardless their "sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" (Article 4). A Human Rights Commission for Bosnia and Herzegovina was provided in Article II Paragraph 1 in order to "ensure the highest level of internationally recognized human rights and fundamental freedoms" as regulated in Annex 6 to the General Framework Agreement.

Government effectiveness

Lawmaking powers and the relations between national, regional and local legislation are enshrined in the fundamental law. In the Bosnian Serb Entity (Republika Srpska) the principle of local self-government is ensured through the creation and functioning of a Ministry of Local Self-Government in charge with the supervision of the 64 municipalities, while in the Federation a Law on Local Self-Government multiplied at cantonal (regional) level regulates the permeability of subsidiarity among the three layers of government. A separate structure of executive and legislative authority regulated by a constitutional order was imposed through the voice of the High Representative (European supervisor) in 2000. As regards the recognition of the transfer of competences to local communities and the subsidiarity principle, the Constitution regulates the juridical relations, attributions and powers between the state of Bosnia and Herzegovina and the two Entities (the Federation and the Republic) according to the principle of subsidiarity, awarding the Entities **"**all governmental functions and powers not expressly assigned (…) to the institutions of Bosnia and Herzegovina". In case of conflict of unconstitutionality or conflicting competences between the two Entities or

between Bosnia and Herzegovina and one of its Entities, or between structures of Bosnia and Herzegovina the fundamental law authorizes the Constitutional Court to decide. The subsidiarity principle is moreover nuanced by the Constitutional Court's mandate to rule on the constitutionality and compatibility of any law with the "Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina".

Rule of law and regulatory quality

Institutional guarantees of the rule of law adopted at this level and to the supremacy of the state's Constitution and laws for the entities and all their structures and compliance to the international law are introduced in the fundamental law. The fundamental law recognizes local self-government and fiscal decentralization of their Entities' structure. The rule of law principle is essentially enshrined in the Constitution being clearly stated in Article 2 under democratic principles "Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections".

Control of corruption

Aiming at discussing whether the Constitution introduces provisions regarding central agencies and institutions' independence; for the first six years after the adoption of the fundamental law the decisions of the Central Bank of Bosnia and Herzegovina to extend credit had to be supported by the legislative, while the first mandate of Governor of the Governing Board of the Central Bank had to be nominated by the International Monetary Fund, after consultation with the Presidency (Article VII).

In terms of the reform of the judiciary and corruption control, the international community noted the adoption of the Law on Transfer of Cases amended, the Law on the Court of Bosnia and Herzegovina amended, the Law on the Transfer of Cases from the International Criminal Tribunal for the Former Yugoslavia to the Prosecutor's Offices of Bosnia and Herzegovina and the use of evidence collected by the International Criminal Tribunal for the Former Yugoslavia in proceedings before the Courts in Bosnia and Herzegovina, the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the Law on the Attorney's Profession of the Federation of Bosnia and Herzegovina and the Law on the Centre for Judicial and Prosecutorial Training of the Federation of Bosnia and Herzegovina. In terms of electoral reform, attention was drawn to the successive amendments of the Electoral law, the adoption of the Law on Party Financing (2000, amended in 2004). In terms of corruption control within the administration and civil services, the Archives of the Federation of Bosnia-Herzegovina Act, the Law on Asylum in Bosnia and Herzegovina, the Law on Conflict of Interest in Governmental Institutions successively amended, the Law on Administrative Disputes amended and the Law on Administrative Procedure, the Law on Civil Service in the Institutions of Bosnia and Herzegovina amended, the Law on Public Procurement for Bosnia and Herzegovina, the Law on Movement and Stay of Aliens and Asylum, Law on Citizenship of Bosnia and Herzegovina, the Law on Filling a Vacant Position of the Member of the Presidency of Bosnia and Herzegovina, the Law on Humanitarian Activities and Organisations of Bosnia and Herzegovina (1998), the Law on Identity Cards of Citizens of Bosnia and Herzegovina, the Law on Immigration and Asylum 1999, the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina, the Law on Movement and Stay of Aliens and Asylum, the Law on

Permanent and Temporary Residence of Citizens of Bosnia and Herzegovina (2002), the Law on Public Procurement for Bosnia and Herzegovina, the Law on Succession of a Bosnia and Herzegovina Presidency Member, the Law on Travel Documents, the Law on the Amendments to the Law on Citizenship of Bosnia and Herzegovina (2005), the Law on the Civil Service in the Federation of Bosnia and Herzegovina, the Law on the Intelligence and Security Agency and the State Ombudsman Law.

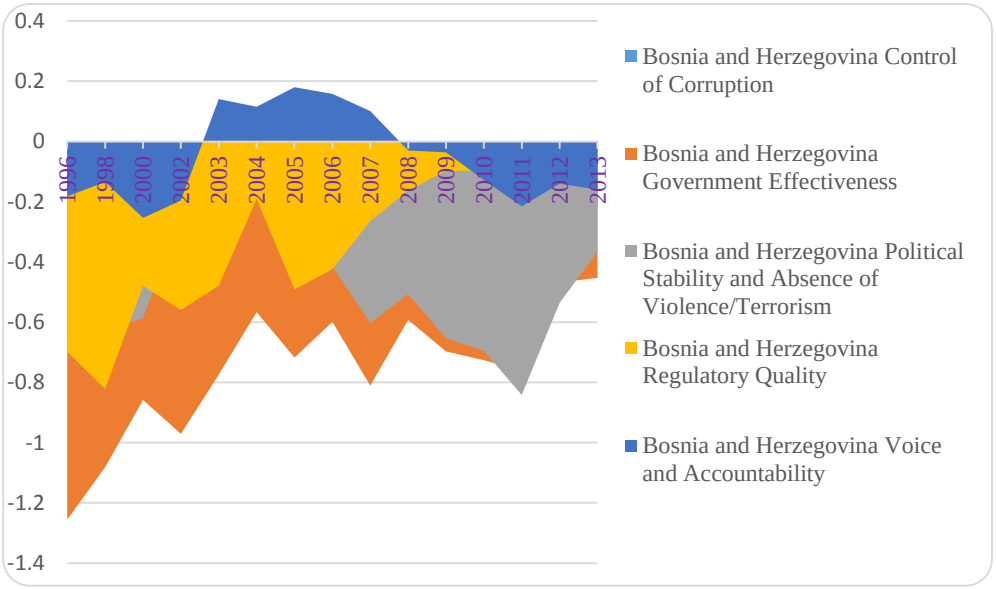

Figure 8. Reflections on democratization indices. Case-study: Bosnia and Herzegovina
Source: Author's analysis based on data from database: Worldwide Governance Indicators

In terms of criminal law, the Criminal Code and the Criminal Procedure Code were successively amended. As regards corruption control we have to note the adoption of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, the Law on Special Witness Identity Protection in Criminal Proceedings in the Federation of Bosnia and Herzegovina (1999), the Law on the Prevention of Money Laundering, the Law on Witnesses Protection Program in Bosnia and Herzegovina, the Law on the Execution of Criminal Sanctions (1998) and Law on the Human Rights Ombudsman of Bosnia and Herzegovina.

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ORIGINAL PAPER

Comparison of the Process of Establishment of the Communist Regimes in Central European Countries

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Abstract
The article deals with the process of formation of communist regimes in Central Europe after WW2. The author traces the causes of the rise of these regimes in Czechoslovakia, Hungary, Poland and East Germany. This process analyzes with the comparative method, and trying to show the similarities and differences between developments in these countries. The analysis is based on a comparison of conditions in frame of three keys factors: experience / inexperience with parliamentary democracy, social and economic conditions after WW2, and the way of establishment of a communist regime in the relevant country.

Keywords: *Rise of Communism, Central Europe, Second World War, Social Transformation*

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The communist regimes in Central Europe were a historical phenomenon and, secondly, the phenomenon of the political science. Theory of totalitarianism, emerging from the 50s of the 20th century as the Western concept of Political Science, tried to show above all common features of these regimes. The key problem which, however, these concepts of totalitarianism in professional debates crashed, were either of these modes changes that occurred since the 50´s almost until 1989, and the differences in the characteristics of these regimes in each country of Central Europe. They were not only given by the current socio-economic conditions or situation of communist elite, but also by profound differences in historical traditions of each country. These differences are already fully reflected in the way the communist regimes in the countries of Central Europe after WW2 raised. Differences between these regimes consisted mainly in the way the Communist takeover and the public's attitude, in dependency of the power elite on the Soviet leadership, and the ability to promote the national interests of the state, the extent and way of applying repression, the position and perception of opposition groups, including the Church, in their ability to respond demands for reform and the changing situation on the international scene.

In the following article we will show the similarities and differences of the key factors that influenced the creation of Communist regimes in Czechoslovakia, Poland, Hungary and East Germany. In particular, we should analyze: 1. Actual geopolitical situation in CE as a consequence of the WW2; 2. Differences in previous development of each country (national, political, economic, cultural, religious); 3. Different perceptions of radical changes in recent history (results of WW1, experience with the interwar regimes of 1918-1938, WW2 – resistance vs. collaboration); 4. Different position of communist parties in each national society in CE; 5. Different level of un/modernity of each national society in CE. In order to outline these differences, we must research (at least) the following three factors: 1. In/experience with Parliamentary Democracy; 2. Social and economic conditions in the relevant country after WW2; 3. The way of establishment of a communist regime in the relevant country

In/experience with Parliamentary Democracy

Czechoslovakia and East Germany certainly had, from reporting countries, the richest experience with the regime of Parliamentary Democracy. In both countries, since the last third of the 19th Century and especially during the interwar period was richly developed party and social life; after 1918, both countries developed in the frame of liberal democratic constitutional system and the rule of law. However, in both countries observed in this period also strongly opposing tendencies, notably on the restriction of Parliamentary Democracy. In Czechoslovakia, these tendencies were manifested in the form of too strong role of party elites and rather passive membership of political parties. Constitutional and political practice, this corresponds to the conception of tied candidates lists and tied parliamentary mandate. Although in Czechoslovakia did not exist a strong republican tradition, has managed to build up quite quickly, among other things. And because this idea had a strong support especially in the Czech elites and public. To support the building of the republican form of state were political and cultural elite also used the historical traditions (the references to the Hussite Revolution, social reforms, the struggle for cultural autonomy in the 19th Century).

In Germany, after 1918, there were too many obstacles to building a strong republican and democratic traditions. Formally existing Weimar Republic was being swayed by political extremists, whether it represented a nationalist, radical left-wing (Communists) or right-wing populist parties eventually in the form of NSDAP. How much exactly once wrote historian Golo Mann, it was "a republic without republicans and democracy without democrats" (Mann, 1993: 24-25). The prestige and authority of the republican authorities in Germany after 1918, decreased steadily depending on the deteriorating economic, social and international political situation. Significant support of Stresemann´s centrist governments in the second half of the 20´s proved to be a very short episode. In both countries also existed uncontrolled domination of political parties and economic elites, and strong tradition of party-controlled press, which kept the public support to the Political System. Both countries have been characteristic by strong social stratification of society, different social class closely perceived their collective identity, and it basically corresponded strong linkage of voters to "their" political party, which built its policy strictly on defending of particular interests of the social class. This also corresponds to the political practice in the Parliament: we can observe "militant" approach of political parties to the solution of key problems and their weak willingness to reach a compromise.

Parties were living in the environment of a sort of permanent cold civil war, able to always go to the hot phase, as seen from the street battles of the Communists and the Nazis since the late 20´s. Even in the face of the Nazi threat in January 1933 other political parties with a majority in the Reichstag were not able to agree on such a joint approach by the Nazis came to power prevented.

In Czechoslovakia, the situation was apparently different (strong tendency of parties to a mutual agreement, the governments of broad coalitions, which, however, strongly qualified the importance of the elections), and the result was quite different from Germany. Majority of citizens criticised, questioned, and finally refused (by massive support for the Nazi Party, other nationalists, and communists) this form of ("Weimar") party democracy in Germany. The citizens in Czechoslovakia also criticised the actual form of democracy and the ruling political system, but majority of them supported democratic political parties until 1938 (with the exception of the majority of ethnic Germans in Czechoslovakia). However, in Czechoslovakia after the Munich agreement (1938), and after the experience of the occupation and creation of Nazi Protectorate (1939) and WW2 prevailed among the public and politicians in 1945, convinced of the impossibility of returning to discredited "party state" from the time of the interwar republic (Judt, 2005: 64). It also greatly facilitated the success of the Communists to power.

In the case of Poland and Hungary, the situation was more complicated. Poland wants its statehood began in 1918 to build an entirely new and largely not political traditions something to build on. Poland started building its statehood and its system of Parliamentary Democracy "from square one" after 1918 and had no older democratic traditions (excepting the First Republic in 16th – 18th century). Thus, when opting for the most commonly used form of republican and Parliamentary Democracy. In the face of external threats Bolshevik Revolution, however, found themselves facing the need to fight for the survival of their national independence - and it is too early to have enough to build a little stable foundations of the democratic system (Davies, 2003: 13).

General social and economic catastrophe, even inherited from WW1, and the weakness of the newly established democratic institutions meant that after the defeat of

the Red Army Tukhachevsky gained on the Polish political scene, the dominant position of the architects of victory, headed by Marshal Pilsudski. This resulted in the establishment of an authoritarian regime, seeking inspiration in Mussolini's Italy, that in Nazi Germany, but always ready to find common ground with anyone in a negative relation to the USSR. Maintenance of national and state independency, Anti-Russian and anti-Soviet tendencies were pivotal axis of Polish politics since the twenties until the period just after WW2 (Rupnik, 1992: 46-47). The Pilsudski´s Army becomes the main guarantee of Polish political independency; this led to the preference of authoritarian regime. Safety of state had priority over preservation of democracy. It was also typical the economic decline, strong role of traditional elites and absence of political liberalism for Polish society.

Hungary was (in the time after 1918) characterized by both tremendous frustration with the results of the war, and in particular the results of the Paris Peace Conference, and the Treaty of Saint-Germain-en-Laye. The political situation in Hungary determined the postwar chaos caused by the reluctance of local elites to come to terms with the new situation in Europe, as well as frequent violent upheavals and political adventures, culminating in the form of so-called "Hungarian Soviet Republic". Establishing Horthy´s regime in this context appeared to be a stabilizing factor that has enabled Hungary gradually absorb too radical changes in its national, political, social and economic organization, which in 1918 was clearly not ready. This was done at the cost of restriction of Parliamentary Democracy and the establishment of an authoritarian regime. Thanks to this in interwar Hungary was not much place for a moderate liberal policy; their positions rather renew old traditional conservative social class with its defeatist approach to politics and with Anticommunism.

Generally, we can thus summarize this aspect so that in 1945, while - in the case of Germany and Czechoslovakia - there was some experience with parliamentary democracy, but they were both very short, and because of its many systemic weaknesses not enough and did not strongly rooted in society, nor in the social and political institutions. Moreover, it was not accompanied by economic democracy, which was the citizens in both countries perceived as one of its key weaknesses. The German society, of course, entered the post-war period, both after twelve years of experience with brutal tyrannical regime, and secondly, the situation of economic, social, moral and general human catastrophe in the form of defeat in war and the almost total destruction of the entire country. Of course, it played its role well as the fact absence of state independence, which was a logical consequence of the occupation of Germany by the Allied armies (Weber, 2003: 10). Poland was in 1945 the country liberated by the Soviet army and became a battleground on which he had yet to decide the struggle between the forces of anti-Russians more than the pro-democratic (Mikolajczyk´s People´s Party) and the Polish Communists, who had some very scant public support, but strong support for the Soviets. Sharp anti-Russian mood of the public, even complemented the WW2 experience with the pact Molotov-Ribbentropp, murders in Katyn, not help of the Soviets to Warsaw Uprising and the mysterious death of General Sikorski, it could be assumed that in Poland after the war pulls a sharp political struggle for power.

Very similar situation was in Hungary, which was like Germany the country in the war militarily defeated and occupied. The position of the Communists in Hungarian society was also rather weak, which resulted mainly from the social structure of society and also from the fact that during the inter-war period the communists were illegal (as in Poland), and could not therefore broadly develop political activities. Most citizens of

Hungary after the war supported the Peasant Party (Smallholders"), which represented a large part of the countryside, but also had considerable support in the cities. On the left dominated the rather moderate social democrats with a traditionally strong position in Budapest and larger cities. All this gave a sense that here the way of the Communists came to power will be very difficult – they had only one powerful helper - Allied Control Commission, controlled by the Soviets and headed by Marshal K. Voroshilov.

Social and economic conditions in the relevant country after WW2

Generally, of course, it was possible in 1945 noted the extensive devastation of post-war economies of the four surveyed countries. Prewar Czechoslovakia and Germany were definitely the industrial countries, Germany was in the 30´s even the most dynamically developing industrial powers of Europe. It had large stocks of raw materials and consumables developed heavy industry, extensive research and development, and also excelled in a developed transport infrastructure. A large part of the industry was concentrated in the east of the country, which was occupied by the Soviets at the end of the war. Wartime destruction, of course, led to a significant weakening of the industrial potential of the country, which was further reduced by post-war expropriation, the Soviets realized within the wound healing for the victims, which the Soviet Union brought the defeat of Nazism in the war.

Czechoslovakia was also developed industrial country, but with significant regional differences in the level of industrialization; almost entirely agrarian Slovakia strongly contrasted with the industrial areas of Bohemia, Moravia and Silesia. Wartime devastation, although significantly damaged the country, but not so much as in the case of Germany. Poland and Hungary were more agrarian countries, with a relatively small share of the industry. Wartime occupation of Poland greatly damaged the country economically, moreover Poland in the war lost almost all the intelligence, the social elite as well as extensive eastern territories which were only partly offset by earnings former German Silesia (Kosman, 2011: 38). Hungary is particularly towards the end of the war became a vassal of Nazi Germany rather, which of course it also cost significantly damage. The country has however retained a considerable part of the intellectual elite. In all the above mentioned countries took place after the war nationalization of key industries, mineral resources, banks and insurance companies, which expressed the faith of local (often non-communist) elites in the possibility of realization of socially just society.

The way of establishment of the communist regime

As we have already indicated above, the conditions for the emergence of communist regimes in our surveyed countries varied. In Germany, the division of a unitary state and the establishment of the Communist regime in one of them was the result of the post-war power structure. East German Communist elite was not long after the 1949 master of the situation in his country, in which decided Soviet generals and politicians. Creating of the GDR was not originally Stalin's intention; Soviet dictator favored maintaining of the unified Germany, but with a strong influence of the Communists to the politics.

But when the three Western allied governments agreed to merge their zones and the creation of the West German state, the Soviets had no choice but to respond to the situation similarly, if they did not want lose their influence in Germany completely. But

East German Communist regime still quite long served the Soviets as an instrument for negotiations with the West.

Stalin and yet also Khrushchev were ready to accept the sacrifice of the GDR in a few specific historical situations, and to accept also its reintegration into a unified German state in exchange for a strong Communist influence in such Germany (Vykoukal, Litera & Tejchman, 2000: 418). West German leaders never accepted such offers, even if that they undoubtedly met the expectations of many East German citizens (Fullbrook, 2010: 115). Until the entry of West Germany into NATO in 1955 put an end to these Soviet affair with the existence of the GDR - indeed, it was no coincidence that only after that act gained the GDR full sovereignty from the Soviets, as demonstrated also agree to set up its own army of the GDR.Czechoslovak case is perhaps known well enough, but we note the basic factors of its development. The establishment of the Communist monopoly on power have contributed to our mind these basic factors: significant influence of the war exile (in Moscow) leadership of the Czechoslovak Communist Party for talks on postwar arrangements of the political system of liberated Czechoslovak republic, held in Moscow in March of 1945. At these meetings the Communists enforced whole their version of the new government program (ie. The Košice´s government program), which meant a fundamental changes in the political system, economy, social affairs, security and foreign policy of the state. Other political actors (non-Communist parties, the President Beneš) more or less respected dominant influence of the Communists, or they faced it rather ineffectively; in addition they have agreed with many measures proposed by the Communists, especially in foreign and retributive politics, as well as the vast majority of the measures in the economy, and - in the case of the Social Democrats – the have proposed an even more radical steps (Kaplan, 1993: 19-20); disappointment of the population from the political and economic system of the pre-war Republic, which was perceived in the context of the Munich agreement as a politically corrupt and socio-economically unjust; the election in 1946 - it was the only election in Central European countries in which the Communists won (40 % of votes) in relatively democratic conditions; the Communist Party seized control of key ministries (interior, army, justice, Secret police). The communist takeover in February of 1948 was certainly perceived by the public less fatal than we perceive it today. From the former perspective it was mainly the solution of the government crisis, caused by the demise of leaders of non-Communist parties. The Communists used the advantage of the crisis for the powerful reversal in their favor. Within a few days, they activated the public support on their side, activated thousands of its officers in the village and towns who took power in "national committees" (town halls), and they neutralized the President. Through its allies in other political parties they made an upheaval of these parties that added to the "revived" National Front in a few days after 25th of February of 1948. (Rataj & Houda, 2010: 55).

Although we can certainly speculate on the constitutionality of this process, it is obvious that the basic building block of success of the Communists was both surprise (non-communist parties were not sufficient to recognize the intentions of the Communist Party, and when it is observed, they were already in principle unable to prevent their implementation) and, secondly, passivity of majority of the public, which in principle also was unable to see the consequences of the ongoing changes. All this gave the communist leaders reason to believe that the silent majority of the public actually supports their progress. This proposition was defeated also by President Beneš, who accepted all of communist's proposals for solving the crisis (Bureš, 2004: 118-120). The real power reaching breakeven however, it was up agreement (March-April of 1948) of the other

political parties to form a so-called "Unified list of candidates" for the upcoming parliamentary elections, which practically meant the resignation of the parties in the electoral fight against the communists (Kaplan, 1997: 498).

The takeover of Communists in Poland and Hungary was much more complicated, it is because we limit ourselves only to its main features. Communism was in both countries restored clearly against the will of the majority of inhabitants. Post-war Poland was tossing about violent political struggle between the communists (who had strong support from the Soviets, but the minimum support among the public), and popular politicians, who organized domestic and exiled resistance against the Nazis, and who were in 1945 leaded by war exile Prime Minister and Chairman of the People's Party Mikolajczyk. He thought, moreover, that he will be able to create a political alternative to the pro-Soviet government (ie. Committee in Lublin). But the Soviets forced (through rough coercion and terror against the leaders of Polish wartime resistance movement) the formation of a government in which the Communists and their Allies occupied the overwhelming majority of seats. This new government was finally also recognized by the Western Allies. This is why the exile democratic leaders (with their pro-Western policy) were eliminated and lost the influence on events in postwar Poland.

The Communists with Soviet support postponed democratic elections, required especially by the party of Mikolajczyk, to obtaining an advantage in terms of realization of irreversible personal, economic and social changes in Polish society. The Christian Democrats refused to join the joint list of candidates with the Communists in 1946. It followed by a referendum on the government's economic policy, organized by the pro-Soviet government. The Polish government lost this referendum at the end of June 1946 when it voted against 75 % of voters. However, the results were falsified and the government announced that it had, on the contrary, 68 % support. The Communists started a discrediting campaign against the opposition Christian Democrats. The government´s candidate list (communists and socialists) won the elections, held in January 1947, with 80.1 % of the votes; the opposition Christian Democrats were defeated. It followed the adoption of the new constitution that undermined the principle of separation of powers and concentrated most of the political power in the hands of the executive (in the form of the newly established Council of State) (Paczkowski, 2000: 120-121). Subsequently, the Communists carried out the discrediting campaign against its previous allies, the Socialist Party. The enforcement of the next wave of nationalization (services, trade and commerce), liquidation of the autonomy of universities, arrests and show trials of the leaders of the Socialists was the result of it. People's Party was officially disbanded in autumn 1947 and Mikolajczyk emigrated from Poland. In March 1948, the Socialists (under press agreed of the Communists) agreed with unification of their party with the Communist Party. The monopoly of the Communists was completed.

In Hungary, the situation was different practically only in the official position of the country at the end of the war: while Poland was allied countries, liberated by the Red Army, Hungary was a hostile, defeated and occupied country. This situation, of course, considerably eased the communists their path to power, because the country was effectively ruled by the Allied Control Commission headed by Soviet Marshal Voroshilov. At the end of the war, all Hungarian political parties including the Communists agreed to form a National Front of Independence that should manage the country to the holding of elections (Kontler, 2001: 360). The government, formed on the basis of this agreement, however, conducted a major political and economic changes: the confiscation of the property of traitors, nationalization of industries, agrarian reform, introduced the

principles of planned economy and system of controlled democracy (Irmanová, 2008: 247).

The Communist Party, originally tiny, illegal and without significant public support, was quickly picking up new members and with the support of the Soviets occupied key power ministries (Applebaum, 2012: 70). Conservatively Agrarian Peasant Party ("Smallholders") had the strongest public support, but this party was now led by the young and inexperienced politicians. The political atmosphere in the country was very sultry, both major political camps was bored against themselves with the threat of disaster in case of victory of the enemy. The Smallholders convincingly won the elections in November of 1945 to gain 57 % of votes, Communists ended up with nearly 17 % to third place behind the Social Democrats.

However, the real power position of the Communists has not changed. The Soviets after the election gave a strong indication if their interest in the continuation of the coalition of National Front. Communists "had to" remain in the government, and although Smallholders occupy the highest constitutional positions of the prime minister and president, communists retained power ministries, including control of the secret police AVO. In the following months they tried to decomposition of Smallholders Party, which they did in cooperation with the Soviets in the Allied Control Commission, and finally they met this goal with help of the unions and the secret police and manipulated justice.

The Government of Smallholders in Hungary ended up with a touch bizarre thriller: after Prime Minister F. Nagy went on holiday in Switzerland in May of 1947, he was accused of preparing the conspiracy in Hungary, and was warned not to return. Communists blackmailed him for his son, who remained in Hungary. Ferenc Nagy thus remotely from Switzerland resigned as Prime Minister, the Communists sent him a son and he remained in exile. Meanwhile, Hungary rejected the Marshall Plan and carried out massive nationalization.

The Communists won 22 % of votes in the manipulated parliamentary elections held in August of 1947, disorganized Smallholders party ended up in third place with 15.4 % of votes. Subsequently, the parliament headed by a communist Imre Nagy, gave most of its powers in favor of the government. The Communists immediately completed the process of nationalization of property. In June of 1948, virtually the same time as in Czechoslovakia, the Hungarian Communists united with the Social Democrats and became party of power monopoly.

Conclusions

The way the communist regimes emerged in the surveyed countries remained firmly imprinted on the way they were perceived by the citizens as well as the local communist elites.

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ORIGINAL PAPER

European Practices for the Integration of Immigrants

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Abstract
The European Union has a great responsibility in providing the reception and expulsion structures designed for the individuals of the intra- and extra-community countries correlated with its capacity of relevant political actor not only in the continental but also in the international power equation. The process of immigrant's integration has significant effects on the production of "good" and "bad" international migration models. The successful integration is essential for humanitarian and cultural reasons and this is also necessary for maximizing the economic and social benefits of immigration, both for individuals and for society. The aim of this paper is to analyze the theoretical and practical approaches of the European Union regarding integration of immigrants, considering that at European level, there is a discursive context in which the ideas related to insertion, democratization and protection of rights of immigrants are taking a meaning, but they are not unanimously supported by policies adopted by the member states. Two main objectives will be presented in a theoretical approach: an overview of the "limits" of integration of the immigrants and the role of European Union in developing a framework for the integration by implicating the pro-immigrants organizations. The integration of immigrants implies a balance between the rights they have and the respect for the laws and culture of the host country. However, we should not disregard the fact that institutions, such as the European Commission, finances the pro-immigration organizations and they propose collaborations where possible, in order to create mutually reinforcing relationships, by institutionalizing the skills of different social actors, which can generate a pro-immigration emulation in the national states. Pro-immigration lobby provides examples on indirect representation and on how to capture interest through technocratic and legal pathways of influence.

Keywords: *immigrants, integration, European Union, lobby, pro-immigrants organizations*

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Immigration and discrimination

Currently Europe is the scene of some processes with similar effects and sometimes with identical effects: on the one hand, globalization, which erodes and even erases the barriers opposing international flows of people, assets, services, capital and information and on the other hand, the expansion of the European Union, which entitles citizens from less developed countries to aspire to a life-style considered to be better in EU. In the case of Europe, the issue of migration became more complex further to the European Union expansion. The analysis of this phenomenon is the more necessary, the more it rises and its patterns start changing radically, revealing at an international level new surprising tendencies both in migratory flow direction and in the migrants' psychosocial representation and migration effects. The migration topic has so many aspects and it implies so many analysis directions that this perspective partially covers the generosity of such a discursive field. According to Kymlika's idea ''we have witnessed a remarkable trend toward the internationalization of minority rights in the European context'' (Kymlika, 2005) in the '90, after the fall of communist regime. Still, the history of immigration control is marked by discussions about racism, although this aspect is not very developed in the analysis of contemporary political theories referring to the ethics of immigration restrictions.

The normative discourse theorists, who support the right of the state to limit immigration, consider that, despite historical evidence, there can be a form of control. They emphasize the fact that, generally, the restrictions referring to immigration do not have to discriminate potential immigrants on grounds of race or ethnicity. In order for this argument to be authentic, accepted and adopted, it must be able to condemn racist practices which characterize the history of immigration restrictions. It is very important to establish how and why meeting these conditions represents a serious challenge to the arguments in support of the right of the state to exclude potential immigrants.

Race is a concept which involves multiple theoretical approaches. We use it in this context in order to recognize the fact that race is a social construct, with deep social effects, one of which is the fact representing the foundation of certain specific ways of discrimination (Mason, 2000: 11 -12). *Racism*, in this approach, imposes a fairly broad meaning, which implies the hostile treatment related especially to the racially perceived difference, going along with a perception of hierarchy. The term *ethnicity* is used in order to highlight the differences between people, based firstly on beliefs related to common history and culture. Thus, *racial and ethnic discrimination* refers to distinct treatment on grounds of racially and ethnically perceived differences, which may occur in the absence of explicit and intentional hostility or of a sense of hierarchy (Appiah and Gutmann 1996).

It is important to remember that, through the centuries, race and ethnicity have been the focus of concerns related to migration from all over the world. Actually, *colonialism*, *imperialism*, *migration* and *race* are much more complexly interconnected. Historians Marilyn Lake and Henry Reynolds argue that, at the end of the 19th century and the beginning of the 20th century, "immigration restriction became a version of racial segregation on an international scale" (Lake and Reynolds 2008: 5-10). Lake and Reynolds show how "international campaigns for racial equality and human rights have often started as a response to barriers to mobility and to certain racial discriminations adopted by democracies in the New World in the 19th century " (Lake, Reynolds, 2008: 5-10). More than this, Michael Dummett argues that "the main, real motivation for immigration policies based on exclusion is represented by racial prejudices and,

sometimes, by prejudices against foreigners, who, when they are present, are always felt more intensely as compared to those who are or – are considered to be – of another race" (Dummett, 2001: 58).

In other words, the introduction and the extension of restrictive immigration policies are, generally, responses to the reaction of the people regarding race and ethnicity, which represent primary factors of hostility against certain groups of immigrants. But *is there* another way to refer to immigration control which can be supported and which manages to be separated from this racial pattern? Certain contemporary normative theorists argue that it is possible to develop a defensive restrictive immigration policy. John Rawls, Michael Walzer, David Miller or Christopher Wellman Heath have provided arguments in order to support a form of the right to exclude potential immigrants. Other authors, such as Teresa Hayter, consider that the most obvious way to separate the immigration policy against legacy of racism is to remove all barriers. (Hayter, 2000: 21).

It could seem that contemporary normative arguments supporting the right to exclude can point out the fact that they represent a clear morally separation from the problematic history of immigrations. In order to generalize, all these arguments share the basic belief that those self-determined communities have the right to a certain degree of control over immigration. None of these considerations supports the right of the state to total discretion regarding the immigration decisions. David Miller, for instance, explains that "even if the states are not required to pursue an open-door policy with regard to potential immigrants who are not refugees, they are required to adopt an immigration policy, which is correct, in the sense that it provides good reasons in order to allow some to come and others not to come" (Miller, 2008: 388).

The normative contemporary arguments which try to defend the right of the state to exclude different individuals to a certain extent, seem to be more involved in a form of institutional theory, according to Blake: "I am convinced an institutional approach is best." (Blake, 2001: 263-264). There are elements of ideal approach in some of these assertions, providing justifications for immigration restrictions and there are also non-ideal examples of theorization, an example being the debate related to refugees, because the very existence of refugees involves committing injustice and serious violations of the fundamental rights.

On the other hand, we should keep in mind that the very prohibition of direct discrimination on racial grounds involves a context for expression of racism, reminding that *race* refers to a certain type of social relationships constructed in and through racial reasoning. The idea that racial discrimination is unacceptable is already based on the existence of a socially constructed category, *race*, which means certain forms of unfair practices. From an ethnic perspective, expressing the preference for those with a certain ethno-cultural past, the state inevitably supports the culture in question as being superior, thus undermining its attempts to treat all cultures impartially in its domestic policy. In this regard, David Miller considers that any kind of ethnic discrimination in the acceptance policies wrongs all members of ethnic minorities (Miller, 2008: 382).

Thus, we may say that *race*, *racism* and *racial* and *ethnic discriminations* are embedded in the history of immigration, in the public reactions towards immigrants, in the control of immigration and migration flows. Although the so-called democratic liberal positions from nowadays would deny the fact that their immigration policies directly discriminate on racial and ethnic grounds, it is not difficult at all to find clear examples of such discrimination. For instance, in 2009, France sent 10,000 Romani people to Romania and Bulgaria, a move which drew criticism from the *United Nations Committee on the*

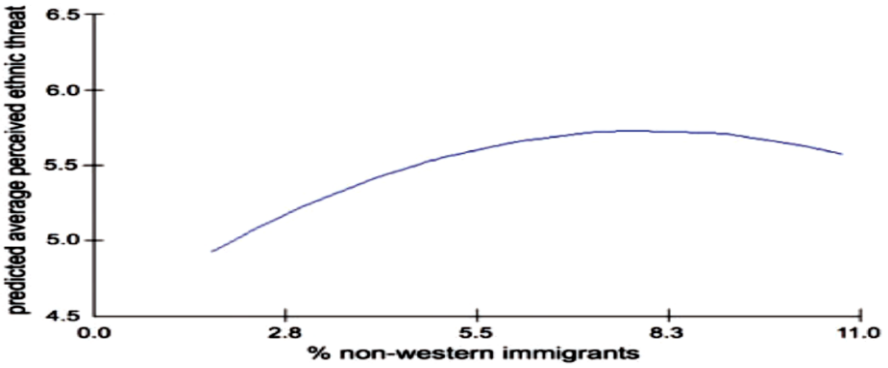
Elimination of Racial Discrimination and which was described by the Vice-President on the European Commission and responsible for Justice, Fundamental Rights and Citizenship, Viviane Reding, as being a "disgrace". The Committee requested evidence to support the claim that France did not specifically target the Romani people. In the case of sending the Romani people to their country of origin, the French government denied the fact that the Romani people were specifically targeted, instead, it claimed that it would end illegal activities, such as the proliferation of their illegal stay. Usually, the clear targeting of certain groups is poorly covered up behind what the states see as legal, "acceptable" methods, such as border security against terrorist threats or against a great number of immigrants without documents or for the safety of the immigrants themselves. These arguments have let some experts to consider immigration control as an inherent, inexorable and racial one.

European practices for the integration of immigrants in the European Union

The discourse of identifying the best European solutions to handling immigration issues faces certain challenges: the identification of the most beneficial measures both for migrants and for states that turn into receiving countries, the observance of the fundamental human rights and of the existing international treaties and – of course – the long-desired stage of reaching an agreement by the Member States on the European joint policy on migration. It is quite difficult to explain the concept of integration. By referring to key domains of it, we can explain four themes: "achievement and access across the sectors of employment, housing, education and health; assumptions and practice regarding citizenship and rights; processes of social connection within and between groups within the community; and structural barriers to such connection related to language, culture and the local environment" (Ager, Strong, 2008: 166-191). Some studies regarding immigrant integration are correlated with the relational skill assets. Naeyun Lee and Cheol-Sung Lee (2015) are showing that anti-immigrant sentiments are lower for the workers with a higher possession of interpersonal skill in a study based on 2004 national identity module of General Social Survey which provided dataset from United States of America about native workers' attitudes toward immigrants and their occupations. Their study tested two hypotheses: "occupations requiring high levels of interpersonal skills will have fewer immigrant workers and workers with high levels of occupation-specific interpersonal skills will show less anti-immigrant sentiments". (Lee, Lee, 2015: 272).

One the other hand, the European anti-immigrant prejudice based on ethnic competition theory is presenting that *the economic standing of immigrants* is important, but also matters *the cultural distance of immigrants*, correlated with *intergroup contact theory*, which showed that familiarity with immigrants decreases ethnic threat perceptions (Schneider, 2008: 62). Data set of the European Social Survey were combined with multi-level models (figure 1), thus the *contextual analyses* showed that "non-western origin adds to the average level of perceived ethnic threat in European countries" (Schneider, 2008: 63).

Figure 1. The nonlinear effect of the percentage of nonwestern immigrants



Source: Schneider, 2008

Studding immigrant integration policies and perceived group threat in 27 Western and Eastern European countries Elmar Schlueter, Bart Meuleman and Eldad Davidov discovered that there is a correlation between immigrant integration policies and perceptions of group threat from immigrants. The immigrant integration is more permissive when the policies of the state sustained this approach. It means that that integration policies that are more permissive decrease negative perceptions of threatened group interests. When we are talking about *life satisfaction*, some studies are presenting dissatisfied perspective about it for the first and the second generation of immigrants (Safi 2010). Even more, the perspective of the members of the second generations towards inferior living conditions are considered more unfair than the first generation (Handlin, 1966; Portes, Rumbaut, 2001). The economic criteria is the most important one used in evaluating individual immigrants by the immigrant-receiving societies in which job skills are highlighted by education and occupational status (Iyengar, Jackman, Messing, Valentino, Aalberg, Duch, Hahn, Soroka, Harell, Kobayashi 2013). Since the economic issues are more important than the cultural ones, generally, there is a higher rate of citizen's support for individual immigrants than for "open immigration policies" in advanced industrialized democracies (Iyengar et al., 2013: 659-661). By consulting The Migrant Integration Policy Index (MIPEX) which measures policies to integrate migrants in all European Union (EU), Australia, Canada, Iceland, Japan, South Korea, New Zealand, Norway, Switzerland, Turkey and the United State of America we found that approximately all MIPEX countries have slightly favorable laws prohibiting ethnic, racial and religious discrimination especially because of the adoption of EU law. Also, it seems that we are having consistent improvement of integration policies in new Member States from Central Europe (for example, most recently, Austria, Croatia, Czech Republic, Estonia, Malta, Poland, Slovakia). Traditional countries of immigration (Canada and United States better than Australia and New Zealand) are combating racial, ethnic, religious and nationality discrimination by offering more support for integration of immigrants comparing to European Union countries with longstanding legislation (strongest in Portugal, Sweden, United Kingdom) and a few new EU Member States (Bulgaria, Hungary or Romania), as we can see in the table below.

Table 1: Policy Indicators for Antidiscrimination (2015)

	Nationality discrimination explicitly prohibited	Multiple discrimination explicitly prohibited	Racial/ethnic/religious discrimination prohibited in all areas of life?	Shift in burden of proof required?	Class action and Action popularis allowed?	Strong & independent equality body?	Strong state actions to promote equality ?
AT	Weak	Yes	Yes	Full	No		
AU	Yes		No	No	Yes both	Partial	Partial
BE	Yes		Yes	Partial	No	Partial	
BG	Yes	Yes	Yes	Full	Yes both	Yes	
CA	Yes	Yes	Yes	Partial	Yes both	Yes	Yes
HR	No	Yes	Yes	Full	Actio popularis		
CY	Weak		Yes	Partial	Class action	Partial	
CZ	No		Yes	Partial	No	Weak	
DK	No		Yes	Partial	Class action		
EE	No		No	Partial	No		
FI	Yes		Yes	Full	No	Partial	Yes
FR	Weak		Yes	Full	No	Partial	Yes
DE	Weak	Yes	Yes	Partial	No	Weak	
GR	No		Yes	Full	Actio popularis	Partial	
HU	Yes		Yes	Full	Actio popularis	Yes	
IS	No		No	No	Class action	None	
IE	Yes		Yes	Partial	No	Yes	
IT	Yes		Yes	Partial	No	Weak	
JP	No		No	No	No	None	
KR	No		Yes	No	No		
LV	No		No	Partial	No	Partial	
LT	No		No	Full	No	Partial	
LU	No		Yes	Full	Actio popularis		
MT	No		Yes	Full	No		
NL	Yes		Yes	Full	Class action	Yes	
NO	No		Yes	Full	Class action	Partial	Yes
NZ	Yes		Yes	No	Class action	Yes	
PL	No		Yes	Full	Class action	Weak	
PT	Yes		Yes	Full	Yes both	Yes	Yes
RO	Yes	Yes	Yes	Full	Actio popularis	Yes	
SI	Yes		Yes	Full	No		
SK	Weak		Yes	Partial	Yes both		
ES	Weak		Yes	Partial	Yes both	Weak	Partial
SE	Yes		Yes	Full	Class action	Yes	Yes
CH	No		No	No	No	Weak	
TU	No		No	No	Class action	None	
UK	Yes	Yes	Yes	Full	No	Partial	Yes
US	Yes	Yes	Yes	Partial	Yes both	Partial	Partial

Source: Migrant Integration Policy Index

The integration of third-country nationals who are legal residents remains a key issue and, sometimes, a controversial one. The successful integration is essential for humanitarian and cultural reasons. This is also necessary for maximizing the economic and social benefits of immigration, both for individuals and for society. There is no single means of ensuring a successful integration. But it is obvious that certain efforts have to be made, both at the European Union level, and at national and local level, in order to obtain better results because each immigrant should feel at home in Europe, by complying with its laws and values, and they should be able to contribute to the future of Europe. The immigrants must be given the possibility to participate to the life of their new community, especially in order to learn the language of the host country, to have access to employment and to education and health systems and to have the socio-economic capacity to support themselves. The integration requires efforts made by the immigrant and by the receiving society in order to learn about the fundamental values of the European Union and of its member states in order to understand the culture and traditions of the country in which they live.

For example, in 2010 in the EU there were almost 257 800 asylum seekers, meaning 515 seekers for one million inhabitants and only ten member states had over 90% of the seekers in the EU : France, followed by Germany, Sweden, Belgium, the United Kingdom, the Netherlands, Austria, Greece, Italy and Poland (COM (2011) 248 Final). The main purpose of the common European asylum system is reducing the great discrepancies regarding the solution for asylum applications presented in different countries from the European Union and providing a common set of procedural and substantive rights which can be invoked within the Union, while ensuring full compliance with the Geneva Convention of 1951 relating to the status of refugees and other relevant international obligations. Normative theorists who debate migration ethics and especially those who try to defend a certain form of the right to exclude potential immigrants have an extremely important role in clearly issuing a framework for the non-discrimination of immigrant minorities in European Union. The political responses to immigration in the EU member states were covered by different national approaches, resulting from patterns of immigration/emigration, from the understanding of the concept of nation and from the clear specification of the place of immigrants within certain imagined national communities (Brubaker, 1994, Geddes and Favell, 2000). The framework of anti-discrimination policies is irregular (Wrench, 1996). Koslowski (1998) showed how cooperation on issues of restrictive policies remains a form of integration, because, gradually, through routine and by creating transnational links between politicians and officials as they cut their way through Europe by "wine and dine" method (den Boer, 1996), the decision factors from the supranational institutions of the Commission, the Parliament and the Court of Justice can be drawn into these different forms of European cooperation. The daily interaction may contribute to institutionalization, as a result of collaboration and policy-oriented learning process.

Pro-immigration lobby groups have been active since the early 90s, after which they reinforced their activities when the Maastricht Treaty created the formal cooperation framework at European level on issues of immigration and asylum. Among the most influential pro-immigration groups are those supporting human rights (Amnesty International, European Council on Refugees and Exile Issues, Starting Line Group), or the organizations of different churches (Caritas, Churches Commission for Migrants in Europe). They assume moral authority along with the symbolic capital which can be used

in order to support their claims. Moreover, by operating at European level and presenting their claims to the member states, these organizations highlight the importance of a component of European integration based on human rights. For instance, after the Amsterdam Treaty was signed in October 1997, Starting Line Group (SLG) came up with a proposal for a directive which implements the principle of equal treatment, by eradicating direct and indirect discrimination: "There shall be no discrimination whatsoever, direct or indirect, based on racial or ethnic origin, or religion or belief in particular in the following areas – the exercise of a professional activity, whether salaried or self-employed, access to any job or post, dismissal and other working conditions, social security, health and welfare benefits, education, vocational guidance and vocational training, housing, provision of goods, facilities and services..., participation in political, economical, social, cultural, religious life or any other public field" (SLG, 1998). One of the most important action against racism and xenophobia at European level started with the *Franco-German intergovernmental initiative* launched at the European Council in Corfu in December 1994 and represented the creation of the Consultative Committee on Racism and Xenophobia, chaired by Frenchman Jean Kahn. The report of the Kahn committee of April 1995 proposed the creation of a *European Observatory on Racism and Xenophobia*, which was established in 1997, with headquarters in Vienna (ECCCRX, 1995).

On European level, there is a discursive context in which the ideas related to insertion, democratization and protection of rights take on meaning. However, it is a fact that institutions, such as the European Commission, finances the pro-immigration organizations and they propose collaborations where possible, in order to create mutually reinforcing relationships, by institutionalizing the skills of different social actors, which can generate a pro-immigration emulation in the national states. Assigning migration policies competencies to the Union creates migration insertion capacities in specific and limited areas. Generally speaking, the EU capacities in the social field resemble those of a "pre-New Deal liberal state", with a high level of civil rights and a low level of social rights (Streeck, 1996). Anti-discriminatory laws focused "on social policy as a productive dimension" (Wendon, 1998). The migrants' insertion claims seem to be successful if more attention is paid rather to market functionality than to the state's intervention, as the latter rather destabilizes markets. The Commission receptivity to "migrant insertion" is revealed by the congruent approach between progressivism and instrumentalism. What it is debated is whether the EU has a progressive vision on the immigrants' rights issue or not. There is proof of a sort of left-wing progressivism in the Commission, which nevertheless more obvious in the Commission components that deal with social insertion (Hooghe, Liesbet 1997). A Residents Charter would extend the EU citizens' rights from legal residents to third country citizens. The pro-migration lobby groups relied on the existence of agreements between the UE and third countries such as Turkey or the Maghreb countries to support their claims according to which these agreements give rights to citizens of third countries and these rights should be extended to include all the legal residents coming from third countries (Guild, 1998).

Discussion

The justification of the right to individual spatial mobility does not guarantee the respect of the individual's civic rights. An open framework of manifestation of a plurality of identity-related values and experiences does not guarantee either the individuals'

integration in the macro-social system. The existence of a series of European and international organizations that militate in favor of the migrants' rights does not guarantee the observance of these rights by the state actors.

Hence, we may conclude that the classification of present day migration at a theoretical level of analysis that is pragmatic and objective (prescriptive and institutional) involves a set of rules, European solutions by a joint effort of all Member States and by a European policy on migration managed at a supranational level. This seemed to be the "measure of relief" for many of the shortcomings shown also in this paper: from the lack of clear-cut provisions in the international law regarding the observance of migrants' rights up to the institutional and political incapacity of the European Union to handle firmly the status of the constantly mobile population, whether we speak of EU citizens or whether we report to the set of rules to be enforced on third states' citizens. Of course, a supranational accountability for the joint policy on migration might generate disadvantages, maybe even prejudices to various EU states and the often declarative optimism in supporting such a policy has not been always backed by a pragmatic behavior. If we were to speak about a practical example, we can resort to the case of France that lobbies since 2007 for this purpose, but that has a questionable internal behavior to citizens of various ethnic origins on its territory.

Policies and institutions play an extremely important role in providing the necessary solutions to integration process of the immigrants, both factually and formally. Institutions are the stage on which immigration-related problems are debated on and analyzed, and policies provide answers further to these debates. The quality of the European solutions migration challenges depends on the formal quality, reliability and correct positioning in the decision making process of these institutions. As a consequence of different paradigms of migrants integration, we may conclude that the public policies which improve the functioning of institutions from all the domains - social, legal, economic, politic, the access for regular people to basic facilities of the macro-society system - are fundamental, not only in order to create a proper environment for integration in general, but also for determining many immigrants to invest or to go back to their own countries. We may, also, conclude that pro-immigration lobby provides examples on indirect representation and on how to capture interest through technocratic and legal pathways of influence. The potential to form pro-integration alliances between supranational institutions and pro-immigration institutions also suggests a strategic orientation of pro-immigration groups towards participation, as a form of gaining access to the resources of the European Union. Rather than mobilizing against the *European fortress*, pro-immigration groups have cultivated alliances with the EU institutions, in an attempt to institutionalize *the issues of Europe*, for which the solution could be *a broader Europe.* The activities of these organizations prove that the EU has provided, to some extent, new institutional frameworks and ways of access for the lobby pro-immigration groups, by trying to open new "windows of opportunity" (Kingdon, 1984). The institutionalization of migration policies gives the possibility of a progressive counterbalance of cooperation within intergovernmental policies.

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ORIGINAL PAPER

Theories of the European Integration before and after Communism

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Abstract: This paper aims at interpreting the philosophical meaning of political and civic European integration – from West to East. For this purpose, the paper explores certain historical sequences and theoretical modeling of European integration (from the Middle Ages until the Treaty of Lisbon), confronted with theoretical synthesis of the twentieth and twenty-first centuries, regarding the establishment of European unity. The study is based on modern and contemporary authors who have pondered on the problem of a European integration philosophy. The philosophical perspective is based mainly on normativism and centered on the alliance between knowledge, spirituality, equilibrium, good will and legality - and in this respect the research methodology consists in a confrontation of particular perspectives (such as the legislative framework of the European citizenship) with major theories currently performing in a interdisciplinary approach.

Keywords: *European integration philosophy, European unity, particular perspectives, theoretical synthesis, European citizenship*

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Introduction

The European Union political projects have evolved over time from imperial ambitions to the global democratic ideas, either those have invoked, or these have ignored the European cultural model (Noica, 1993). The current project of European integration, initiated by Pan Europe manifesto in the twenties of the last century as an philosophical-political alternative centered on the individual, personality and freedom ideas has a striking table normative component, for both theoretical and ideological initiatives are under the sign of moral imperative, namely the soteriological peaceful shade (Riou, 1929).

In this respect, the first part of this study is entitled "Historical sequences and theoretical modeling of European integration" and it overtakes some historical moments (from the Middle Ages until the Treaty of Lisbon), confronted with theoretical synthesis of the twentieth century and twenty-first century, regarding the establishment of European unity. The second part of the study is entitled "The European citizenship inside of the legislative framework" and outlines the theory and the posibility of a new civic identity. The research methodology in accordance with the major assumption of this study is that European integration theories are based on normativism and centered on the alliance between knowledge, political action, spirituality, equilibrium, good will (Basile, 1970) and legality.

Historical sequences and theoretical modeling of European integration

Europe as a philosophical ideal, theoretical construction and spiritual aspiration, as "historical being that transcends the various parts of the continent" (Julien Benda) was associated with the idea of integration (even though this notion did not exist from the beginning), based on the universal principle of a common substance on behalf of which ethnic groups and very different political communities could form a whole.

The political or philosophical integrative projects conveys the idea of cultural unity and of a common spirit, an idea whose theological, humanistic or pacifist dimensions could be read finally as a hope, as a "global" response in a crisis situation (barbarian invasions, the threat of Christianity, the collapse of civilization, fratricidal wars, world wars, democratic reforms), but also as a way to sublimate the desire for power or geopolitical and strategic interests.

From the effort of Justinian and his predecessors to hold back the "barbarian kingdoms" and to restore the unity of the Roman Empire whose legacy one actually held the eastern part of the continent (Fontana, 2003) from the attempt of Charlemagne to establish an "empire of West" - the idea to rebuild Europe was taken over by Pope Innocent III, by Charles V, by Frederick Barbarossa or Napoleon and those has concerned a unified leadership and administrative system, a common legal status and intellectual direction (Breton, 2006).

But as I have shown, the current project of European integration, initiated by Pan Europe manifesto in the twenties of the last century as an philosophical-political alternative centered on the individual, personality and freedom ideas has a striking table normative component, for both theoretical and ideological initiatives are under the sign of moral imperative, namely the soteriological peaceful shade. For this purpose, Richard Coudenhove-Kalergi, the initiator of the project (Coudenhove-Kalergi, 1923), proposes

the cultivation of personality and the respect of difference, the respect of freedom accompanied by awareness of responsibility, characters acquired through practice and reception of Europaean art, religion and politics - the latter represented mainly by the German power. This project was advocated in the interwar period also by the Frenchmen oriented to the left of the political spectrum, and by Frenchmen oriented to the right, but he encountered also severe critics, such as those that came from Julien Benda (Benda, 1933).

The interwar and postwar visions of European integration understood as the normal course (despite some "failures") of the idea of unity (Jouvenel, 1930), as an organic and unitary assimilation of nations model (Gasset, 2002; Manent, 2007), as a possibility of inclusion of diversity in the name the same harmonizing principle (Assunto, 1983) that makes a larger homeland composed of smaller countries (Riou, 1928), is not yet a paradigm shift. This process, according to Andrei Marga's analysis occurs from the last decade of the twentieth century, when our life problems and cultural interrogations pass imperceptibly from national paradigm that took a long route in European culture, to the "European paradigm" (Marga, 1995: 5). In other words, the European idea has a long history (Orban, 2004) where, from the twentieth century, states are involved not only by their national interests but also with their citizens. The transnational formulas more or less radical outlines what we might call a soteriological concept of European unification and in this respect Joseph Pironne's remarks loaded by a sense of urgency are relevant because he has considered the wars between European nations as civil wars (Pironne, 1935: 13).

Since the development of post-communist European Union has a considerable charge both theoretical and practical, concerning theories of European Integration before and during communism in this study I will formulate only what I consider to be the idea of this philosophical-political construction: throughout its history, the political concept of Europe as a kind of open society to the idea of self explanation, as ideal opposed to mass barbarism has been shaped by "illuminated" minds, even if their ideals were speculated by the politicians and business men and at the same time it has self modeled according to the dominant civilization in a certain period (Rougemont, 1961). Up to this point I have presented only some details, philosophical arguments and historical examples aiming to highlight some post-communist transformation in the concept of European integration.

After 1989 have occurred many transformations and "significant changes" in European development, such as the dismantling of the Iron Curtain, the disappearance of communist regimes, German reunification, dissolution of the Warsaw Pact and the Soviet Union, the end of the Cold War, the emergence of new European institutions (Defarges, 2002). If European integration philosophy broadly remain at the same social-humanist and political-pacifist ideals beyond economic interests, the consequences of these changes affect nation-states and their citizens. How Europe is responding to these changes and developments and their consequences is the focus of a book like *Theory and reform in The European Union* (Chryssochoou, 2003). This book examines how the Union has changed since the events of 1989 and whether available theoretical and "conceptual tools" enable us to explain and predict future European integration.

The authors (Dimitris N. Chryssochoou, Michael J. Tsinisizelis, Stelios Stavridis and Kostas Ifantis) highlight the unequal development both within EU policy areas and between EU policies and institutional settings, emphasising that, in spite of important breakthroughs in the form of the Treaty on European Union and the Amsterdam and Nice Treaties, the political authority of the Union has not singnificantly increased. Nor, according to the authors, has there been a realiable integration theory as the basis for

assessing the Union's future. For the authors, such an entity would have to strike a balance between being "the main locus of collective, binding decision-making for the constituent governments, and the dominant focus of popular identification" (Chryssochoou, 2003: XI).

According to Dimitris N. Chryssochoou, Michael J. Tsinisizelis, Stelios Stavridis and Kostas Ifantis, theorising about the structural conditions and operational dynamics of European integration has produced a wide-ranging "laboratory" of concepts and ideas about what the European Union is, and towards what it is developing. Central to these analyses has been the search for "conceptually refined paradigms and interpretations either of specific policy actors and processes, or on the dynamic institutional configuration of the larger management system" (Chryssochoou, 2003: XIV).

The above cited authors dismiss the possibility of a regional superstate, first, because the Union is still composed of sovereign nation-states, whose dominant governing elites are still capable of managing the process of large-scale institution-building. Second, because since the 1990s state and regional organisations have found themselves bound in a mutually reinforcing relationship – what has been termed "above symbiotic arrangement" – thus dismissing any zero-sum conception of the interplay between the collectivity and the constituent segments. Third, because the extension of the scope of integration, that is the new policy arenas that gradually form part of the Union's policy acquis, does not necessarily coincide with the less dramatic extension of its level, namely, the actual way in which the new functional areas are managed- i.e., in a supranational or state-centric manner. Finally, the whole question of a "democratic deficit" in EU and national political structures has revealed the growing democratic disjunctions between the wishes of West European political elites and their respective publics, resulting in an acute legitimacy crisis: (Chryssochoou, 2003: XIV).

Quite rightly these authors consider that the multitude works and positions theorising European integration have produced a situation where one might expect that little remains to be said. But this statement does not mean "an attempt to escape the intellectual responsibility of developing a greater understanding of the forces that constantly form and reform the regional system". It is only to state that the theory of such a plysemous concept as integration appears to have reached a high plateau in its Western European context: "Not that theorists of European integration should start looking for new regional experiments of comparable analytical potential. Rather, the idea is that the new challenges facing the study of regional integration in Europe (concerning both its theoretical boundaries and operational dynamics) do not take place in a theoretical vacuum: they are an extension, if not a refinement, of older ones. The task remains to discover a reliable integration theory as the basis for the future of he European Union and offer a convincing response to the challenges of large-scale polity formation" (Chryssochoou, 2003: 1).

According to the book *Theory and Reform in the European Union*, both normative and narrative interpretations of the integrative project, purporting to identify the logic of a distinct form of regionalism and its implications for the participating state and societies, often tend to overemphasise either the importance of the central institutions or, conversely, the role of national governments in setting the integrative agenda and the acting authoritatively upon it. Writing on the inappropriateness of classical statist, purely intergovernmental, and traditional federal forms of political organisation, Keohane and Hoffmann have captured the evolving European reality as "an elaborate set of networks, closely linked in some ways, partially decomposed in others, whose results depend on the

political style in the ascendant at the moment". But perhaps one of the most "progressive" classifications has been Scharpf's conception of the then European Community (EC) as a "joint-decision system", where the pathology of public policy-making is conditioned by a "systemic tendency towards sub-optimal substantive solutions", exemplifying the notion of a "joint-decision trap" or *politikverflechtungfalle*. Embracing Wallace's dictum that the Community system is "stuck between sovereignty and integration", while recognising that the effectiveness and implementation of common policies are greatly influences by what Taylor had earlier called the 'interdependence trap", Scharpf argues that Europe "seems to have become just that middle ground between co-operation among nations and the breaking of a ne one" (Chryssochoou, 2003: 14).

Some terms to be found in the academic language as means of conceptualising the larger entity incude: "proto-federation", "confederation", "concordance system", "quasi-state", "Staatenverbund", "consortium", "condominium", "regulatory state", "regional regime", "federated republic", "polity market", "managed Gesellschaft", "international state", "confederal consociation", "multilevel governance".

Core theories of integration until 1970 are: Functionalism (representated by David Mitrany with the book "The Functional Theory of Politics"), Federalism, theorized by Preston King (Federation and Representation), Michael Burgess (Federalism as Political Ideology), Reginald J. Harrison (Europe in Question: Theories of Regional International Integration), Confederalism represented between others by Heinrich von Treitschke with the book "State Confederation and Federated States" (Chryssochoou, 2003: 17), *Transactionalism* - Karl W. Deutsch (Political Community of the North Atlantic Area, 1957) (Chryssochoou, 2003: 19), *Neofunctionalism* (Paul Taylor, "The Limits of European Integration"), G. Haas ("Beyond the Nation-State: Functionalism and International Organization"). After 1970 have appeared theories such as: *Interdependence theory*, *Concordance system* (Donald J. Puchala, *Of Blind Men*) (Chryssochoou, 2003: 33). New theoretical approaches, after 1990 are *The liberal intergovernmentalism* - Andrew Moravesik ("Preferences and Power in the European Community. A Liberal Intergovernmentalist Appproach") (Chryssochoou, 2003: 46), New *institutionalism* - Simon Bulmer ("The Governance of the European Uninon: A New Institutionalist Approach") (Chryssochoou, 2003: 48-50), *Constructivism* (Thomas Christiansen, Knud E. Jørgensen and Antje Wiener, The Social Construction of Europe) (Chryssochoou, 2003: 56-57), *(Neo)republicanism* – Paul P. Craig (Democracy and Rulemaking within the EC: An Empirical and Normative Assessment) (Chryssochoou, 2003: 60). But as the authors cited above argue, conceptual issues raised by the definition of a united Europe is still looking for their solution, along with the practical problems, while this larger entity progress (at least theoretically) towards the formation of a European "demos", of a "political nation" conceveid in civic rather than etnoculturals terms. These aspects can be treated as potential effects of the European citizenship.

The European citizenship inside the legislative framework

The evolution of political projects, social and cultural aspects of the European Union from imperial ambitions to the global democratic principles clearly emerges from the conceptual level of European citizenship. The European citizenship status pays attention to citizens' public information and to their feeling of belonging to an ideal and cultural space, but also to a legal area. The European integration as synchronizing economies and institutions of member states of continental organization is equally

addressed to the individuals, i.e. to the citizens of member states that become also European citizens. As we know, this organism which contributes to accelerating the democratic reforms required in the countries of Eastern continent currently operates through its authorized institutions: European Parliament; The European Commission; Council of the European Union; The Court of Justice of the European Communities; The Court of Auditors. The paradoxical mechanism of the European institutions training, understood as "machines", "frameworks", "multilateral structures" changing throughout history, is concentrated by Phillipe Moreau Defarges into a formula that includes political, civic, legal, educational and cultural plane: throughout its history, while Europe is in harrowing conflict, actually it dreams the peace, the political unity (Defarges, 2002: 16). The troubled geopolitical universe within which the European construction has progressed from 1950 to 1990 when the overthrow of communist regimes has prompted the treaty's signatories on European Union of Maastricht (7 February 1992) to appoint that document as the "refounded" act, has imposed a new continental architecture ensuring peace and fostering (at least theoretically) the economic reconstruction and social consensus, the political democratization. If the first point of Article 8 of the Treaty of Maastrict stated that any person holding the nationality of a Member State is a citizen of the Union, in the Treaty of Amsterdam (1997, became effective in 1999) it is added that the citizenship of the Union complements national citizenship and does not replace it. The Amsterdam Treaty strengthened the protection of fundamental rights, condemning all forms of discrimination, and recognized the right to information and consumer protection. This "complementary" citizenship means a political situation of the individual beyond the boundary between "an autonomous and conflictual citizenship" and getting "a cultural, economic or social citizenship" as remarked Catherine Wihtol de Wenden: "Europe which felt the need to constitute itself from the moment when it ceased to be a center of the world, putting an end to the Franco-German conflict and to the "trade of nations", has tried to replace the world of the countries by a transnational citizenship, "more economic and cultural than political in front of the globalization" (Wihtol de Wenden, 1997: 15). Nevertheless, as the same author remarks, "Europe of citizens" who made a qualitative leap at Maastricht (1992), exceeding the "Europe of workers" of 1957 cannot constitute by a decree or by a treaty and we can add that to achieve this status is required an adequate public space.

Despite this philosophical remark, EU citizenship under the Treaty on European Union, as amended by the Treaty of Lisbon, is subsumed under the principle of "the strengthening of European democracy". Since the *Introduction* states that "The Treaty of Lisbon puts the citizen back at the heart of the European Union (EU) and its institutions. It aims to revive the citizen's interest in the EU and its achievements, which sometimes appear too remote. One objective of the Treaty of Lisbon is to promote European democracy which offers citizens the opportunity to take an interest in and participate in the functioning and development of the EU". As for issues relating directly to the European public space, namely concerning a "European Union more accesible to citizens", is shown that "the EU has often dismissed the image of a body with a complex structure and procedures. The Treaty of Lisbon clarifies the functioning of the EU in order to improve citizens' understanding of it".

The opening of the European Union to the East was accompanied by a wave of Euroscepticism more or less manifest, signaling a crisis of legitimacy. On this basis, EU citizens are found at the crossroads of several roads between individualism and collective identities (regional, religious or ethnic), between the local, national or international stages,

between universalism and specificity claiming. If European citizenship seems to be "the sociocultural texture of political Europe" which would otherwise remain - according with Jacques Delors's phrase – "an unidentified political object", European identity is expressed, most probably, by reference to Europe as a symbol and as the space able to unify the cultural, economic, legal and communitarian of citizens from member states. And this despite the lack of symmetry between East and West, despite a "dual" European society which is manifested by the formation of a "Europe for the elite citizens" and a "Europe of the workers" (Wihtol de Wenden, 1997: 18); despite a Europe organized around urbanity and civility, limited to individuals who share a common language (democracy, rule of law, aspirations to political consensus, reconciliation, valuing individualism and privacy) on the one hand, and on the other a Europe of "the excluded from the edge" (Wihtol de Wenden, 1997: 19). But also for these latter, at least in principle, European citizenship provides "a framework of extensive life", as shown in practice and on social networks, in online forums and media by the rights of citizens of the member states: freedom of movement, the right to stay, the right of establishment, the right to work and study in other EU Member States, the right to vote and to stand for election to the European Parliament and in municipal elections in the State of residence, under the same conditions with the citizens of this state; the right to benefit on the territory of a third country (not a member state of the European Union) from consular protection from the diplomatic authorities of another Member State, if the State of origin has no diplomatic or consular representation in the relevant third country; right to petition the European Parliament and the right to appeal to the European Ombudsman to address cases of maladministration by the Community institutions.

Currently more in the virtual European public space there are questions related to European citizenship, such as: Are the European citizenship rights really complied? Do we know the European citizens' rights? Does such a status involve any obligations? Because the European citizenship requires a certain involvement, such as participation in European elections and the participation issue goes beyond elections: it reflects the manner in which the European citizen can communicate with its representatives. Is there such a communication? Do we make our voice heard in Brussels? If yes, which is the manner? Do we have a civic spirit in the "European" meaning?

Dominique Schnapper shows that there is a natural and essential difference between ethnicity, immediately lived as a feature, and participation in the nation, the latter being the result of the detachment of data characteristics. In other words, the nation, i.e. the Community of citizens "in Hegelian terms", is the product of a culture, or Bildung, which aims to alienate us from ourselves, to raise us through this "dispossession", beyond the limitations of our belonging to a particular people, realizing the universal essence of humans (Schnapper, 2004: 101). At this level, the concept of European citizenship which in principle "alienates" all the members of integrated states, while ensuring an end to otherness, achieves – interpreting Pierre Manent's vision – the postmodern ideal of European construction: "Europe is a political promise because it promises the exit from the policy", which would announce "a meta or post-political world, an unmediated human world" (Manent, 2003: 322-323).

Foreseeing such a post-historical possibility, Dominique Schnapper draws attention to the potential risks it entails. According to Schnapper, in fact, the "post-national" citizenship desired by philosophers and lawyers anxious of any nationalist derives, if adopted, would also act for the purposes of depoliticization. Within the nation the legitimacy and democratic practices were built, the weakening of the national state,

which is a consequence of European construction risks to involve that of democracy. Also, in Western European societies that do not recognize neither the legitimacy of religious principle nor the dynastic principle, the national link's dissolution risks to weaken even more the social relation (Schnapper, 2004: 201).

We can find a philosophical answer by pursuing the history of European democracy from the beginnings until today, as does Salvo Mastellone: European unification called into question the national state, the political representativeness, the power of governments, giving a particular value to the topic of democracy. Concerning the kind of democracy which should be adopted by the European Union, the answer given by Norberto Bobbio was "the democracy of rules". According to Bobbio, European civil society must comply with constitutional norms, adopt the principle of mutual tolerance, to act in the name of peace (Mastellone, 2006: 248). In short, the ideal system of stable peace can be expressed by the synthetic formula: "a democratic universal order of democratic states" (Mastellone, 2006: 25).

Serge Latouche states that the "cultural" flows in one way start from the countries of the Centre and arrive anywhere on the planet by "classics" broadcast media such as newspapers, radio, television, movies, books, records, video, to which are now added the virtual media. Therefore, these flows of information and cultural products "inform" the desires and necessities, forms of behavior, attitudes, education systems, lifestyles of the receptors (Latouche, 2012: 55-56). In addition to the disadvantage of the "imaginary's standardization", this phenomenon has the advantage that the West – the place of projection and achievement of European citizenship – designates – more than a geographical entity or a precise space – "a direction" (Latouche, 2012: 62).

And this direction towards the West as "more ideological than geographical concept" (Latouche, 2012: 63) is the one where the citizen of a political entity which is still being built (European Union) can manifest itself in a space more or less real, more or less virtual. This aspect reiterates the philosophical premises of European citizenship and public space. According to Habermas, in the description of a political public sphere at least two processes intersect: on the one hand, the communicational production of legitimate power and, on the other hand, the monopolization of media force to create the loyalty, of requirements and of a "compliance" to the imperatives of the system. From this perspective, a public sphere able to political functioning needs not only guarantees received from state institutions, it is also linked to the support of cultural heritage and socializing patterns, to political culture of a "population *accustomed* to freedom" (Habermas, 2005: 41). Also available for both public space owned by the national citizenship as well as those concerning European citizenship is that "assumptions regarding a political functioning public sphere (...) can no longer be simply characterized as utopian" (Habermas, 2005: 283). The theoretical understanding of the integrative process and its implications in the lives of states and of citizens have the quality of an open answer to the questions about the very meaning of the European Union and its extension from West towards the East.

Conclusion

The European citizenship is one of the most appropriate concepts to express the European Union's enlargement from West towards the East after communism, because it contains the entire theoretical load of the idea of European integration developed over history. Beyond the unequal treatment of EU citizens in the political and social realities,

European integration had a very important role in the post-Communist democratization (Vachudova, 2005).

European citizens' status is one of those concepts that illustrates the importance of the concept of harmony in European culture and civilization. Harmony can be transposed to the relation between unity and diversity, which enables the construction of the concept of European integration starting from the philosophical attitude of Baroque, whose theoretician is Leibniz. If Leibniz's idea was realized in the eighteenth century only in the urban plan (Assunto, 1983: 30; 32; 33; 57), nowadays the fulfillment of this ideal in practice emerges clearly: the technological revolution, the development of communications and international trade contributed to the development of interdependence between nation-states (Dehousse, 1996: 3) and international cooperation embraces the henceforth so diverse fields such as culture, technological development, improving working conditions, the fight against drugs or environmental protection. Because the interaction between internal and international affairs is so striking that one cannot operate a distinction between the two levels, the EC, conceived initially as a classic international system has evolved towards a system where decisions of the Community are one step ahead the rules of national law, even if it is a constitutional one. However, the integration does not lead to a retreat of the state, as otherwise it can be seen from a horizontal approach to intergovernmental cooperation. This highlights the common interests and values of the main actors (the European citizens) in a given network and the attitude more or less favorable regarding community innovations, particularly those political-institutional arising from the Treaty of Maastricht (Dehousse, 1996: 2;12).

Returning to the the conceptual problems mentioned above the Union still remains a difficult theoretical problem (Dehousse, 1996) and a reality in search of a definition encompassing the nation states and the federal union of states or a federation of nation states (Barroso, 2012). In this respect one can say that the Union is neither an international organisation as conventionally understood, nor is it becoming an ordinary state possessing a monopoly of law-making and law-enforcing powers and also, on the other hand, that "an equally puzzling remains the nature of its legal structure" that the Union rests upon a series of international treaty-based rules, while others prefer to speak of an incipient constitutional system driven by aspirations akin to those involved in traditional state-building (Chryssochoou, 2003: 3). From an integration theory perspective, considers the authors of *Theory and Reform in the European Union*, it has failed to meet either the sociopsychological conditions of the older functionalist school or those related to the formation of a neofunctionalist-inspired European "political community". Therefore, "the Union remains an integrative venture whose final destination is yet to become discernible", between state-centric theory and federalist-driven approaches which involve a more profound understanding of what the Union actually is. According to these authors analyzing perspectives of different theories considering also the conditions of their synthesis as possible in a work which is still actual, "we do not know exactly what the end situation of the integration process might look like, but at least we can conclude with a degree of certainty what ist final product will not come to resemble: a regional superstate subsuming the participating units-in the form of states, subnational political authorities and citizens - in its governance structures" (Chryssochoou, 2003: 4). These statements reflect the theoretical optimism beyond Euroscepticism that accompanies the process of European integration from the West to the East.

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ORIGINAL PAPER

With or Without Regionalization? Realities, Challenges and Prospects in a European Union of the Regions

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Abstract
For some time, the European Union is facing two trends that are antithetical: the nation and the nation state with all its internal and external powers and the form of confederation or federation in the process of globalization. Italy, Spain, France and, not least, Romania are forced to face not only the trend towards regionalization upon economic and administrative criteria, but also an acute expression of nationalism as form of ethnic regions with a high degree of political autonomy if not the separation of the state they are belonging to.
This study deals with the presentation of such regionalization trends, developing an argument based on the documents of the European Union and some studies of this subject. It also highlights the arguments which so far stopped the beneficial regionalization of Romania as part of the EU.

Keywords: *state, regionalization, European Union, political autonomy, confederation/federation*

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Introduction

The European Union is today a form of economic, political and cultural organization in full process of coagulation. The objectives of the European Community on the approval of a constitution to form a confederation, federation or union of states has progressively evolved over the years while developing a series of common policies (industrial, social, monetary, energy, research, external relations, environmental protection policy etc.) caused by economic, social and political needs of the community order. The transfer of competencies from the national to the community level and vice versa still know limits due to the treaties in force, and to the procedures for internal territorial-administrative organization of states (Olimid, 2013: 9-18). In the new political world, the nation-state in the form in which existed in the nineteenth century sees its position threatened by administrative, political, ethnic entities manifested especially in the international organizations, including the European Union. Politicians, in particular, and also analysts consider the region as an entity closest to the citizens, who manages to solve problems even where the state is proving powerless. Jacques Palard believes this new form required increasingly stronger is the "clock of the world time" (Palard, 1999: 663).

The European world dominated by globalization and regionalization processes realize the need for a reorganization and the competencies allocated to the new forms are intended to redesign the power, functions and authority of national governments (Georgescu, 2014: 135-146.). But scientific analyzes prove that States have remained the major international authors together with regional and global organizations. Strategies and policies in the field of geographical, technological and socio-political factors aims at smart power (Rotaru, Zodian, 2015: 40) who manages to convert resources into results. The main links of territory-politics-society relationship gives to the state the power position in the international system, even if parts of its sovereignty were transferred to European institutions voluntarily, the goal being a stronger and more effective European building. The European Union is not a single state although it has unique leader who gives it representativity on international level and despite the way of solving external challenges (Bărbieru, 2015: 17). If states' size matters, sovereignty (self-governance) involves not only the size of the territory, but also forms of political and administrative organization, the management of local institutions and economic and human resources. The government, in its complexity, focuses both on global governance and on regional government. The ability of states and society to organize, manage and capitalize their interests is based on the public policy, the administration and the connections and relationships between state – civil society – interest groups.

Conceptual aspects of regionalization

The concept of region is no stranger to historical evolution of states and was acquainted over time with both a varied legal regulation (Tănăsescu, 2002: 5), and an uneven economic development (Cuşmir, Macoveţchi, 2013: 23). Is defined by the Community Charter of Regionalization as being "a territory that forms, from geographical point of view, a distinct unit or a similar ensemble of territories in which there is continuity" context in which the population has common elements and "wishes to retain the specificity resulted and to develop it in order to stimulate the cultural, social and economic process" (Niculcea, 2015). In the legislative sense, regionalization completed

by territorial decentralization denotes recognizing the legal personality to local collectivities with their own local interests. Thus, regionalization is a general trend in Europe and aims at creating the necessary conditions that will enable regions to maximize national economies (Cușmir, Macovețchi, 2013: 23). Committee of the Regions (CoR), set up in 1994 and now consisting of 350 representatives of Member States, has the tools that allow involvement at all levels of local and regional authorities and citizens so that regions and cities of the European Union exchange best practices and participate in a better implementation of EU public policies (Committee of the Regions). In essence, the process of building a capacity for autonomous action is conditioned by the constraints exercised by the political and institutional framework starting with the fundamental law and continuing with all the legislation in force.

Regionalization phenomenon is attributed several meanings. Of these, pseudo-regionalism (a form of deconcentration of state administration at the local level), administrative regionalization (intermediate power between the city, community, district, department and national level represented by the state) and super-regionalization (political organization located between regionalism and federalism) are the most important ones. These correspond to local autonomy, which enables participation in forms of decentralized cooperation, cross-border relations and the entire manifestation of regions in the field traditionally managed by state under the attribute of its external sovereignty (Popescu, 2001; Niculae, 2009: 2).

The already existing regions in Europe (Italy, Spain, France etc.) try to produce new rules that are related to populations who intend to move away from the nation state, often weakened. Public interest issues within the European community are resolved by local governments in accordance with legal conditions and on behalf of the communities they represent. Developing international regulations under the influence of macro-economic and socio-political factors (Constantin, 2010: 35; Diaconu, 2007: 24) is important in studying the diversity of territorial, regional and local administrations in the European Union. The evolution of local autonomy has some features which are based on traditions and legal rules that determine free administration of collectivities. In turn, they have enough tools that allow the existence of autonomy in decision and also the existence of local regulatory powers and is legislatively supported by government flexibility and obeys the principles of the rule of law (Dănișor, 2007: 106). In the European administration can be met a series of traditions with particular features (Avram, Pițurcă, 2003: 103).

Patterns of regionalisation in Europe

Italy, under the Constitution of 1947 where we find principles of political regionalism is presented as an entity with regional structures where regions have a broad local autonomy. By art. 5 of the Constitution of the Italian Republic local autonomy was recognized and promoted (Constitution of the Italian Republic). 1977 is the year of the first administrative reforms aimed at decentralizing state (Poggi, 2007: 99-110), and the Italian regions have won considerable autonomy only after 1999. Thus, the issue of regions' autonomy constituted a constant concern for the politics of the peninsula (Massimo, Polo, 2006: 229-284). According to art. 123 of the Constitution, regions benefit by statute autonomy and basic principles of regional organization and functioning of and state may delegate them legislative initiative, publishing regional laws and regulations. The revision of the Fundamental Law in 2001 has differentiated areas of competence

between national and regional legislator. Also, a distinction is made between regions with common law status and regions with special status, where the Regional Council (Consiglio regionale), the Regional Assembly (Giunta) and the President of the Assembly (Presidente della Giunta) are presented as management bodies. Constitutional Law no. 1/1999 and Constitutional Law no. 3/2001 have strengthened Giunta as the executive body of the Region (Alexandru, 2008: 422). Italy is part of the regional states which have conferred wide powers to regions, moving towards a form of federalism in which central government provides the necessary support for regions that want the development of their international relations. Thus, The Unit for Regions within the Ministry of Foreign Affairs assists regions and local entities in their international activity. According to the law named *La Loggia* (Law no. 131/ 05.06.2003) regions may conclude economic, social and cultural agreements with third countries, in matters of their own competence, but these will be of executive nature of international treaties already in force or of technical-administrative nature. Regions and autonomous provinces conduct a varied series of promotional activities, of institutional visits, twinning etc. complying with the obligation to observe the cooperation with central authorities.

Spain, in accordance with its basic law, is organized territorially into municipalities, provinces and communities benefiting by autonomy in managing their interests and guarantees the right to autonomy to the nationalities and regions which are forming it (Alexandru, 2008: 417). Like Italy, it took into account the different status that certain minorities had and the insular individuality. According to art. 2 of the Constitution, the continental provinces with common historical, cultural and economic traits, the island territories and the provinces with historic regional status may accede to self-government. Spanish autonomous communities benefit from a dual autonomy by nature, administrative autonomy specific for local communities and political autonomy. Basic Law distinguishes between regional autonomy (Comunidades autónomas) and local autonomy (municipios, provincias). Autonomous communities have regulatory autonomy, adopting their own laws and regulations with the same value and force as State's laws (Avram, Radu, 2009: 619, 623), statute autonomy (adopt their own statutes), functional autonomy and financial autonomy. The adoption of the so-called *El Pacto local* in 1994, called also the second decentralization, aimed at delimiting competences between the two levels, regional and local level, and providing the tools needed for managing their own interests (Llovet, 1995: 115). As a result of its impact on Spanish political order there were generated a series of reforms through which was accomplished the introduction of a legitimate intervention of local entities (Nogueira Lopez, 2007: 161-174). In conclusion, Spain has a regional autonomy in which the autonomous communities are operating under a status of autonomy based on community organization and skills. Basic organizational rules are the statutes, recognized by the state and included in its legal order (Plumb, Popescu, 2004: 18).

Although there are numerous contrasts of territorial and demographic nature, regions in Italy and Spain have a high degree of functionality and cohesion, this being due to groups of large regions (Balcanii Europa: documentary).

Local autonomy and free administration in France is a true model for other European countries like Belgium, Holland, Luxembourg, Portugal etc. The literature shows that the first manifestations of regionalization occurred in 1950, when it was instituted a higher administrative level – region, but the effective delimitation into regions took place a few years later, in 1956, and took into account both the economic development of big cities and the historical evolution, returning basically, in most cases, to the old French provinces. It was also taken into account the trend in the European Union.

After 1981 with the election of Mitterrand as president, were made important steps in the field of decentralization, considering that the great task of the president consisted of truthfully applying the principle of decentralization and autonomy (Mény, 1987: 66). The transformation of region into territorial collectivity has taken place as a result of the decentralization laws from 1982-1983, which removed the State's control over the acts of local authorities, raised regions to the rank of territorial collectivities, and created a true executive at the level of departments (Borella, 2008: 178). Thus, a number of governmental functions have been delegated and since 1984 have been instituted specific institutions at territorial levels, have been increased the role of the prefect as an agent of the state, as well as the role of state-appointed local executives, and the powers of local assemblies (Avram, Pițurcă, 2003: 103). The process of regionalisation (division into 26 regions) was completed in 1992 through a law which regulated the territorial administration provided by decentralized regional communities and by services transferred from the State. Bureaucracy and duties of the regional administration level similar to those of the lower administrative level led the experts in the field to affirm that the French system is outdated. The difficulties of the system are specified in the report drawn up at the request of Sarkozy, by Jacques Attila, report which does not enjoy trust and appreciation among the governors and which argues that, in order to limit bureaucracy and financial losses, the State should strengthen regions, abolish the departments, reduce the number of communes from 36,000 to 6,000. The problems pointed out in Attali's report "are highlighted in another report conducted by Jacque Chereque, who brings to the foreground the deficiencies of horizontal cooperation and between the three levels of government" (Garaiman, 2013).

German administrative system, in contrast to the French one, has a federal nature, being organized on five levels: federation, länders, administrative precincts, administrative districts and cities, communes (Avram, Radu, 2007: 280). It is based on the principle of subsidiarity, avoiding centralization at the levels of länders, administrative precincts and communes and having a truly autonomous management (Avram, Pițurcă, 2003: 104). Practical necessities determined the internal organization of Germany and turned it into a model of regionalism, achieved by "federal structure, created by regionalization, a balance between historical traditions, arbitrariness imposed by political circumstances of the moment and the will of the people expressed through referendums" (Săgeată, 2004). Länders have legislative jurisdiction, the powers of the federal State being listed and determined by law (Borella, 2008: 185), and directly designate their representatives to the Bundesrat, where they have the right of veto (Avram, Radu, 2007: 280, 281).

The German model is also found in Switzerland, where cantons are similar to German Länders. Federation, cantons and communes are the main elements that give the federal nature of the state (Auer, Malinverni, Hotellier, 2000: 78) and the Basic Law of Switzerland provides that "all cantons are sovereign insofar as their sovereignty is not limited" by the Constitution (Alexandru, 2008: 431). From the administrative point of view, the cantons exercise all rights not delegated to the confederation (Benoit, 2009: 14). According to art. 50 of the Constitution, they enjoy a broad autonomy, and not sovereignty, Swiss legislation setting limits on autonomy. Art. 42 provides for the demarcation between the confederation's tasks and the competencies of the cantons. Cantons have their own governing bodies (cantonal parliament, cantonal government), directly elected by the electorate.

The examples analyzed in this study were designed to demonstrate that EU countries took into consideration in the process of organizing in regions both administrative criterion and historical criterion, economic cohesion and ethnic homogeneity, each addressing regionalization according to its interest and internal realities.

A Romania of regions?

In Romania of today there is a trend of regionalization, which involves primarily the Constitution and all legislation, and last but not least the consensus between the directions that start from the geographical, historical, economic, and ethnic causes in the post-communist period (Șerban, 2012). So far no doctrine failed to agree with political or public opinion. In the contemporary period there have been numerous attempts at regionalization but which proved ineffective, however, fact which led to giving up to them.

Over time, there were several administrative-territorial divisions of Romania who have tried to adapt to the requirements of the time. Of these, most of them have proven to be inadequate, as evidence in this respect being giving up to them in a very small period of time. Romania is currently functioning on the basis of the administrative-territorial division in 1968, which unfortunately turns out to not be able to maintain its viability in the new socio-economic conditions.

After the Union of 1859, the basic administrative-territorial unit was the county, after the Great Union in 1918 leading to the territory's division in 71 counties. In the interwar period county and "plasa" (small administrative unit) have been preserved as forms of organization. During the authoritarian regime of King Carol II, for two years, land ("ținutul") represented, along with county and "plasa", a new form of organization. The Administrative Law from 1938, modeled after the Yugoslav model of 1926 and the Italian model of 1929, Romania was divided territorially in 10 lands ("ținuturi"), led by the royal residence, each land comprising several counties. After two years, lands were abolished, the country returning to earlier administrative organization according to which counties were decentralized administrative units with legal personality (Băhnăreanu, Sarcinschi, 2012: 69). After 1947 there were a series of reforms in order to adapt Romania to the demands of the time. Law no. 5/1950 abolished counties and replaced them with 28 regions consisting of 177 districts. This law was also amended two years later by the Romanian People's Republic Constitution of 1952 and Decree 331, imposing administrative-territorial reorganization in 18 regions, including the Hungarian Autonomous Region, created on ethnic grounds (Băhnăreanu, Sarcinschi, 2012: 69-70). Basically, the Constitution of 1952 legalized the communist totalitarian regime that expelled the principle of local autonomy. In the years 1964-1965, the changes in Communist Party leadership imposed the necessity of adopting a new Constitution, with some changes in public administration, too. The Constitution of 1965 showed the changes in the Romanian society of the time and stipulated in art. 1 that Romania "is a socialist republic", "State of the working people in towns and villages, sovereign, independent and unitary", its territory being "inalienable and indivisible" and Title V, art. 79-93 made mentions on local bodies of state power and local bodies of state administration (Muraru, Tănăsescu, 2001: 98).

Last administrative-territorial reorganization of Romania, under a new fundamental act, took place in 1968 (Gherghe, 2012: 401-407). Law no. 1/1968 changed

"art. 15 of the Constitution, providing that the territory of the Socialist Republic of Romania is organized into territorial-administrative units – county, city and commune – that larger cities can be organized as municipalities and Bucharest, the capital of the Socialist Republic of Romania is administratively organized into sectors" (Law no. 1/1968). Along with Law no. 1 of 16 February 1968, it was adopted the Law no. 2/16 February 1968 referring to the administrative organization of the territory of the Socialist Republic of Romania, bringing specification on the administrative sector. The country was divided into 39 counties, 2,706 communes, 46 municipalities, 189 cities (Law no. 2/1968). Art. 1 stipulated the cessation of the People's Councils, regional and districtual Councils and of their executive committees (Official Bulletin, 1968: 946-950), so being regulated the administrative organization on departmental system, based on two links: county – at the upper level, respectively city and commune – at the lower level, unlike the 1926 organization that was based on three links: county - the upper level; "plasa" – the intermediate level and commune or city – the lower level and unlike the law of 1950 which stipulated also three links: region, district and commune (city) (Săgeată, 2004). During time some changes have occurred, and current legislation establishes 41 counties, including Bucharest municipality, which is valued as county.

Between the years 1968-1989 local autonomy was actually non-existent. The principle of collective leadership included in all documents of the Party and State did not increase the participation of working people, as they were supposed to do, to the achievement of the objectives proposed and the responsibility of governing bodies only meant the implementation of the directives of the upper bodies. This period meant for Romania forced economic development and the imposing of the objectives planned by the single party; the practice proved that real local autonomy was not possible in fact, but only in the articles of the laws.

Scenarios of regionalization in Romania

As already noted in this study, the idea of regionalization is not new for Romania. As a member state of the European Union, Romania is obliged to follow the requirements formulated by it in relation to certain rules of territorial organization arising from EU legislation (Băhnăreanu, Sarcinschi, 2012: 64). Countries in the former communist bloc considered that regionalisation was appropriate and put it on the list of priorities, so it became a reality in 2003 for Bulgaria and Estonia, in 2004 for Poland and for Slovakia in 2005. Although in the past 25 years it became evident that regionalisation is necessary for Romania, eliminating development gaps between regions has been realized at governmental level only since 2006. Unfortunately, until now the process has not occurred.

In a study published in 2007, on the difficult process of regionalization in Romania, Mircea Preda drew three conclusions that explain why so far this important administrative-territorial change was not possible: "a) all parliaments and governments after 1989 have addressed this issue in its insignificant elements, limiting themselves mainly to the declaration of cities as municipalities, of communes as cities, to the establishment of new municipalities or changing the name of certain localities. Even these actions were in most cases just the result of some legislative proposals, of some singular acts of certain deputies and senators which took into consideration only the county that they represented; b) secondly, we could say that sometimes, especially in the early years after the revolution, even the proposals made by local authorities have not always been

sufficiently substantiated, the initiators changing their minds about some of them and demanding their replacement with others; c) third, none of the governances has defined a clear strategy and a concrete program on actual costs entailed by this action as a whole and by each of its elements in order to know if and when they can support the costs" (Preda, 2007: 9). Many writers, policy makers and political men believe that in Romania "it cannot create territorial-administrative units using ethnic, linguistic or other criteria, organization criteria must be generated and common to all administrative units of the same rank or at the same level. Admission of such criteria would establish a discrimination between citizens of the same country, depending on their membership to a national minority or on using a particular mother tongue" (Preda, 2007: 13).

Currently, various debated forms of regionalization meet more or less the needs of Romania, but have the common argument of the obligativity to meet economic, social, environmental and cultural needs that have experienced a significant transformation from those existing at the date of adopting the territorial-administrative organization of today. In time, although initial discussions on the subject aimed at division based on ethnic principles, things have calmed down, discussions have become substantiated, and the political class and the authorities have realized the benefits of such a process, the big gain consisting of attracting European funds for large-scale projects. In this sense, part of the specialists and Romanian political class points out that the proposed regionalization of the country should equally take into account the regional assembly with distinct historic, cultural and economic personality. The functionality of these provinces has been demonstrated by the fact that the regional organization, accompanied by genuine decentralization is a process which the European Union supports, on the one hand, and by the economic imperative of EU 2014-2020 budget, on the other hand (Balcanii Europa: documentary).

In 1998, in Romania, like other countries in this part of Europe, have appeared development regions, which were created in anticipation of the accession to the European Union, without legal personality and without being administrative-territorial units, but only being the result of an agreement between the county and local councils, in order to coordinate the zonal development and European funds absorption: 1) *Bucharest-Ilfov Region* (with residence in Bucharest); 2) *North West Region* (with residence in Cluj-Napoca); 3) *West Region* (with residence in Timişoara) 4) *South-West Oltenia Region* (with residence in Craiova); 5) *South Muntenia Region* (with residence in Călăraşi); 6) *South East Region* (with residence in Brăila); 7) *North East Region* (with residence in Piatra Neamţ); 8) *Centre Region* (with residence in Alba-Iulia).

In 2011, the Social Liberal Union (political coalition, which was in opposition at that time) launched a model of regionalization that keep the present administrative-territorial organization in counties, but that fits in the trend of regionalization, process that should be extended over several years. The main points of the model proposed by the Social Liberal Union are: a) maintaining current counties; b) creation of another administrative level, called Region, after the French model, between the counties and the central administration of the country; c) regions coincide with the current formal division in the 8 euro-regions; d) regions have political, administrative and administrative integrability characteristics specific to local current structure; e) a region should be managed by a regional council, headed by a regional president – both elected by the citizens; f) regional president acts as a premier and is elected directly by citizens. Regional board members have executive responsibilities; g) Regional Council have its own budget; h) besides the president and the regional council, each region has a prefect appointed by

the government, so the 8 regional prefects will replace the 41 prefects currently existing in each county; i) establishment of a body called the Regional Economic and Social Council (CES), which should operate in addition to the Regional Council, with powers to achieve regional development plans. CES will be advisory but its consultation by the regional council will be mandatory; j) central government will only decide on national projects. All other projects, investments, expenses, budgets etc will be the responsibility of regional councils; k) there will not be a capital of the region, there will be specific centers of development: political and administrative center, economic center, university center, cultural center etc.; l) the transition to this model of territorial administration should have been done in three phases between 2012 and 2016. In 2016 the first elections should take place following this model, then it should be elected the first regional parliaments and the first regional presidents (Ionescu, 2011). This model of regionalization has not been implemented so far.

Another variant of regionalization was proposed in early 2013 and was based precisely on the 8 euro-regions. Administrative-territorial units, with regional autonomy, would have had exclusive or shared competence with the state, multi-annual budget and a regional council led by a president. Government has assumed the end of 2013 for the setting up of regions (Bărbieru, 2015: 140), which should have involved three simultaneous administrative proceedings, the constitutional revision, developing the legal framework for the organization and functioning of regions and the regulatory framework for decentralization of powers to regions, counties, municipalities, cities and communes, but the project failed.

Some of the reasons why we still can not talk of regionalization in Romania and the project proposed in 2013 was a failure would be the fact that ethnicity criterion was invoked; the approach was not politically good because it was not discussed anything in terms of decentralization, but basically it was wanted the overlapping of a new level over the political and administrative structure already existing in Romania; duplication of bureaucracy that would have resulted from this action; avoiding solving problems requiring a regionalization of European type in our country.

Other proposals, including the ones of the Romanian Academy, was based primarily on economic criterion, but also on geographical and historical criteria, so that the region be evaluated in terms of its potential and development needs; secondly, proposals took into consideration the autonomous capacity for cooperation with other regions in Europe, as is the case in Poland, in Italy, in Spain (these countries have permanent missions in Brussels representing strictly the interests of the region); third, fiscal decentralization have been taken into account; and last but not least they wanted to avoid bureaucratic system.

Although it is an important issue for all governments since 1989, regionalization in Romania can only be achieved on the basis of a real political consensus. The new form of regionalization that will represent the region as an entity inferior to the central State benefiting from political representation through an elected council, its own budget emerged from fiscal policies and last but not least from a program of territorial development, lays on the working table of political parties, government and academia. The Statute of the Assembly of European Regions (ARE), the Community Charter of Regionalization and EU treaties (Maastricht, Lisbon) presents a vision of the role and functioning of the region. Reorganization of countries within the EU aims, according to the Commission, Council and European Parliament, at stimulating cultural, social and economic progress. The region as distinct unity with common features and continuity of

the local population and the specific of its identity represent the EU vision about Europe's current and future dynamics. Certainly, the term of region must not be confused with the one of regionalism. The latter refers to an ideology and a political movement that recommends a substance control of the region over political, economic and social affairs in its territory. Regionalism appears in this vision as a historical process with distinct socio-economic content (Loughlin, 1996: 147-150). In Brussels, there are offices of delegations organized by embassies system that oversees community decisions. They should not harm the particular interests of regions, but should help in getting as many European funds as possible. The Conference of the Presidents of Regions, the Council of Communities and Regions of Europe are associations with legislative powers representing regions.

Today is expected a new approach to regionalization in Romania, which would require amending the Constitution. Local and parliamentary elections to be held in 2016, in our view, will speed the response to what the European Union expects and, surely, Romania's development at all levels in the period 2016-2020.

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ORIGINAL PAPER

Scaling and Managing Defense and Security Self-Assessments in the New European Democracies. A Security Quiz of the National and Regional Interests and Objectives for Romania and Bulgaria

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Abstract: The aim of the present article is to explain the recent theoretical developments of security and defense by arguing where, how and when national security and strategic planning and implementation of Romania and Bulgaria fits into the regional process of security. The present article also integrates the answers to the following security-assessment quiz by reflecting and answering the following six issues: the national security planning and implementation definition and key concepts, the national security creation and maintenance to react to regional/ international changes, the defense dimension viewed as a separate structural and functional mechanisms and instruments.

Keywords: *defense, security, regional cooperation, partnership, national interests*

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NDS and NSS: Defense and Security Continuum

Since the fall of the Wall of Berlin, the fusion of democratic settings, defense and security self-determination has taken on new ways, precisely at the moment of the critical evaluation of the documents in the field. From an empiric consideration, it may be considered that the present article pushes security strategy and information into the executive place by combining the major strategic dimension with the security proportion (Edmunds, 2014: 525-539; Rogers, 2009: 831-862). Both settings develop the national security strategic framework to better understand the defense, the public order dimension and rule of law (Schröder, Kode, 2012: 31-53; Blume, 2008: 713-721; Călinescu, 2013: 305-308). Our primary goal is to focus on the security strategy organizing and implementation enabled by the *National Defense Strategy 2015-2019* (Romania) (hereinafter NDS) and *the National Security Strategy* 201 (Bulgaria) (hereinafter NSS). Each item selected for analysis has its own impact on the fundamentals of the relations between the international arena and regional security (Butfoy, 1997: 38-58; Ilie, 2014: 203-212). The article aims is also to provide an understanding of the risks and threats associated with the regional security and defense which in the case of NDS and NSS represent characteristics used to discuss the partnership between the citizen, the state and society. In the current paper, the linkage between the national security system planning and implementation and the regional cooperation in the Black Sea region will be carefully analyzed in order to examine the efficiency of the national legislation (current legal settings) as they were structured by considering the European and Euro-Atlantic principles, values and norms, the preservation of the democratic control of the national security system, the maintenance of the good relations in the region and the consolidating of the partnership with US (Olimid, 2011: 169-179). On the basis of the high variance of security policies and strategies, the article will focus on the equitable distribution of the items for NDS and also for NSS (from NDS, $IC_{A1-\ldots n}$ and from NSS, $IC_{A1-\ldots n}$).

This is a particular approach allowing to selectively categorizing: interests and objectives (Chapter I of the NDS), international security environment approach, security dimensions at Euro-Atlantic level, regional security (Chapter II of NDS), threats, risks and vulnerabilities (Chapter III of the NDS), lines of actions and methods to guarantee the national security, the public order dimension, the intelligence, counterintelligence and security dimension, the diplomatic and crisis management dimensions (Chapter IV of NDS), the national security strategies (article 8 of NSS), threats dynamism, international political and military security (article 10 of NSS), security policies (article 11 of NSS), efforts of the central government institutions (article 16 of NSS). To help better understand where security and strategic planning and implementation fits into the regional process of security, the present article devise the answers to the following security-assessment quiz by reflecting and answering the following six questions: How is the national security planning and implementation defined? How the national security is created and maintained to react to regional/ international changes? Is the defense dimension viewed as a separate functional mechanism? Do other institutional mechanisms and instruments consider and participate as an enable instrument of security organizational strategies? What policies and strategies does the national security have? What risks and threats limit the security fundamentals? (Pogoriler, 2010: 535-546; Waxman, 2012: 289-350; di Floristella, 2013: 21-38).

NDS and NSS: core inputs and outputs

In its stronger approach, the national security strategy planning and implementation is based on the traditional approaches relating to the dynamic of the strategic framework and the legal settings (Kehler, 2012: 18-26; Schiff, 2012: 318-339; Karska, 2014: 7-22). However, the strategic planning of NDS and NSS requires the allocation of the primary resources, the coordination of efforts and the creation of a strategic foundation. This may include: 1. for the case of NDS - the "convergence with the European security principles" (Introduction, article 4 of NDS), the "constitutional democracy and mutual respect between state and citizens" (Introduction, article 3 of NDS), the "national cohesion and consensus" (Introduction, article 9 of NDS), "a strong market economy" (article 10 of NDS), the "free initiative and transparent competitions" (Introduction, article 10 of NDS) and 2. for the case of NSS – "the rule of law and equity of all citizens before the law" (Chapter II. The Fundamentals, article 18 of NSS, *National security policy principles*), the "dialogue and partnership between state institutions and organizations" (Chapter II. The Fundamentals, article 18 of NSS, *National security policy principles*), the "national consensus" (Chapter II. The Fundamentals, article 18 of NSS, *National security policy principles*), "the inseparability of the national security from the NATO and EU security" (Chapter II. The Fundamentals, article 18 of NSS, *National security policy principles*), "openness, transparency and accountability in security policy formulation and making" (Chapter II. The Fundamentals, article 18 of NSS, *National security policy principles*), "democratic control of the national security system" (Chapter II. The Fundamentals, article 18 of NSS, *National security policy principles*), the "partnership between the citizens, the society and the State" (Chapter II. The Fundamentals, article 18 of NSS, *National security policy principles*).

The aim here is to know the extent to which two broad approaches determine the trends and security patterns: the "convergence with the European security principles" (Introduction, article 4 of NDS) and "the inseparability of the national security from the NATO and EU security" (Chapter II. The Fundamentals, article 18 of NSS, *National security policy principles*). This, in effect, involves a two-step approach: first, to forecast "constitutional democracy and mutual respect between state and citizens" (NDS). This would be followed by the "national cohesion and consensus" and the "free initiative and transparent competitions" in the post-communist period following the challenging years of transition (Şerban, 2012). Second, the security principles form the foundation of the security strategy and infrastructure determining how the goals will be reached. In addition to NSS fundamentals, "the rule of law and equity of all citizens before the law", the "partnership between the citizens, the society and the State" and the "democratic control of the national security system" refine the meaningful security policies and metrics. As shown in Table 1a and Table 1b, the item comparison 1 (hereinafter IC) (Vision, mission, principles) is developed, collected, structured and engaged for four basic perspectives: state, citizen, society, Europe/ NATO. Moreover, the vision, mission and principles item typically includes: 1. the preparation to security planning; 2. the creation of a security strategic planning; 3. the security and defense actions; 4. the implementation planning; 5. the security and defense particular requirements (see NDS, $IC_{A1\text{-}F1}$). As shown in Figure 1, the performance metrics that NDS and NSS recommend for security and defense concern principles like: the rule of law, the equity of all citizens before the law, the openness and transparency in security policy formulation and making, the respect and

partnership between citizens, society and state. It may also consider that the security information (implementation and organizational measures) concerns particular issues such as the "security policy; procedures and control; non-technological tools and methods and organizational and individual awareness creation and maintenance" (Hagen, Albrechtsen, Hovden, 2008: 377-397). The elements of the vision, mission and principles approach are diagrammed in Figure 1. Vision, mission, principles.

Table 1a. IC 1: Vision, mission and principles (NDS)

	Item No./ Country	IC 1: vision, mission and principles	Legal Settings
	1 / NDS	Romania	
A1	NDS, IC_{A1}	the "convergence with the European security principles"	*Introduction*, article 4 of the NDS
B1	NDS, IC_{B1}	the "constitutional democracy and mutual respect between state and citizens"	*Introduction*, article 3 of the NDS
C1	NDS, IC_{C1}	the "national cohesion and consensus"	*Introduction*, article 9 of the NDS
D1	NDS, IC_{D1}	"a strong market economy"	*Introduction*, article 10 of the NDS
E1	NDS, IC_{E1}	the "free initiative and transparent competitions"	*Introduction*, article 10 of the NDS
F1	NDS, IC_{F1}	"dignity", "civic cohesion", "assertion of national identity", "Romania's state and territorial integrity"	Chapter I. *Defining national security interests and objectives*, article 16 of the NDS
G1	NDS, IC_{G1}	the principle of "continuity", the principle of "predictability", the principle of "legality", the principle of "proportionality"	Chapter I. *Defining national security interests and objectives*, article 17 of the NDS

Source: author's own compilation

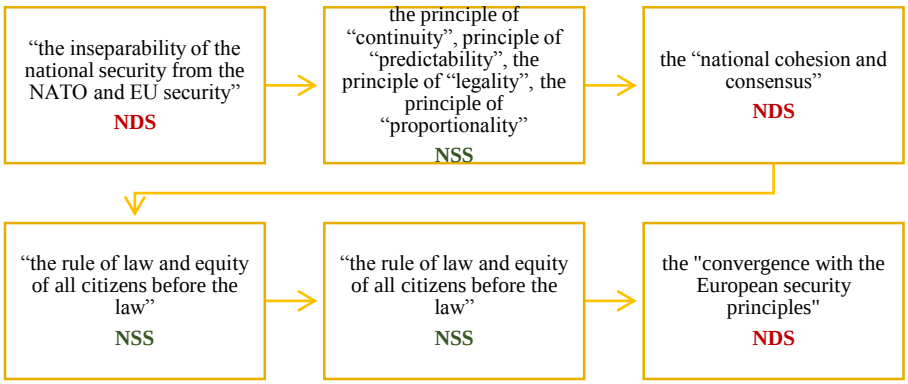
Table 1b. IC 1: Vision, mission and principles (NSS)

	Item No./ Country	IC 1: vision, mission and principles	Legal Settings
	2 / NSS	Bulgaria	
A1	NSS, IC_{A1}	"the rule of law and equity of all citizens before the law"	Chapter II. *The Fundamentals*, article 18 of the NSS, *National security policy principles*
B1	NSS, IC_{B1}	"the inseparability of the national security from the NATO and EU security"	Chapter II. *The Fundamentals*, article 18 of the NSS, *National security policy principles*
C1	NSS, IC_{C1}	the "openness, transparency and accountability in security policy formulation and making"	Chapter II. *The Fundamentals*, article 18 of the NSS, *National security policy principles*
D1	NSS, IC_{D1}	The "democratic control of the national security system"	Chapter II. *The Fundamentals*, article 18 of the NSS, *National security policy principles*
E1	NSS, IC_{E1}	the "partnership between the citizens, the society and the State"	Chapter II. *The Fundamentals*, article 18 of the NSS, *National security policy principles*

Source: author's own compilation

This first stage of the analysis is to achieve the "theoretical security/defense level" with details and information concerning the national mechanisms and measures (Barany, Rauchhaus, 2011: 286-307). Each aspect of the security and defense process is determined and interconnected in the terms of policies, strategies and procedures: partnership, citizens, society, and state. They also define the roles and performance metrics related to carrying a successful national strategy. According to Figure 1, a proactive national strategy plan take into consideration the following three arenas: the constitutional principles of a democratic state, the convergence with the European principles and values, the national cohesion and consensus.

Figure 1. Vision, mission and principles



Source: author's own compilation

Monitoring and scaling the national security interest

This open-ended discussion on the constructionist background of the security and defense planning and implementation remain an important part of testing security and other interests or objectives (Miller, 2006: 611; Walater, 1999: 69-72).

Security-defense relations identify a focus indicator that systematically particularizes the two countries involved in the study: the national security interests. In a broadest interpretation, the national security / defense planning and implementation is a program plan to combine challenges associated with the resources, the risks and threats and the processing of the national security interests. According to the two documents, the national security interest defines and guarantee "the state's national character, sovereignty, independence, unity and indivisibility" (Chapter I. *Defining national security interests and objectives*, 1.2. National security interest, article 20 of the NDS) and "the rights, freedoms, security and wellbeing of the individual of the society and of the State ("to guarantee the rights, freedoms, security and wellbeing of the individual of the society and of the State" (Chapter I. *Defining national security interests and objectives*, 1.2. National security interest, article 20 of the NDS).

For the NDS, the national security interest also determines the basics of state character as three elements mentioned in the Chapter I. *Defining national security interests and objectives*, 1.2. National security interest, article 20 of the NDS: "guaranteeing the

state's national character, sovereignty, independence; "defending the country's territorial integrity and inalienability"; "capitalizing on our country's resources and geostrategic position" (see NDS, IC_{A2-C2}).

As Table 2a and Table 2b show, these three elements are the basic around which the national security interests are organized and developed. A broader interpretation of what makes up the NDS elements of national character, sovereignty, independence, territorial integrity and inalienability can be found in analyzing the five elements and domains of the NSS (see IC_{A2-C2}). These are: 1. "to guarantee the rights, freedoms, security and wellbeing of the individual of the society and of the State"; 2. "to defend the sovereignty and territorial integrity of the country and the unity of the nation"; 3. "to promote national identity". The elements defining the national security interests in both documents takes on a fundamental legal and technical approach assuming that the security interests and objectives are a common-place for protecting the state character and constitutional freedoms and rights (see NDS, IC_{A2-C2}). This viewpoint moves forward with an additional perspective of "capitalizing country's resources and geostrategic position" (article 20 of the NDS) and of "reducing development disparities and the reconstruction of major public systems" (article 20 of the NDS) (see NDS, IC_{A2-G2} and NSS, IC_{A2-C2}) (see Figure 2. National security interests).

Table 2a. IC 2: National security interests (NDS)

	Item No./ Country	IC 2: national security interests	Legal Settings
	1 / NDS	**Romania**	
A2	**NDS, IC_{A2}**	"guaranteeing the state's national character, sovereignty, independence, unity and indivisibility"	Chapter I. *Defining national security interests and objectives*, 1.2. National security interest, article 20 of the NDS
B2	**NDS, IC_{B2}**	"defending the country's territorial integrity and inalienability"	Chapter I. *Defining national security interests and objectives*, 1.2. National security interest, article 20 of the NDS
C2	**NDS, IC_{C2}**	"defending and consolidating constitutional democracy and the rule of law"	Chapter I. *Defining national security interests and objectives*, 1.2. National security interests, article 20 of the NDS
D2	**NDS, IC_{D2}**	"protecting fundamental rights and liberties of all citizens and guaranteeing their safety"	Chapter I. *Defining national security interests and objectives*, 1.2. National security interests, article 20 of the NDS
E2	**NDS, IC_{E2}**	"capitalizing on our country's resources and geostrategic position"	Chapter I. *Defining national security interests and objectives*, 1.2. National security interests, article 20 of the NDS
F2	**NDS, IC_{F2}**	"reducing development disparities and the reconstruction of major public systems"	Chapter I. *Defining national security interests and objectives*, 1.2. National security interests, article 20 of the NDS
G2	**NDS, IC_{G2}**	"consolidating the European Union" and "the trans-Atlantic collective defense system"	Chapter I. *Defining national security interests and objectives*, 1.2. National security interests, article 20 of the NDS

Source: author's own compilation

Table 2b. IC 2: National security interests (NSS)

	Item No./ Country	IC 2: national security interests	Legal Settings
	2 / NSS		Bulgaria
A2	NSS, IC_{A2}	"to guarantee the rights, freedoms, security and wellbeing of the individual of the society and of the State"	Chapter II. *The Fundamentals*, II.2. *National Interests* article 19 of the NSS
B2	NSS, IC_{B2}	"to defend the sovereignty and territorial integrity of the country and the unity of the nation"	Chapter II. *The Fundamentals*, II.2. *National Interests* article 19 of the NSS
C2	NSS, IC_{C2}	"to protect the Constitution", "to promote national identity", "to ensure the integrity of Bulgarian civil society"	Chapter II. *The Fundamentals*, II.2. *National Interests* article 19 of the NSS

Source: author's own compilation

Figure 2. National security interests

Source: author's own compilation

Regional security perceptions and strategic skills: objectives and other important interests

Needless to say, a comparative study on these items of security objectives and other important interests is particularly valuable in order to understand the consolidation of the national defense and security system considering the new national interests and regional dynamics (Frankowski, 2009: 922-923).

The NDS and NSS view of objectives and other important interests focuses on the consolidation of the internal capabilities, the reinforcement of the rule of law requirements, the strengthen of the Euro-Atlantic profile and the intensification of the regional cooperation and good neighbor relations and development of the relations in the Black Sea region (Roberts, 2006: 207-223; Winrow, 2007: 217-235; Özdamar, 2010: 341-

359). These elements enhance the security and administrative capacity and increase general awareness about regional cooperation and foreign policy perspective (Georgescu, 2014: 39-50).

As shown in Table 3, one of the first items that security analysis identifies when investigating the objectives of the security strategy is support for the "regional security and stability". Based on guidance from the "preventing" "consolidation", "upholding", "strengthening", "ensuring" (see NDS, $IC_{\mathbf{A3\text{-}E3}}$**)**, the NDS focuses on the role of traditional principles in upholding the security objectives and prevailing the aims of the European and Euro-Atlantic profile of Romania. As it develops, the NSS planning and guidance provides particular focusing on the "predictable security context" and "regional security and stability".

NSS also rationalizes the national security strategy across the regional elements to ensure that the planning maximum benefit from the "development of regional Black Sea cooperation" (see NDS, IC_{E3}). NDS and also NSS involve, directly or indirectly, a numbers of regional actors. For example, NDS provide resources or activities for these actors to coordinate closely their security". Under this argumentation, NDS considers "upholding the Republic of Moldova's European aspirations" by "ensuring security in the Black Sea region" and "intensifying regional cooperation, including in the field of defense" (see NDS, IC_{E3}).

Considering the national security objectives and other important interests, NDS and NSS prioritize the security goals and objectives that are essential for the structural and organizational focus and regional development.

They also consider similar ways of approaching strategic organization and other interests' data collection.

Regardless of how the national security objectives and other important interests are engaged in regional cooperation and stability, there is a well-constructed security planning that aligns the answer to the following questions: what are the fundamental security reasons for planning this? (NDS, IC_{A3}); what the national security promotes and engage? (NDS, IC_{B3}); is the rule of law uphold and how are prevented radical or extremist reactions and tendencies? (NDS, IC_{A3}); how are consolidated security and protection of critical infrastructure? (NDS, IC_{C3}); how NDS and NSS enable and strengthen the European and Euro-Atlantic profile of the country? (NDS, IC_{D3}); what is engaged the security information and system in the Black Sea region? (NDS, IC_{E3}); how are maintained good relations in the region? (NDS, IC_{E3}); how is supported the social stability and prosperity? (NSS, IC_{A3}); how are enhanced the environment and natural resources? (NSS, IC_{C3}).

Explicit answers to these questions help well understand the security objectives and interests enabling the national/ regional approaches to reflect the changes in the strategic priorities. Moreover, this underlying continuity between the national and regional level reflects one of the most important characteristic of NDS and NSS, taking into account other interests in the socio-economic field: the "basis rights and freedoms", the "good governance" and the "social stability and prosperity". These declaratory objectives also develop a new strategic planning which also contributes to "enhancing administrative capacity" (NDS, IC_{C3}).

Table 3a. IC 3: National security objectives and other important interests (NDS)

	Item No./ Country	IC 3: national security objectives and other important interests	Legal Settings
	1 / NDS	Romania	
A3	NDS, IC_{A3}	"the consolidation of the national defense capacity" and "preventing radical or extremist reactions and tendencies"	Chapter I. *Defining national security interests and objectives*, 1.3. National security objectives, article 22 of the NDS (internal perspective)
B3	NDS, IC_{B3}	"promoting and ensuring the unrestricted exercise of basic rights and liberties" and "securing an efficient, dynamic and competitive economic environment"	Chapter I. *Defining national security interests and objectives*, 1.3. National security objectives, article 22 of the NDS (internal perspective)
C3	NDS, IC_{C3}	"upholding of the rule of law ", "promoting national identity", "consolidating security and protection of critical infrastructures" and "removing deficiencies affecting good governance, enhancing administrative capacity"	Chapter I. *Defining national security interests and objectives*, 1.3. National security objectives, article 22 of the NDS (internal perspective)
D3	NDS, IC_{D3}	"strengthening Romania's profile within NATO and the EU", "observing the European Union's basic principles and values" and "consolidating the strategic partnership with the US"	Chapter I. *Defining national security interests and objectives*, 1.3. National security objectives, articles 23 and 24 of the NDS (foreign policy perspective)
E3	NDS, IC_{E3}	"ensuring security in the Black Sea region", "intensifying regional cooperation, including in the field of defense" and "upholding the Republic of Moldova's European aspirations"	Chapter I. *Defining national security interests and objectives*, 1.3. National security objectives, articles 23 and 24 of the NDS (foreign policy perspective)

Source: author's own compilation

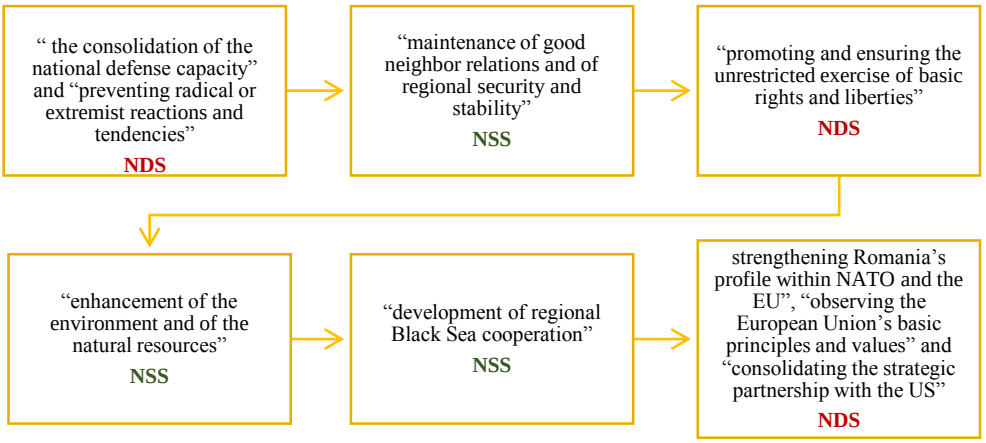
Table 3b. IC 3: National security objectives and other important interests (NSS)

	Item No./ Country	IC 3: national security objectives and other important interests	Legal Settings
	2 / NSS	Bulgaria	
A3	NSS, IC_{A3}	a "favorable and predictable security context", "maintenance of good neighbor relations and of regional security and stability", the "development of regional Black Sea cooperation"	Chapter II. *The Fundamentals*, II.2. *National Interests* article 20 of the NSS
B3	NSS, IC_{B3}	"maintenance of economic, financial and social stability and prosperity,	Chapter II. *The Fundamentals*, II.2. *National Interests* article 20 of the NSS

		"preventing corruption and organized crime"	
C3	NSS, IC_{C3}	The "enhancement of the environment and of the natural resources"	Chapter II. *The Fundamentals*, II.2. *National Interests* article 20 of the NSS

Source: author's own compilation

Figure 3. National security objectives and other important interests



Source: author's own compilation

Scaling security context and managing internal and external assessments: **ten keys to regional strategic planning**

Of these indicators, the first one focuses upon the vision, mission, principles, objectives and interests according to NDS and NSS. Both documents take into account the "ongoing transformation process" (NDS, IC_{A4}), "the unstable economic and political situation" (NSS, IC_{D4}) and those of their allies when "re-defining geo-strategical "games" (NDS, IC_{B4}). On the other hand, it is argued that NDS and NSS reflect consensus and "new ways of acting, based on a medium and long term vision" (NDS, IC_{A4}) contributing to the regional cohesion and stability. These key conceptual issues are all centrally relevant to the study of NDS and NSS such as: international relations - "ongoing transformation process", "new ways of acting, based on a medium and long term vision", "highlighting interdependences and unpredictability"; regional politics - the identification of constancies and foreseeing any possible internal, regional and international phenomena", engagement with the European commitments, "positive tendencies… in the West Balkans", "Bulgaria's active role in the maintenance of international peace and its commitments to guard the NATO and EU external borders", "cooperation between countries in economy, trade and security". These arguments have contributed to a third characteristic feature scaling security context and managing internal and external assessments: observing the ongoing transformation of the region, planning new ways of acting, taking into account the risks and threats and "foreseeing any possible internal, regional and international phenomena".

The idea of the "re-defining geo-strategical games" reveals varying perceptions, objectives and interests that essentially involve the compromise in both security and

strategy terms (O'loughlin, 1999: 34-56; Gherghe, 2009, 32-35; Bărbieru, 2014: 115-125). Furthermore, NSS recognizes the adoption of an active response concerning the role played in the region referring to "positive tendencies… in the West Balkans" and "Bulgaria's active role in the maintenance of international peace and its commitments to guard the NATO and EU external borders" and the "cooperation between countries in economy, trade and security" (NSS, IC_{F4}). NDS and NSS also charge that although the traditional perspectives focuses on the "identification of constancies and foreseeing any possible internal, regional and international phenomena" (NDS, IC_{C4}), the contemporary reconfiguration of the international arena argues for a new conceptualization of classical risks and threats. The management of the internal and external assessments is rooted in a specific ethnical, religious, ideological, social, economic, political, military context and as that "the measures to strengthen confidence and security at regional and international level have gradually transformed, there are some elements that develop medium and long term vision such as: "rapid development of informational technology" (NDS, IC_{A4}), the role "played by the United Nations Organization" (NDS, IC_{C4}), "economic growth focus from the West to the East", "growing impact of non-governmental structures", "developments in the energy sector" (NSS, IC_{A4}), "energy security" and the "cooperation between countries in economy, trade and security" (NSS, IC_{F4}). The process of scaling security context leads to a dialectical perspective of rethinking and re-evaluating the concepts by "highlighting interdependences and unpredictability" (NDS, IC_{A4}). Moreover, as Table 4a and Table 4b shows there are no significant differences between NDS and NSS in the planning, development and implementation of "the measures to strengthen confidence and security at regional and international level" (NDS, IC_{D4}).

Table 4a. IC 4: Scaling security context and managing internal and external assessments (NDS)

	Item No./ Country	IC 4: scaling security context and managing internal and external assessments	Legal Settings
	1 / NDS	Romania	
A4	NDS, IC_{A4}	"ongoing transformation process", "new ways of acting, based on a medium and long term vision", "highlighting interdependences and unpredictability", "the difficulty to delimitate classical risks and threats"	Chapter II. *International security environment assessment*, 2.1. The Global Security Environment, articles 29 and of the NDS
B4	NDS, IC_{B4}	"redefining geo-strategical "games", "rapid development of informational technology", "the resurgence of nationalism and extremism", "ethnical and religious fragmentation and ideological radicalization"	Chapter II. *International security environment assessment*, 2.1. The Global Security Environment, article 30 of the NDS
C4	NDS, IC_{C4}	"the identification of constancies and foreseeing any possible internal, regional and international phenomena", the role "played by the United Nations Organization"	Chapter II. *International security environment assessment*, 2.1. The Global Security Environment, articles 31 and 32 of the NDS

D4	NDS, IC_{D4}	"understandings regarding armament, deployment and stationing of troops and military capabilities", "the measures to strengthen confidence and security at regional and international level", "a turbulent reconfiguration at the international relationships level"	Chapter II. *International security environment assessment*, 2.1. The Global Security Environment, articles 29-32 of the NDS

Source: author's own compilation

Table 4b. IC 4: Scaling security context and managing internal and external assessments (NSS)

Item No./ Country	IC 4: scaling security context and managing internal and external assessments		Legal Settings
2 / NSS	Bulgaria		
A4	NSS, IC_{A4}	"economic growth focus from the West to the East", "growing impact of non-governmental structures", "developments in the energy sector", "migration, poverty, development issues and climate change"	Chapter III. *Security context: risks and threats*, III.2. *External security context* articles 24-43 of the NSS
B4	NSS, IC_{B4}	"terrorism", "radioactive matter", "toxic substances and bio-agents"	Chapter III. *Security context: risks and threats*, III.2. *External security context* article 28 of the NSS
C4	NSS, IC_{C4}	"regional conflicts and economic and financial crisis", "cybercrime and trans border organized crime"	Chapter III. *Security context: risks and threats*, III.2. *External security context* article 27 of the NSS
D4	NSS, IC_{D4}	"the unstable economic and political situation", "low standard of living in Third World states and regions"	Chapter III. *Security context: risks and threats*, III.2. *External security context* articles 34 of the NSS
E4	NSS, IC_{E4}	"the risks to environmental security" and "energy security"	Chapter III. *Security context: risks and threats*, III.2. *External security context* articles 35 and 38 of the NSS
F4	NSS, IC_{F4}	"positive tendencies… in the West Balkans", "Bulgaria's active role in the maintenance of international peace and its commitments to guard the NATO and EU external borders", "cooperation between countries in economy, trade and security"	Chapter III. *Security context: risks and threats*, III.2. *External security context* articles 40-43 of the NSS

Source: author's own compilation

Conclusions

Scaling, managing and testing a security culture argue that the discussion of a critical theory of security necessarily involves the theoretical debates on the vision, mission, objectives, principles and other interests. Recent political events proved that the status of national security commitments toward regional cooperation and cohesion are

incorporated into a new view of reality more complex and independent comparing to the traditional ones. In conclusion, NDS and NSS together develop a regional strategic approach by enhancing the European and Euro-Atlantic values and norms and linking the national interests to the partnership commitments within the NATO alliance and agreeing with the developments in the economic and social sector.

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ORIGINAL PAPER

Policies, Programs and Projects for Youth Employment in Kosovo

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Abstract
The main goal of this research is studying the policies, programs and projects for youth employment which are implemented by the Regional Employment Centers in Kosovo. The result of the research is to identify the policies, programs and projects for youth employment which are implemented and not implemented in Kosovo. In the paper are used several methods. The first, has been organized a focus group of exploratory nature with the aim of identifying the issues for research. The second, a questionnaire was carried out (semi-structured) with directors of Regional Employment Centers. The third, the research of laws and bylaws in the area of employment, the publications of the Department of Labor and Employment, Ministry of Labour and Social Welfare, and scientific literature in the field of employment. Conclusion of the paper is that, in Kosovo there are policies, programs and projects for youth employment in Kosovo, but they are not enough.

Keywords: *Kosovo, employment, youth, political, REC*

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Introduction

Kosovo has policies, programs and projects for youth employment, but they are not enough

By the policies, programs and projects for youth employment benefit a considerable number of young jobseekers. However, these policies, programs and projects are limited by two main circumstances. Firstly are realized with donnors found. secondly, are not implemented all policies, programs and projects. The study of policies, programs and projects for youth employment, with special focus identifying policies, programs and projects which are implemented and not implemented, is the main objective in this paper study. So, the paper will study this topic in these key dimensions. *In the first part*, will realize a theoretical analysis about the unemployment statistics for young people in Kosovo, policies and services that provide Regional Employment Centers (hereinafter: REC) for young jobseekers. *In the second part*, we will bring empirical evidence on these issues. At the end we give the main conclusions of the paper and bibliography.

Research Methodology

In order to identify the issues that need to be investigated, we organized a focus group with ten (10) young participants. From the discussion developed within this focus group we managed to identify five (5) issues that participants have identified as important in terms of youth employment through public employment services. Our research has been directed at finding the answer to these issues which we have turned into research questions. Therefore, the main data of this study were obtained through semi-structured questionnaires. REC-s directors have responded in the questionnaires sent by mail. The questionnaires contained some key questions and some sub-questions. The rest of the data were taken from several sources. The first, laws and other bylaws covering the field of employment. Second, periodic reports to the Department of Labor and Employment (hereinafter DLE) and the Ministry of Labour and Social Welfare (hereinafter: MLSW). Third, the academic literature in the field of employment (Matthews, Ross, 2012; Eco, 1997; Manheim, 2002; Feraj, 2004). In the aspect of the relationship between the dependent variable and independent, in the case of our research, independent variable are the policies, programs and projects for youth employment, while the dependent variable is the employment of youth. So, as many policies, programs and projects for youth employment, the greater is their employment. The paper start with the study and theoretical research.

The theoritical part

The theoretical framework of policies for youth employment consists of theoretical explanations for the focus group, the statistics of young people registered as unemployed or job seekers to REC's, policies and services tha are offered in order to address the challenges arising from unemployment, and opinion of the Directors of REC's related with policies and services for youth employment. So, "... the focus group is a method for collecting qualitative data ... the difference is that the focus group (as the name says itself) leaves from the interviews one by one, and become a group interview" (Matthews, Ross, 2012: 235). Three are the focus group characteristics "Merges a group of 5 to 13 people, who have something in common that relates to the topic of research, to take part in a discussion on this topic, which is moderated by the researcher" (Matthews,

Ross, 2012: 235). Focus group "Explorer: either pre-pilot phase of social research, for example, to discover what participants think is important in an issue or theme and what kind of language and concepts are used in the discussion" (Matthews, Ross, 2012: 236). While, in terms of overall statistics of the DLE , the number of young people registered as jobseekers is "... 92. 615 jobseekers "(Department of Labor and Employment. 2012: 20). While, until September of this year this number has reached "... 95. 448 registered jobseekers "(Ministry of Labour and Social Welfare. 2013: 1). This age marks the greater entry in unemployment compared with all other age groups (Ibid). So, "The unemployment rate for the persons aged 16 to 24 is approximately two times higher than the overall unemployment rate" (Institute for Development Research, 2013: 24). But exactly which age refers the policies, programs and projects for the youth employment? According to the Law on registration and evidence of unemployed and jobseekers, "Jobseekers in Regional Employment Centers can enroll persons from the age of eighteen (18) "(MLSW, 2012a: 2). Therefore, in this research, when we say 'policies, programs and projects for the youth employment', we referred to the policies, programs and projects for persons aged eighteen (18) to twenty four (24). In theoretical aspect are some policies, programs and projects dealing directly with youth employment. Policies, programs and major projects for youth employment are: "Lifelong guidance, job search assistance, professional qualification, work practices, job training, salary subsidies, public works and promotion of self-employment" (MPMS. 2012b: 3). All policies for youth employment are realized with donor funds. The main donors that support the implementation of employment policies are: "United Nations Development Program (UNDP), the European Commission, the Government of Switzerland, Pristina Municipality" (DLE, 2007-2012: 20).

In addition, also in theoretically aspect are identified even services offered by the REC for young jobseekers. Services offered are several. First, identification of jobseekers. So "REC compile and maintain a register for youth registered as jobseekers" (MLSW, 2012a: 5). Second, RCE offer two types of counseling for young jobseekers: "Professional counseling for employment and career guidance" (MLSW, 2012a: 5). Third, employment mediation. REC advisors through labor market research reach to realize even "... preparation and employment mediation" (Ibid). Fourth, providing information on labor migration (For more about migration and consequences, see: Traø, 2006: 202). This service is provided by employment Counselors and Migrant Service Centre operating within the DLE. In the center you can find "Information on job opportunities and study abroad as well as procedures for obtaining visas, work permits and residence permits, accessing to the health care system and education abroad as well as other information that you need while you think to move abroad" (MLSW, 2012a: 5). Despite the policies and services provided, REC directors again are moderately satisfied with the policies and services that offer for young jobseekers. Kosovo is known as the country with the youngest populaton in Europe. So more than 70 percent of its populaton is under the age of thirty five. The people aged from 15 to 24, 55.3 percent were unemployed and the rate is pronounced higher to the young females with an unemployment rate of 63. 8 percent than to the young males with an unemployment rate of 52.0 percent. In the coming five years approximately 200,000 youngsters will reach working age and will begin searching for jobs (Myha, 2013: 1). This format of the theoretical data is constructed based on empirical data which we will bring as following.

The empirical part

To the empirical part we will bring concrete facts and data about the focus group, statistics, the number of unemployed young people who benefit from employment policies, services that are offered and opinions of REC directors . In addition, we will formulate opinions by the logic of critical thinking.

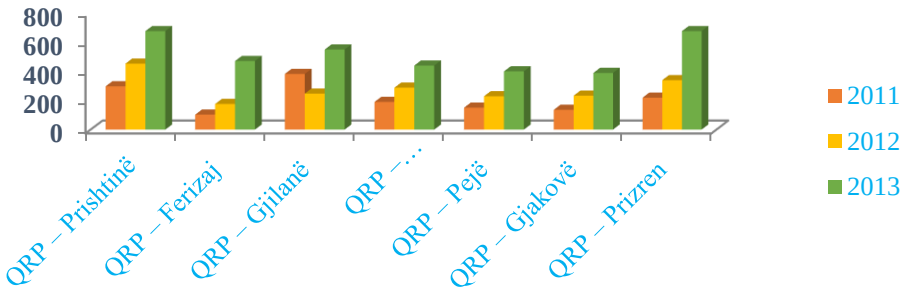
Focus group

Initially, we organized a focus group. The purpose of this focus group was to explore the issues that young people consider as important to explore regarding policies, programs and projects for employment which are offered by the public employment service. The topic of discussion was: employment experiences in relation to public employment services. Focus Group is composed of ten (10) participants. The discussion took fifty (50) minutes. Participants were from the age eighteen (18) to twenty (24) years. From them have been five (5) men and five (5) women. Five (5) participants were from Pristina region, while five (5) participants from other regions. The meeting was moderated by the author of this paper. From discussions held with focus group emerged these problematic issues: *registration* – some participants are not registered at Employment Offices; *limited possibilities* – participants are concerned about the number of candidates who benefit from policies, programs and projects by region; *lack of knowledge* – some participants have concluded that have lack of knowledge about policies, programs and projects of youth employment; *variable of age* – participants have discussed regarding to which age is given more priority in employment; *bureaucracy* – participants had no knowledge of the internal organization of the Employment Offices. In order to address these concerns, we have oriented the research in finding the answers to these questions: What is the number of young people registered as jobseekers? What are the policies, programs and projects for youth employment and what is the number of beneficiary candidates? What policies, programs and projects provides REC in Pristina regarding to youth employment? What is the number of employees of this category compared to the other categories of jobseekers? What services REC provide and how to access the use of these services? Initially, we will examine the reply to the first question.

Registration as jobseekers

According to statistics of REC the number of young people registered as jobseekers remains high. A typical trend based on statistics presented in Figure 1 is the increasing number of young people registered as jobseekers. General characteristic is that in 2013 the number of registered unemployed youth in REC is several times greater than in 2012 or 2011. Except the REC - Gjilan in which case the number of unemployed is lower in 2012 to be raised again in 2013. The main reason for this growth is the public information campaign realized with the help of Lux's Devolpment related to activities and opportunities offered by the REC. As seen from the data presented, REC of Prishtina and REC of Prizren have the largest number of young people registered as jobseekers (over 700), it's because these two regions have the largest number of population. While RECof Peja and REC of Gjakova have small number of young people registered as jobseekers (near 400).

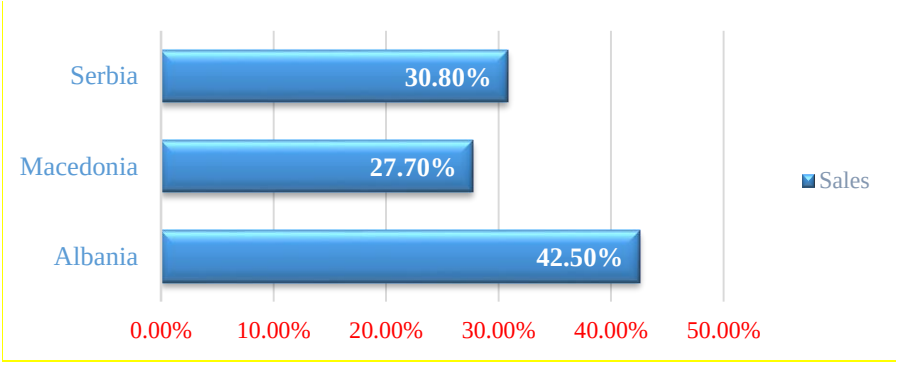
Figure 1. The number of young people registered as jobseekers at the Public Employment Services



Source: Obertinca, Z, answers given in the questionnaire sent by email (REC-Prishtina), date: 06. 12. 2013; Shabani, K, answers given in the questionnaire sent by email (REC-Ferizaj), date: 04. 12. 2013; Aliu, Xh, answers given in the questionnaire sent by email (REC-Gjilan), date: 03. 12. 2013; Elezi, F, answers given in the questionnaire sent by email (REC-Gjakova), date: 05. 12. 2013; Dema, B, answers given in the questionnaire sent by email (REC-Peja), date: 02. 12. 2013; Hajrrullah, H, answers given in the questionnaire sent by email (REC-Prizren), date: 07. 12. 2013; Bekteshi, S, answers given in the questionnaire sent by email (REC-Mitrovica), date: 04. 12. 2013.

If we look at youth unemployment in the region, it appears that even countries in the region have a high rate of youth unemployment. As seen from Figure II, Albania has the largest number of young people registered as jobseekers or unemployed, then comes Serbia and Macedonia which has the lowest number. So, unemployment remains phenomenon and challenge of all countries in the region.

Figure 2. Youth unemployment in neighboring countries in 2009



Source: Development Programme of the United Nations in Kosovo (UNDP), the project document, Active Programs of Labour Market 2, Pristina, 2013. F-3

But, if we look at the logic of critical thinking, it appears that state institutions should develop policies that promote the economic development same in the whole territory. Balanced economic development stimulates the same youth employment. Different from the economic development level varies from region to region, policies for

youth employment are largely the same. But differ in terms of number of candidates engaged.

In the regional context it should be noted that, "All Western Ballkan contries, after the shock of transition, slowly are recovering and intentions and measure to reduce the number of workers in employment office are rising" (Jashari et. al., 2014: 1). So, "Macedonia claims that unemployment has decreased to 29 % in contrast to 21 % in Serbia and Bosnia, and Kosovo, Albania still have high figured. But, will public employment policies and a range of measures, among the which most common are employment under temporary contracts, reducing unemployment among young people, women, social cases of handicapped people yield results" (Ibid). And, "According to these logics of employment policy and labor movement and the labor market, changes in the labor market, the logic is imposed when Western Balkan countries will join the EU and replaces the labor force with worker from Afghanistan, Bangladesh of Eritrea?"(Jashari et. al., 2014: 1).

While, in the context of the European Union, "The developments in Europe in relations to youth employment over the past four years can only be described as a cataclysmic failure on behalf of decision – makers with regards to youth people" (European youth forum, p-4). This is because "The issue of long term unemployment (LTU) is now one of paramount concern for young people. LTU can have a profound impact on the personal devolpment of young people, as well as societes in which they live" (European youth forum, p-4). Then "Althugh youth unemployment has been traditionally higher the adult rate, in the intractability of the current youth uneployment crisis has resulted in un precedented rates of LTU, which has increased by 3. 7 % among young people since 2008, compared whith an increase of 1. 8 % for the adult population" (European youth forum, p-4).

Policies, programes and projects

Despite all REC have policies, programs and projects for youth employment dynamics and the number of candidates involved varies from region to region. The main criterion is the number of population in the region. Respectively the number of young people registered as jobseekers. REC - Pristina has the largest number of candidates engaged in any policy, program and project. For example, in the project funded by the European Commission, 'Training on the job' Kosvet VI, "REC of Prishtina has engaged four hundred (400) jobseekers" (European Union Office in Kosovo, 2013: 2). While all other REC share the same number of candidates engaged in practice at work and on the job training.

Table 1. Types of policies, programs and projects for youth employment and the number of unemployed young people who are engaged in 2013

TYPES OF POLICIES AND THE NUMBER OF BENEFICIARIES BY REGIONS		
Regional Employment Center	**Active labor of market for employment generating for youth - UNDP**	**Job training, Kosvet VI**
REC – Prishtina	51	400

REC – Ferizaj	27	200
REC – Gjilan	21	200
REC – Mitrovica	39	200
REC – Pejë	21	200
REC– Gjakova	21	200
REC – Prizren	27	200

Source: Obertinca, Z, answers given in the questionnaire sent by email (REC-Prishtina), date: 06. 12. 2013; Shabani, K, answers given in the questionnaire sent by email (REC-Ferizaj), date: 04. 12. 2013; Aliu, Xh, answers given in the questionnaire sent by email (REC-Gjilan), date: 03. 12. 2013; Elezi, F, answers given in the questionnaire sent by email (REC-Gjakova), date: 05. 12. 2013; Dema, B, answers given in the questionnaire sent by email (REC-Peja), date: 02. 12. 2013; Hajrrullah, H, answers given in the questionnaire sent by email (REC-Prizren), date: 07. 12. 2013; Bekteshi, S, answers given in the questionnaire sent by email (REC-Mitrovica), date: 04. 12. 2013

While Chart 2 presents the policies, programs and projects for youth employment that are applied in the constant form from REC. There are three policies, programs and projects which are implemented by the REC: job training, work practices and professional training. Professional training is provided through a network of the Professional Training Centres distributed in eight key centres of the state. Except the REC of Prishtina which offers two job training projects. While all other REC have similar characteristics regarding to policies, programs and projects for youth employment, respectively offers a job training project, a project in work practice and professional training. The following charts presents the policies, programs and projects for youth employment which are implemented by the REC.

Table 2: Employment policies which are provided by the REC

POLICIES, PROGRAMS AND PROJECTS FOR YOUTH EMPLOYMENT THAT ARE IMPLEMENTED BY REC		
Regional Employment Center	**Policies**	**Comments**
REC – Prishtina	☐ Job training ☐ Practice at work ☐ Professional training	☐ 2 job training projects ☐ 1 practical project at work
REC – Ferizaj	☐ Job training ☐ Practice at work ☐ Professional training	☐ 1 job training project ☐ 1 practical project at work
REC – Gjilan	☐ Job training	☐ 1 job training project
	☐ Practice at work ☐ Professional training	☐ 1 practical project at work

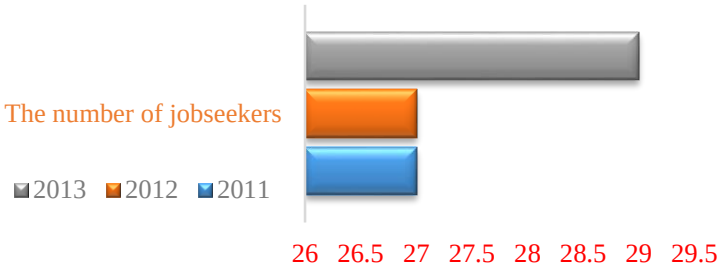
REC – Mitrovica	☐ Job training ☐ Practice at work ☐ Professional training	☐ 1 job training project ☐ 1 practical project at work
REC – Peja	☐ Job training ☐ Practice at work ☐ Professional training	☐ 1 job training project ☐ 1 practical project at work
REC – Gjakova	☐ Job training ☐ Practice at work ☐ Professional training	☐ 1 job training project ☐ 1 practical project at work
REC– Prizren	☐ Job training ☐ Practice at work ☐ Professional training	☐ 1 job training project ☐ 1 practical project at work

Source: Obertinca, Z, answers given in the questionnaire sent by email (REC-Pristina), date: 06. 12. 2013; Shabani, K, answers given in the questionnaire sent by email (REC-Ferizaj), date: 04. 12. 2013; Aliu, Xh, answers given in the questionnaire sent by email (REC-Gjilan), date: 03. 12. 2013; Elezi, F, answers given in the questionnaire sent by email (REC-Gjakova), date: 05. 12. 2013; Dema, B, answers given in the questionnaire sent by email (REC-Peja), date: 02. 12. 2013; Hajrrullah, H, answers given in the questionnaire sent by email (REC-Prizren), date: 07. 12. 2013; Bekteshi, S, answers given in the questionnaire sent by email (REC-Mitrovica), date: 04. 12. 2013

REC project -Prishtina

Also, REC - Prishtina realizes another project, 'job training', with financing of the Municipality of Prishtina, in which case, every year "are mediated twenty-nine (29) new jobseekers in public companies, private or state institutions" (MLSW. 2013b: 2). Training or instruction given to individuals in the work setting to assist in developing the skills and knowledge necessary to carry out work. On the job training practices are normally carried out during working hours, involves both formal and informal training initiatives, and is usually conducted by staffs who are more experienced in a particular process, skill, or knowledge area. The number of candidates involved in this project has been largely the same in the last three years. For example, in 2011 and 2012 this number was the same twenty-seven (27), while in 2009 this number increased to twenty-nine (29).

Figure 3: The number of candidates involved in the project, "Training at work ', REC - Prishtina, in 2011, 2012, and 2013



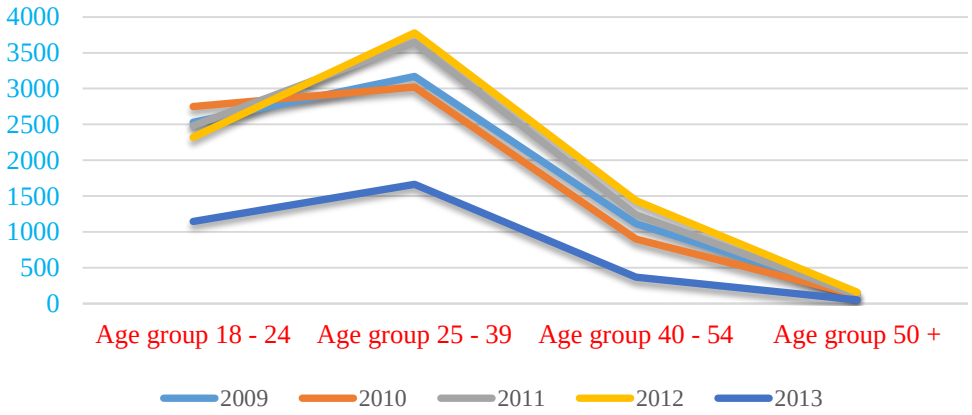
Source**:** Obertinca, Z, answers given in the questionnaire sent by email (REC-Pristina), date: 06. 12. 2013

Although REC of Prishtina has the largest number of unemployed youth engaged in policies, programs and projects for youth employment, youth at the country level have priority over all other age groups of society in terms of employment.

Employment – variable of age

Generally from three thousand one hundred and seventy-eight (3178) candidates involved in all active projects and programs in the labor market, one thousand seven hundred and forty-seven (1,147) belong to the age group 18-24 years in 2013. So, in comparison with all ages of society, priority in engagement in policies, programs and projects of employment has age group 25-39 years, and the age group 18-24 years. The same trend should be noted that is followed from 2009. Figure 4 below shows the trend of hiring jobseekers in policies, programs, and employment projects from 2009 to 2013 by age group.

Figure 4. Number of jobseekers engaged in programs and active labor market in 2013 by age group



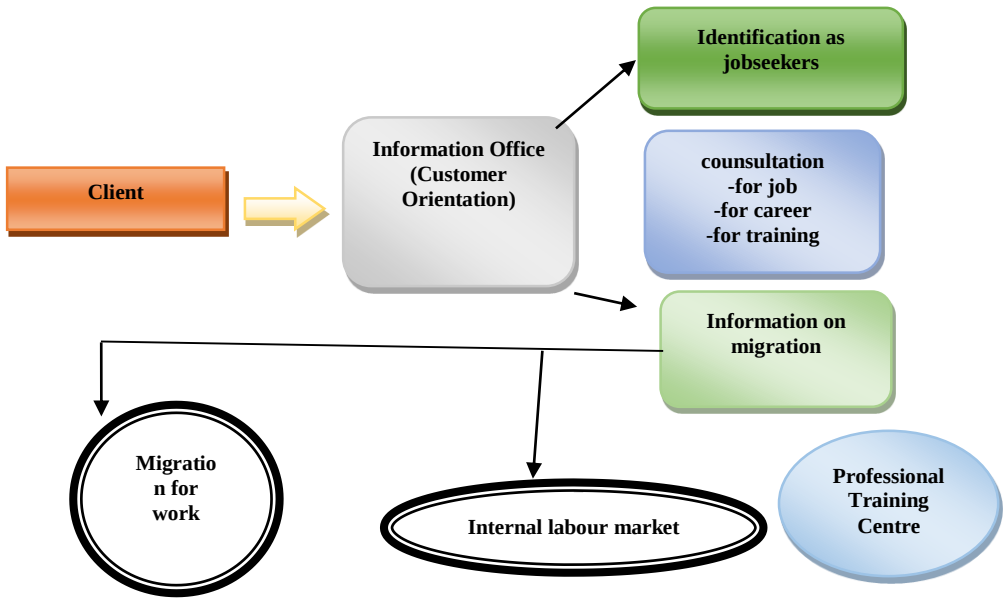
Source: Department of Labor and Employment. (2009) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2010) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2011) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2012) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2013) Annual performance report. Prishtina: K. G. T.

But, if we look at by the logic of critical thinking there are several main criticism. First, the growing number of jobseekers youth engaged in policies, programs and projects for youth employment. Second, to expand policies, programs and projects for youth employment. For example, to have programs and projects that support the enterprise (self-employment). Currently, this policy does not apply any REC (MLSW. 2012d: 3). Despite it all REC offer similar services for young jobseekers.

Services

Besides policies, programs and projects for youth employment, REC also offer services for young jobseekers. Services offered by RCE are: identification as jobseekers; employment counselling; career Counselling; counselling for training; and providing information on migration.

Figure 5: Services offered for young jobseekers and schemes of offering these services



Source: scheme prepared by the author

But, if we look at by the logic of critical thinking, then come some criticsm. First, the REC "... should provide services exclusively for young jobseekers" (Koro, L. 2013:13). Second, the RCE should keep records profiled for young jobseekers. Not to keep general records (If we look at the practice of other countries, for example, of

Slovenia, then we see that the Public Employment Service in this country, keeps records profiled for jobseekers. For more see: Employment Service of Sllovenia. 2010: 20-32). Third, "Increased levels of employment and professional training establishment at the request of the labor market" (MLSW. 2012-2014. 2012c: 16).

Besides these operational services, RCE's and Office of Employments also offer other services that are important for labor market. These other services are: information on conditions and employment opportunities; market work research; inssurance of certificates for job seekers; support for self-employment; preparation for successful interviewing" (MLSW, 2012b: 2); acceptance of applications for the issuance of work permits for foreigners. Applications are accepted from RCE's and OE's, while decisions are issued by the Department of Labor and Employment. This service is offered until the end of March, and now is the purview of the Ministry of Internal Affairs; accepting applications for maternity leave. Applications are accepted from RCE's and OE's, and decisions issued by the Department of Labor and Employment (See annual reports and see website MLSW, part for DLE).

While services training, which are for unemployed and jobseekers persons through Vocational Training Centres, are professional training which are offered free of charge. These training (which will be listed besides the main training offered, we will examine the modules offered in some of the main training which are most attended by job seekers and the unemployed): business administration. Modules offered within this training are: "introduction to business administration, communication and business management, preparation of marketing and sales, financial management in small businesses, keeping accounting books" (MLSW 2012c: 2); information technology; administrative assistant; accountability; graphic design; entrepreneurship - modules offered within this training are: "The idea of business, market analysis, stoc, costs, distribution, business plan" (MLSW, 2012c: 3); makery; waiter - modules offered within this training are: "Health and safety, organizing the counter, preparing the location, preparing beverages, servimit methods, service and communication" (MLSW, 2012c: 3); wiring electric; woodwork; building; metal welder; servicing of office equipment and ICT network; electric auto - installation of water and central heating; plastering; paving tiles and clothing; maintenance of industrial electronic equipment; cook; textile; use computer; agri-food technology; self employment; the electrical installations in civilian homes; hydraulics and pneumatics; industrial electronics; repairman technique of household; tourism; hairdresser; processing milk products.

Satisfaction with services offered

Despite the offering of these services, REC directors are not satisfied with their activities in function of young jobseekers. When we asked, 'How many are satisfied with the services provided to young jobseekers', the majority responded that they are 'average satisfied'. The rest responded that they were 'slightly satisfied'. While, only one responded that it is 'Very satisfied'.

Figure 6: Opinions of Directors of REC related to policies that they offer to young jobseekers

Source**:** Obertinca, Z, answers given in the questionnaire sent by email (REC-Prishtina), date: 06. 12. 2013; Shabani, K, answers given in the questionnaire sent by email (REC-Ferizaj), date: 04. 12. 2013; Aliu, Xh, answers given in the questionnaire sent by email (REC-Gjilan), date: 03. 12. 2013; Elezi, F, answers given in the questionnaire sent by email (REC-Gjakova), date: 05. 12. 2013; Dema, B, answers given in the questionnaire sent by email (REC-Peja), date: 02. 12. 2013; Hajrrullah, H, answers given in the questionnaire sent by email (REC-Prizren), date: 07. 12. 2013; Bekteshi, S, answers given in the questionnaire sent by email (REC-Mitrovica), date: 04. 12. 2013.

But, if you look at by the logic of critical thinking, note that, the REC lack the framework of performance measurement for youth employment. As Slovenia has. Performance measurement framework "consists of the following elements ...: (i) setting targets, (ii) performance measurement and (iii) systematic control / feedback on performance" (Koro, 2013: 13). So, "These are used as instruments REC management to monitor the activities of employment offices and their staff and to ensure efficiently delivery of programs and services" (Ibid). Also, the REC should invest more in providing services in electronic form for youth. Furthermore, we propose to use the model of Austria which "... is a model example for active policies for youth" (Public Employment of Austria, 2012: 31).

General statistics

General statistics regarding registration as unemployed, employment and training, in terms of ethnic communities in Kosovo. The number of citizens registered as unemployed or job seekers, mediate in employment and vocational training, through employment offices.

Table 3: General data on registration, employment and vocational training for Albanian, Serbian and other communities

GENERAL TABLE			
Registration			
Viti	**Albanian**	**Serbian**	**Other minorities**
2004	259.713	8769	13.865
2005	291.092	11.635	27.298
2006	303.224	13.063	29.551
2007	305.524	13.371	30.411
2008	307.934	13.098	30.600

2009	306.221	13.055	29.705
2010	305.400	13.021	16.839
2011	295.550	12.810	16.901
2012	232.223	12.397	14.721
2013	239.813	12.865	15.426
	Employment		
2004	4669	372	573
2005	5193	357	313
2006	5811	182	272
2007	5438	91	279
2008	6121	211	60
2009	6303	158	505
2010	6157	183	447
2011	6701	274	509
2012	6668	356	668
2013	4248	248	233
	Vocational Training		
2004	2992	52	116
2005	3476	180	272
2006	3021	38	57
2007	2842	0	55
2008	3185	41	107
2009	2889	51	112
2010	3064	242	176
2011	3264	66	185
2012	3055	44	131
2013	3147	60	143

Source: Department of Labor and Employment. (2004) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2004) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2005) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2006) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2007) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2008) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2009) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2010) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2011) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2012) Annual performance report. Prishtina: K. G. T; Department of Labor and Employment. (2013) Annual performance report. Prishtina: K. G. T.

Conclusions and recommendations

Analyzed of what was said above, we conclude and recommend that: 1. Kosovo has policies, programs and projects for youth employment, but they are not enough. We recommend to increase government funding in order to increase the policies, programs and projects for youth employment, in order to engage a greater number of young jobseekers; 2. youth unemployment remains very high in Kosovo. The number of young people registered as jobseekers at REC increased from 2011 to now. We recommend to organize more public information campaigns so that young jobseekers to attend more public employment services; 3. services that are provided for young jobseekers are:

evidence of young jobseekers, employment consultations, career counsultation, counsultation for professional training, mediation in employment and offering of the information on migration. We recommend to increase the quality of the offering of these services; 4. regardless of policies, programs and current projects for young jobseekers and services that are provided, REC directors are moderately satisfied. We recommend to increase staff engagement of public employment services regarding to young jobseekers.

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ORIGINAL PAPER

Legal Liability and Responsibility of the Romanian State regarding Uniformity of Law at European Level

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Abstract
The unification of the law at European level acts as a step which succeeds the nearby processes and legislative alignment and implies that the laws of each Member State have to adapt to the basic principles and the European legislation in force. Wingspan process involves, firstly, a strong legal responsibility of Member States, in general, and of the Romanian state, in particular, and this must be channeled mainly for adapting national legislation to the requirements of European law, without neglecting the slightest obligation to respect the legal standards developed at European level. In this context, liability, one of the most important terms of the law, along with legal responsibility, prerequisite and necessary, enable this process at all easy. European legal order and national legal order are not mutually exclusive but they are intertwined in the direction of an uniform law in the European Union, overpassing borders. The fact that the Romanian state is one of the Member States of the European Union make it to be, primarily, a matter of law for the European legal order, requiring both legal liability on its part, as far as legal liability. Thus, it becomes imperative the following question: what happens if the romanian state is not manifesting the above mentioned responsibility and violates European law? In other words, will it respond for disregarding European law?

Keywords: *uniformity of law, legal liability, responsability, European legal order, national legal order*

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Legal Liability and Responsibility – Inherent Values for the Member States

Legal liability is one of the most important terms of law, the concept of liability being used in ancient times to establish social order within the group. Besides this, legal liability completes the legal framework that is necessary for any subject of law. European Union Member States are subjects of law for the European legal order, and this aspect requires of them both the quality of their responsibility and the vocation of the legal liability, so that the possibility of them being held legally liable could materialize.

Legal Liability and Responsibility – Distinct Concepts

The notion of legal liability has raised serious problems for those who have tried to give a clear and complete explanation of this phenomenon, failing, up to the present day, to come up with a universally accepted definition in the specialized literature, and this is mostly owed to the lack of terminological unity concept. Legal liability is a matter of great practical importance because it ensures the efficiency of the rule of law, stimulates the attitude of compliance, establishing and maintaining the social order.

In this context, while liability involves the subject of law being aware of the legal constraints that he might undergo in case of violation of the rules of law, responsibility can only involve awareness of the duty that each subject has, to respect the rules. Responsibility is also the instrument that regulates social relations. Gaining measure of responsibility, the subject of law ceases to be in a position of absolute obedience and unapprehended submission to the rule of law, acquiring the status of 'factor which relates to the norms and values of a society actively and consciously" (Tănăsescu, 2007: 3). Since the border between the two concepts (legal liability, respectively legal responsibility) is so fragile, largely due to the similarity in terminology in some legal systems, it appears that sometimes the two concepts are mistaken. This happens all the time in French law, for example, which does not distinguish between responsibility and legal liability, and only sporadically, in the Romanian legal doctrine, even if the latter is greatly influenced by the French legal language. Moreover, the confusion never occurs in the English legal system, as terminologies are different for the two concepts (liability and responsibility).

Liability and responsibility, present in all branches of domestic law, could not have avoided European law. Since the foundation of the legal responsibility is the lawful conduct of the subject of law, it follows that his purpose can be no other than ensuring the legality and order at the European law level.

The Romanian State as a Responsible European Actor

For any State that "applied" for this living structure called the European Union, the approximation of national legislation with European regulations is "a necessary process" (Mazilu, 2005: 4), an imperative that derives primarily from its choice to become a member of communities which have their own supranational legislation. Romania has assumed this obligation when it decided to be one of the greatest actors in Europe and signed the European Agreement establishing an association between it, on one side, and the European Communities and the Member States, on the other side. The agreement was ratified by Romania by Law no. 20/1993 and devotes a chapter especially to the approximation of law (Chapter III of Title IV), and the concerned areas to be subject to

approximation are established by art. 70, and they refer mainly to economy, banking, labor, protection of humans, animals and plants.

Also, the Romanian State had a representation of how important was the obligation to meet the necessary requirements to integrate into the European structure since the official launch of the application for membership in June 1995. Along with other authors (Puşcaş, 2003: 12), we argue that absorbing the European Union regulations represented, along with economic, social and political conditions, one of the criteria needed to be met by the candidate countries to the European Union, and this is due, mainly, to the importance given to the legal system in the context of European integration. Taking its role very seriously, Romania has shown, since then, an active attitude, drafting several strategies and programs that facilitated the adoption of regulatory acts corresponding to the Community law. Some acts and actions are those such as the National Strategy of Snagov for accession (adopted in June 1995), the National Programme for Legislative (adopted in 1996), the National Programme for the Adoption of the Acquis Communautaire (adopted in December 1997) the National Programme for Accession of Romania to the European Union (NPAR, adopted in May 2000 and updated in June 2001 for the period 2001-2004), the National Strategy for Economic Development of Romania for medium term (adopted in 2000), the Pre-Accession Economic Programme (PEP, adopted in September 2001 and sent to the EU). At the same time, there were created institutions and administrative structures to ensure the implementation of the new legislation.

Open in the first half of 2000, the negotiations for accesion were completed by the end of 2004, when the Council of Europe marked the end of them. Following negotiations and sustained efforts made by the Romanian state, Romania joined the European Union on January 1, 2007 after the Treaty of Accession that was signed on April 25, 2005, was ratified by all Member States. From this moment on, the Romanian state became a subject of European law, a special subject of law, whose rights and obligations manifest themselves in two ways: on the one hand, in relation to the entity which is now part of, the European Union, and, on the other hand, in relation to the other Member States and its own citizens, who are now European citizens. However, no matter how the issue is regarded, the fact is that the Romanian state should be aware that it has a duty to comply with all obligations deriving from its new capacity, and this basically means that it becomes a responsible subject of European law. Furthermore, it follows that its entire existence will be subject to the purpose of bringing existing legal systems within the European structure and feeding "a relationship in harmony with the community goals of all Member States" (Boulois, 1991: 191). This new vision is based on the support of all political and social forces, targeting the country's solid anchoring in the European values system, the development of the Romanian society on the principles of democracy, rule of law and market economy, able to ensure social stability and prosperity of citizens and nation (Ungur, 2006: 393).

Legal Resposibility of the Romanian State for a Uniform Law at European Level

The unification of the law at European level acts as a step which succeeds the nearby processes and legislative alignment and involves, firstly, a strong legal responsibility of Member States in general and of the Romanian state in particular and this must be channeled mainly for adapting national legislation to the requirements of

European law, without neglecting the slightest obligation to respect the legal standards developed at European level. The European legal order and the domestic legal order are not mutually exclusive but are interconnected in the direction of unification of law in the European Union, breaking border barriers.

European Legal Order – Source of Obligations for the Romanian State

The legal order is seen as "a state of relations that anchors due to strict compliance with the legal provisions by all citizens and state bodies and it is provided by law" (www.rubinian.com/dictionary). In lack of order, the disorder takes its place, "the deviation from regularities" (Mihai & Motică, 2001: 237), and for that matter to be avoided, it is necessary that every subject of law always acts responsibly. The issue of the legal order, in general, and the European legal order, in particular, is an inexhaustible theme that arises alive controversy today. The European society, in order to survive, needs stability and safety, it needs to be ensured that the activity of subjects of law will be held naturally and that their rights will be respected. However, this order cannot be achieved unless it is inspired from a higher moral ideal, and this ideal can only be "the idea of justice" (Vălimărescu, 1999: 68-69). But, for positive European law to create truly legal order, it must be effective. "Efficiency is absolutely essential to the transformation of a moral order into legal order" (Dănişor, Dogaru, Dănişor, 2006: 467). Legal order, in its meaning accepted at the level of the doctrine (Mihai, 1996: 96; Craiovan, 1993: 119), requires an ordering of the behavior through legal rules and legal responsibility plays a key role in this regard. The novelty that the Romanian state experiences is that after Romania joined the European Union, the domestic legal order is added another legal order, the European one, which integrates into the legal system of the Member States and which imposes itself on the national judicial bodies . Consequently, its behavior must adapt to this legal order, and the legal responsibility concerns its attitude towards both of them, for now we cannot speak of one without invoking the other. In fact, we are witnessing "an integration of the Romanian legal system into the Community legal order, which thus becomes a complement and, at the same time, a measure of national law " (Rusu & Gornig, 2009: 1) and the balance between these two legal orders is provided by the Court of Justice of the European Union, through its jurisprudence. Moreover, the Court of Luxembourg confirmed the idea of the supremacy of the Community legal order with the judgment in Les Verts case (Case 294/83), on which occasion it stated that "The European Community is a community of law in which neither the Member States nor their institutions escape the control of the conformity of their acts with the Constitutional Charter, which is the Treaty ".

European Union law requires discharge in good faith of the obligations arising from treaties (Rusu & Gornig, 2009: 54). As Ihering stated, "the law is an uninterrupted work, a work not only of the state authority but of the entire people" (Ihering, 1938: 270). Comparing the old thinking to the new aspects circumscribed by the European structure particularities, we can say that, in the same way, the statutory regulation activity of the European Union is not sufficient, but it is just as necessary that Member States recognize the importance of voluntary compliance with these standards. Legality, as state of affairs imposed by the new legal reality, involves a certain discipline from the Romanian state, its lawful behavior being the result of a right and conscious decisions, in other words, responsible. Only in this way, with the consciousness of the duty to respect the positive

law, both domestically and at European level, our state is involved in the creation and maintenance of the legality of the European legal order.

Romanian State Participacion in the Unification of the European Law

European law evolves towards the legislative unification in all areas, without underestimating the rules at national and even local level (Apostolache, 2013: 98). "It does not reject, but encourages local autonomy in all shapes and stances" (Apostolache, 2013: 98). Rightly, it is noticed within the doctrine that the promotion of European order is not done against existing values, but for their defense and development, aimed at establishing "a system of protection of traditional values of European culture and civilization" (Mazilu, 2006: 96), contributing to the "development and enrichment of universal culture and civilization" (Mazilu, 2006: 96).

Uniform European law implies that the laws of each Member State have to adapt to the basic principles and the European legislation in force. The relation of the European law with the Romanian legal system is influenced by the two principles that are actually the pillars of the European legal order: the principle of European law supremacy and the principle of integration of European law into national law of the Member States (Eremia, 2006: 45). In this context, efforts must be made to approximate national legislation with European law. However, the harmonisation of legislation is an ongoing process that evolves in the context of the integration itself. Following the signing of the Treaty of Accession to the European Union, each Member State is faced with the issue of integration into the European structures, and in order to make this possible, they must make all necessary efforts to ensure full compatibility of national regulations with the European law, by modifying or supplementing national laws. According to a study (Bellis, 2013: www.fco.gov.uk), all Member States encountered problems when transposing EU legislation, which were comparable in certain situations, and these difficulties come mainly from the lack of knowledge when it comes to concepts and terms used .

Under the provisions of art. 4 of the Treaty on the European Union, "Member States shall adopt any general or particular measure to ensure fulfillment of the obligations issued from the Treaties or resulting from the acts of the institutions of the Union". Consequently, each Member State is responsible for the implementation of the European law in the domestic legal system, and this can be fortunately achieved by meeting the deadlines set for transposition of the Directives, by the proper application of regulations and by of national legislation to meet European legal principles and rules. Regarding the Romanian legal system, there must be noticed that Romania makes an effort to purify the Romanian legal system in the way that it is unified with the European law. According to a study (Popescu, www.mdlpl.ro), on the 25th of September 2000, there were 6149 regulatory documents in force, of which only 348 were issued between 1864-1989. These latter laws remained in force after the repeal of most documents dating from the period before 1989, but they have been modified in order to be adapted to the effective legislation and, gradually, most of them have been also repealed. Unfortunately for our state of law, there are still some old regulatory enactments that are encountered today. As an example for this, we can mention Law no. 58/1934 (the law of bills of exchange and promissory notes), which entered into force on 01.06.1934 and, although it has undergone numerous changes over time, it continues to regulate commercial legal relations, for it has never been repealed. As considered, "the European law is not a perfected international law, but it belongs to a different legal universe" (Combacau, 1991: 56), which requires training

actions from Member States. Thus, the Romanian state began preparing the national legal order by constitutional revision in 2003, as the Constitution of Romania of 1991 contained no reference to relations between Romanian law and European law. The reform undertaken in 2003 created the ground required for the implementation of European legislation because it expressly included the principle of separation and balance of powers, established numerous guarantees for the exercise of constitutional rights and the rights of citizens and rules to ensure the proper functioning of state institutions. Based on the enthusiasm with which the constitutional reform was regarded (Duculescu, Adam, 2004: 14) and the benefits it brings in order to approximate the Romanian Constitution provisions with the European legal order, but also based on the entire subsequent legislative activity, serving the same purpose, we can say that it was reasonable to state that Romania is "an obedient student" (Elias, Cioclei, 2012: 97-114) in terms of adapting national legislation to European standards. The support testimony consists of numerous laws enacted for this purpose, but also recently adopted codes. No less important is the fact that in the "Statement of Reasons" that comprise the latter, there is mentioned, among objectives, the implementation within the national legal framework of regulations adopted at European level, and those of the Romanian law with the legal systems of the other Member States.

Also, the concern of the Romanian state for adapting national legislation to European law lies in the intense activity of the Romanian legislator, concerned to issue as many laws compatible with EU law as it can. Its legal responsibility seems to be required more often in the private law section because here it operates a large number of European legal acts. I believe, however, that the same importance should also be given to the criminal law area, taking into account the direction of development of European law, which, after the Treaty of Lisbon, has placed human rights at the center of its concerns and enables the opportunity to use criminal law. This aspect is considered, rightly, indispensable to ensure effective EU policy (Barbe, 2011: 438 and seq.), and the areas that the criminal law of the European Union covers circumscribe a free, safe and just space, a genuine "Europe's large construction site" (Beauvais, 2010: 721-725).

In total agreement with the claim that the appropriate and correct application of EU legislation is essential to maintain a strong foundation of the European Union and to ensure obtaining the expected impact of European policies that favor the citizens (Dimitiu, 2013: 13), it should be added that the idea of Member States liability becomes unavoidable and desirable. We can therefore state that the Romanian state has two feelings about European law. First af all, it manifests legal responsibility, in other words it relates to the legal value which is in the content of European legislation and acknowledges that it has a duty to obey it in all aspects of its existence, shaping its laws in this respect. Secondly, and inevitably, it experiences legal liability, meaning that it relates to the effects of European law, realizing the consequences that any disregard of it may draw.

Legal Liability of the Romanian State for Non-Compliance with EU Law

Application and control of enforcement of EU law involves many factors: European institutions, Member States, including the authorities and courts of local and regional level (Dimitiu, 2013: 12). However, for various reasons, different problems may arise during the application of European law, and the European Commission retains, as main reasons, the lack of attention from Member States in the correct interpretation of the legislation, delaying implementation of activities and notification of national transposition

measures, choice of procedural options (European Commission, 2007). In light of the above, the next question appears inevitable: what happens if the Romanian state does not prove the responsibility it is supposed to, and it breaches European law? In other words, will Memebr States and, implicitly, the Romanian state account for disregard of EU law?

The treaty on the Functioning of the European Union describes, in art. 258, in very general terms, the violation by Member States of the obligations they have according to the Treaties. Regarding the situations that may constitute grounds of legal liability, the doctrine has conducted several studies (Oțel, 2006: 57; Voicu, 2010: 104; Rusu, Gornig, 2009: 129-130), but, according to a detailed analysis (Craig, de Búrca, 2009: 556 et seq.), "certain types of violations are more often the subject of infringement actions than others." According to that latter study, Member States shall be held liable for breach of the duty of loyal cooperation provided for in art. 4 of the Treaty on European Union, for the inadequate implementation of European legislation or persistent breach thereof, for breach of a positive obligation to ensure the effectiveness of EU law as well as for the actions and omissions of the internal institutions of the Member State. Also, it was rightly estimated that, to these types of violations, there are also added the situations in which, by the action or omission of the Member States, either a regulation of the European Union (primary or secondary), a general principle of law or a public international law regulation applicable in the European Union is disregarded (Rusu, Gornig, 2009: 130; Dumitriu, 2013: 14).

On the other hand, an explanation in this regard comes from the Court of Justice of the European Union (the European Court of Justice, under its previous name) which, through its jurisprudence, established the principle of states liability for failure or misapplication of the European law by the Member States, irrespective of whether such act is imputable to the legislative, administrative or judicial authority of the Member State (C-167/73, Commission v France; C-392/06, Commission v Ireland). Thus, it consistently held that any Member State will be responsible for failure to transpose directives (C -6/90 and C -9/90, Francovici v. Italy; C-22/87 Commission v Italy), for incorrect transposition of a directive (C-392/93 The Queen v. H.M. Treasury, ex parte British Telecommunications) but also for violation of primary law by the national legislator (C-46/93 and C-48/93 Brasserie du Pechêur v. Germany and The Queen v Secretary of State for Transport ex parte Factortame). The year of 2003 brought, with the decision Köber versus Austria, a new form of liability of Member States, including liability for violation of Cummunity law by domestic courts adjudicating a cause in final analysis (C-224/01, Köber vs. Austria). The Court also outlined the criteria of states liability for legislative and administrative acts (C-424/97 Salomone Haim vs. Kassenzahnärztliche Vereinigung Nordrhein; C-224/01, Köber vs. Austria) and judicial acts(C-173/03, Traghetti del Mediterraneo v Italy) contrary to Community law. In recent doctrine it is righteously argued that, although this form of legal liability of Member States, creation of the Court of Justice of the European Union fails to provide effective protection for the interests of individuals, it is nevertheless desirable that these means of appeal are introduced in the Constituent Treaties (Rusu, Gornig, 2009: 172).

The intervention of the Court of Justice of the European Union is welcome and it brings forth the obligation of Member States to review their national regulations on state liability. However, the Court has shown that the provisions of national law on State liability cannot hinder or make impossible the claims for damage of individuals, Member States being obliged to repair to individuals any damage resulting from failure to transpose the directive. In this respect, it is irrelevant whether the State's liability is committed under a national law or under Community rules on the liability of states. Thus, the doctrine

correctly states that in those cases where national law does not involve state liability for damage brought to the individual by not applying Community law, the claims of the individual will be based on Community law regulations (Rusu & Gornig, 2009: 166).

Regarding the Romanian State liability for violation of the European law, it seems to be a regular customer of the European Commission, this "guardian of the Treaty" (European Commission, 2002) as it calls itself, which repeatedly noted the failure of Romania to fulfil its assumed obligations. Thus, regarding Romania, there were triggered numerous infringement finding actions and it received, with time, as many reasoned notifications for failure to transpose directives, the infringement procedure often being triggered. However, according to a publication (www.ziare.com), Romania is below the EU average in terms of the number of infringement finding actions regarding the single market (infringement procedures) that the European Commission has launched against it, and the Romanian state has currently no adjudgement to the Court of Justice of the European Union regarding the transposition of EU directives.

Also, by 2014, the European Commission has started nine times the infringement procedure against Romania for regulatory documents contrary to European law (www. ec.europa.eu), which were considered to be discriminatory, but each time the procedure was closed because, meanwhile, the Romanian State has modified the legislation as it was supposed to. It is true that the infringement procedure is "an original mechanism, which monitors the compliance with EU law, ensures its supremacy to domestic legal systems and, last but not least, it guarantees the continuity and stability of the mechanisms necessary for the functioning of the EU" (Steel, 2006: 54), but it is no less true that if this procedure was completed, the condemned state would be financially shaken and its authority to the civil society would be severely affected.

Therefore, this phenomenon should be at least dimmed, and the Romanian state will manifest more legal responsibility and will pay more attention to the European law, as regards both the transposition of Directives and also the issuance of regulatory documents in full agreement with the principles and legislative acts of the European law. In this way, a possible conviction by the Court of Justice of the European Union can also be avoided, especially since the financial penalties are very high and they would be particularly onerous for the Romanian state. For example, when the European Commission decided to continue infrigement procedure against Romania and other four state, for lack of transposion of Directive 2010/63 / EU on the protection of animals used for scientific or educational purposes, there were proposed penalties of more than 150 000 euro / day, and when it was started the infringement procedure against Romania for partial transposition of EU directives on electricity and gas, the Commission proposed a daily penalty of 30 228.48 euros for each partially transposed Directive.

We personally believe that these amounts are just too high, given the financial possibilities of the Romanian state. Even though art. 260 of TFEU provides for a penalty to the State which has not complied with a judgment of the Court, by which the infringement was detected, and the Commission shows that these penalties should be dissuasive and it shows three criteria to be taken into account when determining them (the grossness of the obligation of the Member State plus the invasion of the Court's judgment, the duration of the infringement and deterrence of future violations), I think a fourth criterion should be taken into consideration, the financial possibilities of the state concerned. It would be completely absurd that such a penalty would put that State into the situation of a financial breakdown, that would draw negative consequences for the entire structure of the European Union. In another train of thoughts, it should be noted that Art.

259 of the Treaty on the Functioning of the European Union, states that "Any Member State may refer the Court of Justice of the European Union if it considers that another Member State has failed to fulfill any of its obligations under the Treaties". However, this type of action was seldom used, being introduced only six times in the history of European integration (Dumitriu, 2013: 17), and of these, only four cases have been resolved by pronouncing a judgment (Case 141/78, France v. United Kingdom, judgment of 4 October, 1979, Case C-388/95 Belgium v Spain, judgment of 16 May 2000, Case C-145/04 Spain v United Kingdom, judgment of 12 September 2006, Case C-364/10, Hungary v. Slovak Republic, judgment of 16 October 2012) and only one was declared reasoned (Case 141/78, France v United Kingdom, judgment of 4 October 1979). It is noted here that, at least for now, the Romanian state has managed not to be the issue of such an action.

As a final conclusion of the discussed topic, we can say that the modernization of the national legislation in relation to the imperatives of the European law is a must, which brings many advantages at a domestic level, (these taking the form of a current dynamic legislative framework which promotes the principles and values of the constitutional state, inherent in any modern European state) but also at European level, facilitating future regulations and, perhaps even codifications of the European Union. A contrario, the violations of the European legal order involve liability of the Romanian state, as a member state of the European Union, which requires huge financial losses.

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ORIGINAL PAPER

The Difficult Road of Transition: the Romanian Elections from 1990 and 1992 and their Political Consequences

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Abstract
The most desirable goal of any transition process is democratization, in both political and economic fields, but the road to a consolidated democracy is often filled with uncertainties and unpredicted problems. That is why, in most cases, the periods of transition are defined by a state of generalized unrest and disorder, which often comes in contrast with the apparent order of the non-democratic regimes. There are many theoretical interpretations of the fundamental – and historic – process of transition from an authoritarian regime, regardless its form, to a democratic one, but all of them acknowledge the importance of free and fair elections for the good course of this process. This paper aims to analyse the first years of post-communist Romania, with a special emphasis on the electoral process, which we consider to be one of the most important aspects of the transition process at that time. We base our analysis on a working hypothesis that the transition was especially hard an continued for a long time in Romania mainly because the beginning of this process was defined by some significant problems that resulted from the government's failure to solve some of the social and political tensions that appeared in the early '90s. Both of the Romanian electoral processes from 1990 and 1992 were defined by major anomalies that had a significant effect on the parliamentary majorities and the quality of the political representation. During those first years of transition, the Romanian political system was a "confused" one that was just partially opened to political pluralism and used the elections and their results more for the consolidation of the government's legitimacy than for the development of the political culture and the conformation to the principle of the pluralism of choice.

Keywords: *transition, Romania, elections, political representation, pluralism*

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As Francis Fukuyama said, politics is a phenomenon which generates social order, especially through the special abilities of political leaders (Fukuyama, 2002: 9). In societies where there no longer is a correlation between the "supply" and "demand" for social capital, there are destabilizations and undemocratic or at least alarming upheavals of the situations on the political scene. Seen as a social phenomenon, voting exists on several levels, not only the political one, the election of the representatives (in various situations) being "a central value instilled into the population" (Bulai, 1999: 76). The political vote is central to socialist democracies. Here, elections are preceded by very well organized propaganda campaigns, and competition, although it doesn't really exist, has a certain importance, if we think about, for example, at the fact that the lists for Grand National Assembly always proposed (from the Front of Socialist Unity and Democracy) more candidates than the total number of mandates, which means that, in several cases, the electorate had to actually chose between these candidates. According to Alfed Bulai, the most important aspects of this type of electoral system, working in a totalitarian regime, are not those regarding the "undemocratic qualities" or the "obvious dysfunctions of the system", but those related to the "field of values and cultural models it promotes within the population" (Bulai, 1999: 76). Thus, after 1989, the Romanian population tried to adopt these models, which had only been promoted, but never put into practice during communism. The manner in which these models were assumed, especially in regard to voting, has been mistaken, also specific to socialist democracy (Bulai, 1999: 77).

1990 – confusion, new political actors and the first democratic elections after the fall of the communist regime

After the street events in December 1989, the first thing seen as the beginning of the transition from the undemocratic communist regime to the democratic system was the emergence of a large number of political parties. The stated purpose of many of these political formations was to lay the foundation of a stable democracy in Romania, following the Western model, but, as stated by some authors such as Constantin Sava and Constantin Monac, in many cases, these parties only provide the citizens with replicated names of foreign parties, lacking any doctrinal consistency: "in many cases, lacking a doctrine, a team and a leader, these formations were content with reviving pre-war visions and models, or to translate into Romanian the names of foreign parties" (Sava and Monac, 1999: 220).

The first political force who dominated the confused political scene in late December 1989 was the National Salvation Front (FSN), which, once publicized and legitimized by the statements of the central figures of that time, started to create territorial branches. In the early days of 1990, the first official political parties began to emerge, including both historical parties and also several political formations directly related to the revolutions, especially in Bucharest and Timişoara (Bulai, 1999: 78). The most visible historical parties at that time were the Christian-Democratic National Peasants' Party (PNŢ-CD), the National Liberal Party (PNL) and the Romanian Social Democratic Party (PSDR). In February 1990, a new legislative political formation emerges, the Provisional Council of National Unity, which was composed of 50% FSN members and 50% representatives of the new political parties, representatives of the minorities, as well as representatives of associations (such as the Association of Former Political Prisoners).

The most important provision of the Law on Political Parties no. 14/2003 was that, in order to be registered, a political party needed to submit a list comprising "at least

25.000 founding members, residing in at least 18 Romanian counties and Bucharest municipality, but no less than 700 persons for each of these counties and Bucharest municipality" (Law no. 14/2003: art.19). The first post-communist piece of legislation regulating political parties was the Law Decree no. 8 of December 31st 1989, which required a considerably lower number of members for the creation of a political party: 251 members, 100 times fewer than the legislation passed 13 years later. According to George Voicu, the general feature of the emerging multiparty system in Romania after 1989 is improvisation (Voicu, 1998: 212). At the time when the Law Decree no. 8 was passed, the Romanian society was atomized, and it did not have, like Czechoslovakia or Hungary, civic structures which "could evolve and become political formations" (Voicu, 1998: 212). Consequently, the first party to (re)appear on the political scene was a historical one, the Christian-Democratic National Peasants' Party, because it already had an active framework, as it had been accepted into the Christian Democratic International in 1987.

Romanian political parties were legitimized at a rapid pace after 1990. Thereby, before the May 1990 elections, 80 parties were registered in Romania, of which 71 submitted lists of candidates for the parliamentary elections. The process of creating new parties continued after that, to a similarly fast pace, to such an extent that on October 1st 161 political parties were registered with the Bucharest Tribunal. The high number of political parties on the Romanian political scene in mid-90's indicates both that the quality was not the most important thing, and especially that an ideological identity was missing. Analyzing the political system in post-communist Romania, Alexandru Radu, Gheorghe Radu and Ioana Porumb believed that in 1995, the recently created multi-party system resembled rather more an "ideological congestion, under the pressure of the political system's natural tendency to rebalance, but also of the fear of extremes, especially of the far-left. [Thus – a.n.], all parties were self-defined as centre (-) parties" (Radu, Radu and Porumb, 1995: 53). The first parliamentary and presidential elections after the collapse of communism were held on May 20th 1990. The parliamentary elections had no less than 72 political formations and independent candidates, but only candidates entered the race for presidency, representatives of the three largest political forces at the time: the Front of National Salvation, the National Liberal Party and the Christian-Democratic National Peasants' Party.

Although the quality of the political offer was rather questionable, the May 20th 1990 elections, which were held according to the electoral system of proportional representation (restored based on the model used in the interwar period, but without the electoral premium), witnessed a 86.18% voter turnout: of the 17 200 722 voters on the electoral rolls, 14 825 017 came out to vote, which proved "a real desire to change the single-party system" (Voicu, 1998: 214-215). Romanian sociologist Alfred Bulai warns that voter turnout in such a large number for the 1990 elections must under no circumstances be seen as a sign of maturity of the Romanian electorate (Bulai, 1999: 74). In fact, in most countries with democratic tradition, voter turnout varies between 60 and 75%, or even less, showing that even in these states, a considerable share of the population doesn't vote. Hence, it is perfectly normal that in every state there is a part of the population that considers that voting is a not so important issue, or even that it is totally inefficient.

The number of valid votes was 13 707 159 for the Chamber of Deputies (representing the votes of 92.45% of the total number of voter turnout) and 13 956 180 for the Senate (representing the votes of 94.13% of the voter turnout) (Preda and Soare, 2008: 92), and the number of political formations who obtained at least one seat in the Romanian

Parliament was, due/because of the fact that there was no electoral threshold, 27. The National Salvation Front (FSN) gained 66.31% of the votes and a large parliamentary majority (263 mandates), followed by the Democratic Union of Hungarians in Romania (UDMR), with 7.23% of the votes and 29 mandates and the National Liberal Party (PNL), with 6.41% of the votes and 29 mandates (Preda and Soare, 2008: 92; Bulai, 1999: 80). The other 24 political actors obtained less than 3% of the votes and, except the Romanian Ecologist Movement (MER) and the Christian-Democratic National Peasants' Party (PNȚ-CD), less than 10 mandates each.

Under these conditions, the opposition was basically inexistent, and the elections seemed to have made the transition between the political system of the single party to the political system of the predominant party, achieving what Jean Blondel called the "one and a half party system" (Voicu, 1998: 215). In the presidential elections held the same day, of the total number of 14 825 017 Romanian citizens eligible to vote who came out to vote, the number of validly expressed votes was 14 378 693 (representing the votes of 96.97% of the total number of voter turnout) (Preda and Soare, 2008: 92). The three candidates were Ion Iliescu (FSN), Radu Cîmpeanu (PNL) and Ion Rațiu (PNȚ-CD). The winner of the elections and the President of Romania until 1992, when the following elections were held (after a new Constitution, elaborated in 1991, and a new Electoral Law), was, from the first ballot, Ion Iliescu, who obtained 85.07% of the votes and registered the biggest distance from the other competitors that was ever registered between the candidates in the presidential elections in Romania (Radu Cîmpeanu gained 10.64% of the votes and Ion Rațiu – 4.29%) (Romanian National Institute of Statistics, 2015).

In the attempt of analyzing electoral behavior in the May 20th 1990 elections, Romanian sociologist Alfred Bulai considers that the Romanian electorate had a relatively simplistic view of the political scene and identifies three types of voters (Bulai, 1999: 84). First, there are the *content voters*, who supported the current leadership, being satisfied by it. Second, there are the *discontent reagents*, who wanted a change in leadership, being dissatisfied by its performance. The third category according to Bulai, are the voters who were not strongly involved in the political battle and who cast their votes for new parties, mostly unknown. The Romanian sociologist qualifies the vote of the latter voters as rather reactive, a normal situation, according to him, given that the campaign held by the opposition had also been reactive, based mostly on two directions: the attack against the current leadership and the promises to achieve certain things the Romanians "were pretty sure they already had" (the so-called "real democracy") (Bulai, 1999: 84).

Ever since this first democratic exercise in 1990, we can see an increasingly stronger emergence of a new category of voters, those who do not wish to be involved in the political battle between parties and who are, in general, dissatisfied with all political formations. Also, this analysis must not omit the ethnic parties, of which the most important one is the party representing the interests of the Hungarians, who, after the events in December 1989, created their own political formation, the Democratic Union of Hungarians in Romania. At the other extreme, in 1990, was also created the Alliance for Romanian Unity (AUR), formation later renamed Romanian National Unity Party (PUNR). Both political formations had a strong voice, especially in Transylvania, where they won votes in both the opposition and the FSN. Another thing that was noticed in the May 1990 elections was that some political parties (especially the historical ones) obtained a relatively high number of votes, especially in the urban areas, being defeated in the rural areas, which determined some political commentators to state that in these first post-1989 elections "the people legitimized the remains of the former regime" (Bulai, 1999: 84).

This vote allocation is not that surprising if we consider the fact that in the rural areas many former representatives of the Communist Party had maintained the positions held before 1989, some of them even becoming irreplaceable. However, we have to specify that it is clear that these mayors in the rural areas were re-elected rather more for their good managerial qualities than for their political affiliation, as it is very well known that in small communities the mayor's political affiliation is less important in the voters' eyes than his ability to efficiently manage their locality.

Although the 1990 elections in Romania were formally considered free and fair, attributes essential to all democracies, either consolidated or incipient, as the one in Romania, the political context was, however, unstable. The words used by professor Ioan Drăgan to describe the relations between the political actors (parties, candidates, voters) at that time were "mistrust, aggressiveness, exclusion, elimination" (Drăgan, 1998: 312), which placed the Romanian society far away from the triad "acceptance – rivalry – adversity" (Drăgan, 1998: 312) which should have manifested at all levels. Traian Brătianu, a journalist from Constanţa, follows along the same line of reasoning, emphasizing the fact that the 1990 elections did not generate, as expected, a "political, social and economic reshaping of the Romanian society" (Brătianu, 2009: 213) and, despite the spectacular voter turnout, which showed the people's desire to actively participate in the political life and the decision making process, no immediate improvement of the quality of the political act or governance were observed.

After 1990, the main trends manifested in the Romanian society were, beside the decrease in voter turnout (which followed a solid line all subsequent ballots), vote concentration (naturally followed by the decrease in the number of parliamentary parties, from 18 to 4, after the last elections in November 2008), the emergence and consolidation of a nationalist and populist pole and "consolidation of the reformist movement" (Ghebrea, 2007: 257).

1992 – a new Constitution, new electoral laws, new elections

An IRSOP survey conducted in April 1991 showed that 63% of respondents believed that "it is not possible for the communist regime to remain in power" (Brătianu, 2009: 213) and believed in the possibility of the new democracy to stabilize and evolve.

On the eve of the 1992 local elections, the social and political climate was quite unstable. The two Mineriads, in June and September 1990, had created rifts within the FSN, and under the same instability, the three historical parties united with UDMR and a series of less important political formations and created the Romanian Democratic Convention (CDR), which emerged as a real opposition force, whose main advantage in the eyes of the voters was that it provided an image of stability and unity.

The collapse of the FSN and the open conflict between Petre Roman (the former prime-minister) and Ion Iliescu generated a rift within FSN voters. In this regard, the option of most of the FSN youth and intellectuals to join Petre Roman was going to be a process with a series of unfavorable consequences for the future Party of Social Democracy in Romania (PDSR). In this context, a large part of the FSN electorate became "incidental voters" (Bulai, 1999: 88), who preferred to revolve around Ion Iliescu's personality, but renounced any express political commitment. Thus, Alfred Bulai distinguishes between two types of voting, depending on how they manifested sympathy or attachment to a political party or candidate. On the one hand, he identifies the *public vote*, "the one where voters publicly support their opinions, eventually participate in the

political rallies of the respective parties and openly express their preferences" (Bulai, 1999: 89). The *private vote*, which derives from the so-called "ballot box" sympathy, is the vote "which is not publicly expressed, especially in hostile environments, but only in front of the ballot box" (Bulai, 1999: 89). However, a party cannot maintain its political leading position and cannot only exist through this type of private voters, because if they don't constantly reconfirm their attachment and options, the strengths of the support will decrease.

In 1992 the parliamentary elections were held under Law no. 68/1992 for the election of the Chamber of Deputies and Senate, and for the presidential elections, under Law no. 69/1992 for the election of the President. In the September 27th 1992 parliamentary elections, of the 16 380 663 citizens registered on the electoral rolls, voter turnout was 12 496 430, representing 76.28%, a slightly lower percentage than two years before, but higher than the average in Western democracies, which, according to George Voicu, showed that "the people's political appetite stayed alive" (Voicu, 1998: 223). However, we must take note of the fact that in practice, the real turnout was lower, if we take into account the fact that about 1 500 000 votes were null (which would limit the voter turnout to approximately 67%). If we also subtract the "lost" votes, namely the votes cast for parties who did not meet the 3% electoral threshold (approximately 2 million votes), than political participation drops even more drastically, to 53.60%, which means, in George Voicu's opinion, that the level of political participation in the 1992 was "little over the critical limit of political legitimacy" (Voicu, 1998: 223).

The total number of votes validly cast in the elections for the Chamber of Deputies was 10 880 252 (representing 87.06% of the voter turnout), and 10 964 818 for the Senate (representing 87.74% of the voter turnout) (Preda and Soare, 2008: 92). The total number of invalid votes was 1 591 071 for the Chamber of Deputies and 1 507 623 for the Senate (according to the official data, provided by the Romanian Central Electoral Bureau and the Romanian Permanent Electoral Authority). A particularly interesting issue is the fact that, in accordance to the official data published by the Central Electoral Bureau and the Permanent Electoral Authority, the sum of the invalid votes and the ones validly cast is not equal to the number of voter turnout (situation which is mentioned in all elections, from 1992 to present day, the 1990 elections being the only ones when, according to official data, this difference was not found).

Of the 79 electoral lists which submitted candidacies in the 1992 elections (lists including members of 92 political formations) (Preda and Soare, 2008: 85), only 7 managed to win seats in the Chamber of Deputies and 8 in the Senate. Besides them, 13 Chamber of Deputies seats were granted to civic organizations belonging to national minorities (article 4 of Law no. 68 of July 15th 1992, published in "Monitorul Oficial al României" no. 164, of July 16th 1992, mentions the fact that organizations of citizens belonging to national minorities, legally established, which failed to obtain in the elections at least one deputy or senator seat, have the right, according to art. 59 par. (2) of the Constitution, to a deputy seat, if they obtained at least 5% of the average number of votes validly cast throughout the country for the election of a deputy").

The Democratic National Salvation Front gained 28% of the votes and obtained majority in the Parliament after the redistribution of the votes won by the parties who failed to reach the 3% threshold provided by the new electoral law (Romanian Permanent Electoral Authority, 1992a: 1-5). In the first round of presidential elections, held on September 27th 1992, of the total 12 496 430 participant voters, 11 898 856 cast as valid votes (representing 95.91% of voter turnout) (Preda and Soare, 2008: 92). This time, 6

candidates ran for the Romanian presidency, and the first two who obtained most of the votes and got into the second round were Ion Iliescu (FDSN, 47.34% of the votes) and Emil Constantinescu (CDR, 31.24% of the votes) (Romanian Permanent Electoral Authority, 1992b: 1-3). In the second round, held on October 11th 1992, of the 16 380 663 Romanian citizens with voting rights, voter turnout was 12 153 810 persons, indicating a slightly lower turnout than in the first round, namely 74.19%. 12 034 636 votes were validly cast (99.01% of voter turnout) (Preda and Soare, 2008: 91-92). The FDSN candidate, Ion Iliescu, won the elections, by obtaining 61.43% of the votes and became once more the President of Romania (Romanian Permanent Electoral Authority, 1992c: 1-3).

According to a report on Romania's process of transition in the early 90's, elaborated by the International Republican Institute (IRI) and the National Democratic Institute for International Affairs (NDI), the quality of the 1992 elections was compromised by two serious issues which could be noticed during the electoral process: the suspiciously high number of null votes and the extremely high number of voters on additional electoral rolls. 4.74% of the votes for the election of the president, 12.44% of the votes for the Senate and 13.18% of the votes for the Chamber of Deputies were declared null, compared to the 1990 elections, when only 3.12% of the votes for the election of the president, 5.8% of the votes for the Senate and 8.16% of the votes for the Chamber of Deputies were declared null (Report on Romania's Democratic Transition, 2015: 4).

It is difficult to imagine a plausible explanation for this unusually large number of null votes registered in the 1992 elections, compared to the 1990 elections. If in the latter such situation could be more easily accepted, being the first democratic vote after a long period when Romania had lost the exercise of free and fair elections, it becomes hard to explain how the percentage of null votes was higher in the 1992 election, when, in theory, the Romanians were becoming used to the "exercise" of voting. This situation fuelled the arguments of the – rather numerous – people who contested the correctness of the electoral process and claimed electoral fraud. However, despite these difficult to explain phenomena (the large number of null votes and of people who voted on additional electoral rolls), no clear evident of any attempt of election fraud was found.

As sociologist Alfred Bulai stated, the 1992 elections radically simplified the political scene, where four categories of political forces remained (Bulai, 1999: 98). The central axis was composed of the main political formations at that time, namely the Democratic Convention of Romania (CDR) and the Social Democratic Party (PDSR). Another rather powerful force was the ethnic axis, also including two political parties, the Democratic Union of Hungarians in Romania (UDMR) and the Romanian National Unity Party (PUNR). The third axis comprised the so-called extremist parties, of socialist orientation, such as Greater Romania Party (PRM) and the Socialist Labour Party (PSM). The final axis comprised a "mid-ranking" political formation, which didn't have reasons to fear not exceeding the electoral threshold, but wasn't strong enough to win the elections by itself, but only through alliances (which was not possible in 1992). This latter political formation was the Front of National Salvation (FSN), the future Democratic Party (PD).

On the eve of the 1992 elections, the Romanian political scene was far from stable. Besides the FSN (which represented the power) and the opposition (represented by the historical parties), the Romanian political scene witnessed the emergence of a new wave of political formation, which, having very similar names and logos, increased the confusion of the voters, making it impossible to clearly distinguish between them. Some

of these new parties were the Traditional Social Democratic Party (PSDT), the Independent Social Democratic Party (PSDI), the Social Democratic Party (PSD), the New Liberal Party (NPL), the Ecologist Party of Romania (PER), the Romanian Ecological Federation (FER), etc. In the 1992 parliamentary elections, of the 144 political formations existing throughout the country, 88 political formations submitted candidate lists in the elections for the Chamber of Deputies and 74 in the elections for the Senate. In contrast to the previous elections, we can notice a decrease of the number of parties present in both chambers of the Parliament (the composition of the two chambers comprised 4 parties less than 1990), as well as a decrease in the share held by ecologists and liberals and an increase in social-democrats.

The main types of dividing lines manifesting in Romania in 1992 were *ideological, between the left and the right* (which manifested rather more like a rupture between the ones who had won and the ones who had lost as a result of the political change), *ethnic* (visible especially in Transylvania, due to the strong antagonism between PUNR and UDMR), *regional* (which differentiated between Moldova and Muntenia, who had voted for FDSN and Bucharest and Transylvania, where CDR had won) and *rural – urban* (Ion Iliescu had won 54% of the votes in the rural areas and only 36% in the large cities, while Emil Constantinescu was the favorite in the large cities, where he had obtained 42% of the votes, in contrast to the 24% gained in the rural area) (Ghebrea, 2007: 260).

In a paper published in 1998, sociologist Ioan Drăgan draws attention on the fact that the analysis performed on the 1990 and 1992 are mostly based on generalized or partial information, as well as a few surveys from the spring of 1990 (Drăgan, 1998: 301-302). Despite the precarious information, the Romanian sociologist believes that, for the first years of transition, we can distinguish between 4 models explaining the electoral behavior of the Romanian voters (Drăgan, 1998: 313): the *affectionate* (or emotional) *model*, where the motivation of the vote is exclusively emotional; the *legitimist model*, where the motivation of the vote is the restoration of order and stability, or the achievement of continuity; the *model of identity - community*, where the vote is determined by the group of affiliation, and voting irregularities can be noticed based on criteria such as ethnicity, religion, rural or urban environment; and the *usual model* (or de habitus behavior), generated by the existence of a "culture of dependency" to the authorities in the conscience of the population.

Conclusions

Since the beginning of the transition period and up to the early 2000s, when the law still in force was passed, the number of political parties has significantly dropped in Romania. Thus, if during the first post-communist parliamentary elections in Romania, 80 political parties were registered with the tribunal, this number almost doubled until 1992, reaching 155. After the 1992 elections, the number of registered political parties constantly dropped, to 75 in 1996, 73 in 2000, 30 in 2004, 34 in 2008 and 28 in the latest parliamentary elections in 2012 (Preda, 2013: 28). The 1990-1992 period is one that stands out in this context, with a record number of political formations registered with the tribunal and which participated in the elections. This was the period when pluralism and the freedom to create new parties generated a high number of such organizations, the smallest ones, however, remaining almost unknown and basically having no role in the transition process in the first years after the fall of the communist regime. Also, in their great

majority they failed to get seats in the Parliament, the maximum number of political formations represented in the Parliament being 27, after the 1990 elections (situation also generated by the absence of an electoral threshold), and others did not even propose candidates for the elections.

Furthermore, the lack if importance of some of these political formation on the Romanian political scene was also emphasized by the very brief existence of some of them, which did not manage to pass an important test – the test of durability for this type of organizations – and disappeared less than a decade from their creation. With the passing of time, the number of political parties submitting candidacies in the parliamentary elections constantly dropped. However, as noted by political scientist Cristian Preda, this drop was not necessarily an effect of the introduction of the electoral threshold starting with 1992, or of the obligation of having a large number of founding members (starting with 1996 – 10.000 and 25.000 after 2003), but rather more of a strategy conceived by the political formations representing national minorities (Preda, 2013: 34). After the 1990 and 1992 elections, they noticed that it was very difficult for them to win senator seats and gradually gave up on submitting lists of candidates for the upper chamber of Parliament. One of the paradoxes which characterized the beginning of the transition period in Romania was that the 1990 and 1992 elections were the only elections after 1989 which were won by a single political party: FSN in 1990 and FDSN in 1992. As Cristian Preda also shows, all the other elections have been won by political or electoral alliances: the Romanian Democratic Convention (CDR) in 1996, the Party of Social Democracy in Romania (PDSR) in 2000, the National Union PSD+PUR in 2004, the Political Alliance PSD+PC in 2008, the Social-Liberal Union (USL) in 2012 (Preda, 2013: 36).

The first post-communist elections in 1990 were only a first step toward Romania's political development. The conclusions of a report on Romania's process of transition in the early 90's, elaborated by the International Republican Institute (IRI) and the National Democratic Institute for International Affairs (NDI), reveal that, under the conditions of that period (early 1990 – a time of increased social, political and economic instability), the elections were a laudable effort from the state institutions, even if the government was more concerned with the daily crisis than the attempt to implement a concrete program to reform the political system (***Report on Romania's Democratic Transition, 2015: 1-3). Moreover, the government saw in these elections rather an opportunity to consolidate its legitimacy in the eyes of the population, than a public exercise of freedom of choice and only provided a small degree of openness of the political process, enough to grant them Western approval. After the first post-communist elections in 1990, the political system in Romania was characterized, as Cristian Preda notes, by the "quasi-absolute dominance of one party. After the 1992 elections, there was a transitions to a multiparty system without a dominant party, and then, 4 years later, the main element of political change brought by the 1996 elections (held under the 1992 Electoral Law, which provided for the electoral system of proportional representation and a 3% electoral threshold), being the alternation in governance. The effect of simplifying the political scene (by reducing the number the parties in the Parliament), which the introduction of the 3% electoral threshold should have produced, never really existed in fact. In this regard, Alexandru Radu, Gheorghe Radu and Ioana Porumb believed that the political system configured in Romania after the 1992 elections (in fact, like the one resulted after the 1990 elections 1990) was characterized by a "hypertrophied multiparty system" (Radu et al., 1995: 157).

George Voicu believes that there could be arguments to consider the system of parties resulted after the 1992 elections, and which was maintained after the 1996 elections, as a "pure multi-party system", which is an indicator of stability and which "strengthens a horizon of expectation" (Voicu, 1998: 231). One of those is the fact that none of the parties managed to obtain absolute majority of votes, as well as the fact that the first two political formations each obtained over 20% of the votes (fulfilling the requirement pure multipartism imposed by French political scientist Jean Blondel) (Voicu, 1998: 225-226). On the other hand, the two political formation taken into account in this situation are two coalitions, in the case of one of them (CDR) the composing parties opting for their own parliamentary groups. Consequently, Jean Blondel's conditions is not fulfilled, because, in the configuration of the Parliament resulted after the 1992, there was, in fact one single party who held more than 20% of the votes, namely the FDSN (or the PDSR).

After the 2000 elections, Romania returned to a system with one dominant party, situation changed with the 2004 and 2008 elections, but which was repeated after the 2012 parliamentary elections. The latter generated an exceptional situation, where, as political scientist Cristian Preda notes, "the dominance of the USL block made the effective number of parties [in Romania – a.n.] to drop under 2, increasing the impression that the system is returning to its state before 1990" (Preda, 2013: 50). In other words, the political instability which was specific to the first years after 1989 and which generated an atomized system of political parties does not belong in the past, but is an extremely current political reality in Romania. Therefore, although the transition to a democratic political regime has been finalized, the stability and efficiency of the Romanian political system are far from being completed and continue to require much attention and responsibility, especially from the Romanian political class, the one in continuous reformation, rejuvenation, change, accountability, but which does not yet provide certain guarantees regarding the success of all these efforts.

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ORIGINAL PAPER

Peace-building and State-building Challenges in the Republic of Kosovo

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Abstract
The purpose of this paper consist on scientific analysis of political developments in Kosovo after the 1999 armed conflict, mainly focusing on policy-making processes towards peace-building, developing the new democracy and building functional and transparent state institutions. Elaborated materials in this paper will include official documents published by state institutions of Kosovo and the international community engaged in the country. Also, will be used materials from various relevant institutions by country and region, about the Kosovo case. The methodology applied in this scientific paper is based on content analysis of texts and different publications, also by using descriptive, historical and causal method that will enable a real and comprehensive view of events from the beginning of peace-building and the journey toward state-building. The expected results from this paper are aimed to show the many challenges and problems that the country had to go through in building democratic institutions that will serve all its citizens. The conclusions and recommendations of this study will serve as a model for overcoming the political crisis, establishing the rule of the state of law and setting the foundation for a functional democratic state. Moreover, this study can be used as guidance for other multi-ethnic states in the region, which face similar problems as a result of the delayed transition.

Keywords: *Kosovo, peace-building, state-building, challenges, success, failure*

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The beginning of peace-building in Kosovo

The term *peace-building* is attributed to Johan Galtung who had coined this term in three approaches about the peace: peace preservation, the establishment of peace and peace building (Verheij, 2010: 11). Although the term *peace-building* appeared in the early XVI century, this topic was not object of study until '60-'70 years of the XX century (Chetail, 2009: 1). Some of the nations of Europe, such as English, French, Albanian, etc., have and use expressions with similar intonation as: Peace, Paix, Paqe (Dalipi, 2014: 71).

Peace-building aims the transformation of society in lasting peace by dealing with the causes of conflict and by promoting the capacity of local politics to deal with social problems in peaceful ways (Verheij, 2010: 12). While about the concept of peace-building was scientifically discussed, it came into the wide use after the publication of the Agenda for Peace (1992) by Boutros Boutros-Ghali, in that time he was General Secretary of the United Nations (UN, 1992). Norwegian sociologist Johan Galtung, divides the peace in "positive peace" and "negative peace". While the negative peace as a definition is "the organized violence between groups of people or nations", the notion of positive peace is part of a long-term conception, according to which is established a lasting peace, thereby enabling this through the cooperation between groups or nations and by the disappearance of the causes of conflict (Chetail, 2009: 1).

Peace-building in Kosovo has started since 12 June 1999, with the entry of NATO troops, and since then has passed a long period, almost 16 years when Kosovo was detached from Serbia. International missions for peace building have been very active in Kosovo, being engaged in the implementation of programs dealing with inter-ethnic dialogue, peace education, multi-ethnic projects and institutions, democratic governance and the media (CARE & CDA, 2006).

Peace-building in Kosovo and building of an independent and sovereign state, normally has its challenges, each in its uniqueness, towards the journey of building. But, what is more important than the building itself, is maintaining what has been built, such as in the case of peace, as well as in the case of state. Kosovo normally faced with many challenges and of all kind of problems on the path towards state-building, but also on the path towards peace-building. These challenges and problems normally have been overcome with hard work and dedication of Kosovar political class, normally without forgetting the international factor, so we are where we are considering the work done by everyone, including also the citizen or individual, which has very significant role in state-building.

Kosovo despite the problems and challenges, which have been successfully overcome, obviously that there were also failures, something that is probably normal, considering that the lack of experience in state-building has been evident in Kosovo politics. But, when we see how much failures and successes have been, normally the successes are noticed quite a lot and dominate in relation to the failures. How much there were successes or failures of international factor in building of peace in Kosovo, it can be seen from both sides of the coin, because different social groups have different views and perceptions around this issue.

The joint efforts of the United Nations, the OSCE, and the EU, in cooperation with KFOR in Kosovo, are considered a history of success (Narten, 2007: 121). Civilian and military intervention in Kosovo, had as a major cause the prevention of other serious violations of human rights, such as violations that had occurred earlier under the Milosevic regime (Narten, 2007: 122). The UN Security Council, including Russia and China,

emerged with Resolution 1244, in order to prevent violence and to facilitate the dialogue (Reinhardt, 2014: 14). The resolution was adopted on June 10, 1999, with a total of fourteen (14) votes in favor and no votes against (China had abstained) (Weller, 2009: 299). On June 13, 1999, the UN Secretary General – Kofi Annan will appoint Vieira de Mellon as the UN envoy, with the aim to open the UNMIK office, who would receive the task of setting the interim administration in Kosovo and which was responsible for the implementation of the peace agreements reached (Buxhovi, 2012: 893). The purpose of UNMIK (civil) and KFOR (military) was to establish their presence on legitimate basis. UNMIK and KFOR took from Belgrade de-facto all the powers of sovereign authority of the state, in accordance with the UN Security Council Resolution 1244. Here are included the legislative, executive and judicial branches, and KFOR is responsible in military terms to establish security and public order on the basis of a Technical Military Bilateral Agreement with Belgrade, from June 1999 (Narten: 2007: 122).

These joint efforts of UNMIK and KFOR are seen as a good example and success in cases of international administration in maintaining peace, as well as in promotion and protection of human rights. This assessment has changed radically since the violence that erupted in March 2004, and which cost with lives lost, also with the displacement of minorities (Narten, 2007: 121). Finally, all international organizations have supported the idea of "Standards before Status", a policy defined and initiated by the Special Representative of the Secretary-General, Michael Steiner, to describe and fulfill specific standards in relation to the security field, human rights, dialogue with the Serbian government, etc. "The standards before status were later renamed as" The standards and status "and was used as a tool of political pressure against the Kosovar side, and which opposed the demand for early independence by the Provisional Institutions of Self-Government (PISG), which was the local government dominated by Kosovo Albanians" (Narten, 2007: 123-124). From what was said above, we can see a top-down policy that international organizations have implemented in Kosovo, and those are: the efforts of all parties to build and implement a collaborative culture and a sustainable process of peace (Narten, 2007: 124).

Evaluation of results about international efforts (UN, OSCE, EU and NATO), for peace-building in Kosovo, depends mainly on the involved groups of the respective companies (mainly Albanian and Serbian), included in the peace process. Inter-ethnic relations are related to peace-building and state building. This aspect can best be seen by considering the main focus of each group in relation to the peace process, which also serves as an element which sends us to the interpretation of the past, present, and future development of this process (Narten, 2007: 124). Public administration and rule of law are two areas that need to be strengthened, in order that by it can be ensured the political stability, and as a result from this political stability to create more comprehensive political culture, and responsive which respects the multi-ethnicity in Kosovo (Verheij, 2010: 5). According to Francis Fukuyamas, the main task of a modern policy is to regulate the exercise of power under the rule of law (Fukuyama, 2008: 24).

The challenges faced by Kosovo policy in its journey towards state-building

In the case of Kosovo, four key groups are involved about the success or failure of international efforts to build peace (Narten, 2007: 124). The first groups, Albanians of Kosovo, mainly are focused on peace and security through independence to self-determination (Narten, 2007: 124). The second group, totally opposite from the first, Serbs of Kosovo are based as a group in peace and security through reintegration in Serbia (Narten, 2007: 124). In contrast to these two groups, the perspective of different groups (other minorities), such as Roma, Ashkali, Egyptian, Turkish, Bosnian, Gorani, Croats etc., are focused on peace and security through alliances with the majority groups (Albanians or Serbs), which are perceived that determine their future (Narten, 2007: 124). Finally, the international community as the fourth group can be divided into sub-perspectives, each associated with another international organization. Military perspective that includes NATO focuses on peace and security through military prevention; Civil and administrative perspective that includes the UN, focuses on peace and security through temporary authority of veto; Perspective institution – civil building, which includes the OSCE, focuses on peace and security through local capacity building; and finally, civil-economic perspective that includes the EU has focused its peace and security through economic reconstruction (Narten, 2007: 124).

Kai Eide Report (August 2004 and October 2005) ended the period of "implementation of standards" in Kosovo, and as a result came up to the appointment of Martti Ahtisaari as special envoy of the UN for the final status process of Kosovo (UN, 2005).

The international project of state building in Kosovo has started since the end of war in 1999. The international community has lead Kosovo in the executive, judicial and legislative powers. International state builders, aimed to prevent conflicts by taking over the governance of Kosovo, also by installing their military and police forces to protect the country from violence. In 2008, Kosovo distinguishes itself further from other cases of state building, by declaring independence from Serbia (Knudsen, 2010). State building after a war or conflict, as a focus has building of government institutions which must be legitimate. Four features of this definition should be highlighted (Paris, Sisk, 2009: 14-15): state building is not synonymous with peace building. State Building, in contrast is a sub-component of peace-building. What should be done in post-conflict countries are the establishment of legitimate governmental institutions, as well as the commitment of all parties in order to avoid misunderstandings; state building is not limited in form of "top-down" approach of strengthening of institutions (focuses on national elites), also does not preclude the approach "down-top" (work through civil society groups). State must win the legitimacy from two sources, external source or international, and domestic or local source. Regarding the local source, legitimacy derives from a belief among the people of a state, in which public institutions possess the legal authority to govern and which is obtained by free and democratic elections. This is the essence of legitimacy; state building is not synonymous with the building of the country. These two concepts can be linked among themselves, but differ in terms of content because state building has the main focus on public institutions (state machine) from the courts and the legislature, while building the nation has to do with strengthening of collective identity of a national population; 4. all that was said in the three points above are related to the provision of security, rule of law, basic services (including assistance in emergencies, support for the poor and essential health care, collection taxes, etc.).

States first must ensure the public order and protection from the interference or invasions from outside, and then have to provide universal health insurance or free education (Fukuyama, 2008: 32). Kosovo has had difficulties to overcome a wide network of economic and political challenges, including the transition from previous communist economic practices under the Yugoslav leadership; difficulty of establishing or re-establishment of functional markets after massive ethnic cleansing, displacement and violent conflict, the high level of corruption, poverty, and the challenge of the transition from an embedded international profession, in a practice of creation of parallel structures and relocation of basic fundamental responsibilities on security, justice and economic practices (Howard, 2013: 10).

In the discourse of state-builders, policy-making in general is seen as task of specialists and experts, rather than to derive as a result of a political process based on popular consensus (Carton, 2008: 12). This pursued policy, normally carries on separately the risk of inconsistency of policies drafted from the external actors with the needs of community.

The campaign of NATO bombing stopped after a negotiated agreement, and then the OKB takes over the administration of Kosovo. Subsequently, the OKB Security Council approved the Resolution 1244, which mandates the Interim Administration Mission of the United Nations in Kosovo (UNMIK) (Verheij, 2010: 1). UNMIK has remained active since then, even though now after independence, UNMIK's role is diminished and his place has taken EULEX. The change of status quo, for almost a decade, was difficult, until came the time when the OKB special envoy Martti Ahtisaari was tasked to drawn up recommendations to resolve the Kosovo status. This included "supervised independence", in which the executive powers of UNMIK will be transferred to the International Steering Group (ISG), a group of states that monitor the implementation of the plan (Verheij, 2010: 1).

The comprehensive proposal through which will be achieved the resolution of Kosovo's status, had a very short framework agreement with twelve (12) schedules (Weller, 2009: 346). The Ahtisaari Plan or the The Ahtisaari package as it otherwise known, defined a 120-day transition period, during which it was envisaged that (International Crisis Group, 2008: 1): the Kosovo government should prepare the legal framework, which was needed for governing; temporary administration of UNMIK to pass into the hands of the Government; Rule of Law Mission of the European Union, EULEX, to be settled in order to provide support, mainly in the field of security and governance throughout Kosovo with a riot police force; The International Civilian Representative to begin monitoring the implementation of the Ahtisaari plan.

Negotiations for having a new resolution by the Security Council of the OKB, which supports the Ahtisaari Plan was scuttled in 2007 due to ongoing disputes (expected) among the permanent members of the Security Council, and of Kosovo, which decided unilaterally to declare independence on 17 February 2008. Thus, the government in Pristina immediately was supported by the majority of the European Union countries and the United States of America, and by the end of the year, there were 53 countries that had recognized Kosovo. Until the declaration of independence, the disintegration of the former communist federations had occurred along the borders of the constituent republics, and Kosovo case was the first case when a sub-republican unit is recognized as new independent state (Verheij, 2010: 2). Serbia, for Kosovo's unilateral declaration of independence, refers to the International Court of Justice in The Hague, believing that the declaration of independence by Kosovo violates the international law. However, in 2010

the International Court of justice decided in favor of Kosovo and said that Kosovo's declaration of independence from Serbia did not violate international law (ICJ: 2010). However, this did not ended the dispute and Kosovo remains one of the most controversial topics in the world. The OKB Resolution 1244 is still in force, and no further agreement for Kosovo cannot be achieved without the compliance from the all members of the Security Council (Hólm, 2012: 46).

The EU has become the most important international actor in Kosovo, in the period after the independence. EU has taken over many of the responsibilities of the UN and NATO in peacekeeping and police, state-building and administrative reform, since Kosovo committed for the implementation of the Ahtisaari Plan (Verheij, 2010: 3). The mission of Rule and operation of Law in Kosovo (EULEX) is the largest operation in the history of the EU, and the EU has allocated most of resources of pre-accession assistance per capita about Kosovo than in any other country in the world. For the period 2007-2012, about 550 million were earmarked about improvement and promotion of Kosovo institutions, as well as socio-economic development and regional integration (Verheij, 2010: 4).

The main tasks of the EULEX are: monitoring, mentoring and advising the Kosovo authorities within the legal rules, including mostly areas such as justice, correctional services and customs (Verheij, 2010: 46). Taking into account what was said, we can say that in the context of direct governance of the population that has not the last word on her fate, the mechanisms of accountability can be a crucial element to ensure the success of international administration (Lemay-Hébert, 2009: 75). Socio-economic dimension of state-building is an important aspect and should be taken into account in any state-building efforts (Lemay-Hébert, 2009: 70).

In the past, UNMIK, was more committed to build a joint community in Kosovo (Albanian, Serbian, and other communities), rather than working on the construction of the country. It has successfully built institutions for an independent Kosovo, but failed to connect those institutions with a common understanding about a comprehensive notion of Kosovo citizenship (Lemay-Hébert, 2009: 73). But the problem about creating a multi-ethnic state was a problem for UNMIK, because in Kosovo before the war in 1999, there did not existed something like this.

State-building missions should have the courage to ensure the roots of peace and democracy (Montanaro, 2009: 19). International actors should support the strengthening of Social Contract and the enhanced participation of all communities in political decision making (Montanaro, 2009: 20). The independence of Kosovo is a right that belongs to Kosovo, as every other independence. Kosovo has certain attributes to be declared independent. Independence covers certain segments, such as: the aspirations of Albanians became a political reality; from a printed area for many centuries is created a set of civilized and democratic international relations; and the Power of Balkan gunpowder, came to an end, emptied (Jakupi, 2006: 81).

Kosovo's independence has brought peace in the region and this is proven by four factors: 1. the first factor shows that while it was thought that the declaration of Kosovo's independence would bring spread of conflict in the Balkan region, quite the opposite happened, the declaration of independence of Kosovo has brought peace and tranquility in the region. Kosovo very rapidly adopted policies of good neighborliness. The Presidency, Government and the Ministry of Foreign Affairs, as well as relevant state actors and non-state actors, in the deal with Kosovo's foreign relations, worked in harmony and accorded the principles of the Charter of United Nations for good neighborly relations;

2. the second factor had to do with impact that had the application by Kosovo of the policies mentioned above, related to good neighborly policies and which obviously reflected to other Balkan countries to apply the same shape and policies, as well to recognize the independence of Kosovo; 3. the third factor has to do with the statement of International Court of Justice (ICJ), which came up with its opinion that Kosovo's declaration of independence did not violate the international law; 4. the fourth factor relates to the international community, which did not leave Kosovo alone after the declaration of independence. Normally there was even further a need for the presence of the international community, because was needed the normalization of relations between Kosovo and Serbia, therefore this prompted the US and EU to continue to operate in Kosovo in order to achieve this goal. And all this work began to become official in April 2013 where was reached the Agreement for the normalization of relations between Kosovo and Serbia, mediated by Baroness Ashton (Representative of Foreign Policy of the EU). Thus the EU was not just mediating the agreement, but was also the main actor for implementing the agreement (Bashkurti, 2014: 238-239). Kosovo after the declaration of independence cannot be imagined without a multiethnic society (Jakupi, 2006: 77). A multiethnic Kosovo with equal rights for all its citizens should be alpha and omega of the after independence (Jakupi, 2006: 77). Inter-ethnic relations are related to peace building and state building.

Kosovo's independence has brought lasting peace between multi-ethnic communities within the country. And this is indicated by several factors: 1. there were two factors that contributed to ensure multi-ethnic peace in Kosovo. First, the Constitution of Kosovo was approved in June 2008. It was provided in the Declaration of Independence; 2. the Constitution of Kosovo as a unique legal act, has established a strong legal foundation, protection of fundamental freedoms and human rights on one side, and the protection of the rights of national minorities on the other. The Constitution of the Republic of Kosovo is legally based on the European Charter of Human Rights; 3. the Convention for the Rights of Minorities of the Council of Europe; 4. in the Convention for the decentralization of local government; 5. has given a stable legal and institutional framework for the representation of national minorities in all aspects of state and society by giving minorities more rights than any other state in the Balkans, this includes legislative authorities, executive agencies in center and locally. The only area of continuing ethnic disagreement for a long time remains the Serb minority in the northern part of Mitrovica, which remains a challenge for Kosovo's political elite. Furthermore, the situation there basically is not interethnic problem, but mainly a geopolitical problem, a border dispute between two countries. The Serb minority in that area is used, misused and abused by different state actors and non-state actors in Serbia for their interests; 6. the second factor that has contributed to bring peace in Kosovo, was the fact that in the case of the northern part of Mitrovica, the Republic of Kosovo faced with this unprecedented situation by the implementation of policy control, and by avoiding the use of force. There was a strong political will for Kosovo's political leadership to resolve the dispute in North Mitrovica mainly with peaceful political and diplomatic means, and was avoided in maximum the use of force. Even that, there was highly growing pressure against Kosovo's leadership from within Kosovo and abroad trying to impose the use of force in north Mitrovica, the leadership of Kosovo has remained convinced and in voluntary pursuit of its peaceful conduct. Therefore, in the end, this patience brought its fruits and this was seen as a major achievement, especially during political elections in the northern part of Mitrovica, when for the first time since independence, Serbs and Albanians has participate

freely and fairly in elections under the framework of Constitution and law of the Republic of Kosovo (Bashkurti, 2014: 237-238).

After the independence, Kosovo are waiting three (3) key challenges to a successful and sustainable transition from conflict to self-sustaining peace and in state-building: the difficulties of reconfiguration of international presence in Kosovo, which is linked to changes (the advent and departure) of the international missions; the division of Kosovo and challenges posed by the creation of parallel structures in the north, which could bring instability in Kosovo; threats to stability and development, arising from difficult economic situation in Kosovo, and exacerbated by the high rate of population growth (Zaum, 2009: 5).

The transitional presence of the International representatives after settlement of Kosovo's status should not be seen as a conditionality of independence, but only as consolidation of independence (Bashkurti, 2006: 107). Missions for state-building in Kosovo, which are divided into two successive stages, have included elements such as: a centralization of the military power, the rule of law, and support of civil society organizations. In these two phases, the reliability of these missions was supported by the military forces of NATO (Capussela, 2015: 31).

Conclusions and recommendations

The idea that states can or should in some cases be (re)constructed by international factors, are ideas of the era of post-Cold War and mostly these ideas have come from reasons of globalization and changing the autonomy of states. The participation of international community in state-building in countries of crisis, in which this presence is required, is a very complicated process and is needed many years to attain the final goal. Normally in this process, is required a high human energy and financial resources because the process has cost.

Organizations that develop free and democratic elections and from which is determined the political class, have sense and can be expected to respect human rights and from this democratic culture, we may also have a bottom-up process and multi-thnic tolerance. The role that UNMIK, KFOR, OSCE and the EU had, did not reached to understand the complexity of the problem from the bottom-up, and although that the case of Kosovo is known as a case of success, normally we mentioned earlier that in this successful case, there were some elements of failure. These international actors present in Kosovo, made a mistake in what they initially thought a brief presence in Kosovo, moreover later saw that the approach to the problem of Kosovo, does not require a short term presence, but a long-term presence because it requires the solution of social problems from the bottom up.

The role of the international community in Kosovo statehood, and in particular in the maintenance of peace is a model, an example that shall be used as a good experience for other countries of the crisis. The international factor, despite the challenges that had in the Kosovo case, at the final result has shown that it was successful, and the case of Kosovo can be used by the international factor as a story of success. Based on these key findings in relation with Kosovo, the following recommendations can mostly be related with international peace builders. Peace-builders must take clear policy positions after a war or conflict, in order to have easier peace-building and state-building. There should also be a better review of the effects of the presence and peace building efforts, within the complex relations in societies that emerged from the war. Violation of the human rights

as well as the violation of individual property should not be tolerated in any circumstances, even for the sake of the conflictuos past.

Kosovo policy makers in the future should continue to work in order to develop and to lead forward Kosovo's state-building by internationalizing Kosovo's statehood. This implies that Kosovo policy should continue to cooperate with its strategic allies, towards recognition of the state of Kosovo and its membership in regional and international organizations, especially membership in the United Nations Organization (UN). Kosovo has been able to enter into important economic cooperation with leading international financial institutions, like the World Bank and the International Monetary Fund, but a significant number of states that have not recognized the independence, continue to restrict the process of economic recovering.

All what was said above had to do with the work that needs to be done by Kosovo policy making in the area of foreign policy, while regarding the internal politics, Kosovo, or rather the Kosovar political elite should continue to strengthen its institutions, especially those institutions that deal with law enforcement (courts, prosecution) and to continue developing the harmony between minorities and the Albanians majority.

Challenge remains also the high unemployment, considering that Kosovo has the youngest population in Europe. Many young people are educated but have difficulties finding jobs, this should be provided by the state and institutions of Kosovo in order not to have “export” of youth in Europe, because that would be disastrous and failure for the state of Kosovo. To make a summary of all that was said about what should be done by the Kosovo policy making in the future, we say that fighting against corruption through law enforcement brings stability and security to foreign investors that wish to invest in Kosovo, also combats the informal economy. Therefore, from this stability and investment in the economy of Kosovo would have economic development and the provision of jobs, and as a result the unemployment rate would be decreased. Base for the functioning of state is law enforcement. From the non-implementation of law, in a state that in our case it is Kosovo, derives "naturally" also the high development of corruption that is a “cancer” for the society which destroys the whole. This entire process can be seen with more clarity because is linked in a chain form. Non-implementation of law brings corruption, corruption brings no Economic Development also development of the informal economy, from non-economic development we have increasing of unemployment, and by increased unemployment we have emigration of youth abroad. But, if the opposite happens and law is implemented, then we have fight against corruption, from fight against corruption we have economic development and disappearance of the informal economy also foreign investments, from these investments are generated the workplaces and standing of youth in the country. For foreign investors and international donors, it is very important providing security for investment. From what was said, it is obvious that the biggest challenge for Kosovo policy makers is the implementation of law and fighting corruption (such as internal affair),also the increase of recognition of the country and the adjustment of the image in the international arena (like a foreign affair).

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ORIGINAL PAPER

Post-communist Development in Bosnia and Herzegovina: What Future for Brčko District?

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Abstract
During the 1995 Dayton peace talks, the status of Brčko, a small town in northeast Bosnia, became a new source of tension which threatened to put the peace agreement on hold. Both entities, Republika Srpska (RS) and Federation of Bosnia and Herzegovina (FBiH) agreed that the final status should be decided by international arbitration. The tribunal's decision was that Brčko would belong both to the FBiH and the RS simultaneously and at the same time put under international supervision. Years after being considered a remarkably successful example of post-war transformation and peacebuilding Brčko District is now regarded as an anomaly of the already flawed Bosnian political system. It continues to be one of the most disputed zones in the country and the status of this hybrid condominium is challenging the sustainability of the political system as a whole. This paper seeks to summarize the recent developments surrounding the status of Brčko District as well as to explore the wider context of governancein Bosnia and Herzegovina. The paper will further focus on defining relations between entities and Brčko District and the way they contribute to already permanent political deadlock in the country.

Keywords: *Bosnia and Herzegovina, Brčko District, governance, democratization, international arbitration*

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A peaceful revolution that swept accross Central and Eastern Europe and brought down communists regimes took a violent turn in the Western Balkans. The region became entangled in bloody conflicts that took a heavy toll on its development and future prospects. Years after the Dayton agreement formally ended the war in Bosnia and Herzegovina, the country is still portrayed as the political black hole of Europe with its perplexing political system, tenacious nationalist disputes and the lasting political and economic deadlock.

Praised as a significant diplomatic achievement, the Dayton peace agreement was in reality a double edged sword. While it put an end to years of conflict, it also divided the country into two hostile entities that were unable and unwilling to reach any compromise. Some authors emphasize that the peace agreement was a "construction of necessity" (Keane, 2001: 61) and not meant for building a sustainable and stable political system. In terms of territory and international recognition, the new borders reflected the pre-war borders of SRBiH. This granted the external sovereignty and recognition of the Bosnian state. The internal sovereignty, on the other hand, was severely undermined with the concurrent partition of the country into two semi-independent entities – the Republika Srpska and the Bosniak-Croat Federation. The central government lost the majority of legal and executive authorities that were transfered to entity level. While it did create a *multi-ethnic state* consisting of three major ethnic groups (Catholic-Croatian, Muslim-Bosniak, and Orthodox-Serbian), the Dayton agreement at same time territorialized and politically institutionalized national cleavages and linked territories within the Bosnian state to particular national identities (Jeffrey, 2004: 88).

In practical terms, the Dayton peace negotiations were a process of dividing the land and assigning contested towns and territory to one of the entities. In this process a small northeastern town of Brčko became the last piece of the Dayton puzzle that threatened to crush the international efforts to achieve peace in the Western Balkans.

Brčko's important geopolitical position made both entities determined and uncompromising in their claims over its territory. In 1995 Brčko was not only split between Bosniak, Croat and Serb forces, but it was also situated at the intersection of their vital territorial interest (Dahlman, Tuathail 2006: 651-675) therefore becoming the "toughest of all issues at Dayton" (Holbrooke, 1999: 296). This article will seek to examine the initial success of Brčko District and its downfall in recent years. It will explain the (un)expected shift of Brčko District from a successful model of international peacebuilding to a potential flashpoint leading to renewed violence in BiH.

International arbitration and the establishment of Brčko District

The pre-war municipality of Brčko, was an important river port and a principal transit region connecting Bosnia with economically more prosperous republics of Croatia and Serbia. It was covering a relativelylarge area (439 km. sq.) with 87,332 inhabitants in 1991, some 41,000 of whom lived in the town centre and its surrounding suburbs (ICG, 2003: 3) Brčko was ethnically mixed comprising of 44,06 per cent Bosniaks, 25,39 per cent Croats, 20,68 per cent Serbs, and 10 per cent "Yugoslav and other" according to 1991 census (NSS Sarajevo, 234). This demographic structure was changed completely by the war as the town was seized and ethnically "cleansed" by Serb forces in May 1992. Brčko witnessed some of the heaviest fighting and ethnically motivated violence during the war, becoming the site of numerous war crimes and concentration camps, and this had a profound impact on later peace-building process and the restoration of peace (The city's

river port (Luka) became the seat of one of the biggest concentration camps in northern Bosnia; mass killings, torture and mass rapes were done by Serb forces especially during the first few months of the war. All city mosques were burnt to the ground and the town's infrastructure was almost completely destroyed). The estimated population of Brčko in 1996 was 45,000, 97.5 per cent of whom were Serbs (ICG 2003: 3).

At the time of the Dayton peace negotiations both entities defended their right over Brčko. The Serb side claimed that Brčko was vital to Republika Srpska's integrity as it was the only link connecting its northern and eastern part and that without it, the continuity and survival of the Republika Srpska would be put at risk (ICG 2003: 2). In sharp contrast, Bosnian and Croatian side vigorously and repeatedly argued that as the town and its surrounding villages had a pre-war Croatian and Muslim combined majority, under the principles governing the Dayton agreement, Brčko and its sorounding areas should be awarded to the Federation (Klemenčić, Schofield, 1998: 69). They insisted that assigning Brčko to Republika Srpska would be an act of rewarding war crimes and ethnic cleansing. The only agreement in relation to Brčko reached at Dayton was that the final decision would be made by an international arbitration.

Annex 2 of the Dayton Agreement (article 5) states that: *The parties agree to binding arbitration of the disputed portion of the Inter-Entity Boundary Line in the Brcko area on the map attached* (In reality there was no map attached and therefore the first task of the tribunal was to define the borders of the disputed area. During the war the Brcko Municipality was fragmented into three parts, based on ethnic divisions: Brcko Grad (Serb), Ravne-Brcko (Croat) and Brcko-Rahic (Bosnian). The arbitration process was supposed to find an effective strategy of governing this divided area) *in the Appendix [...] No later than six months after the entry into force of this agreement, the Federation shall appoint one arbitrator, and the Republika Srpska shall appoint one arbitrator. A third arbitrator shall be selected by agreement of the Parties' appointees within 11 days thereafter ... The third arbitrator shall serve as presiding officer of the arbitral tribunal* (Dayton Agreement, Annex 2, article 5 in OHR, 2000: 37).

As a result of this agreement the Brčko Arbitral Tribunal was formed in 1996. It included one representative each from the RS and FBiH (Dr. Vitomir Popović and Professor Ćazim Sadiković respectively) and was presided over by Roberts Owen, a member of the US negotiating team, chosen by the International Court of Justice. Arbitration proceedings were originally scheduled to take place towards the end of 1996. Considering the intense political struggle for Brčko and escalating tensions and nationalist rhetorics, the Tribunal was hesitant to issue an award and risk reigniting armed conflict (Dahlman, Tuathail, 2006: 651-675). It was clear that arbitration decision could have serious consequences as it seemed that awarding Brčko to either entity would lead to a renewed armed conflict. Serb member of the Presidency Momčilo Krajišnik stated that the integrity of Republika Srpska via Brčko is more important than peace and that they "would go to war over Brčko" (Graham, 1997). With regards to such attitudes, Republika Srpska initially refused to participate in the deliberations of the arbitration panel and accused the Tribunal of favouring the Bosniak side (ICG 1997: 4). Once the formal arbitration hearings started in Rome in early January 1997, Republika Srpska, however, decaded to engage in the process, hoping that the arbitration would reaffirm the Serb control of Brčko.

After unsuccessful implementation of the Dayton agreement, particularly in terms of return refugees, and persisting instability in Brčko and its surrounding areas, Rome interim declaration (1997) pushed for radical increase of international intervention in

Brčko. The most important step towards achieving this was the creation of the Office of the High Representative in Brčko headed by the "Brčko Supervisor". According to the decision of Arbitral Tribunal, the supervisor gained very broad unilateral executive authority: *The Supervisor will have authority to promulgate binding regulations and orders in aid of the implementation program and local democratization. Such regulations and orders shall prevail against any conflicting law. All relevant authorities, including courts and police personnel, shall obey and enforce all Supervisory regulations and orders. The parties shall take all actions required to cooperate fully with the Supervisor in the implementation of this provision* (Arbitral Tribunal, Article II in OHR, 200 I).

In practice this meant that the Supervisor gained almost unlimited authority and his decisions could not be questioned or overruled. The Tribunal once again postponed making the final award of Brčko as the situation in the town and the surronding area was far from peaceful. Refugees were prevented from returning to their homes with frequent episodes of violence and constant threats. As time the passed, the Arbitral Tribunal came under significant pressure to reach the final decision. In March 1999, after three years of hearings and negotiations, the Tribunal announced the Final Award of Brčko. The decision was that Brčko area would officialy become a District that would be part of both entities and be shared by them in condominium. It would at the same time gain a level of de jure (if not de facto) independence from the entity governments: *[...] upon the effective date to be established by the Supervisor each entity shall be deemed to have delegated all of its powers of governance within the pre-war Brcko Opstina to a new institution, a new multi-ethnic democratic government to be known as "The Brcko District of Bosnia and Herzegovina" under the exclusive sovereignty of Bosnia and Herzegovina. The legal effect will be permanently to suspend all of the legal authority of both entities within the Opstina [municipality] and to recreate it as a single administrative unit* (Final Award, paragraph 9 in OHR, 2000a: 284-285).

None of the parties was actually satisfied with such a decision but they were aware that at the time it was the only viable option. Critics pointed out that the Tribunal was creating a merely temprorary solution to the problem by keeping the status of Brčko rather ambiguous and, in its essence, still disputed. On the other hand, the Tribunal justified the Final Award as a means of establishing a "multi-ethnic democratic District with strong connections to the Bosnian state, while producing an independent structure of governance over the territory that has the strength to resist incursions by either entity" (Jeffrey, 2004: 107). With the Final Award in place, Brčko became almost entirely self-governing. The District became sort of a corpus separatum, a unit of territory beyond the control of the Entities and under the exclusive sovereignty of Bosnia and Herzegovina (Parish, 2010: 70-71).

The Statut of Brčko District which represents the District's "constitution", established separate legislative, executive and judiciary powers, independent on the authorities of RS and FBiH. At the same time, the District also laid the foundations of independent health, education and tax systems as well as the police force. It is important to notice, however, that the District's self-government only applied to its relations with the Entities. Soon after the implementation of the Final Award there was an escalation in the powers of the international organisations in Brčko, in particular the Office of the High Representative (later renamed to "The Office of the Final Award").

The position and powers of the international Supervisor remained firmly rooted and the Supervisor continued to oversee and control the creation and functioning of all District institutions. The system that was established in the District resembled a

dictatorship of the Supervisor considering that he was appointed and not elected and all political power rested in his hands. He was granted the authority to give and revoke political power any way he deemed suitable. All District supervisors have been American officials starting with a diplomat Robert W. Farrand who paved the way for the coming supervisors.

Brčko District – a *Success* Story?

In the first few years of its establishment, Brčko District became focus of unprecedented international attention and foreign investments were pouring in. Ethnic tensions that were holding the rest of the country back were tamed by better living conditions, more job opportunities and equal treatment and position of all ethnic groups. According to some authors (see Parish, 2010; Oner, Kirbac, 2013) the main reason behind such success lied in the established and firm authority of the Supervisor. Acting as the mediator between all three sides the Supervisor also exercised unchallenged authority in decision making.

Soon after the Final Award was announced he established a multiethnic assembly and appointed all senior public officials including a mayor, vice-mayor and heads of government departments. The Assembly of 29 members was meant to reflect and balance the multiethnic structure of the city. An unofficial *ethnic key* was introduced, under which job positions at all levels would be distributed in the ratio 2:2:1 (Bosniak:Serb:Croat) (This informal rule granted Croats a gross over-representation in District nstitutions considering that after the war they accounted for only 10 per cent of overall District population) (Oner, Kirbac, 2013: 14).

Brčko District offered an alternative to the idea of creating ethnically homogenous and distinct territories as means of achieving peace. Unlike the central and entity governments that held strong ethnic veto powers, the political system in Brčko allowed power sharing and encouraged cooperation between the ethnic groups. The long-term goal was to establish a strong multi-ethnic democratic system that would eventually grow out of need for international involvement.

Probably the most cited example of District's success is the educational reform that integrated the schools and made them multi-ethnic. The District government under the auspices of the Supervisor, approved new curriculums and decided that all first-grade students would attend school together, regardless of their ethnic background. Two exceptions had to be made when adopting the curriculums – native language (Bosnian/Serbian/Croatian) and history classes would be taught separately. Students of higher grades continued to attend classes separately (similar to "two schools under one roof" principle that was present in the rest of the country).

An important aspect of District's initial success were far reaching budgetary and revenue reforms that accounted for the District's economic self sustainability. Adoption of District's first budget in April 2001 was followed by establishment of the District Revenue Agency, an independent executive institution responsible both for revenue collection and treasury functions, with the objective of ensuring transparent expenditure of District funds by government departments (Oner, Kirbac, 2013: 11). Unexpected economic growth in the District created a vast budget for District institutions. By September 2003 Brčko District had the lowest unemployment rate in the whole country (around 45 per cent) and the highest average wage of 690 Bosnian Marks,or KM (approximately 350 Euros) per month. In comparison, the average monthly wage in the

Federation at this time was 512 KM; in the RS 385 KM (Oner, Kirbac, 2013: 12). Abundant funds have been invested to reconstruct the destroyed infrastructure and factories (some of the most mentioned examples are Sava port, Bimal oil factory, Arizona market etc.) and create new job opportunities.

Comparing to other parts of the country Brčko District achieved greater levels of integration between the different ethnic groups and formally recognised the equal right of each ethnic group to live there, to practice their religion, to speak with their own language and to write in their own alphabet (Jones, 2011: 5). Rather than to promote their ethnic identity, citizens of District were encouraged to adopt liberal democratic citizenship. This goal was to be achieved by ethnic mixing in all public institutions, the formal equality of the three main languages and two main scripts and the removal of ethnic symbols from public space (Jones 2011: 7). Street names have been altered to reference ethnically neutral subjects (e.g. the main square that was renamed during the war to The Serb liberation of Brčko is now called "Square of Youth").

Critics however point out that multi-ethnic democracy that was established in Brčko was conceived in strict mathematical terms and "involved recruiting people of the right ethnic origin for posts within executive and legislative bodies" (Jeffrey, 2004: 147). Such an approach in the long run removed the possibility of citizens developing a multicultural civic identity and kept them permanently locked in their ethnic positions. Similarly, the post-conflict strategy adopted in Brčko was focused on encouraging forgetting and avoiding any public debate about the war crimes, the victims or the punishment of the perpetrators. In some sense confronting the trauma of conflict became a taboo and silence about the war became an accepted social norm. Citizens were encouraged to accept the new authority of the Supervisory regime that promoted a hybrid unity (Jeffrey, 2004: 148).

However, the fact that Brčko portrays the image of neutrality when it comes to ethnic divisions is in no way an indicator of completed reconciliation process or the definite success of peacebuilding. Based on interviews done in December 2014, citizens of Brčko feel that District continues to be in a limbo where every matter is too politicized and where reconciliation is forced and merely cosmetic (Interviews conducted by the author in April 2015). The field research further shows that even though society is ethnically mixed at the administrative level, the town remains deeply divided. Most of the suburbs are inhabited only by one ethnic group, cafes and restaurants are separated and there is little communication between different ethnic groups in the private sphere.

Brčko District at Risk

In June 2006 Supervisor Schwarz-Schilling announced that the Office would be closing down and even though the mandate was later extended it was enough for everyone to stop taking the Office and its decisions seriously. The leadership became less effective and nationalist elites took it a as a sign that their time was approaching. The international staff working in OHR was just as unmotivated and ineffective as they realized that their mission was coming to an end. With the appearance of new threats to international security and new conflicts spiraling out of control (e.g Afghanistan, Iraq, Syria), the EU and the US lost their interest in Bosnia. This also meant that they stopped sending in the most qualified diplomats and staff and this resulted in the lack of comprehensive approach to District's future.

The most important act from this period was Supervisor Susan Johnson's decision to abolish all Entity laws in the District (2006, Supervisory Order "Entity legislation in Brčko District and the IEBL"). This decision shifted the District a step further from Entities grip and made the District's legislation supreme within its territory. In March 2009, under remarkable international pressure, the BiH Parliamentary Assembly adopted Amendment 1 to the Constitution, which defined Brčko's place in constitutional structures. The amendment guaranteed District a direct access to the Constitutional Court in case of political disputes with the entities or state institutions. However, it failed to resolve its legal status and provide the District with representation in state institutions.

In the meantime, rumours about dividing the city started to circle amongst political leadership and situation on the ground was changing dramatically. By the beginning of the September 2007 school year, schools were starting voluntarily to re-segregate themselves, with "only 12 per cent of primary school children attending a school in which the majority ethnic group did not outnumber all other pupils combined by a ratio of 2:1 or more" (Oner, Kirbac, 2013: 14). The reason behind such a change was a policy that allowed parents to choose to send their children to any school they wished within the District. This was a clear indicator that the previous success in mixing the population was forced a did not really have a profound effect. This was also confirmed by election results in the District that once again put the power in the hands of the nationalist parties. National daily newspapers, both in Republika Srpska and in Federation, were filled with prognosis of Brčko being re-divided and the OHR could no longer influence the public opinion.

In 2012, after 15 years of international supervision, the High Representative closed the office in Brčko and suspended Supervisor's powers. Such decision was justified with claims that District's institutions have achieved a significant progress and were ready to set their own agenda and implement their decisions independently. Some safeguards continued to be in place. Supervisor Adam Moore in his letter to the citizens of District states that "the High Representative, the Arbitral Tribunal, the BiH Constitutionall Court, OSCE and the EU will have powers to protect the progress achieved in Brčko" (Moore, 2012). Since then the District began to face its greatest crisis of governance and economic development. In the past five years, all Bosnia, including the District, was shaken by a political and economic crisis. Massive anti-government protests that spread around the country in 2014 within the couple of days reached the District. The angry crowd threw eggs at the government building and surrounded and threatened the mayor when he tried to address them. To make matters worse, just a few months later, the entire region suffered deadly floods and landslides that destroyed much of the infrastructure as well as private homes and buildings. The flood damages in the District were calculated to millions of euros. These events created additional tensions and citizen dissatisfaction with the whole District arrangement.

Many authors (Parish, 2010; Dahlman, Tuathail, 2006: 651-675) agree that Brčko remains a geopolitical space under construction and contestation. Closing the Office and suspending the Supervisor's powers put the District at a great risk as the political leadership from both Entities, and the RS in particular, never really accepted District's existence or gave up their claims over its territory. In the words of Henry Clarke who served as the District's Supervisor from 2001 to 2003, entity intrusions into District's territory are a serious threat and "Entities would eat Brcko alive when the Supervisor is gone" (Jeffrey, 2006: 214). Without international supervision there is little District authorities could do if one or both of the entities tried to destabilize the situation in Brčko.

The question that remains is if questions is if Brčko District can survive until the country as whole moves beyond ethnic animosity and reaches a relative state of political stability.

The development of political situation in the region directly influences the situation in Brčko. After Kosovo's declaration of independence in 2008, Republika Srpska saw it as an opportunity to seek and justify its own independence. The president of Republika Srpska, Milorad Dodik threatens with holding a referendum that would legitmize the final secession of his entity. The possibility of Republika Srpska's seccession is vigorously opposed by the international community. Unlike Kosovo that was a constitutionally defined territorial unit in ex-Yugoslavia with similar authorities and rights as the republics, Republika Srpska did not exist as a unit until its unilateral proclamation of independence in the beginning of the Bosnian war. Regardless of the historic and legal reasons, accepting Republika Srpska's independence would be seen as legitimizing the ethnic cleansing and crimes against humanity that led to its establishment in the first place (see Malcolm, 2010). This could only be achieved if Republika Srpska would reach territorial integrity and Brčko would become an inseparable part of it. The FBiH, on the other hand, has neglected Brčko District since its establishment and created a vacuum RS is eager to fill (ICG 2011: 9).

Conclusion

The Dayton agreement failed to resolve the status of Brčko and it was only in 1999, under immense international pressure, that Brčko District was established. The international Tribunal granted Brčko a special status of almost complete independence from the Entities and the city soon began to resemble a protectorate under the auspices of the international Supervisor. His powers were virtually unlimited and extended to all areas of social, political and ecnomic life in the District.

In the early period, Brčko District achieved a great progress in terms of political stability, refugee returns and economic growth. By 2003 it had become the most attractive place to live in the whole Bosnia and Herzegovina.

Sinc Supervisor's powers have been suspended in 2012, the District experienced political and economic instability, becoming less and less attractive for potential investors and ever more attractive for radical nationalist politicians. Developments beyond Brcko (primarily the relations between the Entities, Kosovo's declaration of independence and subsequent plans of Republika Srpska to secede and overall lack of international attention and interest in the region) fuel the ethnic tensions and divisions in the District. The progress that was achieved by large-scale international engagement is now put at risk by nationalist politics and the weakness of the entire state-level political system. Economic decline, re-segregation of formerly multi-ethnic schools and increasing nationalist rhetorics only show that the District is in no way distant or detached from political disputes in the rest of the country. The future of District will therefore be decided by developments beyond its territory, primarily the level of strength that the central government will exercise in controlling Republika Srpska's advances and ambitions.

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Privilege against Self-Incrimination – Guarantee for Fair Trial in Modern Criminal Procedures (Nemo Tenetur Prodere Seipsum)

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Abstract
The defendant is one of the core subjects of the criminal procedure. As a subject, he has a range of rights, such as: the right to remain silent, the right to defense, the presumption of innocence, the right to be informed for the accusation, the right to be tried within a reasonable time, etc. By some authors, the privilege against self-incrimination is a core right of the defendant, which from derives some of above-mentioned rights! The privilege against self-incrimination does not refer only to the defendant, but it`s main effect must go to the state bodies and not allow them to compel the defendant in a way that he/she would criminalize himself/herself in judicial proceedings. The privilege against self-incrimination is in correlation with the idea that no one is obliged to risk his life or liberty by answering the questions in the course of judicial proceedings. This privilege, particularly contributes to protect the integrity of the individual in official procedure'. The privilege against self-incrimination appears in the International Covenant on Civil and Political Rights, the American Convention on Human Rights, in the Statute of the Tribunal for the former Yugoslavia, in the Statute of the Tribunal of Rwanda, as well as many national acts of different countries through the world: the Charter of Rights and Freedoms of Canada, the Fifth Amendment of US Constitution, the Constitution of India, the Constitution of Pakistan, the Constitution of South Africa, etc. This privilege appears in the Criminal Procedure Law of the Republic of Macedonia, the Criminal Procedure Codes of the Republic of Albania and the Republic of Kosovo. From the most relevant acts presented, privilege against self-incrimination is not provided in the European Convention on Human Rights.

Keywords: *privilege against self-incrimination, remaining silent, burden of proof, the defendant, criminal proceedings*

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Introduction

The privilege against self-incrimination guarantees that men and women cannot lawfully be required to answer questions that will aid in convicting them for a crime. The privilege is widely regarded as both fundamental to human liberty and venerable in the history of the development of civil rights. Some form of the privilege can undoubtedly lay claim to antiquity, boasting a link with the Latin maxim often used to state it, nemo tenetur prodere seipsum that means that no one should be compelled to betray himself in public (Helmholz, 1997: 1). The principal that a person ought not to be compelled to act against his or her own interests and in particular be able to refrain from implicating him or herself in a crime has been traced back to Talmudic Law (Schlauri 2003: 39). However it might be difficult, or quite probably impossible, to trace the modern procedural guarantee back to such a source. It is preferable to think of this principle as having its origins in the development of common law. Although some authors refer to developments in eleventh and twelfth century, the birth of the right is generally traced back to 1641 when both the Star Chamber and the High Commission were abolished and the *ex officio* oath forbidden (Schlauri, 2003: 56-60).

Most important international acts and the largest number of contemporary national acts foresee the privilege against self-incrimination as a part of the rights and opportunities of the defendant in criminal proceedings. Moreover, the privilege against self-incrimination introduces legal protection from getting the confession of the defendant by using violence or torture. Its regulation in international acts, the approach of national acts toward the privilege against self-incrimination, correlation with the presumption of innocence, the right to remain silent and the burden of proof, it`s ratione materiae and the exceptions from the rule shall be subject of this paper.

The privilege against self-incrimination in International and Domestic Acts - a comparative view

International Covenant on Civil and Political Rights (hereinafter: ICCPR) in Article 14, al.3, (g) contains this privilege with other provisions that constitute the minimum rights of a person against whom is being carried out an ongoing criminal process. Having determined that "no one is to be compelled to testify against himself or to confess guilt", ICCPR, the application of the privilege against self-incrimination does not restrict only to non-answering a specific question but also in his non-compelling to plead guilty. The same provisions is provided in the Statute of the Tribunal for ex-Yugoslavia (art. 21, subart. 4 (g)) and in the Statute of the International Tribunal for Rwanda (art. 20, subart.4 (g)). The statutes of both tribunals puts the privilege against self-incrimination in the wake of the rights of the defendant. American Convention on Human Rights (hereinafter: ACHR) provides the same text (art.8, subart. 2, (g)) but also contains a special section (subart.3) which explicitly provides that "A confession of guilt by the accused shall be valid only if it is made without coercion of any kind".

The privilege against self-incrimination is not present in a explicit way in the text of European Convention on Human Rights (hereinafter: ECHR), but is considered as a part of the fair trial principal of the ECHR. In the legal system of United States of America, the privilege against self-incrimination is foreseen in the Fifth Amendment of the

Constitution. The Fifth Amendment to the U. S. Constitution provides, that: "No one, in any kind of criminal proceedings, shall not be compelled to testify against himself".

According to Leonard Levy: "The Framers of the Bill of Rights saw their injunction, that no man should be a witness against himself in a criminal case, as a central feature of the accusatory system of criminal justice. While deeply committed to perpetuating a system that minimized the possibilities of convicting the innocent, they were no less concerned about the humanity that the fundamental law should show to the offender. Above all, the Fifth Amendment reflected their judgment that in a free society, based on respect for individual, the determination of guilt or innocence by just procedures, in which the accused made no willing contribution to this conviction, was more important than punishing the guilty" (Levy, 1988: 260).

However, because the dictates from the Fifth Amendment were not applicable to the states until 1964, a separate line of constitutional jurisprudence developed at the state level to address interrogations and involuntary confessions. In a series of opinions, the U. S. Supreme Court carved out a "totality of the circumstances" standard to examine whether confessions were indeed voluntary. This standard was derived from the due process clause of the Fourteenth Amendment. Relevant factors to be considered in the analysis included: the length of interrogation, the age and intelligence of the suspect, whether the suspect has been physically abused, threatened or intimidated, whether there was a deprivation of food, water or restroom breaks, and the suspect`s previous experience with the criminal justice system (Mack, 2008: 298).

The privilege against self-incrimination is a universal value and is part of many domestic acts of states throughout the world, i.e. in the Canadian Charter for Rights and Freedoms (in art. 11, (c)), among other rights is provided the privilege against self-incrimination. Precisely, by this article: "Any person charged with an offence has the right (among others) not to be compelled to be a witness in proceedings against that person in respect of the offence"; the Constitution of India (in its Part III: Fundamental Rights/ Right to Freedom: Protection in respect of conviction for offences is provided that: "No person accused for any offence shall be compelled to be a witness against himself"); the Constitution of Pakistan (in Part II: Fundamental Rights and Principles of Policy, Chapter 1: Fundamental Rights, provides the disposition: Protection against double punishment and self-incrimination, as follows: "No person: (a) shall be prosecuted or punished for the same offence more than once; or (b) shall, when accused of an offence, be compelled to be a witness against himself"); the Constitution of the Republic of South Africa provides disposition on self-incrimination in its Chapter 2: Bill of Rights as a Right of an arrested, detained or accused persons, précising that: "Everyone who is arrested for allegedly committing an offence has the right (a) to remain silent; (b) to be informed promptly: I. of the right to remain silent; and II. of the consequences of not remaining silent; (c) not to be compelled to make any confession or admission that could be used in evidence against that person, etc. The Law on Criminal Procedure of the Republic of Macedonia, the Code of Criminal Procedure of the Republic of Albania as well as the Code of Criminal Procedure of the Republic of Kosovo provides the privilege against self-incrimination, as well. The Law on Criminal Procedure of the Republic of Macedonia (Official gazette no.150, 18.11.2010) provides the privilege against self-incrimination in the disposition that regulates the rights of the defendant in criminal proceedings (Art. 70), when except other rights like the right to be informed in time and in a detailed way for the accusation against him, the right to have enough time to prepare the defense and so on, is stated that the defendant cannot be compelled to testify against himself or his relatives and cannot be

enforced to confess guilt for a certain crime. In the text, a similar situation is foreseen for the witness as well (Art. 216 provides that the witness is not obliged to answer the questions, if by answering them, he incriminates himself or his relatives or causes huge material damage or considerable shame).

The Code of Criminal Procedure of the Republic of Kosovo (Code nr. 04/L-123, 13 December 2013) contains a disposition for the privilege against self-incrimination in the art.10, p.2 and 3 and in comparison with the disposition of Macedonian law is more detailed one. Consequently, in this disposition is stated that: "the defendant is not obliged to defend himself or to answer a specific question, and if uses the defense, he is not obliged to incriminate himself or his relatives neither to confess guilt. This situation does not include the cases when the defendant voluntarily decides to collaborate with the state prosecutor" and: "It is forbidden and punishable to compel the defendant or any other person that participates in criminal proceedings, to impose a confession or any other statement by torture, force, threat or under the influence of drugs or other similar measures". In this view, the Code of Criminal Procedure of Kosovo, regulates in a supplementary way the issue of this privilege and in particular way emphasizes the main ways of its non-compliance in practice (application of force, torture, threats, etc.). This is a solution nearer to the one that exists in ACHR!

The Code on Criminal Procedure of the Republic of Albania (Edition of Official Publication Center, Tirana, 2013) in the articles 36 and 37 determines the value of defendant`s declaration in general and the one that shows self-responsibility. According to the legal provisions, the statements made by the defendant during the proceeding, cannot be used as proof of the case and if a person, who is not a defendant, in front of proceeding`s authority makes statement that contains incrimination against him, the authority is ought to interrupt the questioning and to warn him that after this statement, he may be a subject of an official investigation and invites him to appoint a defender. This statement cannot be used against the person who gave it! Determining for: "The person who is not a defendant", this procedural code determines the circle of persons (ratione personae*)* whom the privilege against self-incrimination belongs, but at the other hand, inviting him to appoint a defender, it`s seems that is left a chance for his prosecution on the basis of the given statement. Otherwise, why is a defense necessary, if the statement or declarations cannot be used against him?!

The privilege against self-incrimination and the presumption of innocence

The presumption of innocence is one of most important presumption of the criminal procedure law, that is foreseen not only in legal acts, but also in constitutional and international acts (Matovski, Buzharovska, Kalajxhiev, 2011: 63) and is usually defined as a right of e person to be presumed innocent until his guilt is not determined with final court decision. The presumption of innocence is provided in favor of the defendant (Sahiti, Zejneli, 2007) and is reflected in the burden of proof (belongs to authorized prosecutor) and the duty of the court to interpret the dubious facts in favor of the defendant *(in dubio pro reo).*

Correlation between the presumption of innocence and the privilege against self-incrimination comes because those two institutes complements one-another. Starting by the fact that each individual is presumed innocent and argumentation of his guilt is a duty of the authorized plaintiff in criminal proceedings, the defendant has the right to remain silent and even if he is not using this right, he can still refuse to answer specific answers

that incriminates him or his relatives, and his silence or refusal cannot be considered as a circumstance that increase the level of his guilt. Even if he remains silent or refuses to answer, he is still protected by the presumption of innocence that must be "laid down" by the authorized plaintiff. However, the case of *John Murray v. UK (*John Murray v. United Kingdom Application 19731/91, 14.11.1991) to some extend blurs this picture! This applicant was found by the police in a house where a person kidnapped by IRA was held prisoner on the first floor. The applicant came down the staircase when the police entered the building. It is the first case which concerns legislation permitting inferences from the silence of the suspect under certain circumstances. In its report the Commission stated that "whether a particular applicant has been subject to compulsion to incriminate himself in such a way as to render the criminal proceeding unfair… will depend on an assessment of the circumstances of the case as a whole". The court addressed the issue squarely: "What is at stake in the present case is whether these immunities are absolute in the sense that the exercise by an accused of the right to silence cannot under any circumstances be used against him at trial, or, alternatively, whether informing him in advance that, under certain conditions, his silence may be so used, is always regarded as improper compulsion". On the one-hand it is self-evident that it is incompatible with the immunities under consideration to base a conviction solely or mainly on the accused`s silence or on a refusal to answer questions or to give evidence himself. On the other hand, the Court deems it equally obvious that these immunities cannot and should not prevent the accused, in situations which clearly call for an explanation from him, be taken into account in assessing the persuasiveness of the evidence produced by the prosecution.

The privilege against self-incrimination and the right to remain silent

One might be tempted, perhaps even seduced, by the rather loose terminology into assuming that the "right to silence" and the "privilege against self-incrimination" are one and the same thing. However, the two guarantees must be seen as being represented two partly overlapping circles. The right to silence is narrower in that it refers to acoustic communication alone, the right not to speak. The privilege clearly goes further in that it is not limited to verbal expression and it also protects against pressure to produce documents (Trechsel, 2005: 342). By the interpretation of European Court for Human Rights, the right to silence and the privilege against self-incrimination are internationally recognized guarantees that "stays at the heart" of the idea for fair trial like it is provided in the article six of the ECHR (Haris, O`Bojl, Varbrik, 2009: 259).

The tight co-relation between the right to remain silent and the privilege against self-incrimination has been subject of many cases from the practice of the courts. A specific case is the case *K v. Austria.* In this case, the applicant was accused before the District Court in Linz in having bought three grams of heroin from a couple M and Ch W, who were being prosecuted in separate proceedings before the Regional Court in Linz. The applicant was charged with having bought and possessing drugs, *inter alia,* from this couple. M and Ch W were charged with drug dealing. The applicant pleaded not guilty and was then summoned to give evidence at the trial of M and Ch W. It can be assumed that in the witness stand he would have had two choices: either to lie or to say that he had in fact bought drugs from the defendants, and thus at the same time, necessarily admit that he had committed an offence. This would certainly have amounted to a confession and would have been incompatible with his right not to incriminate himself and to remain silent. The Commission, however, found that in the proceedings against M and Ch W, K.

could not be considered to be an accused and thus could not claim any rights under Article 6. (Trechsel, 2005: 343). Interpreting this right in the light of Article 6 it was found that while there were situations in which a person could be compelled to make a statement, i.e. when there was a basis in law, a legitimate aim in conformity with Article 10 $ 2, and a pressing social need for a compulsion- such as the duty to testify as a witness- a person, even outside the scope of criminal proceedings or in a different role than that of the accused, could not be compelled to make statements which were self-incriminatory. In particular, the Commission noted that the principle of protection against self-incrimination is, like the principle of presumption of innocence, one of the most fundamental aspects of the right to a fair trial (Trecshel, 2005: 343).

The defendant is not interrogated for getting his confess about the criminal act (even he can do it) but for informing him about the accusation and for giving him the opportunity to defend himself. Even, the state authorities have the right to interrogate the defendant, he is not obliged to declare anything. He has the right to silence (Sahiti, 2005: 88). If the defendant remains silent, his silent cannot be considered as aggravating circumstance and consequently, there must not be negative consequences for the defendant as a result of his remaining silent (Matovski, 2003: 203).

The Supreme Court of U.S. considered that, according to Fifth Amendment of the Constitution that provides the privilege against self-incrimination, it is the duty of the police to warn every suspected person on his Miranda Rights (*Miranda v. Arizona, 348 US 436 (1966))* before starting the interrogative process and after his arrest (*custodial interrogation).* Miranda Rights consists of: a). the warning that every suspected person has the right to silent and everything that he will say, can be used against him during the criminal proceeding and b). The right to counsel by his choice, and if he does not have enough material sources to pay him – the counsel will be pointed ex officio (Lazhetiq-Buzharovska, Kalajxhiev, Misoski, Iliq, 2011: 45). There is only one exception of the need for warning the suspect for his Miranda Rights. That is the case when it is a threat for the public interest (if the person who must be arrested possess a gun or similar destructive tools that may threat the life of police officers or other present people in the nearby (Lazhetiq-Buzharovska, et. al., 2011: 45). A confession obtained by actual compulsion in violation of the Fifth and Fourteenth Amendment is not admissible as evidence in the trial of the suspect. However, if e confession is allowed in as evidence and is subsequently determined to have been the product of coercion, the Supreme Court has determined that such an error is subject to harmless-error analysis. That is, an appellate court will examine the strength of the remainder of the evidence to determine if the erroneous admission of the remainder of the evidence was harmless beyond a reasonable doubt. By contrast, if an incriminating statement is obtained by violating Miranda rights, that statement may nevertheless be used to impeach the defendant if he takes the stand during his criminal trial (Mack, 2008: 305).

The privilege against self-incrimination and the burden of proof

The privilege against self-incrimination is not only a guarantee that the defendant in a criminal procedure is a subject with certain rights, but mostly it is reflected into the principle that means that the burden of proof belongs to the authorized plaintiff of a criminal procedure (Bilalli, 2011: 81). If the defendant does not answer a specific question, it might not be considered against him and the authorized plaintiff remains the subject who is obliged to prove the guiltiness (nevertheless the defendant has not

answered). There are no doubts that the privilege against self-incrimination is reflected in the discovery of material truth in criminal proceedings, but the guarantee that the privilege gives to the individuals as part of a society is considered more important than the truth revealed in a criminal case!

The privilege against self-incrimination increases the level of confidence in the judiciary system and enables individuals to not disclose certain issues in front of state authorities. If state authorities have doubts or direct/indirect evidences about the guiltiness of an individual, they should materialize or argue that in legal procedure, but not by gaining enforced answers or enforced confessions from the suspect or the defendant (Bilalli, 2011: 81). That argumentation must be on the level of the proof beyond a reasonable doubt. Development of criminal procedure depends on the indictment of the plaintiff (the adversarial principle) and he is ought to prove all the points of accusing act (objective and subjective identity between the accusatory act and judgment) and not the opposite! So, the defendant does not have to argue his innocence because the criminal process is developed to prove the guiltiness and not to prove the innocence!

Application *Ratione Materiae*

The privilege against self-incrimination applies only within the context of criminal proceedings. The state may request that individuals provide many types of information and often the information can have a negative effect, one need only think about tax returns. There can be no doubt that the privilege does not apply outwith the criminal law – a fact evidenced by the very term self-in*crimi*nation (Trechsel, 2005: 349). According to the interpretation of the European Court of Human Rights in Strasbourg, the obligation to submit income and capital in order to calculate the tax is "overall quality of modern states tax system that would not be able to function efficiently without the existence of these tax systems". Therefore, is noted that the correct presentation of income or capital (which is required for tax purposes under threat of criminal sanction) who discovers earlier tax evasion is not considered a violation of the privilege against self-incrimination (Harris, O`Bojl, Varbrik 2009: 264).

Direct effects of the privilege against self-incrimination

The direct aspect concerns the situation of the person who is accepted to give some sort of reaction to questions or requests. At its extreme, this means that it is definitely forbidden to have any resource to torture in order to obtain a statement, whether self-incriminating or not (Treshcel, 2005: 346).

The privilege has not an absolute character. The privilege against self-incrimination prohibits the application of violence against defendants in criminal proceedings. But the issue that deserves consideration in this regard is: "What is considered *violence* applied to the defendant"? Violence can be presented in different forms. It is clear that the application of physical violence against an individual in order to obtain his confession for an offense or for obtaining any other kind of evidences related to the crime, the threat with criminal sanction for not-disclosing information about the crime means violation of the privilege against self-incrimination, regardless if that person, later on, will be indicted and convicted or not. Even the application of the rule of extracting conclusions with negative effect for the defendant because of his remaining silent, also represents a form of violence that is expressed through narrow repression to answer the

questions. Similarly, the use and inclusion of agent-provocateur in order to gather information about the offense, may entails certain degree of violence (Harris, O`Bojl, Verbrik 2009: 260). The notion of voluntariness in U.S. criminal procedure has two separate connotations. One interpretation under the Fifth Amendment privilege against compelled self-incrimination examines various factors to determine whether a confession is voluntary. These factors take into account police conduct as well as the suspect`s personal characteristics (including whether he knew or understood his rights), and balance the totality of those circumstances to determine if the confession was voluntary. The crucial question is whether the suspect`s will was overborne such that his confession could not have been the product of a free and voluntary choice. The alternative definition of "voluntary" arises from the Supreme Court`s decision in *Miranda*, in which the Court determined that the very nature of a custodial interrogation creates and inherently coercive environment that places a suspect at the mercy of skilled interrogators and, consequently, more likely to make incriminating statements unless a barrier is erected between the suspect and the law enforcement. Therefore, if the police does not advise the suspect of his *Miranda* warnings (i.e. do not place the barrier between the suspect and the officers) or if the officers ignore properly invoked *Miranda* rights (i.e. ignoring the barrier), then any statement given under those circumstances is presumed to be involuntary, even though no actual physical coercion has taken place (Mack, 2008: 305). Practical experience shows that sometimes interrogations even on seemingly unimportant questions are particularly risky for an accused. If he or she does not pay particular attention, the risk of unwise admissions or contradictory statements increases. These, in turn, will serve to weaken the position of the suspect and may well affect the credibility of his or her declarations on important points (Treschel, 2005: 342).

Exceptions from the rule

The privilege against self-incrimination, as interpreted by the European Court of Human Rights, exists primarily to guarantee that will be respected the will of the defendant to answer certain questions and does not mean situations where from the defendant are obtained the substances that exists independently of his will as: blood, urine or other materials used for DNA analysis (Treshcel, 2005: 354). Another exception is the situation of disclosure of one`s identity. No one who is accused in criminal proceedings is obliged to say anything. To this, however, there is a generally accepted exception: there is no right to remain anonymous and therefore a person can legitimately be compelled to reveal his or her identity. This is not set out in international human-rights treaties, but is expressly stated in the Third Geneva Convention on prisoners of war: "Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information". This fundamental rule also applies outside the context of war. There can be no right to conceal one`s identity, no right to anonymity. Man, as a *mens sociale*, a social being, needs relations with others and such relations cannot be meaningful if a person refuses to reveal his or her identity (Treshcel, 2005: 355).

Conclusions

The defendant, as provided in the different international and national laws of democratic states, has a range of rights, in criminal proceedings. Among them counts the

privilege against self-incrimination, which explicitly is not provided only in the ECHR, but is considered as an integral part of Article 6 thereof.

When compared ICCPR and ACHR, we saw that the latter one pays more attention to the privilege. Indeed, the practice of non-response to certain questions, is the US known as "taking the fifth".

The privilege against self-incrimination applies only in the field of criminal law and does not apply, for example in taxation law. The most obvious way of violating the privilege against self-incrimination is the application of violence against the defendant in order to obtain answers to posed questions. Precisely, through this privilege, it is tempted to prohibit such practices of the state authorities. Violence, in this regard is considered: physical violence, threatening with imposing criminal sanctions in case of non-response, psychological violence that affects the defendant as a result of consideration of silence as an aggravating circumstance and (according to some authors, with whom I agree) insertion of the provocative-agent. Although in certain cases, analysis of DNA (blood, saliva, urine of the defendant) or polygraph testing with falsehood seems to vitiate this privilege, they are not included in the terms of violation of the privilege against self-incrimination. The defendant, in terms of war and peace, may invoke the privilege against self-incrimination and the right to silence, to all charges but not to reveal his own identity. Every person may remain silent for other aspects, but is obliged to disclose his/her identity.

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Toward a Social and Judicial Analysis on the Social Reintegration of Persons Deprived of Liberty: Evidence from the Romanian Detention System

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Abstract
In this paper we aim to analyze the social reintegration of persons deprived of liberty in the Romanian detention system, from a judicial and sociological perspective. The first part of the article presents the essential aspects of social reintegration, ranging from definitions, to key factors, general principles, ground rules, international and European legislation. The second part of the article presents the evolution of the social reintegration system in Romania from 1874 onward, focusing on the current situation and analysing the actual situation and the legislative acts in force, as well as the present Romanian Strategy for the social reintegration of prisoners between 2015 and 2019. The final part of the article presents the results of a sociological survey, conducted in March 2015 at the Maximum Security Penitentiary in Craiova and which aimed to test the hypotheses outlined after the analysis of social documents.

Keywords: *social reintegration, inmates, criminal legislation, social reintegration legislation, Romania*

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The social reintegration of persons deprived of liberty. Basic notions

When faced with the penitential system, prisoners undergo an identity remodelling, an utter mutilation of their personality, "a re-personalization" (Goffman, 2004: 56-94) meant to make them adapt to the new system, as they ought to create a new self in order to survive the penitential system. Pollak feels that there occurs a "de-socialization" of prisoners when disconnected from the exterior world, and an ulterior "re-socialization", both in terms of the prisoner's self, and of their relations with the other persons who share the same system (Pollak, 1990: 260). Their proximity to the various persons whom they meet within the penitential system, originating from different social backgrounds, who have been convicted for a wide range of crimes and the behaviour of whom is for the most part seen as antisocial, has a negative influence on the personality of a new prisoner. When deprived of their liberty, one must create multiple personalities, being caught between their former values and identity and their new penitential personality, which must meet their needs of communicating both with the other prisoners and with the prison staff (Micle, 2004: 5). Despite of the obvious change of the prisoners' personalities, the penitential system intends the deprivation of liberty to serve not only for a retributive purpose, but also a preventive one, by preventing further crimes and a re-integrative one. In sociological terms, social reintegration of prisoners means "a process of reorientation and integration in social life of persons who have displayed marginal or deviant behavior, as a means of social control implemented in specialized institutions, in order to recover and reintegrate delinquents into society, by providing them with a set of norms, values and attitudes which have been commonly agreed upon" (Rusu, 2010: 30). In psychology, social reintegration of prisoners implies "restoring those once deviant social qualities of personality which are necessary for a normal life in society" (Rusu, 2010: 30).

The United Nations define "social (re)integration" as "the process of socially and psychologically integrating a person into the social environment". In criminal justice, this term refers to "different means and programs of intervention conducted in order to prevent criminal actions or reduce the risk of second offenses, for those who have already committed a criminal offense" (United Nations Office on Drugs and Crime, 2012: 5). Social (re)integration programs imply the special intervention on inmates, during their prison time, including education, rehabilitation and pre-release programs, as well as post-release ones, aiming at parole and other types of mutual assistance, in order to help them reduce the risk of second offenses (UNODC, 2012: 5).

Bryan A. Garner defines the reintegration of persons deprived of liberty as "improving the criminal's personality in such a way as to enable him, or her, to be an active member of the society without committing any further criminal acts" (Garner, 1999: 184). Alleman (2002) and Ross (2008) include all elements or actions taken in order to change the way in which prisoners react to the surrounding world, as well as their lifestyle and motivation. Eventually, the purpose of social reintegration is to provide former prisoners with the competences and abilities they need so, they will not commit any second offenses upon returning to their society (Levan, 2004: 290). Ciobanu and Groza see the social reintegration of prisoners as "an educational, re-educational and therapeutic process administered to persons who have been sentenced to prison, in order to make them re-adapt to a system of norms and values which have been commonly agreed upon by the society, avoid second offenses and promote social reintegration" (Ciobanu & Groza, 2002: 54).

Literature in the field of criminal justice and statistical data related to the incidence of second offenses indicate the fact that a large number of former prisoners commit second offenses and return to the penitential system, at high costs for the state budget. In 2012, the Report of the United Nations Office on Drugs and Crime mention the fact that there are no global figures related to the incidence of second offenses, but the estimates indicate an alarming 70% rate (U.N.O.D.C., 2012:7). The question remains: How must criminal policies change in order to improve the social reintegration process for current and former prisoners and to lower the incidence of second offenses?

The problem begins as soon as it becomes imperative to draw up a plan for the actual reintegration of prisoners. As mentioned by Christy A. Visher and Jeremy Travis, the process of social reintegration and the transition from deprivation of liberty to an active social membership is influenced by a series of factors: personal circumstances and characteristics; family; community and state policies (Visher & Travis, 2003: 92). At a more detailed level, the authors also noticed that the process of long-term post-release social reintegration is closely connected to a series of circumstances which may have occurred throughout the prisoner's life, such as: "1.pre-sentence circumstances (family characteristics, demographic profile, abilities related to a certain field, employment, criminal activities, drug abuse etc.); 2.time served (reintegration programs attended, duration of the time served, inside relationships, contact with close outside persons); 3.immediate post-release experience (family support, habilitated assistance, basic needs met: food, shelter etc.); 4.further post-release experience (employability, family influence, legal supervision, connection to other persons involved in criminal activities)" (Visher & Travis, 2003: 94).

There is a large number of educational and psycho-social programs conducted inside penitentiaries, dealing with the psychological, social and educational perspectives of the prisoners, in order to assist them in their re-socialization process. Social adaptation to life outside the penitentiary is a painstaking process, which requires permanent efforts. In detention, it is necessary to take an initial assessment and training, as well as a basic and a pre-release training (Ardeleanu, Racu, Pistrinciuc & Zaharia, 2009: 37). A successful adaptation depends on three categories of factors: the personality of the released prisoner; the conditions in the social environment; the conditions in the respective penitentiary. In the guide "The social reintegration of the persons released from their place of detention" there is a division of the integration process in three stages, depending on the level of integration of the persons deprived of liberty: "the level of social integration; the level of psycho-social integration; the level of subcultural integration" (Prițcan et. al., 2007: 25-26).

While serving time, an important part in the process of social reintegration and behaviour rehabilitation is that of the penitentiary staff, such as "doctors, psychiatrists, psychologists, priests, social workers, educators, teachers and instructors" (Durnescu, 2009: 24). Nevertheless, the most important role in the social reintegration of prisoners is that of the social worker, who is the link between the probation services and others, aiming at a successful social insertion of the prisoner, as compared to the roles of other specialists such as the psychologist or the educator, who focus on psycho-social support and on the development of the prisoners' abilities in detention (Durnescu, 2009: 19-20).

In *Social work in penitentiaries*, Ioan Durnescu analyzes the role and functions of a social worker in a penitentiary in the quarantine stage, during the time served and before the inmate is released. Thus, in the first stage, the social worker conducts an initial social and family assessment, tries to identify any potential problems, and assists the

prisoner in adapting to life in the penitentiary by providing them with information and counselling. During time served, the social worker organizes various programs meant to develop the prisoner's social abilities, family and institutional connections, while representing the person deprived of liberty in their relation with the authorities. Before release, the social worker ensures the prisoner's connection with the probation service or with other institutions which may facilitate their social reintegration, while conducting various intensive pre-release programs (Durnescu, 2009: 20).

Nowadays there is a large number of legislative acts issued at an international and European level, in the field of the social reintegration of the prisoners, dealing with the subject both first hand and in part, such as the 1948 Universal Declaration of Human Rights (UN), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN), the Standard Minimum Rules for the Treatment of Prisoners issued in 1955 and in 1977 (UN), the United Nations Standard Minimum Rules for Non-custodial Measures in 1990, the European Convention on Human Rights/ Convention for the protection of human rights and fundamental freedoms issued by the Council of Europe in 1950, the Recommendations R(87)3 and Rec(2006)2 of the Committee of Ministers on the European Prison Rules), the Recommendations R(89)12 and R(2003)20 of the Committee of Ministers on education in prison), the Recommendation R(97)12 on staff concerned with the implementation of sanctions and measures), the Recommendation CM/Rec(2010)1of the Committee of Ministers on the Council of Europe Probation Rules) etc. According to the European Prison Rules, the ground rules are: respect for human dignity; impartial treatment; health and self esteem, a sense of responsibility, attitudes and abilities for social reintegration; specialized inspections in criminal institutions and services; individual rights concerning the legal grounds for serving time (Zidaru, 2001: 83).

The situation of the social reintegration of inmates in Romania

In Romania, the first elements of social reintegration of prisoners were introduced in the Law in 1874, regarding the penitential regimes. The purposes of a sentence were: to serve as an example and to set right (Sucilă-Pahoni, 2012: 99). The law focused on the rehabilitation of the persons deprived of liberty through education, religion and work (in state workshops, in private and in salt mines) (Dianu, 1900: 102-103). The law provides the creation of "supervision committees" or "societies of free patronage", the purpose of which was to "conduct moral and educational activities inside the penitentiary", as well as the assistance of the former prisoner after their release in "finding shelter and a job" (Durnescu, 2009: 44). A person was seen as rehabilitated only after they have served their time, reintegrated into the society and regained the rights of which they had been denied (Zamfirescu, 1903: 430-432).

The Law in 1929 providing for the organization of penitentiaries and prevention institutions changed the purpose of a sentence and turned it from isolation for the crime to improvement of the prisoners' behaviour, in order to give society "normal people, with a healthy body and love of good and truth" (Gorescu, 1930: 37-40). Education was conducted through a set of activities focusing on moral elements, training and religious assistance, intellectual development, professional training, skill-based specializations, courses, access to libraries, radio and music, conferences, as well as physical education, by providing prisoners with access to gyms and work (Goga, 2015: 231). This law provided that "schooling is compulsory for juveniles and adults sentenced to more than

six months in prison, if they have not completed elementary school" and the creation of a "Directorate of Guidance" with an Education and Training service, within the National Administration of Penitentiary and Prevention Institutions (Durnescu, 2009: 44). The Regulation on executing punishments issued on the 21st of April 1938 listed the educational measures in a distinctive chapter: writing, reading, debating, working etc. (Durnescu, 2009: 44).

The communist regime was a dark period in Romanian detention. Thus, the regulation for the implementation of the penitentiary regime issued in 1952 and the Regulation on the intake, detention, regime and surveillance in concentration camps and colonies issued in 1955 excluded re-education or had a superficial approach of it. Its purpose was to "strengthen the regime and prisoners discipline, raise working productivity and educate inmates to become useful members of society" (Regulation, 1955, Article 96), and the purpose of detention was to "isolate and guard the prisoners and to make them unable to commit any crimes which may prejudice the rule of popular democracy, to re-educate the prisoners through work, to get them accustomed to order and to qualify them for various occupations (Regulation, 1955, Article 3). Thousands of prisoners were sent to work in colonies, consisting of mines, canals, dams and agricultural crops (Ciuceanu, 2001). In 1962 a Regulation was adopted on the implementation of the penitentiary regime in places of detention, and it detailed the educational elements used within the penitentiary regime, such as cultural and educational activities, work, rewards, qualification courses etc. In 1969 Law no. 23 regarding sentences, was issued, with strong emphasis on the rights and obligations of the prisoners, re-education and the detention conditions. The Law included a great deal of the Standard Minimum Rules for Treatment of Prisoners, adopted by the U.N. in 1955. Special focus was placed in Law no. 23/1969 on post-release assistance, describing the mechanisms which enhanced the chances of the former prisoners to reintegrate. Thus, upon release, the former prisoners were employed in various fields by the Ministry of Labour and by the local authorities dealing with work and social protection (Durnescu, 2009: 46).

The Criminal Code on 1968 defined punishment as "a measure of constraint and a means of re-educating the prisoner, using the time served to develop a correct attitude towards work, the rule of law and the rules of social cohabitation" (Criminal Code, 1968: Art.52). For the implementation of the Criminal Code on 1968, a new Law (23/1969) regarding the execution of sentences was issued, stipulating for the re-education of prisoners: paid work, qualification, re-qualification, "cultural and educational activities, as well as stimulating and rewarding prisoners who work diligently and shows consistent signs of improvement". The underage prisoners were subjected to "a special educational action". They can "carry on with their general studies and are given the opportunity to get vocational training" (Law 23, 1969: Art. 5-6).

The Criminal Code in 2004 mentioned that the purpose of a sentence was "to re-educate the prisoner and prevent them from committing new crimes" (Criminal Code, 2004, Art. 57, Paragraph 1). Once the Criminal Code has come into force in 2004, in 2009 a new Law (294/2004) was promulgated, regarding the execution of sentences and of the measures required by the judicial institutions during the Criminal trial. This Law provided the fact that "the personalization of the detention regime for the execution of freedom-depriving sentences was determined by a specialized committee", and "an assessment plan was drawn for the social and educational intervention in the case of each prisoner by the habilitated department in the penitentiary" (Law 294/2004, Art. 39, Paragraph 1 and Paragraph 4). The prisoner was included in various programs: "a) social and educational

activities, psychological assistance and counselling, support in finding a job or in being involved in a professional activity after the release of the prisoner; b) school training; c) vocational training" (Law 294/2004, Article 39, Paragraph 2). In August 2012 a considerable number of institutions have contributed to the completion of a National Strategy for the Social Reintegration of the persons deprived of liberty. This strategy originated in the proposal launched in 2010 by the National Administration of Penitentiaries. In December 2012 the public debate was also concluded regarding the draft of the Government's resolution approving of the Strategy. In 2013 another stage was concluded, dealing with the financial impact of the suggested measures (Annex to the Resolution 389/2015: 8-9).

The current law on the execution of sentences and of the custodial measures imposed by the court during the criminal trial, Law no. 254/2013, mentions the reintegration of the inmates into society as one of the purposes of the custodial sentences (Law 254/2013, Article 3, Paragraph 2). The current law came into force in February 2014, along with the new Criminal Code, published in 2009.

Law no. 254/2013 provides a set of conditions which are similar to those in the previous law, no. 294/2004, for the process of social reintegration of the prisoners; however, there are some slight differences. Thus, a new Committee is created in each penitentiary, dealing with the determination, individualization and change of the execution regime of the custodial sentences. The role thereof is to individualize the sentence execution regime for each prisoner "depending on the duration of their sentence, their behaviour, personality, potential risk, age, health, specific needs and their opportunities of social reintegration" (Law 254/2013, Article 42, Paragraph 1). An individualized assessment plan is drawn for each prisoner consisting of the educational and therapeutic measures that need to be taken by the specialists of the department of education and psychological and social work "based on the identified needs and potential risks" (Law 254/2013, Article 42, Paragraph 4). Each person deprived of liberty is included in "various educational, cultural, therapeutic, moral, religious activities, as well as benefiting from psychological and social assistance and professional and academic training" (Law 254/2013, Article 42, Paragraph 2). The activities are conducted by the "staff of the educational, psychological and social assistance services inside the penitentiaries, in co-operation with probation counselors, volunteers, associations, foundations or other representatives of the civil society" (Law 254/2013, Article 42, Paragraph 3). The definition in the Romanian legislation (Law no. 254/19th July 2013) of the "reintegration" of prisoners is relatively simplistic: "to develop a correct attitude towards the rule of law, the rules of social cohabitation and work" (Law 254/2013, Article 3, Paragraph 2).

In the national legislation, the process of social reintegration is defined as a series of stages in the assistance of persons deprived of liberty, the purpose of which is to socially reintegrate these persons. These stages are: "1.The institutional stage. This stage begins upon incarceration and ends approximately 90 days before release; 2.The release preparation stage. It starts 90 days before release and ends upon release, or, such as the case may be, upon release at full term; 3.The post-detention stage. This stage begins upon parole or release at full term" and it is conducted by the "habilitated institutions for no more than 2 years after release or until the time the sentence is bound to finish" (Annex to the Resolution 389, 2015: 1).

Within the context of an intensive debate on social reintegration, it must be mentioned that, an important instrument in the process of post-detention reintegration is constituted by the probation systems. In Romania the institution of probation has only

been recently created. It was experimentally introduced in 1996-2000, with the creation of 11 experimental probation centers (Durnescu, 2008: 18-19). The Romanian infrastructure of probation has developed since the year 2000, when Government Ordinance no. 92/2000 regarding the organization and functioning of the services of social reintegration (currently called "probation services"). Government Resolution no. 1239/2000 was issued for the implementation of the Government Ordinance no. 92/2000, and the institution of probation was consecrated by Law no. 123/2006 regarding the status of the staff in the probation services and Law no. 327/2006 on the salary system and other rights of the probation staff. Probation services are presently ruled by Law no. 252 of the 19th of July 2013, regarding the organization and functioning of probation services.

There is presently an incomplete legislation in the field of the social reintegration of persons deprived of liberty and there are many legislative acts which only approach this topic inconsistently, such as: the Romanian Constitution, the Criminal Code, The Criminal Procedure Code, Law no. 253/2013 on the execution of sentences, of educational measures and of the custodial measures imposed by the judicial institutions during the criminal trial, Law no. 292/2011 on social work; Law no. 272/2004 regarding the protection and promotion of the children's rights; Law no. 116/2002 on the prevention and combat of social marginalization, including subsequent amendments and additions; Law no. 252/2013 on the organization and functioning of the probation system; Order no. 2199/C/2011 issued by the Ministry of Justice for the organization and development of educational, cultural, therapeutic, psychological counselling, social work activities, school education and training etc.

In the year 2015, Government Resolution no. 389 on 27th of May 2015, approved the National Strategy for the social reintegration of persons deprived of liberty between 2015 and 2019. It decided that "the National Administration of Penitentiaries, the central and local public institutions and authorities, habilitated in the field of facilitating the social reintegration of persons deprived of liberty" will implement the Strategy (Resolution 389/2015, Article Art. 2). An Inter-ministerial Commission was created for the implementation and coordination of the strategy (Resolution 389/2015, Article 3). The purpose of the strategy is to "reform inter-institutional collaboration and to ensure a continuum of social services, individualized assistance and counselling, carried out in a systematic way, while fulfilling the needs of the persons deprived of liberty or of the persons who are supposed to execute freedom-depriving sentences". Its mission is that the central and local public institutions and authorities, as well as other non-governmental associations and organizations to jointly organize and conduct educational activities, social and psychological assistance in order to contribute to the creation of responsible, reintegrated members of the society (Annex to the Resolution 389/2015).

The instruments used for the "social reintegration of the inmates should be individualized, depending on the estimated risk of committing second offenses, given the fact that criminology studies have shown that an approach based on the rehabilitation of prisoners is not effective" (Durnescu, 2000: 125). James Bonta suggested a three-generation classification of the instruments used for estimating the risk of committing second offenses (Bonta, 1996). He suggested the use of criteria such as: "objectivity; structure; analyzed markers; relevance in the rehabilitation process" (Durnescu, 2000: 126). According to Ioan Durnescu, elements of the Romanian criminal system can be identified in the first generation of instruments used for estimating the risk of committing second offenses, consisting of subjective, unstructured analyses, because in our system there is no explicit mention of the risk of committing second offenses, specialists use

irrelevant markers in a random way (courtroom or prison demeanour, number of siblings, parents' occupation etc.)" (Durnescu, 2000: 127). For that matter, an analysis of the data published courtesy of the National Administration of Penitentiaries in the Annex to the Resolution no. 389/2015, shows that in our country there is an alarming incidence of second offenses: between 60 to 80% of the total number of incarcerated persons in Romania are sent back to prison.

The strategy used for social reintegration mentions a limited number of members of staff involved in social reintegration within the Romanian detention system: the persons working in the field of education and in that of psychological area and social work. A further issue is that of the understaffed Romanian penitentiaries: 639 specialists out of the total number of 12.208 employees. Another major problem is the lack of financial and material resources, given the fact that the funds allocated to the field of social reintegration (60.000 lei in 2011; 40.088 lei in 2012 and 34.754 lei in 2013) are lower than the requested amounts (175.000 lei in 2011; 139.361lei in 2012 and 153.936 in 2013) (Annex to the Resolution 389, 2015-19).

Nowadays, the function of social reintegration of the prisoners in Romania is fulfilled through a series of activities of a moral and religious nature (Examples: educational activities focused on moral and religious values, development of the ethical and civic sense, Building on the Word – modules I and II, Praise the Lord, choirs, pilgrimages, contests, literary circles, icon catechises, etc.), activities for the education of prisoners (Examples: school classes and professional training, educational activities and programs, such as: literacy, adaptation to institutionalized life, civil education, physical education, the Hobby program, topic-based contests etc.), as well as social work and psychological assistance (Examples: self-knowledge and personal development, ergotherapy, training support prisoners for other prisoners facing life crises, developing decision-making abilities in hazardous criminal situations, development of social and parental skills etc.) (National Administration of Penitentiaries, 2015: 15-16).

In order to solve the problems of social reintegration, the National Strategy for the social reintegration of persons deprived of liberty between 2015 and 2019 has taken on the following strategic objectives: 1. The development of the institutional and inter-institutional capacity in the field of the social reintegration of the persons deprived of liberty and of the persons who have already executed freedom-depriving sentences/measures. The purpose is the development of the staff's skills, the improvement of institutional infrastructure and inter-institutional cooperation, a new normative framework meant to ensure a continuum of social services in the field of social reintegration); 2. The development of educational programs, psychological and social assistance during time served; 3.The facilitation of post-release assistance at a systemic level. The main purpose is to develop and consolidate partnerships; elaborate and approve of the normative framework regarding the creation, organization and functioning of a number of centres for social inclusion and of social companies designed to generate employment for vulnerable target groups (Annex to the Resolution 389, 2015: 23-24).

Results of the sociological research on social reintegration of inmates, conducted in the Maximum Security Penitentiary in Craiova

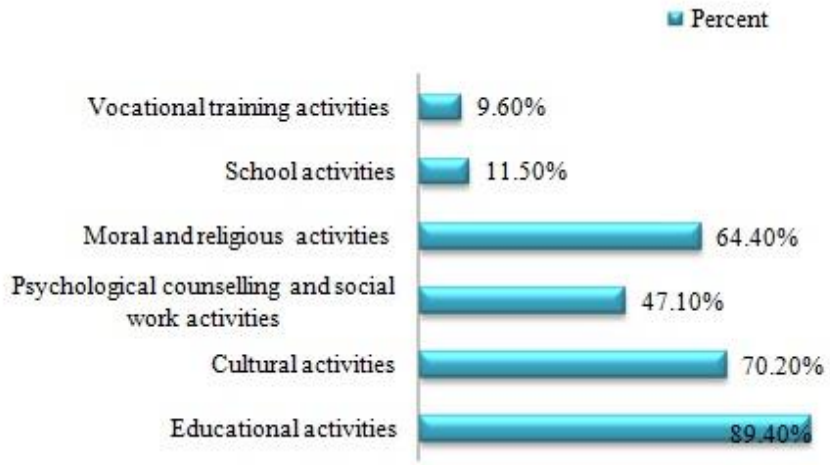
The present research was conducted by the desire to capture the views of inmates on their experiences inside the penitentiary and to see their perspective on social reintegration. This article only presents the main results of the research, related to the social reintegration experience of the prisoners.

Composing the conceptual framework, facilitated the definition of a set of cause-effect variables. Starting from the cause-variable of the implementation of various programs of social reintegration for persons deprived of liberty according to the national legislation, was identified the effect-variable, that of an increased utility of these programs. The initial hypothesis was that the reintegration programs used in the penitentiary have a positive effect on the persons deprived of liberty. Therefore, one of the objectives was to identify the perception of the persons deprived of liberty in relation to the level of influence of the social reintegration programs, as well as their expectations, in order to help improve these programs.

Given the fact that the main purpose of the research was to identify the prisoners' opinions on their penitentiary experience and the effects of the social reintegration programs, a quantitative approach was preferred, by administering a questionnaire which enabled the examination of social acts in the light of the characteristics expressed in numbers. The method of the research was the opinion survey, by applying the questionnaire technique.

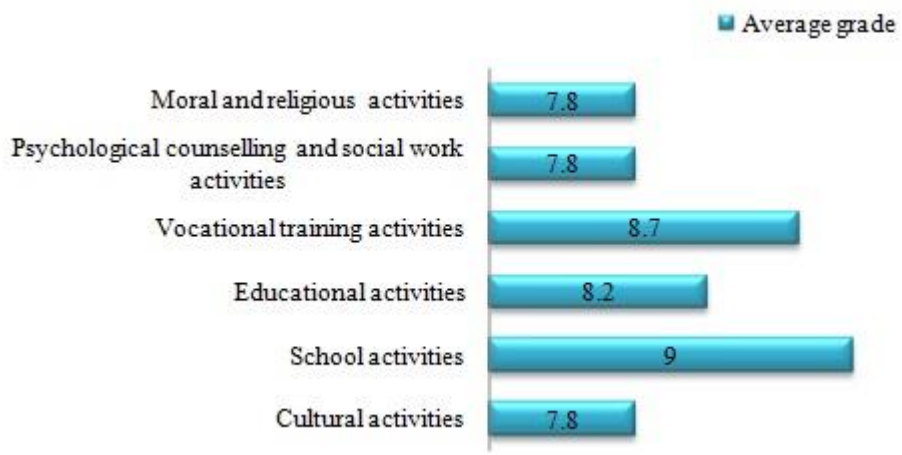
Respondents were persons deprived of liberty who were convicted by a definitive sentence and whose level of education is over 8 grades. Out of the 504 persons who met these criteria, 469 were men (93,06%) and 35 were women (6,94%). A percent of 20% of the total number of potential respondents were selected, 101 persons. The target group was chosen so as to keep their initial proportion: 7 women, representing 6,94%, and 94 men, representing 93,06%. The relevant data were collected between the 20th of March and the 5th of April in the Maximum Security Penitentiary in Craiova.

Figure 1. Answer to the question: *Which are the main activities included in the social reintegration system, that you attend/have attended during detention*?



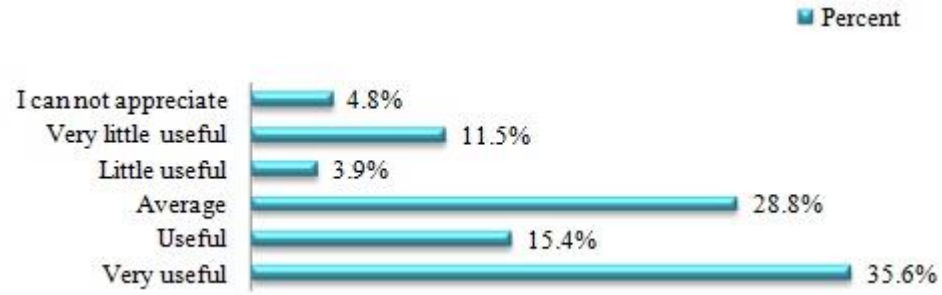
The persons deprived of liberty were asked to mention the activities they have attended within various programs of social reintegration. A percent of 89.4% of the people interviewed, mentioned educational activities, 70.2% of them mentioned cultural activities, 47.1% of them said psychological counselling and social work activities, 64.4% included moral and religious activities, 11.5% school activities and only 9.6% stated having attended vocational training activities. It is noteworthy the fact that these activities are only seldom attended. For that matter, the interviewees admitted to having attended these activities very rarely, as there is little cooperation with other institutions and not enough staff to ensure program continuity.

Figure 2. Average of the grades granted for the social reintegration activities conducted in penitentiary



The interviewed persons granted grades ranging between 1 and 10 (wherein 1 meant ”very bad” and 10 meant ”very good”) for the activities conducted within the penitentiary for the social reintegration of the prisoners. A 7.8 average grade was given for the cultural activities, 9 for the school activities, 8.2 for the educational activities, 7.8 for the moral and religious activities, 8.7 for the vocational training activities and 7.8 for the psychological counselling and social work activities. An overview of the grades granted by the persons deprived of liberty proves a high level of satisfaction related to these categories.

Figure 3. Answer to the question: *Do you think the programs of social reintegration conducted in the penitentiary are useful?*



When asked if they thought that the programs of social reintegration conducted in the penitentiary are useful, 35.6% of the prisoners estimated that they are ”very useful”, 15.4% ”useful”, 28.8% of them felt that they have an “average” usefulness, 3.9% thought they are ”little useful” and 11.5% ”very little useful”. Therefore most of the respondents think that the programs of social reintegration which they attend inside the penitentiary are useful.

When asked to mention what other types of programs/activities they have failed to attend and they find useful for their social reintegration, most of the respondents were unable to provide an answer. The persons who did respond, specified: assistance in finding a job, volunteering programs, artistic programs, more qualification/re-qualification training, psychological counselling and social work activities and more diverse educational programs.

Conclusions

An analysis of the system of social reintegration for the persons deprived of liberty emphasizes its role in fulfilling the purpose of the national and international criminal policies, to reduce the incidence of second offenses. Nevertheless, given the high incidence of second offenses, it is noteworthy that, despite the obvious progress over the past ten years, in the approach of social reintegration, the system is yet to be improved.

In Romania, these programs were not emphasized in a timely fashion. Nowadays there is a high lack of staff involved in such services. 2015 was the year when the National Strategy for the social reintegration of the persons deprived of liberty was launched for the period 2015-2019. It aims a inter-institutional cooperation in order to ensure a continuum of social services assistance and counselling. For that matter, the results of the sociological research conducted in the Maximum Security Penitentiary in Craiova emphasize the fact that most of the persons deprived of liberty who have taken part in the study are aware of the benefits of these programs and grade them highly; however, they have a strong sense of the lack of specialized staff and inter-institutional cooperation, and they identify the need to increase the number of qualification/re-qualification training courses and other activities of psychological counselling and social work.

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ORIGINAL PAPER

Youth Subculture and "Postmodern Axiology"

Ali Pajaziti*

"If it was not for internet,
I'm sure half of Macedonia
would go mad".
Note from Facebook

"Knowledge without wisdom is a fire one lights only to burn one's self."
Fatmir Muja

Abstract
Youth is a social category that marks a very dynamic entity, especially nowadays in the era of global transformations, when we face a large scale of changes, even in the sphere of the culture and values. So today's social anthropology cannot be written without consistent and deep analysis of interaction between different kinds of culture, produced by economic actors and media, and their impact to mentality and lifestyle of the young.
One of the products of the post-modern society is popular or youth culture, which is linked to cultural economy, pleasures, idleness, style and identity forms, relationships, meanings and social and cultural texts. Some of the question that we face in the beginning of the 21st century are: Why the traditional values day by day are being relativized and new values are being affirmed by different TV, IT and social network tools? How they create a new profile of consumerist, hedonist and individual(ist) young and ignorant parallel society? Why the youth is attracted by computopia and what are its moral reflections? Is pop culture a new (pseudo)religion?
This paper, that uses different research methods, especially ethnography and content analysis, is about the triangle of youth, consumerist culture and postmodernism as a stimulating condition for life variety and a relativizer of social values.

Keywords: *youth, pop culture, consumerism, hedonism, postmodernism, facebookmania*

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Fore-explication

Youth constitutes the most vital part of any society, the future and positive horizons of the healthy social environment or that category which makes societies foresee a turbulent future, even the state of many mutilations in all vital dimensions. It is the bearer and realize of community's vision and mission. Youth is a term that indicates physiological, demographic and sociological dimensions of a social group and category, generally including individuals who attend the education process, economically dependent, sensitive towards social issues and demographically including the age range 15-25, with some taking the limit to 30, even 35 years. Youth is the most dynamic and complex phase in life. Its main characteristics are physical and psychological development, dynamism, emotionality, entrepreneur spirit, impatience, search for identity, rebelliousness, crisis, anxieties, sorrow, reactions, conflicts, dreams, passions, endless demands, lack of correspondence between psycho-physical and social development, etc. It is a preparation phase in which personality traits are earned that are necessary for bearing professional and family duties, when the young starts behaving more independently and more responsibly (Pajaziti, 2009: 553-554).

Pop culture or youth culture, also called as consumerist culture implies a culture accepted without control by people as a homogeneous body, a culture created and distributed through commerce, "an industrialized culture produced and distributed by an industry motive by profit and which pursues its economic interests only" (J. Fiske). In the empirical aspect popular culture can also by described as spare time practices and texts, while ideologically it is treated from the aspect of being exploited or controlled in the framework of "creativity" or resistance (Rowe, 1996: 20).

Pop culture: Consumerism, youth identity and hedonism as *modus vivendi*

"Popular culture" is an expression that sociologists have not reached a consensus upon. Because of the "popular", some link popular culture with "people". According to them popular culture implies everything produced by those who are not part of and stand above the people but "create" for the people which constitute the majority. So it is a culture of majority. Some has called it a culture of the labor class and since the latter is poor, relatively uneducated, ignorant and of a low level, the culture that stems from it is low, unworthy and vulgar too. Some have treated it from the aspect of quantity and quality, asserting that since it is a culture of majority, it is a culture without real quality. This link popular culture with mass culture, widely created and distributed by the cultural industry, possessed by power holders and used by them to lead the crowds (Güngor, 1999: 10, 11). The consumerist culture that is part of culture industry and which has been transformed into an activity of new relevance and in rise since the end of the last century (Viesand et. al., 2002: 7), is not about consumption only, but about culture as well, an active process of creation and bearing of significances and tastes in the framework of the social system. This culture is widely discussed about as a result of the dazzling development of audio-visual and media technologies. Advertisements, pop music, cinema, fashion, sport, etc. are objects of discussion in this context. The study of consumerist culture has been contributed to by structuralism, semiology, semantics and many other disciplines. This culture is the fruit of modernization and change, of culture industry and is considered to be part of mass manipulation. According to some, the consumerist culture undermines the bridges that link the past of the people with their present, a "drug" offered to people in the

form of fashion and what is trendy or "in". This because it takes them away from personal culture, from authentic values, from national authentic culture. This culture sows in people the instinct of acting according to the consumerist logic, making them lose true objectives and transforming them into goods. People's culture differs from the culture of consume (or pop culture) in the creative role of the people and the tradition as an important element with the first. People's culture is identified with national culture and identity. Consumerist culture is the antipode of the most exclusive culture, like the elitist or high culture, an antipode of the culture of the dominant social groups (Emiroğlu & Aydın, 2003: 694-695; Fisk, 2001: 31).

Popular culture is considered as an instrument of domination, especially of American domination (Mel van Elteren) (Güngor, 1999: 17), so it can be linked to the global McDonald, to americanization and westernization. The representatives of the Frankfurt School employ popular culture as a synonym of mass culture and entertain a negative idea about it. For example Adonro says music alienates people and expresses very pessimistic feelings about this. According to Adorno and Horkheimer, popular culture which spreads through means of mass communication, creates a homogeneous cultural environment that makes the functioning of productivity and consume easier in relation to the market functioning of such culture (Güngor, 1999: 14-15) But in this context, of culture and market and economy, a number of thinkers raise their voice in asserting that culture is a public capital that cannot be sacrificed to monetary economy. Whereas the producers of entertaining culture maintain that besides the educative dimension, culture must have the entertaining aspect as well (Viesand et al., 2002: 8), as it is reasonable and natural.

Case study

From among 125 students of mine, the day a made the survey 118 had worn jeans, probably the only American contribution to fashion industry. The other seven "renegades" also possessed jeans but had not worn them that day. My question is whether is there any other cultural product – movie, TV program, CD, lipstick – as popularized?

I asked them to write shortly what jeans meant for them personally and had a discussion about it. A coherent network of significances grouped around some central points stemmed from that debate. One of those focuses was essentially unifying and rejected social differences. It considered jeans as informal clothes, with no class, no gender; suitable to city and village and wearing jeans was seen as a sign of freedom against definitions that social categories impose to behavior and identity. The mostly used adjective was "free", often as "being free to be who I am", followed by "natural". In fact, that dress is psychologically repressive, more often conveying social meanings than individual sentiments and spiritual state (Fisk, 2001: 8-10).

Popular or youth culture is linked to cultural economy, pleasures, idleness, style and identity forms, to many relationships, meanings and social and cultural texts generated in different forms (Rowe, 1996: 22). Some have also linked it to the laissez-faire philosophy, to freedom, to social differentiation and distinction, to the bottom-up social movement towards the city, sophistication, fashion and the special (Fisk, 2001: 13). In some countries however, until the end of 70's, all products of popular culture were labeled as garbage and kitsch and were marginalized. Austrian culture value high culture only: Wiener Festwoechen and Salzburger Festpiele put Austria at the epicenter of global high culture (Viesand et al., 2002: 92).

Seventy years ago, in his novel *The Island,* Aldous Huxley drew a pessimistic view of a new world that does not recognize any purpose beyond body pleasures and doesn't choose methods to reach this goal, or interferes with human development since the embryonic phase through scientific means. He describes such an order as a system imposed by a despotic dominant minority. Huxley talks about infants that are made to never touch books by means of electroshock, about children who blush when family, father, mother, brother, uncle, aunt are mentioned, about "twins" whose intellectual level is petrified because of the possibility to engage them in crude work, crowd that hate countryside and mountainous areas but love open sports, savages with heads poisoned with Shakespeare. Today the picture equivalent to that drawn by Huxley would be that of World Cup, Spanish, Turkish or Indian soap operas, videogames and movies, hormone tomatoes, national lottery, online studies, e-library… This is a period when the individual is lost within the crowd and we are living hyperdemocracy and don't find people like Erasmus of Kant anymore to rebel against individual passions in the name of humanity and justice (Avci, 1999: 8-18). Popular culture is linked to the hedonistic trinity of the 60's: sex, drugs and rock & roll. During the 60's songs called for enjoying the moment, like "But I Might Die Tonight", "Someday never comes", "Get it While You Can" (Janis Joplin), "Let Live for Today" (The Grass Roots). The time has even been labeled as the time of rampant hedonism, of uncontrolled abandonment to all kinds of passions. (Harris, 1994: 103-104) The vocabulary of Albanian youth music contains low, aggressive, anti-cultural expressions, like "I don't give a damn", "I'm an outlaw, I respect my laws", "Bloody Boyz", "My spirit's like an hurricane", "My nerves are breaking", "make it hot", "Alcohol, whatever you want, any color you want, however you want", "You are a junky, you keep a knife to mess with me", etc. (teksteshqip.com) This is anti-art itself, lexical and language bastardization, immorality in action.

The climate created by economic globalization and intellectual vulgarization and mediocrity has been the target of many different circles. During a ceremony in Brazil in 2007, Pope Benedict XVI blamed popular culture for the spread of immoral sexuality while praising modesty and honesty at the time of extreme hedonism. He blamed media for deriding marriage and virginity and expressed thoughts against drugs, violence, corruption and enticement to wealth and power. Since the 90's he had criticized Bob Dylan's performance about Pope John Paul II (msnbc.msn.com).

The influence of consumerist culture is also seen in economized sport transformed into a kind of neo-paganism, a quasi-religion and generator of hooliganism and fan violence. While sport should connect people, today it has become a scene where hate against the other, in terms of club or nation and race, explodes. The social identity of sport fanaticism has now taken the form of a subculture, becoming a subidentity that protects itself through any means, even aggressive and hooligan ones. Youth aggressiveness is a matter touching the conscience of contemporary society and this field of concentric circles is widening by everyday with the number of intolerant pupils rising. A considerable part of them cannot even bear their families and parents, let alone opponents of any kind. They express nuances of violence against people with different views, from sport to ideological, ethnical and religious adherence. The causes of such a state are many. The society in general is not a stable one but a society of much turbulence and tensions, of cultural and especially political aggressiveness and this generates violent youngsters who show their superiority not with values but with anti-values, not through the power of reason and intelligence but through muscles and sticks. Analysis show that the means of mass communication too increase the level of violence through their

broadcasts full of guns, rifles, swords, punches, tanks… Low education and deethicization of society also play a role. Moral values are in their lowest. Nobody cares about morals and ethic. All are inclined towards utilitarianism and hedonism, towards moment's profit and pleasure (which can be the stealing of a purse, adultery or beating the opponent sport fan). Modern society in general is in crisis and the greatest thinkers of the time, like Rene Guenon, Ivan Kropek, etc. speak about this.

A study made this year in Macedonia by UNICEF with students of 7-th, 8-th and high school 1-st and 2-nd degrees (with 2114 from 30 schools) shows that children from 11 to 15 years old not rarely are consumers of alcohol and tobacco. According to sociologists, "consumption of alcohol among young population, especially among school youth, is a reflection of pop culture, of the weakening of family and traditional culture, of the fading of parent authority and the acceptance of influences by mental globalization. The global secular culture attempts to break the taboos and prohibitions. Helped by TV and internet, movies and especially sport, it targets youth as the "worthiest consumer" (kohaere.eu) Data about drug usage are terrifying, in the country as well as in global framework. According to J. H. Gatto, the industrial project that destroys personality, personal freedom and traditional morals, separated children from the real world, by advancing the authority of business and of the political state against tradition, family and religion, brought about the state in which people have problems with themselves as well as others (psychological and social problems). According to Al Gore (2000) 55 % of Americans are mentally disturbed and need therapy (Gatto et.al., 2008: 41).

We can say that the hedonism of the time continually creates icons "adored" by the crowd, Popular culture adores some of them like Hugh Hefner, Richard Branson, Merlin Monroe, Kennedy, Paris Hilton, Christiano Ronaldo, Eminem, Brad Pitt... (moreintelligentlife.com) The fame pushed by media and missionaries of superficial culture, increase the number of followers of the machine that produces hedonism of forms like Big Brother, Macedonian Idol, Golden Cage, etc.

Postmodernism, information ignorance, *alias* Facebook mania

As it is known, the great narrative of modern philosophy or the totalizing narrative includes the discourse on progress, emancipation and freedom which affirm universality. All these grand myths that contain historical messianism have to do with the future, the idea expected to get realized. The essence of modernism is the idea that history has a progressive significance; that it advances towards a final perfection (*endism*). Some dramatic events that have shaken the 20-th century (like Chernobyl, Berlin Wall, the dissolution of communism) have been perceived as the drowning of the ideals and goals of illumination spirit, as the dissolution of the great emancipation projects (Kullashi). (Salihu, 2009: foreword). A crisis of these narratives is going on recently, conditioned by scientific developments and ending in disbelief in great narratives: the postmodern. Habermas says the modern is a project destroyed or done with. Lyotard says that after the dissolution of meta-narratives we are in a state of the immeasurability of the heterogeneousness of discourse games irreducible to each other (Salihu, 341-342).

One of the characteristics of the postmodern is doubt about everything. In this time, relativeness is the norm (Sardar, 2010: 263). Postmodernism constitutes a view that was developed as an answer to the crisis caused by modernity, a worldview with evident reflections on the thought of the last 20 years. This polysemic notion is now widely used in art and social sciences literature and it contains elements like game, chaos, partiality,

schizophrenia, polymorphism, dissolution, surface, collage, lack of identity, anarchy, intertextuality… (Dibra, 2007: 24-25). Some other designations about it are: "disbelief in meta-narrations", "rebellion against human monotony imposed by the modern way of life which melts all distinctions in its boiler," "a break of ties with the aesthetic space of modernism", "core of post-criticism and policy o interpreting today", "schizophrenic period of consumer society". Postmodernism which holds a valuable place in the critics towards the western way of life and thought, has become an important point of interest by intellectuals in the west and beyond. Since the 70's it has been judging all values and institutions sanctified by the modern period.

The well-known scholar Z. Sardar says that postmodernism is "a logic of late capitalism", a part of the linear trajectory that starts with colonialism, continues with modernism and ends with postmodernism. He asserts that something like the Truth does not exist at postmodern times. Everything that attempts to offer us the truth is nothing but a deceiving legerdemain. Postmodernism suggests that an ultimate reality does not exist. Instead of it we have an ocean of images, a world where the distinction between the image and material reality has dissolved. Postmodernism describes the world as a videogame, in which we administer our movements around, make battles in cyberspace and make love with the flow of digital information. We swim in an endless sea of images and stories that form our perceptions and individual "reality" (Sardar, 2010: 234).

The reality of our time is that of the information highway, of information society, when post-industrial technologies are one of the most influential factors in human's and society's life. The society of the beginnings of the 3-rd millennia lives with the postmodern and futurological concept of the information society which suggests that the essential factor of social development is the exploitation of scientific, technical information, all in the framework of the so-called "the fourth sector" of economy. Theoreticians like Ulrich Beck, Anthony Giddens and Manuel Castells assert that since the 70's the passage from the industrial society into the information society has been realizing globally. On the theoretical plan, information society is closely tied to post-industrial production (D. Bell, A. Toffler). The main protagonist of this theory is the Japannesse E. Masuda. The Spanish sociologist of information society Castells, uses the term "internet galaxy" regarding this society, which replaces that of Gutenberg. The young population is especially "organically" tied to this galaxy. The juvenile culture has generated a parallel society *(Parallelgesellschaften),* that of the youth world which breathes with the internet, the magic web. It is the *computopia* (Y. Masuda), a surreal world that has computer in its epicenter. This is verified by a note I encountered some days before while surfing on the internet: "If it was not for internet, I'm sure half of Macedonia would go mad" (facebook.com/16.03.2011).

Facts show that a good part of people today, especially young people, are victims of social networks, especially of Facebook, one of the greatest superpowers of the web. It is like a virtual "state" with more than 500 million citizens, most of whom are under 34 years old (72%). Every fourth person who surfs on the web has a Facebook account. The last year 742.400 people in Macedonia were connected to Facebook. It is suggested that Microsoft has made usage of computers easier. Google helps in looking for information. Youtube entertains. Facebook has the advantage of emotional investment by its users, making us laugh, shiver, contract in front of our photos we look at later, worry when nobody answers our sharp notes, wonder when we see somebody fattened after high school, change our status to "married" after marriage and to "single" again after divorce. Facebook has changes our social DNA, making us much more open. As the inventor of

Facebook (Zuckerberg) says, company's mission is to make the world more open and connected (Fletcher, 2010).

People attached to this network have been called as *facebookaholics* by some, a category of people who take a look at the network as soon as they wake up or have some spare time, or get back from school, after dinner, while making homework, before going to sleep. Other designations about FB are *facebook addicts, facebookers anonymous, facebookacy*: a disease that has appeared in Norway and implies being too much attached to the "king of internet". A wise man of our times says internet is a way to spend the time that nobody gives us back. Others have expressed complaints like "How Facebook Stole my Life". A study from Switzerland (Eidenbenz, 2001) has established that internet addicts spend averagely 35 hours a week on the internet, out of profession engagement. However, less than 35 hours a week on the internet might cause negative effects or be about addiction symptoms (el-hikmeh.net). Computopia, the utopia world of computer is also linked with sectors of popular culture. It promotes pop-images, has to do with the process of disneyfication (Viesand et al., 2002: 143), with music and fashion industry, with the mythology of being young (Rowe, 1996: 17). The first edition of the Albanian magazine *Facebookmania*, features the main actors of Albanian pop culture, like Blero, Agnesa Vuthaj, Rozi, Hueyda el Saied, Bojken Lako, Kaltrina Selimi, Genta Ismajli, etc.

Network mania also causes problems about education. Most children pass their winter holidays in front of the magic screen of computer or TV, because these two components of contemporary life exert much more attraction than the classical tools of culture and information like books, magazines, newspapers, etc. The colored world of the screen is more easily consumed and more attractive on first sight because it offers everything as ready and is present in every house. All of us are hooked up in a virtual world that feeds us awry information, bombards us with needed and unneeded things and treats us like slaves of consumerist society. The man of today, especially the young, is not socialized with books. In fact he barely knows it. It is residuary and boring to him. Many finish the school without opening a book, an absurdity of the time we are living in. While book has been the closest friend for man during the past, today it is put for décor on ultramodern shelves, just like a vase, glass or painting. A few days before I saw on TV a kind of furniture which included a simulation of books, a library with encyclopedias and thick books from outside and empty inside. This is the reality of our time when book is vulgarized and killed, when the rich scoundrel deceives other with his false library. This is the time when PC is the technological master of the house excluding reading, talking, traditional hours, stories, tales… For the teenager world of our time, the book is *out*; it engages with iPAD, iPhone, Facebook, walkman, etc. There's no time for the book which is considered as démodé. Unfortunately this is the state of the globalized, technologic new generation, of the e-society or e-misery I would say. A generation that doesn't even know the elementary terms of communication, that has a poor language full of lingual idiocies and barbarisms, without taste or tact. Internet mania of youth is addicting people everyday who express their creativity by communicating through distance with the world, by writing and rewriting mutilated words and sentences and reading very little. We should emphasize that unfortunately internet is very little used for information in our country but for entertainment and spending time mostly, whereas in developed countries it is mostly used for research and study. Some have described internet as better that mother's milk, whereas in general it produces ignoramuses, offering deformation as much as information so that no distinction remains between the Golden Book and a voluminous classical work. The postmodern in alliance with the magic network are narrowing the world every day,

metamorphosing many dimensions of human development and of our daily order. The ignoramus in action can be seen in the constellation of the idols of the time who do not have elementary information about things but are taken as referential persons by teenagers, as "secular icons". A famous singer (Ch. Aguilera) was asked where the Cannes Film Festival was to be held this year. Another **(**B. Spears) doesn't like fish from Japan, a country she thinks is in Africa. A basketball player (Sh. O'Neal) who was asked by journalists whether he had visited the Pantheon in Athens, answered that "he doesn't remember the names of clubs he had visited".

Conclusions

A considerable part of our youth, unfortunately live in palaces of cartoon (Bashgil), in a postmodern utopia, without looking life in the eye. The consumerist culture makes them hip-hop generation, screenagers and addicts to time's manias, follower of the postmodern religion (Lady Gaga: "Pop culture is my religion!") (delo.si/zgodbe) They lack guidance about the way of learning and spiritual support, this being the main cause of desperation, pessimism and spiritual destruction (Bashgil, 2009: 16-17). Many people reach success and get to positions in the society they don't deserve, but this doesn't mean they are happy too. The search for happiness somewhere outside us, in fame, wealth and power, is an optical illusion in the dry, thirsty desert. Students as apprentices of life must learn the art of living. Education institutions are obliged to sow in young people good manners through which they will attain to success and happiness, and protect them from ugly manners. The *ethic will* must be aroused in them and they must be made possessors of the spiritual power that will enable them to choose and realize good deeds and get away from ugly models (Bashgil, 2009: 38), from slavery to beastly instincts and passions. An education far from the heart and spirit is deficient and cannot reach fruitful results. Unfortunately, elementary schools, high schools and universities in our time pursue economic goals instead of intellectual and spiritual ones. They tell new generations they need such knowledge that would open the doors of success for them, the latter being measured by monetary achievements. Whereas the main goal of education must be the education of mind, the balance between the inspired soul, the irascible soul and the reasonable soul, moral and intellectual perfection. To conclude: The ignoramus and the consumer of superficial culture must leave the scene and be replaced by those who know how to live and hold in their hands the sails of the ship in the postmodern ocean of globalism.

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Social and Political Implications of the Infringement of the Right to Private Life

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Abstract:
The present paper aims to highlight the social and political failure of privacy. The privacy requires a complex content and any breach of its components can be some violations of this right. In this area, privacy is a fundamental right derived from the right to life, a social value which must be protected and a subjective right of personality. The work will focus on violations of fundamental and subjective rights of personality and its implications on society and breach of privacy as a social value, with the same impact on society and politics. We use analysis, comparison and evaluation methods and underline some violations of this trilogy with implications in society.

Keywords: *privacy, fundamental right, individual right, social value*

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General aspects regarding the right to private life

Originally defined as the "right to be let alone" **(**Brandeis,1928: 438), the right to privacy had to ensure "the protection of the person in everything that involves the space reserved to beliefs, thoughts, emotions and sensations" (Dumitru, 2012: 45). Hence, private life was protected on the psychological side (Laurent, 2003: 197). Without going so far as to develop the American concept of *privacy*, European jurisprudence adopted another position regarding private life that does not concern only individual privacy. Therefore, we notice that privacy has always been a focal point of both the legislator and the court houses. And this interest is the fact that privacy in any of its meanings is likely to be affected by the "collision with aggressive ways of exercising freedom of expression" (Sudre, 2006: 315). The notion of privacy must be considered in opposition to public life. It consists of the individual's life singularly analyzed – personal life, with reference to health, leisure time, intimacy, feelings - family and married life - social life, embracing friendships, love affairs, professional relations at work. Interpreting the provisions of paragraph 2 of article 71, it means that correspondence and residence are considered private as well. Failure of the privacy components as we have shown above may have social and even political implications. In this paper we intend to highlight these, and the starting point of research will be represented by the regulation of the article 8 of European Convention on Human Rights and its additional protocols. As considered, article 8 argues that "the right to respect for private and family life. 1. Everyone has the right to respect for his/her private and family life, his/her home and his/her correspondence. 2. There shall be no interference by a public authority with the exercise of this right except to the extent that this mixture is stipulated by law and if it is a measure that, in a democratic society, is necessary for national security, public safety, economic well-being of the country, prevention of disorder and crime, protection of health or morals, or protecting the rights and freedoms of others".

Socio-political implications of failure of personal life – part of privacy

This component of private life aims to protect the privacy of the person's identity, intimate life, personal relationships, sexual freedom. Thus, overall, the Member States of the European Council, implicitly Parties to the European Convention regulated the identification of the nationals based on a national system. This practice does not violate art. 8 of the Convention, so that the duty of every person to have a national identity card and show it at the request of police does not constitute an interference with private life, prohibited by this text. It was also decided by the former Commission that the existence of video surveillance of public places or places where persons are deprived did not constitute an infringement of the right to image of people, if such images are not designed to be stored and are not made public. Information about the health of a person is covered by the concept of privacy. Therefore, the Court decided that the respect for the confidential nature of information on the person's health is an essential principle of the legal system of the signatory states of the Convention. What would the implications be in case of breaches of health state information?

Firstly, in the absence of such protection, those in need of medical care would not be willing to provide personal and intimate information required in order to prescribe appropriate treatment for their illness or to consult a physician, which would be likely to threaten their life, and in the case of contagious diseases, it would be a danger to society.

Disclosing information about AIDS without the consent of the person concerned would oblige the courts to determine, based on a rigorous examination, guarantees for the protection of privacy. Not often, the personal lives of public figures are the subject of various discussions in various TV shows. Thus, Kanal D was fined 25,000 lei by the National Council of the Audio-visual (NCA) for the shows "Right on target" and "Kanal D News" where Cătălin Botezatu's right to privacy was violated. NCA decided on Thursday to summon B1 TV publicly for the show "World of Banciu" where the moderator Radu Banciu violated Ștefan Bănică and his family's right to privacy; on Tuesday NCA decided to fine Kanal D with 50,000 lei for two editions of the show "TV Cancan", in which the right to privacy of the television celebrities Simona Gheorghe, Andreea Marin Banica and of the producer Dana Mladin was infringed.

What would be the social implications of these infringements of the right to personal life? Maybe the decreasing of confidence that people can have in the media? Trust in the media is not at very high levels, according to a recently published study, conducted in December 2013. According to these data, only 1 in 5 claims that the Romanian press is *completely independent* or *rather independent*, while other 24% believe that *is neither dependent nor independent* and 52% consider it *rather dependent* or *dependent*. (http://www.turdanews.net/bloggelu/un-interesting-study-cum-stay-with-confidence-in-media / of 28 February 2014). Maybe the deliberate defamation of public figures in exchange for the payment of a fine? On the other hand, we can analyze the situation regarding the granting of fines easily to the media, based on a less detailed and less legally supported analysis regarding a real violation of the right to personal life, in order to increase the state budget.

To protect personal data, art. 33 of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data (Law published in the Official Gazette no. 790/12 December 2001) refers to the offense of "infringement on privacy and application of security measures". Applying these rules, the President of the National Authority of Supervision of the Personal Data Processing (NASPDP) ordered the application of fines in the amount of 20,000 lei for the Public Notary Office OOP for breach of its obligations for the implementation of security measures and confidentiality processing of personal data.

The social implication of such a measure made public can be a positive one, which refers to boost confidence that people have in state institutions, namely the National Authority of Supervision of the Personal Data Processing. It can also be an example to consider for other notary offices and other public institutions of public interest to comply with the law on personal data processing.

Socio-political implications of the infringement of social life – part privacy

The right to privacy includes not only the right to be stuck in its own "universe", with the exclusion of others, namely personal privacy, but also the right to exit this "universe" to go to other members of society, i.e. social private life (Marguenaud, 1999: 66). Consequently, the notion of "private life" also covers the area in which people interact and develop social relationships. Moreover, "there are times when one can carry out professional activities in his/her home and in an office or commercial space, business-related activities" (Bârsan, 2005: 619), which causes the sphere of privacy to extend to the professional or business activities. It is therefore necessary to protect the individual's right to develop relationships with the outside world. Establishing and maintaining social

relationships is achieved through many ways. The summary under consideration is the phone calls. It has been often called into question the legal nature of wiretaps of all kinds. Given modern technical means of investigation in criminal proceedings, respect for privacy has gained increasing importance. An eloquent proof in this regard is the fact that, in practice, the parties frequently invoke violation of Article 8 of the European Convention on Human Rights to request the annulment of evidence produced by a party or by an act of administration of the sample. Both individuals and public authorities and agencies must respect the privacy of the person when managing evidence. In this respect, art. 8 paragraph 2 of the European Convention provided an exception to the rule, a faculty member state to authorize an "interference by public authority in the exercise of this right" provided that it is needed. As noted in doctrine, intimacy protection of privacy is ensured by the creation of the legal framework for taking evidence itself, possibly evidence obtained by violation of the privacy to be censored through the principle of legality. For example, search, legally executed, does not involve, in principle, any excessive violation of privacy. The possibility of wiretapping by state authorities is practically provided in all states signatories of the Convention, being generally related to the fight against crime. According to art. 190 of the New Penal Code, it is charged the act that consists of "violating the right to privacy of a person through the use of remote means of interception of data, information, pictures or sounds from the places indicated in Article 189 paragraph 1, without consent of the person using them, without permission of law and is punishable by imprisonment from 2 to 5 years. The same punishment applies to the dissemination of data, images and sound information obtained by the means set out in paragraph 1". Any deviation or abusive exercise of legal norms in this matter is an infringement of the right to social life and is punishable as such.

Some examples are presented. The European Court of Human Rights in Strasbourg passed judgment on Romania, on Tuesday, November 27th, 2012, for violation of the right to respect for private and family life in the case of a judge who was arrested and sent to court improperly by the National Prosecution Department Oradea, for a so-called bribery, in a case managed by prosecutors. Violation of art. 8 of the ECHR mentioned the fact that during criminal investigations, the judge was wiretapped illegally, on the basis of permits issued by prosecutors, and also by the High Court, during 1999-2003, which continued in 2005, so over the time limit allowed.

In this case, the ECHR awarded damages symbolically, according to its practice according to which the admittance of the infringed right is simply a compensation for prejudice.

We see, therefore, that the first social implication redressing social disregard of the right to life is rehabilitating a man who was found guilty for committing various offenses. This equates to damage. But, in opposition to this situation, there is an ECHR judgment in the case of Stefan Blaj against Romania. The doctor, unhappy with the conviction he received in Romania, filed a complaint to the ECHR, where he complained that he did not have a correct trial, that, in reality, he was caused by the denouncer to accept bribes when the recording was done, that he was not informed during interrogation about his rights and the charges against him. The social implication that we consider in this example is to confirm correct perpetration of justice made by the courts in Romania, aspect with positive political implications over the state institutions as well, such as the National Prosecution Department that implements and enforces the law when an act of corruption is analyzed. Another example is that of the mayor Apostu against Romania. ECHR upheld the complaints of the former Cluj Mayor, Sorin Apostu, sentenced to prison for corruption, in

which he complains of the bad conditions during the pre-trial detention, and of the violation privacy. According to the decision posted on the website of the European Court of Human Rights, it appears that the former mayor of Cluj, Sorin Apostu claimed that in 2011, when he was in custody for corruption, had poor and unhealthy conditions in the pre-trial detention Police Cluj County. The former mayor of Cluj also complained that his privacy was violated when prosecutors who handled his case released wiretaps that contained instants of his private life and had no connection with the file corruption. The ECHR judgment states that both the complaint on poor detention conditions and the complaint that by publishing wiretaps, the mayor's right to privacy was violated were upheld. Although demanded compensation in this case, the ECHR rejected it, motivating with the lateness of the application.

Socio-political implications of infringement of correspondence and residence – components of privacy

The right to keep correspondence is, as a principle, a part of the private life of a person. The editors of the Convention chose to mention in the text of art. 8. In the practice of Convention, it appears sometimes invoked distinctly; but it is sometimes joined right to privacy and/or to the right to family life. Thus, the Court decided that when a communication between two members of the same family is intercepted, we face a double interference: both on the right to family life and on the right to correspondence. As for the notion of correspondence, subject to the right protected by art. 8, cited right in the decision above mentioned, the European Court referred to the essential word: communication; as the former Commission said, there is correspondence within the meaning of art. 8 of the Convention in all cases where two or more people change, in any way, a message or an idea; it includes both written communication, and the telephone.

These aspects of private life were analyzed above. Art. 8 of the European Convention on Human Rights protect distinctly the right to home. In the jurisprudence concerning examination of the application of the provisions of art. 8 on protection of this right, the Court has held that the right to home regards the safety and welfare of a person. Ultimately, all other rights referred to in art. 8 are linked, in principle, to the right of home.

Indeed, as a rule, private life develops in relation to home; and so does family life, and the right to correspondence is also related to the person's home.

Also, as we shall show further, European court jurisprudence has extended the notion of home to the place where a person pursues his/her work, and recently it has been decided that, within certain limits, domicile within the meaning of art. 8 can involve a company headquarters and agencies. All these elements characterize the privacy of personal life which must be protected against any external interference. On a national level, the right to privacy of correspondence is also protected by rules of criminal law. The criminal legislator criminalized in the provisions of art.302 all the actions regarding opening, theft, destruction or retention, without right, of a correspondence sent to another, as well as disclosure without right of the content of such communications even when it was sent opened or it was opened by mistake and also the interception without right, of a conversation or communication by telephone or by any electronic means of communication. If the deeds refer to the disclosure, dissemination, presentation or disclosure to another person or to the public, without right, of the contents of the intercepted conversation or communication, even if the perpetrator became aware of it by mistake or by accident, the act is considered by the criminal legislature to be more serious.

By criminalizing these actions the legislature protects social relationships regarding the inviolability of correspondence, conversations or communications of a person and therefore those relating to privacy of the person. The person who commits such an infringement of the right to privacy is punishable with imprisonment or fine by the penal legislature. The home is protected by the criminal law by criminalizing the offense of trespassing - art. 224 The New Penal Code - breaking and entering. By home, the criminal legislature understands the residence and its annexes, where freedom and personal privacy should act freely, and by criminalizing this act, the criminal legislature protects social relationships whose security is conditioned by ensuring a person's freedom to have a home where can live free from abusive interference from the outside and decide freely on the people they want or not in his/her home.

Conclusions

The right to private life concerns personal privacy and it is closely related to family life, marital status of each individual, to all the identification attributes, including the main dwelling or other residences. Some conclusions about the socio-political implications of the failure of the right to privacy can be drawn from specific examples, of instances of case law. Thus, a high profile in the last two decades in our country and which derives from the right to privacy is, as already mentioned, that of correspondence. Media coverage was made possible as a result of political regime change in December '89. The supreme law of the country expressly stipulates that "privacy of letters, telegrams and other postal communications, of telephone conversations and other legal means of communication is inviolable." Without emphasize on the semantics of the term inviolable, it is very clear that there is not the possibility of accessing the content of the correspondence of a person without his/her consent, basic law not providing an exception and leaving no room for other interpretations, meaning the possibility of interference within the meaning of the correspondence. According to Romanian legislation typology and hierarchy of laws issued by the only legislative authority of the state by law, be it organic or much less by ordinary law, the constitutional legal norms contained in the supreme law cannot be violated. Correspondence cannot be violated not even by state institutions. But media exemplified many listening situations of phone calls to people who are accused of committing certain illegal offenses. In these cases, in addition to violation of a fundamental legal rule, it is rejected the right to privacy of the person, these actions being made while the person continues the presumption of innocence. Even more, such practices are apparently used previously to bringing some complaints, respecting the procedure in force, proceeding directly to monitoring a person (or group of people), to gather evidence for certain behaviors or intentions.

Internationally, access to private data, including correspondence, is motivated by the danger of terrorism in the world, especially if we consider the major events caused by terrorist organizations at the beginning of this millennium (WTC-USA, London, Madrid). Even if these motivations can lead to such interception practice and mail verification, abuses are not to be created. In another example, it was considered a violation of the right to private and family life, the attitude of a prison manager in Turkey, who often controlled correspondence between a prisoner and his lawyer. The prison staff has also destroyed the correspondence which a prisoner sent for publication in a newspaper, in order to inform people about the realities of the prison system. European court considered this attitude as a breach of art. 8 of the European Convention of Human Rights, whose content aims also

to privacy of correspondence, considering that in a democratic society such an attitude is illegal.

A new, but very extensive, is the possibility of electronic communication. The Internet has become a vehicle for transmission of large amounts of information in a very short time, instantaneously. The content of a correspondence must be also respected in the so-called non-traditional forms of communication, not even the companies which function as administrators of Internet services, do not have the right to verify the correspondence. The storage of personal data by companies employing employees or their assistants do not entitle companies to use such personal data for a purpose other than managing the staff situations of the company, the use of personal data of employees is possible only with their consent. Checking the mail is a violation of the right to privacy, and in terms of Romanian positive law, it is considered that the text of the Constitution, stipulating that secrecy of correspondence is inviolable, cannot be interpreted beyond the term used, other regulations not having the necessary legal force to exceed, including the legislation that was organized by the secret services or other central autonomous authorities whose purpose is to protect state interests and national security.

The legal standard is confirmed by a constitutional provision of another rule, in the Romanian criminal law, which incriminates the act of a person of opening or intercepting the correspondence of a person, even if it is not sealed or glued or even codified. The only ones who have the right of interposition between the correspondence between the sender and recipient, by consulting its contents, are parents or other legal representatives, in charge with the education of the minor, when there are assumptions that the child could be affected. (Udroiu, Predescu, 2008: 212). Unlike the Constitution, which, in my opinion, is firm and does not provide any possibility to intercept the content of correspondence, at least that's the meaning of the word “inviolable”, according to the Dictionary of the Romanian language. In criminal law, it was created an exception, the act of opening a correspondence of another, is incriminated only where the operation was done <without right>, which makes us think that, in addition to the categories of persons above mentioned, who can take the correspondence of minors, the caretakers, there would be other bodies or organizations that, under the name of the law, do so under various pretexts. Given the conflict between the two rules, namely the organic, which requires more than the constitutional norm, the first can be regarded as unconstitutional, even if it is in force, nobody informing so far the Constitutional Court about checking the legal effect which creates criminal provision, based on the constitutional norm.

In another case, which is debated by the European Court of Human Rights, also aiming at failure of privacy and family, an Italian woman noticed that near her own home (at a distance of 30m) a foundation of storage and treatment of waste was being built. The applicant asked the European Court, citing art. 8 ECHR, being permanently disturbed by noise and possible exhaust emissions of the waste stored there, all affecting health and family peace, while constituting a threat to the environment. The European court noted the grievances of the applicant, even if after 7 years from the commissioning of the deposit, its administrators took steps to respect the freedoms of the applicant, the court held that the State is in violation of the Convention, because for 7 years it despised the right to the residence by dangerous activity carried out in that warehouse, not taking into account the right to silent privacy of the applicant and her family.

In the privacy of an individual approach, developing technology has again concrete effects. Increasing sites where there are video cameras had a positive effect in terms of security for a particular object, but the placement of these devices in public places

such as schools, public institutions, shops or parks or other objectives has repercussions on the privacy of any person. Managers or owners of private property have the right to place video surveillance systems, but their focus is only on that property, and not on public spaces. The reason is understandable, namely the protection of privacy of every individual who uses public places. Capturing images with a video camera, which oversees the space of a closed circuit in the UK, and those images aimed at a person while trying to commit suicide, the act remaining in the prior attempts, followed by dissemination through a TV channel, prompted the person filmed to address the international courts, the latter considering that the offense charged was a violation of the European Convention on Human Rights concerning the right to private life (Selejan-Guţan, 2006: 136). The law protects private life, however, media (paparazzi) publicly discloses aspects within the privacy of public figures, often with a high reputation. On the other hand, the exposed person can be considered injured person and can invoke subjective rights, which concern private life, dignity, liberty or the like. Given the realities of everyday disputes started through the media, fellow curiosity about another's living, the possibility of using information through specific methods of blackmail someone's life, respect for privacy and family are suffering. The law is often violated and sanctions in many cases do not reach the application. Numerous articles are eloquent, some called <tabloids>, which sometimes bring serious prejudice to the personal aspects of a person's life and no finality of the case can be reached, as most often the person whose right was breached avoids to continue or amplify a conflict with the press, and does not use the right to ask to do justice.

Analyzing the categories of implications of violations of privacy, we conclude that they fall into the following categories: 1. implications with positive connotations for society: increased confidence in state institutions (e.g. Anticorruption National Department, ANC, the National Authority of Supervision of the Personal Data Processing, etc.), financial growth of the state budget through fines, recognition of the violated rights equivalent to compensation, punishment of those who violate privacy, warning the various institutions to respect legal provisions on the right to privacy or to prevent their decay or fine; 2. implications with negative social connotations for society: loss of confidence in institutions that frequently violate the right to privacy (medical centers, the media, courts applying legal provisions abusively, unsanitary detention centers, etc.), harm the legitimate interests of a person by committing abuses through legislation.

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The Right to Honour, Reputation and Image of the Natural and Legal Person in Post-Communist Romania

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Abstract
The right to honour, reputation and image, as well as the right to privacy, tend to protect the peace and the tranquillity of personal and family life, resulting from the notion of freedom and hence the difficulty of determining the circumstances to put them into operation. If we assumed that the right to privacy absorbed the right to image, it could be declared about the right to dignity that it included the right to honour and reputation. Each of them should be considered as an autonomous right, but in the context of the protection of personality rights. Unlike the Communist regime, in the transitional period Romania, the legislator admitted that the infringement of non-patrimonial rights attracted the same consequences, either in the hypothesis of damaging the rights of individuals or legal persons, so that only the natural person had the name as attribute of identification, whereas the legal person was identified by the legal entity's official legal name. Any infringement to the name of the natural person or legal person is, in fact, a violation of the right to honour, reputation or image. This article provides an overview on the evolution of the Romanian legislation on addressing the protection of these rights and of the concept that not only the individuals, but also the legal persons may suffer moral damages.

Keywords: *non-patrimonial right, dignity, freedom of expression, audio-visual communications, mass-media*

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General considerations

Having the role to protect the human personality and dignity, the juridical norms that protect honour, image and professional reputation are essential in any democratic society, in which the human being is the fundamental value. The evolution of the society imposed, having as purpose a harmonious living, the necessity to judicially protect and guarantee dignity, honour and reputation of people, without consideration for the statute of natural or legal person. Altogether, the way in which we ought to also regulate the defencing mechanisms of dignity, honour, image and reputation, still constitutes the subject of numerous debates. The general regulations regarding the right to honour, reputation and image, along with the right to a private life, are no longer sufficient, given the circumstances of the progressive development of mass media, the emergence of new computerised ways of communication (social networks), in the same time with the significant growth of their impact on the public opinion.

The inclusion of the human dignity in the very first article of the Romanian Constitution, amongst the supreme values of a state governed by the rule of law, confers to this the value of fundamental constitutional principle (Deleanu, 2007: 454; Buta, 2013: 26). Nevertheless, the inclusion in the group of the supreme values was not intended to confer to dignity more significance in our juridical system, allowing us to notice the reticence of the legislator for the definition of this concept (Radu, 2015: 92), along with that of the Constitutional Court to mention it in its decisions: "The functions and the contents of these values, in our constitutional system, are rather unclear, due to the fact that, on one side, they leave the impression of meta-juridical concepts and, on the other side, the Constitutional Court usually avoids to make direct use of these values, and, when it does, it avoids to determine the exact content of them" (Dănișor, 2009: 50). In art. 58 from the new Civil Code, the Romanian legislator enumerated, in order to exemplify, the right of personality – "the right to life, health, physical and psychical integrity, to dignity, to the personal image, to the observing of private life, and other legally protected rights", the formulation "and other legally protected rights" bringing forward the issue of establishing "other legally protected rights" that belong to the group of the rights to personality.

Undoubtedly, we cannot exclude, among them, the right to name, pseudonym, honour, reputation, and neither can we do this with quite a few freedoms, directly or indirectly recognised by the civil law, such are: the freedom of thought and conscience (including the confessional freedom), the freedom of expression, the freedom of travelling and settlement, the freedom of working and profession, the freedom of association, the freedom of getting married or remaining unmarried, the freedom to live in seclusion or in a community or of free union; then, the freedom to have a large family or to not have any children, the freedom to adopt a child, the freedom to choose the friends, the freedom to select the way of dressing and of eating; the freedom to make arrangements for the funeral ceremony (Cornu, 2003: 185). Encompassed in the title of the rights to personality, other authors also include the right to anonymity, the fundamental guarantees for the hospitalisation of people with mental disorders, the inviolability of the domicile, the right to the personal image, the right to the personal voice, the right to confidentiality (Deleury and Goubau, 2002: 97-214; Cornu, 2003: 184). All these rights and freedoms, even if they are not mentioned in an expressed legal disposition, have a lot in common with the rights to personality, from which they cannot be separated, because they also represent "inherent qualities of the human being". All these rights and freedoms are gathered in what can be

called, in a broader respect than that of "the rights to personality", *"the freedom to display the personality"* (Radu, 2013: 179-196).

The rights to personality are the work of doctrine, a work developed and perfected in time (Malaurie and Aynes, 2004: 91; Carbonnier, 1997: 287), an evolution that is very well evidenced by the establishing of the right to dignity, to honour, to reputation, to the respect for private right and image. This fact allows us to consider that, in the lack of an exhaustive regulation, it is not only difficult to accomplish a perfect determination and systematisation of these rights, but also this determination, no matter how detailed it is, could be soon surpassed by the natural evolution of the demand for the protection of the character of personality (Malaurie and Aynes, 2004: 85).

The personality that these rights refer to, should not be confused with the technical notion of legal person, which is the quality to be subject of law, but it owns a wider meaning, describing the human being with all the features, including the biological, psychological and social aspects. We are concerned – for this analysis – only about the right to honour, reputation and personal image, these rights resonating both in the civil law, the labour law (Radu, 2013: 179-196), and in the administrative and commercial (business) law, because the subject who can suffer the infringement of these rights can be a natural person (freelancer, employee or civil servant) or a legal person. The right to honour, reputation and image, along with the right to private life, tend to protect the peace and tranquillity of the personal and family life and result from the notion of freedom, determining the difficulty of the circumstances to put them into operation. If we assumed that the right to privacy absorbed the right to image, it could be declared about the right to dignity that it includes the right to honour and reputation. Even if there are specialised authors who affirm that the honour and reputation are only components of the dignity (Ungureanu, 2006: 9-19), in our opinion, each of them ought to be analysed as an autonomous right, but in the context of the rights of personality protection.

All the rights to personality are recognised to each person, without discrimination, they are opposable *erga omnes*, imprescriptible by acquisitive and extensive prescription (Nicolae, 2004: 421) and they are extra-patrimonial rights, meant for the accomplishment of personality (Malaurie and Aynes, 2004: 91). The rights to personality cannot change their bearer; they do not also have transmissible character, meaning that they cannot be transmitted to the successors. On the other hand, due to the fact that they refer to moral aspects and, therefore, they are not susceptible to have a pecuniary value, they are part of the non-patrimonial rights. As a matter of fact, these rights are non-assignable, because they cannot be the subject matter of a transfer or definitive and imperceptible renouncement, being outside the trading businesses.

Nonetheless, we have to notice that these qualities must sometimes be regarded in detail, because they are not equally valid for all the rights from the category of the rights to personality. There are interferences between the rights to personality (that are extra-patrimonial rights) and the patrimonial rights. For the reason that, from the legal point of view, certain conventions related to the rights to personality (personal image, voice, name exploitation) can be legitimate, there has been discussed, in the doctrine, the emergence of certain "patrimonial rights of personality" (Ungureanu, 2006: 9-19).

Broadly, we can declare that the right to honour, reputation and image, along with the right to secrecy, are rights that protect a person's moral integrity and the private life. Honour, honesty, good reputation and image of a person are immaterial, ethical goods and they are inherent to the human being. Independently from the perception or the conscience of an individual, regarding his own identity and dignity, a person's honour, honesty, good

reputation and image are not innate attributes, but ethical characteristics that are gained during lifetime and, altogether, they determine the way in which a person is regarded by the other members of the society. Restrictedly, all these above mentioned rights are included in the notion of "reputation", a notion that designates the way in which a person is considered in a society and it can be changed during the lifetime.

There are situations in which, in the press and the other audio-visual ways of communication, the right to honour, the right to reputation and the right to image can be jeopardised. In these cases, the judges have the difficult mission to find the necessary equilibrium between the protection of the individual's rights to personality, to private life, on one side, and the freedom of expression, respectively, the right to information, on the other side. The attempt to keep a balance between the right to the respect for the private life, consecrated by art.8 of The European Convention on Human Rights, and the freedom of expression, stipulated by art.10, necessitated a permanent readapting to the evolution of morals and manners, the social realities and the juridical requirements, a fact illustrated by the jurisprudence of the European Commission and European Court for human rights (Bîrsan, 2003: 16-20).

The lack of precise definitions for these rights and of a well-established legal background is noticed especially in the area of mass media. The conditions in which the right to honour, the right to reputation and the right to image are infringed, are going to be analysed by the judges, not related to a general formula, but only correlated to a specific case. Any infringement of this rights exposes the person in circumstance to the danger of exclusion, in a greater or smaller extent, from the circle of family, professional, social and juridical relations, and, therefore, they must be protected by law, not only as moral goods, but also as social and juridical values.

The evolution of the legal background after the Romanian Revolution from December 1989

One of the most important democratic achievements of the Romanian Revolution from 1989 is the freedom of expression, stipulated in article 30 of the Constitution. Subsequent to the fact that, in the first sections of the constitutional document, the legislator enounced the essential attributions of the freedom of expression, in the last three sections he imposed certain limits for the exercising of this right. Thus, according to art.30 section 1, the freedom to express the thoughts, opinions or beliefs and the freedom of any kind of creations, oral or written, in images, sounds or other means of public communication, are inviolable. For the exercising of this fundamental freedom, there are instituted numerous guarantees, among which: the interdiction of any king of censorship; permission for founding publications, the basic component of the press freedom; the interdiction to suppress the publications. In order to avoid the abusive exercising of this freedom, art. 30 section 6 from the Constitution mention that the freedom of speech "cannot prejudice a person's dignity, honour, private life and neither the right to the personal image".

Starting from the literary meaning of word "image", according to which the image is a reproduction of the physical appearance in a picture, or in a television show, in the juridical post-December literature (Andrei and Safta-Romano, 1993: 49-53), it was expressed the opinion that the infringement of the right to the personal image, which the constitutional text refers to, can occur by capturing, preserving and disseminating the image of a person from the editing of independent images, with the purpose of obtaining

a general effect. Therefore, this opinion resumes only to the physical image, included in photographs, films, television shows etc.

Another opinion, a more complex one, asserts the fact that the personal image includes a broader field, referring to the result of the physical and moral features of a person, the opinions and beliefs, the quality of the professional activity, the behaviour inside a society, the coefficient of honour, honesty and loyalty, in relation with the other members of the society, of an individual (Pavel and Turianu, 1996: 27-28).

We should notice that under the protection of art.30 section 6 of the Constitution, there are encompassed dignity, honour, private life and the right to the personal image. While the first three attributes (values) mentioned in the text – dignity, honour, private life – refer to the behaviour of a person, the forth element – the personal image – can be regarded in a wider acceptation, being related to the way in which a person's behaviour is reflected and is perceived by the other members of the society, not only in the manner it is illustrated by a material object, such is a photograph, a printed image, a drawing etc.

These limitations for exercising the freedom of expression regard the forbidding of defaming the country, nation, the inciting to war of aggression, national, racial, class or religious hatred, discrimination, territorial separation or public violence, along with the obscene manifesting, contrary to the good manners (art. 30 section 7 from the Constitution).

These constitutional stipulations were brought into unison with the international regulations on this subject (Tuculeanu, 1995: 123-126). Proclaiming the freedom of expression and to information, art.10 of the European Constitution on Human Rights, concluded at Rome on the 4th of November 1950, stipulates, among others, that the exercising of freedoms can be subjected to many restrictions, conditions, formalities or sanctions of the law, which constitute necessary measures, in a democratic society, for the national security, territorial integrity or public safety, for keeping the order and preventing the crimes, for protecting the health and morality, the reputation or the other's rights, for stopping the divulging of confidential information, or for guaranteeing the authority and impartiality of judicial power. The European Constitution on Human Rights was ratified by the Romanian Parliament through Law no. 30/1194, being consequently integrated into the internal law (art. 11 from the Constitution).

Another important regulation on the freedom of expression is Resolution no.1003/1993 of Council of Europe, in which there is affirmed The Ethics of Journalism. Based on this resolution, the Chamber of Deputies, through Decision no. 25/1994 and the Senate, through Decision no.32/1994, recommended to the entire mass media to take into account and to apply these deontological principles of journalism, whose validity is still considered, after more than 20 years from their adopting, as much as, in Romania, it is still felt the lack of a law to regulate the practicing of the profession of journalist. Resolution no. 1003/1993 includes, among the principles of journalism, the following ones too: the observing of the citizen's right to private life; the right of people who fill a public position that their private life to be defended (point 23); the obligation of mass media to defend the democratic values – respect for the human dignity, opposition against violence and incitement to hatred, rejection of discriminations based on culture, gender, religion (point 33); the obligation of mass media, especially television, to avoid the transmission of shows, messages, images that depict violence, sexual exploitation or depravation, along with the deliberate use of inappropriate manner of speaking (point 35). Resolution no. 1003/1993 also contains ethical principles, among which there can be evidenced that: the journalists ought not to distort the real, impartial information and the

honest opinions, nor to exploit them, for their own interest, in order to mislead the public opinion (point 21); mass media plays an important role in the evolution of the democratic life, because, through the offered information, it guarantees the participation of citizens to the political life (point 17); in journalism, it is not applied the principle "the end justifies the means", therefore, the information has to be obtained through legal and ethical means (point 25); to the request of the interested people, mass media, has to rectify the information that proved to be fake or wrong; the national legislation must stipulate adequate sanctions and, whenever it is necessary, damage compensations (point 26).

A corollary of the freedom to expression is the right to information, which represent a person's access to any kind of public information (art.31 section 1 from the Constitution). Establishing the legal background for the exercising of this right, the fundamental law stipulates that the public authorities have the obligation to correctly inform the citizens on the public issues, but not the personal ones. The right to information must not prejudice against the young people's protection measures or the national safety. We can notice the fact that, by guaranteeing the right to information, the constituent legislator considered only the public information. The exercising of this right cannot implicate the access to facts and information that do not have a public character and nor to those regarding the national safety or the judicial investigations (Constantinescu, Iorgovan, Muraru and Tănăsescu, 1992: 81). It is our belief that the same exigencies must be imposed on mass media that, without holding a position specific for the state's authorities, through the power of influencing the public opinion, tend to become the fourth power in the state.

Taking into account the responsibilities of mass media, public or private, the Constitution stipulates their obligation to provide the correct information of the public opinion (art.31 section 4). Besides the obligations stipulated by the legislation, mass media has, first of all, a moral responsibility for citizens and society, especially nowadays, when the information and communication fill a special position in the support of the democratic values (Vintilă, 1999: 154-155).

Another important regulation adopted by the Romanian Government was G.U.O. (Government Urgent Ordonnance) no. 53/2000 on measures regarding the settling of the requests referring to the licensing of compensations for moral damages, which abrogated the Law of Journalism no. 3/1974, excepting the dispositions of art. 72-75 and art. 93. The normative document was stipulating, in art.1 section 1, the right of the prejudiced through an infringement against honour, dignity or reputation, private or family life, the right to image, to ask for compensations or moral damages, and was modifying, through art.4, the Law no. 146/1997, on the stamp duties, as regarding "the establishing and providing of compensations to the natural person, for moral damages against honour, dignity, reputation, private or family life, or the right to image".

The Constitution attributes the civil responsibility for the infringement of the juridical coordinates, concerning the accomplishment of freedom of expression, to the editor or television host, the author, the organiser of the artistic show, owner of the multiplication device, radio or television station (art.30, section 8). It is noticeable the fact that the juridical responsibility, to which art. 3 section 8, from the Constitution, refers, is the civil responsibility, the penal one being stipulated in the old Penal Code. Unlike the actual Penal Code, the old Penal Code of Romania, from 1968, also protected the esteem, consideration and respect that any person should enjoy. Art. 205 from the old Penal Code used to regulate the insult as following: "The infringement against honour or reputation of a person, through words, gestures, or any other means, or through exposure to mockery,

is punished… (section 1); the same punishment is applied in the situation that a person is attributed a deficiency, illness or infirmity that, even real, they should not be mentioned". On the other side, the calumny, as a crime, is stipulated by art. 206 from the Penal Code: "The public mentioning or imputation, through any means, of a determining fact about a person that, if it were true, would expose that person to a penal, administrative or disciplinary sanction, or the public contempt, is punished…".

The present Penal Code does not regulate anymore, neither the insult, nor the calumny, the only modality in which a person, who suffered an infringement against honour or reputation, can recuperate the prejudice, being to bring an action against, in the civil court. Showing a greater thoughtfulness than before, to the private life, the new Penal Code incriminates, among the crimes that invade the domicile and private life of a person, "the immersion in the private life, without consent, by taking pictures, filming or image registering, listening with technical devices or audio recording of a person who is in his/her house or annexed rooms owned by them, or of a private conversation" (art. 226 section 1), "revealing, broadcasting, presenting or transmitting, without consent, of sounds, conversations or images mentioned in section (1), by another person or by the public people" (art. 226 section 2), along with "revealing, without consent, of data or information on a person's private life, which can bring a prejudice, by an individual who found them out due to his/her profession or position, and who has the obligation to keep the confidentiality about" (art. 227 section 1). These provisions of the new Penal Code are of high importance, because, it might happen that an infringement brought against the private life, to attract an infringement against honour, image and reputation.

The constitutional dispositions, and those of the penal legislation, must be correlated to the provisions of the Audio-visual Law no. 504/2002. An abstract of the content of art.3 section 3 from Law no. 504/2002, can be considered the idea that the liability for the content of the programmes is, according to law, of the radio-transmitter, host or author, accordingly. It is worth noticing the fact that, unlike the present law, the old law of audio-visual, used to content more detailed provisions regarding the reparation of moral damages, resulted from audio-visual communications. Thus, according to art. 2 section 5 from Law no.48/1992 of audio-visual, "The civil liability for the content of the transmitted information through audio-visual channels, through which there resulted material or moral damages, is incumbent on, as the case may be, the host, author, the bearer of the licence for the broadcasting station, the owner of the radio-electric station through which the communication was done". The significant and very important fact to be mentioned here is that art. 2, section 5 was referring to the compensate the moral damages, when the content transmitted through audio-visual channels caused such damages, the provisions of the mentioned law not being able to draw a distinction between the quality of natural and legal person, of the prejudiced. Another important provision of the old law of audio-visual was included in art. 4, according to which: "The person who considers suffering prejudice against one of his/her legitimate, moral or material interest, through an audio-visual channel, has the right to ask for the necessary rectification, and in case of refusal, he/she has the right to reply. The rectification and the reply shall be broadcasted in the same conditions, in which his/her right or interest was infringed. The liability for the transmitting of the rectification or the right to reply, is incumbent on the owner of the broadcasting licence, of the station where the infringement occurred". We should notice, once more, the fact that art. 4 was also mentioning "the person who considers to suffer prejudice", without making a distinction between the natural and the legal person.

The right to honour, the right to reputation and the right to image of the legal person

Contrasting with the communist regime, in the transitional period Romania, the legislator admitted that the infringement of non-patrimonial rights can draw the same consequences, either by violating the rights of a natural person, or a legal person, because the natural person has as identification attribute the name, while the legal person identifies through denomination. Any impingement brought on the name, in the case of the natural person, denomination or company, in the case of the legal person, represents, in fact, an infringement of the right to honour, reputation or image.

The belief, according to which the impingement of non-patrimonial rights is also compatible, in the case of the legal persons, has been gradually shaped in Romania, based mainly on the dispositions or art. 54 section 1 from the Decree no.31/1954, from which it results that the protection of non-patrimonial personal rights refer to any person who suffered, among others, an infringement against his/her/its right to name or denomination. Even if only the natural person is able to experience sensations or to have feelings, incompatible to a legal person, it is not less true the assertion that "the term non-patrimonial…refers not only to the circumstance in which this kind of prejudice has not got an economic value, precisely evaluated in money, but not to the fact that the goods, to which such an infringement can be brought against, would not belong to the impinged person" (Albu and Ursa, 1979: 49).

The situation that a legal person cannot suffer from infringement of certain non-patrimonial specific rights (denomination, company), will not lead us to the conclusion that the right to honour, reputation or image are compatible with the quality of legal person. The first approach of this subject in the post-December legislation, can be found in the dispositions of Law no. 15/1991, for the solving of the collective work conflicts, according to which "in case of declaring as illegal the ceasing of strike, the courts will decide on the obligation of the guilty parties to pay compensations requested by the unit, for the damages" (art. 36 section 3). Because the mentioned text is referring to general compensations, and not only to patrimonial compensations, in the Romanian doctrine (Beligrădeanu, 1993: 14-15; Ștefănescu, 1996: 49), it was appreciated that the obligation to moral compensations of the strike organisers, illegally declared or continued, is legally admitted, if the unit suffered from a real non-patrimonial prejudice, severe enough, in this way, the judicial instances having the sovereign right to decision, according to the specific situation of each case (Mazeaud, Mazeaud and Tune, 1957: 407-408). These dispositions were also included, later, by the art.61 section 2 of Law no. 168/1999, on the solving of working conflicts (Radu, 2008: 98, 103), along with the art. 193 section 2 and art.201 section 2 from the Law of the social dialogue.

Other arguments supporting the idea that the image and the reputation of a firm can be infringed, are met in Law no. 11/1991, for the fight against the unfair competition. According to this law, if, by means of disloyal acting and facts there are "caused patrimonial or moral damages, the injured party is entitled to address to the competent court an appropriate civil action" (art.9), without distinguishing if the prejudiced party is a natural or legal person.

Under these circumstances, we appreciate that, along with the natural person, the legal person can also suffer prejudice against the right to honour, reputation or image, in press or through an audio-visual channel. Such infringements can occur when, after the

broadcasting of denigrating affirmations and, as a consequence of these actions, the legal person faced liabilities that materially prejudiced it. Such actions can include, for example: the deed of an employee to disclose secret information regarding the job, or to denounce, in an ill-disposed or easy way, fact that can be imputed to his employer (Radu, 2013: 194); the revision for the granting of environmental authorisation; suspension or annulling of the environmental agreement or authorisation/ the integrated environment authorisation (under the provisions U.G.O. no. 195/2005 on environmental protection); the suspension and the ceasing of a legal person's activity, after the withdrawing of the functioning licence; reduction in the number of people (clients) that resort to a legal person's services and other economic consequences, although susceptible of being evaluated according to pecuniary criteria. Moreover, the deed of the employee to disseminate an open letter with offensive or slanderous allusions constitutes a severe crime, because it affects the reputation and harms the image of the employer (Radu, 2013: 195).

The offered examples are just generic ones, the reality evidencing other situations too, in which the slanderous actions aim the public display of a negatively deformed image, regarding a legal person, image that can cause moral damages – through the distortion of reputation and image, on one side, and materially – through the alterations of the relations with the partners and the clients, and the decreasing of the turnover, on the other side.

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Processing the Political Image of a King: An Overview of the Interwar and Communist Discourse about Carol II of Romania

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Abstract
Carol II was the most controversial personality of the Hohenzollern-Sigmaringen Romanian dynasty. After he had renounced his right to the throne, Carol changed his mind and, consequently, took the Romanian crown in 1930. At the end of his reign, the King decided to change the political regime, by recasting the constitution and creating a single political party – the National Renaissance Front (1938). Carol II's personality, the events of his life and the decisions he took were analysed by the historians from the interwar period, as well as by the communist historiography. On the one hand, before World War II, the discourse was strongly influenced by the cult of personality that Carol II promoted; on the other hand, during the communist regime, Carol's last years as king were seen as a dictatorial period.

Keywords: *Carol II, political image, cult of personality, interwar period, commnist period*

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Introduction

Our study is comprised of three distinct parts: the first part presents the idyllic image that some of his contemporaries were trying to create to King Carol II of Romania; the second part, the very short period of transition from eulogies to vehement criticism against the Sovereign, outlined by us through the presentation of articles that appeared in the newspaper *Romania* (the official newspaper of the political party founded by King Carol II – the National Renaissance Front). The last part presents a negative image that some of the authors of specialized works published in the Communist period tried to create to the former Sovereign. How exactly is perceived a historical character, be it even the king, by the general public? The image of that character is, overwhelmingly, the image written down on paper by: his contemporaries and especially by historians in their studies concerning that personality. King Carol II, the most controversial monarch who occupied the throne of Romania, has triggered, since the period during which he was Prince, the interest of media and of the public opinion at large. His accession to the Romania's throne has further intensified the interest of contemporaries in terms to form an opinion on the behavior and characteristics of the Monarch. Communist historiography did not avoid this issue, on the contrary, Carol II was the favorite sovereign for the historians of that period; the reasoning of those authors, was simple – Communist leaders wanted to denigrate Romanian monarchical institution and Carol II proved to be the easiest target. Without proposing to make an exhaustive research of the image of the sovereign, in our study we will attempt to present, in an objective manner, the image that, initially, his contemporaries and later, historians from the Communist era created to King Carol II. This presentation will be based on quotations in which we emphasize the characterization made by different authors to the King.

Period 1930-1940

After he had previously renounced the succession rights repeatedly, even leaving Romania, in 1930 Carol changed his mind and aimed to become king. Carol II came to the throne of Romania by removing his son Michael, still a minor at that time (Scurtu, 2001: 70-88). This return was facilitated by the misunderstandings between Romanian political party leaders and also by the diminution of the regency's prestige and the decrease of the Romanian monarchy's prestige as well. The Restoration from June 8th, 1930 was performed by Carol from a privileged position, being helped in his approach by leading politicians representing the entire Romanian political spectrum (Scurtu, Buzatu, 1999: 210-214).

Since the beginning of his reign, the sovereign showed interest in imposing his political will and making known his wish to dominate the Romanian political class. The King initially tried to create a government coalition bringing together members of different political parties. This formula was not viable, disagreements between representatives of opposing political groups proving to be far more powerful than the monarch's desire for determining them to ally (Scurtu and Buzatu G., 1999: 249). A rather long period of Carol II's reign, George Tătărescu (1934-1937) held the position of prime minister, an obedient politician who allowed the King to impose his will even over the actions of the Government (Dima, 2010: 146-219). It was during this period that it was settled around the Sovereign what his opponents have called the *royal camarilla*. This camarilla was formed mainly of big businessmen and influential political figures, of what

today we generally call *lobbyists* (Țurlea, 2010). Precipitation of events at international level by emphasizing revisionist tendencies and the establishment of authoritarian regimes in many European countries (Berstein and Milza, 1998: 112) gave confidence to King Carol II that he could impose such a regime in Romania. The plan has been implemented since February 1938 when, after a coup d'état, the monarchic authoritarian regime has been imposed. Among the important measures taken to strengthen the regime may be mentioned: the change of the Constitution, the outlawing of political parties, the introduction of censorship and the establishment of a single political party – the National Renaissance Front – on 16 December 1938 (SANIC, Fund FRN, file no. 1/1939: 8). Under the new system, special attention was paid to the propaganda, a conclusive example in this respect being the establishment of a special ministry called Ministry of Propaganda (SANIC, Fund Președinția Consiliului de Miniștrii, file no. 167/1939: 87). Thus were launched the series of some high-profile public ceremonies meant to mark various events, but, in reality, those were simple propaganda events. From major religious celebrations to the anniversaries of the royal family, national celebrations and to marking important dates of the reign of Carol II – as the Restoration from June 8th, 1930, these data represented a good opportunity for staging propaganda apparatus (Buzatu, M. C., 2010). National Guard – National Renaissance Front auxiliary formation – was the essential body for organizing and coordinating these events; Guard members were also those who reported to the central bodies the success or, conversely, the failures in each event (Bruja, 2002-2003: 77-94; Buzatu, M. C., 2012: 113-122).

Besides propaganda made to the regime in general, those events gave a special place to the praise of the monarch who was presented as the savior of the nation, the one who have an objective view on domestic and foreign policy of Romania and the only one who could put in practice the great work of *national revival*. More than its predecessors, Carol II was very interested in organizing such events where the pomp and grandeur were defining terms. King Carol II believed that laying the foundations of a cult of personality was indispensable for creating the image of the supreme leader, for which he supported and encouraged the initiatives taken in this regard. Undoubtedly the Monarch was delighted to hear the words full of praise that were addressed to him; no less true was the fact that many of those around him, among whom were remarkable intelectuals, have surpassed themselves in flattering the sovereign with "beautiful words". Appeared from overlapping two needs (one need coming from the King – to be worshiped by his subjects, and the other need expressed by some of those subjects to enter into the amiability of their ruler) King Carol II's cult of personality was a premiere in Romanian politics (Sandache, 2001: 289).

Having its origins lying between the sovereign's vanity and the trend traced on the European scene by the great political leaders of the era, the cult of personality will record the first steps in the early 1930s. The period of the monarchic authoritarian regime was, however, one that exemplified the specific key issues that led to its base: from monarchical messianism – one of the defining elements of the doctrine of the National Renaissance Front (Bruja, 2006: 104-105; Savu, 1970: 167-176), to the presentation of the achievements of the single political party, and hence of the regime in general, in a favorable light and up to the endless pages in which the Royal Word was idolized, all have tried to create an idyllic image of the leader. Celebrations organized throughout the country during the period from 1939-1940, at the orders of the Royal political party leadership were all favorable moments for the expression of adulation in relation to Carol II.

Although representatives of the National Renaissance Front contributed in an essential way to the development of this cult of personality, his appearance cannot be claimed by members of the single political party. Between the first "flaterrers" of the King one can identifie Dimitrie Gusti, Al. Rosetti, Dr. Vergil Leonte and Octav Onicescu that, since 1930, believed that King Carol II represent the "classic prototype of monarch reformer", making reference to the achievements of Peter the Great and Frederick the Great (Sandache, 2001: 289). For Aurel Sacerdoțeanu the sovereign appear as "a hostage of power and justice, voievode of culture and redemption, icon of love of country and nation", calling him "Carol the Great" (Sacerdoțeanu, 1937). Ion Constantinescu, in turn, has sketched a portrait of the King as an all-knowing character: "He's versed in literature, in science, in arts, in music, in poetry and the military art has no lock hidden or mysterious to him. He knows French, German, English and Italian. He is versed in the history of peoples. He is a great master of sports. He has all the strengths of a President of a Republic in the most democratic country in the world" (Constantinescu, 1932). In this trend of glorification and praise of the King, which debuted, as we have seen, with the ascension to the throne of Carol II, but intensified during the authoritarian regime, were enrolled also writings belonging to intellectuals and cultural figures of that time. Celebrating ten years since the Restoration has provided the perfect opportunity for the expression of such praise addressed to the King. On June 8th, 1940 in addition to the organizing of national demonstrations specific to the single political party, there were also published numerous volumes dedicated to the King, in which the authors have outdone themselves in eulogies at his address. It is worth noting that, because of the situation quite turbulent throughout Europe, the demonstrations in the summer of 1940, dedicated to the Restoration, did not have the magnitude of those from October 16th, 1939 organised to celebrate the birthday of the King.

One of the most important book published on this occasion was "Ten years of the reign of H.M. King Carol II", which was structured in three volumes totaling an impressive number of pages – 1269. Between those who signed, one could find: the Patriarch Nicodim, Nicolae Iorga, Alexandru Vaida Voevod, Constantin Argetoianu, G.G. Mironescu, A.C. Cuza, Victor Iamandi, Mitiță Constantinescu, Grigore Gafencu, Constantin C. Giurescu, Grigore Antipa, Dimitrie Gusti, Silviu Dragomir, Ion Lupaș, Mihail Ghelmegeanu, N.I. Herescu, Camil Petrescu, Lucian Blaga, Emanoil Bucuța, Nichifor Crainic, Petre Andrei, George Enescu, Ion Marin Sadoveanu, I.D. Enescu, D. Danielopolu, Șerban Cioculescu, Grigoraș Dinicu, Constantin Rădulescu-Motru, Mihail Ralea, Ion Agârbiceanu (Cioroiau, 2000: 35), and the list could go one. We will present some of the "beautiful words" addressed to the Sovereign included in the pages of these books, which clearly fall among texts meant to embody the King Carol II' cult of personality. Patriarch Nicodim, as in a prayer, said: "Humbled I pray Almighty God to give his Majesty the King health, power, glorious and long reign, as to Mircea the Old, Stephen the Great and King Carol I the Wise and help him aciving to overlook from the heights of five to six decades of reign over happy Romania, feeling himself happy at seeing his work" (Cioroianu, 2000: 36). Alexandru Vaida Voevod, among the lines dedicated to the Sovereign, wondered: "Who wants to go back to the ways of the labyrinthine, imposed by centralist politics, instead of following the straight path of autonomous decentralization outlined by His Majesty the King? With patience and faith we must build the grand temple of National Renaissance Front for him to surpass, in grandeur and power, the masterpiece of master Manole and to proclaim to future generations the glory of King Carol II" (Cioroianu, 2000: 35).

Referring to the benefits of the authoritarian regime, Constantin Argetoianu said: "If the policy initiated in the spring of 1938 could pay off in the midst of a Europe shaken from the foundation [...] then the proof is done abundantly that it was the regime that we needed. Thanks again to King Carol that gave it to us!" (Cioroianu, 2000: 35). With the occasion of the Restoration in June 1940, appeared a special issue of the "Journal of the Royal Foundations"; there were published 39 articles dedicated to the Romanian Monarch (Catalan, 2000: 37). Tudor Arghezi presented King Carol II as a national immortal hero – "For ever from here before / Times will take him in mind", calling it "beautiful Prince" (Catalan, 2000: 37). Cezar Petrescu, in the article signed by him, compared Carol with Constantin Brâncoveanu and called his reign "cultural voievodeship" (Catalan, 2000: 37).

The President of the Romanian Academy, Constantin Rădulescu-Motru, gave the King the ratings of "protector" and "direct inspirer" of the prestige of the Romanian Academy (Catalan, 2000: 37). Petru Comarnescu stated the following: "Plato, who saw as the ideal ruler of his ideal State only a wise man being at the same time the son-of-King, could not have asked for more than what God has bestowed upon our country" (Catalan, 2000: 38). Another album entitled "Writers of Your Majesty worship the Writer King with their heart, faith and pen" was dedicated to King Carol II who has recalled this in his diary: "In the morning I started to receive again gifts [. ..] from the writers, what moved me very much, a tribute volume, in which each has written a page, including some very beautiful and very touching" (Carol al II-lea, 1998: 196). In the poem signed by him, Ion Barbu wrote: "Triumph of the stalk of aloe/ And floral flag for hot climates /The planet's meaning is in harvest and leaves/ And the meaning of tribes is in Princes" (Otu, 2000: 39). Referring to the king's transcendent image, Otilia Cazimir specified: "We would waste ourselves in a dust of grounds/ and all, one by one, will forget about us/ but in the deep light of ages/ you will live, my Lord" (Otu, 2000: 40).

Recalling the significance of the day, Demostene Botez wrote: "Restoration from June 8th, 1930 is a decisive act of the people. It has the high moral significance of an act of justice committed by an entire nation" (Otu, 2000: 40). George Bacovia, under the title "Great and brilliant work of progress through faith and work", stated: "A nation completes its ideal for a future of true civilization, under efficiency and rare leadership qualities of his Sovereign. The years passed, they awakened a new consciousness towards the mists of time remaining forever ago" (Otu, 2000: 40). Ion Minulescu enrolled among those that signed the tribute album dedicated to the King by writers; he wrote, addressing to the Monarch: "And – today – / You are the Lord of those forever defeated by oath / Of those defeated by water / Of those defeated by wind / Of those defeated by lyrics / By icons / And by song / Of those resurrected like Lazarus by your royal word ... / Yeah! / You are the Lord of those forever defeated by oath" (Otu, 2000: 41). It should be also noted that the reign of King Carol II was not a period of endless praise and glorification of the sovereign. He received, since coming to the throne, some criticism coming mainly from his political opponents; complaints have increased with the establishment of the monarchical authoritarian regime in 1938. Among the most vocal we can mention Iuliu Maniu, the leader of the National Peasant Party, who stood at the head of the Government in June 1930, when took place the return of King Carol in the country. Though sceptical with regard to the intentions of the future King, Iuliu Maniu, accepted Carol's return, but, shortly after, resigned from the Presidency of the Council of Ministers (Scurtu, Buzatu, 1999: 213). He became after this episode one of the main contestants of the policies implemented by King Carol II.

Along with Maniu, another political leader of the time – Corneliu Zelea Codreanu – contested step by step the path followed by the Sovereign. The leader of the legionary movement, since its establishment and until his death in 1938, Corneliu Zelea Codreanu expressed, throughout the '30s, his disapproval regarding actions taken by Carol II or the actions taken by his relatives. Although, among the contestants of the King stood other politicians of the time, we summarize the reference to the two political leaders. It should be emphasized, however, that, although there were more such voices of disapproval, they were not in a position to influence the great mass of the population, so that the overall image of the Sovereign Carol II cannot be regarded as a negative one in the era. During the period of the authoritarian regime the opposition trend intensified, but this phenomenon coincides with the introduction of censorship throughout the country, which has led to the halting of creating a mass phenomenon. In conclusion we can say that during the period of his reign, in general, King Carol II (in particular during the period 1930-1938) enjoyed the sympathy of a large part of the population, positions of disapproval being circumstantial.

Romania Newspaper

From praising the sovereign to vehement critiques at his address was only a step; this shift was accomplished in a short period of time and debuted with the territorial losses in the summer of 1940, when Romania lost approximately a third of its territory and a tird of the population: Bessarabia (then occupied by the Soviet Union), North-Western Transylvania with Bukovina (Romanian territory taken by Hungary) and Dobrudja (which, following the Treaty of Craiova, was given to Bulgaria) (Midan, 2008: 284-357). Since then there have been voices that characterized King Carol II in pretty hard terms. Those voices belonged to both major political figures of the times, but also to ordinary people. An example that highlights the radical change of optics in terms of the image of Carol II was given by the official newspaper of the royal political party – *Romania*. In the pages of this journal we find initially endless praise addressed to the sovereign. In the number appeared on October 15th, 1939 there were published numerous articles dedicated to the birthday of King Carol II. Among these we present some rows written by I. Valerian: "Suddenly the mist began to clear the horizon / From the heart of the mountains / And to the shores of the sea/ Same song of glory fills the air with joy/And as in the past royal days/ A long convoy of flags and cheers/ All subjects are gone / On the path of His Majesty". The celebration of the Restoration (June 8th, 1930) was also a new opportunity for praising the sovereign. On June 9th, 1939 the newspaper Romania, which usually had 20 pages, included no less than 36 pages. One of the articles devoted to the King wore the following title: "Descending from the air, like an archangel of salvation, H.M. King Carol II has re-knotted the thread of dynastic continuity" (Romania, June 9th, 1939; Cristoiu, 2011: 18).

A year later, celebrating 10 years since the Carlist restoration, the newspaper Romania had a special issue with 48 pages. Between the articles dedicated to King we find: "The King consolidator of the country", "King of writers – King of Romanian culture" (Romania, June 9th, 1940; Cristoiu, 2011: 18).

Less than 3 months after the occurrence of the number dedicated to the celebration of a decade since the Restoration in 1930, the newspaper Romania radically change its editorial policy. King Carol II, who, in early September 1940 was in the ungrateful situation to abdicate and leave the country, was completely forgotten by the newspaper

which praised him until recently. The numbers of 6 to 7 September were dedicated to the eulogy of the new head of state – Ion Antonescu (Romania, 6-7 September 1940; Cristoiu, 2011: 22).

The era of flatterers and eulogy of King Carol II ended. There was a lull period in terms of appearances of the former sovereign of Romania; this was understandable if we consider that during that period the Second World War was in full swing at international level. The attention of the public and the journalists was captured by armed clashes and by the imminent entry of Romania into war. War and, later, the establishment of the Communist regime have put discussions and writings relating to Carol II in a cone of shadow. Set aside but not forgotten, the sovereign returned in the Romanian historiography during the communist period. The political picture of the first king of Romania born on Romanian earth was quite changed; this new perception of the former sovereign recalls the notes found in the diaries of his direct political opponents.

The Communist period

During the Communist era, the authors of the various items that were related to Carol II entered its discourse on the direction mapped out already by the Communist rulers, namely, discrediting the monarchy as political institution in general and the Romanian Royal family in particular. Being, without a doubt, the most controversial ruler of Romania, Carol II was a much easier target than Carol I, Ferdinand I and Mihai I. From repeated disclaimers of the throne to the tensioned relation he had with his family, from the connections that Sovereign has had with big businessmen of that time to the actions and properties held by him, from the royal camarilla and its actions to the reputation of adventurer and extramarital relationship of the Sovereign, from the attempt to discredit the political parties and up to the authoritarian regime of the King, all these were the subjects of defamation of Carol II and the Hohenzollern Sigmaringen family. Among representatives of the Communist historiography, which remind the Sovereign Carol II in their writings, we can identify the authors who attempts an objective characterization, up to a certain point (creating a negative image of the King on the whole), but also authors who have a vehement tone and use phrases with a purely negative connotation to describe the Monarch. Livia Dandara is part of the first group of authors, who, as mentioned earlier, tried to fall on the line proposed by the Communist leaders, but at the same time tried not to use negative epithets in describing King Carol II. The author, without bringing direct criticism to the Sovereign, uses terms such as "antidemocratic", "antiparlamentar", "contradictory measures", "atmosphere of confusion and provisional state" (Dandara, 1985: 46, 85), when speaking about political actions undertaken by the King. A negative description is also made to the political party which was set up by the Monarch in December 1938 – the National Renaissance Front – the same author calling him "reactionary, totalitarian, unsustainable and harmful political fiction" (Dandara, 1985: 91).

Costin Murgescu, in his work relating to the currencies affairs of the Royal House, brings to the attention of readers various businesses in which the ruling family was involved, focusing on the negative aspects of such involvement (Murgescu, 1970). The author emphasizes also that, in the eight decades of existence of the Romanian monarchy, the royal family used their position held for interventions both in addition to the members of the government, and in addition to representatives of the various organs of the State in order to fostering various persons or companies close to them (Murgescu, 1970: 79).

Trying to sketch a picture of King Carol II in which negative connotations prevail, Murgescu note: "In the time of Carol II the practice has not only reached its peak, but has gain the most degrading forms. Former King not only did not hesitate to require State institutions to give him personal grants to finance some activities that had nothing in common with his public functions or to make him gifts, but openly demanded favors, privileged treatments or even committing blatant illegalities on behalf of capitalist societies in which he was interested, which offered him packet of shares or various sums of money as a gift. He come to make the appointments in public functions as those to whom such request were addressed to have proved to be receptive, reluctant or recalcitrant " (Murgescu, 1970: 79).

Referring to the same economic implications, but also to the political connotations of the actions which the Monarch had undertaken in its financial benefits, Emilia and Gavrilă Sonea contribute to shaping a negative picture of King Carol II. The authors characterize the Sovereign in their work as being "an adventurer element and avid of enrichment by any means," who "sought to achieve some political and economic changes in favour of the Crown" (Sonea, E. and Sonea, G., 1978: 26). Exploiting another topic often used to point out a negative image of King Carol II, Florea Nedelcu speaks, in his book – *From restoration to royal dictatorship*, about the decisive role played by the sovereign in "the collapse of the Romanian political life" (Nedelcu, 1981: 7). The author also contributes to shaping the painting of the politician Carol II, claiming the following: "Avid of power and enrichment by any means and known as a sympathizer of «iron fist» regimes, Carol II – installed on the throne of Romania with the help of reactionary circles in the country and abroad – has pursued with perseverance the establishment of a regime of personal dictatorship. To succeed, he used all possible machinations directed towards undermining parliamentary-constitutional regime" (Nedelcu, 1981: 8).

One of the most vehement authors as regards constructing an unfavorable image of King Carol II was Al. Gheorghe Savu. In his book – *The royal dictatorship* – he is using numerous adjectives with negative connotations to describe the former Sovereign. The author seems to bring in front of the readers a character with a fundamentally negative structure: "in the memory of his contemporaries, Carol remained a man of unusual rapacity, of a stubbornness and diabolical perfidiousness, self-centered and lacking the most basic sense of loyalty, with an unhealthy penchant for debauchery and adventure, unrestrained and fickle, coward, paltry, showing an innate revulsion towards the popular masses, reactionary to the bone and with the manners of oriental despot. Carol II seems to mass together all the negative traits of his ancestors the Hohenzollern, of the feudal boyards and those of imperialism" (Savu, 1970: 31).

Conclusion

The interwar period and, in particular, the last two years of Carol II's reign (the period of the authoritarian regime) is replete with information on the Sovereign. Whether we are talking about representatives of the media, cultural figures interested to capture the attention of the sovereign or politicians who have interacted directly with the King, each had something to say and said it: directly, in the form of articles and books published during that period or indirectly through rows written in their own diary. We found in the image created to Sovereign in the interwar period a multitude of accents from praising to irony and to vehement criticism. On the other hand, the Communist historiography offered a more subjective description of the monarch. This time the image that emerged was a

purely negative one. This trend of widening and hyperbolizing the negative characteristics of King Carol II follows the line drawn by the Communist leaders namely defaming the Romanian monarchy. The only difference between the different studies devoted to the Sovereign is given by the tone used by each author. Thus we find within Communist historiography authors who try keeping an objective description of the events that occurred in the fourth decade of the 20th century, but who nevertheless manage to impart a negative note to the actions of the monarch. We also found authors who presented Carol II as a negative personage, placing him in the middle of some circles that were not to be trusted. In the Communist period there were authors who have not hesitate to condemn directly on Sovereign and to sketch him an image reminding us of monarchical absolutism of the past centuries.

Starting from praising and even adulation and reaching up to the most severe criticism, the political image of King Carol II is, as we have seen, one that could not be more complex. If many of his contemporaries, for various reasons, have sketched an idyllic portrait of the Sovereign, the representatives of the Communist historiography were very harsh regarding the characterization of the same personage. It is our duty, of those who approached since 1989 and will further address this issue, to be objective and to outline a complete picture, including both the positive and the negative aspects of the personality of the most controversial monarch of Romania.

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Communism and Condominium: the Communist State and the Freedom Regime in the Traditional Romanian Villages

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Abstract
The aim of this paper is to clarify why in the Romanian history, the communist state has proved to be the most unsuited and incompatible institution with the mechanism of the Culture of Commune to Diffuse Tradition (*Cultura Obștei de Tradiție Difuză*), specific to the Romanian agrarian communities; furthermore, the article investigates why the communist state and the free rural communities (sate devalmase) were in structural and functional contradiction, impossible to be removed both theoretical and practically.

Keywords: *communism, condominium, devălmaș property, freedom, traditional Romanian village*

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The Property as the basis of freedom in Romanian villages

How did these communities manage to withstand the pressure of the tributal, feudal, capitalist exploiting mechanisms and prevent thus the appearance of the "clăcăşirii" phenomena or the one of slavery and disintegration in their inner? How did these socio-cultural rural units kept their functional freedom and autonomy? What explains their sustainability? Could it be explained by their geographical position, by their territoriality, finding themselves isolated mainly in mountain areas, positioning which we find out about from the few statistical data concerning Romanian villages contained by "Conscriptia virmontiana from Oltenia"(1722), from the works of John Donat (1831), Nicholas Sturdzu (1840) or Petru Poni (1912)? Should it be rather the result of blood valuing and the defense of blood ties between their members, which had the gift, as Sebastian Radovic says, citing the phenomenon of "walking on the elderly" (Radovici, 1909: 67) to congeal and strengthen the inner cohesion? Or to be the effect of a behindhand technical level of agriculture, which delayed the historical evolution of common property Romanian Village? (Stahl, 1998: 14).

From our point of view neither of these assumptions is satisfactory. The geographical, biological conditions, as also an economic status cannot generate and guarantee the autonomy of the "răzăşeşti" or "moşneneşti" villages. This also even more as the mentioned factors, far from explaining the phenomenon of free Romanian peasantry, proved limited even in conditioning them. Thus, the "răzăşeşti" and "moşneneşti" villages, true social Romanian phenomenon of mass including from the beginning of the eighteenth century, are located not only in mountain regions but also those of hill or plain, given that, for example, the statistical research of Petru Poni, mentioned above, which reveals a veritable mobility tendency of the free peasants within the territory of the Carpathians and Danube (Poni, 1921). Nor the influence of the value of blood ties in the free Romanian villages, as sustained by the theoreticians of "the hero founder of villages", is not relevant in this case, knowing that the phenomenon of "walking on the elderly", on which these theoreticians base their arguments, is a late phenomenon in our village's history, one that rather shows the moment of their disintegration than revealing the basis of autonomy in the life of franklin people (Stahl, 1998: 46). Finally, although we acknowledge the importance of economic factors in the mechanisms that explain the autonomy of free peasants' life, we cannot agree with the way they are presented to us in abstract and poor schemes of historical materialism. Thus, far from conceiving economic activities as determinants of social life, we count on that by themselves they have no infrastructural power capable of generating inner changes in socio-cultural units. Related to human biological needs and depending from the beginning on the epistemological level reached by human collectivities, technical and economic factors manifest from the start strongly marked both by the mental structures of these collectivities and their spiritual, moral, legal, politic and economic accomplishments.

That is why, despite their concreteness and visibility, the economic factors are never effective analyzable by themselves, but only in relation with spiritual, legal and administrative productions, to which they are related, penetrated and from which they acquire meaning. In this context, agriculture or shepherded, for example, cannot be treated like mono-dimensional economic activities with specific traits, but as real cultural complexes with practical character in which we find not only the inner purely economic operations, methods, techniques, procedures but mainly a series of religious, artistic,

metaphysical, scientific, moral, legal, administrative, political attached components, which together with these activities are designed to meet needs that go far beyond the sphere of economic needs. The stagnation and technical delay of the Romanian agriculture from the common land villages cannot, therefore, explain by themselves a cultural phenomenon as complex as that of autonomy of our "răzăşeşti" and "moşneneşti" communities, they must rely therefore on the whole range of other factors. That is why in this article we will look for the source of these communities' resistance against the pressure and centrifugal force of historical processes of tribute, feudal, capitalist and later communist exploiting in a different direction than the one tried so far. We will seek, for instance in determining the type of relationship that the "răzăşeşti" and "moşneneşti" communities developed with their natural and social environment, type of relationship that is reflected in all socio-cultural activities that can be undertaken by these communities, regardless if we talk about spiritual, economic, legal or political activities. These communities' relationship with the human environment consists primarily of the way they, from certain value systems, ideographic, transcendental, subconscious and with an objective character "motives" (Durkheim, 1911: 437-453), which some are impossible to directly discern in the actual realities, but which are leading and necessarily presented in all conscious experiences of their members, give sense, appreciate and judge their personal situations or the collective facts of life. Among these values, which should not be confused with the aims pursued by a community (goals are set based on background of this effectiveness of these values) nor with its assets (goods are things that have gained value), we inventory besides constitutive values of beauty, truth and goodness also the regulative values of liberty, property, equality or responsibility. On the meaning and weight that these values gain on the mentality of "răzeşi" and "moşneni" people depends, therefore, the relationship that these collectivities have with their natural and social life. How did these communities manage to withstand the pressure of the tributal, feudal, capitalist exploiting mechanisms and prevent thus the appearance of the "clăcăşirii" phenomena or the one of slavery and disintegration in their inner? How did these socio-cultural rural units kept their functional freedom and autonomy?

First of all, we believe, by giving property a value of major importance in their axiological system, especially to land ownership. It is a meaning which follows easily from the analysis of Village Community and the Confederation of Detour, administrative institutions of free Romanian villages, where the peasants could not become members unless they previously acquired ownership of the estate, from the study of customary land (Jus valachicum), the old unwritten law, highly encounter in common property Romanian villages, about which Nicolae Iorga said that is nothing but a "property right": "a Romanian Right, different from the Roman principles and feudal habits, was recognized by all who hat Romanians, on this side or beyond the Danube, in their possession. This "right" is not only an old custom with folded Thracian – the strongest and deepest ones – and slave roots that can be followed in different fields. In that one which comprises the connections between humans and land and the links between people, determined by earth" (Iorga, 1983: 250), from investigating the techniques of organization and economic exploitation of the villages' territories, where the property with its three forms (farm – house built in the center of the village with the land around the house, the belt area around the village consisting of lots of land and the peasants' land, forest areas, pastures, fallow land used in condominium) represents the internal base of the structure of households and common land villages in general, and not least from the analysis of events and spiritual productions (magical rites, religious views and beliefs, popular literature, popular science,

moral concepts, etc.) where the value of the property transpires thematically with every opportunity. Indeed, studying the lives of "răzeşi" and "moşneni" we cannot not notice that they base land ownership at the foundation of their lives. They do it recognizing the close link between spirituality and work, between work and justice, between justice and their administrative capacity, a connection represented by the land, a primordial good that provides unity and functionality of everything. Considering spirituality, economics, law and administration as four unitary areas, free peasants are spared the mistake of supposing that if, for example, their material well-being would represent an economic problem, then their autonomy personal / collective would be an another, strict political, supporting a separate resolution. Attending to an integrated rural culture of diffused tradition (Stahl, 1983: 250), "moşneanul" understands that political ordinances ca not be separated, for example, from the economic ones, just as they cannot be separated from the juridical ones. They cannot be separated, but neither can be combined with each other randomly. Village community cannot work, for instance, beyond the Old Testament's readings about customary land in connection, for example, with written royal rites or with the modern Romanian law of quiritara bill, just as customary land cannot function beyond the requirements of the natural economy, namely in relationship with mechanisms of capitalist financial economy. Therefore free peasants will follow to find the most appropriate image in which land ownership ensure the unity of the four fields of peasant life, maintaining thus in equilibrium the village community, customary land, peasant households and collective spirituality.

In these circumstances, land ownership comes to be considered not only a source of economic freedom of these peasants (freedom gained in the limits of agricultural rigors of crop rotations and farming techniques), or guarantee their legal recognition and protection, but also the source of personal and legitimate power to participate and decide on how their administrative problems are solved. While recognizing the fundamental role of property, freedom is only possible to the extent in which it does work or get to work at the same time as spiritual, economic, legal and political freedom. Conversely, in the absence of either of these components, the value of freedom becomes unattainable for the peasant, turning in a vain abstraction, in a dangerous non sense. But which is the most appropriate image which the Romanian peasantry gave to property so that it can be protected from the mechanisms of traditional community and to assure in equal measure the unity of the four fields of peasant life?

To answer this question we need to know from the beginning that for "moşneni" and "răzeşi" the property is not seen by itself as a natural right of the human being: "Why do you step our glades, why do you graze our hay? Which glades, you Peacocks? Which hay, you fool? Only this land is not yours, not even yours nor mine, but all of God!" (Alecsandri, 1965: 180). On the contrary, for them it is just the conditioned right, a right which man acquires in a double way. The property is acquired by him on the one hand directly as a result of its affiliation to a village community, and on the other hand, in a mediated manner, as a result of the work submitted.

In the first case, the peasant gains access to a condominium property, belonging to God, in the second case to a private property that belongs to the man: "These communities [Gemeine], from which, in terms of language history a line starts until the common good or the public good [common welth, public welth] opposes the private sphere [Besondere]. It is the field of what is separated [das Abgesonderte], in a private sense, one that today we understand when we question the private interests [Sonderinteresse] and private ones [Privatinteresse]" (Habermas, 1998: 49). The first

actually reduces to a right of use, which covers consumer forests, meadows, pastures, hayfields, alpine poets, or the land ("Curaturi" or "provisional private belongings"), vineyards, gardens, bee yards, waters, riprap rivers, ponds, mills, roads, etc., the second one to the right of owning "forever" regarding household (home and place around the house), pieces of land, haystacks "lands for agriculture", wine yards, all parts of the "shrines" or "hearses" locked in "fences of the parcel of land", meaning properties in their true meaning, acquired through grubbing, clearing, goods that are meant to be inherited. Affiliation to the community and the work are the two fundamental conditions of the free peasants' property. It appears as a kind of property with mixed character, containing two separate components functionally related to each other, the right to use condominium and private property (estate), components that constitute the primary psychological frame through which the free peasant relates to the social environment and natural framework, through which he will differentiate between a public sphere of the village and another private one, of households.

The *devalmaș right* and the public sphere in the Romanian village

What does it mean the particular component of the peasant property? First of all the fact that it is related to a household that includes home, garden, outbuildings, estate and local belongings, received or grubbed from the indivisible fund of the community. A particular component is production workshop that belongs to a family of peasants, made up of all labor resources owned or used by them. It is thus a property of the family.

Determined as households, which provides the only source of family- income, private property is to secure their social cohesion. Household as private property is actually the key to understanding relationships within the family unit, some otherwise, if judged on other grounds than those of property, long ago on biological or racial of blood ties, remain for us to not understandable. This property of movable or immovable means of production is hereditary and inalienable. It is attributed not to the head of the family, but to all members, whether wife or children so that the former cannot dispose of it at the expense of the latter, neither inter-vivos nor mortis causa.

Romanian particular property is not property but a simple family; judged in relation to the primary type of this property, it seems to have evolved rather one with nature. Although it is transmitted from generation to generation and heredity principle is upheld in favor of women, there is private ownership Romanian prohibitions emancipated so vivos or causa mortis inter-specific primary type of family property, and the principle of exclusion of women in inheritance (It is worth remembering here the rule of "marriage on yard" rule that breaks the prohibition to marry girls with land; if a family has only girls among children, one of them, although she will marry, will take over his parents' home as head of the household, it is considered a son, and her husband a "married on yard"). In addition to her hardly find the difference between terra recognized aviation (tera Patris, paternity) and terra Aquis.

However, although private ownership is owned by the family, we cannot say that it is indivisible. Indeed, although for the Romanian private ownership, the father is not considered an absolute owner of the land, and therefore his children consider themselves owners of the land of culture, even before the father's death or mainly starting with adulthood based on their own work in the household since childhood, this property is in the mastery of his father. Testify to this are the numerous rules influenced by the law of land (of particular importance has it here the "right of pre-purchasing and repurchasing"

which appears in the Byzantine legal language through the term "protomisis", right clarifying the structure of the Romanian ownership and which derives from it), that regulates the passage of land ownership from the old parent to his descendants, or from them to third others.

If the Slavs, for example, in the inner of their "zadrugii" (South Slavs) of "mirului" (ointment) (Eastern Slavs), the Verve (western Slavs) exiting the primary family property was made only with great difficulty and solemnly, but without affecting the division structure of this property, in the case of the Romanian peasants proves to be a common phenomenon, especially with the sixteenth century. In the Romanian family children become adults, leave their parents' home to start a new household, taking with them, once married, without written formalities, their share of wealth. They thus ceases to be as brothers to each other in relationships of undetermined ownership, although their father is still considered master of lands, offered them as an inheritance.

Let's see what nature has the condominium component of peasant property? The question is all the more important as the above condominium have hovered over time many misunderstandings. For instance there were few Roman authors who, although previously recognized the difference between joint property and individual ownership of Roman law, have labeled it still on the first as a species of co-ownership. However, ignoring the fact that designates the type of co-ownership describes a structure of quiritar right, they ended up wrong assigning it an individual character, exclusive and alienable one: "The coexistence of the two owners, in a co-property, does not change the organic structure itself. Each of the co-owners is absolutely owner. Its right is individual, exclusive and perpetual" (Fotino, 1940: 353).

And though many authors have considered joint property ownership as a collective one, getting to speak on the basis of this alleged identity of the existence of a primary communism alive in the common land villages and also about a nearby structural and about the essence between their life and communist political organization. The fact is all the more regrettable as it is based on a serious misunderstanding of the condominium, generally of the peasant property of Romanian origin. First is ignored in this case the Romanian mixed nature of property, the fact that this is based on a unit compound of two elements (the particular and the common one) that working together, they lose their meaning one in the absence of the another. Although through certain of its aspects joint property can remind us of Gemeinschaften's communist property, the one that Marx speculated in his works (Marx, Engels, 1972: 416-437), it is actually a type of property specific to Feldgemeinschaft sites, those in which the house and the living place of a family have ceased to be common property of the community and became private property of the family.

In relation to private property of the family, condominium gets a different meaning than it had in primitive communism. Indeed farmers do not have a common property right for forests, pastures, waters, but only the right to use them. On this basis the joint property is considered to be equally for all and for no one. Thus farmers may send their "cattle to pasture, without even their number to be in any correlation with the extent of ownership of land in the village or on farming land. And when regarding these pastures, forest reserve and water comes the matter of allowing to a stranger the access in the village and the recognition of the right to use them, then we encounter in acts that all people of the village appeared to recognize such a right" (Fotino, 1940: 355). Condominium cannot be therefore subject to the right of property, much less as a right of collective property.

Under these conditions, the actual ownership remains tied to the peasant life, to the heart of the village and the dust, rather than to the others "from across the border".

However, the role of condominium is essential to ensure the equilibrium of the free peasants' life: the functional component of the peasants' private property, the common property inhabitance form is the deepest source of Romanian rural solidarity. Moreover, from the recognition of such joint ownership and analyzing the unity of the four unit fields of the free peasant's life (spiritual, economic, legal and administrative) we can establish a real functional correlation between them, on the one hand the joint property right of usage and the public sphere of the free Romanian villages and on the other hand the private ownership and private sphere of their members.

If the village community has rights below or up the right of households which compose it, rights exercised by the administrative or management body called the "congregation", then it is entitled to own them only based on the recognition and the exercise of the right of use by villagers. Its functionality is related, therefore, viscerally of the existence and recognition of condominium, without which it will permanently lose authority and purpose. That is why according to the degree of the common land village, we can determine the loss of power of the community and with it we can determine the level of dissolution of the "moşnenesc" and "răzăşesc" village.

We understand that such "free villages were able to last as long as they managed, helped by their fighting body, which is the congregation, to resist the pressure put on them by the boyar class. When congregation falls in battle, disorganized, conquered through infiltration and after replaced by the presence of a nobleman, then free condominium village quickly disintegrate and disappears, the administration of these villages were taken over by the local lord" (Stahl, 1998: 27). Indeed, the congregations' resistance to historical pressure of tributal, feudal, capitalist or communist exploitation has its source in the possibility of exercising the right of common property by its villagers. However, the functionality of the community in the free village it does not come only from the exclusive power of the right of common property, but from the balanced report, non-contradictory that the latter has with particular property.

On the other hand, the condominium law is the basis for rural communities while also functioning as a determinant factor for the occurrence of the peasant public sphere, a public sphere alien to the one presented in the western feudalism, the one called by J. Habermas as a representative public sphere (Habermas, 1998: 48). We are talking about a public environment (mouth of the village, eye of the village) that is based not on the opposition between *publicus* and *privatu*s (other categories of Roman law, foreign to the conceptual customary land) but on the street, and communion between particular and common, two different categories recognized in the old German legal tradition: "True, some correspondence with the classical notion privatus publicus and juridical tradition comes from the old Germanic in that community (gemeinlich) and private (sunderlich), common and particular. This opposition relates to the Community elements (genossenschaftliche), to the extent that they have said in the feudal production relations. Field Obst (Allmend) is of public order, public; fountain, the land market, for common use, are publicly available, are loci communes, public loci" (Habermas, 1998: 49). If in the feudal structure, the private sphere of the one endowed with rights, immunities and privileges, so called lord sphere, takes over the sphere of monopolizing public, submits the communality to a strong devaluation, and becomes the core of what is public, in the structure of the condominium village the private sphere of peasants legitimizes itself, starting from the common one: "In ambivalent meaning of gemein (common) with rural

meaning, of "in common", or accessible (open) for all, and gemein with meaning of "ordinary", or in other words, of something excluded from the specific right, respectively the right of particular seniority, generally in rank (public rank), is reflected until today by integrating the elements of rural organization in a structure founded on functional domination" (Habermas, 1998: 50). The peasant public sphere is thus not a representative one, but a participatory one.

It resembles the ancient remote sphere of the polis, specific to the Greek city-states, the sphere of free men (Koine), noting that unlike this one, it is not severely separated from the sphere of oikos, private for each individual (Idia), on which it actually sustains. That is why we cannot say that in public rural life the sovereignty of the peasantry through its peasant congregation peasantry obstructs the personal freedom of the peasant, as the authority of the whole obstructs the freedom of the citizen in the polis assembly. The particular freedom of peasant, far from being opposed to the public authority of the community, is founded directly on condominium law that gives its meaning and sense. Benjamin Constant's famous distinction (Constant, 1996: 3-22) between the freedom of the ancients (sovereignty in public affairs) and the moderns' freedom (independence in private businesses) do not operate in the case of "moșneni" and "răzeși" because their freedom in no way implies recognition in the collective mentality of any opposition between public and particular.

If public sphere is not representative for a real social domain, it appears more like a landowner status circumscribed sphere, one that submits itself to the subservient peasant or to the vassal without leaving room for initiative, decision and inhibit expression or senior communion with others landowners, the public sphere of the condominium, on the contrary has the great merit of creating and feeding motivational mechanisms of peasants' involvement in the village's life.

Losing of the *devalmaș right* **and the disintegration of the free peasant community**

But over time the resistance of peasant communities to the processes of enslavement and tribute, feudal, capitalist and communist exploitation eventually diminishes. The causes that led to this weakness were generally two. Both of them are related to the gradually narrowing limits of using the joint property by the free peasants, narrowing which leaded to a disintegration of the administrative armies of the village and together with it to the fall of peasant communities under the dominion of nobleman, royals or convents.

The first way has economic nature and it is linked to the development of technical capacity of production used in rural agriculture and to the general change of economic conditions, occurred with age in the production and sale of goods in exchange of capital, change limiting until demolition the condominium law and separating the congregation into village households, thus giving rise to self-stratification and social tensions between the peasantry and nobility. This, together with the phenomenon of breeding of the rural population associated with demographical saturation of land, represent the internal source of dissolution of the common property village.

The second way is a political one and indicates the external source of dissolution of the peasant communities. Formed in the old order and the professionalized military tribute, Romanian boyars were from the beginning the first class strongly affected by general economic changes occurring with the eighteenth century. How in the new

economy of capitalist service, its military origins gradually lose their importance, it is forced to retrain and find a new means of subsistence. It will primarily find through direct involvement in the process of agricultural production, processes that have been an attribute of peasant communities. Lacking land ownership, the nobility realizes, however, that its social maintaining cannot be achieved by simply grabbing the land of the villages.

For the land to have value on the market, he must be worked, work that requires, of course, people whom are able to receive some part of their work product, in the form of tithe or crack. These people, who could only be free peasants, had to be brought in bondage. Boyars needed, therefore, no land but villages. To enslave a free village and thus acquire not only arable land and labor necessary for working it, it had, first of all, to disorganize the army of the village. The task was made easier by internal factors and processes generating dissolution in the inner of the joint property villages. Indeed, the evolution of agricultural technology, and the breeding population in the villages, reduction of the joint property territories as a result of demographic saturation of lands led to a gradual individualization of the peasant private property (this process develops under the form of incomprehensible phenomenon in Romanian historiography, the phenomenon of "umblării pe bătrâni") and so to an imbalance in the structure of traditional rural property. Individualized and removed from its unity with the condominium law and its institutions, the Village Community and the Customs of Land, peasant private ownership has become extremely vulnerable to the needs and intentions of the nobility. The nobility will not hesitate to take advantage of this opportunity, using different strategies to enslave the free villages. The most common one was the one that directly attack the village's base unity, the condominium, by receiving the nobility in division with "răzăşimea" and "moşnenimea". In this way it acquired the right to joint property, grabbed the land from Community Fund, to remove them later from joint, thus managing to substantially reduce the power of the free peasantry, to impoverish it and finally to submit it to slavery.

This process of enslavement of the peasantry, especially beginning in the eighteenth century, continued including the nineteenth century. But not only continued; it reached paroxysmal and reached maximal levels despite agrarian reforms begun in 1864. The phenomenon was favored by strong and unfettered penetration of capitalism that turned everything in its path and changed direction accelerating the dissolution of the village and pushing it, after C. D. Gherea's words, to new slavery. Force of penetration of capitalism was increased by Western structures of modern Romanian state, structures that deeply foreign to the peasant community's specific mechanisms have been designed to respond only to the needs of the bourgeoisie. The right of condominium and private peasant ownership were now starting to face a new factor of pressure and destabilizing: modern Romanian state and its western laws focused on the principle of natural right of individual private property, state and law as their medieval counterparts, from a culture which was foreign to the mechanisms of peasant communities.

Yet, despite economic order marked by capitalization, industrialization, intensive trade, free peasant communities, especially those "răzăşesti" from Moldova managed to maintain their cultural unity and cope with these capitalist influences. One explanation is found in the fact that the penetration of capitalism did not happed uniform and homogeneous, leaving behind "large islands in the old country almost untouched".

Not the same thing happened after the installation of communism in the Romanian territories. Planned and systematically imposed in the territory, communism, unlike capitalism entered evenly and homogenously in our society, nearly destroying the roots of peasant communities, which through their cultural structures proved by far the

most resistant to communist ideals and state policy. Through expropriation and mainly through the collectivization policies that led to the seizing of almost entire agricultural properties in Romania, the communist state demolished what any tributary or feudalism or capitalism system have failed to do in their historical sequence, namely the very foundation of the organization of peasant life: land ownership.

Conclusion

Following this structural demolition, the collectivized Romanian villages, losing support of their inner mechanisms of community became social environments with a disaggregated culture that favored the installation among their members of ambivalent relationship towards their natural and social environment, some backed by a refractory attitude towards everything that administration and politics meant, generally to everything that authority and responsibility represent. The consequences are fully felt even today.

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ORIGINAL PAPER

The Romanian Religious Press in the Early Years of the Communist Regime: Elements of the Official Political Discourse in the Editorial Content

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Abstract
The events of August, 23, 1944 would change the Romanian course of history, leading to the instauration of a communist government, with the aid and following the model of the Soviet Union political regime. Until December 1947, the new regime coexisted with the old democratic state structures, but from that moment on, the communist government would start the procedures to abolish the old government institutions, bringing rough changes that would affect every aspect of the Romanians' life, including culture and day-to-day existence. The utopian ideology of the Communist Party, based on a sustained plan to reinvent the human condition itself, would be soon noticed in every sector of activity, even in the theological discourse, that is usually meant to speak about divinity and its relationship with humanity. The only political party is promoted as omnipresent and omniscient, the supreme value and the depository of the whole human wisdom and thus it justifies its authority to control the evolution of individuals (Cozma, 2010: 21). From this point of view, the new ideology would attack the very essence of religions that relies on divinity as the source of truth, knowledge and life itself. In these conditions, many of the Romanian religious magazines would be eliminated, others would refuse to continue and few of them would find a compromising solution in allowing elements of the communist wooden language discourse to penetrate their contents. The goal of this research is to reveal how the relationship between the state and the religious cults affected the theological discourse of the Romanian religious press and the way the editorial content of four prestigious religious magazines is parasitized by the wooden language of the official political discourse of the new regime. Through the discourse analysis method, the main aspects of this political intrusion will be underlined: new themes of the articles, new interpretations of the biblical precepts, new vocabulary.

Keywords: *communism, religious press, wooden language, political ideology, language*

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Premises

"The sovietisation process" (Popescu, 2010: 35) in Romania starts with the events in August, 23, 1944, when Marshall Ion Antonescu was removed from the government and Romania declared war to her former ally, Germany. Until December 1947, the new regime coexisted with the former democratic structures, but from that moment on, the communists would start the procedures to eliminate them, up to the constitutional system itself. The cultural environment would also be affected by the changes in the political system; everything would be subordinated institutionally and ideologically to the new regime, whose main goal is to "abolish the moral traditional values" and to "eradicate the former society" (Verzea, 2010: 47). In this political context, one of the means of establishing the new regime of "popular democracy" was the press (Nicolaescu, 2001: 126). From the communist perspective, the press is "nothing but a weapon of the political power, with precise missions and tasks: to educate the population, to mobilize it to the accomplishment of political and economic objectives, such as combating the political enemies and praising the achievements of the regime" (Coman, 2007: 133). The reality itself is replaced with the Communist Party's reality, one and the same for every aspect of an event, nothing is left to the unpredictable and uncontrolled; there is only the official information or lack of information. But silence is not a choice, the duty of the regime and of every citizen is to speak out loud, in a noisy discourse that states nothing but its affiliation to an ideology. So the press should speak up: "to objectively describe a particular fact, but this description should leave such an impression on the reader as to make him assume the spirit of the Party" (a recommendation of M.I. Kalinin, the president of the U.S.S.R. Supreme Leadership Council, to the journalists, apud Petcu, 2005: 73). The religious press would not make an exception and it would not escape the tentacles of the wooden language, because mastering this language was more than a way to state that the religious cults approved the new regime, it was also a recommended way to participate and to exercise the so called democracy of the people (Thom, 2005: 136). In addition, the impact and the authority of the cults in their congregation was a valuable resource for the communist government in terms of easily reaching an audience.

Methodology

Through the discourse analysis method, the article will reveal the intrusion of the communist ideology in the contents of four Romanian religious magazines: *Păstorul ortodox* ("The Orthodox Shepherd" – Pitesti, 1904-1947 with pauses, 1995-present, the new series), *Foaia bunului creştin* ("The Good Christian's Gazette", Sibiu, June-December 1953), *Glasul Bisericii* ("The Voice of the Church", Bucharest, 1942-present) and *Revista cultului mosaic din R.P.R.* ("The Mosaic Cult Magazine in R.P.R.", Bucharest, 1956-1957). The methodological approach of the discourse analysis takes into consideration the fact that lately the discourse is defined as an interdisciplinary concept, far beyond the old approach of the structuralism that used to limit the discourse to its phrase structure, in a context free formula. Nowadays, social, cultural and situational factors define the discourse, bringing a complete significance to all the participants in the communication act as a social discourse (Rovenţa-Frumuşani, 2005: 70). Thus the discourse, as a complex entity that carries the historical, the social, the cultural and the communicational context, contains an ideology (Maingueneau, 1998: 2).

The importance in the history of the Romanian religious press of the four

publications chosen for the analysis is defined by the following aspects: representativeness – in terms of the religious belief of the majority of the population and, respectively, of an important minority at that time, the longevity and continuity of the printed editions and the official character of the magazines. A brief presentation of the four magazines will demonstrate the significance of the case analysis and thus the relevance of the results.

In January 1900 a monthly publication called *Păstorul* ("The Shepherd" is edited in Pitesti by "Frăția" (Brotherhood) Arges Clergy Society (Păcurariu, 1997: 302). In December 1904 its name was changed to *Păstorul ortodox* ("The Orthodox Shepherd"). It is initially printed until 1912, written by Plato Ciosu, the future bishop, it is reprinted from 1 January 1931 to 1937, then in 1938-1944, 1946-1947 (Barangă, 2003: 107; see also Răduică, Răduică, 1995: 314) and in 1995, the new series, as the official magazine of the Archbishopric of Arges and Muscel, under the guidance of Archbishop Calinic Argatu (*Enciclopedia Ortodoxiei româneşti*, 2010: 475). The frequency, as well as the editorial content, varies depending on the period and the editorial board. From 1 January 1905 it appears bimonthly. During the period 1907-1912 it is edited by a committee of priests. In the pages of the "The Shepherd", the editors included theological, historical, literary and topical articles about the Church. In 1945, 1946 and 1949, on the front page, under the magazine's title the reader can see this phrase: "Approved by the Press Military Censorship, no. 2115 from November, 30, 1944".

Lumina satelor ("The light of the villages") was an important gazette of the Orthodox Church, with a large circulation and a consistent summary, edited by the Archbishopric of Sibiu, starting with 1922 until 1948 (Păcurariu, 2011: 282). In June, 14, 1953, under a new series, it changes its name to *Foaia bunului creştin* ("The good Christian's magazine"). Its new appearance in A3 format has a modern layout and illustrations. A new name is now justified by new objectives, on the one hand considering the old editorial policy of a gazette addressed to the large rural Christian public, regardless of their intellectual training, and on the other hand dictated by the new social and political conditions in Romania, established by the new government and its ideological orientation.

Revista cultului mozaic din R.P.R. ("The Mosaic Cult Magazine in R.P.R.") appears in Bucharest from October, 19, 1956 ("14 cheshvan 5717), in an A3 Romanian-Hebrew bilingual bimonthly four-pages. The editorial staff was located in D. Racoviţă Street, no. 8, District 23 August. In the program-article in the first issue, the editorial board declared their "purpose and aim", bringing into discussion the person of the first patriarch, Abraham, who "planted a tree at Fountain Oath and there he invoked the name of God, the Master of the world". Nothing in this article would anticipate the political direction the magazine was about to take.

Glasul Bisericii ("The Voice of the Church"), the official magazine of the Bucharest Archbishopric, appears from 1942 to present days. Initially it was meant to be a weekly magazine, in a newspaper format. In 1945 it was changed into a B5 book format, with 22 issues per year. From 1948 until the present days it will have a monthly apparition. In the period we analysed, the magazine appeared with the blessing and guidance of Justinian the Patriarch of the Romanian Orthodox Church.

Results

There are three main aspects of the political intrusion in the editorial content of the Romanian religious magazines in the early years of the communist regime: new themes of the articles, new interpretations of the biblical precepts and new vocabulary.

The intrusions in the religious discourse are first of all visible on the themes: the reconstruction of the society, the superiority of the popular democracy, the time of the great changes, the necessity that the clerics get involved in those historical processes and the myth of the peace protection are now the leitmotifs of the majority of the preaches. Some titles are relevant: "The priests of the Capital city, working for the public benefit, are restoring the cells at Plumbuita Monastery", „Following the new spirit" (*GB*, no. 1-2/ Ianuarie-Februarie1949), „Teachings from the gathering of peoples" (*FBC*, no. 1-2/14 June 1953), „The Patriarch who opens a new road in the life of our Church, the road of connecting our healthy Orthodox tradition with the effort for development and flourishing of the Popular Republic" (FBC, no. 3-4/1 September 1953), „The Youth and the Peace", „Harvesting, threshing and collecting" (*FBC*, no. 5-6 / 15 September 1953), „The month of the big friendship" (the Romanian-Soviet friendship) (*RCM*, no. 1/19 October 1956: 1), „August 23" (*RCM*, no. 17/1 August 1957), „Collecting is a patriotic duty" (*FBC*, no. 3-4/1 September 1953), „A call to the priests and the believers of the Popular Republic of Romania" (*FBC*, no. 3-4 /1 September 1953: 1), „The notes of a partisan" (*FBC*, no. 9-10, 1 December 1953: 3), „The deputies elections in the Popular Councils/ The believers give a strong support to the flourishing and empowering the Mother Country" (*FBC*, no. 9-10, 1 December 1953: 4), „For the development of the villages – Collaboration", „The attitude of the B.P.D. (The Democratic Parties' Block) and of the Romanian Communist Party towards the Church", „A Christian social economical action", „The Constitution and the freedom of religion in U.R.S.S." (*PO*, no. 11-12/ November-December 1946) etc.

In the issue 7-10/1946 of *Păstorul ortodox*, in articles such as „The freedom and the universality of work", „The democracy and the Church", „The Gospel and the democracy", the biblical foundations for the new doctrine are emphasized. Some aspects about the Eastern political power that is, according to the writers of the articles, supporting "a vivid and fruitful activity of reorganization and invigorating" of the religious life; one particular aspect of this reconstruction is the restoring of some churches. Stalin is considered "the greatest supporter of the Orthodox Church". And the propaganda continues. According to a leading principle of the press, the rule of the present topicality or the temporal proximity, but also being compelled to follow the censorship's directions, most of the articles in *Păstorul* contain explicit or implicit references to the new situation the country was facing and to the ideology of the Communist Party: "Although it might seem – on a superficial view – anachronistic and futile to talk about sects and their adepts in the democratic Romania after August, 23, 1944…"; "The times of today, with their struggles toward a new age"; "For the development of the villages – Collaboration" – the entire article, a pleading for the new founded cultural institution, the Community Center (*căminul cultural*), which was actually a new means of propaganda; "The position of B.D.P. [The Block of the Democratic Parties – our note] and of the Romanian Communist Party toward the Church" under the heading "Internal news"; "A Christian social-economic action" and "The Constitution and the liberty of religion in U.S.S.R." under the heading "External news". In "The position of B.D.P. and of the Romanian Communist Party toward the Church" we can notice the abbreviation when the author refers to the other parties and the full phrase when he refers to the Communist Party. It is another way to divide the two entities into two categories: "they" and "us". On the other way, the situation reminds the author of the study about a particular aspect of the job as a religious press editor. One of the first things a newcomer in the editorial staff of a religious magazine learns is the fact that it is not recommended to abbreviate the names of God the holy persons, so if we think about the position the Communist Party as the centre of the

people's existence, as the source of truth and wellness to all those who embrace its values, as a "Big Father" who decides the direction of the individuals. Later on the Romanian history, when the Communist Party would become the only legal party, the abbreviation would be used and would become a very well-known formula to designate the political establishment in Romania until December 1989. Anyway, these articles didn't seem to advantage the editorial board of *Păstorul ortodox*, since the magazine ceases its appearance, along with many other religious magazines and other media products, in the years 1947-1948.

In the issue 2-3 of *Revista cultului mozaic*, from January, 15, 1957, the Jewish editorial board assumes its required mission to be a social mobilizer. On the upper side of the front page there is the following appeal: "Citizens! Verify if you were counted on the electors' lists. No citizen who has the right to vote shouldn't be left out the list!". The layout is neat, the content is various, with different particular elements in the text settings, illustrations (pictures, portraits of Dr. Moses Rosen, Chief-Rabbi, and of Solomon Schechter, important rabbi, academic scholar and educator). A large news story on the front page, continued in page 3, approaches the application of Dr. Moses Rosen for the Grand National Assembly elections. The text, chronologically written, is completed with discourse fragments in which we can recognize wooden language formulations used in that period, as a proof of the political intrusion in the cult's activity. Here are some specific phrases, both on the political-administrative level of language and also as standard formulation with no particular reference to reality: "citizens assembly", "officials, workers on various institutions, factories and plants", "the liberties that the large popular masses of this country enjoy", "the supreme instance of the state power", "the best sons of the people, elected from all social classes", "widely representative character of the Grand National Assembly", "make a statement", "the word of peace and fraternity between peoples", "the fruitful and restless activity", "the attachment for the cause of democracy and peace", "to commit to his mission" etc. The new format of *Lumina satelor*, named *Foaia bunului creştin*, welcomes the reader with an almost natural combination between an archaic language and standard phrases of the wooden language, this time inspired by the Church language: "with the occasion of this anniversary of *Telegraful român* ("The Romanian Telegraph"), His Holiness Patriarch Justinian writes that after the accomplished apostleship today he has the duty to «follow the same road as our people towards peace, light and the happy future that our Mother Country is building». His Holiness the Archbishop Nicolae of Transylvania guarantees that «today *Telegraful român* will continue his religious traditional way for the moral and material development of the true believers people and for the defence of peace». And his editorial board commits to «serve even more willingly the Church and the Mother Country, to the benefit of the true believers, to the prosperity of the working people and to the victory of peace throughout the world»" (*FBC*, Year XXXII, no. 1-2/14 June, 1953: 1).

The elements of the wooden language can be found in the following phrases: *road towards peace, light, the happy future our Mother Country is building, the moral and material development, the defence of peace, to serve even more willingly, the prosperity of the working people, the victory of peace throughout the world.* Some of the words belong to the religious vocabulary, such as *peace, light, victory*; they were borrowed by the political discourse and became phrases of the wooden language. The religious origins of these phrases makes them easy to combine with the rest of the religious language of the article, thus no discrepancy is noticed. The words *duty* and *commit* are though disturbing because they break the natural language rhythm of the text.

In *Glasul Bisericii*, we can find an example of how any particular event, more or less important in the existence of the Church, can be exploited as an occasion for the communist political propaganda. The New Year's Eve is not usually such an important celebration in the life of the Church as it is in the laic word and a pastoral preach with this occasion is not a common gesture. We think that it was imposed to the Church's hierarchy and thus the New Year's Eve would get a bigger significance, compared to the significance of Christmas, a celebration when the Patriarch addresses a pastoral to the clergy and the congregation. The lack of a very obvious religious significance allows the hierarch to approach a social and political theme: "the Church is invited by the times to bring into the people's life the spirit of peace, of brotherhood, of social justice and of the sacrifice for the development of the Mother Country, for the reinforcement of solidarity between the peaceful and freedom loving peoples in the world […]. The leaders of our Republic, considering that our Church request is right, have passed a law to abolish the Concordat imposed to our Country by the former monarchy, the instrument of the bishop of Rome – who calls himself the Pope. […]. On New Year's Eve – the Leaders of our Country have ruled the whole year development plan, through the planning rule and the new budget law. All the people and thus the Church and its clergy are called to accomplish this plan" (*GB*, Year VIII, 1-2/ianuarie-februarie 1949).

As we can notice in the previous examples, even the main journalistic principles in the gathering and selecting information and the news writing are eluded in the communist press. If the positive perspective on reality usually represent the rule, and often the news are usually negative in the democratic press (the watch dog metaphor), this criteria does not stand in a communist regime. The press as a means of propaganda shows the positive events in the context of the regime's great achievements on the way to development and progress of the society. From this point of view, the religious press in general and the communist press have something in common, because they both write about positive events. Only the nature of the events is different and the political themes placed in the editorial content of the religious magazines look out of place. Another artificial solution is to give new significances to the biblical parables as to coincide with the "new spirit" in the Romanian society, a society whose main ideals are labour and peace. The massive use of the themes of labour and work is a technique specific to the wooden languages – the pre-treated reality (Thom, 2005: 85). In the issue 11-13 from November-December 1946 of *Păstorul ortodox*, the priest Marin Branişte, a well respected theological voice in Romania, signs an editorial entitled "The present meaning of Christmas". The main idea of the text is "perfectly working together to praise and pray for peace, as to be able to see together not only the various human social classes, but also the elements of nature". Some articles try forced interpretations of the biblical parables - The Parable of the Sower, The Parable of the Vineyard Workers, The Parable of the Ten Virgins and The Parable of the Wicked Workers:

"Christ, the Sower of Joys.

Everywhere, the Saviour sowed joy, proclaiming the communion of the faithful to God and pouring happiness in their hearts.

His teachings guided believers so that even in this life they can reach a satisfactory happiness, doing goodness to their fellows and helping each other for everyone's well being. He showed everywhere that contentment and joy brought industrious work, understanding between peoples, and how many moments of happiness the contemplation of nature produces, as nature is so endowed with riches, which calls upon man to harvest and use them thus contributing to their increase" (*FBC*, no. 5-6 of 15 September 1953: 1).

The mobilizing discourse of the religious press gets new valences according to the official political discourse about the dawn of a new era, an era of peace, progress, liberty and democracy of the people. For example, in the article "The Orthodoxy and The State", the theological content is overwhelmed by the political content: "The man is led to be a comrade to his kind. Thus, he needs his people. This is the new state, the popular state, the most advanced form of organization. In our democratic popular state, the individual can get a better living through honest labour. […]

R.P.R. is a state that loves peace and fights for its instauration in the world. […]

In the biblical places, the Orthodoxy teaches us:

1. The duty of each citizen is to obey the state.

2. The right of the state to be obeyed and to punish the insurgents. […]

Briefly: The Orthodoxy acknowledges the state, serves it and works together with it, in good understanding and support, it uses the language of the people as a liturgical language, it prays for the leadership of the state and for its army, it supports the state and it gets support from the state; it embraces the people's ideals" (*FBC*, no. 9-10, 1 December 1953: 1). On the language level, the main characteristics of the religious press discourse are the lack of stylistic consistency and the large use of the political terms, mainly neologisms, terms inadequate to the specific of the religious language and its archaic character. Here are some examples: *coordonare* (coordination), *factori* (factors), *supreme* (supreme), *divergenţă* (divergency), *aspiraţiuni* (aspirations), *revendicări* (revendications), *contemporană* (contemporary), *architect* (architect), *camarazi* (comrades), *cetăţean* (citizen), *oscilare* (oscillation), *alternative* (alternative), *examenul* (exam), *deficienţe* (deficiencies), *epuiza* (exaust), *convorbire* (conversation), *dezarmare* (didarmament), *separaţiuni* (separations), *intoleranţă* (intolerance), *ateism* (atheism), *intuiţie* (intuition), *evidenţă* (evidence), *originalitate* (originality), *independenţă* (independence), *doctrină* (doctrine), *expresiunea* (expression), *propagandă* (propaganda), *polarizează* (polarize), *ostilitate* (hostility), *predominant* (preponderant), *exclusivism* (exclusivism), *consecvente* (consistent), *stimulare* (stimulation), *insinuări* (insinuations), *calomnii* (calumny), *asistenţă* (assistance), *pedagogie* (Pedagogy) *introductivă* (introductory), *eficacitate* (efficacity), *prioritate* (priority), *anacronic* (anachronic), *inutil* (futile), *chestiune* (matter), *interdicţie* (interdiction), *periclitau* (endangered), *agenţi* (agents), *dezertori* (deserters), *confiscate* (confiscated), *adversar* (opponent), *relativă* (relative), *ideologic* (ideological), *arsenal* (arsenal), *nimbat* (nimbed), *progresist* (progresist), *complexitate* (complexity), *abdicare* (abdication), *equivalentă* (equivalent), *absorbită* (absorbed), *mixtură* (mixture), *să solidarizeze* (to make common cause with), *instrument* (instrument), *armonizeze* (harmonize), *faliment* (bankruptcy), *instrucţiune* (instruction), *prestigiu* (prestige), *alarmante* (alarming), *clandestine* (clandestine), *rapoarte* (reports), *prostituţie* (prostitution), *pauperism* (pauperism), *proporţii* (proportions), *cortegiu* (procession), *comisiuni* (commissions), *celule* (political cells), *partide* (parties), *animat* (animated), *să discrediteze* (discredit), *comandamente* (commandments), *consideraţiune* (consideration), *avantagii* (advantages), *constituţie* (constitution), *sovietice* (Soviet), *fascişti* (fascists), *guvernamental* (governmental), *marcant* (prestigious), *mondiale* (global), *emancipeze* (emancipate), *component* (component), *marxism* (Marxism), *mandate* (mandatory), *solidarizare* (solidarity), *abnegaţie* (self-abnegation), *obiecţiune* (objection) etc. The texts are stylistically marked by the antithesis *old/new*, *past/present*, which is specific to the socialist ideological discourse, completed by the religious opposition *darkness/light*; *bankers, landlords, capitalists, the stuffed* versus t*he patient and hardworking people, the working class*;

laziness vs. *labour*; *analphabetism* vs. *schools*; *the darkness of the night* vs. *the electricity*; *the quacks* vs. *medicine*; *no cares for the public welfare* vs. *everyone is responsible*. The abuse of the same epithets and metaphors make the texts lose their style value and words to become marks of the wooden language: *the hardworking people, the lack of knowledge is a weed, the light of knowledge, rich libraries, instructive conferences, flourishing collective farms, fresh agricultural associations, the bright sun of socialism* etc.

Conclusions

The religious magazines editorial content is characterized by a mixture of plans, by the presentation of the events in the life of worshipers through the reinterpretation of social values, even by trying a theological and biblical foundation of communist ideology. There isn't a clear delimitation between the religious-theological content and the social-political content of the magazines, between the mission of spreading the words of God and to inform the congregation on the one hand and the mission of the press as a social activist, as an agitator to make the citizens fight for the communist government's goals, as a propaganda means on the other hand. From this point of view, each article could contain marks of the relationship between the state and the religious cults and elements of the communist wooden language, even though some articles can lead the reader into error by neutral, religious or theological titles. The result is a split in style within the same publications, between "clean", pure theological articles and "parasitic" articles, or even within the same article. Although we have only pointed those contents with visible political intrusions in the pages of the religious magazines, there are still a large number of clearly religious and theological articles, enough to justify the titles and the affiliation to a religious cult. This aspect makes the intrusion even more disturbing and gives a new turn to the reader's expectations which can make him/her sometimes think that he/she is reading a political magazine. The political ideological intrusion in the religious discourse and the elements of the wooden language are the religious magazines' proposed or imposed solutions to coexist with the demands of the new communist regime. Because, under the appearance of a false freedom of the conscious and of religion, stated by the Constitution in 1948, actually the new regime was restraining them. Only 14 religious cults were admitted as legal; the Greek-Catholic or United Church, with a more then two centuries tradition, was abolished in the 358 Decree on December, 1, 1948 (Cârstea: 2012: 474).

Abbreviations

PO - Păstorul ortodox ("The Orthodox Shepherd");
FBC - Foaia bunului creştin ("The Good Christian's Magazine");
RCM - Revista cultului mozaic din R.P.R. ("The Mosaic Cult Magazine in R.P.R.");
GB - Glasul Bisericii ("The Voice of the Church").

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ORIGINAL PAPER

Germany and its Influential Role in the Iraq Issue. Start of Cracks in Relations between Germany and the US?

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Abstract
The issue of Iraq has been an issue that has put into question the unity between the Great Powers. This has happened for many reasons, for each major power has seen its own interest, without seeing the danger, to be sowed in the region this delicate issue. Even the relations between Germany and the United States are no exception. They were very tense, because Germany had been against intervention in Iraq. It saw good relations somewhat, that he had made Germany to Iraq. On the other hand in this battle horns rammed two main ideas: "The fight against terror and the axis of the Devil" and "disobedience and passive attitude to this war". Therefore I will try to highlight relationships and more strained cracks between these two world superpowers in the case of American intervention against Iraq. It will be a detailed analysis, which will contain the whole of the dynamics ee events related to the relations between these states.

Keywords: *Iraq, NATO, Germany, USA, Central Powers, France*

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A little history on German-US relations

When we talk about the links between Germany and the United States of America, immediately someone might think that these links are very late, around 70-80 years ago, because little it is said about them. But let's start with a concrete example: German – American psychologist Hugo Münsterberg in his "Die Amerikaner" (Americans) makes a detailed description, how Americans look in the eyes of the Germans and the Germans in the eyes of Americans: He writes: "to the American, the German is a pedantic, petty, Slack, and slow acting man, that finds the pleasure in carry pipes, beer and skat. He likes to do marching parades and hates the progress and further development. He always fights with neighbors. While the American in the eyes of a German is seen as a Jenkin, a plebeian, blockhead, that in public life receives and approves corruption, money-seeking and sensational events". He is a man of hypocrizy, a barbarian of science and art, a man who chew tobacco and that finds the greatest satisfaction in executions without trials (Lynchtrials) (Mauch, Patel, 2008: 9). We can say, that this description is somehow exaggerated by both sides in nowadays. And that does not make sense in this context, because both nations are in the forefront of science, economics and politics. In his book Munsterberg has defined as very important, the relations and ties between Germany and the United States of America. For this he mentions two facts which are really very significant. In a meeting with the president of Harvard University at the time of donation to an imperial gift by the brother of the emperor, suddenly enters the room the German Prince Heinrich, who with joy and said loudly: "This let Due prominence The ongoing ,forever and sincere relations between Germany and the USA" (Münsterberg, 1904: VIII). As the second example has to do with a letter written by US President Franklyn Roosevelt, sent to the author of the book, which clearly expressed the American – German love: "Be very sure, that in my heart there are few things, that I really love like this sincere friendship and openness between Germany and the United States of America" (Münsterberg, 1904: IX). But this has been the perspective of Germans and Americans against one-another. Today there is much to talk about German – American bonds, because the moment and the situation wants these two powerful nations to have a good cooperation with one-another in the overall global geopolitical, economic and security situation. Today the German – American love is at its peak. Despite sporadic cases, which have questioned up this "feeling". Here we can mention the case of tapping the phones of Americans. Especially telephone tapping of Chancellor Angela Merkel.

These two powerful nations must work together to maintain global security. Because there are two most powerful promoters of the economic policy for now, as well as for the future. And I think that German and American politics will be the first violin together for many years on the progress of world politics to solve the problems and issues in different regions of the globe. But the question arises, what is the origin of these links, and this close relationship, as these relationships have evolved? Therefore I will make a brief background on these bonds. German – US relations date back to the 17th century, in 1683. In this period there was a large influx of immigrants from Germany to the United States of America. Even the German lawyer, the only writer of the Barock preriode US-Franz Daniel Pastorius founded along with Englishman William Penn, the son of famous British Admiral William Penn, near the Pennsylvania town "Germantown". Mainly German immigrants came from Baden, Württemberg, Hesse, the Palatinate, as well as

Kohl's, Osnabrück, Münster and Mainz. In the 18th century due to the difficult economic situation and social developments, hundreds of thousands of Germans left Germany. Seeing this huge wave of German invasions, American politician Benjamin Franklin began to complain for the so-called "germanizing" of the British colony of Pennsylvania. He was very afraid, that English would be removed from the official language and be replaced by German. However this was not realized for many factors of that time.

Only in 1850 in United States arrived about 1 million Germans. They established their colonies, mostly in California, followed later by Pennsilvania, Ohio, Illinois and Texas. They introduced the so called German belt or "German belt". This belt belonged to the states, such as Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska and Iowa. German – Americans first became involved enormously in public life, especially in the union. They were the first initiators of labor organizations and trade union associations. They demanded and fought very hard for a better integration of the Germans in American daily life, for better working conditions and lifestyle. According to the latest census of the US population conducted in 2010, all US territory about 15.2% of respondents, or about 58 million Americans claimed, are of German roots. First the Germans were mostly bakers, beer producers, workers, farmers, musicians, businessmen, etc. They gave another dimension to the American everyday life. German immigrants brought a new spirit of desire to work, the correctness and punctuality at work, in life and everywhere.

Even in German political life – the Americans have left deep imprints. Here we can mention politician Karl Schulz, who was the first German to reach the highest peaks of American politics. He too, strongly supported Lincoln in the presidential elections of that time, and was elected senator of the state of Missouri, and even managed to become the Minister of Internal Affairs in the government of US President Rutherford Hayes. Germany and the United States tied political relations in 1797, where renowned politician and later US President John Quincy Adams was sent as ambassador to Prussia at the time. Relations between the two countries have been inseparable and very strong, with the exception of the periods 1917-1921 and 1941-1955. The bonds between Germany and the USA focused primarily in the areas of immigration, trade and economy. For a long period theUnited States was represented in Europe, even in Germany through representations accredited in England and France. German – US relations have not always been excellent, there have been of course ups and downs. Here we consider the First World War, where German submarines sank five American merchant ships. This thing shook many bilateral relations, so the US President Wilson declared the war and immediately broke diplomatic relations with Germany. This led him, which eventually removed the German language lesson plans that time and the street names were changed to English names. The same thing happened in World War II. Relations between the two countries have been very tense in this period.

Germany is one of the most significant, the most important of nowadays international political arena and in the EU in general. This relates more to changes of its political course after the `80-`90. This policy was a political non-alignment policy issues in international and military non-alignment, for not sending military troops in global conflicts. This is not related to a lack of will and the desire on the part of the German state, but with the treaties signed by its Western allies on 05/26/1952, with the obligation in order to merge all these treaties (Deutsche Bundestag, 1953: 2-73). Today we can talk about a Germany in the vanguard, the first to solve various issues in the European political arena and in international law. This is related to greater political engagement, economic and military German government taking into account its vital interests. This is seen very

well in its commitment during the Kosovo crisis in 1999 (Friedrich, 2005: 21-72) and the political and military engagement in Afghanistan, in the fight against terrorism (Mertes, 2003: 5-9). In recent years German politics in general has changed, has evolved in the international political arena and security policy. This has led to a radical change of orientation or main objectives of policy. Germany until the early 90's has been under a kind of American "vassalag". It has been a loyal and obedient ally of US. In the eyes of American politics Germany has been a nice, tolerant and generous Cinderella. We can say, that this role suited more to the German policy until the late 90's, for the fact that its weight in the international arena was negligible. It was not considered and not taken into account at all by other European countries. Because Germany was always persecuted by the shadow of World War II. Because Germany was treated as a defeated state politically and militarily. This love, this "honeymoon" between Americans and Germans going toward and end or "divorce" in some way.

And this happened, when Cinderella began to erect perennial top injustices that were done to her. So she stopped playing the role of Cinderella sight of world politics and began to ask her selfishness a new role at the international political and security, which will ensure them a stronger voice in the world order as well as to be taken more seriously by other European allies and the US (Größl, 2000: 20-24). In this respect, the German increaseit was in the interest of US policy, because in this way it had a better grip and stronger European Union, for so Europeans would be more unified around fundamental international issues and were always supportive to the US policy in the world. But on the other hand the United States feared that, in this way the Europeans would become independent and will act in accordance with their own interests and US policy would remain like fish out of water in this turbulent global oasis. Situation, that Germany was passing in this period, showed that it would be a different political pole, a counterweight in the nowadays bipolar world. As it was apparent by later political streams it did not accept the US hegemony in Europe and in the world, and it proved it later in the numerous open objections to the irritating US policies. The fact is that American policies didn't take into account the feelings and opinions of European allies on many international issues. This meant, that it acted on its own, regardless of the danger which threatened the democratic world. Therefore we must say, that after the reunification of Germany in 1990 and the end of the Cold War, relations between Germany and the United States have been ambivalent. Germany focused more on the European area, so it gives more importance to European domestic situation. As the United States pursued turn "Market-Political", to find new markets in the period of globalization. Contacts with Europe remained tight, but not so tight as to the period of the East-West. Europe for its part is always obliged to stand by the United States, it also cause security policy. The reason is that the United States had and has all the potential to solve problems and conflicts that may arise in Europe. The wars in the Balkans (Joerissen, 2007: 2-14), in this region too politically turbulent, with major ethnic and nationalism problems, showed that Europe and Europeans were not able to solve and assume the costs of litigation in Europe. European policy is convinced that the Balkan region is a "gunpowder keg" that could explode from moment to moment. The wars in Bosnia-Herzegovina, massacres in Kosovo (Krause, 2000: 395-416) and Croatia showed that Europe was divided politically, and there was not a unified political attitude regarding these fierce conflicts in the heart of Europe in the 20th century.

Therefore, conflicts in the Balkans expressed clearly the new role that is taking the US behold the new international policy. But, on the other hand we have the emergence of a "superpower" new European Germany. But many experts as Hans-Peter Schwarz or

Rainer Baumann have called Germany as "central power" (Baumann, 2007: 62-72). This force was seeking "chair" her "new world table" – the new international situation. Relations between Germany and the US have had ups and downs. There were no perfect partnership between the two superpowers. But, after the terrorist attacks of 11 September 2001 against the World Trade Center, the German relations – the US took a another stream. This flow continued until the start of the invasion of allied forces led by the United States against Iraq. European people was expressed from the beginning against this war and this refusal was so great that through various surveys appeared opinion that Americans should have resolved the problems, which opened with his own hands. "What shall sow, reap". But "When I own tongs, why burn the hands" says another word popular proverb. This is used properly US. Iraq War in 2003 showed once again the major divisions and rifts between the US and European countries to NATO, among them Germany. This war has disrupted the unity that existed between old allies within the European Union (Knelangen, 2008: 99-123) Germany was deployed out against this war. This became apparent in the word of the former German Minister of Foreign Affairs Joschka Fischer: "Ich bin nicht überzeugt!" (I'm not convinced!) (Der Spiegel, 08.02.2003), When he banged his eyes open in the former American Secretary of Defense Rumsfeld during the Munich Security Conference in 2003, when he defended the idea of military intervention in Iraq. The motto of the Iraq War was a "war against terror and the axis of the Devil". This flaw or "diplomatic freeze" continued for a long period. German policy has always ignored the issue of Iraq. And it has brought, Germany in this country has lost somewhat credibility and sympathy it enjoyed for so long. German active foreign policy in this period faced with two difficulties: a) the first was the security situation in the country, which was very tense, and today we can say that improved. During these years seen signs towards normalization of life in general. In the period 2004-2006 there was a civil war between Sunnis and Shiites, the level of violence was very high. Every German engagement in the country would be high cost, because the government of Iraq had no power in all its territory; b) the second is that this was a legacy of the years 2003-2008 policy. German foreign policy for Iraq off the agenda had its day. What all these years did not play the role expected of the international community (Steinberg, 2009: 33-40). But rejection, which makes Germany and France Iraq War, compounded complete situation within the European Union. In this year began a conflict between members Bloc. He created two camps: 1) camp of supporting states, which included Great Britain, Italy, Spain, Netherlands, Poland, etc. and 2) states opposing camp which included Germany, France, Belgium, Austria, etc. German policy had openly and clearly that there will be routed in any way military troops on the ground and any associate of the German public and private enterprises in hazardous areas. Because in this way it came out in support of Saddam Hussein and his military clique (Hacke, 2003a: 23-27). This would put into question the relations within Europe and in the international political arena. Because this would have higher human, economic and political cost. Once a little girl of three years was asked in Saudi satellite channel "Iqra", if she loved and liked Jews. Her reply was immediate "NO". "Why not? Because they are monkeys and pigs". "Who says this?" – Addressed the moderator. "Our Lord" – answered the little one three years. The moderator then did another question: "Where is written this thing?". And the girl without a blink answered, that this phrase was written in the Qur'an, the holy book of Muslims. In the end the moderator addressed the audience with these words: "Everyone would like to have such a baby that believes in God. God bless her and her parents". This anti-Semitic spirit, this spirit of religious and human intolerance is always growing. As well as anti-American and

anti-European spirit between the Arab and Muslim countries. And this is noted to the young Muslim generation, that is supporting more radical and fundamentalist Islam.But the question arises: Why did not participate actively in the Iraq war Germany in 2003? These are the reasons that forced Germany not to be active in this fight: lack of legitimacy under international law (Lack of mandate from the Security Council of the United Nations); lack of evidence and facts, which show the great danger that "was supposed" to come from Iraq; a military intervention could have encouraged Islamic fundamentalism and international terrorism; the risk of terrorist attacks would not have been diminished, but increased; efforts to support a democratic and non-violent Islam would be put at risk; the other military missions (Afghanistan) would have been put at risk; in other countries such as Syria, Saudi Arabia, Jordan, Pakistan, fundamentalist coups could occur; the boundaries of national states in this region could have been into question and this could arise to the emergence of dangerous situations or conflicts between Arab countries; after the war, Iraq would not have had the opportunity to be democratically stabilized; lack of will and support from the people themselves could have occur; especially the German people would have had a negative attitude to this war, and they would have not accepted that it was Germany leading it. And the reason was the historical legacy of World War II.

We must say, that the terrorist attacks, not only were not prevented, but they were added even more. Alarms for bombs in the United States of America, Canada and European countries have greatly increased. The danger is always imminent. So it is required more cooperation and political and military coordination between European countries and the United States of America; the risk of terrorist attacks will not decrease, but will increase more. This is also confirmed in nowadays, where international terrorism and Islamic fundamentalism are two main issues in the international political agenda today. This intervention further strengthened and nurtured the idea of Islamists, that evil comes only from the West: efforts to support a democratic Islamic and non-violent will be jeopardized; the other military missions (Afghanistan) risk; in other countries such as Syria, Saudi Arabia, Jordan, Pakistan, fundamentalist coups could occur; the boundaries of national states in this region can be called into question and this may give rise to the emergence of dangerous situations or conflicts between Arab countries; after the war, Iraq would be able to democratize and stabilize; lack of will and support from the people themselves.

And the reason that historical legacy of World War II. Because if it would happen, that Germany would be the leader of the war on Iraq, the shadows of World War II, German Nazism would be turned (Steinberg, 2003: 33-40). Other countries would see with skepticism this leadership, because they would thought, that in the German policy has turned the idea of a modern post Hitler Germany. Therefore German politicians feared exceedingly the idea of military leadership). This would aggravate further the relations with European countries, especially France, a historic rival of Germany. What were its interests, that pushed not a member of the Coalition to Goodwill? (Hacke, 2003b: 8-16) That when it comes to define its interests in the world, the German government is very restrained, measured. The first, was the stability and territorial integrity of Iraq. This meant, that in the event of bankruptcy or the division of Iraq would occur conflicts numerous local and regional. Especially the period between 2005-2007 was indeed threatening, where Iraq threatened such a phenomenon. Even in early 2009 appeared the risk of disintegration of Iraq into two, three or more parts, because the Kurdish parties had strongly urged the Iraqi constitution of 2005 to receive federal character. And the country's federalism suited the German interest.

The second, was to limit the effects and negative consequences that could bring regional stability. This meant, that the policy of the states of the Near East and Middle has been filled with interstate conflict and this war will harden regional strife, and would provoke direct or indirect interference by neighboring states. This given the impact that could exert Iran as an important actor of Shiite groups in the south and center of the country, as well as central government anytime – Shi'ite. Therefore, the interest of Germany was that New Iraq help to resolve regional conflicts, so that he was not a source of conflict.

Third, to curbing Islamic terrorism, although Al-Qaeda was weakened somewhat but there is the risk that the activity of jihadist groups in the country can be expanded and spread to neighboring countries and Europe. The terrorist attacks in Madrid in 2004 and London in 2005 showed once again that the Iraq war was the main motive for the assassination by Al-Qaeda (Steinberg, 2003: 33-40).

The fourth issue that bothered German foreign policy, was the issue of deportees and displaced. With millions of Iraqis fled to Syria and Jordan. But the capacity of these countries to keep such numbers of dislodges were further their limits. In addition to economic and social problems, this wave would jeopardize the stability of these countries, especially Syria and Lebanon, for their importance of these countries in the Arab-Israel conflict. This would cause instability in these countries.

It, which was concerned over Germany, was the problem of energy security at reasonable prices. And this was the fact that Iraq owns about 9% of oil reserves and 2% of the world's gas reserves. But there are whole areas in the country, who have not yet sought and discovered. In the `60 and` 70 Iraq was one of the most important trading partners of Germany. Iraq is an interesting place to invest.

Last issue that the recovery of the Iraqi infrastructure, road construction has given its fruit in Kurdish northern Iraq, while the Arabian still suffering the consequences of war and strife between ethnicities. And it increases the commitment of the German economy in this part of the Iraq economy (Steinberg, 2003: 33-40). However, Germany is back issue of Iraq after 2008. German foreign policy has written again this topic on its agenda. With the changes that occurred in the US by taking the Obama presidency, it became easier growth of German involvement in Iraq domestic politics. Under this view must be also visit the former German foreign minister Steinmeiers in Iraq in February 2009. But it must be said, that Germany has turned his eyes again to Iraq and his case. Because the situation in Iraq is still being perceived more. This indicates the fact that the situation in Iraq was and is destabilizing and that could destabilize the entire surrounding region. However, we must recognize that Germany does not yet have a proper policy on the issue of Iraq. Anyway the thing for which should be worried more German foreign policy, that seizure or "freeze" the US diplomatic. German assistance for the training of Iraqi security forces was only the first step to improve relations with the White House violated. Germany in the framework of the Paris Club gave substantial assistance. This assistance by the Paris Club amounted to 4.3 billion euros. It was a relief to reconstruction and reclamation of the Iraq shattered economy. All this in order to improve the relations with USA. Germany also helped in the reconstruction of the Iraq political institutions. German political foundations organized trainings for local observers for the 2005 elections, organized seminars for representatives of non-Iraq, trained Iraq politicians and experts regarding various issues and topics of the constitution. In June 2008, was held for the first time after 21 years the Joint Commission German-Iraq economy under the guidance of former German Minister of Economics Mr. Glos. An agreement was signed for the promotion

and protection of investments. All this in the service of improving relations with the United States. Further improving relations served the visit of former Foreign Minister Mr. Joschka Fischer directly after the war in Iraq, in which there was a "melting" between the two countries. His meetings with former Foreign Secretary of Mr. Colin Powell and former National Security Adviser Mrs. Condolesse Rice further eased tensions between the two countries. His words show a clear intention to have Germany and Europe "this is in the common interest, that things in American-European relations walk on a common constructive line" (Fischer apud Powell and Sicherheitsberaterin Rice, 2003).

This improvement has served visit of Mr. Colin Powell in Germany on May 15th 2003 or visit the former US President Bush in February 2004. All of these mutual visits "warmed" frozen relations between the two transantlantic-powers. Today we can talk about a "spring season" in relations between Germany and the USA. However, we must say, that although German-American relations are much warmer in the international geopolitical situation today, even because of the problems and issues that are of concerning and agitating even more the world of nowadays, admitting again, that the US intervention in Iraq has never calmed this troubled region, but has only sparked cools of anti-American and anti-European spirit. This point was noted earlier by the Germany. This is proved once again by the latest issue, which deals with the Islamic state or caliphate, ISIS. The situation in Iraq and in Syria today is more alarming. This imminent risk has been long foreseen by German politics, so this was the reason why it was deeply anti-war and American intervention in Iraq. Therefore the improved relations between Germany and the United States of America are a strong base of consolidation, are a foundation on which should be acted quickly to calm the international situation and the situation in Iraq and in the region. Relations between Germany and the United States of America has always been a game of chess. The reason is that both superpowers expected reaction by the opponent in chess, in the large international field, where each horse gets another horseshoe, and then react in their own way. German Re-US relations have always been tense, because none of the superpowers did not move from his own position. And the starting point has been the question of Iraq. Because here interpenetrated all global interests, ranging from the issue of oil, gas and energy security. And the fact that Russia by her own was beginning to blow sparks and playing with European countries to further increase its influence through gas policy in the region and beyond.

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ORIGINAL PAPER

The Teaching Relation during the Period of the University Studies. Traditional, Modern and Postmodern Conceptions and Practices

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Abstract
In this article we intend to highlight the specificity of the teaching interaction approach, relative to the knowledge relationships, communication, socio-emotional and influence/driving relationships between teachers-students. The hypothesis followed by us was that in academia are applied a number of conceptions and educational practices, which integrates both classical/traditional ideas on training and some trends, patterns, beliefs, behaviors that are part of the modern and postmodern pedagogical paradigms. In terms of application we presented ascertaining concrete data regarding the perceptions of a sample of students, to reveal the main features of the existing relationships in academia. The modern and postmodern perspective in training means a change to the pedagogical concepts where the relationship was dominated by focusing on the magister teacher, on the teaching or assessment activity. Nowadays, the focus on learning and students involves a concern for an optimum, professional networking with the students group and each individual, using a large range of strategies, by adapting the actions of the teacher to the needs of the learners, by addressing in an efficient manner the teaching communication and the management of the group of students. The teachers and students should address flexibly the teaching, learning assessment, and the opening and democratization of the relations are justified by the very primary mission undertaken in the university education, which is to generate and to transfer knowledge to society. As a result, in teaching networking the teacher is required to facilitate the acquiring of the autonomy and self-determination of students by studying, focusing on the capitalization of the human resources, promoting cooperation/support between teacher-students, students-students, and these goals are achieved by selecting and contextual application of some of the practices either traditional or modern/postmodern, depending on the value-utility or their demonstrated advantages in education.

Keywords: *relationship, influence, traditional, postmodern, flexibility*

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Introduction/Conceptual Clarifications

Education, as a complex activity of personality building is a product of the social relations, and training refers to the training conducted in an institutional framework, by a specialized staff, through teaching-learning-assessment. In essence, in the teaching activity we deal with a prospective process of inter-individual communication and management of interrelations and capitalization of numerous interactions and influences created. From psychological point of view, the interpersonal relationships are psychological links, conscious and direct among people (Zlate, 1997). Carl Rogers (1959) highlighted the characteristics of the human relationships: express the empathy and goodwill of the people; are authentic and congruent. From the pedagogical point of view the teaching relations, including those among teachers-students, have an ethical/moral and formative character (Iucu, 2005).

The interaction designates a reciprocal action of the educational partners and the influence – a relationship in which one`s action affects other`s action, "organized and structured educational action, exercised upon a person – student – aiming at the construction, formation or change of some behaviors, attitudes, etc." (Ullich, 1995, as cited Iucu, 2005: 77). After Neculau, the influence means "sharing the authority and its reception" (1983: 104). The social perspective shifts the focus on the rankings of the statuses and roles that we encounter when setting up an educational group and during its functioning, the teacher having decisive role in stimulating the interactions. Adrian Neculau observed the fact that "the social field designates the structure and ecology of a human group, the network of the positions (statuses) occupied by actors within the organizations (institutions). Among the parties occupying positions in a field are established cooperative relationships (or adversity), are developed positive or negative interactions; «The forces» of the field are distributed in relation to the choices of the actors, their social representations, instruction level and type of the education received" (Neculau, 1997: 9).

The classical, modern and postmodern perspective

In the traditional teaching or classical (seventeenth-nineteenth century approximately) it was operated with a conception in which the instruction revolved around the teaching activity as transmission of knowledge, skills, abilities, and the interventionism and dirigisme of the teacher was a priority. The fundamental ideas and most instruction practices, elaborated in Europe, first as philosophical ideas in Antiquity and then by setting, generalization of the education system in classes and lessons (Comenius, Herbart, Pestallozzi etc.), by organizing the education in universities – are part of this conception mostly, in which the pupil or the student was considered the subject of certain actions (organized) and influences (spontaneous) determined by the teacher and the teaching relationship was impersonal.

The term of modern in education must be understood by a reference to the current situation, advanced in comparison with the past, in which it was outlined prominent the concern for the improvement of the education systems and the key concept, to mark the difference with the traditional period, was the activism of the students and the concern for achieving the learning. From a philosophical point of view, the modernity (the nineteenth century and the period before 1989) attempted to legitimize, as shown by one of the

theorists of the modernity and post-modernity period (Lyotard, 1997), the idea of empowerment by rationality. If most part of the history of education, as traditional period, the education was understood as transmission, the shift to the new teaching discipline was toward the regulation of the teachers-students relations, framing them in a series of formal regulations.

Going beyond the previous conception, the postmodern conception consists of bringing together and restructuring of some currents and different explanatory models, to give a post-competitive sense to inter-human relationships, to reinterpret the humanist ideas. As interactions and influences not to remain coercive, individualistic, it is required cooperation, negotiation, acceptance of the variants, diversity in relationships. In fact, the postmodernism is defined by the following characteristics (Macavei, 2001: 16-19): indeterminacy, ambivalence, originality, contextualism, decentralization, and the values promoted are: freedom, tolerance, altruism, creativity, performance, interculturalism. The most important pedagogical consequences in such a perspective are given by the interdisciplinary approach of the education contents, by change of strategies, relationship, educational communication, by the explicit concern for organizing the knowledge and learning.

Clive Beck (cited Stan, 2004: 23) stated that "the postmodernism is characterized by challenging the conventions, mixing styles (...), celebrating innovation and change, focus on the construction of reality". Thus, one of the postulates of the postmodernism in education is the closeness of man with the real life, with all its difficulties and imbalances, to find solutions of optimal reconstruction (Joiţa, 2006: 27). The flexibility of way to relation means shifts from pedagogical relationships based on authority, guiding, power of teacher to relationships where is required the involvement, participation, accountability of the student while the teacher is a facilitator, relationships are open, of partnership, involving dialogue, mutual support; from the student waiting to be asked, who had to be conformist, it goes to the student who wants to be treated democratic, may negotiate, participate in decisions, can freely express, creative. The critics brought to the postmodernism must be taken into account; there is a number of paradoxes with relational impact: people manifest still much individualism in a global society, there are large blockages of interpersonal communication in a society in which we communicate more, more varied, more easily than in the past; should not be neglected the phenomenon of alienation in interpersonal relations, in a society where were removed the space and time limits in relationship.

E. Păun noted that "a large part of the subjectivity of students - how they learn, how they think, what they feel – is largely a black box for teachers" (Păun, 2002: 18). By this author, the educational relationship is an interaction with a dominant, symbolic and interpretive dimension. Also, "despite all the novelties introduced by the new education and various other contemporary psychological currents (Piaget's constructivism, strategic learning, differentiated learning, etc.) must be stated that the organizational situation that places the teacher in the heart of the action remains the dominant model of teaching" (Tardif and Lessard, cited Păun, 2002: 18).

However, identifying the three paradigms (traditional, modern, post-modern), understood as systems of pedagogical thinking accepted by the researchers (Kuhn, 1962; 2008), different from each other by the supported ideas and the way of emergence – does not imply their reciprocal exclusion; in practice, they may coexist. Thus, after an inventory of the main training systems based on communication (traditional and modern), on action, interaction or information, I. Cerghit advocated "in favor of pluralistic approach,

differentiation of the various solutions, able to bring more dynamism and flexibility to set up a possible antidote against slipping into a pedagogical conservatism, uniformity and routine in teaching activity" (Cerghit, 2002: 33).

The typology of interpersonal relationships

The concerns for analyzing the teaching interactions are multiple: the field theory (Lewin, 1989), various traditional patterns that inventory especially the volume of the interactions determined by teachers (Flanders, 1952; Bellack and Davitz, 1963; Ferry, 1968; Postic, 1979; Lippit, 1967 as cited Joiţa, 2000: 127-134), the newer researches (Hamre and Pianta, 1999, 2001) which confirmed the importance of the support that a teacher can provide to his students, by a good relationships, by considering the personal characteristics, through exchange of information. The perspective of analysis is diverse: for example, Lippit and Fox (1967, as cited Joiţa, 2000: 133) showed that among actions/behaviors of the teacher there is a circular relationship, of continuous influence, certain actions being determined by the previous ones, while other studies have focused on the consequences of interpersonal relationships (Baker, Grant and Morlock, 2008 as cited in Gallagher, 2015) to show that teachers have an important role in the learning experience path of the students.

The main types of interpersonal relations are the relations of knowledge, communication, socio-emotional, influence/guiding: a) reciprocal-knowledge relations: The knowledge is the basis of some interactions with adaptive effects of the both parties. The object of perception consists of manifesting interpersonal features of the individual, situational-relevant traits and relational behaviors but this perception, and then, knowledge, based upon some methods, is selective. There are even negative effects to be kept in mind: the criticism, inertia/prejudice, stereotypes and false predictions, insufficient psycho-pedagogical knowledge; b) communication relations: The didactic communication is an exchange of information in which the roles are exchangeable and the feed-back is absolutely necessary. We note that teachers and students in higher education, by virtue of the nature of activity, benefit from increased communication skills, by openness, express orientation to questioning, debate, argumentation, explaining understanding. However, there are some blockages at the level of communication that need to be resolved: distortion, uneven involvement of teachers, students, the emergence of dissatisfactions, conflicts. Therefore, the essential conditions to meet are the accessibility intersection of repertoires, the existence of common language codes, feedback and the variation of the information flows and forms (verbal, non-verbal, trans-verbal); c) socio-emotional relations take into account the emotional involvement on the axis sympathy-antipathy, leading to closeness-eutrality or distance between teachers and students. Is known the fact that emotions have a high degree of disorganization, they could be positive or negative. Therefore, this type of relationship depends on the personality and emotional maturity level (which is not done at youth), and the normativity understood by teachers and students, the climate created or students reaction (as environment). Iucu (2005) showed that the influence process depends on a number of factors, including socio-affective relations, student` s perception by the teacher, the usage of the influence and the degree of the individualization of strategies. The same author observed an interesting aspect: the emotional reaction is independent of the professional skills of the teacher; d) the relations of influence or guiding not only depend on the ability to influence, but also on the hierarchy created by the statutes and roles stated

The phenomenon of social influence contains the processes by that the individuals and groups configure, maintain, disseminate and modify their ways of thinking and acting, in the context of their social interactions direct or symbolic (Mugny, Doise, Deschamps, 1999). Also as a result of social influence, gradually can be outlined: situations/relations of accommodation in respect of habituation, mutual adjustment, assimilation relations, where works the transfer of mentalities and practices, stratification relations, according to the hierarchy of statutes held, alienation relations, in case of incompatibility. The interactions teachers-students may arise in the case of situations/relations of collaboration and cooperation: the coordination of the efforts towards a common goal; competition: the manifestation of rivalry, competition in achieving an individual target or even conflict: the existence of serious misunderstandings in relation to one indivisible purpose. The cooperation is understood as a specific application of the collaboration, as higher level of the achievement of common goals through mutual support in a smaller group. Among the members of the group must be established the necessary feedback of any training situation (in this case – of communication). The students need feedback also from a strong desire of identity` assertion, they seek to obtain this feedback from the teacher and not from colleagues. However, organizing the training collectively or individually depends on several factors: the task, the organization of teacher intervention, the learning styles, the motivation, the age, the number of students.

The teaching relations in a multiple-determined context

In the initiation, operation and development of these relations, a mechanism that you should keep in mind is that "the changes are usually asynchronous. First changed is the «material culture», then the behaviors and habits of the individuals and, finally, as a consequence, the concepts, attitudes, social representations" (Neculau, 1997: 13). Some authors raise the psychosocial aspect of the teaching relationships. The relationships depend on a number of factors: the age, the number, the type of the group of students, the personalities, the followed objectives, the specific of discipline, the personality of the teacher, the teacher expectations (Brophy, Goo, 1980, as cited Diaconu, 2004). Many assessment and training tools (as is the Classroom Assessment Scoring System – CLASS: Pianta, La Paro, Hamre, 2008) have been tried to improve the training relations. The authors who analyzed the collaborative learning (Johnson, Johnson, 1999) showed that the quality of relationships includes such variables as interpersonal attraction, liking, cohesion, esprit-de-corps and social support.

There are also many studies about the impact of the relations for improving the learning outcomes, even at young ages, by action mainly on the motivational factor (e.g. Klem, Connell, 2004). Therefore, the good relation between teachers and students is important for their academic success. For an optimal relationship of teachers with their students the teaching skills are required, meaning the knowledge skills, interpersonal communication skills, management skills. The teacher plays a role in determining the mood to teaching activity, in clarifying the goals, establishing certain individual projects, making the learning accesible, providing the attitudinal support, as noted by Negreţ-Dobridor and Pânişoară when presenting the humanistic perspective on the learning (Negreţ-Dobridor and Pânişoară, 2005). Emil Stan shows that "the comprehensive perspective relates itself to teachers and pupils as fluid realities, able to determine each other, depending on the quality and depth of their commitment to the educational process"

(Stan, 2005: 51). In 1998, Haberman and Post (cited Solomon, Sekayi, 2007) considered that the selection of the teachers should consider their skills on self-knowledge, self acceptance, the relationship skills, the empathy, motivation for sustained effort, ability to manage the violence and the functioning in a chaotic environment.

Spencer and Schmelkin (2002) considered the qualities valued by the young students to their teachers: the care shown to students, assessing students` opinion, clarity in communication and openness to different views. Also the qualities pursued by the adult students to the teachers who instruct them (Donaldson, Flannery, Gordon, 1993 as cited Imel, 1995) are: the capacity of knowledge, the concern for the act of learning, clear presentation of the material, the ability to motivate the learners, the ability to demonstrate the relevance of the material taught and the ability to be enthusiastic in teaching. We may conclude, therefore, that those personal qualities the teacher should possess are multiple and the teaching activity involves actually the achievement of several interconnected roles: expert of teaching and learning act, motivating agent, group leader with respect to students, counselor, model, professional reflexive, manager (Woolfolk, 1990, as cited Nicola, 2003).

Management and leadership. The relationship is the basis for group leadership, to guide, to influence the attitude of students towards the success in action. "Teacher-student relationship depends largely on the real authority of the teacher in the eyes of his students. This authority is gained through competence, morality, thinking flexibility and consistent in terms of the values promoted and requirements addressed" (Diaconu, 2004: 12). Even if the democratic style and the participative management are the preferred styles of students, we must specify that the value of the styles is contextual (Potolea, 1989). As process of social influence, the leadership is the capacity to influence others to act (Zlate, 2004) and the authority considers the earned respect, the consent of the ruled ones against the decisions taken by the manager. Bochenski (1992) revealed the existence of two types of authority: epistemic – the specialist, the one who is competent in a field and ethics – the supervisor, the one who, by the position held, can give directives that must be followed.

Regarding the need for communication and negotiation, for self-improvement of the teachers and students, Neculau (1997: 10) makes an analysis of the opinions of the two educational partners (opinion surveys among students, teachers) on the desired/expected changes in the academic environment the wishes were: free and democratic elections; flow of information and people; exchanges with other universities; developing innovative spirit; renewing of the structures and curriculum. A large part of the analysis shows that the infrastructure/the material base is the aspect that has not changed for a long time, therefore, being affected the motivation and work style, even the mentalities being influenced by material conditions offered.

As a solution to improve the situations of inconsistency at the level of conceptions and practices, the negotiation is considered by Christophe Dupont "an action that puts face to face two or more partners who, faced both with divergences and interdependences, consider appropriate to find voluntarily a mutually acceptable solution that enables them to create, maintain and develop, at least temporarily, a relationship" (Dupont, 1990: 11). Several authors, including E. Stan, highlighted that the partnership and negotiation are needed not only to ensure effective control of the class, but also for the pupils` involvement in a critical exercise of the democracy: choosing and accepting the responsibility for choice made (Stan, 2004: 39).

- The specificity of the higher education is given by the purposes, contents, methodologies and evaluation methods different from earlier stages of education. Those criteria dominating in the classic higher education, selective and elitist criteria were replaced by the participation in mass in higher education (Vlăsceanu, 2005). The personality of youth and adults, their level of training, but mostly the purposes of the curricula give a sense to the educational relations at this level.

Another important factor is the pedagogical conception. If the modernism drew the attention to the need to take into consideration the educational group, the postmodernism takes also into account the individual. A postmodern perspective on teacher-students` relationship requires a mentoring relationship. The postmodern teacher accepts the different views of the students, whether they are motivated, in order to reach the truths by consent (Siebert, 2002). Interestingly, in the socio-constructivist conception, the educated person is not only the subject of his own training, but also an agent of social influence. The dialogue and democratic attitude leads to tolerance, diversification of the relational flow so that it becomes multi-related. Moreover, the teacher-student relations affect those relations of reciprocity among students (Hughes et al., 1999, as cited Gallagher, 2015).

The learner-centered paradigm triggers changes in the roles that the teacher must assume in managing the learning: as designer, tutor, manager, organizer, manager of the training experiences, mediator, partner, facilitator of learning and self-determination, counselor in learning problems, but there should be a balance between the individualization and fostering collaboration within groups. We believe that the critical remarks should be accepted: "despite the widespread use of the term, Lea et al. (2003) argue that one of the problems with the pupil-centered learning is that many institutions and educators claim to be pupil-centered, on their learning activity in practice, but in reality they are not" (Lea et al., 2003, as cited O′Neill, Mc Mahon, 2005). We note, therefore, that by his attitude and style the teacher prints a value sense to his interrelations with the students and their interrelations in the group.

The modern and postmodern perspective, especially the constructivism focused on the role of the social context of learning, on the pursuit of it as social negotiation. Typical for the constructivist didactics is that the pupil has an active role in training; he must be treated democratically by the teacher, not to reproduce, but to demonstrate the understanding and solve real situations. The modern role of the teacher becomes one of mediator, facilitator, mentor. The ethics of the constructivist didactics profession is the source of certain requirements that consider the educational relations (Table 1):

Table 1. The ethics of the teaching profession in constructivism

The roles of the constructivist teacher influence the professional ethics:	Implications:
- from the perspective of the role of moderator, the constructivist teacher must demonstrate objectivity in order not to impose his own point of view; - at the same time, he can not criticize rough the students` achievements, but constructive, precisely because it is important to ask	- from relational point of view, in the constructivist training the teacher-students relations, students-students, are of mutual respect, but for them to be established, it requires a good organization from the teacher. - motivating learners can be done by: interactivity, reasoning the links with

questions, to incite them, while respecting the social equity; - the pedagogical attitude of the teacher should be centered on the mental availability for experiences, perspectives and proposals of others; - in order to enthuse the students, the teacher himself must have professional enthusiasm, thus avoiding the danger of relativization of the conceptions.	the practice, the negotiation at group level.
Professional ethics requirements:	Implications:
- open mentality and availability to observe and study compared the different school systems and practices (in Europe and in the world); - favorable attitude to own professional improvement; - centering on the students' learning interests; - capacity of self-organization; - transparent communication with students or other educational factors; - participative decision-making, by negotiation; - correctness to delimit the own elements in relation to those of others; - perseverance for surpassing various obstacles in the educational activity.	- among the general requirements that any teacher must comply with in constructivism are found those characteristics that contribute to the improvement of the students` learning: to devote himself to the activity, to monitor the results and learning process, to reflect systematically on them and engage in large leveraged social education actions.
Consequences for students` roles:	Implications:
- the responsibility of the students is manifested in the way which students communicate, participate actively, allow time for training/self-training, make decisions. - the way to activate the students is a challenge for the teacher who must intervene to guide them, but not directly. The delegation of tasks can be a solution to this.	- in the educational relationship is emphasized the self-esteem, but also the respect for others; these are prerequisites which will involve taking attitudes, the assertion of own values, the development of the cultural level, acceptance of multiple interpretations.

Source: Frăsineanu, 2007: 65-66

The results of a focus group

From the analysis of the official documents (National Education Law, 2011) we find that the teaching relationship is placed at the level of general conception on education, under the sign of the modernity, because the educational ideal of the Romanian school is: the free, integral and harmonious development of the human individuality. We present further the ascertaining results obtained in 2015 with a group of 23 students studying the Psycho-pedagogical disciplines, while being students at Geography and Foreign Languages, third year, at the University of Craiova.

The method we used was the focus group, in order to find the opinions, assessments and explanations of the young people related to the characteristics and the

level of interaction teachers-students. Although the sample size does not allow us a generalization of the data obtained, we intend to find out what types of the teaching relationships operate, their level of achievement and, especially, the degree of students` satisfaction in relation to them, starting from the assumption that these relations are perceived and performed/ practiced varied, depending on the dominant pedagogical concepts in a concrete context. The participation in the focus groups was voluntary and the responses assessment scale for the closed questions was a Likert scale, with 5 levels: Very Much, Much, Average, Lesser and Very Less, At All. The focus group methodology (Krueger, Casey, 2005) consist of an informal discussion, structured and moderate, so that to cause a debate at group level. The deployment should be relaxing and safe, in order the subjects to share positive and negative feedback and comments about the proposed work.

To find out the stage of the mutual cognition, by reference to the teaching mission, two introductory questions were addressed: 1. Do you consider that in the teaching work from higher your teachers know you? 2. Do you consider that, as students, considering what the teaching activity involves, you know your teachers? The majority of the responses were for the Much and Average and the explanations on the two directions of knowledge, revealed that teachers are those who are most interested in creating or closing the channels of knowledge. It was shown that the large number of students and the different curriculum, the methodology of teaching-learning-assessment, personality and specific concerns of the teachers, of students, the different degree of personal self-disclosure and the courses frequency differentiated rates are important variables that go hand in hand and lead in academia at a level of mutual knowledge sometimes insufficient.

The students were asked to assess the satisfaction about the way of making communication with their teachers, and if at the items above, compared to the pre-university education, in the higher education, the level of the mutual knowledge is incomplete, at this item was shown that the level/relationship of communication is very good/good. The students particularly appreciate the communicative skills of teachers and believe that they have such competencies.

The socio-affective relationships were assessed whether more neutral, or more closely, without going to extremes; what is important is that the students appreciate this way. The responses to this item were correlated with those about the management style identified at teachers in most cases: the democratic style, this style being appreciated. According to students` opinion, in teaching-learning-assessment, the teachers in most cases initiate cooperative situations, but the students valorize also as positive the competition for its role activator if it is well understood and used wisely. At the question about the learning preferences for the teacher-dependent or teacher-independent style, the variants of answers were: 1) the learning depends on own conception of learning; 2) the learning depends on the instructions given by the teachers; 3) the learning depends on the instructions from the learning materials; 4) the learning depends on the information from colleagues. Most students learn cumulating these influences: teachers, colleagues, own conception; the balance of their choices leans towards independence, but this is not total. An impediment in this case is that the support application may be accompanied by problems in the social image of the student to other students.

Another item followed the assessment of the academic relations: 18 students appreciate as being Very Good, 4 – Good and 1 student – Less good. We mention that in the interview guide existed also the answer Other Assessment. Most students appreciate relations as good or very good, and the cases where relations are rated as less good were explained by the restrictive attitudes, purely authoritarian, manifested by teachers in the

classroom, by the existence of some complaints regarding the unfairness of the evaluation, the emergence of dissatisfaction relating to approach of some contents that students considered uninteresting. For the students in the sample there is a sense of belonging to the academic life: it was very much appreciated at the level Very Much and Much. We considered that these answers are in relation to the fulfillment of expectations, with the nature and success of the activities and results obtained by the interaction with teachers, but also depend on the interactions with other students, even with other than the group colleagues. A crucial question for our approach was if the teachers from the academic environment are flexible, make a differentiation of the relations, adapt to the requirements of students and the students consider that there is a mid-level flexibility, in the sense that some requirements, criteria are formulated, that must be met, but with the acceptance of the diversity, of some alternative solutions.

The last question followed to find the way of teaching relation and training, mainly used by teachers: traditional, modern, postmodern, combined. Unanimously, the responses indicated the combined mode: for the university teachers the relational foundation is given by the principles and traditional values (truth, good, beautiful, right), but there are openings, especially in knowledge tools and management – that belong to the modern trend and at the level of communication (the openness to the interactive methodology, use of media) and treating the student as partner can be considered as post-modern manifestations.

Conclusions

The data obtained by the focus group have confirmed the hypothesis; the discussion was the most successful in terms of the involvement of some students, who by the specific pedagogical studies get familiar with the trends in training and design appropriate training steps deliberately. The results have an ascertaining value and correlate themselves with other aspects of research, even experimental, where the support granted by the teacher to students in teaching, the frequent relation, focused on mutual knowledge, the adequate communication, the proximity, the democratic/participative management, in order to facilitate to accomplish the self management of learning (Frăsineanu, 2012) led to increases in the performance of the students in learning. Openings: The techniques to improve the interpersonal behavior are semi recognized and accepted by the students, who are trained to be teachers. They can be: the training of the intra and interpersonal intelligence, social responsiveness through deliberate targeting for a better perception of the emotional behavior and reactions of own person and of others; by clarifying the personal values and aspirations and values and aspirations and the formation of new values and aspirations, appropriate to the democratic method of problem solving of the individual and the group of students; by encouraging practicing behavioral styles that are not characteristic (e.g., a shy person to be bolder) by empathic attitude and meta-cognitive adjustment.

Therefore, the concern of the teacher and the students` feedback forego the improvement of the teaching relations and are conditions for the selection of appropriate pedagogical conceptions and practices. From the students` proposals we note the fact that: the concern on improving the interpersonal relationships teacher-students meets some aspects: the diversity of the students` problems; the identity crisis at this age and the concern to find a job; the solving of problems related to learning demotivation; the

adaptation to a world in continual change, fast, characterized by the advanced technology and information explosion.

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ORIGINAL PAPER

Transition from Soviet-Communist Media Theory to New Authoritarian Media System: Turkmenistan and Azerbaijan Media Case

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Abstract
Seventy years of the sovereignty under the Russia, the collapse of the Soviet power has caused the emergence of new states. In the early of the 1990s the Central Asian Republic of Turkmenistan and the Caucasus Republic of Azerbaijan freed from the oppression of communism and in a successive declare their political independence. There are important developments regarding the Turkish world. In these countries the media was covered by Soviet-Communist Theory was used as propaganda and persuasion tool of the political regime in USSR period. After gaining the independence both Turkmenistan and Azerbaijan have passed form the Soviet media system to the New Authoritarian media system. But according to the media that completly operate under the authoritarian regime in Turkmenistan, the media in Azerbaijan has managed to be freer editorial context. The process undergone by the media of Turkmenistan and Azerbaijan from Communist Theory to the New Authoritarian Theory will be examined in this study in detail.

Keywords: *Media, Turkmenistan, Azerbaijan, Soviet-Communist Theory, New Authoritarian Theory*

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Introduction

It is well known that communication instruments have been conflicts and clashes with political power since the process in which first appeared. Thus political power has sought to control the communication with strict regulations throughout history. In this context, the main reason of the variations in social and communication tools, expected to play a role in the political process, is diffences in the political system (Işık, 2002: 2). Political system in the country has shaped the communication system as the main determinant of the relationship (Weischenberg, 1992: 86). With regard to the political system, general arrangement of the economic life affects the communication system (Işık, 2002: 11). After 1917 revolution, a process had begun where there are fundamental changes in every sector of society with the establishment of the Soviet Union. Soviet Media and other mass media formed the normative framework of a new media theory in this process by organizing based on the Marxist doctrine and in accordance with the fundamental principles developed by Lenin (Kaya, 1985: 55). According to Schramm, who looked on that Media Theory of the Soviet Totalitarian serves as an extension of the Authoritarian Theory, although Marx never actually mentioned the mass communication problems, Marxist idea formed the basis of the Soviet press system. There is a sharp contrast and distinction between Marxist integrity concept and right and wrong issues. This situation does not allow that the press criticizes the government freely, acts as a forum for discussion and tasks to fulfill its function as the fourth power. Consequently, the media, helping to interpret the realization of the Communist Party Marxist thought politics is a tool that serves the interests of the working class (Işık, 2002: 35). The Soviet-Communist Theory of the press has formed as "model for other socialist countries in the field of communication arrangements" in time.

The mass media, as a tool of the government or party, has performed its responsibilities under the strict control of the state. In the Soviet Union, everything is for the realization of a single purpose and it is not be accepted the deviations from the purposes and the contrary to this objective. The lack of deviation from the idea of purpose leads to substantially similarities of any kind of information, given the same day by all Soviet mass media. When there is no different political ideas and structures, it is natural to not be located in different political interests or media debate. Therefore, media-like appearance is regarded as a "great power". The scope of the theory, it is clear that mass media has an important function for "social integration and unity". There are intensive control mechanisms to prevent the country from any kind of externalsources for interruption of this function operates. Censorship is considered necessary and legitimate (Budak, 1997).

Soviet-Communist Media Theory in Turkmenistan and Azerbaijan in the period of USSR

Azerbaijan and Turkmenistan, which have continued their exists as Soviet republics in the Soviet Union border for many years, left behind the first twenty years of the independence process as significant reform years. The structure is directed to a different embodiment after independence, which serving for the purposes of the Communist Party organ as a media organ effectively during the Communist system and

does not interfere with the government's policy of mass media in contrary develops them by supporting their objectives and reinforces the dominance of the ruling power (Vural, 1994: 29). This different configuration means that forming a mass communication system ideally based on the press and freedom of expression and directed to democratic criteria in the media field of all republics in transition period. However, it is observed that the traces of the old system are still there throughout the process.

Initiation of Bolshevism in the Caucasus and in the Central Asia through the era of postcommunist authoritaranism, a continuum of constraints has restricted the media. Lenin's candid acknowledgment that press freedom and public access to information could threaten his young regime was followed by Josef Stalin's acknowledgment of the power of a controlled press to susrain the Communist Party and its goverment (Freedman, 2011: 1). Social and political life, directed through the media. Public was informed about the issues by the goverment which they want announce and thus the thoughts and opinions of the individuals kept under control. Mass-communication in Soviet-Communist Theory was developed along the line of Lenin and Stalin. Media assumes functions for the purposes of the regime as a major manufacturer and distributor of ideology and culture. The media kept under central control which based on methods as "Propaganda and Persuasion". The method in this propaganda was distributed as planned and continuous news, knowledge to influence thinking and behavior of certain target groups (Labin, 1976: 10-11). Controlling or orientation the operation of this field by political actors can be seen in almost all of mass communication systems in the influence of communist theory. This controls and inspections are performed under different conditions than the old method, of course. However, it does not mean that controls and inspections do not exist anymore. Sometimes inspections are made in the effects of the financial powers, and sometimes both political and commercial actors are trying to make impression on them.

The control of the mass-media in the Soviet-Communist Theory was actively used in public transit for achieving the goals of the regime, the daily events in the making from the perspective of the ideology of the people of foreign origin and the information required in the regime of protection from foreign posts. As all applications of Soviet period the media control in mass-communication in Soviet Union based on Marxist doctrine and organized the principles which was developed by Lenin has pioneered the formation of a new mass communication theory in intellectual means and this system became a model in other socialist countries within time. In fact, Soviet broadcasting and all the media tools in general are used in the process of creation of one voice "Soviet people" (Dadashov, 1992: 14).

The change process observed in the mass communication system of the young republic began in 1985 year Gorbachov came to power, but the concept of freedom of expression and the press at the beginning of the period, as Gorbachev said, were subjected to censorship in terms of the defense of economic and cultural reforms (Budak, 2005: 110). After independence issues prohibited by the Soviet ideology is started come forefront on the agenda, the people suffering from information hunger are started to see the reality and the media only played the role of propaganda for many years is gradually began to be convert into real information tool (Muharramov, 1996: 119). On the other hand in the Soviet system took place even though the claim of equality of nations which constituting the union, especially the non-Slavic was considered the "potential threat" and radio and television broadcasts made in the Turkish Republics also had been noted to the editorial policy (Bal, 1996: 100).

General state of the media, in Azerbaijan and Turkmenistan in the post-independence period

There was a significant geopolitical gap in this region after disintegration of the Union of Soviet Socialist Republics in 1991. This gap, which cannot be filled exactly by any power alone, is witnessed to making large strategies and the efforts of regional and global powers for emplacement with different moves. In addition, South Caucasus and Central Asia are regions with natural wealth and have importance in strategic terms (Memmedli, 2012: 2). Achieving their independence after the dissolution of the Soviet Union, Central Asian Turkmenistan and Caucasian Azerbaijan began to pursue the democratization efforts in their own terms. However, the dissolution of the Soviet Union was caught unprepared for these states about independence and all republics have faced major problems in the democratization (Budak, 2013: 2). The media is also seen the dominant power tend to use as political tool in the post-independence. Especially in the first years of independence more clearly seen that the Soviet method (Downing, 1990: 151) to be used in the field of mass communication by all the forces who want to be effective in political life after independence (Androunas, 1991: 186-187).

On the path to democracy both of republic has led to to various problems in the settlement of properly media system for every country in transition period. Current discussions are underway about pressures of political power on the task of working in the field of media, affecting of international and ethnic tensions to the follow-up news, the importance of the role of the media which contribute to civil and democratic society and the importance of structuring an efficient mass communication. Publications which were operated in Soviet-Communist Media System for seventy years have gone to another dimension after independence. Substantially the freedom of the media is also affected by this process. The development of the press and freedom of expression in these republics significantly depend on economic and political development of country (Budak, 2013: 2).

Throughout the seventy years of Soviet system Turkmenistan, did not have truly free and democratic media system. Also continues the management and control of a single party after independence. Media system in the country very few like it in the world continues its commmunication acts as a system of central-controlled and private enterprise can not enter the field of media. The goverment of Turkmenistan has been checked media very extensively for the duration of twenty-four years independence.

The situation is slightly different in Azerbaijan. Even allowing for the operating of private broadcasting in the country, government control is not missing out in these media organs. There is a strong competition between the state-controlled media and private media organizations in Azerbaijan. An increasing the number of commercial channels and media organizations are also available which advocate the views of the opposition. The Russian language is also widely used in the press of Azerbaijan. The most followed media is television. Freedom of expression is protected by the Constitution and laws in Azerbaijan and required infrastructure are provided the freedom of expression and press in theoretical meaning. However, in application area the problems with the freedom of press and expression maintain its presence. State control and effect over the audiovisual media is greater than the press. Frequency supply and giving broadcasting license caused chaos in process and many radio and television organizations has experienced the problems especially during the first decade of independence. Press employees, vocational training activities are limited and various professional journalism organizations which operating in Azerbaijan are effective when they can overcome their economic difficulties.

The changes seen in all aspects of social life in Azerbaijan and Turkmenistan republics are also observed in television broadcasting. National consciousness was becoming stronger in the entire formations constitute the Soviet Union with weakening of censorship on television broadcasting by reconstruction and glasnosts since mid-1980s. In many republics constitute the Union, pro-independence movement began, propaganda against Russian colonialism was seen in the media widely (Demir, 2000: 15).

On the other hand, it is understood from some applications that traces of "Soviet-Communist Theory" (Sibert, 1963: 5) in the intellectual platform are not fully eliminated after independence, which is one of the four basic theories of media (Authoritarian, Liberal, Social Responsibility, Soviet and Communist theories) and dominating in the pre-independence mass communication system and including philosophical foundations of the mass communication system. For example, state televisions continue their operations in both republics, as in the period of the USSR. AZTV state channel in Azerbaijan supports the state's political and economic policy, is shaped its broadcasting in comply with it (Rüstamov, 2005: 52). In Turkmenistan, due to there is no private broadcasting organizations, four state televisions still continue to broadcast. These are channels of "TMT-1", "TMT-2", "TMT-3" (All Turkmen) and also "TV-4" started broadcasting in 2004, which focus on entertainment programs (www.turkmenistan.russian-club.net/smi.html). Aliyev's (Azerbaijan) and Niyazov's, Berdymukhamedov's (Turkmenistan) periods, there has been a steady decline in the coverage of the opposition. Both Azerbaijan and Turkmenistan have also returned to the Soviet era totalitarian or post-totalitarian media system. There are most obvious differences in terms of the media autonomy, content control, pluralism, ideology and language. Big differences are in terms of content control, autonomy and pluralism. On the other hand, the political regime of Berdumuhammedov and Aliyev has a negative impact on the media are monitored and condemned by international human rights organizations. The power of Turkmenistan and Azerbaijan also violates the international agreements by restricting the freedom of expression.

In one hand "media lords" set up complex relationships with the political power defined as "interest", but on the other hand observed that media companies were converted an important component of the capital group in both republic. After the dictatorship, media has showed the condensation and commercialization features in emerging republics as a post-communist countries. Political independence did not bring the commercialization of the mass communication and the media ownership has become highly politicized instrumentalized by political ambition (Bek, 2010: 105).

Independent states revealed with the disintegration of the Soviet Union while living the whole problems of being integrated process into the international system, on the other hand come to the fore eliminating the need for the neglected societal and cultural needs. Therefore to be a part of Soviet Culture in the ruling political elite has been shaped different perception of dominance, in addition the efforts of people to adapt to the new economic and political system have deeply affected the citizens of Turkmenistan and Azerbaijan (Bıchakcı, 2008: 2).

Manifestation of New Authoritarian Media System in Azerbaijan and Turkmenistan

Central Asian Turkish Republic of Turkmenistan and South Caucasus Turkish Republic of Azerbaijan had been organized mass communication systems according to the principles that dominate in Soviet Union in the pre-independence period. During the Soviet era the most comprehensive description of media system in Turkmenistan and Azerbaijan was Soviet-Communist Theory put forward by Siebert and colleagues. But at different times in Turkmenistan and Azerbaijan are known to be functionally different theories. Even though the media of these countries are shaped by the Communist theory in USSR, after regaining their freedom have tried to adapt to liberal theory, yet often remain under the influence of authoritarian theory. But despite of any trouble, deficiencies and disadvantages, after the 1990s, the study of the application of neoliberal policies in the political and economic fields, the front control and censorship on the print media and audiovisual communications field did not implemented completely and it is indicator of whether an authoritarian approach.

Thus, after 1990 media systmes applied in Turkmenistan and Azerbaijan mixed of Liberal, Authoritarian and Social Responsibility theories in accordance with the country conditions or may be considered a derivative comprising of a mixture thereof. Researcher Jonathan Becker began to use the concept of "Neo-Authoritarian Media System" about this derived. Jonathan Becker says that the new authoritarian media system arises from the combination of authoritarian theory and Soviet communist theory (Becker, 2004: 139–163). After achieving independence in both of Republics, New Authoritarian theory is considered as an evaluation to correct to some extent in the free spaces is not fully meet the current state of the old media theory, who are formerly lived under the umbrella of the Soviet Union. New theory contains traces of authoritarian and soviet-communist theory is intended to describe relationship between mass communication system and political system (especially in Russia and in some of the new republics).

Despite media organizations operating in the new authoritarian system has been offered constitutionally enshrined democratic and free media environment, the laws remain only on paper. Most of journalists who are pressured and subjected to violance bowed their necks to the goverment requests or tend to leave the country. The scope of the system that the new authoritarian State-owned media has, has a limited autonomy and key positions assignments depend on political loyalty. It may be open to the public, access to the media, and are the exclusive property of tolerable but other mechanisms are used to control messages. State aid, targeted (special purpose) tax benefits, the Government advertising and other forms of assistance, support is used to increase. To silence critics, defamatory determining fines for journalists, public interest, national security and related issues such as the image of the president largely side of the received laws items as legal and applied selectively against media owners through the so-called legal actions of the economic dominant prerelease is quite dense state censorship is not the solution (Becker, 2002: 168-170).

New-media that authoritarian system also may be or your own political interests of flexible leadership authority and a weak judiciary might have difficulty enforcing the execution system. Worst of all, regime, defiant journalists and editors ignore violence against and not his voice. One of the targets is to create uncertainty among the journalists, in this way, self-censorship, the most common and important journalistic activities restrictive. New-from systems that more traditional authoritarian system that

authoritarianism is a little different situation within the scope of the spread of democracy, and the strategic power of television's communicative usage instances are. Some of the elements of political democratic mass media system are being tolerated, given the image of democratization; there are limits to the underlying media autonomy. New-non-authoritarian system specifically distinguishes between broadcast and media environment, which is branching. In the system, that the new authoritarian State, is capable of controlling the publication tools suggests, especially television because television is perceived as the most important tool to communicate with the population. Especially important as economic troubles in Russia and the people's purchasing power is significantly limited in countries where television is often the most important communication tool, the Government on major issues on television, published on the negative and positive control implementation capacity, meaningful pluralism and citizens "a conscious political decisions and vote based on the selection you can use the" capacity of the axes (Gunther and Mughan, 2000: 421).

The new media that authoritarian system has a unique feature, when you have a tight lid on television, periodic harassment, violence, and despite the relatively autonomous closing, you can access and the population is extremely critical for the regime in an independent owner (individuals, parties or foreign companies) is the presence of a remarkable printed press.

Both in Azerbaijan and Turkmenistan when journalists were exposed the government's anger they come face to face with the risk of detention, deportation, and even assassination. Despite the independent media organizations operate legally and are also part of the new authoritarian theory is not a potent force. Journalists are often threatened, attacked and constantly intervened by power, emerging as key opposition figures in the country. Having new authoritarian media system, Turkmenistan and Azerbaijan government's senior executives are different from their counterparts in active authoritarian regimes are trying to suppress the independent media by using more subtle mechanisms of censorship and pressure.

These methods:

1. Giving a bribe to media organizations

Giving a bribe to media organizations is the common method in the Turkmenistan and Azerbaijan Republic for silencing of the media. In the preparation of the only positive news about the power, the presentation of praise news about the senior managers in the state and their families to fill the pockets of media bosses with bribes are the way in which government frequently resort. The power uses the media not only preparation of the good news about themselves aslo for preparation of bad and false news about the opposition politicians. The goverment also gives the bribe to the televisions and the newspapers to prevent the litting of events which was held by the opposition. We can identify these media organizations as a "Ordering Media" and reporters of these media demanding bribes from government officials with the shamelessly, also decorate the main news bulletins and news headlines with lie informations.

As a result all of these, public anymore lost their trust to the media and people follow the news about their country through the foreign media.

2. Organs such as Media Supreme Council of State be selective to the distribution of the ads

Private media organizations which are closest to the power benefit from the largest slice of the advertising pie. At the same time advertising time violations made in the pro-government media are also ignored.

3. To do the manipulation of tax to the borrower media organizations

Many government and private media organizations in the Turkmenistan and Azerbaijan charged with amount of tax liability. State authorities seized the opportunity of these tax debt are able to direct opponents media outlets in accordance with their requests. Goverment hold the media under the more of pressure which has debt to the state and unlawfully swell tax liability each year. On the other hand, tax liability of the media who are close to power reset and their tax kidnapping are tolerated by the goverment.

4. To provoke conflicts between shareholders of broadcasting organizations

Government is waiting impatiently quarrel between the partners of the major broadcasters. The power uses clashes to reduce weaker media organizations and try attracting them in every way. As a result of this instigation causes the proliferation of new pro-government media.

5. The implementation of the restrictive media laws that facilitate the prosecution of independent and opposition journalists

Both Turkmenistan and Azerbaijan one of the biggest problems in the field of media in legal regulations.The start of the privatization process in broadcasting and journalism as well as in all fields following 1990s in the independence period after of Soviet Union is due to the necessity of new requirements in the new era and it indicates that a new page was turned in this area now. Complex broadcast environment consist of private televisions was required to proceed with legal regulations, which starting their broadcasting individually in the legal gap environment at first (Ercilasun, 1997).

These countries want a Constitution or press-release law of the existing freedom of expression in words and in a clear manner are emphasized. But law said "the promise and the freedom of expression" is very difficult to come across the notion of experience. With the many changes made in legislation the media system more democratic and free press is also moved to the criteria of cases for employees and conviction have been observed to increase in recent years of more. In these countries, Information, justice and communications Ministries also indicated an overall effect on the media system. Sometimes the press circles by this domain, the opposition criticized as print press mute has been described as. Also present in the country, some members of the mass media laws limiting the activities of free media. For example, edits pointed out in Turkmenistan include press agencies as in the instructions must be given notice in the on-premises statements included. For example, an accident will occur in the armed forces, border with neighbors to live any problems occurring in the country, such as a natural disaster, accident, citizen's confidence that the Government will ensure that issues are asked to shake. If this does not comply with the rules imposed heavy sanctions on journalists (Budak, 2003: 137).

In these countires legal guarantees on media freedom cannot be fully achieved or cannot be put into practice. Unresolved issues in the media field affect social and regional problems negatively. Mass media in post-Soviet countries of South Caucasus constitutes an important example in terms of strengthening more mentioned tension by the media and converting extreme nationalism into confrontational contradictions and tensions (Budak, 2007: 131-147).

Conclusion

The answer to the question "what kind of a mass communication order?" in the case of the Republic of Turkmenistan in the Central Asia and in the Republic of Azerbaijan in the South Caucasus is that it should not be a system which involves, on one hand, a state dependent media understanding that supports pro-government discourses and, on the other hand, a media understanding which has come under the domination of trade monopolies, having completely financial concerns, always encountering problems in the role that it plays and in the path that it takes for the purpose of being critical, and always striving against various pressures. It is seen, however, that the conflict between, on one side, the mass communication understanding of the Soviet era, which is a hangover of the past and could not be eliminated completely and, on the other side, the new values as a necessity of independence and the new liberal media system in these two republics. Those powers which strive to dominate media try to shape the public opinion based on their own interests.

It is seen in theoretical evaluations that the philosophical foundations of mass communication often do not meet the conditions brought by liberal-pluralist social responsibility or democratic participation theories, that they generally develop in accordance with the New Authoritarian Theory, which is more a new assessment of the Soviet-Communist Theory and the Authoritarian Theory, and that, although there are differences from country to country, new methods which can be classified as licensing (there are blockages against private enterprises especially in radio and television, transactions take too long, sometimes frequency and license allocations cannot be carried out for years due to the deterrent and dissuasive forces), prosecution (a control method involving such sanctions as punishment, prison sentence or disablement from profession against those who make publications or broadcasting that allegedly involves slender or personal right violations) or special taxes (a control method which is imposed on both circulations and also on profit shares and thus brings an additional cost) or which are current adaptations of the past are implemented. In the New Authoritarian Theory, the state influence continues by more covert control or internal methods or those methods which involve self-control. The effect of intense commercialization often empowers the close cooperation or connection of those persons or groups who dominate media organizations with the political powers for maintaining their existence and also empowers the structure in which media assumes a more conciliating, rather than critical, role.

As a result of all these, the New Authoritarian Theory is known as the most appropriate theory for understanding the media system in the case of both Turkmenistan and Azerbaijan.The New Authoritarian Theory is considered to be an assessment for filling, to some extent, the gap that occurs due to the fact that the former media theories cannot sufficiently meet the current situation in these countries.

Although, in the case of the Republic of Azerbaijan, some steps have been taken for a free press, this process seems to have not yet started in Turkmenistan. Of course, there are differences between countries. That is to say, it is clear that a single theoretical perspective or assessment will not be sufficient. The fact that, in new republics, media organizations do not possess a long background after the independence period involves many processes or steps which can be considered both positive and negative. Although direct state control and the relevant propaganda activities are officially abandoned in this period, free press could not yet been established completely.

It is considered that the future of independent media is under threat in these republics where the freedom of speech and press is limited.

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ORIGINAL PAPER

Statelessness: Challenging the "Europeanness" in the Baltics

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Abstract
After the successful "return" back to Europe – the regaining of independence on Russia in the beginning of the 90s – Latvia and Estonia were both facing the dilemma of what to do with a large number of Russian (by ethnicity) people who decided to stay in these countries after the breakaway. According to some estimates, Russian minority formed about 29% of the total number of population in Estonia and about 33% of the population in Latvia. The Citizenship and Language Laws adopted in these countries in the middle of the 90s did not improve the legal status of non-citizens and Russia has been continuously demanding to stop discrimination against its minorities living in the Baltic States. At the same time, the Council of Europe had went a long way introducing the far-reaching human rights instruments and has been lately actively calling to protect stateless people claiming that "no one should be stateless in today's Europe". The on-going integration in the EU shows us that the domestic policies are becoming more and more shaped by decisions made at the level of main European institutions. Nevertheless, the question of whether this is happening to a sufficient extent in Estonia and Latvia remains open.
This paper, concentrating on the EU imperatives to sort out the problem of "statelessness" on its territory, presents a comparative analysis of Europeanization – in a sense of internalization of European values and policies – at the domestic level in Latvia and Estonia. Ultimately, this analysis aims to contribute to the existing studies of the challenges to the political identities of these countries. Moreover, this paper focuses on how despite the Europe's general moving towards the better protection of the human rights, Latvia and Estonia's treatment of non-citizens can indicate some signs of Euroscepticism there.

Keywords: *statelessness, citizenship policies, Europeanization, Estonia, Latvia, ethnic minorities*

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Introduction

Since its foundation, the European Union (EU) has gone a long way from being seen as purely economic unit to becoming one of the major global players that advocate democratic values and human rights. The emergence of a large number of independent post-Communist states in Central and Eastern Europe in the end of the 1990s brought not only shifts in the geopolitical situation in Europe but also changes to the EU's internal organization. Each candidate state applied for the EU membership with its own agenda and special issues that needed to be resolved. The 1993 Copenhagen Criteria aimed at protecting the EU from having to resolve them after the candidate states will become its formal members. There were fears that such issues might significantly undermine the Union's economic and political success. However, it is evident that even after decades of being EU members some states were not able to sort out some of their problems. Minority protection and access to citizenship are among the most topical problems of the European Union that has been lately raising a lot of concern among the European policy-makers and scholars. This paper presents a comparative analysis of Estonia and Latvia – the two countries with the highest numbers of the stateless people at the moment of the EU enlargement in 2004. The main question that this paper endeavours to answer is how the treatment of its stateless persons reflects the processes of Europeanization in the two Baltic States? Putting it differently, it seeks to understand the limits of the statelessness reduction in Estonia and Latvia and the degree of their *Europeanness* in the minority protection area.

The concept of Europeanization which is chosen as a theoretical approach for the purposes of this research belongs to a comparatively new wave in the European studies. It concentrates on the analysis of the influence of the domestic policies of the member states on the Union and vice versa. One of the first definitions of Europeanization was presented in 1994 by Robert Ladrech who defined it as "an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making" (Ladrech, 1994: 69-88). Since then, scholars were trying to better understand how the internal policies of member states are being changed due to various EU regulations (Sedelmeier, 2001; Featherstone and Radaelli, 2003; Bulmer and Lequesne, 2005; Heritier et al., 2001). Perhaps one of the most all-encompassing characterizations of this concept was offered by Johan P. Olsen in his article *The Many Faces of Europeanization*. He elaborates five main usages of the term Europeanization: a) as changes in external political boundaries; b) as the development of the European-level institutions; c) as domestic impacts of European-level institutions; d) as exporting forms of political organization and governance that are typical and distinct for Europe beyond the European territory; d) as a political project of Europe's unification (Olsen, 2002: 921-52). This paper focuses on the third concept – the domestic impact of European-level Institutions – which, according to Olsen, explains how the domestic institutions deal with the pressures coming from the European level. What is more, Olsen stresses that "European values and policy paradigms are also to some (varying) degree internalized at the domestic level, shaping discourses and identities" (Olsen, 2002: 935). Therefore, there is a shift in the studies of Europeanization as of necessary changes of the institutions to the more sophisticated idea emphasizing shared interests, beliefs and values.

In the existing literature it is common to use the concept of Europeanization for the in-depth study of how Latvia and Estonia put their policies in accordance with the

Copenhagen Criteria that in the end allowed them to enter the European Union in 2004. However, there is a gap in literature that examines how European values and norm are being internalized in the Member States after the countries became members of the European Union. What is interesting to look at, in this case, is how the new member states adopt and internalize European core values and norms themselves – without any pressure coming from above – thus, showing that "being European" has some special meaning to them indeed. This paper proceeds as follows. First, it sheds light on the issues of statelessness on the EU current agenda. Secondly, it looks at the historic aspects of the Baltic States' membership in the European Union. The third part presents an in-depth comparative study of the positions of stateless persons in Estonia and Latvia focusing on whether we could observe some improvement in the situation of these persons since 2004. Ultimately, this paper draws some conclusions about the prospects and limits of Europeanisation in Estonia and Latvia in regards to the spread of specific European values and norms.

Europe vs. Statelessness

The idea that the right to citizenship is one of the basic rights of a person is not new and the notions about the prohibition against the arbitrary deprivation of nationality were part of the Universal Declaration of Human Rights (UDHR, Article 15, 1948). The right for nationality is accentuated in a number of international human rights treaties such as Convention on the Rights of the Child (CRC, Article 7, 1989), International Covenant on Civil and Political Rights (ICCPR, Article 24, 1966), Convention on the Reduction of Statelessness (CRS, Article 1, 1954) (Latvia signed and ratified all 3 conventions; Estonia signed and ratified CRC and ICCPR but never signed the Convention on the Reduction of Statelessness). In Europe everybody's "right to a state" is promoted in a Council of Europe Convention on Nationality (CECN, Article 4, 1997) and the guidance for the improving of the protection of children against statelessness is postulated in the Recommendation on the Nationality of Children (CM/Rec, 2009). Although Europe had gone a long way introducing the far-reaching human rights instruments, in practice, these rights are not covering everyone yet. Recently, the calls for the protection of the stateless people are becoming more and more evident. In June 2008 the Council of Europe's High Commissioner for Human Rights, Thomas Hammarberg, proclaimed that "the persistence of *legal ghosts* in today's Europe is unacceptable" and that "no one should be stateless in today's Europe" (CommDH/Speech, 2010). On 19th of September, 2012 the Delegation of the European Union to the United Nations proclaimed that "the EU Member States which have not yet done so pledge to address the issue of statelessness by ratifying the 1954 UN Convention relating to the Status of Stateless Persons and by considering the ratification of the 1961 UN Convention on the Reduction of Statelessness" (EU, 2012). According to the European Network on Statelessness (ENS) – a civil society alliance that was established with the goal to combat the issue of statelessness in Europe – there are still around 600.000 stateless persons in Europe whose rights should be protected (ENS, 2014). On 14th of October, 2013, ENS officially launched a pan-European campaign with the two main goals. First of all, it is calling for all European Union states that are not signatories of the 1954 Statelessness Convention to do so by the end of 2014. Secondly, it points to the fact that some European states still have to commit to introduce a functioning statelessness determination procedure by the end of 2016 (ENS Newsletter, 2013).

It is evident that concept of "rights" became a key aspect of all the activities of the EU. Secondly, it is arguable that with the introduction of the Lisbon Treaty Europe is moving towards further integration and the domestic policies are becoming more and more shaped by decisions made at the level of main European institutions. Therefore, the concept of Europeanization – ability of policies made at the EU level to affect the domestic policies of the member states – seems useful. Baltic States have put a lot of effort in stressing their "Europeanness" and expressed their happiness for being "back in Europe". However, the way Latvia and Estonia doing in regards to the human rights of their non-citizens in practice is questionable. In order to avoid any sort of speculations on the issue, a fully-detailed analysis is required.

Per aspera ad…Europa?

Former Baltic Soviet republics were the first ones to declare independence on Kremlin in the beginning of the 90s. Since then, Estonia, Latvia and Lithuania needed to redefine their "self" in the post-Soviet realities. The shared general feeling was that finally, after decades of occupations, the three countries no longer wanted to be regarded as Russia's "near abroad" and were finally safely on their "European" track where they belong. Having been directly admitted to the United Nations and the Conference on Security and Cooperation in Europe (CSCE, now OSCE), the three Baltic countries started to seek membership in the majority of western and international structures. Lithuania and Estonia became members of the Council of Europe in May 1993 and were joined by Latvia in February 1995. The Western European Union (WEU) granted Baltic countries status of Associate partners in June 1994 and the European Union (EU) signed the free trade agreements and European Agreements with them on 12th of June, 1995. Later in 1995 all three countries sent official applications to become members of the European Union, thus officially acknowledging their aspirations to become part of the West.

In order to fulfil the Copenhagen criteria the three countries had to deal with a numerous issues – from liberalizing their markets to introducing environmental standards and changing their justice systems. Nevertheless, the biggest and the most sensitive area of the European concern throughout the accession negotiations was, without any doubt, the minority *problematique* in the Baltics. The whole region experienced dramatic changes in its ethnic composition during the Soviet era. From the three Baltic States, only Lithuania was able to formally tackle the citizenship problem quite fast, granting automatic citizenship to all persons who had been citizens in 1940 and their descendants. It was supplemented by a state treaty with Russia according to which Russian citizens who came to Lithuania between the passage of the Citizenship Law (3rd of November, 1989) and the signing of the treaty could also claim citizenship as the pre-1989 residents (Lane, 2004: 288). Citizenship policies developed by Lithuania's Baltic "sisters", however, were much more nuanced and controversial. Russian officials even compared those policies to an "ethnical cleansing" and threatened that there would be "consequences ... beyond conjecture" in case the laws would not be revised (Merkushev, 1993). The following two chapters focus on the analysis of the development of the citizenship policies in Estonia and Latvia and the assessment of the current state of the stateless persons' protection there.

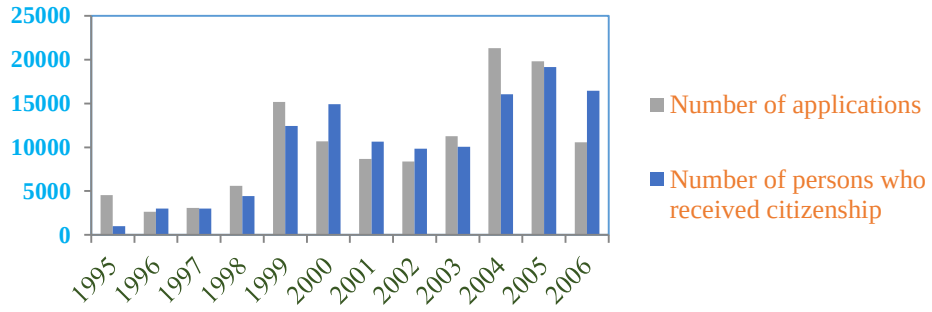
Latvia: "non-citizens"

Having regained its independence, Latvia granted automatic citizenship only to those persons that were Latvian residents prior to the incorporation of their country into the Soviet Union. As for the rest of its residents, Latvia followed the so-called "right to blood" principle which is also known as *jus sanguinis.* This principle establishes that the citizenship is granted to those persons whose parents (at least one of them) are citizens of the state (Citizenship Law of Latvia, 1994, Article 2). This means that all children that were born in Latvia but whose parents are either stateless or Russian citizens are not entitled to the Latvian citizenship. For this vast group of residents the special status of "non-citizens" was created and it was assumed that these persons can become Latvian residents through the process of *naturalization.* According to that procedure, a person should prove their knowledge of Latvian language and history in order to obtain citizenship (Citizenship Law, 1994, Chapter 2). Since its creation, the special status of "non-citizens" has been subject to heated and continuous debates. Some see it as a "trick" played by the Latvia's officials in order to avoid the statelessness reducing provisions. Article 1 of the Convention on the Status of Stateless Persons gives definition of a *de iure* stateless person as a person "who is not considered as a national by any State under the operation of its law" (CSSP, 1954, Article 1). Therefore, technically, there is no difference between the status of "non-citizens" in Latvia and "stateless persons" according to the 1954 Convention. Latvian officials, however, stress that it is necessary to separate these two groups given the strong difference in the rights that the persons of these groups possess. Before looking closely at what are these rights that these "non-citizens" hold, let us have a look at why and how has the "non-citizens" category been created in the first place.

Decision to go for *jus sanguinis* and not the *jus solis* principle – when the citizenship is determined by the place of birth – can be explained by Latvian fears that the latter would undermine the state-building process in the post-Soviet Latvia. The ethno-linguistic picture of the country had radically changed over the years of the Kremlin rule. Firstly, due to mass immigration from other Soviet republics the number of Russian-speaking minority in the country rose from 33% in the 1940s to 48% by the end of the 1980s (Galbreath, 2003: 37). Latvians became almost a minority group in the eight largest cities. Secondly, Latvian language was restricted (if not legally then in practice) since Russian was approved as one of the official languages and was clearly favoured by the Soviet leaders who actively promoted the social homogeneity of the society. Dominance of the Russian language in administration and economy during the Communist period made it hard for the Latvian officials to reassert it in the public sphere and challenge its status of the minority language. The solution was found in the downgrading of the status of Russian language to an "unofficial language" (State Language Law, Article 5, 1999). It also required all institutions and enterprises of the state to improve their knowledge of the official language "to the extent necessary for the performance of their professional and employment duties" (State Language Law, Article 6, 1999). Both the 1994 Citizenship Law and the 1999 State Language Law raised concerns in the European Union in the pre-accession years. In the Agenda 2000 Commission Opinion the European Commission reported numerous loopholes in the Latvian legislation in terms of the human rights protection and advised further promotion of social integration (European Commission, 2005). In the end, despite only few minor corrections to the existing framework, Latvia was granted membership in the European Union with an unofficial promise to make

further steps in order to simplify and promote naturalization processes. At first, the EU membership indeed seems to have had a positive effect on the naturalization process. As one can see, from Table 1, both the numbers of naturalization applications and of granted citizenships increased significantly in the years of 2003-2006. If in 2000 about 24.4% of the Latvian population were non-citizens, by 2006 this number decreased to 18.2% (Office of Citizenship and Migration Affairs).

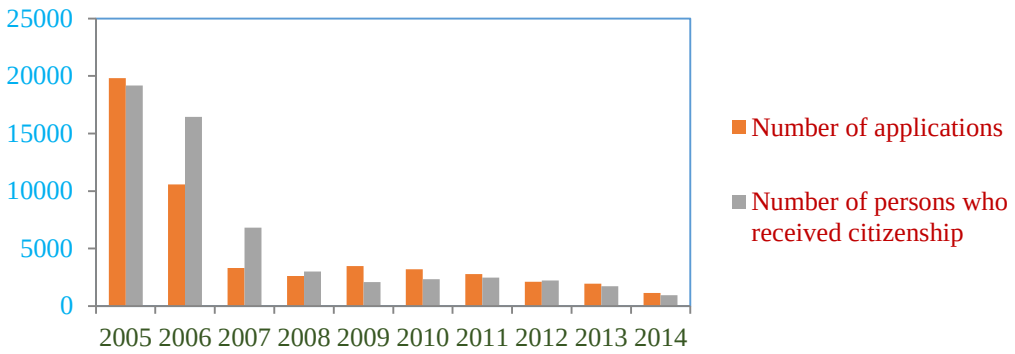
Table 1. Naturalization process in Latvia in 1995 – 2006



Source: Naturalization statistics, The Office of Citizenship and Migration Affairs. Retrieved from: http://www.pmlp.gov.lv/en/home/statistics/naturalization.html

Nevertheless, this positive effect was only temporary and since 2007 we can observe sharp decline in these numbers (Table 2). This decline can be explained by the new regulation passed by the European Council on 30th of December, 2006 that provided significant amendments to the visa rules regarding the enjoyment of the fundamental right to freedom of movement (2006/961/EC). This regulation entered in force in January 2007 and gave non-citizens right to travel across the EU. Positive effects of this regulation have its limits since it only gave the right to travel but not to work in any state of the EU. Moreover, travelling to the United Kingdom and Ireland would still require obtaining a separate visa since these countries did not accept the amendments to the regulation.

Table 2. Naturalization process in Latvia in 2005 – 2014



Source: Naturalization statistics, The Office of Citizenship and Migration Affairs. Retrieved from: http://www.pmlp.gov.lv/en/home/statistics/naturalization.html

Position of non-citizens in Latvia despite its minor improvements continues to be alarming when it comes to their rights. According to Latvian Constitution, only Latvian or EU citizens that permanently reside in the country have access to political rights (Constitution of the Republic of Latvia, 1922, Chapter 2). As an outcome they cannot vote or be elected neither in the municipal nor at the national elections. The same goes for their right to vote in the European elections leaving them with restricted options of how to influence public policies. Moreover, non-citizens are discriminated in the labour market as they cannot hold certain positions in governmental institutions and civil service and often in other spheres due to their lack of knowledge of Latvian language.

Some improvement can be observed in the legislation concerning the non-citizen's children. According to the regulations established by 1999 Citizenship Law amendments, recognition of a child who was born in Latvia to non-citizen parents is only possible under specific circumstances. Firstly, if a child is under 15 and the conditions of residence are satisfied, his parents can submit application demanding the full recognition of their child as a citizen (Citizenship Law, 1999, Section 3). Secondly, between the ages of 15 and 18, the child can her/himself submit the application if he can demonstrate his/her fluency in the Latvian language. These provisions were regarded to be highly discriminative and the Commissioner for Human Rights, Nils Muižnieks, was urging Latvian government to target stateless children more vigorously since the problem is being transmitted over generations (Human Rights Europe, 2013). In 2013 new Citizenship Law amendments established that all children born after 21st of August, 1991 will be granted citizenship during the registration of birth of a child if at least one of the parents expresses its consent (Citizenship Law, 2013). This legislation significantly increased number of naturalization of new-born non-citizen's children but have not changed much in the naturalization of children who were already born as non-citizens (Djackova, 2014). Both UNHCR and the OSCE High Commissioner on National Minorities urge Latvia to grant automatic citizenship and to apply this provision to all non-citizens' children born after 21st of August, 1991. These proposals, however, were rejected by the parliament.

Resentment towards the integration of non-citizens into the Latvian community was also visible when *Saeima* refused to accept the amendments of the Directive 2003/109 of the European Commission. Its Article 4 notes that "Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application" (Directive 2003/109/EC, 2003). This formulation clearly reinforces the idea that non-citizens are entitled to the automatic status of long-term resident of the European Union. The Law on the Status of Long Term Resident in the Republic of Latvia adopted on 22nd of June, 2006 although agreed that non-citizens have a right to claim this status, had not, however, made it mandatory and never granted this status to persons automatically (SLTRRL, 2006, Sections 2-3). The provisions of this law require proof of sufficient knowledge of Latvian language as well as the proof of solvency in order to obtain the status. This law was even returned to the Latvian Parliament by the then President Vaira Vīķe-Freiberga for revision but the *Saeima* did not agree to amend it.

There are numerous reasons behind low rates of naturalization and the unwillingness of parents to apply for the citizenship for their children. Firstly, some people do not have enough information about the naturalization process and fear its difficulty. Secondly, remaining non-citizens simplifies travelling to Russia and other CIS (Commonwealth of Independent States) countries. Thirdly, some people think that they

will not be able to pass the Latvian language and history exams. Last but not least, some people believe that citizenship must be granted automatically and consider the process of naturalization humiliating (Rozenberga, 2014). Although technically non-citizens are excluded from the policy-making, in practice they are quite visible and actively influence the political development in Latvia. Minority polemics divides the community and plays an important role during the elections. At the same time even the main party that represents interests of the Russian minority and the Russian language in Latvia, left-wing, Harmony Centre, expresses concerns about the low dynamics of naturalization. Nils Ušakovs, the leader of the Harmony Centre and the mayor of Riga, in one of the interviews had expressed that "it is better to apply for citizenship than sit and complain" (DELFI, 2012). This position mirrors the attitudes of a large number of Latvians that believe that only non-citizens themselves are to blame for the persistence of Latvia's problems with statelessness.

All the factors that are stated above are disturbing as they show that the problem with the statelessness in Latvia is twofold. On the one hand, the government is still unwilling to broaden the scope of the non-citizens' rights, to simplify their naturalization procedures that would promote their participation in the state affairs. This unwillingness springs from the fear of the political changes that such participation might unleash. On the other hand, lack of motivation of the non-citizens to apply for citizenship leads to the further increase of disconnection between the three different communities in Latvia: the ethnic Latvians, the naturalised Russian-speakers (who now have an opportunity to vote and, therefore, being politically active) and the non-citizens.

Estonia: "residents with undetermined citizenship"

Estonia shares a lot of similarities with Latvia in the minority *problematique*. First of all, it also experienced significant demographic changes during its Soviet period and turned from the 90% ethnically Estonian country into the 62% Estonain one with the proportion of the Russian-speakers reaching 30.3 % in 1989 (Budryte, 2005: 92). Secondly, like Latvia, Estonia chose the "restoration" model of development and did not grant citizenship to all those who resided on its territories after the breakaway from the Soviet Union but re-established the Citizenship law from 1938. This law granted citizenship only to those persons (and their descendants) who had been Estonian citizens before 1940 (Citizenship Law, 1995, Article 5). That left roughly 450.000 people without citizenship. Thirdly, as in Latvia, such decision was also influenced by the negative attitudes towards the Russian-speaking population that was considered as a threat to the preservation of the Estonian language and the whole state-building process. According to Pettai and Hallik, "...for average Estonians the idea of recreating a citizenry had great appeal, since it was an opportunity to repudiate publicly the legitimacy of the Soviet Union as well as gain a psychological boost of confidence as a free nation" (Pettai and Hallik 2002: 510–511).

Estonia introduced its own label – "residents with undetermined citizenship" – that included all Estonian residents who were not eligible to the Estonian citizenship after the restoration of independence in 1992. These persons did not for a separate category as in Latvia but are considered "aliens" in the same way as third-country nationals. These *de facto* stateless persons have to acquire citizenship either by birth (if at least one of the parents of the child holds Estonian citizenship at the time of birth of the child) or through naturalisation process. Citizenship Act that entered in force on 1st of April, 1995 set up

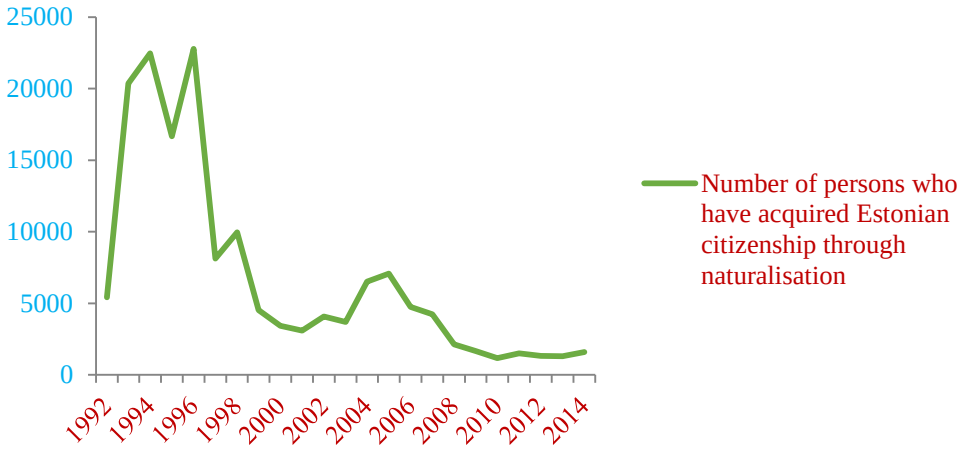
that a person applying for Estonian citizenship is required to: a) pass the Estonian language test; b) have knowledge of the Estonian Constitution and Citizenship Act; c) be at least 15 years old; d) have lived in Estonia with a residence permit at least five years permanently; e) provide a proof of solvency and of registered residence in Estonia; f) show loyalty to the state of Estonia taking the required Oath (Citizenship Act, 1995, Article 6).

In the very emergence of newly independent, democratic Estonia, most Russian speakers were excluded from the policy-making. Firstly, they were not granted right to vote in neither the constitutional referendum nor in the general elections of 1992. Secondly, there were no ethnic Russians elected in the first *Riigikogu* (the Estonian parliament). Nevertheless, despite this initial exclusion of Russian speakers, the Estonian Constitution of 1992 granted specific political rights to all permanent residents: "[…] in elections to local government councils, persons who reside permanently in the territory of the local government councils, persons who reside permanently in the territory of the local government and have attained eighteen years of age have the right to vote, under conditions prescribed by law"(Constitution of Estonia, 1992, Article 156). The right of Estonian residents with undetermined citizenship to vote in the local elections is one of the major differences between the minority politics in Estonia and Latvia (where such right for "non-citizens" is not guaranteed). At the same time, political rights of stateless persons in Estonia are significantly restricted – they cannot join the political parties or run for the elections. Moreover, these persons cannot vote in national elections or the elections to the European Parliament and it is difficult for them to get a job in the civil service (Local Government Council Election Act, 1996).

Looking at the numbers of persons who have acquired Estonian citizenship through naturalization since 1992 (Table 3), we can register the following dynamics. In the first years of independence, numbers of positive decisions on citizenship applications were soaring reaching 22.773 in 1996 (Estonia, 2015). Nevertheless, after the new naturalization requirements of the 1995 Citizenship Act came into force, numbers of the granted citizenship dropped sharply. This decrease can be explained by the highly complicated and discriminatory conditions for naturalization and language requirements set in these amendments. Realizing the necessity to adjust its citizenship policies in order to enter the European Union, Estonia had introduced several amendments granting specific concessions to its stateless population. For example, the 1998 amendments of the 1995 Citizenship Law allowed children of stateless individuals to attain citizenship. Moreover, the language requirements were simplified.

The international community urged and helped Estonia to work out better ways to resolve the problem of statelessness and established special governmental agency – Bureau of the Minister of Population Affairs – together with a special foundation for the integration of non-Estonians (Järve and Poleshchuk, 2013). As an outcome, we can observe positive naturalization dynamics in the first years of the new millennium up until the accession of Estonian into the European Union in 2004. Since then this trend has been fading out and reached its lowest point in 2010 when only 1184 persons gained citizenship through naturalization procedure. As of 1st of February, 2015, 84.3% of Estonia's population held Estonian citizenship, 9.4% were citizens of other countries, and 6.3% were of undetermined citizenship (Estonia, 2014).

Table 3. Number of persons who have acquired Estonian citizenship through naturalisation



Source: Official portal of Estonia (2015)

It is clear that similarly to Latvia, the actual changes in the Estonian regulations because of the EU conditionality requirements were not sufficient and were not able to eliminate the problem of statelessness and lift integration in the country. In fact, new restrictive citizenship measures we introduced by the 2007 amendments of the Language Law that gave "language inspectorates extended powers, including the right to recommend dismissal of employees with insufficient language proficiency" (Sasse, 2008: 850-851). These amendments worsened the positions of the persons with undetermined citizenship in the labour market, making it hard to ensure the stable source of income, provision of which is a necessary requirement of the naturalization procedure.

The downward trend in naturalization in Estonia since 2004 has similar reasons to those that we have registered in Latvia. They include rigid requirements in force that the government is not willing to lift as they no longer have it as a necessary requirement of their EU membership, insufficient knowledge of procedures, advantages of sticking to their "alien passports" that facilitate travelling to the CIS countries, rejection of the very principle of naturalization process which is both costly and humiliating. In Estonia's case, however, questions of alienation and social exclusion of Russian-speakers is, arguably, much more vivid than in Latvia. According to some estimates, 30 % of the Russian-speaking population subjectively feel social exclusion and this number is even higher among people with undetermined citizenship (40%) (Fangen, Fossan, Mohn, 2012: 94). People with undetermined citizenship represent the lowest-income section in Estonia and are mostly marginalized in the socio-economic terms (Fangen, Fossan, Mohn,, 2012: 94). Despite the overstressed and overemphasized rights to vote at the local elections, these persons are mostly under-represented in politics. Firstly, it is due to the already mentioned fact that they cannot join political parties or run for elections. Secondly, as some estimates show, around 74% of Russian-speakers respondents said that they are not interested in Estonian politics (Fangen, Fossan, Mohn, 2012: 94-105). Parties that claim to represent Russian-speakers in the Estonian Parliament (such as the Centre Party) have been constantly part on the side of the opposition to the ruling coalition.

Another factor that plays an important role in the statelessness *problematique* in Estonia is the state of the recent Russo-Estonian political relations. These relations remained cold since the dissolution of the Soviet Union and have been getting extremely frosty over the last decade especially in the light of such events as the 2007 Bronze Soldier Crisis, the 2008 Russo-Georgian war and the recent crisis in Ukraine. These events only strengthened the disaccord between the two groups of community bolstering fears of the possibility of the ethnic conflict in Estonia. Media had played an extremely important role since the majority of non-Estonians regularly watch and follow Russian channels of information whose coverage and assessment of the on-going events are very often antipodal to that of Estonian media.

Although the naturalization dynamics in Estonia has been quite problematic, it would be incorrect to claim that government has not been trying to change its citizenship policies at all. One of the most significant changes came on 21st of January, 2015 when the Estonian parliament passed a law proposal amending the Citizenship Act of Estonia. According to this act, Estonian citizenship by naturalization is guaranteed to all children born in Estonia to parents with undetermined citizenship automatically at birth. Also, the Estonian language requirements for applicants of the Estonian citizenship for elderly were simplified (UNHCR, 2014). Although this can be seen as a major improvement in the position of non-Estonians, the motivations behind these changes are unclear. They might stem from Europeanization of Estonia and realisation that it is high time for the country to grant the full spectrum of rights to its stateless members in order to promote stability and the gradual transition to the "inclusive" and not "exclusive" character of the Estonian political process. However, the necessity of such "inclusion" might also have its roots in the fears of the Estonian government to become the "next Crimea". Recent calls made by the Conservative Party (EKRE) to pass the bill that will denounce the rights to vote in the local elections granted to non-citizens can only raise sceptical doubts of whether Estonian officials are becoming true "Europeans" in the sense of the minority protection (Hõbemägi, 2015).

Conclusion

Question of the necessity to combat statelessness in Europe had come to the forefront on the European agenda in the recent years. Although so far there are no instruments held by the European institutions to "enforce" citizenship regulations on its member-states, it has been proclaimed internationally that the European Union will do what it takes to make sure all their members who have not done it so far will ratify the 1954 UN Convention relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness. However, signing or ratifying the necessary regulations and conventions cannot be seen as a cure to the existing problem. This paper elaborated the concept of Europeanization stressing the importance of the transfer of norms and values, which in this case refers to minority protection and the importance of citizenship.

The analysis of the situation with the stateless persons in Estonia and Latvia revealed some crucial issues. Firstly, in order to live up to the objective criteria of the union, these two countries have invented new special terms for persons who remained at their territories since the restoration of their independence in the late 1900s – "non-citizens" and "persons with undetermined nationality". These persons (*de facto* stateless since they obtain no citizenship of any other country) do not have same access to human

rights as their "compatriots". Despite the continuous demands from Russia and criticism from the UNHCR, European Union accepted Estonia and Latvia as its members in 2004. In doing so there was a hope that the rising numbers of naturalized persons is a sign that in the following years the minority issue in the Baltic will be finally tackled. However, after more than 10 years of EU membership, both Estonia and Latvia have alarming numbers of stateless persons.

Having analyzed and compared some of the major aspects of the citizenship policies in Estonia and Latvia, it is possible to come to several conclusions. Firstly, positive effects of the EU membership negotiations have faded out after 2004. Since 2005 we observe the downward trend in the numbers of naturalized persons. Secondly, the positions of the stateless person vary significantly in the two Baltic neighbours. If "persons with undetermined citizenship" in Estonia do obtain some political rights as the right to vote in the municipal and local elections, in Latvia "non-citizens" have no political rights at all. In both countries non-citizens have denied access to some of the job opportunities, but in Estonia the discrimination that they are facing is bigger. Both "non-citizens" and "persons with undetermined citizenship" have special passports that reduce their mobility around Europe.

Thirdly, the cases of the two countries seem to be different when analyzing the reasons behind the low naturalization rates. In case of Estonia there is strong evidence supporting the claim that the Russophone minority seems to be highly marginalized in the society and faces serious discrimination. Latvian situation is different as a lot of experts believe that the blame for the high numbers of non-citizens should be put on the non-citizens themselves. Some non-citizens simply decide not to apply for citizenship preserving their statelessness benefits. Russia's factor in the minority issue is especially visible in Estonia where escalations in the bilateral relations will always bring further separation between the societies.

Although, there are some changes in the citizenship legislation in both countries that better reflect European values and norms, it would be impossible to view them as signs of Europeanization in Estonia and Latvia. The drivers behind these changes especially in the light of events in Ukraine are unclear and require further investigation.

To conclude, much more needs to be done in Estonian and Latvian legislation in order to guarantee social and political protection of stateless persons. The change that is even more urgent, however, is that of perceptions. Only this way can these societies move from the simple coexistence towards creation of new, internally stable European states where there is no room for the ghosts of the past.

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An Integrative Approach to Social Policy in Romania: Review of the Special Protection of Persons with Disabilities

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Abstract
The concept of disability has not received any legal definition in the Romanian law system, despite the existence of a multitude of social security regulations regarding the protection of persons with disabilities. The legislation refers only to the concept of person with disabilities. Disability is not only an individual problem, but a serious social problem that requires attention from the state and society. Special protection of disabled persons includes measures stipulated by Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, in order to encourage persons with disabilities to exercise their right to special treatment to prevention, to medical treatment, rehabilitation, education, professional training and social integration. In order to provide professional rehabilitation and vocational integration of people with disabilities, the law provides that employers, individual or legal persons, conclude with these disadvantaged persons individual employment contracts in accordance with their training, their physical and intellectual capacities. Also, Romanian legal system provides for the right to education, social and legal assistance, pension, housing, health care and other social services for children and adults with disabilities.

Keywords: *disability, allowance, social assistance, law, employment*

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General considerations

After the revolution of 1989, the status of persons with disabilities experienced a rapid process of change and continuous enrichment through the creation of a favorable framework, of a decentralized system with reform and control role, of a strong developed partnership between state structures and NGOs of people with disabilities or those active in the protection of disabled persons in order to protect the dignity and the free development of personality of these disadvantaged persons. Central and local administrative authorities' efforts focused on the successful inclusion of people with disabilities in the community, the labor market, education, culture, social and recreational activities, as well as their involvement in social, economic, political and religious life. First rights for disabled people in the employment field have been recognized by Law no. 57/1992 on the employment of people with disabilities, subsequently repealed by Government Emergency Ordinance (G.E.O.) no. 102/1999 regarding special protection and employment of persons with disabilities (Radu, 2004: 82-89).

Definition of disability

Disability is not only an individual problem, but a serious social problem, which requires the adoption of a social policy focused on specific education, vocational rehabilitation and employment of people with disabilities, on their care and social integration. The concept of disability describes the social role attributed to a person with deficiency, by which is disadvantaged in comparison with others in the interaction with them or with specific cultural and social environment. Thus, the handicap becomes synonymous with the notion of rejection, marginalization or exclusion of persons with deficiency or disability. The concept of disability must be bounded strictly of related or neighbouring notions. Thus, it is different from the notion of infirmity which encompasses "any abnormality or disturbance, loss of a structure or a function at the level of the organism" (Ghimpu, Ţiclea and Tufan, 1998: 447). The infirmity occurs more as a cause of disability than any one of its manifestations: as disability is not necessarily generated by an infirmity or infirmity does not necessarily generate the disability (Borgetto and Lafore, 2000: 276). Distinction must be made between disability and maladjustment: if the two notions can have a similar effect, the second does not refer to both an organic or psychiatric impairment as to a harmful behavior towards certain social norms (Borgetto and Lafore, 2000: 276). Disability should not be confused with the concept of incapacity within the meaning of "restriction, reduction or loss of ability to perform an activity in conditions considered normal for a normal person" (Ghimpu, Ţiclea and Tufan, 1998: 447) nor with the legal incapacity: the fact that disability can lead to this does not mean that any disabled person must, a fortiori, be subject to such measures. Finally, disability should not be confused with the concept of social exclusion, not because the person with a disability would not be at risk of exclusion, but because the two concepts are situated on different planes, exclusion is not only a possible consequence of disability: as disability does not necessarily lead to exclusion, this one is not necessarily caused by the existence of a disability (Borgetto and Lafore, 2000: 276-277). In the specialised literature, disability was defined as "any disadvantage suffered by a person due to infirmity or disability that prevents her wholly or partially from satisfying tasks considered normal for it (depending on age, gender and various social and cultural factors" (Pop et al., 2001: 357). The Romanian law refers only to the concept of disabled person, from whose definition we

may conclude that the handicap may consist of any physical, sensory, psychiatric or mental deficiencies that prevents or limits its normal access on equal terms in social life, according to age, sex, education, social and cultural factors, requiring special protection measures for social integration.

Special protection for persons with disabilities

According to art. 2 para. 1 of Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, "disabled person" means a person who, because of physical, mental or sensory illness lacks the skills to carry out normal daily activities, requiring protection measures in support of recovery, integration and social inclusion. It is worth noting that under G.E.O. no. 102/1999 regarding special protection and employment of disabled persons and only in the context of employment, the disabled person has also designated an invalid person. The Declaration of the handicapped, proclaimed by the United Nations in 1975, states that the term "handicapped" means any person who is unable to secure all or part of individual and social needs of a normal life due to congenital deficiency or to other causes of physical or mental disability. According to art. 50 of the Constitution, persons with disabilities enjoy special protection. In order to achieve this protection, the state carries out a national policy of equal opportunities, of prevention and treatment of disability, aiming at the effective participation of persons with disabilities in community life while respecting the rights and duties of parents and guardians. Special protection of disabled persons includes measures taken under Law no. 448/2006 on the protection and promotion of disabled persons in order to ensure the rights of persons with disabilities to special treatment, prevention, rehabilitation, education, training and social integration of this category of persons.

Protecting and promoting the rights of persons with disabilities is based on the following principles: respect for rights and fundamental freedoms; preventing and combating discrimination; equalization of opportunities; equal treatment in terms of employment; social solidarity; community empowerment; subsidiarity; adapting society to the disabled person; interests of the disabled person; integrated approach; partnership; freedom of choice and control or decision over their lives, services and forms of support; person-centered approach in service delivery; protection from neglect and abuse; choosing the least restrictive alternative in determining support and advice; integration and social inclusion of people with disabilities, with equal rights and obligations as all other members of society.

According to the revised European Social Charter, adopted in Strasbourg on 3rd of May, 1996, ratified by Law no. 74/1999, as well as other national and international acts to which Romania is a party, public authorities, social service providers, civil society and individuals and legal entities are obliged to promote, respect and ensure the rights of persons with disabilities, namely the right to health care – prevention, treatment and recovery; education and training; employment and workplace adaptation, vocational guidance and retraining; social assistance or social services and social benefits; housing, adaptation of personal life environment, transport, access to the physical environment, information and communications; leisure, access to culture, sports, tourism; legal assistance; tax incentives; assessment or reassessment by examining nedeplasabile persons at home by members of the Evaluation Committee, at an interval of 2 years. Law no. 448/2006 also provides another measure of special protection, namely that the public authorities have to take specific actions to include the needs of people with disabilities

and their families in all policies, strategies and regional, county or local development programs, and in government health care programs. These measures should be aimed at creating availability conditions for transport, infrastructure, communication networks, medical and socio-medical services; establishment of rehabilitation centers specialized for types of disabilities; creating conditions for ensuring access and assistive technology; development of programs to prevent the occurrence of disability; supporting access to recovery and spa treatment; inclusion and recognition of sport as a means of recovery (art. 9 para. 1). In particular, the special protection of persons with disabilities in institutionalized form is achieved by providing support services, care, treatment, recovery, rehabilitation, vocational guidance and training, as well as other services in the institutions of special protection for people with disabilities. A measure of special protection under the former regulation (G.E.O. no. 102/1999) is also found in Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities. Thus, public utility buildings, doorways, residential buildings built with public funds, means of public transport and their stations, taxis, passenger rail carriages and platforms of main stations, parking lots, streets and public roads, public telephones, information and communications environment will be adapted according to the relevant legal provisions, so as to allow free access of people with disabilities, while historical and heritage buildings will be adjusted accordingly, respecting the architectural characteristics (art. 61 para. 1 and 2). The costs of work necessary to achieve these adaptations are supported from the budgets of local or central government authorities and from own sources of private legal entities, as appropriate.

Special protection measures are applied on the basis of classification in categories of persons with disabilities in relation to the degree of disability established after assessment of the evaluation committee of disabled adults or by the commission for child protection. Classification into a category of persons with disabilities is attested for both adults and children, according to medical and psychosocial criteria approved by order of the Minister of Public Health and the Minister of Labour, Family and Equal Opportunities, at the proposal of National Authority for Disabled Persons, which determine the degree of disability (light, medium, severe and profound) stressed by a certificate of admission to degree and type of disability.

The organization and financing of social assistance for people with disabilities

Institutions dealing with the special protection of disabled persons and with observing the law in this area is the National Authority for People with Disabilities, the Board for the analysis of the problems of people with disabilities – at national level, the General Directorate for Social Assistance and Child Protection and committees for analysing the problems of disabled people – at local level. National Authority for People with Disabilities and other central and local public authorities must ensure, according to law, necessary conditions for integration and social inclusion of people with disabilities. Also, this authority drafts policies and ensures the monitoring and enforcement of the rights of persons with disabilities. Funding social assistance of persons with disabilities is mainly from the following sources: local budget of municipalities, cities and villages; local budgets of counties, respectively of Bucharest Municipality's sectors; State budget; monthly maintenance contributions of disabled people receiving social services in care centers; donations, sponsorships and other sources, under the law. The Special Fund for

Social Solidarity for People with Disability is managed and administered by the National Authority for People with Disabilities and approved by the state budget law.

Obligations of persons with disabilities

According to art. 58 of Law no. 448/2006, persons with disabilities have the following obligations: a) to present themselves, at their own initiative or upon request, for evaluation and re-evaluation by the committees with competence in the field; b) to do everything necessary to enjoy the rights provided by law; c) to follow the activities and services provided in the recovery plan for children with disabilities, respective in the individual service plan for the disabled adult; d) to make reasonable efforts for employment on the labour market, under the law, in relation to the vocational preparation, physical and mental possibilities, based on the recommendations of the committee with expertise in the field; e) to work with social workers and specialists aimed at recovery, rehabilitation, vocational guidance and social integration; f) to inform the general directorates of social assistance and child protection (from county or sectors of Bucharest municipality) within 48 hours of becoming aware of any change on the degree of disability, domicile or residence, material status or other situations likely to alter the granting of rights provided by law.

Compared to the previous regulation, we note that the current law has replaced the legal obligation of the disabled people "to engage in a job, under the law, according to their vocational training, the possibilities of their physical and mental health and the medical recommendations" with the obligation to "to make reasonable efforts for employment on the labour market". Art. 21 of O.U.G. no. 102/1999 was criticized on the grounds that has instituted a form of forced labor in the account of disabled persons which blatantly contravened to the principle of freedom of work stipulated in art. 41 para. 1 of the Constitution and in the international conventions ratified by Romania (Radu, 2004: 82-89). Thus, in order to benefit of protective measures provided for in regulations, a person with disabilities should be employed, otherwise being deprived of the protection of the law. Even if this obligation of disabled person was considered to have a protective purpose and effect and therefore constitutional (Ștefănescu, 2002: 552), we believe that the formula adopted by the legislature in 2006 is more appropriate.

Employment of Persons with Disabilities

Employing people with disabilities raises a number of issues. First, the organization of the workspace, the degree of specialization, working conditions, working hours and nature of work affects the extent to which people with disabilities can participate in performing an activity. Thus, when the family is the unit of production or disabled person is helped into work performed by members of his family, it is easier for them to have an active professional life, in relation to the flexibility and complexity of work. In the competition between labor supply and demand, participation of people with disabilities in the labor market becomes more problematic (Manea, 2000: 442).

People with disabilities have the right to work and earn income in accordance with the provisions of labor law and the specific provisions of Law no. 448/2006. According to art. 72 of Law no. 448/2006, any disabled person who wants to integrate or reintegrate into the labor market has free access to professional evaluation and orientation, regardless of age, type and degree of disability. The disabled person actively participates

in the evaluation and vocational guidance, has access to information and choice of activity, according to his wishes and skills and the principle of free work.

The person with disability who is educated and has the appropriate age for employment, the disabled person without a job, who does not have professional experience or who, while being employed, wants vocational retraining take advantage of professional guidance, as appropriate. Training of persons with disabilities is organized, on the basis of law, through initiating, qualification, training and specialization programs. People with disabilities have the right to conditions created for them in order to be able to choose and practice their profession, trade or occupation, to gain and maintain employment and to promote in their profession. Employment of disabled persons is made by natural or legal persons, in accordance with their professional preparation and physical and intellectual capacities available to them, on the basis of a certificate of admission to a degree of disability issued by the evaluation committees at the level of the county or of the sectors of Bucharest Municipality. Taking into account that disabled persons of third degree are included by law in the sphere of disabled persons (art. 76 para. 2), hiring is done following the conclusion of an individual contract of employment or of individual agreements concerning employment relationships concluded between a cooperative society and cooperative members who put together their work and capital (Găină and Găină, 2008: 58-70). For this purpose, can be established protected units, with or without legal personality, or protected places of work, especially organized, by providing facilities and adaptations according to the requirements of people with disabilities. Another form of employment of people with disabilities is the conclusion of an individual contract work at home, in which case the natural or legal person employing them must provide transportation to and from the home of any raw materials they use in their activity and finished products carried out by them. The new labor code provided a new legal system for work at home through art. 108-110 (ex art.105-107). Since the regulation of labor at home has many shortcomings (Radu, 2008: 162-163; Popescu, 2013: 179), *de lege ferenda* it is necessary supplementing the law, as to provide that person with a disability employed with an individual labor contract at home can be helped by husband/wife, children, parents or an auxiliary.

Protected units are socio-economic units organized and equipped according to the requirements of persons with disabilities, with a view to the elimination of any impediment for carrying out the work by such persons. Authorized protected units benefit from the following facilities: a) exemption from licensing fees to the establishment and renewal; b) exemption from payment of income tax, provided that at least 75% of the obtained exemption is reinvested for restructuring or for the purchase of technical equipment, machinery, installation work and / or layout of workplaces protected as provided by Law no. 571/2003 regarding the Fiscal Code, as amended and supplemented; c) other rights granted by local government authorities financed from own funds.

Public authorities and institutions, legal persons, public or private, with at least 50 employees (in the previous law this number was at least 100 employees) are required to employ disabled persons at a rate of at least 4% of the total of employees. Public institutions of national defense, public order and national security are exempted from this obligation. In the case that the number of disabled persons employed is inferior to the amount prescribed, public authorities and institutions, legal persons, public or private, covered by the law, can opt for any of the following obligations: a) to pay monthly to the State budget an amount corresponding to 50% of minimum gross basic salary per country multiplied by the number of jobs in which they did not hired people with disabilities; b)

to purchase products or services from authorized protected units, on a partnership basis in the amount equivalent to the amount due to the State budget under the conditions referred to in point a).

People with disabilities seeking employment or already employed have the following rights: training courses; reasonable accommodation in the workplace; counseling prior to the period of employment and during employment and on probation, from a counselor specialized in labor mediation; a probationary period paid by the employer of at least 45 days; paid prior notice, of at least 30 working days, granted by the employer at the employment contract termination for reasons not attributable to the employee; opportunity to work less than 8 hours per day, under the law, where there is the recommendation of the evaluation committee in this regard; exemption from salary tax. In what concerns the probation period it is worth noting that, unlike the Labour Code, which provides that the testing of the professional skills of persons with disabilities is done solely on the basis of a probationary period not exceeding 30 days and with exclusive character (Gidro, 2013: 59-60), Law no. 448/2006 on the protection and promotion of the rights of people with disabilities sets a probationary period of at least 45 working days. Its provisions are applicable by priority because this is a special law and adopted after the entry into force of the new Code labor. However, because it contains provisions less favorable to employees, *de lege ferenda* we propose amending art. 82 of Law no. 448/2006 in the sense of stipulating a probationary period not exceeding 30 calendar days for the employment of people with disabilities and not having an exclusive character.

In order to support and encourage the employment of persons with disabilities, art. 83 of Law no. 448/2006 provides certain rights for employers who resort to employment of such persons: a) deduction in calculating taxable income, of the amounts they use for the adaptation of protected places of work and the acquisition of machinery and equipment used in the production process by the disabled person; b) deduction in calculating taxable income, of expenses for transporting disabled people from home to work, and the costs of transporting raw materials and finished products to and from the residence of the disabled person hired to work at home; c) settlement from the unemployment insurance budget of the expenses specific for training, vocational guidance and employment of persons with disabilities; d) a subsidy from the state, as provided by Law no. 76/2002 on the unemployment insurance system and employment stimulation, with subsequent amendments.

Right to pension

According to Law no. 263/2010 on the unitary system of public pension, individuals who have made a contribution period under handicapped conditions before becoming insured benefit from reduced standard retirement age, depending on the degree of disability, as follows: a) by 15 years, if the insured with profound handicap have achieved in conditions of disability pre-existing to the quality of insured, at least a third of the complete contribution period; b) by 10 years, if the insured with severe handicap have achieved in conditions of disability pre-existing to the quality of insured, at least two thirds of the complete contribution period; c) by 10 years, if the insured with medium handicap have achieved in conditions of disability pre-existing to the quality of insured, the complete contribution period. In case of worsening disability during the execution of the individual employment contract and classification of the employee in another disability degree, are applicable the legal provisions relating to the degree of disability he

had at the employment moment because the law clearly states the conditions of "disability pre-existing to the quality of insured" (Gîlcă, 2003: 101). The blind receive old-age pension, regardless of age, if they realized at least one third of the complete contribution period while being blind.

The right to health care and social services

According to art. 10 of Law no. 448/2006, people with disabilities have free medical care, including free medicines for both outpatient treatment and during hospitalization in the health insurance system, as laid down by the framework contract. In order to provide assistance for recovery / rehabilitation, people with disabilities have the right to: a) free medical devices for outpatient treatment, according to the conditions set out in the framework contract concerning medical assistance in social health insurance system and its implementing rules; b) free accommodation and meals for the companion of the child/adult with severe or profound disabilities in hospitals with beds, sanatoriums and spa resorts, on the basis of a recommendation from the family doctor or a medical specialist, provided by the Single National Fund of Health Insurance, according to the framework contract concerning medical assistance in social health insurance system; c) a free ticket for spa treatment in a year, based on individual program of rehabilitation and social integration and on recommendation of the family doctor or the medical specialist.

Another extremely important measure to protect persons with disabilities is the obligation of the public authorities to take measures for introducing a priority criterion for hiring, at lower levels of rent, housing from the public domain of the state or its territorial administrative units. People with severe disabilities have the following rights: a) granting a room for living, in addition to the minimum standards of living provided by law, based on renting contract for dwellings included in the private or public domain of the state or of the administrative-territorial units; b) determining the rent, under the law, based on renting contracts for residential areas with destination of housing owned by the State or its territorial-administrative units to the minimum level required by law. From these provisions will benefit also the family or legal representative during the period in which they take care of a child or an adult with severe disabilities. People with profound and severe handicap are entitled to gratuity urban transport on surface and underground, on all lines. This right belongs also to the personal assistants or companions of the person with disability. The right to social assistance in the form of social services shall be granted upon request or ex officio, where appropriate, on the basis of documents provided by law. People with disabilities receive social services provided at home, in the community or in day care centers and residential centers, public or private. Social services for people with disabilities are designed and tailored to the individual needs of the respective person. The persons with disabilities can receive social services provided in day care centers and residential units of various types (public-private, public or private type). Day centers and residential centers are places with adequate infrastructure where social services are provided by qualified staff; residential centers are locations where the disabled person is hosted at least 24 hours.

The types of residential centers for the disabled are centers of care and support; recovery and rehabilitation centers; centers of integration by occupational therapy; training centers for independent living; respite centers/ crisis centers; community services and training centers; protected housing. A person with disabilities is sheltered in a residential center, except for respite centers, crisis centers and protected dwellings if its

protection and care can not ensured at home or in other community services. Adult with severe visual disability receives for the payment of his attendant an allowance equivalent with the net salary of junior social worker with secondary education from social assistance units in the public sector, other than those with beds. Adults with disabilities benefit under the law, of the monthly allowance, regardless of income, the amount of which varies depending on the degree of disability (severe and profound) and of complementary personal monthly budget, regardless of income, whose amount is differentiated for adults with medium, severe or profound disability.

Disabled person who has in care, supervision and maintenance a child and who does not derive other income outside monthly allowance for adults with disabilities receives a child raising allowance in the amount of 450 lei until the child turns age 2 years and a monthly child support in the amount of 150 lei for children aged between 2 and 7 years. Children with disabilities, including children with disabilities by type HIV/AIDS benefit from state allowance under the conditions and in the amount provided by law, increased by 100%. Children with disabilities by type HIV/AIDS receive a monthly allowance for food, calculated on the basis of the daily food allowance established for collective consumption in public health units.

In accordance with Law no. 448/2006 and Government Emergency Ordinance no. 148/2005 on family support for raising children, approved with amendments by Law no. 7/2007, as amended and supplemented, the person who has the care, supervision and maintenance of a disabled child benefit, where applicable, from the following rights: a) leave and allowance for raising a disabled child or, if applicable, monthly incentive, until the child reaches the age of 3 years; b) leave and raising child allowance in the amount of 450 lei for disabled children aged 3 to 7 years; c) reduced working hours to 4 hours for the parent taking care of children with severe and profound disabilities until the child reaches the age of 18, at the request of the parent; d) medical leave granted under the law, for taking care of disabled children requiring hospitalization, outpatient treatment or home treatment for discontinuous affections and recovery/ rehabilitation, until the child reaches the age of 18; e) placement monthly allowance granted under the law, whose amount is increased by 50%.

Those rights shall be granted, upon request, to a parent, a person who is entrusted a child for adoption, who adopted a child or a person who has a child in foster care or in emergency placement, and the person who was appointed guardian, except professional maternal assistant and people who at the same time have the quality of personal assistant for the same child.

In addition to the benefits listed above, children with disabilities also benefit from a range of facilities and gratuities under Law no. 448/2006. These facilities are granted to children with disabilities to ensure equal opportunity for integration on social life and avoid their internment in care centers.

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The Image of the Crown Domain through the National and the International Exhibitions (1884-1939)

Narcisa Maria Mitu*

Abstract

Exhibitions were initially seen as a competition in which each participant would tend to make a profit directly from sales focusing particularly on agricultural and industrial products. Later, they became a scene that showed different lifestyles, political ideologies and structures. Their role was to promote a country's identity and also to exhibit the scientific and technical performance of different areas. They address a broad range of participants, from researchers, developers, producers to potential consumers, buyers and users. The first major exhibition organized by the Romanian state which had also a strong echo abroad, was a Jubilee exhibition in 1906, held in Bucharest. The event to commemorated 1,800 years from the arriving of the first settlers in the Romanian lands, 40 years of reign of King Carol I and the 25 years since the proclamation of the kingdom. Of the 12 sections of the exhibition, the Crown Domain ranged only from 7: agriculture, sericulture-hunting, horticulture-viticulture, zootechny, mining, quarrying and industry. That institution, also participated to the expositions from Chişinău (1925) and Bucharest (1934, 1939). The Romanian products issued from the Royal Estate had the chance to enter and be known on international markets, too. The international exhibition from Paris in 1900 has been a success for the Royal Estate of Romania, as it evidenced by the receipt of 21 medals. Starting with this year, this institution has been regularly present to all international exhibitions where Romania was invited to exhibit. We could note in this regard the exhibitions from Lemberg-Ukraine (1925), Warsaw-Poland (1929), New-York-USA (1938).

Keywords: *Romanian Crown Domain, XIX-XX centuries, national exhibitions, international exhibitions, Paris, New York*

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Exhibitions were initially seen as a competition in which each participant would tend to make a profit directly from sales focusing particularly on agricultural and industrial products. Later, they became a scene that showed different lifestyles, political ideologies and structures (Vlad, 2001: 18). Their role was to promote a country's identity and also to exhibit the scientific and technical performance of different areas. They address a broad range of participants, from researchers, developers, producers to potential consumers, buyers and users. The first Romanian exhibition was recorded in our country in the early nineteenth century, being organized in Iaşi (1836). The law from June 1836 that divided the country in 10 agricultural regions, coffered the right to each county's residence to organize an annual exhibition that would show the progress registered in that region. This represented an impulse in the development of the Romanian agriculture. Later, the number of these manifestations increased, between 1865 and 1884, being registered 10 agricultural and industrial exhibitions (Roceric, Oprescu, 1939: 284). Considering that the man from the village will be much more interested in the work from the different domains, only if he is shown concrete, tangible, things, Crown Domain's administration sought to promote their products through these events, at first local.

The first exhibition on which it is reported the presence of Crown domain is that of the Cooperators, organized in Craiova on August 15th 1887, and then to all the exhibitions held in Craiova and Bucharest between 1894 and 1895 (Roceric, Oprescu, 1939: 290, 324). We also mention the participation to all agricultural and industrial exhibitions, organized in the districts to which they belonged, such are: Vaslui, Brăila, to that of Agrarian Society, of The Romanian (Onciu, 1906: 1; Potra, 1990: 337; Cofas, Constantinescu, 1997: 145; Apostol, Neguţu, 1998: 115; Comşa, 2012: 15). Association for the development and the spreading of science, exhibitions that allowed them to become more and more recognizable on the national market (Kalinderu, 1909: 179-185)

The first major exhibition organized by the Romanian state which had also a strong echo abroad, was a Jubilee exhibition in 1906, held in Bucharest. The exhibition was intended to be a replica of the one in Paris in 1900. The initiative belonged to Take Ionescu, who proposed the celebration of four decades of existence of the king on Romanian soil. By his gesture aimed to impress the king and thus strengthen its position in the party (Coronană, Neguţu, 2006: 101). The event to commemorated 1,800 years from the arriving of the first settlers in the Romanian lands, 40 years of reign of King Carol I and the 25 years since the proclamation of the kingdom. The exhibition was organized by a law voted by the Parliament (Chamber of Deputies and Senate) in May 1905 (Dorojan, 2007: 248). By royal decree, published in the Official Gazette, C. Istrati was appointed general Commissioner of the exhibition (Dorojan, 2007: 248; Teodorescu, 2012: 333). As members of the committee we mention: Al. Ghica, General Secretary, Grigore Groceanu, General Inspector, and Dr. Alexandru Zaharia. The works on the exhibition began a month later and were executed under the guidance of the architect I. Berindey (1871-1928), who perfected in 1925, the Administrative Palace in Iasi, after the plans created by the French landscape architect Edouard Redont (1862-1942) (Teodorescu, 2012: 334). As a place for the exhibition was elected the Carol Park, located in the southern part of Bucharest, with an area of 360,000 m^2. This event aimed at presenting the achievements of Romania in the period 1866 -1906, on all levels: political, cultural, economic and military.

The exhibition was inaugurated by King Charles I, on the 6th of June 1906 (Onciu, 1906: 2). Although the exhibition was intended to be a national character, the event was attended both the Romanian provinces occupied – August 26 arrived in

Bucharest over two thousand Transylvania, the Romanian Banat, Bukovina, Macedonian and Romanian – and some neighbor countries such are: Hungary, Austria, France. The pavilion of the Crown Domain and of the Royal House was located in front the Mihai Viteazul square, on Calea Moldovei and was distinguished through the pure Romanian style. The building looked like a peasant's house with two staircases at the entrance and a garden with beehives, tree trunks, traditional chairs of the villagers etc (Mitu, 2010a: 150). Noticing it, Nicolae Iorga said: "It's neat, harmonious, and doesn't have more embellishments than needed. The little garden in front of it makes it even more enjoyable. The title was written in Cyrillic letters, many believing that the flag is a Muscovite, Bulgarian or Serbian" (Mitu, 2011: 324). The next day after the official opening of the exhibition, the pavilion of the Crown Domain was visited by the Royal Family, accompanied by the principles Ferdinand and Carol, on which occasion they brought thanks to Mr. Kalinderu "for his tireless work" for the flourishing of these estates (Carol I, 1906: 258). The exhibition was comprehensive in covering all the fields. Of the 12 sections of the exhibition, the Crown Domain ranged only from 7: agriculture, sericulture-hunting, horticulture-viticulture, zootechny, mining, quarrying and industry (Mitu, 2011: 325-330). The exhibited objects represented the result of a collaborative effort in 22 years and individualized every estate.

In the pavilion designed for agriculture, could be identified: the economic palns of the Sadova, Segarcea, Domniţa, Dobrovăţ, Gherghiţa, Cocioc, Ruşeţu Domains; soil profiles belonging to these domains; photos representing schools plans, constructed by the Crown Domains' Administration; photos of the plans of walled deposits for products, a hop dryer from Gherghiţa and Cocioc, of a stable; different graphics of the surfaces, exploitation expenses, the gross and net income from the twelfth estates; photos of the marsh and river Snagov drainage works from the Cocioc Domain; postcards and plans of the staff's houses; miniatures of the administration houses from Cocioc etc

A special section exposing all varieties of cereals grown between 1905 and 1906: samples of wheat, corn, flax, beans, peas, hemp, sugar beet, oats, rye, barley (winter, spring, common, with six rows) two-row barely, proso millet, millet, hops, rape, sorghum, poppy seed, vetchling, clover, sainfoin, buckwheat, white mustard, coriander, sunflower, yellow lupine, soybean hyspida, horse bean and earthmouse, lentils, different varieties of wheat, oat, barley, rye, flax, hemp, made up in bundles, different varieties of potatoes, lucern root. In photos was shown how the land was exploited with farm machineries and plows. There have been presented two plows from 1866, 1906 in order to observe the development in the technical area. They were joined by a panel of instruments used in agriculture. There have also been exhibited miniature models of rack wagons and cart used to transport grains, made in the workshops of the Sadova Domain, wheelwrights and smiths workshops models, the mill from the section Ocolna of the Sadova Domain and the model of the same farm, that included maize barns, store houses, cars sheds, cattle stables, the houses of the personnel, gardens surrounded by plantations. Other exhibits consisted of: fruits dried in the dryer from Gherghiţa such are: apricots without kernels, sour cherries, apples, soup vegetables, etc.; sheep wool samples from the breeds tzurcana and prime wool sheep, washed and unwashed, carded and spun, dairy products from the Periş milk factory on the Cocioc Domain such as: Periş butter, Cocioc cream, Cocioc Brie, Tilsit, milk and butter milk.

The viticular domain was represented by boxes with grafts arranged on multiple layers in different types of soil: in moss and sawdust; a panel with different grafting systems and tools used for this purpose; a wooden replica of the workshop from Segarcea

where were grafted the vines, realized in the carpentry workshops of the domain; different photos of the vineyards and the plan of the vineyards' section from the same domain; different types of white and red whine, produced in the Segarcea, Sadova and Gherghiţa Administrations.

The sericulture showed different silk products, made by the peasants or the students from the schools of the different domains; woven materials and silk drawings, several varieties of silk cocoons from the Cocioc Domain, a collection that presented the silk worm in different stages of evolution, the cloths obtained after the processing on the cocoons, silk, simple and colored silk cloth; the metamorphose of the silk worms collected by the mixed school from Mălini, a sericultural conspectus, made for the rational culture of the silk worms and a weaving machine made in the workshops from the Buşteni Domain.

The apiarian domain exhibited few postcards with bee gardens from the domains Mălini, Bicaz, Cocioc, Gherghiţa and Segarcea; different types of hives: Dzierzon, Berlepsch, Hermes; many types of honey combs; the bee in different forms with the enemies of the hives; jars of different shapes with May honey; liqueurs, made at the Periş apiary from honey and fruits – vanilla, sour cherries, centaury, coffee, peppermint, strawberries, oranges, bitters liqueurs but also beverages such as: sour cherries wine, wormwood wine, honey beer; different shapes and qualities of candle wax.

The pavilion of the silviculture presented different types of wood products:a) industrial wood: wooden species samples, presented in different sections, belonging to the Bicaz Domain, birds nests, Berlepsch system, after the models introduced by The Society for the Protection of the Animals, realized in the carpentry workshop from the Gherghiţa Domain; plop wood troughs, wooden bowls; water buckets, milk churns, fir tree wood vats made in the workshops from Mălin; common maple yoke for the oxen (Dobrovăţ); different housekeeping objects; sieves and strainers, spoons, bushels, ladles, tubs and wooden pails, oak butts and barrels with iron hoops (Sadova), boxes and barrels for khalva (Buşteni), oval and round boxes for delight, pharmacies, cheese (Buşteni); forester hammers, forester compasses, different models of blinds made at Bicaz, oak tubs; shovels, rakes, beech wood pitchforks; the replica of a oak bathroom made in the workshop from Sadova; b) resonance wood for the musical instruments; c) wood shaped as a wooden tile executed on the Borca Domain; d) wood discharged for staves and wheelwright's work; e) wood discharged at the frame saw for construction; f) deformed and abnormal pieces of wood, sections in different species of wood; g) replicas of some installations used in exploitation: the water saw from Gura Borcei, the mechanic saw and the telepher from the Mălini Domain; h) photos that reproduced the way in which was realized the forestry exploitation, the replica of the resinous seed drier, of the timber factory from Aţa-Bour, made of 4 frame saws, 10 Venetian saws, 4 circular saws, machines for grinding and for cutting the logs of wood, from the Bicaz Domain; i) studies of forest planning and plans: the topographic plan of the Sabaşa-Farcaşa domain, maps that presented the mountains after the situation of the forest in 1900, of the forestry administrations from Bicaz and Taşca, the Bicaz Domain; the map of the same forestry administrations, during 1900-1909; the map of the forest from the Dobrovăţ Domain (1899), of the Mălini Domain for 1905-1915; the map of the mountains and the forest planning of the Cocioc Domain's forest (1905), of the Gherghiţa Domain' forest (1906); the general plan of the mountains from the Mălini Domain; the forest planning of the Segarcea Domain' forest (1901); the topographic plan of the mountain Caraiman, the Buşteni Domain; studies of forest planning of all the forests from all the Crown's Domains; j) the relief of the Bicaz Damain,

accompanied by the list of the conventional signs of the forest areas, the commons, the plough lands, the hay lands and the meadows etc.; the relief of the Poiana-Doamnei administration from the Mălini; k) graphics regarding the circulation of wood; l) instruments used in hunting and different wild animal and; m) fishes; n) collections of insects and butterflies: a collection of butterflies from the Dobrovăţ Domain and a collection of insects injurious to the forest, each species being presented in all the phases, from egg to the mature insect.

There also have been presented different pieces of furniture and objects made in the willow-weaving workshop, situated on the Cocioc Domain, which was created in 1888: travelling baskets in different shapes and sizes, fantesie basket for flowers, with the form of a horn, lyra, bookstand basket for notes, wheelbarrow made of weaven straws and willow for flowers, shopping baskets, nests-basketsfor flowers, with different forms, fruit dishes and wallets; different shapes of laundry baskets, desks, different objects made at the Gherghiţa Domain, willow colored armchairs, a red table and four chairs for garden, a green garden pavilion, made of 24 pieces of furniture, along with tables an chairs etc. There have also been presented products of the foundry from the Segarcea and Bicaz Domains, stone quarry products from Buşteni. In the housekeeping industry section have been exhibited: traditional clothes, carpets and peasants' furniture, made by the students and by the personnel's wives from the Domain. The pottery factory from the Cocioc Domain exhibited: vases, flat bottles, plates, different pitchers, medallions representing the king and the queen, stoves etc., all made of ceramic.

From the Mălini toy factory there have been exhibited different shapes of dolls, simple and luxurious, some of theme were closing and opening their eyes, dressed in rustic clothes, but also different other toys such as: soldiers, weapons, animals, small houses, cars etc. The products created in the brushes workshop were also from Mălini. The public present at the exhibition was also shown the studies and the publications that belonged to the Crown Domain Administration' library, monographs, plans and school replicas, churches monographs, the statues of the cultural-economic societies existent on the Domain, replicas of the churches from Farcaşa, different objects realized in the school workshops, replicas of some theatre scenes, photos showing different scenes from plays in which acted school children and the model of the village's theatre from Borca.

Remarking the diversity of the objects that the Crown Domain exhibited, the newspaper Albina related: "It is a real kaleidoscope of all the country's richness" (Teodosiu, 1906: 1066). At the awarding of the prices, on November 5th 1906, the Crown Domain Administration, represented by Ion Kalinderu, was awarded a special prize, representing a silver vessel with allegorical figures, admirably executed. This prize was offered by the king "to the most outstanding farmer" (Onciu, 1906: 4). Exposing the motifs for which the Crown Domains were awarded this special prize, Dr. C. Istrati, said: "The Crown Domains are for a long time a good example for the entire country, having an important influence on the activity of our great landowners. All that was done there was due to a serious thinking, had been studied and applied before on a large scale, only after it had been experienced on a smaller scale" and continued, referring to the industry that was developing in the perimeter of the Administrations: "A good result was that regarding the industry and especially the industry that works with the products from agriculture and particularly during the winter's months, by our villagers" (Onciu, 1906: 13).

The exhibit was closed on November 23rd, in the presence of Queen Elisabeth and the princely couple, Ferdinand and Mary. In the speech that Ion Lahovary delivered, the mentioned all the objectives and the purposes of the organizers: "We desired to show to

the foreigners and to the Romanians that what Romania once had been and what is today, after 40 years of glorious reign of the King Carol I… we wanted that the foreigners to know and that the Romanians to know themselves better, to know that between the Danube and the Carpathians leaves, grows and becomes stronger a hard-working, brave and peaceful people, leaded by a patriot and wise king" (Sora, 2001: 183). The organizers and the Romanian Government considered the event a great success, recognized also by the foreign press, present in our country. After this exhibition, the agricultural contests and exhibitions gained a greater importance. Mentions regarding the exhibitions organized during the period 1906-1918 aren't any, although we don't doubt about their existence, the archive of the Crown Domain being destroyed during the First World War (1916-1918). The union of Basarabia with Romania from 1918, extended the possibility to participate at the exhibitions organized in the Romanian province from over the Prut. Thus, when such an event was organized at Chişinău, on August the 5th 1925, the Segarcea Crown Domain, recognized especially for the wines produced there, answered positively to the invitation to participate with agricultural, forestry, viticultutal and animal products. There have been exhibited: samples of red and Polish wheat, barley, millet, oat, two-row barely, vetchling, but also 93 forestry species collected from the Domain's forest, arranged on 48 boards; 0.300 kg of silk, starting from a thread made from a cocoon and to 100 gr. of cocoons, 0.50 kg of silk worms cocoons; 0.150 kg of prime wool in 6 flocks, a distaff and a spindle; different categories of wines representative for this administration: 20 bottles of Frongtinon from 1921, 20 bottles of brandy, obtained in 1919, 20 bottles of Pinot Noir, 30 bottles of Riesling from 1920, 20 bottles of Alb superior from 1920, 20 bottles of Fetească albă from 1920 (Mitu, 2010a: 152). On the 2nd and 3rd of October 1927, the Chamber for Agriculture from Dolj organized in the commune Segarcea a zootehnic agricultural exhibition. For the examples that the Domain Segarcea presented, it was awarded 5 gold medals by the Chamber for Agriculture (Mitu, 2010a: 153). In 1934, on the occasion of the manifestation „Expoziţia Târg", organized in May at Bucharest, the domain Sadova brought 275 bottles of wine, bottled in recipients of 750 ml and other 275 bottles of 750 ml, with wine from the butts (Mitu, 2011: 332). A last participation, as coming from the documents, is mentioned four years later, at the agricultural exhibition from Bucharest, in 1938. On this occasion, the Sadova Domain exhibited a plan that evidenced the evolution of the estate in the third decade of the 20th century. The plan involved a presentation of the oak and locust tree forest, the vineyard and the cultivated soil; the five existent agricultural centers, represented by red colored rings, the sixth sub-center, planed to be realized in the future, such is the forest range from Dăbuleni – marked by a circle hachured with red; the apiarian centre from Ocolna, hachured with blue. It was especially insisted on the development of the apiary, during 1930-1939, showing in the diagrams the price in cost and the medium price for selling; the increased number of hives and the annual produce in kilograms (Mitu, 2011: 333.). The outbreak of the Second World War made, then, impossible the organization of such events. Being on the scene of operations, many administrations had to interrupt their activity. Although, most of the documents from the Crown Domains' archive were destroyed during the events of the two world wars, the few left information regarding the exhibitions they participate and the awarded prizes, allow us to create a shaped image about the part played by this institution in the emancipation of the Romanian village.

The Romanian presence at the international exhibitions was registered starting with the second half of the 19th century. Preponderantly agricultural country, but having important performances in this economic branch and also in the traditional household

industry, where Romanian made itself noticed at the Brussels exhibition from 1897 when it was, because of the awarded prices, on the 17th place among the countries in Europe and on the 25th place in the world classification (Vlad, 2001: 34). Among the main commercial partners of Romania we must mention Belgium, France, Austro-Hungary, Italy, England, Turkey, Germany, Russia, Holland and Switzerland. Starting with this year, Romania became a constant presence at the international exhibitions during, the between wars period, both on the European continent and the United State of America. The exhibition from Paris, at the end of the 19th century, the first international exhibition the Romanian Crown Domain attended, paved the way of this institution for the international and universal exhibition where, not few times it was noticed. Instituted through a presidential decree, emitted on July 13th 1892 the exhibition organized at the confluence of the two centuries, wished to be a "synthesis" of the 19th century and a landmark for the evolution of the new century. The inauguration was made on April 15th 1900 by the president of France, Émile Loubet and reunited, on a surface of 230 hectares, 41 countries, from four continents (Vlad, 2007: 135-136). Romania received the invitation to participate in 1895, but the refusal of Ion Kalinderu to be appointed General Commissar, delayed the official answer until 1898. Yet, the Crown Domain Administrator was a member of the Consultative Central Commission of the exhibition. On March 1898, the Parliament voted the law through which the Agriculture, Commerce, Industry and Domains Ministry authorized the spending of 1.300.000 lei for the participation of our country to the exhibition and organized, through a Regulation of the public administration, the special service for the preparation of the activities. Article 2 from the regulation stipulated the organization of exhibitions of the Crown Domain' Ministries and of different public administrations by each Minister or administration. The initiative regarding the participation took place in the same time with the continuous dispute between the conservatives and the liberals, the first being discontented by the too large sums of money that was supposed to be spent and the liberals arguing that "the participation to the exhibition was requested, first of all, by the common sense of answering to the demand of a friend-country, and then by the political and especially economic interests, being necessary to bring foreign capital in our country" (Ollănescu, 1901: 23-24).

The exhibition was structured on 18 groups. From the total number of 18 groups, Romania entered in 17, most of the Romanian exhibitors being registered at the agricultural, alimentary and clothing sections. During the exhibition, The Crown Domain constituted a special group in the upper gallery of the Royal Pavilion, in the cupola from the end of the left gallery of the first floor, along with the sections: stationery, public industry, public assistance and hygiene. The participation was made on the expense of the Domain Administration. In this pavilion were exhibited all the agricultural and the industrial products, arranged on different domains, miniatures of the schools, buildings and forestry operations, furniture and rural houses, birds and animals that lived in the forest of the Domain, fishes from the waters of the Domain, the products of the stone and granite quarries, ceramic pieces, pottery art, cotton, woollen and silk woven materials realized in the rural schools, a plan in relief of the Bicaz Domain, a collection of stuffed animals and birds, agricultural tools, graphic paintings, maps, albums etc (Ollănescu, 1901: 109).

The cultural part was represented through many brochures and books from the Administration's library, studied and appreciated by both the jury and public, as C. Ollănescu mentioned. Taking advantage of the presence at this exhibition, in order to promote the image of the Crown Domain, the Administration edited, in French language,

a brochure named Notice sur le Domaine de la Couronnede Roumanie (Notes on the Romanian Crown Domain) that was given free of charge to the French authorities, the cultural, agricultural, industrial and commercial institutions from France and to all the General Commissariats of the participant countries. The book contained information regarding the situation, activity and the results seen from the establishment of the Domain until that moment.

Giving such works (in different European languages) about Romania was absolutely necessary in order to allow the other states to better understand our society and economy. This measure was initiated by Dimitrie C. Ollănescu who often dealt with the insufficiency or the wrong opinion about our country of the foreigners and with the ignorance of the Romanian people who, in such cases, considered that "the French people don't know geography" (Vlad, 2007: 141). The juries, appreciating the activity, the effort and the results obtained in such a short time, awarded the Crown Domain with 21 prizes (Ollănescu, 1906: 442-227). These prizes proved to be important for obtaining the 8th place in the classification. The Crown Domain Administration was rewarded with: 10 big prizes for: the realisations from education; the dairy produces, butter and cheese installations from Cocioc; the studying of the land from the agricultural point of view, presented as analyzes, field samples in vertical section (2 m height), agricultural statistics; the complete collection of cereals; a railway installation and a cable railway for wood transportation, arrangements plans, the mechanic saw from Mălini, a miniature, unique model, of a forest range, the plans in relief of the Domains Bicaz and Mălini with the installations for the exploitation of the resinous essences, postacards presenting forestry installations; for the products of forestry exploitation and industry (there had been presented in an album different types of forestry essences-leaves and buds, leaves and fruit, resonance pieces of wood in different shaped board, planks, piano backs-sides realized by the Gaston Eichler factory from the Domain Mălini and the factory owned by Mr. Torok and Compani from Bicaz), the miniature of a resinous seeds drying house, the section made on a fir tree representing the annual growth of the tree, the birch tree trunk representing the debit manner of the tree, a 95 years old fir tree trunk, wooden works, species of wood used for matches, packing wood, kitchen objects (two-handled tub, barrels, staves), a miniature cart with tree trunks, boards for Venetian shutters, wooden chests made in Dr. Havel's workshop from Bicaz, doormats; mine exploitations and quarries; 1 big prize awarded to the administrator Ion Kalinderu for the entire activity at the Crown Domain; 2 gold medals for products belonging to different rural exploitations, postcards presenting constructions and hunting products (bear, fox, squirrels, wild boar, wild cat, stag head and the horns, chamois horns, eagle, pelican, mountain cock, and hazel hen, partridge, raven, awl, bugles, bag and other hunting related objects); 5 silver medals for: the school library publication; for the non-alimentary agricultural products (flax, hemp); the national carpets, linen and hempen threads and woven materials, different types of ropes, gymnastic instruments, belly bands, strings, cloth, halters, etc., for the section of laces, embroideries, haberdasheries (silk threads and wooden materials, cocoons, white and yellow, school workshops); baskets, bottles, canteens, furniture, osier and mace reed doormats, hats; 1 bronze medal obtained for the ceramic objects; 3 mentions for: the seeds collection; cheap and luxury furniture (different pieces of furniture and works used in a village house); embroideries, made on silk and regular cloth, and the national industry.

The success that this institution enjoyed in Paris is proven by the prizes mentioned above and by the appreciations published in the French press. For example, "Le Temps"

remarked the exemplar exploitations from the Crown Domain and the effective realization from the cereals domain (Vlad, 2007: 174). Among the numerous visitors of the Romanians pavilions was also the president of France, on June 15th. Referring to this moment, Dimitrie C. Ollănescu, rememberd that, when the president had came in the Crown Domain compartment "he had stopped for a long time in front of the beautiful cereal samples, pieces of wood and forestry exploitation installations, woven materials and he had been indeed impressed by the beauty of the wild boar and birds" (Vlad, 2007: 174).

A new international exhibition on which the Crown Domain participated is that from Lemberg, Ukraine, in 1925, on which there had been presented the same types and quantities pf products as those from the exhibition organized at Chişinău, as we shown before, in the same year (Mitu, 2010b: 221). After the commercial convention with Poland, the leading circles organized, in 1929, at Warsaw, a wine, grapes and other fresh or conserved fruits exhibition. Accepting the invitation, was expected to send until November 10th 1929, ¾ wine bottles with the next sorts: 5 bottles of the wine Negru de masă (dark red table wine) from 1927 and 1928, 5 bottles of Crâmpoşie wine from 1928 kept in barrels, 2 bottles of Alb Superior (superior white) wine from each year 1929, 1921, 1922 and 1923, 2 bottles of Riesling wine (both 1921 and 1923), 2 bottles of Frontignon (1921-1924), 2 bottles of Fetească (1921-1923), 2 bottles of Tămâios (1919 and 1923), 2 bottles of Bordeaux (1920-1923), 2 bottles of Pinot Noir (1920-1923), 2 bottles of dark and red wine (1922 and 1924) bottled; but also wine kept in barrels, the next quantities: 2 bottles of Alb superior (superior white) (1924-1926), 2 bottles of Riesling (1924-1926), 2 bottles of Fetească (1924-1926), 2 bottles of Tămâios wine (1925 and 1926), 2 bottles of Bordeaux (1924-1926), 2 bottles of Pinot (1924-1926). Along the wine there had been exhibited 2 bottles of brandy, made in 1922 and 1929 at Sadova Domain (Mitu, 2010b: 221).

In 1935, with the celebration of the Belgian state of 100 years from the inauguration of the first continental railway and 50 years from the creation of the independent state of Congo, took place the universal exhibition from Brussels. Placed on a surface of 125 hectares on the Osseghem plateau, near Laeken Royal Park, was inaugurated in the presence of King Leopold III, on April 27th 1935 (Vlad, 2001: 74). The exhibition lasted 194 days, housing the stands of 8.930 exhitiors from all continents countries. The exposed objects and products were grouped in 9 section and 167 classes (Vlad, 2001: 78). Receiving the invitation on July 1934, the government Gheorghe Tătărescu officially accepted Romania's participation to the Brussels exhibition. The presence at this exhibition was under the patronage of King Carol II, initiative due to the Committee leaded by Ion Manolescu Strunga, the Minister of Industry and Commerce commissary of the exhibition was appointed Cezar Popescu. The Romanian pavilion, with a surface of 1.000 m^2, situated at the junction of the streets Avenue de Bouchout and Avenue du Gros-Tileuil, built in a sober style that merged perfectly the elements of the classic architecture with the modern one, was the work of the architect Constantin Moşinschi. Three from the four facades of our pavilion were decorated with incised drawings, representing scenes from the every day life of the peasants and in the centre of the main façade was situated the equestrian statue of Carol II (Vlad, 2001: 85-86).

In the pavilion there had been organized sections for agriculture, transportations, textile products and ancient, religious and rural art. We find the Crown Domain at the agrarian section, exposing different samples, along with the Institute of agronomic researches, The State Farm Zorleni, Jean Cămărăşescu, The Viticulture School fron

Chişinău etc (Vlad, 2001: 93). The exhibition was marked by the artistic dimension. The awarding ceremony of the participants to the exhibition, organized on October 15th 1935, offered to Romania 97 rewards, placing it on 15th place (Vlad, 2007: 101). The last participation of The Crown Domain, at some universal exhibitions, was that from New York in 1939. It presence was facilitated by the election of the first president of the American confederate nations. It was called one of the most grandiose exhibitions in the entire history, having 44 million visitors. It took place at Flushing Meadows – Corona Park, in two seasons, 1939-1940, and named "Building the World of Tomorrow" (Vlad, 2006: 104).

Romania presented two very beautiful and imposing edifices – The Romanian Pavilion and The Romanian House, both plated with marble, very luxuriant, presenting architecture that maintained the characteristic of the Romanian style. The interiors wew decorated with statues made by Milița Pătrașcu, Ion Jalea, C. Medrea, frescoes, mosaics, bas-reliefs, friezes. The Pavilion was the creation of the architect G. M. Cantacuzino and the Romanian House, the work of the architect Doicescu (Roceric, Oprescu, 1939:323).

Among the exhibiters from New York also the Administrator of the Segarcea Crown Domain, with a new presentation of wines. The range of wine exposed here were the noble ones internationally recognized: dark red wine (Bordeaux) from 1929, 1930 and 1934; Pelin wine from 1934; Rieling wine from 1930, 1934 and 1937; Alb Superior from 1936, Fetească from 1934 and 1936, Frontignon The total number of wine bottles that went to America was 15.240. Besides wine, there were sent 400 bottles of brandy and 200 bottles of sterilized must of grapes. These drinks could be tasted and bought from the restaurant-pavilion (Mitu, 2010b: 223).

All these exhibitions offered the opportunity for our products, obtained in the thirteen administrations, to be recognized and appreciated. Thanks to this possibility of promotion, many requests had been registered for our wines and wood products, the proof being the contracts concluded with different foreign societes.

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ORIGINAL PAPER

The constitutional philosophy and practice in the Romanian Principalities in 1765-1832

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Abstract
The Romanian modern institutional organisation was part of a general continental process, which included in its becoming the patterns of the Latin states. The history of the Romanian constitutionalism had been preceded by a transition era that had created the necessary background for the transition from the establishment of the Old Regime towards the Organic Regulations – the first fundamental organisational laws of the Romanian Principalities. The period that followed after 1750, when the reforms of Constantin Mavrocordat and Alexandru Ipsilanti appeared, announcing an enlightened absolutist monarchy, was of a great importance in the ulterior constitutional development of the Romanian Principalities. During this period, which was that of memoires and bills, there appeared the elements of a certain synchronisation with the constitutional tradition, founded on the documents elaborated in the age of the Revolution from 1789.

Keywords: *Romanian Principalities, 1765-1832, juridical documents, constitutional thinking, modernisation*

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From the perspective of law modernisation, the age after the second half of the 18th century, in which there are identified the reforms of Constantin Mavrocordat or Ipsilanti, announcing an enlightened absolutist monarchy, had a great significance in the later constitutional development of the Romanian Principalities. "In this era of intellectual mutations in the Romanian territory" (Stanomir, 2004: 19), there were being assimilated, in a personal note, and adapted to the new realities, certain elements that belonged to the occidental space (Cernovodeanu and Edroiu, 2002: 436).

As a consequence of the transformations emerged in the administrative organisation of the Romanian Principalities, starting with the ruling of the Mavrocordat line and until Alexandru Şuţu and Grigore Callimachi, there could be noticed the need to adapt the juridical norms to the new requests of those times (Cernovodeanu and Edroiu, 2002: 436). Although they were continually applied during the ruling of Nicolae Mavrocordat (Cronţ, 1973: 332-347), the old system of laws was not corresponding anymore to the modernising tendencies of the Romanian society (Cernovodeanu and Edroiu, 2002: 436). Therefore, starting with the second half of the 18th century, the law specialists and the great scholars, combined their efforts and erudition to elaborate new normative documents. The activity, and the efforts involved by the autochthonous writers of the code of laws, were component parts in the process for the modification of the landmarks system, which characterised the Romanian society, starting with 1780 (Stanomir, 2005: 15).

The removing of old customs, the necessity of the written laws, the rationalisation of the law system, are just few of the provisions that appeared in the normative documents from this period (Stanomir, 2005: 15). The first synthesising code, whose civil, penal and juridical organisation provisions were put into force in Wallachia, was The Register of Laws from 1780. Although the collaborators for this juridical paper are still unknown, it was assumed that Ienăchiţă Văcărescu (Cernovodeanu, Edroiu, 2002: 820), "a trustworthy and devoted servant of the Prince", brought a major contribution to its final draft. The dispositions of this register were applied until the entering into force of *Caragea's Law*, when they were tacitly abrogated. Nonetheless, certain provisions referring to boundaries, succession, dowry, were still applied after this date too, until the 1st of December, 1865, when *The Civil Code* entered into force. The importance of the text from 1780 is obvious, as much as, in some of its stipulations, it is limited the arbitrary of "the executive" through its censoring by an early-staged judicial power. Moreover, there can be mentioned the framing of an incipient legal background for the protection of the individual against the interference of the state (Rădulescu, 1957). New initiative was imputable to the European Enlightenment influence (Stanomir, 2004: 29).

Caragea's Law elaborated in 1818, under the Prince's supervision, by the "educated and experienced boyars", was evaluated by a Commission that gathered the high boyars and, in the end, it was legalised by the Prince through a charter (Ceterchi, 1984: 75). The dispositions of this law entered into force in 1819, and were applied by the 1st of December, 1865. Although they had as a foundation the stipulations of *Napoleon's Civil Code* from 1804, which were referring to successions and contracts, the main inspirational document was constituted of the *local custom* and the *Register of Laws*. The document had 630 paragraphs, with four general and special codes: civil, penal, civil procedure and penal procedure (Rădulescu, 1955). The dispositions that referred to the commercial law were replaced by the provisions of the *Organic Regulation*, and those for penal law and penal procedure were abrogated in 1841 and 1851.

An incontestable proof, for the debut of the modern structures of the Romania law, is constituted of the bills that were not sanctioned by the Prince through a charter, bills elaborated at the Prince's initiative. One of those documents is the Laws Manual, drafted by Mihail Fotino, known for its three variants, from 1765, 1766 and 1777 (Cernovodeanu and Edroiu, 2002: 820). Based on *the Emperor's Laws*, this juridical synthesis was addressed to the judges, who had to apply the law "without passion", bias and "hiding of rightness". Among the principles of the natural law, inserted in this bill, we mention: the sanctioning, by the Prince, of illegality and injustice; the creation of a legislative system based on the observing of law and equity; the instituting of the arbitrary justice, considered common court; the establishing of the taxes according to the wealth of the contributors. The work of the jurist Dimitrie Panaiotachi-Catargi, *The judicial art from 1793*, dedicated to Prince Alexandru Moruzi, was a working instrument for both the judges and the parties involved in a law suit (Ceterchi, 1984: 79). There were stipulated norms of procedure, inspired from the French encyclopedian people (Cronţ, 1973: 345) and it was also stipulated the supremacy of law and the need for the syllogistic arguments, according to the paradigms asserted by Aristotle. In the Moldavian space, the oldest attempt of law code belonged to Alexandru Mavrocordat Firaris, who elaborated, in 1785 The Ecumenical Charter. Approaching issues from the successional law, the document tried to define the property, influenced by the theories of the juridical modernity (Ceterchi, 1984: 79-80), and circulated until the age of Alexandru Ioan Cuza. Andronache Donici elaborated the manual: *Comprehensive succinct work from the Emperor's code of laws for the use of those who wish to study, with notes about the books, title and author*, which appeared in 1813. The text of the work, revised in 1814 and accompanied by a Preface, is an original paper approaching the juridical theory and the civil law (Rădulescu, 1959). As regarding the civil procedure and the judicial organisation, there were regulated the procedures for the appointing of the judges and mediators, the judicial behaviour, along with the claimant's and defendant's positions.

Callimach's Code, also known as *The Civil Code of Scarlat Callimach*, or *The Civil Code of Moldova*, was elaborated in 1871, at the request of Prince Scarlat Callimachi. To its drafting participated: Christian Flechtenmacher, Andronache Donici, Anania Cuzanos and Veniamin Costachi. The methodology and the elaboration plan of this juridical work had as a model, The French Civil Code, from 1804, and The Austrian Civil Code, from 1811. Initially, it was drafted in Greek, in 1838, being translated into Romanian too. In this code of laws, there was stipulated that the customs followed due to "ignorance and mistake" were inapplicable, and it was also specified the interdiction to resort to a custom, instead of the written laws, this mentioning being acceptable only if the written disposition lacks details, or is a way to sanction the deviance from the good manners *(*Rădulescu, 1958). It can be also remarked a certain preoccupation for the protection of property, because it started to appear "the goods" concept, which the juridical discourse could not be imagined without (Stanomir, 2004: 36).

The reformation process, started by the Phanariot rulers, was sustained through the effort invested by the autochthonous elites, to modify both the international statute of the both Romanian Principalities, and the procedure of exercising the leadership positions (Stanomir, 2005: 15). The memoir and the reformation bills elaborated in the period after 1770 "fulfil the role of a constitutional and legal laboratory" (Stanomir, 2005: 15) inside which there had been stated, for the first time, the questions that were answered in the following period of time. Thus, these questions considered the next aspects: the procedure of power transmitting; the necessity for founding a General Assembly that would

participate to the leadership of the country and, in the same time, to represent the dwellers; the drafting of citizens' rights and freedoms; the difference between the elective national monarchy and the foreign Prince. The principles formulated and recorded in *The declaration of the rights of man and citizen from 1789*, by the ideologists of the French revolution, along with those stipulated in *The French Constitution from 1791*, represented legal models that influenced the form of government from the Romanian Principalities; the ways to accomplish the socio-economic transformations and the direction of evolution, for the two Romanian countries (Georgescu, 1970: X).

In 1772, on the occasion of the peace treaties between Russians and Turks, which took place at Focşani, with the mediation of the Habsburg Empire and Prussia, a delegation of boyars from Muntenia addressed, on the 24th of July/4th of August, 1772, to the representatives of the Christian Powers through identic memoirs (Cernovodeanu and Edroiu, 2002: 517). Thus, in the memoir addressed to the delegate of the Vienna Court, it was mentioned the Union and the independence of the Romanian Countries under the leadership of a local Prince, through the compensation towards the Turks and the functionality of the new state as a buffer zone between the Porte and its adversaries, under the collective protection of Russia, Habsburg Empire and Prussia. In the same year, Ienăchiţă Văcărescu, in his *memoir*, addressed to the great vizier Mehmed pasha Muhsinzade, requested: the observing of the old treaties' dispositions; the ceasing of the Phanariot abuses and the returning to the local ruling (Georgescu, 1970: 38-41). Between 1802 and 1821, it was elaborated a significant number of memoirs for the Imperial Courts and Constantinople, Paris and Sankt-Petersburg, in which there was requested the adopting of fundamental documents, named "establishments", "code of laws" or "regulations", demonstrating that the idea of Constitution, in the meaning of fundamental law of a country, had started to find more and more adepts among the local political leaders (Carp, Stanomir and Vlad, 2002: 16-17). Among these, we mention: the memoir called "aristo-democratic republican ruling", elaborated by Chancellor Dimitrie Sturdza, and addressed to Napoleon Bonaparte in 1807 (Georgescu, 1972: 108), the texts of Iordache Rosetti-Rosnovanu from 1818 in Moldova (Carp, Stanomir and Vlad, 2002: 17), and those of Barbu Văcărescu from Wallachia, from the 18th of February/1st of March, 1819.

A special juridical importance had the bill called *Plan or form of aristo-democratic republican ruling*. Initially attributed by Emil Vârtosu to the Moldavian Chancellor Dimitrie Sturdza and dated in 1802 (Ilin-Grozoiu, 2009: 36-39), the document seems to have an earlier history. The leading of the state was not attributed to the Prince, but, due to the separation of attributions, to some collegial bodies, named Divans: "the high", "the legal" and "the common" ones. Vlad Georgescu was noticing the eclectic character of the Legal Divan and the affinity with the system of Estate Assemblies (Georgescu, 1972: 148).

As it can be noticed, regarding the bills, the boyars' memoirs, and the codes, that an effort of modernisation is permanently present, due to the penetration of ideas and conceptions transmitted from the European Occident. They innovate, as well, through the attempt to project a background for people's rights and freedoms. From all these rights, a special importance is gained by the right to the free circulation, which is argued as a necessity. On addressing the first constitutional formulations, in the context of Tudor Vladimirescu's action, there can be noticed the early sprouts of a democratic touch, because we can really talk about the presence of a democratic spirit in the Romanian constitutional documents, only few decades after, as a sequence of other contextual evolutions. In the proclamations drafted by Tudor Vladimirescu, it can be remarked the

existence of an idea, related to the popular consent as regarding the governing, the tendency to offer protection to the private property, from which it emerged the legislative dimension of his action (Cornea, 1972: 42-46).

An establishment for the separation of powers is noticeable, if we consider the fact that, in the constitutional bill *The Requests of the Romanian People*, the legislative power belonged to the People's Assembly, which was made of members who had adhered to the programme of the revolution; the executive power was exercised by the Prince, who, "along with the other leaders, had to take good care of the internal and external welfare". The Prince had to observe provisions from *The Requests of the Romanian People*, a document legislated through "a charter and the great oath of the people", recognised by the sultan, guaranteed by Russian and Austria; the judicial power was exercised by the great and small officials, who were promoted according to their competence. Among the measures referring to justice, we should regard as being important the ones that considered the reduction of the judicial fees and the number of judicial servants. Moreover, it was stipulated the abrogation of *Cragea's Law*, because it had not been elaborated "according to all people's will".

As regarding the administrative area, it was mentioned that the high offices, "both the political and the clerical ones, from the highest to the smallest, to not appoint their leaders through payment" (Berindei, 1991: 224), because it was considered that this buying of positions had determined stealing and abuse. The police captains had to make the commitment that they would not "plunder". The magistrate office, the hetman's office and the sword-bearer's office were dissolved; the number of the judicial servants was reduced, along with their salaries, which became "lighter". A limitation of the boyars' power was also that the ranks of boyars, to no longer be grated according to the money paid, but "according to their service" (Cernovodeanu, Edroiu, 2002: 35).

The political turmoil from the two Principalities, between 1821 and 1828, were evidenced by numerous memoirs, reformation or constitutional bills, sent to Russian and the Sublime Porte, along with pamphlets, where there were discussed, both the juridical statute of the Principalities, and the issues related to the internal organisation (Cernovodeanu, Edroiu, 2002: 72). Among these memoirs and reformation bills, regarded as an expression of the different European concepts, but also as autochthonous options for the political-institutional organisation, we are going to stop next on the Constitution bill that the representatives of the small boyars from Moldova, showed to the Prince Ioniţă Sandu Sturdza, in the fall of 1822. Its authors desired that this bill to be the constitutional background of Moldova, until the further elaboration of a new Constitution or an "exquisitely drafted code of laws" (Şotropa, 1976: 65). This reforming bill, known as *The most significant requests of the people from Moldova* (Cîncea, Iosa, Apostol, 1983: 17), and was containing principles, also stipulated in *The Declaration of the Man and Citizen Rights from 1789*, along with the memoir addressed for the delegation of the boyars from Moldova to the Ottoman Porte, in March 1822. Nevertheless, they were adapted to the situation from Moldova, generating an original content (Şotropa, 1976: 68). The theory of the natural rights, the separation of power in a state, the limitation of the monarch's power, the modernisation of the main administrative institutions, along with a written Constitution ("the boundaries of power"), are just few of the stipulations found in that document (Stanomir, 2004: 82). Through the announced concepts, the Carbonari were establishing a "liberal party" (Stan, Iosa, 1996: 33), which cleared the way for the democracy of the Romanian society.

As regarding the organisation of the state powers, the Carbonari took into account only partially the principle of the powers separation. The legislative power was exercised by the People's council, which was considered the Parliament of the country, and by the Prince (art.19). People's Council played the part of constituent power and included: the country's metropolitan, two bishops, the members of the Divans and the judicial departments, a boyar for each region, elected by the local boyars (art. 20). This Council had the following attributions: the drafting and the improvement of laws; the paying of the debts for the Porte; the founding of schools and public institutions; the entering into force of the laws (Iordache, 1996: 89). People's Council could meet without the request that its members to be summoned by the Prince. The decisions were taken on the basis of the absolute majority. All the members of the People's Council had to attend the meetings. The members, who, because of illness or other justified reasons, could not attend the debates, had to send someone to replace them. In case of divergence between the Council and the Prince, the last prevailed, because the Prince could reject only once a measure proposed by the Council, and if insisted, the Prince had to express his adhesion (Xenopol, 1898: 7).

The executive power belonged to the Prince. He enforced and executed the decisions of the People's Council, but did not have legal initiative, did not have the veto right and the right to dissolution. The Prince was the leader of the army, but he could not give orders to the gendarmes, but along with the People's Council; moreover, he could not appoint the boyars, in their ranks, by himself, and the state servants were appointed by the People's Council. The Prince enforced and executed the orders of the People's Council, which were advanced in a report, signed by all the members of the Assembly. He could send the report back, in a charter, in which he expressed his opinion. It was considered that the decisions, adopted by the People's Council and promulgated by the Prince, "express the will of the entire community". All "the people of the country" had to be subjected to these decisions, including the Deputies and the Prince (Xenopol, 1898: 7). The latter had to be a local personality, elected by the People's Assembly was constituted of the metropolitan, the bishops of the country and of "all the boyars, from the High Chancellor, to the smallest in rank" (art. 72). It was elected Prince only that who was "well-known for his good deeds, for his patriotism and for his respect for the suzerain power" (Xenopol, 1898: 221).

The form of government was represented by the constitutional monarchy. Therefore, the principle of powers separation was present, but it was requested the collaboration between the legislative and the executive power, and the reciprocal control. *The judicial power* was exercised by: the First Divan, the highest court, the Second Divan, the Department of foreign matters, and the Department of criminality. In each region, there was a court constituted of a judge and the sub-prefect of that region. The First Divan was made of: a High Chancellor; four Ministers of Justice; a Sword-bearer and a Ban. The Second Divan was made of: a boyar "without an important rank"; a high Cupbearer; an Equerry; a high Cavalry Commander and a High Steward. This Divan was similar to a Court of Appeal, which judged the civil and the commercial problems. The Department of Foreign Matters was made of: five boyars, "without an important rank" and the great Provost Marshal, who could attend the debates, having only a consultative vote, without signing the decisions (Xenopol, 1898: 171-174).

Unlike the other bills and memoirs, the Carbonari Constitution expressed, although feebly, the organisational principles and norms of the state, the reciprocal control and the collaboration between the state powers, proclaimed the autonomy of the state, the

individual freedom, the equality in front of the law, the freedom of education, work, commerce and industry, the freedom of thinking and press. Although it cannot be considered a veritable Constitution, from the juridical point of view, the bill belonging to the Carbonari party, from 1822, responded in the best way to the exigencies request by those times. As an argument, the dispositions of article 75, in which the Constitution was depicted as the fundamental text, to which the authority was related, and in which there are guaranteed the citizens's rights and freedoms. The first three laws, for the organisation of the Romanian Principalities that encompassed also dispositions from anterior bills, were the *Organic Regulations*. Having few differences in content, from one country to the other, and renouncing to many feudal institutions and customs, the *Organic Regulations* created a background for the modern state, adapted to reality of those times (Cernovodeanu, Edroiu, 2002: 86). These constitutional documents introduced elements that allowed the separation, even if incipient, of the executory and the creation of a controlling system of the decisions taken in court. The *Organic Regulations* stipulated that the Prince was elected by the People's Extraordinary Assembly, constituted, in Wallachia, of 190 members and, in Moldova, from 132 members (Negulescu, Alexianu, 1944: 1, 173). The necessary presence for the Prince to be elected was of 3/4 of the Assembly's members. The Prince was elected from the voting, if he had 2/3 of the votes, or a simple majority from the 10 favourable candidates, in case of the second ballot (Avram, 2007: 201). The election of the ruler, by the People's Extraordinary Assembly, had to be communicated to the Ottoman Porte, through a memoir, signed by all the deputies, "according to their ranks". The same deputies also signed "an official note addressed to the Petersburg court" (Negulescu, Alexianu, 1944: 179). Immediately after the fulfilling of this mission, the Assembly was dissolved. The Prince was elected on life, and he could be dismissed from his position by the suzerain and protecting courts, after an investigation. He could abdicate, under the request that the abdication to be acknowledged by the two Courts (Negulescu, Alexianu, 1944: 179). In case of ceasing or vacancy, the ruling power was exercised by the temporary leadership of the caimacams, in a number of three, elected among the leaders of high dignities: the president of the High Divan, the Minister of Affairs and the Minister of Justice, who were holding the positions at the moment of vacancy.

The candidates for the princely dignity had to observe few conditions: to be, at least, 40 years old and originate from a boyar's family (Negulescu, Alexianu, 1944: 5). After the appointment in the high position, the caimacams had to give account to him and to the People's Ordinary Assembly. The Prince had the right to legislative initiative. The Assembly had the right to approve the bill, to modify it, or to reject it. After it had been voted, the bill was sanctioned by the Prince. If he wanted to refuse the enforcement, the ruler could send the bill to the Assembly, "to be considered again". If we sanctioned it, he orders the entering into force, which was the equivalent of the promulgation. In Wallachia, the People's Ordinary Assembly was made of 42 members, and that of Moldova, from 35 members. The metropolitans and the bishops were righteous members in the two assemblies. The other deputies were elected among the boyars, and the electoral body was constituted only of boyars. The deputy electors of the counties were the boyars and the boyar's sons, of at least 25 years old, landlords of estates and with the domicile in that county. The President of the Assembly was the Metropolitan of the country. The chancellery of the Assembly was made of two secretaries and two deputy secretaries. It was stipulated that the ministers could not be members of the Assembly. Moreover, the deputies could be appointed in any other positions, without losing their mandate.

The Prince had the initiative of the laws and used to send the bills to the Assembly, through a princely decree, or princely order. The bills were voted as they were drafted, or with certain modifications. There was also the possibility that the Assembly to reject the bill. In order to become laws, the decisions of the Assembly had to be sanctioned by the prince, without motivating the gesture (Negulescu, Alexianu, 1944: 10, 182). The amendments for different articles had to be supported by at least 6 members of the Assembly (Negulescu, Alexianu, 1944:10, 182). The voting of the bills was made, considering the absolute majority (Şotropa, 1976: 89). The result of the voting was communicated to the ruler, through an address signed by all the deputies who had attended the meeting. No law could enter to force without the prince's sanctioning. The Assembly did not have the initiative of the laws. It could only express desiderate to the Prince. The decisions of the People's Assemblies were subordinated to the treaties and sultan's decrees, which were in force and to the observing "of suzerain and defending Courts' rights" (Negulescu and Alexianu, 1944: 11, 183). As a consequence, the People's Assemblies had a consultative role: they were debating, without deliberating, the sanctioning of the result of those debates of the People's Assembly being the Prince's prerogative. The legislative document was therefore depending, on his will and competence. Thus, the People's Assemblies did not have the ability to adopt a law; only the Prince had this right (Negulescu and Alexianu, 1944: 43-44).

The Assembly was elected on five years. The Prince could dissolve it, reporting to the two Courts the reasons for the dissolving, and asking their authorisation to re-elect a new Assembly. On the 1st of December of each year, the prince had to convoke the Assembly, the session taking place on two months, with the possibility to be prolonged (Oroveanu, 1992: 209). At the beginning of each session, there was cited the princely decree; then, it was appointed the Commission for the research of the elected deputies' ranks, it was established the number of meetings a week, there were elected the commissions: financial, administrative, clerical and judicial. Afterwards, the Assembly answered to the princely decree from the beginning. In order to validate the debates, it was necessary the presence of 2/3 of the members from the Assembly. The People's Ordinary Assembly was establishing the budget and was controlling the income and the expenses (Cernea, Molcuţ, 1993: 167), was sending the reports to the two Courts, in which there was depicted the situation from the country and the noticed discontentment, making proposals regarding the measures that had to be taken in certain fields: agriculture, industry, trade, the public order. The divergences between the Prince and the Assembly were solved by Turkey and Russia (Iorga, 1985: 580). The Prince, in his relations with the Assembly, had the possibility to resort, "in case of upbringing or riots and disorder", to the help of the two Powers *(*Negulescu, Alexianu, 1944: 11, 183).

Through the new organisation, we can meet, for the first time, the naming of *ministers* (Avram, 2007: 202). In the system of the Regulations, the prince appointed and revoked his collaborators, without taking into consideration other aspects, than those he thought necessary. The ministers could not have a policy different from that pf the Prince, who was establishing the directives and the necessary course. Because they were part of the Assembly, he could not express a vote of censure; yet, he could, due to his decrees, to "demonstrate" the inappropriate administration, the great unjust gestures made by certain ministers. The Assembly had the legal possibility to communicate these "demonstrations" to the Two Courts too, which could order an inquiry, whose result could be even the removal of the ruler, as it happened in 1841 with prince Alexandru Ghica (Avram, 2007: 203). For the leadership of the country, the ruler enjoyed the help of the ministers that he

could appoint and remove personally. They agreed all the measures proposed by the Prince.

The Ordinary Administrative Council was constituted of the ministers: of internal affairs, or finance and the secretariat of the state, being under the presidency of the prince or high Minister of Justice. It had the role to counsel the prince and to prepare the documents of the People's Assembly works. It was meeting twice a week for the elaboration of bills. After they were proved by the Prince, these bills were subjected to the deliberation of the People's Ordinary Assemblies. In order to debate problems of a certain importance, the ruler convoked the Extraordinary Administrative Council, also called "the great council of the ministers" (Avram, 2007: 203). This Council, created only in Muntenia, was made of the members of the Ordinary Administrative Council and the leaders of the departments: of militia, of faith and of justice.

According to the norms established by the Organic Regulations, there were founded (Ceterchi, 1984: 127): *the department of internal affairs*– it had in its subordination: the internal matters, the education, the health, the public works and the social instance; *the department of finances* – which supervised the income and expenses, trade and industry. At the end of each semester, it was reported to the treasury, the condition of the income and expenses, on which basis, the treasurer handed the lord a general situation, verified by 6 boyars, appointed by the Assembly; they drafted an annual report, presented by the lord to the People's Assembly; *the department of state secretariat*, led by the high Seneschal. He was the head of the princely chancellery and, with his help, there was presented the ruler's ordinances, to the certain departments of the People's Assembly. Under his leadership, there was the country diplomat for the relation with the Porte and the Community control; *the high chancellery of justice*, led by the high chancellor of justice. He presided the Supreme Court, having the duty to supervise that the verdicts of the judicial courts were according to the laws and regulations in force. *The high chancellery of faith and clerical misunderstandings*, was a department founded in Muntenia, through which, it was accelerated the interference of the state into the clerical matters. The judicial courts were reorganised according to modern principles: the separation of the juridical activity from the administrative one; the recognition of the definitive decision made by the court; the hierarchic organisation of the judicial courts. Although the dispositions referring to the institution of the ministerial responsibility were not clear and complete, the separation of powers brought forward the desire to limit the princely power (Stanomir, 2004: 19).

The Organic Regulations created, in Wallachia, the High Divan, and in Moldova, the Princely Divan, as the third and the highest instance, competent for judging the civil, commercial or penal matters. There were established two categories of judicial courts: ordinary and extraordinary. In the first category, there were the civil courts, and in the second, the military and clerical courts. The civil courts were ordinary and special. As regarding the judicial procedure, the Organic Regulations brought the following innovations (Avram, 2007: 204): the Prince had only the right to enforce the definitive decisions; the insertion of principle of final decision; as a penal proof, the torture was eliminated. As a rule, the Prince did not have the right to judge, but only to enforce the definitive judicial decisions. Nevertheless, in Moldova, he presided the meetings of the Princely Divan, which demonstrates that the principle of powers separation was just a formal one (Cernea and Molcuț, 1993: 167). Thus, according to art. 281, from the Organic Regulation of Moldova, the right to judge was attributed to the judges who were judging in the name of the Prince. The people who administrated the justice, in the name of the

Prince, were appointed, in the High Divan and the other courts, for three years. The Prince, in agreement with the People's Assembly, ten years after the entering into force of the Organic Regualtions, could give irremovability to the judges who were already holding a position. The judges were appointed by the Prince, for a period of three years, with the possibility to prolong their mandate, with other three years.

For the first time, it also appears the institution of the *prosecutor*, with "responsibility for the civil and penal matters", the attributions of both the lawyer and the prosecutor being different from those of the bailiff, the steward or the high officials until then (Avram, Bărbieru, Radu, 2014: 122). The administrative-territorial organisation remained the same, with the distinction that the number of counties and districts was reduced. There appeared new elements about the names and the duties of the counties and lands. Thus, in Wallachia, they were called county chiefs, and in Moldova, sub-prefects. They were appointed for three years by the Prince, at the proposal of the Administrative Council (Cernea, Molcuț, 1993: 169). According to the provisions of the Organic Regulations, they had administrative attributions, but they were still keeping certain judicial prerogatives.

On addressing the organisation of the other wards, districts and arrondissements, there were stipulated some modifications. Thus, in Wallachia, the wards and the districts were led by deputies, and the arrondissements, in Moldova, by supervisors. They were elected by the representatives of the villages, among the landlords of immobile goods, and were enforced by the prince. Their main attributions were to: cease the abuses, maintain the order and guarantee the health. Their activity was analysed by the heads of the counties and lands (Ceterchi, 1984: 152). The towns that were no longer on feudal domains received juridical personality and the right to be administrated by the Council elected by the dwellers. The town Council was led by a president, appointed by the Prince, who had both competence in the administration of income and expenses, and the organisation of the commercial activity. Extremely important, there were the dispositions that were referring to the planning of the Union for the two Romanian Principalities. These dispositions provisioned: the forming a unique market and economic activity identity; the freedom of trade, assured by the equality in treatment of the traders from the two Principalities and the elimination of the custom duties; the possibility of the citizens to own mobile and immobile properties, in any of the two Romanian Principalities; the citizens could travel without restraints from one country to another. Moreover, there were stipulated measures that were referring to the unification of the penal legislation, the concluding of agreements for the extradition of criminals, fugitives and debtors (Ceterchi, 1984: 128).

The Organic Regulations from Wallachia and Moldova were a characteristic model of legislative identity, because they established, in the two Romanian countries, the same organisation of the state. Furthermore, they constituted a transition stage, from feudalism to capitalism, foreseeing the organisation of the Romanian state. The Organic Regulations organised, on a modern basis, the public services, and created new ones, established their composition and competence, formed a group of permanent public servants, founded the national militia, modernised the financial system, abolished the buying of the positions, created a Legislative Assembly and stipulated the election of the Prince for life. The Organic Regulations did not entirely change the already existing political system. They were a juridical instrument, through which Russia maintained its political domination in the Romanian Principalities. Although the Ottoman domination

was removed, it was introduced the Russian one, much more demanding, for the Romanian Principalities.

The Romanian modern organisation of the institutions was framed into a continental general process, which used as a model of construction, the models of the Latin states. If the modern institutions of the Romanian state resulted from a general evolutional process, registered in the middle of the 19th century in Europe, this process was also founded on the internal background.

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ORIGINAL PAPER

Constituent power – the essence of democracy

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Abstract
The concept of constituent power is a purely democratic one, and democracy (in literal translation "leadership by the people", from the Greek word "demokratia", from demos, "people" + kratos, "power") is a political regime which is based on the will of the people. In a democracy, constituent power belongs to the people, this freedom initially belonged to the individuals who, accepting the social pact, gave their share of sovereignty to the community and so they received a freedom guaranteed and protected by the law. The People as constituent power has the will to organize themselves, to establish a legal system and a form of government, only in this form a Government is legitimate. However we shall consider one of the problems debated in this matter: "The people can't decide until someone decides who the people are", so we face a constitutional dilemma, democracy implies a certain group of members who are actively involved in the democratic process, to express their opinion, to participate in the democratic process of decision-making. However, for the initial founding decision of the demos, its boundaries are not yet established and it is therefore unclear who should take part in the decision-making (Jennings, 1956: 56). This means that setting a government and setting limits to their governance takes place outside the democratic process – this is the dilemma of the demos' limits in democracy that has been widely discussed in the literature. This study aims to clarify these conceptual and normative dimensions. Essentially, the question guiding this paper is: what is the link between democracy and constituent power and how can this influence the legitimacy? This means addressing the demos not only as the basis, but also the object of legitimacy (Scherz, 2013: 1).

Keywords: *constituent power, legitimacy, legality, Constituent Assembly, democracy*

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Guidelines regarding democracy and constituent power

The theory of constituent power began to assume its contemporary features in revolutionary America, and it was here that constituent power first emphatically asserted itself as the essential prerequisite for governmental legitimacy (Thornhill, 2012: 469). The conception of the state as constitutionally willed by the people, helped to consolidate the political system in different countries, starting with America, and following with states form Europe, in different ways, being the starting point in early forms of democracy.
Both the early and the modern doctrine tried to answer questions regarding the legitimacy of power. The first theories on this subject were those of the social contract. But social contract theory cannot answer all these questions, and this is where modern doctrine intervenes. The classical theories of the eighteenth century (mainly represented by Sieye (Sieyes, 1994) and the The Federalist Papers (no. 38, no. 40 and no. 57)) presented the constituent power as a power able to create a constitution, and "the state was considered a conscious figment of the people" (Schochet, Chapman, 1979: 3). The Constitution contains the most important legal norms, the rule of organizing and structuring the entire legal and political system. But constituent power is more than writing and adopting a constitution (Dyzenhaus, 2012: 229-260); is, rather, a power that establishes a regime by creating institutions and rights for its citizens and by establishing relationships between members (fundamental rights) and certain obligations for these obligations imposed by compliance. Throughout this study we consider the analysis of this concept both from a legal perspective and from the perspective of sociological, psychological and political doctrine, as a constitution illustrates not only how to "be" and "to exist" of a people, but also the amount of social-historical traditions and experiences through which it has passed. "Written Constitutions come from a supreme power called constituent power, which in turn determines the existence and the constituted powers action. (...) It's called the *original constituent power*, the power to adopt the constitution of a state. It is the first constitution of a State or other new constitution" (Ionescu, 2008: 187). Based on this statement of professor Cristian Ionescu, we can extract the first attributes of constituent power: the power to generate a new constitution, a power outside the legal system because it comes from a supreme will, and a first distinction is made between two types of constituent power: the original and derived one.

The idea of the constituent power is used for the first time by Sieyes, he states that the powers created by the Constitution are multiple and they fulfill a particular function, but within the limits conferred on them by the fundamental law, drafted by the will of the constituent power (Neither aspect of the constitution is the creation of the constituted power, but of the constituent power. No type of delegated power can in any way alter the conditions of its delegation. In this sense, and in this sense alone, are constitutional laws fundamental. Those which establish the legislative body are founded by the national will before any constitution has been established; they form the first stage of the constitution) (Sieyes, 1994: 22). However they have a common element, they represent the general will of the people, the nation. As stated Sieyes, a constitution requires, above all, a constituent power. Moreover, Sieyes emphasizes the distinction between constituent power and constituted power, stating that the Fundamental Law, the constitution, is not merely the work of the constituted powers, but the constituent power. By making an opposite presentation to these terms, Sieyes considers that constituent

power is the power to make the constitution and the constituted powers are powers established in the constitutional provisions.

Sieyes's whole conceptualization is based on natural law doctrine and the contractual theories are the germs that created this essential concept in constitutional law. We cannot speak of conceptualizing the term of constituent power in Jean Jacques Rousseau, Thomas Hobbes and John Locke work, because their theories on the social contract, do not know the distinction between ordinary legislative power and constituent legislative power that would be given to a Constituent Assembly. In Rousseau's conception there is no higher power that is above the legislative power and that the people by agreement shall establish rules of their social life (Gözler, 1992: 7).

Although Sieyes was the first to ground in the European zone the term *constituent power*, a year earlier, in 1787, in the United States this concept already had been found in the Constitution adopted following the Philadelphia Convention (Loughlin, 2013: 2). Following the Federalists' essays, which were based on contractual theories and on the design of the separation of the three powers made by Montesquieu, the US already had a constitution, extremely modern and democratic, where the will of the people at that time was to impose a new form of government. In The Federalist no. 40, James Madison was condoning a higher power that can lay down, the power that "transcendent and precious right of the people to abolish or alter their government as to them shall seem most likely to affect their safety and happiness" (Madison, 1783: no 38) (James Madison in The Federalist no 38 states: "the improvement made by America on the ancient mode of preparing and establishing regular plans of government" was "to bring about a revolution by the intervention of a deliberative body of citizens" rather than to rely on mythical lawgivers)".

Although the notion of constituent power seems simple, we will see as below, that it is a complex notion that involves a careful analysis of the evolution of the concept and various facets that it can have, especially in regard with democracy. Automatically, the concept of constituent power raises the question of power legitimacy, and this highlights the different understandings and views that have emerged over time.

As Arend Lijphart states, democracy is a controversial concept, which has been subject of numerous studies from different perspectives; however the criteria for establishing a democratic regime, promoted by Robert A. Dhal remains constant in the doctrinal analyses, including in Lijphart studies (Lijphart, 2008: 234). These criteria are: *universal suffrage, institutional guarantees that the elections are free and fair, freedom of speech, freedom to form and to join certain organizations, and also alternative sources of information*.

But what is the relationship between these two highly controversial concepts: constituent power and democracy? Böckenförde asserts that the concept of constituent power is a democratic and revolutionary one precisely because of its origins (Böckenförde, 1991: 11-12), basically the link between these concepts lies in the problem of legitimation. In a democratic regime, the fundamental law's legitimation and the legitimation of the constituted powers depends on the extent of the citizens' participation in the procedure of creating a Constitution. Freedom of expression and collective political will represent the basis of the constitutional theories; the constituent will is a fundamental democratic principle according to which the people shall establish their own form of Government that will represent their interests and provide laws that are meant to confer them the comfort and freedom that they wanted when they agreed on the social pact (Kalyvas, 2005: 237-238).

The democratic regime gives the concept of constituent power a political and social dimension in assessing the legitimacy of the fundamental act, its justice or injustice, basically, the holder of the constituent power, the people, becomes subject in the analysis thorough which democracy is valued (Scherz, 2013). As Andreas Kalyvas states, the mere fact that a group of individuals was able to create a law which it is considered essential, it doesn't mean that we face a democratic system, because it doesn't represent the collective will of the individuals, therefore the law is not legitimate, because it doesn't illustrate the will of the majority (Kalyvas, 2005: 239).

But what are the conditions which must be fulfilled before a constitutional regime, a newly created one, to enjoy democratic legitimacy? And how are these "limitations" reflected in the concept of constituent power (Colon-Rios, 2010: 199-245)? (In the opinion of this author, opinion that we share, not all constitutional regimes were created as a result of a democratic constituent act, some states which currently enjoy a democratic system were created as a result of a decision of a Constituent Assembly, composed of representatives of the State, without the participation of the people, this is the case of the Canadian Constitution of 1982, which is now a prosperous and democratic country which by decision of State officials was granted a Constitution and the people were not at all involved in this process). First of all, to be able to try to formulate some opinions in regard to these questions, we must establish that, if so far we had in mind the concept of democracy from the social-philosophical perspective, when we refer to the democratic legitimacy we will take into account the legal and procedural perspective that is involved in this process.

The question of democratic legitimacy has concerned Schmitt, and, in his studies, he states: "the logically consistent democratic theory knows no legitimate constitution other than a constitution based on the people's constituent power" (Schmitt, 1928: 143). Schmitt's conception, while resenting on the constituent power theory, has some problematic aspects. Schmitt considers that the consent of the electorate, as expressed in the participation in regular elections, is evidence that the constitution is based on the people's constituent power: "a conclusive action is discernible in the mere participation in the public life a constitution provides, for example, an action through which the people's constitution-making will expresses itself clearly enough. That is valid for the participation in the elections, which brings with it a certain political condition" (Schmitt, 1928: 139). On the other hand, the mere consent in the participation of elections is not enough, we consider that constituent power should be an episode of heightened popular participation, otherwise it would be considered legitimate a constitution imposed by an external agent according as long as a relevant group of humans accept it (Colon-Rios, 2010: 215). This is why we consider to be of utmost importance to try to delimitate the demos, as an important factor in the decision-making process.

Conceptual and normative dimensions of *the demos* and *the people*

The demos. Some considerations

From an empirical point of view, the conceptual dimension that the term *demos* represents, is loosely shaped, but has a vital importance in the determination of the legitimacy of power and the individuals over which the political power is exercised. A. Scherz (2013) identifies two aspects for which the demos legitimacy is relevant from the standpoint of democracy: (*i*) if the legitimacy of the demos is questioned, then the democratic process of decision making is affected, and there is a confusion regarding

decision taking factors; (*ii*) the legitimacy of the demos affects the right to exclude certain individuals, so if the demos composition is arbitrary, their right to decide on its own members is not valid. This issue of legitimacy, has both a sociological and legal point of view. In legal terms when we are talking about legitimacy we refer to electoral rights, the person's ability exercise its rights, to restrict the right to vote, and others, all having relevant implications on the process in which the people, the *demos* – in the conception of the Scherz, is involved, but also on how democracy is understood.

To outline the size of the demos legitimacy we have in mind the following principles on which we can assess its composition: (*i*) the principle of those who are directly affected (all affected interests), (*ii*) the principle of all those subject to, and to those affected indirectly (all subjected, all coerced and interlinked interests), (*iii*) voluntary association (voluntary association), (*iv*) the mixed demos (unbounded demos or the all affected principle as a critical standard) (Scherz, 2013: 5-8).

Generally speaking, the demos can be defined as the political subject of a society, constituted by its members, who participate or have the right to participate in political decision-making. In this sense, the demos is defined as the individuals having participation rights. The definition of the demos through rights of political participation leads primarily to a descriptive understanding of the concept. Such an understanding would designate a group of individuals who have decision-making rights. Besides these descriptive elements, the demos also has a normative aspect. For example, if the majority of the population who can legally exercise its rights has no opportunity to participate in political decision-making and the deciding group is a small elite, we would not consider this elite the demos, and we would still refer to the citizens as the basis of legitimation. In other words, there is a descriptive understanding of the demos which answers only the question of who actually has participatory rights in a society, and a normative understanding of the demos which justifies or questions the distribution of political rights. This normative aspect of the demos is specifically relevant to democracy. Democracy always requires a subject, a body of people in its process of collective equal decision-making (Scherz, 2013: 8).

Constituent power is in direct link with a self-determining demos, a coherent group of individuals that are united by their will and solidarity. In this sense, we may say that the people are the bearer of the constituent power, that they ought to be sovereign and that in the exercise of their sovereignty they should be allowed to have any constitution they want (Colon-Rios, 2010: 209), this is, Preuss already said, "constituent power is the power of a collective body, which by the very act of constitution giving, exercises its right to self-rule" (Preuss, 1993: 647). This means that constituent power is by definition a democratic power, its absolute and unconstrained nature means that it can put at risk the democratic content of the constitutional regime. However, despite its unlimited nature, constituent power comes accompanied by an important procedural limitation: its exercise must include in the process of making a constitution those that will become subject of it, therefore the connection between constituent power and democracy is obvious: democracy, as constituent power requires the participation of citizens in creating the fundamental law. Democracy involves the participation of the citizens in the production of the law, a popular participation, one of the basic democratic ideal (Colon-Rios, 2010: 235).

The people. A constitutional perspective

The doctrine considers that citizenship can be viewed from the perspective of constitutional law both as a legal institution and the status of persons recognized by a particular state. As a legal institution, citizenship is seen as a set of legal rules governing the acquisition or loss of citizenship, and the social relations that this status requires.

The population of the state is presented as a composite entity in terms of specific legal and political relations they have with each member of the State in which a population lives in. *The population* is a distinct sociological category different of people and nation that meets a number of features relevant to constitutional law and public international law. The population is an undetermined group of people that at any given time are living in a State (Cadart, 1990: 55). We understand here that the notion of population include the whole people living in a State whatever the characteristics of their identity are in relation to the territory and to the state itself. From this point of view, the population of a country consists of its citizens, plus foreigners and, where appropriate, the stateless people.

Each of these three categories of individuals has certain legal relations with the State in which they live in and are subject to its authority. In this equation comes the third constituent element of the state *ie* its sovereign power. Sovereignty is an essential element in establishing relations of citizenship, as well as legal relations only a state can conclude with foreigners and stateless persons. The constitutional foundation of the concept of citizenship starts, as stated in the literature, from three factors that define the relations between the individuals and the State (Berceanu, 1999: 72): a) sovereignty principle; b) the distinction between their own citizens and people who have this quality; c) full equality before the law and public authorities of all citizens without discrimination.

Citizens are a unique civic body – a community of citizens – that cannot be divided into segments of social, ethnic, religious or political or older. Any distinction between citizens on the criteria of non-discrimination would be unconstitutional. For example, this is the conclusion drawn from art. 4 para. (2) of the Romanian Constitution, which states that "Romania is the common and indivisible homeland of all its citizens ..." and from art. 2 para. (1) which states that national sovereignty belongs to the Romanian people, every citizen is thus a segment holder and bearer of equal national sovereignty. As such, the citizens appear as the *foundation atom* of a state. We are in the presence of a constitutional statement that excludes the concept of citize in an ethnic sense, even if accompanied by appellation "Romanian". So when we refer to the concept of citizenship, we consider combining the two types of views: a) political and functional relations grafted on institutionalizing the principle of national sovereignty, according to which political power resides in the people/ nation, in a civic sense of the word; the people are the ones who transmit the power to the state in order to be exercised through representation; b) legal relations. These will regulate the actual status of the citizen, from birth registration – the highlight in which citizenship is established – and ending with proof of citizenship. We include these relations in the sphere of legal and constitutional rights recognized by state to its citizens and the citizens' fundamental duties towards the state. The political link connecting the state with its citizens is not limited to the direct contribution of the electorate in the formation of the state's representative institutions in regular cycles. People are constantly drawn to public life and civil society organizations, including associations and foundations of civic profile, political parties and unions. We see thus a civic activism of citizens through which they can fulfill certain rights and legitimate

interests. The state is also interested in the well-functioning of civil society as a form of release and civic orientation towards certain directions and energies, as an expression of social solidarity. Of course, it is arguable weather in these particular forms of integration of citizens in public life they are true members of a state, but they can contribute to a greater sense of civic loyalty of the individual to the structures of state entities that guarantee free status of civil society and represents a symbol of political unity between state and citizen. The fundamental elements of the symbolism of national unity are: the national anthem, the national flag, the national day, the national currency, the commemoration of historic personalities or political events anniversary with a great national etc. (Rouvier, 1998: 178). These values or symbolic elements are likely to strengthen the relations of citizenship, increase the feeling of national pride, the deep attachment to the community of political, social, economic and cultural, and social responsibility and the respect of their constitutional duties. The community of citizens will express a homogenous election, with the sole purpose of electing a parliament and a president of the republic, which does not mean that voters expressed a single will, on the contrary, it represents the will of different individuals towards different partisans. The electoral body is expressed, however, homogeneous and remains so because national sovereignty - which he exercise - is by nature indivisible. Also, each member of the community is equal subject in his relations with the state and has no privileges. The German philosopher Kant said that only a citizen is given the ability to vote (as individual component) for a political union. This means, he continued, the independence of the people, people that not only plans to participate in the social existence of a State but also is a member, ie takes an active part along with others, by its own will (Kant, 1991: 164). A similar idea is found in Hegel's studies, who analyzing the concepts of governance in the world of Greek and Romans finds that is specific to them that all citizens should participate in debates and decisions on laws and issues of general interest (Hegel, 1997: 78).

This model has been adapted over the modern era and in a different historical context, where direct democracy is no longer possible, only representative government. In this model, the society is structured in the ruling elite, designated through democratic procedures and the community of citizens. For example, it is a fundamental requirement resulting from art. 2 of the Constitution, the citizens have the ability to participate and exercise political power through democratic procedures, free, periodical and fair elections, and also at the exercise of state power itself. We are talking about a citizens' initiative recognized and guaranteed by art. 74 para. (1) and art. 150 of the Constitution and the referendum, understood as a way of consulting the will of the people.

Legitimacy vs legality. Constituent power and democratic legitimacy

Joel Colon Rios, discussing the legitimacy of the democratic system, states that a regime is democratic not only if it recognizes the freedom of political rights of individuals, but, furthermore, whether it has provided institutional mechanisms to allowing its citizens to initiate and to decide on any changes in the basic law, when they no longer correspond to the current reality; basically to allow the expression of constituent power when this is required by certain social events (Colon-Rios, 2010: 201). Sometimes, as in fact history has proven with countless occasions, constitutions often exceeded social transformations and their change is required, and a Constitution which does not provide the mechanisms for change, or these mechanisms involve a very strict procedure, difficult to fulfill, denies

the existence of freedom of the political expression itself that a democratic regime requires, and limits the power of the original constituent power, which is, by its nature, an unlimited power (Colon-Rios, 2010: 202). Any mechanism through which the alteration of the fundamental law is allowed, by default rules established by a Constituent Assembly, through a certain type of procedure, is a manifestation of the derived power, which means, in fact, the expression of democratic legitimacy. Thus, as we have already stated, the original constituent power is unlimited and its essence lies in the intrinsic connection with the concept of democracy. Joel Colon-Rios propose a specific terminology for a democratic society open to the manifestation of constituent power, which he calls: *democratic openness.* From his point of view, the constituent power is the ideal expression of this "democratic openness", i.e. the capacity of individuals to make laws that let them organize the forms of Government, as well as the ability to change the basic law ensuring the participation of the people within this democratic activity (Colon-Rios, 2010: 212). Changing the fundamental law, i.e. enabling the derived constituent power, determines certain particularities in relation to the concept of democracy. Thus, the more significant the change in the basic law is, the more need for participation, obviously thinking these issues from a utopian perspective, because the process of revision of a Constitution is the same for all the changes, and in regard to the Constitution provisions we cannot priorities its requirements [See the example of the Canadian constitutional laws of 1927 when such a proposal for revision made by various procedures based on their relevance has been made (Colon-Rios, 2010: 230)]. Although it is essential that when we look at the concept of democracy, we should not ignore the "people's control" over how they are governed.

Constituent power should be the manifestation of the will of the majority of individuals who form a community. Constituent Power must not be imposed by force, but by authority, only by acceptance legitimacy is granted (Negulescu, 1939: 49). We must mention that legitimacy does not necessarily mean legality, the original constituent power speak of legitimacy, because, as Maurice Duverger said, "the constitution is the one that extract its authority from the constituent power, I and not the constituent power that extracts its authority from the constitution", therefore this implies that the legitimacy of authority is accepted by the majority (Duverger, 1948: 78). In the case of the derived constituent power, however, we can speak of legality, because this power is expressly stated in the constitutional text, and any deviation from the scope of this text, as prof. Deleanu said it is "a constitutional fraud" (Deleanu, 2006: 430). The conception of democratic legitimacy can be analyzed through two perspectives: (i) the initial constitution-making moment; (ii) the way a constitutional regime is susceptible to democratic alteration. Andreas Kalyvas also connected constituent power to the idea of democratic legitimacy, his conception focus on the democratic origins of the constitution: "in a democratic regime, the legitimacy of the fundamental norms and institutions depends on how inclusive the participation of citizens is during the extraordinary and exceptional moment of constitution making" (Kalyvas, 2005: 223). This kind of passage suggests that constituent power is only relevant at the time of making a new constitution.

But, as Colon-Rios argues, we should consider it to be important also from the perspective of the democratic alteration, because, amending and revising a constitution also implies constituent power, a derived form of constituent power. Democratic openness, in this situation, i.e. *the way a constitutional regime is susceptible to democratic alteration*, requires an openness that can be accessed by the citizens, and that offers real opportunities for the participation of ordinary citizens. From this point of view, democratic

legitimacy is not only about the procedure that the constitution establishes for law making, but about the procedures it establishes for its own transformation; it is a conception heavily informed by constituent power and its democratic implications. For the possibility of democratic re-constitution to mean something, it must have actual institutional implications. In other words, the constitutional forms must provide the means for constituent power to reappear after the constitution is in place, and, if needed, to put the entire institutional arrangement into question. The basic condition of democratic legitimacy is also connected to the principle of the "rule by the people" in one fundamental sense. To say that the people rule themselves is to say that they are a "self-governing" people: a group of human beings that come together as political equals and give themselves the laws that will regulate their conduct and the institutions under which they live. A self-governing people must be able to reformulate their commitments democratically: for there to be democratic self-rule, no rule can be taken for granted or be impossible (or virtually impossible) to change (Keenan, 2003: 10).

Conclusion

To be considered democratic, a regime must not absolutize the constituent power, nor to limit or to hide it through a difficult procedure, but on the contrary, should it give it a real chance to manifest, only in this matter we're talking about *democratic openness*. However, the detailed provisions established by the Constitution to assure a democratic regime must be real. Citing the whole doctrine which opposes the idea of considering the ratification of constitutional amendments through referendum, as democracy (Colon-Rios, 2010: 235). Colon Rios says that this mechanism is insufficient, since a constitutional referendum is not a manifestation of the democratic constituent power, it is a manifestation of established power, a pre-established constitutionally procedure because people are called upon to rule on alternative constitutional provisions default, as they are not involved in the actual process of elaboration, as otherwise it may happen in a utopian world (Colon-Rios, 2010: 235-237). Given these considerations, we can say that in countries with a democratic tradition, there must be some sort of *checks and balances* between the citizens and the public powers.

As we can see, both the concepts of democracy and the constituent power support various meanings and are understood differently in the world, giving states more or less democratic legitimacy, but qualifying them as being democratic. An objective analysis can be done starting from the idea of the concept of ideal democracy, applying some of the markers the doctrine gives, and so we can establish a certain degree of democracy in different constitutional regimes. In this equation, derived constituent power is a mechanism by which the degree of democracy can be modified in the constitutional text, and provide it with the democratic opening that a fundamental law needs. Because, as prof. Cristian Ionescu said, democracy is defined not only as *Government of the people by the people and for the people, but also under the control of the people* (Ionescu, 2015: 254).

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