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SEPE
Social, Economic & Political Evolution

Walter COUSINS*

Abstract: *The following article emphasizes a broad view of history and of today's stage of the Western World and, especially, of the European Union recognising the theory of natural evolution. The author's point of view is rather sceptical considering that we have failed in the history. But also, that federal union must not mean the deliberate or thoughtless destruction of the fascinating diversity of the national life of its Member States. We must forever treasure and safeguard the richness and traditions of the European way of life.*
Keywords: history, evolution, peace, cooperation, union.

When Wallace and Darwin shook the world with their theory of natural evolution, they had still dealt with only part of the evolution of one particular species, homo sapiens, because man is a political as well as a natural animal.

Throughout history I see no evidence in the conduct of our affairs, national or international, to suggest any knowledge of the forces governing mankind's SEPE. Intense nationalism is still rife – though the religious divide may eventually prove to be much more difficult to overcome.

Even within the European Union, nationalism is still a major obstacle to further progress.

Awareness of our SEPE has clearly not been a conscious driving force, with the Commission interested in such mighty matters as jam-jar labels, the noise of lawn-mowers and the contents of icecream and sausages. Fortunately, man's natural evolution has needed neither his knowledge nor his consent. Unfortunately, his peaceful social, economic and political evolution requires both. Hence we have the strife, bloodshed and misery of the past – and of the present. If it is important that man should understand his natural evolution, it is vastly more important that he should understand his SEPE, for his continued existence now depends upon it.

World peace and the Brotherhood of Man are civilised, intellectual concepts, however blurred in our minds; and stages toward their realisation can no longer be safely left to emerge merely as a by-product of man's primitive instincts. Blindly, we have reached our present stage of develop-

* Walter Cousins – *founder, in 1957, of the European Federal Union Movement in the U.K. This article is reprinted with publisher's permission, from* Bulletin européen. Edition française, mars 2008, no. 694.

ment, but only at staggering cost to others – and to ourselves.

If we take a broad view of history, it is possible to trace the thread of man's social, economic and political evolution through family, tribe, city-state, petty kingdom and great nation. The movement is world-wide, though the speed varies with the circumstances. All such changes have actually taken many centuries, but clearly there is a common, underlying force behind them.

The process of mankind's SEPE is at times hard to detect, because it has always depended upon a number of factors, particularly the ease of communicating, but however slow, it has always been present. Furthermore, of great importance, it is not the haphazard business that it at first appears. That it has been accompanied by war or threat of war at almost every stage is only because we have hitherto been ignorant of the forces involved.

At every level, mankind's political development has always been marked, initially, by the need for cooperation, usually for defence, a higher standard of living, or for both. This cooperation, if successful, has then led to economic and political ties, and, ultimately, to economic and political union, usually achieved, hitherto, by war.

The greater the problem, or more complex the situation, the greater has been the need for cooperation and eventual unification. Unification makes further progress possible, further and wider cooperation essential and yet further unification with its increased capacity and potential inevitable. Hence we have the growth of larger and more powerful economic and political units.

Trade and industry, which create the major need for economic and political unification, have taken a similar course. Multinational companies are now operating throughout the world. I find it odd that though we recognise the need for such development in trade and industry we remain blind to it politically, or stubbornly refuse to acknowledge the need; and this refusal is almost invariably based on outdated sovereignty. The concern that world leaders have for long expressed regarding the balance of trade is one clear indication that they are not really aware of the fundamental issues confronting us.

Posterity will laugh at Europe's preoccupation with exports and will quote it as an example of insularity and ignorance of SEPE. Countries that depend on exports are economic and political anachronisms. We need new thinking. High exports are clear evidence that economic development has outgrown the economic and political bounds of the nation. This sometimes results in war as the nations concerned endeavour to safeguard their foreign markets or sources of raw materials.

For countries that share common interests and cultures and which together form a compact geographical region, the sensible way to overcome the problem without a lowering of standards is to create a political union whose members share a common purse, thereby automatically easing the situation for all members. A common purse is much more important than a common market. Of course, such a movement would simply be an extension of the thread of SEPE that can be traced throughout history. In Europe we have recently seen international cooperation on an unprecedented scale, even in peace-time. Such costly and highly complex projects as the "Concorde" airliner and the Channel Tunnel have clearly followed the pattern in the technological field, as has the Common Market in the field of economics. This is regardless of how blind all involved in both fields may have been, and probably still are, to the underlying forces of social, economic and political evolution that have driven them to do so.

On a wider front, as forecast in 1990, the two super-powers of USA and USSR have eventually found it to their great advantage to cooperate on Space travel. The undeniable fact is that man's progress has always been founded on cooperation.

On yet a still wider front, the entire world faces ecological disaster within a few decades unless pollution of the air and of the sea is immediately brought under international control and is eliminated or greatly reduced. This is typical, of course, of the factors and the forces that motivate social, economic and political evolution.

Obviously, the greater man's scientific progress, the greater the momentum of SEPE; but therein lies the danger. Any attempt among nations to halt that momentum, and the economic and political changes that are needed, creates ever more dangerous stresses, particularly when the changes require the sacrifice of a measure of sovereignty. Wars, in fact, are basically blind, primitive forces overcoming, or attemptting to overcome, equally blind, primitive reaction, and they will therefore continue for as long as man fails to recognise the imperative need for change, national or international, or lacks the will and the courage to make it. When change is necessary, and the modern world demands change at an ever increasing rate, those of us, individuals or nations, who take no positive part are actually creating, by an act of omission, the conditions necessary for war.

In our SEPE we see that, on a broad front, the past traces the future; only the scale of events differs, but they follow a set pattern in a recurring cycle, with every cycle, under the influence of scientific and technological advance, becoming both more extensive and intensive than its predecessor. Most important of all, the process cannot now be stopped. Man must either control its effects or destroy himself. Hitherto he has survived only because his weapons have been inadequate for complete self-destruction. But modern science has made good that deficiency with fearful weapons of mass murder, disease and destruction that can obliterate nations and leave this entire planet an ecological disaster area.

Here I must emphasise the cyclic nature of the evolutionary process, because the world's politicians have hitherto completely failed to understand what is involved.

In the Western World, I see the peaceful unification of Europe as the end of one particular cycle; but the end of one cycle in our SEPE is also the beginning of another. The next cycle will have the same potentially dangerous incidents, economic, political and territorial, but the threat to life, civilian, military and ecological will be on an even greater and wider scale. If, as in the past, nations continue to follow primitive instincts, it follows from our SEPE's cyclic nature, that, however unbelievable today, the next terrible war in the Western world is likely to be between the USE and the USA.

Unchecked, Europe and America are likely to annihilate each other, doubtless to the joy of many other countries. It is therefore imperative that, long before we reach the precipice, all Europeans and Americans learn from history the lessons of the economic and political evolution of mankind. We all must learn, right from the start, that no apparently minor disagreement should be ignored. Already they are occurring and creating the highly dangerous preliminary friction. Every point of friction must therefore be settled fairly, amicably and quickly. Nothing must be left to fester.

If we look at the history of the United Kingdom, I believe we see in broad outline an unfolding picture of the future world, because in the U.K., on a small scale and in an accelerated form, we have, as in

other small countries, the SEPE to-date of all mankind.

From the many small and scattered social units of very early England, there gradually arose over the centuries the seven kingdoms of the Heptarchy. This regional grouping eventually gave way to a united England, under one central government. In classic SEPE style, the next major move was the United Kingdom, to be followed by world-wide expansion. In broad outline the various stages can be seen in many areas of the world.

Hitherto, this entire movement has been entirely unplanned; every step has been taken blindly only as the desire arose, with, as always, war or the threat of war as the instrument of change. The cost in lives and misery in creating just the United Kingdom has been appalling, and is incalculable. Must mankind continue to suffer the same blind process of economic and political unification by force over and over again on an ever-widening world scale, with all the destruction of lives and property that science makes possible, or are we going to plan this development consciously and thereby create a new era for us all?

Hitherto in the history of man we have failed miserably.

Two World Wars should have taught all Europeans that, despite our differences, our common basic needs make a Federated Europe essential if we are to cope with the threats, political, military, eco-nomic and cultural that are increasingly confronting us from within and from without. In fact, a United Europe is no longer a matter of choice. History shows beyond all doubt that unification, in peace or in blood, is inevitable. As sensible people, let us accept this and choose the method. The millions that sacrificed themselves in the two World Wars will not then have completely died in vain. We shall at last have understood their message. Europe brought about its own downfall because apathy and hostility to essential international political adjustments were too strong for these to be accomplished willingly and peacefully, while the general view was that sovereign States were permanent institutions. After thousands of years, man was still blind to his SEPE. There can be but one sensible outcome. Within Europe, SEPE must lead to a peacefully United Europe as individual sovereign States realise that they can no longer stand alone, economically, socially, politically, technologically, industrially or militarily.

In 1957 I had hoped that by now, more than 50 years later, we would have had at least four countries, Germany, UK, Italy and France, in close political union as the powerful and prosperous core of a slowly expanding Union. Instead, Europe is in a mess. With a population of 493.000.000, twice that of the USA, it should be a powerful force for peace and justice in the world, but the politicians of Europe have failed us. Part of the explanation is that they have tried to do too much, too soon and on too large a scale.

The vision has become a nightmare: a massive bureaucracy in which democracy has been brushed aside. With 27 member States, many of which have, in effect, been bribed to join; an amazing 785 MEPs, traveling like a circus between two almost useless Parliaments in two different countries; 23 official languages; mountains of surplus food in a semi-starving world; secret budgets that for 13 years the auditors have refused to sign; just one democratic vote every five years; widespread fraud; and a Constitution that is being forced upon us, it seems to me a situation that will take decades to correct – if the EU does not fall apart before then. Have we learnt nothing from Yugoslavia?

Europe had the opportunity of leading the world into an era in which we actually plan international political development

among nations instead of leaving it to blind and primitive emotions. Have we lost that opportunity? Our task, our chapter to write in history, is The Peaceful Unification of Europe. To do so, our first step must be to decide whether a United Europe is to be a union of peoples or a union of States. The difference is of vitally importance. If the former, individual States would quickly become powerless, because the central authority would obtain its power directly from the people as a whole and could therefore at any time ignore the wishes of individual States, or even a minority protest from any group of them – which is fine, if you are not in a minority State. Again, have we learnt nothing from Yugoslavia?

To me, it is therefore imperative, in the current situation, that Europeans choose the second option, a union of States. If so, no central government, or any State or combination of States, should be allowed to push through a law or to perform an act that would be harmful to any other State of the union. For that reason, every State must insist on retaining the veto for the foreseeable future, though its use as a bargaining tool must be strictly forbidden. It may be several generations before the peoples of Europe regard themselves first as Europeans and not foremost as members of a participating race or nation. The difficulties involved only reflect the idiocy of the recent premature enlargements of the EU.

Finally, federal union must not mean the deliberate or thoughtless destruction of the fascinating diversity of the national life of its Member States. We must forever treasure and safeguard the richness and traditions of the European way of life.

National and International Law Relationship. The Application of the International Decisions Concerning the Private Person Situation in the National Legal Order

Cristina PIGUI

Abstract: *This article analyses the difficult problem of the relationship between the national and the international law, referring to the international settlements in this matter, to various decisions of several national courts and to the opinions of some important scholars. The conclusion is that that the international law will make more efficient the national law application being, at least, an instrument of its interpretation and, on the other hand, the national law is the exclusive mean for transposing the international rules on the state plan. Indifferent that they are two distinct orders or they are two distinctive parts of the same universal order, the international and national law contribute to fulfil their common aim and, in the same time, their primordial function: the maintaining of the peace and social cohesion*.
Keywords: international norms, private person's situation, implementation, effectiveness, national courts, decisions.

We begin this article with a conceptual delimitation required for establishing its analytical framework: the concept of international decisions refers to those international law rules that are different through their compulsory[1] character and in this article we will refer, especially, to the international justice court decisions and Security Council (SC) resolutions under Chapter VII from Charter.

The international law coordinates the domestic legal orders of the international law subjects but does not unify the different national orders of the various states. Therefore, we must discern between the concepts of the *transpositions into reality* of the international norms which circumstantiates but it is not identical with that of *the international law applying*. The transposition into reality of the international law is the state exclusive attribute (international law implementation) as sovereign legislator and, usually, it is seen as a prudence obligation but not as a result one. Therefore, we will refer to both distinctively, the first concerning the measures for implementing the international decisions as the implementation of the international court decisions and the Security Council resolutions, while the second refers to the role of the national judge in the international decisions applying that, as we will show below, has a conventional legal fundament.

Another conceptual delimitation that we will make concerns the concept of *the international rule* that will be often used to replace that of *the international norms*.

Though both have approximately the same sphere often it is preferable to use the first concept because it calls less the Law-maker character of the international body - this is a strange concept for the international law.

National and International Law relationship

The relationship between the national and international law may be seen from a double perspective:

a. From the international field perspective, this report favours the international law according to article 27 of the Vienna Treaty Law Convention: "A party may not invoke the provisions of its in-ternal law as justification for its failure to perform a treaty…". This rule was con-solidated by an abundant international jurisprudence[2] though the Chart is silent as far as it is concerned, despite the superiority of its provisions, often, it being considered as the World Constitution in international law.

b. From the national perspective, the conflicts between the national and international law will be solved according to *lex fori.* The national courts will be hold by the rules of their own law system and by the place accorded by it to the international law in the domestic legal hierarchy.

In this regard, the application of the international law by the authoritative organs from the legal domestic order (justice system) is related with two systems:

1. Monist system or
2. Dualist system of each state.

1. The monist system abides direct applying of the international rules in internal juridical order and presents, itself, two characteristics:
   i. The existence of monism is conescrated in national and international legal order quite through the domestic norms.
   ii. The international rules with direct applicability must be precise enough so as not to request the intermediary acts for their enforcement.

The direct applicable international rules in the national juridical order are called *self-executing* rules (norms).

The direct applicability (monism) of the international law rules is not as easy as it seems. The contradictory debates raise the case of the conflict between the international and national norm. From this new perspective, the monist system may be sub-classified as:

A. Monism based on the national law supremacy.
B. Monism based on the international law priority

Point A is a consequence of the concept of the unity existent between the national and international law. According to this concept, the international law is seen being the external branch of the national law because, in the end, the international law is created by the same state which adheres to the international rules.

Logically, the conclusion of this reason is the prior application of the national law in the case of the conflict with the international rules. That supposes that an international treaty may be abrogated by an internal law though, as such, the consent of the other legal subjects who have ratified/ signed the treaty is excluded. In this way, the *jus cogens* norm of *pacta sunt servanda* is emptied of its content by the principle of the absolute sovereignty.

Although this conception was rejected by article 27 of the Vienna Convention aforementioned, the reminiscences of this system persist in the American legal system[3] and were invoked within the European area on the occasion of applying some fundamental rights (Solange system)[4].

Point B is founded on the Kelsen[5] normativism (Grundnorm) following the Kantian unity of the law. According to this point of view, the entire normative system is based on the fundamental norm (Grundnorm) from which also derive the national norms, and, therefore, these cannot be contrary to the international law (Grundnorm) on which they were founded.

More than that, the international norms are the states' behaviours that may be reduced to the individual persons' behaviours because the states are formed by the individual persons so that there is no differrence between these two legal orders. Therefore, the individuals cannot derogate through domestic norms from the consented international norms[6].

2. Dualist system supposes the incurporation of the international rules in the national legal order through the internal normative acts.

Dualism is a consequence of the duality of the national and international orders following from the different subjects and aims or the various conditions of their validity.

Therefore, the international treaty is seen as a source of the rights and obligetions upon the states and, especially, upon their organs with international prerogatives, but not for their ressortissants. It is necessary to activate a double treaty mechanism for creating effects upon the states' ressortissants:

A. The treaty ratification/signature.
B. The implementation of the treaty provisions through an internal normative act.

As a consequence of the duality of the national and international legal orders, the domestic norm may prevent the application of international rules which are in conflict with it, but this fact engages the state international responsibility/liability, eventually, for the international illicit fact. This system is unfavourable for the development of the international law.

This classification is rigid and leaves out the mixed system adopted by a lot of countries including Romania, which permits for certain international rules to be *self-executing* and others not, the latter requiring their implementation through the internal normative acts. On the other hand, the positive international law is more complex and does not conform to this rigid classification.

The positive law complexity is manifestted through the autonomy and, at the same time, the interdependency of both legal orders. The autonomy consists in the fact that the national law establishes, absolutely, the place which is occupied by the international law rules in the bosom of its own system and, therefore, they cannot be an obstacle in its application. In contra party, the international law cannot be invalidated by a domestic norm being able to establish, itself, the effectiveness of the domestic law norms in the international area though, sometimes, it is difficult to realize a homogeny practice or jurisprudence in its respect.

The interdependency of both juridical orders concerns that the international law without domestic law signifies federalization, while the contrary means the impossibility to constitute the international community. The both orders cannot survive one without other.

Therefore, Gerald Fitzmaurice showed that the controversies between these two systems are artificial[7]. Michel Virraly deemed, more, that this controversy does not solve the problem of conflicting norm[8].

The last trend in this respect is to leave the systemic point of view in the favour of the substantial ones. The last option favours the international law omnipresence in the internal law. This new tendency is a globalisation consequence which imposes

upon the international law to progress from the protection of the bilateral interests to the protection of the interests of international community as a whole and also, to the promotion of the international politics under the form of universal principles developing such as the principles of the human rights and fundamental freedoms; supposing that the international law implementation in internal area is inevitable and the states have not much alternatives in this direction.

As a consequence, it is important to remember that the international contemporaneous law obtained a new function: not solely to regulate interstate relations but also, more and more accentuated, to harmonise the national rules[9].

I. The international law implementation

A. The area and content of the national measures for implementing the international law rules

The domain and the content of the national measures for implementing the international law rules are defined through the next elements:

a) The substantial content of the implementation measures;
b) the territorial area of the implementtation measures;
c) the *rationae personae* application of the implementation measures;
d) the *rationae temporis* application of the implementation measures;
e) the interpretation of the exceptions from the international rules through the content of the implementation measures;
f) the effect of the implementation measures upon the private rights;
g) the adoption of the sanctions in the case of the infringement of implementtation measures;

The rapidity of the implementation of some international rules does not mean necessarily their better transposition into practice. Sometimes, the implementation measures transgress partially the international rule requirements for becoming more efficient.

From the substantial point of view, the states are entitled to adopt the most appropriate measures for the implementation of the international rules.

Generally speaking, these implementtation measures aim the territory of states which will adopt them. They cover both the activity of the ressortissants of these states and the activity of the others being on the territory of the first. However, the contradictory debates raised the universal jurisdiction applying by the states and, also, the international obligation to punish *jus cogens* crimes which is seen as an *erga omnes* obligation[10].

Concerning the *rationae temporis* application of these measures, we must show that, in certain cases, they preceded the international rules such as the SC resolutions or the international justice court decisions, being adopted on autonomous bases and constituting a separate legislation without implementation character. It was the case of Sweden and Finland concerning the sanctions adopted against South Africa and Rodhesia[11].

Regarding the implementation measures of some international rules, following after and from these international rules, we may remark that it was impossible for them to coincide from the temporal point of view with the rules transposed, usually, being a reasonable term for their implementation.

In this view, there are problems when the international rules have an immediate effect or they do not specify a certain date of their application. The rules with a normative character cannot be retroactive. Therefore, the domestic implementation measures

bring the international rules in the internal order after the adoption of the last and, therefore, it appears to be justified the international rules infringement according to the non-retroactivity principle of the domestic law.

Concerning the SC resolutions, the problem is more visible as much as these resolutions establish sanctions available for operations (exchanges and commercial contracts, financial operations, etc) consented before their adoption.

For the exceptions of the international rules which follow to be implemented, they will be inserted in the domestic acts in such a way as they have been interpreted by each state. This proves the fact that, implicitly, the SC resolutions and the international court decisions may be interpreted by the national authorities in the case of ambiguity.

SC resolutions contain a number of uncertain terms which let often wider possibilities of their implementation by the national authorities being in the detriment of the uniform implementation. Security Council, itself, clarified sometimes the terms of these resolutions or it delegated this burden upon the Sanction Committee. Usually, the interpretation given by the Sanction Committee has been seen as an authoritative interprettation[12].

The human rights topic was sensitive when the international rules were punitive or restrictive concerning the human rights and fundamental freedoms. In *Yussuf Case*, the European Court of Justice declared that these rules must comply with *jus cogens* norms of human rights[13].

The adoption of some sanctions for the infringement of the implementation measures raises the problem of their abrogation while the sanctions imposed by SC have been ceased through a newer resolution. The period of time between the punitive resolution end and the abrogation of its implementation national act raises controversies concerning the general law principle *nullum crimen sine legem*, but we'll talk below more.

B. The implementation of the SC punitive resolutions in the national law

The Security Council resolutions permit the member states to choose the measures for their implementation[14]. Therefore, it appears often a vacuum between the adoption of the SC compulsory resolutions and their application by the member states. Or, their efficiency (including economic punitive sanctions), is deep dependent by their implementation period.

The implementation of the SC decisions raised currently the next problems:

- The implementation delay because of the lateness of the legislative measures necessary for their enforcement;
- The modification of the SC decisions content by the act of their transposition into national law in the sense of their restraint from the territorial, temporal, personal point of view through the insertion of the new exceptions from their application in their content, etc.

Concluding, the SC mandatory decisions may be assimilated to the obligations deriving from treaties because such decisions are binding under the Charter, article 25, having a conventional nature.

Although, even in the monist countries as United States in which the international law is declared "the law of the land", the SC decisions do not enjoy by the direct applicability in the sense as we showed in the next paragraphs. In such countries, usually, there is a distinction between the *self-executing* treaties that are enough precise and complete expressing the intention to act immediately against the national ressortissants and the treaties without *self-executing* character that, therefore, ask the adoption of the necessary legislation for their implementation and for obtaining

their enforceable character before the national courts.

Despite of their importance on the international plan, the SC decisions under article 41 from the Charter were general assimilated with the treaty obligations without *self executing* character. In *Diggs v. Dent*[15], The Columbia District Court deemed that the SC resolutions 270(1970) and 301(1971) concerning Namibia had no self-executing character because, generally "the U.N. resolution (…) does not confer rights on the citizens of the United States that are enforceable in court in the absence of implementing legislation". A treaty is *self-executing* only if the binding rights of the individuals derive from treaty without the necessity of the ulterior legislative or executive action: "The United Nation Charter provisions are not *self-executing* and do not invest any request with any individual legal right that they may claim before of this Court…".

On the contrary of these arguments, in the *Diggs v. Schultz Case*[16]**,** the Columbia Appeal Court showed concerning the Rhodesia sanctions, that they "had been implemented in this country through the Executive orders that imposed punishments against the persons who were violating their directives".

The German Federal Justice Court contended on April, 21st, 1995 that the measures adopted by the Security Council under Chapter VII of the United Nations Charter have not direct effect for individuals from member states and they are binding only for the state themselves. This position did not remain uncontested and the national court had the occasion to take into account that the Security Council resolutions may affect the legal situation of the individuals through their direct consequences upon the contractual obligations even in the absence of the implementation domestic legislation. In Belgium, the courts indicated that certain SC resolutions enjoy by the self executing character while the French courts adhered to the legality of the individual actions for the non-execution of certain contracts founded on the Security Council resolution which banning them, though the justification was based more on the major-force than the resolution *self-executing* character. In Argentina, the courts suggested that they may apply SC resolutions as *self executing* provisions in analogy with the court decisions regarding the human rights. The same, resolution 692/-1991 for establishing the United Nation Commission for Compensations appeared as having direct effect in the Poland legal order. Finally, it has been suggested that in Namibia, also a monist country, SC decisions may be applied by the Namibian courts without to be necessary the implementtation laws[17].

Concluding, because there is no unanimous practice concerning the *self-executing* character of the Security Council resolutions, their implementation, generally, has asked for the adoption of the internal legislative measures.

More, we contend that the financial and economic sanctions adopted by SC under Chapter VII affect the statute of the individuals from the member states through the infringement of their property or the contractual obligations protected by the national constitutions. These resolutions should be taken by such a way to avoid their challenge before the national courts.

Whatever, it is necessary to adopt a general legislation, especially to avoid the delay implementation of the Security Council resolutions. In its absence, it follows to adopt the *ad hoc* norms.

Such general legislative framework has been adopted, especially, after *Rhodesia Case* and the implementation of the Security Council decisions which affect the individual rights makes necessary, in some

countries as Switzerland, the Constitution amending. The affectation of the statute of individuals through the restriction of their property, the contractual obligations' enforcement or the other restrictions of the human rights by the SC resolutions determined their implementation through *ad-hoc* legislation which is a lent parliamentary law-making process. The adoption of the *ad-hoc* legislation raised the problems concerning the moment of its abrogation especially in the case when the SC sanctions ceased but the *ad-hoc* domestic law continue to produce its effects till to newer law which abrogates it.

Other times, the state pre-existent legislation – as the permission given to Executive for having some prerogatives to take the rapid measures necessary for the sanctions implementing – facilitates the burden of the implementation of these decisions though it is not related with their enforcement.

Out of the general legislation, the profundity of the European integration process imposed in addition the coordination of the implementation national measures with the measures taken inside the Union by the organs entitled. In the case of federalism the legal bases of the implementation measures are different according to each federative state.

II. The international law applying. The national judge as a guarantor of international law applying

A. The power of the national judge to interpret the international law

We'll try to dial with the next problems in this paragraph taking into account the conventional nature of state obligations under article 103 from Charter or founded on the international justice court statutes:

a. the national judge power to interpret the treaties and custom;
b. the national judge power to interpret and enforce the international decisions;

The national courts turned towards an objective method to interpret the treaties according to the article 31 of the Vienna Treaty Law Convention[18]. The traditional dichotomy between "the intention of parties" and the textual approaching consists in choosing between *the text signification in the light of the intention of parties and the intent of parties presumed in the light of text expression*.

These methods to interpret the treaties will be applied by the national judges who interpret them. There are still many obstacles before the national court judicial review:

1. Dilemma „political question";
2. Dilemma „the act of state";
3. Dilemma of the judiciary independence before the Executive power;
4. Dilemma *opinio juris ac necessitatis*;
5. Dilemma of the direct applicability of some international rules.

The first point, dilemma „political question" was called in many internal claims from United States by the courts from this country during the Vietnam War for refusing to check if US engagement in this war was legal from the international law point of view.

In other case – *Murruroa Case*[19], French State Council refused to show if the French Govern action to create a security zone by 60 maritime miles around Murruroa Atoll from Pacific suspending the maritime navigation for doing the nuclear experiments is concordant with the international law or not.

The American judges turn more and more in the sense of the international customary law cannot be applied when it implies the Executive act review including when the conflict regards the problem of human rights.

Therefore, the administrative act theory that excluded the Executive from the

subjects of the national law application has been used on the international area when the claimer called the international illegality of his Government acts before the national courts.

In the Rapport of the International Law Institute from Milan 1993, Rapportor Benedetto Conforti deems that there are exceptions from "political question" theory when there are realized two requirements:

i. The precise and complete international obligation existence

But, Benedetto Conforti contends that if this problem is left to the Executive discretion such as the treaty negotiation or the diplomatic representative accreditation, then the problem of the judicial review is obsolete.

ii. The authorization of the Executive acts by the legislative authority. With few exceptions, the judiciary cannot review the Legislative acts.

Point 2, the "act of state" dilemma, protects the third states against the *forum* state banning the judiciary to decide upon the conformity of the acts made by these states with the international law.

This interdiction was interpreted as a prohibition to judge the third state acts in the light of international law, as the impossibility to judge the same acts in the light of the *forum* public order.

This theory was restricted in some countries and expanded in the others. In the respect of, the American courts embraced so called „*treaty exception*" or Second Hickenlooper Amendment (1964) elaborated by the United States Congress according to which the acts of the third states may be appreciated as illegal concerning the causes of the expropriations contrary to the international law. In United Kingdom, The Lord Chamber extended in *Buttes Gas and Oil Co. v. Hammer Case*[20] the „act of state" theory to the transactions between sovereign states.

Benedetto Conforti agrees with the idea that the national judges should refuse to apply any law, judiciary decision or administrative acts elaborated by third states when they establish with good-faith that these acts are not conform to a determined obligation of the international law.

We contend that the Benedetto Conforti opinion is dangerous because it infringe the guaranteed defence right, except the case when the emitter of the litigious act from the third state will be cited in process (the fact is prohibited by the state sovereignty principle). On the contrary, these judgments will be rendered on the political criteria more than juridical.

Point 3 concerns the situation when the judiciary has a certain dependency by the Executive "legitimated" by the necessity of the coordination of their voices making a coherent line at the international law unitary subject.

This practice is followed by United States and also, in other countries, for example:

a) The judiciary dependency by Executive in France in the matters of the contract interpreting. France was criticized by the European Court of Human Rights for this reason in *Beaumartin c. France Case*[21].
b) The competence of the Commonwealth and Foreign Office to elaborate the mandatory certificates for the English courts concerning the international facts recognized and considered to exist legally by the British Executive (borders, war and neutrality state, etc).
c) Wider powers conferred to the justice minister from Italy for permitting or not, reciprocally, the forced execution of the foreign state properties.
d) The possibility of the US President to ask the courts to apply the "act of state" doctrine and also the powers given to the Executive concerning the

applicability or inapplicability of some treaties in the domestic order.

Benedetto Conforti deems in his Report that the Executive may proceed only in its quality of *amicus curiae* and in any case it cannot have a binding and ultimate decision-making power. The exclusive case when Benedetto Conforti consents in his Report that the judiciary has to abstain from exercising the state act review is the case of the state security. But, Conforti appreciates that the problems which affect the state security have to be established by Legislative.

The problem if the national judge may refuse to apply the rules of the customary international law or may to modify them according to the circumstances but with the risk to expose the state to the international liability, raises powerful debates. If the new custom of the international law come into being from the older custom infringement, what are the limits till the national courts may take the steps towards the new custom breaking the existent unwritten law?

In the first opinion, it has been showed that the national judge cannot be an international customary law legislator because his task is the law interpretation. For this reason, his decision must be founded on the pre-existent practice but which it was not sufficient, itself, being consolidated by the respective judiciary decision in the sense of *opinio juris necessitatis.* The judgement strengthens the starter practice through its references to equity and justice. For example, the Lord Chamber Decision in *Trendtex Trading Co. v. Central Bank*[22] promotes the limited immunity concept which is "consonant with justice".

As a consequence, it has been showed that the national judge may refuse to apply the customary international law norm or to modify it if he justifies *opinio necessitatis* or the decision is based on the national or international existent practice in the respect of, even fragmentary.

Finally, point 5, the self-executing effect of the treaties represents the direct application of the complete, precise and valid treaties. The disputed problem is if the courts are competent to establish that the treaty is complete, precise and, therefore, direct applicable.

Many times, the self-executing – or not – character of the treaties was nuanced on the more political than juridical criteria according to the state interest. For justifying these interests, it has been invoked the vague, uncertain character of the treaties.

The Swiss Federal Tribunal excluded from the direct application the treaties that contain the clause of reciprocity showing that the reciprocity clause permits to the state to apply or not the treaty according to its execution by the co-contracting party. For example, GATT Treaty abides to the state to adopt some measures inconsistent with the treaty in the case of the economic difficulties. In these cases, the national judges may apply these last measures even contrary to the treaty.

The majority of the human right conventions enclose dispositive clauses for their implementation which provide, usually, that each contracting state will take all legislative measures of any kind and eventually, in a progressive manner, necessary for their enforcement. Such clauses are enclosed in the Civil and Political Rights Protocol (art. 2, par. 2) as well as in the Economic, Social and Cultural Rights Protocol (art. 2, par. 1) annexed to the United Nations Charter, etc.

On United States, the existence of the implementation clause is interpreted as being the intent of signatory parties to avoid the direct application of the entirely treaty in the domestic legal order. But, International Law Institute showed in its Report from Milan, 1993, that, because the

implementation clause does not concern the procedural methods, it means that it not affects the convention direct applicability because the intent of the signatory parties is to enforce completely the treaty implementation in domestic order in such a way that it result from the implementation clause. On the contrary, such clause would oblige the states to guaranty the formal validity of the treaty in domestic area.

Therefore, it was general agreed that the national judge cannot refuse the direct applicability of the treaty because its provisions are vague and indefinite or because the treaty has the implementation, reciprocity, even conciliatory clauses, but he has to check if the treaty establishes obligations upon the states and its implementtation may be done without the intervention or creation of the special organs and procedures (for example, the right of fair trial may be realised only after the creation of the tribunal).

Another question raised by doctrine was if the national judge may refuse to apply an international treaty taking into account the circumstances that put the treaty into end as the notorious causes of its invalidity or its ending through the state succession, the changing of circumstances, etc. or, it is necessary, first, that the state from which the judge belongs to denounce the treaty?

We agree that the national judge may establish the moment of the international treaty cessation even the state did not denounce it, taking into account the accomplishing of its term or the modification of circumstances *(rebus sic stantibus),* the abrogation of its implementation norm or the apparition of the contrary treaty between the same parties (*lex potest*).

However, in the case of the conflict between the treaty provisions and the national law (the conflicting norm), we contend that the intention to abandon the treaty cannot be deduced solely from the apparition of the national law contrary to it. The national judge must try, as it is possible, to adapt internal law to the spirit and the letter of the international law. Anyway, for deducing the abrogation of the treaties implemented by the subsequent national law it is necessary the identity between the domain of the international treaty provisions concerning its consequences in the internal legal order and the domain of the posterior internal law for its abrogation.

B. The effectiveness of the international decisions concerning the situation of the private persons in domestic legal order

The individual or collective legal subjects from internal law are bearers of the rights and obligations resulted from the international law treaties without becoming the international law subjects.

Therefore, in its advisory opinion from *Dantzig Tribunal Jurisdiction*[23], ICJ showed: "…according to a well-established principle of international law (…) being an international agreement, cannot, as such, create direct rights and obligations for private individuals. But it cannot be disputed that the very object of an international agreement, according to the intention of the contracting Parties, may be the adoption by the Parties of some definite rules creating individual rights and obligations and enforceable by the national courts".

The International Human Rights Convention is an example of international rules codified but which determines rights directly in the patrimony of the ressortissants of member states.

As a consequence, we may conclude the next: *the internal legal subjects have not international personality (they aren't international legal subjects), but they are*

international capacity in the international arena. We borrowed the term "capacity" from the national law terminology for expressing international aptitude of the internal legal subjects to obtain international rights and obligations on international arena and to act for defending them in the international process.

We'll study separately the particularities of the effects in internal plan concerning the decisions which establish rights and obligations upon the private persons elaborated by the international courts or in the case of Security Council resolutions.

The national effectiveness of the decisions which regulate the situation of the private persons elaborated by the international justice courts

According to the United Nation Charter, article 94.1, each member state agrees to fulfil the International Justice Court (ICJ) decisions in the cases in which it is involved as party.

Nevertheless, the Charter has not any mechanism for monitoring the implementtation of these decisions than to seize the Security Council upon the infringement despite of it is an political organ in a high degree and, therefore, it will act more on the political criteria than juridical (though the enforcement of the decision is the third part of the judicial process).

Therefore, the creditor state keeps in hand the next means for obtaining the enforcement of ICJ decisions: to adopt countermeasures, to apply at the international or regional organization, to seize the Security Council.

Particularly, this enforcement could be guaranteed by a domestic judge. The national judge intervention may be called either the creditor state or the private persons that benefit by rights and obligations.

The binding effect of the ICJ decisions is based on the conventional rule that ties only the contracting parties. The article 94.1 must be corroborated with the article 59 of the ICJ Statute which stipulates that the decisions are binding only for the litigant states.

Consequently, in the case when the court decisions raise the rights and obligetions in the patrimonies of the individuals or juridical domestic persons, may they prevail by the authority of the judged act *(res judicata)* before the domestic courts concerning the international decision according to the article 59 aforementioned?

Being of the private persons are not parties before the international courts neither they are obliged by this decision nor the domestic judge who judges in an ulterior procedure in which these parties are involved.

The national judge, being face to face with such dilemma, may use the international court decision for:

1. To interpret the national law norm;
2. To interpret an international rule such as we have showed in the first paragraphs of this article;
3. For solving the preliminary question.

As a consequence, the international court decisions are not susceptible to be enforced on the national area before of their inter-state nature and also due to the principle of the relativity of judicial decision effects.

In the first opinion, it has been showed that when the state acts before the international courts for the fulfilment of the rights of its private legal subjects it has produced a "procedural substitution" which permits the last to benefit by the international decision effects in a quality comparable with their state quality and they will be able to valorise their rights through domestic procedures as their own state. This conclusion would be confirmed by the institution of the diplomatic protection.

This ration is contradicted by the *Mavrommatis Concessions in Palestine*[24]

in which the International Permanent Court of Justice showed in its decision from August, 30th, 1924 that the state which acts for the diplomatic protection of its ressortissants: "does not substitute to the rights of its ressortissants but it valorises its own right".

The same problem has put in the *Avena Case*[25] when ICJ has recognized that the diplomatic protection right is an individual right and the state from which the injured person belongs, may act before ICJ to valorise this right.

Nevertheless, the Court did not mention that the respective state has the right of recourse through the substitution in the rights of its private person but it relieves the state possibility to defend the individual rights of its ressortissants before the international courts.

In the respect of, because Osbaldo Torres (Avena Case) was not party at the process before the International Court of Justice he couldn't call the authority of the judged act of the ICJ decision before the American courts of justice. The Criminal Appeal Court from Oklahoma answered to his appeal that "The International Court of Justice has jurisdiction only upon to that court"[26].

We'll check if this ration is available for the European Court of Human Rights (ECHR). Sure, this problem does not refer to the situation when the state takes precaution measures and adopts domestic norms that permit the case revision as a consequence of the ECHR decision. For this situation, the obligation of the national judge to re-open the case does not follow from ECHR decision but from the national law provision.

In the absence of the domestic similar norms the national courts have the possibility either to give to the case a wider interpretation in conformity with the national law permitting the adoption of the ECHR point of view or to consider that the ECHR decisions do not affect the authority of judged act from the domestic area and also the enforceability of the national decisions.

In the both cases, the ECHR judgements cannot be called as the judged act authority before the national courts.

The decisions of the international courts tie only the state-party but not its courts though the state as abstract entity is represented by its public organs on the plan of the international relations. Therefore, it would result that the action of the state public authorities drags the state liability on the international arena despite of the fact that the state obligations do not oblige its public organs.

For exemplifying the refuse of the national judge to apply the International Justice Court decisions, we remembered the refuse of the American courts to give efficiency to the ICJ decision in *Avena* Case calling either its lack of judged act authority or the principle of the state power separation (concerning the memorandum *Compliance with the Decision of International Court of Justice in Avena* adressed by George W. Bush to the General Attorney).

The same, in the case *Comité des ressortissants des Etats-Unis residant au Nicaragua c. Reagan*[27], American courts rejected the damage request of the civic committee following the prejudices made by the war from Nicaragua. In the opinion of the appellants, the United States responsibility derives from the US aid for CONTRAS which was established as illegitimate by the International Court of Justice. The American ordinary court dismissed the request of claimants with the reason that it implies "political question". The Appeal Court rejected the appeal justifying that the individuals cannot act before the domestic courts for enforcing the ICJ decisions[28].

In the *Socobel Case*[29], Permanent Court of Justice (PCIJ) rendered a decision which confirmed the validity and mandatory character of the arbitral decision obtained by the *Socobel* (Sociéte Commerciale du Belgique) in 1936 and, also, in 1939, but whose Belgium didn't eficiency for guaranteeing their enforcement with a forfeiter sum deposited in Belgian banks and deserved to Greece according to the Marshall Plan. The tribunal denied the effectiveness of their enforceability showing that neither arbitral decisions nor the Permanent Court of Justice decision were not the object of the exequatur procedure in Belgium and Socobel was not part in the case before PCIJ. A part of doctrine criticised the Belgian court solutions. Claude Albert Collard deems that the International Permanent Court of Justice decisions and as a consequence, the International Court of Justice decisions should be assimilated to those of the superior tribunal more than foreign tribunal and, therefore, they should be excepted from the exequatur formality. It has been considered that to permit the national judge to discuss the judged act authority of the international decision would mean the infringement of the principle "the impossibility of the non – confirmation of the international judgement by a national ones" which has been affirmed by the PCIJ in the case l'*Affaire relative a l'usine de Chorzow*[30] from September, 13th, 1928.

The aforementioned cases exemplified the theories constituting the true obstacles against the international court decisions effectiveness before the national courts.

The exemplificative models through the national courts gave efficiency in the national legal order to the international decisions has been supported by the theories contrary to the aforementioned.

The first differentiation has made concerning the decisions rendered by the international courts regarding the delimitation of borders which have been called decisions *in rem* opposable *erga omnes* differring by the decisions establishing the obligations only in the charge of the debt party submitted to the relativity effect (called the decisions *in personam*). This doctrine was criticised on the fact that *erga omnes* effect for the decisions so-called *in rem* would permit to the individuals to call the international decisions though they are not parties or receivers of those.

The ICJ decision in case *Pecheries norvegiennes* was taken into account by the Supreme Court of Norway in the cases *Rex c. Cooper* and *Rex c. Martin*[31]**.** Identically, the decision rendered in the case *Minquiers et des Ecrehous* has been invoked by the Cassation Court in the case *Buchanon*[32]**.**

In other situations, the ICJ decisions were taken into account for interpreting the international law by the national courts. In these situations, the national law is seen as an "international law factory"[33]. Such as, in the case *Bendayan***,** the French Cassation Court used the ICJ decision from the case *Droits des ressortissants des Etats – Unis d'Amerique au Maroc* for interpreting the international law[34].

The appealing to the ICJ decisions for baring the re-examination of the problems already solved, so-called "teoria efectului colateral", respectively, collateral estoppel concerns the American doctrine of the collateral effect regarding the judged act power of the judicial decisions, namely, the banning of the re-examination of the problems already solved through a precedent definitive decision though the ulterior case has a different object. According to the US Supreme Court decision from *Cromwell v. County of Sac* Case[35], the difference between *res judicata* and *collateral estoppel* is that, in the first, the effect of the definitive decision is plenary between the same parties, object and cause while in the second, this

effect also relates with a different process but which implies the problems already solved through the verdict of the jury in a precedent process. It means, by the others, that only the decisions upon the case substance may give rise to the collateral effect. The principle of the decision effects' relativity excludes from their application the thirds that did not take part in the process. But, when the thirds valorise pretensions concerning the effects following from the precedent decisions in a separate way, the exception of the "collateral estoppel" may be raised even against them.

Such as, it has been supported that the ICJ decisions would be able to bar an ulterior procedure upon the problems already solved before it. In the respect of, there are cited various decisions that followed the ICJ jurisprudence from *Teheran Hostages Case*[36] as the cases *Narenji v. Civiletti*[37]*, National Airmotive v. Iran*[38]*, US v. Central Corpopration of Ilinois*[39]. The same, the ICJ decision concerning *Anglo-Iranian Oil Company Case*[40] has been invoked by the national judges solving the claim made by the Anglo-Iranian society against a Swiss customer[41] and, then, against a Japanese commercial society[42]. The civil tribunal from Rome used the analogous conclusions as in the *Anglo-Iranian Oil Company v. S.U.P.O.R.* Case in its judgement from September, 3rd, 1954[43].

These examples prove that, many times, the national judge try to avoid the obstacles raised by the inter-state nature of the ICJ decisions using the "collateral estoppel" doctrine for eschewing *res judicata.*

The opponents of this theory showed that the "collateral estoppel" theory may be used in the favour of a third party and against one from the parties. In the national decisions aforementioned there are involved only particulars – juridical or physical persons, who were not parties in the procedures before ICJ because only the states are legal subjects.

Hence, if the aforementioned national decisions are not explained upon the „colateral estoppel" base then what is the juridical fundament of them?

Concerning the *Narenji* Case, it has been showed that the measures taken by the American authorities against the Iranian students had a domestic character being legal from the national legal order point of view in virtue to the fact that Executive is able to do discriminations on the nationality base but in certain circumstances. On the other hand, on the international arena, these measures may be seen only as retaliations against Iran – an unfriendly but legal behaviour. In these circumstances, the invocation of the ICJ decision was not more than an adjuvant.

Concluding, the national judge is free to ignore the ICJ decisions or to take them into account for interpreting the national or international law or avoiding the re-examination of the problems already settled by them.

From our point of view, for giving the efficiency of the ICJ decisions on the internal plan, the ICJ Statute must be changed for being able to create rights and obligetions which may be valorised by the private persons. This point of view is worth one's while and a significant antecedent we find in article 14(1) from the rough draft of arbitral procedure of International Law Commission from 1950. According to this article, the arbitral sentences joined to mandatory power "for all the litigation parties and for all the *resortissants and organs* of these states".

The domestic legal subjects have access to the international jurisdictions after ending all the domestic jurisdictional stages from the state against which they claim. In this moment, they are able to obtain the diplomatic protection of their state or to claim

before the international courts the illicit repairing.

The inverse situation when the state illicit fact has been established by an international court such as in the cases *LaGrand* and *Avena* raises controversies if in such a way the domestic legal subjects may call the judged act authority before the national courts for asking the reparations as a consequence of the illicit already settled by the international court.

The guaranty of non repeatability and its effect in the national area

The case *La Grande*[44] disturbed the international world through the guaranty imposed upon United States by the International Court of Justice at the Germany request. Two German resortissants were convicted to capital punishment by United States without the fulfilment of the Vienna Convention conditions concerning the prisons informing about their right to benefit by their consulate assistance. Germany asks ICJ to statue that US is debt of the obligation to assure and to guarantee the non-repeatability of the infringement of Vienna Convention obligations concerning the diplomatic protection but it did not ask any material reparation for the prejudice suffered. The Court gave satisfaction to Germany for obtaining the non repeatability assurance concerning that, in the case when US will convict the German resortissants to grave punishments without the fulfilment of the consular notification obligation then, it will be obliged to take internal measures for permitting the re-examination or re-evaluation of the verdict.

This decision raises debates concerning if the obligation of the non-repeatability should be attached as a secondary obligation to the main obligation in state responsibility or, on the contrary, ICJ condemned US to a new main obligation in virtue of its responsibility for the Vienna Convention infringement (apart from that in responsibility) to non violate more the rule, which, however, it implies conformity through its definition. The obligation of non-repeatability is axed more on the prevention than on the equitable reparation. ICJ did not examine the legal base for establishing the non-repeatability obligation and the International Law Commission did not clarify it more[45]. *LaGrand* Case was the beginning of the Court jurisprudence through which there was imposed the finality obligations more than the prudence obligations upon the states[46].

Subsequently, in the *Avena Case*, ICJ has gone ahead on the same jurisprudence and has condemned US for the infringement of the obligation to inform 52 Mexicans sentenced to capital punishment regarding their rights of consular protection. The decision of the US condemnation imposed upon it the obligation to re-examine the verdicts already sentenced in virtue of the non-repeatability guaranty established by *LaGrand*. *Avena* stressed by a retroactive manner the reparatory function of the non-repeatability obligation which has been considered before to be pre-emptive.

Conclusively, though the Court decision in *Avena* Case was not fulfil due to the US justice federalization difficulties, on the other hand, in an original way, the international law of the states' responsebility used the national law to give efficiency to its primary rules.

Effectiveness of the Security Council decisions which regulate the private persons' situation

The sanction resolutions for freezing the founds or goods of the state or target entity as well as the embargo upon the commerce, transportation etc[47]. affect the private rights of the individuals and raise the substantial problem of their application area. What legal effects determine such

contracts affected by an embargo: the nullity or the temporary suspension of the contracts ruled with the target state?

Another question concerns the non-retroactivity of such measures. Regarding the last, the states responded differently: from instituting the exceptions from the resolution applying such as the contracts which were settled or began to perform before the decree elaboration for implementing the resolution to the application of "hardship provision".

In many countries, the property protection enclosed the compensations for lacking the property. In the same time, such compensation requests could also be made on the general law principles.

The compensation is not general available for all the contracts that couldn't be ruled due to the embargo but, such as the Swiss courts showed, it is available only when there are involved the state substantial interests.

More, to the international level, there are excluded the compensations following from the embargo imposed by the United Nations being permitted only some exceptions from humanitarian reasons.

In certain cases, SC called the states to provide penalties as punishments for the sanctions infringing. What is the legal base to adopt such punishments in the member states' legislation?

The legal framework was sought in the special provisions of the criminal national code such as the punishments for the arm embargo infringement or in the provisions of the commercial code with the various degrees of gravity.

Such punishments were taken also for the European law infringement. In *Ebony Maritime* Case[48], the European Court of Justice should respond to the question if the seizure of a Maltase cargo being in its way towards Yugoslavia infringing SC resolution was in conformity with the Community law. ECJ stated that though the penalties are at the EU member states' will, nevertheless such penalties shall be "effective, proportionate and dissuasive".

Concerning the conflict between the SC resolutions and the domestic law, its solution depends by the international law place in *lex fori*.

There are some constitutions which provide the supremacy neither the international law nor the national law in the case of conflicting norm. It is the case, for example, of the Japanese Constitution which is silent in the regard of.

Other constitutions statue the *lex posterior* rule as in the United States („later in time") and the others consecrated the supremacy of the *self-executing* treaty upon the national law.

In the context of, the implementation of the SC resolutions may raise a true "constitutional crises" on the national area, especially in the field of the human rights and fundamental freedoms.

From the international courts, only the European Court of Justice and European Court of Human Rights render decisions with direct effect in the legal order of the member states, the first, on the base of its regulations and the second, underlined on its treaty which gives a quasi-constitutional rank to its decisions for all the member states from the Europe Council.

Out of these, the international law rules are applied by the national courts in conformity with the national constitutions and only for domestic aims.

Although it seems that, at least, the implementation domestic acts of the international rules are submitted to the internal jurisdictions, the resolutions implemented often touch the problem of the security and public order which escapes to the competencies of the judiciary (the theory of the state act).

Sometimes, the refuse to control the SC resolutions was justified on the Charter supremacy. Thus, a decision of the Hague District Court from August, 31st, 2001 rendered to the Milosevic request to be release unconditioned showed that Holland transferred its competence to the ICTY that enjoys by supremacy upon the national courts and the Charter obligations prevail upon those of the member states[49].

Many times, the courts have been confronted with claims against the abuses which exceeded the SC resolutions. In this case, the national courts were in the position to interpret the SC resolutions.

The most relevant case in this direction is *Bosphorus Hava Case*[50]. The Irish High Court mentioned that because the SC resolutions are not part of the Irish law, the resolution 820/1993 is merely the source of the Council Regulation 990/1993 in whose interpretation the Court will take into consideration any judiciary or academic commentary because, in their absence, the resolution 820 is unimportant for Court.

But, the situation is changed when the problem of human rights is approaching. Albeit the SC resolutions do not affect directly the human rights, the national courts are often confronted with the subsequent problems following from embargo as: the infringement of the property right or the right to an equitable and preliminary compensation, the right to a fair trial, etc.

In *Hilal Abdul-Razzaq Ali Al-Jedda* Case[51], the Appeal Court from London showed that the resolution 1546 from 2004 does not affect the claimant rights under the International Convention of Human Rights according to article 103 from Charter. Although the power was given to Iraqi administration, the situation from Iraq continued to be called as a peace threaten through the resolution 1483/2003 which calls in the 5th paragraph to all the parties involved in Iraq stabilization to fully respect the obligations under international law or, in its 8th paragraph, to assist the Iraqi people including the human rights observance. The SC President, himself, called with the occasion of the resolution adoption to exercise the duties under Charter "in conformity with the justice and international law principles"[52].

Also, in the case *Boudellaa ş.a versus Bosnia Herzegovina*[53] the Chamber of Human Rights for Bosnia Herzegovina decided on October, 11th, 2002 that the international fight against the terrorism couldn't exonerate the respondent parties from the fulfilment of the obligations concerning the human rights guaranteed by the Annex to the General Framework Agreement for peace in these territories.

Nonetheless, such as the Professor Bernhardt showed in pag. 1300 from his Commentaries upon the Charter, article 103, from the Professor Simma book[54], SC adopted and developed a standard formula for many from its resolution under Chapter VII from 1990 to present:

"Call all the states… to act strictly in conformity with this resolution, despite of the existence of any rights given or obligations conferred or imposed by any international agreement".

The challenges addressed by the human rights to the SC resolutions, beforehand the challenges against the Talibans, Osama Bin Laden and Al Qaida, concerned the listing of individuals suspected by terrorism, which became the targets of the UN sanctions. Particularly, the individuals listed by the Sanctions Committee in the resolution against Liberia protested. In November, 2005, the expert group for Liberia noted that it had received some claims from individuals who had showed that they are listed unjustly and their right of free movement is infringed. The claimants had sustained that they are innocents, they do not know the reasons for which they are on the list and they had threatened UN and

the expert group that they claim them before a court. Generally, the individuals who showed that they were listed erroneous according to the Sanction Committee criteria have had the possibility to introduce a delisting request through their states of nationality or residence being a certain form of the diplomatic protection.

Concluding, it result that the international law will make more efficient the national law application being, at least, an instrument of its interpretation and, on the other hand, the national law is the exclusive mean for transposing the international rules on the state plan.

Hence, indifferent that they are two distinct orders or they are two distinctive parts of the same universal order, the international and national law contribute to fulfil their common aim and, in the same time, their primordial function: the maintaining of the peace and social cohesion.

For this reason, we consider that it is wrong to talk about the exclusion or compromise between two different legal orders – national and international, but we may talk instead of those about the reciprocal enrichment and normative reinforce between the two distinct spaces of legality.

Notes

[1] As Professor Raluca Miga Beşteliu showed in her academic course, the mandatory character of the international law rules consists in their authors' decision–especially states, to respect them within the horizontal system without legislative, executive or judiciary bodies. It does not mean that, through its subject will, the international law does not possess the coercion instruments or certain hierarchy of its normative values having *jus cogens* as head of that pyramid (Raluca Miga-Beşteliu, *Curs Universitar: Drept Internaţional Public*, All Beck, 2005, pp. 4-5). Out of the state consent, Professor Adrian Năstase mentions as configuration factors of the international law: national interest, power balance or philosophical, political conceptions, the historic traditions and also, the role of the personalities (Adrian Năstase, B. Aurescu, C. Jura, *Drept Internaţional Public: Sinteze pentru examen*, C.H. Beck, 2006, p. 15).

[2] Starting with Alabama Case Arbitration from 1872 and continuing with the advisory opinion of PCIJ in Greco-Bulgarian Community Case when the Permanent Court of Justice declared that „it is generally accepted the principle of the international law that in relation between that Powers which are contracting Parties to the treaty, the domestic law provisions cannot prevail upon those of the treaty", the international jurisprudence relieves uniformly the lack of the relevance of internal law provisions for complying with the international obligetions. Ulterior, the International Court of Justice (ICJ) also showed in the Treatment of Polish Nationals in Danzig that „a state cannot prevail against another by its own Constitution with the intent to avoid the obligations which charge upon it under international law or enforcing treaties". (Vera Gowlland-Debbas, *Collective Responses to Illegal Acts in International Law,* Martinus Nijhoff Publishers, 1990, p. 510).

[3] B. Stern, *L'affaire du Bureau de l O.L.P devant les jurisdictions interne et internationale*, A.F.D.I, p. 165-194, 1988.

[4] Solange I opened the possibility that the European Court of Justice (ECJ) decisions do not be applied by the German courts if they are contrary to Constitution, urging ECJ to develop with new enthusiasm the subject of the human rights. Following, in Solange II, the German Constitutional Court declared „…it has to statue that, while the European Community secures the general and effective protection of the fundamental rights…the Federal Constitutional Court do not exercise more its jurisdiction to decide upon the applicability of the secondary Commu-nity legislation… and it will not control that legislation according to the fundamental right standards from Constitution (…)". See Karen J. Alter, *Establishing the Supremacy of European Law*, Oxford University Press, p. 94-96, 2001.

[5] Hans Kelsen, *Pure Theory of Law*, The Lawbook Exchange LTD, Union, New Jersey, p. 3-15, 2002.

[6] Hans Kelsen, *The Principles of International Law*, Rinchart, p. 73, 1952.

[7] Gerald Fitzmaurice, *The General Principles of International Law considered from the Standpoint of the Rule of Law*, 92 RCADI (1957 – II) at p. 71.
[8] Michel Virraly, „Sur un pont aux anes, les raport entre droit international et droits internes", în Michel Virraly, *Le droit international en devenir*, Paris, Presses Universitaires de France/ Graduate Institute of International Studies, 1990, p. 129-130.
[9] See Vera Gowland Debbas, *Implementing Snctions Resolutions in Domestic Law*, Koninklijke, Netherland, 2004, p. 37.
[10] The international law is seen through two contradictory concepts :
- The traditionalist view according to which the international law relates horizontally with; and
- The *ius cogens* perspective that is defined by a vertical relationship;
The norms *ius cogens* tend to impress a hierarchical character in international law. In *Barcelona Traction Case* the International Court of Justice (ICJ) stated that it is a difference between the state obligations to the international community as a whole (*jus cogens*) and those appeared in relation with another state in the diplomatic protection field (M. Ragazzi, *The Concept of International Obligations Erga Omnes*, Clarendon Press, Oxford, 1997, p. 43-72).
The consecration of the "constitutional" norms called ius cogens (imperative norms) in the international law, which implies the conformity of all norms with them seems to be consolidated by the Vienna Law Treaty Convention from 1969 that stipulates in art. 53: «A Treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.» (See A. Năstase, Bogdan Aurescu, *Drept internaţional contemporan. Texte esenţiale*, Regia autonomă „Monitorul Oficial", Bucureşti, p. 154, 2000).
El Zeidy arguments that the interdiction of the crimes against humanity, the war crimes and the genocide touches the superior hierarchical statue of the *ius cogens* norms from international law. The consequence of this fact is the universal jurisdiction of the states and *erga omnes* obligation for *aut dedere aut judicare* (cited by J. Dugard,Van den Wyngaert and T. Ongena in "Ne bis in idem Principle, Including the Issue of Amnesty", in Rhys David Evans, *Amnesties, Pardons And Complementarity: Does The International Criminal Court Have The Tools To End Impunity*, Nottingham University, 2002, p.8)
Generally, the universal jurisdiction is a controversial principle of the international law in which the states which feel to be victimised detain criminal jurisdiction concerning the suspects of the grave crimes of international law perpetrated outside of their borders indifferent of the perpetrators' nationality , citizenship or residence or any relationship from these and the investigator authorities. The universal jurisdiction is based on the national jurisdictions, respective on the fact that those crimes are considered to be perpetrated against all human beings such as every state is authorized to punish them. Therefore, the concept of the universal jurisdiction is related with the mandatory character of the *ius cogens* norms infringed and *erga omnes* obligation to punish these infringements. It remains to national judges the task to make the connection between the peremptory norms of the international law broken and the national law norms which permit their investigation on the base of the active or passive jurisdiction or the universal jurisdiction. In the last case, the national law has to provide the possibility of their investtigation according to the universality principle.
[11] Also, United Kingdom adopted the sanctionnatory measures against Iraq before August, 6th, 1990, when the United Nations rendered resolution 661 against Iraq. Also, in France, the Iraq goods were frozen before elaborating SC resolution.
[12] See the Ireland Suprem Court decision Bosphorus Case in commentaries by Panos Koutrakos*, Trade, Foreign Policy and Defence*

in EU Constitutional Law, Hart Publishing, 2001, p. 132-138.

[13] Case T-306/01, Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities available on http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri= CELEX:62001A0306:EN:HTML.

The commentaries around it relating with *jus cogens* norms in Larissa Van Den Herik, "The Security Council's Targeted Sanctions Regimes: In Need of Better Protection of the Individual", *Leiden Journal of International Law*, 20 (2007), p. 800-802.

[14] The Security Council resolutions adopted according to article 24 from Charter have the recomandatory value when they are related by the atributions exercised by Council under Chapter VI or VIII from Charter and a mandatory value when they are adopted under Chapter VII (Raluca Miga Beşteliu, *Organizaţii Internaţionale Interguvernamentale*, All Beck, 2000, p. 187-189). But, in this article, we'll study only the binding resolutions.

[15] Magdalena M. .Martin Martinez, *National Sovereignty and International Organizations,* Martinus Nijhoff Publishers, 1996, p. 230.

[16] Erika De Wet, André Nollkaemper, Petra Dijkstra**,** "Review of the Security Council by Member States", Amsterdam Center for International Law, Intersentia*, 2003, p. 69.*

[17] Gilbert Guillaume, „L'introduction et l'exécution dans les ordres juridiques des Etats des resolutions du Conseil de Securite de Nation Unis prises en vertu du Chapitre VII de la Charte", 50, *Revue Internationale de Droit Comparé*, 1998, 539-549.

[18] The courts will approach the interpretation of the treaties from the three perspectives: the "parties' intent" point of view, the textual view or a teleological approaching. According to the Vienna Convention (article 31) the treaties have to be interpreted with good faith in conformity with the ordinarily understanding of their terms from context and in the light of their aims or objectives. The article 32 of the Vienna Convention provides using the text expression in a wider sense. In the regard of, we have take into account the preparatory work in treaty-making process and other circumstances called "the supplementary means of interpretation". The expression "supplementary" used by the article 32 of the Vienna Convention does not mean the alternative and autonomy means for treaties interpreting but only helpful means. This article has been understood to give raise at three principles: the good faith principle following from the „pacta sunt servanda" rule; the parties are presumed to have the intention resulting from the usual understanding of their terms; the ordinarily understanding of these terms will not be determined abstractly but from the treaty context and in conformity with its objecttives or aims.

These three approaches concerning the treaties' interpretation do not exclude each others and the treaty theory encloses all of them. Sometimes, one from them tends to achieve supremacy upon a treaty particular aspect but that not means they do exclude each others.

[19] Anthony A. D'Amato, *International Law and Political Reality*, Martinus Nijhoff Publishers, 1995, p. 233-247.

[20] Elihu Lauterpacht, C. J. Greenwood, *International Law Reports*, Cambridge University Press, 1979, p. 273-306.

[21] Elihu Lauterpacht, C.J. Greenwood, A.G. Oppenheimer, *International Law Reports: V.107,* Cambridge University Press, 1998, p. 50-64.

[22] Ernest Kwasi Bankas, *The State Immunity Controversy in International Law: Private Suits Against Sovereign States in Domestic Courts*, Springer, 2005, p. 144.

[23] The case content may be seen on http://www.icj-cij.org/pcij/index.php?p1=9&p2 =4&p3=3.

[24] Robert Yewdall Jennings, Vaughan Lowe, Malgosia Fitzmaurice, *Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings,* Cambridge University Press, 1996, p. 328.

[25] International Court of Justice*,* Case Concerning Avena And Other Mexican Nationals (Mexico V. United States of America)*, United Nations Publications, 2005, p. 4-14.*

[26] Sean D. Murphy, *United States Practice in International Law,* Cambridge University Press, 2006, p. 34.

[27] *Ibidem*, p. 325-327.

[28] Mary Ellen O'Connel, "The Prospects for enforcing monetary judgements of the International Court of Judgement: A Study of

Nicaragua's Judgement against United States", *Virginia Journal of International Law* (1990), p. 15.

[29] Nandasiri Jasentuliyana, *Perspectives on international law*, Martinus Nijhoff Publishers, 1995, p. 287.

[30] Chittharanjan Felix Amerasinghe*, Jurisdiction of International Tribunals,* Martinus Nijhoff Publishers, 2002, p. 439-442.

[31] The Norway Government delimited through its decree from July, 12nd, 1935, the areas of fisheries reserved exclusively to its ressortissants. The United Kingdom claims before the International Court of Justice the non-conformity of this kind of the borders' establishment with the international law. ICJ rejected the claim on the considerate that the method used is not contrary to the international law. After that, before the Norway courts were introduced two similar plaintiffs: two particulars, the first of English nationality and the second of French nationality, were accused to fish in Norway waters and they were condemned at a financial penalty and also at the partial confiscation of their cargo boat and equipment. The both declared recourse pretending, on the one hand, the impossibility to apply the Norway order of its borders delimitation in domestic law because this decree is contrary to the international law and, on the other hand, they invoked the good faith principle. Responding, the Norway Supreme Court showed that, the decree conformity with the international law has been established by ICJ in *Fisheries Case (Pecheries)* from 1951 (Hersch Lauterpacht, C. J. Greenwood, *International Law Reports,* Cambridge University Press, 1957, p. 166-167).

[32] The French society Hanappier-Peyrelongue used for its whisky labelling the labels which resembled with those used by the London society James Buchanan for its whisky battles, such as it could appear confusion concerning the origin of the product. As a consequence, the London society claims damages in French being rendered a decision in which, on the one hand, has been interdicted the label imitation by the French society and, on the other had, it has been recognized that the French society action means an unfaithful competition. The London society introduced recourse in cassation against this decision considering that it did not obtain the French society condemnation to reparations for the label imitation. The French society supported that its condemnation must be rendered only in two months according to the French law. The French society prevailed by the ICJ decision in Minquiers et des Ecrehous Case mentioning that the French and English territories have the common borders and, in this case, it could not be possible to valorise a longer term in the favour of the private subjects belonging from the state which is not neighbouring to the France (possibility which is conferred usually by the French law). Through its decision ICJ stated that the territories of the Minquiers şi Ecrehous islands being situated less that 6 miles from the French Coast and under the English sovereignty mya be considered as neighbouring to the French territorial waters having the area of 3 miles by Coast. The French Cassation Court rejects the request on inadmissibility raised by the French society in the light of the Minquiers et des Ecrehous Case justifying it on the fact that the islands are placed outside of the English territorial waters and their contiguity with the French territories could not have the result to institute the common border between these two states. Hence, there is the possibility to examine a term longer than 2 months for the English society, the recourse being declared admissible (Elihu Lauterpacht, C. Greenwood, *International Law Reports,* Cambridge University Press, 1970, p. 425-426).

[33] Robert H. Jennings, „The Judicial Enforcement of International Obligations", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Stuttgart, 1987, vol. 47, p. 10.

[34] Bendayan şi Ettedgui, the nationals belonging from United States living in Morocco has been claimed before the French jurisdictions from Casablanca for transporting the cheques with the infringement of the provisions concerning their declaration and authorisation. It has been made references to the art. 102 of the Act from April, 7th, 1906 but its enforcement concerning the United States ressortissants had been confirmed by ICJ in the case Droits des ressortissants des Etats – Unis d'Amerique au Maroc. Bendayan challenges

the jurisdiction of the Court from Morocco because in the article 102 from the act aforementioned (Algesiras), the confiscation, financial penalty and custom penalties must be applied for strangers by a consular jurisdiction. Therefore, the problem was if the Algesiras provision had applicability in the respective lawsuit and if the French jurisdictions had the competence to interpret this act. On the last, The Court called that it was to the tribunals' competence to interpret the international conventions or, in this case, the signification of the article 102 was clear concerning the custom delinquencies. In this regard, the delinquencies against the Morocco legislation perpetrated by two Americans in their trade escape from the provisions of Algesiras, art. 102. a sa consequence, the Cassation Court dismissed the recourse claimed by Bendayan. In Algesiras interpretation, the Court took into account ICJ decision from the case Droits des ressortissants des Etats – Unis d'Amerique au Maroc (Nandasiri Jasentuliyana, *Perspectives on international law*, Martinus Nijhoff Publishers, 1995, p. 287).

[35] Peter R. Barnett, *Res Judicata, Estoppel and Foreign Judgments: The Preclusive Effects of Foreign Judgments in Private International Law,* Oxford University Press, 2001, p. 164.

[36] See Rosalyn Higgins, *Problems and Process: International Law and How We Use It,* Oxford University Press, 1994, p. 208: ICJ condemned Iran that "was fully conscious by its obligetions… has had all necessary means to fulfil its obligations ; (but) it failed to fulfil these obligations".

[37] The lawsuit appeared as a consequence of civil action started against the measure taken by INS (Immigration and Naturalization Service) at the General Attorney Order. It has been showed that the respective order had been adopted to the illegitimate seizure of the US embassy from Iran and as a consequence of taking the American diplomatic stuff as hostages and it imposed upon the Iranians students who were frequenting US faculties the obligation to give to the INS office the dates concerning their residents and or non-emigrants statute. The students who did not furnish these dates or furnished the false dates risked to be expatriated. The Court of Colombia District which was call to statue upon this act annulment decided that it is illegitimate "the impermissible distinction made on the base of the national origin which violates the guarantee of the law equal protection according to the Fifth Amendment". On the contrary, .the Appeal Court reformed the ordinary decision showing that in the immigration sector both the Council and the Executive may do differences on the nationality base with the requirement that those don't be total unreasonable. As a consequence, for establishing if the act is valid is necessary to produce with the prejudicial title the proof of the illegitimacy of the Iran behaviour. Particularly, for proving the illegitimacy of the government act was necessary to demonstrate the illegal character of the Iran behaviour concerning the United States. On this question, the Appeal Court deemed that it not posses the power to judge recognizing the effectiveness of the ICJ decision as "collateral estoppel" through which it has been already stated that the illicit had been committed by Iran (Lawyers Co-operative Publishing Company, United States Supreme Court, *United States Supreme Court Reports,* Lawyers Co-operative Pub. Co, 1957, p. 815).

[38] The case comported upon the two apartments' property occupied formally by an Iranian official having to establish by the others if is applicable in this case the Foreign Mission Act. The defender Central Corporation affirmed that the both apartments cannot be seen as the diplomatic mission residences because that means the continuity of the treaty for friendly relationship between Iran and US from 1980. On the contrary, the American Appeal Court established that, in conformity with ICJ decision the treaty remained enforceable during even the crises concerning the American diplomatic staff capture (Khan Rahmatullah, Rahmatullah Khan, *The Iran-United States Claims Tribunal: Controversies, Cases, and Contribution,* BRILL, p. 15, 1990).

[39] This lawsuit relates with a civil action intended by an American society against Iran for the contract non-execution. While the action starting Iran asked the suspension of the procedure Judicial Panel on Multidistrict Litigation because „as a consequence of the President order banning the free circulation between US and Iran, the lawyer is impeded to obtain the factual information necessary to make an adequate defence". The claim was

dismissed considering that the President Order was rendered as a consequence of taking hostages in American embassy and the Iran illicit behaviour had been already established by ICJ (the case is exposed largely on the http://209.85.135.104/search?q=cache:myk8ldpmlQcJ:bulk.resource.org/courts.gov/c/F2/877/877.F2d.793.88-1657.html+National+Airmotive+v.+Iran&hl=ro&ct=clnk&cd=4&gl=ro).

[40] On 1951, Iranian Government approved a law which nationalized the refinery of the Anglo-Iranian Oil Company that, such is well known, had concessions of oil extraction and its trading in Iran. That raised a conflict between Iran and society, in virtue to that the state from which the society belonged seized ICJ in conformity with the right of diplomatic protecttion for obtaining a decision which attests that the law of nationalization is contrary to the international law. Iran, on the other part, raises the preliminary exception of the Court jurisdiction contesting the English Government affirmations according to those the treaty settled in 1933 between Iranian Government and society may be consider as being either a leasing treaty or an inter-states' agreement. The Court, after rendering the order of the conservatory measures favouring United Kingdom, received the preliminary exception raised by Iran without solving the conformity of the nationalization law with the international law. (Bimal N. Patel, Shabtai Rosenne, *The World Court Reference Guide: Judgments, Advisory Opinions and Orders of the Permanent Court of International Justiceand the International Court of Justice (1922-2000)*, Martinus Nijhoff Publishers, 2002, p. 259-265).

[41] The claim was introduced by the Anglo-Iranian company against a Swiss customer concerning the 700 tones of the nationalized oil. Or, the Supreme Court of Aida Colony, seized with this claim, calls the conservatory measures taking by ICJ for rejecting the good faith invoked by the Swiss customer (Noyes E. Leech, Covey T. Oliver, Joseph M. Sweeney, *Cases and Materials on the International Legal System*, Foundation Press, 1973, p. 444).

[42] The same company as in the precedent case introduced a similar action in Japan against the company Idemitsu Kosan Kabushiki Kaisha, but, the District Japanese Court rejects the claim using the ICJ decision rendered upon the case substance for demonstrating licit character of Iran nationalization law. (Noyes E. Leech, Covey T. Oliver, Joseph M. Sweeney*, Cases and Materials on the International Legal System*, 1973, Foundation Press, p. 451).

[43] In this decision, the Rome Tribunal mentioned that, though ICJ did not refer explicitly to the licit character of the contract settled between Iran and the Anglo-Iranian Oil Company, yet this court decision stated that the convention from April, 29, 1933 „is only a concession contract between Govern and a foreign private society" (Fulvio Maria Palombino, "Jurisdictions Internationales: Les Arrets de la Cour Internationale de Justice Devant le Juge Interne", *Annuaire Francais de Droit International*, LI-2005-CNRS Editions, Paris, p. 137-138).

[44] International Court of Justice*, LaGrand Case (Germany v. United States of America),* International Court of Justice, 1999.

[45] Professor Raluca Miga Beşteliu showed that art. 31 such as it appears in the redaction of the ILC Project from 2001, permits two interprettations: it permits to be admitted the existence of the illicit international facts which do not produce a damage quantifiable material or moral, case in which the establishment of the state responsibility implies the cessation of its illicit behaviour and the fulfilment of the obligation infringed or it means that the prejudice affect the entirely legal order (the legal or juridical prejudice). The ILC Commentaries prefer to make references only to the main obligation content without clarifying this aspect (Raluca Miga Beşteliu, „Dreptul Răspunderii Internaţionale a Statelor. Codificare şi Dezvoltare Prograsivă în viziunea Comisiei de Drept Internaţional a ONU", *Revista Română de Drept Internaţional*, CH Beck, 2/2006, p. 4-5).

[46] Academie de Droit International de la Haye**,** *Recueil Des Cours, Collected Courses,* Volume 207 (1987-VII), Martinus Nijhoff Publishers, 1996, p. 211-213.

[47] For the sanction evolution, especially in the field of terrorism, see also Marian Mihăilă, „Cooperarea internaţională în domeniul contracarării terorismului", *International Law Notebooks*, nr. 17 (4/2007), p. 7-19.

[48] Panos Koutrakos *Trade, Foreign Policy and Defence in EU Constitutional Law,* Hart Publishing, Oxford-Portland, 2001, p. 146-149.
[49] Vera Gowlland-Debbas, Djacoba Liva Tehindrazanarivelo, *National implementation of United Nations sanctions: a comparative study,* Martinus Nijhoff Publishers, 2004, p. 60.
[50] Nikolaos Lavranos, *Legal Interaction Between Decisions Of International Organizations And European Law,* Europa Law Publishing, 2004, p. 172.
[51] The ordinary judgement is available on http://www.liberty-human-rights.org.uk/publications/pdfs/al-jedda-intervention.pdf, iar judecata în apel poate fi regăsită integral pe http://www.justice.org.uk/images/pdfs/Al%20Jedda%20Intervener%20Submissions%20jan06.pdf
[52] See also Claudio Saporetti, „Pentru un viitor al trecutului irakian", *International Law Notebooks*, nr. 17 (4/2007), p. 19-22.
[53] The case is available on http://www.hrc.ba/database/decisions/CH02-8679%20BOUDELLAA%20et%20al.%20Admissibility%20and%20Merits%20E.pdf
[54] Rudolf Bernhardt, „Article 103", in Bruno Simma, *The Charter of the United Nations. A Commentary*, edition 2, vol. II, Oxford, 2002, p. 1292-1302.

GATT – Mon amour
(pages of an unwritten book)

Constantin FOTA

Abstract: *60 years of GATT A good occasion to review its major contribution in the expansion of international trade, in economic development. The study is structured in three directions: GATT – WTO and trade liberalization; GATT – WTO and economic development; GATT – WTO and regional economic groupings. The final part is dedicated to the problems of new international economic governance in a knowledge based society.*
Keywords: Bretton Woods, GATT, rounds of negotiations, most favored nations treatment, custom union, E.U., free trade area, N.A.F.T.A., U.N.C.T.A.D., G.S.P., regionalism, tripolarisation, globalization, New - liberal institutionalism, New - medievalism, Inter-governmentalism.

April 1944, Isalnita, Dolj, Romania

I wasn't nine years old yet. It was the third day of Easter when I, my parents and my four-year old sister went to our godparent's house bearing gifts: 30 Easter eggs, dyed with onion skins, 3 large egg-washed loaves of bread, sausages and ham, 2 round and golden cakes baked in special pans, 1 litre of Tesco wine, a demijohn of red wine, all home-made by my father from our vines on the Folea Hill and obviously a living hen, one of the largest in our back-yard. My godmother had prepared chicken soup soured with myrobalams, and hen steak fried in lard in a cooper pan.

After eating, I, my sister and my three cousins – Leana, Mita and Gheorghita – godparent's daughters, went out to play. It was hot and the sky was blue. Then, out of nowhere, we saw American airplanes flying above our village. There were tens of massive, deafening and scary airplanes coming back from bombardment to Bucharest or Ploiesti. Smaller escort airplanes were flying around them at great speed. From the entire crowd we saw one falling fast. It was attacked immediately by Stukas German hunting planes which seem to have appeared out of the blue as well. Everything seemed like a dream. The falling bombardier went towards Folea Hill crashing its eight engines into the steep slope. Before the impact, there were several parachutes flying in the sky. Where the impact took place, the water literally sprang out of the earth. The plane's aluminum body spread around the large area of the hill. All of the villagers came and took bits and pieces from the plane, no one leaving the place of the impact empty handed. My father and I took home an aluminum plate out of which a gypsy made my first hair comb which became my lucky charm. The American pilots were friendly

captured and transported by the Romanian soldiers to Craiova town where they were very well treated. Long waited Americans are in Romania!

July 1944, Bretton Woods, New Hampshire, United States of America

The 44 allied countries which were already known to have won World War II met for the United Nations Monetary and Financial Conference to create a new post-war economic environment and rebuild the international economic system. They have decided to create the International Monetary Fund (I.M.F.) for monetary relations, The International Bank for Reconstruction and Development (I.B.R.D.) for loans to finance reconstruction and economic development and and the World Trade Organization (W.T.O.) for commercial relations among countries. Romania was not invited to the conference being the enemy and also considered defeated even though on August 23, 1944 turned its weapons against Germany.

In 1947 the I.M.F. and I.B.R.D. were founded, the two great pylons of international economy. The status of the third necessary pylon was not approved by American Congress, its place being taken by the General Agreement of Tariffs and Trade (GATT) which incorporated the principles and mechanisms of international comercial negotiation found in the Havana Charta. Even though it did not have the status of an international organization from the very beginning, GATT, with the I.M.F. and I.B.R.D., had a crucial role in the world economic development through the liberalization of the trade of goods and services along until 1994 when W.T.O. was founded.

In the 60 years (1947-2007) of GATT – W.T.O. activity, international trade was and will still be governed by fundamental principles and long term norms of relationships between countries like the most favoured nation treatment and non – discrimination, using tariffs as the major economic instrument for protection of the national economy along with the complete elimination of quantitative restrictions as the administrative instrument. Is also compiled the periodic international commercial negotiation rounds with the purpose of reciprocal reductions in tariffs, the prohibition and sanction of dumping and subventions for export and finally, preferential treatment for developing countries.

During this period, eight negotiation rounds were conducted, the most important being the Kennedy Round (1964-1967), Tokyo Round (1973-1979) and the Uruguay Round (1986-1994), during the latter being decided the founding of the WTO. As a result, the average level of tariffs in international trade fell substantially from 20-30% in 1947 to less than 4% today. At the same time, the quantitative restrictions were eliminated from international trade, their use being only permitted in exceptional situations approved by GATT.

GATT – WTO Negotiation Rounds

Name	Time period of participating countries	Objectives	Result
Geneva	1947, 23 countries	Reduction in taxes product by product	Concessions in 15,000 tariff positions
Annecy	1949, 33 countries	Reduction in taxes product by product	5000 tariff concessions and 9 new participating countries

Torquay	1950, 34 countries	Reduction in taxes product by product	8700 tariff concessions and 4 new participating countries
Geneva	1956, 22 countries	Reduction in taxes product by product	Modest reductions
Dillon Round	1960-1961, 45 countries	Reduction in taxes product by product	Change in 4400 concessions
Kennedy Round	1963-1967, 48 countries	Linear reduction in taxes, non-tariff measures	Reduction in taxes of 35%, 33,000 of tax concessions, customs evaluation and antidumping agreement
Tokyo Round	1973-1979, 99 countries	Linear reduction in taxes with exceptions, non-tariff measures	Reduction by 1/3 in taxes to 6% from the developed countries imports, conduit codes for all non-tariff measures
Uruguay Round	1986-1994, 47 countries	Linear and product by product reduction in taxes, non tariff measures for services	Reduction by 1/3 in taxes. Rules for agriculture and textiles. Creation of the WTO , new agreements for services (related intellectual property, investments)
Doha Round	2001- , 150 countries	Linear and product by product reduction in taxes, non tariff measures for services and the environment	Still developing

Reference: *WTO: World Trade Report*, 2007, p. 198.

As a result, international trade recorded a considerable growth, reaching $ 14,472 billion ($11,762 billion in exports of goods and $2,710 billion in exports of services) compared to $60 billion in 1948. In order to better understand this number, we recall that Romania's exports in 2006 reached around $25 billion. Foreign investments, the second most important economic flow reached in 2006 $1230 billion and the number of people working outside their home countries' borders reached 300 million.

In these 60 years, the international trade volume grew significantly faster than the average GDP. Thus, the average exports growth rate between 1950 and 2005 was approximately 6.2% and the GDP growth rate was 3.8%. The Exports/GDP ratio which indicates the degree of openness of an economy and the intensification of the globalization phenomenon also grew significantly.

Export of goods/GDP ratio (%)

	1950	2005
Globally	5.5	20.5
Canada	19.3	39.7
USA	4.9	10.2
Brazil	3.9	8.9
Mexico	3.0	12.3
France	7.6	27.6
Germany	5.0	51.1

England	11.3	19.3
Italy	3.5	28.8
China	2.6	10.7
India	2.5	3.7
Japan	2.2	15.7

Reference*:* Maddison (2001), *L'economie mondiale: une perspective millienaire.*
WTO: World Trade Report (2007), p.244.

Obviously, the most powerful countries in the world record the largest volume of exports-imports of goods and services. Taking into consideration the exports and the import of goods only, the largest comercial countries are: USA – $2,957 billion, Germany – $2,022 billion, China – $1,761 billion, Japan – $1,225 billion, England – $1,044 billion, France – 1,023 billion. Remarkable, on the one hand, is China's expansion in international trade which became the third big commercial power after the European Union as an entity and the United States and, on the other hand, is the relatively low status of Russia ($496 billion).

Regarding the Exports/GDP ratio, the best performing countries are the small and medium ones: Belgium – 112.6%, The Netherlands – 77.7%, Austria – 64.8%, Switzerland – 59.3%, Norway – 55.6%, and Finland – 51.9%. For the sake of comparison, Romania's Exports/GDP ratio is only 20%.

The dynamism of international trade is strongly related to the relatively pacific environment in the world after WWII, reinforced by the fall of the Berlin wall, whose existence was strongly related to NATO and the vertical and horizontal consolidation of the European Union. In its turn, international trade strengthened the trust regarding collaboration between countries. Interrelationships and symbiosis between trade-reciprocal advantage and good understandding have been the foundation of the longest period of peace globally.

Economically speaking, the main factor was and continues to be technological improvement which led to the transition of human kind from the industrial age to the knowledge-based society. An increasingly bigger contribution has the expansion of transnational corporations which enforces the phenomenon of globalization. However, the constant liberalization obtained by GATT as a result of perseverance was crucial to the development of international trade.

The evolution of international trade which beneficially reached GATT's objective – minimum levels of unemployment through economic development – confirmed the validity of the classical, neoclassical, modern and contemporary free trade economic models beginning with the ones based on absolute and comparative advantage (A. Smith, D. Ricardo), continuing with those concerning the relative abundance of resources (E. Hecksher, B. Ohlin) or mobile factor (P. Samuleson, R. Johnes) and, obviously, not finishing with standard terms of trade (P. Krugman, M. Obstfeld) or competitive advantage (M. Porter) models. All these models encourage international trade and see it as a factor of economic growth, its role being directly related to its degree of freedom. All countries benefit from it, some more than others. It became more and more obvious that from the separation of the producer (protectionism) and the consumer (free trade) the winners is population who has more possibilities to exercise the freedom to choose the best qualitative products at the best price regardless their origin. In this case, the producers' challenge is to offer the market both.

April-June 1964, Geneva, Switzerland, Palace of Nations

It was a crossroad time for GATT's and the world's evolution. The United Nations Conference for Trade and Development was institutionalized as an international organization with the purpose of formulating claims against developed countries. It has also been debated the idea of replacing GATT, which did not have the status of universal organization with UNCTAD as an international organization.

The conference debates were conducted in accordance with the report elaborated by the First Secretary of UNCTAD, the Argentinean Raul Prebish. The report in its essence was meant to direct all measures towards the idea of "economic development through trade" approved by the developed countries compared to the idea of "financial aid for development" initially promoted by the developing countries.

During the preparation of Romania's participation at UNCTAD in 1964, a group of researchers from the Chamber of Commerce under the conciliation of Professor Titus Cristuveanu and Alexandru Zamfir, both doctors in economics in famous British and American universities and with tacit approval by Professor Mircea Malita, deputy minister of Foreign Affairs at that time, elaborated a study regarding Romania's status in the following debates, as a developed country – donor of financial aid and commercial preferences or as a developing country – beneficiary of such advantages. From the study regarding the level of economic development compared to developed and developing countries, it was obvious that Romania was not a developed country, but a developing one.

The act of making public Romania's status as a developing country contrary to that officially proclaimed as developed country must be approved by political leadership. The prime minister of that period, Gheorghe Maurer made a shocking statement: "If we get something, we go to Geneva as a developing country, but you will never convince me we are not a developed country." In order to be recognized as a developing country, Romania adhered later to the Latin-American subgroup and along with this to the Group of "the 77."

Making Romania's status as a developing country official represented a key moment in the country's evolution in the international environment, benefiting from a special treatment compared to the other socialist countries. Economically, Romania was included in the countries that benefited from the Generalized System of Preferences offered by developed to developping countries having a result of hundreds of millions of dollars on Romanian exports to Western Europe, North America, Japan, Australia and New Zealand. At the same time, Romania became a member of the Protocol of "the 16" and the Global System of Trade Preferences which had more than 40 developing countries with the purpose of the development of reciprocal trade. Gradually, Romania started to become one of the leaders among developing countries.

Encouraged by the success they faced in UNCTAD, the ones involved engaged in new international openings. Professor Alexandru Zamfir, along with the researchers, passed "the border" between GATT and the UN headquarters in Geneva establishing the first contacts with GATT. The event was published in the international publications as sensational news.

Important events followed: Romania's adherence to GATT based on a specific project developed by a Romanian fellow at the GATT Course of commercial policy which was distributed to all member countries as study document, the adherence to the I.M.F. and the I.B.R.D., the signing of the first Romanian-American commercial

agreement which stipulated the reciprocal extension of the most favoured treatment, the conclusion of "technical" protocols on product groups and of a general accord with the European community. All of these evolutions materialized in larger amounts of exports because of the lowest possible tax rates negotiated with GATT and of preferences, stand-by credits from the IMF and loans from the IBRD with reasonable interest, better conditions of access for agricultural products, textiles in European markets and others.

These beneficial evolutions were brutally interrupted by the sharp political decisions of that time – foreign economic advises being considered as interference in internal affairs – like the advanced payment of the foreign debt by forcing exports to the maximum and reducing imports to the minimum, ending the relationships with the IMF, unilateral giving up the most favoured nation treatment with the US, all with severe consequences on the standard of living of the population. This was followed by a period of semi-isolation which reached the peak when President Mitterand refused to make a programmed visit Romania. It was the beginning of the end of the autocratic regime.

As told above, the institutionalization of UNCTAD as an international organization generated a rivalry between GATT and UNCTAD. Some people even assumed the termination of GATT. The essence of the conflict was based on the two different ideologies supported by the two organizations: the market economy encouraged by GATT and the centrally-planed economy which the socialist countries tried to expand to the developing countries in the frame of UNCTAD. Gradually, the developing countries chose the path of market economy. They recognize the different functions for the two organizations: GATT – contract and UNCTAD – recommendation. More than that, it was "discovered" that GATT also had to deal with a "Fourth Part" to developing countries, including the idea of not asking from their part concessions like those offered by the developed countries. This led to the foundation of the Generalized System of Preferences. The conclusion was that the two organizations, GATT and UNCTAD, are far from being rivals, but, they could and should cooperate being complementary. In this spirit, the International Trade Center as the common ground between GATT and UNCTAD was set up. Finally, the two organisms better defined their roles: GATT – organism dealing with contractual arrangements, negotiation and regulation in international trade; UNCTAD – organism dealing with study, debate, solutions and recommendations regarding economic development. As a result, the majority of the world's countries are members of GATT/WTO, the conflict being annihilated.

1957, Rome, Italy

The Treaty regarding the foundation of a Customs Union by the 6 countries that constituted the European Coal and Steel Community was signed. Ten years after GATT had been established, the article XXIV regarding the derogation of custom unions and free trade areas from most favoured nations treatment (article I) became significant in practice.

I haven't found an answer yet to the question concerning the implementation of this derogatory article which constituted over the years the juridical basis of around 100 different preferential arrangements significantly eroding the principle of the most favoured nation treatment. To cover at that date the existence of a customs union between Belgium, the Netherlands and Luxembourg? Or, better yet, the negotiators of GATT's status deliberately created the possibility of the appearance of such an alliance in order

to materialize the illuminist vision of the "United States of Europe" as a solution to eliminate wars in Europe and around the world. I think both articles I and XXIV represented an historic compromise with consequences difficult to determine between the American (multilateralism) and European (regionalism) visions. Was it beneficial? Only time can tell. As European citizens we could say YES, as long as Europe is not on the same competitive keel with the US. As citizens of the world we could say NO because it divided the world into economic groupings.

The most spectacular evolution both vertically and horizontally of a customs union is European Union: from the European Coal and Steel Community (1951 – Treaty of Paris) to European Economic Community (1957 – Treaty of Rome) to the Common Market (1986 – Single European Act) to the Economic and Monetary Union (1992 – Treaty of Maastricht) and to the European Union as a juridical entity (2007 – Treaty of Lisbon). The number of member countries increased from 6 (France, Germany, Italy, the Netherlands, Belgium, Luxembourg) to 9 (+England, Denmark, Northern Ireland) to 12 (+Spain, Portugal, Greece) to 15 (+ Austria, Sweden, Finland), to 25(+ Poland, Hungary, The Czech Republic, Slovakia, Slovenia, Estonia, Lithuania, Latvia, Cyprus, Malta) to 27 (+Romania and Bulgaria) with the possibility of reaching more than 30 in the coming period (+Croatia, Albania, Serbia, other countries that were part of former Yugoslavia, and maybe Turkey). It has not yet been created the United States of Europe because the tentative Constitution was rejected by France, but the long term path is towards it.

Romania adhered to the European Union in its last phase of extension to the east in January 2007 because of its slow pace in getting through all the necessary steps to become a functional market economy but also because of the volatility of the institutional, especially juridical system in the battle with the low and high scale corruption. The adherence to the customs union, which was preceded by a period of free trade agreement, resulted in divergent effects in the long integration process to the EU: on the one hand, a significantly higher presence of foreign investors in Romania, which had positive consequences on production, especially in services and exports; on the other hand, massive emigration of the work force, generating a crisis of skilled labour in many sectors and a substantial increase in the level of imports leading to a dangerous current account deficit. Generally, Romanian citizens that suddenly became also European citizens are far from psychologically overcoming the dichotomy between the East and the West, between Latin origin and Orthodoxies.

A significant evolution was, also, encountered by the North American Free Trade Agreement (NAFTA) with the three big members: USA, Canada and Mexico as a second economic pole. This area was established in response to the evolution of the European Union. An extra reason for NAFTA could be its expansion towards the south, which could be tempting, but difficult to obtain mainly because of some Latin-American countries which, along with Cuba, are anti-USA.

Considered the missing pole of a tri-polarized world, the Asian pole took the form of an alliance of different countries from different areas: Asia (Japan, China, India etc), New Zealand, Australia, the USA, Canada, the EU which formed the Asia-Pacific Economic Cooperation (APEC). With the heterogeneous not only geographic composition, APEC does not have the possibility of becoming the third economic pole in the world. It is neither a customs union nor a free trade area. Consequently, the idea of an economic tri-polarization

does not have a strong foundation and neither does the idea of bi-polarization (EU-NAFTA).

December 2004, Geneva, Switzerland

The Uruguay Round was finally over, after 8 years of negotiation. It was considered the most important round as a result of its findings. Tariffs for industrial products were lowered further by 1/3 reaching the average level of 3.5%. After difficult negotiations between the USA and the EU, the subsidies for agricultural products were "tariffed" and reduced by 25%. With respect to the service sector which counts for more than 25% of international trade, special measures were taken under the General Agreement on Tariffs and Services (GATS). Also, new rules and mechanisms concerning intellectual property and patents were negotiated under Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement.

The most important achievement of the Uruguay Round was considered the founding of the World Trade Organization which incorporated GATT, GATS, and TRIPS as permanent negotiation, conciliation forum with respect to international trade. There are 150 participating countries.

WTO planed on organizing another round, "The Millennium Round". President Clinton, following President Kennedy tried to launch the new round in 2000 in Seattle but it was unsuccessful because of the anti-globalization manifestations. After other failed tries, the Millennium Round was launched in 2001 in Doha.

The round is still developing having a broader range of domains being debated: further reduction in taxes and tariffs for industrial products, further reduction of the level of subsidies for agriculture, reduction and elimination of barriers to trade of services, implementation of new norms concerning intellectual property rights, new rules concerning investments, the environment, and work standards. Negotiations concerning agriculture continue to be problematic. Despite all these, the Doha Round is expected to end with a further step toward the liberalization of international trade benefiting all countries.

April 2008, Craiova, Romania

It is the Saturday before Easter. I went to the market for some last minute shopping and I met my cousin Gheorghita. She was selling radishes, green onions, garlic, and vegetables. I remembered how we used to go to their house to celebrate Easter. Meanwhile, my godparents died, my parents died as well. Their children are all alive: me, my sister, and my three cousins. We did not celebrate the way we used to when my godparents were alive, but I still sent my cousins gifts. I bought them each Heidi chocolate, Jacobs coffee, smocked meat, pineapple and Heineken beer.

Offering the gifts to Gheorghita, I asked her whether she remember the year 1944, the American airplane that crashed on Folea Hill. She said she didn't remember anything and she burst into tears. She is 84 and her everyday life is a continual work in the garden: to dig, to seed, to weed, to trim, to wet hook, to pick, to bundle. She also sells products in the local market: 8 radishes for 1 leu, 3 bunches of onions for 1 leu, 5 bunches of dill and parsley for 1 leu... (3,5 leu / €)

Time passed by so fast. It's been 65 years since the arrival of the Americans in Folea Hill, from the Bretton Woods Conference and since the end on the last (?) world war; 60 years from the founding of GATT, IBRD, and the IMF; over 50 years since the signing of the Treaty of Rome; almost 20 years since the fall of the Berlin Wall and the Romanian Revolution; 1 year, 4 months and 2 weeks since Romania became a member of the European Union.

So many things have changed in the world during this "short" period of time. The globe's population grew from 4 to 5 to over 6 billion people. From 60 to 2,000 to 15,000 billion dollars the world exports; from $4 to $12 to $150 (?) per petroleum barrel; from $35 to $45 to $1000 per fine ounce of gold; from 4 DM/$ to 2 DM/$ to .85 euro/$. From the lamp to the transistor to the chip. From home telephone to cell phone to Internet. From Earth to the Moon to Mars. From industrial world to consumption world to the knowledge-based world. From absolute and comparative advantage to competitive advantage to strategic trade. From Ike to John to Bill and George W; from Joseph to Nikita, to Vladimir and Dimitri; from Konrad to Ludwig to Helmuth and Angela; from Charles to Francois to Jacques and Nicolas; from Winston to Margaret to Tony and Gordon; from Ghita, to Nicu to Nelu and Traian. From hot war to cold war to 9/11. From 6 to 15 to 27 members of the EU. From 23 to 50 to over 150 members of GATT/WTO. From economic nationalism to bilateralism to multilateralism and globalization. From the American pilots on Folea Hill to the adherence of Romania to NATO and the EU to Ford in Craiova with 300.000 units per year.

We are probably on the time threshold towards a new world, a much more integrated, globalise world. A world that becomes more and more conscious of the need of durable development and viable economy, a world where no country and no person will hope to have a good life while other have a bad life.

Economists and other researchers that exclude the idea of bi-polarization or tri-polarization assume the risk of designing a new system of world governance adjusted to the new conditions and challenges. In current discussions, three directions are mentioned. The first one called "The New Liberal-Institutionalism" which focuses on the power of the market and on the modernization of the actual pylons of international economics (GATT/WTO, IMF, and IBRD), including by elimination of democratic deficit (for instance the relatively recent evolution of GATT/WTO). The second direction, the vaguer, called "The New Medievalism" is based on the idea of self governance (Kosovo?) and an increased role of the international non-governmental organizations. Finally, the third direction called "Inter-governmentalism" which focuses on the function of the state and the relationships with resort ministers from all over the world (like agricultural ministers in EU?).

Undoubtedly, each of these possible directions needs a much higher degree of debate. On the other hand, the adoption of one or the other direction depends on the countries and their interests. Whatever the solution, the role of GATT will remain vital representing by WTO a new product in the new international economic environment.

Bonne anniversaire GATT,
Long live WTO!

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European Union's Common Agricultural Policy: Evolution, Objectives, Challenges and Future Perspectives

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Abstract: *This article aims at analyzing the evolution, objectives, challenges and future perspectives of the European Union's Common Agricultural Policy (CAP). On 27th November 2007 the European Union began to re-examine the Common Agricultural Policy (CAP). The objective of the reform is to adapt the CAP to the challenges of the world market which have led to the increase in the demand of cereals, milk and derivative products. Within this context, the European Commission has announced its project on the process of simplification and modernization of the European Union's Common Agricultural Policy (CAP). The document is styled Health Check of the CAP.*
Keywords: agriculture, policy, reform, public health, rural development.

EU agricultural policy is a constantly evolving policy. In the earliest days of the European Community, 57 years ago, the emphasis was on providing enough food for a Europe emerging from a decade of war-induced shortages, subsidizing production on a large scale and buying up surpluses in the interests of food security. In present times, the focus of EU agricultural policy is to get food producers (of all forms of food from crops and livestock to fruit and vegetables, or wine) to be able to stand on their own feet on EU and world markets.

In the beginning, the common agricultural policy (CAP) was based on three principles: a single market, Community preference and financial solidarity between the Member States of the Community. This framework offered farmers guaranteed prices for their produce, protected them against competition from imported products and subsidized exports. It also had the beneficial effect of strongly boosting agricultural production and giving the Community self-sufficiency as regards food. With time, however, disadvantages became apparent because guaranteed prices led to overproduction, subsidized exports and the accumulation of stocks financed by the Community budget[1]. This situation benefited, above all, bigger farms, while farm incomes remained, on average, lower than in other sectors.

Agriculture represents a sensitive sector to which public authorities gave a special attention in all countries for social and electoral reasons. Therefore, since the beginning of 50's, a European arrangement of goods was planned but this project was

not accomplished because of interest divergences. The perspectives of developing a Common Market resumed this debate coming to the decision that this field of activity should be the subject of the Treaty of Rome of March 1957. There have been established five essential objectives for Common Agricultural Policy (CAP): improving productivity in the agricultural sector; ensuring a reasonable standard of living for the producers; stabilizing foreign exchange by supplying agricultural products for domestic consumption from domestic sources rather than imports; ensuring the security of supply; stabilizing prices at levels reasonable for the consumer[2].

The content of the Treaty of Rome gave only the general direction to be followed in this field, the Commission having the function to submit to the Council proposals regarding the markets common organization on the basis of the work of a member states' Conference. It led to the Stressa (Italy) Reunion of July 1958 where the principal directions were set[3]. In January 1962, a team of experts conducted by Sico Mansholt (ex-minister of Dutch agriculture) laid the foundations of PAC after long and difficult negotiations. The Mansholt Plan proposed an ensemble of measures that basically represented the guidance aspects of the CAP: a first set of measures concerned the structure of the agricultural production, aiming to bring about an appropriate reduction in the number of persons employed in the agricultural sector and to create agricultural enterprises (farms) of adequate economic dimensions; a second group of measures were concentrated upon markets, with the double purpose of improving the way they worked and of adjusting supply more closely to demand; the last set of measures were meant for providing personal assistance to farmers which were unable to benefit from these measures (this assistance should be payable within specified limits defined in the light of regional factors and the age of the persons concerned)[4]. The aim of the Plan was to encourage nearly five million farmers to give up farming. That would make it possible to redistribute their land and increase the size of the remaining family farms. Farms were considered viable if they could guarantee for their owners an average annual income comparable to that of all the other workers in the region. In addition to vocational training measures, Mansholt also provided for welfare programmes to cover retraining and early retirement. Finally, he called on the Member States to limit direct aid to unprofitable farms.

The reaction of the agricultural community was too aggressive so that Sicco Mansholt was soon forced to reduce the scope of some of his proposals. Ultimately, the Mansholt Plan was reduced to just three European directives which, in 1972, concerned the modernization of agricultural holdings, the abandonment of farming and the training of farmers. The three directives issued in April 1972 by the Council are: Directive no. 72/159 which allowed member nations to support their farmers' modernization through grants or subsidized interest rates on the condition that these farms were capable of generating income levels comparable with those of other local occupations; Directive no. 72/160 which permitted member states to extend lump-sum payments or annuities to farm workers aged between 55 and 65 years to lure them into leaving the industry; Directive no. 72/161 that aimed at encouraging member states to establish socio-economic guidance services to entice farm workers to retrain and relocate. The precise method of implementation of these directives was left to the discretion of national governments.

The 1980s was the decade that saw the first true reforms of the CAP, foreshadowing further development from

1991 onwards. In 1991, the MacSharry reforms (named after the European Commissioner for agriculture, Ray MacSharry) were created to limit rising production, while at the same time adjusting to the trend toward a more free agricultural market. The reforms reduced levels of support by 29% for cereals and 15% for beef. They also created "set-aside" payments to withdraw land from production, payments to limit stocking levels, and introduced measures to encourage retirement and forestation. Since the MacSharry reforms, cereal prices have been closer to the equilibrium level, there is greater transparency in costs of agricultural support and the "de-coupling" of income support from production support has begun. However, the administrative complexity involved invites fraud, and the associated problems of the CAP are far from being corrected. It is worth noting that one of the factors behind the 1991 reforms was the need to reach agreement with the EU's external trade partners at the Uruguay round of the General Agreement on Tariffs and Trade (GATT) talks with regards to agricultural subsidies[5].

The "Agenda 2000" reforms divided the CAP into two Pillars: production support and rural development. Several rural development measures were introduced including diversification, setting up producer groups and support for young farmers. Agricultural-environmental schemes became compulsory for every Member State[6].

Having in view the fact that in member states the situation had characteristics which had to be taken into account by the public authorities (numerous and small dimensions exploitations, low productivity, an important part of the active population being engaged in the primary sector, average income per inhabitant being inferior to those from other fields of activity, the production being often unable to satisfy food necessities) and the authorities had to act with a view to orientating the development and modernization of the structures, but also to regulating markets and ensuring incomes to the farmers, CAP took inspiration from practices and models of organization available in France and Holland and replaced national mechanisms with a community device.

The adopted system was based on a series of principles[7]:

a. free movement of agricultural goods; by removing customs taxes and subventions and progressively adopting administrative, sanitary and veterinary norms, a unique space was created;
b. a common organization of market which substituted for national systems; the price for each product is only one and surpasses world price (in order to ensure a reasonable income for the producer) inside the EEC;
c. preference for community goods; the consumption of products from Europe was promoted in comparison with that one of goods from outside the Union (the entrance to the community market of exterior products is discouraged by imposing prohibitive taxes);
d. financial solidarity; guaranteed prices, export of surplus goods etc. which are registered in the European Orientation and Agricultural Guarantee Fund, created in 1962.

The six main mechanisms of CAP are:

- Price support: guarantees minimum prices set by agricultural ministers;
- Import taxes: to ensure external prices cannot undercut internal EU prices;
- Intervention: support by selling or storing surpluses;
- Stock disposal: to dispose of surpluses by other means (e.g. Free Food Scheme);
- Subsidized exports (that results in the "dumping" of surplus produce causing a destabilizing of prices in third countries);

- Production control: quotas (e.g. on milk) and "set aside" (refers to land).

Prices are established annually and uniformly for every product by the Council of Ministers of Agriculture, at the Commission proposal. Their fixing implies long negotiations and the system adopted (the mechanism of guaranteed prices) presents common characteristics, although it is differentiated on sectors: an orienting price which serves as theoretical reference; a floor price which is applied to imports at the entrance to EEC (in order to protect European production); a intervention price proper to a minimum guaranteed level (at which all legal organisms buy the surplus products in order to store or to destroy them)[8].

Every year, beginning with April 1st, a common standard comes into force which is established depending on a series of parameters: the objective followed in the field of incomes, costs evolution and the level of EEC goods supply. The absolute guarantee of prices is applied only to certain products such as wheat, but there are different degrees of protection depending on market organization for other goods (sugar, olive oil, rice, milk, beef etc.).

In the course of time, the Community effort materialized in special allowances for mountain regions, environment, disadvantaged regions and also in financing some investments in some regions of South Europe and Ireland. CAP enabled the radical transformation of agriculture and its integration into the market economy, but the "productivist" model which inspired it knew also negative effects that led to hardly tolerable costs.

From the beginning, the establishment of CAP has experienced technical difficulties and, little by little, led to basic lack of balances. From the beginning of 80's, the finding of provisional solutions for limiting the lack of balance was vital. Due to the persistence of this situation and at the intervention of GATT, in 1992 the CAP was globally reexamined and starting with 2000 important changes has been applied. Between 1986-1993 agriculture represented one of the essential fields of negotiations (Uruguay Round) which had in view a more intense liberalization of world trade of goods and services, limiting customs taxes and fighting against measures not concerning tariff[9]. The reform which came into force in May 1992 was inspired by the proposals made by the Commission in the Green Paper in July 1985. The progressive drop in prices of surplus products with the aim of discouraging production, the obligatory annual abandonment of a part of cultivated field and the application of strategies of rural development with the aim of protecting environment are only some of the principles of the new orientations.

The Reform of CAP (influenced by GATT) ensures a balance on medium term between the mechanisms of Green Europe and the exactingness of international enlargement. At the beginning of the third millennium, new negotiations inside World Trade Organization (WTO which replaced GATT starting with 1995) are expected. The Council from Berlin (March 1999) made the decision to diminish the support prices and to reevaluate direct aids in order to maintain the incomes. The ministry Conference of Seattle, in December 1999 decided to cover agriculture multifunctionality, in other words the productive activity and, at the same time, environment protection[10].

In 2003, a new basic reform was made according to which CAP was adapted to the demand. The reform has completely changed the way the EU supports its farm sector. The agricultural producers are no more paid only to produce food products. The preoccupations of consumers and contributors are entirely taken into consi-

deration while the freedom of producing what was in demand on the market was granted to the farming producers coming from EU. The vast majority of subsidies were to be paid independently from the volume of production. This new reform emphasized the importance of environmental, quality or animal welfare programs by reducing direct payments for bigger farms; more money will be available to farmers for this aim. The Council further decided to revise the milk, rice, cereals, durum wheat, dried fodder and nut sectors. In order to respect the tight budgetary ceiling for the EU-25 until 2013, ministers agreed to introduce a financial discipline mechanism. This reform will also strengthen the EU's negotiating hand in the ongoing WTO trade talks. The different elements of the reform came into force in 2004 and 2005. The single farm payment came into force in 2005.

With regard to the implementation of the reform, the Commission has chosen to do this through the agency of three Commission Regulations. First Regulation covers the provisions concerning cross-compliance, controls and modulation. The provisions with regard to cross compliance are one of the new key elements in the CAP reform, which make the future Single Farm Payment dependant on the farmers respecting public health, animal health, environmental and animal welfare, EU norms and good agricultural practice. Second Regulation embodies the key element in the reform of introducing a Single Farm Payment, where the payment will no longer be linked to production (decoupling), allowing the farmers to have their incomes ensured and steering their production towards the needs of the markets and the demands of the consumers. Payments will, however, only be paid in full if the above cross-compliance provisions are respected. At the same time decoupled payments will mean that a major share of our support to agriculture is moved from the trade distorting classification under WTO rules (Amber Box) towards the minimal or non-trade distorting category (Green Box). The third regulation covers those areas of support, which in the future are still product specific, or where the Member States have the option to retain a certain element of support coupled in the future. Such possibilities have in particular been foreseen in the area of animal premia (beef and sheep), where the concern with regard to the effect on production and decoupling has been most pronounced.

There were and still are many controversies concerning CAP. The CAP has been criticized for its large budget and for supporting inefficient agricultural practices. The 1990s reforms are accused of so far having done little to reduce its cost, and of leaving agricultural prices unnecessarily high at the expense of the consumer. By encouraging overproduction, the CAP forced the EU to buy up the surplus of production, which it was then sold on cheaply in the developing world - undercutting local producers and damaging local economies. "Dumping" of this sort, combined with high external tariffs for food imports, led to considerable international criticism of the CAP, notably at the Doha World Trade Organization talks in 2003[11]. Attempts to reduce overproduction by paying farmers to "set aside" land are thought to have mitigated but not eliminated the problem. Set aside also risked distorting the public's perception of farmers - who the public thought were being paid to do nothing. Furthermore, by encouraging farm "modernization", the CAP was blamed for environmental damage caused by the increase of agricultural chemicals and intensive farming methods. Some have blamed the CAP for the practices that led

to a series of food safety scares during the 1980s and 1990s, chief among them being BSE.

It was also claimed that the distribution of funds under the CAP was unfair - with some 20 per cent of farms, primarily the larger ones, receiving 70 per cent of the subsidies. There have also been reports of CAP fraud in some member states, where levels of diligence to prevent fraud reflect different levels of effectiveness from different member states' agriculture ministries.

EU enlargement poses a serious challenge to the CAP: the economies of some of the accession states which joined in 2004 - notably the largest, Poland - are heavily agrarian. The massive cost of including these new states in prevailing CAP terms led to France and Germany developing a deal to freeze CAP spending between 2006 and 2013, and phasing in payments to the new members, in 2002. The accession states were outraged, and successfully secured additional payments, in spite of the Berlin Council's commitment to stabilize CAP spending.

However, the CAP has contributed to an improvement in European agricultural efficiency by promoting modernization and rationalization. Average agricultural incomes have risen roughly in line with other sectors, markets have been stabilized, and the EU has been rendered virtually self-sufficient in all foodstuffs that its climate permits to be cultivated.

In September 2007 a consultation process was launched by the European Commission on the Budget Review to be proposed in 2008/9. All interested parties at local, regional, national and European levels were invited to participate. And in May 2008 proposals were put forward to modernize and simplify the CAP in an attempt by the EU to mitigate the effects of global food prices.

From a statistical point of view[12], real agricultural income per worker in EU 27 rose by 5.4% in 2007 after increasing by 3.3% in 2006. This growth in EU27 real agricultural income in 2007 was itself the result of:

- an increase in output of agriculture at basic prices in real terms (+4.3%);
- a rise in input costs (+5.8%) and a slight decrease in depreciation (-0.3%), in real terms;
- a decrease in the real value of subsidies net of taxes (-2.8%).

In the course of time, the focus of agricultural support has changed: until 1992, EU policy aimed to guaranteed high prices for growers' produce; between 1992 and 2004, direct aid payments linked subsidies to production; from 2005 onwards, subsidies were not paid for producing but for meeting environmental standards with regard to arable land[13].

The growing needs of the EU population made that the objective of the CAP changed too. One of the new directions of CAP is spending the money where it is most needed. Financial safety nets are still in place, but are used much more selectively. The common agricultural policy (CAP) steps in, for example, with financial support for farmers hit by natural disasters or outbreaks of animal diseases, such as foot-and-mouth or bluetongue. Where necessary, the CAP supplements farm income to ensure that farmers make a decent living. However, assistance is linked to compliance with broader objectives in the areas of farm hygiene and food safety, animal health and welfare, preservation of traditional rural landscapes, and bird and wildlife conservation.

Another new provocation for CAP is meeting new needs. The reforms have freed funds to promote quality – and internationally competitive – foodstuffs and innovation in farming and food processing.

Consumers have become much more quality-conscious, so voluntary EU labels allow producers to differentiate their food-stuffs from the competition. There are labels – and underlying standards – for foodstuffs coming entirely from one area and using recognized know-how, foods with a clear geographic tie to a particular area, foods made of traditional ingredients or using traditional methods, and for organic foods. The reforms have also released money to promote rural development, including diversification of rural economies, since farm employment is no longer the mainstay of rural communities that it once was. EU research budgets further support innovation in agriculture through projects to increase productivity while at the same time becoming more environmentally friendly. This includes looking at how agricultural crops can be used to produce energy without detracting from the primary purpose of producing food and animal feed, e.g. by using by-products and waste products.

The policy reforms have also been in the interests of fairer world trade. They have reduced the risk that EU subsidies for exports of surplus production will distort world markets. In the so-called Doha Round of international trade liberalization talks, the EU has offered to eliminate export subsidies altogether by 2013 if other countries make matching concessions. Even if the talks fail, this will not necessarily deter the EU. The European Commission is proposing that export subsidies be phased out because they do not fit with the competitive mindset which it seeks to foster. As part of the Doha Round, the EU has also offered a significant reduction in import duties on agricultural products. However, even without these, the EU is already the world's largest importer of food and the biggest market for Third World foodstuffs as a result of trade and agricultural policy reforms over the last five decades.

The most recent development is a "health check" of agricultural policy launched in late 2007. This does not imply that the policy is sick; it is a chance to see whether adjustments are needed in the light of experience since major reforms in 2003 and to ensure the policy is fit for new challenges and opportunities, such as climate change. It is not a major reform, but an effort to streamline and modernize the policy still further. Reforms notwithstanding, the common agricultural policy is the most integrated of all EU policies. Consequently, it takes a large share of the EU budget. Nevertheless, this has dropped from a peak of nearly 70% of the EU budget in the 1970s to 34% over the 2007-2013 period. This reflects expansion of the EU's other responsibilities, cost savings from reforms and a shift to spending more on rural development. Rural development will take 11% of the budget over the same period.

Rural Development Policy

The European Union has an active rural development policy because this helps us to achieve valuable goals for our countryside and for the people who live and work there. The EU's rural areas are a vital part of its physical make-up and its identity. According to a standard definition, more than 91 % of the territory of the EU is "rural", and this area is home to more than 56 % of the EU's population. Furthermore, the EU's fantastic range of striking and beautiful landscapes are among the things that give it its character – from mountains to steppe, from great forests to rolling fields.

With over 56 % of the population in the 27 Member States of the European Union (EU) living in rural areas, which cover 91 % of the territory, rural develop-

ment is a vitally important policy area. Farming and forestry remain crucial for land use and the management of natural resources in the EU's rural areas, and as a platform for economic diversification in rural communities. The strengthening of EU rural development policy is, therefore, an overall EU priority.

Many of European rural areas face significant challenges. Some of farming and forestry businesses still need to build their competitiveness. More generally, average income per head is lower in rural regions than in towns and cities, while the skills base is narrower and the service sector is less developed. This means that the EU's Lisbon Strategy for jobs and growth, and its Göteborg Strategy for sustainable development, are just as relevant to countryside as to towns and cities.

A new policy for rural development was introduced as the second pillar of the EU Common Agricultural Policy in the framework of Agenda 2000 in March 1999. Agenda 2000 reformed the CAP in view of the expected enlargement to largely rural countries, such as Poland, Bulgaria or Romania. The EU proposes reinforced rural development measures, as support for semi-subsistence farms, for the candidate countries, so that they can reap the benefit of the Common Agricultural Policy even before they meet the EU production standards. While Central and East European countries are only offered 25-35 per cent direct payments from the CAP budget from 2004 to 2006, reaching 100 per cent in 2013, the new members will receive higher rural development subsidies which will help them stabilize farm incomes.

The main aims of the new EU rural development policy are:

a) to improve agricultural holdings,
b) to guarantee the safety and quality of foodstuffs,
c) to ensure fair and stable incomes for farmers,
d) to ensure that environmental issues are taken into account,
e) to develop complementary and alternative activities that generate employment, with a view to slowing the depopulation of the countryside and strengthening the economic and social fabric of rural areas,
f) to improve living and working conditions and promote equal opportunities.

Between 4,300 and 4,370 million euro were allocated each year to rural development during the period 2000-2006. These measures were financed by the EAGGF Guarantee Section or Guidance Section. The following rural development measures are supported by the EAGGF: early retirement[14], less-favored areas, agri-environment measures, afforestation of farmland, renovation and development of villages, protection and conservation of rural heritage, diversification of farm activities, improvement of infrastructure.

Theoretically, individual EU Member States could decide and operate completely independent rural development policies. However, this approach would work poorly in practice. Not all countries in the EU would be able to afford the policy which they needed. Moreover, many of the issues addressed through rural development policy do not divide up neatly at national or regional boundaries, but affect people further a field (for example, pollution crosses borders all too easily; and more generally, environmental sustainability has become a European and international concern). Also, rural development policy has links to a number of other policies set at EU level. Therefore, the EU has a common rural development policy, which nonetheless places considerable control in the hands of individual Member States and regions. Also, caring for the

rural environment often carries a financial cost. The policy is funded partly from the central EU budget and partly from individual Member States' national or regional budgets.

The essential rules governing rural development policy for the period 2007 to 2013, as well as the policy measures available to Member States and regions, are set out in Council Regulation (EC) no. 1698/2005. Under this Regulation, rural development policy for 2007 to 2013 is focused on three themes (known as "thematic axes"). These are:

- improving the competitiveness of the agricultural and forestry sector;
- improving the environment and the countryside;
- improving the quality of life in rural areas and encouraging diversification of the rural economy.

To help ensure a balanced approach to policy, Member States and regions are obliged to spread their rural development funding between all three of these thematic axes.

A further requirement is that some of the funding must support projects based on experience with the Leader Community Initiatives. The "Leader approach" to rural development involves highly individual projects designed and executed by local partnerships to address specific local problems.

As before 2007, every Member State (or region, in cases where powers are delegated to regional level) must set out a rural development programme, which specifies what funding will be spent on which measures in the period 2007 to 2013.

A new feature for 2007 to 2013 is a greater emphasis on coherent strategy for rural development across the EU as a whole. This is being achieved through the use of National Strategy Plans which must be based on EU Strategic Guidelines. This approach should help to:

- identify the areas where the use of EU support for rural development adds the most value at EU level;
- make the link with the main EU priorities (for example, those set out under the Lisbon and Göteborg agendas);
- ensure consistency with other EU policies, in particular those for economic cohesion and the environment;
- assist the implementation of the new market-oriented CAP and the necessary restructuring it will entail in the old and new Member States.

Under the Rural Development policy, which is an integrated part of the CAP, the European Union will make 88.3 billion euro available for rural development projects in the 27 member states in the period between 2007-2013; a minimum of 25% must be spent on projects that support land management and improve the environment[15].

However, the process of modernizing European agriculture is today a sure fact. This evolution was, at the same time, accompanied by the considerable decrease of population working in this sector[16]. The evolution of its development, objectives, mechanisms and priorities demonstrates that the aim of CAP is the maintenance of an economic, social and institutional sector, distinct, multifunctional and orientated towards family farms, with complex regulations for the entire EU. CAP is "a defensive strategy, politically managed, of modernizing European agriculture".

Notes

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[13] Nicola Ursu, *Politica agricolă comună în 2005*, „Euroconsultanţă. Ghidul firmei" nr. 1/2005, p. 58.
[14] In order to surpass the crisis of the pension system, EU proposes to member states an early retirement scheme in according to which the older farmers (minimum 55 years old) have to put an end to their agricultural and trade activities, their properties being transferred to younger farmers. See also Livia Popescu, *Politicile sociale est-europene între paterna-lism de stat şi responsabilitate individuală*, Presa Universitară Clujeană, Cluj-Napoca, 2004, p. 119, E. Teşliuc, L. Pop, E. Teşliuc, *Sărăcia şi sistemul de protecţie socială*, Editura Polirom, Iaşi, 2001, p. 101, R. Radu, M. Neamțu, *Implementarea acquis-ului comunitar în agricultura României*, Revista de Ştiinţe Juridice/ La Revue de Sciences Juridiques nr. 2/2007, Editura Themis, Craiova, 2007, p. 158-169.
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Politics and Security in Contemporary World

Aurel PIȚURCĂ

Abstract: *The article aims at discussing the issue of security, its contents and the directions of its evolution with reference to the state, especially relating to national politics, to the external environment and the decision-makers. The article emphasizes the role of the political paradigm, which lays the basis and guides the activity of a society, in society's political construction, including the security one.*

Keywords: politics, security, national state, strategy, data flux, policies, international environment.

One of the major issues faced by the contemporary world is represented by security. It emerged and emerges challenging debates involving politicians, experts, political analysts, researchers from the academic field or from the field of international relations. This is not random or conjectural, it is directly connected to the enlargement that the notion of security acquired, with its impact on many field and segments of social, economic, political, cultural life, of the environment and even financial. Nowadays society is exposed to multiple threats, much more serious than the military one, which the world faced and found the antidote. Nowadays dangers and threats are multiple, new and with a high power of destruction which may put in danger the human existence in itself. This is why everybody is searching for the best and the most efficient solutions in order to secure its own national community, and, since this measure is not sufficient in itself, it must be extended at a global level. More than ever, today there is an interrelation between the national security and the one from the external environment, one presumes with necessity the other and only together, these may ensure tranquility, order, in one word, everybody's necessity.

The analysis of the issue of security, of the contents and directions of its evolution cannot be achieved without referring to the state, but especially to politics. Politics, through its institutions, through the decisions taken and applied is the only one capable to impose, and even to determine the contents of the security policies and strategies, its internal, as well as external directions and coordinates. The nature of the political regime from a society, its form of government, the level and stage of material, spiritual and political development, the objectives proposed and the consequences represent factors which influence the construction and promotion of security policy.

In the constructive applicative action of security we cannot exclude the people

in their double position of creators and consumers of security, but especially as decision factors. "Human beings – says Susan Strange – try through social organization to ensure wealth, security, liberty and justice"[1]. For humans, security represented a permanent value, being associated with ensuring wealth, stability, order, liberty with life itself. The way in which they reflect, appropriate and understand the phenomena and processes of social life, especially the political ones, the way they relate may influence the draft and application of security policies. Besides the internal environment given by objective and subjective factors, in the construction of policies and strategies and their dynamics a major role is played by the international context. This may impose the contents, directions of security policies, their dynamics, including their efficiency. In connection to the international environment, humans, especially the decision-makers, adapt and promote certain positions and attitudes which will be materialized in solutions and measures.

In any security policy we must find the will and the interests of society, of the people. It must be different from politics in general, due to the fact that it has multiple consequences, profound and immediate for society, for the people.

In the elaboration of any security policy and strategy the major role belongs to the state and to its political institutions – parliament, government – due to the fact that, in any conditions, "The state maintains a central function which cannot be fulfilled by any transnational actor: it remains the only source of power which has the capacity to impose the rule of law"[2]. The same state, through its institutions elaborates and, especially through government, applies the security policies due to the fact that "its first task is to ensure the security of its citizens"[3].

Ensuring the security of citizens by the state and its institutions thus becomes a major obligation and is conceived differenttly from these. The distinction is given by the nature of the political regime, by the principles and values used as basis for functioning, by the priority given by different values in organizing the policies. From this perspective, there is a big difference between the modality of elaboration and achievement of security policies in societies with democratic regimes in comparison to the dictatorial ones.

In democratic societies, security policies are included in political paradigms and programs of political forces and parties, occupying a place as important as the social policies or development policies and through the citizen's vote, they have their agreement. Of course, this is the rule which, in most cases, is respected; in political practice we may also encounter situations when a party, a political leader, from numerous reasons, internal or international, although having the power on a certain political program, may govern using other program principles, including modifying the security policies. The data flux on which the elaboration of policies is funded also represents an important factor of distinction.

In the democratic societies which own important material, financial, spiritual, but especially intellectual resources, the data flux represents an essential component in political construction, including in the security ones. This can be found in the multitude and diversity of institutions, starting from the public ones, to the private ones which create and make available data and which contribute to the basis and decision-making of security policy. In connection to this aspect, the ex-secretary of state Henry Kissinger appreciated that "those who elaborate policies do not lack data. They are, in major cases, overwhelmed by the data received"[4].

In the practice of political life, the elaborators of security policy are not always the beneficiaries of the best, competent international data flux. As in any policy, interest is the most important thing in security policies. Within this, there are the interests of the ones who support the power, the government, politically and economically; they will always give an advantage to certain economic and political groups. Irrespective of the way in which they are appreciated, one thing is certain: in this society politics benefit of an important data flux which ensures a solid theoretical basis to the political act in its various phases, of information, elaboration, decision, and application.

The political paradigm which lays the basis and guides the activity of a society also has the role in society's political construction, including the security one. It ensures the general funding, the principles and values on which the policy and its products must be grounded, performs the political priorities and its products, accomplishes the priorities of value of the society, the essential coordinates which have to be followed and which will be found again in all political constructions, and also of the security policy. Next to these requirements, a political decision factor with a major role will also be attached. In this situation, we will take into account several aspects, without achieving a priority or hierarchy. Among these, the most important is the way in which the decision factor will perceive the threat to security: correctly or erroneously. To these we will add the possible vulnerabilities and risks which have to be taken into account in the elaboration and application of security strategies. We must make the distinction between threat as a reality which comes from the international environment and its representtation in the mind of the ones which will take the decision. There can also be instances when the situation is not real, or is not perceived or taken into account. In connection to the last issue, the most conclusive aspect may be the shortcoming of not taking into account the possibility of attack on the twin towers in New York on September 11th, 2002, which was not included in the North American security strategy.

Also, there may be significant differrentces between the way in which political elites and governing parties perceive threats, their type, risk factors and vulnerability, which will be reflected in the elaborated policy, on the one hand, and, on the other hand, the public opinion and mass-media. There may be at least two situations: the political elites, in order to obtain the adhesion of the public opinion to their security measures, will exaggerate threats or even, in certain limits, will deform them; there may even be situations when the public opinion or mass-media have no correct or complete data regarding the type of threat, its gravity, from this resulting its minimization or exaggeration. Among these, we have to take into account the presence and activity of political opposition, of certain political and economic group interests which may also contribute to the manipulation of public opinion and of mass-media.

The geographical position, the status in the field of international relations, the interests manifested towards a certain part of the world, as is the case of the USA, may also influence the security policy.

Taken into account these special features, the democratic societies have theoretical-intellectual potentials of rich and various international fluxes, of material resources, political in the elaboration of policies and strategies, and security strategies, these being as close as possible to reality, to the needs of citizens and, at the same time, of taking into account the international level, its dominant tendencies.

The community of principles and values on which democratic societies are founded and function cannot represent arguments in sustaining that security policies and strategies are the same, uniform. The presumption that states and governments have towards this type of threat, their interests, the state in the field of international relations will generate differences in what concerns the construction of security politics, the objectives which represent a priority, the means and modalities of application. In the field of international relations we will oppose interests of political actors, they will be found in policies which are different, be they economic, military but also security ones. The political community of principles and values will also generate common notes of policies elaborated and promoted, but, in no situation, will these be identified and homogenized.

The situation of the mechanism of elaboration of security policies in societies with non-democratic regimes is radically different. Starting from the principles on which the power is grounded, from the way of its acquiring and exercise, politics in general and particularly the security one will not represent and promote the majority's interests, they do not have its endorsement, they will be the emanation of those who rule, meaning of a minority. In most cases, this type of society lacks theoretical-intellectual resources, institutions specialized in supplying data, data necessary to politics, or even if these are in disagreement with the visions and interests of people who govern. The perception of international relations, of threats which might result from them is understood completely wrong and also erroneously interpreted from subjective reasons. From here results the impossibility of elaboration and application of objective, realistic security objectives, in the citizen's best interest or even in the national community's best interest.

The basis of politics, including the security one, on data fluxes, on contemporary results and techniques, the realistic vision on the internal and international environment, the respect of the will and interests of the citizens, information and consultation of the public opinion, detaching from subjectivism are some of the requirements of security policies. Politics plays a major role in the elaboration of security strategies, this does not represent just a political choice issue. The complexity and dynamics of processes of contemporary development makes security not to belong exclusively to the military factor. Today we face the appearance of new phenolmena and processes putting in danger the states' security, such as: terrorism, organized crime, degradation of the environment, the increase of gaps among states, energy problems, raw material. In this new situation, as scientific, rational, realistic and dramatic as the elaboration of security policies may be, this is not sufficient anymore. The elaboration of security policies must take into account the new types of global threats which impose the achievement, at community level, of a common policy which each state and government must take into account in the achievement of its own security policy. This is what the specialists call "external constraints"[5], which impose the inclusion in the national security policies of new types of threats and risks. This is why we may appreciate that today we assist at a process of approaching the states' security policies dictated in great measure by the change in the international environment, by the appearance of a new type of insecurity. More and more societies have gone to restructuring, adjustments in their security policy, at the adaptation to the new realities and requirements of the contemporary development. The

globalization has lead to the disappearance of isolated security policies, limited only to the national interest, without taking into account the community in its assembly.

Notes

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Cold War Redivivus?

Ion DEACONEASCU

Abstract: *This article analyses Russia's role in the today's stage of the international relations, starting from the largely accepted idea that the old enemy could not become friend and strategic partner for the EU and the USA but also arguing that, with a huge energy potential, with reform-driven and well-intended politicians, Russia would not afford, in the years to come, to be co-substantial to the Cold War and to continuous conflicts.*
Keywords: conflict, security community, energy potential, vassalage.

Following the fall of the Berlin Wall and the implosion of the communist system, one expected real and profound "defrost" of Moscow's relations with the Western-European countries and the USA, so tensed until then.

However, political analysts have understood very quickly that Russia could not become friend and strategic partner for the EU and the USA, as neither could the latter prove themselves capable to realistically approach the new world geography, "destabilized" by the all too powerful currents of democracy in certain states detached from the communist system

Considering each other enemies and under no circumstance as allies, within an ample stability and concord project, both the EU and the USA, as well as Russia have permanently fuelled the syndrome of distrust and isolationism, Russia being worried, lately, by the offensive extension of NATO, organization which according to certain specialists should have auto-dissolve immediately following the dissolution of the Treaty of Warsaw. NATO expansion towards Russia's borders, the accession of all the former communist countries of Eastern Europe, of the Baltic countries, long time ago former Soviet republics, as well as Georgia, Albania, Croatia and Macedonia's initiatives of accession to NATO have become solid arguments for Moscow to affirm, on different coordinates, the signs of an "ice age" in its relations with the USA, but also with the EU, especially within the energy competition, re-shaping the geopolitics of the new Cold War and the ideology of a different type of conflicts.

Moreover, Russia has, especially at present, enough fears regarding the new nuclear politics of the USA, launched in December 2001, through their retreat from the „Anti-Ballistic Missile Treaty" (the ABM Treaty), signed by Nixon and Brezhnev in 1972, which banned the development and unfold of anti-missile systems.

Furthermore, in 2002, the American president announced the allocation of a sum of 8 billion dollars for the edification of a „National Missile Defence System",

while in 2008 one registered an extremely high threshold of the USA's military budget of 583 billion dollars, which should allow this superpower to "unfold a military force at a global scale, to operate from Africa to the Middle East and further", as Victoria Nuland, the ambassador of the USA to NATO, declared in 2006.

A high official within the Pentagon, the brigade general Patrick J. O'Reilly, stated last year that his country would implement the "anti-missile defence system" until 2011, a project partly accomplished, as, after a series of negotiations, the USA and Poland signed, on August 20th, 2008, the Agreement regarding the unfold of elements of the anti-missile shield, on Polish territory, and the establishment, until 2012, of ten interceptors capable to destroy long-range ballistic missile from flight. This agreement is completed with a "statement of strategic cooperation" in the spirit of Article 5 of NATO Treaty which stipulates that any armed attack against a signatory state of this document is consider an attack against all signatory states. Within a Europe shattered from its foundations by the implosion of the Soviet world and empire, it has not found its tranquillity and peace, yet, as "peace and liberty are not synonymous". A still divided Europe, in which shots are still being heard (the recent war in Georgia is eloquent) and a wall is raised in another sense, in order to protect the "centre" from the diverse "peripheries", poor and generators of social-politic instability.

In this type of political climate, the Russian flank is going to distance itself from the Western one, from the German one in a smaller extent, from extremely complex reasons, while another type of centripetal forces are going to inflict political and economic mutations, as well as equilibriums left fragile through flexible and active subterfuges.

The security community established by the EU in the North of the continent will be different from the one in the South, the recent events in Kosovo demonstrating again the passivity of the powerful before area and regional pressures, consistently fuelling the "power-serfdom" equation, as "anti-Western" has already become a cruel reality in the Arab world.

As long as a field of dynamic or latent conflict persists among Russia and certain states from the Caucasus, as long as some places become a sanctuary for interethnic and economic tensions (Checheny, Abhazia, South Ossetia, Nagorno-Karabach), Moscow continues to be regarded as a generator of aggressive conduct in its relations with these countries, some of them wishing to be effectively independent, others seeking a normal road towards democratization.

Equally, the other vector relation is valid: Europe's vassalage position towards the USA, the EU attitude to perceive Russia as an unfriendly state, engaged in diverse continental disputes (Georgia, Transnistria, South Ossetia, Abhazia), the energy monopoly will further on fuel national frustrations and malice, but also a state of political immaturity and pressures that will amplify consistent disagreements among some EU Member States and Russia.

With a huge energy potential, with reform-driven and well-intended politicians, Russia would not afford, in the years to come, to be co-substantial to the Cold War and to continuous conflicts.

It needs Europe, and Europe needs Russia, through the multiplication of power ad influence poles, within a vast space, at present marked by obvious disequilibrium, as Russia, losing its imperialism, turning into an „empire en désordre", as Alain Joxe would say (*Le cycle de la dissuation*, La Découverte, Paris, 1990), has to identify other ways and political combustions in order to impose itself within a too

"relaxed" world system, following the fall of the Berlin Wall

Equally, the EU, being in a long process of real unification of the Member States frustrating energies, needs a radical change of social, economic and political azimuth, in order to impose its integration doctrine which does not generate confrontations and dissensions among its members or obsolete democratic melancholies, even if, as Pascal Bruckner states (*La mélancolie démocratique*, Seuil, Paris, 1990), the existence of an adversary „represents a provision for the future, a certain way for a group to assume its cohesion".

With or without potential enemies and during a period of political viscosity, Russia, the EU and the USA will remain the great authors the world political scene that have the obligation to pacify and democratize the planet, to eliminate, as much as possible, the conflicts and confrontations among them, needing a "great geopolitical turn", capable of edifying other relations between the old military powers (the USA, the USSR) and the new economic powers (Germany, Japan, Russia, China, France etc.).

Globalization Influence on Minorities

Mihai-Radu COSTESCU
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Abstract: *Seen from the social dimension, globalization has brought to attention a series of aspects, such as the achievement of free circulation of people of all nations, growth of cross-cultural contacts, advent of new categories of consciousness and identities such as Globalism etc. Still, there are a lot of negative aspects of social globalization, and they can be clearly seen in the way European Union (EU) changed during the last decades. For example, we cannot say that a direct link between regional development and minority protection really exists. The focus on regional development does not equal development of regions inhabited by ethnic minorities, as selection of eligible areas for funding is based on poor development conditions and not the minority status of populations residing therein. Today, papers from the EU bring to attention the argument that EU cohesion policy cannot be expected to automatically reduce ethnic tensions, promoting inter-communal cooperation and accommodation of minority demands. Nevertheless, EU cohesion policy represents one of the main factors that condition reformulation of domestic regional development agendas, framed through the prism of employment growth. In this context, attempts are made to incorporate a minority concern in the initiatives launched either through initiation or consolidation of power-sharing governance models. The new development opportunities created by EU funds trigger, and occasionally reinforce, political mobilisation of minorities, enhancing local democracy and representation. Integration of minority representatives in sub-national institutions is not inexorably linked to economic involvement in regional development activities. But even in those cases where political and economic representation is ensured, individuals asserting membership of a minority often encounter harsh difficulties in the planning and management of local development strategies. In order to reduce and, if possible, to eliminate, at a certain moment, minorities problems, European institutions are empowered to adopt measures to combat discrimination based, amongst others, on „racial or ethnic origin". Since June 2000, the Race Discrimination Directive was enacted. Aimed at ensuring equal treatment of persons irrespective of racial or ethnic origin, the Directive has the potential to turn into the most effective EU minority protection mechanism. Innovative in applying both vertically and horizontally, it prohibits direct and indirect discrimination, and has a broad scope of application. It covers employment, social protection, education and housing, and allows for affirmative action to prevent or compensate for invidious treatment linked to ethnicity.*
Keywords: *Globalization, European Union, employment, integration, minorities.*

The integration of economic, political, and cultural systems has been one of the major global trends at the end of the 20th century. Advances in information technology and transportation have dramatically expanded economic, political and cultural interaction among actors all over the place. This process, called globalization, is indeed not a new phenolmenon, but its scale and pace have con-

siderably increased since the 1980s driven by the internet revolution and major progress in transportation and logistics, namely containerized cargo and roll-on-roll-off cargo ships. These developments have led to dramatically falling transport-tation and communication costs and brought the world's markets and cultures closer together than ever.

Globalization is also characterized by institutional and political reforms in many countries, just to mention gradual trade liberalization and international coordination of policies. The reduction of tariffs and other barriers to trade, bilateral trade agreements and – very much indeed – European integration and the fall of the iron curtain have been additional drivers of the massive growth in world trade.

The growth in worldwide trade has picked up speed in the 1980s and has by far exceeded output growth in the last 20 years. While the world's gross domestic product (GDP) increased by 150 percent from 1980 to 2005, the volume of worldwide trade more than quadruplicated in that period.

The process of globalization has acelerated even further in the late 1990s due to the integration of major developing countries into the world's markets. The impressive growth of the economies in China and India has already attracted much attention and has had a huge impact on international markets, already. However, it is fair to say that globalization has just started and will most probably become much stronger in scale and scope.

We will now refer to the European Union (EU), where, ever since March 2000, the EU council, at Lisbon, decided that changes influencing global economy are a positive and dynamic way to reach the goal of full usage of labour. At Lisbon new objectives were adopted for the EU, regarding the creation of the most competitive economical system in the world, capable of a high rate of economic growth, in order to lead to creating of more and better work places and to an increased social cohesion.

These objectives rely on the European social pattern. Reliance on this pattern and on its influence on economic progress does not necessary mean the EU has an easier task. The European social pattern needs to be improved for:

- meeting the requirements of globalization and transition to a science-based economy and society;
- the fulfilment of social and demographic changes;
- meeting the economic and social life expectations of EU citizens.

Placing population in the center of EU policies is the key to success for these actions. This means an adequate strategy oriented to increased participation of all EU citizens to the economic and social life.

Education with long term effects, improved skills and people mobility at all levels, similar working conditions for public and private sectors, all these are important requiremts for creating an European labour market open to everyone, for a better work quality and a stronger social cohesion.

Without important investments in perfectioning quality on labour market, it will be hard to complete the Lisbon objectives and there is also the risc of increased tension on the labour market, as a result of a growing difference between the income of those with higher qualification and those with low or no qualification.

But this will not happen if the EU programmes will not adress the whole population – this is a fact that was proved by the experience many Member States had. Still, this means serious efforts, both economic and social.

As sweeping changes have taken place in the world's economies in recent

decades, they have reshaped the structure of employment on a global scale. National economies are now more integrated into the global system than at any other point in the recent past. The volume of international trade and the magnitude of cross-border capital flows have reached historically high levels. Advances in communications and transport technologies have led to the establishment of complex international production networks, with developing countries producing an unprecedented level of manufactured exports within global supply chains. Fundamental shifts in economic policies have accompanied the process of globalization. These policies have emphasized maintaining low rates of inflation, liberalizing markets, reducing the scope of the public sector and encouraging cross-border flows of goods, services and finance, but not labour.

It is commonplace these days to assert that globalization provides enormous challenges as well as opportunities. This observation is particularly relevant as regards employment. The era of global integration has been associated with far-reaching changes in the structure of employment, including pressures for increased flexibility, episodes of „jobless growth," growing informalization and casualization, expanding opportunities for the highly skilled, but vanishing opportunities for the less skilled. New employment opportunities have been created in many developing countries due to the expansion of globally-oriented production, helping to reduce poverty and raise incomes. However, contradictions abound. Many of the new employment opportunities are precarious, and the size of the „working poor" population remains staggering.

Employment is the primary channel through which the majority of the population can share in the benefits of economic growth. In particular, employment plays a critical role in ensuring that economic growth translates into poverty reduction.

The latest „Employment in Europe 2007" report edition, one of the most important means of the EU Comission in helping Member States in analyzing, formulating and implementing policies for labour market, offers a realistic image of the achievements in this domain, as well as an analytical analysis of the way these policies are applied. Based on the most recent data and a realistic analysis, the report is the start up point for future discussions and implementation of national or EU policies.

EU has irreversibly started the journey to creating a science-based economy, to creating more work places, reducing unemployment and increasing labour quality. Results obtained in the EU and in Member States show how the EU strategy for labour market has lead to 3 major domains that were adressed:

- increasing employment;
- implementing structural reforms and labour market modernization;
- completing social changes.

Economic growth is crucial. EU productivity has constantly raised by 2% per year in the last 30 years, which lead to a double increase in life standards for the last 40 years. But this means the future growth has to be kept in the same limits, in order to maintain the employment rate.

Here is where we can see how European countries depend on eachother. As a consequence, trade among Member States must be given a greater importance than trade with the rest of the world. Interdependence existing among Member States can become a power factor, but it is important that it will be used in a positive way.

Social, economic and labour market policies are requirements, well-defined and easy to apply for the populaion – this is even more important as EURO was introduced or is to be introduced in the

following years in all EU countries – and, at the same time, policies based on strategical and political previsions. The complete labor usage in a science-based economy can only be achieved through a realistic plan of economic, productivity and life standard growth.

An interesting situation was met with the Eastern enlargements of the EU in 2004 (ten states) and 2007 (two more). At that time, offensive managers placed priority on getting access to labour (especially skilled labour) from Central and Eastern Europe (CEE). Defensive managers have focused on walling off „deep" Eastern Europe from CEE and erecting mobility barriers against NMS workers. Initially, it seemed as if the primary management would involve the Commission walking the CEE states through a welter of well-established (if patchwork) regulations regarding free movement of persons, which had become a core principle for the single market in both theory and deed by the 1990s. But technocratic debate over mutual recognition of things like professional certificates was soon swamped in the late 1990s by the high politics of Member States. Germany and Austria, in particular, raised strong objections to immediate free movement of CEE workers, and the EU was ultimately obliged to negotiate the right of individual OMS to limit entry for up to seven years after membership. Here, one could say the Commission was an unsuccessful advocate for offensive management. The EU also had substantial influence over the CEE states' efforts to control their own external borders to the East. Here, they largely shared the defensive position of the Member States. Though the EU had little experience in guiding the development of external border policies – traditionally the domain of the nation state – there is good evidence that they pushed CEE states to seal those borders in a variety of ways.

Now it is a good opportunity to talk about the Equal Economic Opportunities Programme that aims at advancing ECMI's (European Centre for Minority Issues) expertise on issues relating to the participation of minorities in economic life. Specifically the programme has two goals: first to advance theoretical understadding of economic inclusion/exclusion of minorities, and then to provide practical advice to national governments and other relevant policy-making bodies on how to devise policies to combat the problem of economic marginalisation.

Minorities' ability to participate in economic life is strongly affected by the context in which they live. This context refers to a number of different situational variables including:

1. the extent to which minorities are dispersed across the territory of the state or are geographically concentrated;
2. the location of minorities, e.g. in the capital city, in deprived urban regions or in the rural periphery;
3. the presence or absence of a kin-state and the relationship of the host state therewith;
4. general socio-economic processes that are taking place in the country or region concerned, such as privatization or rapid integration into the global economy.

Minority participation in economic life is also dependent on quite often localized informal institutions, such as the existence of (often mono-ethnic) economic networks, as well as minorities' own expectations of their 'place' within society. ECMI's ability to provide advice on the issue of economic participation is therefore dependent on its understanding of these different contexts and of how certain policies may affect minorities in different ways in different contextual settings. For this reason, it is necessary first to conduct research in order

to devise a methodology on how to deal with the problem of economic participation and then to think about how to apply that methodology.

While equal opportunities for minorities has long been a focus of concern within the field of human rights, little work has been carried out on how to promote equal economic opportunities for members of minorities, despite a few declarative statements in a number of legal instruments that are intended to protect members of national minorities from economic discrimination. Similarly, although social exclusion in general (with which economic exclusion is often associated) has been a focus of EU policy-making since the launch of the so-called Lisbon Strategy in 2000, few attempts have been made to shed light on the link between social and economic exclusion on the one hand, and ethnicity on the other.

Thus, we can say that, even if EU managed to obtain a high performance level in incrasing employment, there still are major objectives to be achieved:

- reducing the differencied between the main population of a country and it's minorities, if we are to talk about employment or active population;
- full employment in EU by promoting labour market integration to all persons, particularly to older persons, nationality not being a criteria;
- reducing unemployment and, most of all, reducing young people unemployment;
- increasing regional and social cohesion.

Economical and social pregress needs the european social pattern to be improved and to include the „reality" of central and east european countries. At the same time, we must not forget that the last countries that became EU members, in 2004 and 2007, came with important labour market problems which lead to the necessity, at least for the next years, to supervise their evolution. Free labour mobility, one of the central elements of an economical and social integration, is not, as proven by todays realities, only a factor for economical growth, but also a potential disturbance element for certain social problems. In my opinion, I think it is important for the EU to carefuly observe this situation and to try to control the social and economical exclusion of minorities, so that all the European objectives to have the possibility to be met without severe perturbations.

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The Georgias to Come

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Abstract: *Starting from the recent Georgian case, Michael Radu's article discusses Russia's appetite for regional conquests, arguing that a similar scenario might happen soon in other regions of the former soviet space (e.g., Transnistria, Nagorno Karabach, Crimea).*
Keywords: breakaway republic, autonomy, occupation, satellization, peacekeepers.

Those who thought that wayward Georgia marks the end rather than the beginning of Russia's appetite for regional conquest should consider a recent headline from a Romanian newspaper: "The other Georgia to come: The 18 tanks of Transnistria could reach Chisinau in 30 minutes." The August 22nd article went on to warn that Russia now threatens Europe's easternmost reaches.

This will indeed come as news to Americans, most of whom have never heard of Transnistria, a breakaway republic in Moldova, or of Chisinau, Moldova's capital. Moldova, despite being a UN member state, is another of those legalistic entities – such as Somalia – whose existence is largely dependent on the willingness of powerful states to recognize it. Transnistria, a Stalinist creation like the now better known Abkhazia, South Ossetia, and Nagorno Karabagh, offers a militaristically resurgent Russia yet another opportunity to flex its muscles and presents the West with yet another insoluble problem. When it takes just 18 Russian tanks to reach the capital of a sovereign European country, that is cause for international concern.

To justify its military presence in Georgia and Transnistria, Russia has used the Kosovo analogy. Kosovo, it will be remembered, was part of one internationally recognized country, Yugoslavia, and later of another, Serbia. Because the local ethnic Albanian majority wanted to separate and claimed oppression or even "genocide," the EU and NATO, without UN blessing, used force to expel the legal Serbian authorities. Earlier this year the same EU/NATO and the United Nations recognized a new state of Kosovo. Kosovo is in fact no more a viable entity than Abkhazia, albeit more viable than South Ossetia or Transnistria. Russia would like its occupation of sovereign countries to be

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seen in the same context.

There are, however, important differences between Kosovo and Georgia's separatist regions that Russia prefers not to mention. Albanians in Kosovo were a clear majority for decades, while the Abkhaz represented only 17 percent of the region's population by the early 1990s, when Russia helped evict the majority Georgians from the area. Ossetians in South Ossetia were about two thirds of the total for a long time, while Russians in Transnistria were for decades the third largest ethnic group, after Romanians ("Moldovans") and Ukrainians, and Armenians in Nagorno Karabagh were always a majority.

Just as Russian ambassador to NATO Dmitri Rogozin's hanging a Stalin poster in his office is a symbolic demonstration of the continuity of Russia's imperial ambitions, Transnistria is the most concrete manifestation of Stalinist tactics. Created on a piece of Ukrainian land after World War I with a few Romanians on the left bank of the Dniester after the Soviets lost the historic Romanian province of Bessarabia (actually eastern Moldova, annexed by the Tsars in 1812), the grandly named Moldovan Autonomous Soviet Socialist Republic was intended to create the impression that it represented the "real" Moldova, unjustly divided by the Romanian annexation of the right bank area. After World War II, Moscow re-annexed Bessarabia and, with Transnistria attached, renamed it the Soviet Socialist Republic of Moldova. Today it has an area of 34,000 square kilometers and 4.3 million inhabitants.

Despite strenuous Soviet efforts at Russification, Bessarabia retained its Romanian ethnic majority (about 66 percent), even if not a very strong self-identity. The very term "Moldovan" as a national description is fictitious. Not only is most of the historic province still in Romania, but in language and religion Moldovans are as much a distinct "nation" vis-à-vis Romanians as Kansans are vis-à-vis Americans.

After the Soviet collapse there was a certain amount of pressure, especially among the young, to bring the area under the Romanian flag. Moscow, weak as it was at the time, still reacted rapidly, following a pattern similar to that of Abkhazia and South Ossetia. The Slavic majority in Transnistria (made up of both Ukrainians and Russians, despite Romanians being the largest single ethnic group) panicked at the idea of becoming a marginal minority in a Greater Romania. It proclaimed "autonomy", requested and immediately received Russian military aid (a combination of "peacekeepers" and Cossack mercenaries) and annexed the city of Tighina on the right bank. Moreover, to further ensure that Moldova will never be a viable state, Moscow encouraged and supported "autonomy" within the remaining territory for the small Gagauz, an Orthodox Turkic minority (140,000 people on 1,600 square kilometers).

Russian "peacekeepers" have remained in Transnistria ever since 1993, despite Moldovan protests and Moscow's promise to withdraw them, first by 1997 and again by 2002, in effect protecting a Mafia-run enclave, where, as this author has seen, admiration for Lenin and the Soviet Union are officially exhibited, giving the "capital" Tiraspol the atmosphere of an ideological Jurassic Park. Not surprisingly, the local "authorities," who have repeatedly expressed their desire to join Russia, receive the enthusiastic support of Russian nationalists and systematically suppress all manifestations of "Moldovan" (i.e. Romanian) language and culture. As for the economy, just as in the case of other such separatist enclaves (South Ossetia, Abkhazia, indeed Kosovo), it amounts to a Russian subsidized smuggler's paradise, with some arms exports, controlled or owned by a

small clique around "President" Igor Smirnov, a former Soviet petty bureaucrat from Eastern Siberia who is still a Russian citizen.

While Moldova is powerless to resist Russian pressure and Transnistrian threats and blackmail, one should resist the temptation of sympathizing too much with its regime – or its voters. Government after government in Chisinau – and they have all been freely elected since 1991 – has refused to make any hard decision regarding the country's future. The best explanation is the confused identity of the voters themselves and of the political elites.

Throughout the Tzarist and Soviet occupation, the peasants, mostly ethnic Romanians and, unique in Europe, the majority, did cling to their language and identity against Russification efforts, but distrust Romania after two centuries of Russian propaganda. Many of them also distrusted capitalism to the extent that, when land was offered for private property, many still preferred Soviet-type collective farms. The young, while more pro-Romanian, mostly chose the easy option of having it both ways – obtain Romanian passports and using them to gain access to the European Union. The clearest manifestation of such behavior is the election and re-election of Vladimir Voronin, a former KGB Major General, leader of the Party of Moldovan Communists since 1994 and president since 2001. That makes Moldova the founding member of a club of two countries in Europe that have elected openly communist presidents (the other is Cyprus, which did so earlier this year). Not surprisingly, Voronin goes through the motions of moving toward "Europe," mostly seeking economic aid and protection against imaginary Romanian annexation, while regularly, and more sincerely, expressing his friendship for Moscow and antipathy toward Bucharest and all things Romanian.

All of that explains why no serious political or popular pressure exists to force Chisinau to make the hard choices about Moldova's future. Those choices are limited, and become more so in light of Russia's newest demonstrations of military might. In descending order of their realism, those choices are satellization (worse than Finlandization) by Moscow and retention of Transnistria as a reward, continuation of the present situation and the associated realities of a continuous exodus of the young and deepening poverty, and unification with Romania, leaving behind the indigestible Transnistria and Gagauzia. Painful as each may seem, none of these choices is completely in the hands of Chisinau, but will mostly be decided in Moscow, Kiev and, to a lesser extent, Bucharest. If the present Russian plan for the federalization of Moldova – in effect making almost 4 million Romanians constitutionally equal with half a million Transnistrian Rusophiles is accepted, complete with a Russian military presence for decades to come, Moscow would complete its domination – legally, peacefully and at minimal cost.

For Moscow, the present situation is perfectly acceptable. Russia controls Moldova's energy supplies, is by far the dominant market for its exports (mostly wine and fruits), and can manipulate the Transnistria issue should Chisinau exhibit any uppity behavior. The only problem may appear if Ukraine succeeds in safeguarding its independence, because then Transnistria, and by implication Moldova, would be cut off from Russia and become hostages of Kiev, rather than Moscow. From Russia's perspective, the fate of Moldova is not just secondary but will be practically decided by the nature of relations between Moscow and Kiev.

For Ukraine, which has long behaved as if Moldova and Transnistria are of marginal interest, compared to its terri-

torial dispute with Romania in the Black Sea and the Danube Delta, the events in Georgia should bring home the fact that a Russian-controlled Transnistria (and/or Moldova) on its west adds to the security threat of its long eastern border with Russia proper. That is a situation no independent government in Kiev could live with, but Kiev could handle it simply by isolating, and thus suffocating, Transnistria (and a satellized Moldova), probably in cooperation with Romania. Kiev could also remember that historically Transnistria was part of its territory – and that there are as many Ukrainians as there are Russians in that region.

On the other hand, if Moscow's ultimate goal of bringing Ukraine into its area of control succeeds, the problem of Transnistria – or of Moldova's sovereignty and territorial integrity – will cease to be relevant.

Romania, albeit one of Moldova's two neighbors and ethnically identical, has played a much smaller role than one could have expected. True enough, Romanian politicians have expressed concern, the Romanian Orthodox Patriarchate has detached a minority of Moldovans from under Moscow's religious authority, and Moldavians have received scholarships and, most importantly, passports, but Chisinau has resisted any closer cooperation, military or political, and, judging by this author's observations, beyond a nostalgic solidarity that is more regional than widespread, the overwhelming majority of Romanians do not seem very excited about events beyond the Prut River – or prepared to do much to influence them. They instinctively realize that Romania does not really need and cannot really afford reunification with 3 million poor and resentful relatives, ESPEcially if the already high cost could include over a million inassimilable and hostile Slavs.

For a Europe that is largely unable to offer a strong and coherent response to Moscow's mutilation of Georgia – which is pro-Western, much larger and more strategically important, and which has a well-defined national identity – the notion peddled by some in Chisinau and Bucharest of Moldova's admission into the European Union (and NATO) is simply and realestically inconceivable. All that is left is, in effect, the next move by Moscow and the inevitably ineffective protests and expressions of concern from Brussels to follow.

The little-known developments in Moldova since the early 1990s should have rung alarm bells in Europe and Washington. They served as a model for what has been done in Georgia recently. The "international community" did nothing as a Russophile remnant of Stalinist political mapmaking was strengthened by Russian forces disguised as "peacekeepers"; a local puppet clique was installed, encouraged and subsidized by Moscow; and the legitimate government was blackmailed and threatened into tolerating the situation. Yeltsin's Russia was too weak to fully apply this pattern beyond Moldova, but Putin's has now taken it to its logical and intended consequences in Georgia, and very likely we shall see it repeated, on a much larger and more dangerous scale, in Ukraine.

All the ingredients are there. Crimea has a restive Russian majority, used to belong to Russia (after being taken from the Ottomans), the would-be "peacekeepers" are already there as the Russian Navy's largest Black Sea base in Sevastopol, and Kiev's ability to resist is undermined by the large pro-Russian sector of Ukraine's population, its dependence on Russian energy and markets and the divisions in the country's political class. The lessons of Moldova were not learned by Europe or Washington, and it may be too late to apply them to the coming Ukrainian crisis.

Persia, a Permanent Opponent at the Gates of Europe

Ionuţ ŞERBAN

Abstract: *This article presents the main political events which have opposed Iran to the European states along history. The periods of ascent alternated with those of crisis, however, Iran has kept the glory of ancient Persians, at present being the most important actor of the political scene in the Middle East, this hot zone of nowadays.*
Keywords: conquest, opponent, empire, kingdom, treaties.

During the reign of Assyrian King Assur-ah-iddin (681-669 BC), the main attacks of the Median population are attested, but they knew to oppose them the force of the Scythian tribes.

In 615 BC King Cyaxares attacked Assyria at the same time with the Chaldeans. He occupied the upper Mesopotamia, kept under obedience the Persians and destroyed the State of Urartru (future Armenia).

In 585 BC the King initiated a war with the Lydians, establishing the frontier at Halyes in 582 BC. His successor Astyages (582-550 BC) did not resist in front of the new opponent: the Persians[1].

The Indo-European tribes of the Persians established their rule in mountains, at Parsumash (future Persepolis, North from Susa), under the command of king Ahmenes (the founder of the Ahemenit Dinasty), who accepted the suzerainty of the Elamites in the 7th century.

The successors of Ahmenes eliminated the authority of Elamites establishing their residence at Anshan and Parse (present province of Shiraz), accepting the suzerainty of King Astyages. The main Persian ruler, Cyrus the Great (556-530 BC) makes an uprising against Astyages who becomes his prisoner. Cyrus the Great becomes the Master of the entire Western Asia, eliminating the tribal formations and arriving at the gates of the great-civilized states: those of Mesopotamia and Egypt[2].

The Persian Kingdom destroyed the Lydian Kingdom of Cressus, the New Babylonian Empire (538 BC) and Egypt (525 BC). After that, Persians went on the corridor of the Palestine, freed the Jews from their captivity, allowed them to enter in Jerusalem re-building their Temple and re-gaining the cultic inventory stolen by Babylonians[3].

The power of Persians, the greatest force of the near East was based on an innovator system of communication. The main axes named the Royal Way, from Sardes to Sussa connected the Aegean Sea

with the Persian Gulf and Ancient India (present Afghanistan). From this axes split two ways, one from the Plateau of Media and Hircania and other by desert, based on a system of oasis from the present Turkestan. The Persian Kingdom had another way to the Arabia for arriving at the Red Sea harbors.

Historians explained the growth of the Persian power through the birth of the "Iranian conception": "Ride! Shoot the arch! Tell the truth!" and through the experience gained by Persians from the government systems of the conquered oriental states.

The Persians applied a very important lesson, unfortunately ignored until the 20th century, that of ethnic toleration.

The Medians and the Persians were a small group comparing to the conquered people. They were exempted from paying taxes, which were collected as describes the Greek historian Herodotus (Histories, book III), exclusively from the subjects of the state.

The subject people were informed by the Imperial administration in their mother language, which they were free to use among them and in relation with the state. They were also free to honor their own gods and to apply their own laws. It was a propagandistic way to present the Great King's "mercy".

The main reformatory of the state was Darius (522-486 BC), who implemented the system of provinces, with separate command, military and civilian, struck the golden coins, developed the roads infra-structure.

For the first time, Persian Kingdom entered in contact with the European civilization in 546 BC when Cyrus subjected the Greek cities from the coasts of Minor Asia. As usual, the Greek cities were let to develop autonomously, not being obliged at the tribute excepting the annual gifts for the Great King. The single "intervention" of the Persians was the help offered to the Greek tyrants, who might action as mediators between Persians and Greek cities. Hestiaios and his son-in-law Aristagoras ruled the greatest city of Ionia, Miletus. The political intrigues of the first and the attempts to independence ruined the peace and contributed to the Ionian uprising (499-493 BC) in which Miletus was erased from the face of Earth. Its allies from the European Greece (Athens and Eubeea) will be punished very soon[4].

Between 490-449 BC, Europe knows its first intercontinental war. Persians were defeated at Marathon (490 BC), Salamis (480 BC), Eurymedon (468 BC) and their allies from Carthage at Himera (480 BC).

It was Europe's first major peace, signed in 449 BC (Peace of Kallias), which confirmed the first separation of the influence area between the Greek world and the Persian Kingdom.

In 487 BC was created the first European defensive alliance, the Delian League which had as main objective the security of the Greek world.

Because Athens subdued the League, for confronting with its former ally Sparta, Greece was wasted by the Peloponesian War (431-404 BC), gained by Sparta, but giving satisfaction to the Persian Kingdom which recovered the lost terrain from 449 BC.

In 400 BC, 10,000 Greeks helped Cyrus the Young against Persian King Artaxerxes, brother of Cyrus.

The death of Cyrus made useless the victory of Cunaxa near Babylon.

The Greeks lead by Xenophon went back home almost without casualties, presenting the real situation of the Persian Empire: a colossus with clay-foots.

The ascension of the Macedonian Kingdom under Philip the Second and Alexander the Great was the catalyst of the idea of defeating Persians. Alexander the Great, between 334-327 BC, had a great

expedition against Persians, creating a Great Empire on two continents which did not survive his creator who died in 323 BC.

The conflict between the generals of Alexander the Great finished in 301 BC after the battle of Ipsos after the death of Antigonos, the last exponent of the Imperial Monarchy[5].

After the end of Hellenistic Dynasty from Seleucia, a tribe subdued by Persians took over the initiative of Persian recovery and creates the Parthian Kingdom under the Dynasty of the Arsacids and Sasanids.

The new state confronted with Rome, the first state which created a European Empire. After the defeat of Crasus at Carrhae (54 BC), all Roman Republican leaders and Emperors (Traian, Hadrian, Septimius Severus, Caracalla, Macrinus, Severus Alexander) confronted with Great Parthian Kings as Chosroes I (107-130 AD), Vologese II (130-148 AD), Vologeses IV (191-208 AD), Vologese V (209-222 AD), Artaban V (222-226 AD)[6].

Between 226-272 AD, the Parthian State was conducted by the Sassanid Dynasty on centralized bases. All Roman Emperors as Maximinus, Philip the Arab, Valerianus, Gallienus, Decius, Claudius Gothicus and Aurelianus fought with the Sassanids[7].

With Diocletianus and Constantine the Great a new state will appear, the Byzantine Empire. After the division of the Roman Empire in 395 AD, at the end of the reign of Theodosius, it was the Eastern part of the Roman Empire (the Byzantine Empire) which confronted with the Parthians until 651 AD, when the Sassanid organization was replaced with the religious one, that based under the Muslim faith founded by Mohammed since 622 AD[8].

The Byzantine Empire punished the Jews who helped the Persians and rejected the Monophysits, who preferred the Muslim Rule, contributing to the religious unity of the Empire.

The Arab Conquest will impose the organization of the Caliphates until 1322 when the Ottoman Empire was founded by the Warrior tribes of Turks. Controlling the Persian Area, the Turks got for their Emperor (Sultan) the ancient name of Padishah (King of the Kings)[9].

In the 18th century Iran was a state in decline. In 1747, after the fall of the Empire of Nadir-Shah, the power is taken by the Turks of Muhammad Shah who is killed under the influence of Russians (1797).

Persia, wanted by both the Russian and English Empire ceased to be a great power, but succeeded to avoid the colonization. Napoleon helped Persia to organize its army, but since 1809, Persia gave all its attention over England, which helped it avoid the Russian domination[10].

In 1809, the British Government obliged the Persian Shah Fath Ali to cease the diplomatic relations with France, because Napoleon had the intention after the Treaty of Titlist (1807) to attach India. During the period 1804-1813 the Russians won a war against Iran imposing the treaty of Gulistan, in which Persia lose Christian provinces of Georgia and the Muslim provinces of Shriven and Dagestan. The Russian imposed a new treaty on April 2nd, 1828 when Persia lost Armenia.

In 1834, Russia follows the idea of the neutrality of Persia concluding a treaty in which they recognized the independence of Persia.

Muhammad Shah (1834-1847) will try to take back the Afghan region of Herat in 1837 from British, which was attacked firstly in 1816 and the second time in 1833 when he was the heritor prince.

A new attack against Herat will be stopped by British between 1852-1856.

Confronted with religious problems Persia recovered after 1852[11].

In 1839, the former Persian province of Gedrosia, independent at the half of the 18th century, was occupied by British as protectors in 1854. In 1879, at the treaty of Gandamak they decided to make the annexing of Gedrosia, finished in 1887. Great Britain succeeded to impose the domination in Persia imposing its domination in Bahrain, protected between 1870-1888 and annexed from 1914.

British took all the main economic fields from Persia under their monopoly (telegraphic communications-1863, tobacco-1892, oil-1909) and took half of the money of the foreign companies from Persia, in the London Treasury.

From 1907, British and Russians conceived a treaty on the recognition of Persian independence under their influence.

After a riot in 1908, on June 23rd, British, Russian and Turk troops invaded Persia throwing the king and replacing him with his son Ahmed Ghan (1909-1925).

The Russian Revolution from 1917 obliged Russian to withdraw from Persia which became entirely dominated by British, getting its independence under the "eternal protection of England" on August 19th, 1919.

Iran declared war in 1943 to the Axe Roma-Berlin forces, occupied by the Russians who organized the allied conference in Teheran (December 1943)[12].

In contemporary age, the Shah Mohammed Rheza Pahlevi celebrated 25 centuries of Iran by a monumental ceremony in 1971. Shah Mohammed used the huge reserves of oil to engage Iran on the international political scene, but the spiritual leader, Ayatolack Komeini started the Islamic revolution which gained the victory in 1979, throwing away the Shah who left the country dying into exile.

Between 1981-1989, the war against Iran, conducted by Sadam Hussein, the leader of Iraq with the help of American government was gained by the Iranian forces.

During the Gulf crisis, from 1990 to 2003, Iran was a strong political and military force. The Iranian militia fought in Syria, South of Lebanon, against the interests of Israel.

Today, Iran is the most powerful state in the Middle East, the "red point" on the world's political map which has a great army, an ultra-modern infrastructure, accused by producing the atomic bomb, trying to regain the glory of the ancient times.

Notes

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Government Instability Indicators and the Exercise of Limited "Consensus" in Post-Communist Romania (1992-2004)

Anca Parmena OLIMID

Abstract: *The article aims at understanding the political phenomena of the Romanian transition, particularly, starting from post-December government instability. The article proposes a chronological approach of governments starting from specific indicators of government instability. The central idea of the study is that political instability is a dependent variable of economic and social instability.*
Keywords: government instability, limited consensus, duration of government, optimal report.

During the 1990s post-communist societies faced similar challenges at the level of executive government. Since the early studies of Rosenthal (1978), political science literature's focus is on the different continuums of political stability. The literature argued that "political stability, political order and political structure belong to a single category of political concepts. One may call it the category of time oriented political concepts. *Political stability* indicates that a political phenolmenon (unit of analysis) has stood unaltered throughout a period of time"[1] (italics added).

From an empirical standpoint, Jose Casanova argued "the greatest threats to *political stability* are likely to result from excessive democratization, that is, from internal cleavages, hyper-mobilization, the overload of social and political demands, and the ensuing *crisis of governability* of paralysis of centralized, unified command"[2] (italics added).

In recent years there has been an increased interest in analyzing the effects of political instability in post-communist Romania. The cabinet structure, the period of governance, the reasons of termination of a government represented persistent variations over the period examined. However, in spite of the mounting interest, a close look at the socio-political situation of Romania suggests the vulnerable notion of *political instability*.

This article is an effort to look at the indicators of political instability (redefined as Government instability) in an unconsolidated democracy. The issue of political stability in post-communist Romania must of course be analyzed in relation to the challenges of reform and the sources of the limited consensus in government coalition in Romania (1992-2004). The methodo-

logy of the study concerns the dynamics underlying political instability in any post-communist society but with the determinants within all national political systems[3]. Svante Ersson and Jan-Erik Lane introduced new concepts of political stability that are suitable for the description of the cross-sectional and longitudinal variation in basic aspects of the political systems of Western Europe. The analysis of standard indicators on political instability applied to European data revealed six properties: public sector deficit, inflation, government change, party system volatility, violence and protest[4].

Citron and Nickelsburg (1987) propose a different model for the study of political instability. The model of country risk incorporates economic and political variables referring to a standard equation; the political instability indicator is proxied by the number of changes of government over five years (the study showed that when a government is characterized by instability,"the increase in government welfare through spending depends essentially from domestic purchases"[5].

In order to test the government instability in the period 1990-2004, we introduce two standard indicators of the institutional stability that can explain changes in government coalition:

a. *the duration of a government*;
b. *the optimal report* among the cabinets of the mentioned period[6]. We adopt this focus as it provides the most significant insights into the issue of political stability, of how and why governments succeed.

Government Organization 1992-2004

Yet, although the process of institutional building is still very much unfinished, the foundation established in the last 18 years represents the basic direction taken seems to be one conductive to a political instability.

The period 1990-1996 covers the first period of government by the left of centre National Salvation Front (NSF) and its successor, the Party of Social Democracy of Romania (PDSR)[7]. However, Roman's successors, Theodor Stolojan and Nicolae Văcăroiu, vary from public hostility to radical, both pursued gradualist reforms involving the phased removal of price control, an ineffective system of privatization and insignificant structural reforms.

András Bozóki and John T. Ishiyama argued that while it is often taken for granted that the structure of government is reflected in the structure of the economy[8]. In the case of Romania, resistance to reform in the first years after the failure of the communist regime not only raised questions about the economic reform, but also about the profound implications for the democratic institutions.

In 1996, Romania voted out of office President Ion Iliescu and elected in his place Emil Constantinescu who representted the Romanian Democratic Convention (CDR), the largest coalition of opposition parties[9]. The Convention's first Prime Minister was Victor Ciorbea. The government was a coalition between CDR, the USD and the UDMR (themselves coalitions)[10]. From the beginning it has to be acknowledged that this heterogeneous coalition was made of political actors with different memories, histories and different political convictions.

Under these circumstances in December 2000 the ex-communists returned to power (the Social Democratic Alliance in coalition with the Romanian Social Democratic Party and won 37% of the seats in Parliament). The most striking change between the two elections was the collapse of the centre-right Democratic Convention (CDR), which had been the centrepiece of the post-1996 governing coalition[11]. The new administration was sworn in on 3 January

2001 after having signed agreements with a number of opposition parties[12].

Determinant Indicators of Government Instability

a. *Duration of government*

In the literature on comparative government's stability it is a much-contested notion (most of the authors using duration as meaningful 'proxy' for stability[13]). This indicator of existence of a political stability refers to the ability of each govern to pursuit the social and economic program reforms. We consider 4 years as a normal period of government (1461 days).

However, in a new democracy, where government stability and effectiveness are still in question, the literature falls into three groups to explain the variation in government duration: features of parliamenttary cabinet government (type of government, ideological composition of government, parliamentary support); institutional features (plurality, structure of parliament, executive power of the Head of State); party system features (the ideology of the relevant parties, the degree of polarization)[14]. More specifically, column three shows the difference in number of days in government. The intervals measured show the unequal number of days in government (from 491 days for Ciorbea Government up to 1489 days for Văcăroiu Government).

Table 1
Duration of governments in Romania (1992-2004)

Government	*Period of governance*	*Duration of government*
Nicolae Văcăroiu	13 December 1992-10 December 1996	*1489*
Victor Ciorbea	11 December 1996-15 April 1998	*491*
Radu Vasile	16 April 1998-13 December 1999	*616*
Mugur Isărescu	14 December 1999-12 December 2000	*366*
Adrian Năstase	13 December 2000-21 December 2004	*1469*

Note: *Duration* is measured in days. The number in the last column (*average duration*) indicates the report between the effective and the normal period of government.

There are five governments listed in Table 1, but only two governments provide a very high rating of political stability (Văcăroiu government-1489 days and Năstase government-1469 days). Ciorbea government and Isărescu government, for example, score lower than might be expected. This could reflect the problems governing central institutions.

They also suggest that the reasons of termination of a government is the main dependent variable of interest. A close look to *reasons for termination* of a government shows that in only two of the cases elections are the reason for termination of a government in the mentioned period (Văcăroiu government and Năstase government account 40% of all cases).

b. The second is the *optimal report*. The term "optimal report" is commonly used to express the report between the normal period of government and the effective period of government. This is an interrelated and determinant indicator for the institutionalization of a democratic legitimacy.

As we already mentioned, we consider 4 years as a normal period of government (1461 days). In pursuit of this last issue the paper indicates that we establish government stability when this report tends to 1; but if the value of this report tends to 0 we establish govern-mental instability[15]. The optimal report is a dichotomous variable which takes on a value of 0 under a governmental instability and a value of 1 when the period of governance takes place under political stability[16].

Table 2
***1st Period of governance* (13 December 1992-10 December 1996)**

Government	*Period of governance*	*Duration of government*	*Average duration*
Nicolae Văcăroiu	13 December 1992-10 December 1996	*1489*	*1,02*

According to table results, the level of government stability is very high. In this respect, the Văcăroiu government appears to be almost a paradigmatic model of the transitional democracy. As indicated bellow, the average score for Văcăroiu government is significant higher that for the rest of the period.

Table 3
***2nd Period of governance* (11 December 1996-12 December 2000)**

Government	*Period of governance*	*Duration of government*	*Average duration*
Victor Ciorbea	11 December 1996-15 April 1998	*491*	*0,33*
Radu Vasile	16 April 1998-13 December 1999	*616*	*0,42*
Mugur Isărescu	14 December 1999-12 December 2000	*366*	*0,25*

Nevertheless, the November 1996 elections in Romania marked the democratic consolidation of the country since 1989. The lack of a clear majority in Parliament meant that every bill had to be negotiated. The analysis of optimal report data shows that there is indeed a high risk of government instability backsliding immediately after 1996. The numbers in the fourth column represent the average, minimum (Isărescu government) and maximum (Vasile government) for the period 1996-2000. The table also shows that very no substantial variation in numbers for the cabinets in the same period (from 0,25% up to

0,42%). However, the table shows that the results for the three cabinets are similar between 0,25% and 0,42%. Isărescu government has the lowest value of the period around 1999-2000. As already mentioned in this introduction, the scores are valuable for the analysis of the political instability.

Table 4
***3rd Period of governance* (12 December 2000-21 December 2004)**

Government	*Period of governance*	*Duration of government*	*Average duration*
Adrian Năstase	13 December 2000-21 December 2004	*1469*	*1,01*

The table shows that Năstase government has one of the highest scores of the period (1,01%). The table also indicates that the average duration of Năstase government is quite similar with the average duration of Văcăroiu government.

In conclusion, the two following particular hypothesis are related to political instability:

1. Under a situation of crisis, political instability is to be expected;
2. Political instability may still be predicted, given the following analysis: understanding the reasons behind frequently changes of government are important in any democratic context. The variations of the period of governance have a significant effect on the level of concentration of the government authority.

Notes

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[15] Răzvan Grecu, *Instabilitatea guvernamentală în România postcomunistă* in „Studia Politica. Romanian Political Science Review", Volume I, no. 3/2001, p. 792.
[16] The lack of interest in political science literature to the government stability in post-communist Romania is explained by the varying changes in the number and character of governments in most of the countries in the region Cristian Preda and Răzvan Grecu report similar scores with respect to governments in the mentioned period. For more see, Cristian Preda, Sorina Soare, *Regimul, partidele şi sistemul politic din România*, Bucureşti, Nemira, 2008, p. 129; Răzvan Grecu, *op. cit.,* p. 792).

Standard of Living and Quality of Life in Romania

Marieta STANCIU
Carmen PUIU

Abstract: *Standard of living expresses the situation of a country, as well as its various segments in close liaison with the growth of economy, with sustainable economic development and welfare theory. The appreciation of the standard of living is achieved by means of economic and social indicators, living standard is a main component of the quality of life.*
Keywords: way of life, standard of living, quality of life, welfare, development strategies.

Standard of living is a "social-economic indicator that expresses all goods and services that a person can provide with its income. The standard of living expresses the situation of the population that exists in a country, as well as its various segments in close contact with the economic growth, with sustainable economic development and welfare theory. The new design approach on the standard of living is called the Issue of Equal Opportunities and the Equality of Opportunities. The level of life expresses their satisfaction with the needs of the population and is found as the fundamental indicator in social policy, concept approaching the human condition, social position, lifestyle, culture, values and aspirations, in connection with possibilities of meeting the needs of the population.

Living standard assumes a certain methodology of the research and measurement components, operating indicators and analysis of economic and social inequalities, and their sizes. Indicators for assessing compatible in concept, statistically and interpretative are:

- Economic development.
- Services development.
- The existence of a public sector to allow maintenance in decent limits the standard of living in critical periods.
- Development of education.
- A certain report on employment in industry / agriculture.
- A large amount of spending directed towards social welfare.

The appreciation of the standard of living is achieved by means of economic indicators (GDP per capita, income distribution, the price level) and social (education, health, employment and quality of life, free time, accessibility to goods and services, the physical and social environment, personal safety."[1]

The concept of standard of living refers to the satisfaction of the needs of the people in relation to the volume of goods

and services that they can provide with the help of the obtained incomes.

Living standard, in general, reflects the contribution of economic activities that meet the main needs for the members of society. In the indicators system that is used to determine the living standards of people in a country or of different social classes, the largest share is represented by the level and evolution of incomes, the level and evolution of prices and tariffs, the level and structure of consumption of goods and services , the employment and living conditions.

Because the complexity of the human being led to an analysis not only of objective factors, economic summarized in the concept of standard of living but also of the reflection on the subjective degree of satisfaction or dissatisfaction over living conditions, was developed on the philosophical line as a complement the concept of standard of living, the concept of happiness. It is known that this philosophical concept reflects a subjective state that everyone aspires to, but it should pursued on what extent the existing life causes determine feelings of satisfaction, balance and realization of human personality and what must the man do, because in certain conditions of life, or at a certain level of living he should maximize its satisfaction to live. In general, researchers tend to define the standard of living through the quantifiable elements of life.

Limits of living standards depend on the level of economic development of each country, the degree of participation in the labor process, skills and the quality of work submitted, as well as the position of each person compared to the sources of income.

Starting with the 6tb decade of the twentieth century, the concept of living and associated concept of quality of life, allowing the later idea that mainly includes quality of life as an organic component of the material and cultural living of the population.

Paradigm of life quality has emerged as a necessity, as a response to a crisis of growth, specific to present society, and its diverse issues is determined so of the high degree of economic development, as well as economic conditions of underdevelopment, so the possibilities of economic growth in future, and its limits, emphasized by the current state of present, worldwide economy development.

The quality of life can be defined as the value for a man of his life, provided that the conditions of human life offers the opportunity to meet many of its needs, the degree to which life is satisfactory for humans; in this way the quality of life is as a relationship between the existing state and its assessment by the population[2].

The concept of quality of life, with its entire issue and the flags and targets that are associated, is a practical way of operating the endpoint of sustainable human development: the development of man and through man.

The concept of human development has emerged as an objective necessity to develop an alternative approach to development, promoting various aspects of human welfare, beyond economic ones. Thus, the objective of human development far exceeds the definition of development in a strictly economic sense, by highlighting the need to situate people, needs, aspirations and capabilities in the center of any development effort.

Human development, in terms of sustainable development should be lead to an improvement in the standard of living, reflected by increasing the quality of life of people.

In close connection with the concept of human development is the concept of quality of life. Life quality reflects the

status of a welfare society, including a series of economic and non-economic issues, quantitative and qualitative, which together determine the content of an individual's life. Quality of life of each individual in part contributes to the quality of life in a society. The report can only be from the individual to society; aggregated indicators reported to the number of inhabitants do not provide the same degree of accuracy and representativeness as the private individual situations.

The first concerns regarding the concept of quality of life occurred in the 70s of the twentieth century and was a reassessment of the level of development reached by the society, by removing the exclusive economic perspective on social life and the assessment of society development. The innovative importance of the concept and of its substance were then quickly taken over by the scientific community, becoming in a very short time on of the strong ideas of social and human subjects, and one of the key terms of many of the programs of social development, being frequently used in the political and ideological language.

In the domain of quality of life resources, first steps have been completed in countries with a developed economy, the aim being to see ratings that people do about their lives, from the state of frustration of individuals against the human weaknesses development, in relation to the development degree and expansion of development.

This difference between high rates of economic growth and a weak performance on quality of life occurs because wealth is not equitably distributed, because the phenomenon of poverty is present in the companies with a large degree of economic development, but mostly because the expectations and evaluations of people are different, even if they are at the same level of economic standard, which led to the emergence of a human crisis of growth and economic development.

The concept of quality of life, arose from the need for reorientation of the whole process of economic development to meet human needs, has seen numerous approaches that departed it from the doctrinary purposes, with contrary effects to those involved, in fact, an actual research of quality of life by putting an equal sign between this and some specific dimensions, such as economic standard, health status, degree of social integration, welfare, satisfaction etc.

The first step towards a new approach to development strategies was represented by the awareness of the negative features of a model determined by economic growth, which was the birth of the concept of quality of life that has received the task to solve the social, economic and ecologic crisis of contemporary society. The insufficiency, of the human signification was known, meaning economic growth of Keynesian type, awareness stimulating different attitudes, ranging from destructive denial until the to re-designing of contemporary society[3].

Introduction of the human element in the equation of economic thinking opens the way to achieve economic human development by stopping the firm trend of the economic subsystem to require only its specific values of social system, but there must be made a distinction regarding the values of economic subsystem that do not necessarily have negative effects on society, as long as they do not replace the entire axiological society ensemble. The issue that goes on is to mobilize in such a way, human resources and materials available to the society concerned, so as to obtain an economic growth that would have as an end, the welfare of the individual and society, establishing a standard of living which is satisfactory for all its members so

as to solve major social and human problems that they face. The idea of quality of life provides even here, the perspective of guiding much clearer to the whole process; a more efficient use of natural resources, a friendly behavior in relation to the environment, maximize the quality of life in the process of transition to human society through sustainable human development.

To provide a perspective and a clear social and human end, economic development and therefore establish an appropriate strategy with regard to increasing the quality of life is necessary to explore and formulate human needs so as to achieve the maximization of objective and subjective conditions of satisfying all human needs of all human for man to live safely and in a civilized manner.

Knowledge of human need, through their awareness of each individual, the possibilities and methods of meeting them, by raising living standards, an essential component of the increase in the quality of life, is a sine qua non of improving the organization of the entire society, the organization that represents itself a source of great significance for improving the living environment, so the increase in the quality of life itself.

The concept of quality of life can be evaluated properly only if they have the dimensions simultaneously economic, sociological, psychological and environmental styles of life, but of these, only two dimensions underlying the concept of quality of life, economic and social dimensions that interpenetrate and form a whole, which must seek the insurance of a the collective welfare, supporting concerns for economic growth so that the social objectives are finalized.

In regard to the *economic dimension* of the concept of quality of life, it remains extremely important, although it is not the sole solution in the collectivities of achieving personal wealth.

Quality of life of people is evaluated, primarily, by elements such as economic wealth, but they no longer represent a single condition to express this indicator: considerations of social and ecological nature become increasingly important.

It is important to ensure for all community members a minimum standard of living, decent, civilized by tapping the collective welfare state which allows the extension of the range of possibilities of access, for each individual, at the resources needed for a convenient standard of living.

Negative social conditions that are found in the present on a global level such as excessive social polarization, poverty, insecurity of life, personal insecurity, problems related to resources availability (provision of food, of an adequate housing, access to means of training, social absence) and meet basic human needs put in the background other components of quality of life and make the problem of economic resources to become a primary concern.

The importance of economic dimension of the quality of life results, also from the fact that access to resources for the development of human capital and expanding opportunities for access and involvement of individuals in social life are limited, although access and availability of such resources determines, in turn, the freedom of people.

Even in practice it was observed that the economic development and growth or the economic dimension of quality of life is obtained with smaller final cost and much easier for people better educated, fed, healthy, which makes the fight against poverty, the cause of degradation of social and physical environment, to constitute an imperative objective for ensuring a healthy civil society and to achieve greater social

stability , as a good environment to ensure the necessary level of living conveyable.

In regard to the *social dimension* of quality of life, a series of social objectives should be considered to cover such issues as diverse of the existence of human life, both of the individual seen as an entity, and of collectivities of people:

- Ensure all community members a minimum standard of living, decent, civilized by tapping the collective welfare state to allow expanding the scope of possibilities of access, for each individual, the resources needed for a convenient standard of living.
- Diagnosis as clearly of needs of the population, needs required by an existence characterized by the well-being, due to awareness of the limitations and economic constraints, and especially of environment that humanity faces at the global level, so as to promote community-level rational consumption, without squandering over the needs of living.
- Use of non-economic resources life quality growth, resources that did not consist of primary economic products, but that may entail some economic costs, relatively low.

Starting from the economic and social dimensions of the concept of quality of life in the process of achieving that wish, the society must overcome two obstacles: the first is the economic dimension and is related to improving the whole economic activity, and the second is the social dimension and regards the streamline of the organization and social management.

Often, “the quality of life is regarded as an output, consisting of two factors – input with Aggregate character: factor physical (material) and spiritual factor.

Factor (the charge) physically, that is the material which consists of quantifiable goods and services, while the spiritual factor (charge) includes psychological, sociological and anthropological components as belonging to a community, the need of esteem, auto- actualization, love, affection, components that are difficult to quantify"[4].

The need of measuring economic and social parameters of quality of life has a dual purpose:

- first to assess the extent to which human needs are met, the level of distribution of wealth and secondly to estimate their significance in relation to the quality of human capital;
- and two the extent in which it is a prerequisite for economic development, which signifies an overall assessment of social status, including the quality of economic growth, providing information on critical areas, of importance to the living level and of interest in social policy and also for economic policy.

In essence, these objective measurements and analysis is the needs of the people and general issue of living standard, as an essential component of quality of life, to which is found in relationship from part to the whole. Also, by measuring the quality of life, the human condition will be assessed in the social reality.

As for the indicators used, the most sensitive are objective social indicators which have a number of disadvantages whereas they do not provide information on the perception, at the discretion of individual or social group of a phenomenon or social process, this information is only given by subjective indicators allowing another vision of reality.

As such, more and more national and international organizations (such as the United Nations Development Program and World Bank) base their statistics and assess the level of development and economic growth as well as the dimensions of life quality on the results achieved on the social level, as has been noted that the economic

process is deeply and strongly influenced by poverty, widening inequality in society, the low level of education and access to education, health, low employment, especially among youth, juvenile crime which increases alarmingly, etc., all these represent social phenomena that are found globally.

The issue of human development is not the privilege of each country separately, but outlines a problem with global implications. The world countries can not be indifferent to the problems faced by other countries, whereas the balance in the global economy is very fragile and tense situations may move rapidly along the border. A sustainable development must be harmoniously conceived on a worldwide level, to not marginalized or excluded groups of individuals, at present, the advances in science and technology progresses rapidly and is expanding rapidly, so that new technologies become available to the poorest of people. The problem is still the one of accessibility from financial point of view, as new goods and services or technologies are very expensive.

There are a number of indicators with general standard of living and quality of life[5]:

1. *The quality of the environment* expresses the conditions of developing a normal life. In conditions in which the quality of the natural environment is not a threat to biological integrity of the human being, the demand for the quality of natural environment remains similar to that of goods and services.

The main demographic indicators, natural increase, childbirth, the structure by age group, family stability, the balance between population growth and economic development, have a decisive importance for human beings. As long as there are quantitative differences between rural and urban areas, between physical and intellectual labor, living standards and quality of life of individuals are different.

2. *The quality of working conditions* is given by the use of all resources of their work according to skills, workplace safety, labor protection and security, combating monotony, duration of the work rest.
3. *The size of revenues* is a prerequisite of a certain standard of living and quality of life. Based on the income of a person, family, social group, goods and services are procured to meet needs.
4. The size and structure of consumption is that part of the standard of living and quality of life, which depends, on a crucial way, the need to satisfy various physiological, social and spiritual needs of the population. In close connection with economic development, the level of consumption also progresses.

For the various components of consumption, evolution takes place at different rates, which lead to changes in its structure, to reduce the share of food consumption and increase the share of consumption of non-especially durables goods.

1. *Living conditions and their quality,* contributes to the satisfaction of needs, the physiological and psychosocial functions of the individual and his family, such as providing the framework for the rest, raising children, etc. The quality of housing conditions depends largely on the level of economic development.
2. *The health of the population* represents good general state of physical, psychological and social nature which is the support of the physical and intellectual development of the population, the ability to exercise employment and development capacity for physical and spiritual growth of the human being. Health is conditioned by the satisfaction of other priority needs such as

food, clothing, rest and recreation, physical culture and sports, education, etc.

3. *Training, education and culture* are indicators of great importance in evaluating the standard of living and quality of life. The degree of training, education and culture, depends on the quality of labor, goods and services created, the quality of social and inter-human relationships, the intensity of participation in the scientific, cultural and artistic life, social institutions function, efficient management.
4. *The quality of socio-political environment* is given to how they are provided conditions for achieving civic freedoms, in which people are free to think freely, to express their views, and to capitalize on their own beliefs the physical and intellectual skills, to manifest itself freely in all areas of social life.

As a concept focused on ensuring the welfare of human-like finality individual or collective-life quality, it is desired for it to become a mirror which reflects the social status of a mass, without reducing the image at the residence, ways of life or lifestyles that are reduction concepts, considered insufficient and partial which focus on the economic dimension of the concept, for a complete image is imperative that in the equation non-economic and social processes are introduced, guiding the economic dimension to achieve desired social results of the community.

This acknowledges that currently studying the quality of life of people should go to social facets of the concept which combines the levels of micro, mezo and macro social; more exactly it starts from the individual and then move on to different social groups and human communities, to reach society as a whole[6].

Since the contemporary development 'manifests as the establishment of two processes, sustainable development and human development, quality of life can be considered the effect and measure of economic and social progress, as progress in man.

In a number of key areas the intervention became necessary by policies that strengthen the link between economic growth and human development.

Government intervention should be simultaneous, both in favor of accession and integration into the EU, both of human development, to create a new dynamic of change in Romania, which solves the profound inequalities at the human level and to create a fair, competitive and productive society. Human development policy should include a wide range of targets, such as per capita income growth, improvement of health services, developing opportunities for education, citizens' access to resources, promoting the participation on a more widely level in public life and creating a clean environment.

The strategy for human development in terms of accession and integration into the European Union strengthens the link between economic growth and human development. This strategy highlights, on the one hand, the way in which economic growth can promote human development, and on the other hand, how human development can promote economic growth. Therefore any response that supports the economic integration process, but the process of human development, must include two key objectives: equitable distribution of wealth and optimal use of available resources.

Note

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The Principle of "Equal Pay for Equal Work" in Community Norms and Romanian Legislation

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Abstract: *The « equal pay for equal work » principle finds its source in the larger principle of non-discrimination among employees. This principle is stipulated in Article 141 (former Article 119) of the Treaty of Rome and in Directive 75/117/EEC. Thus the employer is forced to ensure the equality of remunerations among all the employees within an identical situation, the identity of the situation being appreciated based on the qualification and length of service as well as on the work accomplished by the employee. Within the Romanian legislation, Article 154 paragraph 3 of the Labor Code stipulates on the ban of pay differences on grounds of sex, sexual orientation, genetic traits, age, nationality, race, color, ethnic origin, religion, political opinion, social origin, handicap, family situation or family responsibility, affiliation to or union activities.*

Keywords: employment right, salary, work, discrimination, directive, policy, law.

European Law and the Equal Pay Directive

The most significant employment right is the right to equal pay. This right results from the principle "equal pay for equal work" in according with which individuals doing the same work should receive the same remuneration regardless of their sex, race, sexuality, nationality or anything else. The right to equal pay between men and women is another anti-discrimination measure akin to the right not to suffer discrimination on the grounds of sex.

The equal pay principle aims to ensure that men and women who are doing the same or similar work are paid the same wages. The stipulation of this principle in the European legislation is the result of the fact that historically men have been paid a higher salary than women based purely on their gender and the fact that they were seen always as the family "breadwinner". Besides this fact, there are many reasons for this historical inequality: the concentration of women in certain job roles, the concentration of women in part-time roles, childcare requirements, women missing out on promotion opportunities due to maternity leave[1]. This phenomenon of lower paid women work is influenced by such factors as the size of the organization (the larger the organization the higher the pay) and location (those working in capitals and the big cities receive more). Another factor is the over representation of females in the lower sized jobs, such as personnel assis-

tant. There is also the impact of personal choice, females may opt to work in more "worthwhile", but lower paid, voluntary and public services sectors. Also, the voluntary and public sectors are often regarded as offering a better work–life balance. This evidence indicates that a "one-size-fits all" enforced approach will not be appropriate and all these factors need to be examined in a holistic way[2]. Rather, organizations need to be encouraged of the business benefits of ensuring a bias-free way of rewarding and recognizing contribution and think about the approaches that most make sense in their individual circumstances. Equal pay legislation is just one part in the jigsaw of legislation which seeks to remedy these inequalities.

The principle of equal pay for equal work originated in Europe and can be found within Article 141 (formerly 119) of the Treaty of Rome which provides that men and women should receive equal pay for equal work. Article 141 states that "Each member state shall… ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work". This article was included into the Treaty of Rome at French insistence because France already had a legal regulation in this field and its industrial costs were assumed to be generally high. This stipulation of the Treaty was received with a noticeable lack of enthusiasm but the situation improved since the 1970s. "Some publicity had been attracted to Article 119 by the problem of a Sabena air hostess who had lodged a complaint in Belgium concerning the inequality in her conditions of service. The question of her pay led ultimately to a consideration by the European Court of Justice which made clear its view that Article 119 was meant to be taken se-riously and properly applied. One result was to spur the Commission to produce a directive on equal pay in 1975"[3]. The Equal Pay Directive of 1975 expands upon article 141 stipulating that the principle of equal pay means that "for the same work or for work to which equal value is attri-buted, the elimination of all discrimination on grounds of sex with regard to all as-pects and conditions of remunerations". The Directive also states that where a job evaluation scheme is used for determining pay, it must be based on the same criteria for men and women and be drawn up so as to eliminate any discrimination on the grounds of sex[4]. It therefore establishes certain controls, requires an effective appeals system and provides a much stricter framework within each member state has to apply the policy.

Article 119 of the Maastricht Treaty provides equal pay for equal work irrespective of sex. There was certainly no difficulty in applying Article 119 where the facts clearly showed that a woman worker was receiving lower pay than a male worker performing the same task in the same establishment or service, whether public or private. But the difficulties appeared when differences in the type of work, working conditions or the organization of working time seemed able to justify indirect discrimination. The Case C-33/89 *Kowalska* showed that, in respect of benefits arising from a collective wage agreement, the terms of such an agreement may be contrary to Article 119 if they indirectly discriminate against women and cannot be objectively justified by factors unrelated to sex.

Article 1 of the Directive 75/117/EEC stipulates that the equality of remuneration means, for the same work or for work to which equal value is attributed, the elimination of all discriminations on grounds of sex with regard to all aspects and conditions of remuneration. In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and

so drawn up as to exclude any discrimination on grounds of sex. The Directive does not make job evaluation schemes compulsory, but member states must establish some effective machinery whereby it can be decided whether work is of equal value[5].

We also find this principle in article 7 of the Universal Declaration of Human Rights, according to which "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination" and in article 23 paragraph 2: "Everyone, without any discrimination, has the right to equal pay for equal work".

Despite three decades of equal pay legislation and independent investigations by various organizations the gap between the average earnings of men and women remains stubbornly high. Figures from the Office for National Statistics reveal that in 2005 the gap for full time employees was 17.1 per cent, rising to 38.4 per cent for part-time employees[6].

Lack of progress in removing the gender pay gap appears to be due to many factors including complacency, fear of costs and ignorance generally about the importance of looking beyond figures and pay patterns to identify the underlying causes which perpetuate unjustifiable pay differences.

However, experience shows that this is a complex issue and there is no single solution or quick fix. Achieving fair reward for all employees is more challenging than addressing gender differences in pay and goes beyond number crunching and fixing discrepancies with money. The wider diversity agenda is complex and creating an inclusive workplace, in which everyone feels valued, demands employers' attention in order to enhance the added value people make to business performance, not just to comply with the law.

As such we have long emphasized the importance that organizations ensure that their human resources policies and practices do not discriminate against certain groups of individuals. Employers should be aware of the fact that their human resources polices and practices should not discriminate against certain groups of individuals and have to act on equal pay because of three reasons. First of all, discrimination between men and women at work is illegal. Second of all, pay can affect where and how an individual lives, the education of their children, their healthcare and whether they have a pension on which to retire comfortably. The last but not the least, ensuring the satisfaction of their employees makes business sense. If employers are basing their remuneration decisions on misconception, biased value systems, stereotypes and prejudice, they are undermining their ability to realize the full potential of all their employees.

Although the anti-discrimination legislation plays an important role for the protection of employees' rights, it is not enough because the discrimination in the labor field has different forms and types of manifestations. The remuneration discrimination is more often a consequence of discrimination based especially on gender criterion or on the trade-union adhesion or activity but it can be an independent form of discrimination without any relation to other acts/facts/criteria of discrimination.

Romanian Legislation concerning Equal Pay for Equal Work

After Romania's adhesion to EU (January 2007) and its implications, Romania became a part of internal market, being forced to apply the whole community acquis in this field. This means to respect the four freedoms concerning the mo-

vement of goods, capitals, services and persons, and to apply the community norms concerning the principle of equal treatment[7].

According to article 2 of the Directive 75/117/EEC, the European Union's member states shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other competent authorities.

Article 4 of the same directive stipulates that member states shall take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the principle of equal pay shall be, or may be declared, null and void or may be amended.

In the Romanian legislation the basis of the equal pay principle lies in article 154 paragraph 3 of the Labor Code in according to which "at wage establishment and adjustment any form of discrimination based on sex, sexual orientation, genetic characteristics, age, nationality, race, color, ethnicity, religion, political opinion, social origin, handicap, family situation or responsibility, trade-union adhesion or activity is forbidden". For the same reason, the Emergency Government Ordinance no. 56/2006 concerning the modification and completion of the Labor Code introduced paragraph 3 in the article 6 of the new Labor Code, paragraph that stipulates: "for equal work or work of equal value any discrimination based on sex is forbidden concerning all the remuneration elements and conditions". The right applies to employees, and also to anyone with a contract personally to carry out any work or labor. The significance of this principle is that, when two or more employees are in the same situation, their wages can not be different. This does not mean that this principle is an obstacle to the employer's power of individualization that is justified if the difference between employees' wages is based on objective reasons. For every employee, wage quantum is established in comparison with its qualification, the importance and complexity of the activity performed, professional training and competence. The fundamental criteria for wages establishment remain the professional capacity, the nature and the complexity of the tasks related to the job occupied by the employee; the employer cannot introduce his own unjustified (arbitrary) criteria, essentially different from the common ones.

According to the Romanian law, sexual discrimination means direct and indirect discrimination, harassment and sexual harassment of a person by another person at the workplace or in another place where the former carries out her activity. This means that the differences between wages can take the form of direct or indirect discrimination and most frequently the one of sexual discrimination. In accordance with Law no. 202/2002 concerning the equality of chances for men and women, direct (sexual) discrimination refers to a situation in which a person is less favorably treated, on grounds of sex, than another person is, was or would be treated in a similar situation; on the other hand, indirect (sexual) discrimination is defined as a situation in which a disposition, a criterion or a practice, apparently neutral, would disadvantage especially the persons belonging to a certain gender in comparison with persons of the opposite sex, excepting the case when this disposition, criterion or practice is objectively justified by a legitimate purpose and the means of accomplishing this purpose are proper and necessary.

Trade union confederations delegate, in the framework of trade unions at the

organizational level, representatives with prerogatives of ensuring the respect of the equality of chances and treatment for men and women at the workplace. Trade union representatives receive complaints from the persons that consider themselves discriminated on the ground of gender, apply the procedures of solving it and request to the employer to solve employees' petitions. In the case of organizations where there are no trade unions, one of the employees' representatives voted by them has prerogatives of ensuring the respect of the equality of chances and treatment for men and women at the workplace. The opinion of trade-union representatives is necessarily mentioned in the control report concerning the observance of law dispositions.

Pursuant to article 39 under Law 202/2002, when the employees consider themselves sexually discriminated, they have the right to submit petitions to the employer or against him, if he is directly involved, and ask for the support of the trade union or the representatives of the employees for solving the work situation.

In contrast with other states' legislations which thoroughly regulate the procedure of mediation at employer's level, in the Romanian legislation there are only brief references concerning this procedure. Because of the fact that this aspect is not regulated by law, it should be included as a distinctive issue in the content of collective labor contracts concluded at the unity level or internal regulations, such as results from the dispositions of the Collective labor contract at national level for the years 2007-2010, article 96 paragraph 2: "In order to create and maintain an environment meant to encourage the respect of each person's dignity, through the agency of collective labor contract concluded at unity level, there shall be established procedures of amiably solving the individual complaints of the employees, inclusively the ones concerning cases of violence or sexual harassment".

If the intimation/complaint is not solved at the enterprise level through mediation, the employed person who has features of fact implying the existence of a discrimination, direct or indirect, on the basis of gender, will have the right to inform, on the ground of Law no. 202/ 2002 dispositions, the competent institution, as well as to make a complaint to the court of competent jurisdiction or to the instance of administrative control, but no later than one year after the date of committing the act[8]. From these dispositions of the law results that a person discriminated on the grounds of sex, discrimination which led to the violation of the equal pay principle has the possibility to introduce a complaint to the court only after the previous phase of mediation. The intimation and petition represent previous compulsory actions which have to be introduced at employer's level, before introducing the complaint to the court. Only if the petition is not favorably solved at employer's level through mediation, it is possible for the discriminated person to lodge the complaint to the court.

Such a solution is in accordance with the dispositions of article 96 paragraph 2 of the Collective labor contract at national level for the years 2007-2010 which impose the condition of the previous procedure of amiably solving the individual complaints of the employees, inclusively the ones concerning cases of violence or sexual harassment at the unity level.

Thus, in the Romanian law, a complaint to the court is admitted only if:

- previous phase of mediation took place and the employee's petition was not solved;
- the employee underwent a prejudice of his rights through the discrimination act and has features of fact implying the existence of discrimination, direct or indirect, on grounds of gender;

- no more than one year has passed from the moment of committing the act.

If the criterion of discrimination is other than sex, the Emergency Government Ordinance no. 137/2000 concerning the prevention and fighting against all forms of discrimination stipulates that the possibility of introducing the complaint to the court of competent jurisdiction is not conditioned by the notification of the National Council for Fighting against Discrimination. The term for introducing the complaint is of maximum 3 years after the date of committing the act or the interested person could have knowledge about its committing.

The burden of proof is incumbent on the person against whom the intimation/ petition or, as the case may be, the complaint was made. This person must demonstrate that the principle of equal treatment was not violated. The proof of discrimination can be made through any means of probation, inclusively audio and video registering. The National Agency for Equality of Chances for Men and Women, trade unions, non-governmental organizations which aim at the protection of human rights, as well as other juridical persons with a legitimate interest in the respect of the principle of equal treatment of men and women have, at the request of the discriminated persons, an active procedural quality in front of the court and can assist these persons in the administrative procedures.

After receiving a complaint concerning the violation of the equal pay principle, the judge will have to see if the inequality of treatment can be justified by a difference between situations[9]. But it must be also taken into consideration the fact that not any difference between situations can justify a difference of treatment. This difference of treatment must be in a direct relation with the object of the law that established it so that the means used (the difference of treatment) must not be disproportionate in relation with the aim pursuit by the legislator. In this way, the purpose of the law becomes the criterion according to which the situations are compared and the difference of treatment has to be established[10]. But the judge can also change the control of proportionality between the means and the purpose of the law, considering that even the legislative finality is discriminatory[11].

Equal Pay Principle does not simply relate to basic salary but also to the full range of benefits, non salary payments, bonuses and allowances that are paid. The law gives a woman the right to be paid the same as a man (and vice-versa) for: like work, or work rated as equivalent by analytical job evaluation study, or work of equal value. In order to bring a claim before an employment tribunal for breach of the Equal Pay Principle, an applicant must be able to find a "comparator". A comparator is a person of the opposite gender, working for the same employer, doing like work (or work rated as equivalent, or work of equal value) who is paid more, or has more beneficial terms and conditions of employment, than the person bringing the claim. Unlike other forms of discrimination, there needs to be an actual comparator, not just a theoretical one.

There are three situation in which a woman will be entitled to equal pay: she is employed on like work with a man in the same employment; she is employed on work rated as equivalent with that of a man in the same employment or she is employed on work of equal value to that of a man in the same employment[12]. If a woman can demonstrate that her work is comparable or equivalent with that of a man under one of these heads, she will be entitled to receive pay equal to his. Equal work means a work either the same or broadly similar. A woman is regarded as

employed on work rated as equivalent with that of any man if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (effort, skill, decision making etc.), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings. In such claims the court will question whether jobs have been graded and compared under a job evaluation scheme and if so whether the two jobs where rated as equivalent. This means that the employer has to carry out a job evaluation scheme, respectively a scheme or a study whereby an evaluation is made of all of the jobs in the workplace. In this scheme, the jobs are graded according to the levels of effort, the complexity of the tasks carried out by employees, personal skills or decision-making involved. Unfortunately, the great majority of Romanian employers have not implemented a job evaluation scheme. They can, however, begin to implement such a scheme after an employee begins a tribunal claim based on equal pay principle.

The most difficult situation is to prove what will constitute “work of equal value”. Equal value claims must normally be struck out if the work of the woman and that of the male comparator have been given different values on a appropriate job evaluation scheme. An employer may be able to defend an equal pay claim by showing that any differences in pay are due to there being a genuine material difference between the workers. This difference must relate to something other than sex, for example qualifications, levels of experience, degree of skill required, level of responsibility, geographical pay differences, approved pay scale, market forces, economic considerations, administrative efficiency. Many of these differences are self-explanatory. For example, a woman who has only been employed for one year may reasonably expect a male colleague with 25 years’ service to earn more than she does. The reason of this pay difference is that the man has gained considerable experience during this time and not because he is a man.

The comparator can be someone working for the employer at the same time, or in the past or the future. A comparator may even work for another employer as long as the inequality in pay is attributable to a single source which may arise in public sector cases. Hence, a person can compare themselves with a predecessor or successor in the same job. However, the time limit for bringing a claim in the employment tribunal is one year (if the discrimination is based on sex) or three years (if there is another form of discrimination which has led to differences between the salary of the claimer and the one of the comparator) from the date of committing the act.

The Equal Pay Principle and the principle of contractual liberty imply that into every contract of employment can be introduced an ”equality clause” which gives the rights detailed above. Where any term in a contract of employment is less favorable than that of the comparator, the term that is more favorable is deemed to be included in the contract of employment.

The law does not allow a contract of employment to be considered as more or less favorable as a whole as that of a comparator – that is to say, it is not a defense to a claim to say that a lower hourly rate of pay for one person is compensated by, for example, a better annual holiday entitlement. The contracts of employment of the applicant and the comparator need to be compared side-by-side and clause by clause. The applicant can effectively ”pick

and choose" the most beneficial provisions from their own and the comparator's contracts.

If an employee alleges that he is employed on "like work" to a comparator who earns more than he does, the court will look at what their jobs entail and question whether they have the same job title, carry out the same tasks or have the same level of responsibility. To be employed on like work means that "the work must be regarded as being either the same or broadly similar" and "any differences between the work must not be of practical importance"[13].

In case that the complaint is upheld by the court, the latter can take the following measures: the cessation of the discriminatory situation and the punishment of the guilty person by the payment of damages to the victim of discrimination (damages equal to the real harm suffered by the employee)[14]. The damages shall cover both the material and moral prejudices suffered by the victim of discrimination. This means that the employer shall be forced to pay the difference of remuneration not received because of the discrimination act, as well as all the contributions to the state budget and the state social security that are incumbent both on the employer and the employee.

In accordance with Law no. 202/2002, the fact of committing any act of discrimination represents a contravention and is punishable by a fine of 1.500 lei (~400 euro) up to 15.000 lei (~4000 euro). In the case of discrimination based on multiple criteria, the contraventional sanctions will be cumulated without being possible to surpass the double of the maximum fine established for the most serious contraventions or, as the case may be, the general maximum established for the contraventional imprisonment (6 months, respectively 300 hours) or the obligation to carry out an activity for the community benefit[15].

As a measure of protection and encouragement of the discrimination victims, Law no. 202/2002 stipulates, under article 13, that it constitutes discrimination and is prohibited for the employer to unilaterally modify the labor relations or conditions or to dismiss an employee who has previously introduced a petition at the unity level or made a complaint to the court of competent jurisdiction, in accordance with the law stipulation, even after the court verdict, with the exception of certain legitimate basis and without connection with the cause. These stipulations which forbid the unilateral modification of the salary made by the employer are also valuable in case of modification of wages of trade union members or employees' representatives who had the prerogatives of supporting the victims in solving the situation at the workplace.

At interested person's request, the court can dispose the suspension or the withdrawal of the functioning authorization of juridical persons which, through acts of discrimination, cause a considerable prejudice or, even if the prejudice caused is minor, break repeatedly the dispositions of the Emergency Government Ordinance no. 137/2000 concerning the prevention and fighting against all forms of discrimination[16].

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Sustainable Development of Romania within the Process of European Integration

Elena TOBĂ

Abstract: *The present article aims at discussing the issue of the sustainable development of Romanian economy within the process of European integration, by including some minimal requirements in order to achieve the* general objective of *a* sustainable *development. The analysis correlates the macroeconomic indicators and the European requirements on economic efficiency and performance.*
Keywords: sustainable development, economic increase, economic growth, stimulation of crediting, macroeconomic indicators.

Structure and development within economic theory

The increase in national wealth, in macroeconomic results per assembly and per inhabitant constitutes one of the preoccupations of decision factors from different countries and the main object of theoretic investigations and controversies.

Within the actual economic judgment there are expressed different opinions connected to economic increase and development[1]. Considering these facts, *the economic increase* is defined as the process of increase in the dimensions of economic results determined by the combination and use of production factors and underlined by macroeconomic indicators – the gross domestic product, gross national product and national income in real terms, not only per total, but also per inhabitant.

The notions of economic increase and economic development should not be opposed one to another, nor do they superpose either. The two notions have some common elements: both processes are evolutional; they are based on the co-operation and use of the same factors; the social finality of both processes is represented by the improvement in the quality of people's lives. At the same time, the two notions contain elements that delimitate them. Thus, they have a different comprehension sphere. The economic increase supposes the quantitative increase in national economic dimensions, in the macroeconomic results per assembly and per inhabitant (GDP, GNP, NI). Synthetically, the economic increase is expressed through the rhythm of GDP, GNP, NI increase per inhabitant. Within the sphere of national economy (technological, inter-branches, economic-social, organizational, territorial etc), as well as the people's level of living. Any economic development also supposes an economic increase, but not all economic increase

means economic development. The rapport between the two concepts is as from part to whole. Economic development, besides economic increase, associates and modifies its qualitative structures within national economy and quality of life. The concepts of economic increase and economic development are associated to the concept of *economic progress*, which underlines the specific and sense of development in each step, in comparison to anterior steps and constitutes the support of an optimistic view on the perspective evolution of society.

As a form of manifestation of macroeconomic dynamics, *economic development* supposes an assembly of quantitative, structural and qualitative changes not only in economy, but also the organizational mechanism and structures of functioning in the way of reflection and the behavior of human beings. Within this context, the *concept of sustainable economic development* appears, concept which represents that form of economic development within which it is wished to satisfy present consume requirements and not to compromise or prejudice the one of future generations.

The concept of sustainable development expresses the process of enlargement of possibilities through which present and future generations can fully manifest their options within any domain – economic, social, cultural or political, man being the centre of the development action.

Sustainable development is conceived within the visions of reconciliation between man and nature[2], of their equilibrium and harmony, "on a new means of development that should sustain the human progress, not only in a few places and for a few years, but for the whole planet and for a long future"[3]. Essentially, sustainable development is a development that satisfies present necessities, without compromising the possibilities of future generations of satisfying their own needs.

The general objective of sustainable development is of finding an optimal point of interaction and compatibility of four systems: economic, human, ambient and technological, within a dynamic and flexible functioning process. The optimal level corresponds to that development of long duration that can be supported by the four systems. In order to realize a sustainable development, the *minimal requirements* include: re-dimension of economic increase, taking into account the accentuation of quantitative branches of production; elimination of exiguity under the conditions of satisfying the essential needs – work place, food, energy, water, house ad health; assurance of increase in population at an acceptable level (reduction of uncontrolled demographic increase); conservation of increase in human resources, maintenance of diversity of ecosystems, surveillance of the impact of economic development on the environment; technological reorienttation and control of their risks; decentralization of the governing forms, increase in the participation degree when taking the decisions concerning the environment and the economy.

A. *Romanian National Strategy on Sustainable Development*[5] partially reunites the requirements resulted from its quality of European Union Member State and continually necessitates completions and fundaments.

In the elaboration of the *Romanian National Strategy on Sustainable Development* it was ascertained that at the end of the first decade of the 21st century, after a prolonged and traumatized transition to pluralist democracy and market economy. Romania still has to recuperate considerably towards the other Member States to the European Union, simultaneously with

the acquirement and transposition into practice of the main principles and practices of sustainable development within the context of globalization. In spite of all progresses realized within the past years, it is a reality that Romania still has an economy based on the intensive consume of resources, a society and an administration still searching for a unitarian vision and a natural capital affected by the risk of some deteriorations that can become irreversible.

The present Strategy establishes concrete objectives for the passing to the model of development that generates added value, propelled by the interest for knowledge and innovation, oriented towards continual improvement in the quality of life and the relations among them in harmony with the natural environment within a reasonable and realist period of time.

As a general orientation, the paper focuses on the realization of the following *strategic objectives*, in short, on a medium and long term:

Horizon 2013: Organic incorporation of the principles and practices of sustainable development within the assembly of public programs and policies of Romania, as E.U. Member State

Horizon 2020: Reaching the actual medium level (with reference to the number of the year 2006) of EU – 27 according to the basic indicators of sustainable development.

Horizon 2030: Significant approach of Romania towards the medium level from that year of the Member States of the EU from the point of view of the indicators of sustainable development.

The text is structured in 5 parts:

Part I presents the conceptual frame, it defines the notions used, it describes the main points of the Renewed Strategy for Sustainable Development of EU (2006), the actual stage of the process of elaboration of basic indicators of sustainable development and relevant measures taken by Romania within the pre- and post-accession period.

Part II contains an evaluation of the actual situation of Romania's natural, anthropic, human and social capital. This approach is according to the last recommendations (May 2008) of the combined EU Work Groups of Statistic Department (Eurostat), the UN Economic Commission for Europe (UNECE) and the Organization of Economic Cooperation and Development (OECD) concerning the measurement of performances of sustainable development according to the evolution of the four forms of capital.

Part III offers a perspective vision, establishing the precise objectives on the three time horizons, strictly following the logic of key challenges and inter-sector themes, as they are mentioned within the Renewed Strategy for Sustainable Development of the EU.

Part IV analyses specific problems that Romania confronts with and establishes targets for the acceleration of the process of passing to a sustainable development, concomitantly with the reduction and elimination of the existent gaps regarding the medium performance level of the other Member States of the European Union.

Part V contains concrete recommenddations concerning the creation and modalities of functioning of the institutional frame in order to assure implementation, surveillance and rapport on the results of Renewed Strategy for Sustainable Development. The proposal considers the experience and practice from the other EU Member States and focuses on the adoption of some innovative solutions, adapted to specific conditions of Romania, concerning the responsibilities of public authorities and active implication of social factors in realizing the objectives of sustainable development.

The problem of elaboration of the Strategy for Sustainable Development of Romania was more obvious in 2006, from the perspective of our country's accession to the European Community. The creation of a National Consultative Council and of regional councils of sustainable development contributed to the intensification of the effort of accumulation, synthesizer and partition of a huge documentary and prevision material existent at the level of branches, sectors, basic products and public services that compose the structure, infrastructure and superstructure of Romanian society from the first part of the 21st century. They took into account the other national spread documents, including the *pre-accession and post-accession strategies*.

The Project of the strategy for Sustainable Development of Romania is an integrator document, the first with such amplitude after 1989 and it is concerned with a few essential provocations that humanity confronts with, in the new millennium. *Energy, food and environment are considered a priority* under the conditions of the disappearance of natural resources and the alarming increase in environmental polluting and destroying factors. The strategy establishes the development frame on a long term, the way in which economic structures support the established objecttives. However, it is not an economic and environmental strategy, but a synthesis of all elements that may assure the sustainable development of the country.

B. The elaboration of scientific documents of Romania's development should start from the *actual realities* of our country.

Romania is an energofagus country, consuming more energy than the European average: with a value of four billion dollars a year. The 85,000 flats consume circa 65% from the electrical energy of the country, where the necessity of efficiency of the whole economic system. The economic increase was based on consume of products, not on added value. Concerning the use of natural resources, in Romania there does not exist any town with the management of integrated water. Within the urban area, the centralized drinking water system represents circa 65%. We have an enormous deficit of specialists capable to elaborate eligible projects for European financing.

We earn and we borrow even more, but we consume almost the whole amount. The management and financial projections are lacking at the level of houses, not only concerning incomes, but also concerning expenditures and loans. Present needs dictate us the consume behavior, and to the future we reserve the strategy "we shall live and we shall see". The risk of living in debt could now reflect on banks, under the conditions of diminishing the access to alternative financing resources, internal or external.

Salaries supply over half from the total incomes of Romanian houses, and social activities circa one fifth, during the second trimester of the year 2008. Without some economy stimulation instruments, the Romanians allotted their average monthly incomes (of 2,046 lei per house and 702 lei per person) in a proportion of 90% of the consume [5].

- The Chinese earn almost one dollar per hour, from which they save 40%, and the rest is consumed. The Romanians earn better than the double of the Chinese, but they save circa 10%.
- Others will enjoy the fact that we are situated on a better position than the Americans who earn 24 dollars per hour and spend 25. It is not quite so: consume credits dominate the whole part of populations' debts.

INS also tells us that from the total consume of the households, circa 43% are spent on food and non-alcoholic drinks, 7% on clothes and shoes and almost the same on alcoholic drinks. Evidently, the most part of Romanian acquisitions within the urbane area is realized within retail store commerce. Within the rural area, 40% of food is still assured from auto consume.

- Fulminatory actual increases – with tens of percentages – at salaries, pensions, compensations, to which a new increase of the minimum salary to 600 RON starting with 1st January 2009 will certainly supply the consume as value volume.
- In real term, the prices' intensification will fuel inflation and will diminish the buying capacity.
- The budgetary impact of all salaries and social increases within the past year (1st October 2007-1st October 2008) reaches 3,5% from the domestic intern product estimated for the year 2008.

The consumer behavior of Romanians has been directly influenced by the *stimulation of crediting*, to the cost of saving. The difference between active and passive interest (namely between credits and deposits) maintained at an exaggeratedly high level for a period of 16 years. The profits of the banking system have been huge. Within the past two years, the difference of interest started to drop significantly. But savings moved slowly on an ascendant scale.

The Romanians take loans to consume: over 90% for the debts of population are represented by the consume credits.

More concretely, starting with the second half of the year 2007, the population becomes net debtor towards the banking sector. The only exception is represented by the region Bucharest-Ilfov.

But, per assembly, the weight of the credits offered to the population in DIP is inferior to the countries from the euro area. Such comparisons are less too relevant. Romanians are more indebted than European citizens if we compare the credits at the level of incomes. The differences are even more increased if we rapport these credits to the level of the declared fiscal incomes to which we add a maximum of 20%, according to the new rules of RNB.

We think that the tightening of crediting norms represents the correct solution, but too late. Until now, both fundamental purposes of efficient crediting norms have been missed: of reducing the non-reimbursement risks, respectively of stimulation of productive credits against the ones for consume. We will witness more and more financial drowning of the crediting persons, but we still protect the one from the surface.

Actual pressures on consume are partial reciprocally annulled. On the one side, the available incomes are increasing. On the other side, the interests at credits are even more costive, and the credit allowance conditions are more restrictive. The important depreciation of the Leu is added here. The population is completely uncovered towards this exchange risk.

Thus, Romanians find themselves in the unpleasant situation of reimbursing a sum greater with 10% in lei for credits in Euro, to which the increases of interest rates are added.

The optimism of the consumer, that in future years he obtains greater incomes, and the reduced perspectives of unemployment fuel on the other side the request for consume credits.

Presently, in Romania, the population consumes with 20% more than it produces. There is no high added value at Romanian products, the change being imposed according to economic rationalization, of competitive finality for products and ser-

vices. The main objective of sustainable development is the increase in life quality for all social categories. Presently, the economic increase is based on consume, not on production, and the consume increases the imports. Although, sometime, it was considered "Europe's barn", Romania of the 21st century imports over 60% from agrarian products. Even salt is imported by the country of the salt mountains! The efficiency of resources is an essential challenge for the future decades. Agriculture remains the main "alcove" of our sustainable development, with the 14 million hectares of agrarian land, from which 7 million of arable land. The cultivation of ecologic products is vital.

Ecologic agriculture, balneal therapeutic tourism and the Black Sea connected to the Caspian Sea, both rich in hydrocarbons are considered to be the main resources for sustainable development of Romania. Demographic crisis and education are other priorities to which the Romanian state should find radical solutions, under the conditions of a decline of 1,6 million inhabitants, plus 3 million who work abroad, within mentioning annual retirements.

C. *The National Strategy of Sustainable Development* of Romania should comprise *new directions* in order to facilitate the EU integration.

Among all these, more important are the following:

- Elaboration and attachment within the National Plan of Development of a special chapter regarding the development and modernization of industrial activities recommended by the EU.
- Elaboration of another special chapter regarding technical endowment, increase in productivity and improvement of the crediting system of agriculture.
- State support for the re-launching of scientific research, that should ease the modernization of economic activities.
- Attraction of a high volume of direct foreign investments.
- Re-thought of fiscal and currency economic policies according to the requests formulated by the EC and the IMF.
- Government surveillance that each external credit employed directly serves the economic production objectives.
- Rationalization of expenditures from public money, by simplifying all administrative structures at national and local level, starting with the Parliament and local administrations.
- Reduction of commercial gap and of the current account on the basis of modernization of industry and agriculture, as well as of the development of energy production on the basis of regenerable resources.
- Rational correlation of the development objectives, including of investment programs, for inter-sector and regional profile, with potential and capacity of sustenance of material capital;
- Accelerated modernization of the systems of education and professional training and public health, considering the unfavorable demographic evolutions and their impact on labor market;
- Use of the best ecologic and economic available technologies in investment decisions from public funds on national, regional and local plans of such decisions from private capital; firm introduction of the criteria of eco efficiency within all production or services activities;
- Anticipation of the effects of climatic changes and elaboration of some acclimation solutions on long term and of some plans of measures of inter sector contingency, comprising portfolios of

alternative solutions for crisis situation generated by natural or anthrophic phenomena.

- Assurance of alimentary security and safety, including through valorization of comparative advantages of Romania concerning organic agriculture; correlation of the measures of quantitative and qualitative increase in agrarian production in order to assure the food for people and animals with the requests to increase the production of bio combustibles, without reduction from the exigencies regarding maintenance and increase in soil fertility, biodiversity and environmental protection;
- Protection and valorization of the cultural and natural national patrimony; compression to European norms and standards regarding the quality of life together with the revitalization in modernization of some means of traditional living, especially within mountain and wet areas.

Notes

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How Do Romanian Public Organizations Communicate?

Cătălina Maria GEORGESCU

Abstract: *Reaching the objectives of public organizations is determined by efficient internal and external communication characterised by unity, coherence, structure and formalization, transparency, accessibility and effectiveness. The paper deals with aspects regarding the influence of the political factor upon the information system within public services and the manner of establishing internal communication policies within public organizations. Moreover, the paper proposes in the final part several ways of improving the performance of the information system and of managerial communication within public organizations aiming at improving the quality of services offered to citizens, as well as the participation of the stakeholders.*

Keywords: public organizations, information system, managerial communication, information circuit, organizational structure, policy attractiveness, participation of stakeholders.

Introduction

Though omitted in the past from the sphere of public services, at present the concept of internal communication within public services seeks every conspicuous opportunity to spread to all management functions from one administration to the next[1]. Due to the escalation of the economic growth and to the changes and numerous reforms, the public organizational experience is subject to the imperative of efficiency and effectiveness, which can only be accomplished by resorting to theoretical approaches and complex analyses. The analysis of the information system within the public services and of the manner in which the policies of internal communication are established within public organizations precedes the analysis of the way in which the political factor impacts upon the management of public organizations. The paper deals with aspects regarding the influence of the political factor upon the information system within public services and the manner of establishing internal communication policies within public organizations. Moreover, the paper proposes in the final part several ways of improving the performance of the information system and of managerial communication within public organizations aiming at improving the quality of services offered to citizens, as well as the participation of the stakeholders.

Communicating in the public field

The processes of collecting, recording and analysing the data and information as well as information circuits and fluxes are subjected to the relations among the aggregate institutions of the public administration system. The exercise of legislative, juridical and executive authority by the authorised organizations claims the existence of information circuits and networks which enhance the exchange and spread of information.

Lately public organizations manifest a tendency of acting more in the field of public relations aiming at improving their image by boosting their political agenda communication through the media, effective governing coming second on their priority list[2]. Public organizations' practice of increasing the time budget of external communication corroborated to the transparency and publicity of their achieving the objectives has lead to an easier polishable institutional image. The use of data and information in the decision making process and the spread of normative decision to local authorities requires efficient and effective information circuits and fluxes. However, the quality, comparability, reliability and objectivity of data and information depend on the length of communication circuits. Consequently, information circuits within public organizations must be shortened and rendered efficient for the information to be operatively collected and spread both upwards and downwards. Moreover the well-functioning of the information system requires an improvement of the means of collecting, registering, analysis and spread of information.

The information system functions of decision making, operational and documenting are highly interconnected, its performance being enhanced by an efficient and effective use of its aggregate components by public managers. Thus, public organizations' top management must systematically bring their share to the adjustment of public organizations structure and decision making fluxes through surveys, monitoring and control. A reshape of the public organization's image and communication strategy requires examination and analysis at all levels, starting from the public institution's aggregate image to the basic functions and departments. Top management expertise must be twofold, guided by the best practices in the industry and by modern techniques of management and communication. Best results are obtained by inputting all the possible risks in the equation, such as organizational culture-determined behaviour or the public servants individual skills.

As regards policy implementation, performance is enhanced by networking communication. Decentralisation of communication networks boosts performance in the case of highly complex issues, due to the high number of communication channels among members. Flexibility is also enhanced within decentralised communication networks. The motivation is twofold: higher openness and participation from the members and higher flexibility in adapting the members' behaviour. The tendency among centralised public organizations and networks is towards rigidity and closure to new methods and possibilities of approaching and solving problems. Centralised autocrat communication structures have higher performance and efficiency as regards simple tasks, whereas complex tasks, demanding flexibility, rapid acceptance of innovation and change, necessitate decentralised structures.

However, there is not a universally valid recipe for a highly performing and effective communication structure; just as highly trained human resources do not conspicuously result in universal public organizations efficiency the formal organi-

zational dimension – written norms, principles, communication channels, motivation and control – is not self-sufficient. Yet, a vital issue for effective public organization communication is whether the communication structure is suitable to the external environment and to communication technology[3].

Public organization communication responds to a triple challenge. Firstly, it serves the need to publicize the mission of the public administration, as well as that of the distinct offices and departments[4]. Secondly, it responds to the need to assess the achievement of the proposed results so as to raise awareness on public actions and services. Finally, public organization communication approaches the need of networking between staff and missions at the level of department or service. From this angle, internal communication becomes a management tool, communication efficiency and effectiveness being enhanced by policy attractiveness, personnel responsebility, clearly-cut competences, and public organization mission statement[5].

However, managerial communication is subjected to legislation, thus restricting the liberty of communication. Due to the sources of financing public organizations, which can range from state budgets, local budgets, the public organizations' own revenues, or subsidies granted from state budgets or local budgets, communication in the public domain is exposed to standardization and legal provisions. Unlike private organizations, in which communication is highly influenced by objectives, communication within public organization is subjected to rigour and standardization, which result from the respect of the legal provision that bind the activity of public organizations, from the normative framework, regulations and rules that shape the information circuit.

The approaches of a communication strategy are oriented towards three binary dimensions: internal and external communication, written and oral communication, formal and informal. On the one hand, communication strategy must improve its efficiency indicators which act in terms of accuracy, openness, distortion, excess of information, information deficit, while, on the other hand, it must enhance individual and organization performance, and communication climate.

In conclusion, the achievement of organizational objectives is determined by efficient internal and external communication. Consequently, it requires the establishment of a formalized system of internal and external communication possessing the following traits: unity, coherence, structure and formalization, transparency, accessibility, effectiveness. Moreover, taking into account the following techniques for efficient communication can prove to be useful for the purposes of public organizations: boosting trust, conducting lucrative meetings, changing the organization structure by reducing hierarchy, thus by hammering down its structure, resulting circular structures which enhance horizontal communication, and, finally, banning barriers which hamper efficient communication. Public organization mission statement, both for its employees and for the persons outside the organization, has the purpose of organization brand building and increases public policy attractiveness for the stakeholders[6]. Public organization external communication enhances public debate and open, participatory decision making[7].

Policy recommendations

The Romanian public organizations must struggle to become partners, recognized and appreciated at national level, by participating in the establishment of a national network of information which

includes the cooperation with other national actors such as: other governmental institutions, NGOs, research institutes, specialised institutions or social partners. The data and information circulating both within and among public organizations also comprise statistical data, descriptive and analytical, mostly textual, information resulting from research activeties, opinion polls, and other investigations, information regarding conferences, campaigns, events etc. Consequently, it is the duty of the Romanian public organizations to be engaged in a dialogue with the representatives of civil society and with other interested social actors, as well as other competent public authorities and to encourage their cooperation. Also, public organizations would have the capacity to identify key issues and specific aspects at local, regional, or even national level and to prepare recommendations concerning them in their annual reports or in their work programs.

Moreover, public organizations are capable of offering a source of information regarding the positive evolutions in their field of activity and can realise an exchange of information regarding examples of best practices with other such organizations. Thus, one can accomplish a direct transfer of information and knowledge and the dissemination of good practices at municipal and regional level and among cities from within the country and abroad, thus cutting short the hierarchical and bureaucratic circuit of information. To put it differently, within the present economic, social and political climate, highly influenced by economic growth and globalization, public organizations must appropriate the communication and information practices which characterize the organizations that activate in the private sector, recognized as being more competitive, efficient and flexible.

Public organizations must increase performance in identifying key aspects in the domain of public interest and in being capable of making their first steps in this respect. In order to accomplish this desideratum, public organizations could incurporate the input and experience of NGOs and of other organizations which activate in the same field. Public organizations need to be informed regarding the examples of best practices from other states or other geographical areas and to analyse the possibilities to implement them. Thus communication within the public administration becomes vital as the organizations are informed regarding other national actors aiming at complementing and not duplicating the initiatives and at strengthening future cooperation.

With the purpose of raising the quality of the services delivered to the citizens, the public organizations took the possibility of making available, for both the public and their own employees, electronic archives and databases available through the internet. For the public, the purpose of such a database was to offer an easily usable search instrument to access information of public interest. Moreover, access to public sector information, public services, on-line public auctions are easily available through the internet.

Another means of both improving the quality of Romanian public services and receiving public support for diverse projects, actions, policies of public interest, was that of offering newsletters or other serial publications for subscribers or of creating a mailing list through services such as e-mail for the members of the website of the respective public organization. Users may receive a user id and a password which can be used for collecting data and updating. One observes an ever increasing number of visitors on the websites of public organizations, thus it has

become imperative for each public organization to create such website in order to ceaselessly deliver in real time news and information of public interest, to disseminate the information rapidly and relatively cheap.

Until recently this desiderate was shadowed by the existence of insufficient financial resources for equipping the local public administration with information technology[8] and of the relative insufficient training of the potential beneficiaries (local authorities, public institutions) to accomplish and implement projects through programs of external financing. Moreover, the citizens' relative reduced abilities (in fact the final beneficiaries of public administration services) to become committed to the information technology, together with their lack of interest to become actively involved in the decision-making process at local level have lead to the necessity of a policy to improve administrative communication.

In order to improve the communication climate within public organizations, one might initiate workshops, as modelled by private organizations; public organizations might also practice an open-door policy for discussions and debates to which participants might be both from within that particular public organization and experts from outside the organization on subjects referring the organizations regarding project development, methodology, strategies and recommendations. Information and reports resulting from these workshops might be made public on that public organization's website. Moreover, there are multiple possibilities of training the public organizations personnel, both central and local, in the field of communication through diverse training programs financed by the European Union. There are also multiple possibilities of contracting external, European funds, especially destined to the modernization of the public administration.

Moreover, most county mayoralties have benefited from the possibility of network connections, facilitated by projects implementing within external financing programs. They also enjoy multiple possibilities of project development in digital formats which can be integrated to databases in a geographical international system (GIS), with applications of visualisation, analysis, scenario, plans and reports editing, for all administrative-territory units.

Furthermore, improving the quality of data and information of public interest and of other information entering public organizations' field of competences is expected to improve communication climate within public organizations. Thus it is required to improve the comparability of data and information at local, regional and national level, the harmonization of definitions and classification systems, and information registry. One must also perfect the manner in which official data is collected, analysed and introduced in databases.

Political leadership and the media must also be integrated to this approach, having in view the relatively high interest the media and citizens share on public organizations' activity. Moreover, the tendency of the media to reflect mostly and, often, without checking the negative aspects of certain activities if the public administration, the information being misinterpreted or misunderstood, is well-known. One must raise awareness on the difficulty to build strategies and action plans which resist political change. Some even argue that the present political class is not mature enough to appreciate and implement the programs and policies initiated by the leadership of public organizations from previous mandates. The purpose of efficient public organization communication is also that of enhancing cooperation, of building

a new approach of connecting private companies and foundations with organizations from the public field at local, national or even European level on objectives aiming at community cohesion.

Conclusions

Communication within public organizations responds to three aspects: information, by providing the basis for decisions, motivation, by stimulating cooperation and participation of stakeholders, and control, by establishing duties, responsibilities and accountability. To the existing forms of communication, dependent on information, control, coordination functions of public organization communication, one must add other distinct forms to enhance the exercise of emotional and motivation functions, leading to the accomplishment of objectives specific to organizational communication strategy. The idea of public organizations perceived as a complex dynamic, open system with continuously adaptable structures to the demands of the external environment is a desiderate for the improvement of public services quality. In other words, flexibility, the organization's ability to learn from experience and to introduce change and innovation, once internal and external circumstances suffer changes, are vital elements for boosting Romanian public organizations efficiency. One of the major challenges affecting public organizations being the response to a changing environment and adapting to external pressures, change[9] is perceived as an element that urges organizations to take action due to the interdependence between local community and public organization. Thus we consider that communication loopholes on the motifs and purposes of change are among the factors that infringe change.

Notes

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The Involvement of Politics in the Development of the Banking System

Georgeta GHIONEA

Abstract: *The article deals with the establishment of the banking system and modern credit at the end of the 19th century and the beginning of the 20th century in Valcea County as part of the accomplishments of the Liberal National Party in the financial domain.*
Keywords: banking system, credit, National Liberal Party, social capital.

At the end of the 19th century and the beginning of the 20th century the "through ourselves" policy was materialized through the encouraging of national industry, through the establishment of the banking system and modern credit, the organization of the Rural House, the redemption of railways etc.

In the financial domain among the remarkable accomplishments of the Liberal National Party we may mention the set up of large establishments of national credit: the Rural Landed Credit (whose meant was to sustain the large properties) and the Romanian National Bank (set up to ease the commercial and industrial movement from Romania). At the same time the Minister of Education Spiru Haret had taken some measurements to improve the situation of the peasants through laws which led to the set up of the popular banks in 1903 and allowed the set up of some rural cooperatives in 1904.

The set up of the Romanian National Bank by the Bratianu Government in 1880 set the bases of the entire banking system and modern credit, used by liberal financial circles to obtain a dominant position in the Romanian economy. Because it was considered that the state should not organize the financial institution by itself and also because there was no private association of capitalists with enough authority so that its operations to have general trust, they have finally found the solution to adopt a mixed system of association of private capitals with the State's into a single bank of emission. In 1901 the state gave up the quality of shareholder, the Romanian National Bank becoming a private institution dominated by the liberals.

There were two political personalities of that time, who organized the central institution, the two best friends Ion C. Bratianu and Eugeniu Carada. Both of them had close relationships with the greatest bourgeois families from Vâlcea: Capelleanu, Plesoianu or Slavitescu[1]. At the same time, Ion C. Bratianu had close friendship relationships with Dimitrie Simulescu, Prefect of Vâlcea during the liberal government. Dimitrie Simulescu, known in the epoch as "Boyard"[2]

of Drăgăşani, had the initiative of setting up the first liberal party in Drăgăşani[3]. To the liberal members the purpose was to obtain capitals for the locality regarding the economical development.

At the end of the 19th century Drăgăşani was famous for vine crops.

Important incomes for the inhabitants of the town were brought by cereals crops, breeding animals and trade. The handicrafts were specialized in the local needs. Thus we find mentioned in the town coopers, tailors, cobblers, furriers, skinners, felt boot makers, bakers, butchers etc.

In the first decades of the 20th century Drăgăşani knew an unprecedented boom. On January 22nd, 1909 Dimitrie I. Dimitriu[4] submitted the governor of the Romanian National Bank, Theodor Stefanescu, an account in which he related the economic situation of Vâlcea. Related to Drăgăşani, Dimitrie I. Dimitriu observed: "the viticulture also had a great upsurge in Drăgăşani and if in the future the same zeal for replanting the famous hills is followed, shortly after, one will see overflowing above our district an entire wealth that will assure the prosperity of its inhabitants. The culture of fruit-bearing trees is also a part of the inhabitants' main occupation, bringing them lots of profits. Every year large quantities of nuts, apples and plums are exported especially in Germany"[5].

From the initiative of the liberal mayors from Drăgăşani banks were set up in the locality to sustain the peasants and the tradesmen. Thus there were set up: the Drăgăşani Bank, the Trade Bank Drăgăşani Branch, Viticulture Bank Drăgăşani Branch and the Peasants Bank. About the activity of the banks from Drăgăşani we will present some information.

The Drăgăşani Vineyard Bank was set up on August 13th, 1907 as a joint-stock company, with unlimited term. The bank had its headquarters in Drăgăşani on 11 Regele Mihai Street.

The building was build of bricks, covered with tiles on a concrete foundation. It had a basement, two corridors, two small rooms, with a surface of 280m^2 and an outhouse situated in the yard, a building of bricks, covered with old, degraded sheet, which had a surface of 73 m^2 and a place for a house where houses were built on a surface of 654 m^2.

In 1947, the bank had a social capital of 6 million lei[6]. At the end of the year 1948, the bank was moved in the 15 August 23 Street in Drăgăşani, lead by Teodor Nanci and Al. Tarbalescu.

On September 15th, 1949, the bank entered into bankruptcy[7].

The Drăgăşani Bank was a joint-stock company for bank trade with unlimited term. It began its activity on July 10th, 1909. It had its headquarters in 17 Voievodul Mihai Street, Drăgăşani[8]. It was set up by a number of 32 traders, mostly from Drăgăşani[9].

The initial social capital was 10 million lei.

The first administration council was made of: Gogu C. Predescu (manager), I. Filipescu, Valeriu Badiu, G. G. Teodorini (censors), I. L. Ramniceanu (deputy administrator), I. M. Palavan (chief accountant), Ilie M. Stanescu (book keeper)[10].

The bank favoured the development of trade, crafts and agriculture in the Drăgăşani area[11].

In 1931, the Drăgăşani Bank was registered with the Industry and Commerce Chamber of the Vâlcea district. With this opportunity, the declared administration council was made of: Alex. Olanescu, Stefan Rezelini, Gheorghe Tudor, Grigore Iorgulescu, C. V. Gherorghiu, Gh. Diaconescu, Nistor Rozenovici, Nita Diaconescu, C. Radulescu. Censors: M. Isvoranu, D. M. Nicolaescu, Petrica Ionescu. Deputy censors: M. Vasilescu, Gh. C. Christescu and Gh. Stanescu[12].

The Drăgăşani Trade Bank was a branch of the Trade Bank from Craiova. It had its headquarters in 12 Voievodul Mihai Street, Drăgăşani. It began its activity on May 9th, 1912 and developed peculiar banking activities. The first manager mentioned in the documents from the archive was M. Creteanu[13].

At the date of registration with the Industry and Commerce Chamber from Vâlcea (1931), the office workers were: M. Creţeanu, Valeriu Badiu, Gh. Iliescu[14].

The bank gave credits to traders, ploughmen and farmers from the locality and district and to the shepherds from Vaideeni commune. After nationalization and the introduction of restrictions in giving credits, the traders did not receive credits and ploughmen and farmers "checked clients" oriented towards popular banks or towards the Farming National Credit. Because of the difficulties encountered in fulfilling the loans, some farmers gave up contracting credits from this bank.

The Viticulture Bank, Drăgăşani Branch, a joint-stock company for bank trading, had its headquarters in Bucharest. The address of the branch in Drăgăşani was 26 Regele Mihai Street and was set up on December 28th, 1920, with unlimited term[15].

The main purpose of the bank was to ease the credits for the winegrowers and fruit growers and to ease the trade for wines and alcohols. It assured credits for new plantations to remake or to complete the viticulture farms, for trading and industrializing the fruits, it practiced the trade with wine, it secured the vessel and the necessary equipment to manufacture the grapes and to transport the wine, and it built wine cellars[16].

The Drăgăşani Viticulture Bank was registered in 1931 with the Commerce and Industry Chamber from Vâlcea district and has been radiated on May 14th, May 1946[17].

The Peasants Banks from Drăgăşani, a joint-stock company for bank trading, was set up on April 4th, April 1921, with unlimited term[18], by a number of 28 founders from Vâlcea district[19] and the Peasants Bank from Bucharest. The first manager mentioned in the documents in the archive was Silviu C. Ionescu[20].

The headquarters of the bank were in Drăgăşani on 45 Regele Mihai I Street[21]. The Bank also had a branch in Râmnicu Vâlcea. The first Council of Administration was made of Constantin Argetoianu (president), D. Sencovici, Dumitru C. Popescu (vicepresident), N. C. Popescu Portaresti (deputy administrator), Silviu C. Ionescu, Eustatiu Cristescu, Alex. D. Popa, Tiberiu Anastasiu, N. Zamfirescu, Gh. Gh. Teodorini, C. C. Popescu-Portaresti (members); Sava Fortunescu, Grigore Gh. Frasineanu, H. Abramovici (censors); Th Paraschivescu, Gh. Gh. Arsenescu, Ilie Orasanu (deputy censors)[22].

The initial social capital was 5 million lei also having the possibility to increase up to 20 million lei[23].

On September 30th, 1931 it was Registered with the Industry and Commerce Chamber in Vâlcea District.

On March 5th, 1935 the branch from Râmnicu Vâlcea was radiated[24]. In 1943, the bank merged with the Drăgăşani Bank[25].

In 1946 the administration from Drăgăşani, solicited the setting up of a branch of the Romanian National Bank in the locality. A monograph of the locality was advanced to the headquarters. We may note from this that: there were 10,000 inhabitants, from which 4,000 lived in Drăgăşani. 99% were Romanians. Their main occupations were trade, farming and viticulture. Viticulture remained the main occupation, the best planted vineyards belonging to: Oromolu, Dinu Bratianu, Barbu Stirbey, Nicolae Budurascu. In 1946, 90 trading firms were registered, the majority dealing with trade,

manufacture and textiles, followed by smith's trade, pharmacies, restaurants and wine cellars. At the same time, the following developed their activities: Oltul Mill[26], four peasants mills, several mechanical workshops, carpentry and cooper shops.

From the same monograph we find out that the Romanian National Bank did not have any agency opened in Drăgăşani, but a Trade Bank, Drăgăşani Branch, Vineyard Bank, Drăgăşani Bank and Peasants Bank functioned. When the monograph was accomplished, banking operations were developed only in the Trade Bank.

After the Second World War, in the context of reorganizing the Romanian National Bank, some private banking institutions were closed, others subordinated to the central institution.

In 1948 agencies were set up of the Romanian National Bank in the localities: Râmnicu Vâlcea, Drăgăşani, Călimăneşti, Băbeni and Bălceşti. The Drăgăşani agency had to be installed in the building that belonged to the Vineyard Bank, bank which was during the abolition. At that time, the building was occupied by the local organization of the National Popular Party and also by the manager of Oltul Mill, as a lodger. The house was especially built for a bank. After the necessary repairs, the agency had to have a room for operations, an office and the treasury.

Because of the opposition of the National Popular Party regarding the evacuation of Drăgăşani agency, it was inaugurated on May 15th, 1948 in the building of the exigency of the Trade Bank in Craiova.

The building was situated on 12 23th August Street, Drăgăşani, the owner being Ion Moldoveanu and it had four rooms of which one was used as room for the operation, two rooms as a private dwelling and a room for the archives. At the beginning of the 20th century several popular banks and rural cooperatives appeared which had an important contribution to the development of the Romanian international market, at the same time being an important support for the peasants without credit.

The Barsanul Popular Bank from Drăgăşani, an economy and credit society, began its activity on February 15th, 1912, with unlimited term. The society headquarters were in Drăgăşani, 215 Traian Street[27].

The initial social capital was 13,000 lei, and the purpose of the society was to "ease the credit that the associates need for their farming work and trade"[28]. The bank was set up from the initiative of 25 people from Barsanu[29].

The first council of administration was made of Andrei Ion Bleotu (president), Marin Negreanu (vicepresident), Gh. I. Ionescu, Nicolae Guinea, Florea I. Oraseanu, Dumitru Dobrin (members); Dumitru Gh Provac, Ionita N. Stancu, Nae Savoiu (censors); Nicolae N. I. Bleotu, Nae I. Lupu, Ion Barbulescu (deputy censors). The function of cashier was occupied by P. Gh. Bleotu[30].

The St. Nicolae cooperative was set up in 1909 with 125 members and a social capital of 25,000 lei. The first council of administration was made of Dumitru I. Marinescu, manager, P. Macuceanu, president, D. Marinescu, cashier. The cooperative build bakeries in the locality, taking care of the evaluation of wheat, tobacco, alcohol and "all sorts of other trading operations"[31]. The activity of the cooperative was interrupted during the First World War, hardly reorganizing after 1925. During the economic crisis of 1929-1933 the society entered into failure. The Drăgăşani viticulture cooperative was set up in 1930 with the social capital of 125,900 lei. In 1944 the bank had 200 members. The cooperative eased the

operations of supply, production and sale for viticulture and fruit-farming for internal consume and for export in Germany[32]. The headquarters of the cooperative was in 12 Palade Street, Drăgăşani.

The first council of administration was made of: G. Rosescu, president; Tile Anastasie, vice president; Mih. Amzulescu, Marin Ilinca, D. Neciu, G. G. Teodorini, Liviu Ionescu, Mih. Sandulescu, Ion Tanasescu, Cosma Bajenaru, G. Serbanescu, Ilie Brezoianu, members.

The Unirea Cooperative was set up in 1939 by 118 people from the district with a social capital of 540,000 lei[33].

Concluding, we may affirm that, from the initiative of the liberal mayors from Drăgăşani, in the locality there were set up the Drăgăşani Bank, the Trade Bank, Drăgăşani Branch, The Viticulture Bank, Drăgăşani Branch and the Peasants Bank. The main objective of the banking institutions was to assure cheap credits, necessary to the enterprisers to develop the industry, trade and to consolidate the peasants' properties.

Notes

1 D. G. Capelleanu, *The lineage of Capelleanu's family 1745-1902*, Bucharest, 1902, pp. 2-6.

2 Aurel Viorel Popescu, Marian Constantin Popescu, Ion M. Ciuca, *Personalities from Drăgăşani. Laura Simulescu*, Drăgăşani, Kitcom Publishing, 2007, p. 42.

3 Emil Istocescu, Teodor Barbu, Constantin Serban, *The Monograph of Drăgăşani City*, Constanta, Ex Porto Publishing, 2004, p. 264.

4 Dimitrie I. Dumitru graduated the Superiour Commerce School from Iasi. From the second half of the year 1902 he received the mission to set up and organize the Agency of Romanian National Bank in Râmnicu Vâlcea, agency which he had managed for 31 years (1902-1933).

5 National Archives in Râmnicu Vâlcea, the Romanian National Bank fund, file 4/1903-1933, f. 7.

6 Idem, the Ramnicului Bank fund, file 16/1947, f. 2.

7 Idem, the Vineyard Drăgăşani Bank fund, file 3/1948, f. 1.

8 Idem, file 34/1931, f. 1.

9 Constantin Tudor, Ionita Iamandi, Gheorghe Diaconescu, Alex. Olanescu, Nita Diaconescu, Nistor Bojenovici, Nicolae Povateanu, Costica V. Gheorghiu, Mihai Borta, Florea Duinac, Marin Vasilescu, Stefan Rezerii, Nicolae T. Ignat, Petrica Ionescu, Petre Popovici, Ioacib V. Ciuculescu, D. M. Nicolaescu, Grigore Iorgulescu, Costica Iorgulescu, Costica Radulescu, Mihai ilie, Ion Talamas, Gheorghe Christescu, Mihai Panaitescu, Mihalache Isvoranu, Ilie Constantinescu, Gheorghe Stanescu, I. Constantinescu, Gheorghe Tudor, Gavrila Gheorghe, Dumitru Pradatu, Ilie M. Tudosie, Dumitru Luca.

10 Natioal Archives in Râmnicu Vâlcea, the Industry and Commerce Chamber of Vâlcea District fund, file 34/1931, f. 1.

11 *Ibidem*, f. 9.

12 *Ibidem*.

13 Idem, file 30/1931, f.1 and next.

14 *Ibidem*, f. 7.

15 Idem, file 7/1931, f. 1.

16 *Ibidem*, f.2.

17 *Ibidem,* f. 11.

18 Idem, Industry and Commerce Chamber fund of Vâlcea District, file 43/1931, f. 1.

19 Ion Tomescu, Traian Mihailescu, Alex. Popa, N. Manolescu, H. Abramovici, Aron Teodorescu, Constantin Tetoianu, Fredrich Gelttesch, (from Râmnicu Vâlcea), G. I. Luculescu, Silviu Ionescu, N. C. Popescu-Portaresti, D. C. Popescu, Tatomir Bratu, C. C. Popescu-Portaresti, C. V. Gheorghiu, T. Rosenthal, D. Neciu, G. Rosescu, Dumitru Mitrulescu,Tiberiu Anastasiu, G. Calinescu, C. D. Stanescu, T. Paraschivescu, Ionel Popescu, I. N. Radulescu, C. Adamiade, Nae Ion (from Drăgăşani), Radu Tintorescu (from Horezu).

20 National Archives in Râmnicu Vâlcea, Industry and Commerce Chamber fund of Vâlcea District, file 43/1931, f. 1.

21 *Ibidem*, f. 3.

22 *Ibidem*.

23 *Ibidem*, f. 4.

24 *Ibidem*, f. 8.

25 Idem*,* fund Romanian National Bank, file 105/1939-1944, f. 101.

[26] The Oltul Mill, a joint-stock company with a capital of 2 million lei. The Mill had a capacity of production of two corn trucks and two wheat trucks in 24 hours.
[27] National Archives in Râmnicu Vâlcea, Barsanu Popular Bank fund, file 123/1931, f.1.
[28] *Ibidem.*
[29] Ghita Gh. Bleotu, Andrei Ion Bleotu, Petre Gh. Bleotu, Florea I. Orasanu, Ionita Gh. Oasanu, Marin Negreanu, Gheorghe Ionescu, Dumitru Dobrin, Nicolae Guinea, Ion P. Barbulescu, Dumitru C. Predut, Nae I. Lupu, Nicole Gh. Provc, Nicolae I. N. Bleotu, Mihalache Gh. Provac, D-tru Gh. Provac, Ionita N. Stancu, Nae Savoiu, Ilie N. Bleotu, Sandu Buga, Ion I. Spiridon, Dumitru B. Deacon, Victor Dobrin, Dumitru I. Tunaru, Marin I. Oprea.
[30] National Archives in Râmnicu Vâlcea, Industry and Commerce Chamber fund of Vâlcea District, file 123/1931, f. 3.
[31] Idem, fund Drăgăşani Town Hall, file 7/1941, f. 26.
[32] *Ibidem.*
[33] *Ibidem.*

The Support Law of the Crown Domain

Narcisa MITU

Abstract : *This articol presents some less known aspects concerning the creation of the Crown Domain: focusing on the parliamentary debates, on the diversity of opinions and on the final text law.*
Keywords: king, civil list, estate, budget, law.

The period when Carol the First ruled represented a very important stage in the development of the modern Romania, the 48 years of ruling being some of real progress on many levels. Carol the First assumed with patience, tenacity and ability the mandate that was given to him by the representatives of the Romanian nation from east and south of the Carpathians.

In the context of the Kingdom proclamation, at March 14th/26th 1881, was necessary the strengthening of the prestige of the monarchic dynasty, without being in any way affected the external one. Yet, Romania was still passing through a period of transformations in all the directions. The industry hardly coped with the foreign competition and the agriculture was touched by the low prices of the agricultural products[1]. In that period appeared the first bills that claimed for giving a financial support for the monarchy, in the same time with the maintaining of the civil list, solution accepted in the first years of ruling of Carol the First.

One of the first attempts of creating financial independence for the royal family appeared in 1870 as proposed by the conservators, soon after the moment of Carol the First with Elisabeth of Wied marriage, initiative reminded by the conservator politic character Titu Maiorescu, during the meeting of the Romanian Senate from 6th/18th of June 1884.

Another proposal was made in 1882, at the initiative of D. A. Sturdza. He realized a sketch with the estates that meant to be held in the bill of constituting the Crown's Domain[2]. There was a proposal that these state's properties should be declared inalienable and to be administrated by the Crown and "should not be part of the state's income budget". They would have represented the Crow's dowry. Was also proposed that this law should come into force at April 1st 1882.

The proposal for constituting the Crown's Domain would be materialized two years later, in 1884, during the liberal government from 9th/21st of June – 23rd/4th of April 1888, when prime-minister was Ion. C. Brătianu. This proposal led to many debates in the Romanian Parliament. The purpose for constituting these domains was that to establish a more tight connection between the dynasty and Romanians and the king himself would have also play a

part as his compatriots in the agricultural problem.

Thus, at 10th/22nd of June 1884[3] was promulgated the Law for creating the Crown's Domain, proposed by I.C. Brătianu as a parliamentary initiative.

First, the liberal government forwarded a project regarding the constituting of the Crown's Domain, presented by the deputy Andrei Vizante in the plenum of the Assembly of Deputies, during the meeting from 5th/17th of June 1884[4].

The vehement discussions revealed the diversity of opinions of the politicians that attended the meeting. The old conservators attacked the bill in the press, looking to exploit the situation against the Brătianu ministry.

The liberal deputy Nicu Gane was the speaker of the delegates committee from the sections, committee made from the deputies: Cantemir Enache, the general Călinescu Atanasie, Andrei Vizanti, Titu Maiorescu, Papadopol Calimachi, Lascăr Costin. In the meeting from June 5th 1884, he read the report and the bill for the constitution of the Crown's domain, also evoking the progresses made by Romania staring from 1857 that were: The Union, the introduction and the consolidation of the representative constitutional government system, the foreign hereditary ruling, the moments of conquering the independence and the proclamation of Kingdom, motivating the report regarding the bill with the following words: "The higher the Crown will be, the higher our country will get"[5].

Next, were read the articles that formed the bill:

The 1st article mentioned the domain's composition, presenting the rural buildings that were about to make part from its organization. They were: *Ruşeţ* from Brăila district; *Sadova* from Dolj district; *Segarcea* from Dolj district; Cocioc from Ilfov district; *Bica* from Neamţ district; *Gherghiţa* from Prahova district; *Clăbucetu-Taurului* and *Muntele Caraiman* from Prahova district; *Domniţa* from Râmnicu-Sărat district; *Mălini* Suceva district; *Borca* Suceava district; *Sabaşa* and *Farcaşa* Suceava district; *Dobrovăţu* Vaslui district.

The 2nd article mentioned that the Crown has the right to use the land and the subsoil of the above mentioned properties, without being necessary to give any guarantee. All the possessions could be exploited either directly, either through leasing, in which case the lease period must not pass of 10 years.

The 3rd article mentioned that the forests existing on these properties would be exploited by the Crown, according with the prescriptions exposed in the forest code and in the law from March 24th 1882.

The 4th article was referring to the rights, the obligations and the way in which the forest agents were paid, but also the Crown's obligations of supporting all the expenses that involved the sowing, the forests' arrangements etc.

The 5th article stipulated the Domain's inalienability and imprescriptibility.

The 6th article was referring to the fact that the Domain didn't have to pay any taxes to the state, but those to the commune and district.

The 7th article stipulated that it was tax-exempt of any stamp or registration tax. As regarding the judicial problems, they were the same as the state ones.

The 8th article showed that its properties were to be administrated by a Domain's administrator.

The 9th article was referring to the lawsuits that would be bought only against the administrator.

The 10th established that the transactions were to have the same policy as for the state properties.

The 11th article stipulated that in the lawsuits the assistance of the Domains' Ministry was mandatory, assistance realized with the participation of the ministry's public lawyers.

The 12th article established that this law should come into force at October 1st 1884 when, the income of these properties was no longer part of the state's budget.

Once that the bill was read, the deputy P. Strejescu said that he will vote this bill, fully trusting "the great man" that was the head of the Liberal Party and in the rightness of nation: "Today we fulfill an action of great righteousness. Endowing the Crown, we prove to the King that we are devoted to Him and to His Dynasty"[6]. And he still affirmed that it was the duty of the country to create the right means for the new status, as a consequence of Carol's crowning: "We offer nothing more to our King than our willingness of sustaining the prestige of the Romania's Crown"[7].

The deputy P. Cernătescu brought forward the problem of the civil list, precisely stipulated in the Constitution, taking care that it won't be modified by the majority of some government, considering that: "these problems must be prepared ahead; the public opinion must be educated, long debates must straighten the taken decisions"[8]. Also, the opinion that the argument of endowing the Crown in order to be better protected against the pretenders that will take the throne "secretly and in accordance with foreigners", is not valuable because "only a mad, an unreasonable ambitious man would think to separate these principalities united for eternity" and "those from the ex-rulers that claim the throne for themselves, for me they are just shadows that chase illusions". He motivate that "no Romanian would agree with such ideas"[9].

In these conditions P. Cernătescu said that such arguments can't allow infringing the Constitution, but still wishing to change the 94th article of the Constitution, only if this would have been proposed, fact that amused the prime-minister Brătianu. As a conclusion, he considered the endowing of the Crown as a "infringing of the Constitution".

When the meeting ended, when the law was accepted, he had the surprise to see that among the estates proposed to belong to the Crown was Segracea for which "thousand of petitions were written by the peasants to buy land"[10].

Also, the same deputy underlined that long discussions are necessary because this bill was referring to the way that the Europe's rulers had the public domain at their disposal. He considered that the law wasn't absolutely necessary because in Europe existed some cases, such as England's, where the king George the Third received money, and the Parliament supervised all the domains.

The deputy N. Dimancea combated him, affirming that through the Constitution, in the 94th article, was established the civil list for each reign, rhetorically asking those in the room "Is there a reign today?", an allusion to the fact that Romania lives in a new reality.

The same deputy eulogized his generation that "offered a Crown to the country" and the country's duty was now "to give back a dowry and not a longer civil list". He pronounced himself for this bill, considering that through this law Romania will progress "on the way that the sentinel of the Latinity walks" in order to give "stability to the country"[11].

At the tribune on the Deputies' Assemble took the floor a great Romanian orator that was the deputy N. Ionescu. He affirmed that the prime-minister I. C. Brătianu declared that the bill was in the attention of Europe, fact denied by the president of the council. Then, he proved to be rather incisive with those that agreed

with the bill saying that: "The Romanian Kingdom can't pretend to need support, unnecessary straighten and, I dare to affirm, no future warranties"[12]. In the same time he contradicted those who declared that the dynasty was endangered because "the pretenders agitate themselves". He then asked a question to those present at the debates, referring to the way the people from this country would see this situation that offers to the sovereign Domains like "the rulers from the past … considered the throne a way to become wealthy. A nation's affection can't be bought thorough the enriching of the Crown"[13]. N. Ionescu considered that this law was no emergency for Romania, because that situation didn't ask for it: "You must not forget that a Crown, as mighty as it would appear, without wealthy and satisfied people doesn't mean anything"[14]. In his vision, the Court lives in an "exemplary simplicity", without any need for ostentation and that's why the king doesn't need any supplementary expenses because he knows how to manage his civil list[15]. At the end he said that he would be among those who would vote against the bill.

It is necessary to specify that this law leaded to the withdrawal from the Parliament of the group leaded by C. A. Rosseti that didn't want to act against it[16].

Titu Maiorescu, in his speech, contradicted his foregoing speakers, the deputies P. Cernătescu and N. Ionescu and returned back in time, mentioning the moment when His Royal Highness Carol the First married with Lady Elisabeth and a majority from the conservator chamber, 65 deputies[17], proposed a yearly dowry of 300 000 lei, starting with 1st of January 1870[18]. That proposal was received with enthusiasm at that time but the King, only a Ruler at that time, didn't agree, motivating that: "not until the Romanian People would have seen the Lady"[19]. In order to give credibility to those that he affirmed, he showed to his co-speakers this bill with only one article, dating from 1st of January 1870 and mentioned those conservator deputies that agreed with the bill: G. Gr. Cantacuzino, P. Mavrogheni, I. Văcărescu, C. Blaremberg, Petre Grădişteanu, A. Lahovari, A. Urechia etc.

He sustained the necessity of giving their entire support for this bill because "Once we have this King as our leader, we are received in the Europe's family and we start to gain some importance in the Europe's politic life, such a vote signifies that we are willing to offer to our Kingdom the material means to accentuate the external prestige, according with the growth of its importance"[20].

After the allocution of T. Maiorescu, the president of the Council said that, referring to the question weather to give a dowry in money or in estates to the king that he was for the estates because the king would have become "the first Romanian freeholder"[21].

At the affirmation of the deputy N. Ionescu, according to which the destination of the estates would be changed because of this bill, was answered that the moment they are sold the property is changed and that "what we give to the Crown in only the usufruct, and the bare property remains to the state"[22]. As a conclusion, the president said that their destination and property remains the same.

After the intervention of N. Catargiu that declared that he will abstain from the vote, a proposition regarding the delay of the bill for the future Legislative Chamber, proposal signed by C. M. Ciocăzan I. Orănescu, N. Ionescu, A Demetriad, D. Micescu, S. Nicolau, Z. Zamfirescu, Urseanu Valerian[23]. This proposal was subjected to vote, was rejected and the result of the debated was that, those who proposed the law won. The bill was accepted with 77 votes *"for"*, 16

deputies were *"against"* and 4 abstain from voting.

Once accepted, the next step was the voting on articles. After reading the first article, two deputies, N. Ionescu and Petre Cernătescu tried to reaffirm their opinions, considering that there wasn't paid much attention to some aspects from the law. N Ionescu accused the prime-minister that he confuses the public domain with the state one, and P. Cernătescu brought again into discussion the inclusion among the estates meant to become the Royal Crown Domain of that from Segarcea, Dolj district, that he wished to changed it with a larger one if it is possible, "because this is requested by thousand of peasants to buy it because another larger property is not in the Dolj district"[24].

Referring to the 2nd article, 2nd section, the representative deputy of the peasants Dincă Schileru, propose to those present an amendment through which a new commune to be formed, with 200-250 Romanian peasant liable to pay duties from the sub-mountain area, on the 12 estates mentioned in the first article. They should receive 8 acres of land, depending on the quality of the estate, wood from the forest to build their house on their own expense, without paying taxes and, in addition, on a period of five years, the Crown will assure "the agricultural implements for oxen and ploughs" and then to compensate them. Also, was requested that in each commune the crown should build primary and agricultural schools. He was motivated by the belief that the King will administrate them very well that "he will make model agricultural farms … he will bring foreign people to exploit the estates in a more systematic way"[25].

Although the amendment was rejected, being sustained only be five deputies, all the other article had been adopted without any further discussions[26].

The bill was subjected for voting in totality and was ratified in the applauses of the assistance with 76 votes for, 11 against and 4 abstains from voting[27].

At June 6th 1884, the Bill of the Crown's Domains was debated in the Romania's Senate also. The Foreign Minister, Dimitrie Sturdza, read the royal message that forwarded the bill.

One of the Senate's speakers, Eugen Stătescu, took the floor supporting the necessity of this new law, because the civil list established for the king in 1866, didn't correspond to the necessity of the monarchy anymore: "The law reaffirms the trust that the nation has in the monarchic principle and its attachment for the King and for the Dynasty"[28].

Then the senator V. Maniu interfered and said that he considers absolutely necessary to exist a new law for dowry, because the ruler had became King but, taking into consideration that the opposition retreated from the Parliament, the law can't be deliberated upon and so, can't be legitimate.

In this situation the prime-minister I. C. Brătianu took the floor and presented the reasons for which the bill from 1870 wasn't materialized. He also answered to his foregoing speaker, making an incursion in the problem of the dowry in the Western Europe, giving example that, in France, the Parliament increased the necessary means for the president of the Republic, D. Grevy although he beneficiated from the civil list. That's why he considered that changing the 94th article from the Constitution was a proof that the opposition, coming in the office, will be able to bring an action against for infringing the fundamental law. He then continued his speech making a short presentation for the way the rulers from the Middle Ages enriched themselves, receiving money and a house for which the people had to pay 30-40 000 ducats[29]. And

more, he affirmed that the country had enough estates (1.100 at that time) and afforded to offer to the Crown twelve of them.

The parliamentary debates ended with: 45 votes for the law, 5 against and 2 abstains.

In these circumstances, at 10th/22nd of June 1884, the two Chambers of the Romanian Parliament adopted the Law regarding the Creation of the Crown's Domains that stipulated that the royal family will receive 12 estates from the state's property, totalizing a surface of 118.286 hectares, from which 67.198 of forest.

Notes

[1] Dan Berindei, *Societatea românească în vremea lui Carol I (1866-1876)*, Bucharest, The Military Publishing House, 1992, p. 70.
[2] The Central Historic National Archives, the Royal House Fund, The Administration of Crown's Domains, The Central Administration, d. 145/1942, f. 30. The proposed estates were: *Răsăritu(?), Apusul, Cotmeana* in Argeş District, *Citan (?), Vatra, I. Kîului, Pinu*, in Buzău District, *Ciuperceni* in Dolj District, *Vatra Mănăstirii Tismana* in Gorj District, *Jigaba (Jigalva?*) in Ialomiţa District, *Corbia cu Munţii* in Muscel District, *Caraiman* in Prahova District, *Vai de Eni cu Munţii, Comana* in Vâlcea District, *Barnova* in Iaşi District, *Mălini, Borca* in Suceava District, *Tazlan, Tarcan, Bicaz, Vadurile, Galu* and *Pipirigu* in Neamţ District, *Dobrovăţu* in Vaslui District.
[3] Romania's "The Official Gazette" (it will be further cited as: O. G.), nr. 53 from 10th/22nd of June 1884, p. 1097-1098; C. Hamangiu, *Codul General al României. Legi Uzuale (1856-1907)*, 2nd Edition, II vol., Bucharest, 1907, p. 729-730; *Anuarul Ministerului Agriculturii, Industriei, Comerţului şi Domeniilor, Legile, Decretele, Regulamentele (1859-1893)* , Bucharest, 1893, p. 974-976.
[4] O. G. *Dezbaterile Adunării Deputaţilor*, (it will be further cited as: O. G. D. D. A.), nr.164 from 5th/17th of June 1884, p. 2600.
[5] *Ibidem*, p. 2618.
[6] *Ibidem*, p. 2614.
[7] *Ibidem.*
[8] *Ibidem.* p. 2615.
[9] *Ibidem*.
[10] *Ibidem.*
[11] *Ibidem*.
[12] *Ibidem,* p. 2616.
[13] *Ibidem*, p. 2620.
[14] *Ibidem*.
[15] *Ibidem*.
[16] Ion Mamina, Ion Bulei, *Guverne şi guvernanţi, 1866-1916,* Bucharest, Silex Publishing House, 1994, p. 55.
[17] O.G. D.D. A. nr. 165 from 6th/18th of June 1884, p. 2622.
[18] *Ibidem.*
[19] Idem, *Dezbaterile Senatului*, the meeting from 6th of June 1884, nr. 167 from 8th/20th of June 1884, p. 2639.
[20] O.G. D.D. A., nr. 164 from 5th/17th of June 1884, p. 2624.
[21] *Ibidem*, p. 2623.
[22] *Ibidem*.
[23] *Ibidem*, p. 2624.
[24] *Ibidem*.
[25] *Ibidem*.
[26] *Ibidem*.
[27] *Ibidem,* p. 2625.
[28] Idem, nr. 167 from 8th/20th of June 1884, p. 2640.
[29] *Ibidem*, p. 2644.

The Premises of Appearance of Constitutionalism in Moldavia

Loredana Maria ILIN GROZOIU

Abstract : *The subsequent article deals with presenting the appearance of modern juridical institutions in Moldavia in the Phanariot epoch. The article presents some projects, memoirs, also styled "constitutions", which include some principles of national modern constitutionalism. The conclusion is that due to the content of the articles, their grouping and their presentation, these memoirs may be considered a project of constitution.*
Keywords: modern constitutionalism, Phanariot epoch, reform, project, government system.

In Romanian Principalities the debut of some institution of juridical modernity is recovered in the Phanariot epoch as it cannot be ignored the fact that a series of measurements were the work of Phanariot lords[1]. Among these measurements, we may mention: the removal of juridical pluralism, the organization according to norms and rational principles of sources of justice and the improvement of justice administration[2].

The activity of codification, the effort deposited by the national code of laws were parts of the process of modification of marks system which characterized the Romanian society beginning with 1780. Therefore the removal of customary law, the necessity of the written law, the rationalization of the system of law's sources are only few stipulation which appeared in this period[3].

The process of reformation began by Phanariot lords was sustained by the effort deposited by the national elites to modify the international status of the two Romanian countries and also the exercising procedure of the State's functions. The initiated reforms in this period began a new horizon of waiting opened to modernization[4].

The memories and the reformed projects after 1774 were considered "a legal and constitutional laboratory"[5] inside of which were enumerated, for the first time, a series of questions which were recovered in the following period. Thus these questions are taking into account the following aspects: the procedure to transfer the power, the necessity of setting up a general assembly to compete to the rule of the country and at the same time to represent the inhabitants, the difference between the national monarchy and foreign prince[6]. The principles included in these programs of organization of Romanian Principalities recovered in the Organic Regulations which

offered a normative frame to government, thanks to which the State realized its functions.

The formulated principles, registered into "The Declaration of Human Rights" from 1789 by the ideologists of the French revolution and also those which are recovered stipulated into the French Constitution from 1791, were the legal models that influenced the memories and the reform projects elaborated after 1774. Thus the approached themes were: the international state and the government of Romanian Principalities, the modalities to accomplish the economic-social transformations, the sense of evolution of the two countries[7].

From the multitude of emitted texts after 1774, a certain place is occupied with the memories and the projects from 1821-1822: Tudor Vladimirescu's rising, the action of Hetairia and the restoration of lord lands are only few circumstances which announced the existence, at least embryonic speaking, of the polemics that have marked the following period[8].

In the content of the proclamations addressed by TudorVladimirescu to the participants at the rising from 1821 was noticed on one the hand the existence of some ideas regarding the popular commitment towards the government, and on the other hand the trend to offer a space of protection to private property. Thus was emphasized the legal character of his rising[9].

The effects of the rising of 1821 were felt in the following period through the possibility created into the Romanian Principalities regarding the organizing of national modern structures. Thus the rising of 1821 and the restoration of national reigns determined the renew or the change of administrative, social, economic and political structures of the two Principalities[10]. After the revolution of 1821 the internal situation changed. Besides the upper bourgeoisie, appeared a new force, represented by middle-class and lower middle class, which in Moldavia dominated the political scene watching the access in the functions in the government equally[11]. Having also the support of lord Ioniţă Sandu Sturdza, this category of nobles invigorated their positions. The upper bourgeoisie wanted an oligarchy in government, and middle and lower class marked to participate in government and to benefit of the privileges of rank[12].

From the elaborated texts in this period, is discerned the project of *party of carvunars* of 1882, named also "constitution" which includes some principles of national modern constitutionalism. The author of this project of constitution was Ionică Tăutul, Ioniţă Sandu Sturdza's conspirator and counselor" "equerry of bourgeoisie, engineer of handicraft with a Romanian soul"[13]. To the redaction of this project participated: the governor Iordache Drăghici, the cupbearer Vasile Barnoschi, the carvunar Alex Donici, the governor Iordache Catargiu, Stavar (sardar), agha Greceanu, Bishop Meletie of Huşi[14].

The Constitution of Carvunars systematized the principles of organizing a rule of law: the separation of powers in the State, the rights and freedoms of the citizen, the limitation of king's power, the necessity of apparition of a written constitution "the edge of power". The principle of separation in State was foresight in the 19th chapter[15].

The legislative power was exerted by Public Council and the governor. According with the 20th article from the Carvunars Constitution, the public Council was made of: the metropolitan of the country, two bishops from the members of the Divan and judicial departments and by a noble chosen in every region by the local nobles[16]. The Lord's power was limited in relation with the Public Council. The Lord consolidated and executed the decisions of the Public Council, but he did not have the

initiative of the law, nor the right of veto or the right of dissolution. The Public Council could meet without its members being convoked by the Lord. The executive power belonged to the Lord. Thus, the Lord, chosen from earthly by the Public Assembly made of the leaders of the church and from "the entire community of nobles" and confirmed by the Porte, was helped by a Public Assembly which had more important attributions than the Lord had[17]. The interference of the Public Assembly in the Lord's attributions was more real than the Lord's in the business of the Public Assembly. For example the Lord was the chief of army but he could not give orders to gendarme but only with the Public Assembly, he could not give by himself noble ranks, and the officers were named by the Public Assembly[18].

The form of government was represented by the constitutional monarchy. Therefore the principle of separation existed but required the cooperation between the legislative power and the executive and mutual control. The decisions of Public Assembly were taken with absolute majority. All members had to be present at the debates. The member who was missing because of an ill or other reasons, had to replace himself with a deputy. The Lord consolidated and executed the decisions, advanced through the anaphora signed by all the members of the Assembly. He could return the anaphora through royal characters in which he expressed his opinion. The adopted decisions by Public Assembly and enforced by the Lord were considered "that express the will of the entire country". To them had to be said "the community people", including the deputies and the Lord[19]. Thus, according to article 74, even the Lord was subordinated to the power of the "codex of laws"[20].

In article 72, in the Constitution of the Carvunars was provided to be earthly, chosen by the Public Assembly, made of the metropolitan, bishops and from nobles assembly from logophete to gypsies. The Lord was chosen only he who was "known for his good deeds, for his patriotism and for his belief towards kingly power"[21].

The legislative power was exercised by the Divan in the highest instance, by the second Divan, by the department of foreign reasons, and from delinquency department. Every region contained a compounded court from a judge and a ispravnic[22].

The first Divan was compound of: a logophete, four mayors, a high spatharius and a ban[23]. The second Divan was made of: a noble "without effective nobility, a cup-bearer, an equerry and a high steward". This Divan was a kind of court of justice which judged the civic and trading problems[24]. The department of foreign reason was made of five nobles without effective nobility, the high gendarme that could take place in the debates; he had the right to consultative vote, without the right to sign the decisions[25].

The power of the church was sovereign. It was provided the nationalization of the churches and monasteries, the administration of Moldavian priests.

There were provided regulations referring to the content and the action of freedom. Otherwise article 22 from the Constitution included provisions referring to the religious freedom, differing between the Orthodox religion that had the entire freedom and the other cults, "only tolerated"[26].

Regarding the personal freedom in the 6th article was stipulated: "no one should be accused, arrested, or punished for cases provided by law, according to the legal laws"[27]. There were provided the freedom of industry and trade, of education and printing[28].

A special attention was accorded to individual properties, being considered a natural right of human. It was guaranteed the right of individual property of mobile

and immobile goods on "of soldiers' fruits and skills"[29]. Through articles 3 and 58 the constancy of the right of property was respected. The 5th article provided the expropriation for causes of community use[30]. The liberty was statuary to give petitions to the Divan and the right of petition to the sovereign. At the same time, was provided the equality of all citizens before the law, the promoting being done for the ones who deserve. A certain importance settled in the achieving and losing of the quality of citizen and of the rights of foreign citizens.

The Carvunars Constitutions, unlike the memories and projects of precedent constitution from 1822, expressed more clearly the principles and the organization norms of State life, the mutual control and the collaboration of the power in State it proclaimed the autonomy of State the individual liberty, the equality before the law, the liberty of education, work, trade, industry and the liberty of conscience and the press.

As it was mentioned "the Moldavian memoir is not a simple enumeration of liberal principles; it is more, an attempt to solve in a liberal spirit the two problems of modern organization in the content of the society a bit structured from the economic, social and administrative point of view"[31].

Definitely, the constitutional settlement from 13th September 1822 represented an important step in the introduction of modern government system, according to the requests of historical progress.

From the content of the articles, from their group and also from the exposition results that this memoirs may be considered a project of constitution.

Note

[1] Ioan Stanomir, *Libertate, lege şi drept. O istorie a constituţionalismului românesc*, Iaşi, Polirom Printing, 2005, p. 15.
[2] *Ibidem*.
[3] *Ibidem*.
[4] Vlad Georgescu, *Ideile politice şi iluminismul în Principatele Române*, Bucharest, Academy Printing, 1972, p. 45.
[5] Ioan Stanomir, *op. cit.*, p. 15.
[6] *Ibidem*.
[7] Vlad Georgescu, *Mémoires et projets de réforme dans les Principautés Roumaines. 1831-1848.* Bucharest, Academy Printing, 1972, p. X.
[8] Ioan Stanomir, *op. cit.,* p. 16.
[9] Paul Cornea, *Originile romantismului românesc*, Bucharest, Minerva Printing, 1972, p. 166-167.
[10] *** *Istoria românilor*, vol. VII, tom 1, Bucharest, Encyclopaedic Printing, 2003, p. 63.
[11] *Ibidem*, p. 65.
[12] *Ibidem*, p. 67.
[13] Alecu Russo, *Cugetări,* Bucharest, 1977, p. 134.
[14] D.V. Barnoschi, *Originile democraţiei române. "Cărvunarii". Constituţia Moldovei de la 1822*, Iaşi, 1922, p. 110-120.
[15] M. T. Oroveanu, *Istoria dreptului românesc şi evoluţia instituţiilor constituţionale*, Bucharest, Cerma Printing, 1992, p. 199.
[16] D.V. Barnoschi, *op. cit*., p. 158-161.
[17] Valeriu Şotropa, *Proiectele de constituţie, programele de reforme şi petiţiile de drepturi din Ţările Române în secolul al XVIII-lea şi prima jumătate a secolului al XIX-lea*, Bucharest, Academy Printing, 1976, p. 74
[18] *Ibidem*, p. 73.
[19] D.V. Barnoschi, *op. cit*., p. 169.
[20] *Ibidem*, p. 223.
[21] *Ibidem*, p. 221.
[22] *Ibidem*, p. 171-174.
[23] *Ibidem*.
[24] I. Şendrulescu, *Memoriul cărvunarilor*, in "Memoirs Studies and Juridical Research", 16, 1971, 3, p. 463-470.
[25] *Ibidem*.
[26] D.V. Barnoschi, *op. cit*., p. 136.
[27] *Ibidem*, p. 140.
[28] Valeriu Şotropa, *op. cit*, p. 69-71.
[29] D. V. Barnoschi, *op. cit*., p. 137.
[30] M.T. Oroveanu, *op. cit*., p. 200.
[31] *** *Istoria românilor*,…, p. 67.