UNIVERSITY OF PITESTI
FACULTY OF ECONOMIC SCIENCES AND LAW

Journal
LEGAL AND ADMINISTRATIVE STUDIES

Year XIX, No. 2 (23) – 2020

e-ISSN: 2344-6900
ISSN-L: 1583-0772

Publishing House C.H. BECK
Bucharest 2020

Journal
LEGAL AND ADMINISTRATIVE STUDIES
e-ISSN: 2344-6900
ISSN-L: 1583-0772
No.2 (23), Year XIX, 2020

Type of journal: scientific/academic
First appearance: 2002
Publication frequency: two numbers per year
Edition: English

The name of issuing institution
UNIVERSITY OF PITEŞTI
Faculty of Economic Sciences and Law
Editorial address: Avenue Republicii no. 71, Piteşti, code 110014, Argeş county
Tel/fax: +400348.453.400
E-mail: jlas@upit.ro
Web-site: www.jlas.upit.ro

Publishing House
C.H. BECK SRL
Address: Str. Serg. Nuţu, no. 2, Sector 5, Bucharest
Tel.: 021/410.08.47
Fax: 021/410.08.48
E-mail: redactie@beck.ro
Web-site: www.beck.ro

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e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (23), Year XIX, 2020, pp. 6-24

ON THE TRANSNATIONALITY OF HUMAN RIGHTS - SOME REFLECTIONS

Rainer ARNOLD[1]

Abstract:

Two decisions of the German Federal Constitutional Court (FCC) of 6 November 2019 on the so-called "right to be forgotten" in terms of the European Union data protection law, expressed by Article 17 of the EU General Data Protection Regulation (GDPR), have addressed the question of which catalogue of fundamental rights is applicable in a concrete dispute, the EU Charter of Fundamental Rights or the German Basic Law (Decision I), and whether the Federal Constitutional Court can apply not only German fundamental rights but also European fundamental rights, i.e. those of the EU catalogue of fundamental rights (Decision II).

Key words: fundamental rights; decisions; German Basic Law; EU Charter of Fundamental Rights.

1. THE IMPETUS FOR THESE REFLECTIONS: TWO DECISIONS OF THE GERMAN FEDERAL CONSTITUTIONAL COURT OF 6 NOVEMBER 2019[2].

Two decisions of the German Federal Constitutional Court (FCC) of 6 November 2019 on the so-called "right to be forgotten" in terms of the European Union data protection law, expressed by Article 17 of the EU General Data Protection Regulation (GDPR), have addressed the

[1] **Professor Ph.D. Dres.h.c., University of Regensburg (Germany), jean.monnet@gmx.de**
[2] 1 BvR 16/13 und 1 BvR 276/17

question of which catalogue of fundamental rights is applicable in a concrete dispute, the EU Charter of Fundamental Rights or the German Basic Law (Decision I), and whether the Federal Constitutional Court can apply not only German fundamental rights but also European fundamental rights, i.e. those of the EU catalogue of fundamental rights (Decision II).

These two decisions of the Federal Constitutional Court are of the utmost importance for fundamental and human rights dogmatics and also further develop national constitutional law in the sense of the principle of the efficiency of fundamental rights.[1] However, they also give cause to reflect on the relationship between the catalogues of fundamental and human rights in the various legal systems. The question arises as to the extent to which national, supranational and international (universal and regional) catalogues of such guarantees coexist autonomously, influence each other through interpretation, functionally converge or, under normative-institutional separation, develop in a closed manner, i.e. introverted into themselves, and remain in the written status quo.

First, a brief explanation of the two decisions of the German Federal Constitutional Court: Decision I concerns the EU GDPR, which has direct normative validity in the Member States, i.e. also in Germany, as secondary EU law. In the terminology of the Federal Constitutional Court, it represents "law not fully harmonized under EU law", i.e. the GDPR relevant here does not regulate all issues, but leaves some issues to be regulated by the Member States. In this specific case, it is about the so-called media privilege, which concerns the question of the extent to which the right to the protection of personal data must be reconciled with the right to freedom of expression and information, in particular also with the right to process such data for journalistic purposes - the Member States can provide for derogations or exceptions from the GDPR if this is necessary. Thus, a Member State must define this so-called media

[1] Rainer Arnold, *Substanzielle und funktionelle Effizienz des Grundrechtsschutzes im europäischen Konstitutionalismus*, in: Max-Emanuel Geis, Markus Winkler, Christian Bickenbach, Von der Kultur der Verfassung, Festschrift für Friedhelm Hufen zum 70. Geburtstag (C.H. Beck, 2015, 3 – 10).

privilege in its own law and, in doing so, weigh up the two fundamental rights of data protection and freedom of the press. Does this balancing of the national legislator have to be based on the fundamental rights of the Basic Law or the EU Charter of Fundamental Rights?

This problem becomes even clearer if the facts of the case are briefly described: the complainant (i.e. the person who filed a constitutional complaint with the FCC, specifically against the decision of the Federal Court of Justice in the last instance) was legally sentenced to life imprisonment in 1982 for murder and attempted murder (which he had committed while crossing the Atlantic on the yacht on the high seas) and was released from prison after 20 years. The report on this, which appeared in the news magazine *Der Spiegel*, was later placed in the magazine's online archive, where it can still be accessed free of charge and without access barriers at any time. The complainant invokes his right to be forgotten, while the news magazine relies on freedom of the press.

The Federal Constitutional Court upholds the constitutional complaint, since the complainant's right of personality had not been sufficiently respected by the press archive. The fact that a considerable period of time had elapsed since the judgement on account of the said offence should have been adequately taken into consideration. The "effect and subject matter of the reporting, in particular the extent to which the reports affect the private life and the development opportunities of the person as a whole" must be taken into account...".

The court is of the opinion that the Federal Court of Justice (BGH) did not take into account that on the press archive "could and should have been imposed reasonable precautions which at least offer a certain protection against the findability of the reports by search engines in name-related search queries, without unduly hindering the findability and accessibility of the report in other respects". Therefore, the FCC concluded that the ruling did not correctly assess the balancing of the

freedom of information of the press and the right of personality of the person concerned and therefore violated the constitution. [1]

The second ruling of the FCC deals with a question concerning its review competence, namely whether a constitutional complaint can be lodged not only against the violation of fundamental rights of the German Basic Law, but also against the violation of fundamental rights of the EU Charter of Fundamental Rights. The traditional interpretation limits the possibility of a constitutional complaint against legal acts of German public authority that violate the fundamental rights of the German Basic Law. The violation of fundamental rights in a non-German catalogue of fundamental rights such as the European Convention on Human Rights has not yet been admitted in established case law of the FCC itself. Now, however, the question concerns the directly effective fundamental rights of the EU Charter of Fundamental Rights.

The admissibility requirement for a constitutional complaint before the Federal Constitutional Court is, among other things, the substantiated complaint of the violation of a "fundamental right", which is traditionally understood to mean a fundamental right of the German Federal Constitution, i.e. the Basic Law. In addition, there are other constitutional rights that are not fundamental rights, but are counted among the group of constitutional rights that can be asserted with a constitutional complaint. These rights include the right to vote for the German Bundestag, Article 38 (1) of the Basic Law, furthermore the so-called judicial rights (Articles 101-104 of the Basic Law), which are considered to be equivalent to fundamental rights, and finally the right of resistance of Article 20 (4) of the Basic Law, which comprises the ultimate possibility of resisting the elimination of the democratic order as a last resort. In this context, therefore, the question arises as to whether the word "fundamental rights", as written in Article 93(1)(4a) GG and in Section 90 of the Federal Constitutional Court Act, may only be

[1] See BVerfG, Order of the First Senate of 6 November 2019 - 1 BvR 16/13 -, paras. 1-157, http://www.bverfg.de/e/rs20191106_1bvr001613en.html (English translation by the Court), paras. 143 - 153

interpreted in the traditional sense of "German fundamental rights", or whether fundamental rights guarantees from other legal systems are also covered by this term. The Federal Constitutional Court has included the fundamental rights of the EU Charter in this term in order to avoid a gap in the protection of the individual under fundamental rights that would otherwise arise. The FCC thus focuses here on the function of fundamental rights in general, namely to ensure comprehensive protection of the individual, and does not limit itself to a purely institutional-normative perspective.

The FCC thus accepts the review of judgments of German courts from the point of view of whether they have correctly applied the EU Charter of Fundamental Rights.

The court thus sees it as its competence to interpret EU fundamental rights and to review the interpretation and application by German courts.

In the case in question, the complainant's name appeared on a search engine with a link to an online archive containing a transcript of an article accusing the complainant of unfair treatment of a terminated employee. The FCC limited its review to whether the civil court whose decision it was reviewing had reasonably weighed the two fundamental rights at issue under the EU Charter of Fundamental Rights. The specialized law was not reviewed by the FCC as this concerns the interpretation and application of *ordinary* statutory law, but the FCC is only responsible for the violation of *constitutional* law (in the specific case of the EU Charter of Fundamental Rights), i.e. the violation of fundamental rights.

The FCC thus accepts the review of judgments of German courts from the perspective of whether they have correctly applied the EU Charter of Fundamental Rights. The constitutional complaint was dismissed because the FCC found the balancing of Charter fundamental rights to be justifiable.

This decision is also a step further on the way to recognizing the cross-border function and effect of fundamental and human rights, i.e. their transnationality.[1]

2. THE EU CHARTER OF FUNDAMENTAL RIGHTS AND THE FUNDAMENTAL RIGHTS OF THE BASIC LAW: THE NORMATIVE-INSTITUTIONAL SEPARATION OF THE TWO SOURCES OF LAW AND THE FUNCTIONAL TRANSNATIONALITY

The EU Charter of Fundamental Rights, as part of EU primary law, is part of an autonomous legal order that is independent from the German constitution. Although it is functionally linked to the legal order of a Member State, it is institutionally and normatively separate. The functional connection of the two normative orders becomes particularly apparent in the fact that the concepts of the EU Charter taken from national constitutional law are to be interpreted in the light of the so-called general legal principles of EU law, which can be derived from the constitutional law of the Member States.

In addition, there is a second point of view: the EU Charter of Fundamental Rights has binding effect on the one hand vis-à-vis the EU institutions and on the other hand vis-à-vis the Member States, insofar as they "implement" Union law (Art. 51 (1) of the Charter). What "implementation of Union law" means in this sense is not easy to determine. The opinion of the Court of Justice of the EU on the one hand and, as far as Germany is concerned, of the FCC on the other diverge here. The Union perspective is broader than that of the FCC. The FCC has explained its position in the decision on the anti-terrorism file[2]; it is narrower than that of the Court of Justice of the European Union. Whereas the Court of Justice in Luxembourg held that the EU Charter

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[1] BVerfG, Order of the First Senate of 6 November 2019 - 1 BvR 276/17 -, paras. 1-142,
http://www.bverfg.de/e/rs20191106_1bvr027617en.html, paras 59 et sequ.

always applies when the national rule falls within the scope of EU law (the basic decision in Akerberg Fransson[1]), the FCC held that the EU Charter only applies when the national rule is "determined" by EU law[2]. The latter is referred to in the FCC's terminology as a "fully harmonized" EU regime, a "fully unified" regime under EU law (so in the FCC's second decision of 6 November 2019). If this is the case, only the fundamental rights of the EU Charter are applicable, not those of the Basic Law.

If it is a matter of provisions of EU law that still leave regulatory content to the member states, then there is no complete unification, no (complete) determination of national law. Then the fundamental rights of the Basic Law come into play. The FCC's 1 November decision is based on a case of such national regulation that is not fully unified under EU law. It concerned the "opening clause" of the EU's GDPR, which leaves it to the member states, indeed mandates them, to regulate national rules that deviate from the General Regulation for certain special situations, such as the use of personal data by the press, the so-called media privilege. This has been done in Germany through Art. 9, 57 of the Interstate Broadcasting Treaty and through regulations in the press laws of the federal states.[3]

This is the starting point for an interesting argumentation of the FCC concerning the transnationality of fundamental human rights. The German fundamental rights apply, but functionally they "guarantee the rights of the EU Charter of Fundamental Rights as well".

If EU law, in this specific case the GDPR, does not regulate a certain issue itself but leaves the regulation to the member states, then, according to the FCC's view, "a diversity of fundamental rights is permitted" by EU law. In other words, this means that in addition to the fundamental rights of the EU (which apply to the GDPR as EU primary

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[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62010CJ0617&from=DE

[2] BVerfG, Judgment of the First Senate of 24 April 2013 - 1 BvR 1215/07 -, paras. 1-233, http://www.bverfg.de/e/rs20130424_1bvr121507en.html, paras 88, 91.

[3] See https://www.szv.de/das-medienprivileg-in-zeiten-der-dsgvo/

law), the fundamental rights of the German Basic Law, i.e. the legal system that makes the regulations left to the Member States, also apply.

Looking at this statement, one can see that the normative-institutional protection is narrower, more limited: it is limited to the German Basic Law, but the functional protection is broader, as it encompasses the level of protection of both the Basic Law and the EU Charter of Fundamental Rights. This is expressed in the fact that, as the FCC puts it, national fundamental rights also "co-guarantee" supranational fundamental rights as to the level of protection. We thus see a transnational effect of fundamental and human rights. According to the FCC, this goes so far that rights which are not guaranteed in national fundamental rights protection, but which exist within the framework of the EU Charter, are applied in such a case with direct reference to the EU Charter.

Basically, we can thus speak of a double or parallel fundamental rights protection of the national constitution of the Member State and the EU Charter. However, this only applies, it should be emphasized once again, insofar as it is a matter of a national regulation that is embedded in EU law, which, however, leaves the regulation to national law. Accordingly, this is a combined regulation with a supranational and a national part. If, on the other hand, the regulation is purely national, only the Basic Law with its fundamental rights is applicable; accordingly, a comprehensive EU regulation without such an opening to national law is only to be measured against the EU Charter of Fundamental Rights.

A further functional interweaving of the two levels of fundamental and human rights can be seen in the fact that national fundamental rights are also to be interpreted in the light of the EU Charter, while on the EU side the rights of the Charter, insofar as they were inspired by the constitutions of the Member States, are also to be interpreted in the light of these constitutions, concretized in the form of common constitutional traditions expressed through the jurisprudence of the constitutional courts. This is expressly stipulated in Art. 52(4) of the EU Charter, while the interpretation of national fundamental rights oriented towards the EU Charter is a maxim developed by case law.

In this context, it should be mentioned that a functional intertwining of fundamental rights protection between national constitutional law and the European Convention on Human Rights (ECHR) is already part of German constitutional jurisprudence, which has been consolidated since the FCC's *Görgülü* decision in 2004[1]. This is also part of the constitutional law of other European states, partly laid down in their constitutions, such as in Article 10(2) of the Spanish Constitution, but partly developed through case law. In this respect, one can speak of a general European principle of orientation of national fundamental rights protection towards the ECHR.

The relationship of EU law to the European Convention on Human Rights is of decisive importance for the functional convergence of fundamental and human rights protection in Europe. This is also stated by the FCC.

It should be recalled that the EU has not formally acceded to the ECHR. Nevertheless, the ECHR is of crucial importance for the interpretation of EU law, even beyond the interpretation clause of Article 52(3) of the Charter of Fundamental Rights. This provision states, in accordance with what has been said on the interpretation of the EU Charter in the light of the common traditions of the Member States, that those provisions of the Charter which have been taken over from the ECHR are also to be interpreted in the light of the ECHR. Nevertheless, the above-mentioned tendency related to the orientation towards the ECHR also applies in the area of interpretation of EU law in general.

Even at the beginning of the existence of the European Communities, when the case law of the ECJ began to develop general legal principles of European Community law, this was done on the basis of the Member State constitutions and also the international treaties that were binding on the European Communities. The ECHR has thus assumed a prominent position. In the field of supranational law, too, it

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[1] BVerfG, Order of the Second Senate of 14 October 2004 - 2 BvR 1481/04 -, paras. 1-72, http://www.bverfg.de/e/rs20041014_2bvr148104en.htm (English translation by the Court).

has become the central document for the protection of fundamental and human rights. When the European Union (the forerunner of today's European Union, which has existed since 2009), established in 1993, set out to create written protection of fundamental rights, it did so in various stages. The first stage was in 1993, when Article 6 of the then Treaty on European Union explicitly included the obligation to respect the principles of the ECHR as well as the general legal principles of Community law. At that time, no written catalogue of fundamental rights was introduced into the text of the treaty, but only the obligation to make the content of the ECHR the standard of one's own legal order. This does not constitute a formal accession to the ECHR, but only a functional link. The EU's obligation to be guided by this was continued by Article 6 of the Treaty on European Union in 2009 [1]and specified to the effect that the fundamental rights deriving from the ECHR and the general traditions of the Member States are as such part of the EU legal order, namely as "general principles" of EU law. Here, too, we can see a functional link between the contents of two different legal orders, the EU and the ECHR. The EU's accession to the ECHR, made obligatory in Art. 6(2) of the EU Treaty, ultimately failed due to the rejection of accession by the opinion of the European Court of Justice.[2]

In this context, the FCC pointed out in its November I decision on the right to be forgotten that both the Basic Law and the EU Charter of Fundamental Rights belong to a "common European tradition of fundamental rights" and that this gives rise to the "presumption of an overarching connection".[3] This is particularly evident from the fact that the various fundamental rights systems in the constitutions of the EU member states have their common foundation in the ECHR, on which the Treaty of the EU and its Charter of Fundamental Rights are themselves based. [4]There are, the FCC rightly states, "interactions between the

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[1] See Art. 6. 3 Treaty EU

[2] http://curia.europa.eu/juris/document/document.jsf?docid=160882&doclang=DE

[3] BVerfG, Order of the First Senate of 6 November 2019 - 1 BvR 16/13 -, paras. 1-157, http://www.bverfg.de/e/rs20191106_1bvr001613en.html para 56.

[4] BVerfG, Order of the First Senate of 6 November 2019 - 1 BvR 16/13 -, paras. 1-157, http://www.bverfg.de/e/rs20191106_1bvr001613en.html para 57.

Charter, the Convention and the constitutions of the Member States as the basis of a protection of fundamental rights that is open to diversity but nevertheless underpinned by a common ground".

These findings lead to another statement by the FCC that is relevant to the functional interconnectedness of national, supranational and international human and fundamental rights protection:

"According to the principles of the Basic Law's friendliness towards international and European law, as they result from the preamble as well as from Art. 1 para. 2, Art. 23 para. 1, Art. 24, Art. 25, Art. 26, Art. 59 para. 2 of the Basic Law, the Basic Law places the interpretation of fundamental rights and the further development of fundamental rights protection in the development of international human rights protection and, in particular, in the European tradition of fundamental rights." [1]

This statement makes it clear that the national protection of fundamental rights cannot be viewed in isolation, but is embedded in the development of international human rights protection, that the fundamental rights laid down in existing constitutional law are to be interpreted in the light of this international protection, and that the content of fundamental rights also evolves along with the development of international human rights protection.

This is an important statement on the protection of fundamental rights in Germany, but also more generally on national protection of fundamental rights in its relationship to the extra-state catalogue of human rights, i.e. to the documents of regional human rights protection in the European, inter-American and African spheres, as well as to the instruments of universal human rights protection. In this context, the FCC refers to the principle of "open statehood", called by the FCC in accordance with earlier case law the "international and European law friendliness of the Basic Law", based on the Preamble of the Basic Law, the important provision of Article 1 (2) GG , in which the "commitment"

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[4] BVerfG, Order of the First Senate of 6 November 2019 - 1 BvR 16/13 -, paras. 1-157, http://www.bverfg.de/e/rs20191106_1bvr001613en.html para 59.

[1] BVerfG, Order of the First Senate of 6 November 2019 - 1 BvR 16/13 -, paras. 1-157, http://www.bverfg.de/e/rs20191106_1bvr001613en.html para 61

to the "inviolable and inalienable human rights as the basis of every human community, peace and justice in the world" is enshrined, furthermore to the integration norms of the Basic Law (Art. 23 and 24 GG) as the foundations of supranational communities and to the international law norms of the Basic Law (Art. 25 GG concerning the general rules of international law, which as such are a direct component of German federal law, and Art. 59 GG, whose para. 2 provides for the transformation of international treaties into German law). These Basic Law norms on European integration and international law, on the one hand, give permissions (for example, to transfer sovereign rights to supranational communities), on the other hand, partly contain safeguards for the core existence and core concepts of the Basic Law against ever-advancing integration (on Art. 23 (1) GG with reference to the European Union) and are also provisions indicating the legal consequences of opening up the state (direct adoption of the general rules of international law into the internal legal order, such as Art. 25 GG, or transformation of international treaties into German law, on Art. 59 (2) GG). However, these norms also mandate state organs to observe EU law and international law, to take adequate account of it when interpreting internal law, and not to do or refrain from doing anything in the domestic sphere that would be contrary to European or international law.

Let us return for a moment to Article 1(2) of the Basic Law: this paragraph must be considered together with paragraph 1, the guarantee of human dignity as the central value of the constitution and the legal order. It is about human rights as an expression of human dignity as a universal value inherent in human beings and recognized by law. Therefore, it does not primarily matter in which legal order this recognition of human rights takes place. They are to be respected, regardless of the institutional boundaries of a legal order, as universal values. From this follows a functional connection of the human rights protection of all legal orders.

3. GENERAL STATEMENTS ON THE ESSENCE OF HUMAN AND FUNDAMENTAL RIGHTS PROTECTION: THE ANTHROPOLOGICAL AXIOM AND THE ANTHROPOCENTRIC BASIC SCHEME OF PUBLIC POWER AND INDIVIDUAL

In continuation of the statements of the jurisprudence of the German Federal Constitutional Court, some general statements on the protection of human rights can be made:

(1) The anthropological axiom is the inherent dignity of the human being, which must be recognized by the legal system; it exists even without being explicitly provided for in the written text. Part of the dignity of the human being is his or her freedom in principle, which may be restricted in the interest of the freedom of others, but only to the extent that this is absolutely necessary and reasonable, i.e. in accordance with the criterion of proportionality. Democracy is political freedom and self-determination and thus an essential element of the principle of freedom and an indispensable requirement of human dignity. These values, which are intrinsically linked to the human being, imply equality, since every human being is a bearer of these values. The rule of law basically means orientation towards these values by the institutions of the state, or generally speaking, of a social institution that is able to exercise public authority over the individual. The rule of law is thus the institutionalization of basic anthropological values.

This anthropologically founded *anthropocentric* basic scheme of any social organization that is capable of restricting human freedom has *general* validity, independent of national specification in a particular legal system. It appears with great clarity in the State as a traditional form of organization, but exists in the same way in supranational communities which, like the State, shape politics, i.e. (co-)shape the life of the individual, and also have a normative function of regulating and restricting the freedom of the individual.

A legal order must not only correspond to this basic scheme of the relationship between public power and the individual in its structure,

but also efficiently shape it and secure it. This safeguarding task is on the one hand an internal task of each legal order itself, but also an external task of the overarching community. Thus, the legal order of the European Union safeguards its own structure in this sense on the one hand, but also those of the Member States on the other, as Article 2 of the EU Treaty clearly shows. The ECHR, as a regional safeguard of human rights and democracy, performs this safeguarding task for the Member States of the Council of Europe, similarly the Inter-American Convention on Human Rights for the Latin American members of this organization, and also the African Charter on Human and Peoples' Rights for its area. The international community of States assumes this safeguarding task universally, even if not with the same intensity of safeguarding as in the State that is the most integrated form of organization.

However, it should also be emphasized that the non-governmental organizations and treaty systems must also realize this basic scheme of which we are speaking, insofar as it has an influence on the shaping of people's lives and on freedom, whether directly through these non-governmental organizational units or indirectly through influencing the States as organizations directly concerned with people.

These observations show that for State, supranational and international law, the compelling consequence of the anthropological fact of human existence is the recognition of human dignity and freedom in equality. These anthropological basic values are part of every legal order, whether this is written in the normative text or not.

This is also connected with the statement that this basic relationship between public power and the individual applies universally, i.e. globally, and is a necessary component of every constitution or basic order of a social organization in the above sense.

This is not contradicted by the fact that political reality does not always correspond; but it is a legal reality, even if, regrettably, it not infrequently does not correspond to political reality. Moreover, another aspect should also be mentioned. The universal validity of human dignity and freedom in their essential aspects is not dependent on culture and does not vary from region to region. Their basic statements have their origin in the human being and therefore have equal validity.

Nevertheless, it is necessary to distinguish between anthropological and also legal existence on the one hand and cognition and recognition of this existence on the other. Recognition takes place through concrete law, which is formulated in normative documents and in the interpretation by the courts. The cognition and recognition of these values through concrete law may have been deficient for a long time in a historical perspective and they are also quite different in the individual legal systems. However, it seems necessary to distinguish between existence of law and the (possibly divergent) cognition of law. Therefore, the consideration of other legal systems is not exclusively an analysis of the anthropological basic scheme of the legal system, but rather comparative law, i.e. finding and evaluating the differences in legal cognition.

The anthropocentric basic approach, which has just been presented, is quite generally valid, therefore also transnational, i.e. universal. Legal cognition i.e. the understanding of law and the interpretation of existing legal norms, is the responsibility of the institutions called upon to do so, especially the courts, among them of high importance the constitutional courts or also the supreme courts of a country, which functionally exercise constitutional jurisdiction. Their legal insight with regard to concrete law should correspond to the existent legal situation, which is based on the anthropological axiom of human dignity and freedom. If the basic scheme of the relationship between public power and the individual is understood in the right way and used as a basis for the judicial judgement, it is recognized by this. Details can diverge as long as they are compatible with the basic schema.

If we apply these findings to the November I case decided by the FCC, the following can be said: both the German Basic Law and the Charter of Fundamental Rights as the functional constitution of the European Union take this anthropological axiom into account and correspond to the basic scheme mentioned above. For German law, the ECHR has a safeguarding function in favor of the concepts of the Convention. For the EU, which is not formally a member of the ECHR, the Convention has an inspirational function. The connection between the

ECHR, the national constitution and the EU Charter of Fundamental Rights, as emphasized by the FCC as a commonality of fundamental rights culture, has a unifying effect, but the parallelism of fundamental rights protection by the German Basic Law and by the EU Charter can ultimately be explained by the concept of the generally applicable anthropocentric basic schema.

Nevertheless, the interconnectedness of the three documents has significance for a common understanding of the details that shape the basic scheme. We can thus state: institutional separation between the different legal systems, but functional connectedness, transnationality, which should be expressed especially in the interpretation of the relevant provisions in the individual legal systems. This is ultimately also the reason why constitutional jurisprudence transnationalizes the interpretation of its own norms. This interpretative adaptation process across institutional borders is legitimized by the universality of the basic anthropocentric scheme.

(2) A few more consequences of this basic assumption should be briefly mentioned here. Fundamental and human rights are to be interpreted in an evolutionary and dynamic manner at national, supranational and international level. The importance of human beings means that their protection is also accorded constitutional significance, at least functionally.

Since a constitutional order, which is fundamentally designed for an indefinite period of time, continues to develop, "lives", the most important part of the constitution, the fundamental and human rights, also change. The interpretation must adapt accordingly.

Another important consideration is the normative efficiency of fundamental and human rights; by their very nature, they require comprehensive effectiveness. Substantive and functional efficiency is a characteristic of this field[1], which can be observed at all three levels. The content of protection must be comprehensive; it is based on the principle of freedom, which always aims to protect people efficiently from dangers

[1] See note 2.

to their freedom, whether they exist at present or will only develop in the future. The interpretation must also aim at the broadest possible protection. Functional safeguarding means that a restriction may only be made by law, not by mere executive action, and only if the restriction is imperative for the protection of legitimate goods. Never may the essence of the right be removed.

It is also part of the efficiency of fundamental protection that these rights also represent objective values, ideal structural principles of the entire legal order. This implies that they are not only understood as subjective defensive rights, but also impose on the organizational units of the State or supranational community the obligation to actively protect the values underlying fundamental and human rights. This applies on the one hand vertically, vis-à-vis the State or the supranational organization EU, but also vis-à-vis other private individuals. Protection is not only achieved by the holder of public authority refraining from unlegitimized interference, but also by taking the necessary steps to ensure protection by means of laws, etc. This so-called duty to protect exists at all three levels. This is already recognized in State constitutional law and, for general considerations, also has to apply in the supranational sphere and, beyond that, in regional and even universal human rights spheres.

CONCLUSIONS

It should be noted that the functional efficiency of fundamental and human rights protection has also expanded the scope of application of fundamental rights, so that these, in national law, must also be observed in private law relationships, often in an indirect manner, i.e. by interpreting private law norms in the light of these rights. In international law, at least in the area of universal human rights protection, this has not yet been clearly developed. However, from the general basic idea of the efficiency of human rights protection, national private law norms must also be interpreted in the light of international law protection instruments, even if private individuals do not have international law subjectivity. In addition, the States, which are themselves subjects of international law, are subject to the obligation under international law, which is probably

also at least implicitly secured by national constitutional law, to adapt the laws that are relevant for transnational civil law actions to the obligations under international law.

Overall, it can be said that the concepts of fundamental and human rights protection are not nationally limited, but are transnational and even universal in nature due to their anthropocentric foundation.

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e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (23), Year XIX, 2020, pp. 25-40

THE THOUGHT OF NATIONAL SOLIDARITY IN THE VIETNAMESE CONSTITUTION

Thu Trang THAI T.[1]
Mai Thuyen NGUYEN[2]

Abstract:

The Constitution is the basic law of a country, the content of the constitution provides for important national political issues, basic human rights, organization and operation of the state apparatus… Besides, the constitution also helps us to see thoughts bearing the identity of each nation. When researching on the Vietnamese constitution, we can see that the national unity ideology is an outstanding and unique factor which is shown in many different aspects in the content of the Constitution.

This article will focus on analyzing the idea of national solidarity reflected through the provisions of the Vietnamese Constitution; including Constitution 1946, Constitution 1959; Constitution1992 and Constitution 2013 to see the formation and development of national solidarity in the history of the Vietnamese constitution. The article will also focus on analyzing the idea of national unity in the following angles: national solodarity in determining the origin of state power; national solidarity in the policy towards all ethnic groups in the territory of Vietnam; national solidarity through the role of the Fatherland Front organization; national solidarity through some basic human rights of citizens.

Afterall, through the analysis and commentary on the thought of national solidarity reflected in the Vietnamese constitutions, the article wants to point out the values and significance of recognizing the thought of national solidarity in the Constitution for Vietnamese state and society.

[1] **Lecturer at Hanoi Law University; Hanoi (R.S Vietnam), thaithithutrang.dhl@gmail.com**
[2] **Lecturer at Hanoi Law University; Hanoi (R.S Vietnam), nguyenmaithuyen.lhp@gmail.com**

Key words: *National solidarity; Vietnamese Constitution; Fatherland Front Organization; Human Right.*

INTRODUCTION

National solidarity can be considered as one of the highlights when talking about the country and people of Vietnam.This has been proved through the historical practice of fighting against foreign invaders, the idea of national unity has linked the Vietnamese people to form great strength to gain independence and freedom for the country. National solidarity is not only revealed through the process of national liberation struggle from colonial yoke but that thought continues to be preserved and promoted even in the present time. It is the consensus and synergies between the state and the people that have helped Vietnam overcome difficulties from natural disasters and epidemics. For example, in the recent anti-Covid process, Vietnam has made many countries around the world express their admiration.

National solidarity is a prominent feature in Vietnam that stems from the following reasons:

Firstly, the solidarity of Vietnamese people is nurtured from the educational tradition of national roots. In Vietnam, from thousands years ago, the legend of Great Father Lac Long Quan and Great Mother Au Co laid a sac of one hundred eggs, from which hatched one hundred humans is the explanation of the common origin and bloodline of the Vietnamese people which has been passed down through generations. It is the concept of the same source that has formed the sense of promoting supporting and protecting each other like brothers and sisters of Vietnamese, especially in hardship and tribulation. Vietnamese proverbs have sentences to reflect this such as: “La lanh dum la rach” - The leaves protect tattered ones; “Bau oi thuong lay bi cung, tuy rang khac giong nhung chung mot gian” - People living next to you(in the same country and/or family) may be different to you, but love them since you are on the same boat; “Mot cay lam chang nen non, ba cay chum lai nen hon nui cao” - "Together we can change the world";….

The “Death Anniversary of the Hung Kings” celebrated every year (March 10th of Lunar calendar) is considered as a typical example of this feature. A Vietnamese proverb has a saying “Wherever you go, do not forget to ancestors worshipping day on 10th March” This is an opportunity for Vietnamese people from all parts of the country or even living in foreign countries towards the ancestral land to offer incense to commemorate The Hung Kings who had put a foundation fỏ the nation’s cultural, historical and patriotic tradition, expressing the deep national consciousness. It can be said that ethnic basic education communication has become a basic factor into the sense of national solidarity of the Vietnamese people.

Secondly, national solidarity is formed and developed from the practical needs of the country of Vietnam. Vietnamese history is recorded with the national heroic imprints. After thousands of years of Northern colonial period and then against the French and the US invasion, it has shown that the desire for independence and freedom has made Vietnamese people closely bonded that created the power to resist foreign invaders. During the Ho Chi Minh era, , national unity became a way to build and develop revolutionary forces, form great physical and mental strength to successfully carry out the national liberation revolution. Ho Chi Minh used to have a slogan: “Solidarity, solidarity, great unity. Success, success, great success"; "Rivers may dry, mountains may wear out, but our solidarity never diminishes"[1].

Thus, national solidarity has been formed from the cultural traditions and struggle practice of the Vietnamese nation and for that reason, the idea of national solidarity has always been an indispensable element in the Vietnamese constitution. Each Vietnamese constitution exudes the spirit of national solidarity in terms of exercising state power and human rights.

[1] Ho Chi Minh whole (National Politics, 2011, Volume 4), 294-250.

1. NATIONAL SOLIDARITY IS DEMONSTRATED THROUGH THE REGULATION CONFIRMING THAT STATE POWER BELONGS TO THE PEOPLE AND DETERMINING NATIONAL SOVEREIGNTY.

For Vietnam, asserting state power belongs to the people not only reflects the state's democracy but also shows solidarity between different components and classes in society. According to Ho Chi Minh's opinion, “Great unity means first of all to unite the great majority of people ... That is the foundation of great solidarity… ”[1]. Therefore, the 1946 Constitution, in Article 1, affirms: “All authority in the country belongs to the entire people of Vietnam, regardless of race, female or male, rich or poor, class, religion". The assertion of state power belongs to the entire people without major distinctions is an important commitment of the government in ensuring the interests of the people, regardless of whether they come from any class or group. It promotes cohesion between different strata of society, together defending the achievements of the revolution, defending the government is still very young. It can be said that the democratic character in the 1946 Constitution is shown in the most complete and comprehensive manner compared with the later Vietnamese Constitutions. Walking through the stage of socialism building, to meet the goal of building a country in the socialist orientation, besides asserting state power belongs to the people, The Vietnamese Constitution also emphasizes the role of the closely bond between classes, the socially fundamental class: the working class, the peasant class and the contingent of intellectuals, for example, the 2013 Constitution stipulates: "All state power belongs to the people whose basis is the working-class alliance with the peasant class and the intellectuals" (Article 2, Clause 2). The affirmation of the source of power belongs to the people at the same time reflects the ideology of great solidarity for the entire people, is the content that is always focused by the Vietnamese Constitution, recognized in the first things, as a basis for building other contents in the Constitution.

[1] Ho Chi Minh whole (Volume 9), 244.

Besides asserting that the source of state power belongs to the people, the great unity of the entire people is also reflected in the regulations on national sovereignty. Historical circumstances of Vietnam have some times when the country was divided and territorial imperfect. However, awareness of attachment cannot be separated from all regions of the country has always been the goal of the Vietnamese revolution. Ho Chi Minh once affirmed: "France has Normandy, Provencal ... No one can divide the country, one family, no one can divide France, this is why no one can divide Vietnam". In Ho Chi Minh's Thought, independence and freedom cannot be separated from the unification of the country, immaturity[1]. As the basic law of a country, The Vietnamese Constitution clearly shows national sovereignty in relations with countries in the world, concretely: The 1946 Constitution provides in Article 2: "The country of Vietnam is a unified bloc, The Central, The South and The North can not be divided" or Article 1 of the 1959 Constitution: "The country of Vietnam is an indivisible North-South unified bloc". These regulations represent the determination to unify the country, show the inseparable attachment of parts of the national territory. Once again, it is the spirit of national solidarity that has become the driving force for Vietnam to defend its national sovereignty, successfully performed the work of unifying the country, not allowing any part of the national territory to be invaded or colonized.

Consiquencely, the national unity ideology in the Vietnamese Constitution is expressed firstly, associated with people's sovereignty, national sovereignty. In this respect, national solidarity is both the source and the driving force for the State of Vietnam to assert state power belongs to the people and to assert the national sovereignty as an independent, unified and territorial integrity in the Constitution.

[1] https://baoquocte.vn/ho-chi-minh-voi-tu-tuong-doc-lap-dan-toc-thong-nhat-to-quoc-70177. html accessed 11/11/2020.

2. NATIONAL SOLIDARITY IS SHOWN THROUGH THE REGULATIONS ON ETHNIC GROUPS IN THE VIETNAMESE TERRITORY

When discussing the thought of great national solidarity in Vietnam, it is impossible not to mention the aspect of solidarity among other ethnic groups living in the Vietnamese territory. The solidarity between the ethnic groups has always been concerned, preserved and developed by the Communist Party and State of Vietnam. Vietnam is a country of many different ethnic groups, according to the statistics of studies in Vietnam, the number of ethnic groups in the Vietnamese territory is up to 54 ethnic groups[1] with different scales and allocations, ethnic groups living from Lung Cu cot (in the North) to Rach Tau hamlet (South), from Truong Son peak (West) to Truong Sa archipelago (East). Vietnam is a country with a diverse culture, which comes from the diversity of ethnic groups living on the national territory. In terms of national defense and the solidarity between ethnic groups in the same territory is a very important factor. Reality has shown, if ethnic groups do not have solidarity, especially ethnic minorities with many difficulties in socio-economic life then many reactionary forces will take advantage of, cause divisions, lead to riots, and cause political instability. Therefore, the principle of solidarity among ethnic groups is an inherited and developed content in the Vietnamese Constitution. Since the 1959 Constitution, Vietnam always has a provision in its Constitution to prescribe principles to establish relations between different ethnic groups in the territory of Vietnam, specifically: Article 3 of the 1959 Constitution states: "The Democratic Republic of Vietnam is a unified country of many ethnic groups. All ethnic groups living in Vietnam are equal in rights and obligations. The State has the duty to preserve the solidarity between the peoples. All acts of contempt, oppression, and division of the nation are strictly prohibited. The ethnic groups have the

[1] http://chinhphu.vn/portal/page/portal/chinhphu/NuocCHXHCNVietNam/ThongTinTongHop/dantoc accessed 13/11/2020.

right to maintain and modify common practices, using their own language, developing their ethnic culture ... The State strives to help ethnic minorities to quickly catch up with the general economic and cultural level"; Article 5 of the 1980 Constitution, instead of the State regulation "preserving national unity, emphasized more fully and specifically the role of the state to "protect and strengthen the national unity bloc", at the same time "all acts of disdain and division of the nation are strictly forbidden". After that, Article 5 of the 1992 Constitution completed one more step on regulations on policies for ethnic groups:"The State implements a policy of equality, solidarity and mutual assistance between the ethnic groups"; "The State implements a development policy in all aspects, step by step improving the material and spiritual life of the ethnic minorities". With inheritance and consolidation of content demonstrating the policy of national unity among ethnic groups in the Vietnamese territory of the previous Constitution, Article 5 of the 2013 Constitution states: "1. The Socialist Republic of Vietnam is a unified nation of all ethnicities living together in the country of Vietnam. 2. All ethnic groups are equal, unite, respect and help each other develop; all acts of ethnic discrimination and division are strictly forbidden. 3. The national language is Vietnamese. Every ethnic group has the right to use their own language and script to preserve their national identity, promote good customs, practices, traditions and culture. 4. The State implements a policy of comprehensive development and facilitates the ethnic minorities to promote their internal strengths, develop along with the country". Thus, through the constitutional documents, the policy contents for ethnic minorities are increasingly completed, increase the cohesion of the relationship between ethnic groups in Vietnam. Moreover, the above provisions also show that, The State determines its important role in preserving and promoting the solidarity between peoples. The legal reality of the organization and operation of the Vietnamese state apparatus also reflects this, specifically, all important state agencies in the state apparatus have a design with a department specialized in ethnic issues. For example: In the National Assembly's structure, besides the Committees, there is also the Ethnic Council to advise the National

Assembly on issues related to ethnicity[1] , or in the Government's structure, there is the Committee for Ethnic Affairs, which has the function of State management over ethnic affairs nationwide[2] , or the structure of the People's Councils in the province, in some places at the district level there may be an ethnic minority committee... These specialized agencies on ethnic issues contribute to ensuring that state agencies perform better research, development and implementation of ethnic policies in practice.

The Constitution also shows this through a number of basic rights reserved for citizens. Article 42 of the 2013 Constitution states: "Citizens have the right to determine their ethnicity, use their native language, and choose their language of communication". This provision ensures equality for citizens of different ethnic groups in preserving the national cultural identity. The State of Vietnam has determined that ensuring equal development between the ethnic groups is a condition for increasing solidarity among the ethnic groups.

3. NATIONAL SOLIDARITY IS SHOWN THROUGH THE POLICY TOWARDS OVERSEAS VIETNAMESE

Advocacy work for overseas Vietnamese has been formed since the early days of the revolution and it has always associated with key tasks in the period of national construction and defense. Since the country's innovation in 1986, the advocacy work of overseas Vietnamese has been associated with the task of promoting the strength of the entire nation, serving for the cause of building and defending the country for the purpose of wealthy people, strong country, a fair society, democracy and civilization[3] .

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[1] Article 75 of the 2013 Constitution

[2] Article 1 of Decree No. 13/2017 ND-CP of the Government regulating the functions, tasks, powers and organizational structure of the Committee for Ethnic Minorities

[3] http://daidoanket.vn/cong-tac-kieu-bao-doan-ket-gan-bo-ba-con-voi-dat-me-62672.html accessed 16/11/2020.

From a constitutional perspective, policies for overseas Vietnamese are specified for the first time in Article 75 of the 1992 Constitution: “The State protects the legitimate rights and interests of overseas Vietnamese. The State creates conditions for overseas Vietnamese to keep close relations with their families and their homeland, contribute to building homeland and country”. This provision is a solid legal basis to ensure the interests of overseas Vietnamese, to motivate overseas Vietnamese to look to their homeland, to consolidate the solidarity between the Vietnamese in the country and the Vietnamese living abroad. On that basis, Constitution 2013 inherited and further developed another step, the policy of solidarity between overseas Vietnamese and domestic people. Instead of putting Vietnamese rights content at the end of provisions on basic rights such as the 1992 Constitution, The 2013 Constitution put this content ahead of the provisions that prescribe basic rights and see it as a constitutional principle expressing Vietnam's policy towards overseas Vietnamese: "1. Overseas Vietnamese are an inseparable part of the Vietnamese ethnic community. 2. The State of the Socialist Republic of Vietnam encourages and creates conditions for overseas Vietnamese to preserve and promote the cultural identity of the Vietnamese nation, keep close relationships with family, homeland, contribute to building the homeland and the country” (Article 18 of the 2013 Constitution). According to the 2013 Constitution, The Vietnamese State defines Vietnamese as an inseparable part of the Vietnamese ethnic community. This is a affirmation that clearly shows attachment and solidarity between foreign expats and the Vietnamese people. This content of the 2013 Constitution comes from the line of the Communist Party shown in Resolution No. 36-NQ / TW dated March 26, 2004, which pointed out the role of overseas Vietnamese in the national unity bloc when asserting: “Overseas Vietnamese are an inseparable part and a resource of the Vietnamese ethnic community, is an important factor contributing to strengthening the cooperation and friendship between our country and other countries”. The resolution also points to the source of solidarity: “The basis of solidarity is national consciousness and patriotism, national pride and common goal of all Vietnamese people: maintain the national independence, unification of

the country, make the people rich, the country is strong, the society is just, democratic and civilized ” and the scope is not only limited to the national territory but the national solidarity spreads to the Vietnamese community in all parts of the world: “All Vietnamese people, regardless of their ethnicity, religion, origin, social status, reasons for going abroad, desires to contribute to the implementation of the above goal is gathered in the great block of national unity”.

4. NATIONAL SOLIDARITY IS SHOWN IN THE ORGANIZATION VIETNAM FATHERLAND FRONT

With the establishment of the Fatherland Front is a specific feature of the policy of promoting the strength of great national solidarity in Vietnam. The Vietnam Fatherland Front, is an umbrella group of mass movements in Vietnam aligned with the Communist Party of Vietnam, was established on November 18, 1930. Through historical periods, Vietnam Fatherland Front has many different names, associated with the history of glorious struggle of the Vietnamese people. During the struggle for national independence and national liberation, The Front is the gathering place for patriotic forces to fight for independence and take power to the working people. In the current country-building period, The Vietnam Fatherland Front continues to promote its role of gathering and promoting the strength of the bloc of great national unity, making a positive contribution to the country's socio-economic development.

There are no regulations on the Vietnam Fatherland Front in the 1946 and 1959 Constitution. Since the 1980 Constitution, The Vietnam Fatherland Front has been defined in the Constitution as the basic law of the country. However, until the 2013 Constitution, positions, roles and duties of the Vietnam Fatherland Front have only been specified, fully and accurately. Regarding the position and nature of the Vietnam Fatherland Front in the political system, The Constitution noted: "The Vietnam Fatherland Front is a political union organization, voluntary union of political organizations, socio-political organizations, social organization and typical individuals of all classes, ethnicity, religion, Vietnamese people residing overseas - is the political basis of the

people's government". If the new 1980 Constitution defined the Vietnam Fatherland Front as "the strong support of the State", The 1992 Constitution considered the Vietnam Fatherland Front and its member organizations the "political basis of the people's administration" then the 2013 Constitution identifies only the Vietnam Fatherland Front (with its members)) is the political basis of the people's government. Specifically, the 2013 Constitution stipulates: "The Vietnam Fatherland Front is a political union organization, voluntary union of political organizations, socio-political organizations, social organizations and typical individuals of all classes, ethnicity, religion, overseas Vietnamese"- is "the political basis of the people's administration" (Article 9).

The 2013 Constitution continued to strongly affirm the basic tasks of the Fatherland Front has been mentioned in the previous constitutions: gather and promote great national solidarity, implement democracy, strengthen social consensus; carry out people's external activities to contribute to building and defending the country. At the same time, the Constitution also highlighted more clearly the role of the Vietnam Fatherland Front in the current period that is: representing, protecting the legal and legitimate rights and interests of the People, monitoring and criticizing the society; participating in building the Party and State.

From the regulation of the constitutions, it can be seen that existence and role of Vietnam Fatherland Front is a hallmark of the ideology of national solidarity in Vietnam. National solidarity is firstly reflected in the composition of the Vietnam Fatherland Front with the following characteristics:

Firstly, the Vietnam Fatherland Front is a political coalition organization, the most extensive voluntary union of organizations and individuals typical of all classes, ethnic groups, religions and overseas Vietnamese. Their similarities are national interests, precious traditions, cultural identity, patriotism and national spirit. Organizations and individuals voluntarily join and become members of the Vietnam Fatherland Front all have equal positions in coordination, unified action and organizational independence. The Vietnam Fatherland Front is the organization with the most extensive social base compared to other organizations in the political system. Because of this feature, the Front

has the conditions to assemble, mobilized many strata of the people, expanded the block of great national unity, forming great strength in the cause of national construction and defense, participate in building people's government.

Secondly, the basic characteristics in the mode of operation of the Vietnam Fatherland Front are mobilization, education, persuasion, coordination and unifying actions. It is the way, the method of proceeding the work to match the roles, functions and duties of the Vietnam Fatherland Front. This is the fundamental advantage of the Vietnam Fatherland Front in mobilizing all strata of the people to exercise their right to master and strictly enforce the Constitution and law, supervise activities of state agencies, elected deputies, and ministries and state employees.

Thirdly, the Vietnam Fatherland Front represents the people to perform the function of social supervision and criticism. Supervising and reviewing the formulation and implementation of the policy, the Party's lines, the State's policies and laws is a very basic function, is a very important mission of the Vietnam Fatherland Front, deeply reflects the nature of socialist democracy. Unlike the oversight functions of elected bodies, the Front's supervision is not about power, but is social and people-oriented. The Front promotes the People's mastery, mobilize people to supervise and participate in monitoring with the mechanism of "follow up, discover and propose". Along with that, social criticism is a form of promoting socialist democracy, upholding the People's ownership and sense of responsibility in contributing ideas to draft guidelines, policies, major decisions of the Party and draft legal documents of the state, a number of major and important projects and projects.

Thus, the establishment and development of the Vietnam Fatherland Front is an objective indispensable element of Vietnamese history. The Front is a suitable, unique organization that takes the role of gathering, promoting the strength of national solidarity, is the place reflecting the most aspirations, interests and ownership of the People, is the bridge between the People and the Party and the State. The provision of the Fatherland Front in the Constitution is a profound expression of

the thought of great national solidarity in Vietnam, especially in current conditions, when the State and society of Vietnam move towards the common goal, is preserving the national independence, building and defending the homeland, successfully implementing the industrialization and modernization of the country, build a strong, wealthy, democratic, fair and civilized country.

5. THE MEANING OF RECOGNIZING THE THOUGHT OF NATIONAL UNITY IN THE CONSTITUTION

National solidarity is a profound human value of the Vietnamese people, has become the great power of the people to overcome all enemy natural disasters, made the country endure, national identity is maintained. Formed from the patriotic tradition of the Vietnamese nation, through the history of the struggle to build and defend the country, that human value becomes more and more beautiful, sparkling as recognized in the Constitution - the basic law of the country of Vietnam. The Constitution provides for many contents, expressing many values of the nation, in which, the contents of the people's sovereignty and national sovereignty, on national equality and policies towards the peoples, the policy towards overseas Vietnamese and on the existence and role of the Vietnam Fatherland Front are the highlight. Recognizing the idea of national solidarity in the constitution has great implications for the State and society of Vietnam today.

Firstly, the recognition of national solidarity in the Constitution affirms that this is a core value of the Vietnamese people that the Vietnamese people want to preserve and promote, not only in the fight for national liberation but also in the current context. While many countries around the world are facing the problems of ethnic division, uniting the entire people is more deserves to be the guiding guide for the State and each Vietnamese people in the process of building a peaceful and prosperous country. With the thought of national unity, The Vietnamese Constitution becomes the bond that holds the Vietnamese people together creating great strength to contribute to the construction and defense of the country.

Secondly, recognizing the idea of national solidarity in the Constitution contributes to consolidating and enhancing the value of the Vietnamese constitution. As the basic law of the country, The Constitution is the highest document expressing people's sovereignty as well as basic issues about the state and society of Vietnam. The provisions of the Constitution expressing the thought of great national solidarity has properly reflected the feelings, aspirations and legitimate needs of each Vietnamese people, not only within the country but also overseas Vietnamese, of each ethnic group. The Constitution, therefore, is not far-fetched, but so close, because those are the qualities and values that still flow in the veins of every Vietnamese from the past up to now. Since then, each citizen has added faith in the Constitution, respected and raised the awareness of constitutional protection.

Thirdly, recognizing the idea of universal solidarity in the Constitution is the basis for building specific policies. This stems from the important, fundamental and supreme nature of the constitution in the legal system. From the provisions of the Constitution, legal documents, mechanisms and policies on ethnicity, religion, and social policies continue towards coming to encourage, motivate and bring into play the strength of great national solidarity. The State also has specific policies, taking care of all walks of life, in society, especially policies towards ethnic minorities, the poor, the Vietnamese living far away from their homeland ..., create conditions for them to overcome difficulties, ensure their lives, actively participate in building and defending the country.

Fourthly, in a nation, on the general level, conflicts arise mainly due to conflicts of interests. Properly handling national - ethnic - class - individual relations in a country is a very important issue, possibly related to the regime's survival. . The basic interests of the people and the Vietnamese people today are independence, freedom and a prosperous and happy life. Benefit shows daily in all areas of social life. Recognizing the idea of national solidarity in the Constitution, contributes to the harmonious settlement of the relationship of interests between the nation, the nation, the class and the individual interests, from there, gather, unite and bring into play the strength of the peoples, classes and individuals, maintain national unity and defend territorial integrity.

Fifthly, the Constitution recognizes the ideology of national solidarity besides other content values which strongly affirmed the requirement to build and develop the country of Vietnam in today's era: combining national strength and era power. In certain frameworks and degrees, the combination of national strength with the power of the times had been done present in the history of human development as well as in Vietnam. Today, globalization, but first of all, economic globalization is having a strong impact on all aspects of social life, on all nations and peoples. No nation can develop but separate, isolated from the world. Openning the nation door, integrate, actively participate in the process of globalization is the requirement of globalization, but it is also a favorable condition to combine and promote the national strength with the power of the times in development.

CONCLUSIONS

From the above analysis, it can be seen, national solidarity is a great spiritual value, an extremely precious tradition of the Vietnamese people, and is also a feature of the Vietnamese constitution. Throughout the entire history of Vietnam's constitution, The idea of national solidarity cannot stop. Throughout the history of Vietnam's constitutional history, the thought of national solidarity has been constantly preserved, supplemented and developed. National solidarity has brought in itself great strength, however, that power is even greater when recognized and guided by the constitution. From the past, present and future, National solidarity thought has always been the highlight of the Vietnamese constitutions to encourage the country and the Vietnamese people to overcome ups and downs in order to survive and develop sustainably.

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (23), Year XIX, 2020, pp. 41-55

EXTENDED RESPONSIBILITY OF PRODUCERS IN WASTE MANAGEMENT - A CURRENT ISSUE

Marta – Claudia CLIZA[1]

Abstract:

This analysis was determined by the entry into force of GEO no. 74/2018 for the amendment and completion of Law no. 211/2011 on the waste regime, of Law no. 249/2015 on the management of packaging and packaging waste and Government Emergency Ordinance no. 196/2005 on the Environmental Fund ("GEO 74/2018") which determined the modification of the entire waste management chain in Romania (especially in the field of packaging waste). We will make here a brief presentation of the current waste management system, focusing mainly on the activity and role of organizations implementing extended producer responsibility ["OIREPs" - i.e. former RTOs (Responsibility Transfer Organizations)].

Keywords*: environmental responsibility; waste management; responsibility transfer organizations; producer responsibility; recycling; waste*

1. INTRODUCTION: WHAT DOES THE EXTENDED MANUFACTURER'S LIABILITY ("EML") ENTAIL?

This topic starts from the realities of today's society, detailing in concrete terms one of the ways to implement the principles of environmental law and strategic objectives.

[1] PhD Associate Proffesor, Faculty of Law Nicolae Titulescu (Bucharest, Romania), e-mail: claudia@cliza.ro

In general, these modalities include:

- Integrated pollution prevention and control by using the best available techniques for activities with a significant impact on the environment;
- Adoption of development programs, observing the requirements of environmental policy;
- Solving, on competence levels, environmental problems, depending on their magnitude;
- Promotion of normative acts harmonized with European and international regulations in the field.[1]

Among the fundamental human rights of the "third generation", of the rights of solidarity, the right to a healthy and balanced environment is characterized by a special dynamic regarding its recognition and legal guarantee.[2]

The values attached to the protection and good management of the environment are interdependent with man's survival as a species on Earth and the satisfaction of his essential needs (water, air, food). These needs are conditioned by the great natural balances of the biosphere (climate, water cycle, biodiversity) in respect of which it has been established that they are also dependent on the impact of human activities on the environment and natural resources. [3]

Environmental public policies implemented to correct environmental externalities can be expressed in various forms: rules, prohibitions, voluntary agreements or economic incentives (taxes, subsidies and negotiable permits). It is mainly about two important methods of pursuing and promoting the objective of environmental protection in public policies: regulation and use of economic instruments.[4]

Among the modern tools for translating this desiderata into reality, we also find the extended responsibility of the producers.

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[1] Costel Ene, *Dreptul mediului. Noțiuni* (Bucharest: C. H. Beck, 2011), 18.
[2] Mircea Duțu and Andrei Duțu, *Dreptul mediului. Ediția 4* (Bucharest: C.H. Beck, 2014), 120.
[3] Mircea Duțu, *Politici publice de mediu* (Bucharest: Universul Juridic, 2012), 48.
[4] Duțu, *Politici publice de mediu*, 51.

The Extended Producer Liability Chart ("EPL Chart") is the implementation of the European principle of extended producer responsibility through a set of measures taken by the state to ensure that product producers bear the financial or financial and organizational responsibility for managing the waste stage from the life cycle of a product.

In other words, the EPL Scheme sets out the obligations and rights of each participant in the waste industry to ensure, at national level, the management of packaging waste placed on the national market by producers. Specifically, producers have a responsibility to ensure the traceability of waste so that the state can verify whether it has been collected, sorted, recycled or incinerated.

For this purpose, art. 12 para. (5) of Law 211/2011 on waste management ("Law 211/2011") sets for the central public authority for environmental protection a number of obligations, including:

(a) It clearly defines the roles and responsibilities of all those involved, including (i) producers who place products on the national market; (ii) organizations implementing extended producer responsibility on their behalf; (iii) public and private operators managing waste; (iv) local authorities and; (v) of economic operators reusing or preparing waste for reuse [art. 12 para. (5) (a) of Law 211/2011]; and

(b) It defines, in accordance with the waste hierarchy, waste management objectives relevant to the EPL Chart, in order to achieve at least the quantitative objectives that we will present in point D below [art. 12 para. (5) (b) of Law 211/2011];

(c) It ensures the implementation of a reporting system that collects data on products placed on the national market by producers to whom the extended producer responsibility applies and data on the collection and treatment of waste from these products specifying, where appropriate, the flows of materials, as well as the relevant data regarding the obligations from letter b) [art. 12 para. (5) (c) of Law 211/2011].

2. WHO IS RESPONSIBLE FOR THE EPL?

As it results from the provisions of art. 12 para. (5) (c) of Law 211/2011, the EPL Chart covers the following categories of participants: (i) Producers who place products on the national market; (ii) OIREPs; (iii) Territorial Administrative Units ('ATU') or Intercommunity Development Associations ('ADI'), as appropriate; authorized collectors ("Collectors"); and (iv) recyclers ("Recyclers") or licensed recoverers, as appropriate ("Recoverers").

(A) Fulfillment of EPL obligations on packaging waste

The provisions of art. 16 para. (1) of Law 249/2015 on the management of packaging and packaging waste ("Law 249/2015") establishes the categories of economic operators who must implement the obligations regarding the extended liability of the producer ("Responsible Economic Operators").

According to art. 16 para. (5) of Law 249/2015, starting with January 1, 2019, the obligations regarding EPL may be complied with by the Responsible Economic Operators, as follows:

(a) individually, by managing their own packaging placed on the national market

(b) through an OIREP, authorized by the Committee set up according to Law no. 211/2011, by type of material and by type of packaging, primary, secondary and for transport

In accordance with art. 16 para. (6) of Law 249/2015, on January 15, 2019, the Order of the Minister of Environment no. 1362/2018 on the approval of the Procedure for authorization, annual approval and withdrawal of the right to operate OIREPs ("Order 1362/2018") was published in the Official Journal no. 39.

One of the key changes to the whole EPL system for packaging waste was the elimination of the possibility for economic operators responsible for fulfilling their extended producer responsibility obligations on an individual basis based on "packaging waste taken from waste holders".

In this sense, the provisions of art. 16 para. (5) (a) of Law 249/2015 prior to the entry into force of GEO 74/2018 provided the following:

„(2) The responsibilities of economic operators can be complied with:

a) individually, by collecting and recovering packaging waste from its own activity or taken from waste generators or holders, sorting stations, authorized collectors, managed through authorized economic operators from the point of view of environmental protection for the collection and recovery of packaging waste" [Art. 16 para. (2) (a) of Law 249/2015].

In other words, the current EPL Chart for packaging waste assumes that the responsible economic operators can meet their annual recycling or recovery targets individually only by collecting and recovering packaging waste from their own activity.

In reality, this category of waste is significantly lower than the amount of packaging waste for which each responsible operator is obliged to prove recycling. Thus, in the new EPL Chart, Responsible Operators are required to fulfill their obligations regarding the extended liability of the producer in a majority share through the OIREPs operating on the national market.

3. WHAT IS AN OIREP?

OIREP is an organization that implements the extended liability of producers, established in the legal form of a joint stock company expressly regulated under the provisions of Law no. 249/2015 and authorized based on Order 1362/2018.

Responsible Economic Operators may fulfil their obligations regarding EPL through an OIREP authorized in accordance with Order 1362/2018. OIREPs are required to implement EPL obligations for all quantities of packaging waste for any Responsible Economic Operator who so requests, in the geographical area in which it operates. [Art. 16 para. (9) (f) of Law 249/2015].

In this regard, the Responsible Economic Operators conclude with an OIREP a Contract for the Implementation of the Extended

Producer Responsibility ("Contract for Liability Implementation") for the quantities of packaging placed on the market by the Responsible Economic Operators by which OIREP takes responsibility for managing packaging waste quantities on behalf of the Responsible Economic Operators, in exchange for a unit price, per material and per flow, which is public on the OIREP's website.

The list of authorized OIREPs is displayed on the website of the Ministry of Environment, currently being 12 OIREPs authorized to carry out their activity at national level.[1]

(i) Annual objectives

OIREP has the obligation to fulfil, on behalf of the Responsible Economic Operator, the annual recovery and recycling objectives provided in Annex 5 of Law 249/2015 ("Annual Objectives")[2].

Thus, the conclusion of the Contract on the Implementation of the Extended Producer Liability leads to OIREP's obligation to achieve the Annual Objectives for the quantities of packaging taken over in the name and on behalf of the Responsible Economic Operator with which OIREP concluded such a contract.

In case of non-achievement of the Annual Objectives by OIREP related to the quantities of packaging for which it has taken responsibility, OIREP has the obligation to pay to the Environment Fund: „*a contribution of 2 lei / kg, due by the economic operators authorized to take over the annual obligations for capitalization of packaging waste, the payment being made for the difference between the quantities of waste corresponding to the annual objectives, established by the legislation in force, and the quantities entrusted for capitalization , respectively managed on behalf of the clients for whom they took over the obligations* "[art. 9 para. (1) (v) of GEO 196/2005 on the Environmental Fund].

[1] See the extract from the website of the Ministry of Environment - http://www.mmediu.ro/categorie/comisia-de-supraveghere/196 ;

[2] See extract - Annex no. 5 of Law 249/2015

(ii) Separate tariffs

Through the Contract for the Implementation of the Extended Producer Liability, the OIREPs have the obligation to establish and charge the Responsible Economic Operators distinct tariffs depending on the type of packaging waste and on the flow in which they are found, more precisely from the municipal flow or the commercial-industrial flow. (art. 16 paragraph (9) (c) of Law 249/2015).

The distinct tariffs charged by OIREPs are established in a transparent manner and may include only the categories of costs provided by art. 21 of Order 1362/2018.

Thus, according to point 21 of Order 1362/2018, the OIREP that obtained the operating license has the right to include in the financial contributions charged to the Responsible Economic Operators only the following categories of costs:

(a) 'the net costs set out in Annex no. 6 of Law no. 249/2015, with subsequent amendments and completions, for packaging waste managed through sanitation services "; [through the Collaboration Protocol concluded with ATU / ADI according to point 17 (q) of Order 1362/2018, OIREP covers the net cost for the management of packaging waste from the municipal flow through sanitation services];

(b) "reporting costs of economic operators authorized as collectors and recyclers for the quantities of packaging waste from trade and industry purchased from generating economic operators and capitalized";

(c) "the costs of economic operators authorized as collectors and recyclers for the management of commercial and industrial packaging waste taken over free of charge on behalf of the holder of the operating license";

(d) "costs relating to the contracts referred to in point 17 (q); q) (iv) for the confirmation of the quantities of packaging waste intended for recycling or recovery ";

(e) "the costs for carrying out, together with the local public authorities or, as the case may be, with the inter-community development associations, public information and education campaigns, within the limit of 40 lei / ton for used packaging collected according to art. 20 para. (8) and (9) of Law no. 249/2015, with subsequent amendments and

completions, and allocated to the organization by them ". [through the Collaboration Protocol concluded with UAT / ADI, OIREP covers the costs related to public information and education campaigns];

(f) "costs for carrying out, together with the central public authority for environmental protection, information and education campaigns for the public and economic operators, up to a limit of 3 lei / ton of packaging for which it implements the extended liability obligations of the producer";

(g) "operating expenses of the organization implementing the obligations regarding the extended producer responsibility ";

(h) "costs for covering the annual approval fee";

(i) "the costs for reporting the data provided in art. 17 para. (1) and (2) of Law no. 249/2015, with subsequent amendments and completions".

All the above costs are borne by the Responsible Economic Operators through the distinct tariffs on the type of material and the flow in which the packaging waste is found and charged by OIREP through the Contracts on the Implementation of the Extended Producer's Liability.

4. HOW DOES A OIREP WORK[1]?

The fulfilment of the Annual Objectives is conditioned by the assurance of the traceability of the packaging waste by OIREP from the generator to the Recycler / Recoverer in accordance with the requirements imposed by art. 70-72 of Order no. 1503/2017 amending and supplementing the Order of the Minister of Environment and Water Management no. 578/2006 for the approval of the Methodology for calculating the contributions and fees due to the Environmental Fund ("Calculation Methodology").

Therefore, the entire activity of OIREP is conditioned by ensuring the traceability of packaging waste from Collectors to Recyclers /

Recoverers. Traceability is defined by point 22 of Annex 1, Law 211/2011 as "*the characteristic of a system to allow the retrieval of the history, use or location of a waste through registered identifications*".

In order to ensure traceability by OIREPs for the quantities for which responsibility has taken over, OIREP has the right to sign a contract *on the one hand* with UAT / ADI, and *on the other hand* with the Collectors who undertake to provide services of collection and transport, temporary storage, sorting and recovery of packaging waste ensuring the traceability of packaging waste.

In exchange for the above services, OIREP covers the **net costs** of packaging waste management in the municipal flow through contracts concluded with UAT / ADI (i.e. calculated and substantiated according to Annex No. 6 of Law No. 249/2015), while in contracts concluded with the Collectors, the price is established by negotiation, according to the rules of common law.

According to the current EPL Chart, Collectors have the right to manage only packaging waste from the commercial-industrial flow, while UAT / ADI has the legal prerogative to manage packaging waste from the municipal flow.

In this regard, OIREP has the obligation to cover, as a matter of priority, within the quantities and types of packaging materials for which it implements EPL, the costs for collection and transport, temporary storage, sorting and, where appropriate, for the recovery of packaging waste managed by the services / sanitation operators with which the UAT / ADI collaborates, and the correlative right to take into account, accordingly, the quantities for which the costs were covered when fulfilling the Annual Objectives. [Art. 16 para. (9) (g) of Law 249/2015].

In other words, OIREP has the obligation to cover the net cost of the sanitation operator for the management of packaging waste generated in the municipal flow in the geographical area in which OIREP operates. In exchange for the net cost covered by OIREP, UAT / ADI has the obligation to ensure the traceability of packaging waste for the benefit of OIREP according to the Calculation Methodology, and OIREP has the right to include in the Annual Objectives the quantities for which the net costs have been covered.

These mutual and interdependent obligations of the participants in the EPL Chart have been transposed[1] into national legislation precisely to ensure that the recycling and recovery objectives for packaging waste are met at national level.

Thus, in the current EPL Chart, OIREP has the legal possibility to include in the Annual Objectives only the packaging waste from the municipal flow for which OIREP has covered the net cost in accordance with art. 16 para. (9) (g) and Annex 6 of Law 249/2015.

The obligation of OIREPs to conclude contracts with UATs / ADIs to cover the net costs of sanitation operators for packaging waste management became due on 1 January 2019 [art. 17 para. (2) of Law no. 211/2011 in conjunction with art. 16 para. (4) (e) of Law no. 249/2015]
From the same date, the UAT / ADI had a legal obligation to sign a contract with the OIREPs and to request them to cover the costs of packaging waste management in the municipal flow of the sanitation operator.

Regarding the net cost, ADI / UAT had the obligation, until January 1, 2019[2], to establish differentiated costs for at least the waste provided in art. 17 para. (1) (a) of Law no. 211/2011 (i.e. at least paper, metal, plastic and glass waste from municipal waste) through a transparent procedure involving OIREPs as well. The term was subsequently extended until June 30, 2019 by Law 31/2019 on the approval of GEO 74/2018.

Thus, from January 1, 2019, UATs / ADIs were required to conclude contracts with OIREPs and the latter to cover management costs established in a transparent manner or, failing that, the cost of reference values established and communicated by January 10th each year on its website, by the central public authority for environmental protection.[3]

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[1] Directive 94/62 / EC of 20 December 1994 on packaging and packaging waste as subsequently amended and supplemented, and Directive 2008/98/EC of November 19, 2008 on waste, repealing certain Directives as subsequently amended and supplemented;
[2] See art. III of OUG 74/2018;
[3] See Annex 6 of Law 249/2015.

In conclusion, OIREP has the possibility to achieve the objectives of packaging waste recovery from the municipal flow only by concluding a contract with UAT / ADI, because only the quantities of packaging waste from municipal flow and managed by UAT / ADI can be included in the Annual Objectives of OIREP.

5. MONOPOLY ON PACKAGING WASTE FROM THE MUNICIPAL FLOW

Directive 2008/98 / EC of November 19, 2008 on waste, repealing certain Directives as subsequently amended and supplemented ("Directive 2008/98/EC") amended the EPL system in order to prevent and streamline waste management by ensuring a recovery higher rate, able to exceed the set objectives.

In this respect, the European legislator has left it to the Member States to amend national waste management legislation to include or not the local public authorities in the new EPL Chart.

Regarding the role and competencies of local authorities in implementing public environmental policies, the trends are different. Thus, in developing countries there is a tendency, more or less accentuated, to diminish the powers of local authorities. On the contrary, in developed countries (France or Italy), local authorities have retained their powers to run this type of public service; there is even a tendency for these components to be amplified when the decentralization policy is applied. However, most often, they can exercise their powers only by associating in inter-municipal unions often subject to state influences.[1]

By GEO 74/2018, the Romanian legislator understood to include local public authorities in the national EPL Chart in order to ensure a high percentage of collection and recovery of packaging waste, regulating in this regard a clear role of local public authorities regarding the management and recovery of packaging waste from municipal flows.

Moreover, from all the amendments brought by GEO 74/2018, it results that the local public authorities do not have the quality of simple

[1] Duțu, *Politici publice de mediu*, 97-98

participants in the new EPL Chart, but represent the only participants who have the right to manage and capitalize packaging waste in the municipal flow.

Thus, the current EPL Chart eliminates the possibility for Collectors to ensure the traceability of packaging waste from the municipal flow, OIREPs operating on the market having to work exclusively with UAT / ADI in order to achieve recycling objectives for municipal flow packaging.

The establishment of such a monopoly in favour of local public authorities has led to serious bottlenecks in the packaging waste market, in the context in which UATs / ADIs often act contrary to legal provisions by discreetly establishing the conclusion of collaboration contracts to ensure the traceability of municipal packaging waste only with certain OIREPs.

Although clear obligations are laid down for UAT / ADI, precisely to give equal opportunities to all participants in the EPL Chart to operate in the market, the failure of the UAT / ADI to fulfil its legal obligations has made it impossible for OIREPs to achieve its Annual Objectives.

In order to eliminate such blockages in the packaging waste market, steps are currently being taken to amend the legislation in order to eliminate the monopoly of local public authorities on the traceability of municipal packaging waste. Proof of this is the draft[1] for the order of the Minister of Environment amending and supplementing Order 1362/2018, as well as the Recommendation of the Competition Council dated February 12, 2020 on allowing collectors to ensure the traceability of packaging waste, so as to ensure competition on this market.

6. UAT / ADI OBLIGATIONS IN THE EPL CHART

The provisions of Law 211/2011 establish the following main obligations for UAT / ADI:

[1] See the draft for the Order of the Ministry of Environment amending and supplementing Order 1362/2018;

(i) "For waste generated in households, the local public administration authorities of the administrative-territorial units and the municipality of Bucharest and, as the case may be, the Intercommunity Development Association conclude contracts, partnerships or other forms of collaboration with organizations implementing producer's extended liability obligations in order to achieve the objectives established by the normative acts that transpose the individual directives "[Art. 59 para. (3) of Law 211/2011]

(ii) "Intercommunity development associations or administrative-territorial units or administrative-territorial subdivisions of municipalities use the amounts collected to cover the management costs for municipal waste that are subject to extended producer 's liability exclusively for the purposes for which they are intended" [Art. 59 para. (6) of Law 211/2011];

(iii) "ensure the separate collection of at least paper, metal, plastic and glass waste from municipal waste, determine whether the waste is managed under a single sanitation contract and organize the award in accordance with the decision taken". [Art. 17 para. (1) (a) of Law 211/2011]

(iv) "to include in the specifications and in the contracts for the delegation of the sanitation service management, in the application of the principles from art. 3 para. (1) (c) and (f) of the Law on localities sanitation service no. 101/2006, distinct tariffs for the activities carried out by the sanitation operators for waste management provided in letter a), respectively for waste management, other than those provided in letter a". [Art. 17 para. (1) (c)].„

At the same time, the provisions of art. 20 of Law 249/2015 establish the following main obligations for UAT / ADI:

(i) "to organize, manage and coordinate, personally or through the mandate of the inter-community development associations to which they belong, the activity of material and energy recovery of the packaging waste flow from municipal waste together with municipal waste from the same materials";

(ii) "to request the amounts from the OIREPs and to establish the method of payment for carrying out information and education campaigns for the public and economic operators";
(iii) "to establish the concrete way of marketing waste at market value and the way of covering the costs for collection and transport, temporary storage and sorting services provided by the sanitation operator (s) according to the value of the secondary raw materials sold and net costs for the management of packaging waste from municipal waste ";
(iv) "to ensure the information of the inhabitants, by posting on their website or through another form of communication, on the packaging waste management system within the localities";
(v) "to publish monthly on its website the centralized reports made on the basis of information received from economic operators";,,
(vi) "to publish annually on its website the situation of the expenses regarding the information campaigns carried out, the implementation of the projects for the improvement of the waste collection infrastructure".

CONCLUSIONS

All of the above show how current environmental issues are, both in public and private life. This analysis aimed to identify the waste route and the role of each actor involved in this chain of environmental responsibilities, starting from producers who introduce products on the national market, shifting responsibility to authorities that implement the extended responsibility of producers and reaching authorized collectors, recyclers or recoverers.

In this chain, we also find local public authorities involved through inter-community development associations, which obviously shows that environmental issues are shared between authorities and economic agents and the responsibility belongs to each subject involved.

Environmental issues are very topical. Let's not forget that Romania risks infringement procedures in the field of environment regarding waste, nature, water and air quality.

Thus, for waste, the Committee asked Romania to close and rehabilitate illegal landfills, for the nature, to ensure the protection of

habitats and species, for the water, to comply with EU rules on urban wastewater; as regards air quality, the Committee asked Greece and Romania to adopt national air pollution control programs.

In this context, the authorities, economic agents and citizens must understand the responsibilities they have, responsibilities that are not limited to achieving goals or complying with European directives, but definitely extend to a clean environment in which we all live healthier and provide to future generations.

This scientific approach is obviously limited to the concept of sustainable development, a concept that designates all forms and methods of socio-economic development, whose foundation is primarily to ensure a balance between these socio-economic systems and elements of natural capital.

Although initially sustainable development was intended to be an ecological solution determined by the intense industrial exploitation of resources and the continuous degradation of the environment, now the concept has expanded on the quality of life in its complexity.[1]

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (23), Year XIX, 2020, pp. 56-67

PROTECTION OF HUMAN RIGHTS AND ISLAM

Maria-Irina GRIGORE-RĂDULESCU [1]
Corina Florenţa POPESCU[2]

Abstract:

Like universalization, regionalization is a process that characterizes contemporary international society, including in the field of human rights. The analysis of regional systems for the promotion and protection of human rights reveals their degree of specificity and the large differences between the basins of legal civilization.

Key words: *Human rights; Islam; sources of consecration and protection.*

CONCEPTUAL CLARIFICATIONS: DEFINITION OF THE CONCEPTS OF ISLAM, ISLAMIC, ISLAMISM

Islam appeared in the Arabian Peninsula in the seventh century and in just two centuries, it spread to North Africa, Spain, Syria, Persia and India, and in the following centuries, to the Balkans, sub-Saharan Africa and Asia[3]. The main reason for the rapid spread of Islam is the

[1] Associate Professor PhD, Faculty of Law, Ecological University of Bucharest (Bucharest, Romania), e-mail: radulescuirinaro@yahoo.com
[2] Associate Professor PhD, Faculty of Law, Ecological University of Bucharest (Bucharest, Romania), e-mail: coripopescu@yahoo.com
[3] Today, more than 1.2 billion people, if not 2 billion, are Muslims, and the country with the largest Muslim population is Indonesia. Islam is a religion spread in different geographical areas and in countries on almost all continents (e.g., Nigeria, Philippines, Saudi Arabia, USA, France, Great Britain, Albania, Croatia, Afghanistan, Brazil, Egypt, Iran, India and China).

Islamic doctrine, according to which Islam is a religion open to all, without any discrimination. A person's declaration of faith is sufficient for conversion to Islam, and this does not have to be confirmed by religious authorities.

The words *Islam-ic* and *Islam-ism/Islam-ist* come from the Arabic term Islam, it is known that Islam is one of the three great monotheistic religions, along with Christianity and Judaism.

The word Islam is a verbal noun with its origin in the trilateral root s-m-m and derived from the Arabic verb 'aslama, meaning, "To give up, to desert, to surrender, to submit (to God)."[1] Another word derived from the same root is salaam, "peace." In Islamic thought, an important place is the triadic conception of Islam, imān (faith) and ihsān (excellence), where Islam represents both acts of worship (ibādah) and Islamic law (shari'a).[2]

The word Allah means, in Arabic, "divinity, the only God" and refers to the same God of Jews and Christians. The Islam has as its basic teaching the existence of one almighty God who created the world, differing from Christianity and the religion of pre-Islamic Arabs by its strict monotheism (Allah cannot have sons or daughters) and by obedience to this unique deity.

In addition to the terms Islam and Allah, Islamic doctrine characterized by the existence of several key concepts that define the behaviour of practitioners of this religion and justify their behavioural reactions:

- *Muslim*, in the etymological sense, means one who is subject to Allah, one who is at peace with God, who places the existence of God and his power outside of any contestation and also derives from the root *s-m-m*;

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[1] E. W. Lane, *Arabic-English Lexicon* (London: Willams & Norgate, vols. I-VIII, 1863), 1413.

[2] C. Glasse, (ed), *New Encyclopedia of Islam: A Revised Edition of the Concise Encyclopedia of Islam* (AltaMira Press, 2003), 192.

- The *Qur'an*[1], considered the holy text by Muslims, states, "*the only religion accepted by Allah is Islam*" and expresses "*adherence to the peace of God*", always preached by all the messengers of God, being synonymous with monotheistic religion.

- *Jihad* (*djihad*) means, in Arabic, "*effort towards a specific goal*", but the full expression is, in fact, *djihad fi sabil Allah*, which means "*effort in the way of God*". Wrongly, the word "Jihad" translated into European languages exclusively by "*holy war*", when in reality it also covers the notion of holy war, as it aims to spread Islam in the world through any initiative.

Jihad is a collective obligation, but it turns into a personal one when Islam is attacked and general mobilization is declared. Its purpose is to defend Islam against external danger by mobilizing the community to resist an external threat[2] or aggression or to spread this religion until the establishment of Islam throughout the earth.

According to an opinion expressed in the literature "*in its original sense, what we call the great jihad, as defined by the Prophet Muhammad, as it is codified in Muslim law or as practiced by the great Sufi mystics, is above all a total submission of the soul to God, an effort on himself to fight against evil inclinations, to follow the path of perfection, to be a better Muslim "*[3]*." the usage and employment of the word jihad depends on the identity, as well as the political and social agenda, of those who hold a monopoly on the term's meaning at any one time* "[4]

Thus, compared to what we have defined as the "*great jihad*," the armed struggle against the enemies of Islam considered the "*little jihad*."

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[1] It said that it was revealed to the Prophet Muhammad by the angel of Allah, Gabriel.
[2] N. Anghelescu, *Introducere în Islam* (Bucharest: Enciclopedică, 1993), 67-70.
[3] G. Kepel, „Qu'est-ce que le Jihad?" in *Les collections de l'Histoire*, no. 30 (ianuarie - martie, 2004).
[4] G. Kepel, *Jihad: The Trail of Political Islam* (trans. from French by Anthony F. Roberts, Cambridge, Mass., Harvard University Press, 2002).

The jihad was accepted by Muhammad, assumed and amplified by the caliphs[1]. The last will succeed the Prophet and will promote different principles of governing the Caliphate, in relation to which the community divided into three sub-cultures:

- Sunnis[2] represent the majority of Muslim believers (about 85%) and believe in the existence of the four caliphs, descendants of the Prophet Muhammad:

- Shiites[3] make up about 12% of all Muslim believers and recognize the existence of only one caliph, Caliph Ali, despised and marginalized by the Sunnis.[4]

- The Khariji recognize the existence of the first two caliphs, Abu Bakr and Omar, and their number is smaller.[5]

Since "*a concept of non-violence is (s. n) absent from Muslim doctrine and practice*"[6], Islam has undergone, especially since the early twentieth century, a profound change materialized by the emergence of fundamentalism based on extremist and deviant interpretation of jihad as holy war against unbelievers. Thus, under the pretext of returning to the true sources, Islamism became a reformist movement that promoted extreme manifestations of the terrorist[7] fundamentalist type in achieving

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[1] There are four caliphs that supposedly ruled between 632 and 661: Abu Bakr (632-634), Omar (634-644), Othman (644-656) and Ali (656-661).

[2] "*Sunna*" usually means tradition.

[3] "*Shi'a*" means separate group, faction.

[4] Shiites characterized by their passion for martyrdom and self-sacrifice as well as a "*strong sense of oppression, which makes them very good fighters.*" E. Margolis, *War at the top of the world. The struggle for Afghanistan, Kashmir and Tibet* (NY: Routledge, 2001), 16.

[5] Anghelescu, *Introducere în Islam*, 56-58.

[6] S. Huntington, *Ciocnirea civilizaţiilor şi refacerea ordinii mondiale* (Bucharest: 1998), 393.

[7] Religious extremism began to manifest itself in the 1970s and 1980s. Thus, in the late 1970s, through the action of the religious far left and extreme right, Arab militants Hezbollah and those belonging to the Jihad group brought Lebanon to the brink of economic collapse, due to internal struggles. In 1977, in Pakistan, General Mohamed Ziaul-Haq took power through a military coup; in Iran, the Islamic revolution triumphed in February 1979, with Ayatollah Khomeini returning to Tehran; in 1981, an Islamic Jihad commando killed Egyptian President Anwar El Sadat, who had made peace with

its goals, and the Islamists wanted Shari'a to apply in all areas of social life.

ISLAMIC RELIGIOUS LAW AND THE SYSTEM OF ISLAMIC LAW

Shari'a is the Islamic religious law whose main sources[1] are the Qur'an and the Simna (Sunnah)[2] and which even constitute "Islamic jurisprudence"[3]. Shari'a means the "right path" and encompasses all of Allah's commandments concerning people and their deeds.[4]

Islamic law covers all aspects of life, from government and foreign relations to the daily life of the individual and the community, and is the source of the law of all Arab and Muslim countries except Turkey, which has adopted European legislation[5]. However, the practice and interpretation of this source varies considerably from country to country, but it protects five values, namely faith, life, knowledge, heritage and wealth, which form the basis of the branches of Islamic law and the main rights of any Muslim.

Shari'a contains, on the one hand, rules relating to culture, policies and legal acts, and, on the other hand, rules relating to relations between the sexes, clothing, food and the like, both categories of rules being characterized by exhortations to apply divine will to every circumstance of life. As the basis of the Islamic legal system, there are

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Israel in 1978. Also in Egypt, after 1990, the armed struggle against the regime of Hosni Mubarak began, and in Algeria, there was a victory in the municipal elections of June 12, 1990, of the Islamic Salvation Front (FIS).

[1] N. Purdă and N. Diaconu, *Protecția juridică a drepturilor omului*, Ediția a II-a revăzută și adăugită (Bucharest: Universul Juridic, 2011), 108.

[2] It represents a collection of the facts and teachings of the Prophet, derived from hadith-un (traditions).

[3] Seyyd Ebul A'la el Meududi, *Introducere în Islam* (Bucharest: S.C. Charter S.R.L., 1991), 90.

[4] C. F. Popescu and M.-I. Grigore-Rădulescu, *Protecția juridică a drepturilor omului* (Bucharest: Universul Juridic, 2014), 76.

[5] M.-I. Grigore-Rădulescu, *Teoria generală a dreptului*, Ediția a III-a revăzută și adăugită (Bucharest: Universul Juridic, 2019), 41.

four summit schools and one Shiite law school[1], similar but different in terms of the realities they reveal.[2]

In the classical form, Shari'a regulates, in addition to the relations between people, their relations with the divinity and was finalized at the end of the ninth century, when it appeared in the form of textbooks developed by Islamic jurists. Shari'a establishes the legal limits of human existence, has as its main components "criminal law" and "family law" and stipulates, like the Qur'an, four great obligations that every Muslim has: fasting, prayer, pilgrimage to Mecca[3] and the obligation to give alms to the poor.

The Qur'an, as the fundamental source of Islamic law, contains, in its more than 6300 verses, about 500 rules of law, case decisions and consultations given by the prophet and refers, for the most part, to the condition of women, relations family law, successions, criminal law, commercial law.[4]

Thus, in the Islamic tradition, there can be no persons or state structures with legislative powers and no subject of Allah can have judicial powers, under which to issue sentences in terms of "good" and "bad", this being the consequence of the fact that "What is right" was revealed, to a limited extent, to Muhammad by Allah in the Qur'an.

Islamic law is the main model adopted by most Arab states, but in combination with other secular systems of law. In the case of Syria, elements of French law observed, and elements of Anglo-Saxon law are present in Oman[5] and Kuwait[6], as in Egypt combined with the Napoleonic code and Anglo-Saxon law. Elements of Turkish, Anglo-Saxon and local tribal law found in Yemen. In Saudi Arabia, shariʿa applies, in official form, along with several packages of secular laws with

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[1] The unity of the Muslim community was destroyed because of its rupture in Sunnism and Shiism, which led to and determines different ways of interpreting religious law.
[2] Anghelescu, *Introducere în Islam*, 77-78.
[3] At least once in a lifetime.
[4] Grigore-Rădulescu, *Teoria generală a dreptului*, 41.
[5] The monarch has the right of veto in any judicial matter.
[6] Shariʿa applies to domestic issues.

marginal societal impact. Shariʿa also applies in Lebanon, combined with civil law, canon law, traditional Ottoman law and Anglo-Saxon law.

Beyond the conservatism and traditionalism of Islamic law, divided into two parts[1] - Usul al-figh, which means foundations or roots of law, and Furu 'al-figh, i.e. branches of law. It should be noted that in the structure of this legal system, the provisions explicit Koranic represent only about 10% of all normative provisions, the remaining 90% being elements of canon law.

UNIVERSAL DECLARATION OF HUMAN RIGHTS IN ISLAM

The concept of Islam over human rights was expressed in the Universal Declaration of Human Rights in Islam, proclaimed in Paris on September 19, 1981[2], at the initiative of the Islamic Council for Europe. The Declaration bases human rights on the divine will, which proclaims them by mystical law.[3]

In part. 2 of the Introduction to the Islamic Declaration proclaims that "*human rights, in Islam, are deeply rooted in the belief that Allah and Allah alone is the Author of the Law and the Source of all human rights*", and its foundation is the divine law ("Shari'a").), respectively "*all the provisions extracted from the Qur'an and the Sunnah and any other law deduced from these two sources by methods considered valid in Islamic jurisprudence*" (Explanatory Notes, paragraph 1). Consequently, the rights enjoyed by the person and the restrictions imposed on him[4] find their foundation in the Qur'an and the Sunnah.[5]

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[1] Sami A. Aldeer Abu-Sahlieh, „Raporturi între drept și religie în lumea arabo-musulmană și influența acestora în Elveția 2007" in *Revista Română de Drept Privat*, no. 5(2007): 135-211.

[2] Popescu and Grigore-Rădulescu, *Protecția juridică a drepturilor omului*, 76.

[3] R. Miga-Beşteliu and C. Brumar, *Protecţia internaţională a drepturilor omului. Note de curs*, edition 5 (Bucharest: Universul Juridic, 2010), 94.

[4] For example, art. 12 lit. a) provides: "any person has the right to express his opinions and beliefs insofar as he remains within the limits provided by law"

[5] F. Sudre, *Drept European şi internaţional al drepturilor omului* (Iasi: Polirom, 2006), 138.

In view of the above clarifications and the definition of the scope of the Declaration in relation to religious affiliation, addressing persons and not states ["*We Muslims (...) affirm* (...)], we conclude that this religious conception of rights man substantially differentiates the Islamic Declaration from the secular ones. Thus, while secular declarations enshrine the fundamental principle of non-discrimination, which derives mainly from religion, the Universal Declaration of Human Rights in Islam promotes the very principle of distinction between people according to their religion and is based on the fundamental Muslim-Muslim difference, aspect that leads to a particular interpretation of certain rights. We exemplify with the provisions of art. 13 of the Declaration enshrining the right to religious freedom, circumscribed by the "limits imposed by law". We corroborate the provisions of art. 13 with those of the Qur'an, which condemns the freedom to leave Islam, with those of classical Muslim law which punish with capital punishment the one who abjures Islam[1] and becomes an apostate[2] and with those of art. 29 of the Declaration, which states that: "*the Muslim has a personal obligation to remain faithful to Islam, once he has joined it in full freedom.*"[3]

CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM

This declaration was adopted in 1990 on the 19th Islamic Conference of Foreign Ministers by 45 member states of the Organization of the Islamic Conference.

The declaration proclaimed the Shari`a law as "*the only source of reference*" for the protection of human rights in Islamic countries[4] and gave it priority over the Universal Declaration of Human Rights.[5]

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[1] To renounce, to publicly renounce a religious faith, a doctrine, an opinion.
[2] Person who has given up previous beliefs.
[3] Sudre, *Drept European…*, 138.
[4] Popescu and Grigore-Rădulescu, *Protecția juridică a drepturilor omului*, 75.
[5] The adoption of these statements has been the subject of harsh criticism by the Secretary-General of the United Nations Commission on Human Rights.

ARABIC CHARTER OF HUMAN RIGHTS

Following the establishment of the Permanent Arab Regional Commission on Human Rights on 3 September 1968, the Council of the League of Arab States adopted at its 102nd Session in Cairo on 15 September 1994 the Arab Charter on Human Rights, which provided for the establishment of a mechanism to control the application of its provisions.[1]

The Arab Charter of Human Rights begins with the right of peoples to self-determination, proclaims ordinary civil and political rights, as well as the right to asylum, certain economic, social and cultural rights (the right to work, the right to access public office), and the right of minorities to cultural and religious identity.

As the text of the Charter was criticized by human rights organizations for failing to meet international standards, in 2002 the Council of the Arab League[2] adopted a series of resolutions calling for and encouraging its improvement, all the more so as the original text of the Arab Charter of Human Rights had been ratified only by Iraq.[3]

In May 2004, on the high - level meeting of the members of the Arab League in Tunis, the amended version of the Arab Charter of Human Rights[4] was adopted, which entered into force on 16 March 2008.[5]

The new Charter continues to promote the same concept of basing its provisions on the Islamic religion and includes a Preamble and 53 articles. Among the rights provided, we mention:

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[1] O. Predescu, *Protecţia internaţională a drepturilor omului* (Brasov: Omnia Uni S.A.S.T., 2010), 48.

[2] The member states of the Arab League are Algeria, Saudi Arabia, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Somalia, Sudan, Syria, Tunisia, and Yemen.

[3] Popescu and Grigore-Rădulescu, *Protecţia juridică a drepturilor omului*, 75.

[4] Popescu and Grigore-Rădulescu, *Protecţia juridică a drepturilor omului*, 75

[5] B. Selejan-Guţan and L.-M. Crăciunean, *Drept internaţional public*, edition 2 (Bucharest: Hamangiu, 2014), 151.

- the right to life
- the right not to be subjected to torture or other inhuman or degrading treatment or punishment
- the right not to be subjected to medical or scientific experiments and not to have his or her organs removed without their full consent
- the right not to be subjected to slavery, trafficking in human beings or servitude, equality before justice
- the right to liberty and security of person;
- the principle of legality of incrimination
- the right to a fair trial
- the right not to be punished twice for the same act
- the right to respect for private and family life
- the right of association
- freedom of conscience and religion
- freedom of speech
- property right
- the rights of persons belonging to minorities to enjoy their own culture, language or religion
- the right to free movement
- the right to asylum
- the right to citizenship
- Economic and social rights[1].

The Arab Charter provides for the establishment of an Arab Human Rights Committee, composed of representatives of States Parties, to examine the level of protection of human rights in Arab States, based on state reports.[2]

[1] Selejan-Guţan and Crăciunean, *Drept internaţional public*, 151.
[2] O. Predescu and N. M. Vlădoiu, *Drept European şi internaţional al drepturilor omului* (Bucharest: Hamangiu, 2014), 34; Popescu and Grigore-Rădulescu, *Protecția juridică a drepturilor omului*, 76.

CONCLUSIONS

We note the existence of an obvious contradiction[1] between universal international human rights norms and Islamic norms, the latter retaining its divine origin and establishing a hierarchy that makes Shari'a a priority over any binding norm of international law. Thus, Islamic States have refused to either accede to the 1966 International Covenants on Human Rights, or have added statements to these texts or made reservations that mention the prevalence of Shari'a.

If religion and politics are associated and used against the moral and fundamental values of life, both religion used for political purposes and politics for religious purposes, any society, including Islamic society can become dominated by religious fundamentalism.

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[1] Because Refah Partisi (Prosperity Party) and others vs. Turkey, the Court stressed the incompatibility of Islamic law with the provisions of the European Convention, considering that the political party in question, which aimed at establishing Shari 'in Turkey, "can hardly pass as an association in accordance with the democratic ideal underlying the Convention as a whole". Its dissolution does not constitute a violation of the Convention." The European judge points out in particular that Shari'a "clearly delimits itself from the values of the Convention, especially because of the distinction based on religion which it makes between persons, the rules of criminal law and criminal procedure, the place reserved for women in the legal order. And the intervention of religious norms in all sectors of private and public life" (Judgment of the European Court of Human Rights of 31 July 2001, para. 71)

4. Huntington, Samuel. *Ciocnirea civilizaţiilor şi refacerea ordinii mondiale*. Bucharest: 1998.
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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (23), Year XIX, 2020, pp. 68-78

A GLOBAL MODEL OF PUBLIC ADMINISTRATION AS A CONSEQUENCE OF THE MEDICAL CRISIS OF 2020? A BRIEF DISCUSSION

Marius VACARELU[1]

Abstract:

Administrative sciences and public law in general have experienced in recent decades several challenges of a political and economic nature that have resulted in concepts modification and transformation, forcing academics and practitioners to adapt to them.

As an effect of these changes, the creation of a global model from a political and administrative perspective can be discussed from many directions, and scientists were interested on it.

Any objective analysis of these decades requires the identification of the main features of such a possible model, because global crises – such as the one we are in – usually contribute to their crystallization. It is therefore necessary a discussion in this regard, in order to be closer to contemporary realities. Our text will try to underline the main lines of such discussion, being conscious that an exhaustive approach is not possible in one scientific article.

Key words: *Public administration; Global model; Evolutions; Pandemic; Constraints; Academia.*

INTRODUCTION

People have always wanted to be in the middle of perfection: from governing the country where they live, to the friends around them; or

[1] **Lecturer PhD, National School of Political and Administrative Studies (Bucharest, Romania), marius333vacarelu@gmail.com .**

from family to the place of daily work. Perfection is not only mentally understood as a desire, but also as a factor of protection against different types of problems, and the direct manifestation of people's political choices have in mind this complex paradigm of perfection.

The way in which perfection is sought is different, each person having their own approaches to the general concept of perfection. Obviously, it is necessary to define it, a real classification of the conditions necessary to meet the standards of perfection, as well as those procedures to be followed in order to correct the shortcomings of reality.

In fact, every feature of the concept of perfection is the one that sets in motion a good part of the legal-political will of the people, without excluding the private sphere. However, in relation to the reality of the fact that man is a social being, it is clear that the complete dimension of the concept of perfection reaches in an almost complete percentage the sphere of politico-legal life, and less the sphere of particular aspects of life.

1. In a famous text, published in 1992 – the next year of Soviet Union collapse (but written in 1991) – Francis Fukuyama noted:

"Periods of democratic upsurge are interrupted by radical discontinuities and setbacks, such as those represented by Nazism and Stalinism. On the other hand, all of these reverses tended to be themselves reversed eventually, leading over time to an impressive overall growth in the number of democracies around the world. The percentage of the world's population living under democratic government would grow dramatically, moreover, should the Soviet Union or China democratize in the next generation, in whole or in part. Indeed, the growth of liberal democracy, together with its companion, economic liberalism, has been the most remarkable macro-political phenomenon of the last four hundred years[1].

[1] F. Fukuyama, *End of History and the Last Man* (New York: The Free Press, part of Macmillan Inc, 1992), 48.

Just as impressive as the growth in the number of democracies is the fact that democratic government has broken out of its original beachhead in Western Europe and North America, and has made significant inroads in other parts of the world that do not share the political, religious, and cultural traditions of those areas"[1].

Obviously, the turn of the 1990s was marked by the official disappearance of communism in Europe and the abolition of the state that imposed it on a large part of the continent. The impression on contemporaries was extraordinary, making some of them to believe that suddenly millennia of history's wisdom could be annulled and the concepts of the rule of law and democracy will become familiar to people not only in terms of discussion and aspirations, but especially of everyday life.

Political changes are essentially difficult and long-lasting, and economic changes can take decades or even centuries to reach the proposed GDP target. It is not more than obvious that the people who were the instruments of a dictatorial system will not change completely in 24 hours, nor will the fear of those who were terrorized by the first group of people disappear in the same interval. Reluctance, stumbling, hesitation and deviant behaviours will manifest in the long run, and the moment that marks the change will later prove to be just a major time limit, which facilitated the move in a new direction.

2. Obviously, most people in the last decade of the 20th century thought about the political aspects of governmental system characterisation. In fact, it is an almost natural aspect, namely that of the interest attracted by the idea of politics, which is in essence easier to detect in society. Thus, politics had been the one that created the great problems of the century – namely the two world wars and their consequences – and it was also called not only to correct the problems it had caused, but also to offer a new line of development of states and their populations.

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[1] Fukuyama, *End of History and the Last Man*, 51.

Politics had in those years the chance to "whiten" a good part of the defects that scientists and citizens had identified.

But as politics is made by people, and they have their own interests, the perennial conflict between the interests of a man and those of a community had been won by individuals – analyzed in a singular way – in many countries that have transitioned from dictatorship to democracy. Thus, the positive image that the idea of politics had obtained with difficulty in those years was quickly tarnished by the behaviours of low moral quality of the political environment, bringing into question – among others – the initial qualities that a person must fulfil before he wants to enter politics.

However, the strong disappointment that the political practices produced for the people allowed the attention of the other components of the state, because politics is only one of the elements that draw the lines of the countries and communities actions.

At that moment, the approach of the administrative phenomenon became essential, because the will of the state is expressed and imposed through the behaviour of some institutions of public administration. After all, the political struggle is to gain control of these institutions of public administration – especially those with state territorial competence.

Thus, the state of democracy – understood as necessary at the global level and accepted at the declarative level by all states – had to be materialized by forming an adequate legislative and institutional framework. Basically, from the moment a country started on the road to democratization – this being often the time when a country could free itself from communism or another form of enslavement of the nation – the new authorities launched a legal and administrative construction operation to the implementation of the democracy foundations.

The principles of the democratic state are known by most people who have reached the age required to vote. In fact, the classical concept of democracy is one derived from the Greco-Latin perspective, intertwining both the idea of political-administrative organization of the state and that of the complete state of legality in which all citizens must conduct their lives, regardless of position on who have it in society. The reality emphasizes that just creating a framework of political and

administrative institutions is not enough to be in the presence of real, effective democracy – being the essence of the concept the highest degree of law enforcement that establishes the legal responsibility for every citizen, regardless of the political or administrative function it performs.

The abolition of monarchical absolutism was not doubled by the complete elimination of the desire for absolute power, but the fate of some overly authoritarian leaders – assassinated or executed, often in revolts – forced political groups to seek general mechanisms to replace parts of the decision-making body. This mechanism is called elections, and its degree of extension is not yet universal, being countries where they are only allowed in limited proportions. It should also be mentioned that for decades the voting rights of different categories of people have been restricted and the possibility of population consulting as widely as possible was completed in most countries only in the second half of the 20th century.

Big words are used in these processes of the political class renewal, and the most commonly used are those who reveal that politicians exercise their power only in the name and in the interest of the people (demos). The words spoken so often and by such a large number of politicians must be followed by facts, and as the latter do not rise to the level of the claimed ideas, there is a decrease in confidence in the entire political mechanism. As consequence, the presence to elections decrease in many countries and the level of trust in parties and parliaments is at the lowest point ever[1].

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[1] See, as example, T. Miyachi, M. Takita, Y. Senoo and K. Yamamoto, "Lower trust in national government links to no history of vaccination", in *The Lancet*, Vol. 395, Issue 10217 (January 2020): p. 31 – 32. See too *Share of Europeans who trust key institutions in selected countries 2019*, available at https://www.statista.com/statistics/1108375/trust-key-institutions-selected-european-countries/, consulted at 16th of December 2020. See also L. M. Bartels, "Democracy Erodes From the Top Public Opinion and the Crisis of Democracy in Europe" (September 2020), available at https://www.vanderbilt.edu/csdi/includes/WP_4_FINAL.pdf , consulted at 16th of December 2020.

In all this time life goes on, and every day citizens have contact with one of the fundamental aspects of political life – more precisely, with the administrative system. The public administration is created to fulfil political decisions, being at the same time the structure that acts in a daily manner to carry out those activities that do not involve contact with the political environment, but that facilitate human life, thus reaching an increase of general standard of living in a country.

The public administration fulfils its attributions based on this double task it has, being the fastest informed sector about the problems of the citizens' lives too. At the same time, the public administration is called to respond or solve a significant part of citizen's needs, long before they are brought to the attention of the political factor. For this reason, in a major political crisis leaders appointed strictly on the basis of the political factor may resign or flee, abandoning their fundamental mission – that of doing good to the community they lead – without the public administration having the opportunity to restrict its attributions, remaining the constant of the state in the society.

3. It is a great mistake that today the study of public administration history is not done more thoroughly, because it is – as scientists stated in several papers – very important in understanding state organization models and their limits.

This aspect emerges very easily from the technological perspective of human history. Specifically, until the 19th century, the states and empires of the world (this being the typology for hundreds and thousands of years of history) used their own ways of action in their own territorial area, in relation to the backward technologies used. The technological development of the 19th century – continued since then in gigantic steps – has led not only to the accumulation of development differences between states, but also to the global standardization of many technologies that have appeared in the last two hundred years: cars, telephones, Radio-TV devices, computers, planes, etc.

All these technologies have not only been adopted by public administration institutions, but also by the general public. However, their ways of functioning were practically the same, which led to a certain uniformity of the tools used by the public administration, based strictly

on its technical-material operations. In fact, if we consider the division of administrative actions into technical-material operations – who produce changes in the real world, and technical-administrative operations – which are expressed by the documents that public institutions prepare, we will see that in the material part the technological development of humanity has led to the standardization of many tools used to fulfil public needs: waste collection machines look about the same, the equipment used to install different types of pipes have the same resemblance, computers use about the same programs, etc.

The great families of law have not changed, the concepts and principles of public law are equally well traced within these large groups of states, but the regulations of identical issues have followed the path of this uniformity: in any country we will meet public roads with almost same level restrictions speed, traffic signs are practically the same; standardization of bank documents is almost universal, etc. In this powerful levelling of human society, technology plays the role of initiator and legislation is what follows. Legislative codifications and adaptations are therefore a consequence of technology in the 20th and especially the 21st century, and not the other way around.

Obviously, from a legal point of view, the problems that arise are others now, related to the more advanced technological perspectives in some countries, which can lead to social or legislative realities that contradict the principles of law in certain countries, as well as certain religious prescriptions. Thus - for example – sex change operations are possible today, but they contravene all religious prescriptions, and will not be recognized by the legislation of certain countries. But citizens of those countries who still want this change can go to another country to do so, but its legal effects will not be recognized in the country of origin. Obviously, this example is just one of many that have emerged in recent decades, and new complicate cases will affect both private law and public law.

The public administration is essentially called to fulfil the normative acts adopted by the legislators. However, public administration is a matter of means, which works on the basis of budget allocations. The financial aspect is particularly important, because in this

century the technological changes of people's daily lives can come faster than a legislation does, and the implementation without sums of money allocated on time contributes to the installation of gaps between the claims of citizens who can afford new technologies and what the public administration can offer as a framework for regularizing the action of private law persons.

4. The year 2020 has brought with it a major change in people's lives, globally. It was not strictly economic change in nature – although the consequences appear here as well, and the public administration will be called upon to solve some of the problems brought by the economic shortcomings of each country.

The factor that hit hard the entire planet was medical, and the consequences were felt most strongly by various sectors of public administration, suddenly called to act according to their own material skills, but in exceptional circumstances.

It should be mentioned – as a particularly important aspect – that the virus that has hit humanity is a new one, so most of the technological challenges have been difficult to solve, and only countries with financial and research strength have been able to bring results in terms of creating tools for healing.

It is therefore up to the governments and national public administrations to manage the spread of the virus, wanting to limit it to a negligible level.

What was in the discussion of academics, practitioners in the field of economics and – at a lower level of depth, of the population – namely the most complete globalization proved to receive a boost by the pandemic. Obviously, the cause of this explosion is not yet certain, but the social levelling it produces is very fast, in relation to the complexity and universality of the air transport systems we built before 2020 year.

The measures that the governments were able to take were mainly administrative, specifying that the economic stimulus will be easier to highlight in the budget balances in the years to come. Otherwise, in all countries the lockdown was used, partially or totally – relative to their territory; norms were established regarding the hospital and behavioural circuits for mild cases; financial resources were unblocked in order to

modernize and increase the medical infrastructure of each country; norms have been enacted for establishing the conditions of movement of persons to a country, as well as on the streets; educational system was stopped or converted into online form; it was established which deeds that violated the administrative provisions could be sanctioned financially and which could be penalized; etc.

All these measures have been adopted on the basis of what administrative law doctrinaires call the theory of exceptional circumstances, and the main actors in these situations is the executive branch – which in many countries has angered parliamentarians, who have suddenly been eclipsed in what constitutes basics of their activity.

Obviously, this situation has led to real and pertinent concerns regarding the general state of legality and human rights[1], and several courts of constitutional control have been notified in this regard, with the result of validating these measures in some countries[2], or with partial validation of them.

These ways of organizing states in the face of the pandemic are roughly identical, even if in terms of form certain elements were different, depending on the country. In addition, the huge degree of connection to the media that our planet has today – with over 4.93 billion Internet users[3] – has allowed us to know in real time the procedures adopted by each state, which has been a source of inspiration for governments in all countries.

Basically, there was a legal uniformity in the field of public law – without neglecting important parts of private law – based on this globalization of communications, which levelling was the consequence

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[1] J. Burgeois, "Crise sanitaire, crise des libertés ...", available at https://www.village-justice.com/articles/crise-sanitaire-crise-des-libertes,34414.html , consulted at 16th of December 2020.

[2] E. Landot, "Conseil constitutionnel, QPC, Covid-19 et application, ou non, de la théorie des circonstances exceptionnelles à la sphère constitutionnelle", available at https://blog.landot-avocats.net/2020/03/26/le-conseil-constitutionnel-valide-la-constitutionnalite-de-la-loi-organique-covid-19/ , consulted at 16th of December 2020.

[3] https://www.internetworldstats.com/stats.htm, consulted on 6 of June 2019.

of continuous information with good and bad administrative practices in each country. The effects of this pandemic will last for many years, and administrative practices now have the possibility to be as uniform as possible globally, because bringing to public knowledge of the entire planet all existing situations is a real fact today, and any legislator can be inspired by examples other countries.

Basically, we are facing a partial legal levelling – in the sphere of norms that the law calls the theory of exceptional circumstances – which will be achieved globally, and certain differences between the legal systems will fade even more. As technological progress expands further in certain areas in the coming decades, it is very possible that the spheres of public and private law will become more and more unitary, globally.

CONCLUSIONS

In general, the concept of globalization has been studied from the perspective of political science, as well as from the economic perspective.

It is difficult to ask lawyers – familiar with the general principles of law, but delved into the depths of national regulations, which are overabundant in many countries – to consider the globalization of the legal system.

However, the realities of the 21st century lead in this direction, mainly as an action of the information space increasingly uniform technologies. As a result of these technologies, a large part of daily activities have come to have a global standardization, and the future will strengthen this line of action.

The pandemic that occurred this year forced states to generally adopt the same measures and public administrations were forced to develop and implement fairly similar procedures, because the current medical requirements do not allow major variations.

It is therefore a result of the pandemic that the public law regulations adopted in 2020 were rather unitary at the level of continents and even more, and as long as pandemic is not brought under control the result will be the extension of the duration for the rules adopted this year.

Thus, we can speak of a certain globalization and levelling of legal norms specific to the theory of exceptional circumstances, which – in the context of contemporary technologies – seems to be long lasting, which will influence over time other spheres of public and private law.

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (23), Year XIX, 20120, pp. 79-89

THE STATEMENT OF THE CIVIL SERVICE IN THE ROMANIAN ADMINISTRATIVE CODE OF 2019

Viorica POPESCU[1]

Abstract:

Starting from the consideration that the administration remains the exclusive prerogative of the public administration authorities[2]*, and the civil servant represents the fundamental resource of this system, the Romanian legislator adopted in 2019 a new regulation in this field in the form of the Administrative Code.*

The premises which have determined the adoption of this normative act derives from the fact that the functioning of every modern state depends on the civil servants and the management of the civil service, the old regulation emphasizing a series of imperfections to be corrected by the legislator.

Although there have been many criticisms of the way in which the status of civil servants has been regulated, considering that the current regulation has not led to any real progress in the field, it should be emphasized that we can see an adaptation of policies and system of human resources to the objectives and requirements of a modern administration.

The current study aims a brief analysis of the concepts of public service and civil servant and of the means in which they are classified in relation to the Administrative Code adopted by the GEO No 57/2019.

Key words: *public administration; public authorities; civil service; administrative code; principles; civil servant.*

[1] Lecturer PhD, Faculty of Economic Sciences and Law, University of Pitesti (Pitesti, Romania), e-mail: **avocat.vioricapopescu@gmail.com**

[2] D. Brezoianu, *Drept administrativ român* (Bucharest: All Beck, 2004), 3

INTRODUCTION

Economic, geopolitical, technological, socio-cultural and legal transformations of the public sector have determined mutations also in the functioning of the Romanian public administration.

Given that the administration must act for the benefit of society, and government officials to be servants of society[1], considering obsolete the way in which the civil service and the civil servant[2] were regulated, as it no longer met the requirements of a modern public administration, the Romanian legislator adopted in 2019 the Administrative Code[3].

The notions of public administration and civil service are closely related, the public administration being defined by the legal literature as a set of civil services, organized by law and entrusted to civil servants (individuals) acting under their competence, assigned by the law[4].

The public administration performs the civil service by summing up the ensemble of activities through a series of administrative acts and facts of an administrative nature, through civil servants.

Also, in an organic meaning, the public administration has been defined as a set of administrative bodies through which, in the regime of public power, the laws are carried out or within the limits of the law public services are provided. The public administration is organized in the form of a mixed, hierarchical-functional structure, within which the following are distinguished:

a) authorities of central public administration and authorities of local public administration (according to the territorial criterion);

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[1] Brezoianu, *Drept administrativ român*, 3

[2] Law No 188/1999 on the status of civil servants, published in the Official Gazette No 365/29 May 1999, currently partially repealed.

[3] GEO No 57/2019 adopting the Administrative Code, published in the Official Gazette No 555/5 July 2019

[4] E. Bălan, *Drept Administrativ și procedură administrativă* (Bucharest: University Press, 2002), 221

b) authorities of public administration with general competence and authorities of public administration with specialized competence (according to the functional criteria)[1].

THE NOTIONS OF CIVIL SERVICE AND CIVIL SERVANT

Defining the civil service has represented a constant preoccupation in the area of the administrative law and lately in the area of public management. Thus, in the interwar period the civil service has been understood as being "the complex of powers and competences, organized by law for the satisfaction of a general interest, in order to be occupied, on a temporary basis, by a holder (or more), a natural person who, exercising his powers within the limits of his competence, pursues the achievement of the purpose for which the function was created"[2].

Prof Antonie Iorgovan defined the civil service as being "the legal situation of the natural person – legally invested with attributions in the performance of the competence of a public authority – consisting in the ensemble of the rights and obligations forming the complex legal content between the natural person and the organ which has invested him"[3].

In the Statute of Civil Servants adopted by Law No 188/1999 the civil service has been defined as the ensemble of attributions and responsibilities, established according to the law, with the purpose of fulfilling the prerogatives as public power by the central public administration, the local public administration and by the autonomous administrative authorities[4].

Currently, the Romanian legislator has partially changed this definition and according to Art 6 Let y) of the Administrative Code, the civil service is defined as the ensemble of attributions and responsibilities

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[1] C. Manda, *Drept administrativ, Tratat elementar*, 5th Edition, revised and amended (Bucharest: Universul Juridic, 2008), 34

[2] P. Negulescu, *Tratat de drept administrativ. Principii generale*, 1st Volume, (Bucharest: Grafic Art Institute Press, 1934), 522

[3] A. Iorgovan, *Tratat de drept administrativ*, 1st Volume (Bucharest: All Beck, 2001), 554

[4] Art 2 Para 1 of the Statute of civil servants adopted by Law No 188/1999, republished

stated by the law, with the purpose of performing the prerogatives as public power by the public authorities and institutions.

The principles founding the performance of the civil service are:

a) the principle of legality;
b) the principle of competence;
c) the principle of performance;
d) the principle of efficiency and efficacity;
e) the principle of impartiality and objectivity;
f) the principle of transparency;
g) the principle of responsibility, in accordance with the legal provisions;
h) the principle of orientation towards citizens;
i) the principle of stability in performing the civil service;
j) the principle of good faith, in the meaning of complying with the rights and fulfilling the mutual obligations;
k) the principle of hierarchic subordination[1].

Given that the notion of civil service cannot exist without that of civil servant, Art 371 Para 1 defines the civil servant as the person appointed, according to the law, in a public position[2].

Within this complex mechanism, which is the public administration, the role of civil servants is that of deciding and/or performing technical activities, to ensure the continuity of the functioning of the public authorities and institutions in the general public interest.

Regardless of the nature of the civil service held, of management or execution, the activity of civil servants shall be performed based on the following principles:

- objectivity;
- professionalism;
- legality;

[1] Art 373 of the Administrative Code adopted by the GEO No 57/2019 published in the Official Gazette No 555/5 July 2019.
[2] Art 371 Para 2 of the Administrative Code adopted by the GEO No 57/2019 published in the Official Gazette No 555/5 July 2019.

- impartiality.

THE FEATURES OF THE CIVIL SERVICE

Considering that the legislator partially changed the definition of the civil service by preserving its fundamental elements from the old regulation, we consider that nowadays the civil service has the following features[1]:

a) the civil service represents an ensemble of rights and obligations. By these rights and obligations, the holder of the civil service receives his own status and shall participate in the performance of the competences of the public administration organ of which he is part;

b) the civil service has a legal feature, in the meaning that the rights and obligations forming its content are unilaterally established, through legal norms;

c) the civil service has a mandatory feature because the performance of the rights and obligations forming its content does not represent a possibility left to the appreciation of the civil service's holder;

d) the civil service has its own character, being in a close relation with the civil servant invested with a civil service. This character of the civil service does not presuppose an exclusivity, the bodies of the public administration being able to realize their competences by fulfilling identical or similar functions by several persons, with the material delimitation of the activity of each of them;

e) the civil service has a continuous feature because the existence of the rights and obligations forming its content lasts as long as it is maintained the competence of the public administration organ that the civil servant fulfils, without any interruptions;

f) the performance of the civil service shall be done only as public power. In this sense, it is mentioned that within a public administration

[1] R.N. Petrescu, *Drept Administrativ*, revised and amended (Cluj Napoca: Concordial Lex, 2001), 439; I. Popescu-Slăniceanu, A. Puşcă, C-I. Enescu and D-M Petrovszki, *Drept administrativ*, 2nd Volume (Galaţi: "Danubius" University Press, 2009), 7 and next.

body, where there are a multitude of functions, it will be possible to differentiate the public functions that are exercised as authority, public power, from non-public functions, which are exercised at the level of compartments. which are in turn exercised on the basis of employment contracts and are linked to the exercise of public power;

g) the holder of the civil service shall be legally invested, the investment being able to take the form of appointment. The general rule of investment by appointment is that the appointment is preceded by a competition;

h) the determination of the attributions of the civil service corresponds to the principle of specialization and professionalization of the public service, the public authority having the obligation to ensure an optimal ratio between the management functions and the executive functions;

i) the content and attributions of the civil service are pre-existing for its occupation;

j) the public office implies certain incompatibilities, the civil servant not being able to perform certain offices or have certain professions, according to the law.

THE CLASSIFICATION OF THE CIVIL SERVICE. CATEGORIES OF CIVIL SERVANTS

The Administrative Code classifies the civil services according to several criteria, namely:

I. *According to their importance*, the civil services[1] are classified as following:

- General civil services – the ones representing the ensemble of attributions and responsibilities with general feature and common to all public authorities and institutions, for the performance of their general competences and specific civil services representing the ensemble of attributions and responsibilities specific to certain public authorities and

[1] Art 383 of the Administrative Code

institutions, for the achievement of their specific competences or which require specific competences and responsibilities;

- Public positions in class I, public positions in class II, public positions in class III;
- State public positions, territorial and local public positions[1].

II. *According to the affiliation and territorial level of the public authorities and institutions*, the civil services are classified as following:

- State public offices[2];
- Territorial public offices[3];
- Local public offices[1].

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[1] Art 383 of the Administrative Code states that the state public offices are established, according to the law, within the ministries, specialized organs of the central public administration, specialized structures of the Presidential Administration, specialized structures of the Romanian Parliament, autonomous public authorities mentioned by the Romanian Constitution and other autonomous administrative authorities, as well as within the structures of the judicial authority; (2) Territorial civil services are established, according to the law, within the prefect's institution, the decentralized public services of ministries and other bodies of central public administration in administrative-territorial units, as well as public institutions in the territory, subordinated/coordinated/under the authority of the Government, ministries and other bodies of central public administration; (3) Local civil services are established, according to the law, within the own apparatus of the local public administration authorities and within the public institutions subordinated to them.

[2] Art 385 Para 1 of the Administrative Code states that in the area of public offices of state are the following services: civil services established, according to the law, within the ministries, specialized organs of the central public administration, specialized structures of the Presidential Administration, specialized structures of the Romanian Parliament, autonomous public authorities mentioned by the Romanian Constitution and other autonomous administrative authorities, as well as within the structures of the judicial authority.

[3] Art 385 Para 2 of the Administrative Code states that the territorial civil services are the public offices established, according to the law, within the prefect's institution, the decentralized public services of ministries and other bodies of central public administration in administrative-territorial units, as well as public institutions in the territory, subordinated/coordinated/under the authority of the Government, ministries and other bodies of central public administration.

III. *According to the level of studies necessary to hold a civil service*[2]:

- The first class includes public positions for which occupation requires undergraduate studies graduated with a bachelor's degree or equivalent;
- The second class includes the public positions for the occupation of which short-term higher education is required, graduated with a diploma, in the period prior to the application of the three Bologna-type cycles;
- The third class includes the public offices for the occupation of which high school studies are required, respectively secondary high school studies, completed with a baccalaureate diploma.

IV. A*ccording to the level of attributions of their holders*, civil services are classified as following:

- Civil services corresponding to the category of senior civil servants[3];
- Civil services corresponding to the category of management civil servants[4];

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[1] Art 385 Para 3 of the Administrative Code defines the local civil services as the public offices established, according to the law, within the own apparatus of the local public administration authorities and of the public institutions subordinated to them.

[2] Art 386 of the Administrative Code

[3] Art 389 of the Administrative Code states that shall have the quality as high civil servant the persons appointed in one of the following public offices: a) general secretary and deputy general secretary within the public authorities and institutions stated by Art 369 Let a); b) the prefect; c) subprefect; d) government inspector.

[4] Art 390 of the Administrative Code regarding the managing public position states that the category of managing civil servants refers to the persons appointed in one of the following public offices: a) general director within the public authorities and institutions provided in Art 385, as well as their specific equivalent public positions, except for those in the category of senior parliamentary civil servants; b) deputy general director within the public authorities and institutions provided in Art 385, as well as their specific equivalent public positions; c) director within the public authorities and institutions stated by Art 385 Para 1, as well as their specific equivalent public

- Civil services corresponding to the category of executive civil servants[1].

V. *According to the degree of access to the public office*, civil services are classified as following:

- Civil services held by debutant civil servants[2];
- Civil services held by permanent civil servants[3].

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positions; d) deputy director within the public authorities and institutions stated by Art 385 Para 1, as well as their specific equivalent public positions; e) executive director within the public authorities and institutions stated by Art 385 Para 2-3, as well as their specific equivalent public positions; f) deputy executive director within the public authorities and institutions stated by Art 385 Para 2-3, as well as their specific equivalent public positions; g) head of service within the public authorities and institutions stated by Art 385, as well as their specific equivalent public positions; h) head of office within the public authorities and institutions stated by Art 385, as well as their specific equivalent public positions; (2) The public office as general secretary of the administrative-territorial unit, namely that as general secretary of the administrative-territorial sub-division are specific public management offices.

[1] Art 392 of the Administrative Code states that are executive civil servants from class I the persons appointed in the following general civil services: counselor, legal counselor, auditor, expert, inspector, counselor for public procurements, as well as the public civil services assimilated to these; (2) Are executive civil servants of class II the persons appointed in the general civil service as expert civil service clerk, as well as the specific equivalent public positions assimilated to it; (3) Are executive civil servants of class III the persons appointed in the general civil service as clerk, as well as the specific equivalent public positions assimilated to it.

[2] Art 388 Para 2 of the Administrative Code states that are appointed as debutants civil servants the persons who have promoted the competition for the occupation of a public position of beginner professional degree, as well as the persons appointed under the conditions provided in Art 612 Para 1 and which do not meet the conditions of seniority in the specialty necessary for the exercise of a definitive public executive function.

[3] Art 388 Para 3 of the Administrative Code states that are appointed as permanent civil servants: a) the debutants civil servants who have fulfilled the internship period stated by the law and have received a corresponding result to their evaluation; b) persons who enter the body of civil servants in the manner provided for in this Part and who have a length of service in the field of studies necessary for the occupation of a civil service of at least one year.

CONCLUSIONS

The modernization of the system of public administration could not be achieved without a reform of the civil service, because it insures the implementation of the social and economic policies.

By exercising the public function, it is necessary to contribute to the realization of public power, either in a direct form, in the case of decision-making functions involving the issuance of legal acts of power or authority, or indirectly through training, execution and control, closely linked. , or in connection with the exercise of public authority.

The Administrative Code adopted in 2019 proposes a reconsideration of the management of civil service, which shall contribute in the efficiency of the administrative service, but also to the improvement of the relations between administration and civil society, in accordance with the European Union's standards.

In this meaning, the new regulation regarding the civil service has tried to eliminate the inadvertences emerged in the Statute of Civil Servants published in 1999, by clearly defining all attributions and competences specific to this concept and adjusting them to the new social relations, but also to the European context within which the civil servants perform their activity.

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (23), Year XIX, 2020, pp. 90-99

MAKING EFFICIENT, AT THE LEVEL OF THE EUROPEAN UNION, THE PROTECTION MEASURES ON THE CHILDREN – VICTIMS OF SEXUAL ABUSES – WITHIN COVID-19 PANDEMIC

Carmina TOLBARU [1]

Abstract:

At European level and in general, the number of crimes committed on children is growing, which supposes a particular focus on violence, namely the sexual ones, whose victims are children, because they strike more deeply the human consciousness. The increase of this type of crime surely imposes the adoption of some efficient prevention measures that should mainly be based on the social and economic domain.

Key words: *sexual abuse; minors; protection; fight; treatment.*

INTRODUCTION

Human rights aim to the same extent at the child rights which are protected both at national level and at European and international level. They consider an adjustment of the justice systems to the new pressures emphasized by the current reality on European and global level, and that is why criminal legislations had permanently in view an implementation of the international obligations into the newly adopted criminal codes. In the Romanian criminal code there were new indictments in this area,

[1] Lecturer PhD, Faculty of Economic Sciences and Law, University of Pitesti (Pitesti, Romania), email: carmina.tolbaru@upit.ro .

such as sexual assault, recruiting minors for sexual purposes, minor trafficking, exploitation of begging or use of a minor for begging, use of child prostitution, or child pornography.

Naturally, through his/her condition as a child, he/she needs special protection from both the family and the society and state, by adopting efficient measures in this regard.

The sexual exploitation and the abuse committed on children represent a social problem that acquired awareness especially recently, which imposed urgent measures. At European level, both the European Parliament[1], and the Council[2] decided additional measures to be implemented into the national legislations of the Member States, as the efforts made until now seem to be ineffective, against the background of the increase of this type of criminality, generated by the COVID-19 pandemic[3].

The European Union makes constant efforts regarding the fight against violence and abuses exerted against children both in the online and offline environment, adopting in this regard a strategy in the sense of a more effective fight against this type of criminality[4].

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[1] Resolution regarding child rights on the occasion of the 30th anniversary of the UN Convention on child rights, November 2019, https://www.europarl.europa.eu/doceo/document/TA-9-2019-0066_EN.html

[2]Conclusions of the Council regarding the fight against child sexual abuse October 2019, https://data.consilium.europa.eu/doc/document/ST-12862-2019-INIT/ro/pdf

[3] Europol, *Exploiting isolation: Offenders and victims of online child sexual abuse during the COVID-19 pandemic*, 19 June 2020, https://www.europol.europa.eu/publications-documents/exploiting-isolation-offenders-and-victims-of-online-child-sexual-abuse-during-covid-19-pandemic

[4] The European Commission, Communication of the Commission to the European Parliament, Council, European Economic and Social Committee and the Committee of regions, *EU Strategy for a more effective fight against child sexual abuse*, Brussels, 24.7.2020 COM(2020) 607 final

1. MANIFESTATIONS OF THE FORMS OF SEXUAL ABUSE[1] AND SEXUAL EXPLOITATION OF MINORS IN THE OFFLINE AND ONLINE ENVIRONMENT

The online environment became the main ally of abusers, against the background of the pandemic situation created by Covid-19 virus. Any access of the informatics system, for educational or simply amusing purpose, supposes a print of the potential victim. It is well known that children are not interested enough in issues concerning making secret their personal data, accepting anyone sending them a friendship request, without thinking that many people want more than just socializing. Therefore, chatting, socializing with different friends on Internet, and living a second life by means of Internet, became very popular activities among grown-ups, but especially among children. Offenders act the same. They mark off the criminal road from the very beginning, by initiating contacts with children via Internet, as a starting point for the next step, that of sexual exploitation and sexual abuses.

Although the public attention is often focused on the image of the vagabond concealed in the media, the sexual abuses on children are many times committed within their entourage, within the family, by those close to them. Child sexual abuses can have different forms: incest, pornography, prostitution,"grooming" – manipulation and recruitment of children for sexual purposes, or "sexting" – sending explicit sexual messages to children – any of these forms seriously jeopardizing the child's mental and physical health.

The technology of information has permanently evolved, knowing significant changes, especially an alarming increase of online shares. In this way, a lever was created by which attackers succeed in getting in contact with children more easily and thus in establishing affective

[1] The terms child sexual abuse and child sexual abuse material includes child sexual abuse material and material that may be produced through the exploitation of a child in exchange for some material gain. It is used in this report in accordance with the Terminology guidelines for the protection of children from sexual exploitation and sexual abuse, accessible at http://luxembourgguidelines.org/

relationships with them for sexual purposes (phenomenon known as grooming). These offences concern not only online situations, but also offline ones and can consist in viewing and distributing images picturing forms of online child sexual abuse, and also sexual abuse via web cameras.

Of course, the authors of such offences specific to the online environment dispose of advanced technical capacities regarding the use of technology, succeeding in hiding their identity and profile, which makes them avoid criminal responsibility and facilitates them to continue to commit other abuses[1].

2. CREATION OF AN EFFECTIVE AND ADEQUATE PROTECTION SYSTEM – A DESIDERATUM OF THE EUROPEAN COMMISSION

2.1. GUIDELINES – TARGET OBJECTIVES OF THE EUROPEAN UNION FOR THE PERIOD 2020-2025

In the matter of protection of child rights, they benefit from a fair system compared to the one set up for grown-ups in all the Member States of the European Council, which is an ambitious and primary objective. The main strength in this regard is first of all the right of the child not to suffer from any form of violence. Children protection is a priority and in the fight against sexual exploitation and abuses, an important demarche is Directive 2011/93/UE on child sexual abuse[2].

Within the context of a more and more extended use of the technologies of informatics and communications both by children and by the authors of offences, the Directive has lacunae regarding certain aspects, such as those in matter of prevention, by prevention programmes

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[1] Europol, *Internet Organised Crime Threat Assessment (IOCTA)*, 2019, https://www.europol.europa.eu/activities-services/main-reports/internet-organised-crime-threat-assessment-iocta-2019

[2] Directive 2011/93/UE of the European Parliament and of the Council of 13 December 2011 on the fight against child sexual abuse, child sexual exploitation and child pornography (OJ L 335, 17.12.2011).

for offenders and potential offenders, and also by programmes of assistance, support and protection for children-victims, or in criminal matter, regarding the definition of the legal framework of offences and setting up of corresponding sanctions.

Within the European Union, there are more legislative instruments[1] that work together in this primary desideratum which consists of the fight against child sexual abuse, but such a fight cannot win without a tight international cooperation on behalf of the Member States.

They want the creation of a conventional framework of legal cooperation in criminal matters, between the members of the European Council. Children protection against violence has been a top priority within the European Council for many years and still is at present, the strategy at the European Union level having as target objectives more concrete initiatives for the period 2020-2025:

- full enforcement of Directive 2011/93 and assure its compliance by all Member States of the European Union by starting the procedures of establishing the failure to comply with the obligations by the Member States;
- the need to update the Directive by reference to the already existing legal instruments at the European Union level or which are prefigured at this moment[2];
- identification of legislative lacunae, of the best practices and of the priority actions – to consider the online aspects of offences, the more

[1] Resolution of the European Parliament of 26 November 2019 on child rights on the occasion of the 30thy anniversary of the UN Convention on child rights, 2019/2876 (RSP)

[2] Directive (UE) 2018/1972 of establishing the European Code of Electronic Communications (JO L 321, 17.12.2018, p. 36); Proposal of Regulation on the European orders to disclose and keep the electronic evidence in criminal matter, COM(2018) 225 final; Proposal of Regulation on the respect of private life and the protection of personal data in electronic communications (Regulation concerning private life and electronic communications) COM(2017) 10 final; Regulation concerning Eurojust [Regulation (EU) 2018/1727 regarding the European Union Agency for Criminal Justice Cooperation in criminal matters (Eurojust), OJ L 295, 21.11.2018, p. 138

and more advanced technological changes, the exponential increase of online shares, the improvement of the technical skills of offenders, especially regarding encryption and anonymity (peer-to-peer file sharing and darknet use);

- the increase of the efforts made by the law enforcement authorities at national and EU level – the improvement of the digital skills of the law enforcement authorities and of the judicial ones, the use of undercover online investigation techniques;
- the creation of possibilities for the Member States to better protect the children through prevention programmes – in this regard, they have in view to set up a prevention network made up of outstanding practicians and researchers, assuring a permanent feed-back between the two areas of practice-research; launching the media campaigns and the awareness campaigns, thus assuring the information of children, parents, caretakers, educators/teachers regarding risks and prevention methods for cases of abuse;
- the creation of an European centre to prevent and fight child sexual abuse – playing a role in assuring a global support for all Member States in their fight against online and offline child sexual abuse. The activity of such a centre could be based on the good practices of similar centres around the world, and on a tight collaboration with the national authorities and with the world-level experts on assistance granted to victims;
- the stimulation of efforts made by the economic sector to assure child protection in its products – at this level, there is an infrastructure that can be exploited by the online service providers, especially for social media, to identify and report the cases of child sexual abuse;
- the improvement of children protection at world level by multi-party cooperation – child sexual abuse is a problem of the current society, felt at global level, which requires intense actions carried out by all the states in the world and a solid cooperation between them, in order to eradicate this plague.

2.2. INTERNATIONAL COOPERATION – KEY ELEMENT IN THE FIGHT AGAINST CHILD SEXUAL ABUSE

Children are exposed to an increased risk of abuse, negligence, exploitation and violence against the background of the isolation measures within COVID-19 situation. Thus, Internet has become the main lever for aggressors and offenders for the distribution, marketing, owning and viewing materials containing child sexual abuse. Such a phenomenon unfortunately propagates at cross-border level and cannot be stopped.

That is why, to inform children regarding the risks they permanently are exposed at by the use of Internet, is a self-protection instrument that every child should benefit from. If every child knew how to use Internet safely, and the behaviours which are not allowed, that the risk facing abuse situations would decrease. Once abused, any child should feel safe, all the more so, not often, abuse can come even from those he/she trusts more. Any child has the right, from the family, the society or the state, to be assured a pack of protective measures due to his/her condition as a minor, all the more so on the background of all forms of abuse being committed on children and which seriously jeopardize their health and psychological and social development. An important part in prevention is the action to report the cases of abuse[1], and for that it is necessary for them to access only those channels which are safe and at the same time adequate for their age.

Sexual abuse and sexual exploitation are among the most serious offences, because the vulnerable child is the target of this type of criminality. Unfortunately, nowadays it is practically impossible for parents to be able to protect their children. Not even a State can do that, individually, as this type of criminality usually takes place at cross-

[1] The action plan for digital education (2021-2027) aims at a tighter cooperation at European level, as a result of the fact that, following the crisis caused by COVID-19 pandemic, the technology is used in a fulminatory way. The future plan of action of the European Commission will also cover the online child sexual abuse, https://ec.europa.eu/education/education-in-the-eu/digital-education-action-plan_ro.

border level, therefore it would require the assistance of the judicial authorities from other countries. International cooperation is regulated by the successful number of treaties of the European Council, so it was not necessary to introduce a special regulation in matters of rules of international cooperation.

The most important instrument issued by the European Council meant to assure a deep and exhaustive protection of children against sexual exploitation and abuses is the Convention of Lanzarote[1]. The Convention is a legal document applicable not only for the members of the European Council, but also for any other state that shares its values. The Convention was adopted in order to improve the prevention, protection, prosecution and sanctioning of offenders. In the extent in which we succeed in achieving this, the world will be a better and safer place for children.

Under the rule of the European Council, significant efforts have been made to protect all children in Europe against sexual exploitation and abuses, so we all have to identify the most effective measures and to follow every necessary step to prevent such risks[2]. The text of the Convention covers different aspects regarding child protection against sexual exploitation and abuses, talking in its articles about preventive, protection and victim assistance measures, and also about aspects of criminal and procedure substantive law, regarding prosecution, investigation or international cooperation. Therefore, the Convention of Lanzarote is of great interest for many of the Member States of the Council, being applicable for prosecution of already committed offences, and also for the measures concerning the protection and assistance of the victims of such offences, and also for the prevention of all forms of child sexual abuse and exploitation.

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[1] The Convention of the European Council for child protection against sexual abuses and sexual exploitation, Lanzarote, 25 October 2007, https://rm.coe.int/168046e1d9

[2] See, in this regard, the objectives provided in Agenda 2030 of UN for sustainable development, https://www.mae.ro/node/35919, also the common objectives of the WeProtect World Alliance, https://www.weprotect.org/

This corollary includes all the efforts made by the European Union to implement totally and as fast as possible the measures contained in its legal instruments, which imposes, at the same time, much more responsibilities to the States and to their authorities, responsibilities referring to the prevention, reporting, notification, criminal research, protection and identification, treatment and monitoring of each case separately.

CONCLUSIONS

Child sexual abuse is a world level problem which perpetuates, and imposes constant and solid efforts on behalf of the actors from the public and private sector to be able to assure an effective protection of children against sexual abuse and exploitation. In this regard, the European Commission aims at concrete obligations, both for the law enforcement authorities, and for the actors from different domains of social and economic life, regarding the identification and reporting the inline or offline cases of sexual abuse.

This desideratum remains a continuous challenge and a key priority for the European Union, claiming additional efforts regarding the prevention of child sexual abuses, and also regarding the assurance of assistance, support and protection for children-victims.

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No.2 (23), Year XIX, 2020, pp. 100-109

GENERAL CONSIDERATIONS REGARDING CIVIL SOCIETIES

Amelia-Veronica GHEOCULESCU (SINGH)[1]

Abstract:

The right of association is one of the fundamental, inalienable and imprescriptible human rights, provided in numerous documents such as the Universal Declaration of Human Rights (art. 20), the International Covenant on Civil and Political Rights, the Romanian Constitution. The latter regulates, in Article 37, the right of citizens to freely associate in political parties, trade unions and other forms of association. For the purposes of these provisions, the association may have as its basis either the exercise of a fundamental constitutional right - association in political parties or trade unions, or the association contract based on the principle of contractual freedom and binding force of contract (art. 1270 Civil Code), which establishes associations and companies under private law.

Thus, based on these regulations, the civil society contract is concluded, which represents one of those institutions of civil law whose topicality cannot be challenged or minimized today, given the increasing share of the private sector in the market economy.

Key-words: *society; civil society contract; legislative framework adapted to the new realities.*

Emerging in a period of unprecedented legal transformations, in the context of the existence of proposals for codification of European

[1] Lecturer PhD, Faculty of Economic Sciences and Law, University of Pitesti (Pitesti, Romania), email: singh.amelia@yahoo.com.

contract law[1] in order to harmonize the civil law of the Member States[2], the New Romanian Civil Code responded to the challenge to take over the Principles of European contract law states with long legal traditions.

The challenge of adopting the New Civil Code must be seen at the same time from the perspective of finding common terms with the major legal systems, the current legal regulations managing to be adapted to modern legislation, benefiting from the changes they have undergone and even taking over regulations from the French Civil Code (entered into force in 1804, the unity of features being ensured by the special involvement of Napoleon, was the basis of many countries, especially those under French occupation), from the Quebec Civil Code (entered into force in 1994, after about 50 years of efforts in this regard by the most prestigious Canadian lawyers, the most modern code groups, in a monistic conception, the fundamental institutions of law), from the German Civil Code (one of the most important and original legislative monuments of the romano-germanic legal system, entered into force on 1 January 1900 and heavily reformed in 2001), from the Italian Civil Code (in force in 1942 - based on the draft civil code of Minister Pisanelli - failed to unify private law, commercial law still existing in the same body of law as a professional right), from Swiss Civil Code (the law codified by the government in Switzerland, entered in force in 1912, brings together civil and commercial matters, trying to remove the difficulties of specifying the limits of application of the two branches of law).

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[1] The European Contract Code entails unique regulations in various fields, such as civil law, commercial law, labor and social security law, private international law and civil procedural law, the European Union's objective being to approximate European laws, "the European scientific community assuming a leading role in the future evolution of European law "(L. Gatt, *Sistemul normativ şi soluţii inovatoare ale Codului european al contractelor*, ed. translated by Fl. Ciutacu – Slatina: Themis Cart , 2008, 28)

[2] To this effect, on 20 February 2012, the European Commission launched an in-depth consultation on the future of European company law. The purpose of this consultation is to determine whether the existing framework applicable to companies is still adapted to current needs and to make it evolve. Europe needs a legal framework for societies that is adapted to changes, adapted to the emergence of new needs and the growth of cross-border change. - see to this regard M. Duboue, „Consultation publique sur l'avenir du droit des sociétés"in *Jeantet Associés* (Avril 2012)

In the current context, the New Civil Code seems to be beneficial for the dynamization of social life, business, being resonant with what is being built in European law[1].

This code has brought a lot of legislative changes, which make their mark on social life, which obviously leads to divergences of opinion. In the doctrine, opinions on the monistic conception of the regulation of private law relations regulated in the form of the new code are divided. Some authors[2] see in the abrogation of the Commercial Code a move of the commercial provisions from one code to another, being made only formal changes, the acts and deeds of trade being replaced by the "commercial enterprise" that would have its source in art. 3 of the current Civil Code, this representing the criterion for determining the scope of commercial law and the quality of trader, traders being professionals who operate a commercial enterprise. On the contrary, other authors[3] consider that the current Civil Code laid the foundations of a "commercial civil law", stating that it is a "code of professionals, ... a new commercial code", that "the legal relations resulting from production activities, of trade or services are civil legal relationships in general, but commercial as a species. For other authors[4], the current Civil Code, considered to be based on a monistic conception of private law relations, abandoned the thesis of autonomy of commercial law, discussing a division, a sub-branch of professional law due to the importance of traders among professionals who refers to art. 3 of the current Civil Code, the new civil legislation including here, along with them, the self-

[1] C.Predoiu, „Reflecţii asupra uniformizării dreptului privat român, precum şi aptitudinile sistemului judiciar în aplicarea Noului Cod civil", in *Revista Dreptul* no.12 (2011): 11-12

[2] St. D Cărpenaru, „Dreptul comercial în condiţiile Noului Cod Civil", in *Curierul Judiciar* no. 10 (2010): 544-546

[3] Gh. Piperea, "Dreptul civil comercial – specie a dreptului civil", in *Curierul Judiciar* no. 7-8 (2011): 363-367.

[4] N. Turcu, "Soluţii noi consacrate de noul Cod civil în material obligaţiilor", in *Revista română de jurisprudenţă* no. 3 (2011): 13-16

employed, as well as other persons covered by art. 8 para. 1 of Law no. 71/2011[1].

However, the monistic conception reflected in the New Civil Code is certain, its regulations covering both the relations between persons as subjects of personal social relations and social relations with patrimonial content, regardless of the field of law in which they manifest (commercial, labor, financial, land, etc.), which means that the legal norms contained in the new code will represent the common law for all the regulatory areas considered and which fall under its scope.

Referring to the idea of cooperation between the subjects of law in order to obtain benefits, to make savings or to avoid losses, it penetrated early in the public consciousness, the "society" representing the solution for its concrete realization.

The civil society contract should not be seen as a simple institution, because at the social level it can represent more than that. The civil society contract can have a social effect of cohesion, stability of the civil society that resides from the special character of the relations between the persons constituting the contract, a special relationship that is also found in relation to the administrator, based on mutual trust.

Not being the result of a simple contractual relationship between persons, the civil society contract generates a complexity of relationships both internally - between partners, between the company as an entity and partners, and externally - between the company and third parties, but also between partners and third parties. . Also due to the special relationship of mutual trust that underlies the establishment and functioning, a better conservation of the patrimony and capital is often achieved, this being the major objective in crisis situations. The simpler formalization - from establishment to functioning - gives the civil society contract a greater mobility, adaptation to change, to the new economic and social realities.

In order to ensure uniformity in practice, the need to regulate the institution of the society contract was felt, its history proving a careful preoccupation of the normative sphere in this regard.

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[1] Published in the Official Journal of Romania no. 255 / 17.04.2012

The importance of companies in private law has led to the need to regulate them since ancient times. The starting point was the civil society, whose base, like other major institutions as important in Romanian civil law, are in Romanian private law.

By adopting the current Civil Code[1], the Romanian legislator considered it appropriate to review the regulations on obsolete civil society and replace them with a flexible regulation that, by reconsidering civil society, can provide stakeholders an effective legal framework for for-profit association, as an alternative to trade association. One of the fundamental changes brought by the current Civil Code is the unification of the legal regime for civil and commercial contracts, with all the consequences arising from this new approach, the Romanian legislator consecrating the proposals[2] of Prof. M.A. Dumitrescu[3] made in the "Manual of Commercial Law" in 1924 .

The whole matter of the society contract has a new legal arrangement, a fact due to the monistic conception which, moreover, is the basis for the elaboration of the current civil code.

The distinction between civil society and commercial society disappears, the latter becoming a species of society regulated by Chapter VII of the current Civil Code. In other words, the provisions of Chapter VII operate on the whole matter of companies, becoming common law in the matter of companies (art. 1887 of the Civil Code) and applying whenever there are no other special provisions. Also, amendments were subsequently brought by Law no. 71/2011 - Law on the implementation

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[1] Law no. 287/2009 regarding the Civil Code was published in the Official Journal of Romania no. 511/24 July 2009, part I. This law was adopted on June 25, 2009, based on the provisions of art. 114 para. 3 of the Romanian Constitution, republished, following the commitment of the Government to the Chamber of Deputies and the Senate, in a joint sitting on June 22, 2009.

[2] "... That is why we are, without a shadow of a doubt, convinced partisans of the suppression of the absurd difference between the acts of commerce and the civil acts and the submission of all to the same legislative norms." – M.A. Dumitrescu, *„Manual de drept comercial”* (Bucharest: Librăria Universala, 1924), 18.

[3] He considered that it applied not only to traders in the Commercial Code of 1887, but also to those who did isolated acts of trade, as well as to those who did civil deeds provided that those deeds were of a commercial nature for the other contractor.

of the New Civil Code, the law having as main object the agreement of the existing civil legislation with its provisions, as well as the settlement of the conflict of laws resulting from the entry into force of the New Civil Code.

In art. 7 it was established that in the normative acts applicable at the date of entry into force of the Civil Code, references to "civil society without legal personality" are considered to be made to "simple society", those to "civil society without legal personality" are considered to be be made to "company with legal personality", and references to "professional civil society" shall be deemed to be made to "professional company with or without legal personality", as the case may be. Through the provisions of art. 138 it was ordered that "Companies regulated by special laws continue to be subject to them".

The provisions of art. 139 establish a serie of transitional norms for the adaptation of the old civil normative system with the provisions of the New Civil Code. Thus, "civil societies established under the Civil Code of 1864 may be transformed into any of the forms of society regulated by the Civil Code or other laws, in compliance with the conditions provided by them. The acts committed by them prior to the entry into force of the Civil Code remain subject to the law in force at the date of their conclusion. The liability of the associates both among themselves and towards third parties, for the acts and deeds committed before the transformation, remains subject to the law in force at the date of their conclusion or commission. "

The current Civil Code practically abandons the classic concept of commercial law (based on the notions of trade and merchant fact) resulting the elimination of the distinction between civil and commercial nature of companies, but other delimitation criteria are needed closely related to notions such as be the enterprise and professional ones[1].

In the light of the current Civil Code, the society contract requires two or more persons to mutually undertake to cooperate in carrying out an activity and to contribute to it through monetary contributions, in

[1] Gh. Piperea, *Introducere în dreptul contractelor profesionale* (Bucharest: C.H. Beck, 2011), 4

goods, in specific knowledge or services, with the purpose of sharing the benefits or of using the resulting economy (art. 1881 para. 1 of the Civil Code). The legal definition of the society contract is indisputably a reinstatement of the classical theories, old and dusty, from Finţescu reading, regarding the contractual nature of the society, because it emphasizes the contractual part, by agreement between two or more parties[1].

The legal definition is not at all safe from criticism. On the one hand, it does not consider the possibility of setting up a society by expressing the will of a single person (for example, a limited liability company with a sole shareholder or, as in the case of the existing regulation in France - but not only, the simplified joint stock company), so it does not consider institutional theories about society. At the same time, the definition is not sheltered in terms of Community law (example - Directive No. 2009/102 / EC on limited liability companies with sole shareholder[2], Directive No. 2017/1132/EC on limited liability companies[3]) which obliges states to create the legal framework for this type of company, or the legal definition seems to do not allow it.

CONCLUSIONS

The radical reform through the New Civil Code of the fundamental institutions of civil law, such as the institution of family law, property, obligations, contracts and guarantees, determined a major change in the institution of the society contract, regulating a legislative framework adapted and compatible with new objective reality from the romanian economic life. Referring strictly to the evolution of the institution of the civil society contract, we can also observe the attempt to use the "expertise" of some important European countries, such as France and Germany.

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[1] Av. Cristi Petre - "Noul Cod Civil : Contractul de societate simplă" (2011), cristipetre.wordpress.com

[2] Published in the Official Journal of the EU no. L258 / 20 of 1 October 2009

[3] Published in the Official Journal of the EU no. L 169/ 30 of June 2017

The new Civil Code, taking into account the economic and social realities, highlights a series of norms already regulated by special acts, of which we mention here only a few: the association between two or more natural persons in order to establish houses with more apartments or other constructions, the association between two or more craftsmen for the common practice of the job, the association between several persons for the exploitation of agricultural lands, animal husbandry, supply, development, conditioning, processing and sale of products, provision of services or other agricultural activities.

The current European and international economic context requires a rethinking of the global economy to rebuild principles that ensure long - term stability and avoid crisis - generating situations, the main goal being to restore a macro - balance with profound social effects.

In this context, the civil society contract should not be seen as a simple institution because at the social level it can represent more than that. The civil society contract can have a social effect of cohesion, stability of the civil society that resides in the special character of the relations between the persons constituting the contract, a special relationship that is also found in relation to the administrator, based on mutual trust.

Not being the result of a simple contractual relationship between persons, the civil society contract generates a complexity of relationships both internally - between partners, between the company as an entity and partners - and externally - between the company and third parties but also between partners and third parties. Also due to the special relationship of mutual trust that underlies the establishment and functioning, a better conservation of the patrimony and capital is often achieved, this being the major objective in crisis situations. The simpler formalization - from establishment to functioning - gives the civil society contract a greater mobility, adaptation to change, to the new economic and social realities.

Anchoring and connecting the institution to the increasingly rapid economic and social evolution can be done by increasing the importance of the civil society contract achievable by highlighting and multiplying the points of convergence between civil and commercial societies.

The already existing real progress registered by the institution of the civil society contract through the recent regulations of the New Civil Code offers an optimistic perspective to continue the process of updating the Romanian legal norms depending on the evolution of the internal, European and international economic and social context.

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900 de zile de asediu neîntrerupt asupra magistraturii române

Ghid de supraviețuire

Autori:

Alinel Bodnar • Dragoş-Alin Călin • Ciprian Coadă • Cristi Danileț
Diego Garcia-Sayan • Anca Gheorghiu • Alina Gioroceanu
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Volumul „900 de zile de asediu neîntrerupt asupra magistraturii române. Ghid de supraviețuire" își propune să realizeze un istoric al demersurilor magistraților români pentru statul de drept și independența magistraturii în perioada 2017-2019, analizând comportamentul autorităților publice și modalitățile diverse de reacție din partea judecătorilor și a procurorilor.

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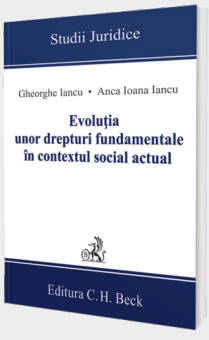

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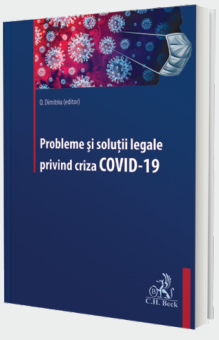

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