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

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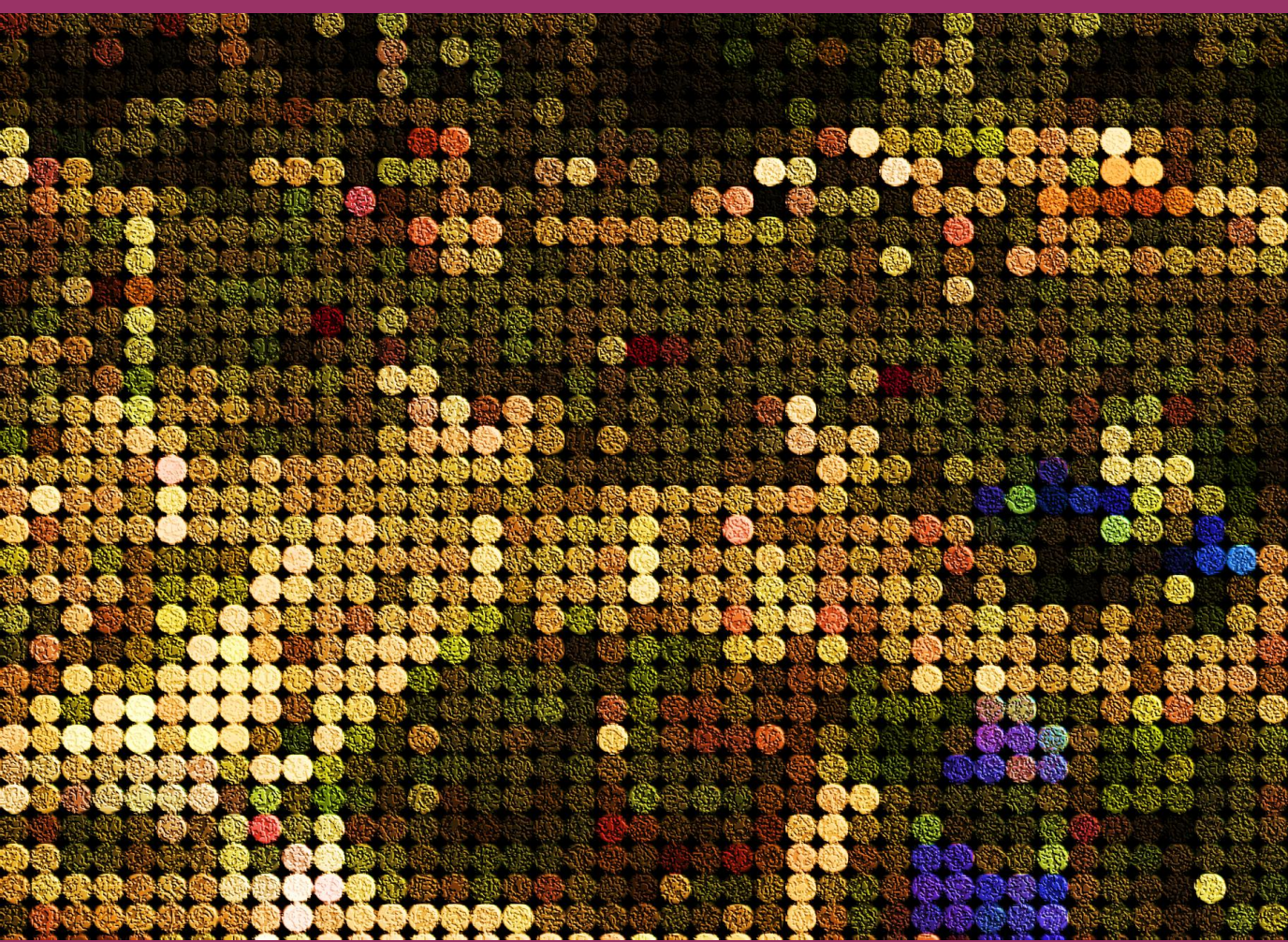

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Revista de Ştiinţe Politice. Revue des Sciences Politiques

RSP • No. 49 • 2016

From Citizen to State: In Depth Post-Communist Analysis of Governance and Administration

CONTENTS

RSP • No. 49 • 2016: 9-11

EDITORS' NOTE

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

Anca Parmena Olimid*,
Cătălina Maria Georgescu**,
Cosmin Lucian Gherghe***

Welcome to the first issue in 2016 of the *Revista de Ştiinte Politice. Revue des Sciences Politiques* (hereinafter **RSP**).

The research contents and the scientific interests of this issue are dedicated to the encounter of the individual with the state an the ideological and practical approaches of this level of analysis considering the living dialectics of law-politics. The content of issue 49/2016 is focused in-between the key topics of the historical patterns, social legacies and current legal challenges.

The articles gathered under the latest issue of **RSP/ 2016** (issue 49/2016) offer an epistemological perspective of the micro and macro understandings of post-communist proposals and consider experience as a way to rationalize the basis of knowledge.

Thus, Eugenia Udangiu claims "the dual foundations of knowledge and the critical rationalism" aiming at "considering a new attempt at compromise between the opposite positions, based on elements of the philosophy of mind". This approach individualizes the maximalist and minimalist rationalism or empiricism by conceptualizing and "equally interacting with World1 and with World2".

In line with these comparative approaches, Cristina Murgu brings new understandings to the legal conflict of constitutional nature in the European space. Murgu argues on the manner in which "the main reasons why only the Constitutional Courts or

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Federal Tribunals can be invested, by certain institutions, with the settlement of the legal conflicts of constitutional nature".

Irina Gvelesiani places the terminological pecularities of the *fiducie* and *fiducia* within the linguistically challenged legal area of jurisdiction. The article bends over the "the common law *trust* has become extremely popular since the beginning of the previous century" considering the French origins of the legal analysis.

Anca Parmena Olimid proposes a new management of the "concept mapping of civil society" considering "the relational analysis of its targeted topics for public participation and democratization practice" while, within the same field of applying the law, Alexandra Oanță (Nacu) exercises an institutional analysis over the public administration by the People's Advocate.

As the journal reader shall consider, within the public involvement and citizen participation within the democratization logic of post-communism, the discussion over the personal data and fundamental rights is drafted as a means to the "protection of individuals with regard to the processing of personal data and the free movement of such data, as a response to the EU legislation" (Marioara Maxim).

Taking a brief leap into the taxation management and organizational factors and behaviors, the article signed by Narcis Mitu discusses "the potential for behavioural research to contribute to better tax collection and administration". Within her analythical endeavour, Cristina Stanciu examines "the issue of risks related to contracts" starting from the assumption that "analyzing and defining risk, in general, was not pursued, in our juridical literature until the adoption of the current Civil Code" in the Romanian legislation.

Moving forward towards the IR analysis, Öncel Sencerman reconsiders the Russian diaspora as "a means of Russian foreign policy" focusing on "the Russian speaking communities in the former Soviet Republics". Valon Krasniqi establishes the legal and practical basis of the political parties in Kosovo considering the historical patterns and institutional establishment.

The communication practices of post-communist Romania are further discovered as Antonia Matei by analysing the collective memory and media commemoration in the last twenty years. Camelia Cmeciu builds on arguing "the EU and non-EU citizens' communication strategies of (de)legitimating Turkey as a EU member".

Within the first RSP issue of 2016 the Center of Post-Communist Political Studies (CEPOS/ CESPO) launches the Call for Papers for the 7th Edition of the International Conference *After Communism. East and West under Scrutiny*, University House, Craiova, Romania, 24-25 March 2017, proposing the following panels: Communism, transition, democracy; Post-communism and colective memory; Politics, ideologies and social action in transition; Revolution and political history; Political culture and citizen participation Law, legal studies and justice reform; Constitution(s), legality & political reforms; Political parties, electoral systems and electoral campaigns; Security and diplomacy in national and Euro-Atlantic environment; Rights, identities policies & participation; Education, media & social communication; Administrative history and governance within South-Eastern Europe during transition; Political leadership, democratization and regional security; Comparative policies, sustainable growth and urban planning; Knowledge transfer and competitiveness in regional economies; Global environment and cultural heritage; Integration, identity, and human rights in European systems; Religion, cultural history and education; Media, communication and politics; Discourse, language and social encounters; Bioethics and transition challenges;

Editors' Note

We enable that the main task of the issue 49/2016 of ***RSP*** is to assess *the individual-state relationship* leading to a new level for analysing mutual trust, confidence and public involvement.

We would like to inaugurate the new series of issues of ***RSP*** for 2016 (no. 49, 50, 51 and 52) by saluting our authors' innovative researches and studies and presenting our gratitude for their inspiring solutions in issue 49/ 2016!

Wishing you all the best,

RSP Editors

RSP • No. 49 • 2016: 12-21

ORIGINAL PAPER

From Individual to State: Levels of Analysis

Eugenia Udangiu*

Abstract
This study addresses the old problem of epistemological rupture between the micro and macro levels of scientific knowledge and critically analyzes the new proposals for reconciliation. At the same time, it is trying to answer questions like: is this methodological dualism a matter which limits scientific knowledge or it is rather an ideological dispute, in the broad sense of the term? Does it not rely on a founding duality and on a living dialectic between "the whole and the part"? The two levels of knowledge are not reciprocally exclusive and can "communicate" with each other and have even common analysis models.

Keywords: *individualism, holism, ideology, aggregated or corporate actors*

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Introduction

The controversy of "the universals" from the scholastic period pushes its consequences in our times. One of its aspects is related to the ontological question: have general categories existence in themselves or only the particular objects exist? Another issue concerns the problem of knowledge: has knowledge the foundation in reason, as rationalists claim, or in senses, as empiricists claim? Finally, we have the methodological problems: holism or individualism? We can easily observe that these three matters are connected. In these disputes have occurred, of course, the conciliatory positions of "common sense". For example, in nominalism (which claims that only particular objects have ontological reality) versus realism (which claims that the general, abstract notions also have existence in themselves) dispute, it was considered that things were particular (nominalism) and their qualities were universal (realism). Some philosophers have argued that "universals" are a priori for intellect (Kant) and others that they had just "mental existence" which helps us comparing an object with the proper universal and attributing the right properties to that object. I will further show in more details how this dispute is reflected in the problem of scientific knowledge and in that of methodological option in the social sciences in general, and in the political science, in particular. Then I will consider a new attempt at compromise between the opposite positions, based on elements of the philosophy of mind. This new attempt tries to overcome the old epistemological split between micro-level analysis and macro - level analysis in social sciences, by proposing certain criteria for selecting the appropriate methodology.

The dual foundations of knowledge and the critical rationalism

The modern or the Enlightenment rationalism had at its beginnings a dual structure: on the one hand, it stated that all "true" knowledge was the necessary result of the principles of reason, which are ideal, perfect, necessary, a priori and universal. On the other hand, within this modern, maximalist rationalism, appeared an orientation that stated that any valid knowledge could only come from the senses by means of experience and logical induction. Later in the eighteenth century, Kant proposed the "rationalist monism" that asserted, somehow paradoxically, the dual foundation of knowledge: reason and senses. It is well known Kant's assertion that the forms of reason – concepts - are "empty" without the material brought by the senses, and the senses are "blind" if the information they bring would not be placed in categories and concepts. (Flonta, 1994) In other words, without concepts we would have only a chaos of existential data, and without senses we could never asses the value of our concepts. The Polish philosopher Witold Marciszewski (1984) summarizes very well both the maximalist and minimalist rationalism theses, as cognitive approaches:

The maximalist rationalism (Cartesianist) of XVII-XVIII centuries, is based on two theses: a. the abstractionism's thesis: there are both individuals and abstract objects (universals); universals can be conceived as "universale ante rem", (in Platonic sense) or "universale in re" (in Aristotelian sense); b. the apriorism's thesis: there are, in addition to empirical judgments, some judgments which do not come from experience, but have an "a priori" character. From this thesis, the maximalist rationalist speech has developed itself, marked by the *belief* that we can have a real knowledge of the nature of existence, exclusively by reason; this knowledge forms a system; everything is explainable and deductible from the general system of knowledge. This system was later called by Max

Weber the “iron cage” of rationality and criticized by many others as having a dictatorial nature.

The minimalist rationalism, or empiricism, illustrates the position after which all knowledge is based on experience. In terms of Marciszewski, theses underlying this position are: a. the concretism’s thesis: there are only individuals (nominalism); b. the empiricism’s thesis: only empirical or observational judgments or inferences from these, contribute to the knowledge of the world. Empiricism aims to minimize intellectual risks by denying the existence in reality of abstract notions (such as “system”) and the new reality born by entities consisting of individuals (such as “society”). These entities are considered only intellectual abstractions with no significant value for scientific knowledge.

Today, rationalism is defined less as an attempt of cognitive elucidation of the world and rather as an "ideological" attachment to reason as opposed to faith, prejudice, habit or any other source of convictions deemed to be "irrational". Critical rationalism warns us against the danger of absolutization of the reason that considers mere illusion what it is not rational (rationalist neo-dogmatism). There is of course the opposite danger also, and that is to think that reason is at most a secondary source of knowledge (irrationalism).

The philosopher Karl Popper attacks the claims of "non-critical" or "complete" rationalism to be the source and basis of knowledge, considering it an "irrational faith in reason". In *Conjectures and Invalidations. The Increasing of Scientific Knowledge* (1963/2001), a collection of essays, the author tries to prove the thesis that we *can learn from our own mistakes* and just this kind of experience can lead to an increasing knowledge. He develops a theory of reason in which the rational arguments play a rather modest but very important role: to criticize our attempts to understand the world and solving its problems. Popper considers experience as a way of testing the scientific theories not as “a basis” for knowledge. Although this vision emphasizes *the fallibility* of scientific knowledge, it is not skeptical but optimistic: knowledge can enhance and science can progress just because of our ability to learn from mistakes. Science progresses by hypothesis, by attempts to solve problems. These hypothesis which Popper called *conjectures* are nothing more than products of our scientific creativity. They will be subjected to a severe critic, to attempts of invalidation, and will survive or not; anyway, their survival does not demonstrate they are truth but only that we do not have for the moment a better altenative.

The conjectures’ critical debate is extremely important because a light on the mistakes allows us to improve the initial proposals and to better approximate the truth. Critical debate must respect the basic principle of critical rationalism: "I could be wrong and you may be right." This principle is rather moral than epistemological, reminding of Bacon's conception about modesty as an indispensable virtue of the scientist.

In *The Structure of Scientific Revolutions* (1962/1999), Thomas Kuhn surpasses the canons of Enlightenment rationalism and formulates a vision that illustrates the complex dynamics of scientific knowledge. This vision emphasizes also the involvement of the social, institutional, psychological and sociological elements, value systems and options, methodological and ontological commitments in all types of scientific practice and theories. In this respect, Kuhn proposes the concept of *paradigm* understood as a model, as a universally accepted scientific achievement, in a certain period of time. It cannot be confused with the “theory” concept because it precedes theory which is just one from its three dimensions: the theoretical – methodological one, the historical one and the sociological one (the disciplinary matrix). When a paradigm exhausted its possibilities for

problem solving, competing theories will begin to proliferate and the community of researchers enter a crisis. This situation will be regularly surpassed by a dislocation of the old conceptual framework by which people used to see the world, followed by a replacement of the old paradigm with a new one. This process of "crisis - dislocation – replacement", is known as "scientific revolution" and take place whenever the old conceptual framework become unable to respond the new challenges. Scientific knowledge, says Kuhn, can be validated only by inter-subjective recognition. The truth-value of a theory is given first of all, by the recognition of scientific community.

In contrast to epistemological absolutism, the most influential contemporary theories of epistemic foundation – this may be the "fallibility foundationalism" or the "coherentism" - allows us to distinguish between truth and foundation, to give an account that they could produce good reasons in favor of some opinions that proved eventually to be false. But excesses does not lack even now: some consider science and magic as being equal from an epistemological perspective, or on the contrary, claim that the physics of Newton cannot be compared with one of Einstein, being completely different languages.

Methodological impasse

The rationalist - utilitarian vision and the nominalist position grant the right of existence only to "individuals". Rational individual moves into a simplified social environment composed of physical objects and rules for regulating behavior. These rules result from transactions between social agents. Emotions, values or tradition are excluded from this type of analysis because they introduce concepts with a rather uncertain referential, such as emotional solidarity, collective consciousness, collective memory, etc. Systemic or structural approaches are also contested for the same reason. George Homans says somewhere that he has never met a system "on the street corner".

He argued that the social system is only a myth, a construct of the Parsons' mind, an abstraction that never does anything; individuals instead, motivated in their interaction by the obtaining of certain rewards, are those who create the social reality. Pareto and Weber expressed also serious doubts regarding the trust of functionalist in the explanatory power of "rules" and "values" as modelers of social behavior (Collins, 1994). The methodological impasse is thus a reflection of the ontological and gnosiological one. The positions in conflict are: the individualistic one (nominalist, rationalist minimalist) and the holistic one (realistic, rationalist maximalist). The holists support the thesis that the wholes are more than the sum of their parts because, by combining these parts new properties will result, belonging only to the whole and not to the parts.

In social sciences, holists considered laws, regulations and social movements as background data for scientific analysis. So, the individual becomes invisible in this theoretical approach. Inspired by approaches and specific concepts from philosophy of the mind, a relatively new branch of philosophy[1], List and Spiekermann (2013: 632-634) try to reconcile the conflicting methodologies. They identify several types of individualism and holism considering the position toward facts, objects, properties and causation, which they group in four theses:

A thesis about facts:

a. Supervenience individualism: the facts from individual level fully determine the social facts. (It is similar to *supervenience physicalism* claim: any possible worlds identical from the vantage point of physical facts, will be also identical from the vantage point of psychological facts.)

b. Social- facts holism: the facts from the individual level do not completely determine the social facts. (The social facts are not fully determined by the individual facts because identical individual facts could have many configurations.)

A thesis about particular objects:

a. Token individualism: any particular entity, event or process considering the social level, accepts a re-description when considering from the individual level. (It is similar to *token physicalism*: between an object in the psychological-level ontology and one in the physical-level ontology is at most a difference in description.)

b. Token holism: some specific objects in social ontology are difference from any object when considering from the individual level ontology. (There are some objects at social level distinct by any object at individual level.)

A thesis about properties:

a. Type individualism: every social property is identical to one when considering from the individual level. (It is derived from *type physicalism*: between a psychological property and some physical one, there are at most differences in description.)

b. Type holism: some social properties are distinct from any other property when considering from the individual level. (There are some properties at social level distinct by any properties at individual level.)

A thesis about causal explanation:

a. Causal - explanatory individualism: every causal relation is identical to some causal relation from individual level. (It is derived from *causal – explanatory physicalism*: a scientific explanation has to be identical to some physical causal relation.)

b. Causal - explanatory holism: some causal relations are distinct from any individual level causal relations.[2] (There are causal relations at social level which cannot be reduced to causal relations at individual level.)

Logically analyzing the theses above, the authors observe that supervenience individualism is compatible with causal-explanatory holism. In other words: *the facts at individual level determine all social facts but certain causal relationships at social level are different from any causal relationships at the individual level.* The causation under debate in this case is not the one considering mechanisms that produced a certain effect but the one dealing with the research of regularities between the variables involved in a particular social process. List and Spiekermann (2013: 637-639) offer some examples of methodological impasse in political science. The "rational choice" theory and the theory of international relations are the most illustrative:

Rational choice theory and political economy: in its extreme version, rational choice theory operates an oversimplification although the mechanisms of causation at micro-social level are correct. But starting from the rational individual, perfectly aware of his interests and acting in a relatively predictable environment, it fails to satisfactorily decipher the macro-level phenomena. Raymond Boudon (1990) for example, describes some irrational consequences resulting from the aggregation of the rational actions of actors[3]. Most of the researchers recognize the fact that social rationality is different from individual rationality and social utility is different from the individual one (e. g. the paradox of public goods).

Another interesting example in which an undesirable social situation appears as a consequence of the composition of human "natural" actions, is the analysis of the phenomenon of segregation, made by Schelling. Consider that the members of two social or ethnic different groups mix among themselves in the situation of a residential proximity. Admitting that members of each group shows no hostility, no segregation

desires towards other group, but they just have the reasonable desire that at least half of their neighbors to be part of the same group with them, in time, the emergence of a ghetto will be inevitable (Schelling, 1960: 168-169).

The theory of international relations: if we analyze the relations between states, it is mandatory to start from the individual? It seems unlikely ... but if we consider states as 'corporate actors' can we assign them individual characteristics? If we consider the states themselves as rational agents we can detect regularities of behavior that reflect certain preferences and interests. But can we personalize them without risk? The same issues remain at stake for a lower level of aggregates than states, such as institutions, parties, groups etc. Of course, all these organizations – states, parties, companies etc. – are "built" from individuals, but the organization itself is much more than individuals together, than their sum as methodological nominalism claims, and therefore the only way in which individuals can confront an organization is to form another. For this, they must surrender some of their personal rights and follow the instructions and the pattern of organization rather than their own goals. This is a new form of rationality: the organization becomes what James Colleman called a "corporate actor", i.e. a rational decision maker that follows his own interests, trying to maximize profits and minimize costs.

So, noticing that causal-explanatory holism involves no mysterious operation with metaphysical entities, the authors formulate three necessary and sufficient conditions for its use: 1) there are multiple levels of description, or in other words, properties of an individual level and properties of aggregate level; 2) high-level properties are determined by the properties of the individual level, but can be realized through many different configurations (multiple realizability); 3) causal relationships between some high-level properties of the system can be identified in some observable variations in the micro-level. (List and Spiekermann, 2013: 639) These three conditions are simultaneously met in cases of interest to political scientists like the relationship between ethnic conflicts and civil war or social - network theory, for instance.

Ethnic conflicts and civil war: "The Conditions that favor insurgency - in particular state weakness marked by poverty, a large population, and instability - are better predictors of which countries are at risk for civil war than has indicators of ethnic and religious diversity." (Fearon and Laitin, 2003: 40) As we can see, the above statement refers to relationships between high - level social properties (holistic ones) that could be "translated" in a lot, almost unlimited configurations at individual level. If the causal relationship between the state's weakness and the insurgency is correct, it should be validated not only by the past events, but also by the future events, whose individual configurations we do not know yet.[4]

Social – network theory: „[i]f we want to understand how society works, we need to fill in the missing links between individuals. We need to understand how interconnections between and interactions between people give rise to wholly new aspects of human experience that are not present in the individual himself." (Christakis and Fowler, 2009 apud List and Spiekerman, 2015: 640) Here we have again a case of properties of the whole (the network) that are not to be found in every component part. These properties that result from aggregation (e.g. average path length) represent a higher level of description and the network nodes (i. e. individuals) represent the micro level. In this case also, the structural properties, which are high level properties, can be achieved through a lot of micro-level individual configurations. From a causal point of view the relationship between two emergent properties, let's say the path of the network and the speed of information dissemination) remains plausible at the micro level, too. Theoretical research

of networks emphasize that several networks with the same emergent properties can be very different at their empirical organization level.

Final remarks

It is obvious that all macro - aspects arise from individual actions and their combinations. In order to understand any fact, phenomenon or social process we will have to start from the individual, if the analysis is done at the micro-level, or from the group, if the analysis is done at macro level. But in the last case, the group has to be viewed as an individual decision maker (a 'corporate actor' as Coleman considers). The constraining external forces – 'social facts' as Durkheim calls them - are simply the result of a multitude of individual intentional and non-intentional actions.

They can also be the unintentional result of individual intentioned and rational actions, as evidenced by Raymond Boudon (1990). But regardless of how social facts arise, their existence cannot be denied: the language, for example, has all the characteristics of a social fact. It was born evidently from individual interactions but every born individual will find it ready-made (externality) and will be constrained to learn and use it. This is valid for culture too, or for any other way of "thinking, feeling and doing" which individuals find around them. Of course, in time all these holistic facts will be modified be the individual actions as constructionists underline, but this does not change their externality and constraining power.

In the same spirit, the philosopher Karl Popper (1994/1996: 13-16) has a pluralistic conception about the world or, more accurately, about the worlds, when he questions the relation between mind and body, criticizing the way in which the reductionists have seen it. He considers those who support without any reserve the methodological individualism - and I refer here to methodology because this is the topic of this article – to be the representatives of the physicalist monism (we can also say materialist monism, or behaviorist monism). For them, there are only physical objects and phenomena that generate and affect the mental states. These are the researchers of what Popper called World1: the world of physical bodies and objects. This can be described by four physicalist theses: 1. any possible worlds identical from the vantage point of physical facts, will be also identical from the vantage point of psychological facts; 2. between an object in the psychological-level ontology and one in the physical-level ontology is at most a difference in description; 3. between a psychological property and some physical one, there are at most differences in description; 4. a scientific explanation has to be identical to some physical causal relation.

A second group of researchers, namely those who believe that all we know is actually our minds' products, are the representatives of the phenomenal monism. They study what Popper called World2: the world of our mental states. The World1 and the World2 interact as follows: **„**When I speak to you, I produce in the first instance, some sounds that represent physical events - detectable with ears, these pressure waves detectors. But you not only detect these waves, but also decode them: you hear meaningful sounds.

These physical waves carry a meaning to you (at least I hope so): they have sense and can determine you (and I hope they do) to think. (...) My mind works on my body that produce physical sounds. In turn, these act on your bodies, respectively on your ears; this way, your bodies act on your mind, determining you to think." (Popper, 1996: 13) But the interaction between these two worlds born a third existential space, called World3: it contains all the products of human minds. These products are both physical (machines,

books, computers etc.) and conceptual (theories, ideologies, philosophies, principles etc.). Our entire knowledge, either objective or subjective, belongs to the World3 that has an enormous value for human survival. It is, in other words, the cultural world, that equally interact with World1 and with World2. It is also the space where human minds meet and interact when reporting to the products belonging to this space. World3 is only partially visible but its effect on the World1 and on the World2 are easy to be observed.

Then why the holism of social facts seems so frightening? Or concepts such as "system" or "structure"? I do not think that scientists are afraid, except cases in which ideological partisanship is more important than knowledge. Physics has progressed since Newton discovered the corpuscular nature of light and Huygens demonstrated its wave features. And so did the sociology and the political science, regardless the holistic or individualistic positions of the researches. In fact, Hay (2009 apud List and Spiekerman, 2015: 639) is right: „(i) there are irreducible social wholes; (ii) these wholes have properties of their own, which cannot sensibly be seen as properties of their constituent parts, but (iii) the wholes are ultimately constituted only by their parts, so that there is no misterious additional ontological ingredient."

Notes

1. Philosophy of mind and the cognitive sciences, study the semantics of ego, seeking to understand and explain its acts of cognition, consciousness and intentional behavior. It tries to answer questions like: "Is the mind something distinct from matter? We can we define it as conscious and can we find the ultimate reason on which we decide that other creatures would be aware of too, or that machines could be built so as to be aware of? What means to think, to feel, to experience, to remember? Is it useful to separate the mind and memory functions of intelligence or rationality of feeling? Do mental functions form a unit? Can the specificity of mental events be defined through the concepts of intentionality, consciousness or on the grounds of mind-body report, formal – experimental report or physically – mentally report?" (Botez, 1996: 9) The central concepts of the philosophy of mind are: ego, consciousness, intentionality; mental events (conditions, acts and processes); connoisseur, known , knowledge; under-determination, supervenience, reliability; mental attitudes (beliefs, desires, hopes, etc.); image, representation, intelligibility; symbol, concept, meaning; personality, identity, plurality; intensional, extensional; subconscious, emotional, irrational; normativity, freedom, subjectivity. This approach is connected to the philosophy of language and science, psychology, cybernetics, logics and metaphysics.

2. I think it is important to have more information about at least two different ways in which the causation process could be conceived: as the „production- or mechanism – based" approach does, or as the „counter – factual" approach does. The first perspective is described as follows: „The production- or mechanism based approach is best illustrated by the traditional idea that causation paradigmatically involves physical objects or bodies impacting on one another, transmitting forces and thereby pushing one another around. (Think of a billiard ball colliding with another.) Thus causation is understood as a process or mechanism that produces certain outcomes." The second one: „The difference – making approach, by contrast, defines causation not in terms of processes or mechanisms, but in terms of the regularities in which certain events or event – types stand. This approach is particularly useful in many special (i.e. nonphisycal) sciences, especially when intentional decision-making or other higher level phenomena are involved. In sciences ranging from medicine and ecology to political science or economics, we are often interested in how changes in some „independent" (or causal) variables (e. g., through interventions) systematically relate to changes in certatin „dependent"

(or effect) variables. On the difference making approach, causal relationships are robust regularities between certain variables or properries." (List and Spiekerman, 2013: 636).

3. Raymond Boudon demonstrates that the sum of rational action does not always give a rational result. So, for example if someone spreads some rumors that gasoline will become more expensive in the near future, rational social agents will hurry to make fuel stocks. This alone can raise the price of the gasoline, even though this was not originally intended. So the rational actions on the individual level produced finally an unintended outcome on the social level. Boudon called this type of consequences: *perverse effects*. The perverse effects are *compositing effects* i.e. they result from the summing of individual action. He demonstrates this way the fact that even if the researcher starts from a micro social type of analysis, the overall effect can be observed at the macro social level and it is very different from the intended effects (Boudon, 1990: 149).

Another example of analysis at the micro level is the "game of coordination". The game of coordination by the convergence of mutual expectations, believes Schelling, underpins the stability of institutions and traditions because the force many rules of behavior stems from the fact that they are solutions for this game. The very concept of "role" in sociology, a concept that explicitly signifies the expectations of others about a certain type of behavior and implicitly signifies the expectations of the actor regarding the behavior of others, can be interpreted through the "convergence of expectations" in circumstances where consensus indicating the tacit adoption of a role (Schelling, 1960: 165).

4. We will quot *in extenso* the arguments offered by Fearon and Laitin regarding the tendency to look after „obvious" explanations and to pay no attention or little to „hidden" causes or motivations: „The data cast doubt on three influential conventional wisdoms concerning political conflict before and after the Cold War. First, contrary to common opinion, the prevalence of civil war in the 1990s was not due to the end of the Cold War and associated changes in the international system. The current level of about one in six countries had already been reached prior to the breakup of the Soviet Union and resulted from a steady, gradual accumulation of civil conflicts that began immediately after World War II. Second, it appears not to be true that a greater degree of ethnic or religious diversity-or indeed any particular cultural demography-by itself makes a country more prone to civil war. This finding runs contrary to a common view among journalists, policy makers, and academics, which holds "plural" societies to be especially conflict-prone due to ethnic or religious tensions and antagonisms. Third, we find little evidence that one can predict where a civil war will break out by looking for where ethnic or other broad political grievances are strongest." (Fearon and Laitin, 2003: 44).

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ORIGINAL PAPER

A Comparative Study on the Subjects of a Legal Conflict of Constitutional Nature in the European Space

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Abstract:
It is a fact that nowadays the legal conflicts of constitutional nature have become a substantial problem in the institutional architecture of the states, due to their importance generated, on one hand, by the subjects involved in such a dispute and, on the other hand, by their uncertain and misleading content. These are the main reasons why only the Constitutional Courts or Federal Tribunals can be invested, by certain institutions, with the settlement of the legal conflicts of constitutional nature. In the European space, this matter acquired significance by the instrumentality of the fundamental laws. To express it more clear, almost every Constitution precisely and concrete states the subjects between which a legal conflict of constitutional nature may arise. Evidently, we could not assert that, regarding their nature, there is an identity of subjects of the legal conflicts of constitutional nature in several European countries. It is precisely the opposite of those mentioned above: the nature of the subjects involved in such disputes varies depending on the constitutional and administrative structure of the countries, on the form of government of the states, on the public authorities representing the powers of the states. Therefore, the subjects of a legal conflict of constitutional nature represent a defining element in any attempt to determine whether a conflict is of a constitutional nature or of any other nature. Taking into consideration such aspects, we can claim that the first step towards establishing the constitutional nature of a legal conflict is to identify and determine the subjects of such dispute.

Keywords: *legal conflict of constitutional nature, subjects involved, European space, Constitution, public authorities, nature of the subjects*

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Legal conflicts of a constitutional/organic nature have always been a controversial subject in the European space because of their importance, which is due, on one hand to their misleading content, and on the other hand to the subjects involved in such disputes. The nature of these conflicts, organic or constitutional - the naming varies according to each state - is the one that determines the parties of such conflicts. Evidently, it refers to certain subjects such as public authorities - in Romania and France -, federal and federate authorities - in Germany and Austria -, state and the authorities of local communities - in Spain and Italy. As it can be noticed, the subjects of a legal conflict of a constitutional/organic nature represent a defining element in the attempt of establishing whether a legal conflict is of a constitutional/organic nature or of a different nature, and in addition they determine the intervention of the Constitutional Courts or Federal Tribunals in the settlement of such disputes, because if a conflict arises between public authorities it is obvious that it cannot be settled by a common court but by a superior one such as Constitutional Courts or Federal Tribunals. The role of the subjects of legal conflicts of constitutional nature in the constitutional framework of the states confers a great significance to these disputes and this is the main reason why only fundamental laws indicate the normative coordinates of such conflicts in their provisions. The present article represents a comparative study on the subjects of legal conflicts of constitutional/organic nature and its aim is to emphasize the manner in which each European state makes reference to such disputes: Germany: "The Federal Courts decides*… 3. In a case of a difference of opinion concerning the rights and obligations of both Federation and Lands, especially the way lands enforce federal law and the way the Federations supervises that enforcement ; 4. Regarding the conflicts of public law between Federations and Lands, between Lands, or inside of a Land, when there is not possible an appeal at another court.*" (Fundamental Law of Germany, art. 93); Austria: "The Constitutional Court settles also the conflicts of competence*:…c) between states or between states and Federation; judges the way Federal Government or The Government of the Federate State enforces law when it requires the competence of the Federation or of the state.*" (Fundamental Law of Austria, art.138); Spain: "The Constitutional Court has jurisdiction over the entire Spanish territory and it has the competence to settle *…c) conflicts of competence between state and independent communities or between independent communities themselves*." (Fundamental Law of Spain, art. 161); France: "*if it appears during the legislative procedure an amendment which is not the domain of law or is contrary to a delegation granted under the provisions of article no. 38, the Government or the President of the House concerned may oppose the inadmissibility. In case of disagreement between the Government and the President of the house which presents interest in the case, the Constitutional Council – being invested with the settlement by one or the other - will deliberate within eight days*." (Fundamental Law of France, art. 41); Italy: "*The Constitutional Court decides upon ...conflicts arise between state and regions and also between regions*." (Fundamental Law of Italy, art.134); Romania: "*The Constitutional Court settles the legal conflicts of constitutional nature between public authorities, at the intimations of the President of Romania, one of the Presidents of the two Chambers of Parliament, the Prime Minister or the President of the Supreme Judicial Council*." (Fundamental Law of Romania, art. 146). Therefore, each and every state regulates in a proper manner the institution of legal conflicts of constitutional nature, and this normative coordinate of the subjects of such conflicts is analysed from different perspectives according to the form of government of the states.

For instance, if in Romania the legal conflicts of constitutional nature arise between public authorities, and the Constitutional Court has to settle these conflicts in order to assure the balance between public authorities which operate inside the Romanian state at central level, in other countries this institution refers either to the organic conflicts between federal and federate authorities in the case of federal states such as Germany, Austria and Switzerland, or to the conflicts of competence between state and the authorities of the independent communities in Spain and Italy, and the Federal Courts or Federal Tribunals intervene in the settlement of these organic conflicts in order to ensure the functional balance between central government and the local one. This is a first major distinction that can be easily noticed directly from the constitutional provisions, but if we go forward and start interpreting these fundamental acts, this matter may become even more intricate.

In Romania, the Constitution makes references only to the procedural aspects of the notion of legal conflicts of constitutional nature, and never refers to the aspects of its content, expressly determining that this kind of conflicts may arise only between public authorities, that they can be settled only by the Constitutional Court and only if it is invested with their settlement by certain persons namely: the President of Romania, one of the Presidents of the two Chambers of Parliament, the Prime Minister or the President of the Supreme Judicial Council (Gîrleşteanu, 2012: 393). Concerning the subjects between which these conflicts may appear, although they are clearly stipulated in the fundamental law, and they should not generate problems of interpretation, yet the constitutional provisions in this sphere are, in our opinion, at least to be considered ambiguous: "*settles the legal conflicts of constitutional nature between public authorities*". Although it is obvious that according to the Constitution the legal conflicts of constitutional nature emerge only between public authorities, yet the fundamental law does not concretely explain the meaning of the expression "public authorities", and consequently it invest the Constitutional Court with another issue, because being the guardian of the Constitution and in the same time the mediator of the legal conflicts of constitutional nature, it is forced to decide, through its case-law, which are the subjects that can be enclosed in the category of public authorities. Being invested many times with the settlement of legal conflicts of constitutional nature, the Constitutional Court had to create an itinerary which should be strictly followed in its approach to establish if a certain dispute is a legal conflict of constitutional nature or not; and the first phase was to identify the subjects between which these conflicts may appear and then to determine whether they should be included or not in the category of public authorities.

In this regard should be mentioned the situation when the Constitutional Court was invested by the prime minister of that time, Călin Popescu Tăriceanu, with the settlement of a legal conflict of constitutional nature between the legal power and the executive power, on one hand, and the judicial power on the other hand, conflict which was generated by "certain judicial decisions which were pronounced in violation of the competence established by Constitution, decisions through which the judicial power exceeded its competence and usurped the attributes of the legislative power" (Decision no. 988/2008, published in the Official Journal no. 784 from 24th of November 2008; 2). In its aim to solve such a situation, the Constitutional Court proceeded, above all, to the screening of the subjects involved in the current dispute. Once identified the parties in conflict, the legislative power, the executive power and the judicial one, the Court continued its process by consulting the constitutional provisions in this matter and

suddenly observed that these three powers did not enclose in the category of public authorities referred in the article no. 146 letter e).

Therefore, the Constitutional Court established that in accordance with the provisions of article no. 146 letter e) "the public authorities which can be involved in a legal conflict of constitutional nature are only those mentioned in the Third Title from Constitution namely: the Parliament with its Two Chambers - The Chamber of Deputies and Senate -, the President of Romania, the Government, central public administration and local public administration and also judicial organs: High Court of Cassation and Justice, Public Ministry and Supreme Judicial Council. In the case presented by Călin Popescu Tăriceanu the parties in conflict were the legislative and executive power on one hand and the judicial power on the other hand, and there was not the case of a public authority considered so by the Fundamental Law. For this reason, the Constitutional Court although it admitted that the state exerts its power through this three functions – the legislative, the executive and the judicial one; functions which are accomplished by the public authorities mentioned in the Constitution – yet it cannot state that there certainly is a legal conflict of constitutional nature.

Based on these considerations, the Court decided that it can never be considered a legal conflict of constitutional nature between the legislative and executive power on one hand and the judicial power on the other hand- because, according to the Constitution, these powers can never be assimilated to public authorities. Thus, although there was a legal conflict at the institutional level of the state, the Court could not consider it a legal conflict of constitutional nature due to the fact that the subjects involved could not be enclosed into the category of public authorities as considered so by the Constitution. For all these procedural reasons, the Constitutional Court stated that the prime minister's petition regarding the existence of a legal conflict of constitutional nature between the three powers of the state is unfounded and inadmissible. Taking into consideration all those mentioned by the Constitutional Court in this decision, we strongly believe that subjects of a legal conflict of constitutional nature can be only those mentioned in the Fundamental Law, and their category is limited by the provisions of the Third Title from the Constitution. From this Title our attention is drawn by Chapter V entitled Public Administration – which contains two categories: Central Public Administration namely Ministers, Supreme Council of National Defence and Local Public Administration local councils, mayors, county councils, prefects.

Regarding the Central Public Administration, the Constitutional Court has been invested with the settlement of certain legal conflicts of constitutional nature and in this direction can be mentioned the situation when the same Court had to solve a conflict which aroused between the Government and the Supreme Council of National Defence, dispute which appeared due to the fact that the Supreme Council of National Defence could not accomplish its tasks as it was removed from the process of decision. Through this decision, the Constitutional Court states that it is competent to settle the legal conflict of constitutional nature emerged between these public authorities, which means that from the point of view of the subjects involved there really exists a legal conflict of constitutional nature in this case, as both parties could be enclosed in the category of public authorities as seen by the Constitution.

The issue that determined the Constitutional Court not to qualify this particular conflict as one of a constitutional nature was the intriguing content of this category and not the nature of the subjects involved, because the Constitutional Court considered that through the Government Emergency Ordinances there were not infringed constitutional

provisions, but the provisions of the Law no. 415/2002 – in concrete they affected the attributions of the Supreme Council of National Defence, but these attributions were not stipulated into the fundamental law but into the Law regarding the organization and functioning of this council, and therefore they did not generate an imbalance at an institutional level.

Thus, the Constitutional Court appreciated that there can appear a legal conflict of constitutional nature between Government and the Supreme Council of National Defence – as public authorities – as long as it emerges in connection with the duties pointed out in the Constitution and it leads to the imbalance of powers in the state. Concerning the Local Public Administration, it was never a part of any legal conflict of constitutional nature, thing which can be easily noticed from the jurisprudence of the Constitutional Court in this matter. So, although it appears in the provisions of the fundamental law as a public authority between which can arise a legal conflict of constitutional nature, yet such a conflict which has as a part an organ of the local public administration and which can determine an imbalance between central government and the local one has not been constituted until the present moment.

To continue on the same line, we will present, in comparison, the issue of legal conflicts of constitutional nature in Romania and that of organic conflicts in Spain and Italy due to the fact that these states are alike from the perspective of the variety of forms of these conflicts although at a certain point interferes a major distinction between them regarding the normative coordinate of the subjects involved in such disputes. Thus, we shall point out mainly the forms of this kind of litigations in the institutional framework of these states: conflicts of competence between public authorities (Romania) / conflicts of competence between state and independent communities or between the independent communities and conflicts in defending the local autonomy (Spain)/ conflicts between states and regions or simply between regions (Italy). Any type of legal conflict arisen between public authorities as long as it refers to their attributions precisely specified in the Constitution (Romania) / conflicts between constitutional organisms of the state (Spain) / conflicts between different powers of the state (Italy). As it can be noticed, the subjects of a legal conflicts of constitutional nature in Romania are only the public authorities, namely those presented from the point of view of the fundamental law of Romania – which was already presented above- while in the case of Spain and Italy, the category of the subjects involved is a bit more extended, as this type of conflicts may appear between the constitutional organisms of the state (as the Parliament, Government, Head of state, Judicial Authority – Italy; or Senate, The Congress of Deputies, the General Council of the Judicial Power - Spain) and also between the state itself and independent communities or simply between those independent communities. The last two categories imply the intervention of the state or some of the independent communities in the field of competence of other and lead to the delimitation of their competences because through the decision of the Constitutional Court are established the subjects which own the disputed competence and also are taken the required measures in order to be ensured the constitutional order (The national rapport for the XV[th] Congress of the Conference of European Constitutional Courts/ Spain, 2011: 14).

A similar situation exists in Germany and Austria, federal states, where the organic litigations involve above all the conflicts of competence between the Federation and Lands (B-VG, art.138.1.3). In fact, the constitutional provisions and the jurisprudence of the Constitutional Court in Austria are very precise regarding the meaning of the conflicts of competence thus, determining it – it is about negative and positive conflicts

of competence between the Federation and the Lands (Favoreau, 1996; 43), exactly like the Romanian legal conflicts of constitutional nature stated for the first time through one decision of the Constitutional Court "a legal conflict of constitutional nature implies concrete actions through which one or many authorities arrogate powers, attributions or skills, which, accordingly to the Constitution, they belong to other public authorities – positives conflicts- or decline their competence or refuse to accomplish acts which are included in their obligations – negative conflicts" (Decision no.53/2005, published in the Official Journal no. 144 from the 17th of February 2005: 5).

To return to our comparison between Romania, Spain and Italy, although such a situation- a dispute, regarding the competences, between central governance and the local one – could arise even in Romania, due to the fact that the Constitutional Law states that there are considered to be part of a legal conflict of constitutional nature even the organisms of public administration, yet until the present moment, the Constitutional Court has not been confronted with such a situation, beside the fact that this instance has been excessively invested with many cases referring to the existence of legal conflicts of constitutional nature between public authorities: either between the President of Romania and the Government (Decision no. 356/2007, published in the Official Journal no.322 from 14th of May 2007); between the President and High Court of Cassation and Justice (Decision no. 1222/2008, published in the Official Journal no. 864 from 22th of December 2008), between the Government and the Supreme Council of National Defence (Decision no. 97/2008, published in the Official Journal no. 169 from 05th of March 2008), between the President and the Parliament (Decision no. 1559/2009, published in the Official Journal no. 823 from 30th of November 2009), between the Parliament and Government (Decision no. 1431/2010, published in the Official Journal no. 758 from 12th of November 2010), or between the Public Minister through High Court of Cassation and Justice and the Senate (Decision no. 261/2015, published in the Official Journal no.260 from 17th of April 2015), etc.

From this point of view forward, and taking into account the fact that the majority of the legal conflicts of constitutional nature which were presented to the Constitutional Court were arisen between the organs which have also the competence to invest the Court with the settlement of such disputes, some scholars (Valea, 2013) were encouraged to state a question, we could say a predictable one – whether there are legal conflicts of constitutional nature only those which appeared between public authorities which have the right to invest the Constitutional Court with such cases. We are justified to believe that the answer at this question is an affirmative one as the Fundamental Law expressly and restrictively states the persons who have the ability to invest the Court with this kind of disputes – namely the representatives of central public authorities of the state (Daniela Cristina Valea, 2013; 6) - and every time a legal conflict of constitutional nature is being settled by the Constitutional Court, at least one part of it is constituted by one of the authorities from which are part the persons which have the right to invest the Court. This is an aspect which differentiates the situation of legal conflicts of constitutional nature in Romania from the situation of organic conflicts in Germany; where the Federal Constitutional Court can be invested with the settlement of these conflicts by any person which claims that through its measure, the opponent violated or endangered the rights and duties with which it, or the organ from which he is part, was directly invested by the Fundamental Law (BVerfGG, art. 64). To express it more clear, the complainant has to prove that the measure which determined him to invest the Federal Constitutional Court has to be an important one legally speaking, in other words to demonstrate that it is not a

temporary nor a preliminary one (National Rapport for the XV th Congress of the Conference of European Constitutional Courts/Germany, 2011: 29). It is obvious that this means that the persons who can invest the Federal Constitutional Court in such situations are only those who can be, accordingly to the Constitution, at some point, part of an organic conflict namely: the supreme federal organs - Bundesrat , the Federal President, Bundestag-, the Federal Government, the parliamentary committee and Federal Assembly (Pietzcker, 2001; 587-593) - and other participants, another parties invested with proper rights by the fundamental law or by the regulation of a federal supreme organ (Fundamental law of Germany, art.93.1) - the Presidents of Bundestag and Bundesrat (BVerfGE, art. 27, 152), The Federal government Members (BVerfGE, art. 45), Political Commissions (BVerfGG, art. 63, 64), Parliamentary groups (BVerfGE art. 143), Parliamentary Groups inside the sub commissions (BVerfGE, art. 67) and the groups as presented in the provisions of article no 10.4 from the Regulations of Bundestag (GO-BT). It can be easily noticed that, regarding Germany, the sphere of the subjects between which can emerge legal organic conflicts is enlarged, being included even the political parties (Decision of Federal constitutional Court from the 4/2010 - 2 BvE 5/07, EuGRZ, 4th of May 2010; 343); (The decision of Federal constitutional Court from the 7/2008 BVerfGE 121, 7th of May 2008; 135); (The decision of Federal constitutional Court from the 3/2007 BVerfGE 118, 3rd of July 2007; 244), thing which is not possible in the case of Romania for two concrete reasons – the legal constitutional provisions regarding this matter and the jurisprudence of the Constitutional Court.

Furthermore, we mention the case when the Constitutional Court of Romania had to settle a legal conflict of constitutional nature, occasion through which it analysed the nature of the public authorities which are supposed to be part of a legal conflict of such type, stating that *into the category of public authorities named in the Third Title of the Constitution are not included political parties, legal persons of public law which contribute to the defining of the political will of the citizens; thus the political parties are not public authorities and it states that the parliamentary groups cannot be assimilated to public authorities either, they being only sections of the Chambers of Parliament. For all these reasons, the Court concluded that an eventual conflict between a political party or a parliamentary group and a public authority definitely cannot be included into the category of the conflicts which can only be settled by the Constitutional Court accordingly to the article no. 146 letter e) from the Constitution* (Decision no. 53/2005 published in the Official Journal no. 144 from the 17th of February 2005).

Another major difference between these two states, regarding the normative coordinate of the subjects involved in the organic litigations, is represented by the category of the interveners. In Romania, in the cases of legal conflicts of constitutional nature, neither the Fundamental Law nor the Constitutional Court through its jurisprudence allow the intervention of other institutions in the resolution process of such conflicts beside the parties involved in the litigation. This situation is different in Germany, for instance, where according to the fundamental law such things are possible to happen. Thus, the article no. 65 in BverfGG states that other entitled parties can became involved in the process on the side of the complainant or of the opponent, no matter the phase of the process. Taking into account the fact that we are talking about organic litigations which present high importance for the good functioning of the institutional framework of the state, the interveners should accomplish certain conditions before entering the process: they have to be part of the category which has a potential to be a part in the procedure and they do not have to suffer a prejudice or to be affect in any other way through the

procedure (National Rapport for the XV th Congress of the Conference of European Constitutional Courts/Germany, 2011: 33), because if it was to happen exactly the opposite way this means that they definitely will become parties involved into the process, thing which will lead to the division of the process. In case the intervention take places in the same conditions stipulated in the constitution, the intervener can endorse without restrictions the party in whose favour the intervention was made and also he can submit applications if they are relevant in the process. Therefore, although this category has some limitations in the process of resolution the organic litigations in the German Federal state, yet it exists in this matter, thing which generates another distinction between the situation of Romania and the German one. The normative coordinate of the subjects of legal conflicts of constitutional nature is an extensive one for every judicial system, but things can become even more complicated the moment we try to approach it from different perspectives; thus, it arises another issue of importance in this matter, the situation of certain institutions of the state such as the Ombudsman, the Audit Office, the Constitutional Court, the Judicial Supreme Council, which have different relevance according to each judicial system. In Romania, for example, the sphere of the subjects of the legal conflicts of constitutional nature is restricted to the provisions of the Third Title from the Constitutions of Romania, in concrete to the public authorities as perceived by the same legal dispositions, which means that certain institutions simply cannot be included in this category although the jurisprudence of the Constitutional Court considers them to be public authorities (Gîrleşteanu, 2012: 393).

For instance, the institutions of the Ombudsman or the Audit Office - which was considered as being part of the fundamental institutions of the state, because its activity is indispensable in the process of providing the financial functioning of all organs of state and its legal regime- the organization and functioning - is stipulated in an organic law (Decision no. 544/2006, published in the Official Journal no. 568 from 30th of June 2006) - although they are considered to be very important at institutional level, yet the Constitution of Romania does not grant them the possibility to become parties of a legal conflict of constitutional nature, a conflict which can only be settled by the Constitutional Court of Romania. Consequently, there are not and nor will be considered subjects of the legal conflicts of constitutional nature in the Romanian legal system. The things are totally different in states like Austria and Italy, where such institutions are provided in the fundamental law as being the subjects of organic litigations. So, the fundamental law of Austria states through article no. 138 that the Constitutional Court has the competence to judge conflicts of competence between the courts, the Federal Administrative Court, the Constitutional Court itself and it can also pronounce upon the divergences of opinion between the Ombudsman and the Federal Government. As it can be seen, in Austria the sphere of the subjects of organic litigations are included many institutions of the state beside the state itself and the lands. On the same pattern is also Italy which includes in this normative coordinate the powers of the state, but with a different meaning; it refers to public independent entities which do not fit in the traditional trichotomy of roles but which exert, in full autonomy and independence, the attributions stipulated in the Constitution, such as the Constitutional Court, the President of the Republic and the Audit Office, in the exercise of his auditing role (National Rapport for the XV th Congress of the Conference of European Constitutional Courts/Italy, 2011; 16).

As the issue of organic litigations is kind of different in France we preferred to emphasize it separately. So, the Fundamental Law in French clearly states that the Constitutional Council has the authority to ensure the distribution of competences between

constitutional organisms, in other words to interfere, if necessary, in the disputes between the Government and the President. This procedure is precisely emphasized in the provisions of article no.41, where it is stipulated that the Constitutional Council has to pronounce a decision in case of a disagreement between the two mentioned organs, in a period of eight days. It is evident that the subjects involved in an organic litigation are constitutional organs, which have constitutional prerogatives which concede them the possibility to exercise sovereignty in their own name (Carpentier, 2006: 114). Although the institution of organic litigation is a certain fact in the constitutional framework of the French state, yet the jurisprudence of the Constitutional Council lacks in this matter as, since 1958 the council has been invested with the settlement of such disputes only eleven times. We, among others, strongly consider that this number is insignificant if we take into account the period of time involved; and for these reasons it is believed to be obsolete (Favoreu, Philip, 1996: 105).

To conclude with, the organic litigations have always been an intricate issue in the institutional framework of the states due to their controversial content and the nature of the subjects involved. In fact, this particular aspect, the subjects of legal conflicts of constitutional nature, is the one that confers, to such disputes their well-deserved judicial significance, due to the fact that they are constituted of constitutional organisms, strategic and relevant institutions of the state, state powers, independent communities or regions, and even the state itself. Although each and every state establishes in a different manner the normative coordinates of this type of conflicts – and the major differences arise regarding the nature of the subjects involved in the dispute- yet, each and every Constitution admits their importance and enlightens their constitutional/organic nature.

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Fiducie and Fiducia (Terminological Peculiarities)

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Abstract

The common law *trust* has become extremely popular since the beginning of the previous century. Many civil law countries have been oriented on the implementation of this legal institution in their jurisdictions. However, the "introduction of the trust (or analogous institutions) requires not only the translation of common-law rules into civil-law concepts but also a precise choice about the functions to be performed by these instruments" (Vicari, 2014: 3). The given paper is dedicated to the juridical and linguistic study of the French and Romanian *trust-like devices* (*fiducie* and *fiducia*). The main accent is put on their latest developments, comparative analysis and juridical-linguistic characteristics. The major results indicate that the contemporary Romanian *fiducia* has the French origin. However, its roots can also be found in the Roman law – in the Roman entrusting relationships. The paper aims at giving some terminological insights and proposes certain linguistic corrections, which answer to the demands of the modern epoch. The major method of the research is a comparative analysis.

Keywords: *Civil law, common law, fiducia, fiducie, juridical-linguistic study, trust-like device*

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The General Introduction

"The purposes for which we can create [common law] trusts are as unlimited as our imagination" (Devaux, Beckner, Ryznar, 2014: 112). Moreover, the ***trusts*** have a great variety of uses in the contemporary life. They are created not only for the private reasons, but for the charitable or business purposes as well. They are mainly used: for the benefit of private individuals (a ***private trust***); for the management of business affairs (the ***Massachusetts trust*** or a ***business trust***); "to benefit future generations of a family through the establishment of successive equitable interests in property, to benefit employees through the holding of a company's shares or other assets in trust for their benefit, or hold funds for public investment (a ***mutual fund*** or ***unit trust***)" (The philosophy of law, 2004 : 871) etc. These characteristic features of the ***trust*** have made this legal institution widely acceptable in the United States of America. Moreover, the same features popularized it in the non-common law jurisdictions during the 20th-21st centuries. Rapid popularization was facilitated by another significant factor – the growing tendency of globalization reflected in the intensified international economic competition and interoperability of the European countries within the European Union. Generally, the legal institution of the *trust* can be defined as "an obligation enforceable in equity under which a trustee holds property that he or she is bound to administer for the benefit of a beneficiary or beneficiaries (a private trust), or for the advancement of certain purposes (a purpose trust)… Trusts are established expressly by a settler in a trust deed or a testator in a will (an express trust) or by implication (a resulting trust). They may also be established by operation of law (a constructive trust)" (The philosophy of law, 2004: 870).

The *Fiducie* – The History and Contemporaneousness

Some scholars believe, that the institution of the *trust* originated from the Roman *fiducia*. However, M. Grimaldi and F. Barrière indicate that the "Trust comes from the Danish *trost* (confidence), *troster* (faith)" (Grimaldi, Barrière, 2004: 570). It's difficult to prove M. Grimaldi and F. Barrière's idea. However, the study of the etymology of the word *fiducia* presupposes its relation with the concept of the *trust*. According to C. R. Dedu, the noun *fiducia* comes "from the Latin word "*fido*", which means to trust (to have faith in someone or something), loyalty" (Dedu, 2015: 211). Hungarian Prof. I. Sandor expresses quite different opinion and states, that *fiducia* derived "from the Latin verb *fidere*, meaning trust" (Sandor, 2015: 25). It's a well-known fact, that in the Roman law "fiducia was a pactum. It was an "appendage to a conveyance". Its primary use was a direction to the holder of property concerning that person's obligations in relation to the property" (Philosophical foundations of fiduciary law, 2014: 23). After the centuries "the institute of "Fiducia" has been taken over in the continental civil law by adaptation of the trust, regulated by the Anglo-Saxon law" (Dedu, 2015: 211. It played an important role (within a narrow scope) in the French law of succession. However, it was forgotten during the historical moment of French Revolution and especially, after the establishment of the Napoleonic Code (Civil Code of Napoleon of 1804). The French Revolution significantly changed French people's life. It "contributed to laying the constitutional foundations of modern civil codification, which aimed at the abolishing of former feudal privileges, the elimination of feudal privileges in property law, and the introduction of a new definition of ownership" (Sandor, 2015: 309). Despite the above mentioned, the "oblivion" of the *fiducia* could be discussed as a temporary fact - although the Napoleon Code and "legal tradition rejected the very notion of *fiducie* as prête-nom under another name, the legislature implemented this very idea in a number of statutes dealing with

investment funds (fonds communs de placement), receivable financing (loi Dailly), and assets securitization (fonds communs de créances)" (Thévenoz, 2009: 36). In 2007 the *fiducia* reappeared. This fact can be explained "by the pressure exercised on the continental private law, by the British/American system, respectively, by Common law, system where the *trust* has born, which although it is not perfectly identified with "fiducia", still it comes near very much, as legal-economical finality, to what we understand by "Fiducia" (Dedu, 2015: 212).

Before the reappearance of *fiducia* (at the end of the 20th century) French scholars expressed their concerns regarding the probability of the implementation of *trust-like transactions* in the French juridical reality. They named the following major reasons: firstly, the impossibility of the implementation of a "split ownership" (or the duality of ownership) in the French law; secondly, the general "disability" of allowing assets "to be set aside for a special purpose (*patrimoine d'affectation*), thus ruling out the possibility of property forming a separate fund that cannot be reached by a trustee's creditors" (Rémy, 1999: 131); the third reason lies in the fact, that at the end of the 20th century Prof. Ph. Rémy described the conditions of the transfer of the assets in the following way: a lot of fiduciary transactions "appear under the guise of unnamed agreements, or achieve their objectives by circuitous routes. One finds express *fiducies* or "crypto-*fiducies* " which perform exactly the same roles as the trust in commercial, family and charitable matters" (Rémy, 1999: 134). Despite these concerns and circumstances, the *fiducia* was implemented in the French reality as a vivid category of a "legal transplant". Alan Watson defined such category "as moving/panning a legal rule or system from one country to another or from a person towards another" (Moreanu, 2015: 80).

The phenomenon of transplants emerged in the ancient times (in the Code of Hammurabi). However, different examples of transplantations have occurred throughout the centuries. We can discuss the *trust-like devices* under the umbrella term "*legal transplants of the 21st century*". The appearance of a growing number of such transplants was stipulated by the following significant factor: at the end of the 20th century several civil-law states were inspired to integrate the *trust* into their juridical systems. The given process occurred in various ways. In certain cases, the introduction of the *trust* was influenced by Pierre Lepaulle's idea considering the function of the *trust* in the segregation of assets and in the formation of the *patrimoine d'affectation.* As a result, in 1994 Quebec "introduced the fiducie in its Civil Code, under the form of *patrimoine d'affectation* - that is, an ownerless patrimony dedicated to a purpose, where the trustee is the administrator of property of another person, in a position not much different from that of the director of a company with legal personality" (Vicari, 2014 : 4). Pierre Lepaulle's idea regarding the civilian *trust* seems incorrect, because it doesn't deal with the major essence of the Anglo-American entrusting relationships, which focus on the form of a double or split ownership and make the *trust* incompatible with the civilian jurisdiction. The given fact can be asserted by the following statement: "while functionally equivalent to its common law cousin, Quebec's *fiducie* is structurally a very different arrangement. As long as it is not distributed to the beneficiaries, the trust fund has no legal owner. The *fiduciaire* (trustee) merely is vested with the power to administer the *patrimoine fiduciaire* (trust fund). The trust fund is a separate patrimony subject to the trustee's power to administer in the interest of the beneficiaries" (Thévenoz, 2009: 22).

The analysis of the common and civil legal systems vividly reveals, that "the basic idea of the common law trust and of the civil law *fiducie* is very similar in that the assets

are going to be transferred so as to be used only for a certain purpose, an appropriation" (Grimaldi, Barrière, 2004: 797).

We can treat the French *fiducie* as a triangular relationship, which considers a transference of rights on a particular property for the fulfillment of a special purpose. The given transference implies the following: "the settlor (constituent) entrusts existing or future assets, rights or security to the trustee (fiduciaire), who manages these for the benefit of one or more beneficiaries. French law does not classify the legal status of the trustee; he is deemed to be either an agent or an administrator, only the manager (*agissant, actor*) of the trust property (*patrimoine fiduciaire*)" (Sandor, 2015: 313). In certain cases, the *constituant* appoints a *protecteur* (a protector), who controls the activities of the *fiduciaire*. However, in some cases, the *constituant* and the *fiduciaire* can be the beneficiaries.

Therefore, the contemporary French entrusting relationships consider the following participants:

Constituant - a transferor of the assets presented by any natural or legal person;

Fiduciaire - a transferee represented by "a banking, insurance, or financial professional, or an avocat (attorney), whose role contributes to ensure protection for the constituent" (Devaux, Beckner, Ryznar, 2014: 110).

Bénéficiaire - a receiver of the benefit derived from the management and exploitation of the property transferred to the *fiduciaire.* In some cases, the *constituant* or the *fiduciaire* can be the *bénéficiaire*;

Protecteur - protector, who controls the activities of the *fiduciaire*.

The object of the entrusting relationships is presented by the transferred assets – the *patrimoine fiduciaire*. Moreover, "if the transferred property - movables and immovables, corporeal or incorporeal – is appropriated to secure the repayment of a debt (with the creditor as beneficiary of the fiducie), the fiducie then has the role of a security" (Barrière, 2013: 101). We can distinguish two major forms of the French *trust-like devices*: 1) the "trust by way of security (*fiducie sûreté),* where the constituent-debtor transfers to the fiduciary properties, securities or rights for its debt to create security, and 2) management trust (*fiducie gestion),* where the transfer of assets is made in view of its management" (Devaux, Beckner, Ryznar, 2014: 112). The creation of the *fiducie sûreté* usually has a great variety of reasons: a trustee may be a debtor of a principle debt; a trustee "can, but need not, be a creditor in relation to the debt, thus combining the status of trustee with the status of beneficiary; the fiducie can, but need not, involve putting the trust property into the hands of a third party; the trust property can, but need not, remain available to be used by the settler" (Barriere, 2013: 101).

Moreanu denotes the *fiducie sûreté* by the term *fiducie-guarantee* and draws parallel between the former and *fiducia cum creditore* of the Roman law. The same scholar denotes the *fiducie gestion* by the word-combination *fiducie-administration/management* via describing it as an equivalent of the Roman *fiducia cum amico* represented by "a contract whose purpose is to ensure the assets' administration which, as a rule, holds also the capacity of beneficiary" (Moreanu, 2015: 85). The French *fiducie gestion* can also be characterized as "an instrument of syndicated loans management" (Lyczkowska, 2010: 2). Grimaldi distinguished one more French form of the property transaction – the *fiducie libéralité* (a fiduciary gift) – in which "the transfer of ownership is driven by the will of the settler to grant rights to a third party by the intermediary of the fiduciary, who, in turn, will transfer to the third-party, donor or legatee, the assets which he shall have received" (Grimaldi, 2011). Some scholars express different ideas in this respect. According to K.

Lyczkowska "apart from the general type, in French law there are also two independent modalities of fiducie: fiducie-sûreté and fiducie-gestion" (Lyczkowska, 2010: 2). A. Devaux gives a more precise description: "the French doctrine does not qualify the *fiducie* as a trust because of its prohibition of *fiducie libéralité"* (Devaux, Beckner, Ryznar, 2014: 112). It must be noticed, that during the creation of the rules regulating *fiducie* "the French legislator used as a source of inspiration Articles 2,011-2,030 from the Quebec Civil Code" (Moreanu, 2015: 84). However, "the French fiducie was not enacted as an ownerless patrimony, as in Quebec, but as a segregated patrimony owned by the trustee" (Vicari, 2014: 4). The history of law gives us a useful information in this respect: in the beginning of the 19th century the institution of the *trust* became an integral part of the law of Canada. Many Canadian rules regulating the *trust* corresponded to the rules of the common law. However, nowadays, the legal rules of the province of Quebec - which is located in Canada - show certain variations from the regulations of the contemporary Anglo-American *trust*. Prof. I. Sandor directly indicates in this respect: "Although French law was introduced in 1663 in Quebec, including the *coutumes* of Paris and the earlier *ordinances*, in 1763 the province of Quebec acceded to Great Britain under the Treaty of Paris, and thus remained independent of Napoleonic legislation. The Quebec Act of 1774 introduced free testamentary arrangement under old French rules of succession (Civil Code of Lower Canada) ; it contained two provisions of old French law, which are deemed to be antecedents of the trust " (Sandor, 2015 : 231). As a result, the Civil Code of Quebec enacted the *fiducie* without the duality of ownership (or the so-called "*split ownership*"). A transferred property constituted "an independent patrimony without owner ("patrimoine affecté"), therefore it should constitute an entity, possibly a legal entity. Case law also moved in this direction, qualifying the trust as a *sui generis* ownership, which has an autonomous, separate entity" (Sandor, 2015: 235).

It must be noted, that generally, the notion of *patrimony* (the French *patrimoine*) comprises an institution through which individuals have rights to own things. According to Aubry and Rau's classic conception: "1. each person has a patrimoine; 2. every patrimoine belongs to someone; and 3. everyone has just one patrimoine" (Forti, 2011). Therefore, in civilian legal systems and especially, in France: "no person has one way of holding moveables and another for holding immoveables" (The philosophy of law, 2004: 267). Moreover, from a more general viewpoint: "the French notion of ownership implicates three cumulative rights: the right to use property (*usus*), the right to enjoy (*fructus*), and the right to exploit it (*abusus*)*"* (Devaux, Beckner, Ryznar, 2014: 101). Despite such circumstances, the implementation of the *fiducie* can be regarded as an important turning point, which *"*destroys" Aubry and Rau's theory of the unicity of *patrimoine* and facilitates the introduction of the notion of *patrimoine d'affectation*. As a result, the contemporary French fiduciary acquires the right to hold one or more fiduciary patrimonies. He "exclusively exercises the prerogatives attached to the property. He is thus the sole qualified actor to undertake an action for the recovery of property against third parties, to use the benefits of the assets (*fructus*), and to dispose of them (*abusus*) unless there is a restricted clause in the contract" (Devaux, Beckner, Ryznar, 2014: 111). Moreover, Article L 526-17-I of the French Civil Code "provides the transfer, based on documents inter vivos, of the patrimony by appropriation, which can occur both under a document of onerous title and under a free of charge document, respectively: sale, donation, contribution to a company's patrimony either to natural persons or legal persons" (Tuleaşcă, 2014: 13).

The *Fiducia* - Contemporaneousness

It's also worth mentioning, that the French law became a source of inspiration for the Romanian legislators. C. R. Dedu believes, that "there are two fiduciary patterns in the European private law, respectively the British pattern (trust), which has been taken over also by the Italian Civil Code and the French pattern (art. 2011-2031 French Civil Code) adopted also by the Romanian Civil Code of 2011, at the articles 773-791" (Dedu, 2015: 212). Despite a vivid influence of the French law, it can be supposed, that the Romanian term *fiducia* originated from the Latin word *fiducia* denoting the institution of the Roman law. However, "in the Roman law, the implementation of the "Fiducia" was limited to the inheritance field, and the third party acquirer (the successor) had only the possibility to exercise a strictly personal action against the fiduciary... The Fiducia of the modern age is different from the fiducia regulated by the provisions of the Roman law and also in the light of the separation of the patrimonial assets, in the meaning that, currently, the personal assets of the fiduciary should not be confused with the ones from the fiduciary assets, as was happening in the Roman law" (Dedu, 2015: 211).

The study of the contemporary Romanian law reveals that Article 773 of the Civil Code of Romania presents the innovative institution *fiducia* and defines it as the legal operation "whereby one or more settlers (in Romanian language: " constituitori") transfer rights in rem, debt rights, guarantees or other patrimony rights or a combination of such rights, present or future, to one or more trustees (in Romanian language: "fiduciar") which they carry out with a targeted purpose, for the benefit of one or more beneficiaries (in Romanian language: "beneficiari")" (Moreanu, 2015 : 84).

The introduction of the Romanian *fiducia* stipulated the emergence of the divisibility of a patrimony and facilitated the appearance of an autonomous patrimonial mass allocated to a specific purpose (*afectațiune*). The given mass can be named as the patrimony by appropriation (*patrimoniu de afectațiune*) - a legal universality, which includes "rights and obligations connected through the purpose of their appropriation, created by the exclusive will of the general patrimony's owner and ascertained by the law" (Tuleaşcă, 2014 : 96). The same patrimonial mass can be named as the *special-purpose patrimony* comprising the *"*totality of assets, rights and obligations of the authorized individual, of the holder of the individual undertaking, or of the members of the family undertaking, affected for the purpose of exercising an economic activity, set up as a distinct fraction of the patrimony of the authorized individual, of the holder of the individual undertaking, or of the members of the family undertaking, separate from the general pledge of his/their personal lenders" (Tuleaşcă, 2011 : 156). The appearance of a *special-purpose patrimony* enables us to indicate to the possibility of the implementation of the *trust-like mechanism* in the civilian jurisdictions, where the impossibility of the duality of ownership is replaced by an autonomous patrimonial mass (*patrimoniu de afectațiune*) allocated from the "general patrimony". Therefore, the contemporary Romanian entrusting relationships consider the following participants:

Constituitori - a transferor of the assets;

Fiduciar - a transferee, who manages transferred rights in rem, debt rights, guarantees or other patrimony rights or a combination of such rights (present or future) for the benefit of one or more beneficiaries;

Beneficiari - a receiver of the benefit derived from the management and exploitation of the property transferred to the *fiduciar.*

The object of the entrusting relationships is presented by transferred assets (the *patrimoniu de afectațiune*) i.e. a fiduciary patrimony ("*masele patrimoniale fiduciare*"

(Tuleaşcă, 2011: 157)). The process of the transference is represented by the following phases: "transfer the patrimonial rights from the constitutor to the fiduciary; administration of these rights by the fiduciary in the benefit of the beneficiary and finally the transfer of the dedicated assets from fiduciary to the beneficiary" (Dedu, 2015: 213). The Romanian (*patrimoniu de afectaţiune)* can be treated as a juridical universality, which has appeared not only in a legal sphere, but in the economic activities as well. Nowadays, the division of patrimony is authorized by "E.G.O. no. 44/2008 on the economic activities carried out by authorized natural persons (free lancers, self-employed persons), individual companies and family associations…

For the first time, the entrepreneurs carrying out economic activities as authorized natural persons, owners of the individual companies or members of a family association (hereinafter natural person merchants) can establish patrimony units assigned to carry out some activities, distinctly from the general lien of their personal creditors (Tuleaşcă, 2014: 96). Therefore, the *patrimoniu de afectaţiune* is untouchable from outside. It is independent from a personal patrimony. After the split of the trustee's (fiduciary) patrimony by the legal operation of the *fiducie*, a patrimonial mass becomes protected against the hypothesis of a trustee's insolvency. Moreover, the *fiducie* can be deployed "in place of an association or a stand-alone company, throughout the possibility of sharing certain assets of a natural or legal person, without it being necessary to create separate legal entities" (Moreanu, 2015: 85). As a result, a trustor's liabilities for his/her other businesses cannot reach the patrimonial mass dedicated to the *fiducie*.

The Major Terminological Insights

It has already been mentioned that the French law became a source of inspiration for Romanian legislators. This fact is seen during the analysis of the terminological units related to the entrusting relationships. The following French-Romanian pairs vividly reveal the similarity of the roots of the terms denoting the participants of the fiduciary transactions:

Constituant - Constituitori

Fiduciaire - Fiduciar

Bénéficiaire - Beneficiari

Patrimoine d'affectation - Patrimoniu de afectaţiune

Moreover, a special attention must be paid to the terms "entitling" entrusting relations. The French language presents the word *fiducie* in this respect, while the Romanian scholars denote the Romanian *trust-like device* with *fiducia*. However, D. Moreanu uses *fiducie* instead of *fiducia*. The given facts indicate, that on the one hand, the contemporary Romanian *trust-like mechanism* originated from the Roman *fiducia*, while on the other hand, its roots must be searched in the French juridical reality. It's worth mentioning, that certain problems of interpretation occur in cases of the French terminological units, for instance, L. D. Egbert's "Multilingual Law Dictionary" presents the following French equivalents of the English terms denoting the legal institution *trust* and participants of entrusting relationships:

"trust

cartel (m); confiance (f); trust (m); fidéicommis (m)" (Egbert, Morules-Macedo, 1979 : 260);

"beneficiary

bénéficiaire (m)" (Egbert, Morules-Macedo, 1979 : 37).

The existence of almost all the above mentioned equivalents makes obscure the essence of the French *fiducie*. We believe, that the equalization of the English term *"trust"* with the French word *"trust*" is the best way of the maintenance of the essence of the Anglo-American entrusting relationships. Moreover, it is preferable to denote the French term *bénéficiaire* with the word-combination "*French beneficiary*" instead of the English word *beneficiary*. This procedure will prevent the ambiguity caused by the merge of common and civil law concepts stipulated by the evident misinterpretation. Hungarian Prof. I. Sandor stated in this respect: "in the process of adopting the trust, special attention should be paid to the correct application of the rules of the given legal institution in term of both terminology and classification. In many cases, the trust or trust-like legal instruments used in civil law or in mixed legal systems are not recognized as trusts by Anglo-Saxon jurists" (Sandor, 2015: 25). Therefore, the terminology related to the trust-like mechanisms of the civil law jurisdictions must correspond to the above mentioned.

The Major Conclusions and Proposals

All the above mentioned enables us to conclude, that the common law *trust* "made its entry into Romanian law through the most traditional source of influence that the Romanian law has had over time: the French law… Therefore, the reception of trust occurred… in a filtered way, and not following a direct confrontation of the Romanian legal tradition with the model of trust proposed by the common law systems" (Gheorghe, 2014: 276). The in-depth study of the French and Romanian *trust-like mechanisms* reveals their connection to the common law *trust* and enables us to single out the following similarities and differences:

The major similarities:

1. The *fiducie* and the *fiducia* similarly to the *trust* involve three parties - a transferor, a transferee and a receiver of the benefit. However, in case of the *fiducie*, "the constituent transfers property, rights, or securities to a fiduciary, who is in charge of realizing the objectives of the *fiducie*" (Devaux, Beckner, Ryznar, 2014: 110).
2. The French *constituant* similarly to the common law *trustee* appoints the *protecteur* (a protector);
3. The *fiducia* and the *trust* represent the tools contributing to the economic development.

The major differences:

1. The *trust* is oriented on the bifurcation of the ownership of property between a trustee (a receiver of a legal title) and a beneficiary (a receiver of an equitable title). The *fiducie* and the *fiducia* are not oriented on the bifurcation. They create only a *patrimony by appropriation*;

2. In contrast to the *trust*, the registration of the *fiducie* is connected with the certain formalities - the *fiducie* must be registered in the National Register of Trusts;

3. The French legislator did not go through the logical consequences of *patrimoine d'affectation*, which would suggest that the fiduciary is solely responsible for the fiduciary debts like the American trustee;

4. The difference between the *fiducie* and the *trust*" (existing in both Article 775 of the Romanian Civil Code 26, as well as in Article 2,013 of the French Civil Code) is the prohibition expressly stated, under the absolute nullity penalty, to constitute indirect donations (in Romanian language: "liberalități indirecte") (or to be subject to a liberal intention) in the beneficiary's favour" (Moreanu, 2015: 85).

Therefore, the implementation of the French *fiducie* and the Romanian *fiducia* can be regarded as an internationalization of the European legal systems in respond to the contemporary globalizing processes. Although these legal transplants are not as flexible as the common law trust and they have not become entirely common in France and Romania, we can predict the increase of their popularity during the next decades. The major reason lies in the fact, that on the one hand, the *fiducie* and the *fiducia* are excellent tools for the protection of property or management of a private wealth. On the other hand, they present the *patrimony by appropriation* (the French *patrimoine d'affectation* and the Romanian *patrimoniu de afectațiune*) - a juridical universality, which "destroyed" Aubry and Rau's theory of the unicity of *patrimoine* and facilitated the emergence of the notion of a "split patrimony" consisting of a patrimonial mass "impermeable" i.e. untouchable from outside.

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Managing the Concept Mapping of Civil Society: A Relational Analysis of its Targeted Topics for Public Participation and Democratization Practice

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Abstract:
The present paper revisits the social and political postulates of the civil society in the post-communist period and it highlights the main aspects of the institutional capacity and dimensions recognized as basic principles for a democratic society. The attempt to highlight the social and political actors of transition focuses on a complex analysis of the proper understanding of the rule of law and the normative criteria that usually interrelate with the framework of civil society and its functional and institutional lens. We demonstrate analytically and emphasize using content and legal analysis that aiding and enabling an efficient civil society depends on the legal inputs of the social reform outputs.

Keywords: *civil society, governance, state, participation, representation*

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Introduction

The debate about civil society and its relational analysis with the local governance and democracy practice has its origins in the political, social, cultural encounters of the last twenty years, but nowadays it finds its inner discussion in the terms of actions, democratic mechanisms and political processes.

Thus, the research hypothesis across the civil society's actions and its linkage to the governance and democracy approaches focuses on the following approaches: How is best defined the civil society considering the state-society relationship? Are local observation, national encounters and gradual-generalization decisive in defining the civil society's lens? Is civil society considered as a democratic practice necessary in the transition context? Can be the civil society considered as an organizational construct in Eastern Europe? Can civil society be exclusively focused on an "experiential" approach to social continuity and change?

We demonstrate analytically and emphasize using the concept mapping method that the content analysis advances an efficient civil society depending on the democratic inputs and the social reform outputs: 1. similarities between European and non-European countries regarding the linkage between governance and the civil society participation comparing the place and practice of "civil society groups in multilevel governance" (Laforest, 2013); 2. the process of democratization: political, social and economic terms; 3. The legal requirements for a minimum analytical framework of the civil society in post-communism.

One point concerns the context of the state-civil society relationship also serving as the agenda-setting role within the political transition characterizing two periods: 1. first approach: beginning of the 1990s to mid 1990s: cross-national approaches (national variables): reconciliation, political dialogue, local justice mechanisms; 2. second approach: beginning of 2000s: causal variations: consequences of economic and political reforms, judicial mechanisms, integration mechanisms.

Methodology

Before proceeding to determine the common basis for the research of the civil society and its actions, this study defines the actual approaches used to explain the concepts and definitions (hereinafter Dcv) surrounding civil society and describing four main phases of the its : Dcv1. civil society and the discourse of democratization in post-communism; Dcv2. civil society and its variations in post-communism; Dcv3. civil society and the practice and discourse of the local governance considering the historical institutionalist approach (Georgescu, 2014); Dcv3. civil society as based "experiential" approach to social continuity and change distinguishing between two common usages of the term social continuity, social policies and social control.

Since the study deals with the conceptual interpretations arising due to the civil society's actions and its lens, it is important to individualize the four approaches emerging in the community constituents. Moreover, it will point out that the civil society is considered as a community of citizens linked by goals, objectives and common interests contributing to a collective activity.

To abstract useful concept mapping (hereinafter $CM1_{\dots a, b, c}$) for the civil society and the associated targeted topics, we will use, as research method, the "concept mapping"

that will create and generate "the relationship among a set of targeted topics" linking and representing the concepts as a "network diagram" (Given, 2008: 108).

The tables associated in the analysis will contain in the Column 1 the author's name, in Column 2 the concept mapping from A to C and Column 3 the targeted topics associated with each concept mapping (hereinafter Tt1…$_{..a, b, c}$). The linkages between Concept Mapping A, B and C are identified to refine the new fixed-approaches of the civil society considering the concept mapping variations (CM1$_{... a, b, c}$) and targeted topics interfaces (Tt1….$_{a, b, c}$). Based on the concept mapping-targeted topics linkage, the analysis has the potential to enable the following kinds of connections: civil society is… (Table 1) - civil society as… (Table 2) - civil society as organizational structure (Table 3). Each table delivers associated conceptualizations around the main civil society assets: interface of the transnational networks and society aid, space for the communication of ideas, linkage between democratic practices and social intervention connecting community level engagement and involvement and regulatory mechanisms in Europe.

Civil society and the discourse of democratization

When considering the debate about the civil society society and the discourse of democratization, Mcllwaine reveals and launches a concise definition of the civil society in the so-called "transnational" perspective.

By acknowledging the micro- and macro- levels of meanings, the author characterises not only the social practice variations, but also the explorations of the governmental organizations. McIlwaine also argues that the understandings and conceptual meanings of the civil society research encounter and examine how civil society scales from the local level to the macro-level (global or transnational levels meaning: viewpoints, interpretations and transnational scales. McIlwaine's study also recognizes the meanings of the so-called transnational civil society and the exploration of the governamental organizations in a Gramscian viewpoint (McIlwaine, 2007). Furthermore, Grajzl and Murrell claim that the interpretation of the civil society's actions and acts is often dominated by "partisan interest groups and politicians" (Grajzl, Murrell, 2009: 1-41). Moreover, the same authors initiate a discussion on the "welfare implications of fostering civil society critically" depending on the particularities of the local environment in transitional countries and developing regions (Grajzl, Murrell, 2009: 1-41).

In the same direction, Spina and Raymond witness the civil society debate "through outside assistance" by facilitating a better understanding of social interventions and acts (Spina, Raymond, 2014: 878-879). Moreover, the same authors stimulate and establish the debate over the "functioning state institutions" and the social capacity of the assistance, mechanisms and processes during the post 1990's period developing narrow definitions of the term of "civil society aid" and "substantial foreign assistance" (Spina, Raymond, 2014: 878-879). A further conceptual interpretation is indicated by Peter Burnell and Peter Calvert who guideline o broader view of civil society beyond the various relations between state and civil society.

This certainly explains the disciplinary outcomes of the demands and additional resources for the stability of democratic system accountability (Burnell, Calvert, 2004). By so developing the fundamental principles of representation of state, the authors discuss the social role of political actors and the relevant frameworks of a consolidated democracy (Burnell, Calvert, 2004: 15-16). Burnell and Calvert tend to argue the equilibrium of competitive democratic forces and polarizing the "dominance and subordinacy in social life" (Burnell, Calvert, 2004: 16-17).

In other words, the authors set different contexts and resolutions of the relationship between civil society and democratizatioon by giving to "a multiplicity" of factors roles and norms for controlling and legitimating "the relationship between civil society and democratization" (Burnell, Calvert, 2004: 17-18) (furthermore, for the concept mapping – targeted topics analysis on "civil society is…", see Table 1 Concept Mapping of the Civil Society: Civil society is).

Table 1. Concept Mapping of the Civil Society: Civil society is…

Author	Concept Mapping A (hereinafter CM_a)	Targeted topics A (hereinafter Tt_a)
Mcllwaine (2007)	*Civil society (network) ($CM1_a$)*	Transnational networks ($Tt1_a$)
Mcllwaine (2007)	*Transnational civil society ($CM2_a$)*	Inclusing exploration of governemental organizations ($Tt2_a$)
Spina and Raymond (2014)	*"civil society aid" and "substantial foreign assistance" ($CM3_a$)*	Functioning state institutions ($Tt3_a$)
Grajzl and Murrell (2009)	*Civil society assistance ($CM4_a$)*	Social interventions and acts ($Tt4_a$)
Burnell and Calvert (2004)	*Civil society (social life) ($CM5_a$)*	Dominance and subordinacy in social life ($Tt5_a$)

Source: Author's own compilation

This first table of the concept mapping of the civil society, that of the targed topics of transnational networks, governmental organizations, state institutions, social acts and social life ($Tt1\text{-}2_a$), can be a source to identify and to reveal the conceptual system mapping ($CM1\text{-}2_a$), enabling the civil society at the interface of the transnational civil society ($CM2_a$) and the "substantial foreign assistance" ($CM3_a$).

By adding the new concept mapping of the "civil society aid" ($CM3_a$) and the civil society assistance ($CM4_a$) to the Concept Mapping A, the new conceptual devise of the civil society becomes the concept learning that might be linked to the combination of "social life", "social intervention" and "society assistance".

Based on the above reasoning, it seems right to set the new fixed-approach of the civil society and its practical approach, "social life". Looking closer at the Table 1, each column introduces different heading for each author that labels the following statements: Mcllwaine (2007)_civil society (network)/ transnational civil society_transnational network/ exploration of governmental organisations; Spina and Raymond (2014)_civil society aid and assistance_state institutions; Grajzl and Murrell (2009)_civil society assistance_social intervention; Burnell and Calvert (2004)_social life_dominance and subordinacy.

Civil society and the politics of community-driven conceptualization

Although civil society rediscovered in post-communism the representations of social representation and interventions, the concept of "civil society as…" has emerged assuming the preconditions of the transitional state and social determinations dominated. on the one hand by the space of public communication and, on the other hand, by the importance of the institutional changes.

In the comparative discussions on civil media and local governance, it is often used a particular set of approaches of civil and uncivil societies (Olimid, 2014). One response is called the "democratic civilised West" and it sees the current conditions of the establishment of the civil society-media-global governance linkage. Ame Hintz argues "the term" is used "as frame which has been filled with different people at different time" (Hintz, 2009: 19).

Based on the understandings of the common usages of the governance discourse, the author argues that the civil society is an open space of communication of ideas and exchange of "interest and values"– distinguishing between "civil" and "uncivil" societies in which the shared background of social spheres enables the "space of oppositional citizens groups and social movements" (Hintz, 2009: 20).

This approach emerged during the end of the 1990's influenced by the social continuity of transition and the necessities of political change aiming to expose the "based experiential" understandings of how the post-communist civil society levels the civic participation and social involvement vs the weakness of the social participation. Marc Morjé Howard, influenced by based "experiential" approach to social continuity and change, explains that the transformative consequences of communist to post-communist institutions using the main causal factors, mechanisms and processes and examining the "relative influence of a set of factors from difference times in people's lives on their attitudes toward" social approaches and patterns (Howard, 2003: 19). As a result of this "relative influence", the author attempts to determine depend institutional pattern and "a uniform set of experiences" (Howard, 2003: 19).

Another crucial pattern of the civil society's experience involves the social approaches of the distinction between rights, rationality and membership when considering the meanings and understandings of civil society and citizenship. Building on the adequate grounding of citizenship rights, Somers argues that the "modern citizenship" presents alternative explanations to the legal approaches, but also a convergence of institutional analysis (Somers, 1994).

The central characteristic of the established democracies rates the context of theorization of "global civil society", the setting agenda of the democratisation and the legitimacy of state. This focus is appropriated by Baker that argues the political equality and the necessities of rights "without questioning" or reducing "action in global civil society" (Baker, 2002). As Mentzel also considers, the civil society has to mark national identity and the place of the linkage nation-civil society in the arenas of the revolutions of 1989 (Mentzel, 2012).

Other contemporary discussions locate the "civil society in a politics of civic-driven change" and describe a particular set of conceptual diffusions aimed at focusing on the rights practice, citizenship approaches and leadership processes (Fowler, Biekart, 2013). Reasons for an advanced analysis of the leadership processes are being connected through a focus on the social and political actors usually interrelating the framework of civil society and its functional and institutional lens: 1. civil society as democratic practice (Ku, 2000); 2. civil society as a manageable concept within the communitarian

logic (Rosenblum, 1994); 3. civil society and the conceptual separation of civil society from the state involving social actors and society self-limitations (Akman, 2011); 4. the civil society and the active role of development in global governance (Smith, Brassett, 2008); 4. civil society as an organizational construct within the public sphere bringing together citizens with common interests and sharing same goals (Bee, 2014); 5. the transitional justice, governmentality, and EU democratic construction (Kurki, 2011); 6. the civil society as an open system and the role of social capital as basis of democratic citizenship (Lehning, 1998) (furthermore, for the concept mapping – targeted topics analysis on "civil society as…", see Table 2 Concept Mapping of the Civil Society: Civil society as).

Table 2. Concept Mapping of the Civil Society: Civil society as…

Author	Concept Mapping B (hereinafter CM_b)	Targeted topics B (hereinafter Tt_b)
Hintz (2009)	*Civil society as open space* ($CM1_b$)	civil society as an open space of communication of ideas and exchange of "interest and values" ($Tt1_b$)
Howard (2003)	*Civil society as "experiental" approach* ($CM2_b$)	influenced by based "experiental" approach to social continuity and change ($Tt2_b$)
Somers (1994)	*Civil society as convergence* (CM_b)	"modern citizenship" and a convergence of institutional analysis ($Tt3_b$)
Baker (2002)	*Civil society as linkage of rights and actions* ($CM4_b$)	political equality and the necessities of rights "without questioning" or reducing "action in global civil society" ($Tt4_b$)
Mentzel (2012)	*Civil society as linkage of nation-civil society* ($CM5_b$)	national identity and the place of the linkage nation-civil society in the arenas of the revolutions of 1989 ($Tt5_b$)
Fowler and Biekar (2013)	*Civil society as politics-driven change* ($CM6_b$)	"civil society in a politics of civic-driven change" ($Tt6_b$)
Ku (2000)	*Civil society as democratice practice* ($CM7_b$)	democratic practice ($Tt7_b$)
Rosenblum (1994)	*Civil society as communitarian logic* ($CM8_b$)	communitarian logic ($Tt8_b$)
Akman (2011)	*Civil society as linkage to social acting* ($CM9_b$)	social actors and society self-limitations ($Tt9_b$)
Smith and Brassett (2008)	*Civil society dependent on development* ($CM10_b$)	active role of development in global governance ($Tt10_b$)
Bee (2014)	*Civil society as construct* ($CM11_b$)	organizational construct ($Tt11_b$)

Kurki (2011)	*Civil society as linkage of legal and democratic links (CM12$_b$)*	transitional justice, governmentality, and EU democratic construction (Tt12$_b$)
Lehning (1998)	*Civil society dependent on citizenship (CM13$_b$)*	role of social capital as basis of democratic citizenship (Tt13$_b$)

Source: Author's own compilation

The second table of the concept mapping of the civil society, that of the targed topics of "open space of communication of ideas" (Tt1$_b$), "experiential" approach to social continuity and change" (Tt2$_b$) , "convergence to the institutional analysis" (Tt3$_b$) , "the linkage nation-civil society in the arenas of the revolutions of 1989" (Tt5$_b$), "politics of civic-driven change" (Tt6$_b$), "democratic practice" (Tt7$_b$), "communitarian logic" (Tt8$_b$), "organizational construct" (Tt11$_b$), outline other sources to enable the conceptual system mapping (CM1-2$_b$), revealing the civil society's likage to the social actions (CM9 $_b$) and democratic links (CM12$_b$). As in Table 1, by adding the new concept mapping of the "open space" (CM1$_b$) and the dependency on citizenship (CM13$_b$) to the Concept Mapping B, the new conceptual devise of the civil society becomes the framework modelling for the new application domain of the concept mapping of civil society as linkage between democratic practice-communitarian logic-development-dependent citizenship.

As in Table 1, when considering the linkages author-concept mapping-targeted topics, we reveal the following statements: Hintz (2009)_civil society as open space_interests and values; Howard (2003)_experiential approach_continuity and change; Somers (1994)_convergence_citizenship and institutional analysis; Mentzel (2012)_nation and civil society linkage_arenas of the revolutions of 1989; Kurki (2011)_linkage of legal and democratic approaches_EU democratic construction; Lehning (1998)_citizenship_social capital.

Civil society and the politics of post-civil society

Another recent literature development concerns the "politics of post-civil society" (Gudavarthy, 2013). Gudavarthy argues that the theories regarding the civil society is defined as a manageable process with new forms, insights and strategies and identity articulation of human rights movements and trajectories of the constitutional-democratic connection between civil society and oppositional politics (Gudavarthy, 2013: 8).

A further issue concerns the institutionalist emphasis of the European civil society shaping the policy initiatives and the social sphere of the civil dialogue (Smismans, 2003). Despite the differences in demonstrating the politics of post-civil society, Gudavarthy and Smismans share the common attribute of the constitutional-democratic performance and the participation of civil society providing a direct resource for the public engagement and involvement (Themudo, 2013).

In a recent study, other authors outline a series of approaches to the politics of conflict as a "constructivist critique of consociational and civil society theories" (Dixon, 2012). Moreover, Dixon presents "a (critical realist) constructivist critique of both consociational and civil society/transformationist approaches and their crude understandings of politics and the prospects for political change" (Dixon, 2012). Furthermore, the changing conditions of the public activities show that the increasing

citizens' participation links social dialogue to the deliberative democracy (Öberg, Svensson, 2012).

As for the particular interest of civil society to relate the principles of "liberty, autonomy", Castiglione argues for the "conjunction with the great social and political" requirements (Castiglione, 1994).

Civil society as organizational structure

The term civil society is also dependent upon the importance of the organizational structure and a multi-level conception. Öberg and Svensson (2012) argue that challenge of the civil society sector has to focus on the linkage between the deliberative democracy and the national arenas of the public debate (Öberg, Svensson 2012).

Therefore, it is the organizational engagement that is important and there are the influencing decisions of the national public policies that should be analysed and interpreted first (Öberg, Svensson 2012). As a society reaches and develops trans-national networks, we may encounter the emergence of several approaches: civil society behaviour and actors preferences; conflict-oriented approaches and national infrastructures dealing with the local governance variations, power relations and governmental relations (Sellers, Kwak, 2011).

A much more critical observation of this approach comes from exploring the collaborative and connecting environmental governance linking the power relations and bridging actors, sectors, community and experiences Ali-Khan and Mulvihill argue that characteristic patterns of environmental governance explore and facilitate the collaborative approaches of the civil society actors, the determinants and the "potential role of actor agency" (Ali-Khan, Mulvihill, 2008: 1974-1975).

While many are arguing that exploring the variations of civil society actors, governmental officials and leaders bridges also actors and decisions, Wallman Lundåsen argues that there are specific forms of political participation encouraging the various measurement of community level involvement and engagement (Wallman Lundåsen, 2015). The same author explores the local voluntary associations participation contibuting to the framework of a "consociational context" of the "local political culture" (Lundåsen, 2015).

Furthermore, despite the apparent potential of consociational context" of the "local political culture" and citizens engagement, there is a particular proposition of Skelcher and Torfing, involving the concepts of "civic participation" and "citizens' sense of democratic ownership of governmental processes" (Skelcher, Torfing, 2010). The same authors also explore the multi-level structure of the democratic governance involving the "institutionalized participatory governance" and "the traditional forms of representative government" (Skelcher, Torfing, 2010: 71-72).

Setting-up the institutional design of the civic participation and democratic ownership, Skelcher, and Torfing highlight that the "democratic governance of regulatory policies in Europe" depends on the way in which also the civil society-governments-social-political context-economic competiveness is developed (Skelcher, Torfing, 2010: 71) (Furthermore, for the concept mapping – targeted topics analysis on "civil society as organizational structure", see Table 3 Concept Mapping of the Civil Society: Civil society as organizational structure).

Table 3. Concept Mapping of the Civil Society: Civil society as organizational structure…

Author	Concept Mapping C (hereinafter CM_c)	Targeted topics C (hereinafter Tt_c)
Gudavarthy (2013)	*civil society is defined as a manageable process* CM_c)	"politics of post-civil society"; articulation of human rights movements and trajectories of the constitutional-democratic connection between civil society and oppositional politics ($Tt1_c$)
Smismans (2003)	*Civil society as institutional emphasis* ($CM2_c$)	policy initiatives and the social sphere of the civil dialogue ($Tt2_c$)
Themudo (2013)	*Civil society linkage to the public participation* ($CM3_c$)	a direct resource for the public engagement and involvement ($Tt3_c$)
Öberg and Svensson (2012)	*Civil society as organizational structure* ($CM4_c$)	deliberative democracy and the national arenas of the public debate ($Tt4_c$)
Sellers and Kwak (2011)	*Civil society likage to the conflict-oriented research* ($CM5_c$)	trans-national networks; civil society behaviour and actors preferences ($Tt5_c$)
Ali-Khan and Mulvihill (2008)	*Civil society linkage to the power relation* ($CM6_c$)	environmental governance exploring and facilitating the collaborative approaches of the civil society actors ($Tt6_c$)
Lundåsen (2015)	*Civil society linkage to the specific forms of political participation* ($CM7_c$)	the various measurement of community level involvement and engagement ($Tt7_c$)
Skelcher and Torfing (2010)	*Civil society and the - linkage to the consociational context of local approach* ($CM8_c$)	"local political culture" and citizens engagement ($Tt8_{c)}$
Skelcher and Torfing (2010)	*Civil society - linkage to the institutional design of European policies* ($CM9_c$)	"democratic governance of regulatory policies in Europe" ($Tt9_c$)
Dixon (2012)	*Civil society and - linkage to the politics of conflict* ($CM10_c$)	"constructivist critique of consociational and civil society theories" ($Tt10_c$)

Source: Author's own compilation

The third table of the concept mapping of the civil society, that of the targed topics of constitutional-democratic connection between civil society and oppositional politics ($Tt1_c$), of the policy initiatives and the social sphere of the civil dialogue ($Tt2_c$), of the direct resource for the public engagement and involvement ($Tt3_c$), enables various concept mapping from defining civil society as a manageable process and mechanism ($CM1_c$), as linkage to the public participation ($CM3_c$), power relations ($CM6_c$) and political participation ($CM7_c$), connecting the concept mapping to the local approach. As in Table 1 and Table 2, by adding the new concept mapping of the consociational context of local approach ($CM8_c$) and of the institutional design of European policies ($CM9_c$) to the Concept Mapping C, the new conceptual devise of the civil society reveals for Table 3 the model framework of the new domain of civil society as linkage between the targeted topics of: the community level involvement and engagement ($Tt7_c$), citizens engagement ($Tt8_{c)}$, "democratic governance of regulatory policies in Europe" ($Tt9_c$) and "civil society theories" ($Tt10_c$). As in first two tables: Table 1 and Table 2, when considering the linkages author-concept mapping-targeted topics, we enable the following statements: Gudavarthy (2013)_manageable processes_movements and trajectories of the constitutional democracies; Smismans (2003)_institutional emphasis_policy initiatives: Themudo (2013)_public participation_public engagement; Sellers and Kwak (2011)_conflict oriented research_behavior and actors preferences; Ali-Khan and Mulvihill_power relations_environmental governance; Dixon (2012)_politics of conflict_constructivist theories of the civil society.

Participatory democracy, civil society's lens and local linkages

As Skelcher and Torfing remind us, the consociational context of local approach is attractive because it is the result of the "local political culture" and citizens engagement. Under these circumstances, Busher believes that civil religion is also a factor that reconfigures the responses to the "contemporary repositioning of the nation state within the supra-national political, economic, legal and cultural orders entailed by globalization" (Busher, 2012: 414-415). Civil society is seen as depending on how current reconfigurations of civilizational arguments face the references to the civilizational belongings (Busher, 2012: 414-415). As Gil de Zúñiga, Jung and Valenzuela note, the social media use also reveals that the "*informational purposes similarly contributes to foster democratic processes and the creation of social capital" (*Zúñiga, Jung, Valenzuela, 2012: 319). Accordingly, these formulations emphasize that the knowledge and efficiency of the political structures depends on the democratic processes and the political participatory behaviors *"in the context of today's socially-networked-society" (*Zúñiga, Jung, Valenzuela, 2012: 319).

The authors argue that the key objective is to test how civil society faces the democratic processes and political structures actions. Civil society does however seek to answers to the challenges of the civic participation in multiracial and multi-ethnic contexts.

Thus, the expanded model of community engagement and citizens' involvement relates and also outlines various consequences and marks for the normative aspects of policy-making processes of the social context enabling the multilevel approach. The exploration of the immigration phenomenon allows the test of the civic engagement and participation integrating migration-civic engagement factors, various levels of participation and civic attitudes and political participation (Gastil, Xenos, 2010).

Other recent literature findings investigate the religion-civic culture linkage and require the reconceptualization of the individual–country level and of the relationship between local, regional, and national association membership (Lam, 2006). However, norms of membership and/ or citizenship are linking the good governance outcomes to the "citizens' attachment to civic norm" (Kotzian, 2014). In well-structured society, both good governance and the norms and principles of citizenship determine "the importance citizens attach to these norms" (Kotzian, 2014).

Furthermore, the roles and the impact of the regulatory state framework enables a certain discussion on the decision making process and the transfer of state action to the "global South" (Hochstetler, 2012). By considering the key elements of the deliberative democracy, de Brelàz and Alves argue that the "different stages of advocacy and lobbying processes" and "the influence of regulatory framework" legitimates the linkage between the deliberate type of democracy, representation and the public discussion (de Brelàz, Alves, 2011: 202-203). Wheatley also examine the extent to which the democratic approaches to political authority and global governance at the micro- and macro-levels of regulatory policies in Europe results from "t*he idea of legitimate political authority*" (Wheatley, 2012). In addition to this focus, the key role of the operational levels of democratic legitimacy can be applied in "multiple regulatory regimes" (Wheatley, 2012: 158-159) and "in the absence of a global constitutional settlement and establishment" (Wheatley, 2012: 160). Howe

As noted above, the linkage between local-regional-national-global governance on the vertical approach to the particular area interest of the "varieties of capitalism" and the dynamics of the institutional system affecting the "the management of institutional heterogeneity by transnational corporations" (Faulconbridge, 2008: 185). However, Faulconbridge argues that enabling a relational analysis between national institutional systems and practice reveals "different work practices" at "macro-level categories" (Faulconbridge, 2008: 185).

Despite the fact that the relational analysis of civil society's actions and lens in global governance plays a targeted role for the democratic mechanisms in the developing countries (Waheduzzaman, As-Saber, 2015). Waheduzzaman and As-Saber also reveal that the level of participatory governance "insinuates" that the citizens' participation emerges as an important element of the functionality of the political system relating participation-local development actions and activities and the development initiatives Waheduzzaman, As-Saber, 2015: 474-475).

Sellers and Kwak also establish the local patterns of the relations between state (local state)-society-local governance-governmental institutions. This analysis reveals that the national infrastructures for local governance are linked to the "national variations in the shape of civil society" (Sellers, Kwak, 2011: 620). The relations between the national variations to the local patterns and local state engagement also enable the consideration of the "knowledge and policy mobilities" used to analyze the local effects of development and sustainable designs (Faulconbridge, 2015).

Conclusions

The present article argues that the rrelationship between the context of the civil society at national level and the local connection between a strong civil society and a sustainable democracy has to enable the institutional design of the society behaviour and actors preferences.

In conclusion, in the associational context of the post-civil context and the political life and democracy, expanding the conceptual arenas and prospects of the local/ global and environment governance, consolidation of democracy and a pro-democratic civic participation and engagement develops trans-national networks and dynamize the civil society approaches by combining the theories of organizational structures and local governance encounters.

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ORIGINAL PAPER

The Applying of Law and the Control Exercised over the Public Administration by the People's Advocate

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Abstract
Along with the administrative procedure of hierarchically made appeal and the disputed claims procedure before the courts, the People's Advocate constitutes one of the juridical guarantees for the protection of the human rights in the Romanian law, and also a means for controlling the activity of the public administration. The area in which the People's Advocate Institution activates is rather extended, related to all the petitions against the infringement of physical persons' rights and freedoms, through documents or actions of the public administration, including the authorities of the special and local central public administration, the public institutions, and any other public services that are under the authority of the public administration authorities, and the autonomous departments. For an exhaustive depiction of the role played by the People's Advocate, when applying the law, there are important their attribution and the way in which they are exercised, according to the provisions of the Law no. 35/1997 on the organisation and functioning of the People's Advocate institution, the range of competence, the documents that they can elaborate and the character of these documents, along with the finality of their actions, in case they notice that the lodged complaint was well-grounded.

Keywords: *fundamental rights, administrative authority, People's Advocate, complaint/intimation, Constitutional Court*

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Introductory considerations

The replacing of the communist political regime with the democratic one, in December 1989, the transition towards a market economy, the abolish of the monopole of the state on the means of production and the mass media, the introduction of the political pluralism, the reformation of legislation and the implementation of a new institutional background for the exercising of power, led to "a new conception on the promotion and defending of the citizen's rights and freedoms, along with the alignment of Romania to the international standards, on addressing the human rights and the form of government" (Avram, Radu, 2007: 296).The adopting of the Romanian Constitution in 1991, followed by the revision of it in 2003, equated with the constitutional consecration and guarantee of the entire assembly of the citizen's fundamental rights and freedoms, included in the international documents. Thus, the human rights enjoyed "a global systemic vision and, in the same time, one integrated" (Avram, Radu, 2007: 297) into the new democratic spirit that embraced all the countries from the former communist bloc. Among the fundamental institutions of any democratic society, there is that of the People's Advocate, an institution that, although stipulated in the Romanian Constitution since 1991, enjoyed a distinct regulation much later, though Law no. 35/1991, on the organisation and functioning of the People's Advocate Institution. Later on, in order to establish the organizational structure of the institution, on the 29th of October 1997, it was approved by the Standing Bureau of the Senate, the Regulation for the organisation and the functioning of the People's Advocate Institution. Although the legal background was provided, the lack of an adequate space for a good functioning of the institution only delayed the beginning of the activity done by the People's Advocate, until January 1999.

The Attributions of the People's Advocate

The law on addressing the organisation of the People's Advocate institution establishes, in art. 2, that this is an autonomous public authority, independent as confronted to any other public authority, while in art. 1, there are provisioned the competences of the institution: "The People's Advocate Institution is aimed at the defence of the citizens' rights and freedoms in their relations with public authorities". The area in which the People's Advocate activates is a rather extended one, meaning that it encompasses the petitions against the infringement of human rights and the freedoms of the physical persons, through documents or actions done by the public authorities, including the authorities of the special and local central public administration, the public institutions, and any other public services that are under the authority of the public administration authorities, along with the autonomous departments. The People's Advocate can exercise powers on his own initiative (ex officio) or upon the request of the wronged persons, or companies, as provided in Law no. 31/1990, the associations or other legal persons, and also without previous notice, by visiting the detention place, according to the law (Art. 14 section 1 from Law no. 35/1997 on the organisation and functioning of the People's Advocate Institution).

In an authentic democracy, in which the main role played by the People's Advocate is that to defend the physical persons' rights and freedoms, in their relations with the public authorities, the independence of this institution is absolutely necessary, because there can occur difficult circumstances in which the public authorities can have

subjective interests, with a great political influence, way beyond the observing of the fundamental rights. For these reasons, in the area of the attributions conferred by the law to this institution, there is also the following up of the legal solution of applications received and to request the public administration authorities or civil servants concerned to put an end to the respective violation of civil rights and freedoms, to reinstate the petitioners in their rights and to redress the damages thus caused [Art. 13, section 1 lit. c) from Law no. 35/1997], the informing of the Constitutional Court on the non-constitutionality of the laws, before they are promulgated [Art. 13, section 1 lit. e)]; the possibility to immediately the Constitutional Court on the exception on non-constitutionality of laws and ordinances [Art. 13, section 1 lit. f)]; the possibility to inform the administrative court, under the provisions of the administrative law [Art. 13, section 1 lit. j)].

There can be noticed that, from the general character stipulated in art. 38 of the Constitution, there has been made the transition to the special character of this institution, such is the defending of the citizens' rights and freedoms, in their relations with the public authorities (Brânzan, 2001: 164-170), therefore, the petitions for the Court that do not encompass the relations between the citizens and the public authorities, cannot be the object of the People's Advocate institution. For example, the petitions that are related to litigations between the physical persons, between citizens and companies, between companies, working litigations, or between different organisations etc., cannot be verified by the People's Advocate. It must be evidenced that this is not possible due to the provisions of art. 2, section 2 from Law no. 35/1997, according to which the Advocate of the People shall be no substitute for other public authorities, being known that this type of litigations is solved by the judicial authorities. Moreover, as provisioned in the same article, the People's Advocate cannot carry out criminal charges, these being the field of the same departments of the criminal investigation from the Ministry of Internal Affairs or the Public Ministry, as accordingly. Nonetheless, as stipulated in art. 18 from the same law, in the cases in which the People's Advocate finds that the solution of an application lodged with him is under the Public Ministry jurisdiction, or is on the cause list of a court of law, or deals with some miscarriage of justice, he will refer that matter to the General Prosecutor or to the Superior Council of the Magistracy, in accordance with their respective jurisdiction, and must be duly informed by the latter of the conclusions reached and measures taken in that case. Thus, even if the People's Advocate cannot substitute the public authorities, according to art. 2, section 2 from the law, they have the possibility to inform the competent departments, which have the obligation to communicate their conclusions and the taken measures.

As regarding his attributions, extremely important is the provision from art. 25, section 2, of the law, which stipulates that whether, during the course of his inquiries, the People's Advocate finds gaps in legislation or serious cases of corruption or violations of the Country's laws, he will submit a report on his findings to the presidents of the two Chambers of Parliament or, as the case may be, to the Prime Minister. Even in these special circumstances, in which the People's Advocate cannot represent, according to art. 2, section 2, the attributions of the competent public authorities, for the solution of these facts, yet, he has the obligation to announce the presidents of the two Chambers of the Parliament or, as required, the Prime Minister.

As regarding the possibility for the People's Advocate to eliminate the exception of unconstitutionality, the Constitutional Court considered that the normative document (the fundamental law) that conferred him this attribute "does not contain a judicious

solution that may represent a judicial constitutional norm, because the elimination of the exception by the People's Advocate, for the benefit of a person, cannot represent a real guarantee or a measure for the protection of the citizen, as long as that person, being implied into a trial and conducted by a legitimate interest, can exercise the procedural right to lift the exception before the court. Moreover, the Constitutional Court mentions that the People's Advocate cannot refer to a procedure that would legitimate his implication into a trial, before any court. As long as the citizens are guaranteed their free access to justice, along with the right to defence, this signifies that, in the judicial sphere, they can defend against the unconstitutional legal dispositions. Consequently, the People's Advocate would be given an attribution equally excessive and lacking consistence, that to eliminate the non-constitutional exception, outside a trial, in the name of the justice seeker. Likewise, the institution of the ombudsman, at the European level, is created as a public authority, whose attributions are related to the relations that people have with the public administration, not with the judicial courts. Subsequently, this attribute should be eliminated, among the constitutional dispositions" (Decision CC no. 148/2003). As it was fairly underlined in the doctrine, the Constitutional Court misunderstood the fact that it was a voluntary intervention in a determined trial, at a certain court, in reality the People's Advocate being able to introduce «„a direct suit" in the legal constitutional department, at the Constitutional Court, "the exception" – as unanimously accepted – being a part of the suit, or the exclusive subject of it» (Deleanu, 2003: 483).

In the doctrine, there was considered that the implication of the ombudsman in raising the exception of unconstitutionality, cannot aim but the laws and ordinances that infringe the physical persons' rights and freedoms, which is not entirely in agreement with the purpose of the institution. Consequently, the People's Advocate cannot raise such an exception in the name of, and for the public authorities, political parties, syndicates, private employers, or other legal persons, but he can be given a notice by all of the previously mentioned; moreover, he cannot substitute any physical persons, who can solicit themselves, in their own name, and using the common judicial way, the control of constitutionality (Muraru, 2010).

In agreement with thee doctrines, the attribution of the People's Advocate were gradually enlarged, in the legislative area, thus, the revised Constitution from 2003 acknowledged the right of the ombudsman to give notice to the Constitutional Court on the constitutionality of the laws, before being promulgated [art. 146 letter a)], along with the possibility to raise the exception of unconstitutionality, directly before the Constitutional Court [art. 146 letter d) second thesis]. For the same purpose, art. 541 from the New Code of Civil Procedure (Law no. 134/2010), confers locus stand to the People's Advocate too, who can ask the High Court of Cassation and Justice to rule on the legal issues that have been resolved differently by the Courts. Obviously, as mentioned in the doctrine: «The People's Advocate can give notice to the Constitutional Court and the High Court of Cassation and Justice only on the regard of those laws and ordinance, such are the judgements that resolve differently a legal problem, connected to the observing of the physical person's rights and freedoms. Hence, it is obvious that it would be beyond the competence held by the People's Advocate, which is not related to the supervision of the constitutionality for each law, or ordinance, and the ensuring of a unitary judicial practice in any field. In other words, the People's Advocate does not represent the "midwife of the commune", a pawn politically commended by the authorities of the state, irrespective of Presidency, Government, or any other public authority, outside the constitutional and legal background» (Ciobanu, 2013).

The sphere of competence

As underlined in the specialised literature, the People's Advocate is an instrument that the Parliament uses to carry out the function of control, over the public administration (Drăganu, 1998: 344-350; Muraru, 2004: 10), thorough public administration being understood each authority and institution of the public administration, their subordinated structures, including the autonomous administrations. Thus, people whose interests were endangered due to an action of the public administration authorities and institutions, or by their employees, can give a notice to the People's Advocate. As resulting from the specialised literature, the notice has to be motivated exclusively by an infringement in the human rights; it is sufficient for the claimant "to justify the request from the legal point of view, or to mention point to point the infringed rights" (Balica, Radu, 2011: 27). An answer given to the citizen, after the expiring of the legal deadline, represents an infringement of the legal regulations, which can be the object of an intervention supported by the People's Advocate, while a delay in answering, even an unreasonable one, but until the deadline, cannot be a justified reason for an intervention of the Ombudsman (Balica, Radu, 2011: 27).

The instruments that the People's Advocate uses to exercise the function of control over the public administration are: the right to make his own investigations, to request the authorities of the public administration any information or documents necessary for the investigation, to hear and to take statements from the managers of the public administration authorities, and any clerk who can offer the necessary information for the solving of the petition, under the provisions of the law (Art. 22 section 1 from Law no. 35/1997), the right to make recommendations for the proper solving of the deficiency, and the repositioning of the person in the conjuncture previous to the violation, the possibility to notice the public authorities, with the higher rank, or the sub-prefect, in case of delay or refusal to act according to the recommendations (Art. 22 section 1 from Law no. 35/1997).

Another means that the People's Advocate can use, in the relation with the administrative departments, is the possibility that, in case he notices that the settlement of the complaint that he was given enter the jurisdiction of the judicial authority, he can address, if necessary, to the Minister of Justice, the Superior Council of Magistracy, the Public Ministry, or the President of the Court, who is obliged to communicate the taken measures (Art. 18 from Law no. 35/1997). Consequently, the ombudsman can even bring an action in court, in the name of the complainer, if he appreciates that this is the only way in which the prejudice, caused by the action or the lack of action of the administrative authority, can be repaired. We must underline that the relation between the People's Advocate and the public administration, although contains a component of controlling, is not a punitive one, but is a relation, partly of mediation between citizens and the public administration departments and, partly, of collaboration, the ombudsman being able to resort, in care or refusal or inadequate answer, to other administrative authorities to help the repairing of illegal actions (Balica, Radu, 2011: 28).

Although according to art. 1 from Law no. 35/1997 on the organisation and functioning of the People's Advocate institution, this institution has as main purpose the defending of the citizens' rights and freedoms, in their relations with the public authorities, in the sphere of competence not being all the relations between the citizens and the public authorities. Thus, in art. 15, section 2 and 4 from the same law, it is limited the sphere of

competence of the institution, excluding the anonymous complaints that regard infringements of the stipulations on the human right, which are one year older than the date the person noticed the facts presented in the grievance, as much as the complaints that refer to certain public authorities.

Art. 15, section 2 provides that there cannot be taken into consideration the anonymous complaints or those directed against violations of civic rights, concerning events which are more than one year old than the date when the person concerned has had knowledge of the facts upon which such complaint is grounded. If the restriction can prove to be justified, in case of anonymous complaints, in case of petitions regarding the violations of the citizens' rights that are more than one year old, we consider the measure taken by the legislator too severe. **De lege ferenda** we consider that the text from art. 15, section 2, from Law no.35/1997 on the organisation and functioning of the People's Advocate Institution should be modified, offering the citizens the right to file, to the People's Advocate, complaints that concerning violations of the citizens' rights, three years after the person in case took knowledge of the actions mentioned in the complaint.

Moreover, art. 15, section 4 from Law no. 35/1997 stipulates that: "There cannot be subjected to the People's Advocate Institution, therefore it must be rejected without indicating a reason, any applications dealing with acts issued by the Chamber of Deputies, the Senate, or the Parliament, acts and actions of deputies and senators, the President of Romania, the Government, as well as of the Constitutional Court, the president of the Legislative Council, and the judicial authority, except for the laws and ordinances". There can be noticed that, from the general rule, instituted by art. 1 from Law no. 35/1997, through which the People's Advocate Institution has as main purpose the defending of the citizens' rights, in their relation with the public authorities, art. 15, section 4, stipulates the exception form this rule, taking out of the sphere of competence conferred to this institution, certain public authorities precisely and limitary determined, such as the Parliament with the two Chambers, the Senate and the Chamber of Deputies, the Government, the judicial authority and the Constitutional Court. The President of Romania and the President of the Legislative Council. The same section encompasses the exception from its provisions too, such are the laws and ordinances, from where there can be concluded that they can be the object of the People's Advocate Institution.

By analysing the text of art. 15, section 4, there can be observed that there are still subjected to the sphere of competence, owned by the People's Advocate, as also resulting from the text of art. 20, section 1, only the documents of the public administration authorities.

Furthermore, there must be mentioned that, under the provisions of art. 15, section 4, in case of the documents issued by the Constitutional Court, there are excepted from the People's Advocate sphere of competence only the complaints on addressing the documents that include its quality of constitutional jurisdiction authority (art. 1 from Law no. 47/1992 on the organisation and functioning of the Constitutional Court), such are the unconstitutional decisions made by the Constitutional Court. For these reasons, we consider that the documents, which have no such a character, can be subjected to the People's Advocate Institution – for example, the documents of dismissal from different positions. Even in the case of notice regarding the exception of unconstitutionality of laws and ordinances that refer to the physical persons' rights and freedoms, the Constitutional Court is obliged to solicit the point of view of the People's Advocate too (Art. 19 from Law no. 35/1997), which represents "an efficient means for accomplishing the function for the protection of the human rights" (Muraru, 2004: 88).

In the case of the judicial authority, there are also excepted from the sphere of competence held by the People's Advocate, only the documents that are issued in its quality of public authority, with jurisdictional authorities, with the mention that, according to the provisions of art. 18 from Law no 35/1997, in the case the People's Advocate remarks that the resolving of the complaint that he was given falls under the competence of the judicial authority, can address, as requested, to the Minister of Justice, the Superior Council of the Magistracy, the Public Ministry, or the president of the court, who is obliged to communicate the taken measures. Although, from the legal dispositions, it does not result that there is any relation between the People's Advocate and justice, nor that he is authorised to verify the applying of the law by the judicial power, as in other European states (Dacian, Neamțu, Balica, 2011: 63-69), we consider that, **de lege ferenda**, it should be regulated the possibility for the People's Advocate to defend the rights and the freedoms of the citizens, in their relations with the justice, a possibility through which there could be prevented and sanctioned the violations done by judges, against art. 6 of the European Convention on the protection of human rights and fundamental freedoms, according to which any person has the right to a rightful examination of their case, publically and reasonably, by an independent and impartial court, established by the law (Iancu, 2002: 118). Thus, there is no disposition in the Romanian legislation or Constitution that would forbid the People's Advocate to defend the citizens' rights and freedoms, in their relations with the justice, interdiction that is specifically provisioned in plenty constitutions from a lot of states, in one way or another (Jianu, 2013: 32-58).

On regard to the documents of the Legislative Council, there are exceptions only the documents and the actions of this department's president, not the other administrative documents issued by this council, the law referring precisely to "the president of the Legislative Council", the same stipulation being also made for the President of Romania.

As referring to the legislative power, owing to the fact that art. 15, section 4 from Law no 35/1997, stipulates that "there cannot be subjected to the People's Advocate Institution, therefore they must be rejected without indicating a reason any applications dealing with acts issued by the Chamber of Deputies, the Senate, or the Parliament", we consider that this refers only to the administrative acts, excepting those requested by the people with leading positions from the administrative apparatus of the Parliament, Chamber of the Deputies and the Senate, without the quality of deputy or senator, for example the dismissal decisions.

The same reasons are applied as regarding the documents issued by the Government, with the mention that, according to art. 107 from the Constitution, the acts of the Government are the judgements and the ordinances, the last being excluded expressly from art. 15, section 4 of Law no. 35/1997, from which it results that the ordinances and the rest of the documents issued by the Executive power, can be subjected to the People's Advocate Institution (Dinu, 2006: 65). In case of ordinances that contain unconstitutional provisions, the Advocate of the People can raise the exception of unconstitutionality before the Constitutional Court, this representing "the only form of direct control that the Ombudsman can exercise over the Executive power" (Balica, Radu, 2011: 26). A form of indirect control is the possibility to notice the Parliament in case of inappropriate action or in case the government does not take action, concerning the notice of the public administration on the prefect's performance, or of the other deconcentrated departments (Balica, Radu, 2011: 26).

Another important remark is addressed to art. 28 of Law no. 35/1995, which stipulates that the provisions of this law are also applied to the administrative documents

of the autonomous departments, in this manner introducing in the sphere of competence owned by the People's Advocate, the petitions of the people on addressing the documents issued by the autonomous departments that, according to their legal status, cannot be considered public authorities, but commercial ones, profit-making organisations. Taking into consideration that the autonomous departments are administrated by the state, in fields that concern the national interest, the legislator considered necessary to be also included under the competence of the People's Advocate Institution, nevertheless referring strictly to the administrative documents issued by it.

The exercising of the attributions and the documents issued by the People's Advocate

For an exhaustive depiction on the role of this institution, in applying the law, it is extremely important to mention the finality of the actions undertaken by the People's Advocate, in case it is noticed that the complaint that he was given is grounded. Art. 21, section 1 from the Law no. 35/1997 stipulates that, in the exercise of his powers, the advocate of the people issues recommendations, and art. 2, section 1 stipulates the independence of the People's Advocate against any public authority, it results that his actions cannot be subjected to neither parliamentary, nor judicial control.

The recommendations formulated by the People's Advocate can contain the noticing of the public administration authorities on the illegality of administrative documents or actions (Art. 21 section 2 from Law no. 35/1997), or the notify of the public administration authority which has violated the petitioner’s rights with the request to reform or revoke its own administrative act, to redress the damage thus caused and to reinstate that person to his/her former state (Art. 23 section 1 from Law no. 35/1997). The mandatory character, for the public authorities in case, of the recommendations issued by the People's Advocate, resorts from the provisions of art. 23, section 2, which stipulates that the public authorities shall take the necessary measures for to remove the illegality thus found, to redress damages and to remove the reasons that caused or furthered a violation of the aggrieved person’s rights, while duly informing the advocate of the people thereof.

In case the public authorities do not observe the recommendations issued by the People's Advocate, it must be mentioned that he is entitled to sanctions or coercive measures, but, besides the notification of the hierarchically superior authorities, he can publish in mass media his conclusions, with the agreement of the person whose interests were infringed, and observing the provisions of art. 20 on the secret information and documents.

Hence, provided that the public administration authority or the public officer does not remove, 30 days after the complaint, the committed illegalities, the People's Advocate Institution notifies the hierarchically superior public administration authorities, which are obliged to communicate, in no more than 45 days, the taken measures. If the public authority or the public officer is employed by the local public administration, the People's Advocate Institution notifies the prefect.

According to art. 60 of the Constitution, the People's Advocate presents reports to the two Chambers of the Parliament, annually or on their request. The reports can contain recommendations on legislation or other type of measures, for the protection of the citizens’ rights and freedoms (Emandi, Durlă, 2006: 75).

In order to relate the legal framework of the People's Advocate Institution to the European Ombudsman, Law no. 35/1997 on the organisation and functioning of the

People's Advocate institution, has undergone numerous modifications and additions that aim: the regulation of the Advocate of the People's right of notify the Constitutional Court to judge on the constitutionality of the laws, before being promulgated, the including of the People's Advocate right to raise directly, before the Constitutional Court, exceptions of unconstitutionality, the appointing of assistants, specialised on fields of activity, the election of the People's Advocate, in the common meeting of the Chamber of the Deputies and the Senate, for five years; the stipulation to communicate to the Constitutional Court his point of view, in the trials on addressing the human rights, the possibility to found field offices (14 so far, on the territory of the Courts of Appeal), the creation of a distinct authority for the supervision of the activity, for the protection of the personal information, the appointing of an assistant of the People's Advocate, specialised in the prevention of torture, or other punishments or cruel, inhuman or degrading treatments from prisons. These measures enforced the autonomy of the institution, perfecting its activity.

In **conclusion**, even if the People's Advocate, when exercising his attributions, does not substitute to the public authorities, nevertheless, he has at his disposal numerous means to make his own investigations, in order to resolve legally the complaints that he was given, although it is not necessary to be in the sphere of competence provisioned in the law on the organisation and the functioning of the institution.

The purpose of this institution and its actual efficiency, demonstrates that the decisions made by the People's Advocate cannot be founded on the coercive, sanctioning power, for the reason that the essence of his activity lies in dialogue, in the mediating and pacifist spirit, as more as, in a constitutional democracy, it is founded on the classical principle of the powers separation and equilibrium. The People's Advocate is, and has to remain, the authority that facilitates the accomplishing of this equilibrium, not only among the public powers, but between these and the society (Zlătescu, 2013: 96-98).

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ORIGINAL PAPER

Processing Personal Data by Cookies

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Abstract
After the eradication of the communism, the processing of personal data has become a real topic, as the data privacy turned into a concrete fundamental right for Romanian citizens. In 2001, the Romanian Parliament adopted the Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, as a response to the EU legislation by transposing Directive 95/46 EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Still, the processing of personal data by cookies is not visible for all stakeholders, especially for the data subjects, despite the fact that we access the Internet on a daily basis for social networking, for research, for shopping, or just for information. Whenever we access websites, several cookies might be placed on our computers temporarily or even permanently. Depending on the technical properties of the used cookies, this might imply a collection of personal data, accessing and usage of personal data, international transfer of personal data, etc., all of the above falling under the concept of processing personal data, as provided by the law. Consequently the study explains the legal conditions of processing personal data by cookies in the context of the national legal framework, with consideration of the European Union legislation, and in the light of Article 29 Data Protection Working Party's Opinions and Recommendations.

Keywords: *data protection, cookies, processing, legislation, networking*

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Introduction

According to article 4, paragraph 1) of the Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, as amended by Law no. 235/2015 (Law no. 506/2004), *"the confidentiality of the electronic communication through a public communication network or publicly available electronic communications services, and the confidentiality of the traffic data is guaranteed". This legal guarantee is part of the protection to the private life of the individuals, right that is classified as inalienable, imprescriptible, and non-transferable to any other person (Ovidiu Ungureanu, Cornelia Munteanu, 2015).*

In this context, the same article of Law no 506/2004 establishes as a principle the *rule of consent* anytime the personal data or traffic data are subject of a processing operation, while the exemptions are expressly given in a very limitative register. Thus, the storage of personal data or traffic data for the purpose of making the communication functional, respectively for the performance of the electronical communications services, is allowed, including the case when this implies the usage of cookies technologies. Hence, the article 4, paragraph 6) of the Law no. 506/2004 which transposed the article 5) paragraph 3) of the Directive 2002/58, as modified by Directive 2009/136/EC of the European Parliament and of the Council in November 2009, establishes 2 (two) categories of exemptions, analyzed in one of the below sections referring to the exclusive purpose of the transmission of the electronic communication, and to the delivery of an electronic service required by the user/data subject (section no. 5). The study also includes the main categories of cookies as they have been analyzed by Article 29 Data Protection Working Party (WP), the processing requirements, such as consent validity, the rights and obligations of the main stakeholders, with the consequences for the data confidentiality breach in terms of sanctions provided by the law, and the civil liabilities of the data controllers or data processors.

Definition and categories of cookies

A cookie is a small text file that is downloaded onto 'terminal equipment' (e.g. a computer or smartphone) when the user accesses a website (UK Information Commissioner's Office). (Cookies indicate in fact specific technologies which use unique identifiers (an alphanumeric code - numbers, letters, randomly set) sent to the Internet user/data subject by the website/s accessed by that user while browsing, that are stored on the user terminal equipment (computer, mobile phone, tablet, etc.), and can access various information (e.g. the tracking cookies).

If the Cookies contain the personal data, or might be used as an identification element, or the information generated contains personal data, than the requirements of processing of personal data are also applicable (i.e. the IP address is accessed in setting the cookies). In this respect, according to Law no. 677/2001, *personal data* mean any data referring to an identified or identifiable natural person. Same article provides the references to the *identifiable person* which means any natural person who can be identified directly or indirectly, specifically by indication to an identification number or to one or several specific factors connected to his or her identification – physical, psychological, economic, cultural or social.

Article 3 of the Law no. 677/2001, defines the *processing of personal data* as "any operation or set of operations done upon the personal data, by automatic or non-

automatic means, such as collection, registration, organisation, storage, adaptation or amendment, extraction, consultation, usage, or by dissemination to a third party in any way, or by combination, blockage, erasing or destruction". As we can observe, practically any kind of operation towards personal data means processing of personal data and falls under the Law no. 677/2001, which means that only the access of personal data (such as IP of the user) is sufficiently enough for the application of the Law no.677/2001 and Law no. 506/2004 requirements.

In accordance to Opinion no. 4/2012 on Cookies Consent Exemption, Article 29 Data Protection Working Party refers to the following categories of cookies, depending on the purpose they are used, the technology of the cookies, or the way the consent is required (e.g. expressly, or by objection):

"Authentication cookies" which are meant to support the user to log in for the following times, after he previously registered on that specific site. Examples of websites that use this kind of cookies: on-line training courses, on-line banking services, various accounts on media, e-commerce sites, etc.

Flash cookies", based on tracking technology, which are used to store the information needed for video content or audio content, enabling the users to access them. These cookies usually are stored on the user terminal equipment just for the respective session, falling under the sub-category of "session cookies".

"User-input cookies" used for the storage of the input that the user sent to a website, typically in on-line shopping (for instance when the user sends items to his shopping basket), or for filling-in some on-line forms.

"First Party cookies" vs. "Third Parties cookies" are the cookies placed by the party who operates the accessed website, being typically revealed in the URL displayed to the user. Third Parties cookies are the ones placed by different entities than the ones that operate the website, or its processors, or sub-processors.

"Security cookies" can be connected to the system security requirements to safeguard it from abuses (when log in), or to the security of the services provided, or the security of the websites. They have a longer duration of time, to serve their purpose, and, depending on the case, they might be under special conditions related to the consent of the user, respectively if he/she does not expressly require them or if they are not directly connected to the functionality of the provided services (e.g. being related to an additional service that was not required by the user).

"User interface customisation cookies (UI cookies)" are meant to save specific preferences of the users such as language, currency, display related preferences, etc.

"Social plug-in content sharing cookies" are the cookies that are placed to enable sharing of the information between the friends of various social networks, identifying the members of that social network vs. the non-members visitors, etc. The cookies for the non-members can be placed only if the social network obtained priory their consent, and they need to be only session cookies opposed to permanent cookies.

"Tracking cookies" are used for instance in cases of on-line behavioural advertising or for research and market analysis, for fraud detection, and they are meant to monitor the users' browsing activity, and access the information relevant for the purpose, usually being also third party cookies. They require the consent of the users before the cookies are stored in their terminal equipment. Also, in this case is important to consider the situations when the terminal device is used by many users, and only one of them agreed to have the cookies stored on the terminal equipment (e.g. computer), as the accessed information might belong to the other users, too.

"Opt-in Cookies" vs. "Opt-out Cookies": the first are the cookies that include the consent of the users for various processing of data purposes (e.g. behavioural advertising) while the latter store the refusal of the users for processing of their data, such as on-line preferences**.** In the latter case, one of the problems that have been identified during the research refers to the possibility of the data controller (website owner, ad network provider) to place opt-out cookies on the user terminal equipment with the purpose to exclude him/her from the on-line processing of his/her preferences (opt-out cookies representing an identification code for that specific user), considering the requirements of a valid and freely express given consent.

Thus, the difficulty is related to the existence of a real option of the user in such cases, if the data controller does not provide other options to the end user except the opt-in cookie in case he/she would like to be tracked for on-line commercial ads, and opt-out cookie in case he/she does not accept to be tracked. Still, the opt-out cookie is stored on the terminal equipment of the user who refused to be subject of personal data processing.

Applicable legislation

In case the data storage or accessing the data by cookies implies personal data processing, the Law no. 677/2001 is applicable, with all the provided requirements: data subject consent, notification, information, data subject's rights, etc. Nonetheless, it is to be mentioned that even when processing of data by cookies refers to the data that do not represent personal data, Law no. 506/2004 is still applicable, as a general rule for electronic communication services, which means that in principle the consent is required to be obtained before the cookies are placed on the user terminal equipment, unless we are in the situation of one of the exceptions previously mentioned by article 4, paragraph 6).

Therefore, the main regulations in case of processing data by cookies are the following: Directive 95/46 EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive 2002/58/EC), amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009; Regulation no. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws; Romanian Law no. 677/2001 on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data (Law no 677/2001); Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, as amended by Law no. 235/2015 (Law no 506/2004); Article 29 Data Protection Working Party Opinion 2/2010 on online behavioural advertising (WP 2/2010); Article 29 Data Protection Working Party Opinion 16/2011 on EASA/IAB Best Practice Recommendation on Online Behavioural Advertising (WP 16/2011); Article 29 Data Protection Working Party Opinion 04/2012 on Cookie Consent Exemption (WP np 04/2012); Article 29 Data Protection Working Party Opinion 02/2013 providing guidance on obtaining consent for cookies.

It is to be mentioned that in April 2016, after 4 years of consultation, the European Parliament approved the new Regulation on the protection of personal data and on the free movement of such data, and repealing Directive 95/46/EC (called General Data Protection Regulation - GDPR) that will be directly applied in all EU member states in 2 years after

its publication. At the same time, the Directive 2002/58/EC remains valid, most probably under the revision in the next period. Likewise, the main requirements for the cookies technologies remain the same, as identified in this research, including the requirements for consent validity, and the rights and obligations provided to the main parties, at least until new amendments might be provided to the current framework in the electronical communication services. The relevant aspects brought by GDPR will be mentioned accordingly in the following sessions, if applicable.

Parties: Rights and Obligations

In case of personal data processing by cookies, Law. 677/2001 and Law no. 506/2004 sets forth specific rights and collateral obligations for the following parties: data subject that in most of the time is the user of the terminal equipment, even in cases when there might be multiple data subjects (i.e. the terminal devise has multiple users/accounts), the data controller that can be the network operator, the owner of the website, the ad network provider, the data processor that might be the representative of the data controller, or the publisher in case of the behavioural advertising, and the third parties who are very present in the processing of data by cookies, as most of the cookies fall under the category of "third parties cookies".

Data subject/user's rights refer in the first place to the requirements of the consent that he/she has to express before any cookie is stored on the individual terminal equipment, and clearly before the cookie can access any data stored in the terminal.

In this respect, the consent validity requires the option to be given "expressly and unequivocally". Therefore, we are in a case of an opt-in concept (opposed to opt-out). The consent rule is provided by article 4 paragraph 5) of Law no. 506/2004 in corroboration with article 5, paragraph 1) of Law no. 677/2001. Furthermore, the consent is valid only if the data subject was thoroughly informed about the purpose of the cookies, the entity that accesses the data (first party cookies vs. third party cookies); their duration, the data accessed, including the special personal data; the technology used, if there is any international transfer of the accessed data, etc.. The Article 29 Data Protection Working Party provides in its opinion the obligation for the data controller (the website administrators or owners) to inform the data subject using appropriate tools which have to be very visible and clear, (visible banners, specific box, additional links, etc.), and not hidden terms and conditions, written down with very small letters. The consent has to be also freely given, in the meaning that the data subject has to perform an action, and be active by either clicking on an opt-in button, or accessing a specific link, or by setting his browser configuration, etc. *"If the browser settings were predetermined to accept all cookies, such consent would not comply with Article 5 paragraph 3 of Directive 2002/58/CE"* (WP 2/2010 on online behavioral advertising), respectively article 4 of Law no.506/2004 which transposed the above mentioned Directive. In such an option, it would mean that the data subject accepts also future personal data processing before he/she knows the adequate information about it. In this regards, the Opt-out cannot be considered as a valid consent, but rather as a method for revoking the given consent at a later stage. It is to be also added that the consent of children is expressly regulated in the new GDPR in article 8, paragraph 1) which provides that "in relation to offer of information society services directly to a child, the processing of personal data of a child shall be lawful where the child is at least 16 years old", with the possibility for the member states to provide a lower age. The same article requires the parent's consent if the child is below the established minimum age.

Nonetheless, in case the cookie processes personal data (as for instance the IP or the preferences of the data subject in terms of tracking the accessed websites), the data subject has all the rights provided by Law no 677/2001 in chapter IV, such as: articles 13, 14, 15, 17 and 18: the right to object (article 15), the right to access his/her personal data (article 13), the right to have the data erased/corrected (article 14), the right to address the complaints to authorities or to Courts (article 18). It has to be mentioned that all the rights and obligations have been preserved by the new GDPR.

Data Controller / Data Processor: In order to exercise his/her rights, the data subject can address directly the data controller, which might be depending on the case the website owner, the network operator, or the ad network operator (in some cases the publisher for the on-line behavioural advertising). Thus, according to Law no. 677/2001, the data controller is the individual or the legal entity (in private or public sector) who establishes the purpose and the methods of personal data processing.

Typically, the first party cookies are established by the data controller, the entity that administrates the website, and appears in the URL address (for instance anspdcp.ro).

Nonetheless, the data controller in case of on-line behavioural advertising is the ad network provider, who rent the space from the publisher of the website to use it for commercial advertisements. They establish the purpose of personal data processing, the methods, and have complete control over the cookies technology, or over the behavioural data captured by the cookie. Even if technologically, they use a provider for the equipment, this is under the control and direct guidance of the ad network operator. The website publisher can be as well a data controller, having a jointly responsibility with the ad network provider, as the publisher is the one to have access to IP, collect the IP, and relishes the alphanumerical code / cookies. Therefore, in case the publisher will use the data for a different purpose, or for additional purpose, he will have the role and the responsibilities of the data controller, too. Nevertheless, the website publisher has in general the role of the data processor (a case by case analysis needs to be done, as the circumstances of the situation may differ).

The data controller has thus the obligations meant to ensure the data subjects rights, and to safeguard their personal or traffic data. The main obligations are the following: a. observing the data subject rights and implement technical solution to ensure the proper information, the validity of the consent (e.g. appropriate settings of the application); b. notification of the National Supervisory Authority for Personal Data Processing in certain cases as profiling for on-line behavioural advertising (ANSPDCP Decision no. 200/2015), and notifications of the amendments done during the processing (Bojincă, Basarabescu, Săvoiu, 2013); c. implementation of the technical and organisational measures: data privacy by design / by default; audit rights, etc. (Ombudsman Order 52/2002 on the minimum security requirements applicable for the personal data processing).

In the meaning that the processing of data is performed by the intermediaries, such as providers of electronic communications services, they will have the role and responsibilities of the data processors. The data processors have the obligation to fully observe the data subject rights, to act according to the data controller instructions, to accept to be audited by the data controller, to cooperate with the data controller in case of data breach, and notify immediately the data controller upon any data incidents, and eventually towards the National Supervisory Authority For Personal Data Processing. It is to be mentioned the fact that, as mentioned expressly in the new GDPR (recital 42), "when processing is based on the data subject's consent, the controller should be able to

demonstrate that the data subject has given consent to the processing operation". This means that the obligation to prove that the legal requirements have been fulfilled belongs to the data controller, the data processor remaining of course responsible for fulfilling the data controller instructions.

Third Parties: As the third party cookies are statistically more that the first party cookies, it is very important to distinguish between the data controller, data processor, and third parties' roles and responsibilities.

Thus, according to Law no. 677/2001(article 3), the third parties are defined *"as any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the person who, under the direct authority of the controller or the processor, are authorized to process the data".*

As mentioned by the WP 4/2012, in case of data processing by cookies, the third party will be than the natural person or the legal entity who is not a first party cookie, meaning that it does not appear in the URL address, and thus the third parties cookies *"are cookies that are set by websites that belong to a domain that is distinct from the domain of the website visited by the user…, regardless of any consideration whether that entity is a distinct data controller or not".*

An illustrative example: in the behavioral advertising when the cookie is placed for the purpose to create profiles, and enables the user identification in all the websites accessed by him/her in that browser session or in the following ones. Thus, in such a case, the third party will get access to the personal data of the data subjects. Consequently, it will take actually the role of the data controller, as it has the possibility to define the purpose of the data processing, the methods of accessing information, or the means by placing the cookies.

If the third party becomes a data controller, it has all the related rights and obligations.

Cookies excepted from the Consent

According to article 4), paragraph 6) of Law no. 506/2004, 2 main types of cookies do not require the data subject consent, but continue to imply a complete information of the data subject who maintains his/her rights provided by Law no. 677/2001 (e.g. right to oppose). Thus, the exemptions refer to the following situations:

a) Cookies that are used for ***"the sole purpose of carrying out the transmission of a communication over an electronic communication network"*** (article 5, paragraph 3 of Directive 2002/58/EC)**.**

WP 04/2012 identifies 3 examples that can fall under this category: the cookies that *"route the information over the network, and identify the communication endpoints", the cookies that determine the network "errors or data loss", and the cookies that "exchange the data items in their intended order, by numbering data packets".*

b) Cookies that are ***"strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service"*** (same article of law) include the cookies that are meant to enable a functionality of the website – such is for on-line shopping, video display set-ups, the language preferences, etc.

It is to be mentioned that usually these are first party cookies, as the third party cookies are connected to additional information, and they are not strictly necessary to the functionality of the accessed website, being not related to a service required by the data subject. By these 2 main exemption the law maker ensured that the functionality of the service required by the data subject or the user is preserved, as long as the data controller

or data processor access only the needed data for the user identification (or security matters), so that the service to be provided at an adequate level.

Retention period for the data collected

The duration of the cookies has to be part of the data subject/user information.

One of the principles provided by the data privacy legislation refers to the principle of proportionality in the meaning that the data shall be processed only for a duration proportional with the declared purpose of the collection and storage. This principle has been maintained further on by article 5) paragraph 1) letter e) of the GDPR.

As we before mentioned, some of the cookies (the "session cookies") shall be meant to be stored only for the respective browsing session, so that they should be automatically erased when the session ends. Contrary to this, the so called "persistent cookies" are stored for a longer period of time, until the moment that the set-up period expires. Some cookies have a longer duration for the benefit of fulfilling their legitimate purpose, such as security cookies or authentication cookies. Persistent cookies can technically be set for days, but also minutes or many years (e.g. 7985 years as shown in the Cookies Sweep Combined Analysis – Report issued by WP in 2015), when the longer duration not proportional to the scope of data processing is not legitimate, being contradictorily to the principles provided by the data protection legislation, including the new GDPR. Furthermore, as we identified from the WP Opinion no. 4/2012, there are also cookies that cannot be erased despite the effort of the data subjects / users. This type of cookie is called "zombie-cookie", and it is illegal, being considered disproportionate to the legitimate usage of the cookies, per se. The legislation does not provide certain duration for the storage of the data by cookies, or a timeline for the existence of the cookies placed into the terminal equipment of the data subject/user. Hence, based on the article 14) paragraph 2) of the GDPR, the user / data subject has to be informed about the *"period for which the personal data is stored, or if that is not possible, the criteria used to determine that period".* Still the WP, in its opinion on cookies consent exemption consider that the reasonable duration for the persistent cookies shall be "limited to a few hours" (WP 04/2012), but definitely we also considered that in specific cases shall not exceed 1 year, and the consent shall be re-obtained.

Statistical data

One of the recently performed studies on the cookies was adopted on February 3, 2015, by Article 29 Data Protection Working Party in its Report – Cookies Sweep Combined Analysis. The study was performed in 8 European Countries (United Kingdom, France, Denmark, Netherlands, Spain, Slovenia, Greece and Check Republic), by automatically means, and by manually research, on 478 websites used by the data subjects in 3 sectors: e-commerce, media and public. The main findings, relevant for our research, confirmed the fact that almost every time when the Internet users access an website, several cookies are placed on their terminal equipment, majority of them without being visible, and with no opt-in consent. Thus, the WP report revealed that a number of 16555 cookies were found in all 478 investigated sites (an average of 34.6 cookies/per site). Considering this overall number – 16,555, the following findings have been considered in our research: 3 times more third-party cookies as opposed to first-party cookies; 2302 session cookies and 14,253 persistent cookies; 22 sites used more than 100 cookies (in media and e-commerce sectors); 3 first party cookies with 7,985 years duration (expiry

date in 9999); 415 sites set 8,472 third-party cookies; only 7 web sites were with no cookies (public sector); 59% used the banner to notify the users, while 39% used the link method, and 29% (116 websites) used no notification means; 57% of the websites provided sufficient level of information to the data subjects/users. As the number of third parties cookies are 3 times more that first cookies, and as they are usually not needed for the service functionality, it has to be considered the browser settings that prevent the third parties cookies to be stored on the terminal devise, or access the information stored on the equipment, especially when the consent is not required, and the processing of personal data is not legitimate. European Commission stated as well on its website that *"most browsers support cookies, but users can set their browsers to decline them and can delete them whenever they like".*

Sanctions and Civil Liabilities

The data subjects has the right to object to the data processing by cookies, and the data controller has the obligation to provide an answer to the data subject's complaint in the deadline provided by Law no. 677/2001, respectively in 15 days respectively, or to erase the cookie or to guide the data subject to perform the deletion of the cookies by itself. In additional to this, the Law 506/2004 provides that serious fines that can be applied by the National Supervisory Authority on Personal Data Processing, respectively between RON 5,000 – 100,000, up to 2% of the turnover, depending on the circumstances of the cases. Likewise, the processing of personal data by breaching the data subjects rights established in articles 4-10, and articles 12-15 or article 17, represents an administrative offence being sanctioned between RON 1000 to 25,000, if the offence does not represent a criminal offence by itself (article 32 of Law 677/2001).

In this regards, based on the jurisprudence in the field of cybercrimes, there might be additional technologies used for accessing the personal data, as VoIP, where "VoIP refers to the voice packages send through the electronic networks which uses IP protocol", and the crimes implies illegal usage of the VoIP accounts by other persons than the direct owners (Trancă, 2011). Furthermore, the data subjects have the right to address their case in the Courts, being entitled to have all the damages covered by the data controller or the data processors (article 18 of Law no. 677/2001). "Depending on the existence of the possibility to financially assess the damage, the injury might be patrimonial or non-patrimonial", considering the "emotional suffering" as well, such as in cases of profiling, and pursued adds. (Boroi, Stănciulescu, 2012).

Conclusions

The research performed on the legal regime of the data processing by cookies revealed that there is a legal framework established in the field of the data processing by technological means, without referring expressly to the cookies technologies. Thus, there is no reservation that the regulations of Law no. 506/2004 (article 4) and Directive 2002/58/EC (article 5) apply for personal data processing by cookies, as mentioned by the Article 29 Data Protection Working Party. Nevertheless, from the perspective of the new EU Regulation on data the protection of natural persons with regard to the processing of personal data and on the free movement of such data adopted in April 2016 by the European Parliament that will replace the existing framework (Directive 95/46/EC) in 2 years from its publication (2018), it is the time for Directive 2002/58/EC to be reviewed in the next period of time, and up-dated to the digital age, and to the new legal frame sets forth by GDPR.

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Taxpayer Behaviour: Typologies and Influence Factors

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Abstract
Nowadays there is an ample literature on the contribution of behavioural economics to the design and improvement of tax policy. A less explored side is the potential for behavioural research to contribute to better tax collection and administration. A better understanding of attitudes and behavioural motivations of taxpayers against taxation may improve both voluntary compliance and tax administration efficiency. Among the important factors influencing fiscal behaviour, literature identifies the following: discouragement; personal and social norms; fairness and trust in the tax administration; complexity of the tax system; the role of government and the broader economic environment. Our research suggests that discouragement, the traditional tool of tax administrations, is important but not sufficient to explain the level of tax compliance. In this article we tried to identify the main types of fiscal behaviour and the factors that lead to them.

Keywords: taxation, taxpayer behaviour, taxpayer types, tax compliance, tax morality.

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Introduction

Regardless of the history, form of government and geographical position of a state, taxation remains an indissoluble constant. Since modern society cannot survive in the absence of tax obligations, it is not its existence or non-existence that needs to be questioned but its size and degree of coverage. Therefore, taxation is a matter that sparks controversy, passion exuberance and sadness. To meet the demand for financial resources, the tax administration shall monitor the revenue collection capacity and economic activity of individuals and businesses, the primary objective being the collection with maximum efficiency (costs as low as possible) of the obligations laid down in their tax burden. This objective can be achieved by creating an environment in which all taxpayers learn the scope of the law to implement responsive regulation, i.e. to transfer to the state some of the material values created or held. As such, the direct partner of the tax administration must be the taxpayer. Taxes are able to change the behaviour of the taxpayer. Unfortunately, the lack of a direct and immediate consideration on the part of the state and that a certain part of the property or the value of labour is diverted diminishing possibilities of achieving personal goals lead, most of the times, to the accumulation and expression of feelings of frustration and rejection of tax authorities. This type of pecuniary pressure and coercion exercised by the state is the generator of certain behavioural patterns. There is a vast literature on the subject of behavioural economics and taxation, for example: Braithwaite (2002), Cardozo (2011) Congdon et al. (2011, 2009), Wenzel (2005) etc.

Behavioural types

Fiscal behaviour means displaying a certain behaviour by some law representatives who envisage a fiscal goal. Also, the tax represents a desirable finality with regard to income, on the one hand, and the budgetary expenditure, on the other hand. (Dinga, 2016). If we relate to income tax, the extremely versatile and volatile tax system created by an often much too complex to be fully understood from the point of view of each individual or group reporting to their obligations, there are two main types of behaviour: voluntary compliance and non-compliance. Behavioural attitudes which occur within these two limits are manifold. Thus, in literature, behavioural attitudes of the tax payers towards taxes and tax authorities may be summarized as follows (Braithwaite, 2002):

Table 1. Behavioural attitudes of the tax payers towards taxes and tax authorities

Postures	Description
Commitment	The taxpayers have a positive orientation to the tax laws and authorities. It reflects beliefs about the desirability of tax systems, which enhances their feelings of moral obligation to act in the interest of the collective and pay one's tax with good will.

Capitulation	The taxpayers have a positive orientation to the tax laws and authorities. It reflects acceptance of the tax office as the legitimate authority and the feeling that the tax office is a benign power as long as one acts properly and defers to its authority
Resistance	The taxpayers provide a negative orientation. It considers a posture of defiance and enables doubts about the orientations of the tax office.
Disenchantment	The taxpayers have a negative orientation It is a posture that communicates resistance in which the main objective of the tax payers is to keep socially distant and see no reason for engagement with the tax office and the tax system.
Disengagement	It is a posture that communicates an intentional breach of the law. Law is seen as something to be moulded to suit one's purposes. It reflects a perception of policemen over the tax inspectors.

Source: Braithwaite, 2002.

In case of the *commitment*, the tax payers are fair, ready comply with the law and tax authorities for civic and moral reasons not because of the tax administration coercion. A key factor in tax compliance is a widespread desire to "do the right thing". Taxpayers seek to comply because they believe it is the right thing to do, not because of fear of punishment (Wenzel, 2005). In this situation, the authorities must adopt an attitude of support, cultivation encouragement towards this category of tax payers, by simplifying the law and the possibility to offer those grants. *Capitulation* is specific to those taxpayers who comply with the tax law and authorities conditionally as long as the provided public services and fiscal equity are considered to be satisfactory. There is a lot of evidence that people seek to conform to social norms and that the behaviour of others strongly influences an individual's choices. For those who are in this situation it is suffice that the authorities publicise transparent positive results obtained owing to the efficient use of public funds, to ensure a satisfactory level of public goods, maintain fiscal equity through both costs and benefits and leverage positive fiscal behaviour of this category of taxpayers who, thus, will see an effective respect and valorisation of their contributions. Where the interaction between the administration and the taxpayers is characterised by mutual trust and through a citizen-oriented approach (synergetic climate), the latter will feel they are on the side of the law and will tend to pay taxes honestly and spontaneously. The concept of trust is characterized by its relational aspect (Eberl, 2003) and refers to the concept of "social trust"; thus, it is not conceived as calculative trust (i.e., the result of a rational calculation between gains and losses to maximize outcomes; Tyler, 2003), is designed as a trusted human values (reliance on and confidence in the truth, worth, reliability, etc.)

Resistance *and* disenchantment are postures associated with negative orientation in relation of the taxpayers with the authorities, trying to identify and speculate any opportunity from the tax laws and violate them. In this case, the tax authorities shall ensure guidance for proper understanding of the legislation, to reveal the results of public

spending transparency, and if positive results do not appear, apply the penalties for violating the law and committing acts of tax evasion.

Disengagement is a feature of taxpayers who do not comply with the law and the tax authorities intentionally and out of conviction. Lozza, Kastlunger, Tagliabue și Kirchler (2013: 52) notice that in a climate of distrust, when there is a low level of respect between the tax authorities and the government, on the one hand, and citizens on the other hand, the authorities should emphasize their power to regulate the citizens' behaviour. Against this background of mistrust, when instruments and means of fostering compliance with payment applied by the tax administration are predominantly of coercion and punishment, the reaction of the taxpayers is one of adversity, making it difficult to establish a cooperative relationship. Therefore, respect must be promoted through tax incentives, such as controls and the various tools of enforcement (fines, penalties, surcharges for delay, etc.). Discouragement is a vital tool for any tax administration. A targeted approach to deterrence is likely to be more effective. Discouragement (deterrence) should positively influence taxpayer compliance (Slemrod, 2007).

Factors that influence taxpayer behaviour

Taxpayers' behaviour cannot be explained only by identification and knowledge of the system but also by the influence factors acting in close contact and mutual interrelation. Therefore, in most cases, the taxpayers assess, using their own instruments, the tax policy and the incidence thereof on their living standards as well as on the national economy in general. Assessment, at the level of taxpayers, is not uniform (Olimid, 2014:75). It takes individual forms which can be distinguished by the level of knowledge of the legal framework, the cultural level, faith, morals, customs and the abilities of the assessor to interpret the law, thus generating its own perception on the tax system. Subsequently, the taxpayers socialize and, depending on their typology, they homogenize and shape or not their tax behaviour. Tax authorities have certain objectives to achieve with regard to efficiency and effectiveness of collection of taxes and duties owed by taxpayers. Based on the constant interaction existing between tax authorities and taxpayers mutual experiences are gained, both positive and negative, sometimes subjective, both by taxpayers as well as by tax authorities. A taxpayer shows predisposition for observing legal provisions as long as the exchange between paid amounts and the services provided by authorities is fair. The quality of public institutions has a strong effect on the tax behaviour of taxpayers. Beyond the trust or discouragement (factors which have already been discussed) other factors also influence taxpayers.

Risk aversion (or loss aversion). People tend to take risks more often in order to avoid losses than to win anything. A loss of 100 monetary units (RON, EUR, USD, etc.) is felt considerably stronger than a similar gain. In tax context, practice has proven that effectiveness derives from those measures fighting against tax evasion which move the pressure from the perspective of gaining something to the greater risk of loss.

The proximity effect (imminence). Even though most of the times results are negative, we tend to underestimate future effects. As such, even though in the future certain tax measures may have negative effects, if on the short term they produce positive effects, they shall be easily accepted by most of taxpayers.

Embedded option (*inertia).* Most people are conservative, so embedded options are strong drivers of behaviour. We oppose resistance to everything new, we are scared by the need to change our behaviour and to leave our comfort zone. Therefore, any change

of a rule or a tax system shall be received with great reluctance or there will even be rejection tendencies.

Presentation mode (framing). Decisions are powerfully influenced by how choices are presented. Often, governors, with a view to be able to adopt unpopular tax decisions, emphasize positive aspects and minimize or fail to mention negative aspects.

Geographical position. The geographical position plays an important role when considering that the manifestation of regional tax competition, in order to attract investments, acquires shades of competition, which may induce both positive behavioural typologies as well as negative.

Political regime. Countries with consolidated (ancient) democratic regimes record higher values of acceptance of tax systems and voluntary tax compliance than in young democratic regimes (such as former socialist regimes), where acceptance of tax systems is delayed, and tax compliance is predominantly forced (Leonida, 2014: 588).

Religious orientation is also a relevant factor in positioning the taxpayers towards tax system. In certain situations relating to educational and cultural level, a strong religious orientation may generate an extremist fiscal behaviour, either of voluntary compliance, or refusal of compliance. According to Walsh (2012) which, at the turn, refers to studies conducted by Andreoni et al. (1998) and Boame (2008, 2009), there are also other factors that influence behaviour that influence taxpayer:

Age. Older people are more compliant, perhaps as they generally more risk averse. Certain studies indicate both the young and old are more complaint than the middle aged.

Gender. Males evade taxes more than females. In contrast, most often due to a lack of physical force, females are much more subtle, more indirect when make tax evasion.

Marriage. Some studies find married people tend to have higher tax morale and are more constrained (less opportunity for non-compliance) but others suggest noncompliance is higher in households where the head of the household is married. Widowed taxpayers are more compliant.

Level of school studies. Educated people may be better informed of tax laws, which should positively influence compliance. On the other side, they may also have better knowledge of the opportunities for tax evasion. Empirical studies in this area are not conclusive.

Tax Status. On average, sole proprietors and the self-employed are less compliant. For the selfemployed, taxes are more visible and, for this cause, it is more opportunity to evade taxes. This is often linked to their sectors of trade.

Employment. Unemployment results in lower incomes and cash flow difficulties but also likely lower (or no) tax liabilities. The empirical research results are mixed. Unemployment has a positive effect on payments but a negative effect on reporting compliance. Bankruptcies should have a similar effect to unemployment but again the evidence is limited.

Tax Rates. Most often, in a lot of studies, higher tax rates are negatively associated with compliance (encourage more non-compliance). For example, in Romania, in 2010, when legal VAT rate it was increased from 19% to 24%, tax evasion has increased from 8% of GDP in 2009 to 9.6% of GDP in 2010, and the upward trend was typical for the next years (Fiscal Council's annual report for 2013)

Sector. Certain economic sectors are associated with non-compliance: cash and retail businesses, traders operating from a fixed business location (e.g., garage, shop or

restaurant), agriculture, those with income from rental or investment sources. For example, according to the Fiscal Council, in Romania, the most favourite sectors are: constructions, bread making industry and meat industry.

Income. The extreme incomes (very high and very small) may predispose to tax evasion. Higher income may offer more opportunities (or motives) to evade but lower income reduces cash flow and may present payment and collection difficulties. Therefore both lower and higher income may negatively affect compliance.

Sanctions. The penalties and actual number of tax inspections have, often, a positive impact on compliance but the impact is often found to be small. The subjective level of tax inspections (people tend to overestimate the number and probability of tax inspections) is associated with more compliant behaviour. Sometimes, the penalties (sanctions) have a little effect on compliance, because there is a desire to "recovering" the income lost.

Tax advisors. Use of tax practitioners tends to promote the compliance. In this situation, the knowledge level in the field of taxation is very important and also the high morality of the tax consultants. There are selection issues also (taxpayers chose to self-prepare or a hire an agent).

Filing Method. Electronic filing is associated with higher rates of compliance than paper filing. This may be a selection issue (more compliant taxpayers may select to file electronically).

Therefore, the multitude of existing behavioural factors can be synthesized by their grouping into two broad categories: internal (natural) factors and external (institutional) factors.

The internal (natural) factors are derived from the human matrix of taxpayers. In this category we find: education, tradition, norms, mentality, morals, perception, motivational factors, emotional state, degree of confidence, professional training, access to information, etc.;

Among *external factors (institutional)* we can include: legislative norms (legal framework) and the complexity thereof, excessive regulation, economic stability, social policy, access to resources, the extent of income achieved, tax control probability etc.

The cumulative influence and the degree of interaction of these factors (internal and external) can generate and influence behavioural attitudes.

Taxpayers' type

From the perspective of the citizen-tax administration relation, following the studies carried out, certain researchers (Cardozo, 2011) identify several types of taxpayers. They are perceived and labelled depending on the existence of two distinct moments: the occurrence of the taxable event and before the occurrence of the taxable event.

Therefore, according to Cardozo, depending on tax morality shown upon the occurrence of the taxable event, the typology of taxpayers is as follows:

Type A – the "legal" tax evader

In this category of taxpayers we most often find people with higher education studies, with sufficient economic power and social prestige.

This type of taxpayer is aware of the occurrence of the taxable event, the mandatory nature of taxes, permanently pursuing a legal solution that favours its economic interest. The solution pursued seeks to avoid / reduce to minimum the tax, or merely modify the form of taxation so that the amounts paid to be as small as possible. Generally, the solutions set forth shall not resist a more sophisticated ethical analysis, as they are

exclusively based on the intention to avoid taxation, and not on any specific causes of need or financial impossibility.

In certain situations, this type of taxpayers may generate pressure centres enabling the promotion of common interests with a view to obtaining from tax authorities (and implicitly the State) a special, more favourable taxation system.

Type B – Tax evader by fraud

The areal of coverage of this type of taxpayer is much more diverse. This behavioural type comprises illiterate persons, people with secondary education but also higher education who, consciously try to hide the occurrence of the taxable event, or to reduce the amount owed, by resorting to fraudulent means, such as false documents or accounting records.

Type C – Evader by simple omission

This type of taxpayer simply seeks to conceal from the tax authorities the occurrence of the taxable event, omitting to declare a part of or the entire taxable matter (income, earnings, wealth, etc.). The feature of the type C is the fact that it is not aware of the social and economic effects of the act of omission.

Type D – Abusive planner (illegal avoidance)

It is a very well informed person who has extensive knowledge on the tax legislation. Based on thorough knowledge of law a tax operation is segmented into several steps which, although individually legal, are illegal as a whole. They are false stages meant to distort reality and their unique purpose is to conceal the occurrence of the taxable event.

For example, the apparent donation of an asset that upon completing the set of transactions, returns to the property of the donor via an offshore company, many times located in a tax haven; therefore, the intent of donating is not confirmed. Furthermore, we can include corporate reorganizations that actually conceal a sale (Cardozo, 2011: 219).

Type E – Legitimate planner (legal avoidance)

It is also a well-informed taxpayer, with a good knowledge of tax legislation. Its main feature is that, although it can benefit from deficiencies or weaknesses in legislation, it cannot bear the abusive behaviour or false statements. Therefore, even though it can evade compliance with the law, this type of taxpayer prefers a moral behaviour, choosing to comply with tax legislation.

Type F – Simple compliant taxpayer

This type of taxpayer, although lacking tax culture, strives to meet its obligations and, to the extent of receiving tax information, he shall try not to circumvent it. Simple compliant taxpayer is a citizen proud of his honesty and makes it a purpose to keep an unblemished name in the society.

Type G – Under-compliant taxpayer

This is a taxpayer with poor (precarious) tax culture, and therefore he does not have a very clear image of his rights and obligations. Most of the times, failing to understand the tax mechanism, he is surprised and panics upon receiving information and notice from tax authorities. Lacking the ability to solve tax related problems, he requests assistance from his acquaintances. Most of the times, due to the fact that people whose assistance is requested are not tax specialists either, instead of obtaining the clarification of problems encountered, things get even more complicated.

Furthermore, Cardozo (2011: 220-221), considering the tax morality and compliance with key obligations (taxes payment), identifies the following types of taxpayers:

Type H – Illegitimate withholder

It refers to a particular group of taxpayers. In certain situations the person undergoing tax or social contribution is a person different from the person paying them. The most obvious example is the payment of taxes using the ”source withholding” system.

Illegitimate withholder occurs upon withholding tax obligations of third parties but which are no longer transferred further to tax authorities entitled to collect them. In Romania, the most illustrative examples in this respect are given by the income tax and contributions related to wages, deducted from the income due to employees and not paid (unduly withheld) by the employers. In the example presented, the employer becomes an illegitimate withholder.

Type I – “Legal” debtor

This type of taxpayer normally has no difficulties in meeting his obligations related to the payment of taxes, duties and contributions. The reluctance to pay comes from the certainty that in the future a law shall be adopted that shall provide tax facilities for unpaid taxes.

In the Romanian tax environment two subgroups of this behavioural typology can be outlined:

The first subgroup is represented by the taxpayers organized in interest groups and who have enough power to influence or impose the emergence of certain laws providing specific or general tax facilities.

The second subgroup consists in persons lacking influential power, but who refuse to pay their tax obligations, as the practice has shown, through a large number of examples, that sooner or later fiscal amnesty acts shall be adopted. They have noticed that their refusal or delay in payment represent attitudes that have brought them tax benefits.

Type J – Defiant debtor

Generally, this category comprises those taxpayers who do not consider the payment of tax debts as a priority, either out of conviction or mere lack of organization. This taxpayer is systematically late in paying tax debts or he refuses to pay waiting for the enforcement of obligations by the tax authorities.

Type K – Occasional debtor

This behavioural typology occurs most frequently in times of economic crisis when the economic environment and, particularly, the fiscal environment, becomes extremely unstable. The occasional debtor is normally a good payer of tax debts, but given certain circumstances (the change with great frequency of the legal framework, the rapid degradation of financial situation, etc.) his attitude becomes noncompliant.

Type L – Compliant taxpayer

The most desirable type of taxpayer is the one who complies, on a voluntary basis and with no delay, regardless the circumstances, with all tax obligations incumbent upon him.

To simplify, we can condense all these typologies of taxpayers, in three broad categories:

I. Honest taxpayers, who constantly cooperate, they do not search ways of lowering the taxes, behave honestly based on absolute ethical standards, and their willingness to cooperate depends on institutional conditions, not on the behaviour of other taxpayers.

II. *The taxpayers with social image* are concerned with the social image created by the payment or non-payment of taxes, and the motivation of this typology of taxpayers is given by the social norms of the group they belong to, being often characterized as having a ”herd” behaviour.

III. *Taxpayers in opposition*. These taxpayers, regardless the actual situation, adopt a negative attitude oriented against tax authorities.

Conclusions

Voluntary tax compliance is the most efficient and easy way to collect budget income, thus being a goal of all fiscal policies. Specifically, for this behaviour to be recognized as such, according to Franzoni (1999:55), taxpayers have to simultaneously meet four conditions: i) true reporting of the tax base, (ii) correct computation of the liability, (iii) timely filing of the return, and (iv) timely payment of the amounts due. Any derogation from these conditions results in fiscal non-compliance behaviour.

Several studies have proved that the voluntary fiscal compliance attitude is indissolubly connected to trust in authorities (Leonida, 2012; Nichita, 2012; Richardson, 2008; Scholz & Lubell, 1998; Torgler, 2003; Torgler & Schneider, 2005)

Based on the Eberl (2003) which describes *trust* as "a special quality of relations, i.e., interacting partners ascribe each other positive aspects and intrinsic motivation to maintain the relationship", *trust in authorities* is defined as "the general opinion of individuals and social groups that the tax authorities are benevolent and work beneficially for the common good" (Kirchler, Hoelzl & Wahl, 2008: 212).

But the attitude of the taxpayer toward taxation depends on several variables, such as: the actual amount of taxes, duties and contributions (Rudolph, 2009; Hardisty, Johnson, & Weber, 2010); the capacity of the taxpayer to really assess the tax burden; the attitude towards the law (Hasseldine & Hite, 2003; McGowan, 2000; Roberts & Hite, 1994); the capacity to use administrative rules in its favour (Lewis, 1980; Lozza, Carrera, & Bosio, 2010; Sears, Tau, Tyler, & Allen, 1980); the individual level of tax culture; etc.

The evolution of domestic tax system has a history characterised by several syncope. Everything accrued before the socialist period has not been preserved, and the period of communist regime has created certain tax abstinence, the taxpayers not being aware of the existence of the tax system in such a way as to assimilate cultural elements related to taxation.

The change of social paradigm which took place in '90 (Georgescu, C.M. , 2009) has meant as well the design of a new tax system that would ensure the mechanisms and key factors necessary for the transition to a market economy. In this far too long period of exploration and transition, with numerous unfavourable circumstances, the tax system was characterised by frequent changes, generated by the political and economic environment, which did not allow a consolidation of the positive cultural elements among taxpayers but on the contrary, it has encouraged the assimilation of negative elements about taxation among taxpayers.

The geostrategic position of Romania, with access to the Black Sea and as eastern border of the European Union, a gate between two major cultures, the European and Asian, is not favourable for the consolidation of a voluntary compliance behaviour, as there are frequent opportunities to practice evasion and tax fraud.

Given this background of a strong Balkan culture, of a tax system without much history and consistent accumulations, of a geostrategic position favourable to the development of acts of evasion and tax fraud, with a consistent underground economy often enjoying the support of political factors, the positive accumulations in tax culture field lack consistency. Local tax culture is still looking for its own identity capable to support a healthy social and economic environment.

A modern healthy tax system does not mean exclusively a series of norms and the increase or decrease of the amount of taxes, duties and contributions, but it also entails a long history in which it was created and stratified, in which a certain behavioural culture of taxpayers has been shaped in order to facilitate the proper operation and compliance with the norms and the consolidation of good practices in the field.

The passage of time represents an important, but not sufficient element. Therefore, local authorities have the obligation to rethink the style of interaction in relations with its taxpayers, to reform the legal and educational system giving the possibility to the young generations to perceive the morality of the tax system because, as Franklin D. Roosevelt once said, *"taxes, after all, are the dues that we pay for the privilege of membership in an organized society*".

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ORIGINAL PAPER

Risks Identification and Analysis in the Contract of Carriage of Goods

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Abstract

The issue of risks related to contracts, as well as analyzing and defining risk, in general, was not, in our juridical literature until the adoption of the current Civil Code, a concern that generate a distinct study on it was not done, in this regard , a full analysis of the contractual risks. Changes to the current Romanian Civil Code made the specific literature to focus attention on those legal issues. The current Civil Code lists and defines excused liability cases and the rules for bearing the risk contractually are stipulated as a rule of principle, as well as specific rules applicable to certain types of contracts. In this regard, exempting liability cases are covered in the chapter on civil liability in art. 1351-1356 Civil Code. Also, contractual risk is regulated as general rule applicable in principle to all contracts in art. 1634 Civil Code. Risks terminology has evolved and, today, the doctrine distinguishes between: risk of the good, obligation risk and contractual risk. With reference to the types of contracts, we can conclude that there are three cases that can be taken in view of the contractual risk: res perit debitori, in which case the obligation's debtor bears the risk, res perit creditori, in which case the obligation's creditor bears the risk and res perit domino when the owner bears the risk. The carriage contract is a mutually binding contract and although in principle the contract of carriage should be subjected to the rule res perit debitori, Civil Code solutions are different from this rule in some cases which target assumption of risks.

Keywords: *risk, contract of carriage, Civil Code, risks, analysis*

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The risk in contractual matters, in general

The issue of contracts-related risks as well as the analysis and the definition of the risk, in general, has not been dealt with by our legal literature before the adoption of the New Romanian Civil Code, as a distinct object of study and thus a thourough and complete analysis of the risks related to contracts and more broadely, to private law, has not been done before. The adoption of the New Code represented therefore a good reason for the specialized literature to expressly deal with this legal problem, and not only when dealing with special contracts and their risks, but by developing broad studies of analysis of contractual risks (Ilie, 2012: 16-24) or different articles (Tiţa-Nicolescu, 2012: 248-269) and analyses about this problem. In the context of these kinds of analyses, the contractual risk has been defined as that situation when a contracting party fails to comply with its undertakings for certain reasons, which are considered by law as causes for exemption. In this case, the problem is to identify the party which will bear the consequences provided for by the law for this failure. The doctrine (Pop, Popa, Vidu, 2012: 322) underlines the fact that the problem of identifying the party which will bear the risk arising from a contract has known different solutions in comparative law, especially in cases when the risk of impossibility of performance conjugates with the risk of the fortuitous loss of the good in contracts transferring ownership. *Lato sensu*, the notion of risk deals with several legal aspects related to the occurence or the intervention of certain legal situations which can be assimilated to the risk, but, from a technical perspective, it especially refers to the fortuitous impossibility of performance of the contract (Ilie, 2012: 16-24).

Morover, the current Civil Code enumerates and defines the causes of relief. The causes of contractual risks bearing are stipulated both as a principle rule as well as specific rules applicable to certain types of contracts. In this respect, the causes of liability relief are dealt with under the chapter concerning the civil liability, articles 1351-1356 of the Civil Code. In the same time, the contractual risk is regulated as a general rule applicable in principle to all contracts, as provided for by the article 1634 of the Civil Code, also applicable to contracts transferring ownership. This rule establishes that the risk is supported by the debtor of the impossible obligation. All the more, the current Civil Code's regulations deal also with the remedies for impossibility of performance, in article 1557. The terminology concerning risks has evolved and the current doctrine distinguishes between: the risk of the good – which analyzes the situation of the owernship relation, the risk of the obligation – the risk of failure to perform the obligation for fortuitous causes – and the risk of the contract – which refers to the unilateral and bilateral contractual risk, the risk of the obligation and of the correlative obligation; the faith of the contract, in general.

Speaking of types of contracts, we can conclude that there are three cases of contractual risks: *res perit debitori*, where the risk is supported by the debtor of the impossible obligation (in bilateral contracts, risks are supported by the debtor of the impossible obligation; in this case, the debtor being relieved from its own obligation which ended, will not be able to demand, on its turn, the performance of the corresponding obligation), *res perit creditori*, when the risk is supported by the creditor of the obligation which cannot be executed (as far as unilateral contracts are concerned, risks are supported by the creditor of the obligation which cannot be executed) and *res perit domino*, when the risk is supported by the owner (in contracts transferring ownership, risks are supported by the owner of the good). In other words, the risk in contractual matters has to be

analysed: from the perspective of the fortuitous impossiblity of performance – where the solution of the risk bearing problem is offered by the remedies for failure of performance provided for by the Romanian Civil Code and from the special perspective of contracts transferring onwnership as impossibility of performance is sometimes linked to the fortuitous loss of the good – object of the contract (Pop, Popa, Vidu, 2012: 323-326). With regard to the fortuitous impossibility of performance, the Romanian Civil Code stipulates in articles 1537 and 1634, the following hypotheses and solutions concerning the contractual risk-carrying.

A. *The absolute impossibility of contract performance.* In this hypothesis, the contract is terminated by operation of law, without any formality. According to the article 1557, par. 1 of the Civil Code, the impossibility has to concern an important contractual obligation in the absence of which the other party would not have concluded the contract. The legal consequences for this hypothesis are: the debtor of the non-fulfilled obligation will not be liable for the possible damages caused to the creditor and the termination of the contract is analysed as a sunset clause by the doctrine (Pop, Popa, Vidu, 2012: 324).

B. *The relative impossibility of performance*. This hypothesis deals with both partial impossibility and temporary impossibility of performance. The legal consequences for this hypothesis are provided for by the article 1557 par. 2 Civil Code, as follows: the creditor can suspend the performance, by invoking the non-performance exception; the creditor can invoke the termination of the contract; the creditor can invoke the reduction in benefits, by deducting the party of the contract which is impossible to execute; the creditor shall not be able to invoke the forced performance in nature nor damages for the party which is impossible to execute nor for the party which is temporarily impossible to execute. Regarding the risk arising from contracts transferring ownership, the current Romanian Civil Code opts for the rule *res perit debitori*, meaning that the transfer of risks is separated from the transfer of ownership, and assessed in relation to the moment of the handover.

The interpretation of this matter is comprised in the provisions of the article 1274 of the Civil Code. Therefore, if the good has not been handed over, the risk remains on the debtor of the delivery obligation, the performance of the ownership transfer being irrelevant for the situation when the risk of good loss is supported. If, however, the creditor has been given a formal notice, the risk is transferred to the creditor as of the date of his notification. The current option of the Civil code is a new one and considered by the doctrine to be likely to eliminate a „set of complicated and inequitable rules" (Pop, Popa, Vidu, 2012: 320). The previous Romanian Civil Code opted for the formula *res perit domino* when dealing with the risk in contracts transferring ownership.

The risk in the case of the fortuitous performance impossibility in the contract of carriage of goods

The obligation of the carrier to carry out the carriage of goods is: a contractual obligation, a *to do* obligation, a service obligation, an obligation to achieve a certain result. The carriage contract is a bilateral contract, that is a contract where parties mutually undertake obligations towards each other, and their obligations are interdependent, so that each one is both a debtor and a creditor. In this sense, the article 1711 of the Civil Code stipulates: „the contract is bilateral when the obligations resulted therefrom are mutual and interdependent". The specific feature of bilateral contracts consists of the mutual and interdependent character of the undertaken obligations of contracting parties. Each party has, in the same time, towards the other party, the double quality of debtor and creditor.

The obligation which falls under the responsibility of one of the parties has its legal cause in the corresponding obligation of the other party. This is why, in bilateral contracts, the obligations of the two parties, cannot be conceived one without the other.

Bilateral contracts generate in general the following special effects, applicable in principle to the carriage contract too, which is considered to be a bilateral contract: a) the rule of simultaneous performance – mutual obligations of the parties have to be simultaneously executed. Those contracts which by their nature or by the will of the parties are executed differently make an exception from this rule; b) *exceptio non adimpleti contractus* – any contracting party has the right to refuse the performance of his own obligation, as long as the other party, who claims the performance, does not fulfill his obligations under the same contract; c) the termination of the contract – if one of the parties fails to fulfill their contractual obligations, the other party has the right to unilaterally invoke or to initiate legal proceedings to claim the termination of the contract; d) the theory of risks – if an event independent from his will prevents the party from fulfilling his obligations, the contract ends, the other party being relieved from his obligations too. In this context, there is also the problem of contractual risks-carrying, which means bearing the losses generated by such fortuitous non-performance. In bilateral contracts, the rule is that risks are supported by the debtor of the impossible obligation (*res perit debitori*); in this case, the debtor, being relieved from his own obligation which ended, will not be able, on his turn, to claim the performance of the corresponding obligation.

Identification and bearing of risks in the contract of carriage of goods. The set of situations preventing the perfomance of the carriage, under the Civil Code, regulates two possibilities: the one when the prevention is not imputable to the carrier and the cases when the facts leading to the prevention of the carriage are imputable to the carrier. Also, regarding the situation where the carriage can be continued, there are two possibilities: *a) relative prevention* of the performance of the carriage, where it is possible to continue the carriage and reach the destination but with the change of the route and/or the delay initially agreed and *b) absolute prevention* of the performance of the carriage, where there is no other route of carriage or, by other reasons, the continuation of the carriage is not possible anymore.

In the case of relative prevention of the carriage, the carrier has the right to request instructions from the sender and, in the absence of an answer on his part, the carrier has the right to carry the good to the destination, making the change in the itinerary himself. In this situation, if the fact was not his fault, the carrier is entitled to the *price of the carriage, incidental fees and expenses, incurred on the route he actually made,* as well as to the adequate change in the performance delay of the carriage. In case of absolute prevention, the carrier shall proceed according to the instructions given by the sender in the carriage document for the case of carriage prevention, if such instructions exist. If the carriage document does not comprise such instruction or if such instructions cannot be fulfilled, the prevention shall be notified to the sender without delay, asking him for instructions. The Civil Code regulates in this case only the situation when the sender, being notified about the occurence of the carriage prevention, has the possibility to terminate the contract. In this case, the carrier shall be entitled only to *the expenses incurred and to the price of the carriage according to the length of the route he covered.* In this situation, we can identify two types of risks (Ilie, 2012: 206-213): 1. *The risk of the impossibility to follow the initially established route.* The solution given by the Code in

the article 1971 is the following: if there is not a fact imputable to the carrier, the latter is entitled to the *price of the carriage, incidental fees and expenses, incurred on the route he actually made*, as well as to the adequate change in the performance delay of the carriage. Therefore, the risk of the impossibility to follow the initially established route is supported by the sender (if the fact leading to the impossibility is not imputable to the carrier), not by the carrier, as the latter will receive the price of the carriage for the new possible route. The only inconvenient is the fact that they accept a new route but we cannot speak about a risk *stricto sensu*, but, as the doctrine noted, about „the search of the alternative, the flexibility of the contract. The obligation does not end for it is impossible, but it modifies its physionomy in the view of the final purpose. We are in presence of what we will call the risk of contract modification" (Ilie, 2012: 208). 2. *The risk of the impossibility to deliver the goods at the destination.* In the case of the absolute prevention of the carriage, *the sender is entitled to unitalterally terminate the carriage contract and the carrier is entitled to the payment of the contract price according to the performed route*, if the sender exercises his right. In this case, the risk is shared between the carrier and the sender. One can note that such situations constitute favourable exceptions for the carrier from the general principles concerning the contractual risks in the case of the obligations to achieve a certain result. As we have mentioned before, according to the general principles of law, in the case of the obligations to achieve a certain result, the contractual risks are on the debtor of the obligations to achieve a certain result which cannot be fulfilled anymore and this debtor doesn't have the right anymore to claim that the other contracting party respects their correlative obligation nor to obtain damages, even if he has incurred damages as a result of the fortuitous non-performance (Scurtu, 2003: 64-70).

In the case of the carriage contract, by applying these principles, it would mean that the sender, in the capacity of creditor of the obligation which became impossible to fulfill by non-imputable reasons, bears the resulted damages, without the possibility to claim that the carrier should carry the goods to the destination nor to owe him any price. The carrier, judging according to the rules of bilateral contracts, in the capacity of debtor of the obligation which became impossible to fulfill, bears the risks, in the sense that he loses the compensation to which he would have been entitled to if the goods had reached the destination. The Code's solutions make an exception from the rule *res perit debitori:* in the case of carriage prevention, if the fact is not imputable to the carrier, the latter is entitled to the price of the carriage, incidental fees and expenses, incurred on the route he actually made, as well as to the adequate change in the performance delay of the carriage, and in the case of the absolute prevention of the carriage, the sender is entitled to unilaterally terminate the carriage contract and the carrier has the right to claim the price of the carriage contract according to the route length he covered, if the sender exercises his right.

The bearing of risks resulted from the loss or the damage of goods. In the case of goods loss or damage, we can analyse the following situations: 1. *The risk of fortuitous loss or damage of the good.* The carrier is liable for the total or partial loss of goods, through their alteration or deterioration, occurred during the transportation. This is the rule. There are also situations when the carrier's responsibility is not triggered. The civil liability of the carrier is triggered if the general conditions of the liability are simultaneously fulfilled: the existence of a damage, an illicite fact, a causal link between the illicite act and the damage and the fault of the illcite act perpetrator (Dogaru, I., Drăghici, P., 2014: 297-302). The causes which excuse his guilt can refer to: the absence

of guilt, the victim's action, the act of the third party for which the carrier is not liable, the good's defect. The Code also enumerates a series of situations when the carrier's liability is eliminated. In this sense, the article 1991 stipulates that, in the case when the total or partial loss, the alteration of the damage occurred by reason of: facts in relation to the loading or unloading of the good, if this operation was carried out by the sender or the receiver; the lack or the flaw of the packaging, if the damage could not have been observed at the reception of the good for the carriage, by looking at its exterior aspect; the shipping under a non-adequate, wrong or incomplete name of goods excluded from the carriage or admitted for the carriage only under certain conditions, as well as the failure of the sender to respect the safety measures for these goods; certain natural events inherent to the carriage in open vehicles, if, under special provisions of the contract, the good has to be transported in this manner; the nature of the transported good, if this nature exposes the good to the loss or damage, through crushing, breaking, rusting, internal spontaneous alteration and other of this kind; the loss in weight, irrespective of the distance covered, if the transported good is among those which by their nature commonly suffer due to the mere carriage, such loss as the inherent danger of the living animals carriage; the fact that the servant of the sender, who accompanies the good during the carriage, did not take the necessary measures in order to ensure the preservation of the good; any other circumstance stipulated by special law, the carrier's liability is relieved. Also, the carrier is relieved from his liability if he proves that the total or partial loss or the alteration or damage of the good occurred due to: an act committed with intention or by fault by the sender or the receiver, or to the instructions given by one of them; force majeure or a third party's act for which the carrier is not liable. In other words, in the case of the loss of the good by one of these reasons which do not involve the guilty of the carrier (but are due to the fault of the other party, the good's defect or particular situations specific to the carriage), we cannot talk about contractual risks as contractual civil liability rules have to be applied. (*E. Cristoforeanu*, 1925: 312.). 2. *The risk of the carriage's price in the case of fortuitous loss or damage of the good.* The problem of risks appears when the loss of goods or their alteration/damage occurred fortuitously, meaning it was not imputable to the parties. In this situation, the problem is if the carrier receives or not the initially established payment of the carriage. The law does not provide for in an express way whether, when the good is totally or partially lost, the carrier receives or not the carriage's price or bears the contractual risk or if he shares it with the sender as in the case of the impossibility to follow the initially established route.

Given the fact that the law does not give an express solution to this situation, nor the special provisions in these matters (with one exception, in the matters of air carriage of persons), we think that the common law will apply, with the rule specific to this matter: *res perit debitori* and the article 1557, article which refers to impossibility of performance in the case when impossibility of performance is total or final. In the same time, according to the article 1274 par. 2 of the Civil Code, the notified creditor takes over the risk of the fortuitous loss of the good. He cannot be relieved from this risk even if he had proved that the good would have perished even if the obligation of delivery had been fullfilled in time. By transposing this rule to the contract of carriage of goods, this means that the carrier keeps the price for the distance he actually made until, due to the loss/damage of the good, the contract becames impossible to execute. The doctrine concluded in this matter that „risks are shared as follows: the carrier loses a part of the business, and the sender pays a service which finally does not bring him any benefit whatsoever".

The transfer of ownership and the bearing of risks in the case of goods which are being carried: the carriage contract is an *autonomous* contract. The problem of the carriage contract's autonomy is analysed by the doctrine because the birth of this contract is commonly generated by the existence of another contract or an obligation undertaken under another contract. The circulation of goods can be the result of the conclusion of certain contracts such as: sale, leasing, deposit, etc. and the carriage contract is a consequence of the fulfillment of the obligations undertaken under these contracts. The contract of carriage cannot be analysed by separating it from other similar legal constructions with wich it has inevitable intereference points. For example, the regulation of the sale contract refers also to the obligations of taking over and transportation of the good, when dealing with the sale's expenses, thus, the article 1666 par. 2 of the Civil Code stipulates that the measurement, the weighing and the delivery expenses of the good fall under the responsibility of the seller, and the ones referring to the taking over and carriage from the place where the agreement was carried out fall under the responsibility of the buyer, unless otherwise agreed. Nevertheless, the connection points with different contracts do not transform the contract of carriage into an accessory contract. The contract of carriage is an independent contract, with its own legal physionomy, a result of the complexity of civil and commercial obligations arising from the economic relationships of the parties (Stanciu, 2015: 64-65). The doctrine (Scurtu, 2003: 10-18) underlines the fact that we have to analyse two types of relationships: *a fundamental and legal relationship*, the one which generates the initial relationship which will lead later on to the undertaking of certain obligations for whose fulfillment it will be necessary to conclude a contract of carriage, and *a derived legal relationship*, represented by the contract of carriage itself. Although, from a relational point of view, the two relationsships are related, the contracts which will be concluded will be independent.

The autonomy of the two contracts is supported by a series of arguments: different parties; conclusion and performance of the contract of carriage irrespective of the existence of other conventions between the sender and third parties; in order to claim damages from the carrier it is necessary to prove the capacity of party to the carriage contract and not the ownership over the goods which are transported (Căpăţînă, Stancu, 2000: 54). Morover, practically speaking, the market economy imposed the detachment of the carriage activity from the goods trade as a distinct activity, fulfilled on a commercial basis (Scurtu, 2003: 16-20). The connection between a contract of carriage and a sale contract of a good presents an interest in the case of the fortuitous loss of the good, which can occur at different moments of carriage performance. Then the problem is who the owner of the transported good is at that moment and who bears the risk of the impossibility of performance of the contract transferring ownership. The regulations of the general matters of civil law, as well as those of the sale contract matter stipulate the following: according to the nature of goods, genre goods or individually determined gods, the moment of the transfer is different. In this sense, the article 1273 par. 1 of the Civil Code stipulates that „real rights are constituted and trasnferred through the will agreement of the parties, even if the goods were not delivered, if this agreement concerns determined goods, or, through the individualisation of the goods, if the agreement concerns genre goods".

For the individually determined goods, the ownership is transferred from the seller to the buyer at the moment of the conclusion of the contract, even if the delivery was delayed. The contractual risk will be supported in this case according to the rule *res perit debitori*. In other words, the seller, the sender of the good which diseappeared due

to fortuitous causes or force majeure, bears the risk being the debtor of the obligation of delivery which cannot be executed anymore. In this situation, the sender will not be entitled to the performance of the obligation by the buyer anymore, and if he received the contractual equivalent, he will have to return it (Cotuţiu, 2015: 170-171). The paragraph 2 of the article 1274 of the Civil Code stipulates an exception from this rule: the creditor which has been given formal notice takes over the risk of the fortuitous loss of the good and he cannot be relieved therefrom even if he proved that the good would have perished even if the delivery obligation had been fulfilled in time (Atanasiu, Dimitriu, Dobre, 2011: 480). For genre goods, the ownership is transferred from the seller to the buyer when they are individualised. The individualisation is carried out by counting, weighing, etc. In this case, if the goods fortuitously perished between the moment of the formation of the will agreement and the date established for the individualisation, the risk is supported by the sender owner. Thus, the rule applied is still the same *res perit debitori* (Cotuţiu, 2015: 170-171). The article 1679 of the Civil Code stipulates an exception in this matter concerning the block sale of goods. Thus, if more goods are sold in block and for an unique and global price, the ownership is transferred to the buyer immediately after the conclusion of the contract, even if the goods have not been individualised yet (Baias, Chelaru, Constantinovici, Macovei, 2012: 1755). The aforementioned provisions are supplementary and the parties, through their will, can depart from them.

Therefore, the special literature (Piperea, 2013: 42-43) underlines the fact that in practice the articles 1273 and 1674 of the Civil Code are rarely applied and that parties, through their will, stipulate the moment when the ownership and the risks are transferred. There are actually two ways through which it can be departed from the aforementioned legal provisions: directly, by expressly establishing by the parties, through contractual clauses, the moment when the ownership and the risks are transferred, and indirectly, by referring to uniform trade practices or rules of trade sales, as INCOTERMS Rules. By handing over the goods to the carrier, the possession over the goods is temporarily transferred from the sender to the carrier in order to be transported to the receiver. Accordint to uniform trade practices, such as INCOTERMS Rules, the different clauses concerning the handing over the goods to the carrier are given an essential effect, that is the one of the transfer of the risk of fortuitous loss of goods from the sender seller to the receiver buyer. The manners of delivery and the delivery place differ according to the type of carriage. Thus, the risks transfer will be different, according to the moment when the good is handed over for the carriage. Therefore, if we are dealing with a road carriage, it will be carried out “loco fabrica” or ex works; if the carriage is on rails, the delivery is usually carried out at the closest the railway station; for water carriage, the delivery is carried out on the quay, alongside ship, that is FAS – free alongside ship; or by loading the goods on the board of the ship, that is FOB – free on board (Piperea, 2013: 30).

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Russian Diaspora as a Means of Russian Foreign Policy

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Abstract
After the Soviet Union collapsed about 25 million ethnic Russians and Russian speakers that were located in former Soviet Republics during the Tsarist Russia and Soviet Russia for various reasons, mainly for imperial ones, gained minority status in one night. Russian Diaspora living as minorities abroad out of Russian Federation especially in former Soviet Republics was regarded as a means of Russian foreign policy to reestablish Russian influence over the region. The main aim of this study is to evaluate how the Russian Diaspora became a tool for Russian foreign policy from historical perspective. This study emphasizes the activities conducted related to Russian Diaspora and the increased importance of Russian Diaspora in Russian foreign policy during Putin's term. This study is also of high importance since it deals with the relationship between soft power politics Russia mentioned among her current foreign policy concepts and Russian Diaspora.

Keywords: *Russian Diaspora, Russian Federation, Soviet Union, Russian Foreign Policy, Compatriot Policy*

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Introduction

Cold War ends with the collapse of the Soviet Union in 1990 and an era when conflicted zones were frozen, the demands of different ethnic groups and peoples were rejected and when two different ideological poles were in competition for about fifty years. The collapse of the Soviet Union shows that an imperial period that started by the Russian Empire on its territory had finally come to an end. After the collapse of the Soviet Union other Soviet republics declared their independence one after another, which was followed by a period for reconstructing the nations in the former Soviet republics. However, this period accompanied several problems such as political, economic, social and demographic ones. An important one of these problems is the Russian diaspora consisting of Russian people and other Russian speaking communities in the former Soviet Republics.

Russian people and Russian speaking other ethnic communities, who were settled in the Central Asia (Kazakhstan, Turkmenistan, Kyrgyzstan, Uzbekistan and Tajikistan), the Southern Caucasia (Georgia and Azerbaijan), the Baltics (Estonia, Lithuania and Latvia), Ukraine, Belarus and Moldovia turned into minorities after the break-up of the Soviet Union. The borders between the former Soviet republics achieved an international status with the Minsk and Almaty Agreements in 1991 consequently leaving 60 million people, 25 million of whom were Russians, out of their home countries (Tumbetkov, 2004: 52).

Minority status of these Russian people brought about discrimination against them and they were regarded as an 'other' in these newly independent states that are recreating their national identities. These problems that Russian people and Russian speaking communities encountered in the former Soviet states started to influence domestic politics of the Russian Federation (thereinafter will be called as Russia). The Russian and Russian speaking minority living in the near abroad played a key role in increasing Russia's power in the region helping her to reconstruct Russian political life and to recreate Russian national identity (Dağı, 2002: 209). In addition, the concept of Russian diaspora is closely related to Russian foreign policy towards countries having Russian minorities (Sasaoğlu, 2015: 1).

The aim of this article is to deal with Russian diaspora from a historical perspective and determine the effect of Russian diaspora on Russian foreign policy. The article consists of two main parts. The first part gives an historical perspective about the Russian expansion on its near abroad. The second part deals with the question how Russian diaspora has turned into a means of foreign policy.

The Birth of Russian Diaspora

Russian settlement in the former Soviet republics around Soviet Russia and on the lands out of Russia today started with the migrations from the Tsarist Russia for several reasons. Russian people started to migrate from their homeland to the east and the west starting from the 16th century (Tumbetkov, 2004: 53). The conquers and expansionist activities during the reign of Ivan the Terrible in the Russian Empire had strategical reasons, yet the main reason was economic exploitation because the huge lands of the east and west offered furs and various resources for the Russian (Oliner, 1982: 28). This kind of movement of peoples increased till the end of the Tsarist Era.

Before the Bolshevik Revolution in 1917 millions of people from Russia, Ukraine and Belarus were settled in Kazakhstan.

The aim of these settlements was to ensure the Russification of the southern regions with the help of the Russian peasants by the Tsarist Russia (Tumbetkov, 2004: 53). Besides, Russian people also migrated to the Baltics and the Central Asia. The Old Believers in Russia, for example, emigrated into Lithuania, Latvia and Estonia with the start of a reform period in the Russian Church (Simonyan, 2013: 162). The Russian Old Believers arrived to the north of Kazakhstan and the Ural Region during the 17th and 18th centuries (Peyrouse, 2007: 498). The re-settlement policy started in the Tsarist Russia continued severely and thousands of Russians were settled in three Baltic states, in the Muslim states of the Central Asia and Siberia in small groups consequently establishing their own cities there (Oliner, 1982: 32).

The Russian then occupied most of the lands till the Kazakhstan border today, the Altai Mountains and the whole basin of Ural River in the 18th century. Russian expansionism increased in the 19th century in Central Asia with the socio-political changes in the Russian Empire (Peyrouse, 2008: 2).

During the Revolution approximately 250.000 peasants were sent to neighboring communist states under the policy of "collectivization" (Tumbetkov, 2004: 54). Russians who migrate to these parts of the Union played an important role after 1930s during the Soviet Era to industrialize these remote regions (Tumbetkov, 2004: 53).

The Russification process gained power when the Second World War (WWII) broke out. One fifth of the factories located on the front line were moved to the Central Asia (Peyrouse, 2008: 2). This made it necessary that Russian skilled workers be settled in this region (Dağı, 2002: 209). Another great migration after the WWII stems from the land development program known as 'The Virgin Lands Campaign' started by Nikita Khrushchev under which mostly Russians and other volunteering Russian speaking communities from Ukraine and Belarus were settled in Kazakhstan (Peyrouse, 2008: 2).

Russian people came to the Baltic Soviet Republics after the WWII. The first group to arrive in the Baltics was Russian intelligentsia who escaped from the political suppression of the communist party and teachers, physicians, engineers, researchers, actors and actresses, journalists, highly skilled workers and soldiers followed them (Simonyan, 2004). Here, it can be said that Russian soldiers and other Russian people were sent to that region for security reasons (Tumbetkov, 2004: 55). The Russian population in the Baltic Soviet Republics can be explained by these former industrial policies (Tumbetkov, 2004: 61). The physical availability of the Russians in Ukraine and Belarus has different historical reasons. Belarus, which constituted a part of Kiev Russia in the Middle Ages, later became a part of the Russian Empire and turned into one of the first four members of the Soviet Union (Nygren, 2008: 66).

The Principality of Kiev and the Treaty of Pereyaslav are regarded as the foundation of the relations between Ukraine and Russia. The Russians started to expand towards Ukraine in the 17th century. A good number of Russians rushed into Ukraine with the industrialization in the eastern Ukraine in the 19th century (Nygren, 2008: 49). Stalin, who was following fast industrialization policies, invited Russians and Belarussians to settle in Ukraine (Tumbetkov, 2004: 55).

The history of the relations between Russia and Moldavia goes back to the time of Russo-Turkish Wars. Moldavia was given to Romania after the Crimean War and the Great War (WWI), yet after the foundation of the Moldavian Soviet Socialist Republic in 1924 in the east of Dniester under Ukrainian sovereignty it joined the Soviet Union in 1944. A great number of Russians and Ukrainians moved to the newly constructed industrial zones in Trans-Dniester Region under Soviet rule (Yapıcı, 2007: 124). The

Russian population in the former Soviet republics started to decrease with the collapse of the Union, yet the rate of this population was constant in some of them. Table 1 below shows the rate of Russians in the former Soviet republics in 1989 and the ratio of Russian people to local inhabitants determined by the Group of International Minority Rights between 1995 and 2005.

Table 1. The proportions of Russian population to the country population in the former Soviet republics

Country	The percentage of Russians in 1989 (%)	The current percentage of Russians (%)
Ukraine	22.1	**17.3**
Belarus	13.3	**11.4**
Moldovia	13.8	**5.9**
Azerbaijan	5.6	**1.8**
Georgia	8.1	**1.5**
Armenia	2.6	**0.5**
Kazakhstan	37.8	**30**
Kyrgyzstan	31.5	**10.3**
Uzbekistan	8.3	**6**
Tajikistan	23.5	**1.1**
Estonia	30.3	**25.6**
Latvia	34	**28.8**
Lithuania	**9.4**	**6.3**

Source: Ayman, 1994; International Minority Rights, 2015

As is seen in Table 1, the percentage of Russian population seems to decrease especially because of economic reasons after the breakup and voluntary resettlement program put into effect after 2000 by Putin. More than 80% of the Russian population in Tajikistan and one third of them in Turkmenistan, half of them in Uzbekistan and one third of them in Kyrgyzstan and Kazakhstan migrated to another country in 1991 and this kind of migration movements caused the population in these countries to diminish, yet helped the nationalization processes gain speed in the former Soviet republics (Peyrouse, 2008: 20). This drastic decrease after 1989 has different reasons behind, yet discriminative policies towards Russians and Russian speaking people, identity construction processes in the former Soviet countries and Putin government's economic improvements for Russian diaspora to attract them to Russia can be regarded as some of these reasons (Sasaoğlu, 2015: 2). Russia started to give its close attention to Russian diaspora, whose total number reached up to 25 million (Peyrouse, 2007: 481) and adopted clear-cut policies about its Near Abroad after the transition of power from the Atlanticists to Eurasianists during the Yeltsin era.

The second part of this article offers a chronological order that demonstrates the steps taken by Russia to start to make use of Russian diaspora as a means of its foreign policy starting with the Near Abroad Policy formed in 1993.

Russian Diaspora and the Recent Russian Foreign Policy

After the collapse of the Soviet Union, Russia benefited from the Russian population in its neighboring countries to stir up trouble there and to convince their governments to formulate policies that Moscow appreciates (Ciziunas, 2008: 292). The question how Russian diaspora became a means of Russian foreign policy after the breakup of the Union is discussed below.

Russian Diaspora as a Means of Russian Foreign policy

The collapse of the Soviet Union led Russia that regards itself as the successor of it to prove its power in the international arena. Russia met with nationalism and national integration movements emerging with the economic and political problems that caused an instable period, which witnessed a domestic centralization and an identity search for constructing a new Russia. However, Russia could formulate a new foreign policy bearing political, military and economic aspects in the Commonwealth of Independent States (CIS) (Rakowska-Harmstoner, 2014). The right-wing groups in Russian domestic politics attempted to change the recent political setting and to reinstall the unitary state and their political programs included imperial tones giving an important role to Russian diaspora in their policies (Kolsto, 1993: 198). As Pal Kolsto stated in his work in 1993 these right-wing groups aiming to revive the Russian Empire could use Russian diaspora like Hitler benefiting from the German population in Gdansk and in the Sudetenland (Kolsto, 1993). The Red-Brown Alliance also accepted former territories of the Soviet Union as natural borders of Russia and the statists asserted that Russia should assume a dominant role among other former Soviet states (Değirmen, 2008: 19).

A Russian Foreign Policy Aiming Russians

It seems that Russian diaspora was started to be seen as a factor that could both help Russia to exercise influence over the newly founded states in the Near Abroad and contribute identity construction processes at home when the Eurasianist school began to gain power in Russian foreign policy and succeeded to draw attentions to the potential importance of Russian diaspora. Next title deals with how a Russian foreign policy aiming Russian diaspora was formulated.

The Near Abroad Doctrine and Russian Diaspora

The change in Russian foreign policy till the end of 1992 is remarkable and Russia defined its priorities in foreign politics with the Foreign Policy Doctrine of the Russian Federation and turned its eye on the Near Abroad (Sasaoğlu, 2015: 2). The "Near Abroad" (Rakowska-Harmstoner, 2014: 3) policy that emphasizes Russia's great power and its influence on the region was formulated as the first foreign policy concept of Russia by Kozyrev (Sönmez: 2010). This doctrine called as "the Yeltsin Doctrine" or "the Russian Monroe Doctrine" admits Russia's privileged interests and special role in the former Soviet republics. It also legitimates Russia's intervention there to protect its interest if seen necessary with military ways (Ciziunas, 2008: 293). The main issues about Russian diaspora that became prominent with the Near Abroad Doctrine are as follows: termination of conflicts in Russia's neighborhood, protection of the Russian speaking minorities and human rights and declaration of Russia's vital interests in the former Soviet territories (Sönmez: 2010: 288). Russia aimed at close relations with the members of the CIS in economic, political and military fields (Sasaoğlu, 2015: 2). Yeltsin government widened the concept of Russian nation so as to include 25 millions of ethnic Russians in

the newly independent states of the USSR (Değirmen, 2008: 89). Therefore, Russia gave Russian diaspora a great importance between 1992 and 1994 since it was a means of legitimacy within the country and it gave Russia a right for intervention into the domestic affairs of the newly independent states (Değirmen, 2008: 24). Russia aiming at protecting the rights of the Russian minorities in its near abroad made an unsuccessful attempt to offer double nationality to those people, yet this offer was denied by the members of the CIS and the Baltic countries (Conley, Gerber, 2011: 12).

The Putin Era and Russian Diaspora

It became a priority to reintegrate post soviet space when Putin got into the government, for this reintegration was strengthening the claim that Russia would be an important global actor lending stability to Eurasia (Bugajski, 2004: 29). The Foreign Policy Concept of the Russian Federation underlined the importance of Russian diaspora in Russian foreign policy and expressed its discontent about the borders after the collapse of the USSR by restating the protection of the rights of Russian citizens and compatriots living abroad (Rywkin, 2012: 231-233). The term 'compatriot' used in the Russian Federation's State Policy includes "Russian Federation citizens living abroad, former citizens of the USSR, Russian immigrants from the Soviet Union or the Russian Federation, descendants of compatriots and foreign citizens who admire Russian culture and language" (Conley, Gerber, 2011: 12).

One of the practices that started with this compatriot policy is the voluntary resettlement campaign. The State Program of Voluntary Resettlement aimed at resettling Russian compatriots in scarcely populated areas enjoying a state budget that could hardly cover all the expenses it would have, yet only 17.000 compatriots benefited from this program between 2007 and 2011 (Kosmarskaya, 2011: 65). Putin government took the first serious steps regarding Russian diaspora and gave it an important role in Russian foreign policy. The Foreign Policy Concept of the Russian Federation in 2013 declares that it will be protecting the rights and interests of Russian citizens and compatriots living abroad. The Article 45 puts forward that Russia can benefit from Russian diaspora asserting that the Russian Federation will pay a special importance to negotiate agreements to protect the social rights of the compatriots living in the member states of the CIS (The Ministry of Foreign Affairs of the Russian Federation, 2015).

Mukomel points out that the state policies regarding Russian compatriots living abroad are funded with a separate fund within the federal budget and lists state institutions supporting Russian diaspora as follows: The Ministry of Foreign Affairs of the Russian Federation, The Federal Agency for the CIS, Compatriots Living Abroad and International Humanitarian Cooperation (*Rossotrudnichestvo*), The Government Commission on the Affairs of Compatriots Living Abroad, The Interdepartmental Commission for the Implementation of the National Program to Assist the Voluntary Resettlement in Russia of Compatriots Currently Living Abroad, The Russian Centre of International Scientific and Cultural Cooperation under the direction of the Ministry of Foreign Affairs, the Federal Migration Service of Russia, Ministry of Regional Development of the Russian Federation, Federal Agency for Education subject to the Ministry of Education and Science, The Ministry of Culture and Mass Communications, The Federal Agency for Press and Mass Communications, The Moscow City Government, The City of the St. Petersburg Government (Mukomel, 2015). The Ministry of Foreign Affairs transfers about 400 million ruble to this compatriot program through its embassies (Conley, Gerber, 2011: 13).

Apart from these state institutions there is also one more institution, a foundation called Russkiy Mir Foundation (Russian World) that conducts activities for developing policies on Russian diaspora and activities related to public diplomacy. The objectives of the Russkiy Mir Foundation are as follows: to promote Russian language teaching in Russia and on the world, to introduce Russia's rich history, Russian art and culture to the world and to reconnect the Russian population abroad with their homeland, Russia by establishing strong ties with them and supporting cultural and social programs, exchanges and voluntary resettlement (The Russkiy Mir Foundation, 2015). Russkiy Mir has approximately 65 centers and its annual budget funded by both federal government and private companies is around 500 million rubles (Conley, Gerber, 2011: 14).

In addition to this foundation supported by the state and private companies Non-Governmental Organizations (NGO) are also elements of soft power in terms of supporting Russia's objectives in line with its compatriot policy. These NGOs together with a network of more than 50 cultural centers called 'Russian House' helps Russian compatriots to strengthen their ties with their homeland and contributes into the protection of Russian culture and language, ethnic belongings and cultural values (Conley, Gerber, 2011: 12).

The activities performed by Russia regarding Russian diaspora within the last decade resulted in Russia's practicing soft power policies. Russia tried to benefit from the issue of Russian diaspora with the help of these policies. However, the recent developments in Georgia and Ukraine for the last couple of years and in Crimea show that Russia can apply hard power in order to achieve its national interests (to increase its power in the region and/or reestablish spheres of influence) under the pretext of Russian diaspora. Bender states that since Putin declared that Russia has its right to intervene when Russian minority are in trouble, a possible Russian intervention in the Eastern Europe or Central Asia can cause problems in the future (Bender, 2015). Pranas Ciziunas states that Russia uses ethnic and social discontent of the people in the Baltic states to increase its influence over them (and over other countries within its sphere of influence) (2008: 296). Bugajski asserts that Russia tries to enjoy the political, regional, religious, social and ethnic conflicts and to influence foreign and security policies of each country that he shows within the spheres of Russian influence (the CIS in Europe – Belarus, Ukraine, Moldavia – the Baltics, Central Europe and the Southeastern Europe). He adds that Russia is attempting to undermine military integration processes of these countries with the United States of America (USA) and prevents every other kind of regional cooperation (2004: 30). One of the ways to achieve these objectives is, as Ciziunas mentioned, to use ethnic differences. Russian people and other Russian speaking communities are regarded as sources of regional influence by political decision-makers in Russia and Kremlin thinks that creating as much as privileges for Russian diaspora means investing into a loyal social and political structure suitable for supporting Russia's state policy (Bugajski, 2004: 40). As John H. Herbst writes in his article Putin wants to rebuild Russia's sphere of influence in the former Soviet republics and on the former territories of the Russian Empire and to protect the rights of ethnic Russians and Russian speaking communities in the countries they live. According to him, Putin waged war in order to change the post-Cold War order and to play with the borders in Ukraine and Georgia.

As Herbst puts since Hitler a great power is for the first time trying to find ways to change the borders in Europe (2015). It is really hard to estimate what Russia can do in the former Soviet republics in the future on the pretext of Russian diaspora and the practices towards them. However, it is clear from the Russian Foreign Policy Concept

dated 2013 that Russia has started to adopt seemingly soft power policies. The chapter of the concept titled 'Foreign Policy of the Russian Federation and Modern World' states that soft power is a comprehensive means for achieving foreign policy objectives (Article 20) and Russia aims to improve soft power politics (The Ministry of Foreign Affairs of the Russian Federation, 2015).

Russia's Soft Power and Russian Diaspora

Joseph Nye asserts that it is very expensive today for countries to force other countries to do what they want by military power in this self-help system and he adds that at least five factors affect the distribution of power: mutual economic interdependence, supra-national actors, nationalism in weak states, proliferation of technology and changeable political issues (Nye, 1990: 157-160). These factors, therefore, requires another and more attractive ways to use power beyond traditional methods: A country can achieve the results in foreign policy that it preferred when other countries want to follow it or they agree with them about a situation that has similar effects. For his reason, Nye calls getting "other countries to want what it wants" as 'soft power' (Nye, 1990: 166). The new foreign policy concept of Russia emphasizes that Russia will achieve its interests using 'soft power' as described by Joseph Nye above. Accordingly, this new foreign policy concept offers using new Technologies and the potentials of Russian diaspora. The institution called *Rossotrudnichestv* in the Ministry of Foreign Affairswas assigned to develop and carry out Russian foreign policy to that end (Jensen, 2015). Russia's open declaration that it will give weight on this matter by exercising soft power is very helpful for analyzing Russian foreign policy.

When this concept is considered regarding compatriot policy and its implementation it is obvious that Russia is struggling to influence Russian diaspora applying its soft power and so it can influence domestic policies of its neighboring countries. Russia's emphasis on the importance of civil society, information, communication and other means of soft power called as humanitarian means as an alternative policy for classical diplomacy is something new in Russian foreign policy (Monaghan, 2013: 6). Besides, Russia seems to have shifted its attention to the east and to have given a high importance to integration paying a great attention to the CIS, the customs union, the Eurasian Economic Community, the Collective Security Treaty Organization and the relations with Ukraine (Jensen, 2015).

As a consequence of compatriot policy Russia organizes World Congress of Russian Compatriots every three years and these issues such as voluntary resettlement of Russian diaspora, protection of minority rights, and maintenance of cultural and religious relations with Russia are discussed with the participation of state heads of former Soviet states (Conley, Gerber, 2011: 13). Putin stated during the fourth World Congress of Russian Compatriots in 2012 that Russian diaspora had a common concern for being beneficial towards their historical homeland, introducing socio-economic development of their homeland and reinforcing its international power and prestige, and he also added that supporting Russian diaspora was one of the main policies of the Russian state. Putin also mentioned in his speech that the Russian Orthodox Church had special roles in strengthening humanitarian and cultural connections of Russian diaspora with their historical homeland (2015).

The activities producing soft power planned by the Russian Federation to help Russian diaspora within the last five years are as follows: the revision of voluntary resettlement program, which 100.000 people benefited from as to the data gathered in

2012, the implementation of Russian language program aiming to support Russian language especially in former Soviet republics and to protect ethnic and cultural belongings between 2011 and 2015, the introduction of a large-scale program between 2012 and 2014, the employment of Russian diaspora as translators and volunteers during the Summer Universiade in Kazan in 2013, Sochi Winter Olympics in 2014, the support for those who wants to study or work in Russia and the establishment of Russkiy Mir Foundation (Putin, 2015).

Conclusion

The issue of Russian diaspora contributes to Russian foreign policy in two ways. First, Russia makes use of the Russian population and Russian speaking communities that are numbered about 25 million after the collapse of the USSR as a means of foreign policy. In consequence, Russia could establish its control over the newly independent states thanks to the Yeltsin Doctrine after a short time of uncertainties in foreign policy and could influence their domestic and foreign policies. The issue of Russian diaspora gave chance to Russia, which did not want to content itself with the borders drawn after the breakup of the USSR, to help other Russians beyond their borders and to intervene into these countries' domestic affairs on the ground of supporting them.

Russo-Georgian War in 2008, the crisis in Ukraine and annexation of Crimea by the Russian Federation all reveal that Russia behaving as the protector of all Russians and Russian speaking people beyond its borders can take an aggressive attitude if necessary. Russia's military interventions under the pretense of Russian diaspora leads to interpretations that the Cold War is back again and caused the countries that have a good number of Russian people to be on alert against revisionist actions of the Russian Federation. Nevertheless, the new foreign policy concept of the Russian Federation is giving more and more importance to the issues related to soft power and Russian diaspora. However, Russia can take an aggressive stance when it comes to Russian diaspora and its regional influence.

Second, Russia that experienced identity crisis for a couple of years after the collapse of the USSSR could reinforce its national Russian identity by introducing itself as a historical homeland to the ethnic Russian people and other Russian speaking communities and by emphasizing it at every opportunity. The groups in Russia that state the imperial influence and ambitions of the past should be revived on the ground of Russian diaspora helped Russian identity to strengthen with the issue of Russian minorities.

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Political Parties Ideologies in Kosovo

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Abstract
The aim of this paper is to analyse the ideological profile of political parties and the party system in Kosovo. The political system in general and the political parties in particular are basic elements and very important for functioning of the state. Political parties, depending on ideological attitudes that they represent, hold certain attitudes to solve social problems. Political parties with *left* orientation are supporters of social equality; they support the social strata with economic problems, and they are in favour of stronger presence of the state. Political parties with *right* orientation have different attitudes from left parties. They support evolutionary changes in society, they are in favour of preservation and cultivation of traditions, there are supporters of the capitalization and are for minimal state intervention in society. Political parties in Kosovo have a new tradition of the formation and profile. They are at an early stage in terms of the ideological division. The party system in Kosovo after 1990 can be divided into two phases. The first phase is until 1999, where political parties have operated under the measures of occupation, and the second phase includes the period from 1999 onwards, initially under the international administration, and after the independence under supervision and co-governance in some areas with the mission of the European Union (EU). In order to be more inclusive, political parties in Kosovo offer ideologically unclear programs. Political parties in Kosovo in regards to some topics such as European integration, economic and social policies in general have same positions, with some exceptions. In this paper, the qualitative methodology was used.

Keywords: *political party, international administration, ideology, left-right, program*

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Introduction

Political parties in modern-representative democracies are fundamental for institutional functioning and representation. Without political parties, representative modern democracy cannot work. Individuals through political parties, competing in election, with electoral programmes and ideas aim governing the country. Depending on attitudes and social strata targeting to represent, political parties are positioned and offer solutions for certain and various issues, with interest and debatable in society. Political parties with broad citizen support, typically provide a more comprehensive solution, with all approach differences they may have. All attitudes, beliefs, offers and alternatives that political parties provide for social issues are part of a certain ideological profiling, known in general terms as the right and left spectrum.

This paper makes an analysis of political party ideologies in Kosovo, the level of profiling, their formal and programme approach concerning solving of certain social issues. In this paper, there was used the qualitative research method, narrative analysis and the process tracing method. These methods are used through analysis of literature, programmes and statutes of political parties in Kosovo. Prior to commencing the research, the question was raised: How much are Political Parties in Kosovo profiled? In responding to the above question, the hypothesis was raised: Party system in Kosovo, because of circumstances, first the occupation by Serbia and afterwards the international administration, were more oriented towards state building than ideological profiling. The independent variable in this case is occupation and international administration, whereas dependent variable is the ideological profiling of political parties.

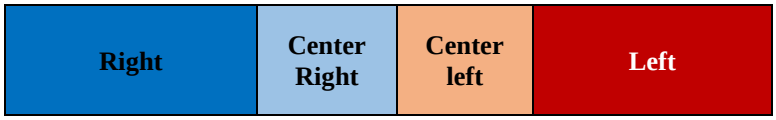
The structure of the paper is composed as follow: In the first part, there is the Theoretical Framework, in which there will be analysed political parties and their ideology in theoretical aspect. In the second part, the ideological and party system in Kosovo are analysed, a brief history of the establishment of the multiparty system in Kosovo and the ideological division. In the end of the paper there are provided some conclusions for party system and ideological division in Kosovo.

Theoretical Framework

Political Parties, their way of functioning, political programs, ideologies and their structure are very much studied by many social and political scientist. Some of the most known but not only are: Giovani Sartori (1998), Maurice Duverger (1954), Daniel-Louis Seiler (2012), Gunther and Diamond (2003), Kitschelt (1995). Also Dommet (2014), Millard (2004), Web and White (2007), Lewis (2001) for political parties after the fall of the communist regimes as part of new democracies. Despite other groups, political parties based on programs offered to the electorate, maintain consistent approach to the social and economic problems, foreign policy and other topics. Articulation of attitudes, beliefs, approaches towards phenomena and the way of resolving some issues or governance orientation comprise the ideology of a political party.

Furthermore, more it can be argued that "ideology is a system of belief, not private, represented by a certain group of social actors. Ideology can be changed to certain persons, depending on the belief and vision regarding certain attitudes" (Van Dijk, 2006: 115-140). Political Parties based on their programs and ideologies are divided into three general groups: Right, Left, and Centrist, having either right or left elements.

Figure 1. Ideological spectrum of Political Parties



Source: Author's own compilation

Political Parties of the Right Spectrum proclaim the protection of tradition and the memory of the past, are in favour of small governments, free economy market, less taxes, greater role of the individual, against abortion, against marriages of same gender, complete privatization... Left parties are opposite of the Right parties. They are for greater role of governance, an economy more controlled by the state, more powerful role of the society, are for more solidarity by paying taxes and distribute them to social programs, they are pro abortion, equal rights for women, minorities (Wiesehomeier, Doyle, 2012: 4-8). The foundation of the Left and Right Division was encountered in voting of the Assembly in France in 1789. However "according to the historian Marcel Gauchet, the creation process of the Left and Right topography symbolically appeared during the voting of the Assembly in 1789. Those who would not agree with the situation, and who did not share the same opinions, where noticed of liking the left side of the hall and they always gathered there" (Seiler-Luis, 2012: 39). Moreover, it can be considered that "while the term ideology was used and still continues to be used mostly by leftists, communists and socialist parties in order to emphasise their view and political position. However, also other opinions that are referred to as rightist are called ideologies, such as: liberalisation, conservatism, nationalism or also fascism" (Hofmeister, Grabow, 2011: 24).

Despite this classic Left-Right separation, today the political parties in order to be more attractive, and to win the trust of more voters, often broaden their offers, as well as attitudes towards problems, holding attitudes that they may be contrary to their ideological classic profiling. Political parties emerged from communist countries, including Kosovo with its specifications, vary from Political Parties with a long tradition of pluralism including their ideological profiling, as well as programs providing to voters. The more the Political Parties are profiled and with tangible programs, the more advanced they are. But this does not mean that guarantees more votes for parties. Because of these reasons, political parties today are more comprehensive, pragmatic and try to be acceptable for a larger number of voters. The Quietism of Political Party Ideologies was recently studied by Dommet (2014) in the case of Great Britain. "According to her "the parties are more pragmatic and above ideology their goal is to get much support". Great Britain has a long tradition for Ideological division of the Political Parties and recently has a quitisem among them (Dommet, 2014:1-19).

While in countries with lack of ideological tradition and with many political, economic and social problems and instability, like Kosovo, expectation for ideological division of Political Parties are smaller. At the time of globalization, the parties are trying to be comprehensive, often known for combinations of left and right elements of spectrum, following so-called 'third Way'. Such example is the Labour Party of Britain, led by Tony Blair, and the Democratic Party in the US, led by Bill Clinton who in order to be more pragmatic and provide the best solution for problems, followed the third way in their

governance. According to Blair and Clinton, "Their third way is a social democratic response of globalization, increasing of investment and public finance" (Romano, 2009: 79-94).

Remarkable contribution in studying Political Parties is given by Gunther and Diamond, who in their analysis: Species of Political Parties, the new typology, they categorise political parties in three typologies: The first has to do with the formal organization of political parties. The second includes the nature of programmatic commitment of Political Parties. Some parties hold good articulated ideological positions, based on philosophy, religious beliefs or national feelings. Some are pragmatic and have no clear ideological or programmatic commitments. While some others are directed in particular towards certain ethnic groups, religious, social or economic, or defined geographical constituencies, despite the parties that are heterogeneous, if not discriminatory and comprehensive (Eclectic) in their electoral appeals in society. The third deals with strategies and behaviour norms of Political Parties (Gunther, Diamond, 2003: 167-199). Second typology of political parties in terms of programmatic organization is challenging in the countries emerged from communism like in Kosovo. Kitschelt, made the categorisation of Political parties based on: "Charisma, Clientelism, and Programs.

Due to the competition of political parties based on their programs, it is costly and hardly feasible, a number of authors claim that: (1) post-communist democracies will not be based on programs in the near future, but much more in leadership and patronage and (2) post-communist democracies will remain unconsolidated for a certain period of time" (Kitschelt, 1995: 450-451).

By later developments, in many countries and in Kosovo, analysis of Kitschelt continues to be still present. The above mentioned category includes in principle almost all types of political parties. Each party is part of one or more of these categories, depending on the level of democracy development, the context of their establishment, act circumstances, and profiling. In consolidated democracies, political parties are profiled and structured, comparing to new democracies in process of consolidating.

This also applies to countries emerged from communism, which, from a one-party system, have been transferred into the multiparty system. While parties which were closer to the communist system or that were direct successor of this system, they had Left positions though in new democratic circumstances. Whereas, parties that emerged by the students movements, workers or intellectual movements, who were in favour of changing the mono party system, who opposed it in various ways. With the permission of the multiparty system, and creation of new parties, arising from the opponents of the communist system, they were classified as right-wing party.

According to Millard (2004) ideological parties in the former communist countries were not always coherent, as well as their concerns and priorities of the program differed substantially from the Western European parties. Most of the Parliamentary Parties proved poor ability to establish clear and touchable policies. Political Parties in Central and East Europe were of two types: They were similar in the competition for power, had weaknesses in their ideological profiling and lack of sustainability. The first type came as a result of challenging the ruling communist party.

The second were strong Political Parties in power in the powerful presidential systems like in Russia (de jure) and in Ukraine (de facto). These parties formed the parties with weak ideological elite, through comprehensive electoral offers with the only aim to remain in power (Millard, 2004: 263-267).

Party system and ideologies in Kosovo

Political and Party system in Kosovo has its own specifications. While during 90's, the former communist countries started to act under democratic and pluralist party system, Kosovo was placed under the Serbian occupation. During this time in Kosovo, there were allowed to act some political parties like LDK, which was more like Kosovo Albanians movement against Serbian occupation than it was political party in a classic way. "It means that we have to do with a specific case, either in terms of governance or in profiling, because following the fall of communism, Kosovo as part of the former Federal Yugoslavia, not that it was able to win its freedom, moreover it was restricted having been put under the Serbian regime" (Peci, Malazogu, Dugolli: 4).

Kosovo, during 1989-1999, continued its resistance against Serbian regime, by not accepting that system through developing of parallel institutional life in all fields. "During the period of time 1990-1999, in Kosovo there were active more than one political parties like-Democratic League of Kosovo (LDK), Social Democrat Party of Kosovo, Parliamentary Party of Kosovo, Demo Christian party, Liberal Party. However, these parties did not operate in normal circumstances where would be allowed development of normal political life and democracy" (Krasniqi, Shala, 2012: 8-9).

In this period of time we could not talk about ideological profiling or about determination or some development and orientation. The only and main orientation was freedom and independence of Kosovo from Serbia. "After the NATO's intervention against Serbian regime in Kosovo and Serbia, Kosovo was placed under international administration, where legal basis was resolution 1244/99 of the Security Council of UN" (Caplan, 2005: 138-139). Since the Kosovo placement under international administration until current days, political parties are acting more in pragmatic way, by providing solutions to problems in a more comprehensive manner than they are targeting certain groups of society based on ideological profile. Despite, political parties in Kosovo formally are declared as follow: -two main political parties Democratic Party of Kosovo (PDK) and Democratic League of Kosovo (LDK) in their statute have been declared as centre right parties. Alliance for the Future of Kosovo (AAK) has been declared as well centre right. (Statute of PDK, LDK, AAK); - New Kosova Alliance (AKR) has been declared as liberal-democrat orientation. (Statute of AKR). Self-Determination (VV) has been declared as centre left party (Statute of VV).

Political Parties in Kosovo during the international administration

Initially after the war in Kosovo in 1999, Political Parties were divided into parties emerged from the war (PDK and AAK) and the parties that had followed a peaceful path(LDK) with the same aim to liberate Kosovo but using different way (ICG report, 1999: 1-9, Hofmeister, Grabov, 2013: 96-99) "United Nation Mission in Kosovo (UNMIK) was in favour of good relations with LDK and the leader Rugova, initiating efforts for Rugova's return from exile (Rome-Italy), in order to avoid the impact of the KLA (Kosovo Liberation Army) successor party" (Tansey, 2009: 118-120). This happened because they wanted firstly to establish social balances, afterwards it would be easier to govern the country with parties considered as modern ones. "In the same ways as with East Timor, in Kosovo, one of the ways of international administration impact in political transition occurred through intermediation of elites access in power. Before and after election, the UNMIK had intervened in competitions between political parties and elite aiming to shape election results, avoiding the impact of any single party or ethnicity

and promoting of modern politics in Kosovo. The UNMIK had shaped Kosovan politics through selection of local interlocutors and international involvement in formation of post-election coalitions (Tansey, 2009:117). During the first parliamentary election under UNMIK administration in 2001-2004, ruling coalition was composed by main political parties in Kosovo (LDK, PDK and AAK) and minorities who were an integral part of all governments, guaranteed by legal acts. This composition had comprehensive social involvement, but without ideological or programmatic division.

Meanwhile there weren't any opposition political parties with broad support. This was not common for a democratic country. This tells us that above all, the international administration was interested for stability and inclusiveness, specifically for a country (territory) without any strong democratic tradition like it was Kosovo after the war. 2004-2007 government marks for the first time the position of political parties according to participation in governance, the position under the collation (LDK/AAK) and a strong opposition with PDK.

During the International Administration in Kosovo, the role of UNMIK was very important and powerful in deciding, making, and implementing of laws and politics in all fields. Moreover, it was also involved in party and political system, including election organization, election system, the time of election, certification and the announcement of election results. The UNMIK appointed Serbian minorities in some cases because of their opposition to take part in election for political reasons.

Figure 2. Political Parties in Government since 2001

Electoral Years	2001	2004	2007	2010	2014
Ruling Coalitions- Main Albanian Political parties	LDK, PDK, AAK	LDK, AAK	PDK, LDK	PDK, AKR	PDK, LDK

Source: Author's own compilation

Political Parties after Independence of Kosovo

On February 17, 2008, the date of declaration of Kosovo independence there were PDK and LDK in power, which were the main parties in the sense of citizens support and history representation. The period after independence was characterized with establishing new state institutions, which in earlier phases did not exist or were under international administration. "Post-independence phase was characterized by the establishment of other state institutions that previously had not existed or had been administered by international missions. This step of democratic and institutional consolidation at the same time appears as a major challenge for the Kosovo society. It can be expected that with the economic and social development, political parties can start the articulation of the programmatic orientations and thus the political scene in Kosovo will be consolidated" (Krasniqi, Shala, 2012: 9).

During the PDK and LDK government 2007-2010, ruling parties were more oriented towards state-building and staying in power than concern with any clear program based on ideological determination. This was proven also by the Kosovo Prime Minister Hashim Thaci, according to whom "the PDK-LDK coalition concerned with the declaration of independence of Kosovo and state building than it had to do with any conceptual or ideological connection" (Dudushi, 2014). This was confirmed as well after the decision of the Constitutional Court in 2010 on violation of the Constitution following the issue of two positions held by the President of Kosovo and the President of LDK(Case nr KI 47/10). After the Constitutional Court's decision, LDK left the ruling coalition whereby the country entered in institutional crisis and which derived holding of new parliamentary elections in February 2011 (Ejupi, Qavdarbasha, 2011: 5-6). As of March 2011 until June 2014, Kosovo was governed by PDK and AKR. This ruling coalition was based more in numbers in order to create a majority in the Assembly rather than in ideological and programmatic ties. At the same time it was a strong opposition in numbers, but there was a lack of unity and ideological program.

Concerning future possible coalitions, after the elections of June 2014, Prime Minister Thaci declared that: "We will not exclude any Political Party to establish a new Government. Firstly we will look forward to establish a coalition with parties that have closer ideas with ours, but however this will be decided after the election results" (Dudushi, 2014). This really happened after the elections of June 2014. The lack of political party ideological profiling, before the election as well as the creation of coalitions and then the government, has a negative impact on the governance outputs. It means that the impact is in political system and governance quality, with specific emphasis in social and economic development.

While in countries with clear ideological profiling of right and left or centre (with any of proportional election system), it is known in advance which party enters into coalition with which party, In Kosovo case, all parties go into election campaign with certain election offers and programs, but without being able to say and determine the coalition partner after election results. The short history of Kosovo (after international administration) testified that firstly during 2001-2007 under international administration and as of the independence of Kosovo in 2007 until 2014, ruling coalition's were based more in numbers of members of parliament than in principles, programs or ideological profiling. This has affected the quality of governance, initially because of the co-governance with the UNMIK during 1999-2008, which had a clarity and lack of outcomes and then due to lack of ideological spectrum and profiling of parties. As a result of above shortcomings after the elections of June 2014 (CEC, 2014), the country entered into crisis because none of political party had a parliamentary majority to create majority in the parliament. In a party scheme, with PDK on one side as the winner of the election, and LDK, VV, AAK and NISMA on the other side, known as LVAN block, created obstacles in creating the institutions after the elections, because none of them (LDK, VV, AAK and NISMA) wanted to be in coalition with PDK as the winner of the election in 2014. During this time the minorities represented in the parliament were neutral. This separation of Political Parties was not based in any programme, ideology or coherent plan. After six months blockade, the opinion of the Constitutional Court on the right of the largest party to elect the Speaker of the Parliament and government cabinet proposal and after pressure of the embassies in Kosovo, specifically the USA's Embassy to create a new government, PDK and LDK signed the agreement for the ruling coalition.

The previous government with PDK and AKR was the same, like the others in Kosovo, without any ideological or programmatic roadmap. The only reason of the block LVAN to be together was to leave PDK out of the ruling coalition, but there was not any programmatic or ideological vision. The current coalition between the PDK and the LDK was established in December 2014 after 6-month blockade. Coalition was stable concerning numbers in parliament despite some MPs of LDK did not vote pro, because they were against the government with PDK. Also, opposition parties consisting of VV, AAK and NISMA (from the people who were previously as senior leaders in PDK)are acting strongly against the government as of the beginning of coalition , especially they are strongly objecting the demarcation agreement with Montenegro and the Association of Serb Municipalities, agreed by Kosovo-Serbia talks facilitated by the EU. Thus, as a result of non-acceptance and rejection of the agreement, the opposition parties have blocked holding of Assembly sessions by launching tear gas and organising street protests.

After the Constitutional Court decision that the agreement is not fully in compliance with Constitution of Kosovo, the objection by opposition parties is getting much stronger. Still party system in Kosovo is dialectic and not stable. Like the Governing coalition (PDK-LDK), opposition parties (VV, AAK and NISMA) are not consistent in sense of their past, current ideology and programs. Almost the main role in establishing of governing coalitions in Kosovo, since 1999 until 2014 was played by the Internationals (UNMIK) and embassies(specifically the USA, the UK and German).

Political Parties and voting in Kosovo

Kosovo has continuously organized regular and periodic elections since the establishment of international administration in 1999.Through elections,-- citizens freely decide on their representatives. A very important role in the success of a party is played by a leader with his charisma. Leadership and charisma of the leader is very important for all political parties in Kosovo. This proves the case with the former President Rugova. LDK still continues to have Rugova's leadership as the main ideology and the main program.

Also in PDK, President Hashim Thaci is the key and leading figure of the party, in the elections, their positive outcomes since 2007 and the governing processes. This is noted in the last elections where the leader of party was almost the only and main person during election campaign (Misioni i ri, 2014). The role of the leader is key in VV(Albin Kurti) and AAK(Ramush Haradinaj) as well. “Looking at the trend of political developments in Kosovo, there will be no progress until the leaders are the focal point of political parties and are not programmes.

This is best illustrated when citizens do not refer to party but to the leader. While party programmes have not primary relevance. The lack of an ideological anchoring of parties in Kosovo continues to be a challenge in their development. Concerned with the independence of Kosovo, the political parties in Kosovo have neglected their ideological positioning, being called only as the centre of the right or left” (Ante, 2010: 174-175). Also second categorisation of political parties as Clientelism made by Kitschelt, in Kosovo case it continues to have an important role for keeping and broadening of the support of citizens specifically for the Parties in power in local and central level.

This is valuable for the other parliamentary parties in Kosovo, who are not in power but govern in some municipalities. We may conclude that Clientelism appears in two ways. The first one through employment and the second one via granting tenders for certain businesses, which are then paid back by financing them. Corruption and the way

of tendering are criticised by many international and local reports. This has negative impact in developments of the country and in creation of proper environment for foreign investments.

This happens in developing countries in the process of internal stabilisation and democratic consolidation where economy is weak, and unemployment rate is high. Clientelism and Leadership do not mean that it works in every case, like in Kosovo. AKR and its leader Behxhet Pacolli did not pass the threshold of 5 percent in last election (2014) held in Kosovo. While in 2007, he won considerable votes, later and specifically during the 2010-2014 governance, where AKR was part of government in election was not evaluated well and did not become parliamentary party (CEC, 2014). During this time AKR was left overshadowed by the main party in governing coalition. While third categorization made by Kitschelt is that parties are based on and win the elections on offers and programs, in the case of Kosovo it can be said that is still weaker comparing with the two first Kitschelt categorization.

The way of voting and election campaign depends on the specific political developments in Kosovo, in terms of the exercise of sovereignty by the locals and international administration. Until 2008, for all political parties the main topic during electoral campaign was the independence, while for the other topics as economy and unemployment were some general offers but nothing touchable. For these set back the UNMIK was blamed.

After 2008, the Parties were more specific with economic offers but it is still general. Whereas by 2014, it can be said that there was some progress in the parties offer, but without any clear ideological division. All offers were to address the issues that bring more votes. Election offer was more specific comparing with the previous elections, providing solutions for some issues like: employment, economic development, taxes, privatization, energy, agriculture, social policy, EU integration, etc.

The whole electoral offer was comprehensive in sense of voters targeting. While regarding ideological profiling, it was mixed and without any clear ideological division. European Integration, strategic partnership with the US, the free market economy, open society, the fight against negative phenomena and social policy are some of the points that Parties in Kosovo are closer. Exception is VV, which has different approaches to some economic themes, privatization, (against the privatization of some enterprises important for the country, such as Trepça, Post Office, Airport and KEK), foreign policy or international presence in Kosovo. All Political Parties, with some minor changes in access, declare their commitment to help people who live in poor economic conditions. "PDK with its program of governance is committed to: continue and increase support for the families of martyrs; veterans; war invalids; Indexation of basic pension to inflation; Provision of adequate health support for social categories, in public health institutions; Indexation of social schemes with inflation, etc. LDK, with its program foresees: “social assistance provided by the state to the poor families. As far as possible, social assistance will be conditioned with the active work in different jobs, as well as participation in various trainings.

This is the best way to alleviate poverty and reduce dependency on social assistance (Government Program, 2014). VV Movement is committed to support poor strata with public systems of social assistance, financed by a progressive tax system. Regarding, Social policy and pensions: VV is for the care of the state for each citizen (Movements Manifesto). AAK also promote social inclusion and support for the strata in need (Drejtimi i RI, 2014). Based on this, the parties in Kosovo act based on the context

of the level of development and needs of the citizens in Kosovo. Formally, this also shows that economic circumstances in Kosovo, above the left-right division, requires addressing the basic needs of citizens. Also it can be concluded that all political parties, with minor changes, support providing opportunities for creation of new jobs. At the same time political parties are for social support of the state for the strata in need.

Conclusions

As final conclusions, we can consider the following approaches: establishment of Political Parties in Kosovo was influenced by political and historical circumstances, excluding the ideological model of the parties establishment; international administration, failure to define the status and relations with Serbia, has determined quite a lot the running of political parties in Kosovo; political parties in Kosovo are in the process of consolidation and profiling.

This appears during the debates, electoral offers and their programs. During the period 1999 to 2008, it can be said that the purpose of political parties was initially oriented to build institutions with the support of UNMIK, economic and social development, but without any clear guidance on how to approach the ideological and institutional development.

This was imposed by the context in which political parties operated under international administration until the elections and then with some governmental powers, but still limited. During the time of the international administration, the only program and 'ideology' of all Albanian parties in Kosovo was independence and economic prosperity. While the ideological divisions right, left, centre, were concepts discussed formally, the party system in Kosovo is formally more positioned as centre right. (PDK, LDK and AAK) (while in content they have more centre left policies for social and economic issues, specifically in the fields of social welfare and supporting for some social strata). Political parties and the society in Kosovo has unique attitudes towards certain developments, such as: European integration, the future army of Kosovo (not applied to Kosovo Serbs), the fight against negative phenomena, foreign policy, except VV with some different approaches. PDK, LDK, AAK are politically more comprehensive and less profiled, while VV is more profiled as centre left towards economic issues and as right regarding political issues.-Party System in Kosovo remains not defined in terms of prior determination of political parties for the coalition partner.

This creates uncertainty during the election campaign and as a result even in the government. Political parties in Kosovo are mono-ethnic (Albanians, Serbs, Turks, Bosnian), despite the fact that the aim of international administration was to create a multi ethnic society. Political Parties in Kosovo are primarily more Charismatic and Clientlist, and less based in programs and ideology.

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ORIGINAL PAPER

25 Years After - The National Day on the National Radio

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Abstract
Over 11 million Romanians listen to the radio be it on the classical radios set, on the computer, laptop, IPod, telephone, in the car, at home or at work. For example, the Romanian Public Radio has a continually growing audience in last years, according to the latest radio rankings, being the second most listened radio station in Romania, both at national and urban level. Considering the fact that so many Romanians listen to the national radio station this paper aims to find what how the National Day of Romania was presented on the public radio 25 after the fall of the communism. The study analyzes the major newscasts aired on November 30th, December 1st and December 2nd at Radio Romania Actualități and Europa FM, two radio stations with national coverage. Thus, *25 Years After – The National Day on the National Radio* wants to discover if the public radio carries out its declared functions to inform and educate the audience and also that of maintaining the Romanian collective identity and memory.

Keywords*: radio, news, commemoration, collective memory, identity*

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Commemorations, collective memory and media commemoration

The age of nationalism and post-collaborative nationalism brought many changes and challenges for the national identity and collective memory of nations. In this time of globalization, national identity seems to lose ground and starts to fade out. “Recollection of the past is an active, constructive process, not a simple matter of retrieving information. To remember is to place a part of the past in the service of conceptions of the present” (Schwartz, 1982: 374). Collective memory is a system of signs, symbols and practices (Funkenstein, 1993) and in order for it to work in the social groups it must be materialized through various commemorative practices. They consist not only of rituals (commemorative ceremonies, military parades, laying wreaths of flowers and so on), but also in building physical structures (monuments and other memorials commemorating activities) or propagation of commemorative narratives. In *Social Memories: Steps to a Sociology of the Past*, Eviatar Zerubavel (1996) talks about "mnemonic communities" which cannot exist without being maintained by "mnemonic traditions" and what we remember we do it as members of those communities rather than individuals.

Collective memory does not naturally occur, but is actually built and strengthened continuously and sometimes it can be challenged, negotiated, redesigned and rebuilt by different groups of communities (Watson, Chen, 2015). Thus memory and history are not the same concept, but on the contrary, they sometimes seem to be in opposition. Pierre Nora (1989) believes that memory is life born in societies that still exist and that it “remains in permanent evolution, open to the dialectic of remembering and forgetting, unconscious of its successive deformations, vulnerable to manipulation and appropriation, susceptible to being long dormant and periodically revived [...] Memory is a perpetually actual phenomenon, a bond tying us to the eternal present” (Nora, 1989: 8). On the other hand, states Nora, history is only a reconstruction, problematic and incomplete of something that no longer exists. Precisely in this regard media proved to be a crucial element in shaping and building national identities and journalists whether they know it or not act as commemorative agents and narrators of the collective memory (Zelizer, 1992). Through media reports members of a community are exposed at the same time to the same commemorative narratives, sometimes even in real time. Thus, “while acknowledging that collective memory takes shape through the interaction of multiple sources across various channels, media scholars have started to argue that journalists play a significant role in communicating, shaping, reinforcing, and sustaining the collective memory of historical events” (Watson, Chen, 2015: 3).

Many radio and television stations, newspapers or online publications present a daily calendar of commemorations. Whether it is a simple presentation of important historical events, whether it is the commemoration of the birth or death of a national personality, these commemorative references became something usual in the media space. This daily calendar is “a cycle of “holy days” specifically designed to commemorate particular historical events, the calendar year usually embodies major narratives collectively woven by mnemonic communities from their past. Examining which particular events are commemorated on holidays can thus help us identify sacred periods in their history” (Zerubavel, 2003: 30). Elisia L. Cohen and Cynthia Willis (2004), analyzing the Sonic Memorial Project state that the National Public Radio managed to create a digital aural memorial and to reinforce national identity without implicating the politics. The two researchers emphasize the fact “radio audiences seek out the medium

following national trauma as a way in which to help bridge the gap between self and others, local and distant, and to create and identify with interpretive communities of listeners through attention to a unified message" (Cohen, Willis, 2004: 595).

Nearly 90 years after the radio has appeared in Romania it continues to be a highly important medium. The radio has managed not only to survive, but it managed to adapt and flourish in the age of television and Internet. Approximately 11 and a half million people listen daily to the radio in Romania. The large number of listeners proves that the radio is not in decline, on the contrary, it continues to be a force. Radio audience has continued to grow also because the listening process is not strictly related to a device anymore. People can now to the radio in their car, on their computer, tablet or phone. The radio was always considered a friend of the listener because it addresses to each individual. Having no images support as TV does, the radio challenges the listeners' imagination. "Radio can engage the imagination to communicate ideas and images that create a kind of narrative experienced by each individual listener [. . .] to make personal connections, paint pictures with sound, and indeed create scenes that would be impossible in another context" (Dubber, 2013: 101).

However, radio news analysis is still an underdeveloped area especially in Romania and even less in connection with the commemoration phenomenon. I chose Romania's National Day because it is one of the most important moments in the country's history, representing the Union of the three Principalities. The commemorated events always bear some factual significance and the celebrations of national holidays perform an integrative function because they offer the audience a chance to reflect on their national identity (Kaftan, 2007). Furthermore "national commemorative days provide a rare opportunity to explore such themes, because they illuminate the role of the media in shaping the ways in which social groups understand their past through the years and under changing circumstances" (Meyers, Zandberg, Neiger, 2009: 456 - 457).

On December 1st, 2014 Romanians commemorated 96 years since the Great Union in 1918. The National Day was at the beginning of the week, on a Monday. It is very important to mention the political context in which the National Day was celebrated. The commemorative events were held shortly after the presidential elections (the second round was held on November 16th, 2014). So, on December 1st Traian Basescu was still president and the new president Klaus Johannis was be sworn into office three weeks later, on December 21st.

The National Day on National Radio

Radio Romania Actualități is the public radio station, founded in 1928 and in the analyzed period it had nearly 2 million listeners daily (14.5% market share, being ranked second national wide). Radio Europa FM is a private radio station, it has almost 1.5 million listeners and 7.5% market share in the period under review, being ranked 5th by the number of listeners. At both radio stations, the main newscasts are broadcast at 7 a.m., 1 p.m., 6 p.m. and 10 p.m. on week days. I decided to analyze the news broadcast one day before and one day after the National Day to see if the two radio stations only pay attention to the exact time when there are organized events or the National Day is interesting for a longer period of time. The analyzed newscasts had 75 minutes and 45 seconds, but only 21 minutes were dedicated to the commemorative activities and ceremonies. 14 minutes were broadcast at Radio Romania Actualități and 7 minutes at Europa FM. The most information was broadcast exactly on December 1st. On November 30th there were broadcast just two news copies and none on December 2nd. This lack of information before

and after the National Day can be explained in connection to one of the main features of radio: the immediacy. On the radio, the news is disseminated almost in real time. In order to broadcast again a piece of information it should be updated or at least differently written from the first newscast. As Paul Chantler and Peter Stewart put it "radio is probably at its best when it is 'live' or reacting to an event happening 'now'. Because there are relatively few technicalities, a news story can be on the air in seconds and updated as it develops. Radio works best with news stories which require a quick reaction. There is a flexibility which exists in no other media because comparatively few people are involved in the process" (Chantler, Stewart, 2003: 10).

Any radio station, private or public must always take into account the profile of its listeners. Public broadcasters have certain legal obligations and, as stated in the document about Radio Romania's vision, values and principles, the public station has six types of missions: educational, cultural, competitive, social, democratic and national. The latter refers precisely to promoting and sustaining the national identity, while the democratic plan aims to stimulate the civic spirit and the listeners' involvement in public life. By contrast, although private stations must also abide audiovisual rules and The Code of Ethics, they don't have the same strict mission to inform and educate. Their mission may be just that of entertaining. "Commercial radio survives on advertising revenue. In order to attract advertising, a commercial station has to attract a large audience and cater to the largest potential market. Therefore, most commercial stations play different sorts of music supplemented by local news and information." (Chantler, Stewart, 2003: 4). This explains the fact that Europa FM broadcast less news about the National Day than Radio Romania Actualități.

On November 30th Radio Romania Actualități has previewed the National Day and has broadcast two piece of news about the commemorative events. There are two simple news copies, one of 32 seconds and another 39 seconds and both were broadcast in the second part of the newscast. They present a general overview of the events that have already taken place: "The celebration of the Romanian National Day began today both internally and abroad. The national flag was raised in the Flag Square from Alba Iulia and other cultural and religious events are organized in Covasna, Buzau and Sfantu Gheorghe. Also different shows are organized in Italy and Spain, countries with large Romanian communities" (Radio Romania Actualități, November 30th, 2014, 6 p.m.). The two news copies also present some of the events that will take place the next day, their role being to tempt the listeners to come and take part in the events: "Tomorrow over 25 thousand employees of the Ministry of Domestic Affairs will be on the field nationwide since a large audience is expected at the commemorative ceremonies, military parades and shows. At the military parade in Bucharest will also take part soldiers from Rep. of Moldovia, France, Poland, Turkey and the United States" (Radio Romania Actualități, November 30th, 2014, 6 p.m).

The fact that before the National Day the public station aired only two simple news in the second half of the newscast proves that the events were not considered important enough. Paul Chantler and Peter Stewart (2009) thought of a culinary parallel and talked about a daily menu in the case of a radio newscast and the first and most important radio dish is the first news, the lead story. Events such as the resignation of an important politician, the arrest of a minister, the outbreak of an epidemic or a major accident will automatically become the first news in a radio newscast. So "there will be days when a very important topic will be, without any doubt, the lead story. There will also be days with more than one important topic and then you will have to choose between

them. The criteria are relevancy and interest for the audience" (Mușeteanu, 2009, in Coman: 281).

However, selecting the news and placing them in the newscast also depends on the time of day. The news analyzed in this research where broadcast in the afternoon, while the prime time for radio stations is considered to be between 7 a.m. and 9 a.m. As for Europa FM, it does not broadcast a newscast at 18 o'clock during the weekends. „The audience available between 4pm and 6 or 7pm is called the „Drive Audience" because many of those listening will be driving home from work. It is a tricky audience. On the one hand they want a roundup of the news so far that day and developments on the stories they went to work hearing about, but on the other hand, they also want new news, too. Some stories are important but necessarily develop naturally during the course of the day. That is when your skill comes in of re-writing, refreshing and devising new angles of comments to keep the story fresh" (Chantler, Stewart, 2009: 155).

Very important for every radio stations and especially for commercial ones is programming the news and daily shows. This is done with the help of a clock, which is „a circle that represents an hour broken down into segments. Stations generally program each hour similarly to enable audience members to know what they will hear at a certain time" (Perebinossoff, Gross, Gross, 2005: 239). However, the three authors emphasizes that, in the case of public radio programming should not matter so much as in private ones because public broadcasters must consider the content first and less the advertising or profit part. The situation changed on the second day and on December 1st almost the entire newscast from the public radio station was dedicated to the National Day (11 minutes and 30 seconds out of 16 were about the National Day). But, listening to the newscast showed that most of the time was actually dedicated to Traian Băsescu's speech. This was his last celebration of the National Day as the president of Romania and Radio Romania Actualități broadcast his entire speech which lasted for 8 minutes. Besides this speech, the other 3 and a half minutes there were dedicated to one simple piece of news and two features. As one can easily notice it is a great imbalance: the news copies about the commemorative events lasted only 3 minutes and a half, while the speech of a politician has lasted more than double. Still this is not surprising. Many researchers (Nora, 1996; Rosenfeld, 1997; Roudometof, 2003) talked about the politicization of commemoration and about how politics dominates this ritual. In the case of Europa FM the situation was more balanced and politics did not monopolize the newscast. The private radio station has also broadcast fragments from the new president's speech, but its duration was much smaller.

The first flash of Radio Romania Actualități newscast was about the National Day events. Flashes are an important part of a radio newscast because they are meant to draw the public's attention, but at the same time they try to tempt them to listen to the news. "The flashes must synthesize what the newscast will present. [...] The first flash is not necessarily to be the lead story. Some days there are more important topics and the first flash can be about one of them, but the lead story would be another one" (Mușeteanu in Coman, 2009: 281). The Radio Romania Actualități newscast began with the information that on the occasion of the National Day a reception hosted by President Traian Băsescu is scheduled to begin at Cotroceni Palace and that the president was to deliver a speech that the radio station intends to live broadcast. The choice of the verb "to intend" is not accidental. Professional experience teaches reporters and editors that problems may occur, especially when dealing with live broadcasts. Using another verb or a different tense (such

as "we will broadcast") would have meant expressing a certainty that couldn't have been assumed in this situation.

Radio Romania Actualități newscast had a strong beginning on December 1st. It is a feature story recorded in Bucharest at the military parade which takes place every year in the Constitution Square. It is an independent feature, which is "gives the listener the impression of a live broadcast and creates the sensation that the listener is present at the event. It gives the news a different look, representing the broadcast of the background sound, but filtered through the studio [...] Thanks to voice inserts the listener gets out of the monotony of the simply read newscast, having the feeling that he's being talked to, that he is involved in a reality" (Joanescu, 1999: 206).

The radio reporter must present to the public everything that he/she saw on the field and sounds are those that recall the atmosphere of an event. As Carmen Petcu (2009) states, the sounds used in a radio feature are intended to build an image in the mind of the listener. In this case, the reporter used specific sounds for the event (the sounds of cars that were involved in the parade, the crowd sounds, clapping, whistling, etc.). Moreover, „the length of a story is determined by the length of the newscast, the importance of the story, and the availability of news at that particular hour. If there is not much news to report, the stories may have to be longer than they would be normally. If there is a lot of news, most stories should be short to allow sufficient time for the major stories" (White, 2005: 100).

The first feature dedicated to the National Day lasted 1 minute and 44 seconds, very long for a radio newscast. For a printed press journalist, this duration can seem short. Yet, writing for radio is much more concise than writing for print because the attention of a listener cannot be maintained for more than 3 minutes. Let's not forget that radio is not a domain that requests 100 percent attention from its audience. Radio audience is often involved in other activities (at work, in the car, at the kitchen, on the street etc.) and their attention is distributed in several directions. Robert McLeish (2005) mentions the fact that a newspaper can cover a topic in approximately 30 or 40 de columns, while a 10-minute radio bulletin represents just a column and a half (because a news anchor can read about 160 - 180 words per minute). Thus, the feature presented at the beginning of the bulletin presents an overview of the events, without being able to go further into much detail. It is presented the fact that in Bucharest and other cities were organized religious ceremonies dedicated to the country heroes, military parades and other manifestations. Also, it is mentioned that the military parade held in the Constitution Square started with the Romanian national anthem and as homage 21 gun salvoes were fired by the artillery squad of the Mihai Viteazu 30 Regiment.

The events dedicated to the National Day were depicted in a good light, starting with the great number of participants. The National Day is celebrated in winter, on December, 1st, which always brings in discussion the weather. The quality and the success of the manifestation are often correlated with the weather conditions. Generally, if the weather is good, the public is large, if the weather is bad, there are not too many participants (Matei, 2014). In both features broadcasted by Radio Romania Actualități there are mentions about weather and about the fact that, despite the cold, the public was large and delighted by the ceremonies. In the capital, "even if it snowed without break, ten thousands inhabitants of Bucharest came to the event" and in Alba Iulia, "despite the cold, hundreds of militaries and dozens of equipments of MAPN and MAI enchanted the ones coming to the parade, especially the children" (Radio Romania Actualități, December 1st, 2014, 6 p.m.). Unlike a newspaper, which can emphasize an important story by using

titles and subtitles, by changing or enhancing the font, radio can only emphasize the importance of a subject by its placing and treatment (McLeish, 2005). In this situation, the methods used by radio journalists to draw readers' attention are the vocal indications. "Modifications in voice inflections used by anchors offer oral indications to the listeners. They help stress certain words or expressions inside a text […] Changes in accent add a lot to the audience's ability to understand the intention of the author" (Joanescu, 1999: 48 – 49). In this situation, the intention of the reporter was to underline the fact that the public appreciated a lot the quality of the commemorative ceremony: "Even if it snowed without a break, tens thousands of inhabitants came to the event. Children and elder people, they were all *very* excited" (accent on *very*; Radio Romania Actualitati, December 1st 2014, 6 p.m.). The dynamism of the feature is created by combining several voices because the reporter selected different ones belonging to kids and adults, men and women. They declared themselves thrilled by the parade they attended to:

Voice 1, male: Very beautiful, it is the first time that I came here. I went to Alba Iulia and this year I came to Bucharest. I think it was very beautiful, better organized and larger.

Voice 2, female: It was interesting, it was the first time I came in Bucharest. I used to go much more to Alba Iulia but this year I preferred to come to Bucharest.

Reporter: What did you like about the parade?

Voice 3, child: I liked the tanks and the police cars.

Reporter: Didn't you freeze?

Voice 3, child: I froze but it was worthy (Radio Romania Actualități, December 1st, 2014, 6 p.m.).

The Europa FM reporter noticed that fewer young people attended the event compared to the one last year. And yet, here also the accent is placed on the enthusiasm of the participants:

Reporter – Dressed in Romanian popular costume, she doesn't not show her 60 years age. She was born on December 7th and she never missed a December 1st manifestation.

Woman: Well, I came here because it is the National Day. Nobody asked us to come here. When Ceausescu was alive, we were obliged to come here. Now we come in good will. What does this mean? I say that it is going to get better. I am an optimist (Europa FM, December 1st, 2014, 6 p.m.)

In newscasts analyzed at Radio Romania Actualități and Europa FM there are three vox pops. This is a type of material that shows "the voice of the people". Within vox pops, approximately 4-5 voices are grouped and the reporter asks a question or two concerning a current matter. Vox pops should not be mistaken for a sociological investigation because „while the aim is to present a sample of public opinion, the broadcaster must never claim it to be statistically valid, or even properly representative. It can never be anything more than 'the opinions of some of the people we spoke to today' (McLeish, 2005: 102).

Taking into account the fact that space is another important commemorative element, the news focused upon some of the big cities where events were organized. With Radio Romania Actualități, there were presented events taking place in Bucharest and Alba Iulia, while Europa FM presented the events held in Iasi. Alba Iulia is the town where on December 1st, 1918, the Great Unification took place. Time passed by and the city became a central place of the Romanian collective memory. The places of memory (*les lieux de mémoire)* are a symbolic proof of past events and „our interest in lieux de memoir

where memory crystallizes and secretes itself has occurred at a particular historical moment, a turning point where consciousness of a break with the past is bound up with the sense that memory has been torn-but torn in such a way as to pose the problem of the embodiment of memory in certain sites where a sense of historical continuity persists" (Nora, 1989: 7). Alba Iulia is a city that became a dominant place of memory, meaning a place where official ceremonies take place and people commemorate events considered triumphs of history (Nora, 1996).

2014 it was a year which brought a new element during the commemoration organized at Alba Iulia. This element was presented in the second feature of the news bulletin at Radio Romania Actualități. After 9 years, a military parade was again organized and 25.000 people were present. This second material is built just the same as the first one, with short descriptions of the events that took place. It was presented that the commemorative ceremonies debuted in the morning with wreath layings to the monuments dedicated to political and historical characters: Mihai Viteazul, Queen Mary and King Ferdinand the 1st, Iuliu Maniu and IC Brătianu. The feature included references to the past by depicting the way that delegates from the royal castles were received in the front of the "Unification Room from Alba Iulia, where was commemorated the historical moment of December 1st, 1918, when Romanians from all over the country requested the unification" (Radio Romania Actualități, December 1st, 2014, 6 p.m.). December 1st is presented differently by the two radio stations. Radio Romania Actualități broadcasted the speech delivered by Traian Băsescu while Europa FM aired the speech made by Klaus Iohannis, the recently elected but not yet sworn into the office president. Another difference is that with Radio Romania Actualități, the materials presenting the commemorative ceremonies are broadcasted first and only later the speech delivered by Traian Băsescu.

Europa FM does things differently and politics come first and only later on they presented information about the commemorative events. Analyzing the two politicians 'speeches is not the purpose of this research, so I will not get into it. Also, in Europa FM news, the focus is not upon the commemorative elements but on the popular celebration elements. These "moments of popular joy" (Coman, 2008) generally take place at the end of the official ceremonies and have nothing in common with the solemnity of the commemorations. The reporter from Europa FM talks about popular music concerts and sausage bean, which "became a tradition" (Europa FM, December 1st, 2014, 6 p.m.). Anterior researches already proved that "beans parade is a significant ritual of the National Day, a food ritual that strongly competes with the commemorative ritual" (Matei, 2014: 144). This thing is also presented at the radio while describing commemorative events. A 2 minutes material includes a minute and a half discussion about beans and sausages. The reporter, the children and the elder talk about how good the beans are. Furthermore, the recipe is presented:

Old woman – you put these ones. You soak the beans into water, after that you boil it with an onion, some garlic, spices. You boil them altogether and there you have the best possible beans.

Conclusions

The analysis of the newscasts broadcast on Radio Romania News and Europa FM on the National Day in 2014 shows that the two channels have devoted little time and attention to the commemorative events organized. The analyzed newscasts had 75 minutes and 45 seconds, but only 21 minutes were dedicated to the commemorative activities and

ceremonies. The two stations broadcast only a few piece of news a day before, on November 30th and no news whatsoever the day after, on December 2nd. The news copies presented have referred only to the official ceremonies and to some of the popular celebrations organized after the official ones. They provided information about the time, place and participants, presenting the most important moments. The news but did not provide details about the historic event commemorated or about the importance of the moment and its implications for the national identity. The only references to national identity can be found in the politicians' speeches. As Florica Iuhas (2015) mentioned in a similar research radio journalism has rather an informative purpose than an educational one and that is why it doesn't take the time to present the context of the event. The news about the National Day respected the radio style: they were written in short sentences, with easy words so that any listener can understand. In the end I have to emphasize that we will have a more relevant image about the way the Romanian radio stations reflect the commemoration of the National Day after a more complex research encompassing the news for at least two or three years.

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Online Citizens' (De)legitimation of Turkey's EU Membership

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Abstract
The purpose of this article is to analyze the EU and non-EU citizens' communication strategies of (de)legitimating Turkey as a EU member. To achieve this goal, this study will use the content analysis of 110 comments made by citizens on the *Debating Europe Schools in France* strand on the *Debating Europe* platform. Designed to increase citizens' online participation into EU issues, the *Debating Europe* platform, launched in 2011, may be associated with a transnational communicative space because it facilitates a dialogue between policy-makers and (EU) citizens. Using QDA miner and WordStat, as computer assisted qualitative data analysis softwares, we will interpret the policy-makers' and citizens' comments taking into account three types of codes: (de)legitimation participants, (de)legitimation recipients, (de)legitimation communication strategies. The findings of this study were the following: a salience of debate participants who delegitimated Turkey and EU institutions; a dominance of the delegitimation strategy of 'blame shifting' attributed more to the EU than to Turkey; the use of keywords which have a bias meaning depending on the type of communication strategy with which they cluster together.

Keywords: *European Union, Turkey, members, recipients, communication strategies*

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Introduction

In 2005 the *Action plan to improve communicating Europe by the Commission* highlighted three main weaknesses of the communication between citizens and the EU: continuous fragmentation of communication; messages reflecting political priorities but not necessarily linked to citizens' interests, needs and preoccupations; inadequate implementation. These weak points were the starting point of a new approach to earn people's interest and trust. Since "communication is more than information" (p. 2), the Commission's approach has focused on listening, communicating and connecting with citizens by "going local" (pp. 3-4). This subsidiarity by going local may coincide with Thomas Risse's definition of the public sphere: "(…) we can speak of a European public sphere, if and when people speak about the same issues at the same time using the same criteria of relevance and are mutually aware of each other's viewpoints" (Risse, 2003: 3).

Online platforms are one media outlet through which this new type of European public sphere may be accomplished because of their "inherently democratic and decentralized architecture" (Barton, 2005: 177). The question that remains is whether these EU online platforms may help in constructing the "imagined community of Europeans" (Kevin, 2003). M. Karlsson (2010: 132) considers that the Futurum discussion forum "has marked the shift by the European authorities from a rhetorical commitment to a more participative governance". The quantitative and qualitative analyses (Karlsson, 2010) showed the following aspects: the debate discussants belonged to a small range of countries, a diversity of languages was noticed despite the dominance of English, the issues on policies are highly politically and ideologically loaded, the debates among citizens might reduce the democratic deficit in terms of the nature of the discourse. Although these aspects may be considered as advantages, R. Wodak and S. Wright's discourse analysis (2006) of the *Futurum* highlighted the absence of policy-makers, a fact which, in their opinion may actually exacerbate the deficit and make us question the so-called interaction between EU officials and citizens. Launched in 2011, the *Debating Europe* platform (www.debatingeurope.eu) has four types of partners: founding partners (Friends of Europe (a leading European think-tank) and Europe's World), strategic partners (Google, Open Society Foundations), knowledge partners (Gateway House, EU center in Singapore), and community partners (European Students' Union, Citizens for Europe, European Movement International etc.) (debatingeurope.eu, 2015). Its main aim has been "to encourage a genuine conversation between Europe's politicians and the citizens they serve" (debatingeurope.eu, 2015). The working principles of this EU platform (debatingeurope.eu, 2015) are the following: EU citizens may leave comments under a debate or even suggest a new debate on a topic that has to do with Europe, the platform managers arrange interviews with policymakers and experts across Europe and then they publish the reactions to citizens' comments and promote them through social media.

Turkey's EU membership is a debate which has stirred vivid comments. The number of comments generated by (non)EU citizens shows that the online subsidiarity that the *Debating Europe* platform focuses on, has been functioning especially when the topic to be debated raises opinion diversity due to a controversial issue. Since citizens are considered active prosumers of information, I will label them as (de)legitimators of an issue. The main objectives of this study are: a. to determine the salience of (de)legitimation

participants and communication strategies of (de)legitimating Turkish EU membership; b. to identify the types of clusters created among the debate participants, recipients and communication strategies; c. to determine the main keywords associated with the (de)legitimation of Turkey's EU membership.

The Media Discourse on the EU Enlargement – The Case of Turkey

Islam, the problems with Cyprus or the genocide in Armenia are just three examples which may set Turkey as the Other within the context of a common European identity, emphasizing the polarization 'us' versus 'them'. Agnes I. Schneeberger (2009: 84) claims that Turkey's accession to the EU has a crystallizing effect since it reveals "perceptions of European identity by framing Turkey as being distinct from being European". Michael Minkenberg et al. (2012) consider that no other case of the EU enlargement has caused so much contention and has involved so much complexity as the prospective membership of Turkey in the EU. This complexity has ranged from security issues to concerns regarding economic costs and benefits, geopolitical and cultural issues and religious factors.

T. Koening et al. (2006: 151) consider that the 2004 decision made by the European Council of Ministers and Turkey about the accession discussion in 2005 "may be seen in the future as a key moment in the early development of a reborn Europe as a more cosmopolitan society and less of a fortress". One important type of research about the EU enlargement consists in the comparative analysis of the media discourse about the member states' accession to the EU. In the article *Media Framings of the Issue of Turkish Accession to the EU: A European or National Process?*, the authors identify the ways in which four frames had been used in newspapers from Turkey, Slovenia, Germany, France, the UK, and the USA. The four frames analysed by T. Koening et al. (2006) were: nationalism, economic, clash of civilizations and liberal multiculturalism. The findings of this study were the following: a. The nationalist framings were exclusively dominant in Turkish newspapers. These frames mainly focused on the special conditions for Turkish membership which relied on a privileged partnership between Turkey and the EU rather than on full memberships; b. The economic framing had a negative valence in German and French newspapers, Turkey being perceived as a financial burden for the EU. The positive valence of this framing could be found in the Turkish press and the benefits associated with Turkey's membership focused on financial support, credits, increased competitiveness of Turkish agriculture and the service sector, increase capital investments, or development of tourism; c. The clash of civilization framings was high in all EU member states under analysis, one significant exception being Turkey and it was clearly dominant in Germany, France and Slovenia. The ethno-nationalist aspect of this framing was visible and the media argued that Europe should be associated with white people and Christianity, thus Turkey and Islam being perceived an incompatible with Europe; d. The liberal multiculturalism focused on the right to difference. Mostly used in newspapers from the UK, the US and Turkey, these frames emphasized the tolerance of cultural differences and referred to them as "minor cultural differences set against a shared background of political values" (Koening et al., 2006: 168).

This study clearly shows that although the topic of discussion was the same, one important criterion for the existence of a European public sphere was not fulfilled. As T. Koening et al. (2006) highlight in their comparative analysis of the media discourse on Turkish EU membership, the existence of shared structure of meaning could not be found in the institutionally separate national public spheres.

Agnes I. Schneeberger (2009)'s quantitative content analysis of the British newspapers focused on different topical aspects associated with Turkey and on their evaluation in relation to Turkey's position towards Europe. The author included a comparative analysis of how British print media (*The Times* and *The Guardian*) represented Turkey throughout 2002-2007. The study included two object variables: topical aspects and sources of similarity or distance. The analysis of the 2002-2007 media narratives showed that the most dominant topical aspects discussed in connection with EU-Turkey relations were Turkey's political stability at that time (before and after national elections in 2002 and 2007), Turkey's respect for human and civic rights, Turkey's EU membership, Turkish-Cypriote relations, Turkey's minority rights, Turkey's demography and Muslim population, followed by Turkey's strategic location and military power and Turkey's economic development. A comparison between newspapers showed that the topical aspect of Turkey's respect for human and civic rights and of Turkey's EU membership featured more dominantly in The Guardian than in The Times. A comparison of time periods showed that these two issues became more important points of discussion in 2007 after the official start of EU accession negations in 2005.

Another important aspect of Agnes I. Schneeberger's study was the issue of the proximity to Islamic political movements which was frequently used as a source of difference in EU-Turkey relations. Other sources of difference which were salient in Schneeberger's analysis (2009) of the British media were: secular democracy, human rights, religion, negotiations over Cyprus, culture, geographic location and economic performance. Commitment to reforms was the most frequently used source of similarity in the EU-Turkey relations. Overall, this study highlighted that although the British press provides an "inclusive interpretation of European identity, it continues to portray Turkey in connection with persistent exclusivist perceptions" (Schneeberger, 2009: 83). Whereas the two studies presented above show how the international press framed the issue of Turkey's EU membership, C.H. de Vrees et al.'s experimental study (2011) investigates the effects of news framing on support for membership of Turkey in the EU. Starting from the fact that news framing may exert a strong influence on public opinion, the authors consider that linking media content analysis and public opinion data in the case of Turkey is interesting for three reasons: a) the blending of economic, political/geostrategic dimensions with cultural aspects; b) the impact of news frames upon a particular aspect of European integration; c) the importance of public support for indirect expression of legitimacy and for national referendums. The content analysis of Dutch national news media revealed the following salience of frames: cultural threats, security benefits, economic threats, security threats and economic benefits. This analysis shows that frames are positively (benefits) and negatively (threats) valences and that negative frames were relatively more prominent than positive frames (de Vrees et al., 2011: 186). The study also highlighted that valences news frames matter directly and the experimental test demonstrated that the impact of negative framing is greater than that of positive framing and that the change in public approval of Turkish EU membership is contingent on the elites' and the media's coverage of the issue closely related to individual characteristics.

This diverse structure of meaning associated with a controversial issue as it is Turkey's EU membership is even more visible on the *Debating Europe* platform where citizens and policy-makers may express their opinions on various topics.

Communication Strategies of (De)legitimation

Teun A. van Dijk (2000: 255) considers that legitimation "is related to the speech act of defending oneself, in that one of its appropriateness conditions is often that the speaker is providing good reasons, grounds or acceptable motivations for past or present action that has been or could be criticized by others." As a counterpart, delegitimation challenges the very existence or identity of the other group, downplaying its social position and/or practices (van Dijk, 2000: 258-259). Thus defending oneself and accusing the other are the two main discursive practices that (de)legitimation implies. Unlike van Dijk (2000: 256) who considers that legitimation is "a discourse that justifies the 'official' actions in terms of the rights and duties, politically, socially or legally associated with a role or position", in this study I will not associate power-holders to institutions, but rather to citizens who constitute the new power-holders through an online empowerment.

The integrated model of online (de)legitimation[*] will include three main categories: members (belonging to a micro-group or macro-group): the debate participants (citizens/ officials) who (de)legitimate the issue debated and the actors related to the respective issue; recipients: the actors (EU or MS institutions, citizens etc.) which/who are (de)legitimated; communication strategies: *legitimation strategies* (credit claiming, credit granting, requesting others to perform certain actions in the future) and *delegitimation strategies* (admiting mistakes, blame shifting, requesting others to stop from performing certain actions). These communication strategies are adapted from the five basic discursive legitimation strategies identified by Moritz Sommer et al. (2014): credit claiming (self-attribution of success, directed towards the speaker), credit granting (attribution of success to others), admitting mistakes (self-attribution of failure), blame shifting (attribution of failure to others) and requesting (request attribution to others).

The present study on the discursive analysis of Turkey's EU membership addresses the following research questions: RQ1: What was the salience of (de)legitimators and communication strategies of (de)legitimation? RQ2: How do (de)legitimators, (de)legitimation recipients and communication strategies cluster together? RQ3: What keywords are associated with the communication strategies of (de)legitimating Turkish EU membership?

Methodology

This study will employ a content analysis of the comments generated by the debate participants on the *Debate Europe Schools France* thread. Launched on January 30, 2014, this debate was initiated by the students from the Lycée Montchapet, France. The question addressed to a member of the European Parliament was the following: "Do you think Turkey should join the EU?" The MEP who answered the question was Traian Ungureanu, a Romanian MEP with the Centre-Right. Out of the 133 comments to the French students' questions, 110 comments addressed this controversial issue of Turkey's EU membership.

We transcribed the debate and the comments and imported them into QDA miner, a qualitative data analysis tool. The QDA miner codes facilitated the comparison across the codes of legitimation (L) and delegitimation (DL). The cluster analysis provided an insight into the codes co-occurences for this issue. Using Wordstat 7.0.13., a computer-program-assisted text analysis based on a text mining program, a correspondence analysis

[*] This model was developed in Cmeciu, Manolache, (2016 forthcoming).

was employed to identify the relationship between keywords and the (de)legitimation communication strategies.

We structured the codebook on three main categories:

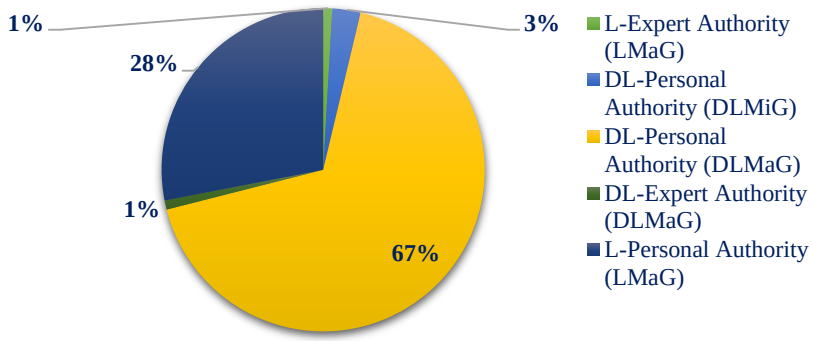
- the code *members* was structured on three codes: L/DL micro-group (MiG - participants who are directly affected by the topic debated; in our case, the Turks or other countries which have interacted with Turks); L/DL macro-group (MaG - participants who are EU citizens). Each of these groups was structured into four types of authority: personal authority (participants who tell their own experience related to the topic debated); expert authority (participants who are experts in the topic debated upon); role model authority (participants who are a role model in the MS or EU country); impersonal authority (participants who mention rules, laws to (de)legitimate the topic).
- the code *recipients* was structured on five codes: Lr/DLr EU institutions (a EU institution is (de)legitimated); Lr/DLr macro-group (a EU country or organizations from a EU country are (de)legitimated); Lr/DLr micro-group (a community - Turkey is (de)legitimated); Lr/DLr individual (a debate participant is (de)legitimated).
- the code *communication strategies* was structured on three codes for legitimation and delegitimation: L-credit claiming (Ls1 - participants attribute success to themselves, as part of the micro-group/Turkey - MiG, macro-group - MaG, or EU institutions); L-credit granting (Ls2 - participants attribute success to others - to another micro-group, macro-group or EU institutions); L-requesting others (Ls3 - participants urges other actors to perform a certain action. These actors belong to a micro-group, macro-group or EU institution); DL-admitting mistakes (DLs1 - participants attribute failures to themselves, as part of the micro-group/ Turkey, macro-group or EU institutions); DL-blame shifting (DLs2 - participants attribute failures to others - to another micro-group, macro-group or EU institutions); DL-requesting others (DLs3 - participants urges other actors to stop a certain action. These actors belong to a micro-group, macro-group or EU institution).

Salience of (De)legitimation Members and Communication Strategies

The analysis of the coding frequency of L-members (legitimation members) and D-members (delegitimation members) shows a salience of delegitimators (RQ1). Figure 1 shows the distribution of (de)legitimators. As observed, DL-Personal Authority (DLMaG) outscored (67%) all the other types of debate participants who legitimated or delegitimated the Turkish EU membership. This code refers to users expressing their opinions (personal authority) as delegitimating citizens belonging to a member state. Two important aspects should be highlighted:

a. Traian Ungureanu (MEP), as an expert authority, positioned himself both as a legitimator and as a delegitimator of this issue. A thorough explanation of Ungureanu's twofold position will be explained in the cluster analysis.
b. Although the percentage is not high, delegitimators as personal authorities belonging to micro-groups (DL-Personal Authority (MiG) are a category that is present in this debate. They refer to those debate participants who explicitly mention their country of origin and who argue about the cultural differences between Turkey and Bulgaria, for example.

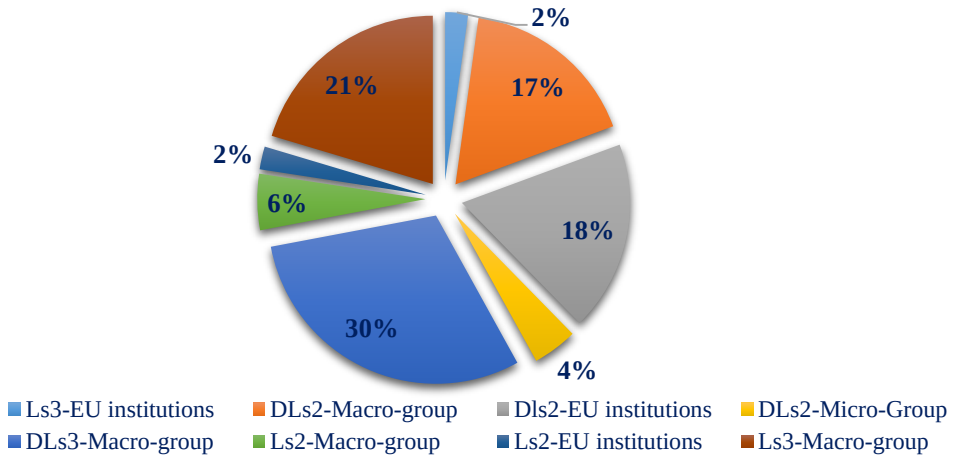
Figure 1. (De)legitimation members – Turkish EU membership



Source: Author's own compilation

Figure 2 shows the most frequently used (de)legitimation communication strategies (RQ1). As observed, the delegitimation (DL) strategies (70%) outscored the legitimation (L) strategies (30%) The top four communication strategies used by the debate participants were: a) the delegitimation strategy of requesting a certain action from a macro-group (DLs3-Macro-Group) – 31%; (b) the legitimation strategy of requesting a certain action for a macro-group (Ls3-Macro-Group) – 21%; c) the delegitimation strategy of blame shifting on EU institutions (DLs2-EU institutions) – 18%; d) the delegitimation strategy of blame shifting on a macro-group (DLs2-Macro-Group) – 17%. In most cases, the macro-group was associated with Turkey since the debate participants who commented belonged to a member state. When delegitimated, Turkey was requested not to join the EU for political or cultural reasons. When legitimated, Turkey was requested either to join the EU for economic reasons or to think twice before becoming a EU member.

Figure 2. (De)legitimation communication strategies – Turkish EU membership

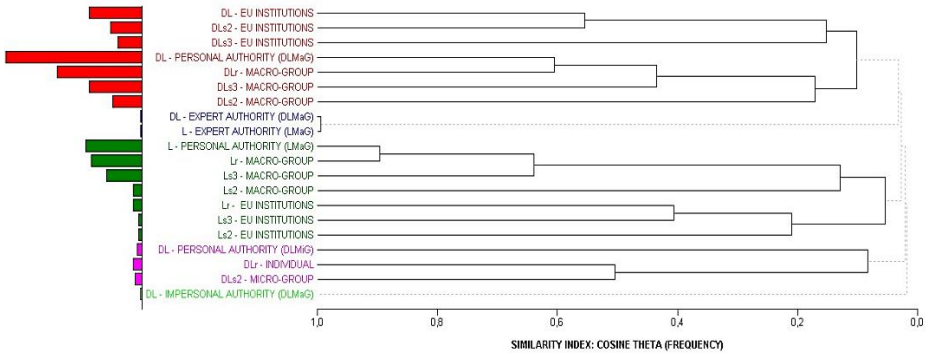


Source: Author's own compilation

(De)legitimation Members, Recipients and Communication Strategies – Cluster Analysis

Figure 3 is the dendrogram obtained for the coding co-occurrence of (de)legitimation members, recipients and communication strategies.

Figure 3. Cluster analysis[*] – coding co-occurrence



Source: Author's own compilation

The following clusters were formed:

• *DL-Personal Authority (DLMaG) – DLr-Macro-Group – DLs3-Macro-Group – DLs2-Macro-Group – DL-EU institutions – DLs2 – EU institutions – DLs3-EU institutions.* As observed, this cluster had the most frequently used codes. The debate participants (*DL-Personal Authority*) delegitimated Turkey's possible EU membership (*DLr-Macro-Group*. Some delegitimators have three mains requests from Turkey (*DLs3-Macro-Group*): withdrawal from Cyprus (Natam Simonian), making serious changes regarding the Kurdish problem or respecting the human rights and freedom of the press (Pavlos Vasileiadis). These demands are closely linked to the 'blame shifting' strategy (*DLs2-Macro-Group*). Turkey is blamed by the debate participants for not having recognized the Armenian genocide (Natam Simonian), for Erdogan's ruling measures (Tsvetanka Boeva), for being terrorists (Selem Juakali Mwangalaba) or for not being culturally European (Dominik Gora). Another delegitimation recipient in this cluster is the EU. Some debate participants shift the blame on the EU for "not working properly" (Aelxandros) and request the EU "to solve its own problems than talk about new members" (Catalin Vasile). This double 'blame shifting' strategy is also used by Traian Ungureanu, a Romanian MEP with the Centre-Right, who was invited to answer a French pupil's question regarding the Turkey's EU membership. The MEP considers, on the one hand, that Turkey has gone through new internal problems which are not speeding up the process and on the other hand, that the EU has launched an 'endless debate' about the Turkey's membership 30 years ago.

• *L-Personal Authority (LMaG) – Lr-Macro-Group – Ls3-Macro-Group – Ls2-Macro-Group – Lr-EU institutions – Ls3-EU institutions – Ls2-EU institutions*. The debate participants (*L-Personal Authority*) legitimated Turkey (*Lr-Macro-Group*) as a future EU member. Some participants provided the 'credit granting' strategy (*Ls2-Macro-*

[*] The conditions for the dendrogram were the following: for *clustering* – occurence (Windows of n paragraphs – nb of paragraphs - 5), index (Cosine theta); for *multidimensional scaling options* – tolerance – 0,000001, maximum iterations – 500.

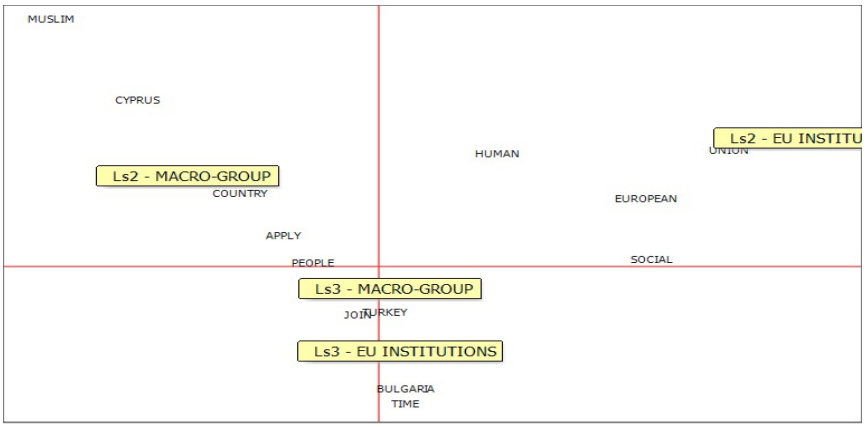
Group), thus attributing qualities to Turkey which may trigger an economic benefit for the EU – Goksun Birgul). Some other participants used the 'requesting others' strategy, implicitly urging Turkey to think twice before joining the EU (Karel van Isacker). The presence of the EU as a legitimation recipient may be explained in terms of the mutual political and economic gains associated with the Turkish EU membership. Besides the economic benefit mentioned above, some debate participants consider that this membership will turn the EU or Turkey into a leader of the Asian Union (Fuat Aslan).

- *DLr-Individual – DLs2-Micro-Group – DL-Personal Authority (DLMiG)*. This instance of coding co-occurrence refers to a disagreement among debate participants, where one participant delegitimates another participant (DLr-Individual). For example, it is the case of the comment exchange between Firat Güllü (a member of the Turkish micro-group) who accuses Ana Georgieva (a Bulgarian) for being racist.

Correspondence Analysis – Keywords and (De)Legitimation Communication Strategies

The correspondence analysis helped us in finding the relationship between keywords and legitimation communication strategies (Figure 4) and delegitimation communication strategies (Figure 5). The WordStat 7.0.13 conditions to find the frequency of keywords for (de)legitimation strategies were: case occurrence higher or equal to 3, a maximum of 300 items based on Tf*Idf. The crosstab results for the two types of communication strategies are in the appendix of this study. In the cases to be analysed, 16 most frequently used keywords were associated with legitimation strategies, whereas 31 keywords were associated with delegitimation strategies (see the appendix). This discrepancy may be explained by a higher frequency of delegitimation strategies (see Figure 2). The correspondence plot allows us to make meaningful interpretation of the general locations of row points (keywords) and column points (legitimation and delegitimation strategies).

Figure 4. Correspondence analysis – Legitimation communication strategies*

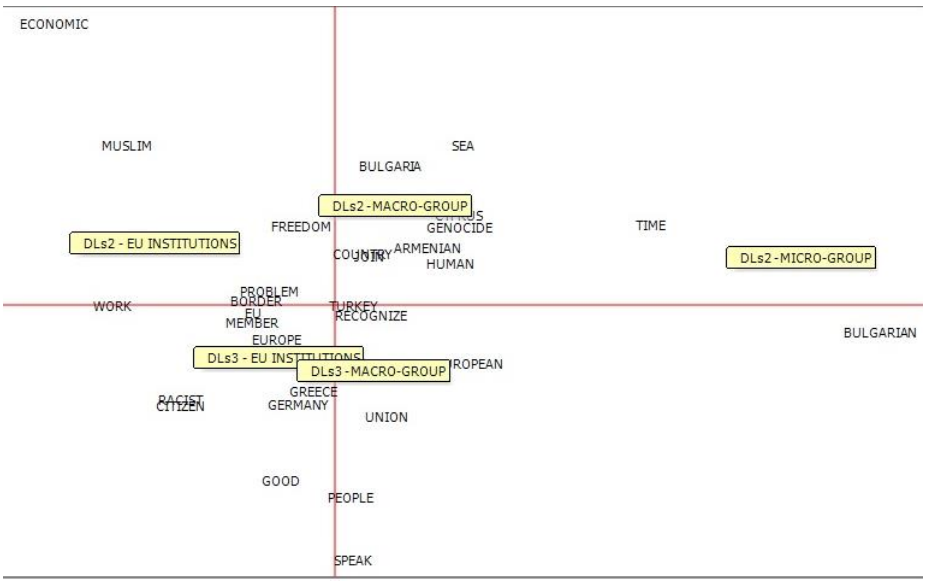


Source: Author's own compilation

* In this study, the horizontal axis (dimension 1) accounted for 54.40% and the vertical axis (dimension 2) accounted for 33.15%.

The horizontal dimension is characterized by the keyword "people" on the left and by "social" on the right and is determined by the Ls3-Macro-Group communication strategy (requesting a macro-group to act in a certain way). The "Ls2-EU institutions" strategy is closely located to the keywords "union" and "European", which can be interpreted as granting credit to the EU for its desire to apply a unity among European countries, Turkey included. The keywords "Cyprus" and "Muslim" are more characteristic to the "Ls2-Macro-Group" since they are farther from the origin. Thus Turkey gets credit from some debate participants for "being the most open country among Muslim countries" (François) and it is thought to have done a favor to Cyprus (Alexandros). The presence of the keyword "Muslim" related to a legitimation strategy is consistent with the liberal multiculturalism frame, mentioned in the study of Koening et al. (2006) or with the religious expression analysed by V. Mihalcea Chiper (2013) in her study. "Turkey", "join", "time" and "Bulgaria" are closely located to the two 'requesting others' legitimation strategies (Ls3-Macro-Group and Ls3-EU institutions). These keywords imply that the debate participants request Turkey to join the EU and they demand the EU to accept Turkey as a member state. "Bulgaria" is a keyword characteristic to Ls3-Macro-Group because this country is interpreted as a good partner of Turkey because of their historical past (Vassilena Stankova).

Figure 5. Correspondence analysis – Delegitimation communication strategies[*]



Source: Author's own compilation

The horizontal dimension seems to be largely determined by the keywords "work", "border", "problem", "Turkey", "recognized". According to this correspondence

[*] In this study, the horizontal axis (dimension 1) accounted for 47.32% and the vertical axis (dimension 2) accounted for 25.26%.

plot, most keywords and delegitimation strategies are closely positioned around the zero point. The "DLs2-Micro-Group" is closely related to the keyword "Bulgarian", which can be interpreted as a disagreement between a Bulgarian and a Turkish debate participant (see the last coding co-occurrence in the cluster analysis section). The position of 'blaming shift' delegitimation strategies (DLs2) and 'requesting others' delegitimation strategies (DLs3) on the correspondence plot clearly shows a polarized distribution of the reasons why Turkey should not join the EU and of the actions which should not be taken both by Turkey and the EU.

The "DLs2-Macro-Group" is clustering with "Cyprus", "genocide", "Armenian", "human" or "freedom". These keywords describe the failures that debate participants attribute to Turkey. It is interesting to observe that "Cyprus" is a keyword present both for legitimation and delegitimation strategies. But unlike the participants who legitimate Turkey for their action in Cyprus, there were a great number of debate participants who expressed their opinions against the Cyprus dispute. "Muslim" and "economic" are two keywords characteristic to the "DLs2-EU institutions" since they are farther from the origin on the correspondence plot. The EU is accused for caring about the economic disaster only that takes place inside the EU (Ahmet Furkan) and it is considered that a mere economic foundation is not a solid argument to build Europe (Panagiotis Salonikidis). Besides "Cyprus", "Muslim" is another keyword used both for legitimation and delegitimation strategies. But whereas the legitimating participants used it to express a liberal multiculturalism frame, the delegitimating participants refer to what Koening et al. (2006) identify as a clash of civilization frame. Some EU citizens consider that it would be weird to have a conservative Muslim nation as the most populous EU member (Christus Maior) or that Turkey is an Asian country with a Muslim fanatic religion (Mirko Marinov).

"Germany" and "Greece" are two keywords that are closely located near the delegitimation "requesting others" strategy (DLs3) whose recipients are Turkey as a macro-group and EU institutions. Whereas Turkey is asked to solve the frontier problems with Greece (Catalin Vasile), the EU is implicitly required not to destroy Turkey as it did with Greece, Bulgaria or Romania (Gina Stodinetchi). "Germany" is used in comparison to Turkey. Debate participants either mention that even Germany still has problems with neo nazi (Sunny Sany) and ask the German officials to solve this problem before talking about the Turkish problems or accuse Germany of implementing a political system where freedom of speech is not allowed (Marcel).

Conclusions

Online subsidiarity where citizens are the new power-holders through an online empowerment seems to be the key concept beyond the *Debating Europe* platform. Since the working principle beyond this platform is to facilitate a dialogue between policy-makers and citizens and since Turkish EU membership has been a controversial issue, one cannot speak of the existence of a shared structure of meaning, but rather of conflicted opinions. Starting from this implicit diversity of opinions regarding Turkey's EU membership, I wanted to determine the salience of (de)legitimators and of communication strategies used and the keywords associated with these strategies. The findings revealed the three aspects. The delegitimators outscored the legitimators and they positioned themselves as citizens belonging to member states and having a personal authority regarding this issue. The presence of delegitimating debate participants belonging to a micro-group shows on the one hand, that citizens explicitly mentioned their country of origin, and on the other hand, that there was interaction between debate participants but

mainly focused on disagreement. The distribution of communication strategies is consistent with the salience of (de)legitimators. The delegitimation strategies outscored the legitimation strategies and they mainly focused on shifting the blame on the EU and on Turkey. This type of delegitimating strategy could be explained in terms of the keywords used by the debate participants. The cluster analyses, crosstab results and the correspondence analyses showed that Turkey is blamed for its political actions in Cyprus, Greece or Armenia or for its ethno-nationalist beliefs whereas the EU is blamed for not allowing multiculturalism and for associating Turkey with a negative valence of the economic outcomes of a possible Turkish EU membership. At the same time, the legitimation strategies should not be ignored. Some debate participants emphasize either the independence dimension of a nationalist frame, arguing that it is better for Turkey not to join the EU or the positive valence of the economic consequences that Turkish EU membership may have upon the EU and other member states.

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Appendix

Crosstab results of legitimation communication strategies

	Ls2 - MACRO-GROUP	Ls2 - EU INSTITUTIONS	Ls3 - MACRO-GROUP	Ls3 - EU INSTITUTIONS
ASIA	2		2	
BULGARIA			3	1
COUNTRIES	3		3	
COUNTRY	3		4	
CYPRUS	3		1	
EU	6		17	3
EUROPE			6	
EUROPEAN		3	5	
GOOD	1		5	
HUMAN	1	1	2	
JOIN	1		5	1
JOINING	1		7	
MUSLIM	3			
PEOPLE	1		3	
RIGHTS	1	1	2	
SOCIAL		1	1	1
TURKEY	4	1	30	3
UNION		4	5	

Crosstab results of delegitimation communication strategies

	DLs2 - MACRO-GROUP	DLs2 - EU INSTITU-TIONS	DLs2 - MICRO-GROUP	DLs3 - MACRO-GROUP	DLs3 - EU INSTITU-TIONS
ARMENIAN	4			3	1
BORDER	1	1		1	1
BULGARIA	1	2	1		1
BULGARIAN			2	1	1
CITIZEN		1		1	1
COUNTRY	4	4	2	2	6
CYPRUS	7			5	
DEMOCRACY	1	1		2	1
ECONOMIC	1	3			
EU	6	7		8	7

EUROPE	1	4	1	3	5
EUROPEAN	1	1	1	4	1
FREEDOM	2	1		1	1
GENOCIDE	4			3	
GERMANY	1	1		3	2
GOOD		1		3	1
GREECE	1	1		3	1
HUMAN	2	1	1	1	2
JOIN	4	1		3	1
MEMBER	2	3		4	3
MUSLIM	2	4			2
PEOPLE	1			4	3
PROBLEM	3	3		4	3
RACIST		1		1	1
RECOGNIZE	2	1		4	
SEA	2			1	
SPEAK				2	1
TIME	2		1	2	
TURKEY	11	4		13	4
UNION	2			4	2
WORK		2		1	1

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-Religion, cultural history and education;
-Media, communication and politics;
-Discourse, language and social encounters;
-Bioethics and transition challenges;

ABSTRACT SUBMITTING (SEE CEPOS CONFERENCE 2017 REGISTRATION FORM on cepos.eu)
The proposals must be sent in English and must contain the title of the paper, the abstract (no more than 300 words) and a short presentation of the author(s) (statute, institutional affiliation, short list of relevant scientific contributions).

DEAD-LINE FOR SUBMITTING A PROPOSAL**: 20 FEBRUARY 2017**
Proposals must be submitted until 20 February 2017 at the following addresses:
Center of Post-Communist Political Studies (CEPOS) cepos2013@gmail.com, cepos2013@yahoo.com

CONFERENCE VENUE
Casa Universitarilor/University House (57 Unirii Street, Craiova, Romania).
You can view the Conference location and a map at the following address:
http://www.casa-universitarilor.ro/
- More information about the Conference venue can be found at the following address:
http://www.ucv.ro/campus/puncte_de_atractie/casa_universitarilor/prezentare.php'
- More photos of the conference room can be viewed at
http://www.ucv.ro/campus/puncte_de_atractie/casa_universitarilor/galerie_foto.php

CONFERENCE PAST EDITIONS
More information, photos and other details about the previous editions of the Conference

and CEPOS Workshops, Internships, and other official events organized in 2012-2016 are available on:
- CEPOS official website sections
Past Events available at http://www.cepos.eu/past.html
Foto Gallery available at http://www.cepos.eu/gallery.html) - CEPOS FACEBOOK ACCOUNT:
https://www.facebook.com/pages/Center-of-Post-Communist-Political-Studies-CEPOS/485957361454074

CONFERENCE INTERNATIONAL INDEXING OF THE PAST EDITIONS

CEPOS Conference 2016
The Sixth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 8-9 April 2016) was evaluated and accepted for indexing in the following international databases, catalogues and NGO's databases:

- ELSEVIER GLOBAL EVENTS
http://www.globaleventslist.elsevier.com/events/2016/04/6th-international-conference-after-communism-east-and-west-under-scrutiny/
- Oxford Journals – Oxford Journal of Church & State
http://jcs.oxfordjournals.org/content/early/2016/02/06/jcs.csv121.extract
- Conference Alerts
http://www.conferencealerts.com/country-listing?country=Romania
- Conferences-In
http://conferences-in.com/conference/romania/2016/economics/6th-international-conference-after-communism-east-and-west-under-scrutiny/
- Socmag.net
http://www.socmag.net/?p=1562
- African Journal of Political Sciences
http://www.maspolitiques.com/mas/index.php?option=com_content&view=article&id=450:-securiteee-&catid=2:2010-12-09-22-47-00&Itemid=4#.VjUI5PnhCUk
- Researchgate
- https://www.researchgate.net/publication/283151988_Call_for_Papers_6TH_International_Conference_After_Communism._East_and_West_under_Scrutiny_8-9_April_2016_Craiova_Romania
- World Conference Alerts
http://www.worldconferencealerts.com/ConferenceDetail.php?EVENT=WLD1442
- Edu events
http://eduevents.eu/listings/6th-international-conference-after-communism-east-and-west-under-scrutiny/
- Esocsci.org
http://www.esocsci.org.nz/events/list/
- Sciencedz.net
http://www.sciencedz.net/index.php?topic=events&page=53
- Sceince-community.org
http://www.science-community.org/ru/node/164404/?did=070216

CEPOS Conference 2015
The Fifth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 24-25 April 2015) was evaluated and accepted for indexing in 15 international databases, catalogues and NGO's databases:
- THE ATLANTIC COUNCIL OF CANADA, CANADA
http://natocouncil.ca/events/international-conferences/
- ELSEVIER GLOBAL EVENTS LIST
http://www.globaleventslist.elsevier.com/events/2015/04/fifth-international-conf
- GCONFERENCE.NET
http://www.gconference.net/eng/conference_view.html?no=47485&catalog=1&cata=018&co_kind=&co_type=&pageno=1&conf_cata=01
- CONFERENCE BIOXBIO http://conference.bioxbio.com/location/romania
- 10 TIMES http://10times.com/romania
- CONFERENCE ALERTS http://www.conferencealerts.com/country-listing?country=Romania
- http://www.iem.ro/orizont2020/wp-content/uploads/2014/12/lista-3-conferinte-internationale.pdf
- http://sdil.ac.ir/index.aspx?pid=99&articleid=62893
- NATIONAL SYMPOSIUM http://www.nationalsymposium.com/communism.php
- SCIENCE DZ http://www.sciencedz.net/conference/6443-fifth-international-conference-after-communism-east-and-west-under-scrutiny
- ARCHIVE COM http://archive-com.com/com/c/conferencealerts.com/2014-12-01_5014609_70/Rome_15th_International_Academic_Conference_The_IISES/
- CONFERENCE WORLD http://conferencesworld.com/higher-education/
- KNOW A CONFERENCE KNOW A CONFERENCE
http://knowaconference.com/social-work/
- International Journal on New Trends in Education and Their Implications (IJONTE) Turkey http://www.ijonte.org/?pnum=15&
- Journal of Research in Education and Teaching Turkey
http://www.jret.org/?pnum=13&pt=Kongre+ve+Sempozyum
CEPOS CONFERENCE 2015 is part of a "consolidated list of all international and Canadian conferences taking place pertaining to international relations, politics, trade, energy and sustainable development". For more details see
http://natocouncil.ca/events/international-conferences/

CEPOS Conference 2014
The Fourth International Conference After Communism. East and West under Scrutiny, Craiova, 4-5 April 2014 was very well received by the national media and successfully indexed in more than 9 international databases, catalogues and NGO's databases such as:
American Political Science Association, USA, http://www.apsanet.org/conferences.cfm;
Journal of Church and State, Oxford
http://jcs.oxfordjournals.org/content/early/2014/01/23/jcs.cst141.full.pdf+html;
NATO Council of Canada (section events/ international conferences), Canada,
http://atlantic-council.ca/events/international-conferences/
International Society of Political Psychology, Columbus, USA,
http://www.ispp.org/uploads/attachments/April_2014.pdf
Academic Biographical Sketch, http://academicprofile.org/SeminarConference.aspx;

Conference alerts, http://www.conferencealerts.com/show-event?id=121380;
Gesis Sowiport, Koln, Germany, http://sowiport.gesis.org/; Osteuropa-Netzwerk, Universität Kassel, Germany, http://its-vm508.its.uni-kassel.de/mediawiki/index.php/After_communism_:_East_and_West_under_scrutiny_:_Fourth_International_Conference
Ilustre Colegio Nacional de Doctores y Licenciados en Ciencias Politicas y Sociologia, futuro Consejo Nacional de Colegios Profesionales, Madrid, http://colpolsocmadrid.org/agenda/.

TRANSPORT
The 7th International Conference "After communism. East and West under Scrutiny" (2017) will be held in Craiova, a city located in the South-Western part of Romania, at about 250 km from Bucharest, the national capital.
The airport of Craiova (http://en.aeroportcraiova.ro/) has flights to Timisoara, Dusseldorf, Munchen, Ancone, Rome, Venezia, London, Bergamo etc.
Other airports, such as Bucharest (Romania) (http://www.aeroportul-otopeni.info/) is located at distances less than 240 km from Craiova and accommodate international flights.
Train schedule to Craiova can be consulted at InterRegio CFR (http://www.infofer.ro/) and SOFTRANS (http://softrans.ro/mersul-trenurilor.html).

ACCOMMODATION
Rooms can be booked at:
Hotel Royal, http://www.hotelroyalcraiova.ro/
Hotel Meliss, http://www.hotelmeliss.ro/
Hotel Lido, http://www.lido-craiova.ro/
Hotel Europeca, http://www.hoteleuropeca.ro/en/

CEPOS CONFERENCE 2017 FEES AND REGISTRATION REGISTRATION DESK
The Conference Registration Desk will be opened from Friday, 24th of March 2017 (from 08.00 a.m. to 18.00 p.m.) until Saturday 25th of March 2017 (from 08.00 a.m. until 14.00 p.m.), for registration and delivery of conference bag with documents to participants.
The Conference Registration Desk is located in the lobby of the University House Club, 1st Floor.

REGISTRATION FEES
90 euros/paper can be paid directly via bank transfer on CEPOS Bank account as follows:
Details for online payment
Banca Romana pentru Dezvoltare (BRD)
Owner: ASOCIATIA CENTRUL DE STUDII POLITICE POSTCOMUNISTE
Reference to be mentioned: CV taxa participare si publicare CEPOS
Account Number: RO64BRDE170SV96030911700 (RON)

MEALS AND OTHER ORGANIZING DETAILS
The registration fee covers:
* Conference attendance to all common sessions, individual and special panels

* Conference materials (including a printed version of the Book of Abstracts of the Conference)
* Conference special bag - 1 for every single fee paid, no matter the number of authors/paper
* Coffee Breaks-March 24, 2017 – March 25, 2017. During the two days conference, 4 coffee breaks are offered.
* Welcome reception (March 24, 2017)
* Lunch (March 24, 2017) offered in the University House Mihai Eminescu Gala Room
* A Festive Gala Dinner and Cocktail (March 24, 2017) offered in the University House Mihai Eminescu Gala Room
* A Free Cocktail Buffet will be served from 19:30 p.m. to 21.30 p.m.
* A Free Entrance Voucher is provided inside of each Conference Bag.
* Lunch (March 25, 2017)
* Certificate of attendance (offered at the end of the conference March 25, 2017)
* Publication of the Conference Papers in the International Indexed Journal Revista de Stiinte Politice. Revue des Sciences Politiques (previous publication of the 2016 Conference papers is available at http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php (RSP issues/ 2016)
* One original volume of the International Indexed Journal Revista de Stiinte Politice. Revue des Sciences Politiques (where the personal conference paper was published) will be delivered to the authors (an additional fee of 10 euros is required for the mailing facilities)
* Computer & Internet Facilities. There is available videoproiector and connection to Internet services.
* Language. The official language of the Conference will be English. The Organizing Committee does not provide simultaneous translation.

NEW! FREE SOCIAL AND CULTURAL PROGRAMME OF THE CEPOS CONFERENCE 2017
* Participants in CEPOS CONFERENCE 2017 have free acces to the Social and Cultural Program of the Seventh Edition of the International Conference After Communism. East and West under Scrutiny, Craiova, 24-25 March 2017: including free guided tours of the:
Museum of Arts Craiova http://www.muzeuldeartacraiova.ro/
Oltenia Museum (all sections included):
http://www.muzeulolteniei.ro/index.php?view=content&c=26
Casa Baniei http://www.muzeulolteniei.ro/index.php?view=content&c=26

CERTIFICATES OF ATTENDANCE
Certificates of attendance will be offered at the end of the conference on Saturday, March 25, 2017

PUBLISHING THE PAPERS IN THE INTERNATIONAL INDEXED JOURNAL REVISTA DE STIINTE POLITICE. REVUES DES SCIENCES POLITIQUES

After the reviewing process, the conference papers will be published in Revista de Stiinte Politice/Revue des Sciences Politiques.
The whole text of the papers must be written in English and delivered until April 3, 2017

at the following addresses:
Center of Post-Communist Political Studies (CEPOS) cepos2013@yahoo.com, cepos2013@gmail.com
Important note: All conference materials presented at the:
- Second International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 2-3 March 2012) were published in no. 33-34, 35 and 36/ 2012 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).
See the full text (free acces) at the following address:http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php
- Third International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 5-6 April 2013) were published in no. 37-38, 39, 40/ 2013 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).
See the full text (free acces) at the following address:
http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php
-Fourth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 4-5 April 2014) were published in no. 41, 42, 43, 44/ 2014 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).
See the full text (free acces) at the following address:
http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php.
- Fifth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 24-25 April 2015) were published in no. 45, 46 (pending publication -47 and 48/ 2015 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).
- Sixth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 8-9 April 2016) are published in no. 49, 50, 51, 52/ 2016 of the Revista de Stiinte Politice. Revues des Sciences Politiques (RSP).

See the full text (free acces) at the following address:
http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php.

INTERNATIONAL INDEXING OF REVISTA DE STIINTE POLITICE/REVUE DES SCIENCES POLITIQUES
Revista de Stiinte Politice/Revue des Sciences Politiques is an International Indexed Journal by:
ProQuest
ERIH PLUS
ProQuest Political Sciences
EBSCO
KVK
Gale Cengage Learning
Index Copernicus
Georgetown University Library
Elektronische Zeitschriftenbibliothek EZB
Journal Seek
Intute Social Sciences.

Revista de Stiinte Politice. Revue des Sciences Politiques. Indexing and abstracting in other relevant international databases, services and library catalogues
Statistics June, 2015

Google Scholar
https://scholar.google.com/citations?user=geaF_FgAAAAJ&hl=ro

ProQuest 5000 International
http://tls.proquest.com/tls/servlet/ProductSearch?platformID=1&externalID=770&vdID=6 14505/ PM ID 99 909

Birmingham Public Library, United Kingdom
http://www.bplonline.org/virtual/databases/journals.as/px?q=R&p=36

Harold B. Lee Library, Brigham Young University
http://sfx.lib.byu.edu/sfxlcl3?url_ver=Z39.88-2004&url_ctx_fmt=info:ofi/fmt:kev:mtx:ctx&ctx_enc=info:ofi/enc:UTF-8&ctx_ver=Z39.88-2004&rfr_id=info:sid/sfxit.com:azlist&sfx.ignore_date_threshold=1&rft.object_id=1000000000726583&rft.object_portfolio_id=&svc.holdings=yes&svc.fulltext=yes

Miami University Oxford, Ohio, USA
http://www.lib.miamioh.edu/multifacet/record/az-9ce56f97d1be33af92690283c0903908

German National Library of Science and Technology
https://getinfo.de/app/Revista-de-%C5%9Ftiin%C5%A3e-politice-Revue-des-sciences/id/TIBKAT%3A590280090

Bibliotek Hamburg
http://www.sub.uni-hamburg.de/recherche/elektronische-angebote/elektronische-zeitschriften/detail/titel/144583.html

Sabre Libraries of University of Sussex, University of Brighton and Brighton and Sussex NHS
http://sabre.sussex.ac.uk/vufindsmu/Record/1584224X/Details

University of Southern Denmark
http://findresearcher.sdu.dk:8080/portal/en/journals/revista-de-stinte-politice%28ca92579a-2621-46ec-946f-21e26f37364d%29.html

Edith Cowan Australia
http://library.ecu.edu.au:2082/search~S7?/.b2071921/.b2071921/1%2C1%2C1%2CB/marc~b2071921

University College Cork, Ireland
http://cufts2.lib.sfu.ca/CJDB4/CCUC/journal/375867
Region Hovedstaden Denmark

http://forskning.regionh.dk/en/journals/revista-de-stinte-politice%2811468a3a-a8be-4502-b8d6-718255c47677%29.html

WorldCat
https://www.library.yorku.ca/find/Record/muler82857

York University Library, Toronto, Ontario, Canada
https://www.library.yorku.ca/find/Record/muler82857

The University of Chicago, USA
https://catalog.lib.uchicago.edu/vufind/Record/sfx_1000000000726583

Wellcome Library, London, United Kingdom
http://search.wellcomelibrary.org/iii/encore/search/C__Scivil%20law__Orightresult__X0;jsessionid=86D8DE0DF1C54E503BEF1CB1168B6143?lang=eng&suite=cobalt

The University of Kansas KUMC Libraries Catalogue
http://voyagercatalog.kumc.edu/Record/143742/Description

University of Saskatchewan, SK
http://library.usask.ca/find/ejournals/view.php?i

Academic Journals Database
http://discover.library.georgetown.edu/iii/encore/record/C%7CRb3747335%7CSREVISTA+DE+STIINTE%7COrightresult?lang=eng&suite=def

Journal Seek
http://journalseek.net/cgi-bin/journalseek/journalsearch.cgi?field=issn&query=1584-224X

Sherpa
http://www.sherpa.ac.uk/romeo/search.php?issn=1584-224X&showfunder=none&fIDnum=%7C&la=en

University of New Brunswick, Canada
https://www.lib.unb.ca/eresources/index.php?letter=R&sub=all&start=2401

State Library New South Wales, Sidney, Australia,
http://library.sl.nsw.gov.au/search~S1?/i1583-9583/i15839583/-3,-1,0,B/browse

Electronic Journal Library
https://opac.giga-hamburg.de/ezb/detail.phtml?bibid=GIGA&colors=7&lang=en&flavour=classic&jour_id=111736

Jourlib
http://www.jourlib.org/journal/8530/#.VSU7CPmsVSk

Cheng Library Catalog
https://chengfind.wpunj.edu/Record/416615/Details

Open University Malaysia
http://library.oum.edu.my/oumlib/content/catalog/778733

Wayne State University Libraries
http://elibrary.wayne.edu/record=4203588

Kun Shan University Library
http://muse.lib.ksu.edu.tw:8080/1cate/?rft_val_fmt=publisher&pubid=ucvpress

Western Theological Seminar
http://cook.westernsem.edu/CJDB4/EXS/browse/tags?q=public+law

NYU Health Sciences Library
http://hsl.med.nyu.edu/resource/details/175011

Swansea University Prifysgol Abertawe
https://ifind.swan.ac.uk/discover/Record/579714#.VSU9SPmsVSk

Vanderbilt Library
http://umlaut.library.vanderbilt.edu/journal_list/R/139

Wissenschftszentrum Berlin fur Sozial
http://www.wzb.eu/de/node/7353?page=detail.phtml&bibid=AAAAA&colors=3&lang=de&jour_id=111736

Keystone Library Network
https://vf-clarion.klnpa.org/vufind/Record/clarion.474063/Details

Quality Open Access Market
https://zaandam.hosting.ru.nl/oamarket-acc/score?page=4&Language=21&Sort=Ascending&SortBy=BaseScore

Elektronische Zeitschriftenbibliothek EZB (Electronic Journals Library)
http://rzblx1.uni-regensburg.de/ezeit/searchres.phtml?bibid=AAAAA&colors=7&lang=de&jq_type1=KT&jq_term1=REVISTA+DE+STIINTE+POLITICE

Harley E. French Librayr of the Health sciences
http://undmedlibrary.org/Resources/list/record/129818

Open Access Articles
http://www.openaccessarticles.com/journal/1584-224X_Revista_de_Stiinte_Politice+---

Vrije Universiteit Brussel
http://biblio.vub.ac.be/vlink/VlinkMenu.CSP?genre=journal&eissn=&issn=1584-

224X&title=Revista%20de%20Stiinte%20Politice

The Hong Kong University
http://onesearch.lib.polyu.edu.hk:1701/primo_library/libweb/action/dlDisplay.do?vid=HKPU&docId=HKPU_MILLENNIUM22899443&fromSitemap=1&afterPDS=true

Biblioteca Universitaria di Lugano
https://en.bul.sbu.usi.ch/search/periodicals/systematic?category=10&page=34&per_page=10&search=

Olomuc Research Library, Czech Republic
http://aleph.vkol.cz/F?func=find-c&ccl_term=sys=000070018&con_lng=eng&local_base=svk07

California State University Monterey Bay University
http://sfx.calstate.edu:9003/csumb?sid=sfx:e_collection&issn=1584-224X&serviceType=getFullTxt

University of the West
http://library.uwest.edu/booksub.asp?OCLCNo=9999110967

Elektron ische Zeitschriften der Universität zu Köln
http://mobil.ub.uni-koeln.de/IPS?SERVICE=TEMPLATE&SUBSERVICE=EZB_BROWSE&SID=PETERSPFENNIG:1460334557&LOCATION=USB&VIEW=USB:Kataloge&BIBID=USBK&COLORS=7&LANGUAGE=de&PAGE=detail&QUERY_URL=jour_id%3D111736&REDIRECT=1

Biblioteca Electronica de Ciencia y Technologia
http://www.biblioteca.mincyt.gob.ar/revistas/index?subarea=148&area=34&gran_area=5&browseType=discipline&Journals_page=17

University of Huddersfield UK
http://library.hud.ac.uk/summon/360list.html

Saarlandische Universitats-und lasdesbibliotek Germany
http://www.sulb.uni-saarland.de/index.php?id=141&libconnect%5Bjourid%5D=111736
EKP Pulications
http://www.sulb.uni-saarland.de/index.php?id=141&libconnect%5Bjourid%5D=111736

OHSU Library
http://www.ohsu.edu/library/ejournals/staticpages/ejnlr.shtml

Valley City State University
http://www.ohsu.edu/library/ejournals/staticpages/ejnlr.shtml

Centro de Investigaciones Sociologicas, Spain

http://www.cis.es/cis/export/sites/default/-

Archivos/Revistas_de_libre_acceso_xseptiembre_2010x.pdf
Drexel Libraries
http://innoserv.library.drexel.edu:2082/search~S9?/aUniversitatea+%22Babe%7Bu0219%7D-Bolyai.%22/auniversitatea+babes+bolyai/-3%2C-1%2C0%2CB/marc&FF=auniversitatea+din+craiova+catedra+de+stiinte+politice&1%2C1%2C

Impact Factor Poland
http://impactfactor.pl/czasopisma/21722-revista-de-stiinte-politice-revue-des-sciences-politiques

Pol-index
http://catalogue.univ-angers.fr/OPD01/86/61/40/00/OPD01.000458661.html

ILAN University Library
http://muse.niu.edu.tw:8080/1cate/?rft_val_fmt=publisher&pubid=ucvpress&set.user.locale=en_US

Dowling College Library
http://wwwx.dowling.edu/library/journaldb/keyword4.asp?jname=revista

Universite Laval
http://sfx.bibl.ulaval.ca:9003/sfx_local?url_ver=Z39.88-2004&url_ctx_fmt=info:ofi/fmt:kev:mtx:ctx&ctx_enc=info:ofi/enc:UTF-8&ctx_ver=Z39.88-2004&rfr_id=info:sid/sfxit.com:azlist&sfx.ignore_date_threshold=1&rft.object_id=1000000000726583&rft.object_portfolio_id=&svc.fulltext=yes

For more details about the past issues and international abstracting and indexing, please visit the journal website at the following address:

http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php.

RSP • No. 49 • 2016: 156-158

RSP MANUSCRIPT SUBMISSION

GUIDELINES FOR PUBLICATION
REVISTA DE ŞTIINŢE POLITICE. REVUE DES SCIENCES POLITIQUES (RSP)

Email: Manuscripts should be submitted online at rsp.editassist@gmail.com, cepos2013@yahoo.com and cepos2013@gmail.com with the following settings:

Page setup: B5 JIS
Paper title: For the title use Times New Roman 16 Bold, Center.

Author(s): For the Name and Surname of the author(s) use Times New Roman 14 Bold, Center. About the author(s): After each name insert a footnote (preceded by the symbol *) containing the author's professional title, didactic position, institutional affiliation, contact information, and email address.

E.g.: Anca Parmena Olimid*, Cătălina Maria Georgescu**, Cosmin Lucian Gherghe***

* Associate Professor, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 00407******, Email: parmena2002@yahoo.com. (Use Times New Roman 9, Justified)
** Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 00407******, Email: cata.georgescu@yahoo.com. (Use Times New Roman 9, Justified)
*** Lecturer, PhD, University of Craiova, Faculty of Law and Social Sciences, Political Sciences specialization, Phone: 00407******, Email: avcosmingherghe@yahoo.com. (Use Times New Roman 9, Justified)

Author(s) are fully responsible for the copyright, authenticity and contents of their papers. Author(s) assume full responsibility that their paper is not under review for any refereed journal or conference proceedings.

Abstract
The abstract must provide the aims, objectives, methodology, results and main conclusions of the paper (please submit the papers by providing all these information in

the abstract). It must be submitted in English and the length must not exceed 300 words. Use Times New Roman 10,5, Justify.

Keywords
Submit 5-6 keywords representative to the thematic approached in the paper. Use Times New Roman 10,5, Italic. After the keywords introduce three blank lines, before passing to the Article text.

Text Font: Times New Roman: 10,5

Reference citations within the text Please cite within the text. Use authors' last names, with the year of publication.
E.g.: (Olimid, 2009: 14; Olimid and Georgescu, 2012: 14-15; Olimid, Georgescu and Gherghe, 2013: 20-23).

On first citation of references with more than three authors, give all names in full. On the next citation of references with more than three authors give the name of the first author followed by "et al.".

To cite one Article by the same author(s) in the same year use the letters a, b, c, etc., after the year.
E.g.: (Olimid, 2009a:14) (Olimid, 2009b: 25-26).

References: The references cited in the Article are listed at the end of the paper in alphabetical order of authors' names.
References of the same author are listed chronologically.

For books
Olimid, A. P., (2009a). *Viaţa politică şi spirituală în România modernă. Un model românesc al relaţiilor dintre Stat şi Biserică*, Craiova: Aius Publishing.
Olimid, A. P., (2009b). Politica românească după 1989, Craiova: Aius Publishing.
For chapters in edited books
Goodin, R. E. (2011). The State of the Discipline, the Discipline of the State. In Goodin, R. E. (editor), *The Oxford Handbook of Political Science*, Oxford: Oxford University Press, pp. 19-39.
For journal Articles
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Tables and Figures
Tables and figures are introduced in the text. The title appears above each table.
E.g.: Table 1. The results of the parliamentary elections (May 2014)

Proposed papers: Text of the Article should be between 4500-5000 words, single spaced, Font: Times New Roman 10,5, written in English, submitted as a single file that includes all tables and figures in Word2003 or Word2007 for Windows.
All submissions will be double-blind reviewed by at least two reviewers.