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

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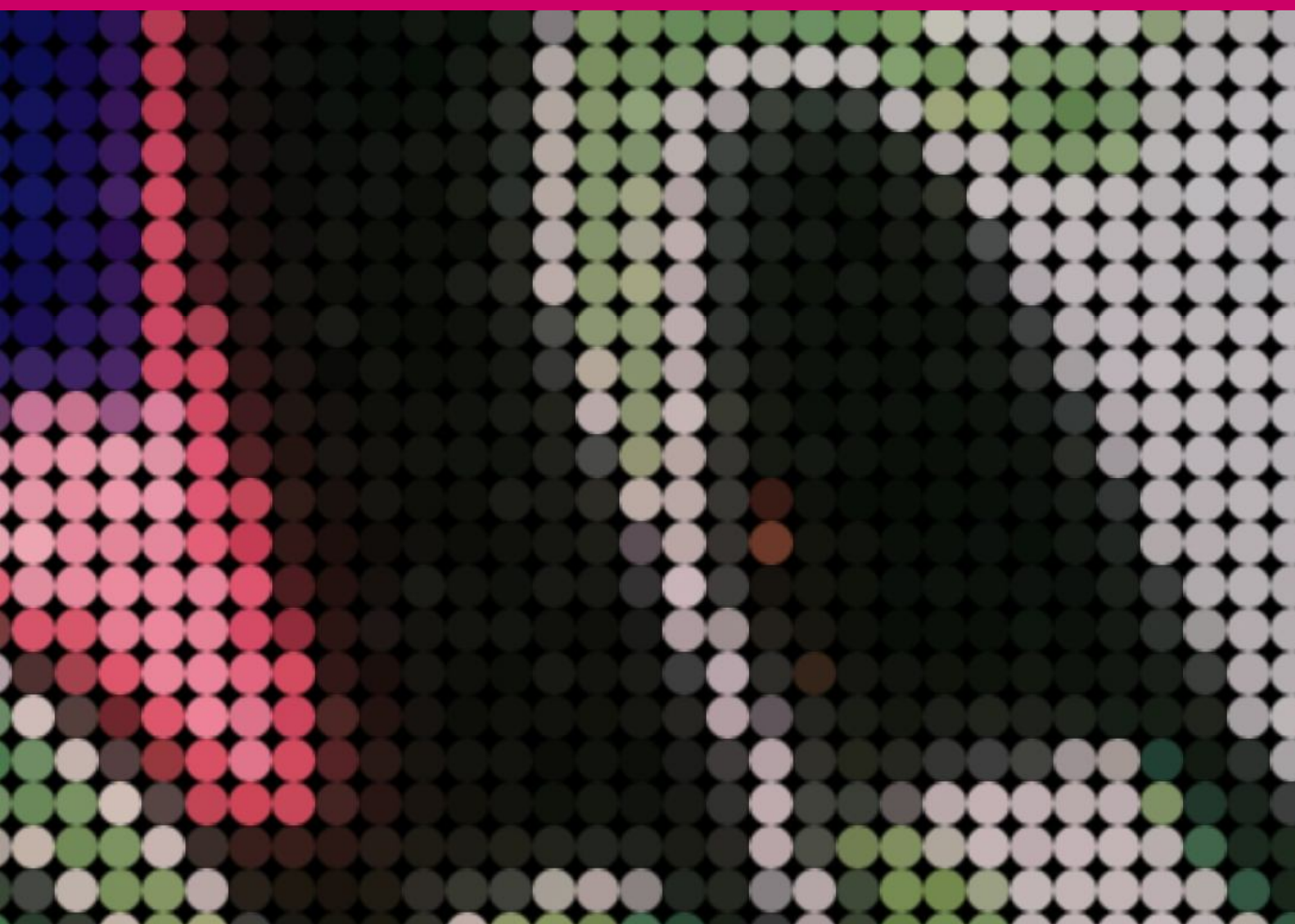

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Special Issue: ***East & West Post-Communist Encounters: Ideologies, Policies, Institutions Under Scrutiny***

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CEPOS

Editors' Note

Joint Note of the Editors of the *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, CEPOS STAFF (Center of Post-Communist Political Studies Staff) & CEPOS CONFERENCE 2014 Board of Directors

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

CEPOS Conference 2014 under Scrutiny

On the morning of April 4, 2014 participants in the Fourth International Conference After Communism. East and West under Scrutiny gathered in Craiova, where the authorities of the University of Craiova and Faculty of Law and Social Sciences and the three co-coordinators of the conference Associate Professor Anca Parmena Olimid, Ph.D., Lecturer Cătălina Maria Georgescu, Ph.D., Lecturer Cosmin Gherghe, Ph.D. (Political Sciences Specialization, University of Craiova, Editors at the Revista de Ştiinţe Politice. Revue des Sciences Politiques) welcomed all participants and media guests at the House of the University for the presentation of the keynote addresses of the conference and welcoming message of the Rector of the University, Professor Dan Claudiu Dănişor, Ph.D.

The official language of the conference was English (a few papers were presented in Romanian due to the specific of their research). In the plenary and common sessions of the first and second day the audience warmly welcomed the news structure of the CEPOS Conference 2014 ten Panels , workshops and working papers series such as: Political theory , ideology and social actions in transitions; Comparative policies and regional development;Transitions and justice reform; Integration, identity, mobility and

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human rights in European legal systems; Regional economics, public administration and social movements; Religion, cultural history and education in aglobal perspective; Revolution and political theory; Security and diplomacy in National and Euro-atlantic environment; Media, communication and politics; Public policies in trnasition (evaluation and fundamentals) , additional two workshops: Workshop 1: Ukraine-a New East & a New West and Workshop 2: Globalisation & East-West Challenges and CEPOS Student Working Papers Series 2014.

In brief, the conference gathered 18 countries participating: Romania, New Zealand, Czech Republic, Greece, Macedonia, Poland, Turkey, Armenia, Georgia, Spain, Moldova, Albania, Estonia, Azerbaijan, Serbia, Iraq, Japan, and Pakistan.

The conference also gathered the studies and research materials of more than 165 participants (senior researchers, academics, professionals) and the 4 young researchers panels and workshops organized within the THIRD INTERNATIONAL STUDENTS' SCIENTIFIC SYMPOSIUM AFTER COMMUNISM. EAST AND WEST UNDER SCRUTINY. They all reflected the current situation of the post-communist research focused on the following approaches: values and academia, social, legal and political controversies in communism and post-communism, reform of the political institutions, politics and politicians, integration, identity and mobility in Europe, history and political transition, political theory and action, regional economics, security and diplomacy, public policies etc.

At the end of the second day of the conference, four special international panels and workshops (see the titles above) gathered selected students' papers from the University of Craiova, Faculty of Law and Social Sciences, especially from the Political Sciences specialization. All students' papers pointed the changes occurred in the East and West thinking and action as a direct effect of the 25 years of transition.

CEPOS Conferences 2012-2014 under Scrutiny

All panels of the CEPOS Conferences Series 2012-2014 directly contacted those involved on both sides of the "post-communist bridge" as an encounter in time and space between History and Present/ East and West/ Old and New and as an inventorying of values, traditions, ideas, ideals models, and methods of researching the post-communist transition.

The conference panels organized during the last three editions of the CEPOS CONFERNCE involved a complex thematic of the post-communist transition considering public policies and regional development, political thinking and social representations, political action: citizens and elites, politics and public administration, cultural education and history, reforms and new policies in justice, political theories, doctrines and ideologies after communism, political parties and electoral participation, etc. (see Chart 1. CEPOS Dynamics Number of participants-Applications received-Students Participating in the Student Organizing Committee 2012-2014; Chart 2. CEPOS Dynamics of the Conference Workshops organized 2012-2014)

Chart 1. CEPOS Dynamics Number of participants-Applications received-Students Participating in the Student Organizing Committee 2012-2014

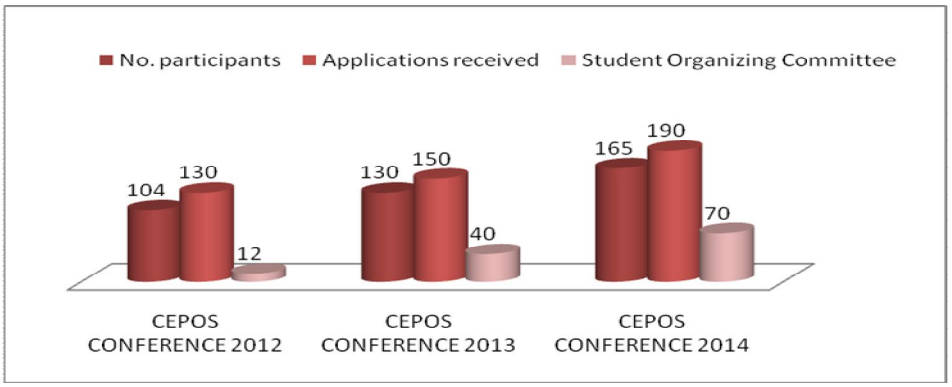

Chart 2. CEPOS Dynamics of the Conference Workshops organized 2012-2014

By all accounts and reviews, 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 Políticas y Sociología, futuro Consejo Nacional de Colegios Profesionales, Madrid, http://colpolsocmadrid.org/agenda/.

It was furthermore announced that the Fourth International Conference After Communism. East and West under Scrutiny would take place on 24-25 April 2014 at the University of Craiova. In short, the Fourth International Conference After Communism. East and West under Scrutiny created a descriptive and analytical sketch of what is usually referred to as post-communist period. The Organizing Committee presents its most sincere and warm thanks to all the members of the Scientific Committee: Professor Dan Claudiu Dănișor, Ph.D. (University of Craiova), Associate Professor Parmena Olimid, Ph. D. (University of Craiova), Lecturer Cătălina Georgescu, Ph. D. (University of Craiova), Lecturer Cosmin Gherghe, Ph. D. (University of Craiova), Professor Patricia Gonzalez-Aldea, Ph.D. , (Universidad Carlos III, Madrid, Spain), Professor Hasan Jashari, Ph.D. (South East European University, Skopje, FYROM), Professor Jonuz Abdullai, Ph.D. (South East European University, Skopje, FYROM), Professor Sonja Bunčič, Ph.D. (University Union, Faculty of Law, Belgrade, Serbia), Professor Harun Arikan, Ph.D. (Cukurova University, Adana, Turkey), Professor Ali Pajaziti, Ph.D. (South East European University, Skopje, FYROM), Associate Professor George Girleșteanu, Ph.D. (University of Craiova), Associate Professor Sebastian Rădulețu, Ph.D. (University of Craiova), Associate Professor Elena Oancea, Ph. D. (University of Craiova), Professor Iordan Gheorghe Bărbulescu, Ph. D. (National School of Political and Administrative Studies, Bucharest, Romania), Professor Ioan Horga, Ph. D. (University of Oradea, Romania), Professor Nicu Gavriluț, Ph. D. (Univesity A. I. Cuza, Iaşi, Romania), Associate Professor Adrian Basarabă, Ph. D. (West University of Timişoara, Romania).

As we ussually conclude Editors' notes, we would like to give our sincere thanks to our outstanding international conference participants. Once again thank you all for your involvement and participation and see you in 2015!

ORIGINAL PAPER

Justification of necessity to limit the exercise of rights and liberties in a liberal society

Dan Claudiu Dănişor*

Abstract
The exercise of rights and liberties may be limited for the reasons enumerated in art. 53(1)C. But their application may not be done in a limitless manner. There has to be a procedural framework which shall limit the modality in which the state may claim these reasons. This procedural framework has to be able to achieve the fundamental purpose of the constitutional provision: protection of individual liberty against possible abuse of the state. The purpose of art. 53C coincides with the general purpose typical to any liberal society: the priority of liberty over authority. Thus, it would be natural for the principle of liberalism to create the procedural framework of limits regarding claiming the reasons of general interest or of perfectionist values in order to justify the limitation of exercise of rights and liberties. This framework may be called in brief „the necessity of limitation in a liberal society". Before judging the necessity of limitation in a democratic society, we have to judge its necessity in a liberal society. This is the structural logic of art. 53C, because the constitutional provision does not have as goal the authorization of limitation of exercise of rights and liberties, but the maximization of protection of the person through strict legal framework of the state's action, which means that the enumeration of the reasons which may represent the basis of limitations has to be interpreted as a restrictive framework, as producing the maximum constraint for the state authorities. Thus, art. 53(1)C has to be interpreted in the sense of creating a procedural framework for the limitation of the state, even if it appears to authorize its action. I will endeavour to demonstrate the modality in which the liberal understanding of the reasons for the limitation may create this framework. Synthetically, this framework supposes that the managing ideas of liberalism – priority of liberty, priority of just over good, priority of self determination of the individual and state neutrality – are transposed in a system of procedural limits of the possibility to claim which justifies the limitation of liberty.

Keywords: limitation of the exercise of liberties; limitations of claiming the general interest; necessity of limitation; liberalism; proportionality.

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A. Priority of liberty in the course of the procedure of limitation of its exercise

In a liberal state, „a basic liberty cannot be limited or refused, except for the protection of one or several basic liberties and never […] in the name of public good or of perfectionist values" (Rawls, 2007: 351), which is equal to saying that none of the causes enumerated by art. 53C and which represents such interests or values can be claimed itself and for itself, but only for the defence of the rights and liberties of others. As the French Declaration from 1789, „the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights".

Among the causes derived from the general interest or perfectionist values, art. 53C also contains as possible reasons of limitation of the exercise of rights and liberties several reasons which represent prevention ones. It is obvious that the prevention of consequences of a natural calamity, disaster, or of a sinister and very serious event does not have the same nature with the defence of natural security or of public moral. The priority of liberty in the liberal society supposes that the general system for the exercise of rights and liberties is the most repressive one. The preventive system represents an exception, his sphere of applicability being of strict interpretation. The rule is, thus, the free exercise of the rights and liberties, the state intervening only if this exercise affects others. The preventive system, which supposes the authorization or prior declaration of the exercise of liberty is compatible with the liberal society only if it does not question the rule of priority of liberty.

Finally, art. 53C stipulates that the limitation of the exercise of some rights or liberties may be done for the performance of criminal instruction. The exercise of liberty may be limited in order to ensure the efficiency of functioning of the repressive system. The priority of liberty in a liberal society supposes that the insurance of functioning of the system cannot be claimed per se in order to limit the exercise of liberty. Some procedural limits must be imposed to the state when it claims its own functionality against liberty.

In order to see which are the limits imposed to the state when it claims the reasons enumerated by art. 53C, we have to clearly distinguish which is the sphere of priority of liberty, with what purpose it is imposed and in which manner its observance has to be proved in a liberal society.

a. Procedural limits resulted from the value priority of liberty

Liberty is firstly, a priority from a value point of view. This means that the general interest, the perfectionist values, the repressive system or the preventive systems shall maintain the instrumental character. They are never, in a liberal society, purposes, only means. The state shall prove the maintenance of the instrumental character of the general interest. Also, the reasoning of the Constitutional Court according to which „through an imperative norm the legislator may grant priority to general interest" (Decision no. 325/2005) cannot be valid per se, because the defence of general interest becomes, according to this reasoning, a purpose per se. It is simply opposed to the particular interest, being decided *a priori* in its favour.

From the value priority of liberty in liberal societies is derived a first procedural limit which frames the possibility to claim the cases of limitation of exercise of rights or liberties: the one who claims the reasons for limitation shall be able to prove that, through their defence, he defends the rights or liberties of the persons. The burden of

proof regarding the necessity of limitation in a liberal society always belongs to the state.

The state shall make proof of the concrete character of the protection of rights and liberties of persons. This means that the first test of necessity to limit the exercise of rights or liberties in a liberal society is the one of derivability of protection of persons from the protection of general interest or the perfectionist value. This protection has to be derivable in a concrete and direct manner. The limitation act shall, thus, contain in an obligatory manner, the determination of modality through which claiming the protection of a general interest case or of a perfectionist value leads to the defence of the rights or liberties of persons.

The protection granted to persons shall be concrete. The rights or liberties which the legislator defends by the limitation of the exercises of other rights should be express and certainly determined. Thus, the Constitutional Court stated, in reference to the limitation of the right of free movement through the establishment of a tax for crossing the border, that „it supposes that the legislator shall establish for which specific rights the tax was established. The determination of such rights cannot, however, be a generic one (…) but a concrete one" (Decision no. 139/1994, published in the Official Journal no. 353 from 21st of December 1994. The numbering is the one done following the rectification published in the Official Journal no. 4 from the 12th of January 1995; please see Constitutional Court, Decisions for establishment of non-constitutionality 1992 – 1998, C. H. Beck, Bucharest, 2007, p. 58). This condition is breached any time the state expressly points out the protected right or liberty. For example, when, claiming national security, the legislator limits the exercise of salary rights of state employees, without determining as effect the protection of certain rights, but only the balance of state budget, which would lead to the defence of economic security, part of the national security (Decision no. 872/2010, published in the Official Journal no. 433 from the 28th of June 2010). The state defends itself, under the pretext that it defends us all.

Such protection is real, but it is not compatible with a liberal society, due to the fact that, in such a society, the protection resulted for some persons from the limitation of rights of others in the name of causes mentioned by art. 53C has to be direct. Of course that, if you defend a general interest, you finally defend some persons. But this protection is not a direct one. Which is imposed by art. 53C is the direct derivability of the protection of a person from the protection of general interest or perfectionist value. Thus, when we protect that public moral through the limitation of the right to freedom of expression, incriminating the distribution of obscene materials, we protect a number of persons. But the problem is that this protection is mediated. Or, the modality to claim perfectionist value with the purpose to defend the rights and liberties of others shall create protection to certain persons in an unmediated way. In the criminal Romanian reasoning, in which the crime defends public moral per se, through the criminal conviction of the author which distributes obscene materials the persons protected are not individualized in any way. The goal seems rather to solve the moral issues of the community. The criminal conviction of the author does not solve anything nor regarding the moral quality of the supposed work of art, neither regarding the moral health of the community, which might be the object of the criminal norm. In fact, the means is not *a priori* capable to achieve the goal. The reason is simple: the purpose is incorrectly determined. It represents a perfectionist value per se and not for another.

Secondly, the state shall have to prove that the modality to defend the general interest is *a priori* capable to lead to the achievement of the defense of rights or liberties

of persons. Any legitimate doubt on the result is favourable to the person, the limitation measure becoming non-constitutional. For example, the reasoning of constitutionality of limitation of salary rights mentioned before is the following: „The Court states that, in the recitals of the law criticized it is showed that, according to the European Commission's assessment, «Romania's economic activity remains weak» [...] and that «in the conditions of current economic conditions, the fiscal deficit target for 2010 (…) shall not be accomplished, due to deteriorations of economic conditions, *of difficulties in the collection of revenues and slidings regarding expenses*». As such, the Court finds that this threat to the economic stability continues to be maintained, thus the Government has the right to adopt adequate measures in order to combat it. One of these measures is to reduce budgetary expenses, measure materialized, among others, in the diminuation of the quantum of salaries/incomes/payments with 25%" (Decision no. 872/2010, published in the Official Journal no. 433 from the 28th of June 2010) (s.n.). The issue is that there is a legitimate doubt that the measure prepared by the state shall *priori* lead to getting out of the crisis, and the other obvious measures, such as better collection of the revenues to the budget or more efficient spending of public money, are not represented as alternatives or complement to the measure envisaged. The measure is unconstitutional because the state does not prove in any manner that the measure proposed is a suitable one before any experiment, due to the fact that the experiences with liberty are not allowed in a liberal society, in order to lead to the desired result.

b. Limits resuted from the procedural priority of liberty

Secondly, liberty has priority from a procedural point of view. This means that the procedure of defense of liberty is always, in a liberal society, prioritary in relation to the procedures of defence of general interest. This procedural priority is more obvious in case of limitation of the exercise of several rights or liberties in order to prevent, that is for the second category of reasons mentioned by art.53(1)C.

The procedural priority of liberty supposes that any imposition of prior authorization or of prior statement of the exercise of liberty shall have to be considered per se a limitation of its exercise. These prior authorizations or statements cannot be judged only as insurance measures of the framework of exercise of rights and liberties, but always as limitations of these. Thus, the procedures of limitation of the exercise of liberty would become priority in relation to its protection procedures.

For example, prior authorization of driving a vehicle on public roads is requested in order to ensure protection of others. It ensures the framework for the exercise of the freedom of movement. But this authorization or its withdrawal also represents a limitation to the freedom of movement. If it is not regarded as limitation of liberty, prior authorization or its withdrawal becomes a priority in relation to the liberty it claims to protect. It is what the Constitutional Court does when it finds that „the right to free movement, as regulated by the Romanian Constitution (…) does not include the right to drive vehicles, respectively to hold a driving license to that end, the constitutional provisions not mentioning the transportation means through which the freedom of movement is achieved" (Decision no. 480 of the 2nd of April 2009, published in the Official Journal no. 289 from the 4th of May 2009).

The establishment of a preventive system for the limitation *a priori* of the exercise of rights and liberties shall, in order for the liberty to remain a priority from a procedural point of view, refer only to the situations mentioned by art. 53, and not to others. The state may thus establish general prevention systems for the limitation of

exercise of the rights or liberties only in order to prevent consequences of a natural disaster or of a sinister event, very serious. The establishment of a preventive limitation in the other cases must be stricter, the establishment of general preventive systems not being possible. Thus, it is forbidden that the state stablishes *general prevention systems* for the exercise of rights and liberties for the defense of national security, order, health or public moral.

In order for the liberty to remain a priority from a procedural point of view, the possibility of the state to limit the exercise of rights or liberties in order to prevent shall not transform the preventive regime for the exercise of rights from an exception into a rule. If the result may be obtained through the repressive system for the exercise of rights, then the preventive measures are not necessary in a liberal society. Only in this manner, the procedure for the exercise of liberty remains a priority in comparison to the procedure for their limitation.

The procedural priority is also transposed in the priority of procedures for the protection of person in relation to the repression procedures. Thus, the reason of the efficiency of performance of criminal instruction, that is of a repressive procedure, cannot be claimed if the modality of this claim voids of efficiency, *a priori*, the procedures for the protection of the person, such as the right to defence or free access to justice.

c. Limits resulted from the temporal priority of liberty

In the third place, liberty is, in a liberal society, prioritary in time. Irrespective of the evolution of circumstances, liberty has to be imposed. This means that the state must be imposed the neccesity to limit in time the consequences in relation to liberty due to the defense of general interest, perfectionist values, functioning of the repressive system or establishment of preventive systems. The Constitutional Court finds that „it is obvious that the limitation of exercise of a right must last as long as the threat for which the measure is taken is maintained" (Decision no. 872/2010).

The limitation in time of the constraint must be predictable, that is the subjects must be able to clearly estimate which is the limit in time for the limitation of exercise of their rights or freedoms. The state must, thus, indicate at least the means for determining the duration of limitation of the exercise of right or freedom. The absence of reasonable clues necessary in order to estimate the duration of the limitation measure makes the emasure unnecessary in a liberal society, because it makes permanent the limit of liberty, instead of making permanent liberty itself.

d. Limits resulted from the spatial priority of liberty

On the other hand, the priority of liberty is spatial. Liberty must impose not only in relation to anyone, but everywhere. The space of liberty is unlimitd per se. The consequence is that the state has the obligation to clearly determine the space of limitation of the exercise of right or liberty in the name of defending general interest etc. This condition is more obvious in the case of establishment of limitations of the exercise of liberty in order to prevent the consequences of a disaster, calamity or of a very serious sinister event in all cases, even if spatiality is understood differently, as sphere of abstract manifestation.

In the case of preventive systems, spatial priority of liberty imposes that the limitation of the exercise of rights or liberties shall be limited to the space affected by the calamity, disaster or sinister event. In all cases, this aspect of priority of liberty

supposes that the limitation operates only regarding those rights or liberties whose free exercise might *a priori* endanger others or even the one who exercises them. The state has the obligation to ensure a coherent system for the prevention of consequences, which means that any measure for the limitation must be integrated into the system. We must, thus, approve the connection between any limitation of the exercise of liberty and the prevention of consequences of the exceptional situation mentioned by art. 53C.

In which regards the space priority of liberty in relation to the other cases of limitation of the exercise of rights or liberties mentioned by art. 53C, this refers to the sphere of abstract manifestation of those rights or liberties. The manifestation space of individual liberty in unlimited. Any limitation of such space must be clearly defined. Thus, it is necessary for the state to clearly identify which is the aspect of liberty which is limited. Any doubt regarding this is in favour of the person. The reverse of this rule is the prohibition of extensive interpretation of the repressive rules.

The limitations of the exercise of liberty cannot be vague. Even if, as Ion Deleanu said, „one of the unavoidable, but solvable paradoxes of law" is the swinging between „the imperative or rigor in the normative use of concepts and notions, their precise determination, so that the predictibility of norms may be ensured" and the „indetermination, freedom, flexibility of norms, so that these may be transposed in any legal situation" (Deleanu, 2013: 73), in the case of limitations of the exercise of freedom, the imperative of rigor is imposed with a special intensity: „intension" of limitative norms always has priority over their „extension" (on the inevitable tension between the „intension" and „extension" of legal concepts, please consult Deleanu, 2013: 73).

e. Limits resulted from the fact that liberty is inherent to the human being

Finally, the priority of liberty supposes that, in principle, liberty is inherent to all persons. Any limitation of the exercise of rights or liberties must, thus, clearly determine which are the persons targeted by the limitation. In other words, we must always be able to determine the modality to limit the consequences of limitation to the persons expressly targeted. Only in this way we can avoid state paternalism, which we analyzed on other occasion (D. C. Dănișor, 2014: 64-67). Thus, it is necessary that a limitation measure of the exercise of liberty should not create restrictive consequences for those situated outside the direct field of application of the norm. The norm's predictability (please consult Deleanu, 2011: 52-82) refers not only to the clarity of the norm for its recipients, but also to the clarity of positioning it inside or outside its field of application.

The priority of liberty is imposed in liberal societies, not in abstract, but in order to obtain a concrete result. Art. 53C must transpose this liberal objective from a normative point of view. Thus, it must be interpreted in the sense of maximization of protection ensured for some persons through the limitation of exercise of rights or liberties of other persons. On the other hand, the limitation of the possibility of the state to claim protection of general interest against the liberty of persons should be maximised. And, as liberty represents the rule, and the constraint represents the exception, art. 53C shall be interpreted in the sense of maximal limitation of the possibility to claim efficientization of functioning of the repressive system or to establish prevention system for the exercise of rights and liberties.

B. Priority of just over good during the procedure of limitation of the exercise of liberty

Political liberalism supposes the priority of just over good (Deleanu, 2011: 11-33). The procedural consequence of this principle in which concerns the necessity to limit the exercise of rights or freedoms in a liberal society is the priority of procedure of selection of the modality of defence of general interest over the substance of one or other of these modalities to satisfy public good.

For example, when the Constitutional Court analyzed claiming the defence of national security by balancing budget in the situation of world economic and financial crisis, it should have analyzed if the state used a correct procedure in order to select among several possibilities of action which might lead to reaching the desired purpose, prior to analyzing the substance of one or another of such measures.

This type of reasoning shall be generalized in case of any claim of general interest in order to justify the limitation of the exercise of liberty. The state must clearly show the correctness of the arbitrage procedure among multiple possibilities, in essence, good, for the protection of national security, of order, health or public moral. The omission of such justification or its inconsistency makes the measure unnecessary in a liberal society.

Thus, in the previous example, the state could have collected better the taxes, improve public expenditure and reduce salaries paid from its budget, as it states. It chose the last method, without showing according to which procedure the choice was made. The Constitutional Court analyzed the constitutionality of the substance of the measure elected by the Government, but did not analyze in advance if the Government used a correct procedure in order to select this measure and not the other possible measures. It is the reason for which the Court's decision is not grounded. Maybe the governmental measure was the only realistic one, but it is not clear how the Government and the Court reached to this conclusion.

The priority of just over good in a liberal society imposes formal character of concepts used by art. 53C. This means that the national security, order, health and public moral have no determined abstract content. Their content depends on the type of threat to liberty eliminated by their defence. They are „vague concepts", whose sense „cannot be determined *a priori*", but only „*pro subiecta materiae*, circumstantially, regarding the case", „not regarding the general or abstract manner" (Deleanu, 2013: 89).

The notions of national security, order, moral or public health are extrajudicial notions. In order to receive a legal content, they have to be formalized (D. C. Dănișor, 2011: 52-69), which means that they have to be considered as not having a value content per se. They receive such a content only for those who operate in non-legal areas based on the formal selection done in the sphere of law. From a legal point of view, national security, order, health and public moral are not, thus, values.

The Constitutional Court holds them as values. Thus, for the Court, „the social value which represents the object of the crime and, in the same time, the *object of legal protection* which the legislator desires to analyze through the incrimination and punishment of the distribution of obscene materials is the public moral" (Decision no. 19/2005, www.legalis.ro) (s.n.). The Court, thus, makes the perfectionist value, per se,

the object of legal protection, without determining which are the persons and rights thus protected.

The perfectionist value or the general interest are not thus available. They do not ensure liberty anymore. „We say that something is available when that respective thing may be used by anyone and anytime, when the respective thing is not a materialized object, it is a *non-object* per se" (Gh. Dănișor, 2006: 109). The unavailability of general interest or perfectionist values, through their transformation in purposes per se, with a value content, destroys the derivability of the protection of liberty from their protection.

The legal vision on the political or sociological concepts used by art. 53C supposes their transfiguration from concepts which describe a material reality into concepts which describe a *form* of protection of liberty. Thus, public moral has for a political man a certain consistency: it means *something*. For a legal counsellor, however, it remains unavailable, that is it may be used by anyone and at any moment in order to be protected, but only if it has a content, if it is a *non-object*, that is just a form, which, by protecting it, we protect somebody's freedom. Its content is determined only through the priority of procedure of protection of the person in relation to a concrete moral or another.

If we apply this type of formalization to the issue of relations between public moral and limitation of freedom of expression, then the limitation of liberty is necessary in a liberal society only if the protection of persons has priority in relation to the defence of morality itself, so if the moral remains available to the person, its content not being imposed by the state. The protection of vulnerable persons from a moral point of view, of minors for example, does not have to be done through the imposition of a moral option, but by procedures for the avoidance of premature contact with certain manifestations of freedom of expression which could be morally dangerous for the minor. The procedural reaction thus precedes the substantial reaction, just precedes the good. Instead of imposing to the person expressing himself a moral option, thus limiting his liberty, we impose a procedure of limitation of contact of minors with possible obscene materials resulted from the exercise of the freedom of expression.

The state's action for the protection of general interest or of perfectionist values has to be regarded from a legal point of view that is not by relation to social purposes, but to the formal selection of the method of action. From a legal point of view, it is not relevant which actions are better from a value point of view, but the modality in which we can choose one of the multiple possibilities without breaching a just formal balance between them. After determining this just balance, we can analyze the value substance of measures which may limit the exercise of rights or liberties.

C. Priority of self-determination of individual during the procedure of limitation of the exercise of liberty

In the liberal societies, the individual is self-determined. The state cannot impose values. This is why the Constitution of Romania makes the free development of human personality one of the supreme values of the Romanian state. When the state claims one of the reasons to limit the exercise of liberty mentioned by art. 53(1)C, it has to observe the priority of self determination of individual. This means that the limitation is not necessary in a liberal society if by it a value option is imposed to the individual.

When the state limits by law the exercise of rights or liberties, it has to affirm the general interest or perfectionist values in such a way not to affect, by the limitation

performed, the free development of human personality, which, thus, becomes a limit of the state competence to claim the reasons enumerated by art. 53(1)C.

The same position is occupied by dignity. The state may limit the exercise of certain right or liberties for reasons which belong to the general interest, but only to the degree in which it does not affect human dignity. Thus, public moral may represent a reason for limitation the freedom of expression, but human dignity represents criteria of assessment of this public moral itself. The limitation of the right to freedom of expression on the grounds of defence of public moral can be, thus, done only if public moral is pursuant to human dignity.

The legal norm remains, however, sometimes constitutional even if it is contrary to the traditional customs of the society, if these customs become contrary to the self-determination of individual. The Constitutional Court finds in this sense, analyzing the incrimination of homosexual relations, that „the right, as social phenomenon, cannot be separated from the evolution tendencies of the contemporary society (…), even if, at a certain point, the legislative and jurisprudence solutions contradict traditional moral beliefs" (Decision no. 81/1994, www.legalis.ro).

The consideration of the right to private and family life as a materialization of the objective of free development of human personality, in its turn, normative materialization of the liberal priority of self-determination of individual, extends its contents with necessity. It becomes more and more a «right to independence», even a «right to individualism», a «right to difference». We do not speak here about pretending to live in shadows, but to live in a different manner. The right to private life is no longer stated only to hinder a simple look of another, but especially in order to hinder judgement of another person (Beignier, 1995: 65) and in order to allow the individual the possibility to develop his own personality and his own appearance.

The capital values mentioned by art. 1(3)C, justice, as just balance, free development of human personality and dignity thus become limits of the modality in which the state may claim defence of general interest, of perfectionist values, functioning of repression or prevention in order to limit the exercise of rights or liberties.

D. Maintenance of state neutrality during the procedure of limitation of liberty

In order for the limitation of the exercise of rights and liberties to be necessary in a liberal society, it is necessary for the state to maintain neutrality during the procedure.

This supposes, firstly, that the substance of reasons determining the limitation should be determined in a neutral manner, which means that the stat shall not impose one value against another when it claims the reasons mentioned by art. 53C (for developments on the meaning of state neutrality, please consult D. C. Dănișor, 2014: 82-90), to determine the contents of concepts used by the constitutional provision in connection to the concrete right or liberty whose protection is aimed, that is to determine them in an opposed manner (please consult D.C. Dănișor, 2011), and that the analysis of the preponderance of a right over another should be done following a neutral procedure, which exceeds their simple opposition, which shall be analyzed further.

The existence, among the limitation causes, of the defence of rights and liberties of citizens shall not be interpreted in the sense that a right or a liberty may represent, by itself, a cause of limitation of the exercise of other right or liberty (to this end, please consult the Decision of the Constitutional Court no. 217/2003, published in the Official Gazette of Romania no. 425 of 17th of June 2003). It is necessary to perform an analysis

of the preponderance of a right or liberty over others, following a neutral procedure, which shall explain the limitation of exercise of one of them.

This would mean, for example, that public moral is not opposed to the freedom of expression, but it is used only to balance the exercise of two rights. Thus, the first phase of the neutral procedure I was talking about is the determination of the second. If it is the minor'right to train from a moral point of view, then we have to determine the cause which might explain the limitation of the exercise of several rights, operation which represents the second phase of the procedure. The election of one of the reasons has to be non-ambiguous, because, in relation to that, the type of concrete opposition determining the contents of rights shall be established.

On the other hand, election of one of the reasons which might explain the limitation has to be neutral in itself. Thus, if we analyze the limitation of liberties of persons in relation to the sexual orientation, the results will be different if we claim public moral or public health. The positioning of analysis on one of the plans is not indifferent. Thus, the state has to justify the necessity in a liberal society to choose one of the reasons.

The right (or liberty) whose limitation is operated has to be also elected in conditions of neutrality. In case of homosexuals, it is obvious that the positioning of analysis on the grounds of restriction of exercise of the life to private life causes different results in comparison to the analysis of the problem on the grounds of the limitation to exercise equal rights.

Selection of one of the reasons which might explain the limitation has to be done in order to reach a concrete objective, and the modality for using the reason has to be proportional with the purpose, that is with the balance of rights in potential conflict. If the selection is done in order to ensure the prevalence *a priori* of one of the rights, then the selection is not a neutral one, and the limitation is not necessary anymore in a liberal society.

This necessity to limit the exercise of rights or liberties in a liberal society, distinct from the necessity in a democratic society, thus supposes the cumulative fulfilment of at least four categories of conditions to claim the reasons mentioned by art. 53(1)C in the course of the procedure to limit the exercise of rights or freedoms: (a) observance by the state of the priority of liberty, (b) observance of the priority of just over good, (c) observance of priority of self-determination of individual and (d) maintenance of state neutrality during the procedure. Each of these categories of limits should be analyzed in order to obtain maximum protection of the person and stricter framework of state competences.

Note of the Author: Theoretical guidelines and concepts of this study were described in my academic work *Libertatea în capcană. Aporii ale justiției constituționale* (*Liberty in a trap. Aporias of constitutional justice),* Universul Juridic – Universitaria, Collection *Repere*, 2014.

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ORIGINAL PAPER

Recent Developments of the Georgian and Lithuanian "Trust-like" Mechanisms (Terminological Peculiarities)

Irina Gvelesiani*

Abstract
Globalization directs world population to become a single community. It stipulates the emergence of a competitive atmosphere, which facilitates the shaping of a new legal landscape. The given paper is dedicated to the study of the innovative "trust-like" devices, which were adopted by some Post-Soviet countries as a respond to the contemporary developing policies. The original form of the "trust" appeared at the end of the Middle Ages – in the epoch, when the real estate was the principle form of wealth. In the beginning of the 19th century, the given institution emerged in the American business sphere and stipulated the appearance of "trust-like" mechanisms throughout the world. Hence, the implementation of these devices was contradicted by the traditions of continental law-governed countries. Despite this fact, during the recent decades, the process of globalization has facilitated the popularization of the utilization of the institution of "trust". Its alternatives appeared even in some Post-Soviet countries in different forms and variations. The given paper is oriented on the discussion of the Lithuanian and Georgian "trust-like" mechanisms. The greatest emphasis is put on the formation of these institutions, their terminological peculiarities and their influence on the development of Georgia and Lithuania. The terminological context of the study directly points to the origin of the newly adopted mechanisms. Moreover, some assumptions about the strategies of their future impact and development are singled out and revealed. The given research is based on the theoretical data. Moreover, the carried out comparative analysis indicates, that the newly emerged Georgian and Lithuanian "trust-like" mechanisms do not represent ideal reflections of the original common law model. Hence, the tendency of their future identification can be imagined.

Key words: Civil law, fiducia cum amico contracta, Georgian, Lithuanian, Post-Soviet, trust-like device

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1. The General Introduction

The process of globalization directs world population to become a single community. It stipulates the emergence of a competitive atmosphere, which facilitates the shaping of a new legal landscape. Important changes are faced by all spheres of jurisprudence. Innovative juridical institutions and challenging prospects of some old ones – these are the major aspects and concerns of a lot of newly created scientific works.

The given paper is dedicated to the study of an innovative juridical model (the "offspring" of the institution of "trust"), which was adopted by some Post-Soviet countries as a respond to the contem- porary developing policies. It's a well-known fact, that there is no unique definition of the common law "trust". Different scholars offer different interpretations of this institution, for instance, A. Underhill believes, that "a trust is an equitable obligation, binding a person (who is called a "trustee") to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestuis que trust) of whom he may himself be one, and any one of whom may enforce the obligation" (Thévenoz, 2009 : 6). According to D. Hayton: "An Anglo-Saxon trust arises from the settlor's transfer of title to property to another person, intending that person to be a trustee-manager of it for the benefit of beneficiaries or for a charitable or other permitted purpose" (Hayton, 2005). These definitions clearly indicate, that common law "trust" is a relationship subject to the rules of equity, binding one person (the so-called "trustee") to manage the property for the benefit of another (the so-called "beneficiary").

The given paper is oriented on the discussion of the Lithuanian and Georgian "trust-like" mechanisms. The greatest emphasis is put on the formation of these institutions, their terminolo- gical peculiarities and their influence on the development of Georgia and Lithuania. The terminological context of the study directly points to the origin of newly adopted mechanisms. Moreover, some assumptions about the strategies of their future impact and development are singled out and revealed.

2. Discussion

Historical "Equivalents" of the "Trust" – The Insights into the Historical Processes

The modern scholars pay the greatest attention to the study of the history of the development of "trust" mechanism. It's an obvious fact, that even in 1790 B. C. the Code of Hammurabi presented rules of law governing business conduct, which vividly considered the behavior of agents (em- ployees) during the process of being entrusted with the property (fiduciary assets) . The roots of the fiduciary principles were met even in the Old and New Testaments. However, the relations similar to the "trust" were more vividly seen in the Roman law of the 1st - 3rd centuries A.D. At that period of time, the Roman legal system recognized ***fiducia contracts*** under which an individual held assets in safekeeping or acted on another individual's behalf. The law acknowledged the following major types of devices: "***fiducia cum amico (contracta)***", ***"fiducia cum creditore***", "***fideicommissum***". The first represented the safe custody, the second was the form of the proprietary security, while the third was used during testamentary relationships.

It's a well-known fact, that the term "***fideicommissum***" originated from the past part. of "***fideicommittere"*** , which generally meant bequeathing the property or the estate in trust. The tran- sferor was denoted by the term ***"fideipromissor",*** while the

word "***fideicommissary"*** meant a "beneficiary" (Andrianov, Berson, Nikiforov, 2000). *"**Fideicommissum***" necessarily considered the obligation of transference. This juridical transaction enabled a person to beg his/her heirs to transfer something to a third person. The begging could be done in a written form or orally via using simple words of request. In certain cases it could be intimated by a nod. An informal character of the creation of "***fideicommissum***" popularized this institution among the population. Its nature "rendered it available as a vehicle for conveying any kind of request from the testator to the *fi- duciarius*, including therefore a request that the *fiduciarius* should transfer to a third party … the share of the inheritance which he received either *ab intestato* or *ex testamento* from the deceased " (Sohm, 2002).

In contrast to the "***fideicommissum***", "***fiducia cum amico contracta***" was not a testamentary dis- position. It was regarded as "a simple agreement concluded between ***fiduciant*** (settler) and ***fidu- ciarius*** ("amicus" – a friend acting as a "trustee"). A *fiduciant* transferred his estate to the *fiduci- arius* who was obliged to use it according to the terms of the agreement and subsequently to give it back to the fiduciant" (Stec, 2003). Therefore, "***fiducia cum amico"*** was a mere safe custody, which ensured the management of the ownership of the Roman citizens, who travelled abroad.

The third type of a trust-like device of the Roman law was named as "***fiducia cum creditore***". It was used to secure a loan. Under "***fiducia cum creditore contracta***" a "***fiduciant*** (secured debtor) transferred ***dominium*** (full ownership) to ***fiduciary*** (secured creditor) on condition that fiduciary would transfer it back when the debt was paid" (Mangatchev**,** 2009 : 4). Initially, the Roman law did not obligate the trustee to act according to the agreement and the settlor was not legally protected. However, the later Roman law gave some degree of protection to the *fiduciant*, "who could also re-acquire ownership of his estate by a peculiar form of *usucapio* called *usureceptio fiduciae causa*" (Stec, 2003).

It can be supposed, that the data of the Code of Hammurabi, the Old and New Testaments and the Romanian law revealed the necessity of the creation of the "real trust", which actually originated in the English Common law during the Middle Ages. This irreplaceable institution derived from a system employed in that era known as *"use of land"* or *"uses"*. The history of the emergence of "trust" states, that during knights' lengthy absence, their estates needed protection and preservation. For that reason, each knight transferred his legal ownership to a close friend under a special agreement – the estate ought to be transferred back upon the knight's return. This transfer empowered the transferee to manage the "acquired" ownership and to enforce the rights of the estate against all parties while the owner was away. However, in certain cases, when the transferors came back, they found difficulties in returning their legal rights. The legal disputes between "acting administrators" and owners were resolved by the King. Later the King's power was transferred to the Lord Chancellor. In the 15th century the function of resolving the disputes was delegated to the Lord Chancellor's Court. The necessity of the creation of new legal norms emerged and the establishment of a new institution *(which was later named as a "**trust")*** was facilitated.

The study of the legal mechanism of the early "trust" reveals its similarity to the principle of the Roman "***fiducia cum amico (contracta)***". Both of these institutions ensured the management of the ownership of persons, who travelled abroad. They were based on friendship – a transferee was ***"amicus"*** (a friend acting as a "trustee"). The legal relationships between a transferor and a tran- sferee ended after the return of the former, because an estate was given back to the transferor. This fact enables us to

suppose, that the Roman law could play a significant role in the formation of the Common law "trust" mechanism.

The Further Developments of the Trust Mechanism

From the contemporary point of view, the law of the Middle Ages was quite remote from the mo- dern practice: "the primary purpose of the trust was to facilitate the transfer of freehold land within the family. The law governing the transmission of freehold land was deeply afflicted by feudal restrictions meant originally to concentrate landholdings for military and related advantages" (Langbein, 1995 : 632). Entrusting the land to a trustee defeated all feudal restrictions. Therefore, the "trust" enabled landowners to provision their wives and children. The beneficiaries lived on the land and managed it, while the trustees of these primary trusts were mere stakeholders with no serious powers of management: "the trustees' only significant duty was to hold until the settlor's death, and then to put themselves out of business by conveying the freehold to the reminder beneficiaries" (Langbein, 1995 : 633). Despite such circumstances, the "newly emerged" insti- tution of "trust" became more and more popular in England and America. In 1872 the trust law was adopted in the State of Connecticut, while "the first trust company was created in 1806 according to the recommendation of a financier and a politician A. Hamilton" (Zambakhidze, 2000 : 62). During the 19th century the given legal institution became popular in the American business sphere. It has offered several economic and legal advantages, especially, through mutual and pension funds, while at the end of the 20th century, the process of globalization stipulated the "internationalization" of the trust mechanism. The starting point of this process was the conclusion of the Hague Convention on the Law Applicable to Trusts and on their Recognition (1 July of 1985) and its ratification by 12 countries (March of 2011): "Trusts of the English type have been received and adopted in civil law systems, such as Scotland, South Africa, Quebec and Louisiana, which are geographically and historically close to common law jurisdiction" (Thévenoz, 2009 : 1). Moreover, during the 20th century "trust" crossed all the geographical and neighboring boundaries. As a result, the Hague Convention has been adopted not only by the trust jurisdictions, but by the non-trust legal systems as well. Hence, the convention was not initially intended "to introduce the trust concept into the do- mestic law of States that do not already have the trust ("non-trust" States); rather to establish co- mmon conflicts of law principles on the law applicable to trusts" (Hayton, 1987). In the contemporary legal literature the term "Non-trust States" usually denotes the majority of civil law countries. Among them are the former socialistic civil law jurisdictions, which attract more and more attention of scholars and legal practitioners. It's a well know fact, that communism fell at the end of the 20th century. The alteration of the political system stipulated a rapid reformation of the juridical sphere. Innovative and integrative processes "invaded" the post-communist space. The "trust" appeared in the form of a "trust-like" device, which was enriched with socialistic peculiarities. The Post-Soviet countries have not ratified the Hague Convention of 1985. However, from the contemporary point of view, the opportunity to join the group of signatories seems quite prospective.

The Contemporary Common law "Trust" Mechanism

The contemporary Common law "trust" is based on the duality of ownership (the property re- sulting from the legal estate is divided into the property of a trustee and the equitable interest – the property of a beneficiary). The so-called "trust instrument" (a

trust contract) is usually created inter vivos or on death at the direction of an individual (such type of a trust is called a "testamentary trust"). It obligates certain persons to use and protect entrusted property for the benefit of others. Therefore, the ordinary Anglo-American "trust" consists of three main elements:

- A "***trustor***" - a person who creates the "trust" (also called a "creator", a "grantor", a "donor" or a "settler").
- A "***trustee***" - a physical person or a legal entity which holds legal title to the trust property. Trustees have many rights and responsibilities. They vary from trust to trust depending on their type;
- A "***beneficiary***" – a beneficial (or an equitable) owner of the property. It's worth me-ntioning, that a "grantor" can be even a "beneficiary". In this case, the "trust" involves a simple delegation of responsibilities.

Trusts are usually created orally or in a written form. An "oral trust" (also called a "parol trust") presents the grantor's spoken statement. It is an agreement formed between a grantor and a trustee without the usage of a written instrument. Generally, trusts of real property require a written form, but the trusts of personal property can be created orally. In order to be valid, each trust has to meet three major certainties ("the given requirement goes back to some words of Lord Langdale (1840)" (Williams, 1940 : 20)):

1. The certainty of intention;
2. The certainty of subject-matter, which can be subdivided into:

a) The certainty of what property is to be held upon trust;
b) The certainty of the extent of the beneficial interest of each beneficiary;

3. "The certainty of beneficiaries *(in case of private trusts)* or of objects *(in case of non- charitable "purpose" trusts without human beneficiaries - i.e. trusts of imperfect ob- ligation).*This requirement does not apply to charitable trusts if there is a general charita- ble intention" (Williams, 1940 : 20).

3. The Contemporary Post-Soviet "Trust-like" Devices

I. The Contemporary "Trust-like" Mechanism of the Republic of Georgia (According to the Civil Code of the Republic of Georgia of 2012)

It has already been mentioned, that the process of globalization stipulated interconnectedness of the juridical systems of the world countries. This process has been hastened by the increased mobility of capital, assets, beneficiaries and trustees. Especial drastic legal changes were faced by the Post-Soviet states. After the dissolution of the USSR they adopted new Civil Codes. The Civil Code of the Republic of Georgia came into force on 25 November of 1997. It reflected the modern achievements of the civil law and maintained some former characteristics. The Civil Code of the Republic Georgia introduced the institution ***"საკუთრების მინდობა"*** *(sakutrebis mindoba)*, which shared some peculiarities of the Anglo-American "trust". However, the Soviet roots of the Georgian juridical system prevented a complete development of trusting relationships.

The Article 724 of the Civil Code of the Republic of Georgia of 2012 clearly describes the major principles of the transference of property: "the principle (a trustor) transfers the property to the tru- stee, who accepts and manages it in compliance with the principle's interests" (The Civil Code of Georgia, 2012 : 180). The specificity of the Georgian *"საკუთრების მინდობა"* presents the right of ownership in a "split" form: "some rights of the owner – the management and the disposition of the property – belong to one person (a trustee), while other rights – receiving income and profit from the exploitation of the property - belong to another (a trustor) " (The Commentary of the Civil Code of Georgia, 2001 : 416).

The Georgian trusteeship has an obligatory character - trusting relationships are discussed under the contractual law, which considers the creation of a "trust contract". The motive of this contract can be the owner's wish to delegate the authorities of management in order to profit from the ex- ploitation of the property. Moreover, "this type of a contact can be successfully used for the purpose of the unification of the capital, for instance, small stockholders may unite their shares (voices at the stockholders' meeting) and delegate them to one person – a trustee, which will act according to stockholders' wishes" (The Commentary of the Civil Code of Georgia, 2001: 417). Therefore, we can rightfully make a definite indication, that entrusting relationships are presented in the legal and commercial spheres of Georgia. Moreover, these relationships are carried out in behalf of the "trustor", which is usually identified with the "beneficiary". However, the Georgian *"საკუთრების მინდობა"* lacks a countrywide popularity – the Georgian "trust institution is less known to the wide circle of entrepreneurs; its legal regulation is not perfect; trust companies are not appropriately popularized, etc." (Zambakhidze, 2000 : 55) .

Therefore, it must be indicated, that the Georgian trust agreements concern two major parties:

- ***„საკუთრების მიმნდობი"*** *(a trustor)* - a physical person or a legal entity (the state or municipality – in case of a commercial form of the "trust"; appropriate governing organ – in case of a non-commercial form), which creates the "trust" (***"საკუთრების მინდობა", "ტრასტი"***) and receives income/ profit from the exploitation of the "trust property" *("მი- ნდობილი საკუთრება");*
- ***"მინდობილი მესაკუთრე"*** *(a trustee*) – a person, who accepts and manages the "trust property" in compliance with the principle's interests. A "trustee" must be chosen via a tender in cases of the entrustment on the basis of the state and municipal ownerships.

An object of trust relationships is the "trust property". It is usually presented by any sort of pro -perty: "non-material property" or "intangible property" **(*„არამატერიალური ქონებრივი სიკეთე"***) and "things" (***„ნივთები"***). A "thing" may be "movable" (***„მოძრავი"***) or "immovable" (***„უძრავი"***), while "non-material property" unites all those requirements and rights "which may be passed from one person to another or are intended for yielding a material profit to their owner, or entitling him (her) to demand anything from others" (The Civil Code of Georgia, 2012 : 44). The ownership is ma- naged by the trustee at the risk and expense of the "trustor". In terms with third persons a trustee en- joys the owner's rights. However, entrusting relationships are created only in the written form du- ring a trustor's lifetime.

II. The Contemporary "Trust-like" Mechanism of the Republic of Lithuania (According to the Civil Code of the Republic of Lithuania of 2011)

Lithuania is a prosperous Post-Soviet country, which has faced a lot of changes after the fall of communism. In contrast to many civil law jurisdictions, Lithuania's legal attitude towards the "trust" seems quite exceptional, because the mechanism of trusting operations (in the form of a law of operation management) had existed even till the reformation of the Civil Code of 1964: "until changes of 1964 version of the Civil Code (henceforth : CC 1964) were accepted (the 17th May of 1994), public property trust law was mentioned as a law of operation management, i.e. a law on the basis of which State enterprises and agencies managed State property that was transferred to them, and only from the date that the afore-mentioned changes came into effect, this law started to be called property trust law. It is noteworthy, that the legislators, in renaming the former law of operation management into a property trust law did not fundamentally change the legal regulatory effect that had existed until then" (Sakavičius, 2011 a : 3). Accordingly, the Lithuanian trust law was created only by the renaming of the existed "law of operation management". Moreover, it developed under the influence of the Russian legislation and shared some of its peculiarities. "However, there can be found essential differences between the Lithuanian and Russian trust law, i.e. Lithuania considers trust of estate institute as proprietary (real) right, meanwhile Russian regulation acknowledges trust of estate as obligatory right" (Sakavičius, 2011b : 1109). According to the Article 6.953 of the Civil Code of the Republic of Lithuania of 2011 : "By the property trust agreement one party (the trustor) assigns to the other party (the trustee) its property by the trust right for a certain period of time, and the other party undertakes to possess, use and dispose of such property in the interests of the trustor or its designated person (the beneficiary)" (The Civil Code of the Republic of Lithuania, 2011). Therefore, the trust agreement concerns three major parties:

- ***Patikėtojas*** *(a trustor*) – a creator of the trust (***pasitikėjimas***);
- ***Patikėtinis*** (*a trustee*) – a natural or a legal person, which exercises the owner's rights to the property assigned to him/her/it by the trust right. In those cases, when the trustee is a State or municipal enterprise, institution or organisation (or the trust right appears on any other grounds than under the agreement), the Lithuanian law may establish certain peculiarities of the property trust right ;
- ***Naudos gavėjas*** – a beneficiary, which can be presented by a trustor himself/herself or by the person designated by him/her.

The Article 6.959. of the Civil Code of the Republic of Lithuania of 2011 vividly depicts the es- sential conditions of the property trust agreement. Therefore, during the creation of a trust agreement the following rules must be singled out and considered:

"The property trust agreement shall specify:

1) the property assigned by the trust right;

2) the trustor, the trustee, and if the agreement is made for the benefit of the third person (beneficiary) - the beneficiary;

3) the remuneration of the trustee and the procedure for its payment if the remuneration is set fort in the agreement;

4) the validity term of the agreement" (The Civil Code of the Republic of Lithuania, 2011).

The property trust agreement ought to be concluded for the term not exceeding twenty years. In certain cases, the law can establish longer maximum terms for the validity of the contract. However, "if upon expiration of the validity term of the

agreement neither party states its wish to terminate the agreement, the agreement shall be deemed extended on the same conditions for the same term (The Civil Code of the Republic of Lithuania, 2011).

The trust agreement is usually created in a written form. Moreover, the immovable property trust agreement must be additionally notarially attested (notarized). The Lithuanian law pays the greatest attention to the separation of property, which is an integral part of entrusting operations. However, in contrast to the common law "trust", the Lithuanian "separation" of assets is characterized by certain peculiarities. Therefore, according to the Article 6. 961. of The Civil Code of the Republic of Lithuania the following entrusting rules and particularities can be singled out and revealed:

"1. The property assigned to the trustee by the trust right shall be separated from the property of the trustor and the trustee. The trustee shall make and manage the accounting (the balance-sheet) of the property assigned to it, and shall open a separate bank account for settlements.

2. It shall be prohibited to recover from the property assigned by the trust right subject to the actions brought by the creditors of the trustor, except for the cases when bankruptcy proceedings are instituted against the trustor or the trustor becomes insolvent. After institution of bankruptcy proceedings against the trustor or his becoming insolvent, the property trust right shall expire and the property shall be returned to the trustor" (The Civil Code of the Republic of Lithuania, 2011).

The objects of the trust right can be presented by immovables (***nekilnojamasis turtas***), movables (***kilnojamasis turtas***), securities (***vertybiniai popieriai***) and any other property. "The State or muni- ci pal property which is possessed, used or disposed of by a State or municipal enterprise, institution or organization, shall not be assigned to any other person by the trust right, except for the cases when such enterprise, institution or organization is liquidated or reorganized, as well as other cases provides for by the law" (The Civil Code of the Republic of Lithuania, 2011).

Finally, it's worth mentioning, that according to the Article 4.108 of the Civil Code of Lithuania: "The right of trust may originate from the law, administrative act, contract, will, or court judgment" (The Civil Code of the Republic of Lithuania, 2011). If trust right does not appear under the ag- reement (contract) and the trustee is a State or municipal enterprise, institution or organisation, "Laws may establish certain peculiarities of the property trust right" (The Civil Code of the Re- public of Lithuania, 2011). It's also worth mentioning, that the Lithuanian "property trust law cannot be unequivocally assigned to either property law or contract law, since it shares characteristics of both property law and contract law" (Sakavičius, 2011 a : 13).

3. Some Important and Crucial Aspects of the Comparative Analysis of the Georgian "საკუთრების მინდობა" and the Lithuanian "pasitikėjimas"

A precise study of the Georgian "საკუთრების მინდობა" and the Lithuanian "pasitikėjimas" enables us to make a comparative analysis of these institutions:

- Similarly to the Anglo-American "trust", the Lithuanian "pasitikėjimas" consists of three major elements: the owner of the property (***Patikėtojas***), the transferee (***Patikėtinis***) and the beneficiary (***Naudos gavėjas***). In contrast to the Lithuanian trust law, the Georgian legal system (the Civil Code of the Republic of Georgia of 2012) presents only two participants of trusting relationships: ***„საკუთრების მიმნდობი"*** (a trustor) and ***"მინდობილი მესაკუთრე"*** (a trustee). Actually, the concept of "trustor"

is identified with the con- cept of "beneficiary". Therefore, the Lithuanian term "***Naudos gavėjas***" has no Georgian equivalents;

- The creation of the Anglo-American "trust" requires a trustor's intent presented orally or in a written form, while for the creation of ***"pasitikėjimas"*** and ***"საკუთრების მინდობა",*** a trustor enters into a written and notarized contract with a trustee;
- Similarly to the Anglo-American "trust", the Lithuanian "***pasitikėjimas"*** can be subject to a *mortis causa* deed (by means of entrusting the property via a valid will). The Civil Code of the Republic of Georgia of 2012 recognizes only "living" ***"საკუთრების მინდობა"***. Therefore, the concept of a "testamentary trust" is unknown to the Georgian legislation;
- The Lithuanian trust law was created by the renaming of the existed "law of operation management", while ***"საკუთრების მინდობა"*** can be regarded as a purely innovative institution of the Post-Soviet Civil Code of the Republic of Georgia;
- Lithuania considers trust of estate as proprietary (real) right, while the Georgian regulation acknowledges an obligatory character of trusting relationships, which are discussed under the contractual law;
- The study of the Georgian and Lithuanian contemporary "trust-like" devices vividly revealed, that these mechanisms have chosen different roots of development. If Georgia and Lithuania have adopted "Convention on the Law Applicable to Trusts and on their Recognition" of 1985, they could share similar experiences. However, on the contemporary stage of development sha- ring experiences can be definitely regarded as a matter of time, as a question of future.

4. The Major Conclusions and Proposals

The given paper is dedicated to the detailed study of the Lithuanian and Georgian "trust-like" mechanisms. It's apparent, that the establishment of these innovative institutions was the reaction to the ongoing process of globalization and a logical outcome of the Post-Soviet development of some former communist countries. The above given comparative analysis enables us to consider the fo- llowing peculiarities: the Lithuanian "*pasitikėjimas"* seems very similar to the Anglo-America "trust", while the Georgian "*საკუთრების მინდობა"* does not represent an ideal reflection of the ori- ginal model. This statement can be explained by the fact, that the Lithuanian trust law is not an in- novative institution. It was created by the renaming of the existed "law of operation management". Therefore, the Lithuanian "*pasitikėjimas*" has the longer history of development than the Georgian "*საკუთრების მინდობა"*. This fact enables us to suppose the further improvement of the Georgian "trust-like" mechanism. Moreover, it's important to make amendments to the contemporary le- gislation, namely, the Georgian legal system needs the insertion of the concepts of "beneficiary" and "testamentary trust" (a trusting relationship created via a valid will). The entrusting transactions ought to obtain an oral form. We believe, that after these amendments the major step will be made to wards the completeness of the Georgian innovative "trust-like" device.

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ORIGINAL PAPER

Right to life and its guarantees through the norms of the New Romanian Criminal Code (2014)

Ruxandra Răducanu*

Abstract
The new Criminal Code which came into force on February 1, 2014 includes new provisions that constitute a guarantee of protection accorded to the right to life by the rules of criminal law. Thereby the criminalization of a new crime called murder on the victim's request means, on one hand, from the legislator's optical point of view, the express provision of criminal sanctions euthanasia and, on the other hand, a distinct and attenuated sanction regime for these facts, which has its justification in the repeated, persistent and conscious request of the victim but also the mercy and compassion that led the offender to surrender to the request of the victim. New regulations are found in the matters of criminalization, determination or facilitation of the suicide, this regarding the delimitation and differential sanctioning of acts committed on minors or persons with diminished judgment.
The importance accorded by the Romanian legislator to protect the right to life results not only from these new regulations, but mainly from the fact that the crimes against life are now placed in the first title of the special part of the Criminal Code from 2014, unlike the Criminal Code of 1969, where the first title regards offenses against state security, emphasizing state protection before protecting human rights and freedoms.

Keywords: murder at the request of the victim, criminal liability, sanction, author, causing or aiding suicide.

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The person, the defence of its rights and liberties are placed in the center protection granted by criminal law to social values protected by criminalization of acts which constitute crimes.

Criminalization of facts which prejudice life, directly or indirectly, has always occupied a special place in the attention of the legislator from all times. In the special part of the Romanian Criminal Code facts that lead to the suppression of human life are incriminated and punished, whether they are directly against the person's life – such as crimes against life, whether against other social values, but ultimately lead to the death of the person - such as robbery followed by the death of the victim, rape followed by the death of the victim, etc.

The importance accorded by the Romanian legislator to protect the right to life results not only from these new regulations, but mainly from the fact that the crimes against life are now placed in the first title of the special part of the Criminal Code from 2014, unlike the Criminal Code of 1969, where the first title regards offenses against state security, emphasizing state protection before protecting human rights and freedoms. In this way, the new Criminal Code falls between modern European criminal codes, regarding life as a primordial value, focusing primarily on its protection and, subsequently, on the protection of other social values.

Protecting the right to life finds its consecration through international norms first, but also through internal rules of criminal law, given the importance that a person's life represents not only for itself, but also for the entire society. Thus, in the 3rd Article of the Universal Declaration of Human Rights states that "every human being has the right to life, liberty and its security." In Article 6 of the International Covenant on Civil and Political Rights states that: "The right to life is inherent in the human person. This right shall be protected by law. Nobody can be deprived of his life arbitrarily."

European Convention on Human Rights guarantees the right to life for any person, but regulates, in the same time, the cases in which it may be prejudiced. The 1st Article states that: "The right to life shall be protected by law". Death can not be caused to someone intentionally, only in the execution of death sentences handed down by a court if the crime is sanctionable with this punishment by law." The dispositions of the 2nd Article complement pointing out that " death is not regarded as inflicted in contravention of this article when it results from the absolutely necessary use of force:

a. to ensure the defense of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. to repress according to the law, violent disorder or insurrection.

Also The European Convention on Human Rights imposes states obligation to take all necessary measures to ensure an effective protection of the right to life. It was considered that this obligation exceeds the primary obligation of states to adopt an effective criminal legislation to deter the commission of acts that endanger a person's life, legislation backed by the mechanism to ensure its application in the prevention, suppression and sanctioning violations of its provisions; this obligation includes, in certain, well-defined circumstances, a positive obligation of the authorities to take preventive, practical steps to protect the individual whose life is threatened by the criminal acts of another individual.

Also, the Romanian Constitution in the 22nd Article paragraph 1 states that " the right to life and the right to physical and mental integrity of the person guaranteed ". Regarding situations where the intentional death of a person is permitted, our

legislation preclude the enforcement of a capital sentence pronounced by a court, since the death penalty was repealed and the Romanian Constitution in the 22nd Article paragraph 3 prohibits the death penalty.

The new Criminal Code and regulation of offenses against life

In the matter of offenses against life, the New Criminal Code brings important changes. Thus, regarding the offense of murder committed intentionally, the new Criminal Code resorts to a revaluation of the circumstances that may qualify the murder and lead to the aggravation of the sanction in this case. There are no longer stipulated as aggravating circumstances such as: murder committed on a husband/wife or a close relative, murder committed by taking advantage of the victim's state of helpless to defend themselves, committing murder in connection with the performance of work duties or of public duties or committing murder if the victim is a magistrate, police officer, military during or in connection with the performance of their work duties or their public duties. It is obvious that such circumstances show a greater danger from those who commit them and require a distinct, more severe sanction than that provided in the case of simple murder.

The long legislative tradition of the Romanian criminal law imposed maintaining the solution that such acts shall be sanctioned separately, even if they have been removed from the first degree murder. Therefore, the murder of a family member receives a separate indictment within the framework of crime on a family member and a separate sanction, the maximum punishment provided for simple murder increased by a quarter.

Committing a crime by taking advantage of the particularly vulnerable state of the victim due to age , health state, infirmity or other cause is a general aggravating circumstance that leads to the aggravation of the punishment for murder committed in such circumstances. Committing murder in connection with the performance of work duties or public duties of the victim or committing murder if the victim is a magistrate, police officer, or military during or in connection with the performance of their work duties or their public duties no longer means of first degree murder, but such facts are incriminated as a crime of outrage, respectively judicial outrage that justice punishes more severely than simple murder. Although in the criminalization of these acts, the new Criminal Code apparently maintains the idea of harsh punishing of murder acts committed on a passive subject qualified through the specified quality, still, on a thorough analysis, things are not quite so. Placing crimes against life in the first title of the special part of the Criminal Code means a change of optics of the Romanian legislator who sought to protect the life ahead of other social values, unlike the Criminal Code of 1969 which put the state above the individual. The legislature was not consistent, and has not maintained this line and the criminalization of murder against a person who performs a public function as outrage or judicial outrage demonstrates this deviation from what the legislature has proposed for the new Criminal Code. In the case of outrage offence the state authority is defended, and in the case of judicial outrage the accomplishment of justice is primarily protected. In the framework of these facts, life is seen by the legislator as a legal secondary object, benefiting from subsidiary protection of state authority or the administration of justice. Therefore, it would have been indicated that the new Criminal Code maintained these incriminations as variations of the first degree murder.

Also in relation to criminal offenses against life, there is the murder at the request of the victim, which is a similar regulatory takeover of the Criminal Code of 1936. The consent of the victim is what determines and justifies the criminalization in the attenuated variant of homicide committed at the request of the victim, as a murder committed at the explicit, serious, conscious and repeated request of the victim who was suffering from an incurable disease or severe, medical attested disability, causing permanent and unbearable suffering. The distinct sanction for murder at the request of the victim is greatly reduced compared to the sanction for murder and this was required to allow the application of penalties commensurate with the gravity of the fact. If in the regulation of the Criminal Code of 1968 such an offence could penalize by applying mitigating judicial sanction lowering the punishment under special minimum (10 years imprisonment), under the influence of the new Criminal Code there is a significant difference, the penalty consisting in prison from 1 to 5 years.

The conclusion drawn is evidently that the regulation of the offence of murder at the request of the victim is that euthanasia remains sanctioned by the penal law, that the legislator understands to protect life even in critical situations, even going over the victim's desire.

On the other hand, to avoid the framing as murder in this form of some facts that hide material interests or other interests, the conditions for the application of the legal text are extremely detailed and proving to have commited murder in the mitigating circumstances considered by the legislator can be quite difficult.

First, we are in the presence of a qualified passive subject of the crime. This is a difference from the regulations of the 1936 Criminal Code which does not impose any conditions on the passive subject's state. From the view of the Criminal Code of 1936, the murder had a mitigating character on condition that it was committed on the victim's request, without having to meet other conditions.

The Criminal Code of 2014 extremely carefully regulates the mitigating sanctioned murder and starts from the existence of a situation which characterizes the passive subject of the crime. The qualification of the passive subject is given by the health state consisting of an incurable disease or serious disability which is medically certified. For the existence of the passive subject and therefore the crime of murder on the victim's request, proof of the presence of such a disease or disability is not enough. It is necessary that the disease or infirmity to cause permanent and unbearable suffering. Therefore, from an evidence point of view, even if evidence of serious incurable disease or infirmity may be made by medical documents, evidence of the permanence of these sufferings and the impossibility of carrying them is more difficult. Moreover, about the endurance of pain, things are different from one person to another and depend on the one's strength, so the endurance of pain assessment must consider the subjective factor. The law imposes the condition that such suffering is permanent which means, from the grammatical interpretation of the term that the suffering should last without interruption. It is necessary to establish that what determines the presence of suffering, their cause, is the incurable disease or serious infirmity because the legislator requires that they be the cause of the permanent and unbearable suffering.

The explanation of these conditions imposed for the passive subject's state of the offence resides in that the offense consider the plight of a person. Due to an incurable disease or suffering from serious infirmity, a person does not hope for recovery or a normal life. Without this hope, and having unbearable, permanent suffering is what determines the person to seek suppression of life (Toader, Michinici, Răducanu, Crişu-

Ciocântă, Răduleţu, Dunea, 2014: 335). For the passive subject, the suppression of life appears to be the only possibility to remove the suffering caused by the disease he has. Only then killing a person acquires , according to the Romanian legislator, an mitigated character, the sanction being more gentle than the one applicable to the offense of murder .

The existence of offence is essentially dependent on the death request formulated by the victim. Conditions imposed by law denoting the particular attention of the legislator on the applicability of the legal text also exists in the request of the victim. Thus, regarding the demand of the victim, the legal text requires that several conditions are met: the request must be explicit, serious, conscious and repeated. Evidentiary difficulties will also exist on fulfilling these conditions.

First, it is necessary that the application made by the victim to be explicit, to be clear. A simple hint, an opinion expressed in a general discussion can not conduct to the conclusion that the victim expressly and clearly requested that its life be suppressed. The man who committed a murder in the absence of an explicit request from the victim will not receive applicability of attenuated murder, but will be responsible for the actual act of murder.

To attract the existence of the crime of murder on the victim's request is also necessary for the request to be serious. It should not be taken as a joke or not to be thought on. The request must be conscious, from where we deduce that it must come from a conscious person who is able to appreciate what is happening to her and around her, so communication of the decision to suppress its life should be made in full aware of the cause.

And last but not least the request must be repeated. One request of the victim is not sufficient and will exclude the existence of the crime of murder at the request of the victim. Repeatability means demand on the one hand, the persistence of the victim in the decision that she took and , on the other hand , its insistence in this request. The insistence of a victim is what makes the author give course and to act at the victim's request. For retaining the attenuated character of the murder, the legislator considered the situation of the one who commited the murder of having committed it as a result of mercy, the feeling of compassion for the victim's situation. The author is the one who knowingly decides to violate the criminal law, and in making this decision is strongly influenced by the behavior of the victim, its attitude, repeating the request for suppression of life to the perpetrator.

Problems in judicial practice will occur in connection with the definition of repeated request. It is possible to interpret that addressing two requests of life suppression is sufficient to consider a request as being repeated. In analyzing this situation the reasons that led the legislator to impose the repeatability request should be considered. The first aspect to be considered relates to the tradition of Romanian legislator regarding the regulation of this crime. The Criminal Code of 1936 required that the victim's request be repeated and persevering. Therefore, two repetitions of this request is not sufficient to retain the offense in this form. The second aspect to be taken into account in assessing situations relates to the legislator considering it justified applying the mitigated form of murder. These situations have in common that the victim's decision to require suppression of life is unavoidable, is steadfast and to convince the offender that it is required to help the victim by showing perseverance. It is necessary to convince the perpetrator because he is committing murder after the victim's request. The insistence of the victim is necessary and indispensable for

application of the mitigated sanction and we believe that the request repeated only twice is not enough to appreciate its repeatability.

The attention of the legislator in regulating the elements necessary for the existence of the crime of murder on the victim's request follows from these conditions required for the application of the a milder sanction for the perpetrator. The request must meet all the conditions: to be explicit, serious conscious and repeated. If one of these conditions is missing or can not be proven, the applicability of the favorable legal text for the perpetrator can not be made.

It is no coincidence that the Romanian legislator has provided so many items for the existence of the crime. Even if proof of all this can not be achieved in all situations that require the applicability of the law text, the legislator's care to avoid concealment of murder in the murder at the request of the victim is to be appreciated.

What led to the regulation so thorough and careful is the fact that the murder on the victim's request is, after all, an act of murder, committed intentionally, thus in the most serious form of criminal guilt. In the absence of this regulation the act would have been classified as murder and the circumstances surrounding the victim's condition that led to its perpetration could have only been considered as judicial mitigating circumstances and applied by judges when individualizing the punishment.

Mandatory retention of this method of mitigating murder, with important consequences regarding the sanctioning regime could have only been achieved through a specific and detailed regulation of the conditions showing attenuated nature of the offense.

So the perpetrator, committing murder at the request of the victim, from a subjective point of view, acts intentionally like any other person who commits murder. This means that he foresees the victim's death and aims or at least accepts this result. Such a situation comes under criminal law because even though, according to art. 26 paragraph 2 of the Romanian Constitution any person is entitled to dispose of itself , this does not imply the existence of the right to dispose of another 's life, even if it the victim explicitly seriously, consciously and repeatedly requests, because of the suffering bared, the committing of an act of suppression of life (Toader et al, 2014: 335).

The mitigated character of the murder in this situation results from the fact that the legislator did not criminalize the attempt of such facts. Although the attempted of murder is punished, and even if the murder on the victim's request is a mitigated form of murder, the legislator did not maintain the sanction for the crime of attempt of murder on the victim's request. Not punishing the attempt of murder in this form has its justification in the special circumstances and of exceptional character that led to the suppression of the victim's life.

In conclusion, concerning the criminalization of murder at the request of the victim by the provisions of the 2014 Criminal Code highlights the following aspects: the legislator emphasized the express criminalization of active euthanasia and expressly provided that in the matters of crimes against life, the victim's consent is not of legal relevance (Dobrinoiu, Neagu, 2012: 32). Criminalizing murder at the victim's request as a mitigated form of murder undoubtedly signifies a guarantee of protection accorded by the rules of criminal law to life.

The Criminal Code of 2014 presents new elements in the matters of criminal offenses against life not only regarding the murder at the victim's request. Important changes that constitute a guarantee of protection of the right to life also appear in the

regulations of some offences provided in the Criminal Code of 1968. Interesting to note is what determined these changes and why they represent a guarantee of the right to life. The changes made by the legislator in 2014 in regulating the offense of causing or aiding suicide are significant and require such analysis.

The offense of causing or aiding suicide is a way of protecting human life and indirect actions which can lead to suppression of life. Criminalize the activities that can be evaluated as a contribution to the suppression of life, it is the victim who suppress their lives, but help author has an important role in producing the result. However we can not speak of a criminal venture as missing crime reference, since suicide is not criminalized (Cioclei, 2007: 88).

In the simplest version, the offense lies in the act of a person causing or facilitating the suicide of a person, if the suicide occurred. This is the regulation of the 2014 Criminal Code. The 1968 Criminal Code regulated the simple fact of causing or facilitating suicide of a person if the suicide or attempted suicide took place. As for the situation in which only a suicide attempt is produced, the 2014 Criminal Code regulates it as a mitigated version of the crime and punishes it accordingly. In the new Penal Code the legislator correctly made the evaluation and differentiation of legal treatment, differentiation which presents important consequences especially in terms of the sanctioning regime.

It is necessary and important that the criminal rules to represent guarantees for the protection of the right to life. At the same time, it is fair to assess and appropriately punish facts which affect this fundamental attribute of the person and thus to ensure protection of the rights of the perpetrators. Therefore, on the one hand, the penalties for various offenses must be proportional to the seriousness of the offense for which they are provided, and on the other hand, regarding an offense they must be assessed and appropriately sanctioned according to various circumstances in which the offence can be committed, assessment which may lead to retention of aggravating circumstances of the offense or, conversely, the detention circumstances of mitigating nature.

From this point of view the 2014 Criminal Code in the matter of the offense of causing or aiding suicide carried out in relation to the result produced, achieves a significant difference between the case where, due to the action of causing or aiding suicide, and the suicide took place and the situation in which there was only an attempt of suicide. Regulation as a mitigating circumstance and milder punishment in the case where there was only a suicide attempt is correct and complies the principle of proportionality of punishment to the seriousness of the offense.

Such a solution is not to be overlooked, especially as it represents a significant change brought by the new criminal legislation on the crime of causing or aiding a suicide and an additional guarantee of protection of the right to life. The explanation starts from the idea that if this act is committed, the author does not directly suppress the victim's life. He only determines, causes, or often convinces the victim to implement the suppression of their own lives decision that she took freely, unconstrained. If the victim just tried to commit suicide, unable to complete this action, the contribution of the author to committing this fact is not as important as when the victim commits suicide. So at first glance the result produced is what delineates the seriousness of the offense, but in fact, analyzing the essence of things, the author's contribution is what determines the seriousness of the offense and establishes the appropriate penalties according to the gravity of the situation.

The offense of causing or aiding suicide is regulated in two aggravating ways. For both modalities, the criteria considered by the legislator for aggravating the sentence refers to the age and state of the passive subject, and the state of the person who is being determined or helped to commit suicide.

In the first aggravated variant, the offense is committed against a minor aged between 13 and 18 years or against a person with diminished judgment. The second aggravated way concerns the situation of an offense committed against a minor under the age of 13 years or to a person who could not realize the consequences of his actions or inactions or could not control them. In both ways it is necessary that the act be followed by the suicide of the victim. If there is only one suicide attempt, even if the passive subject meets regulations of age and state imposed by law, the offense will be retained in the mitigated variant.

To see the additional guarantees made by the new regulation in the matter of right to life is necessary to analyze in a comparative manner to previous legislation the aggravated criminalizing offense of causing or aiding suicide. In the 1969 Criminal Code, the offense in the aggravated form was the one committed against a minor or against a person who was not able to realize his action or could not take control of his actions. The legislator of the 1968 Criminal Code made no distinction on the passive subject; regardless of his age or condition, the author determining or aiding suicide of a person with such a situation was treated, in terms of criminal law, in the same way.

Observations and comments on this issue have existed ever since the coming to force of the provisions of the 1968 Criminal Code. Using arguments, it was appreciated that a minor of 17 years is not to receive the same regulatory situation that led to suicide as the author who acts on a 4 year old person (Cioclei, 2007: 93-94). There was also the view that if a minor under the age of 14 or an irresponsible is to be instigated to commit suicide, the fact must be regarded and punished as murder committed by the victim using physical energy itself, and not as a determination to suicide (Stoica, 1976: 86).

Such criticisms were founded and it was natural that the legislator made a difference from the very reason which led to the aggravated offense when the passive subject is a minor or a person who is not able to realize his actions or could not take control of his actions.

The new Penal Code has taken into account these criticisms, the need to differentiate the situations covered by law and stipulating penalties commensurate with the gravity of the offense. The legislative solution imposed by the 2014 Criminal Code is the regulation of two aggravating circumstances of the offense of causing or aiding suicide. Differentiating between the two aggravated forms took into account - as it concerns the minor - the age criteria and in terms of the person who has not had his judgment fully formed - criterion refers to the degree of formation of the judgment.

Thus, regarding the child - as the passive subject of the offence of causing or aiding suicide - the age limit set by the legislator for delimitation of the two aggravated forms of offense is 13 years. As for the person who hasn't got a fully formed judgment, the seriousness of the offense only takes into account the lack of judgment or just its diminishing. Interestingly, however, is to observe how the legislator understood to sanction the two aggravated forms. If the passive subject is a minor aged between 13 and 18 or a person with diminished judgment the punishment consists of imprisonment of 5-10 years. If the passive subject is a minor who has not reached 13 years of age or a person who can not realize the consequences of his actions or inactions or can not

control himself, the prison sanction consists of 10 to 20 years and the prohibition to the exercise of rights. It is easy to see that the second aggravated penalty provided by law is identical to the sanction for murder. So although understanding to distinctly regulate the offense of causing or aiding suicide committed against a minor under the age of 13 years or upon a person who can not realize the consequences of his actions or inactions or who can not control himself, and has not looked at it as a murder committed by the victim using physical energy, as seen in the older literature, however, in terms of the penalty provided by law, the legislator treated it like a murder case.

Conclusions

The new Criminal Code brings additional guarantees as against the 1968 Criminal Code regarding the protection of the right to life. These guarantees cover both the correct assessment of the gravity of the offense which produces the suppression of life of another person, and proportional sanctioning provided for such offenses to the circumstances in which the threat of the right to life took place.

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ORIGINAL PAPER

Relation on the Line Government-Media (Based on the Situation in Poland after 1945)

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Abstract
Between 1944 and 1989, Poland belonged to the countries of 'Eastern Block'. It was associated with a number of political, social and economical consequences. The most important institution, which was trying to control all the major social issues, was announced the Polish United Workers' Party. Therefore, the undeniable fact was that in the initial phase of Communist authorities, they managed to reduce and even to eliminate the effects of many opposition activists, including the Church. In that process, the media were used and they were politicized in every possible way. In December 1944, it was established the Ministry of Information and Propaganda and then in 1946 it was established the Central Office of Control of the Press, Publications and Performances which was the main organ of censorship until 1989. After 1989, the situation of media was changed drastically. There were established several private broadcasting stations and many newspaper publishers. Since that moment the media have started to take over the dominant role to form so-called 'the Fourth Estate'. However, undoubtedly both the authorities and the media have been connected by the network of interdependencies.
The aim of this work is to present the evolution of the press and its activities over the last 60 years in Poland. The analysis of selected issues is based on a changing political situation during chosen period of time.
Presented considerations are based on an assumption that in Poland the tasks of the press institutions were different before and after 1989. They were mainly influenced by the political system and also the legal and administrative conditions.
In performed analysis is used a historical - critical method of existing archival data and other source materials, including the normative acts.

Key words: Transition, Eastern Europe, media, press, politics, Poland

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Polish media in the early postwar years

In July 1944, on the Polish territories occupied by the Red Army there was formed a new political organization called the Polish Committee of National Liberation (*Polish: Polski Komitet Wyzwolenia Narodowego* – PKWN). That organization initiated by the Soviet was a kind of counterbalance for the Government of the Republic of Poland in exile (*Polish: Rząd Rzeczypospolitej Polskiej na uchodźstwie*) which was recognized by the anti-Hitler coalition countries. It was also a signal of Soviet interest to introduce the post-war Polish country under their sphere of impact. The provisions of the Yalta Conference led to the real division of European lands between two blocks. Among countries under the patronage of Moscow beside Poland, there were found the People's Democracy Countries i.e. the German Democratic Republic, the Czechoslovak Socialist Republic, the People's Republic of Hungary, the Socialist Republic of Romania, the People's Republic of Bulgaria, the Socialist People's Republic of Albania and also outside Europe, the Mongolian People's Republic, the Democratic People's Republic of Korea, the Democratic Republic of Vietnam, the People's Republic of China and the Republic of Cuba. Sometimes, historians exclude from above group the following countries: the Socialist Federal Republic of Yugoslavia under the rule of Josip Broz Tito and also the People's Republic of China, the Socialist People's Republic of Albania (Krajewska & Krajewski, 2013: 267- 273).

In the first days of a gradual takeover of control in each country by the communists, including Poland, they introduced the planned development of media manipulation. As it was mentioned many times by researches of that period of time, in the Communism words were primarily served to hide the truth (Habielski, 2009: 196). The political assumptions, which were adopted by the communist authorities, were generally determined. The primary objective was '*complete dependence and subordination of the media which were supposed to be in its significant part a fragment of the political system, and at the same time its instrument'*(Habielski, 2009: 196). Those guidelines were not changed significantly during the entire existence period of the Polish People's, and since 1952 the Polish People's Republic.

In 1944, they took place the post-war activities aimed at the creation (or restoration) and the systematization of existing system of media, i.e. the press and the radio. As the historians emphasize, the crucial issue was a rule which was not undergone any public consultation. Moreover, it was said that the press and other media were a kind of social good and hence their founders, owners and disposers could be only the publishing cooperatives, the political parties, the social organizations, the state or scientific institutions, but not private persons. Additionally, that rule imposed a state monopoly in the field of communication for the public and journalistic environment (Habielski, 2009: 173). That monopoly was initiated to create the own nationwide mass press facilities by the communist authorities. As part of that activities, it was increased the impact of the most important journals of the Polish Socialist Party (*Polish: Polska Partia Socjalistyczna – PPS*) 'The Worker' (*Polish: Robotnik*) and the Polish Workers' Party (*Polish: Polska Partia Robotnicza – PPR*) 'The Voice of the People' (*Polish: Głos Ludu*) (Łojek & Myśliński & Władyka, 1988: 90). In 1948, both newspapers were combined creating 'The People's Tribune' (*Polish: Trybuna Ludu*) which was one of the largest issued newspapers published in the Polish People's Republic. Also, two smaller satellite parties launched an intensified activity of press. The Peasants' Party (*Polish: Stronnictwo Ludowe – SD*) started to function by creating 'The People's Daily'

(*Polish: Dziennik Ludowy*), a weekly 'The Village' (*Polish: Wieś*) and the monthly periodical 'The Peasant Thought' (*Polish: Myśl Chłopska*). The Alliance of Democrats (*Polish: Stronnictwo Demokratyczne*) began to publish 'The Daily Courier' (*Polish: Kurier Codzienny*) and 'The New Age' (*Polish: Nowa Epoka*). Moreover, at the same time they were created several new titles of national and trade magazines which all of them were subordinated the Communists. In the middle of 1943, the press organ of the People's Polish Army began printing – 'The Soldier of Freedom' (*Polish: Żołnierz Wolności*) (Komornicki, 1965: 22-24) and since October 1944 it started to be published a capital journal 'The Life of Warsaw' (*Polish: Życie Warszawy*) .

The Catholic press as well as the opposition publishers operating legally until 1947 were only partially independent. However, it was not related with the existence of freedom of expression and freedom of speech in reborn Poland (Habielski, 2009: 172).

At the same time, it was established the Department of Information and Propaganda which changed its name to the Ministry of Information and Propaganda (*Polish: Ministerstwo Informacji i Propagandy – MIP*) after the transformation of the Polish Committee of National Liberation (*Polish Polski Komitet Wyzwolenia Narodowego – PKWN*) into the Provisional Government. The scope of ministry activities was quite broad. Beside a support of daily and periodical newspapers, it was also responsible for: press agencies, radiophony, film production and cinematography, houses of culture, informational publishers, as well as extensive and massive, domestic and foreign propaganda. The main tasks of that institution were the management of printing houses, the paper assignment and pre-selection of censorship (Strzyżewski, 1977). In 1945, the range of tasks was expanded about the activities of coronary and the organization of demonstrations. Also, there were attempts to influence on social attitudes through manipulations and gossips. The ministry also managed the Central School of Propaganda Instructors (*Polish: Centralna Szkoła Instruktorów Propagandy*) and the Central Political-Educational School (*Polish: Centralna Szkoła Polityczno-Wychowawcza*). By the spring of 1945 when the communists strengthened their position, they began to create the provincial offices and local branches of the ministry (Habielski, 2009: 180).

In the same year, at the request of the ministry it was established the new organ whose the main task was a preparation of information service for the press, radio and also the state offices and institutions. It was called Polpress. In the following years, the organization changed its name to the Polish Press Agency (*Polish: Polska Agencja Prasowa – PAP*) and in 1947 after the termination of the Ministry of Information and Propaganda it came under the sovereignty of the government. That institution has been working constantly without changing its name until today. After the revolution of political system in Poland in 1991, there was a symbolic connection the Polish Press Agency and the Polish Telegraphic Agency (*Polish: Polska Agencja Telegraficzna – PAT*) – the informational organ of the immigration authorities (PAP, 2013).

The next very important point of communists activities was the introduction of universal media censorship. The institution which was responsible for the censorship started to work in 1944, when it was formed the Central Bureau of Press Control with the help of the Soviet specialists (*Polish: Centralne Biuro Kontroli Prasy*). In March 1945, as it was announced under the regulation, the acceptance from the side of censorship institution was necessary to print: all materials with informative character (newspapers, newsletters, magazines) as well as reprints of newspaper, magazines and books, textbooks, calendars, scientific works, literature, performing arts, poetry, songs,

slogans, leaflets, proclamations, appeals, announcements of various types, drawings, caricatures and monthly reports. The printing of newspapers and magazines was only possible after the acceptance of by a chief editor and a censor and after putting the stamp with the words 'It may be printed' (*Polish: Zezwala się na drukowanie*) (Habielski, 2009: 180).

In the next year, the Central Bureau of Press Control changed its name to the Main Audit Office of Press, Publications and Performances Control (*Polish: Główny Urząd Kontroli Prasy, Publikacji i Widowisk – GUKPPiW*) which was formally subordinated to the Council of Ministers. Additionally, they were changed the competences of the newly-established institution. Beside the control activities and after the final liquidation of the Ministry of Information and Propaganda, it received the concession opportunities. It meant that the Main Audit Office of Press, Publications and Performances Control decided which titles, how often and how many copies of them had the rights to be published. Moreover, the censorship had a real impact on the selection of the newspaper staff and its publisher.

The adopted program assumptions of the communists and the created structure of repression and censorship functioned in a practically unchanged form through the entire Stalinist period until the 'thaw' of 1956. When under the influence of the social instances, the communist authorities decided to modify certain guidelines, including a sphere of the media.

Millennium Campaign as a sign of the media battle between the state authorities with the Church. Epoch of the 'Gomułka socialism'

In October 1956, there was a political crisis in Poland. During the plenary session of the Central Committee of the Polish United Workers' Party (*Polish: Komitet Centralny Polskiej Zjednoczonej Partii Robotniczej – KC PZPR*) Władysław Gomułka, who was released from prison a few months earlier, was elected for the First Secretary of party. At the same time, there was made a number of other personnel changes in the composition of the Central Committee. In the first speech, Gomułka announced the liberalization of economic and social relations, the improvement of situation in the country with maintaining continuity of the communist party (Dudek, 1995: 29). In the first days of the new government, it was proclaimed a resolution related to a 'reduction of the censorship competences' during 8th plenum at the party meeting in Warsaw headquarters of the Main Audit Office of Press, Publications and Performances Control (Habielski, 2009: 233).

The October social atmosphere and reorganization of authorities led to conclusions that in Poland it could have been created a new system of media functioning as a result of those changes. It was assumed that they would have achieved a high level of independence. However, those opinions were verified very quickly by the policy of new First Secretary because the press (not only political) adopted his election with an authentic enthusiasm. In the beginning, Gomułka tried to accept some press diversities, including the ideological diversity, but he did not want to tolerate a disobedience and the 'subversive slogans'. Therefore, quite rapidly he started the works aimed at 'tempering the atmosphere' and the restoration of censorship controls. Once again the Main Audit Office of Press, Publications and Performances Control became an effective tool which protected the party interests. The communist authorities were again suspicious against all forms of deviations from the established directions. Furthermore,

they were ready to intervene wherever their authority or their monopoly seemed to be affected. They tried to impose on the society a vision of the internal and international situation which resulted from the ideological character of system(Habielski, 2009: 237, 242, 247).

The sign of the conflict between the government vs. the free media (which there were very few at that time) became the events of the years 1958-1966. In 1957 the Catholic Church in Poland proclaimed the preparation for a celebration of the Millennium of the Polish Baptism which should have occurred in 1966. The communist authorities reacted quickly on the growing activity of the Church by taking a massive propaganda campaign aimed at minimizing their impact on the Polish society. From the point of view represented by the communists, their reaction was more than understandable. The Millennium of the Polish Baptism undermined indirectly the 'socialist' character of the country by classifying the Polish citizens as the Catholics. Thus, that event caused to increase the impact on the society of ecclesiastical authorities in comparison to the state authorities (Krajewska & Krajewski, 2013: 267- 273). As the most important action the communist authorities decided to establish an own secular celebrations which could have been a counterweight to the Church campaign. As a result of that initiative, in 1958 they proclaimed the Polish State Millennium which became the main point of media campaign. Its essential purpose was precisely formulated by the Department of Propaganda and Agitation (*Polish: Wydziału Propagandy i Agitacji*) and the Administrative Department of the Central Committee of the Polish United Workers' Party (*Polish: Wydział Administracyjny Komitetu Centralnego Polskiej Zjednoczonej Partii Robotniczej*). According to the guidelines, the Polish People's Republic was 'a crowning achievement of the development process of nation and state, the heir of patriotic and progressive tradition of the entire millennial achievements of the nation' (Habielski, 2009: 262-263).

'Battle for the number of souls' (Wilanowski, 2002) of Polish citizens – the Catholics who represented a large majority of country, which counted over 27 million of inhabitants (GUS, 1956: 24), took place in the years 1965-1966 when the Millennium Campaign was linked with the anti-German propaganda. Until 1970 the Federal Republic of Germany did not accept their western border with Poland placed on the Oder and Neisse. Therefore, the authorities of the Polish People's Republic usually responded using the political attacks on the Federal Republic of Germany which were related to the 'historical' danger coming from their site. The press, journalism, literature, radio and also film were included to that battle about the Polish reasons of state. Those steps were slightly in the conflict with the assurances about the inviolability of borders proclaimed by the communist authorities. As historians highlight, 'it was not about the logic, but about the consolidation of society and legitimizing through history'(Habielski, 2009: 262-263). A great opportunity to join the anti-German and the anti-Church threads was an announcement of *The message of the Polish bishops to the German bishops* (Opoka, 2013*)* in 1965. That message of representatives of Polish Church to the representatives of the Western German Church was received as an anti-Polish action by the communist authorities, mainly due to the ending phrase of message – 'we forgive and we ask for forgiveness'. According to the arrangements of state authorities, the campaign to honor the Polish State Millennium was not supposed to have an anti-religious character but it was aimed at people who were against the Polish rights (Habielski, 2009: 262-263). Despite the actions taken by the state institutions, they did not achieve to reduce the significance of Church

celebrations. Any harassment and any press anti-Church campaigns did not bring the expected results. The celebrations of the Millennium of the Polish Baptism did not contribute only to strengthen the Catholicism among the Polish Nation but also they became the political expression of the union between the faithful and the Church. On the other hand, that attitude was also a kind of distrust sign against the communist authorities and other organizations linked with them (Krajewska & Krajewski, 2013: 267- 273, Noszczak, 2010).

Press in the years 1970-1989/1990

At the turn of 1970, the process of media transformation was started. One of its sign was a beginning of the second cycle of publishing (самыздáт) which was not under the control of communist censorship institutions. Those activities became even more intense after the change of the First Secretary of the Central Committee of the Polish United Workers' Party in December 1970. Despite the activities of the independent press, the state media still occupied the most important and indivisible places in the country. Even after the takeover a control by the new ruling crew, 'the media were immediately harnessed in the service of legitimizing of new crew, using a tested convention of mystification'(Habielski, 2009: 278). The main objectives of legally operating media were appointed by the activists of the Communist Party in frame of the 6th congress. In a resolution, which was adopted a year after Edward Gierek became the First Secretary, there was stated that '(…) the main task of the press, radio and television is a comprehensive action of information and current affairs for a permanent consolidation of the entire nation around the party and its program. Therefore, it should improve systematically the all system of mass media based on the gained experience and the postulates of society (…)' (Habielski, 2009: 280). Thus, it was sanctioned the sovereignty of party over the media and the ability to use them for the party purposes.

At the turn of the years 1970 and 1980, a method of censorship of emitted materials became more effective. The censorship staff in all departments was expanded, with a special regard to the television. According to the guidelines, everything, which was considered as 'incompatible with the spirit of the times', could have been rejected by the censor. A current control over the process of television program creating was responsible for intensifying auto-censorship habits. The norm became 'not telling about the things that the authorities would not like' (Habielski, 2009: 280).

The institutions of the media management and control operating in the Polish United Workers' Party were also reorganized. In January 1972, the Press Office (*Polish: Biuro Prasy*) was linked with the Department of Propaganda and Agitation and it was created the Department of Propaganda, Press and Publishers (*Polish: Wydział Propagandy, Prasy i Wydawnictw*). One year before, it was established the office of government spokesman – the institution which was previously unknown in the Polish People's Republic.

In the media, there was presented a campaign informing the society about the ongoing economic growth in the country. The essence of the '*propaganda of success*' was confined to attract the public attention towards a policy of accelerated development which was carried out by the First Secretary. Its realization was supposed to be based on the economy modernization, increasing a prosperity and improving the living standards of citizens. Those intentions could be found in two the most popular slogans

of that time: '*We are building the second Poland*' (*Polish: Budujemy drugą Polskę*) and '*in order Poland is growing in strength, and people are living a prosperous*' (*Polish: Aby Polska rosła w siłę, a ludziom żyło się dostatniej*). The main task of media was reduced to exaggerate the successes of ruling party and to glorify their achievements. The consumerist policy carrying out on the basis of the foreign loans had a breakdown in the middle of 70s. At that time, it took place an erosion of the communist system stability and the formation of some organizations with social character which retreated from the cooperation with the communist authorities. The political crisis and associated with that the liberalization of the media occurred in 1980. Then, under the influence of a wave of workers' strikes the Independent Self-governing Trade Union "Solidarity" was formed (Friszke & Persak & Sowiński, 2013, Garton, 1990).

Even before the introduction of the martial law on the territory of Poland, in October 1981 the resolution about the control of publications and performances came into a force. Article 1, point 1 of the resolution indicated that the Polish People's Republic '*ensure freedom of speech and press in the publications and the performances*' (Dz.U.1981.20.99). However, in the following point there were listed the values where freedom of speech could not have been applied. The restrictions were related to the issues such as an insult of the independence and territorial integrity of the Polish People's Republic, an incitement to overthrow, abuse, ridicule and humiliate of the political system and finally the 'constitutional principles of the Polish People's Republic foreign policy'. The intended to distribute contents were sent to a preliminary inspection called a preventive censorship. But the following contents were out of preliminary censorship control: the speeches of deputies and councilors, the decisions of courts, the reprints of publications issued after 1945 (which obtained a permission to print previously), the publications and textbooks, the works of Polish literature prior to 1918, the scientific and educational publications, the statistical information and the Church publications with a character of 'faith transmission'(Dz.U.1981.20.99).

In the end of December 1981, the political and social situation was changed and as a consequence the above mentioned amendment was not applied. After the introduction of martial law, the way of information spread was based on the notice of the Council of State and the Decree of on Martial Law (Dz.U.1981.29.154). Under the first regulation it was prohibited without a consent of the 'competent authorities' to distribute all sorts of publications and information and to use the printing machines (Habielski, 2009: 321). Thus, there was implemented a total paralysis of the media. All the functioning institutions were totally subordinated to the state authorities. That situation remained until a final abolition of the martial law in July 1983.

In the years 1983-1990, it was observed a slow and systematic reduction of the state authorities impact in the area of media. At that time, the progressive economic crisis led to focus on the economic issues by the state authorities. At the end of that period, especially during the meeting of 'the Round Table' (Kancelaria Prezydenta RP, 1999; Codogni, 2009; Reiff, 1989), there was noticeable the growth in the number of independent magazines. Besides the quantitative character, that trend also had the qualitative nature. As it was possible to notice, the number of bimonthlies and quarterlies decreased in comparison to the number of dailies, weeklies and monthlies. That tendency presents the table below.

Table 1. Dynamics of a press offer by the typological groups in the years 1980-1990.

Group of Titles	YEARS				
	1980	**1985**	**1988**	**1989**	**1990**
Daily	52	51	50	53	73
Weekly	137	180	191	239	278
Biweekly	96	103	110	130	144
Monthly	564	592	626	678	646
Bimonthly and Quarterly	625	609	850	748	657
Other	1096	1408	1401	1452	1339
SUM	2570	2943	3228	3300	3137

Source: Own description based on data from the Central Statistical Office.

Transformation of 1989 and its implications for the media

During the initial phase of political and economic transformations in Poland, in May 1989 it was occurred a significant change in the press activity. The main and essential point of that transition was a liquidation of the censorship institution. Eventually, the Main Audit Office of Press, Publications and Performances Control, which was responsible for the control activities, finished its operations on 11th April 1990 under the new press law (Dz.U.1990.29.73). In the same document, it was also noted that 'according to the Constitution of the Republic of Poland, the press uses the freedom of expression and embodies the right of citizens to their reliable information, transparency of public life, control and social criticism'(Dz.U.1990.29.73) as well as 'the press is committed to present real events'(Dz.U.1990.29.73). Besides the ideological overtones, that declaration had a real impact on the transformation in the field of mass media, especially the press. Most of the existing at that time titles performed the enforced transformations caused by the present political situation by getting rid of the politically inconvenient names or the editorial management. In addition, it occurred a spontaneous development of new newspapers directed to a wide range of customers. The first phase of changes, which lasted approximately two years (from May 1989 to July 1991), was characterized by a spontaneity and an extensive dynamism (Filas, 1999: 37). After a period of mandatory transformations, there was observed an annual phase of the apparent market stabilization which led to the 'open battle for a media market, especially the audiovisual media' in early 1993. The development of the market and its new division (ongoing from the end of 1994 to the present) is characterized by a significant dynamism in the field of mass media, in particular the press. In the table 2 there is presented an evolution of Polish press market in the years 1995-2012.

Table 2. Number of periodical titles and their combined single editions number in the years 1995-2012.

Years	**1995**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**
Titles in absolute numbers	4448	5534	5837	6189	6309	6502	6721	6759	6948	7229	7423	7655	7764	7827
Total single editions (in thous. copies)	83833,9	72332,4	78481,3	76093,9	74095,2	77379,6	86858,5	82912,8	83853,2	86182,2	87353,2	90796,2	91027,8	no data

Source: Own description based on data from the Central Statistical Office.

In 1997, a fundamental sanctioning of political changes in Poland took place. The expression of that event was the establishment of the new Constitution of the Republic of Poland on 2nd July 1997. In the 14th article of this document, it was provided the freedom of the press and other mass media (Dz.U.1997.78.483). Moreover, in the 54th article, it was guaranteed to every citizen 'the freedom to express of their views and to obtain and to disseminate the information'. It was also mentioned that 'the preventive censorship of the mass media and the licensing of the press are prohibited'(Dz.U.1997.78.483).

Thus, the state authorities wanted to distance from the legacy of the previous system in which the freedom of own opinion expression was sanctioned. The media, which took the form of mass medium, became the opinion formers. There is no doubt that the appearance of the private media resulted in the further transformation of the relations between the government and the media. The 'Fourth Estate' changed the form and scope of its activities and also gained a significant dose of sovereignty. However, it is not possible to separate completely a strong attachment between the media and the state authorities. Nowadays, the media are somehow responsible for the creation of political views in comparison to the previous political system where the state authorities exerted a significant influence on the contents of media.

Conclusions

The aim of this work is to show the evolution of the mass media in Poland and their activities during the last 60 years in the context of the changing of political situation. It is only presented a brief abbreviation of long and complex period in the history of Polish media market development and depicted subject cannot be closed only in this work. It does not deplete fully the adopted issues and it undergoes the ageing process of the presented actual information. However, it should be noted that this work fulfills the assumptions in the context of the press transformation in Poland in the last sixty years. It is worth to underline that the press was strongly affected by the state authorities in the

period of the Polish People's Republic and it was also served as a tool for the propaganda purposes. The good example of using the press to fight against the communist authorities opponents was the millennium campaign of 1966. In the period after 1989, these kinds of actions were overcome by applying the constitutional legal guarantees and the liquidation of the censorship institutions. But it does not mean the total independence of the press from the state institutions and its permanent impartiality. The author omitted intentionally the characteristics of different areas of the mass media such as radio, television and Internet.

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ORIGINAL PAPER

The "Import" of the Rule of Law as a Democratic Tradition in Post-communist Constitutional Usage: Charting a Multi-Level Theoretical Matrix

Anca Parmena Olimid*

Abstract

Analyzing the "rule of law" within the European post-communist environment generates confusions, irregularities and difficulties of interpretation and understanding, especially when political conditions rebalance the legal meaning of normative claims and the precautionary principles of transition such as: democracy, democratic and social state, democratic multiparty system, constitutional order, and social justice. The article focuses on the rule of law as a "democratic tradition squared by the basic legal principle of legal and political morality depending on a particular normative and interpretative norm. After providing a constitutional analysis of the rule of law in the former communist countries constitutions, the study identifies and replaces all relevant and common values in two-sided matrices considered as a valuable theoretical condition of establishing a functional democracy. The paper uses a methodology that examines and reconstructs the legitimating status of rule of law in the constitutional provision of post-communist states. The results of the study are rather challenging. On the first place, the study is engaging in a post-communist debate on the "import" of the rule of law and its outcomes in hybrid societies and, on the second place, the study serves as an "exhibit" of the theoretical patterns facing the "post-communist thesis" and its transformations.

Keywords: *rule of law, post-communism, democracy, constitutional design, political legitimacy*.

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The "rule of law" and the post-communist constitutional usage

After the fall of communism, the "rule of law", as a democratic principle, was adopted by almost all Central and Eastern countries. Under these circumstances, the design of the new constitutional architecture process played the decisive role in the transformative process from communism to post-communism. Until recently, constitutional theory tended exclusively to highlight the democratic rebuilding of the society. However, it is increasingly recognized that analyzing the "rule of law" within the European post-communist environment often generates confusions, irregularities and difficulties of interpretation and understanding, especially when political conditions rebalance the legal meaning of normative claims and the precautionary principles such as: democracy, democratic and social state, democratic multiparty system, constitutional order, social justice, institutionalization of democratic parties and pluralistic society (Gherghe, 2013: 19-24). According to these arguments, the present paper poses a basic challenge to rule-of-law analysts' tendency to focus the fundamental theory through the "matrix" of the legal systems pluralism, identifying the same rules, norms, procedures, values and sanctions. The challenge of the present paper is to argue how the import of the rule of law in the post-communist lanscape influenced the constitutional usage of the concept of "democratic tradition". To mark the distinction between the "old" and the "new" legal and moral-political interpretation of this concept, it is vital to apprehend the substance of the "rule of law" by re-elaborating it first as percept of legal plurality, precautionary principle and political morality. In this context, Isser, however, appreciates that "accepting the more sociological definition of legal pluralism, which looks at the facts on the ground rather than state-centric notions" (Isser, 2011: 341).

Redesigned under these empirical values, the rule of law expresses the principles of a "democratic tradition" based on the justification of freedom, equality and justice. These values justify the domain of the post-communist order and the key role of normative claims in enabling and rebuild the existence of the new system of law. The jurisprudential significance of the rule of law as a democratic tradition is individualized under the legal-political import of general norms and supplemented by the distinction between the generality/ particular dichotomy of normative claims and precautionary principles. Thus, both normative claims and precautionary principles in hybrid societies of post-communism should answer to the following two questions: What are the relevant theoretical models about the rule of law that are expected to play to main role in the implementation of the democratic values? How can these theoretical models match? Is there a matrix "solution"?

This paper gathers the particular theoretical questions and issue concerning the rule of law and its constitutional usage in post-communist landscape. It argues that the nature of the rule of law and its transformations exclusively cherished the legal debate after the fall of communism, while at the same time it generated questions and contestations especially when it was "designed" with the political enquiry. This choice contributes in showing to both legal and political debates the theoretical and interpretative enquiries to be achieved. Beyond that, the essential characteristic of the Eastern constitutional democracy encompasses "the legitimacy of constitutional democracy" and the "maintenance of a prescribed constitutional order" (Rosenfeld, 2001: 1308). Moreover, Rosenfeld examines the rule of law as a "virtually indispensable" value "when contrasted with the totalitarian or authoritarian regimes" (Rosenfeld, 2001: 1310).

After providing a constitutional analysis of the rule of law in the former communist countries constitutions, the study identifies and replaces all relevant and common values in two-sided matrices as a valuable condition of establishing a functional democracy, using a methodology that examines and reconstructs the legitimating status of rule of law in constitutional provisions of the post-communist states based on the principle "one person, one vote". In this direction, Elster tends to map a "three-concerned dilemma" based upon the electoral process, the central rights-protecting elements and the constitutional constraints as the central focus towards the "extension of democracy" (Elster, 1998: 17). The same refers to constitutionalism square the concept of "limits on majority decisions; more specifically, to limits that are in some sense improved" (Elster, 1998: 2).

Transition studies often wonder whether and when the "transition process" ended/ ends. The article focuses on the rule of law as a basic legal principle and, in particular, as a "pattern of the political doctrine" depending on a particular institutional factor and specifying certain minimum standards which constitutional order should attain. This article argues that a successfully "transition process" can and should be designed by underlying the choice-of-rule-of-law argument as a statutory principle of the constitutional democracies and questioning: Is there a challenging design of the "rule of law" in Eastern democracies? And if so, why is it needed? Before answering to these questions, a challenging definition is needed of the term of "rule of law" in the context of "Eastern democracies" (Tulis, Macedo, 2010: 1-9). However, Gönenç notes that "constitution-making governments in post-communist countries were the outcome of a multi-dimensional transformation process affecting the whole Eastern Europe and the former USSR" (Gönenç, 2002:105).

Admittedly, the openness of the constitution-making process develops a certain moral-political-legal factor militating in favor of the ideal of giving citizens notice of the formulation of legal norms. As Tremblay explains, the "explicit versions of the rule of law" correspond to asset of "valid constitutional reasons" stating the nature of particular methodological reasons and various ideal of normative interpretations (Tremblay, 1997: 23-24). In any case, the proper characterization of the doctrine of rule of law legitimates the legal foundation for the principle of legality concerning "the issue of formal authorization of executive or administrative action and decision" and the interpretation of legislative provisions postulating that "the rule of law means something more substantial than the idea of formal authorization" (Tremblay, 1997: 24).

Judicial or political theorists' answers design the "Eastern democracies" as varying contexts according to the proximity of "rule of law" to the constitutional foundations. However, the entry into force of the constitutions was a "to be or not to be milestone" of the post-communist order. Focusing exclusively on one country-case does not encounter the whole Eastern "puzzle", the ongoing process of European integration has been limited and restrained by the multi-level constitutional reform.

Nevertheless, in this direction the concept of the rule of law includes the reassessment of democratic values and the extension of principles of stability, legality and equality. As Luatenbach notes, "the rule of law is a public law concept and it concerns the manner in which we ideally want to organize our society through law" (Lautenbach, 2013: 1). As a framework of reference for post-communist societies, the import of the basic principle of the rule of law guarantees the "existence of a stable legal system and enforceable laws" (Lautenbach, 2013: 2).

Although the rule of law has become a "must have" principle in the first decade of the twenty-first century, the instrumental use of the concept is host for two core aspects: the existence and development of the assumption of "modern state", and, second, the strengthen of the "legal pluralism as part of the state-building process", formally engaging the monopoly of the rule of law in the constitutional patterns in post-conflict states. In order to reveal the guidelines and the most disputable arenas of the relationship between the rule of law and state-building process, Grenfell examines the legitimacy of the legal pluralism in post-conflict states as "an attempt to secure internal legitimacy for the new legal order by negotiating with traditional leader" (Grenfell, 2013: 8-11). This argument signalizes the end of the communist regime and the development of the social justice. Furthermore, it exist a variety of the constitutional commitments emphasizing the importance of the rule of law. Therefore, the constitutional design of social justice is associated with the "rule of law" marking the fall of the dictatorship and implying the hierarchy of norms and supremacy of law. The principle is often enshrined in a particular provision formally monopolizing the decision-making context of constitutional justice.

A further theoretical extension of the rule of law is the stabilizing function in conjunction with the process of "state forming" and "political legitimacy" (Thornhill, 2011). In addition, Czarnota argues that the topics of "post-communist rule of law" have to be linked to the wave of Eastern enlargements. Moreover, the historical narrative of the political legitimacy proved a "new type of polity" as "the sum of all *demoi*" creating "the *demos* of the European Union" (Czarnota, 288-290). The problem lies in the acceptance of this form of legitimacy depending on the type of institutional organization of the state and the constitutional order (basic principles of constitutionalism). As points out, in general terms, the rule of law has been described as "the known principles of law", entitling that "no one is above the law" (Kotzé, 2013: 132).

Steps in charting a multi-level theoretical matrix

As the previous paragraph noted, there are profound questions about the rule of law as a stabilizing function for post-communist countries and political legitimacy as a "new type of polity". In either of these theoretical perspectives, the formal elements of most limited definitions of the basic principle of the rule of law are well accomplished. At this point of discussion a second assumption is that political change matters and change is organized interest-dependent (Georgescu, 2014: 24-25). As Hayes also summarizes, "the best way to constrain organized interests is through a renewed commitment to the rule of law as advocates Theodore Lowi and Friedrich Hayek" (Hayes, 2001:5). Given the need of a discussion to engage in stable legal system, there are several factors which clearly contribute to the rule of law and legal order outcomes. In this direction, Hayes argues that the dimension of the discussion differentiates the "breakthrough policies" given the fact that "every policy, however, must originate as a new policy" (Hayes, 2001:125-126). Ordinarily, Hayes' assumption tends to develop a new dimension of the evolution of state-building and policy communities as rationalizing policies. Now since the focus on the idea of basic constitutional order is that it perceives the political change and rationalizing policies, it might seem that "the rule of recognition is the fundamental constitutional rule of a legal order", referring to "constitutional" in terms of legal validity (Dyzenhaus, 2003: 28).

Nevertheless, there are also debates focusing on the lack of political stability and heterogeneous constitutional outcomes asserting the idea of "substantive

constitutionalism and substantive supremacy". Morawa offers a concise and frank explanation of the constitutional pillars of the basic principles within the "substantive constitutionalism" and European constitutional structure (Morawa, 2011: 178). Thus, the acceptance of European constitutional norms, the national law, including the constitutional provisions increases the democratic process of the emergence of European citizenry (Morawa, 2011: 176). At the same time, however, this approach suggests the two main empirical pillars needed to understand and adopt the research of the "rule of law" in transitional societies: the "constitutional import" of the rule of law in hybrid democratic societies and the complexity of political ideals after the fall of communism squaring the European integration.

As mentioned above, following the definitions of Dyzenhaus and Morawa provided in the previous paragraphs, we deal with the two central theoretical pillars of the rule of law debate, the constitutional usage and the political ideals outcomes in accordance with the commitment to social justice. According to Grenfeel and Thornhill, the normative interpretation of legal pluralism and political legitimacy can be questioned beyond its traditional and regular dimension. Yet, as well as the expressions "legal pluralism" and "political legitimacy", the expression "rule of law" and its terminological differences influences and includes the institutional character of "the legitimization of the political system". In this manner, Zolo defines "the state characterized by the rule of law, from an institutional and normative perspective" in order to differentiate it from other contiguous notions, such as "legal state", "liberal state", "democratic state", "constitutional state" (Zolo, 2007: 5).

On the whole, all theoretical approaches are focused at coming to pursue the sustainability and feasibility of the democratic principle of the rule of law in the hybrid post-communist societies. Despite flowing from legal and political transformations, the theoretical contributions develop a dialogue of concern in this challenging context of transition. On the other hand, insisting on the political ideals debate relates the idealist function of the rule of law to the traditional debate of the legitimization of power and the potential for arbitrary government.

Some authors argue that the importance of the rule of law lies in its force to answer to the circumstantial exercise of power depending on the subjective legal rule and the requirements on governments. In drawing up interpretative norms for this idea, we focus on the challenging idea of the "rule of law" depending on the some subjective pretensions relaying to this connection between the ideological function of the rule of law and the traditional concern for the legitimization of power. With this regards, Palombella argues that "the connection between power and the rule that law must be recognized as necessary" (Palombella, 2010: 8). These developments ensure that the arguments about the rule of law as "an institutional ideal" are dominated by the post-communist appeal to the democratic values and traditions. Whereas transition road of post-communist countries seeks stability infusing the theoretical debate with the will of democratic order, the enquiry on the status of the rule of law becomes a request of the constitutional order.

For Seibert-Fohr, the post-communist theoretical debates squaring the democratic constitutional order are connected to the "shortcomings of judicial reform in individual states" (Seibert-Fohr, 2012: 2). The author also explains that the institutional structural reforms in post-Soviet countries generally focus mainly on the rule of law reform and on the findings ensuring the judicial independence. The diversity of law jurisdictions

show a variety of common concern revealing that there is not one particular institutional standard model to build and strengthen the rule of law.

On the basis of the theoretical dimensions above reached, the conclusion that ideas animating the constitutional-making in post-communism are necessary reflects a radical rupture of the new system of "right or wrong choice". Although the importance of the economic factor should not be underestimated, the political factor has become "crucial" in supporting and defining the "transitional model". Petrovic explaines the "exceptional" empirical facts in post-communist countries under the "following circumstances": "focused and designed to comprehensively explain the origins, nature and intensity to inner socio-political regional divisions within the formerly communist Eastern Europe and the impacts of these divisions on different political and policy choices made on both sides after the collapse of communism" (Petrovic, 2013 : 10).

Above all, in hybrid societies, the rule of law is not conceived in terms of calculation of judiciary trust, but rather as a degree of support for democratic rule. It may be expected that this direct connection between judiciary trust and democratic rule to codify the process of constitution-building and step-by-step European integration. This "symbolist" rationality of the "rule of law" represents "the totality of society and the foundation of its values" (Přibáň, 2007: 196). For the author, the international boundaries of the legal system are expected to represent the ethical dimension of the democratic traditions and ideals of a changing landscape. Přibáň also decodifies the ideological expectations and the ethical ideals of post-communist societies invoking the symbolic rationality of the legal system: "nation state constitutions and other legal acts are full of references to cultural inheritance and historical uniqueness, marked by moral values and raditions which supplement the democratic legitimacy of the political system" (Přibáň, 2007: 195).

For Rosenfeld, the rule of law is one of the fundamental characteristics of the constitutional democracies in Eastern Europe and elsewhere. Along with the other two functions of the modern constitutionalism, the powers of the government and the protection of the human right system, the rule of law is dependent on the concepts of "liberty" and "equality" (Rosenfeld, 2001: 1308) and it might contribute to the safeguards of "legitimacy" and "pluralistic society" (Rosenfeld, 2001:1309). Living aside the normative and interpretative explanation for both constitutional basis, the same author legitimates subsequent enforcement such as "the legitimacy of law" envisaged by the "counterfactual requirement of self-legislation, and coupled with willing submission to law" ("the requirement of consent" endorsing "a particular rule of law regime consistent" with legitimating aims) (Rosenfeld, 2001: 1317).

At this point, a major area of post-communist research is the so-called "study evaluation research". This phase predicts the theoretical impact of related research and it assesses the effectiveness of fundamental characteristic of constitutional democracies in Central and Eastern Europe. In the present study a multi-level type of evaluation involves the monitoring of the "rule of law regime" by determining the specific facts required by the implementation of the rule of law.

What is a multi-level theoretical matrix?

In the light of these critical observations, it is not surprising to favor other requirements needed to reveal the consideration of the rule of law beyond the requirements of consent, legitimacy of law and the realm of democratic values. Legal and political pluralism limits change over time. Usually theoretic reports are generated

regularly, and the reports are compared across several periods. When analyzing the post-communist period, it is useful to not just consider the specific categorical counts (as the majority of the previous studies), but the multi-level theoretical approach as it constantly surrounds the period.

A multi-level theoretical matrix focused on the "rule of law" is a pivot-table of inputs and outputs squaring the "import" of the principle of the rule of law and giving to categorical changes ("outcomes" and "democratic traditions") a concept nominalization. Both multi-level matrices (outcomes-democratic traditions and democratic traditions-conditionality) are a simple and interpretative method of summarizing inputs-outputs concepts selection useful to assess the rule of law impact. Thus, the categorical concepts used in the matrices are dealing with a very efficient correlation between the criteria labels: $C_{1,2,3,4.}$ (see Table 1. Rule of law – charting a multi-level theoretical matrix).

Table 1. Rule of law – charting a multi-level theoretical matrix

Inputs	**Outputs**	
Criteria labels	**Outcomes**	**Conditionality**
C no.	**O no.**	**c no.**
C_1 context and	**O_1 political enquiry**	**c_1 political legitimacy**
C_2 focud and items	**O_2 transition process**	**c_2 constitutional justicve**
C_3 principle indicators (1)	**O_3 constitutional democracies**	**c_3 social justice**
C_4 principle indicators (2)	**O_4 judicial reform**	**c_4 pluralistic society**

As a consequence, rule of law's predictability on constitutional democracies of the Eastern Europe associates the formal legality of a pluralistic society through the criteria labels. This, in turn, the matrices lead to summarize all substantive values. Strictly speaking, the concept of the rule of law imposes the legitimacy and viability of law as a consequence of the clash "between the need for biding and transparent criteria of judicial application of relevant legal norms" (Rosenfeld, 2001: 1336).

Two distinctions should be drawn when imposing the legitimacy and viability of law: the first is between judicial outcomes of legal norms application and the legality of a pluralistic society and the second is between the rule of law's predictability and the realm of democratic values (see Table 1a. Rule of law – charting a multi-level theoretical matrix (outcomes-democratic traditions) (1) and Table 1 b. Rule of law – charting a multi-level theoretical matrix (democratic traditions-conditionality) (2)).

This controversy focuses on whether rule of law should be understood not just as a form of "constitutionalizing power"" or as a process-based outcome in hybrid democracies. Consistent with these theoretical adjustments, Samuels argues that rule of law consensus-based circumstances in post-conflict countries is crucial sequence and prioritize reform (Samuels, 2006: 23). This theoretical structure discovers the plausible distinction between the lawmaking consensus and the outcomes of the judicial reform. In light of these solid theoretical arguments, tables 1a and table 1b display a theoretical model conceptualized as "rule of law-implementation and theoretical evaluation cycle" aiming to illustrate the practical operationalisation of the rule of law implementation and promotion in post-communist countries.

These "principle indicators" give the idea of what theoretical patterns correspond to the hybrid societies in Central and Eastern Europe. However, the tables show that the

implementation of the rule of law can develop a functional democracy. The "all in one" implementation pattern theorizes the constitutive value of the rule of rule as a goal in itself (see also Table 1. Rule of law – charting a multi-level theoretical matrix).

Table 1a. Rule of law – charting a multi-level theoretical matrix (outcomes-democratic traditions) (1)

Inputs		**Outputs**		
Criteria		**Outcomes**		**Democratic traditions**
C	**Criteria label**	**O**	**Criteria label**	
C_1	Context and implementation	**O_1**	Political enquiry	Substantive constitutionalism and substantive supremacy
C_2	Focus and items	**O_2**	Transition process and "state forming"	Constitutional justice
C_3	Principle indicators	**O_3**	Constitutional democracies and pluralistic societies	Social justice
C_4		**O_4**	Shortcomings of judicial reform in individual states	Legitimating the concept of a "pluralistic society"

Source: compiled by the author

Table 1b. Rule of law – charting a multi-level theoretical matrix (democratic traditions-conditionality) (2)

Inputs		**Outputs**		
Criteria		**Democratic traditions**	**Conditionality**	
C	**Criteria label**		**c**	**Criteria label**
C_1	Context and implementation	Substantive constitutionalism and substantive supremacy	**c_1**	Functional democracy and "political legitimacy"
C_2	Focus and items	Constitutional justice	**c_2**	"Pattern of the political doctrine"
C_3	Principle indicators	Social justice	**c_3**	Multi-level constitutional reform
C_4		Legitimating the concept of a "pluralistic society"	**c_4**	Judicial application of relevant legal

Source: compiled by the author

Through such matrix is universal for hybrid democratic societies, the inputs (context and implementation, focus and items, principles indicators) and the outputs (substantive constitutionalism and substantive supremacy, constitutional and justice, pluralistic society) produce particular insights in the formulation of post-communist

system governance (see Table 1a and table 1b. Rule of law – charting a multi-level theoretical matrix based on the relationship: outcomes-democratic traditions-conditionality).

Consideration of inputs and outputs of the rule of law require a reconsideration of the liberal-democratic values and a certain functionality of the legal-governmental institutions. The left column provides the criteria label expressed as four independent criteria determining the implementation support for the rule of law. The right column of Table 1a, "democratic traditions" includes efficient safeguards for ensuring the efficiency of the criteria labels ($C_{1,\ 2,\ 3,4}$). The outcomes ($O_{1,2,3,4}$) are introduced to replicate previous criteria labels and democratic traditions, but under different conditionality ($c_{1,2,3,4}$) (Table 1b). The purpose of the matrices is to estimate the impact of the implementation of the rule of law in different contexts, but under the same conditionality. This type of matrix is designed to look at the variables (outcomes, democratic traditions and conditionality at a specific period). They involve assuming multiple inputs, while the cross-table research focused on outputs is limited mainly by conditionality such as: "functional democracy", "political legitimacy", "political doctrine", and "legal norms". Both matrices are designed as descriptive relational research providing a number of inputs and outputs systematically related to the post-communist landscape.

The application of this multi-dimensional theoretical model is no less important interpretable: the shortcomings of judicial reform in individual states are often appreciated as "no more useful" due to the conditions of the judicial reform and implementation. This view, however, focuses on the crucial role of the "judicial application of relevant legal norms" through the prism of the social and political background of these countries. Ramet argues that there is "a variety of factors affecting trajectories of transition, including the relative strength of civil society and independent activism, the mode of exit from communist rule, practices of conflict resolution during the immediate years of transition" etc. (Ramet, 2013: 80).

For a priori reasons, such concepts as the political enquiry, the transition process and "state forming", the multi-level constitutional reforms, the political legitimacy explain the multi-level trajectory of the post-communist democracies encouraging formal patterns of transition process. The belief that these formal patterns of transition process under the constitutional legitimacy and consensus are desirable and necessary followed depends on the consent of "institutional legitimacy and political justice" (Rosenfeld, 2001: 1311).

This multi-level matrix approach that links the political enquiry with socio-judicial features and indicators focuses broadly on the transition preconditions of post-communism following the related issues of "social justice" and "substantive constitutionalism". In this direction, Morawa develops the debate on the "multi-level constitutionalism" arguing that "this is novel for the more positivistic systems of legal thought to which the majority of the Central and Eastern Europe systems belong" viewed under the following factual dimensions: the European pattern, the international law patter and form different other contexts focused on "valid legal systems" (Morawa, 2011: 178). Otherwise, the multi-level constitutionalism may not institute legal stability and political legitimacy. Ultimately, the requirements of a rule of law system reflect the high degree of consensus of democratic values and traditions. To the extent requirements required by the system legitimacy, the transition outcomes predict the maintenance of a compatible institutionalization of the rule of law and its legal

expectations. As Rosenfeld explains, if such argumentation is valid, then the eventual outcomes "transcend the realm of politics" instituting the "legal justice" (Rosenfeld, 2001: 1348).

Thus, the concept of rule of law here requires a re-examination of the theoretical scheme of transition including two predominant dimensions: the first is dominated by the context and implementation process creating a dichotomy of a substantive constitutionalism and substantive supremacy and the second is dominated by the particularities rules, values and patterns of the forming political doctrines. Thus, the main indicators of the rule of law are squared by the"minimal" requirements of constitutionalism and social enquiry. In this direction, the post-communist democratic development brings to light a neglected aspect of analysis: the evolution of the process of judicial reform. The focus is on the relationship between the requirement of a functional democracy and the guarantees of the rule of law. In their institutional implementation, both determine feedback transition mechanism in the process of state forming. Balakrishnan argues that "establishing the rule of law is increasingly seen as the panacea" for many problems in the new post Cold-War lansdscape (Balakrishnan, 2008, 1347).

These divergent theoretical patterns of post-communist transition emphasize the key role of the rule of law in various phases if new democracy forming. Moreover, the outcomes of social justice implementation show that the accumulated contexts, items and indicators impact the chances for reforms designs. While political enquiry and constitutional design matter, their contextual impact is often accountable to the "pluralistic society" through transparent policy-making and relevant legal norms. Ekriet, Kubik and Vachudova argue that in the post-communist democratization "the central issue underlying successful state reform is how to build state institutions that are not too strong to interfere excessively with citizens' lives and their political and economic freedoms" (Ekriet, Kubik and Vachudova, 2007: 15). As remarked above, the political and economic rhetoric seem to dominate the rule of law theory. According to Bellamy, the core discussion operates from the "comprehensive political philosophy" and a "procedural and legal formality" which incorporates two main approaches: the standards approach requiring the properties of legality and the comprehensive theory limited by "the theories of just and good polity" (Bellamy, 2003: 118-119).

The conclusions of the study are rather ambiguous. On the first place, the study is engaging in a post-communist debate on the "import" of the rule of law and its outcomes in hybrid societies and on the second place, the study serves as an "exhibit" of theoretical patterns facing the "post-communist thesis" and transformations. After providing a constitutional analysis of the rule of law in the former communist countries constitutions, the study identifies and replaces all relevant and common values in two-sided matrices as a valuable condition of establishing a functional democracy, using a methodology that reexamines and reconstructs the legitimating status of rule of law in the constitutional provision of post-communist states.

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ORIGINAL PAPER

Split of Czechoslovakia as One of the Outcomes and Results of the Transition to Democracy?

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Abstract
The text examines one of the instruments of Czechoslovak (federal) constitutional system called prohibition of outnumbering (sometimes called prohibition of majorization). Originally designed in 1968 as a procedure to stabilize federal legislature, however, it could never proof its effectiveness due to non-democratic nature of the regime before 1989. After the transition to democracy in 1989, it became obvious that this tool cannot work effectively under democratic conditions, in the situation when political parties – Czech and Slovak – act autonomously. Author concludes that it was the existence of the prohibition of outnumbering / majorization (among others) and its application in democratic regime that led to more complicated relations between Czechs and Slovaks on federal level and acted more as an obstacle rather then stabilizer. This ultimately led to the split of Czechoslovakia.

Keywords: Czechoslovakia, constitution, federation, legislature, legislative process, prohibition of outnumbering / majorization

Non-democratic regimes are usually characterized by strong centralization, both vertical and horizontal, with most of the power being vested in the hands of ruling party leadership. Also any signs of nationalism or national emancipation, any evidence proving differences (whether it's political, economic, social or cultural difference) between several nations living under one non-democratic state are artificially suppressed under the non-democratic conditions. This premise is valid also for the cases of all multinational communist federations before 1989 – Czechoslovakia, Soviet Union and Yugoslavia.

Although we can observe some decentralization attempts also in non-democratic regimes, their practical application is rather formal and theoretical and is not connected with real transfer of the power from the center to the decentralized units. On the other hand, processes of democratization in multinational or divided societies are usualy very closely connected with (real) decentralization as well. The case of Czechoslovakia and its democratization and decentralization belongs to more smooth ones, while similar attempts and reforms initiated in former Soviet Union and mainly in Yugoslavia were

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marked by much more violent processes, leading even to bloody war lasting several years. Although the processes of decentralization had different ways, its outcome was the same: subsequent split of the multinational post-communist federations. The ties between different nations were so artificial and states kept together by the non-democratic centralism that they could not survive in the same structure under the democratic conditions.

Following article will analyze how the decentralization principles existing and "functioning" in communist Czechoslovakia since 1968 failed when adapted to the new political situation after the transition to democracy more then 20 years later. Main attention will be paid to specific constitutional feature called prohibition of outnumbering, whose main objective was supposed to be to facilitate the coexistence of Czechs and Slovaks in one state. As it turned out later, it was conversely one of the pbstacles for the Czecho-Slovak survival.

Historical and constitutional prerequisites of Czecho-Slovak disputes

When we talk about disagreements between Czechs and Slovaks and causes of subsequent splitting of Czechoslovakia, we can find a variety of reasons that try to seek roots, origins and causes of this situation. These certainly include elements that have the nature of political science and constitutional law. I refer here to the institutional, procedural and structural form of the functioning of the Czechoslovak federation before 1989. Although the mechanism of functioning of Czechoslovak federation was created in a relatively relaxed period during so called Prague Spring of 1968, when the settlement of relations between Czechs and Slovaks was one of the main themes, its practical implementation has been significantly affected by the subsequent failure of reform process and upcoming normalization period. The re-centralization of all decision-making processes after 1969 prevented the full and effective application of federal arrangements, even though it was presented that way. The situation had to give the impression that the federalization amendment operates smoothly and achieves its objectives and purposes. The real outcomes, however, could not be seen until the change of the regime in 1989.

After 1989, both objective and subjective reasons caused the inability to comprehensively address the institutional and structural problems of Czechoslovak federation, although a group of members of parliament and also the new president Václav Havel submitted various proposals quite often. The principles of federation, namely so called prohibition of outnumbering (or sometimes called the prohibition of majorization), as set in 1968 constitutional amendment were one of these institutional issues. The prohibition of outnumbering was one of the main pillars of 1968 federalization amendment to the Constitution and was supposed to represent equality between the two nations in the federation, although the equality was already enshrined in the parity representations of Czechs and Slovaks in the upper chamber of parliament, the Chamber of Nations.

The prohibition of outnumbering / majorization was not unfamiliar the Czechoslovak constitutional and political environment. It was already incorporated into the Constitutional Act No. 299/1938 Coll. on Autonomy of Slovak Land (Constitutional Act 299/1938: § 5, paragraphs 1-3) passed in November 1938. It stated that in order to pass any Constitution, constitutional amendments, constitutional laws and *"legislation on economic and financial issues that are necessary to ensure equal competitive conditions for business*" (Constitutional Law 299/1938 Coll.: § 4, paragraph 1, point

12), not only majority of members of parliament (National Assembly) in total, but also majority of Slovak deputies was required to vote for the motion as well. In the case of the Constitution and constitutional laws, it required qualified majority of three-fifths (Constitutional law 299/1938 Coll.: § 5, paragraph 1 and 3), not just simple majority. Constitutional law also gave to one third of Slovak deputies the right to initiate motion of no-confidence against Czechoslovak government, stating that central government should have *"also the confidence of the majority of Slovak nation"* (Constitutional Law 299/1938 Coll.: § 5, paragraph 2). It gave the Slovak deputies de facto exemption from § 76 of the Constitutional Charter of 1920, which required that a motion of non-confidence may submit by a minimum of 100 MPs (Constitutional Charter, 1920: § 76).

Adjustment related to the federalization of Czechoslovakia

Prohibition of outnumbering was incorporated to the Constitutional Act No. 77/1968 Coll. on Preparation of Federal Structure of Czechoslovakia in the spring of 1968. It was applied already for the procedure of adoption of the constitutional amendment on federalization. The law required that federalization amendment has to be passed by three-fifths of Czech MPs of the National Assembly and three-fifths of Slovak MPs of the National Assembly, in a separate vote (Šimáčková, 2009: 136; Constitutional Act 77/1968: § 1, paragraphs 1-2). Law on federalization of Czechoslovakia itself – including the prohibition of outnumbering – was approved by the National Assembly on the 27th of October 1968, the next day it was officially signed by the President Ludvík Svoboda, the Prime Minister Oldřich Černík and the Speaker of Parliament Joseph Smrkovský.

Extensive amendments to the Constitution affected mainly the form and structure of the legislative power. The Federal Assembly, the new highest legislative body, yet constituted a perfect example of a symmetric bicameralism, in which both chambers had completely identical competences and entirely equal footing in the legislative process (Šimíček & Kysela, 2009: 316). One of the chambers, the Chamber of the People, represented the citizens. Its composition (temporarily 300 MPs in 1969-1971, between 1971-1990 it decreased to 200, after 1990 only 150 deputies) corresponded the ratio of the population in the Czech and Slovak part of Czechoslovakia. There were roughly twice the deputies elected in the Czech Socialist Republic compared to deputies elected in the Slovak Socialist Republic. The second chamber, the Chamber of Nations, represented two constitutive units of the federation – the republics. Therefore it was typical territorial second chamber, where Czech and Slovak part of Czechoslovakia were represented in parity (75 MPs for each part of Czechoslovakia). Equality of the two chambers proofed that *"neither civil nor federal principle were played down"* (Šimíček & Kysela, 2009: 316). In the case of the Czechoslovak federation, however, the idea of equality of both chambers have been brought forth, by adoption of the prohibition of outnumbering applications, in which the Czech and Slovak parts of the Chamber of Nations voted separately, under the conditions of perfect symmetric bicameralism, or perhaps better said tricameralism. *"Where under this act constitutional prohibition of outnumbering is applied, vote in the Chamber of Nations is counted separately for deputies elected in the Czech Socialist Republic and deputies elected in the Slovak Socialist Republic. The resolution is adopted if majority of all deputies elected in the Czech Socialist Republic and the majority of all deputies elected in the Slovak Socialist Republic vote for, unless constitutional act requires qualified majority."* (Constitutional Act 143/1968: Article 42, paragraph 1)

The above mentioned procedure was incorporated in the Constitutional Act No. 143/1968 Coll. of 27th of October 1968 on Federalization of Czechoslovakia, in Chapter Three, Articles 41 to 43, where all cases and matters requiring compliance with the prohibition of outnumbering were listed. These articles refered to other articles of the Constitution as well. In addition, the mention of the prohibition of outnumbering, whether exhaustively expressed or only the description of that principle, also appears in many other articles of the Constitution. There is no point in doing the complete list of situations for which this mechanism was required by Constitution, I will mention only those that will be associated with the development of Czechoslovakia in 1989-1992 and eventually will lead to the split of the country. Article 41 covers the use of this procedural element in the adoption and amendment of the federal Constitution, constitutional amendments, constitutional laws or presidential election. A specific feature of all the above mentioned areas was that their approval required qualified majority of three-fifths of all members of the Chamber of People, three-fifths of all members of the Czech part of the Chamber of Nations and three-fifths of all members of the Slovak part of the Chamber of Nations, in compliance with symmetrical bicameralism and prohibition of outnumbering.[*] Given these parameters, it took only 31 votes (one tenth of the members of the Federal Assembly) that could theoretically block the adoption or amendment of the Constitution or the election of the president.

The prohibition of outnumbering also applied for the approval of the program and policy statement of the federal government and for the proposal to a vote of confidence in the government (Constitutional Act 143/1968: Article 42, paragraph 3), which will later be related to the split of Czechoslovakia. The non-confidence motion to the government on the contrary, was passed if either Chamber of the People or any of the national curias of the Chamber of Nations voted for it (Constitutional Act 143/1968: Article 43, paragraph 2, Article 70, paragraph 1 and Article 71, paragraph 2). The most extensive article, which dealt with the prohibition of outnumbering, was Article 42. This article recounted circuits of legislation for which the prohibition of outnumbering was required. In this article, we read that the prohibition of outnumbering should be used for issues such as the acquisition and loss of citizenship (Constitutional Act 143/1968: Article 42, paragraph 2, point a), economic planning (Constitutional Act 143/1968: Article 42, paragraph 2, points b, c), the state budget of the federation (Constitutional Act 143/1968: Article 42, paragraph 2, point e), relationship with the budgets of Czech and Slovak republics (Constitutional Act 143/1968: Article 42, paragraph 2, point d), tax laws (Constitutional Act 143/1968: Article 42, paragraph 2, point h), customs duties and tariffs (Constitutional Act 143/1968: Article 42, paragraph 2, point ch), laws governing currency status and activities of central banks (Constitutional law 143/1968: Article 42, paragraph 2, point i), price policy (Constitutional Act 143/1968: Article 42, paragraph 2, point j), payroll, labor law, social policy and income (Constitutional Act 143/1968: Article 42, paragraph 2, point l), the laws governing the management of state-owned enterprises (Constitutional Act 143/1968: Article 42, paragraph 2, point m) or internal security (Constitutional Act 143/1968: Article 42, paragraph 2, point n).

Prohibition of outnumbering was actually reflected also in the provisions for minimal presence of Chamber of Nations deputies in order to allow voting. The

[*] Ta se vztahovala i k usnesení o vypovědění války.

Chamber of Nations was allowed to vote only if majority of Czech MPs and majority of Slovak MPs were present. (Constitutional Act 143/1968: Article 40, paragraph 2)

Situation after 1989

Prohibition of outnumbering did not get the opportunity to actually manifest its effectivity until 1989. It could not act as the decisive element in the development of Czechoslovakia, given the fact that almost all decisions were done by unanimous votings in all chambers and parts of the Federal Assembly. Only after 1989, when the democratization led to political party system pluralization and various political parties have started to act autonomously, without any order given by one hegemonic party (as before 1989), the prohibition of outnumbering proofed to be an obstacle rather than a tool to assist in solving national problems. Moreover, a different attitude of Czech and Slovak political actors to this element needs to be also reflected: while for the Slovaks the prohibition of outnumbering was a key element in the functioning of the federation, the Czechs seemed it as completely unnecessary. It was one of the major problems with which the post-communist Czechoslovakia had to deal. The prohibition of outnumbering proofed to be ineffective not only in the legislative processes in the Federal Assembly, but it also threatened the stability and the functioning of the federal executive branch, which was directly dependent on this constitutional instrument. It was expected that these problems will be solved during the process of adoption of new Constitution after 1989, hand in hand with the new setting of the operating rules of the federation and the status of republics. To draft a new democratic and functional Constitution and in the rules of coexistence of the republics in the federation was yet one of the key challenges for the new political representation resulting from the first free elections held in June 1990. However, during the mandate limited to two years, political representation in new, democratically elected parliament did no reach that goal. Immediately after the elections in 1990, it became obvious that the fragmentation of opinions among the existing parties, reinforced by internal tensions within the Civic Forum (OF) and Public Against Violence (VPN) and national-ethnic cleavage, were so destabilizing elements that make it impossible to reach across the political spectrum required fundamental agreement on the functioning of the state as in terms of horizontal and vertical division of powers and the relations among them.

Prohibition of outnumbering and the obligation to comply with it in all critical areas the new political representation was facing, greatly complicated from the very beginning the post-November (post-Communist) political and constitutional development. During one of his proposals for constitutional amendments, then President Václav Havel mentioned that *"the current form of the top representative body of the federation is, in my opinion untenable because it is impractical, inoperative and completely indebted to the earlier concept of federation as a formal decoration totalitarian power."* (Havel, 1991) Political scientist Karel Vodička adds that *"the Constitution of the era of the "Prague spring", which continued to be applied after the transition, was totally unsuitable as an institution to facilitate the findings of a democratic consensus. Due to its provisions on the prohibition of outnumbering that rendered one-tenth of the members of the Federal Assembly elected in one of the republics of absolute veto power, constitutional crisis was programmed inside of it."* (Vodička, 1993: 84)

Although the prohibition of outnumbering was subject of criticism, it was not depreciated absolutely. President Václav Havel in one of his 1991 proposals to

restructuralize the legislative power expected to preserve the prohibition of outnumbering to some extent, as a form of some kind of minority veto applied in divided societies. Havel suggested that Czechoslovakia had two-hundred member unicameral Federal Assembly elected by the population, but the decision would not apply – with some exceptions – the prohibition of outnumbering. *"Next to it, and independently, there would be the Federal Council, a small thirty-member operative body, which would be equally represented by both of our republic (Czech Republic, Slovak Republic – P.J.) by those members elected by the national councils."* (Havel, 1991) It was reminiscent of the German Federal Council, although the delegates sitting there represent the state governments, not the provincial assemblies. However, we can find a fairly clear inspiration by the German model in above mentioned Havel's proposal. According to Havel, the Czechoslovak Federal Council should have the right to return laws passed by the Federal Assembly. The Federal Assembly would then have a right to override the veto of the Federal Council, but this time with the respect to the prohibition of outnumbering. *"The Federal Council would not only be able to fully and legitimately provide control of the federal decisions, but it would involve republics directly to the federal decision making processes."* (Havel, 1991) Havel believed that this would replace the impractical double-tracking when the republics are represented by someone else in their national councils (Czech National Council, Slovak National Council) and by someone else in the Federal Assembly. He said this only leads to speculation about who is more legitimate representative of the republics' will. The federation would therefore cease to be something that republics would be unconfortable with and what is floating somewhere above them. It would be federation that is visibly and directly shaped by the republics. According to Havel, such system would *"far better allow any later transformed into a multi-federation."* (Havel, 1991)

1992 elections

According to Karel Vodička, authors of the Constitutional Act on Federalization of Czechoslovakia in 1968 *"did not expect that real elections, in which the Czechs and Slovaks voted for the opposite political orientation and different models of state organization, would be held in Czechoslovakia sometimes in the future. Because of the constitutional provisions on the prohibition of outnumbering, it has always been necessary to create the Czech-Slovak coalition in parliament, which was a circumstance that led to break down of Czechoslovakia after the 1992 elections."* (Vodička, 2003: 363) After the 1992 elections, the situation got even worse as the political party system at that time moved even to a much more competitive stage than it was before. Prohibition of outnumbering in practice fully appeared only once, during the failed attempt to elect Václav Havel as the President on a joint session of all the Chambers of Federal Assembly on 3rd of July 1992. It was already after parliamentary elections (which took place in June 1992), in which voters in the Czech Republic and Slovakia voted for parties having totally different approaches towards economic reform or constitutional arrangements, but also in terms of views on the (un)acceptability of Václav Havel as the federal president. Václav Havel, candidate officially nominated by Czech right wing alliance of ODS-KDS, did not obtain enough votes in the Slovak part of the Chamber of Nations and thus was not elected for a term, which should start in October 1992. The presidential election in July 1992 was the only case where the consequence of the prohibition of outnumbering proved right in practice. In fact, however, the prohibition of outnumbering greatly influenced the development in other

areas at the federal level as well, and therefore it must be applied also to the process leading to the split of Czechoslovakia.

For example, the requirement for federal government to gain the confidence from both curias of the Chamber of Nations (besides receiving it from the Chamber of People as well) basically decided that the federation will not last long. The 1992 electoral results brought to the power parties whose program penetration in fundamental issues was very small. Thanks to the prohibition of outnumbering, the winner from Czech part of Czechoslovakia and the winner from the Slovak part of Czechoslovakia (regardless of their programmatic or ideological proximity) in fact had to become coalition partners in order to gain the confidence by the Federal Assembly.

Table 1: Results of the Elections to the Federal Assembly held 5-6th of June 1992
Note: Only parties that gained parliamentary representation at least in one chamber are listed.

Parties, movements, coalitions	Chamber of People			Chamber of Nations			Total number of MPs
	Votes		Mandates	Votes		Mandates	
	Number	%		Number	%		
CZECH REPUBLIC							
ODS-KDS	2 200 937	33,90	**48**	2 168 421	33,43	**37**	**85**
LB	926 228	14,27	**19**	939 197	14,48	**15**	**34**
ČSSD	498 030	7,67	**10**	440 806	6,80	**6**	**16**
SPR-RSČ	420 848	6,48	**8**	413 459	6,37	**6**	**14**
KDU-ČSL	388 122	5,98	**7**	394 296	6,08	**6**	**13**
LSU	378 962	5,84	**7**	393 182	6,06	**5**	**12**
SLOVAK REPUBLIC							
HZDS	1 036 459	33,53	**24**	1 045 395	33,85	**33**	**57**
SDL	446 230	14,44	**10**	433 750	14,04	**13**	**23**
SNS	290 249	9,39	**6**	288 864	9,35	**9**	**15**
KDH	277 061	8,96	**6**	272 100	8,81	**8**	**14**
MKDMESWS	227 925	7,37	**5**	228 219	7,39	**7**	**12**
SDSS	150 095	4,86	**-**	188 223	6,09	**5**	**5**

Sources: Czech Statistical Office, 1992a & 1992b (for results from the Czech part of Czechoslovakia) and Krejčí, 2006: 285 (for results from the Slovak part of Czechoslovakia).
Abbreviations: ČSSD = Czech Social Democratic Party; HZDS = Movement for Democratic Slovakia (Slovak more left leaning party); KDH = Christian Democratic Movement (Slovak right wing party); KDU-CSL = Christian-Democratic Union – Czechoslovak Peoples Party (Czech center-right party); LB = Left Bloc (Czech post-communist alliance); LSU = Liberal Social Union (Czech center-left party); MKDMESWS = Hungarian Christian Democratic Party + Coexistence Movement (national minority alliance formed in Hungarian parts of Slovakia); ODS-KDS = Civic Democratic Party – Christian Democratic Party (alliance of two Czech right-wing conservative parties); SDL = Party of Democratic Left (Slovak post-Communist party); SNS = Slovak National Party (right wing, extreme nationalistic party); SPR-RSČ = Union for Republic – Republican Party of Czechoslovakia (Czech right wing, extreme nationalistic party).

As expected, the elections to the Federal Assembly in 1992 were won by the right-wing pre-electoral coalition of Civic Democratic Party – Christian Democratic Party (ODS-KDS) in the Czech part of Czechoslovakia and by nationalistic and left leaning

Movement for Democratic Slovakia (HZDS) in the Slovak party of Czechoslovakia. Because of the above mentioned rule of the prohibition of outnumbering these two parties had to – willy-nilly – work together on the federal level, even though their programs were very different. ODS was a classic right-wing party, whose main objective was to finish radical economic transformation initiated in the previous period by the Finance Minister (and ODS leader) Václav Klaus. ODS also sought to deal with the Communist past and in the foreign policy it aimed towards the West. Conversely, HZDS was known as the center-left party, promoting the social and economic concept of the "third way", without any major social impacts of economic transformation on Slovakia. HZDS described so called lustration law as "the enactment of lawlessness." Both parties mentioned the major program differences in the joint statement released on 19th of June 1992. Both parties stated that they have *"differences of their election programs and policy objectives in the field of constitutional arrangement, as ODS considers the only rational and functional form of the common state, suitable for today's Czech Republic and Slovak Republic, a federation with a single international status, while HZDS considers as the suitable solution confederation with the international legal status of the two republics. ODS does not consider confederation with international legal statuses of the two republics as a common state, but a union of two independent states. Before confederation, the ODS gives priority to two completely separated states, which means the constitutional dissolution of current state."* (Stein, 2000: 164)

The winners of the elections – ODS and HZDS – did not have enough votes in their curias to handle majority only by themselves, but had enough seats that without them no majority could be obtained. That would be possible only at the cost of all other parties connecting together against ODS and HZDS, which was impossible to imagine on both the Czech and the Slovak side, especially with with regard to the need to receive the confidence for the federal government from both the curias of the Chamber of Nations, in order to comply with the prohibition of outnumbering. Also both parties were holding enough seats for a blocking minority for adopting constitutional laws (blocking minority was 31 votes, ODS in Czech curia had 37 seats, HZDS in Slovak curia had 33 seats).

The government already by its composition has signaled that it is only caretaker government maintaining basic daily state and administrative issues until the state is split. Although composed of representatives of political parties, it lacked, however, the presence of senior representatives of the coalition parties. The chairmen of all the coalition parties – Václav Klaus of ODS and Josef Lux of Christian-Democratic Union – Czechoslovak Peoples Party (KDU-ČSL) and Vladimír Mečiar of HZDS – rather sat in the governments of Czech and Slovak parts of Czechoslovakia. While these governments were at that time "inferior" governments, with the expected break-up of Czechoslovakia and the emergence of independent republics they were expected to become the holders of the highest executive power in new sovereign states. All federal institutions (including the federal government) will in the same time disappear along with the dissolution of the federation.

Table 2: Composition of the federal government appointed July 2nd 1992 (existed only until the split of Czechoslovakia on December 31st 1992.

Name (party)	Government Portfolios
Jan Strásky (ODS)	Prime Minister, Minister of Foreign Trade
Rudolf Filkus (HZDS)	1st Deputy Prime Minister, Minister of Control
Antonín Baudyš (KDU-ČSL)	Deputy Prime Minister, Minister of Transportation and Communication
Milan Čič (HZDS)	Deputy Prime Minister, Minister for Economic Competition
Miroslav Macek (ODS)	Deputy Prime Minister, Minister of Labour and Social Affairs, Minister of Environment
Jozef Moravčík (HZDS)	Minister of Foreign Affairs
Imrich Andrejčák (HZDS)	Minister of Defense
Petr Čermák (ODS)	Minister of Interior
Jan Klak (ODS)	Minister of Finance
Jaroslav Kubečka (HZDS)	Minister of Economy, Minister of Strategic Planning

Abbreviations: HZDS = Movement for Democratic Slovakia (Slovak more left leaning party); KDU-CSL = Christian-Democratic Union – Czechoslovak Peoples Party (Czech center-right Christian party); ODS = Civic Democratic Party (Czech right-wing conservative party)

Conclusion

As we can learn from the above mentioned case study, the prohibition of outnumbering and its ineffective operation under the democratic and pluralistic party system was quite substantial reason for the subsequent break-up of Czechoslovakia. Its presence in the constitutional and political system of the former federation greatly complicated the adoption of any major law after 1989 – whether it was the necessity of adoption of the new Constitution, the adoption of the federal budget and the preparation and adoption laws governing policies federation and the relationships between the constituent units. In addition, it is necessary to connect the issue of presidential election and vote of confidence in the federal government. All these motions required following the principle of the prohibition of outnumbering and in the same time all these issues were quite sensitive from the Czech-Slovak perspective. It was obvious especially after 1992 parliamentary elections that voters in Czech and Slovak parts of Czechoslovakia were influenced by different factors and that their political representations addressed different priorities.

The case study also proofed the theses that constitutional and legal tools, instruments and procedures that existed during non-democratic regimes, were just artificial formalities never meant to be working under the democratic conditions. Critical situation that appeared in Czechoslovak constitutional system after 1989, connected with the emancipation of autonomous Czech and Slovak party systems (and thus non-existence of one single Czechoslovak party system) did not create base for long time survival of the federation. Even if the situation stabilized in 1992, the conflict would still exist – although in its latent form – and could arise again anytime in future. Following the development in independent Czech Republic and Slovakia after 1993, we

can see that during most of the period election winners and subsequent governments were formed by parties from the opposing sides of the left – right axis.

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ORIGINAL PAPER

The Conflict between Ideology and Academia in David Lodge's Campus Novels

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Abstract

In his *Campus Trilogy*, David Lodge addresses various issues regarding the connection between the personal lives of the university professors and their academic image. As he is a Literature Professor, Lodge has a thorough knowledge of this field and presents ironically the discrepancies between the ideologies taught and supported by an academic and the private way of life embraced by the same person.

This paper focuses on several characters from David Lodge's three Campus Novels – *Changing Places: A Tale of Two Campuses* (1975), *Small World: An Academic Romance* (1984) and *Nice Work* (1988) – analyzing the manner in which they reconcile, or fail to, their academic ideology and their actual existence. One of the characters chosen is an Italian Marxist and two others are very strong-willed Feminists, one is British and the other American. The feminist characters are contrasted and compared to other female characters in the novels, in order to emphasize their beliefs and their actions which are in accord with these beliefs (or not, as the cases may be).

The relationships between the ideologies supported and the lives led by each of these characters are very different. For example, there is a quite tensed conflict in the case of the Marxist character, as she chooses a way of life thoroughly opposed to the ideology she claims to embrace. The paper takes a close look at every character, performing an analysis of every situation, as well as comparing and contrasting the situations. Through the analysis performed, the present article fills a gap in the domain, discussing the relationship between the ideology supported and the lives led by characters belonging to the academic background.

Keywords: campus novels, ideology, academics, Feminism, Marxism, conflict.

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David Lodge is a British contemporary author and literary critic. He was born in 1935 in London. He was Professor of English Literature at the University of Birmingham until 1987, when he retired from academia. Since then, he has continued to publish fiction as well as works of literary criticism, which are often based upon his experience drawn from his novel writing. Lodge published various works of fiction: fourteen novels, one novella and several short stories. His first novel, *The Picturegoers*, was published in 1960 and his most recent one, *A Man of Parts*, inspired by the life of H.G. Wells (an English science fiction writer), was published in 2011.

David Lodge's best-known and most successful fiction works form the Campus Trilogy. However, these three novels were not published together. The first one, *Changing Places: A Tale of Two Campuses*, was published in 1975; the second one, *Small World: An Academic Romance* was published in 1984, followed by the last novel of the trilogy, *Nice Work*, published in 1988. Lodge's campus novels undergo a strong influence exercised by the author's personal experience as an English Literature Professor. The characters in these three novels are academics and the settings change from one country to another, not shifting from the University context (lectures, conferences, campuses).

The author shapes several characters which, as University Professors, embrace and support a certain ideology. However, some of these characters fail to reconcile the ideology they claim with their private way of life. The focus of this paper represents the analysis of the relationships between the ideology supported by the characters and the way of life they choose to lead. Thus, both the discrepancies and the similarities noticed will be presented, discussed and thoroughly analyzed.

One of the most striking characters of the Trilogy with respect to the difference between ideology and way of life is Fulvia Morgana, an Italian Marxist Professor. She is first introduced in the second part of *Small World* (1984), the narrator is presenting her during a flight, in her seat from the Ambassador class, while she is reading an article and making notes. David Lodge uses the close-up technique, as the narrator presents her in every detail, describing her face, her profile, her brow, nose, mouth, and chin (Lodge, 1984: 89). Her first name, Fulvia, is of Latin origin, suggesting her Italian nationality, while her last name, Morgana, represents a hint to Morgan le Fay, the well-known witch from the Arthurian Legends. When first presenting her, the narrator describes in detail her jewelry: rings and gold bracelets, as well as her fine expensive clothes. After that, the narrator tells the reader that the character is studying "Ideology and Ideological State Apparatuses" by Louis Althusser, from an essay collection entitled *Lenin and Philosophy and Other Essays* (Lodge, 1984: 89).

It is the American post-structuralist Professor Morris Zapp who later openly asks Fulvia Morgana about how she manages to "reconcile living like a millionaire with being a Marxist" (Lodge, 1984: 128). Fulvia Morgana lives with her hurband, Ernesto, in a very luxurious house and they have many servants. She terms the question as "very American" (Lodge, 1984: 128), insisting on national stereotypes and displaying a certain level of pride for being European and not American. When answering Morris' question, Fulvia seems to be "quoting something she and her husband had had occasion to say more than once" (Lodge, 1984: 128). She argues that the contradictions in their way of life will cause the bourgeois capitalism to collapse and that its collapse "is determined by the pressure of mass movements, not by the puny actions of individuals" (Lodge, 1984: 128). Marxism promotes the idea that the thoughts and actions of the individuals are determined by the dialectal development of society. The Marxist

ideology and Fulvia's ideas are forming a circle, a catch-22, so to speak. The actions of individuals are determined by the society, whereas the development of society is determined by the pressure of mass movements, and not by the individuals. The idea that closes the present circle is the argument that the mass movements are triggered by individuals as well. Fulvia implicitly agrees to this point, when mentioning that she uses her money to support some groups "who are taking more positive action" (Lodge, 1984: 128).

The reader finds out what kind of groups Fulvia and her husband support when Morris Zapp is kidnapped by a group of left-wing extremists. When Fulvia reads in the papers about the extremists kidnapping Zapp, she asks her husband whether he had given any information regarding the professor to any of their "political friends" (Lodge, 1984: 289). A phone call from Ernesto is enough to release Zapp and the situation seems rather complicated, as Fulvia warns her husband that they will all end up in jail if he does not do anything. The association between a couple of respectable academics who share Marxists ideas but contradictorily live in luxury, and some shady groups of left-wing extremists is highly ironical and reveals that these two characters lack consistence in two matters. Firstly, they fail to reconcile the ideology they support with their way of life. What is more, they also fail to reconcile the way of life they display with their hidden actions and the extremist groups they secretly support. The two characters choose to support the extremist groups in a shady, hidden manner, which contradicts the fact that these groups are actually the exponents of the ideology the two characters claim to embrace. Moreover, this is a case of a very strong dichotomy of the "practice what you preach" type. Fulvia Morgana and her husband Ernesto support Marxist ideas, but they live luxuriously, contradicting the principles they advocate.

The last novel of the trilogy, *Nice Work* (1988), introduces Robyn Penrose, who is a very different type of character. She is the main character of this novel; she supports very strong feminist ideas and sometimes displays left-wing inclinations. In order to create a believable and credible character which is also likeable, Lodge endows Robyn with consistency, as opposed to the wide gap which appears between Fulvia Morgana's ideology and her way of life. Robyn's actions and her way of life are consistent with her views and beliefs. The plot of the last novel of Lodge's trilogy is triggered by the Industry Year Shadow Scheme, according to which Robyn, a Lecturer in English Literature, is bound to follow Victor Wilcox, the Managing Director of a casting factory, at work, one full day on every week of a whole term. Metaphorically, the university meets the factory and this will eventually affect both of these worlds (Diaconu, 2012: 7). Robyn is consistent in her feminist ideas, which make her argue with Vic Wilcox and eventually persuade him to remove the pin-ups showing naked women from the walls of the factory (Lodge, 1988: 140-141). She has left-wing inclinations, and that leads her to attempt to help a Pakistani worker in Wilcox's casting factory, Danny Ram, when she finds out that the management wants to get rid of him (Lodge, 1988: 145-147). Because she is so considerate and intelligent, she is able understand the other side of the problems regarding the image of academia, and plays "devil's advocate" in her discussion with her boyfriend Charles, who is also an academic but fails to consider different points of view (Lodge, 1988: 218).

In his novels, David Lodge displays a high degree of carefulness in choosing the characters' names. When reading *Nice Work*, one is very likely to think that Robyn Penrose could not have a better and more expressive name. Used both for women and men and sometimes spelled with an "i" instead of "y", the name of "Robyn" is a source

of confusion for Vic Wilcox who expects his shadow to be a man (Lodge, 1988: 105-106). "Robin" is also a bird's name and Brian Everthorpe, Vic Wilcox's Marketing Director, describes Robyn Penrose through the words "Your shadow's a bird, Vic!" (Lodge, 1988: 107) In his critical work *The Art of Fiction* (1992), David Lodge explicitly describes the way in which he has decided for the feminine character's first name and he mentions also that his choice determined a new course of events: "An androgynous name seemed highly appropriate to my feminist and assertive heroine, and immediately suggested a new twist to the plot: Wilcox would be expecting a male Robin to turn up at his factory." (Lodge, 1992: 38) Concerning Robyn's last name, Lodge says that "I soon settled on Penrose for the surname of my heroine for its contrasting connotations of literature and beauty (pen and rose)." (Lodge, 1992: 38) The name "Penrose" is extremely suggestive for a woman Lecturer in English Literature who is interested in women's emancipation. The beginning of her name, "pen", suggests a "woman of letters", if we may say so, whereas "rose" is a metaphor for her being a sensitive and refined woman, so delicate in spite of her appearance of power and strength.

In her relationship with Wilcox, Robyn is obvious to dominate. She is the one who chooses to end their love affair and, more important than that, he even changes his own mentality and opinions according to her influence on him. At one point, he even shares her feminist views on degrading women's body though nude pictures. He ironically tells his secretary Shirley that a calendar with nude pictures of her daughter Tracey would only be a chance for the later to degrade herself (Lodge, 1988: 212), much to Shirley's astonishment who candidly enjoys men's admiration of Tracey's nude photographs. In the end of the book, Wilcox has finished reading Victorian novels like *Jane Eyre* by Charlotte Brontë, *Wuthering Heights* by Emily Brontë, some of Matthew Arnold's essays and some of Alfred, Lord Tennyson's poems. He admits that, under the influence of Robyn Penrose, in the last few weeks he had read more than in all the years since he had left school (Lodge, 1988: 356). Accordingly, it can be noticed that her capacity of teaching people different things is remarkable. In the fragment where Lodge describes one of Robyn's lectures, her ability of shaping student's opinions and ideas is almost palpable. On her way to the lecture room, the "little procession" (Lodge, 1988: 70) of students who follow her along the corridors represents a metaphor of her ideas being shared and followed by the students. They are used to her feminist opinions and they would even be "mildly disappointed" if she were not to produce them from time to time (Lodge, 1988: 74). Robyn is a very good lecturer who keeps students' attention during her presentation and, most important, she manages to shape people's opinions and sometimes even change their beliefs. She is the image of the powerful and intelligent woman so appreciated by the feminist movement.

Even though the author sometimes presents with irony Robyn's firm feminist beliefs, a subtle reader can easily notice that most of the times, during the development of the plot, Lodge sides with her and her point of view. One of his important proves of knowledge about women is to be found in his description of Robyn's clothes. She prefers "loose dark clothes, made of natural fibers, which do not make her body into an object of sexual attention" (Lodge, 1988: 49). Robyn is a strong, intelligent woman who does not need to attract men through her dressing style. Just as Wilcox remarks, she "turned herself out as if entirely for her own pleasure and comfort" "stylishly […], but without a hint of coquetry" (Lodge, 1988: 225-226). Moreover, he considers her to be confident and independent and his opinion is right. A feminist and not exaggeratedly

feminine, Robyn is the archetype of the strong, smart, and self-reliant woman, charming through her wit, beliefs and intelligence.

The entire work is based mainly on irony and meta-textual approaches. Robyn Penrose is a lecturer at the University specialized in the Victorian Novel and semiotics, who embraces and supports the feminist ideology. Her relationship with Vic Wilcox, the Managing Director of a company of casting and engineering, is an allegory of the relationship between literature and industry, university and factory, literary criticism and casting company, feminist ideas as opposed to men's supremacy in society and even spirit and matter. When visiting his factory, she feels she has entered not only a men's world, but a world in which women are degraded. The women working in the factory seem to be sexless, Robyn remembers them as "brown-skinned creatures vaguely female in shape but unsexed by their drab, greasy overalls and trousers, working alongside men in some parts of the factory" (Lodge, 1988: 120). This view makes Robyn consider the factory and the work conditions "appaling" and she states that she has a pro-equality view, but not "equality of oppression" (Lodge, 1988: 120). Wilcox's "derisive laugh" when hearing her words emphasizes the supremacy claimed by a man over the feminist views held by any woman. This archetype of women working in a factory can be traced back to the Victorian Industrial Novels, Robyn's field of research, which present the harsh life of working people, both men and women, as generated by the Industrial Revolution.

Robyn Penrose's visit in the machine shop reveals a major issue of the second-wave feminism: sexuality and the women's right to dispose freely of their bodies. In the machine shop Robyn finds "pages torn from soft-porn magazines" which were "displayed on walls and pillars everywhere" (Lodge, 1988: 124). But the aspect the young woman considers to be even "more degrading and depressing" about these pictures is that they "had ceased to arouse"; the pictures were even indistinguishable from the dirt of the rest of the factory (Lodge, 1988: 125). A feminist critical perspective would definitely remark here the beautiful allegory of the tainted girls which have mingled with the stains and dirt of the environment where their naked pictures have been placed. Another instance of sexual degradation underwent by women's body is presented in the episode with Tracey's naked pictures. She is the seventeen-year-old doughter of Shirley, Vic Wilcox's secretary and she wants to become a photographic model. Her mother's attitude is surprising as well as scandalous: she is "thrusting glossy pictures" of her naked daughter "under Vic's nose" (Lodge, 1988: 35). Lodge's irony is to be remarked here, as he makes it clear that Shirley's revolting "maternal" attitude is nothing else but "genuine parental pride" (Lodge, 1988: 35). This is the main basis of the distinction between liberty and libertinism. A free, inteligent and powerful woman, able to dispose of her body at her own will would not allow pictures of her naked self to be exposed in public, as objects of pleasure for men; she would never accept this kind of pictures to bring her some other advantages in her career; and she would never encourage one of her close relatives to do that. The value of the intimate things is preserved only if they remain intimate; moreover, they become stained when publicly exposed.

Marjorie Wilcox represents the archetype of the housewife who never managed to provide her children with an adequate education, to have a happy marriage and a united family. She has even given up trying and, just as Robyn remarks, "her occupation is gone once the children are grown up" (Lodge, 1988: 246). Moreover, Robyn does not

manage to discover what Marjorie's interests are and she even supposes that Mrs. Wilcox does not have any, which is rather degrading for a woman. Marjorie is a weak woman who does not try to overcome the feeling of uselessness she has. She reads books about menopause and drugs herself with Valium in order to get a good night's sleep. She does not represent a sexual attraction for her husband anymore even though she tries once to bring normality back into their couple life. But she fails, as Vic Wilcox "couldn't even force" a desire for her (Lodge, 1988: 165). Undoubtedly, this is a rather shameful failure for an independent, self-reliant woman, but Marjorie Wilcox does not belong to this modern category.

The opposition between the characters Robyn Penrose and Marjorie Wilcox is an allegory of the antagony between the archetypal characters of a strong, intelligent, cultivated, modern woman and a weak, self-pitying, uncultivated, old-fashioned woman. (Diaconu, 2012: 15) Robyn rejected fiercely the idea of giving up her own career and becoming a housewife. When her boyfriend Charles obtained a lectureship at the University of Suffolk, "there had been a certain amount of pressure from both sets of parents for them to get married." However, Robyn "indignantly rejected the suggestion" and she inquired of her mother whether the latter implied that she should "go and keep house for Charles in Ipswich", give up her PhD, live off Charles and have babies. She continued that having a career of her own is certainly what she wants. (Lodge, 1988: 54-55) Marjorie Wilcox leads a life which lacks ambition: she willingly accepted to be a housewife, but even in this field of her choice she turned out to be a failure. She does not cook any breakfast for her husband when he leaves early in the morning to his office. Vic Wilcox notices the discrepancy between his wife's and his mother's attitude, the latter being "first up in the mornings, to see husband and son off to work or college" (Lodge, 1988: 18). After inviting Robyn Penrose for lunch with his family, Vic starts feeling anxious about the way in which Marjorie would manage to deal with having a guest. He thinks that "she would probably drink too much sherry out of nervousness and burn the dinner or drop the plates." (Lodge, 1988: 227)

The differences between the two women are mostly described through Vic Wilcox's eyes. He is very well-aware that Robyn Penrose is more intelligent and cultivated than his own wife; he is also aware that Robyn is much more independent than Marjorie and he is slightly afraid of the former because of that. One of the very few aspects that still make Marjorie feel enthusiastic is "the prospect of a shopping expedition" (Lodge, 1988: 23). Vic tries to imagine what Robyn and Marjorie could possibly talk about: "The semiotics of loose-covers? Metaphor and metonymy in wallpaper patterns?" (Lodge, 1988: 227) He knows that on the intellectual level, Robyn is high above Marjorie and he feels that their meeting would lead to an unavoidable disaster because he places himself instinctively beside his wife. It is an indirect way for Lodge to subtly suggest Vic Wilcox's acknowledging that Robyn Penrose is superior not only to his wife, but also to him.

The American Professor Morris Zapp can be termed as post-structuralist. The character is present in all three novels of the trilogy. David Lodge has stated that Morris Zapp was inspired by the literary theorist and professor Stanley Fish, a prominent scholar with an important contribution in the field of reader-response criticism. However, the character does not necessarily embrace the reader-response theory, but rather he opposes the theories held by others. In *Small World*, the academics' competition for the UNESCO Chair has a great importance both for the novel and the present analysis, because it represents the climax of the main plot in the novel.

Moreover, it gives the impression that the professors competing lose their selves and become only advocates of their theories. "Losing not their souls but their identities, the academics have successfully reduced themselves to the theories they propound" (Morace, 1989: 203-204). This is a very interesting idea, as it emphasizes the relationship between the real persons and the theories they support. Through the question, he asks after the candidates for the UNESCO Chair expose their theories, the young Irish Lecturer Persse McGarrigle underlines the fact that what matters in the critical field is difference and argumentation, and therefore one critical theory could not provide the universal answer. Persse simply asks "What follows if everybody agrees with you?" (Lodge, 1984: 319). It is only Morris Zapp who realizes the real dimensions of the situation and considers that young Persse has a point. According to Lodge himself, "One unhappy consequence of recent developments has certainly been the loss of a common language of critical discourse which used to be shared between academic critics, practicing writers, literary journalists and the educated common reader." (Lodge, 1989: 128)

Morris Zapp's wife, Désirée, is a very firm feminist. As compared to Robyn Penrose's ideology, Désirée's feminism is exaggerated in an ironical manner. Désirée is writing a book about men using for each section a head containing a well-known phrase about women which she changes in order to refer to men (Lodge, 1984: 87). The titles she chose for her chapters are "Frailty Thy Name Is Man" (a reference to William Shakespeare's play *Hamlet*), "No Fury Like a Man Scorned" (a reference to William Congreve's 1697 play *The Mourning Bride*), "Wicked Man Bother One. Good Men Bore One. That Is The Only Difference Between Them" (a reference to Oscar Wilde's 1893 play *Lady Windermere's Fan*). This shows that she is struggling against the tradition of how women have been depicted throughout literary history. Through Désirée's, endeavor, Lodge makes her feminism seem ridiculous and presents her ironically. Her feminism lacks a realistic purpose; her feminist endeavors are similar to the fight against the windmills. Moreover, the narrator states that she uses her vibrator "more out of principle than real enthusiasm", "as a nun her discipline" (Lodge, 1984: 87). This unexpected comparison creates the effect of irony and makes Désirée's feminism seem fake and pretended, as opposed to Robyn Penrose's true beliefs and ideas.

In the first novel of the trilogy, *Changing Places* (1975), Lodge shapes Désirée Zapp as a feminist in order to emphasize the opposition between her and Hilary Swallow, the wife of the British Professor Philip Swalow. The Englishwoman is patient, loving and caring (even if she could be considered too bound to the values of traditional society), whereas Désirée tells her husband that being married to him "is like being slowly swallowed by a python" and that she feels like "a half-digested bulge" in his ego. She struggles to get out of there, "to be free […] to be a person again" (Lodge, 1975: 40-41). Moreover, while she is having an affair with Philip Swallow and he suggests that he could stay in Euphoric State, Désirée quickly dismisses the idea of marrying him. Ironically she asks him not to take any offense, but she prefers to be a free woman standing "on my own two feet and without a pair of balls round my neck" (Lodge, 1975: 175). This rather hilarious view on marriage reveals the American woman's strong feminist beliefs, accompanied by a strong hint of irony towards radical feminism.

It is not by chance that Lodge mentions that Robyn ironically terms Désirée's writing style as "vulgar feminism" (Lodge, 1988: 322). The difference between the two

women is obvious: both of them are feminists, but each of them has different ideas. Désirée is too engulfed in her radicalism to accept other opinions, whereas Robyn is far more reasonable, thus being both firm and realistic. Therefore, Lodge mocks the strong-willed stubborn feminists through shaping the character of Désirée Zapp, and later on, in *Nice Work*, he acknowledges the positive of feminist ideas and creates Robyn Penrose. At the end of *Nice Work*, Morris Zapp volunteers to help Robyn Penrose and to support her in the competition for a job at Euphoric State. Ironically, the American's main reason for supporting Robyn is that the other person who wanted to get the job was Désirée.

The relationship between Morris and his wife is bad enough in the first book of the Trilogy, but in the second one it gets even worse. When he is kidnapped in Italy, the extremists contact Désirée Zapp in order to receive a ransom from her. But Morris' ex-wife turns out to not be sympathetic at all and she asks the kidnappers how much money they want in order to keep him (Lodge, 1984: 276). Her feminist side triumphs when she realizes she can use the episode in her book about men, as she considers it to be "a wonderful inversion of the normal power relationships between men and women, the man finding himself totally dependent on the generosity of the woman" (Lodge, 1984: 296). Irony is triggered at first by this role reversal, but then even more by Désirée's reaction to the news about her ex-husband and her enthusiasm about the entire episode.

In *Nice Work*, Lodge creates a very different episode which includes a man's dependence on a woman, as Vic Wilcox becomes totally dependent on Robyn Penrose's love. Lodge mocks the idea of gender roles by reversing them and shaping a humorous situation. Vic Wilcox, the man in the power position, the manager of an important company, listens dreamily to a song by Jennifer Rush, "The Power of Love", and keeps fantasizing about romantic scenarios which include Robyn Penrose. Moreover, towards the end of the novel, Vic tries to convince Robyn of his deep love for her and pleads that he wants to divorce his wife and marry Robyn. The young and independent academic explains to him that she does not believe in love, as she considers that humans "aren't unique individual essences existing prior to language. There is only language" (Lodge, 1988: 293), therefore love is merely constructed by humans. The male protagonist seems lost in his romantic love for Robyn, whereas she is cool and cerebral, and this gives the female protagonist the control over the situation.

Although they have a male author, all the novels in the trilogy admirably deal with various feminist issues. For instance, in *Nice Work* (1988), both the relationship between an independent woman and a man who is a director and has always dominated his employees (Robyn Penrose and Vic Wilcox), and the idea of a woman-leader, a strong woman whose words can influence other people and change their opinions (Robyn Penrose as a lecturer in the University) present the relationship between ideology and personal life in the case of the main female character, Robyn Penrose.

All the references to theory and ideology might seem to make these novels slightly heavy for the non academic readers. However, Lodge "is never heavy-handed in his writing, and his story moves along at a spanking pace, at once intelligent, reflective, and perhaps with an edge of irritation at times" (Quinlan, 1990: 464). This supports the claim that ideology is always a part of people's everyday existence and that we can never leave it outside, no matter what jobs we decide to embrace or what manner of life we decide to lead, whether we manage to reconcile it with the ways of life we choose to embrace, or we fail in this endeavor of practicing what we preach. It

is for this reason that the present article fills a gap in the domain, analyzing the relationship between the ideology supported and the lives led by characters belonging to the academic context, in the campus novels written by David Lodge, an important contemporary British writer, whose novels are strongly influenced by his background as a Literature Professor.

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ORIGINAL PAPER

On Ethics, Economy and Capitalism. An Aristotelian Approach

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Abstract
In this study we will analyze a subject which arouses lively debates, especially with the emergence of the latest economic crisis and the acceleration of the globalization process. It is the theme of the ethics of the capitalist system. The discussion about ethics and capitalism, in general, is neither a new one nor of secondary importance. It has been amplified ever since the last three decades of the last century, more and more voices demanding the reconfiguration of the current economic and social arrangements of the capitalist type, so that the economy and the society should become more moral, more virtuous. Bringing this controversial subject into discussion again is particularly interesting as the states in Eastern Europe have the experience of two rival economic and political systems, both models claiming, equally, the supremacy in terms of achieving the moral dimension of the economic and social-political life. The ultimate goal we set is to highlight some priority directions of action which should be followed in order to reconfigure, in this side of Europe as well, a more just and moral social-economic model, capable of coping with the challenges of the present world and of leading to the reestablisment of the citizens' confidence and consensus in a new society of welfare and justice. In the first part of our analysis, we will approach the more generic issue of the controversial relation between capitalist economy and morality, declaring our agreement with Aristotle's thesis that ethical virtues are formed by practice and consolidated by constraint. We will show that it is exactly the economic constraints that begin to impose the consonance of capitalism with morality.

Key words: business ethics, economy, ethics, moralty, moral capitalism

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Introduction

Half a century ago, the formula "the ethics of capitalism", if it was not simply catalogued a contradiction in terms, anyway was considered, by many economists and politicians, an oxymoronic formula, without any correspondent in the real economic life, and this not just by the representatives situated in / on the eastern side of the "iron curtain", but also by many exponents of the Western economic area. Obviously, the ironic formula was not in any way applicable to the socialist economies, lacking economic freedom and initiative, but only to the capitalist economic system.

The idea that business must be carried on in compliance with ethical reasons is not at all adapted to present circumstances, and in this respect, most of our fellow men say that not too much progress has been made since the beginning of capitalism until nowadays. The great majority of critics, even insiders have enough arguments and concrete examples in order to emphasize that the economic and political system of the capitalist type is inhumane, unjust, individualistic and exploiting. It is sufficient to turn on the TV and we are immediately bombarded with news about economic agents that commit tax dodging, do onerous business with the state, counterfeit auctions, do not comply with the contracts concluded with their businees partners, pollute the environment or produce and sell products that simply endanger people's health and life.

The first thinker who tried to achieve an ethical substantiation of business was the parent of modern economy himself, Adam Smith (1723-1790). This one, strongly influenced by the moral thinking of the Stoics, but also in the spirit of modern utilitarianism, highlighted that it was useless to expect the fellow men's goodwill and help because, for moral and humanistic reasons, they will never be received. Only if your actions will meet their personal interest and gain, they will offer you their collaboaration. Reaching public welfare is just a secondary consequence of the action of people who think and aim exclusively at their individual goals, the "invisible hand", that is the free market, being the one which links these interests, thus, generating the common welfare. According to Adam Smith, the conjugation of ethics with capitalism is difficult to achieve in the framework determined by the nature of the human being as *homo economicus*: the individual, an instinctively greedy human creature is incapable of going beyond the sphere field of his immediate selfish interests (the welfare of his own, of his family, of his friends). However, in the paper *The Theory of Moral Sentiments*, Smith admits that individual selfishness is not the only basis for ethical decisions and that the feelings of compassion, regard, collegiality, or those of admiration towards the economic performances achieved by other persons can improve, in terms of morality the society of the capitalist type. But, he admits, that only the law and the legitimate state can ultimately keep citizens bound in society, and not at all the sociability and the voluntary compliance with moral rules.

Milton Friedman, one of the representatives of individualistic liberalism, and a parent of the monetarist theory, will take as a starting point Adam Smith's skepticism, but he will be much more categorical towards the relationship between ethics and capitalism. In an article published in 1970, in New York Times magazine, entitled *The Social Responsibility of Business is to Increase its Profits*, Friedman launched a point of view which later generated vehement controversy. He asserted that "only people have responsibilities. A corporation is an artificial person and in this sense may have artificial responsibilities, but *business* as a whole cannot be said to have responsibilities, even in this vague sense."(Friedman, 1970: 32) The only responsibility of companies is to get involved in economic activities designed to increase profits, any expense incurred

for social and moral reasons affecting this fundamental goal. The compliance with the existing legislative framework represents the only social responsibility of a company and any extra expense, without considering that it concerns charitable, philanthropic actions, to support some underprivileged communities or to protect and restore the environment, will result in reducing the profitability and, in the end, everyone will have something to lose. The members of a corporation, irrespective of their position as internal stakeholders can undertake moral responsibilities, but as individuals, not as representatives of the company. One of the main reasons why Friedman considers that there must not be any connection between business and ethics is that a corporation is a legal entity, not a person, and morality is a distinct attribute, exclusively belonging to human beings. On the basis of these grounds, the author of the article mentioned above labels any discussion about the social and moral obligations of business as "fundamentally subversive".(*Ibidem*) Therefore, according to Milton Friedman, moral criteria have no place in the economy; economy and business are in the horizon of amorality and it is there that they should remain. And this opinion was not the only of the respective period, Albert Z. Carr had expressed a similar point of view in 1968, in an article issued in *Harvard Business Review*, a study which is provocatively entitled "Is Ethical Business bluffing?"

We must admit that a great many representatives of the present economic environment would consider that the cynical position expressed by Friedman or Carr, even if it is not accepted by citizens, is approved by those in the business world. And some would say, why would they not be right once they emphasize that the obligation of companies is that the economic activities they carry on must be strictly legal? In fact, the only interest of society is not that companies and their representatives should get ever higher profits, complying with the legal frame, without resorting to swindle and fraud? Is the legal requirement not really sufficient?

We consider that it is impossible to accept this limited conception referring to the obligations of companies because, for example, it would be difficult for us to understand why individuals have both moral duties and legal obligations towards society, whereas their artificial creations, the companies, would be exempt from moral and social responsibilities. Essentially, attitudes of the type shared by Milton Friedman are only the expression of a conviction, still widely shared among businessmen, and in short, it can be expressed as follows: *the means of getting money by people cannot be in agreement with morality*. And it implicitly leads to the acceptance of the thesis that capitalist economy, in general, will not ever be brought into accord with ethics. We must agree that, at least nowadays, we cannot be content with this pessimistic conclusion and that, in the advanced capitalist states, such a an opinion is ever more severely sanctioned.

II. Why should there be morality in economy? In order to demonstrate how ethics should play a very significant part in the business world, Manuel Velasquez starts from the philosophical moral dilemma expressed by Plato in the dialogue *The Republica*: "is there any kind of systematic advantage to ethical behaviour or any kind of systematic disadvantage to unethical behaviour?" Applied to economy, this is reformulated by the author as follows: "is there any kind of systematic advantage that a business organization or business person, has to gain from just behaviour or is injustice truly more profitable?" (Velasquez, 1996: 202) Looking for the answer to this basic question of the capitalist economy, Velasquez appeals to the explanatory value of the "prisoner's

dilemma", used in the contemporary thory of games, but also in the political theory. The paradox of the prisoner points out the fact that the maximization of the personal interest does not automatically lead to the maximization of the mutual interest, as Adam Smith claimed and, after him, many other theoreticians.[*] The dilemma shows that individual selfishness is counterproductive, compared to cooperation. If we extend the dilemma from the cooperation of two individuals at the level of society, then we can speak of a social dilemma. Real economic and social life offers us many situations where, because of the lack of cooperation, the results are at least under-optimal. In social or interindividual relations, the correct behaviour and cooperation, complying with the moral norms which are unanimously appreciated by the community, represent the element that conditions the performance of each person's action. "Being ethical, then, can be thought of as a kind of cooperation between individuals: it is cooperating in the moral norms that sustain our fundamental institutions such as the institution of language, of contract, and of property, and, more generally, the social conditions that make an orderly and flourishing human life possible. Being unethical, on the other hand, can be conceptualized as an attempt to take advantage of others by breaking the moral norms that others are following." (Velasquez, 1996: 205) The prisoner's paradox also suggests that a company focused on the narrow interest of a party, namely of the shareholders, ignoring the behaviour but also the interests of the other stakeholders, will get poor economic results, through the lack of cooperation and commitment in achieving common goals. As it is known, this book has played a key role in the development of the academic field of business ethics. The stakeholders' theory succeeds in offering a valuable perspective of unifying the pragmatic aspects of business, guided by the desire to maximize profits, with the moral aspects of the economic life. Thus, the company is no longer regarded exclusively from the perspective of the owners (shareholders) and of their narrow interests, but as an organization whose optimal economic performances essentially depend on the contribution of the other categories of stakeholders which it includes: executives, employees, suppliers, customers, administrations and local communities. But, now, it becomes obvious that some unethical behaviour of the latter would weaken a lot the organizational effectiveness. Conversely, some unethical behaviour of the company towards them would generate under-optimal economic results which would create difficulties for the company under the circumstances of market competition. Furthermore, if formerly the question "In whose interest should a company work?" immediately received a predictable answer (in the shareholders' interest) now, all of a sudden, things must be considered from a more complex perspective. As it is easy to assume that a company whose moral parameters are high, whose stakeholders are motivated to work properly and to cooperate effectively with one another, will be more profitable, then it will gain a better position in the market and will cope with the economic competition even under conditions of turbulence, as it happens in times of crisis, like the one in the last five years.

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[*] <<The story goes like this: Two thieves arrested for a crime vow not to betray each other. But the police put them in separate rooms, and tell each thief the same thing: "If your partner confesses and you keep silent, he goes free and you get 5 years in prison; if you confess and he keeps silent, you go free and he gets 5 years in prison. If you both confess, then you both get 3 years in prison. If you both keep silent, then we'll give you each 1 year in prison on a lesser charge.">> (Velasquez, 1996, 204)

Gene Ahner draws the attention to another aspect, the one that we have got accustomed to perceiving the economic activity and business in a strictly technical sense, as a mechanism which takes place outside the "premoral or impersonal" human area, forgetting that "business is essentially a human activity"; "business needs to be put into a larger context of human living". "As a human activity, business is by that fact moral activity", everybody agreeing that any human activity, which is related to the horizon of the freedom of choice, automatically interferes with the sphere of morality. We can agree with Ahner's conclusion, that "economic activity is not purely economical. It is the activity of economic, social, moral, and religious subjects". (Ahner, 2007: 13). In fact, to conceive an activity of the human being, regardless of its type, outside an *ethos*, means not to understand completely the reality of the human being in general.

III. Ethics, market economy and human nature. Ever since the early stages of capitalism, there have been many voices which drew the attention to the consequences of moral nature which are generated by this way of organization and development of the economic life. From the long list of reproaches which we hear even today against capitalism, we can enumerate the most frequent: it is built on exploitation and oppression; it cultivates selfishness and greed; it promotes and maintains income inequality; it generates crises, recession, unemployment and inflation; it destroys the environment; it leads to the alienation of the human being and to the weakening of his humanistic dimension, it undermines and affects democracy, through the influence it exerts on the political life. On the other hand, it is easy to see that the capitalist paradigm, in spite of all its shortcomings, is the most efficient form of organization and development of the economic life out of those invented by the man so far. Moreover, we must admit that the remarkable progress of mankind was achieved in the last few centuries, at the same time with the worldwide assertion of the exchange economy of a capitalist type.

The first stage of capitalism was of a liberal type and after the Second World War, the market economy asserted itself strongly, and its special feature is represented by the active role that the state plays in monitoring the correct functioning of the free market, through the use of the legal framework and of some economic mechanisms. By definition, in the market economy, the state has to be a neutral arbitrator of the economic game, a factor that mitigates the negative manifestations of the exchange economy, stimulating, instead, those features which lead to prosperity, social balance and individual welfare.

But if market economy requires, as mentioned above, the involvement of the state in economy, then we could ask the following question: are ethical issues or nonethical behaviours derived from the substance of the capitalist economy, from the nature of the market economy, or are they generated by the weak government, by incompetence or by the interference of some political actors interested only in satisfying personal interests, without taking into account any moral obligation? Obviously, the answer is not easy to be given, as it is very likely that the failures in terms of morality, often identified next to the capitalist economy, should have causes which can be available in both situations. Furthermore, we could introduce another variable in the equation, namely the human nature, wondering: how is the man by nature, moral or immoral?

Regarding the latest issue, let us make a brief philosophical parenthesis and let us remember the famous and suggestive lesson given by Plato in *The Republic*, more precisely in "The Myth of Gyges". Plato lays emphasis on the fact that in the absence of the rules which should constrain the man from the outside, on the one hand, and lacking the moral principles which should guide him from the inside, on the other hand, he will act only in his favour, becoming selfish and committing without restraint, injustice. Moreover, reality shows that, not seldom, people lacking morality come to have money, fame and power, while those who are virtuous remain poor and exploited by the first. Plato concludes that no one is willingly or naturally moral, as injustice is more profitable than justice. Only constraint is what makes us behave morally towards one another. But is Plato completely right? Is it only the fear of punishment that plays a therapeutic-preventive part, is it only it that ensures the moral health of a society, in all its historical forms of manifestation? The philosopher inclined towards this unfortunate conclusion. Thus, he asserted that if there were two miraculous rings which would make us invisible, one being put on the finger of a righteous and honest man, and the other on the finger of an immoral man, then we would notice that not even the moral man could resist the temptation to break social and moral norms. He would commit injustice as well, since everyone easily finds that injustice is more profitable than justice. In other words, immorality brings the individual more advantages than virtue does, so it is more tempting. Plato argued for this not only in *The Republic*, but also in a previous dialogue, in *Menon*. Here he concluded pessimistically that we cannot come to any certainty regarding virtue: we are not virtuous by nature, virtue is not rational knowledge, it cannot be learnt, so there is no science of virtue and there are no teachers of virtue. And if we should consider that someone is however virtuous, then it is due only to a divine inspiration. If Plato had been entirely right, the discussion about morality in general, not just about capitalist ethics would not make sense, as some would be "inspired" to be virtuous or might "recall" virtue (we say, ironically, *to their misfortune*!) and others not, for their own good. In this situation, our hope to build advanced societies from a moral point of view, to live in "the right and happy walled city", as Plato himself wished, would stand no chance ever to materialize. Aristotle, his disciple, would not entirely agree with this pessimistic opinion, being confident in the possibility of the moral education of human beings.

To sum up, Aristotle's conception of virtue, exposed in *The Nicomachean Ethics* is the following: ethical virtues are not given to the man by nature, but they are formed by practice and exercise, by training (not study!), in the beginning under the guidance of a / some models, then by external constraint. Gradually, moral behaviour will become a habit, a "habitual disposition", namely a kind of second nature of the man. Therefore, we become more moral not theoretically-rationally studying ethics or listening to speeches about morality, but always practising virtuous acts. The process of forming the moral character of the man will be ahead especially if it starts in childhood and is developed with intellectual wisdom and perseverance by those who are around: parents, school, professional environment and society. Returning now to the central theme we are debating, we understand more clearly that the lack of morality and justice is not at all the essence of the capitalist economic model. Not only this produced failures as, inequality, "destructive selfishness", the accumulation of goods and wealth in excess, and so on. Capitalist economy is not by much more unethical than the forms of economic organization of a medieval or ancient type, or even than the socialist one. People have always showed the inclination to acquire goods in excess, to get as high as

possible financial incomes or at least to have a surplus of resources in order to lead a more comfortable life, and for this they used all the instruments they had at their disposal, as well as the means of production, their power and position in society, weapons and so on. Furthermore, when they had the opportunity to have a "ring of Gyges" on the finger, they twisted it to become "invisible", in order to be able to break the moral and legal norms and thus to achieve their goals faster. In fact, since the beginning of history, people have not taken social responsibilities and they have not complied with moral precepts in a disinterested way, in an altruistic modality. First, they started to do this by constraint. Afterwards, they started to assume consciously and to practise some ethical behaviour as society evolved, becoming better, and the human condition became emancipated.

IV. Ethics in Western capitalist society. Economy without ethics? In an article issued in *Social Europe Journal*, Jonathan Rutherford analyzes how the weakning of the ethical dimension of the economy in Great Britain occurred in the last 3-4 decades. He finds that the neoliberal capitalist model, put into practice after the bankruptcy of the model of the manufacturing industrial production, in the sixties, generated not only a new economic order, but also a new kind of social order, whose distinctive note is the significant weakening of the ethical sense. Rutherford remarks that the changes have been intensely promoted by the conservative Prime Minister Margaret Tatcher, who carried out the deregulation and the radical restructuring of the economy, bringing the financial market to the foreground of business. This also generated a new policy approach of the state towards citizens. Thus, if the previous state assumed "a moral responsibility for the welfare of its citizens, this new kind of market state promised them instead the economic opportunity to take care of themselves." The financial sector, which has become predominant in the economy, stimulated consumerism in excess through cheap credits. "The housing market became the epicentre of a casino economy that turned homes into assets for leveraging ever-increasing levels of borrowing" (Rutherford, 2009: 13-14.) The new economic order gradually destroyed the collective way of life with its traditional morality, promoting some selfish individualism, guided by some morality of Stoic origin, which urges the man to be content with personal happiness, as much as it can be ensured. In other words, guided by the morality of personal salvation. Meanwhile, the new kind of capitalism, free from traditional moral constraints produced major economic mutations, with serious social implications. Surprised by Rutherford with figures, they look like this: "In 1976 the bottom 50 per cent of the population owned 12 per cent of the nation's non-housing wealth. By 2003 it had fallen to 1 per cent". Practically, in about three decades, "the neoliberal model of capitalism has created a utilitarianism whose rational, economic calculation has contaminated all social relationships". Ultimately, "the destruction of cultural and moral inheritance have led to an economy without ethics." (*ibidem*: 14-15.) Thus, the neoliberal model of capitalism accelerated the decline of the Puritan moral economy, where the traditional British capitalism had been built up.

Rutherford's analysis is not limited to identify how the new type of capitalism weakened the ethical substance of business in the UK, but it extends the findings over its effects on a European scale. Like many other theoreticians from nowadays, he believes in the possibility of correcting this state of things only in a political way. Thus, the author of the article deplores the crisis of the continental social-democracy, the social division and the political disengagement of the European society,

being convinced that "a new politics of the left must galvanise the vitalism of the cosmopolitan cultures of difference while being an advocate for mainstream conservative culture." (*ibidem*) And a little further, as an undisguised admirer of "the socialist ethics", Rutherford completes: "A new left politics must return to first principles and address the big questions of how we live." (*ibidem*, 17)

We appreciate the accuracy of Rutherford's findings regarding the moral mutations produced by the neoliberal capitalism, but we argue that to extend the analysis in the political area is neither theoretically advantageous nor useful in practice.

We consider that the German model, or the Scandinavian one of capitalist economy constitutes good counterexamples in this regard. And in order not to create favourable conditions for those who interpret strictly politically or ideologically the relationship between morality and capitalism (in the paradigm "left" *versus* "right"), we could very well refer to the successful oriental formulas of the capitalist economy, respectively to the state of business morality in that country. We do not have enough room now to expand our debate in this direction. Nevertheless, we note that the term "economy without ethics" would correspond not only to the neoliberal economy, but it could be extended, quite easily, to any other form that the exchange economy met in time, to a lower or greater extent. Not even the socialist economy had a successful symbiosis with morality, perhaps this being as well one of the reasons why this project broke down so fast.

Declaring ourselves Aristotle's followers, we believe that if we want to get to the essence of the issues referred to, then the discussion concerning the relationship between ethics, economy and capitalism should not be taken to the political level. Even if the author of *The Nicomachean Ethics* saw politics as the science with the highest authority, as it deals with providing the walled city with happiness, he stated that ethics must precede politics *de facto*, which means that ethics must remain at the foreground of our analysis. In fact, capitalism is not strictly a political system, but a way of organization and development of the economic life, with direct implications on how society articulates in all its dimensions.

As well, ethics deals with researching and forming the human being's character in general, which represents in its turn the starting point of politics. Furthermore, it is politics that shows us what we need to do for the walled city to be more righteous and for the citizens to be happier, but only according to what ethics requires.

V. Ethics in business and the reconfiguration of the ethical framework of the present capitalist economy. From the beginning, we mention that we share the belief that the relationship between ethics and economy has to be approached directly, without the mediation of politics. The quick way of development of a new and independent field of knowledge, being nowadays in the centre of some remarkable theoretical approaches, makes us confident in the reconfiguration of the relationships between morality and capitalist economy. It is about the field of *business ethics*, which flourishes not only in the academic environment but also in the communities of businessmen and in the society. Business ethics is not restricted to the theoretical-philosophical research of the moral dimension of those involved in the game of the market economy but, and this must be emphasized, it is mainly concerned with the application of standards to the moral behaviour in the large and complex universe of business. Mark S. Schwartz notes that if by 1985 business ethics has been the subject of academic research, thereafter, in a period of ten years, "business ethics became

integrated into large corporations, with the development of corporate codes of ethics, ethics training, ethics hotlines, and ethics officers." (Schwartz, 2008: 217) The basic questions which are tried to be answered by business ethics today are:"can business ethics be taught? What factors actually influence ethical behaviour? What should a firm's ethical obligations (i.e., beyond the law) consist of? Does ethical behaviour actually improve the firm's financial performance? Is a firm capable of being held morally responsible, or only the firm's agents? How can business ethics best be integrated into a firm's corporate culture?" (*ibidem*: 219)

Business ethics draws the attention to the fact that că the modalities by which individuals (owners, employers, shareholders and so on) aim at, create and assume wealth cannot be outside morality. But, at least, this thing is and will be possible to an increasingly smaller extent. However, today the number of businessmen who consider economy as an amoral activity keeps decreasing, and this happens not because of some sudden and natural awakening of their ethical sense, or because to show oneself "friendly" towards moral principles is an appreciated thing by fellow men, thus making them be more tolerant towards the disinterest or towards the act of miming that social and moral responsibilities are taken, but thanks to the fact that the development of some business by practising some behaviour in accordance with ethics begins to represent an increasingly important condition to maintain the profitability of companies. In advanced capitalist societies, where democracy is not reduced to a simple election exercise, citizens, who, unavoidably have the quality of stakeholders for different companies, can severely sanction the companies which prove no moral behaviour and take no social responsibilities. A company with a damaged public image seriously jeopardizes their business and may even exit the market. There are many famous cases of violation of business ethics by various corporations, known not only to the general public, but analyzed in different textbooks on business ethics.

Out of these let us stop at the latest case of British Petroleum (BP), one of the best known companies in the world in the extraction and processing of oil. By 2010, this company had passed for one of the serious corporations which took ethical responsibilities towards environment, local communities, employees and customers. The explosion of the marine platform Deepwater Horizon, on April 20, 2010, in the Gulf of Mexico showed that matters did not stand so at all, the BP corporation had preferred to reduce steadily the costs for the security of the undertaken activity in recent years, in order to maximize profits, although they publicly claimed something else. The sinking of the platform resulted in 11 dead persons and in the discharge, within 3 months, of 5 million barrels of crude oil into the Atlantic ocean, which caused the biggest ecological disaster ever known by America. But the damage caused by this company did not stop here, because the catastrophic way of handling the crisis caused a real public scandal in the United States. The leaders of the company proved not only inefficiency in solving the situation, but also indifference and arrogance that seriously inflamed the public opinion, generating a chain of protests from journalists, environmental organizations and from the citizens who began to boycott systematically the gas stations of this company. Here is how the non-ethical behaviour of a company towards all categories of stakeholders involved in their business managed to send away the customers who no longer wanted to buy from an irresponsible company. Certainly, if BP had oil products of poor quality they would not have lost their customers so fast!

Situations like the previously described case or the huge financial scandal (December 2001) caused by the American energy company Enron, which shook the

Western world of business, should not be seen only from a dark perspective. That is they should not be thought of as further evidence of the fact that the capitalist economy will never be in accordance with ethics. On the contrary, as Archie Carroll remarks, what resounding scandals did was only to increase everybody's interest in the ethical aspect of business; moreover, "lately this interest has grown to a preoccupation or, as some might say, an obsession". The impact of the Enron scandal was so great on business ethics that it has been dubbed the "Enron Effect." The effects and lessons learned from the Enron scandal have been so colossal that business will never be the same. (Carroll, Buchholtz, 2009: 233).

VI. Short Conclusion. The idea we must bear in mind from this first part of our analysis is that the debate regarding the morality of capitalism must be held not only at a theoretical-philosophical level and not at the the strictly political one, but focus on the concrete relationship between ethical behavior and economic profitability. In short, we must start from what today, in times of a capitalism crisis , is pronounced with an ever more insisting voice:"good ethics is good business". This expression "can be and is interpreted as a statement that the invisible hand of capitalism forces managers to make decisions that society sees as ethical. Those managers that do not make ethical decisions will punished by the market." (Burton, Goldsby, 2009: 147) Therefore, if the economic and financial performances are ever more affected by non ethical behaviours and, inevitably, by an increasingly lower trust capital, then those fundamental changes must be rapidly promoted, so that capitalist economy should connect more deeply with the ethical dimension.

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ORIGINAL PAPER

Aspects concerning the phenomenon of discrimination from the perspective of the equal rights principle

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Abstract

The aim of the study consists in a complex analysis of the concept of discrimination through the principle of equal rights. The objectives regard the definition and analysis of the discrimination concept, analysis of the interdependence between national and international law acting in this domain.The results of this research are that a study about discrimination from the perspective of the principle of equality of rights, seen from several points of view.The review was interdisciplinary, regarding the fields of legal protection of human rights, public international law and constitutional law.The findings may be used in legislative activity and support for a more detailed analysis of the issues.The main conclusion of this study is that, in order to have good results in this area, a complex action, divided into two phases, is required. In the first phase, it is necessary to develop an anti-discrimination policy at both national and international level, which has to be based on educating all generations in order to determine them, as in inter-human relationships, to apply undifferentiated treatment regardless of the person with whom they interact.

Keywords: human rights, principle of equality, discrimination,vulnerable groups, protection

Human rights are based on the core values of mankind, namely: integrity and human dignity, equality, peace, non-discrimination etc.. The object of human rights are the fundamental rights and freedoms of the individual, which are the contents of the international relations field.(Ciuvăț, 2000: 45)

Contemporary international law affirms equality in rights of all individuals and promotes the elimination of all forms of discrimination.Equality in rights is a cornerstone to ensuring human rights, thus rejecting the idea of granting privileged regimes to certain groups of people.Enforcing human rights should be made, in global terms, thereby avoiding the restriction in exercising of particular rights.According to this idea, the states have the obligation to ensure the exercise of all categories of human rights, whether if they are civil, economic, political, social or cultural rights.Regardless of these

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classifications, human rights must remain interdependent. The rules protecting this category of rights belong to "iuscogens".In case of violation of these rights, justice is the one that has the possibility of solving these conflicts. The principle of equality is manifested in all areas of activity.

Racial discrimination is, unfortunately, a present reality. Although the fact that across the globe there no longer exists at a national level an institutionalized system that promotes discrimination, as it happened in the past in South Africa, where apartheid was considered an official policy, there are, however, laws that allow various types of discrimination. In the current period where the process of globalization is increasing, in some cases discrimination is considered to be a measure to protect the indigenous population against the tide of immigrants. This aspect results from the Durban Declaration adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Intolerance (2001), which, at point 11 mentioned that "*the process of globalization constitutes a powerful and dynamic force which should be harnessed for the benefit, development and prosperity of all countries, without exclusion. We recognize that developing countries face special difficulties in responding to this central challenge. While globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed. We thus express our determination to prevent and mitigate the negative effects of globalization. These effects could aggravate, inter alia, poverty, underdevelopment, marginalization, social exclusion, cultural homogenization and economic disparities which may occur along racial lines, within and between States, and have an adverse impact. We further express our determination to maximize the benefits of globalization through, inter alia, the strengthening and enhancement of international cooperation to increase equality of opportunities for trade, economic growth and sustainable development, global communications through the use of new technologies and increased intercultural exchange through the preservation and promotion of cultural diversity, which can contribute to the eradication of racism, racial discrimination, xenophobia and related intolerance. Only through broad and sustained efforts to create a shared future based upon our common humanity, and all its diversity, can globalization be made fully inclusive and equitable."* Thus, racial discrimination is constituted not only as a reaction against cultural homogenization but also as a protection against the social and natural environment degradation of a human colectivity. On the other hand, discriminated people, because they belong to certain ethnic groups, are not able to have an appropriate level of education, which determines them to only accept low-paid jobs due to lack of required qualification. We are currently witnessing a manifestation of discrimination that starts with the isolation of these individuals and can end with the existence of some acts of violence against persons belonging to a racial group.The principle of equal rights of individuals enables each and every subject to be able to claim his rights but at the same time to be obliged to respect the rights of other individuals.

There have been over the years several theories that aimed at removing the racial discrimination. The first theory is based on the promotion of racial tolerance, but its application could not get past the existence of prejudices, which caused their failure. Another theory has focused on removing inequalities between social groups by taking, through legislative means, measures that would lead to equal treatment for all individuals regardless of their ethnic or racial origin. Internationally, all documents concerning the abolition of racial discrimination is based on the principle of equality of rights applicable to all individuals regardless of race, nationality, ethnicity, religion, social status, political

opinion, sexual orientation, and so on.In this regard, there were developed and adopted, a number of documents such as:The Convention concerning Discrimination in Regarding employment and occupation (Adopted by the International Labour Conference in 1958); The Convention against Discrimination in Education (adopted by UNESCO in 1960)International Convention on the Elimination of All Forms of Racial Discrimination (adopted by the General Assembly of the United Nations in 1965); Convention on the Elimination of All Forms of Discrimination against Women (adopted by the General Assembly of the United Nation on 18 December 1979); The international convention regarding the suppression and punishment of the crime of the apartheid (adopted by the General Assembly of the United Nation on 30 November 1973); The International Covenant on Civil and Political Rights (adopted by the General Assembly of the United Nation on 16 December 1966).

The international community has come up with a pragmatic solution against all forms of manifestation of discrimination by adopting World Conference Report against racism, racial discrimination, xenophobia and intolerance.This Conference, held in Durban, South Africa, between 31 August and 8 September 2001, is part of a series of global meetings, preceded by the World Conference on Human Rights in Vienna in 1993, and the World Conference on women, held in 1995 in Beijing. The Declaration adopted at Durban is a reference document for all actions and policies that aim to abolish racism, racial discrimination, xenophobia and intolerance, acts incompatible with democratic values, with the respect for human rights, dignity and equality for all (World Conference against racism, racial discrimination, xenophobia and related intolerance, 2002: 5). In the Declaration adopted Durban, at paragraph 77, it is mentioned that one of the tools to eliminate racial discrimination is the application of the provisions of international conventions as they ensure the promotion of equality and non-discrimination worldwide.

Sometimes discrimination is confused with prejudice, which relates more to the psychological state than the behavior. These two concepts are closely related, but it is possible to discriminate against people without conscious bias.(Hadler, 1994: 615)

The international convention regarding all forms of racial discrimination, adopted by General Assembly of the United Nation in 1965 which came into force in 1969.Through racial discrimination is understood ”any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.(The international convention regarding all forms of rasial discrimination: 1)

In order to eliminate all forms of racial discrimination, States Parties to this Convention undertake:not to resort to acts of racial discrimination;not to encourage racial discrimination;to take the necessary steps to repeal legal projects which have the effect of racial discrimination;to encourage international multiracial movements.For the fulfillment of the Convention provisions, a body called the Racial Discrimination Elimination Committee has been set up.The Committee imposed on the occasion examining periodic reports submitted by States Parties to the Convention to receive relevant information on the situation of social groups that did not enjoy the exercise of certain rights because of not belonging to a particular social caste.

In the case of India, the Committee, on the occasion of the final findings adopted in 1996, pointed out that the notion of ascendency refers not only to race but extends to castes and tribes, which requires in this case a stronger response of the state to guarantee

the use by members of the castes and tribes of all human rights in the domestic and international law. Even if some of the states in question (India, Nepal, Bangladesh) have claimed that the population groups concerned are distinct from the racial ones, they have agreed to provide information on these groups and to enter into dialogue with the Committee on this issue.(Report of the Committee, 1996, GADOR, fifty-first session, Suppl. No.18\A\51\18, Comments by India: 128) Also, the final observations taken after examining the periodic report of Nepal, in 1998, the Committee expressed its concern that despite the abolition by law, the caste system still works in this country and it appears as part of the culture rooted in the Nepalese society and asked information on the implementation of practical measures to eradicate the caste system practices. (Report of the Committee of 2000, GADOR, fifty-fifth session, Suppl.No.18A\55\18: 55) In its concluding observations from 2000, the Committee resumed its concern for the existence of discrimination based on caste in Nepal and denial of rights for certain groups of population resulting from this system, and asked for information on the implementation of practical measures to eliminate them permanently, especially regarding the measures in order to prevent the abuses motivated by caste.(Report of the Committee of 2000, GADOR, fifty-fifth session, Suppl.No.18(A\55\18): 55) In same meaning, the final observations taken after examining the initial report of Japan, the Committee assert that the *ascendency* term has its own content and should not be confused with *race, national or ethnic origin*. In consequence, the Committee recommends that the State Partie should ensure protection against discrimination and the full benefit of civil, political, economic, social and cultural rights stated in the 5th article of the Convention provisions to all groups, including the Burakumin community.(Report of the Committee of 2001, fifty-eight session and fifty-ninth session, GADOR , fifty-sixth session, Suppl. No. 18\A\56/18: 35)

The Committee's work has focused on imposing measures that the state should take in this situation, to remove racial discrimination.According to article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, states have the possibilty to create a specialized body that has the power to examine the demands aimed at racial discrimination.People who have undergone this type of discrimination and have not obtained a restoration of violated rights have the possibility that within six months to address The Committee with a petition to remove the effects of the discrimination.

Article 14 of the Convention foresees a procedure to be followed when formulating the Committee petition for stopping racial discrimination.Examination of reports from Member States by the committee showed that progress has been made towards compliance with human rights from the perspective of the principle of equality of rights.The activity of the Committee revealed that in practice there are new manifestations of racial discrimination and that in some Member States of the Convention on the Elimination of All Forms of Racial Discrimination, discriminatory practices that were considered to have been removed reappeared, which involves monitoring more careful and at the same time taking energetic measures to eliminate this forms of discrimination.

In Petition no. 16 \ 1999 on the case of Kashif Ahmad versus Denmark, it has been invoked the fact that in June 1998, the applicant together with family members and friends came to meet his children after exams at Avedore Gymnasium, Hvidovre, during which a teacher invited them out but they refused. Following the refusal the teacher informed the director who called the police and referred to the complainant's group as a group of monkeys. The complainant filed a complaint at the police. Although the director has denied the charge, the response given was that the law was not violated.The

Committee's decision for stopping racial discrimination was that they considered that the petitioner's rights were violated.

In the EU there are two basic directives prohibiting discrimination on several grounds: Racial Equality Directive: this requires states to prohibit discrimination on grounds of racial or ethnic origin in all social activities - employment, education, health, etc. (Official Journal, 2000: 0022 – 0026);

Equal Employment Directive: that requires states to prohibit discrimination based on religion or belief, disability, age and sexual orientation in employment and vocational training. (Official Journal, 2000: 0016-0022)

The international convention regarding the suppression and punishment of the crime of the apartheid, adopted by the General Assembly of the United Nation on 30 November 1973 and entered into force on 18 July 1976.Apartheid is labeled by the Convention as a "crime against humanity". The crime of apartheid is the following:to refuse a member or several members of a the right to live and the liberty of the person; taking the lives of members of a racial group or more racial groups;to strike at the very physical or mental integrity, freedom or dignity of the members of a racial group or of several racial groups or by subjecting them to torture or to cruel, inhuman or degrading treatment;arbitrarily arresting and illegally holding members of a racial group or of several racial groups; deliberately imposing a racial group or more racial groups living conditions aimed at physical destruction in whole or in part;to take legislative or other measures designed to prevent a racial group or several racial groups to participate more in the political, social, economic and cultural life and create deliberately conditions that prevent the full development of the group or groups concerned. Also, to deprive the members of a racial group or several racial groups freedoms and fundamental human rights, including the right to work, the right to form recognized trade unions, the right to education, the right to leave the country and return, the right to a nationality, the right to free move and to choose their residence, the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association; to take measures, including legislative measures, aiming to divide the population by racial criterias creating reserves and ghettos for the members of a racial group or of several racial groups, banning marriages between people of different racial groups and expropriation of land belonging to a racial group or several groups racial or members of these groups; to exploit the work of members of a racial group or of several racial groups, particularly subjecting them to forced labor;to persecute organizations or individuals by depriving them of their fundamental rights and freedoms because they oppose apartheid (Convention on the Suppression and Punishment of the Crime of Apartheid:2).

In order to eliminate the crime of apartheid, States Parties undertake:to take the necessary measures to prevent the crime of apartheid;to take the necessary measures to eliminate any practices that encourage this kind of crime;to take the necessary measures for the punishment of this kind crime. A Group was established for the fulfillment of Convention provisions, composed of three members designated by the President of the Human Rights Commission. The group's aim is to analyze the reports, sent by States Parties relating to the measures taken for the implementation of Convention provisions.

Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nation on 18 December 1979 and entered into force on 3 September 1981. Discrimination against women violates a fundamental principle of human rights and namely, the principles of equal rights. At the same time it violates one of the fundamental human rights, namely women equality with men.States

Parties undertake that they shall take all the necessary measures to eliminate discrimination based on sex, in all fields of activity. As a mechanism to monitor the fulfillment of Convention provisions, a Committee for the Elimination of Discrimination against Women has been established. Although there are several conventions that regulate specific aspects of discrimination, however, an international document regulating discrimination based on sexual orientation is required.

The International Covenant on Civil and Political Rights, art. 2 provides that State Parties to the present Covenant commit to respect and to ensure to all individuals within the territory or under their jurisdiction the rights recognized in the present Covenant, without any distinction of race, color, sex, language, religion, political or otherwise, national or social origin, or any other individual status.Although it does not specifically refers to this form of discrimination, in art. 26 Covenant states that discrimination of any kind will be prohibited by law and will be guaranteed to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or any other, national or social origin, property, birth or other status shall be granted. The Human Rights Committee stated that sexual orientation is a form of discrimination.

The European Council adopted Recommendation 924 of October 1, 1981 entitled On homosexuals discrimination (Duculescu, 1994a: 246) which requires Member States to take all necessary action to protect the right to sexual self-determination.A position against legalizing homosexuality was adopted by the Romanian Orthodox Church (Duculescu, 1994b: 252) which requested compliance with the moral principles of Christian society. The Council of Europe Directive adopted on November 27, 2000 require any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation in the areas covered by this Directive must be prohibited throughout the Community.In Romania, this type of discrimination is punishable by law.

The Romanian Constitution in art. 30 paragraph 7 states that the defamation of the country and the nation, any instigation to a war of aggression, national hatred, racial, class or religious hatred, incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary morality are forbidden.

Discrimination is defined as any distinction, exclusion, restriction or preference based on race, nationality, language, religion, social status, belief, sex or sexual orientation, membership of a disadvantaged group or any other criterion which aims or effect the restriction or removing the recognition, the use or exercise, on equal terms, of human rights and fundamental freedoms and legal rights in the political, economic, social, cultural or any other area of public life (Government Ordinance No. 137, 2000: art. 2, para. 1.)

Application of differential treatment to persons in comparable situations constitute discrimination under art. 1 para. 3 of Government Ordinance No. 137/2000. But the Constitutional Court, by Decision no. 107/1995, held that the principle of equality does not mean uniformity, so that if the equal situation should correspond to equal treatment, for different situations legal treatment can only be different. This means that in some instances discrimination may not be illegal (Decision Nr. 107 of November 1, 1995, on the exception of unconstitutionality of art. 8 para. (1) of the Law no. 3/1977 on State social insurance pensions and social assistance, invoked by Elena Popescu in case No. 1 .036/1994 the Court of Appeals, the Contentious Administrative Department).

There are many forms of discrimination, namely: racial discrimination; ethnic discrimination; sexual discrimination; religious discrimination; discrimination based on

sexual orientation; discrimination based on language, and so on. Sexual orientation is a personal matter for each individual. The position of society depends on various sexual orientations, culture, education and morals of every people. A strong influence in this matter is exercised by the Church. Society was polarized around two concepts regarding sexual orientation. A first group which claims that homosexuality is a mental disease or vice and, on the other side, a group agrees with this sexual orientation. Sexual orientation of a person can be: heterosexual, homosexual, bisexual or asexual. Defining the guidelines as normal or not depends on the social norms. International Psychiatric Organization decided in 1971 the removal of homosexuality from the list of mental illnesses since it has no medical cause. The first group points out that homosexuality can endanger the perpetuation of the human race. We notice a curious thing regarding attitudes towards homosexuality, namely that homosexual women are treated more leniently than gay men. Internationally, there are a number of conventions dealing with the various forms of discrimination regulation. We can mention among these: International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nation in 1965 and entered into force in 1969.

Through racial discrimination is understood ”any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” (The international convention regarding all forms of rasial discrimination: art. 1).

The Law no. 48/2002 in the art. 19 states: *it is considered a contravention, (...) any behavior displayed in public, having the character of nationalist-chauvinist propaganda, incitement to racial or national hatred, or conduct which has the purpose or has the purpose to strike at the very dignity or creating an atmosphere of intimidation, hostility, degrading, humiliation or offense, directed against a person, group of persons or a community on their belonging to a certain race, nationality, religion, social category or to a disadvantaged or beliefs, sex or its sexual orientation.* The Romanian Constitution does not refer to this form of discrimination. By January 2002, the Criminal Code incriminated sexual relations between persons of the same sex in the art. 200. After that date the legal regime has been changed in the sense that for the existence of the crime was necessary the condition of public scandal occurrence or publicly committed act. The new Criminal Code which came into vigor in 2006 decriminalized sexual relations between persons of the same sex.The European Court of Human Rights has received a number of complaints regarding homosexuality and transgender.In the Dudgeon v. United Kingdom case, the decision given stated that the claimant suffered a violation of privacy. The British government claimed that the action targeted a moral protection for the society. The Court claimed that some regulation is considered legitimate for male homosexual behavior as well as other forms of sexual behavior. Criminal sanctioning is justified where the public must be protected generally against that which shocks and injures (...) (Voicu, 2001: 173).

Sexual orientation is a matter of the right to privacy and should therefore be respected as such. On the other hand, children and adolescents should be protected against any manifestations of attracting them in these guidelines since their psyche is not developed enough to be able to cope these issues.We believe that performing in public certain acts that defy ethical and moral sense must be sanctioned by society through mechanisms that

we have at hand. But it does mean that some people are entitled to carry out certain discrimination based on these grounds. Harassment should be prosecuted as discrimination in accordance with the the meaning of paragraph 1, when unwanted conduct on grounds of racial or ethnic origin, result in a violation of personal dignity or creates an intimidating, hostile, degrading or offensive frame. In this context, the concept of harassment may be defined by taking into account the national legislation and practices of Member States (Closca & Suceava, 1995: 90).

There are two types of discrimination, namely: *Direct discrimination*, that occurs when a person is treated, because of its racial or ethnic origin, less favorable than another person, which is in a comparable situation, has been treated or would have treated (E.U.2000/43/EC Council Directive of 29 June 2000: art. 2.1.2.a). *Indirect discrimination* occurs when a provision, criterion or practice would create persons of a certain racial or ethnic origin a disadvantage compared with other persons, excepting the case where that provision, that the criterion or practice is justified objectively by a legitimate aim and if the means of achieving that aim are appropriate and necessary (E.U.2000/43/EC Council Directive of 29 June 2000: art. 2.1.2.b). In our country, the application of legal rules against discrimination has created a specialized body operating in this area, namely the National Council for Combating Discrimination. The purpose of this organization is to implement the principle of equality between men provided in most human rights documents. The Romanian law enumerates, as examples, the 15 criteriaof discrimination that can be encountered in practice, namely: race, nationality, ethnicity, language, religion, social status, beliefs, sex, sexual orientation, disability, age, HIV infection, non-contagious chronic diseases, refugees and asylum seekes.Romanian case law on discrimination is relatively recent and refers to the one founded on ethnic criteria.

Article 14 of the European Convention on Human Rights states that the exercise of rights and freedoms recognized in this Convention shall be secured without discrimination based on religion, political or other opinion, national or social origin, association with a national minority, property , birth or other status, which demonstrates that this list is illustrative, since the phrase or any other situation has a covering effect for any criterion of discrimination.

Romanian legislature created the art. 19 of Government Ordinance No. 137/2000 on preventing and sanctioning all forms of discrimination, as amended and supplemented, a national authority which investigates and sanctions facts or acts of discrimination laid down in the Ordinance, namely the National Council for Combating Discrimination. All persons are equal before the law and are entitled without discrimination to equal protection of the law. Law shall prohibit any discrimination and guarantee to all persons equal and effective protection against all discrimination (Raduletu, 2006: 35). The international community has sought and seeks to find the most effective tools to limit any form of abuse. In Romania there is an independent state authority that is responsible for combating discrimination on the basis of equality. It is the National Council for Combating Discrimination that has the right to rule on complaints relating to acts of discrimination, being able apply fines. The substantiation of this decision is based on both national legislation and taking into account the doctrine and practice of the European Union. Under our legislation, persons discriminated are entitled to restoration to the pre-discriminational situation and at compensation proportionate to the damage suffered.

A worrying phenomenon that has gained magnitude now, is constituted by the extremist organizations which use the internet to promote discriminatory policies. Hiding behind some computers, diverse individuals are instigators to discrimination based on

different grounds. Concrete measures are required to identify and punish those people who, after all, pursue a patrimonial interest.

Nationally, states are encouraged to adopt additional measures for some disadvantaged groups in order to eliminate the conditions that lead to situations of discrimination. The principle of equality needs to be applied in the education of young generations in order to be able to hope for a real reduction of cases of discrimination. Compliance with the principle of equality of rights as the foundation of non-discrimination requires the *ergaomnes* opposable obligation of applying an undifferentiated treatment to all categories of people with whom the individual comes into contact. The legal measures imposed by the domestic laws of each state for the elimination of discrimination are not going to eradicate this phenomenon, because currently we believe that only the effects are treated, but not the causes of discrimination. In order to have good results in this area, a complex action, divided into two phases, is required. In the first phase, it is necessary to develop an anti-discrimination policy at both national and international level, which has to be based on educating all generations in order to determine them, as in inter-human relationships, to apply undifferentiated treatment regardless of the person with whom they interact. Given the reach of the legal framework that provides us the necessary tools to the fight against discrimination, in the second phase we have only to apply the law in case that there might occur some sporadic manifestations of discrimination.

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ORIGINAL PAPER

Gender Inequality in the Social and Labor Sphere: Experience of Sociological Research of the Federation of Independent Trade Unions of Russia

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Abstract

The term of «gender» was introduced into scientific vocabulary in the end of sixties and was used for analysis of socio-economic relations, including labor ones, marking a specific feature of biological differences between men and women. Gender analysis helps to detect and identify different forms of sexual discrimination existing in the sphere of labor, production, promotion etc.

Federation of Independent Trade Unions of Russia (FNPR) in 2012 initiated major research that was conducted by the method of questioning on the theme «Gender equality in modern Russian society: regional aspect» (14 regions of Russia, sample included 4890 people).

The study showed that in the sphere of labor relations gender inequality manifests itself quite clearly. For instance, despite the fact that Russian law prohibits discrimination on grounds of sex, in reality this inequality was qualified as «often» and even «widespread», according to respondents; areas, where the most evidently inequality between men and women exists, include «labor (recruitment, remuneration, career growth, etc.)», «policy» and «leisure»; the right to fair wages, professional advancement and the right to participate in management were marked as the most often violated; problems that concern violations of the rights of persons with family responsibilities, particularly women, have special significance in the social and labor the sphere, because women experience the greatest pressure from the employer when they ask for maternity leave or sick leave.

For real gender equality in our country, according to survey, it is necessary first of all to «improve the legislative basis» and «implement the state policy aimed at achieving gender equality» and «to shape public opinion in defense of social equality».

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The results of research sampled in this article show that despite of democratic changes in our country almost in all spheres of life matters of gender equality in employment and the social sphere remain unresolved.

Keywords: Labor relations, gender, Federation of Independent Trade Unions of Russia, sexual discrimination, gender equality.

The term of «gender» was introduced into scientific vocabulary in the end of sixties and immediately began to be used for analysis of socio-economic relations, including labor ones, marking a specific feature of biological differences in men and women. Gender analysis can detect and identify different forms of sexual discrimination in the sphere of labor, production, promotion, etc. This term in 1975 helped to recognize the existence of socio-economic inequality between women and men and to point out that in most cases women found themselves in worse situation.

Thus, gender inequality, which is now revealed by numerous studies, describes a situation in which various social groups – men as well as women - have sustainable socially fixed differences and, consequently, experience unequal opportunities in society. I.N. Myslyaeva noted: «Gender is not only socially enforced division of masculine and feminine roles, but also a system of relationships that occur between the sexes in the process of fulfilling these roles. This system of relationships acts this way when the society recognises male role as principal and woman role as secondary. This, in turn, is reflected in division of activities as prestigious and non-prestigious. For instance, military service, the management of the country are regarded as masculine and prestigious activities. They are paid higher than women work in schools, kindergartens, etc. It is socially enforced division of masculine and feminine roles is often make a basis for unequality between men and women» (Myslyaeva I.N., 2011: 24).

It's possible to figure out a number of traditional reasons that lead to gender inequality and act as a factor of it's stability.

They include:

- structure of working and free time, in accordance with which men are traditionally more involved in professional activity, which is more remunerable, and women significant part of their free time assign to domestic activity;
- differences in the level of education: men have more opportunities to improve their educational and professional level, while women have limited possibility to do it because they are more often busy with housework and cannot find free time for education;
- gender stereotypes, which accept women as lower quality personnel less able in comparison with men, etc.

As a result, gender inequality in modern Russian society despite serious democratic reforms in economic and social spheres, is a phenomenon not only widespread, but also rather stable. However, positive is the fact that the society is aware of gender inequality and attempts to diminish it (and eradicate in the future). It is implemented by the so-called egalitarian policy of the state, when the state guarantees equal rights for men and women as well as equal opportunities in employment, education, social activities, etc. due to:

- providing women with equal with men opportunities for participation in all spheres of professional activity;
- provision of benefits, compensations and various kinds of assistance regarding children care;
- ensuring equal access of men and women to education;
- implementation of informational and educational work on gender equality, etc.

The effectiveness of the state gender policy and its results, as well as dynamics of public consciousness in the sphere of gender equality is fixed by the results of numerous studies, which are conducted in regions and in the whole country. Over the last 25 years the most famous was the research conducted with the participation or under the guidance of scholars such as Kochkina E.V., Fedorova L.N., Posadskaya A.I., Voronina O.A., Zdravomyslova E.A., Temkina A.A., Pushkareva N.L., Rimashevskaya N.M., Zherebkina I.A., etc.

It should be noted that the need for gender studies is rather high. However, the state in recent years virtually withdraw from ordering researches, addressing gender experts in cases of nessecity of gender expertise of initiatives in education, health, social policy, etc. As a rule, gender studies are used only by several government figures, politicians and officials. Various international organizations actively use gender studies and very often fund it, namely UNDP, ILO, UNICEF, World Bank, etc. In addition some results in gender studies can be obtained in large-scale public opinion surveys of the Fund "Public opinion", the group «ROMIR monitoring», Levada-center and other research institutions.

Trade unions, research centers of the Federation of independent trade unions of Russia (FNPR) actively pursue and use materials of gender studies.

In 2012 major research of gender inequality on the theme «Gender equality with the modern Russian society: regional aspect» was conducted on the initiative of the FNPR. In course of the survey 4890 people aged 25-55 years were questioned, 51% were men and 49% were women. The poll was conducted in urban and rural settlements of Moscow, the Moscow region, Saint-Petersburg, Leningrad region, Tver region, Stavropolsky region, Republic of Dagestan, Republic of Kabardino-Balkaria, Republic of North Ossetia - Alania, Krasnodar region, Tula region, Khabarovsk region, Republic of Bashkortostan, Republic of Chuvashia.

In the framework of this study we would like to present some conclusions, elaborated and commented by participants of focus groups that were conducted at the end of processing the results polls. These findings correlate with the data of other all-Russia researches (FOM in particular)? that, on the one hand, allows to make independent comparison and evaluation of the data obtained, and on the other - to trace dynamics of public opinion on the issues related to gender inequality in Russian society for several years.

The positions of men and women in professional and public life are different. One of the features of gender disparities in social and labor sphere is the division of professions to «male» and «female», when «male» means better paid job and «female» – less paid. By results of research of FNPR, for most part of respondents, both men and women, «the right to fair wages, the right to vocational advancement» and «the right to free labour» are the most important. It should be noted that the razing of level of qualification and skills is of very low value for men (8% of the respondents). That is adequate to the results of numerous studies, that indicated that women are much more likely than men to improve their skills, attend various training courses, get a second

education, etc., Respondents of both genders named as the most important the right to a fair wage.

Table 1. Which labor rights is the most important for you personally?
(Choose no more than three answers)

No.	Estimations	Sex	
		Female	Male
1	right for free labour	15	20
2	right for fair wages	33	32
3	right for career choice	11	11
4	right for vocational advancement	19	16
5	right to rise the qualification and skills	11	8
6	right for participation in management	11	13

The participants of the focus groups noted the problem of adequate remuneration matters not only for women but for men too. Here's what some of the participants:

Female, 24 years: «It always seems that you are paid less than promised, less than you estimated, less than expected, less than you really stand for etc.».

Female, 34 years: «We have always paid less than men, even if the position and the responsibilities are the same. Because the boss is a man and he is always on the side of men. And he will be more inclined to promote a man than a woman, because he will quickly find the common language with him, and it seems to be harder with women».

Female, 37 years: «In case of compensation I'd love to be regarded not as a woman and colleague as a man. We are absolutely identical, we have equal job instructions, we are equally committed to our job. This matter must be considered when salaries are calculated, but not that I wear a skirt and he wears trousers!».

Male, 36 years: «In my view, the fair pay is not related to who is paied - man or woman – but adequacy of the efforts we spent during execution of works, as well as it's quality, working conditions, etc. I like to go to work, I've always wanted to do this job, we have an excellent team and etc, but lately I used to think about changing it. You work desperately but for peanuts!».

Male, 29 years: «Everyone should have the opportunity to make a career within the company. If you're not rising you inevitably lag behind. Bosses need to understand it and to stimulate the desire to move forward. And the increase in position means higher wages, so it is understandable why employees want to be promoted».

Table 2. Russian laws prohibits discrimination. But what's in reality?
(Select one of the claims)

No.	Estimations	Sex	
		Female	Male
1	gender discrimination is widespread	26	16
2	discrimination on grounds of sex still exists	48	45
3	discrimination on grounds of sex is rare	8	11
4	Women have long enjoyed equal rights with men, there is no discrimination	8	14
5	Women have more rights than men, it's time to speak about discrimination of men	2	6

6	don't know what it's all about	8	8

The vast majority of all respondents believe that «sex discrimination still occurs», and even «widespread».

The polled gave following comments:

Female, 35 years: «It is naive to think that if the Constitution determines the norm about equality, it is unshakable in real life! Of course, in real life it is not so as stated by the law!».

Female, 51 years: «Yes, unfortunately, discrimination on grounds of sex in real life can be found often enough. Can't say that I was hard discriminated, but there were some unpleasant situations. And experience of acquaintances shows that discrimination still exists».

Male, 29 years: «A lot of talk about it in reality and on media pages. If this phenomenon did not existed there are much less talk about it».

Male, 42 years: «I cannot say that there is discrimination in our daily life. This is very harsh word, too categorical, but inequality is certainly there».

Table 3. Where, in your opinion, inequality between women and men is the most apparent?

(Choose no more than three answers)

No.	Estimations	Sex	
		Female	Male
1	in employment (recruitment, wages, career growth, etc.)	29	31
2	in policy	29	23
3	in the family	11	13
4	in domestic sphere	7	9
5	in leisure	14	14
6	in personal consumption	3	3
7	in public life	7	7

Almost unanimously the respondents pointed out «labor sphere (recruitment, wages, career growth, etc.)», as well as «policy» and «leisure» as areas where that inequality between sexes is the most evident.

The participants in focus groups gave following comments:

Female, 36 years: «The advantage of males is best felt in the sphere of employment because wages are higher and career growth is bigger. Newspapers often write about it and all kinds of polls confirm it».

Female, 20 years: «In our political environment men are thousand times more numerous than women. Women are harder to get into this environment, where all places initially assigned to men».

Female, 47 years: «What leisure time women can have? The family, the family and the family. No fishing, no football, no bathhouse with friends. All spare time we almost completely devote to family and children».

Male, 54 years: «I agree that in the employment there's the greatest inequality between men and women. We have different physical abilities, we can't be the same, so there no surprise in this inequality».

Male, 32 years: «Well known politicians among women are very scarce. And far less really smart ones among them. Women shouldn't go there. Politics is a man's job».

Various interviews, surveys, as well as lawsuits and other matters often demonstrate the problem of infringement of employment rights. Mainly women are affected, although sometimes the «injured party» turns out to be a man.

Table 4. What kind of employment rights are violated most often on the basis of sex, i.e. women and men have different possibilities to realize them?
(Choose no more than three answers)

No.	Estimations	Sex	
		Female	Male
1	right for free labour	6	9
2	right for fair wages	23	25
3	right for career choice	11	15
4	right for professional promotion	25	20
5	right for training and skill advancement	5	3
6	right for participation in management	23	17
7	There's no discrimination at all	7	11

According to respondents, employment rights, which are most important to them, i.e. «the right to fair wages», «right for professional promotion» and – quite unexpectedly – «right for participation in management» are violated most often. As revealed by results of focus groups, many of participants inclined to take part in management of the company, to hold shares, to enter into the board of directors, etc. Impossibility of implementation of these desires is regarded as violation of their rights.

The participants of focus groups gave following comments:

Female, 36 years: «As for promotion, the man makes a career much more rapidly than women. Men do not like to see a representative of «weaker sex» on one level with him, they seem that we infringe their achievements, abilities, etc. We make real competition for them, that's why we are stopped at each level. Me and my fellow student came to this company simultaneously and got equal starting positions. Now he is a member of the board of directors, and I'm just the head of a department. And I cannot say that he has extraordinary managerial abilities. He is a man, and that's it».

Female, 36 years: «We may occupy same positions, but men are more likely to get bonuses and premiums that make up a sum much higher than the income of women. The leadership explain it that allegedly men work more and often were late in office, their contribution to the result is more significant and etc. I would have stayed after work, but my husband and son, I have to cook dinner for them, to check homework, etc. No one can release me from that...»

Male, 32 years: «I agree that we sometimes get more than women. But they are much more likely early ask for leave, then they have to go to dentist's or to parent meeting at school other reasons. But we often stay after work and all the emergency problems are basically solved without them. Therefore not surprising that we get bigger salary».

Male, 44 years: «Very often high bosses are so far from the real everyday problems of common worker that one can hardly wish call on him and to tell what's really up in the shop without minding the wording. I can almost exactly predict what

will be the consequences of the leadership's decisions from the point of view of a plain workers. If we, the ordinary workers, were invited to an important meeting, the management could be much more effective».

When it comes to labor rights of men and women and their equality, a profession or the types of labor activity frequently become the stumbling block that restrict women's participation in management.

Table 5. The labor code contains provisions that limit the employment of women. What's your opinion?

No.	Estimations	Sex	
		Female	Male
1	this norm must be maintained to protect women from being forced to work in difficult and hazardous conditions	58	66
2	the norm should be cancelled because women won't apply for these jobs	5	6
3	jobs should be safe for women as well as for men, and restrictions should not exist	26	23
4	norm is outdated, women should have the same right with men to choose profession and place of work	11	5

The majority of respondents strongly insist that regulations restricting the employment of women in certain kinds of work should be saved.

Comments:

Female, 34 years: «If men refuse to work in hard conditions and the employer has no possibility to recruit male workforce, there is a temptation to hire women, who demand less wages and ready to work in any conditions in order just to feed the family. This should not happen! Let men be paid more for this job».

Female, 41 years: «Working conditions should be equal for all: secure, well lit, ventilated, etc. Everyone should feel comfortably at the workplace. No one should be limited, everything will occur in natural way as appropriate to an employee».

Male, 51years: «Women sometimes do not understand where they are going: if they need romantics in profession or they want to prove for themselves that they are cool. But the law should be on the side of common sense: there are jobs not for women, and they should not be permitted to do it».

Male, 34 years: «If there's a list of jobs that are not fit for men? I doubt. Let everyone have equal opportunities and working conditions. Let them be at the highest level, and no one should be limited».

Table 6.1. How do you assess the change in the position of working men and women that occurred during the years of reforms?

(Please, mark in columns «men» and in the column «women»)

Women				
Estimates	No	Men	No	Women
Change for the better	1	20	1	16
Change for the worse	2	11	2	15

Situation has not changed	3	20	3	17
No answer	4	49	4	52

Women are not ready to give any specific evaluation of changes in working positions of men and women that happen in a period of reforms. Almost half of respondents gave no answer. However one-fifth of respondents refer positive changes to men's conditions and estimate much lower their own position. Exactly the same proportion of respondents considers that the situation of men «has not changed», however, the situation of women was unchanged too.

Comments:

Female, 44 years: «Men began to live better than women. We did not started live worse ether, but we are still in considerably worse position than men. They have more real rights, better wages and prospects. Our position by far more modest».

Female, 27 years: «I don't think that something has changed during the years of reforms. It seems to me that more than one century needed for serious changes in our society. 20 years of reforms is not enough to draw any conclusions about changes in employment conditions of men or women».

Table 6.2. How do you assess the change in the position of working men and women that occurred during the years of reforms?

(Please, mark in columns «men» and in the column «women»)

Men				
Estimates	No	Men	No	Women
Change for the better	1	21	1	14
Change for the worse	2	16	2	15
Situation has not changed	3	20	3	14
No answer	4	43	4	57

Majority of men are also not ready to give their assessments. Half of them gave no answer. And like women they equally believe that during the period of reforms the situation in the sphere of employment either «changed for the better» (men's position is much stronger than that of women) or «unchanged» (position of women is far worse than that of men).

The participants in the focus groups gave the following comments:

Male, 43 years: «The only positive change that I can fix is the improvement of financial matters. Wages are not equal, but differentiated: good work – good compensation. Chilled for the entire month - so receive a penny. The salary does not depend on anything but your work».

Male, 57 years: «It's become more terrifying to lose job. One have to think thousand times about consequences before fighting with the boss, or declining to perform even the most absurd task. Age matters, and bosses like the young. And where shall I go? So it has become worse».

As for the participation of women in business management as well as their participation in top management, the overwhelming majority of respondents believe that the situation has not changed, and only one third believes that «there's an improvement of the situation». That means an increase in the number of women in leadership positions.

Table 7. How has the situation changed with the participation of women in the management of your enterprise (organization, institution)?

No.	Estimations	Sex	
		Female	Male
1	There is an improvement	31	26
2	Nothing has changed	57	63
3	Situation deteriorated	8	6
4	No answer	4	5

Participants in the focus groups gave following comments:

Female, 49 years: «How it (the situation – auth.) could be changed? Women will replace men? If it is possible?».

Female, 31 years: «There's enough female leaders on my enterprise, but they are all middle managers. «Generals» are exclusively male».

Male, 55 years: «Women have become more numerous. Either it's fashionable or they are really smart, but you can often meet women-boss, it happens at our works and not only in the accounting».

Male, 55 years: «Number of women strongly increased. Some of my course-mates already occupy a decent positions and optimistic about further promotions».

The problems that concern the violations of the rights of persons with family responsibilities are of particular importance in the social and labor sphere. Most often this problem is actual for women, because they have experienced the greatest pressure from the employer if they ask for maternity leave, sick leave or go on vacation in time as required by the family, not the employer/ New Labor Code contains a greater number of rules protecting persons with family responsibilities, many employers have become more «loyal» and even implement some programs in support of the family workers in the framework of their corporate social responsibility.

Table 8. How has the situation changed with the observance and protection of rights of women and persons with family responsibilities in your enterprise (organization, institution)?

No.	Estimations	Sex	
		Female	Male
1	Situation improved	23	22
2	Situation clearly deteriorated	10	6
3	Changes are not significant	57	60
4	I'm not interested in it	10	12

Most part of respondents do not see significant changes in the area of compliance and protection of the rights of women and persons with family responsibilities. They inclined to think that «changes are not apparent», and only a fifth of them marks some improvement in the situation.

Comments of participants in the focus groups:

Female, 34 years: «Employers are not fond of employees with children and elderly parents, because they often ask for early leave to pick up a child from the kindergarten or to go to the hospital to care for sick parents, often take sick leave, etc. Who needs

these workers? Therefore, I don't see any improvement in this area. On the contrary, it became even worse»/

Female, 26 years: «It seems to me situations became much worse than it was before. Bosses have always a lawyer at hand who on the basis of the law can fire you or demote, or cut salary, premium, etc. Women are especially in hard position. Pregnancy is continuous stress, child was born – it is also a stress. You always try to choose, whether to remain on maternity leave until he is 3 or to return to work unless you are fired».

Male, 32 years: «I think that if there are any changes, they do not concern men mainly because family responsibilities are carried by women and man's job is to make money. So we do not have to mix work and family responsibilities.

Male, 29 years: «As far as I know now husbands can also take child care leave. This is clearly an improvement. For many men it is a possibility not to lose job and to make money sitting at home with the child».

Data on studies show that gender inequality is quite evident in the labor sphere and concerns of all its components in certain occupations and types of work, remuneration, career and professional growth, etc.

Achieving gender equality is the goal of the public-political development of modern democracies, from this largely wins and the sphere of economy, culture, society as a whole. The possibility of its achievement in contemporary Russia, the respondents who participated in the study FNPR evaluated as follows.

Table 9. How do you think, is it possible to achieve gender equality in Russia?

No.	Estimations	Sex	
		Female	Male
1	It is already achieved	13	26
2	It is possible and very soon	29	24
3	Not in our lifetime	35	26
4	Impossible	8	7
5	This makes no sense	4	7
6	I've never thought about it	11	10

Oddly enough, quite a big number of participants of the survey showed radically conflicting opinions about possibility of achievement of gender equality in Russia from the «not in our lifetime» to «it's already here» The participants of the focus groups gave the following comments:

Female 36 years: «It doesn't matter how much they speak about democracy in our country, actually there's no democracy, men have more rights, more opportunities, better prospects etc. Of course, much has changed, and it may be our children or grandchildren will live in a more democratic state than we are».

Female 22 years: «I think that social equality is almost here if not. We have equal opportunities with men to put our plans into life and to build our lives the way we want. If someone can't do it, he sholdn't blame sex but mental and financial capabilities, lack of ambition, laziness etc».

Male, 41 years: «Where we are not equal? A woman is welcome to have a business or to become a deputy. They are capable to occupy same positions as men. Not

everyone can do it or she doesn't want. That's why successful men in business or power are more numerous than women».

Male, 38 years: «In many respects the woman has more rights than men. And our success in entrepreneurship, which women often envy, is compensated by the fact that we serve in the army, fulfill harmful and hazardous work, we live less than they do. Question is who should be jealous, and where is this inequality».

Table 10. Who, in your opinion, mostly benefits if the society reaches the social equality of women and men?

(Choose no more than three answers)

No.	Estimations	Sex	
		Female	Male
1	Society	29	29
2	The state	14	12
3	Family	20	20
4	Men	6	5
5	Women	11	13
6	Children	11	12
7	Business	3	2
8	No one wins	6	7

The respondents unanimously supported opinion, that «society» and «family» will get most benefits from gender equality.

Participants in the focus groups commented it as follows:

Female, 30 years: «Probably, there's less crime and less instability in a society where everyone is equal and there's no competition between men and women. Not casual that virtually all countries, including Moslem ones, rewrite their laws in order to bring social equality in it»/

Female, 29 years: «The family will definitely win and stupid jokes and talks about where whose place would disappear. Woman will get possibility to rest more and be less grumpy. Men will treat his wives more fairly, even if she is a housewife. Children would see normal example of fair family relations».

Male, 51years: «The society will consist of a non-conflicting members. Equality is probably a good thing».

Male, 32 years: «It seems to me that if we reach gender equality, each family member be relieved from psychological oppression regarding his position in the family and his duties/. In such a situation, family life, in my opinion, would be more calm and steady».

For real gender equality in our country, according to respondents, first of all it is necessary «to improve the legislative basis»and «implement the state policy aimed at achieving gender equality» as well as «to shape public opinion so it could protect social equality». The respondents assign major role to trade union organizations in a process of solving this matter.

The results sampled in this article reveal that the problem of gender equality in a sphere of employment and social sphere remains unresolved despite of democratic changes in our country.

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ORIGINAL PAPER

Political Change in Czechoslovakia: The Fall of the Nondemocratic Regime in 1989 in the perspective of theory of Transition

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Abstract
The author deals with the problem of denomination of the process of political change in Czechoslovakia in November of 1989, and try set this process in the frame of the theory of transition to democracy. He analyses main turning points – the events, which influenced the development of political change in Czechoslovakia. He starts with the analysis of last period of Communist region in the 80 ´s and shows the processes inside leadership of Communist party (KSČ). He also shows the position of opposition in Czechoslovakia in this period. Afterwards he describes the process of the fall of regime in November 1989. These changes were achieved by public demonstrations in Prague and other big cities, and also by the talks between leaders of oppositional movements and representatives of communist Federal government. The author shows strategies of opposition and KSČ in this process. The author tries to find more precise politological term for this process of political change. He is inspirated by many studies of transitology in the Political Science (Rustow, di Palma, Przeworski, Linz, Stepan), also of Czech authors (Dvořáková). Author analyses three phases of the Czechoslovak case: 1. Phase of preparation (the both sides recognize own power each other and the find out that they must respect each other), 2. Decisive phase (both sides make agreement about the solution of the situation), 3. Phase of Habituation (stabilization of the new democratic political system). The author´s conclusion is that the political change in Czechoslovakia is possible to designate as transition to democracy by the collapse of communist system, because the leadership of Communist party was not able to solve the economical and political crisis in Czechoslovakia in the 80´s and also was not able to react to the people´s demonstrations in November of 1989.

Key words: democracy, transition, communism, Czechoslovakia, politics, regime

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I. The Crisis of the Nondemocratic Regime in Czechoslovakia (1987-1989)

To understand the fall of the Communist regime in Czechoslovakia in November, 1989 it is necessary to track the development of the regime during the preceding years, which saw the start of the systemic crisis.

We can try to define main reasons of dissatisfaction of the citizens with the Communist regime in Czechoslovakia in the 80´s:

- absence of political and civic rights and freedoms, leading to apathy, lack of interest and dissimulation of the people.
- frustration from impossibility to change of regime in consequence of loss of national independency and in consequence of the cold war.
- unmotivated character of Communist system and its anti-meritocratic base (state ownership of economic subjects, central-planned economy, personal politics which did not respect primarily competencies and knowledge)
- absence of economic freedoms which did not allowed official realisation of private economic activities of the citizens
- bureaucratic-authoritarian style of state management leaded by very close party´s elite whose incompetence was the instrument of general abhorrence and derision of the people
- generally enhanced system of corruption and nepotism
- inefficient bureaucratic methods of management of economy, technological backwardness, energy intensity and stagnation, gradual fall of economy
- incapacity to satisfy growing material claims of the people
- devastation of environment and health-social, demographic and also psychical consequences of it
- progressive quality and availability of healthcare
- problematic quasi-federal constitutional system (Bureš 2012: 13-14)

In autumn of 1987, there were pronounced personnel changes in the leadership of the Communist Party of Czechoslovakia. A reform wing was nonexistent as an organized group. Although the new Czechoslovak Federal Premier, LadislavAdamec, readied the government for many reform measures in the short period from October 1988 to November 1989, most of his attempts were focused on purely cosmetic changes in the area of economics. Adamec made it clear that deeper changes in the political system were not being considered.

The conservative leadership of the Communist Party stumbled more and more into the reform process in the Soviet Union. In Poland during the same period, roundtable negotiations began at which participants agreed at the very beginning on the necessity to organize free democratic elections as a way out of the economic and political crisis. Reform-oriented Hungarian Communistsslowly but surely set out on a path toward revising the official stance on the 1956 revolution by rehabilitating those active in the Communist and state leadership of that time. In Hungary and Poland, conservative forces already stood at the fringes of political events, while in Czechoslovakia, they formed its basis and were counted among the ranks the majority of the leadership of the Communist Party.

In autumn 1989, dissatisfaction among citizens grew in the absence of a positive reaction from the power structures to calls by independent structures, initiatives and

ecological associations for an open political dialogue. But the position of dissidents in Czechoslovak society was quite complex. As intellectuals, most of them became isolated, since they were not able to creatively devote themselves to an alternative program of change. They presented no proposals for solving essential societal problems on the scale that their peers did in Poland, for example.

II. The Fall of the Communist regime

The events which took place in Prague in November, 1989, resulting in change to the political system, had several centres of gravity and were comprised of several main processes featuring varying degrees of organization and management on the one hand, and chance and chaos on the other. Main processes controlling the flow of events included popular demonstrations in Prague and other large cities (starting with "initiating" demonstrations by university students on November 17, 1989 on Národní Street in Prague), along with political negotiations begun between opposition representatives (Civic Forum, hereinafter CF) and the power structure on November 21. These negotiations became the chief means for political change in Czechoslovakia.

The main centre of gravity in determining the course of development or, at the very least, substantially influencing it, was the narrow circle of leadership of the Civic Forum, comprised of approximately 10 permanent members, which took part in all significant negotiations and events. The driving force for those in power was the team of advisers and co-workers of Federal Premier LadislavAdamec.

Let us first here outline several watershed events which characterized (and gave direction to) the course of political changes in Czechoslovakia up to the end of 1989:

- 17.11.: "Explosion" – the violent suppression of the student revolution on Prague´s Národní Street.
- 19.11.: The rise of a new principal in the events – the opposition grouping of the Civic Forum.
- 21.11.: The acceptance of demands by the opposition for negotiations with the state (Premier Adamec first met with a CF representative).
- 24.11.: The first victory for the opposition – the inner circle of the Communist Party leadership resigns.
- 27.11.: The public expresses its lack of confidence in the Communist Party in mass numbers as part of a general strike.
- 29.11.: The Federal Assembly approves a change in the Constitution putting an end to de jure one-party rule.
- 3.12.: Premier Adamec presents a reconstructed government known as the 15:5 government – the opposition flatly rejects the number of Communist Party members in the new government, causing the fall of Premier Adamec; the leadership of the Civic Forum changes tactics and accepts the notion of direct participation by CF representatives in the succeeding government.
- 8.12.: The new Federal Premier, MariánČalfa, agrees with all important demands by the CF.
- 10.12.: The government is named with a non-Communist majority and with ministers delegated to the opposition movements; the chief figure in the Communist regime, President Husak, falls.

- 15.12.: A meeting takes place between opposition leader Vaclav Havel and Premier Čalfa, who offers a scenario by which Havel can be chosen President of the Republic by the end of 1989.
- 19.12.: The government of Marian Čalfa wins a vote of confidence in Parliament.
- 29.12.: Opposition leader Vaclav Havel fills the highest government position – President of the Republic.

The student demonstration of November 17, 1989 was starting mechanism of main political changes. The high level of brutality of the regime against the students and actors led to the immediate issuance of a call by the students on November 18, 1989 for fundamental protest against the Communist regime. Also the opposition (mainly Charter 77) began to be activated.

November 19, 1989: The rise of new figures – the opposition group Civic Forum

In terms of the further development of the November revolution, the most important event was clearly the founding of the Civic Forum – the group which directed further developments. The Civic Forum arose out of the merger of several previous opposition structures, initiatives and movements. Its founding was coordinated by Charter 77, particularly by Vaclav Havel.

Havel, whose authority was respected by all currents, played a fundamental role from this moment forward. The deciding influence in CF was wielded by dissidents selected by Havel, people with whom he had worked for many years.

The founders were mainly concerned that the Civic Forum not be simply an opposition organization, but that it include representatives from the broadest possible segments of Czechoslovak society, the main social groups, permitted political parties (including those collaborating with the Communists), the Church, etc. The main reason for this approach was the pronounced weakness of the opposition in Czechoslovakia and its shallowness as a societal phenomenon. It was thus necessary to guard against the division of society and, by contrast, to convince the Czechoslovak public that democratization of the political situation was in its interest. The Civic Forum (CF), however, initially chose a relatively modest strategy for its approach (Suk, 1995: 23). CF's demands were first expressed in the basic public proclamation of Sunday, November 19, 1989. In this, the movement expressed its willingness to immediately initiate negotiations with the state to fulfil public demands formulated in the text.

The first actual positive program came with the Civic Forum proclamation "What We Want" on Sunday, November 26, 1989. In this, CF highlighted the injustices done by the nondemocratic regime over the decades and condemned the regime as being responsible for the moral, spiritual, ecological, social, economic and political crisis. It also notified the opposition that it would not be satisfied with a simple shuffling of personalities in positions of power but rather that it sought the creation of a legal and democratic state. As a necessary precondition, the Civic Forum demanded the implementation of free elections and the acceptance of a new constitution, the basic conditions for concluding the first phase of the transition to a democratic system. The depth of changes demanded by the opposition was expressed by the necessity to create "fundamental, thoroughgoing, permanent changes in the political system of society" (Otáhal&Sládek, 1990: 504). That meant the creation of democratic institutions and mechanisms which would enable subsequent control by citizens over the decisions made by politicians.

From the founding of the Civic Forum to the ratification of its demands

The first days of the revolution, especially the first week (from 20 to 26 November 1989), were marked by a high degree of uncertainty within both the opposition and the state leadership. Spontaneous demonstrations by citizens broke out on Monday, November 20, 1989 in Prague and other large cities in Czechoslovakia, with demands for fundamental political change. The demonstrations continued and even gathered strength in terms of the number of participants. The Civic Forum in Prague and a similar opposition group in the Slovak capital of Bratislava (Public against Violence) were able to manage these demonstrations organizationally on Tuesday, November 21 and from this point forward, their content and demands were put together by the CF leadership under Vaclav Havel. The culmination came with two demonstrations in Prague on November 25 and 26 in which 750,000 citizens took part. Protests this strong could no longer be ignored or violently suppressed. Under the weight of these demonstrations, the Communist leadership underwent its first personnel changes (on November 24, the majority of conservative members of the Communist Party leadership, led by General Secretary Jakeš, resigned) and negotiations with the opposition were begun. On November 26, Premier Adamec led an official meeting for the first time with the opposition Civic Forum. The position of the Communists in society was shown to be very weak during the November 27 general strike, with 80% of workers in Czechoslovakia taking part. On November 29, Parliament approved changes to the Constitution, one of which was the elimination of the passage concerning the monopoly on power of the Communist Party in the political system.

After the naming of the so-called 15:5 government on December 3, 1989, continuing with a lopsided majority of Communist Party members, the leadership of the Civic Forum changed its negotiation tactics after a fiery discussion and decided to send its representatives directly to the new federal government. Backers of the change in tactics were aware that development would go forward faster than expected and that the responsibility borne by the opposition movement for the further development of the country would also rapidly increase.

The exit of LadislavAdamec from the function of Federal Premier (December 7) made it easier for the demands of the Civic Forum to be realized, since the new Federal Premier, MariánČalfa, willingly agreed to the overwhelming majority of opposition proposals. Thus after some days (December 10) agreement was reached on the composition of the new government, this time with a majority of non-Communist ministers, including representatives of the Civic Forum as heads of important ministries (Vice Premier for Economic Issues, Foreign Affairs, Finance, etc.). Immediately after the naming of the new federal government on December 10, 1989, the Czechoslovak President and main representative of the Communist regime, GustávHusák, announced that he was resigning his position in a letter to the parliamentary presidium. At this time, the opposition was united concerning a proposed candidate for the office of the new Czechoslovak President – after extensive discussions inside the Civic Forum and the Slovak movement Public against Violence and with the agreement of the new Federal Premier (still Communist) Čalfa, opposition leader Vaclav Havel was chosen for the presidency.

On December 19, Premier Čalfa presented the government program in Parliament, entitled "A Government of National Understanding". This speech also included a passage concerning the necessity of choosing the President of the Republic by the end of 1989 and offered the name of Vaclav Havel. On December 29, 1989, at a joint

meeting of both houses of the Czechoslovak Parliament, Vaclav Havel was electedthe President of Czechoslovakia. The election of Havel itself was the result of close overall cooperation between MariánČalfa as a representative of the existing powers and Vaclav Havel, in which Čalfa in particular demonstrated an ability to be a clever negotiator inside the communist-ruled Federal Assembly. This ability was a strong selling point, thanks to which Vaclav Havel decided to continue to work closely with Čalfa.

Strategy of the Civic Forum and of the Communist Party

The Civic Forum had to manoeuvre cleverly throughout the period of the political crisis in November and December 1989 and often change its strategy and tools. It is thus not surprising that there was a great degree of improvisation used by the Civic Forum as it approached discussions with the state. The rapidity with which former dissidents found themselves at the peak of popularity and power gave them no chance to fully consider the extent of their responsibility in the early days of the revolution. The Czechoslovak opposition was hardly prepared for a possible transfer of political power. The fact that the Communist state machinery fell so quickly both aided the opposition and caught it off-guard. The opposition originally did not wish a transfer of governmental responsibility. Paradoxically, it was forced into it by its popularity, because as the state power structure collapsed, it was not possible to risk the loss of the freedoms gained by inactivity on the part of the opposition.

The grasp of the Communist regime was essentially very limited by its powerlessness and bureaucracy. The Communists were not able to improvise during negotiations and individual representatives of the party were afraid to take significant decisions on their own recognizance, without express permission from their superiors. Rank-and-file Communists in the regions essentially enabled the smooth course of the Velvet Revolution in that the great majority refused to listen to the leadership. The Communist Party of Czechoslovakia very quickly lost control of the media. Inside of a week it was abandoned by the two main allied political parties (Czechoslovak Socialist Party and Czechoslovak People's Party) which had been part of the National Front. All the units of repression, fearing the breakout of violent conflicts, adamantly refused to take part in dealing with the political situation.

A very important role in negotiations was played by the Communist premiere, LadislavAdamec. Even before November, 1989, he criticized the overly rigid situation in the Communist Party and demanded speedy reforms. He considered himself to be a kind of Czechoslovak Gorbachev. Adamec was essentially the only politician who began to speak with the opposition after the attack on students on Národní Street on November 17, 1989. Communication with LadislavAdamec was difficult. He constantly changed his opinions and positions and distorted what leaders of the Civic Forum said. It is impossible to deny that he made sincere efforts for a peaceful, nonviolent solution to the political crisis which had arisen, but it is nevertheless clear that even he did not understand the depth of what was demanded by the public.

The main figure in the entire protest movement was Vaclav Havel. Some of his closest co-workers agree that he perceived the entire thing as a great scenic drama. Havel was the natural brains behind the Civic Forum. He enjoyed the greatest authority within the dissident movement and it was his friends among dissenters with which he surrounded himself in the Civic Forum.

The role of the final Communist president, GustávHusák, was a modest one. Likely the most important consequence of his activity in the period from November 17

until December 10, 1989 was naming the Slovak MariánČalfa to be Premier, thereby avoiding the choice of AlexandrDubček, his greatest political rival, as President.

The Communist Party changed its tactics after few weeks. Face to impossibility of repression of mass demonstrations of the public, face to recession of hundred-thousands of ordinary members from the party, it decided not defend the old regime. The Party decided to defend itself. The leaders of the party wanted to prepare the conditions for its functioning in new democratic regime. They must and wanted to avoid the party could be forbidden. They wanted to achieve the guarantee of legal participation of the party in the new regime. They also wanted to safe own organisation – to stop the recession of members, and to safe the property of the party.

Theoretical Frame of the Fall of Communist Regime in Czechoslovakia

The first question that we must answer is, if we can name the process of fall of Communism in the Czechoslovakia as the *revolution.* We can come out of the definition of revolution by Lyford P. Edwards. He defines the revolution as "change of the system of legality; during this change the institutions, which obstruct a satisfying of basic human wishes are destroyed, and the reintegration of the society is realized by different and more efficient way" (Edwards 1927; Krejčí 1992: 14). This definition can be acceptable characteristic for denomination of whole process of political change in Czechoslovakia from the student´s demonstration on 17th. November of 1989 until approving of democratic Constitution of the Czech Republic in December of 1992, which formally closed the process of transformation of Czech Constitutional System. But if we include also the change of economic system from the central-planned economics to the free market economics in the process of political changes, so we must shift the border of whole reform process minimally at the end of year 2001, when the privatisation of state banks was finished.

But we cannot use the theory of L. Edwards in any case for denomination of short period from 17th. November of 1989 until the end of 1989, which is in Czech society called "Velvet Revolution." There were realised only the personal changes in the institutions of authoritarian regime in this first phase.

We can also come out of the definition of revolution by Anthony Giddens, which is an synthesis of outcomes of eminent theoreticians of Revolution. Giddens has defined a few basic attributes of revolution:

1) Revolution must have character of mass social movement

2) Revolution must lead to a process of fundamental reforms or changes

3) Revolution must include threat of violence or real use of violence by people protesting against regime (Giddens, 1999: 470-471).

If we apply these conditions *to the whole process of Czechoslovak transition from 1989 until 1992*, so we can name this process as revolution:

1) Public anti-regime demonstrations in November of 1989 had mass character.

2) There were realised fundamental political, social and economic changes in the Czechoslovakia in the period 1989-1992: ending of monopolist power of Communist Party, free elections, creation of democratic Constitutional and Political System, transformation of economics with massive change of ownership structure.

3) We can evidence only using of violence from the regime police units against students protesting against regime in Prague on 17th of November 1989 in the case of Czechoslovakia. Nevertheless potential threat of violence from people demonstrating against regime functioned as an argument of opposition during the negotiations with

Communist elites in case of one-sided termination of these negotiations by representatives of old regime. If the typical attribute of revolution is that the insurrection of revolutionary masses overmatch the regime by military power, so we cannot use the mark "revolution" for the events in the Czechoslovakia in the end of 1989 (Dvořáková&Kunc, 1994: 64).

On the other side, if we apply the theory of A. Giddens only to the short process of Fall of Communist regime in Czechoslovakia in the period of so called "Velvet revolution" (November-December of 1989), so we must affirm validity of theory of L. Edwards too. This short period we can only nameas collapse of old regime.

If we try to apply the theory of phases of transition to democracy of DankwartRustow (Rustow, 1970), we can differentiate these three phases of Czechoslovakia´s transition (Bureš 2004):

1) Preparatory phase (from 17th November until 27th November of 1989):

We can delimitate this first phase in the period between 17th November and 27th November in the case of Czechoslovakia, because the power-holders of old regime acceded to negotiations with the opposition after mass supported general strike, held on 27th November of 1989, when they have seen the power of oppositional movement. This phase was started by suppression of student´s demonstration by the police of Communist regime and by creation of Civic Forum. This oppositional movement immediately protested against violet reaction of the regime, and formulated its first claims, which have presented to the public. Both poles of conflict were clearly defined – the opposition and power holders. Radical claims of Civic Forum leaded to distinctive critique of existing political system. The power holders on the other side examined for the force (power) of oppositional movement. This oppositional force was confirmed especially by mass protests of public in general strike on 27th November of 1989. The representatives of Communist regime have got to know, that they could not suppress their rivals by violence, because the number of openly protesting people in Prague´s streets is so big (750.000 protesters on Letná square on 25th November of 1989). They are re-oriented to the initialisation of dialogue with opposition and careful negotiations how to solve this situation of political crisis.

2) Decision phase (from 28th November of 1989 until June of 1990):

This phase started by enclosure of (unwritten) agreements about mutual respect, which was expressed by promise that neither side will not aspire to destroying its rival. They henceforth exists the distinctive contradictions between both camps in view of the solution of crucial programmatic questions of transition and of the procedure of negotiating. The enclosure of frame agreements about basic steps to building of democratic political system is main aim at this time. The realisation of these agreements is afterwards not only a technical problem, but its success/failure is dependent on many factors of societal development.Realisation of those agreements is hardly enforceable from this reason. It can happened very often, that real process of transition to democracy can more or less deflect from the parameters of origin agreements because it is influenced by general situation of society (elected way of economic transformation, way of reform of law, societal traditions from the period of authoritarian regime = Path Dependency).

In case of Czechoslovak transition we can terminate this (above-mentioned) phase from the beginning of negotiations between opposition´s leaders and Communist PM L.

Adamec (started on 28th November of 1989) until designation of new Czechoslovak government with the majority of non-communist ministers (on 10th December of 1989). The negotiators made agreements also about other political steps: change of the Constitution in three articles (set off article of monopolist power of Communist party, article of National Front as compulsory frame of party system and article of Marxism-Leninism as compulsory base of every education and science). It was promise of important changes which could be interpreted as the beginning of real transition to democracy. Validity of these agreements was certified by a few very important steps:

- the session of federal parliament (Federal Assembly) in which the Constitutional changes were adopted on 29th November 1989
- designation of new Czechoslovak government (called "government of National understanding") on December of 1989
- election of leader of Prague Spring 1968 AlexandrDubček to the position of chairman of Federal Assembly on 28th December of 1989
- election of leader of opposition Václav Havel to the position of the president of the Czechoslovakia on 29th December of 1989
- realization of free democratic parliamentary elections in June of 1990.

In regard to another observed factor of transition – deepness of political change – we can argue, that in the period until the end of 1989 were realised personal changes in main constitutional institutions. But they were still 2/3 of political positions occupied by communists at the time of election of Václav Havel as the President (Suk 2003: 29). Structural reform of political system was started by adoption of new election law in the beginning of 1990.

3) Habituation phase (from June of 1990 until June of 1998):

„A distasteful decision, once made, is likely to seem more palatable as one is forced to live with it. Every-day experience can supply concrete illustrations of this probability for each of us…..It is, above all, a process for resolving conflicts within human groups-whether these arise from the clash of interests or from uncertainty about the future. A new political regime is a novel prescription for taking joint chances on the unknown. With its basic practice of multilateral debate, democracy in particular involves a process of trial and error, a joint learning experience. The first grand compromise that establishes democracy, if it proves at all viable, is in itself a proof of the efficacy of the principle of conciliation and accommodation. The first success, therefore, may encourage con-tending political forces and their leaders to submit other major questions to resolution by democratic procedures."(Rustow, 1970: 358).

In this phase the politicians and citizens are getting used to results of closed agreements and make sure about fruitfulness of solutions of political problems through the way of the agreement of political powers. New political system is opening to various opinion flows and to alternative ways of solutions of societal problems.Very important is the ability of regime to produce new generations of democratic politicians, who are not burdened by heritage of the past (traditions from non-democratic regime neither the compromises, handled in the first phase of transition). This phase is markedly determine by new electoral system, which is chosen in the beginning of transition. The proportional electoral system is considered as most favourable for consensual process of transition and building of new democracy (Dvořáková&Kunc, 1994: 136). But we must appreciate, that the electoral law reforms in post-communist countries were characteristic by "radical institutional dislocation" when the

parliamentary way of adoption of electoral law was replaced by process of non-formal talks by round-table (Poland, Hungary, Czechoslovakia) or by executive decision (Romania, Russia) (Charvát, 2013: 21).

This third phase started by free democratic election in June of 1990, which built fundaments of new political and economic system. The results of election confirmed the course of Civic Forum from the end of year 1989 on one side, but it did not decided the concrete way of following reforms of political and economic transformation on the other side, because majority of candidate subjects had only very tenuous political programmes.It still continued creation of opinions of each political subject and its transformation to classic political parties after the election in 1990. It is why is very difficult to decide concrete time of ending of this third phase. We can mark the December of 1992, when was the new Constitution of the Czech Republic adopted as one of the ends of transformation of constitutional system, but it is not the end of creation of the political system. For example the formation of Czech party system and crystallization of voter´s interest group (cleavages) continued at least until do election in 1998, which won the social democrats as main opponent of the way of economic and social transformation from the nineties, which was leaded by right liberal Civic Democratic Party (ODS) and its leader prime minister Václav Klaus.

The specialist who deal with the theories of transition are not unified about thy typology of Czechoslovak transition (Civín, 2002). We can see these various interpretations:

- Samuel Huntington: Czechoslovak transition named as *"displacement"*. Thanks the cooperation between old and new political elites the power was displaced from the old to the new elites (Huntington, 2008: 155).
- Terry L. Karl and PhillipeSchmitter named Czechoslovak case as *"reform"*, initiated by mobilization of masses from below and the elites solve the political crisis by compromise agreement (Karl &Schmitter, 1991; Dvořáková&Kunc, 1994: 64-66)
- Juan J. Linz and Alfred Stepan marked fall of Czechoslovak Communist regime as "*collapse"*, which leads to radical change of all structures and to marginalization of leaders of old authoritarian regime (Linz &Stepan, 1996: 322-333).
- Czech Scientist MiroslavNovák considers Czechoslovak transition *"to be enforced"* by mass mobilization, oppositional movements and by the influence of international factors (defensive Soviet foreign policy) (Novák, 1999: 144).
- Slovak Scientist SoňaSzomolányi defines Czechoslovak transition as *"negotiated collapse"* and argues that it is example of combination of collapse of old regime and negotiations between ruling elites of old regime and the opposition (Szomolányi, 1999: 21). Czechoslovak Communist regime fall down, when the armed services did estop intervene against protesting people, and the Communist leaders did not want to risk massive massacre. When the regime began fall down, it started the negotiations with the opposition.

The process under observation may be labelled without challenge as one of fundamental political change. The above-mentioned factors, in particular the lack of preparedness for political change by the opposition and the inability of the Communist Party leadership to reform its regime, tend to the conclusion that the transition in Czechoslovakia was a consequence of the collapse of the old regime. This collapse resulted in the elimination of an authoritarian political system and the start of the transition toward creating a stable democratic organization.

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ORIGINAL PAPER

Propaganda in Greek public discourse. Propaganda scales in the presentation of the Greek MoU- bailout agreement of 2010

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Abstract
Based on information and propaganda theories, the present paper focuses on media presentation of the Memorandum of Understanding (MoU)-bailout agreement for Greece in 2010. The research objective is the quantitative analysis of propagandistic characteristics in the political and journalistic discourse on the MoU, as it was presented by TV prime-time news bulletins and internet news sites, and was examined using content analysis. Three propaganda scales were created, based on theoretical approaches of propaganda sentimental and logical methods. The scales were explored with respect to independent control variables using statistical inference in order to demonstrate the various "ingredients" of propaganda in the discourse of the communicators examined. Among the results one can encounter the use of mainly sentimental propagandistic methods on behalf of the communicators, the constant increase of the propaganda methods used during our period of study (February to June of 2010), the use of at least two propaganda methods per communicator (within short statements) and the ideological use of the same propaganda methods on behalf of politicians of different parties so as to either support or criticize the MoU- bailout agreement.

Keywords:Media, propaganda methods, Greece, journalists, politicians, quantitative content analysis.

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Information and propaganda

Information management constitutes an essential strategic point followed by all contemporary political mechanisms, in order to enhance and maintain their cohesion, as well as to reproduce their power structures. "The control of information constitutes an effort of utmost importance for political powers in order to manage public opinion and maintain public control" (Tumber, 1993).

Beyond any doubt, the biggest quantity of information headed towards the wider public, does not necessarily constitute a qualitative improvement compared to the past, because it is aimed at -in many occasions- just to entertain or even deceit (Pleios, 2011). A major part of information is actually misinformation, due to various interests -especially political powers and financially strong factors- that have created and formed its presentation (Webster, 2006: 162). Mass information broadcast, by communication systems,[*] which has undergone specific manipulation aiming at influencing public opinion, especially under the scope of political communication, leads to propaganda (Lippmann, 1927; Jackall, 1995; Edelstein, 1997; Webster, 2006: 168). Its techniques are frequently used by politicians, advertisers, journalists and all those interested in influencing human behavior.

Information revolution has led to a plethora of available information, which results to the everyday "contact" of people with hundreds of messages (Pratkanis & Aronson, 2001; Taylor, 2004: 61). Those messages not only try to persuade us through interaction and the analytical presentation of arguments (persuasion), but as well through the use of symbols and techniques causing sentimental reactions, the one-sided presentation of evidence, the selective presentation of the aspects of a certain issue, even with lies, characteristics that lead to the domain of propaganda.

For a most possible precise definition of propaganda, so as not to let it lose its analytical strength, we locate it in the field of political discourse and political communication and distinct it from persuasion. The latter is an effort of dissemination of views and opinions on behalf of the communicator, through reference to a variety of evidence and rational argumentation, the interaction and satisfaction of the intentions of both the pursuer and the pursuee (Jowett & O' Donnell, 1995: 1; Barker, 2002: 4-5). On the contrary, propaganda, even though it engulfs persuasion, differs from it, in the sense that it avoids the extensive presentation of evidence, makes -intense- use of the sentimental factor and seeks to persuade in order to serve the aims of the propagandist.

The main carriers of propagandistic messages that aim to the public opinion are mass communication media and the discourse, which -expressed through them- reaches wide audiences. Therefore, the approach of propaganda is focused on the discourse used to disseminate its messages. After all, communication- mediated or not- constitutes a constant social phenomenon: it always exists within social contexts built in various

[*] As communication systems we consider Mass Communication Media, such as Press, Radio, Television, Cinema, and all applications allowing mass or private communication within the internet environment (news sites, various content sites, social media, applications such as e-mails and chat applications). Our focus is mainly in communication systems based on commercial rationale which end up offering infotainment through the dissemination of information that serves specific interests of sponsors, advertisers, public relations and the intense information management by political actors, corporations and other factors.

ways, which, in turn, have a structural impact on the communication that takes place (Thompson, 1999: 30-31; Demertzis, 2002: 369).

Propaganda, beyond its constant existence within the political, financial and social action domains, is being exercised in a more intense way during periods of crisis (Lehmann, 2003; Thussu & Freedman, 2003: 235). As such, it can be a war crisis, as the historical examples of the two world wars have shown (Allan & Zelizer, 2004), but can also be political, financial or social (Taylor, 2004), like the one taking place nowadays in Greece. During such periods a wide use of propaganda methods takes place (information source control, influence of the Media, one-sided presentation of events, sentimental and logical argumentation, generalizations), so as to influence the audiences in favor of certain interests. This propaganda takes place especially in crisis periods, because the citizens do not participate in any -institutional- way in the forming or solving of crisis situations, acting mainly as "fact observers".

Given the fact that political elites form the developments during crisis periods, they need propaganda more than any other occasion, as a means of legalizing their decisions and practices before citizens. Main target of political elites and the Media, especially of the mainstream ones, is not to inform wide publics on facts, but to mobilize their audiences in order to support specific policies (Thussu & Freedman, 2003: 178), trying to legalize those policies in the eyes of the citizens (Allan & Zelizer, 2004).

Also, propaganda is an adaptive to different social context phenomena, using them at the same time in order to achieve its aims. Propaganda, therefore, is being adapted to the media of communication it uses, trying to take advantage of their structure and operational culture, so as to serve its purposes (Miotto, 1953; Ellul, 1973; Chiotis, 1986).

Propaganda is a part of contemporary reality. It is placed within the social, political, and financial activity of modern societies, while it occurs in more intense way(s) during periods of crisis. Propaganda constitutes a rational, mainly political, communication process, exercised through the dissemination of information via the Media. It can actually be considered as a foundation element of the "construction" of social, political and financial "realities" and of the exercise of influence -in favor of the propagandist- in a unilateral way to the views, opinions and behaviors of the subjects that act within these realities. (Doxiadis, 2013).

Propagandistic methods which have been implemented throughout the centuries are characterized by a Manichean rationale for viewing the world. Thus propaganda divides the world in "good" and "bad" people, in "friends" and "enemies", in "us" and "them", in "solutions" and "dead ends", in "progress" and "regressiveness". In this sense, propaganda seeks to influence people in a unilateral way.

Propaganda, due to the modernization of politics (Demertzis, 2001), has expanded its reach, including its implementations for governmental and public administration purposes. The more public opinion constitutes a factor that influences politics, including the race of political parties to gain public acceptance and support, the more intense the need for persuasion of the civilians in terms of the acceptance of political decisions or even already implemented policies will be (Corner, 2007).

Propagandistic methods

Basic propaganda characteristics according to Snow (2002: 40) are its "intentional communication practice, planned to influence the behavior of the target audience and the dissemination of unilateral information. Propaganda techniques include the selective

publication of evidence or partly presented facts, stress out threats or dangers, they demonize the enemy, and interpret the facts in very specific ways and take advantage of methods and arguments aiming at both the rationale and the sentiments of the receivers (Theodorakopoulos, 2006).

Among the variety of propagandistic methods, we underline some basic characteristics:

1. Lies and the deliberate construction and dissemination of specific- usually unilateral- information.
2. The use of exaggeration aiming at the distortion of either positive or negative (for the propagandist) information.
3. The direct or indirect evocation to fear or desire (evocation to feelings).
4. The use of rhetoric frames so as to promote generic notions (e.g. trust, discreetness) and to organize the meaning and values in ways beyond rational argumentation (Corner, 2007: 674-675).

The first organization to systematically analyze propaganda methods was the Institute for Propaganda Analysis (IPA), which named seven propaganda methods: name calling, glittering generality, transfer[*], testimonial, plain folks, card stacking and bandwagon. Based on the rationale of the IPA, Conserva (2003) presented 89 different propaganda methods, dividing them into seven general categories (faulty logic, diversion or evasion, appeal to the emotions, falsehood or trickery, playing on human behavioral tendencies, methods of style and methods of reason and common sense). Some of these techniques are included into the current research.

Methodology - Main research question

Based on the abovementioned theoretical framework, the presentation and evaluation of the first bailout mechanism (Memorandum of Understanding - MoU) of the Greek economy will be examined, through statements of politicians and journalists in prime-time news bulletins of Greek television and Greek internet news sites. The choice of these media is based on the fact that they constitute the main pylons of news information in Greece. Television is up to now the mainstream medium, while internet is the most rapidly developing medium in Greece.

The methodology used for the purposes of the current research was quantitative content analysis with the use of a structured coding frame. Content analysis transforms content of mostly qualitative nature into a form of data with either qualitative or quantitative form. It can be briefly defined as the systematic, based on scientific criteria, quantitative or qualitative analysis of the characteristics of various messages (Berelson, 1952; Kiriazi, 2001; Neuendorf, 2002: 1). It constitutes a systematic, reproducible technique of transforming the words of a text[†] into fewer categories of meaning, based on specific codification rules (Stemler, 2001; Miller & Brewer, 2003), allowing the researchers to examine big amounts of data through a systematic methodology.

The research conducted includes specific propagandistic methods, which can form a propagandistic public discourse. The choice of these methods forming our coding frame was made after a pilot research in a small sample of the examined political and

[*] Aim of the propagandist is to correlate an idea, or an object to something or someone admired by the people, usually to commonly accepted institutions.

[†] The term "text" is not being used here with the specific essence of written discourse, but includes many different forms of communication, which might be meaningful such as interviews, letters, diaries, fiction stories, proceedings, audiovisual content etc.

journalistic discourse, so as to figure out which propagandistic methods describe in the best way possible the uttered- by politicians and journalists- public discourse as far as the MoU is concerned. More specifically, the pilot research was conducted in 50 political and 50 journalistic discourse utterances for the MoU, through the examined Media, so as to consolidate the more widely used methods of argumentation and to include in our research coding frame.

As already mentioned in our theoretical framework, the evocation of feelings is a widely used propagandistic method. For the aims of the current research, the practices which aim at the provocation of certain feelings can be divided in two categories (negative and positive feelings). On one hand, "fear", "uncertainty", "dead end", "scapegoat", "name calling", "dilemma" are methods which aim at causing negative sentiments to the consumers/receivers of the discourse. On the other hand, "hope", "patriotism", "decisiveness", "plain folks", "euphemism", "altruism", and "flattery of the people" are methods which aim at causing positive sentiments to the consumers/receivers of the discourse. All those sentimental methods are used so that the propagandee receives the views of the propagandist by mobilizing her/his sentimental mechanisms. These methods have been named "sentimental methods" for the purposes of the current research (Myers, 2004)[*].

In addition, one can find methods which aim at mobilizing the thought of the propagandee (logical methods). Based on our pilot research, we came up with eight methods mainly used to address the thought of TV viewers or news sites' readers. These are the "reference to economic sizes with the use of specific data", the "reference to specific political decisions of treaties", "reference to structural problems of the Greek economy using specific evidence", "reference to possible of real consequences by the implementation of the MoU with the use of specific evidence", "selective acceptance of mistakes (especially on behalf of the politicians) or the difficulties included in the MoU", "emphasis on specific points of the MoU", "invocation upon sincerity" and "presentation of specific alternative -to the MoU- solution(s)".

Main objective of the current research was the effort to create quantitative propaganda scales, based on the categorization of propagandistic techniques as being either sentimental or logical. Therefore, two propaganda scales were created: the first one based on the sentimental methods and the second one based on the logical methods. The consolidation of these two scales forms the total propaganda scale in the presentation of the MoU by politicians and journalists. The sentimental scale has possible values ranging from 0 to 13, the logical scale has possible values ranging from 0 to 8 and the total propaganda scale has possible values ranging from 0 to 21 (counts the use of both sentimental and logical methods by each speaker).

We have to note at this point that the scales measure the number of different propagandistic methods used by the communicators and not the overall number of the methods used by each communicator.

[*] In psychology, sentiment is often defined as the complicated experience of feelings, which ends up to natural and psychological changes influencing thought and behavior. Sentimentalism is connected to a wide variety of psychological phenomena such as temperament, personality, mood and motive.

Finally, our main research question[*] is whether the particular propagandistic scales differentiate with respect to various independent control variables, such as the kind of the medium (TV bulletin or news site), status of the speaker, date, time duration, ideological orientation of speaker and other variables, which are presented in detail in the next chapter of the present paper.

Research material

As far as TV is concerned, the current research focused on the prime-time news bulletins of the TV stations ALTER, MEGA, and NET (former public television). The choice of these TV stations was made on various reasons, such as the high audience rates, the politically focused agenda, the presentation of both political and journalistic discourse, and the representation in the research of both private and public stations.

As far as internet news-sites are concerned, the choice of the web sites for the research was more complicated, due to the "grammar" of the medium. Given the fact that among the main objectives of the current research is to figure out whether and how the internet propagandistic discourse, having to do with the MoU, differs from the one of television, several web sites were chosen. Within the Greek news sites domain, one can observe the existence of two basic categories of web pages: the ones that constitute divisions of already existing communication media before the internet era (especially newspapers sites) (Meyer & Hinchmann, 2008: 186), and those which have been created within the internet era as plain web sites. Given that this dualism cannot be neglected, websites of both "genres" were chosen.

At the same time, one must seek for web pages with high numbers of visitors, (Papacharissi, 2011),[†] because, as we already mentioned in our theory, propaganda, in order to disseminate its messages in the web environment, needs a certain (big) mass of web page visitors. Our quest in the internet based on these two factors, led us to the choice of the following pages:

1. Web sites belonging to "traditional" (pre-internet) news corporations: www.kathimerini.gr (conservative), www.tanea.gr (central), www.enet.gr (leftist), which stand as the "representatives" of traditional media organizations focused in the field of Press.
2. Purely internet web sites: www.newsit.gr και www.news247.gr, which were found, at the time the research refers to, in the first and second place of Alexa ratings (2012) as far as Greek news sites are concerned.

The research period refers to February 1st to June 30th 2010. This period covers the communicational environment for the first bailout agreement of the Greek economy,

[*] The results presented here are part of the research conducted for the PhD thesis of Stamatis Poulakidakos *"Propaganda as an essential ingredient of public discourse. The presentation of the MoU by the Greek Media"*. In this thesis, it is statistically proven that political and journalistic discourse, as presented in the researched media, has been propagandistic either for or against the MoU (as a bailout solution for the Greek economy) and the use of propagandistic methods, which form the propaganda scales, was conducted in a unilateral way.

[†] The internet usage rating is a complicated procedure. Precise data can only be produced by each site's administrator. Among the few sources of such data is Alexa web page (www.alexa.com), where one can find a more or less indicative hierarchy of the one hundred most famous web sites per country.

known as "Memorandum" or "MoU", for a total period of five months, which lies both before and after the approval of the "Memorandum" by the Greek Parliament, after which it became a law of the Greek state (Law 3845/May 6th 2010). This period, having as middle reference point the announcement by the then Greek Prime Minister George Papandreou that Greece would accept to participate to the "European Bailout Mechanism" (widely known as Memorandum in Greece) on April 23rd 2010, focuses on the discussion concerning the Memorandum, both before and after its implementation. Due to the extremely big number of TV news items and internet publications, specific dates were chosen through systematic random sampling, of which the total media content was examined. Two days per week were selected, either Wednesday and Friday, or Thursday and Saturday, combinations which were taking turns in consecutive weeks. The choice of two days per week provides us with relatively high sampling rate of 29% (43 out of 150 total days of the period of interest).

Given that the research focused on the views expressed by the politicians and journalists concerning the Memorandum, our unit of analysis was the self-contained meaningful written- in the websites- or television statement (interview bite) of either politician or journalist concerning the Memorandum (Hallin, 1992; Blumler & Gurevitch, 2001; Lundell & Ekström, 2010). Finally, the control variables were the following:

1. Medium kind (television 41.3%, internet 58.7%)
2. Medium name (ALTER 15.7%, MEGA 14.5%, NET 11%, enet.gr 23.9%, kathimerini.gr 9.7%, tanea.gr 10.4%, news247.gr 6.7%, newsit.gr 8%)
3. Date before (33.1%) or after (66.9%) the acceptance of the bailout mechanism (with turning point the 23rd of April 2010)
4. Month the statement was made (February 4.1%, March 13.4%, April 42.5%, May 19.3%, June 20.8%)
5. Statements' duration/length (brief-up to 30 secs./100 words (61%), middle- 31-60 secs./101-200 words (20%), extensive- more than 1 minute/ more than 200 words (19%))
6. National identity of all speakers (Greeks 81.3%, non-Greeks 18.7%)
7. Status (politicians 79%, journalists 21%)
8. Ideological orientation of politicians (left 19%, center 49.4%, right 31.6%) (n=1159)
9. Political party of Greek politicians (PASOK 53.4%, ND 17%, KKE 10.2%, SYRIZA 13.6%, LAOS 4.9%, independent cabinet member 0.9%)[*] (n=923).

The before mentioned variables seek to provide us with a more specific "image" for the different characteristics of the examined statements of politicians and journalists. The total sample size is 1468 statements (n=1468), while the data processing and analysis were conducted using IBM SPSS Statistics 20.

Results

Our analysis will be focused, first, on the two propaganda scales (sentimental and logical), which are built from the data we gathered, and their possible differentiation

[*] PASOK: social democrat party (center), New Democracy: christian democrat party (right), KKE: communist party (left), SYRIZA: socialist/leftist party (left), LAOS: nationalist right wing party (right).

with respect to the nine independent control variables, through the implementation of a Multivariate Analysis of Variance (MANOVA) procedure.[*]

Table 1: Multidimensional tests for the two propaganda scales (sentimental and logical with respect to the effect of the independent control variables (MANOVA).

Multidimensional Tests			
Effect	**Hotelling's trace value**	**F test value**	**Significance value (sig.)**
Medium	.068	5.008	.000
Medium kind	.045	4.357	.000
Date per month	.021	2.345	.017
Statements' duration/length	.236	51.905	.000
Ideological orientation of politicians	.002	0.996	.370
Political party of Greek politicians	.019	2.850	.009
Date before or after the acceptance of the bailout mechanism	.003	1.246	.288
Status	.002	0.855	.426
National identity	.361	3.359	.000

According to the results of Table 1, the medium, the medium kind, the date per month, the statements length/duration, the political party of Greek politicians and the national identity of the communicators influence the two propaganda scales, while the ideological orientation of politicians, the date, whether it is before or after the acceptance of the bailout mechanism, and the status of the communicators have no significant effect on the two scales.[†]

As far as the total propaganda scale is concerned (see Table 2), the means differ significantly for all the independent control variables through which the scale is analyzed.[‡]

[*] The statistical hypotheses of the MANOVA procedure are as follows: Null hypothesis H_0: The means of the two propaganda scales do not differ significantly per Medium/ Date per month/ Statements' duration/length/ Ideological orientation of politicians/ Political party of Greek politicians/ Medium kind/ Date before or after the acceptance of the bailout mechanism/ Status/ National identity, versus Alternative Hypothesis H_A: Not H_0, i.e., the means of the two propaganda scales differ significantly.

[†] The statistical testing was conducted at the α=0.05 significance level, due to the large sample size.

[‡] The statistical hypotheses for the Analysis of Variance (ANOVA) procedure are as follows: Null Hypothesis H_0: The mean of the total propaganda scale does not differ significantly per Medium/ Date per month/ Statements' duration/length/ Ideological orientation of politicians/ Political party of Greek politicians, versus Alternative Hypothesis

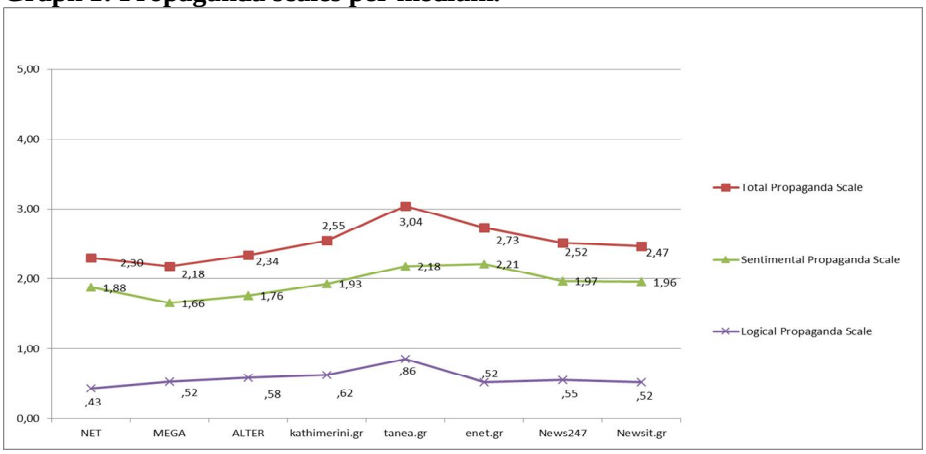
Table 2: Total propaganda scale mean testing per control variables (ANOVA).

Independent Variables	Levene test value	Significance value (sig)	W: Welch B-F: Brown-Forsythe test value	Significance value (sig)
Medium	22.401	.000	W = 4.671 B-F = 5.153	.000 .000
Date per month	6.042	.015	W = 4.349 B-F = 3.690	.002 .005
Statements' duration/length	46.960	.000	W = 124.108 B-F = 135.718	.000 .000
Ideological orientation of politicians	9.898	.000	W = 12.119 B-F = 12.236	.000 .000
Political party of Greek politicians	8.439	.000	W = 18.892 B-F = 7.491	.000 .000

The mean values for the three scales* with respect to the independent control variables are depicted in Graphs 1-5.

The news sites tanea.gr and enet.gr appear to have the highest prices of total propaganda, with mean values of 3.04 and 2.73 methods respectively (Graph 1). The same sites make use of the most sentimental propagandistic methods, 2.21 for enet.gr and 2.18 for tanea.gr. The tanea.gr news site, also leads the use of logical propagandistic methods (0.86), followed by kathimerini.gr (0.62). An overall result is that the first two places in the use of propagandistic methods for all three scales "belong" to news sites.

Graph 1: Propaganda scales per medium.



The use of propaganda scales, apart from the logical propaganda scale, differs per month of the statements of the communicators. One can observe (Graph 2) that the propagandistic effort is steadily becoming more intense for the whole five months of the

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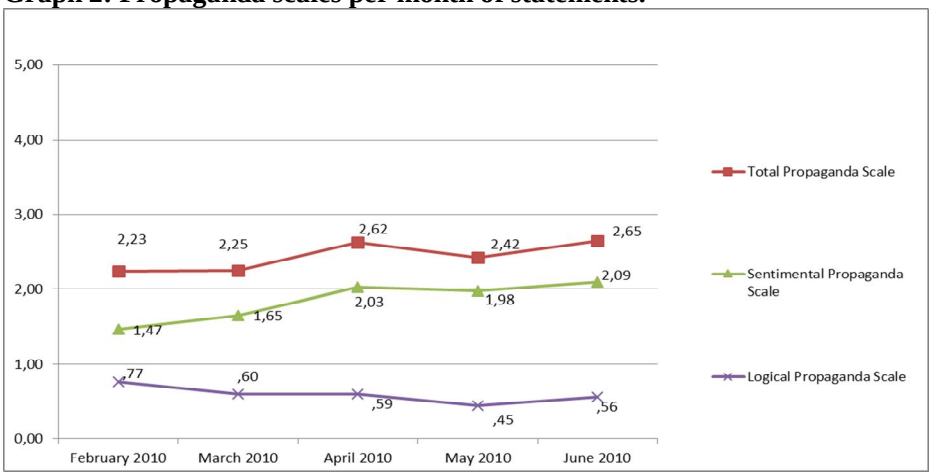
H_A: Not H_0, i.e. the mean of the total propaganda scale differs significantly. The differentiation of total propaganda scale will be tested with respect to the rest of the independent variables having two categories through t-tests, while the relative results are presented in table 3.

* Sentimental, logical and total propaganda methods scale.

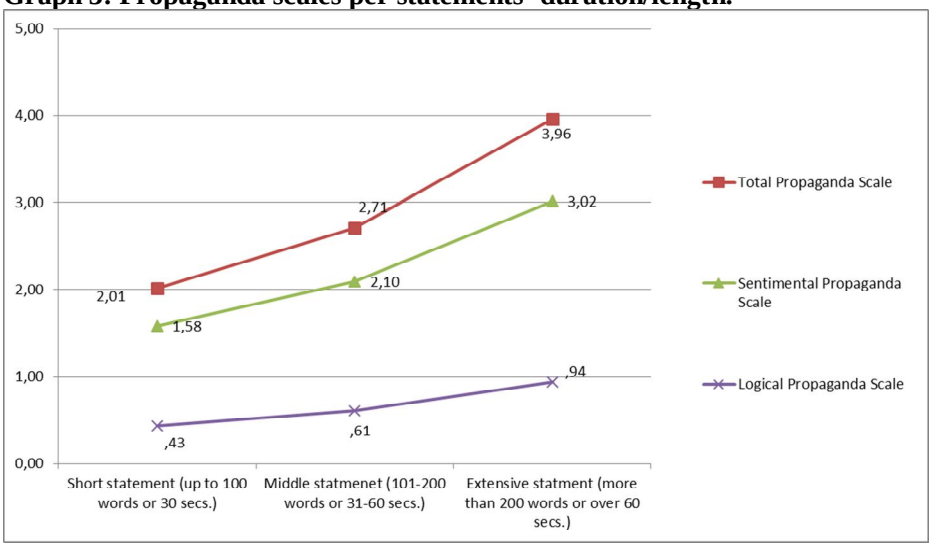
research period, a fact revealed by the steady increase in total propaganda scale, even after the acceptance of the bailout agreement. Another thing worth mentioning is the slight decrease of the logical propaganda as the months go by.

Graph 2: Propaganda scales per month of statements.



As expected, propaganda scales are increasing according to the length of the statements, reaching a mean of almost four propaganda methods for the most extensive statements (more than 200 words, or 1 minute). Of equal importance is the fact that even short statements have a mean of two propaganda methods, consisting mainly of sentimental propaganda methods (Graph 3).

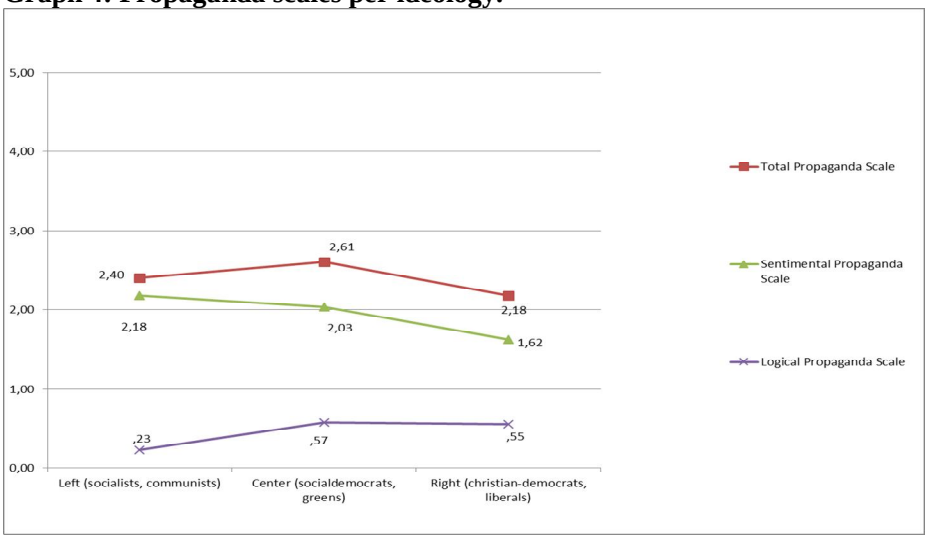
Graph 3: Propaganda scales per statements' duration/length.



With respect to the number of propagandistic methods used by the representatives of different ideologies, the MANOVA procedure did not reveal any significant differences between the sentimental and the logical scales. However, the ANOVA procedure

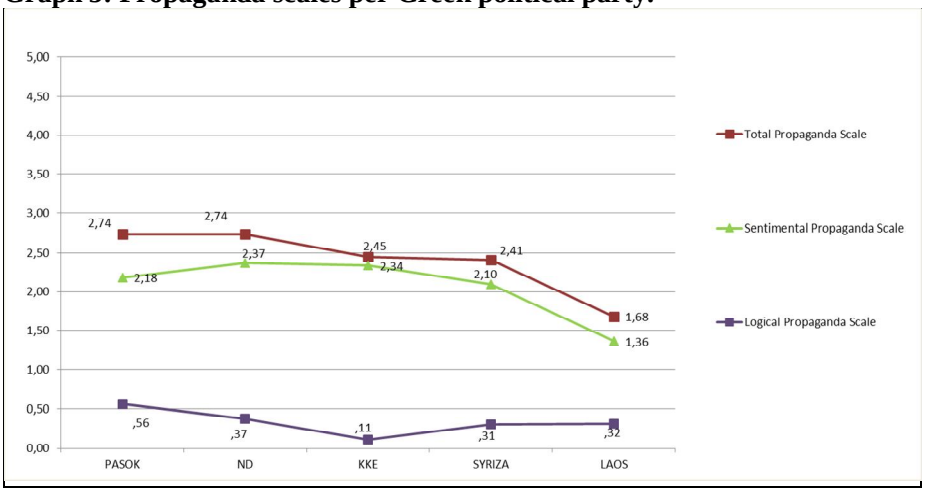
revealed a statistically significant difference between the total propaganda scale and the different ideologies, a fact that in our opinion has to do with the limited presence both in terms of times and duration, and therefore use of propagandistic methods, of the representatives of LAOS party (one of the two right wing parties).

Graph 4: Propaganda scales per ideology.



The use of propaganda by politicians of different Greek parties differs significantly. One can observe (Graph 5) that parties opposed to the bailout agreement such as the New Democracy (mean=2.37) or the Communist party (mean=2.34), make a more intense use of sentimental methods. The governing party of PASOK (mean=2.18) appears to use mainly sentiments too, to influence for the bailout agreement. The third opposition party of SYRIZA appears to be pretty close to PASOK in a quantitative sense (mean=2.10), and lastly we encounter LAOS with an average of 1.36 propagandistic methods, due to the limited presence of its representatives in the examined media.

Graph 5: Propaganda scales per Greek political party.



Finally, the t-tests we conducted to explore the effect of the four independent variables with two possible outcomes (medium kind: tv/internet, Greek/non- Greek communicator, before/after the bailout agreement, politician/journalist) indicated that the mean of the total propaganda scale depends on all four variables (Table 3).

Table 3: Total propaganda scale per medium kind/ nationality/ date/ status.

	Mean value of total propaganda scale	**t-test value**	**significance value (sig.)**
Television	2.27	-5.252	.000
Internet	2.70		
Greek	2.70	12.890	.000
Non Greek	1.73		
Before agreement	2.33	-3.514	.006
After agreement	2.62		
Politician	2.43	-2.029	.043
Journalist	2.85		

Obviously (see Table 3), the internet statements appear to have a higher mean of propaganda use compared to the TV ones. In addition, Greek communicators use significantly more propaganda methods to influence their audiences, than non- Greek communicators. Apart from that, we should underline the intensification of the propagandistic communication around the bailout agreement after its acceptance by the Greek government, as well as the fact that journalists appear to make use of more propagandistic methods in their sayings compared to politicians, making more extensive statements at the same time.[*]

Conclusions

As a first comment on the results, one can observe that more than two propagandistic methods are encountered in every medium. MEGA channel is in the last place with 2.18 methods while the news site tanea.gr is in the first place with an average of 3.04 methods. This finding alone underlines the significant presence of propagandistic methods in the public discourse regarding the "memorandum", the first bailout agreement implemented in Greek economy. At the same time, the formation and analysis of the propaganda scales, let us come up with the conclusion that the implemented propaganda is firstly and foremost a sentimental one.

[*] The differentiation in statement duration/length between politicians and journalists is statistically significant (X^2 test=295.094, sig=0.000). A percentage of 70.6% of the politicians make short statements, 19% medium and only a 10.4% extensive statements. On the other hand, 25.2% of journalists make short statements, 23.9% medium and more than half journalists (50.8%) make extensive statements.

As expected, more extensive statements include more propagandistic methods, with the largest ones to average almost four methods (3.96). Noticeable, though, is the use of propaganda in brief statements too, where, despite the fact that such statements are up to 30 seconds or 100 words, they average two (2.01) propagandistic methods.

Another useful observation is the slight decrease of propagandistic methods as we move from the left to the right ideologies. This slight decrease does not refer to all right wing parties, but mostly to LAOS, whose members appear much less in the public debate regarding the bailout agreement. It is characteristic that LAOS's members appear only 44 times, whereas New Democracy members appear 155 times. Additionally, only three members of LAOS make large statements, when the members of New Democracy being accessible to the media reaches the 70 members. Moreover, right wing politicians seem to ground their propaganda slightly more on logical methods, compared to their left wing colleagues, who construct their communicative strategy on the attempt to create certain feelings to their audiences.

The Communist party appears to be the protagonist in the use of sentimental methods as far as the left ideology is concerned (mean= 2.34), whereas at the same time its members use only 0.11 logical method, making its propagandistic argumentation almost totally sentimental.

The governing party of PASOK appears to try to input in its political discourse a bit more logical, without approaching, though, an average of even one logical method (mean=0.56). This "logical" tendency can be explained by the fact that PASOK, being the government at that time, uses more the "reference to inherent problems of the Greek state" and the "political conditions formed within the EU", so as to justify its decision to accept the bailout agreement.

Among the most interesting findings is the increasing course of propaganda methods during the months we examined. This course appears to be steadily increasing as the months go by and the discussion on the bailout agreement is placed at the center of public debate. The most important feature though, is that propaganda on the agreement keeps on characterizing the statements of both politicians and journalists even after the official voting and implementation of the agreement, even when its details and the measures it included, could be accessible via its publication to everybody. This implies that the propagandistic procedure around the "Memorandum" was a long- term one, and was not at all ended with its implementation. Quite the contrary, it continued- and still goes on- with even bigger intensity.

The steadily intensified propagandistic presentation of the bailout agreement, even after its implementation by the Greek government, brings us to the rationale presented in our theoretical framework. According to that, propaganda is a continuous phenomenon, which aims at creating specific "contexts" around the subjects it seeks to influence. In our occasion, every part, either political or journalistic, seeks to create a specific context for the perception of the bailout agreement on behalf of the citizens-consumers of Media content, either in a positive or negative way.

Propaganda is an essential element of the publicly presented political and journalistic discourse and not only a fragmented practice implemented in specific cases. This situation is being enhanced by the Media too, as they encourage a fragmented and restricted presentation of reality through their content and their interpretation of reality. As we have already seen, significant factors in this propagandistic presentation of the "Memorandum" are the journalists too, who, in their turn, try to influence the public either for or against the bailout agreement with the use of propagandistic methods.

The quantitative increase of the propagandistic presentation is accompanied by another important -in a qualitative sense- finding: the steady increase of the sentimental propagandistic methods and the simultaneous decrease of logical methods. This constitutes a de facto win of sentiments over logical. The correlation we ran for this relationship provided us with a value of r=-0.270 (sig.=0.000), which demonstrates a rather medium but statistically significant negative correlation between the two propaganda scales.

The heavily sentimental character of propaganda reveals a turn to propagandistic techniques of the wartime crises of modernity, especially late modernity, rather than more "mild" forms of propaganda, which include the -unilateral- use of logical arguments as well. The propaganda characterizing the public debate of the first "Memorandum" is firstly and foremost sentimental and not at all rational. Our sentiments are "provoked" to be our perception mechanisms for reality.

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ORIGINAL PAPER

The Czech Party System Change since 2010: From Fragile Stability to Stable Fragility

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Abstract
Paper deals with the question of the party system change in the Czech Republic since the 2010 parliamentary elections. Although at least since the mid-1990s, the Czech party system has been considered more-or-less structured and one of the most stable party systems among the CEE countries, by the 2010 parliamentary elections the situation changed. Since then, the Czech party system is undergoing a process of a major transformation. The main sources of this transformation were a significant change of voter behaviour in the 2010 and 2013 parliamentary elections (especially an erosion of voter support for established parties and the voter´s shift towards new parties) and an inability of established parties to respond to this change. The main goal of the analysis that is designed as a descriptive case study is to describe the nature and intensity of the party system change since 2010 in the Czech Republic, even with the use of selected quantitative analytical tools, commonly used in electoral analyzes in the current comparative-political science research (volatility, effective number of parties).

Keywords: *Czech Republic, party system change, stability, the 2010 parliamentary elections, the 2013 parliamentary elections, electoral volatility.*

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Introduction

Around the mid-1990s, the Czech party system simplified and stabilized its structure and its format. Moreover, during the second half of the 1990s there were distinct stabilization and concentration tendencies in the Czech party system, which were accompanied by its partial consolidation. The 2006 parliamentary elections[*] then became a kind of peak of this process. At the end of the 1990s and in the 2000s, the Czech party system was referred to a number of experts at home and abroad as more-or-less structured, established and relatively stable, and/or as one of the most stable party systems in the region of post-communist Central and Eastern Europe (see, e.g., Birch, 2003; Pšeja, 2005; Šedo, 2007; Deegan-Krause & Haughton, 2010; Koubek, 2010; Stegmaier & Vlachová, 2011; Hanley, 2011; Šedo, 2011; Charvát, 2012).

Probably the most visible feature of Czech party politics since 1996 (and prior to the 2010 parliamentary elections) had been its closeness, particularly evident in the stability (in the sense of continuity) of individual parties and of their identity, and only very limited space for relevant new entrants, as well as low popular demand for them generally. Although the presence of new parties was one of the enduring features in the Czech party system prior to the 2010 parliamentary elections (e.g. the entry of Freedom Union in 1998 or Green Party in 2006), it was a rather marginal phenomenon (for more details see Hanley, 2010). In addition, all of these new parties have not prospered for long – at first entered government, but once left the government, it also left the national politics arena, and some of them later became extinct.

Not only interaction and political struggle between both of the two Czech major parties, the right-wing Civic Democratic Party (ODS) and the left-wing Czech Social Democratic Party (ČSSD), dominated the electoral competition in the Czech Republic since the 1996 parliamentary elections. After the 1998 early parliamentary elections, five parties settled in the Chamber of Deputies of the Parliament of the Czech Republic. In addition, four parties – namely Civic Democrats, Social Democrats, the Communist Party of Bohemia and Moravia (KSČM), and the Christian Democratic Union – Czechoslovak Popular Party (KDU-ČSL) – had a permanent parliamentary representation in the period 1992–2010, and therefore formed "the core" of the Czech party system. Because all of them have been programmatic parties, these parties possessed, thanks to the clear political and ideological profiles along the stable cleavage, quite stable electorate. This was, for example, obvious from both relatively stable patterns of voters´ behaviour and striking continuity in spatial patterns of support across the country (for more details see, e.g., Kostelecký, 2012).

However, the 2010 Czech parliamentary elections result and subsequent process showed that the Czech party system stability was "only" fragile, as Kevin Deegan-Krause and Tim Haughton warned not long before the 2010 elections (see Deegan-Krause & Haughton, 2010). The 2010 parliamentary elections saw a significant change in voter behaviour, which strongly influenced the existing stability of the Czech party system and resulted in a process of its inner transformation. The post-2010 trends were subsequently confirmed and, to some extent, even enhanced in the 2013 elections.

The paper is designed as a descriptive case study and its main goal is to describe the nature and intensity of the process of the Czech party system change outlined

[*] In this text, the term „parliamentary elections" refers to the elections to the lower house of the Czech Parliament, called Chamber of Deputies of the Parliament of the Czech Republic.

above. In this sense, the paper tests the hypothesis that the process of the Czech party system change since 2010 has been given by an erosion of electoral support of established parties, which lost substantial support in the 2010 and 2013 parliamentary elections, and by the arrival of new parties, as well as by a greater equalization of individual party strength compared with the previous elections races. For measuring the change and to prove the main hypothesis of the paper, there were used selected quantitative analytical tools (see below) that are commonly employed in the current electoral analysis research.

Data and strategy of measuring party system stability

The Czech parliamentary elections results were used for this analysis. Although individual parliamentary elections results represent only a kind of symbolic milestone that reflect trends and changes that have occurred in the period immediately preceding the elections, its results allow to demonstrate the changes and measure them. The data source has therefore become a publicly accessible elections archive of the Czech Statistical Office (available at the website http://volby.cz) with all the Czech parliamentary elections results.

A useful and predominantly used measure of aggregate stability and/or change of party system has been a concept of electoral volatility, which captures the dynamics in electoral support of parties across elections. Electoral volatility is computed by using a formula introduced by Morgens Pedersen in his well-known article published in. According to the Pedersen´s index, the value of electoral volatility is computed as the sum of the absolute values of the changes (gains or losses) in the share of voter support of each party between two consecutive elections, and divided by two (so that gains and losses are not effectively double counted). That means, electoral volatility is defined as:

$$V = \frac{\sum_{i=1}^{n} |\Delta p_i|}{2} \qquad (1),$$

where n represents the number of parties, and Δp_i means the difference of the vote shares of each party obtained in two consecutive elections (Pedersen, 1979).

The aggregate values of Pedersen´s index are in the closed interval from 0 to 100[*]. The value of 0 would represent a situation in which the electoral support for all the parties was exactly the same, unchanged in two consecutive elections. On the contrary, the value of 100 would mean that all parties failed to defend a single voice from previous elections, and/or that all the votes were distributed among new parties. In general, the lower the value of electoral volatility, the higher the stability of the party system, while increasing the value of the Pedersen´s index refers to a presence of some destabilizing tendencies in the party system.

[*] The Pedersen´s index computes the aggregate changes in electoral support for parties in two consecutive elections at the level of the party system. In contrast, it is not able to capture the volatility of voter preferences at the individual level. For a diachronic analysis of individual voter behaviour, and/or for research of stability and change of individual voter preferences in two consecutive elections, is this quantitative indicator rather inappropriate.

However, the traditional Pedersen´s index has been criticized, especially in the context of post-communist and Latin American countries, that it fails to distinguish between volatility among established parties and vote transfers from established to new parties (cf. Powell & Tucker, 2009; Mainwaring, España & Gervasoni, 2009; Powell & Tucker, 2014), what is, nevertheless, helpful and necessary for analyzing evolving party systems, and crucial for the study of party system stability in the above mentioned regions. Typically, in post-communist countries is electoral volatility mainly influenced by shifts in voter support from established old parties (its vote share declines) to new contenders that come from outside the previously existing party system.

That is why Eleanor Neff Powell and Joshua A. Tucker (see Powell & Tucker, 2009; Powell & Tucker, 2014), and Scott Mainwaring, Annabela España and Carlos Gervasoni (see Mainwaring, España & Gervasoni, 2009) submit an adaptation of the original Pedersen´s index. These authors suggest to decompose total electoral volatility into two separate components: (a) volatility caused by the entry of new parties in electoral competition and optionally by exit of the old parties (Powell and Tucker use the designation "Type A Volatility", some authors use a term "inter-system volatility"), and (b) volatility caused by voter exchanges among existing (stable) parties ("Type B Volatility" by Powell and Tucker, or "intra-system volatility" according to some authors).

Because the understanding the party system change process in the Czech Republic since 2010, it is necessary to know where electoral volatility comes from, the present analysis will employ the Powell´s and Tucker´s adaptation of the conventional concept of electoral volatility (Powell & Tucker, 2009; Powell & Tucker, 2014). Type A Volatility is therefore defined as:

$$V_A = \frac{|\sum_{o=1}^{n} p_{ot} + \sum_{w=1}^{n} p_{w(t+1)}|}{2} \qquad (2),$$

where p_o refers to the vote shares of old disappearing parties that contested only the first of two consecutive elections (at time t), while p_w is the percentage of votes of new parties that contested only the second of the two consecutive elections (at time $t + 1$).

In contrast, Type B Volatility is calculated according the traditional Pedersen´s index (see Equation 1). The only change is that only stable parties (parties contesting both the current elections and the previous elections) are included in the calculation. Type B Volatility is therefore defined as:

$$V_B = \frac{\sum_{i=1}^{n} |\Delta p_i|}{2} \qquad \text{, included all stable parties.} \quad (3).$$

Total Volatility is, by the logic of its definition, the sum of Type A Volatility and Type B Volatility, what is equal to the original Pedersen´s index of electoral volatility. Total Volatility is therefore computed as:

$$V = \frac{\sum_{i=1}^{n} |\Delta p_i|}{2} = V_A + V_B \qquad (4).$$

Another measure employed by this analysis is Markku Laakso´s and Rein Taagepera´s the so-called effective number of parties (see Laakso & Taagepera, 1979). Although the effective number of parties index has become a subject to criticism (cf., e.g., Molinar, 1991; Dunleavy & Boucek, 2003; Dumont & Caulier, 2003), and later even Taagepera himself highlights some of its shortcomings (see Taagepera & Shugart, 1989; Taagepera, 2007), the index is the most commonly used tool for comparative analysis of party system size (see, e.g., Lijphart, 1994; Cox, 1997; Lijphart, 1999; Wolinetz, 2006). Moreover, according to Taagepera, effective number of parties remains more efficient tool than any other alternative (Taagepera, 2007).

According to Laakso and Taagepera, "*the effective number of parties is the number of hypothetical equal-size parties that would have the same total effect on fractionalization of the system as have the actual parties of unequal size"* (Laakso & Taagepera, 1979). It is calculated as the reciprocal of the sum of the vote shares or seat shares (as the case may be) of each party:

$$N = \frac{1}{\sum_{i=1}^{n} p_i} \qquad (5),$$

where p_i refers to the vote share or seat share of party *i*. Effective number of parties can be calculated in two ways: either at the level of the entire electoral competition (it is calculated by using vote shares) – the so-called effective number of elective parties (ENEP), or only at the level of parties that won parliamentary seats are included (it is calculated by using seat shares) – the so-called effective number of parliamentary parties (ENPP).

The effective number of parties, whether in the form of the ENEP, or the ENPP, offers information about concentration or fragmentation of analysed party system. The lower the value of the effective number of parties the higher the party system concentration. And *vice versa*, the higher the effective number of parties the higher the party system fragmentation (the more parties in party system). In relation to the party system stability analysis, it could be said that higher value of the effective number of parties compared to the previous elections implies a presence of destabilizing trends in the party system.

The patterns of voting behaviour change in the 2010 and 2013 parliamentary elections

The Czech party system transformation has been mostly affected by a change in voter behaviour in the 2010 and in the 2013 parliamentary elections. While prior to the 2010 parliamentary elections, the long-standing Czech parties possessed both quite stable electorates and more-or-less stable spatial patterns of support across the country, the 2010 and 2013 parliamentary elections saw instead the destabilization of electorates and spatial patterns of support of established parties.

The change of voting behaviour can be most clearly illustrated in three basic aspects. First one is the erosion of voter support of established parties and voter´s search for new alternatives. This is closely related to the second aspect, which is the increase of the number of wasted votes (the votes cast the party, which did not obtain parliamentary representation), mainly in the 2010 parliamentary elections when the

number of wasted votes tripled as compared with previous elections results (see Table 1).

Table 1. Shares of wasted votes in Czech parliamentary elections since 1996 (percentage)

Elections year	**1996**	**1998**	**2002**	**2006**	**2010**	**2013**
Shares of wasted votes	11.16	11.29	12.55	5.98	18.85	12.62

Source: Czech Statistical Office Elections Archive.

This rapid increase in the shares of wasted votes in the 2010 parliamentary elections was due to a combination of several factors. Voters voted more strongly for new and non-parliamentary parties than ever before – even though, they have little chance of electoral success. However, the 5 percent electoral threshold surpassed and the parliamentary seats won only two of them, TOP 09 and Public Affairs (VV), while another five parties received between 1 and 5 percent of the vote[*]. Moreover, the high number of wasted votes was also influenced by exit of two parliamentary parties, the KDU-ČSL and the Greens. And last but not least, the change of voting behaviour resulted in a greater use of preferential votes. Although the third-mentioned aspect does not have a direct impact on the process of the Czech party system change, it also illustrates the new phenomenon in voter behaviour since 2010.

The 2010 and 2013 parliamentary elections

As a consequence of the above mentioned change in voting behaviour, the 2010 parliamentary elections saw a significant and unprecedented decline in voter support of both of the two major parties, the ODS and the ČSSD. The ODS´s vote share dropped over 15 percentage points from 35.38 percent in 2006 to 20.22 percent in 2010, the ČSSD lost more than 10 percentage points from 32.32 percent in 2006 to 22.08 percent in 2010. These two parties lost in sum 1,408,243 votes in 2010 compared to the 2006 parliamentary elections.

Also the other two long-standing parties, the KDU-ČSL and the KSČM, experienced a drop in the vote share. While a small drop of the KSČM´s vote share from 12.81 percent in 2006 to 11.27 percent in 2010 resulted in the same number of parliamentary seats (as compared with the 2006 elections results), the drop in the KDU-ČSL´s vote share from 7.22 in the 2006 parliamentary elections to 4.39 percent in 2010 was fatal and resulted in a loss of the parliamentary representation, for the first time in the party long history, because the Christian Democrats, a constant element in Czechoslovak and Czech parliamentary politics until the 2010 parliamentary elections[†], did not reach the 5 percent electoral threshold in 2013 (see, e.g., Stegmaier, Vlachová, 2011).

[*] Moreover, just two of them, the KDU-ČSL, and the Party of Civic Rights – ZEMANITES (SPOZ), received more than 4 percent of the vote (the KDU-ČSL 4.39 percent and the SPOZ 4.33 percent of the vote). Sovereignity – Jana Bobošíková Bloc received 3.67 percent, the Greens won 2.44 percent, and the extreme right-wing Workers Party of Social Justice received 1.14 percent of the vote.

[†] The Czechoslovak People´s Party (ČSL) is one of the Czech oldest existing parties. It was founded in 1918 and it won parliamentary seats in each Czechoslovak and Czech parliamentary elections – in the interwar period, in 1946, and also since the 1990 founding elections (since the 1992 elections, under the name of the KDU-ČSL).

In the 2010 parliamentary elections, newcomers to national politics became TOP09, established in 2009 by former leader of the KDU-ČSL Miroslav Kalousek and some of his colleagues after a prolonged internal party conflict, with 16.70 percent of the vote, and VV, established in 2001 as a local party in Prague 1, but shortly before the 2010 parliamentary elections VV decided to break into the national politics, with 10.88 percent of the vote[*]. These new parties succeeded mainly because they were able to offer voters dissatisfied with the existing party politics an option to express their discontent.

The entry of right-wing TOP09 is noteworthy for one other important reason. While in the pre-2010 period, there was one dominant right-wing party in Czech politics, the ODS, the 2010 parliamentary elections saw a transformation of the Czech political right. Since 2010, there appeared a new relevant and also quite strong right-wing alternative, TOP09, making it possible to talk about a duality of the Czech political right. Moreover, the 2010 elections result of TOP09, including its electoral success in the capital city of Prague, the former electoral domain of the ODS in the pre-2010 period, was a sort of foretaste of that in the future could ODS lose its leading position on the right wing of the political spectrum. This has actually happened in the upcoming elections (see below).

The 2010 parliamentary elections saw also one more new phenomenon in Czech politics when the party with the highest share of the vote, the ČSSD, did not form the government, due to its temporarily low coalitional potential, and the new governing coalition was formed by second-placed (according to the number of votes) Civic Democrats.

Because long-standing parties were not able to respond satisfactory to the public dissatisfaction with Czech party politics, and poor political performance in general, the new trends in voter behaviour, especially the voters´ willingness to shift to an entirely new party, were confirmed in the 2013 elections, and, moreover, to an even stronger extent.

While the ČSSD, although being the main opposition party, experienced a small drop from 22.08 percent of the vote in 2010 to 20.45 percent of the vote in 2013 (nevertheless, the ČSSD is the only party winning more than 20 percent of the vote in 2013), the ODS´s vote shares decreased by 12.5 percentage points between the 2010 and the 2013 parliamentary elections, from 20.22 to 7.72 percent of the vote. In absolute terms, this means that the ODS, as the senior government party, lost 673,618 votes in the 2013 parliamentary elections as compared with the 2010 elections (and 1,508,301 votes compared to the 2006 parliamentary elections).

Also ODS´s junior ally in governing coalition, TOP09, experienced a significant drop in the vote share from 16.70 percent in 2010 to 11.99 percent in 2013. Overall, right-wing parties weakened in favour of the new centrist-populist parties (especially in favour of ANO2011 – see below) in the 2013 parliamentary elections. The ODS and TOP09 lost in sum 951,094 votes (17.21 percentage points) as compared with the 2010 elections results.

However, the 2013 elections result of TOP09, despite a nearly five percentage points´ drop in the vote share and despite losing the position of governing party, may be considered a success. Not only has TOP09 maintained its parliamentary presence (in contrast to the pre-2010 new parliamentary entrants, whose entry into government was

[*] For more detailed information about TOP09 and VV see, e.g., Bureš, 2012.

the beginning of an early end in national politics). It has also newly become the major, however, rather small, right-wing party in Czech politics.

The KSČM remained therefore the only long-standing party winning more votes in 2013 as compared with the two previous elections (12.81 percent of the vote in the 2006 elections, 11.27 percent in the 2010 elections, and 14.91 percent of the vote in the 2013 parliamentary elections). This was largely due to the fact that the KSČM has been able to raise protest votes (for example in the 2002 parliamentary elections, the KSČM had won 18.51 percent of the vote).

In addition to the ČSSD, the ODS, TOP09, and the KSČM, another three parties have won parliamentary seats in the 2013 elections. There have been therefore newly seven parliamentary parties in in the Chamber of Deputies of the Parliament of the Czech Republic, instead of the number of five parties, as it had been since the 1998 elections.

After the failure in previous elections, the KDU-ČSL won 6.78 percent of the vote and it has regained parliamentary representation in 2013. The KDU-ČSL was accompanied by the arrival of two newly formed political movements – ANO2011, which have become the second strongest party with 18.51 percent of the vote (and, therefore, it was seen both at home and abroad as the *de facto* winner of the 2013 parliamentary elections), and the Dawn of the Direct Democracy of Tomio Okamura with 6.88 percent of the vote. In their electoral campaigns, both of the two new movements criticized both the existing poor political performance and parliamentary parties, and attracted, therefore, the voters looking for a change.

Table 2. Distribution of voter support among selected parties in the Czech Republic in the 2006, 2010 and 2013 parliamentary elections (percentage)

	The 2006 elections	**The 2010 elections**	**The 2013 elections**
Civic Democratic Party	35.38	20.22	7.72
Czech Social Democratic Party	32.32	22.08	20.45
Communist Party of Bohemia and Moravia	12.81	11.27	14.91
Christian Democratic Union – Czechoslovak Popular Party	7.22	*4.39*	6.78
Greens	6.29	*2.44*	*3.19*
TOP09	X	16.70	11.99
Public Affairs	X	10.88	X
ANO2011	X	X	18.51
Dawn of the Direct Democracy of Tomio Okamura	X	X	6.88

Source: Czech Statistical Office Elections Archive.

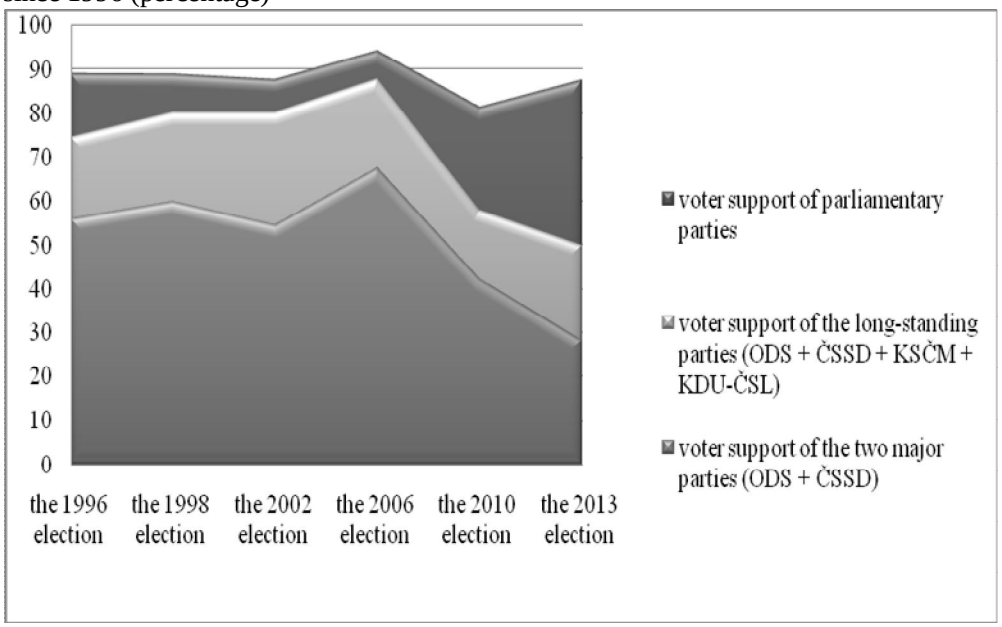
The Czech party system stability and its change since 2010

If there had been a trend towards an increase in voter support for both the two major parties (the ODS and the ČSSD) and four long-standing parties (the ODS, the ČSSD, the KSČM, and the KDU-ČSL), and a decline in voter support for new parties since the 1996 parliamentary elections, the 2010 parliamentary elections saw a

significant change, mainly because of the voters´ swift from established long-standing parties to new contenders.

Moreover, prior to the 2010 parliamentary elections the two major parties, the ODS and the ČSSD, were used to win in sum more than 50 percent of the vote in each elections since 1996 (in the 2006 elections, the ODS and the ČSSD gained in sum up two-thirds of the vote). In the 2010 elections, these parties instead won in sum "only" 42.30 percent of the vote, and subsequently, in the 2013 parliamentary elections, 28.17 percent of the vote (see Figure 1).

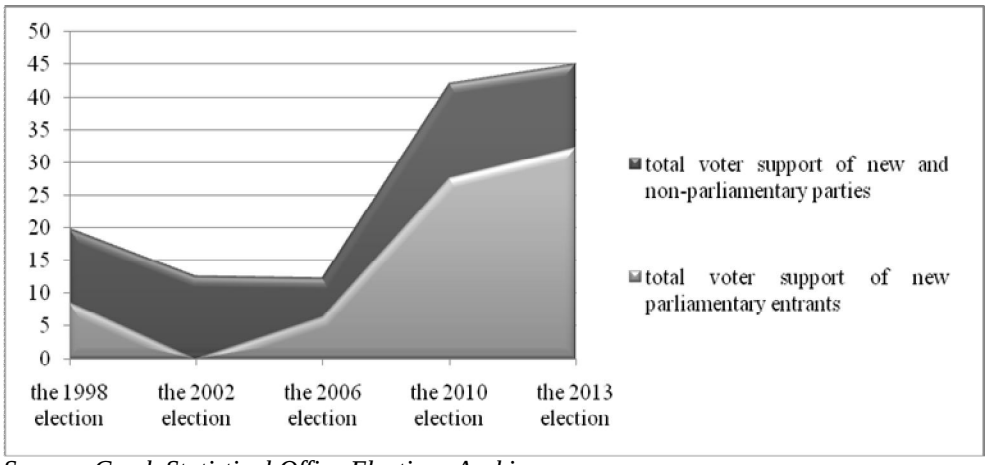
Figure 1. Distribution of voter support of parliamentary parties in the Czech Republic since 1996 (percentage)



Source: Czech Statistical Office Elections Archive.

While there had been at most only one new entrant in the Chamber of Deputies in each parliamentary elections held before 2010, one of the consequences of the growth of electoral support of new parties (see Figure 2) is that in both of the two parliamentary elections held since 2010, two new parties entered the Chamber of Deputies – TOP09 and VV in 2010, and ANO2011 and the Dawn of the Direct Democracy of Tomio Okamura in 2013. Moreover, in 2013, the KDU-ČSL returned into the Chamber of Deputies of the Parliament of the Czech Republic.

Figure 2. Distribution of voter support among new and non-parliamentary parties in the Czech Republic since 1998 (percentage)



Source: Czech Statistical Office Elections Archive.

In addition, if up to the 2010 parliamentary elections the newcomer was always a small party (with voter support reaching from about 6.3 to 8.6 percent of the vote), in the 2010 and in the 2013 elections gained one of the two new entrants a several times stronger voter support than previously was the case of new parties, and thus each of this new entrant became, at least temporarily, one of the major actors in Czech politics (in 2010, third-placed TOP09 won 16.70 percent of the vote, and in 2013, second-placed ANO2011 received 18.65 percent of the vote).

1. Electoral volatility in the Czech parliamentary elections

The previous analysis shows that there have been destabilizing trends in Czech party politics since the 2010 parliamentary elections. These trends seem to be caused by the erosion of voter support of established parties and by entry of new parties into the Chamber of Deputies of the Parliament of the Czech Republic. These observations were proved by a macro-level analysis focusing on the issue of aggregate stability of party system measured in terms of electoral volatility (see Figure 3).

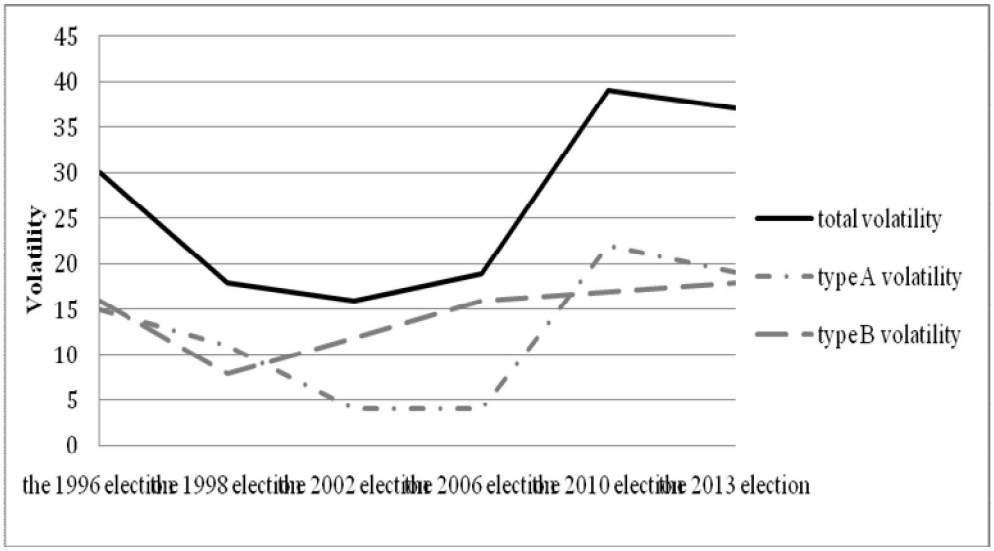
Although electoral volatility was not completely absent in Czech politics, prior to the 2006 parliamentary elections Czech political system experienced a steadily declining trend of electoral volatility. Only the 2006 parliamentary elections saw a slight increase of total volatility compared to the 2002 elections, but the overall level of the 2006 electoral volatility was close to the situation from the 1998 parliamentary elections. Moreover, in the 2002 and in the 2006 elections, the total volatility was primarily caused by the voters that switched their votes between established parties (type B volatility). On the contrary, voters´ shifts to new and non-parliamentary parties had only a little effect on total volatility in this period. This was a specific feature of Czech party politics as compared with most party systems in post-communist Central and Eastern Europe.

However, the 2010 parliamentary elections saw a change. Although type B volatility has remained at about the same level as in the previous period in the 2010 and in the 2013 elections, the 2010 elections witnessed a rapid growth of type A volatility (it was more than five times higher in 2010 as compared with the previous period). In addition, since the 2010 parliamentary elections, type A volatility has been newly higher than type B volatility. And as a consequence, the total volatility has been

doubled in the 2010 and in the 2013 parliamentary elections as compared with the period from 1998 to 2006.

In other words, since the 2010 elections, the increase in total volatility was not so much due to shifts in voter support between established parties, which was a major source of electoral volatility in the previous period, but due to the emergence of new entrants, and by voter exchanges among established and new parties.

Figure 3. Total volatility and volatility by type in Czech parliamentary elections since 1996



Source: Author´s compilation.

2. Effective number of parties in Czech politics

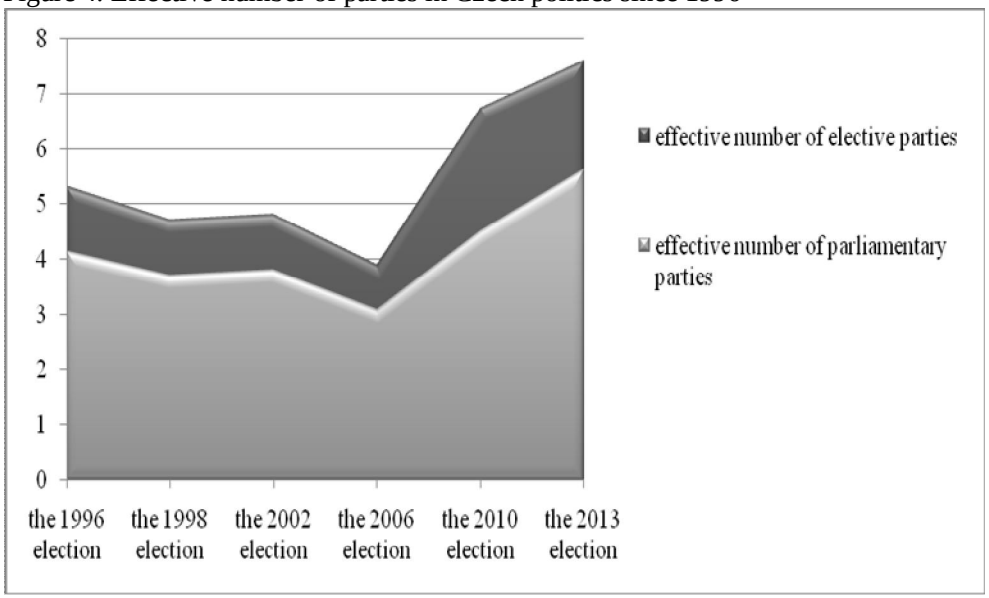
The above described process also caused a higher level of fragmentation of Czech party politics. Figure 4 shows the development of the effective number of parties over time. It shows a gradual concentration of the Czech party system since the 1996 parliamentary elections. Since the 1998 parliamentary elections, however, the process of concentration of the party system slows down, what proves that the Czech party system became more-or-less stabilized.[*] A considerable decrease of the number of effective parties in the 2006 parliamentary elections was mainly affected by the

[*] This concentration tendencies, culminating in the 2006 parliamentary elections, were, *inter alia*, clearly shown above, by the declining share of the total number of votes he forfeited (see Table 1), or, conversely, by increasing the total vote shares of both parliamentary parties and the two main parties (see Figure 1).

significant increase in voter shares of both of the two main parties, the ODS and the ČSSD, and by their greater advantage in the number of votes to the other parties.

However, the 2010 elections result produced a major turning point in this trend, what was subsequently confirmed in 2013. Both of these two elections saw an increase of the effective number of parties, both elective and parliamentary (see Figure 4), and therefore an increase of the party system fragmentation, and also an onset of deconcentration trends in Czech party politics.

Figure 4. Effective number of parties in Czech politics since 1996



Source: Charvát, 2013: 187, tab. 6.2; author´s compilation.

Conclusion

The 2010 and 2013 parliamentary elections resulted in a remarkable transformation within the Czech party system. While in the years from 1998 to 2009, the Czech party system was referred as more-or-less structured, established, relatively stable, and with the presence of distinct concentration trends, since 2010 it has turned the opposite direction. Since the 2010 parliamentary elections, the Czech party system can be instead referred as relatively unstable, mainly due to the relatively high level of volatility in Czech party politics, and with a strong tendency to fragmenting tensions.

The main cause of this transformation was a dramatic change of voting behaviour both in the 2010 and in the 2013 parliamentary elections. Czech voters left the established long-standing parties and began to prefer new political alternatives. Consequently, the 2010 and 2013 elections saw the erosion of voter support of long-

standing parties, which was accompanied by a significant increase in voter support for new parties.

Quite aptly description of the Czech party system transformation was made by Tim Haughton, Tereza Novotná, and Kevin Deegan-Krause. While Czech party politics prior to the 2010 parliamentary elections could be best described by using the phrase "fragile stability" (see Deegan-Krause & Haughton, 2010), for the following period it appears to be more appropriate instead to start referring to Czech party politics "stable fragility" (Haughton, Novotná & Deegan-Krause, 2013).

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ORIGINAL PAPER

Postmodernism and the Culture of Values Brief Radiography Regarding the Axiological Education of Teenagers

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Abstract
This study synthesizes the results of an empiric research, whose aim was to identify the axiological options of teenagers (high school pupils in their senior year, close to graduation), within the socio-educational and cultural context of the postmodernist period that we are currently passing through. The instruments used (the assessment test of moral values, the assessment test of material values, the confidence questionnaire), in accordance with the proposed goal and the formulated hypotheses have aimed at establishing some correlations between the moral-axiological profile of teenagers and the educational factors (in particular the non-formal and informal factors), which constitute the framework, the reference system between the material expectations and their option for their future profession. The results obtained following the carrying out of the research, have outlined an axiological profile of the characteristics of the postmodern juvenile, have emphasized the existence of an own culture of teenagers, have pointed out the downfall of the role that educational environments used to have in the modern period in the axiological and professional orientation of teenagers, and they have allowed the establishment of connections between the axiological and professional options of the subjects. At the same time, new perspectives and actional-methodological possibilities have emerged in this field of axiological education.

Keywords: *postmodernism, axiology, after-postmodernism, values/non-values, axiological system*

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Introduction

The term "postmodernism" is used for the first time in 1870, in an artistic context, when the English painter John Watkins Chapman employs the syntagm "postmodernist painting" to name the European plastic phenomenon that followed the impressionist painting. Towards the middle of the 20th century, the term gets even more spectacular, expanding into different fields and setting up a new stage for the culture and civilization. The frequent use of the concept after the 7th decade of the last century is owed to Jean-François Lyotard, who publishes in 1979, the essay *"La condition postmoderne"*. In other words, postmodernism is not a philosophical movement: it can also be found in architecture, graphics, the art of dance, music, art and literary theory and at present it becomes the favorite subject of many authors (psychologists, sociologists, pedagogues, philosophers, literati), because all areas of the socio-economic are influenced by its effects.

In the current world, postmodernism brings new hierarchies, theories, new orders and preferences. Some authors (Lyon, 1999) consider that postmodernism's characteristics of the cultural and intellectual life are the following: giving up the theory according to which science is built on a solid basis of noticeable facts as well as questioning the illuminist ideas; eliminating all hierarchies regarding knowledge, opinions and preferences; orienting towards local aspects rather than general, universal ones; replacing written, printed text with images offered by the TV screen or monitor, in other words, passing from logocentrism to iconocentrism. The values of the modern era are parodied, reconsidered and revalued from a new perspective. Postmodernism proclaims diversity, eclecticism, mixture of styles, shapes, manifestations, contradictory states. The relations between people change, the power of money is amplified and it triggers the pursuit of personal interest, diminishing self-respect and respect for others (Lipovetsky, 1992). Multiculturalism, interculturalism and transculturalism become directions proclaimed by postmodernism, aiming at cultural holism, globalization, geomodernism. The book (as Lyon also noticed) is no longer seen as an absolute, therefore losing its value as the singular driving force of culture in/over time, since the postmodern man is attracted by the live and colored image, provided by the TV, or especially by the virtual world of the computer. The TV and mass media, in general, create a world of "simulacra", a "hyperreal" (Baudrillard, 1981), illusionary and lively colored world that incites senses.

We must not understand that all these changes have necessarily a negative aspect or negative effects. What must be underlined is the fact that flexibility within each department and between all areas of axiology leads to a greater freedom of movement inside individuals – which is a positive thing – but this freedom offers also the possibility to slide easily between different axiological codes, even antagonistic ones, as a way for subterfuge – and in this respect, negative effects are obvious.

The postmodern juvenile can embrace easily (even enthusiastically), in the name of postmodern principles, the (sub)urban subculture, slipping many times, without realizing and irremediably, into the area of drugs, alcoholism, juvenile violence, street fighting, electronic games or video art. Many times, the juvenile himself, caught up in the traps of such a world that he believes in firmly, cannot realize why he is wrong and why people disapprove of his behavior. In this case, he feels trapped even more in his own axiological disorientation, seeing it as a way for cultural being, at the same time, creating himself own axiological, altered codes, of whose existence the educational

tutorial factors know nothing about (Maliţa, 1998: 93-108; Cucoş, 2000: 74-78). Synthesizing the concepts of several theoreticians of this current (Harvey, Bauman, Hassan, Williams, Bell, Graff, Lyotard, Călinescu etc.), Elena Macavei (2001: 16-19) sets up a comparison between the characteristics of postmodernism and those of modernism:

- **Modern**: rationality, logical rigor, rigorous delimitation, determination, certitude, framing into a style, conformism, fixity, permanent, imitation, continuity, centralized, unitary, convenience, certitude, cultural.
- **Postmodern**: playful behavior, alternative, variants, giving up limits, borders, indetermination, ambivalence, mixture of styles, denial, rebellion, mobility, ephemeral, immediate, originality, discontinuity, decentralized, fragmentary, tolerance, incertitude, intercultural, indeterminacy (a concept which, in Ihab Hassan's opinion, is composed of indetermination and immanence).

Other authors (Taylor, 2005) consider that modernity has the following essential characteristics:

- Development of new mechanical and electrical technologies in the context of accelerated industrialization of production;
- Theoretical revolutions in the field of physics and social sciences, based on the positivist paradigm of objective knowledge of the problems;
- Large scale demographic dysfunctionalities regarding migration towards the urban areas with drastic consequences on rural, agricultural and communal traditions;
- Increase in consumption capitalism;
- Increase in the number of multinational corporations and internationalization of markets;
- Birocratization of social life;
- Development of strong mass-media systems, which allow the control of the audience and its fragmentation depending on interests and expectations;
- Intensification of the influence of strong states in the field of ideology and military field ;
- A fluctuant world economy because of trade and national loans managed by the strong states.

In some authors' opinions (Lyotard, 1984; Jameson, 1991; Foster, in Taylor, 2005; Crouse, 2008), she mentions a few characteristics regarding postmodern education and culture:

- Increase in global mass media, whose activities transcend the traditional borders of space and time. The programs broadcast by these systems eliminate important distinctions built traditionally on modern cultural identities. Therefore, dichotomies emerge between "high art" and "popular culture", "public" and "private", "surface" and "depth".
- Diversification of new creative and artistic practices that reject linearity, coherence, unity and realism of artistic modernism, and recycle old cultural forms, using as well parody. Hence, combinations of diverse elements from the mass media culture are put together and intertwine in new and unexpected ways, the essential characteristics being discontinuity, fragmentarism, but also intertextuality.
- There is a growing suspicion regarding the credibility of the fundamental narrations that have supported the dominant institutions of modern culture.

- There are promoted small, local cultures and "stories", temporal experiences, produced sometimes by marginalized cultures; there is no longer any metanarration, no objective basis for critique, we can no longer talk about a vision on the world that explains the whole life; there are only "tales" or "stories" which are viable only within a community; knowledge is completely subjective and it comes as a result of culture and language; there isn't only a single universe but multiuniverses.
- Societies depend on inclusion, tolerance, fragmentarism, multiculturalism; the accent falls on differences; people are social constructions determined socially;
- If modernists laid accent on the "group", postmodernists emphasize the individual;
- Erosion of traditional identity, based on stability and essence. For instance, the concept oh "individual" has dominated the modern philosophy and psychology. At present, the models are atypical and are characterized by ambiguity, fluidity, defragmentation, partiality and simultaneity.

At present, in the specialized literature (Leicester, 2000; Smith, Wexler, 2005; Rudaitytė, 2008), the syntagm post-postmodernism or after-postmodernism is also used as a distinguished phase that emphasizes the main traits or characteristics of postmodernism. The essential traits of postmodernism are reflected not only in the field of culture, art but also in the field of education. A comparative analysis of the modernism/postmodernism essential notes (for the educational field) is carried out by E. Joiţa (2009: 190-191):

Table1 Comparative analysis between modernism and postmodernism

Modernism	Postmodernism
• Relation to causality, determination, cause-effect relation. Diachrony. Determination	• Relation to differences and contrasts. • Pointing out roles, functionality of relative, particular aspects and synchrony. • Interdetermination
• Relation to large contexts	• Relation to particular situations and concrete cases, contexts.
• Relation to la typical	• Relation to change
• Syntheses, systems, structures	• Critical analyses, antitheses, role of dichotomy and divergence • Destructuring • Skepticism on the great theoretical perspectives
• Value of criterial, structuralist, logical, objective interpretation	• Value of free, spiritual, relativistic interpretation beyond models, through own reflections, without turning to the value of consensus based on own experience
• Creation, construction	• Deconstruction through the critique of texts, relations, hierarchies, ideas, systems and structures. • Knowledge through problematization, subjective understanding of errors, through the selection, critical analysis of information and arguments, and not through metaphysical reason.
• Value of quantitative research	• Value of quantitative research. It is impossible to put into practice the classical scientific method.

	• Knowledge is subjective.
• Role of rigorous selection	• Role of varied combinations.

According to some authors (Cucoş, 2000; Siebert, 2001; Stan, 2004; Joiţa, 2006; Ulrich, 2007; Joiţa, 2009; Maciuc, Ilie, Frăsineanu, Mogonea, Bunăiaşu, Mogonea, Ştefan, 2011) the main tendencies and directions in the postmodern education are the following:

- Searching and promoting alternatives for teaching and learning as well as educational alternatives;
- Eliminating the border between sciences;
- Discontinuity, decentralization, tolerance, incertitude, interculturality, globalism, individualism, deconstruction, humanization of technology, promotion of new values, diversification of communication;
- Promoting new educations;
- Realization of thorough curricular reforms; realization of managerial decentralization; personalized approach of strategies;
- Use of alternative sources of information;
- Multiple correlation between different fields of instruction and reality;
- Openness towards community through the transfer of educational roles and towards other factors;
- Preference for educational finalities form the category of goals, to the detriment of normative, referential objectives;
- Accepting and capitalizing on the multiple ways and modalities of instruction, learning;
- Capitalizing both on the theoretical and applicative knowledge;
- Appreciating the importance held by the contextual learning, that is, learning by doing;
- Promotion of non-cognitive, socio-emotional and self-reflectiveness factors;
- Capitalizing on the "intra-", "inter-" transdisciplinary correlations ;
- Promotion of study, predominantly critical and constructive, and also of educational practice;
- Capitalizing on the subject and social;
- Promotion of flexible approaches, multiple interpretations and reflections, complex and complementary explanations.

These traits characterize to a great extent the constructivist paradigm, which acts as an actional-methodological alternative in the educational practice, being based on deconstruction and "building" of knowledge through the own activity of the one learning (DeVries, 2003; Danforth, Smith, 2005; DeVries, Zan, 2005, Diallo, 2005; Joiţa, 2006). In such an era of profound changes, in an "open" and democratic society that creates and recreates continuously new axiological codes born or not from the axiological codes of a preceding "closed" society (Bergson, in Albu, 1998), the role of education is very difficult, and the axiological orientation of teenagers is hampered by many obstacles. That is why, first of all, the school and family, but also the other cultural and educational institutions, must teach youngsters to truly live their youth, but a youth without the illusions or hallucinations offered by drugs and alcoholism or by the ephemeral pleasures of a virtual world.

Methodology

In a postmodern world, eclectic and preoccupied by the quotidian and by hedonistic pleasures, teenagers are the most "vulnerable" to the effects of the rapid changes that take place in the world of values. Thus, new axiological exigencies emerge in the reconsideration of moral values (Glava, 2000: 211-215), so that teenagers can form a culture of authentic values and make a distinction between these values and the non-values (treated often as values).

In this respect, we have conducted an action research in the 2011/2012 academic year, whose main goal was to notice the way in which adolescents (high school pupils) relate to moral and material values and to the way they project a moral profile within a continuously changing society. The action research considers form a different perspective some of our older preoccupations (Mogonea, 2004).

Throughout our research, our ***objectives*** have been the following:

1. Knowing the moral-axiological, material and pragmatic options oh high school pupils, with repercussions on the choice of a future profession;
2. Identifying teenagers' professional options (when the investigation took place they were sure of pursuing higher education courses), by relating to the own axiological system;
3. Pointing out possibilities for support in the axiological orientation of adolescents

The general hypothesis *of the research was the following one: We consider that the educational paradigms of the postmodern pedagogy, in their functional-actional dimension, influence fundamentally the formation of the psycho-moral profile of teenagers, in an axiological universe continuously changing and accelerating, with a direct impact on the social desirability of professional options.*

In close relation with the general hypothesis, we have pursued two derivative **particular hypotheses**:

1. The psycho-moral profile of teenagers is strongly determined by non-formal and informal postmodern educational factors, which often counterbalance the educational influences of the formal;
2. The material-financial expectations of young graduates influence directly the choice of the future profession.

The pursued variables have been the following:

a) As for the general hypothesis, we have aimed at establishing a correlation between the educational paradigms of postmodern pedagogy and the formation of the psycho-moral profile of teenagers as well as the social desirability of the professional option.

b) As for the particular hypothesis 1, we tried to establish a correlation between the axiological preferences of pupils and the persons or environments considered to be reference points or axiological models.

c) As for the particular hypothesis 2, the pursued correlation was the one between the teenagers' preferences for certain values and the professional option.

The focus group of subjects

The focus group of subjects consisted of 204 subjects (ten 12^{th} grades) in the region of South-West Oltenia (the counties of Dolj and Mehedinți), from different specializations (specializations: pedagogy, modern languages, mathematics, computer science, physics, history, social sciences, chemistry and biology). The chosen subjects are high school pupils, adolescents, with the age between 18 and 19 years old. On the other hand, the surveyed subjects declared their intention to pursue higher education

courses, which is an important aspect in noticing the pertinence of the established correlations.

The research instruments and the way of their capitalization

The research set of instruments was based on:

- ***an assessment test of moral values*** – it comprises an inventory of 20 values and non-values respectively, that the subjects marked with "+" (those considered to be values) and with "-" (those considered to be non-values), depending on their own axiological options. The positioning in two columns of values/non-values eased the understanding of the way in which pupils observed the existence of a relation of synonyms as well as the fact that both synonyms had the same notional content (for instance, "friendship"="companionship" or "arrogance"="infatuation"), although some are only partial synonyms.
- ***an assessment test of material values*** – it comprises 20 material values, that is, 20 hypostases in which pupils were invited to imagine and choose between an ordinary, modest life and a pecuniary, luxurious and extravagant life (Mogonea, 2004). Their marking was done with points from 1 to 5.
- ***a confidence questionnaire*** – aims at noticing the possible sources/environments of provenance that determined the choice of moral and material values/ non-values (mass-media, parents, teachers/school, group of friends, own opinions) that teenagers believe in and consider to be reference points and moral-axiological models (Mogonea, 2004). They have also been marked with points from 1 to 5. Also, this questionnaire takes into consideration the professional option of adolescents, materialized in the choice of a faculty/specialization in accordance with the educational offer of the University of Craiova.

The three tests aimed at pointing out the teenagers' orientation in terms of values, their own axiological system, the sources and axiological models that they relate to, the relation between all this and their professional option. We turned our attention on the pupils in the 12th grade, first of all because of the importance of this phase, on one hand, on the formation of a behavior in accordance with the system of values which is functionable at social level, and on the other hand, on the professional orientation of teenagers.

Results

Following the above mentioned three tests, we obtained the following results:

a) The assessment test of moral values

Table 2. Teenagers' options regarding the scoring of values/non-values in postmodernity

Value/ non-value	Total		Value/ non-value	Total	
	"+"%	"-"%		"+"%	"-"%
1.Frienship	100	0	21.Eccentricity	29.4	70.6
2.Sociability	95.1	4.9	22.Justice	100	-
3.Impulsiveness	20.1	79.9	23.Hypocrisy	27.9	72.1
4.Honesty	90.6	7.4	24.Frankness	70.6	29.9
5.Impertinence	9.8	90.2	25.Arrogance	25.5	74.5
6.Sincerity	79.9	20.6	26.Lack of self-control	15.2	84.8

7.Servilism	22.5	77.5	27.Honesty	87.7	12.3
8.Perseverence	79.9	20.6	28.Servility	7.4	92.6
9.Equity	77.9	22.1	29.Consistency	72.5	27.5
10.Hostility	38.2	61.8	30.Avarice	7.4	92.6
11.Moderation	77.5	22.5	31 Modesty	79.9	20.1
12.Duplicity	25	75	32.Animosity	5.4	94.6
13.Extravagance	44.1	55.9	33.Infatuation	10.3	83.7
14.Parsimony	20.1	79.9	34.Generosity	95.1	4.9
15.Tolerance	65.2	34.8	35.Dexterity	89.7	10.3
16.Self-sufficiency	17.6	82.4	36.Indolence	22.1	77.9
17.Indiference	36.8	63.2	37.Desire for gain	52	48
18.Virtue	77.9	22.1	38.Dignity	95.1	4.9
19.Greed	17.2	82.8	39.Amicability	92.6	7.4
20.Moral integrity	87.3	12.7	40.Spirit for mutual aid	92.2	7.8

By interpreting the data presented in table no. 1 regarding the scoring of values/non-values by the surveyed subjects, we can assess the following:

- just two values have received from pupils a maximum score ("friendship" and "justice");
- there have been values included in the sphere of non-values, as there have been non-values included in the sphere of values (notice table no. 3);
- the assessment of values/non-values in the first column is not the same with the synonyms in the second column, significant differences existing between some of them; for instance, "*greed*"- 17.2% marked with "+", 82.8% marked with"-", but "*desire for gain*"-52% marked with "+" and 48% marked with "-"; "*hostility*"-38.2% marked with "+" and 61.8% marked with "-", but, "*animosity*"-5.4% marked with "+" and 94.6% marked with "-", "*equity*"-22.1% marked with "-" and 77.9% marked with "+", but "*justice*"-0% marked with "-" and 100% marked with "+"; "*servilism*"-22.5% marked with "+" and 77.5% marked with "-", but "*servility*" 7.4% marked with "+" and 92.6% marked with "-".

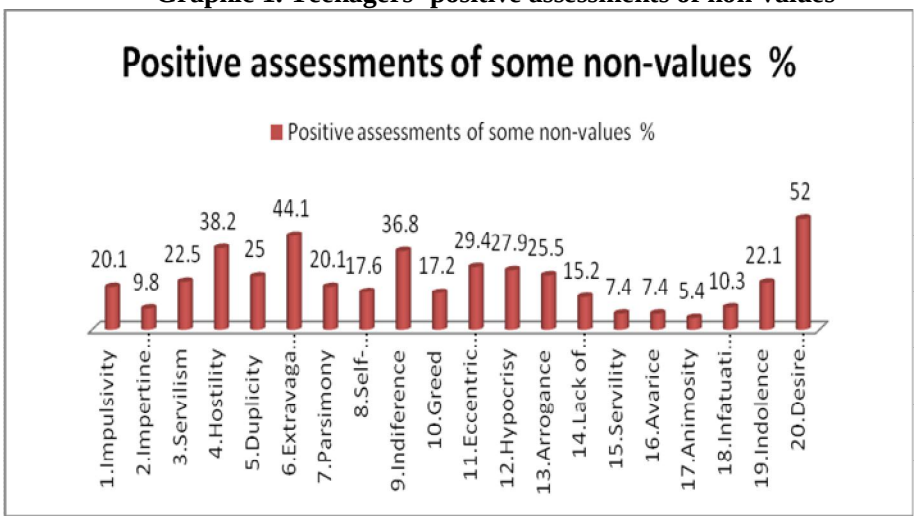
Table 3. Teenagers' options regarding values/non-values

Positive assessments of some non-values		**Negative assessments of some values**	
Non-values	**%**	**Values**	**%**
1.Impulsivity	20.1	1.Sociability	4.9
2.Impertinence	9.8	2.Honesty	7.4
3.Servilism	22.5	3.Sincerity	20.6
4.Hostility	38.2	4.Perseverence	29.1
5.Duplicity	25	5.Equity	22.1
6.Extravagance	44.1	6.Moderation	22.5
7.Parsimony	20.1	7.Tolerance	34.8
8.Self-sufficiency	17.6	8.Virtue	22.1
9.Indiference	36.8	9.Moral integrity	12.7
10.Greed	17.2	10.Honesty	12.3
11.Eccentricity	29.4	11. Consistency	27.5

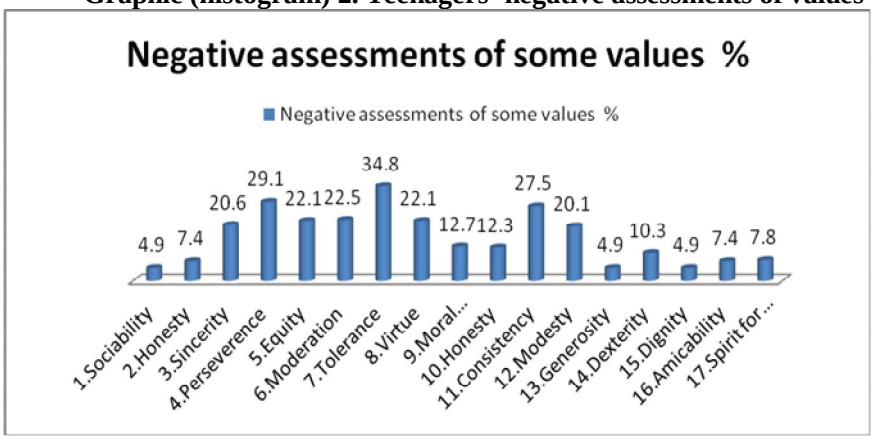
12.Hypocrisy	27.9	12.Modesty	20.1
13.Arrogance	25.5	13.Generosity	4.9
14.Lack of self-control	15.2	14.Dexterity	10.3
15.Servility	7.4	15.Dignity	4.9
16.Avarice	7.4	16.Amicability	7.4
17.Animosity	5.4	17.Spirit for mutual aid	7.8
18.Infatuation	10.3	-	-
19.Indolence	22.1	-	-
20.Desire for gain	52	-	-

The above data can also be represented graphically (histogram no. 1 and no. 2) as it follows:

Graphic 1. Teenagers' positive assessments of non-values



Graphic (histogram) 2. Teenagers' negative assessments of values



b) The assessment test of material values demonstrates that adolescents are also inclined to axiological options that would provide them with a rich, exaggerated life (notice Table no. 4):

Table 4. Teenagers' options regarding material values

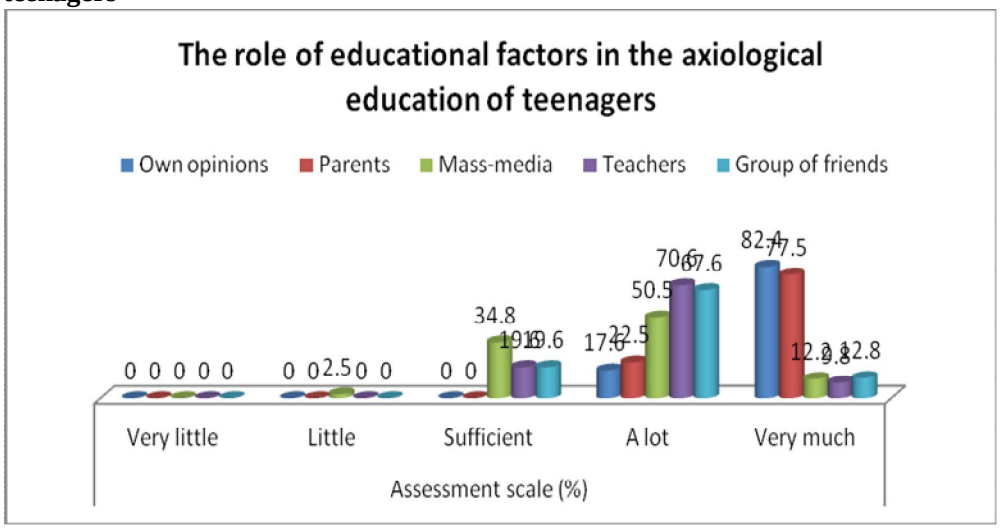
Material values	Assessment scale (%)				
	Very little	Little	Sufficient	A lot	Very much
- a luxury home	-	-	-	17.6	82.4
- a financial situation well above average	-	-	-	22.5	77.5
- ordinary communication means for an efficient communication	-	2.5	34.8	50.5	12.2
- small, but safe and profitable businesses	-	-	19.6	70.6	9.8
- a bank account that would cover usual needs	-	-	19.6	67.6	12.8
- having the most modern technical audio-visual means	-	-	-	22.1	77.9
- one or more luxury cars	-	-	-	25.5	74.5
- becoming the manager of an important firm	-	-	-	27	73
- holding a high and important public position	-	-	2.5	18.1	79.4
- possibilities to spend vacations in different places, domestically or abroad	-	7.4	12.2	69.6	10.8
- a comfortable home	-	13.2	24.5	57.4	4.9
- enough money for an ordinary life	-	20.1	25	45.1	9.8
- state-of-the-art communication means	-	-	-	12.3	87.7
- lucrative businesses	-	-	-	17.2	82.8
- a bank account with a sum as large as possible				16.3	83.7
- having at one's disposal ordinary technical means for one's needs	-	7.4	29.9	57.8	4.9
- an ordinary car	-	39.7	45.1	15.2	-
- being a business associate	-	39.7	45.1	15.2	-
- a modest job	7.4	42.1	43.1	7.4	-
- having an own vacation house in an exotic destination	-	-	2.4	37.3	60.3

c) The confidence questionnaire applied to pupils in the 12th grade pointed out the following results:

Table 5. The results of the confidence questionnaire

Educational factors	Assessment scale (%)				
	Very little	Little	Sufficient	A lot	Very much
Own opinions	-	-	-	17.6	82.4
Parents	-	-	-	22.5	77.5
Mass-media	-	2.5	34.8	50.5	12.2
Teachers	-	-	19.6	70.6	9.8
Group of friends	-	-	19.6	67.6	12.8

Graphic 3. The role of educational factors in the axiological education of teenagers



The subjects' professional options (students-to-be) are as follows:

Table 6. The subjects' professional options

Faculties	Assessment scale (%)				
	Very little	Little	Sufficient	A lot	Very much
Faculty of Letters	-	-	-	25.5	74.5
Social Sciences (Geography, History, Philosophy, Sociology, Political Sciences)	-	7.4	12.2	69.6	10.8
Exact Sciences (Mathematics, Computer Science, Physics, Chemistry)	-	-	2.5	18.1	79.4
Economics and Business Administration	-			27	73
Law and Public Administration	-			12.3	87.7
Automatics, Computers, Electronics	-			17.2	82.8
Mechanics	-	-	-	12.3	87.7
Electrical Engineering	-	13.2	24.5	57.4	4.9
Physical Education and Sports	-	-	5.4	15.2	79.4
Agriculture, Horticulture, Biology	-	7.4	29.9	57.8	4.9

The results obtained in this research have pointed out a series of characteristics such as: an axiological disorientation of teenagers, negative assessments of certain values, positive assessments of certain non-values, tendency for the desire of immediate gain, extravagance, luxury, indifference, disbelief regarding certain values, but faith in certain non-values.

Discussions

For the statistical interpretation of the results obtained following the research, we have used the *Pearson (r)* correlation coefficient in order to establish the correlations between the variables within the hypotheses.

a) In order to establish the correlation between the psycho-moral profile of teenagers and the educational environments or the factors influencing their axiological formation, we shall exemplify by presenting the obtained values: parents: r =.297 (significant correlation at 0.01 level); mass-media: r =.226 (significant correlation at 0.01 level); teachers: r =.372 (significant correlation at 0.01 level); group of friends r =.549 (significant correlation at 0.01 level).

From the data obtained we can notice that the group of friends has a major influence. We substantiate this option through the fact that the surveyed subjects are (still) adolescents, (still) looking up to groups with a strong influence on them. On the other hand, teenagers' tendencies towards eccentricity, originality, extravagance lead them towards extreme acts, sometimes socially undesirable.

Mass media also exerts a great influence on teenagers, and this fact is measured by the correlation coefficient who has indicated a link between the models imposed by mass media and teenagers' preferences for certain material values (which show expectations of a luxury life, great financial gains, important positions etc.).

The study points out the importance of the influence of factors from the non-formal and informal environments, seen as a disloyal "competitor" for the formal environments represented here by teachers. The formal educational environment (r = .372) represents nevertheless a positive indicator in the educational orientation of teenagers.

The parents (r = .297) can be education's fundamental representatives, influencing to a great extent the orientation, direction and content of children's education. The parental education (as goal, contents and strategies) must be in line with both the education promoted by school and the non-formal environments, for the harmonious development of the child's personality.

b) for the establishment of correlations between the teenagers' options for certain material values and their professional options, we have used the same Pearson correlation coefficient. The results obtained show correlations (significant at 0.01 level) for certain faculties that, in general, are alluring because of the material and financial advantages that the practice of a certain profession would bring.

We present the greatest values obtained: Faculty of Economics and Business Administration: r =.348 (significant correlation at 0.01 level); Faculty of Law: r =.227 (significant correlation at 0.01 level); Faculty of Automatics: r =.183 (significant correlation at 0.01 level); Faculty of Physical Education and Sports: r =.184 (significant correlation at 0.01 level).

As for the Faculty of Letters, the correlation is significant (for the same level of significance) but only in the case of moral values and not of material values, a fact which confirms once again the hypothesis according to which there is a correlation between the teenagers' material expectations and options and their professional option.

Conclusions

The 3rd millennium started under the auspices of the postmodern constructivist paradigm, which apparently brings incertitude, denial, nihilism, and the reassessment of metanarrations and modern paradigms. The modern values,

considered immutable and eternal become in postmodernism reasons for incertitude critique and opposition.

The goal of our study is to outline this incertitude surrounding the values of the postmodern education continuously reforming itself and even in crisis, as Ph Combs first announced in 1968. But it may be possible that this crisis that education is confronted with is nevertheless an element of normality, given that the world is in a continuous rapid pace modernizing, changing and adapting itself.

In the present study, we have tried to identify eventual schisises between the theoretical-normative dimension of pedagogy and its methodical-applicative part. Hence, we have tested adolescents' moral-axiological conscience and behavior (pupils in the 12^{th} grade) as well as their professional expectations in relation to this psycho-moral profile. The conclusions we have come to, point out that:

- high school pupils (students-to-be) are oriented towards practical, materialistic dimensions, materialized into important financial gains; holding public positions; having very profitable businesses, luxury cars etc.;
- they prefer well paid professions;
- they want immediate gains from the practice of some apparently easy professions.

The results we have come to and which confirm the established hypotheses create at the same time, the premises for some theoretical and especially actional-methodological openings regarding teenagers' education for values and the formation of a culture of values, in line with the exigencies and expectations of a postmodern world that is changing fast, but surrounded by permanent incertitude. We underline the necessity of the Romanian School of implementing the new instructive-educational paradigms that assure the training of graduates for the real life and world. Teenagers' pragmatism is revealed by the need to form those capacities and competences that can allow them to find their way in real social, professional and life situations.

In this context, we consider necessary to underline the importance of the instructive and educational alternatives, and in this respect, the socio-constructivist paradigm (beyond its limitations inconveniences and critics) is a possibility for the satisfaction of these exigencies. Hence, we believe that teenagers will be better prepared for school as well as for the geomodernity of the 21^{st} century, being surrounded by "thousands of cultures and a single civilization" (Maliţa).

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ORIGINAL PAPER

The competence – a new paradigm in training and educational sectors

Ileana Nicula*

Abstract
The globalization of the labour market imposes mobility, integration, equal opportunities for all the actors implied in this matter. The scientific and technique revolution and the implementation of its results in every day life require not only new occupations/professions, but also new skills and perspectives in practising them. The standardisation of the activities/tasks deployed at the workplace was the answer of the issues. The occupational standards became an instrument of training providers in order to transfer knowledge, skills and attitude needed. Around these standards new concepts have been developed and the core of them is competence.
The European Parliament Council involved in this matter highlighting that "the development and recognition of citizens' knowledge, skills and competence are crucial for the development of individuals, competitiveness, employment and social cohesion in the Community" (Official Journal of the European Union, 2008: 1). Moreover, the Lisbon strategy stressed the importance of a „closer cooperation in the university sector and improvement of transparency and recognition methods in the area of vocational education and training" (Official Journal of the European Union, 2008: 1). The working paper provides an analysis concerning the use of two of the concepts (*competence* and *qualification*), both in the occupational standards framework (OSs) and in educational standards framework (ESs). The author focuses on underlining the actual differences between the two concepts within OSs and ESs. [The author was part of three teams that have designed occupational and qualification standards, including two in the banking industry.]

Key words: competence, occupational and educational standards, personal and professional skills, hard and soft skills/competences, competence-based education

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Introduction

In the ’80 the Great Britain has started to standardise the occupations and professions, based on a new concept, namely ***occupational standards***. The core of this approach is ***the competence***. Around this concept other very valuable concepts were born and the Germans brought an important contribution, due to the fact that their educational system is perceived as being outstanding, not only at University level, but also at Vocational level. Concepts as *social* and *cognitive competences*, *core*, *general* and *specific competences*, learning objectives and outcomes, levels of responsibility, qualitative benchmarks, qualification and educational standards have been developed in order to implement the best practice to train and educate people, not only in the schooling period, but also throughout life.

According to this conceptual framework, the entities implied in training and education, the teaching and learning processes, the timetable and the way in which an individual reaches the desired knowledge, skills and competences (through formal, informal or nonformal ways) are considered to be neutral factors. The essential element is the outcome, the required competence.

The technical and scientific revolutions, practical implementation of their outputs in everyday life activated the labour market, which became more fluid and more dynamic, requiring new occupations/professions. Among them there are the training providers, which noticed the discrepancy between the needs of the real labour market and the employees’ skills. Two phenomena were observed: on one hand the rising of unemployment, on the other hand a constant supply of jobs for which there is no qualified workforce. In fact the *employability* has become a key element in analysing the labour market, highlighting the *functional illiteracy*.

The labour market is now globalised and imposes transparency, integration and equal opportunities, in order to keep pace with the economic and social development and with the knowledge-based society. The educational services are public services, regardless of their providers (public or private entities) and their quality is considered to be a part of the strategic interest of each nation. Therefore, the quality assurance must be supervised and regulated. The free market and the supply and demand are important factors for breaking the monopoly of the ’classic’ educational suppliers, but not enough for an increasingly competitive market.

In Romania (and according to some studies, the situation is similar in many countries), the classic school (vocational and university) ceased to prepare the workforce needed for more and more diverse and complex businesses within so-called knowledge society. Its certificates and diplomas proved to be worthless; pointing out that the period in which jobs were forever has just ended. Moreover, the professional experience may be valued in the workplace without the existence of any formal document. The University studies were considered long-term investments, rewarded with the possibility of advancement up the corporate ladder. The knowledge-based society implies long life learning. However, it seems that, generally speaking, some of the young learn „*despite* the formal education” (Miller, 2003), which has become, generally speaking, ineffective.

Some milestones in the development of the Romanian Occupational and Educational Standards

In this respect Romania has established the competent bodies and the necessary legal framework. There have been created partnerships with the purpose of writing, updating and implementing the occupational standards. The implementation of OSs was possible due to a World Bank program (in the mid of '90), resulting a key body, the Council for Occupational Standards and Awarding (COSA, 1994), which transformed into the National Council for Adult Education and Training (CNFPA, 2003), now being reorganised as National Authority for Qualifications (ANC). The World Bank programme trained a group of specialists (and the author of the work paper was among them) to understand the specific terminology and activities, to write OSs and to develop occupational analysis. There was a new vision concerning the way in which jobs/occupations and professions are seen by all the involved actors (trade unions, professional associations, employers and employees, state agencies and so on).

The partnerships have an important role in the development and the implementation of OSs and qualifications, as well as their synchronization with the labour market. The interested parties (stakeholders) are trade unions, industrial committees, local communities, governmental agencies (as National Agency for the Labour Force), training providers, Universities and Vocational schools, non-governmental organizations (NGO) and so on. Former CNFPA developed and updated the methodological framework for the occupational analysis, the methodological framework for the design and revision of the occupational standards and associated qualifications and the methodological framework for the verification and validation of the occupational standards and associated qualifications (the project PHARE 2004 EuropeAid/121949/D/SV/RO).

These methodological frameworks led to the elaboration of the application guides, whose role is to offer practical instruments to design occupational analysis, occupational standards and associated qualifications. These methodologies are tools available for stakeholders who are interested in participating in the development of qualifications. The practical results are the development of the National Qualifications Framework, according to the European Qualifications Framework. The occupational and qualification standards and the principles around them aim to modernising the education/training (in broader sense) and to allow the validation of competences acquired by the jobholders.

Unlike other areas, Romania ranks very well in this regard. Moreover, our country is developing the Educational Standards according to the recommendation of the European Parliament, based on Lisbon strategy. The National Framework of Qualifications in Higher Education (CNCIS) "is the unique instrument which designs the qualifications structure and assures the national awarding, as well as the compatibility and comparability of the qualifications acquired within the higher education system" (Official Gazette, 2011). The responsible body is the National Agency for the Qualifications in Higher Education and Partnership with the economical and social sector (ACPART). „Qualification means a formal outcome of an assessment and validation process, which is obtained when a competent body determines that an individual has achieved learning outcomes to given standards" (Official Journal of the European Union, 2008: 2). In fact the *qualification* should be seen as the missing link between the real world of work and the formal educational systems. The former is

dynamic and flexible and the latter has proved to be conservative, inflexible, and even obsolete.

Occupational and educational standards

According to European Centre for Development of Vocational Training (CEDEFOP): „occupation standards may specify 'the main jobs that people do', describing the professional tasks and activities as well as the competences typical of an occupation. Occupational standards answer the question 'What does the student need to be able to do in employment?'" (Cedefop panorama series, 2009: 11). „The occupational standards are specific documents which describe what a person should know and should be able to do in order to be competent for a job." (ANC, 2013). The student (apprentice, pupil, learner, trainee – the *student* is used for simplicity) must perform a task/work, must exercise an occupation or profession, according to a qualitative standard (a set of criteria associated with the activities described by OSs).

First, Occupational Standards (OSs) are means *to connect the employment requirements* with *the education/training processes*, in other words to improve the employability.

Secondly, OSs offer a framework concerning the *comparability* and *transparency*, allowing the workforce mobility.

Thirdly, the educational market becomes a *competitive market*, the accumulated experience during the working process can be quantified and valorised for the benefit of people and the society, in other words it is possible „a validation of non-formal and informal learning." (Official Journal of the European Union, 2008: 2) Thus, the Diploma/Certificate becomes *the proof* that the owner can perform tasks/activities, can exercise an occupation/profession, and not that the owner attended a school/course and got a paper.

Fourth, the training/educational systems cease to be closed (a kind of black box). Socially and economically there are other interested parties such as professional associations, employers, industry committees, employments services, local authorities, etc. Their role is to allow the system to fulfil its tasks. Moreover, this framework should implement the transparency and the accountability of the assessment processes through the independent *awarding bodies*.

Fifth, the modularisation and the flexibility of the OSs allow periodical updates of the qualifications, curricula and the assessment methodologies in order to synchronise with the labour market.

The European Parliament Council issued in 2008 a recommendation on the establishment of the European Qualification Framework for lifelong learning, published in the Official Journal of the European Union. This document primary defines the *concepts* and *principles* and secondly motivates the necessity of interconnecting the labour market to the formal educational systems „to develop a framework for the recognition of qualifications for both education and training, building on the achievements of the Bologna process and promoting similar action in the area of vocational training." (Official Journal of the European Union, 2008: 1)

Almost all the countries, members of the European Union, successfully adopted and implemented the recommendation, as a result of its stated goal that „should contribute to modernising education and training systems, the interrelationship of education, training and employment and building bridges between formal, non-formal

and informal learning, leading also to the validation of learning outcomes acquired through experience," (Official Journal of the European Union, 2008: 2). As recommendation it „does not replace or define national qualifications systems and/or qualifications. The European Qualifications Framework (EQF) does not describe specific qualifications or an individual's competences and particular qualifications should be referenced to the appropriate European Qualifications Framework level by way of the relevant national qualifications systems." (Official Journal of the European Union, 2008: 2). Every country is responsible to define and describe the OS's, Qualification standards (QSs) and so on according to the national practice and legislation.

An important development in the spirit of the European Union recommendation is the process of translation from the *Occupational Standards* to *Educational Standards* (ESs). The Educational Standards resulted as a natural development, being somehow different from OSs as a result of the specific pedagogical approach, in which there is a „progressive accumulation of knowledge and skills, and not the logic of a systematic description of occupational tasks, functions and associated competences." (Cedefop panorama series, 2009: 7). Moreover, there is a connection between the two, as the ultimate goal of every level of 'classical school' is to 'arm' the graduate with the necessary competences, in order to find an adequate job or to continue smoothly the next educational level.

The mismatch, especially between education and the labour market, has been noticed for a long time, but nowadays, for businesses the discrepancy means also the impossibility to find properly qualified people for a large range of jobs. The reason could be that educational systems „fail to develop the competencies needed in the workplace." (Lassnigg, 2001). They could not keep the pace with the economic reality due to their inertia, due to the long lags when good educational reforms are implemented, and due to the conservative character of the systems. In education people are the main element of the system and the reforms should touch the spirit, the habits and the values of a critical mass.

The CEDEFOP highlighted that "education standards may define the expected outcomes of the learning process, leading to the award of a qualification, the study programme in terms of content, learning objectives and timetable, as well as teaching methods and learning settings, such as in-company or school-based learning. Educational standards answer the question 'What does the student need to learn to be effective in employment?'" (Cedefop panorama series, 2009: 11). The elaboration and implementation principles of CNCIS are:

- „The harmonization of the higher education qualifications to the labour market;
- The link between the higher education qualifications and the other qualification levels;
- The harmonization of the higher education programmes to the professional qualifications requirements.
- The achievement of the university curricula starting from the ***professional competences*** which are required on the labour market." (The methodology for the National Qualifications Framework in Higher Education, 2013)

The aforementioned document defines the specific concepts of ESs, namely ***professional*** and ***transversal competences***.

The *professional competence* means the proven ability to select, combine and use appropriately knowledge, skills and other achievement (values and attitudes) to successfully solve certain types of activities (at work) or learning situations related to a profession, under effectiveness and efficiency.

The *transversal competences* are those skills that transcend a particular field study, carrying a transdisciplinary nature. They consist of teamwork skills, oral and written communication, skills in native and foreign language, IT&C, problem solving and decision making, recognition and respect for diversity and multiculturalism, propensity for lifelong learning, openness and initiative, development of professional values and ethics, etc.

Based on the CNCIS methodology „each qualification is defined through the ***learning outcome***s, expressed by knowledge, skills and competences." (Official Gazette, 2011)

Knowledge, skill and the relationship with competence

The core of the occupational and educational standards is ***competence*** and the educational systems should *be competence-based*. The learning, teaching and training processes should be developed around the competence concept. As *information* concept, the generic concept of competence is difficult to be defined due to the abstract nature of the word. The definition of CEDEFOP, as it says from the very beginning, is customized for this purpose. In the paper *Berufsbildungs-PISA: Machbarkeitsstudie* (Baethge, Martin et al. Stuttgart: Steiner, 2006), Baethge, as cited in the CEDEFOP paper (Cedefop panorama series, 2009: 33), identifies five level describing the feature of the competence concept:

„(a) 'generic': transferable competences ('key skills'), not linked to a particular occupational context;

(b) 'occupational': targeting occupational competences for a wide range of occupations, formulated in a highly abstract way;

(c) 'task-specific but independent of specific jobs': linked to the description of specific tasks

(for instance roof tiling) without describing exactly how the task has to be fulfilled;

(d) 'job-specific, enterprise-specific' based on the description of the way tasks have to be

executed in a specific organisational context;

(e) 'person-specific' based on a description of how an individual carries out tasks in a particular system."

A competence creates value and can be identified by several elements which should be *observable*, *definable* and *measurable*. Starting from the definition „occupation standards may specify 'the main jobs that people do'", the occupational standards are elaborated documents that comply some rules, developed in several stages.

Within OSs a competence is not too simple, nor too complex (if so it should be split into several competences), leads to measurable outcomes through qualitative benchmarks, is *occupational*, *task specific* but *independent* of specific jobs (see above).

According to the definition of professional competence within ESs, this seems to be more complex, it is related to a profession (in my opinion university studies prepare the graduates for a pool of occupations, not for a specific occupation) and the 'success' as benchmark has loosely and not measurable nature. Moreover, the learning outputs of

given course (subject, discipline) 'arm' the student with some 'pieces of competences' and these should be corroborated to other pieces of competences acquired from other courses, laboratory activities, practice, etc., in order to fulfil a task in the real world of work.

Is there a difference between *knowledge* and *competence*?

„Knowledge means the outcome of the assimilation of information through learning. Knowledge is the body of facts, principles, theories and practices that is related to a field of work or study." (Official Journal of the European Union, 2008: 4) In the context of the European Qualifications Framework, knowledge is described as theoretical and/or factual. The concept of skill underlines the practical aspects of using the cognitive information. The attitude is the way in which an individual puts into practice his/hers knowledge and skills, in order to solve tasks/activities.

Concerning the competence, it concentrates knowledge, skills and attitude which allow the practice of an occupation in accordance with certain quality standards, conditions and contexts. Moreover, the competence can be proved by (a) taking the responsibility for completing a task; (b) using the appropriate instruments, equipments, devices, materials, etc. to fulfil activities; (c) cooperating with others in order to complete required tasks; (d) proving an autonomous behaviour in work assignments; (e) using the experiences gained previously; (f) modifying the routines if necessary; (g) imposing changes as stated goals. Thus the competence itself is multifactorial and has two facets, namely *personal* and *social competences*.

Key competences

The competence-based education means that a pool of *indispensable competence* should be appropriate assimilated, in several stages, during schooling periods, in order to demonstrate that the individual copes the real life throughout the creativity, the ability to take decisions, the personal initiative, solving problems, assessing risks, demonstrating critical and reflective thinking, all these items both in personal and professional life. These competences generated the concept of ***key competences*** which should be back up by an appropriate attitude which round the individual personality such positive attitude, the sense of collaboration, assertiveness, determination and motivation, overcoming the prejudices and so on. „Key competences are those which all individuals need for personal fulfilment and development, active citizenship, social inclusion and employment." (Luxembourg: Office for Official Publications of the European Communities, 2007: 3)

According to the European Reference Framework there are eight key competences: (1) communication in the mother tongue; (2) communication in foreign languages; (3) mathematical competence and basic competences in science and technology; (4) digital competence; (5) learning to learn; (6) social and civic competences; (7) sense of initiative and entrepreneurship; (8) cultural awareness and expression." The development of these competences was part of *The Strategy for the development of education 2001-2004. Prospective planning until 2010 (Romania)*, within the primary and secondary education.

Core competences

In my research I found out three approaches of this concept.

The first, (Prahalad and Hamel, 1990) identified the main feature of so-called *core competence*, namely the *uniqueness*. Armed by these competences, the employees create value that is very difficult to be copied by the competitors. The cutting edges companies are examples of entities implementing the core competencies. „Core competencies are knowledge, skills, and abilities (KSA) that are required by individuals in an organization to become successful. Core competencies are important because they are the foundation of an organization's culture and drive the behaviours that define its success." (http://www.anythinklibraries.org/).

The second approach is strongly related to the very individual on the labour market. According to this approach an individual should be: customer focused, cooperative and collaborative, understanding and compassionate, self-starter and have a strong work ethic, flexible and embrace change, an effective communicator, a problem solver, responsible and honest, emotionally mature, a continuous learner, an innovator, a leader (http://www.anythinklibraries.org/).

The third approach is related to the occupational standards framework and defines *core* or *general competence* within a specific industry (health, education, financial services, etc.). Thus, the *general competences* represent those competences that all employees are expected to demonstrate in order to carry out appropriately the functions of a particular occupation.

For instance in the UK financial services the *core* (general) *competences* are: "(1) Develop yourself to improve and maintain workplace competence in a financial services environment; (2) Plan and organise your work in a financial services environment; (3) Develop productive working relationships in a financial services environment; (4) Ensure you comply with regulations in your financial services environment." (National Occupational Standards for the Financial Services Sector)

For Romanian banking industry the general competences are: (1) Application of the legal provision on safety and health at work and in emergency situations; (2) Application of the customer due diligence (CDD); (3) Application of the rules to ensure the security of bank information.

Competences, outcomes and learning environment

„Learning outcome means statements of what a learner knows, understands and is able to do on completion of a learning process, which are defined in terms of knowledge, skills and competence." (Official Journal of the European Union, 2008: 1) Within the classic educational systems (primary, secondary, high school and university) learning outcome is in a way an elaborated concept for *learning objectives*, which teachers write down in their syllabuses. Moreover, learning outcome can be seen as double-folded: (a) generic and (b) linked by the context. „Another area of confusion for some people is the relationship between learning outcomes and competence." (Cedefop, 2011: 12)

Under the headline **Knowledge, Skills and the relationship with competence** the work paper identified the features of the competence, on short being more than a simple outcome. The cognitive and *non-cognitive learning outcomes* (skills) should be linked, with generic and person specific skills in order to be competent at workplace, namely

within a working environment. That why, as the cited document recommended, the right concept is ***competence-based*** education, qualification, etc.

Outside the working context (place, team, deadlines pressure, relationships between different practical or theoretical knowledge, etc.) a student may be assessed as acquiring an appropriate level of competence, but in fact he/she proved to cope with the *evaluation criteria* and the evaluation criteria cannot simulate the working environment. In fact, the schools 'arm' the students with theoretical knowledge and 'laboratory contexts' and in this way the emphasis on the practice should be understood. The practice has become more and more important in the eyes of the employers more than the grades, certificates and diplomas, as it allows contextualisation, the practical use of various knowledge and personal skills, the power of adjustment and so on. The employers do not only value the business practice, but also the work experience in non-business areas. Clearly stated learning outcomes „can have a social and political purpose in that they make the education and training system (including qualifications) more transparent to all users and in that sense can shift the balance of influence over the way the system operates (for example it can contribute to an accountability system)." (Cedefop, 2011: 8)

Clearly stated learning outcomes, practice, individual and team projects and other teaching and learning techniques coupled with appropriate evaluation methods could lead to competence. Active and pro-active learning are ingredients for acquiring the required competences, according to the individual needs.

The sociological studies have long argued that the crucial factor in modelling non-cognitive skills/competences (soft skills) is the family as the family transfers to the children, consciously and unconsciously, values as self discipline, aspirations, etc., namely the ***behavioural model***. Moreover, within learning environment we should bear in mind that „cognitive skills (hard skills) undergo the greatest amount of change in early childhood and stabilize by adolescence" whereas „noncognitive skills, on the other hand, continue to undergo changes throughout childhood and into young adulthood (sensitive period hypothesis)." (Hsin and Yu, 2012: 9)

This aspect is especially important for the university:

- if cognitive skills/competences are not appropriate shaped, the Young start university studies with a certain handicap, which should be removed;
- as non-cognitive skills/competences are not yet in place (the prevailing view is that these skills are flexible beyond the age of twenty), the University should shape and stabilize them accordingly, as they prove to be determinant in the labour market success.
- anyhow in higher education the competences development is focused on the cognitive ones. There is not enough room and time in the curricula, there is no time in the classroom to put completely into action the soft skills. The most important soft skills are „The Big Five" or O.C.E.A.N.: „**O**penness to Experience; **C**onscientiousness; **E**xtraversion; **A**greeableness; **N**euroticism." (Goldberg, 1971)

The Big Five can be completed by the Positive and Negative Reciprocity, Locus of Control scale (described by Rotter (1966) in *Generalized Expectancies for Internal versus External Control of Reinforcement.* American Psychological Association, Washington, DC.) and by the Brief Self-Control Scale (described by Tangney et al., (2004) in *High Self-Control Predicts Good Adjustment, Less Pathology, Better Grades, and Interpersonal Success*, Journal of Personality).

For instance, the first (openness to experience) implies intellectual stimulation, change and variety (fantasy, curiosity, creativity), which in fact shape the competence. The evaluation formulas used on the large scale in the schooling period are multiple-choice questionnaires, in which it is very difficult to assess subtitles. The Cedefop report stressed the learning outcomes in different segments of education and training. „The emphasis is on defining key competences and learning outcomes to shape the learner's experience, rather than giving primacy to the content of the subjects that make up the curriculum. Learning outcomes are being used in a range of countries to point the way to modernising schooling systems, thus acting as a renewing and reforming influence at different levels – governance, systemic reform, curriculum, pedagogy and assessment." (Cedefop, 2011: 9)

Concerning the higher education the above document stated that „learning outcomes also have an increasingly prominent role in higher education. The evidence is that the learning outcomes approach, on which there is broad agreement at the European policy level and often at policy level in Member States, is being adopted more slowly at the level of higher education institutions. Even if progress is slow, the learning outcomes perspective may point towards a major shift in the reform of higher education teaching and learning in the longer term."

Conclusions

Anyhow there are differences, the critical concept in ESs is the ***outcome***, which does not overlap the competence. For instance an individual knows who painted Mona Lisa (perhaps form school or from his/her reading), it is an outcome (formal or informal obtained), but he/she lacks the competences as an art critic (qualification). Hereby some concepts need to be used according to their proper definition and the universities should bear in mind that they do not offer qualifications, but rather *potential qualifications* (on short, a qualification means a pool of combined competences, which have been properly assess, according to qualitative standards).

Many concepts developed, enriched and defined by OSs are taken over into ESs, sometimes overlapping the definitions of the former. This aspect, in my opinion, has a negative impact especially over the outcomes expected from the graduates. The excessive focus on the concept of competence obscures the correct identification of the *real* and *required outcomes*, resulting from the courses (subjects).

In my opinion the university does not 'supplies' individuals with a specific qualification. The University supplies individuals with a ***pool of narrow competences*** (according to the study programmes), which allows them to integrate, easier or not, into the labour market in order to practice an occupation. Of course other training providers could offer training for certain qualifications and their certificates could have the same value on the labour market. Thus the Universities should adapt and cope with the fierce competition. For now the Romania universities have a slight advantage, due to the importance of the university diploma in the eyes of the employers. This advantage, however, begins to lose. The competence-based education/training has created a competitive market for training bidders, which offer courses for obtaining qualifications in the most required fields. Their advantage is that the trainers are practitioners with a high level of experience, the courses are very flexible, can be organised on levels, according to the level of trainees.

In my opinion there is a new upsurge of the form without substance on the syllabuses, any item must carry *general* and *specific competences*, as the ***transversal***

competences (concept belonging to ESs and defined above). In the university period it is very difficult to fill the accumulated gaps in this matter. Thus within the syllabuses I notice that 'to know' it is a competence (!?), so the enumerated outcomes are practically a series of 'knows'. In fact they are outcomes/outputs, which could become *narrow competences*, if and only if they are ***properly contextualised and assess***. The massification of higher education, the lack of time, the narrow possibilities to simulate the contexts do not allow a proper assessment, as well as an effective monitoring of the students evolution.

In my opinion the *good defined learning outcomes* are more valuable than a list of competences which cannot be transferred (would-be competences). But the idea does not diminish the importance of ESs and competence-based education. Yes, educational standards are forward steps in improving the educational systems, but not panacea. Yes, the educational standards allow flexibility, transparency, mobility, comparability, accountability (for professors and students), broader recognition, and synchronisation with the labour market. The university studies should not be limited to transfer practical and theoretical outcomes/competences, as other training providers, ***they need to head out beyond.*** Both universities and other education providers have their role in the knowledge society. They enter in competition, but have complementary functions. Therefore, the career orientation of the young people is becoming increasingly important to their success in the profession and personal life, enhancing economic and social domains.

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ORIGINAL PAPER

The European context for applying judicial mediation procedure. Case Study: Romania

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Abstract
This article aims to capture the development of policies that promote the judicial mediation in the European Union Member States and especially to analyze the situation of Romania.
At European level, it seems that Directive no. 2008/52/EC regulating certain aspects of mediation in civil and commercial matters did not have the expected results and currently this kind of judicial mediation is used in less than 1% of the cases in the European Union.
In Romania, Law no.192/2006 regarding mediation and the mediator profession was part of a judicial reform strategy designed to increase the quality of the justice system. Until now the law was amended many times, last time in 2013. This last modification brought the greatest change, by modifying the information procedure on mediation from a facultative procedure into a mandatory one, in certain cases.
We will analyze the policy issues and our state legislation adopted in this area, also capturing the statistical aspects.

Keywords: *mediation, legal aspects, European pro-mediation policies.*

Introduction

Alternative Dispute Resolution (ADR) is a very important subject for EU policy since, by offering alternatives to the usual judicial procedures, it helps to improve efficiency of the judiciary system. ADR is widely used in many European countries, both among the general public as well as the legal profession.

Mediation as the main form of ADR was regulated at European level by number of recommendations and the Directive 2008/52/EC. The recommendation no. R (98) 1 refers to mediation in family matters, especially divorces. The recommendation Rec (99) 19 deals with mediation in criminal cases and aims to improve the active

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participation of the victim and the offender in criminal proceedings. The recommendation Rec (2001) 9 shows alternative ways of resolving disputes between administrative authorities and private parties. The recommendation Rec (2002) 10 presents the subject of mediation in civil cases. In 2007, the European Commission for the Efficiency of Justice adopted guidelines to facilitate the proper implementation of these recommendations in the Member States of the European Union. On May 21st 2008 it was issued by the European Parliament and Council, the Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. This Directive has helped to impose the mediation procedure in the Member States, which are obliged to adopt some norms to implement the Directive or modify the pre-existing legislation to transpose the main provisions in the sense required by that Directive.

Conflict

1. General aspects

Conflict starts from the different points of view that people have about the world in general and about specific things or situations in particular. In most organizations and communities conflicts arise as a result to situations or problems towards which individuals exhibit strong feelings about and, usually, they are not very well informed about. Conflicts are not necessarily a bad thing. In many cases, conflict can be a positive source of energy and creativity, which can lead people towards clarification and development, both as individuals as well as members of a group (Markowitz, 2009: 71).

A simple and elegant definition of social conflict is found in a text on negotiation signed by James Wall and Michael Blum: "the interaction between the parties expressing opposite interests" (Wall & Blum, 1991: 275). Conflict has been described as a tense situation occured when two or more parties, in interaction, present divergent interests or the actions of one determine negative reactions from the other party. The conflict may be due to multiple factors, considered separately or summed, which can make it more difficult to return to the stable climate (Blaga, 2010: 911). Conflict can occur at any stage of life, including school life. At this level, it is necessary to manage conflict constructively, thus the pupils could develop skills for solving problems and learning to solve their own conflicts"(Niță, 2013: 22).

2. Manners to resolve conflicts

Robert Blake and Jane Mouton in 1964 described in the book *The Managerial Grid*, five ways of resolving organizational conflicts, from the most rather rejected by effective managers to those preferred by them. The five ways described by Blake and Mouton are called, in current literature, **conflict management styles**:

1. Parties avoids to discuss divergent interests (avoidance);
2. A party gives up to support their interests (accommodation);
3. Power is used and the strongest part prevails (confrontation);
4. Every opponent yields partially, reaching a compromise (compromise);
5. There are examined the reasons which led to the outbreak of the conflict, the problem is defined and convenient solutions are sought for both parties. This method describes the strategy of double victory - involving the initiation of a negotiation (collaboration) (apud. Boncu, 2006:22).

Afzalur Rahim (1983) in the article *A measure of styles of handling interpersonal conflict* proposed a new classification of management styles, ordering them according

to two axes (the axis of concern for personal interests and the axis of concern for the partener's interests):

1. **integration**, is used when there is a particular concern for the self combined with a sharp focus for the other;

2. **domination**, occurs from lack of care for others and intense concern for personal interests;

3. **obligation**, is the result of combining weak concern the self with particular concern for others;

4. **avoidance**, when both motivation types are at a low level;

5. **compromise**, arises as a result of moderate concern for both own interests and the interests of the opponent (apud. Boncu, 2006: 22).

The parties involved in a conflict manage to reach a result that integrates the options if they adopt a strategy based on problem solving, if they manage to see the conflict, as expressed by Mariana Caluschi, as "a challenge to creativity and change" (Caluschi, 2001:182).

Currently, worldwide, we find several established methods of conflict resolution:

- ***Alternative dispute resolution methods - ADR*** (negotiation, mediation, conciliation, arbitration, etc.)

- ***The indictment***.

Negotiation

An essential part of conflict management is to find a resolution that is trying to find a point of agreement between the involved parties. The process that can lead to that is called *negotiation*.

Negotiation is defined as an interaction between groups and individuals with interests and objectives initially divergent, aiming, after their discussion and confrontation of positions, to reach an agreement and make joint decision.

Conciliation

Conciliation is the informal procedure in which a third party, passive one, is "positioned" between the parties in conflict and means to identify and open a communication channel transmitting, usually, messages between conflicting parties, who are not willing to meet face to face. The process is similar to mediation but the conciliator does not advise or recommend what the parties should do.

Conciliation can be done for free by the judge or by a justice conciliator (while mediation is done by a third paid party). Thus, conciliation may be *judicial* (it is done by a judge), *para-judicial* (done by a justice conciliator) or *extra judicial* (the judge is not involved).

Arbitration

Arbitration is the procedure in which a third party, neutral one, (an arbitrator), hears the arguments of the parties in conflict and then make a decision. The arbitration may be conducted in a court or in a private environment. Depending on the situation, the decision of an arbitrator may be enforceable or not. The nature of the arbitrator's decision is usually specified from the beginning, by law or by a contract clause.

Administrative appeal

In administrative disputes between a public person and a private one there are internal ways to solve litigations namely the administrative appeal, procedure sometimes optional, sometimes mandatory, in which in case of disproof of an administrative act it can be repealed (with effects for the future) or retired (with retroactive effects). The administrative appeal may be of *amnesty* (when the appeal is

addressed to the body issuing the contested act, that is required to withdraw the administrative act) or *hierarchical* (when the appeal is addressed to the administrative body hierarchically superior to the one issuing the act, asking it to revoke or cancel that one) (Danileț, 2010).

Med - Arb (Mediation - Arbitration)

Mediation-arbitration is the combined form of solving conflicts nominating the procedure that starts with the third party acting as a mediator and, because the mediation is not successful, it happens that the third party to enforce the solution as arbitrator, based on information gathered in the first part of the procedure (Danileț, 2010).

Besides these alternative methods of conflict resolution frequently used, in some countries we find several different types of ADR, such as:

- Extrajudicial settlement certified by a notary public (Croatia);
- The possibility of a consumer to call the Consumer Complaints Committee or other body that handles complaints, approved by the Ministry of Affairs and Development before it is sent to trial (Denmark);
- Binding recommendations offered by the National Ombudsman in cases related to consumers and insurance by (Netherlands), etc. (Council of Europe, 2012: 144-145).

Mediation - Manner of conflict resolution

1 Mediation. General notions

Mediation "refers to voluntary participation in a structured process in which a neutral third party assists two or more parties attempting to reach an agreement" (Messing, 1993:68).

Other definitions insist on the facilitating function of mediation: "Mediation involves the intervention of a third party that has no decision - making and facilitatse the negotiation of those involved in the conflict" (Gibson, 1999: 6) and others on the orientation of negotiation towards solving problems: "In mediation , confrontation is replaced by cooperative approach, the underlying interests are stated in prejudice of the positions and the disagreements are depersonalized" (Elkiss, 1997: 676).

For negotiators, mediation is attractive because it does not diminish their decision ability and the freedom to establish their own agreement guidelines. However, there are situations in which the mediator has the power to impose a certain outcome. His power comes from prestige and reputation or the possibility of granting rewards to the parties and of punishing them (Boncu, 2006: 180).

According to the Recommendation Rec(2002)10, mediation is "a dispute resolution process where parties negotiate on the subject of the dispute to reach an agreement, with the help of one or more mediators".

The benefits of mediation are many, and among them we can mention:

- Reduced cost of mediation compared to the value of a trial;
- Reduced stress;
- Short time to solve the case;
-The advantage parties' agreement regarding the solution, thus retrieving a gain for both sides.

2 Principles of mediation

There are some cardinal rules, which we can consider principles, underlying the practice of mediation. Renowned authors list among them:

- Neutrality;
- Confidentiality;
- Fairness (fair, objective assessment);
- Voluntary participation.

3 Stages of mediation

In case of legal mediation, the parties in conflict have the right to be assisted by a lawyer or another person under the terms agreed. During the mediation, the parties may be represented by another person, who can make disposition documents (Law no. 192/2006, art. 52, par. 1).

Carnevale and Pruitt in the book *Negotiation and social conflict* of 1993 establish three stages of mediation:

1. arranging the scene where the interaction will occur. In this stage, information is collected about the parties and their dispute. The rules of the game are also exposed;

2. the problem solving phase, in which themes are approached and alternatives generated;

3. establishing the agreement, the final phase in which the mediator convinces the parties they have identified a mutually satisfactory solution (Carnavale & Pruitt, 1993: 181).

Messing Jeffrey in 1993 proposes 4 stages of mediation:

1. orientation;
2. joint session;
3. individual sessions;
4. agreement.

4. Mediation strategies and tactics

Mediation is based on the cooperation of the parties and the use, by the mediator, of the environment, methods and specific techniques based on communication and negotiation. The methods and techniques used by the mediator must serve exclusively the legitimate interests and objectives sought by the conflicting parties, the mediator can not impose the parties on the conflict subject to mediation.

On principle, the mediator gains the confidence of the parties, controls communication between them, identifies the themes of negotiation and establishes the discussion agenda, reduces the continence of the parties to make concessions.

Jean Bartunek, Alan Benton and Christopher Key (1975) classified in the article *Third party intervention and bargaining behavior of group representatives*, mediation strategies into two categories: **content strategies** and **process strategies** (Bartunek, Benton & Key, 1975: 532 - 557).

Content - based strategy includes tactics such as: providing information to negotiators about their own situation, but also the partner's situation, identifying issues, ordering them, suggesting concessions, weakening or reducing exaggerated claims, reducing tactical of parties, imposing maximal terms for completing the contract.

On the other hand, the strategy focusing on progress aims at removing the obstacles created by negative perceptions and tensioned relations between the two parties. The mediator who chooses such a strategy seeks to improve communication between the two negotiators (acting as an emissary), regulates and stimulates interactions, encourages the negotiators to change places, etc.

In 1985, in the book *International mediation in theory and practice*, Saadia Touve and William Zartman placed strategies on a scale from easy to hard, binding. At the "easy" or "facilitator" pole of the scale we find the communication strategies, in the middle formulation strategies, while at the "tough" pole, involving the control exercise, manipulation strategies (also called "directives") (apud. Boncu, 2006: 189).

According to authors Jacobs Bercovitch and Richard Wells in the article *Evaluating mediation strategies* in 1993, the tactics associated with each of the three types proposed by Touve and Zartman are:

a) communication strategy: to establish contact with the parties, gain their trust, facilitate their interaction, identify common themes and interests, clarify the situation, avoid bias; to develop a relationship with the parties, provide informaiton to each negotiator, sketch a framework for understanding the situation, encourage communication, allow discussion of all interests, etc.;

b) formulation strategies: to choose the place for discussions, control the pace of negotiation, control the degree of formality of the meetings, set the protocol, suggest procedures, emphasize common interests, reduce stress, keep the focus on issues;

c) manipulation strategies: to change expectations of the parties, assume responsibility for concessions, make suggestions and proposals to realize the costs of non - agreement, provide and filter information, suggest concessions, help negotiators cancel a commitment, reward parties for concessions, draw a framework for acceptable results, promise resources, threaten to abandon, commit to verify the implementation of the agreement by each negotiator (Bercovitch & Wells, 1993: 3-25).

The situation of mediation at European level

Europe Union institutions have made repeated efforts to impose this procedure among Member States, from issuing Recommendations (Recommendation Rec (98) 1 on family mediation issues, Recommendation Rec (99) 19 on mediation in criminal cases, Recommendation Rec (2002) 10 on mediation in civil cases, Recommendation Rec (2001) 9 on alternatives to solve litigations between administrative authorities and private people), issuing the Green Paper on alternative dispute resolution in civil and commercial law, European Code of Conduct for mediators, till the issuance of the European Parliament and Council Directive **2008/52/CE** on certain aspects of mediation in civil and commercial law.

Directive 2008/52/EC was issued on May 21st 2008, entered into force on June 13th 2008, i.e. 20 days after the publication in the Official Journal of the European Union (Directive 2008/52/EC, art. 13) and transposition deadline was May 31st 2011. The obligation to transpose the Directive nroms into national legislation is presented in article 1, item 1 and specifies that it applies to all EU Member States, except Denmark.

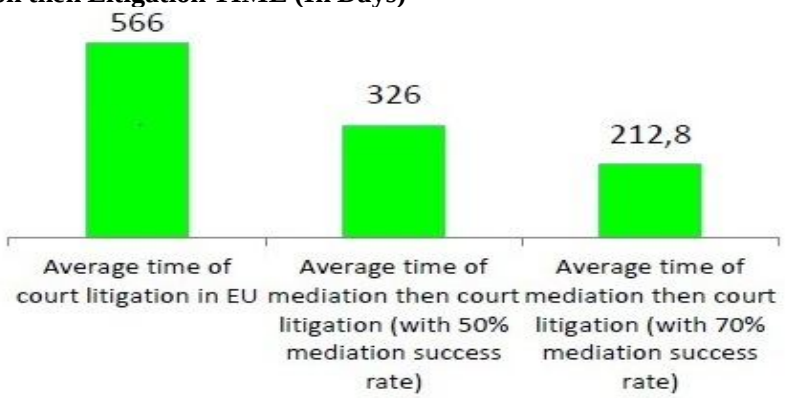
The objective of **Directive 2008/52/EC** is given in article 1, paragraph 1 of that legal act and is to "to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings" (Directive 2008/52/EC, art. 1, par. 1).

The directive imposes mandatory use of mediation in civil and commercial matters, either before the start of the judicial process or after the start of the court intervention, provided that such legislation does not prevent parties from exercising their right of access to the judicial system. However, it is provided that the agreement reached through mediation will be enforceable unless it is contrary to the law in force.

The mediation procedure was proved intensely at European and national level, by issuing legislation acts, organizing trainings, conferences or establishing mediation centers. The cases of voluntary mediations successfully completed, avoiding trial stage, are the happiest with minimum costs and also taking a short period of time. Unfortunately these situations are few in number, but nevertheless it is concluded that if it is imposed mediation as preliminary stage of the judicial process, the success rate of mediated cases increases. Although the benefits of mediation are obvious, they have been calculated and presented including statistically, in order to provide a clearer picture on these aspects.

In the report *'Rebooting' the mediation directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU* issued in January 2014 by the European Parliament, Policy Department: Citizens' Rights and Constitutional Affairs, there is very explicitly detailed the information for the purposes of highlighting the financial benefits and those related to saving time by using judicial mediation before trial stage.

Figure 1.Comparison between Average Time Savings by Litigation Only versus Mediation then Litigation TIME (In Days)



Source: European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs (2014).*'Rebooting' the mediation directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU*.Brussels, p. 7.

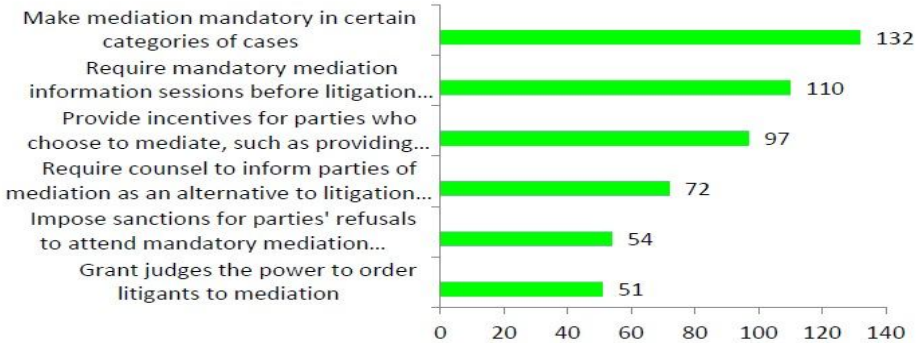
Figure 2. Comparison between Average Money Savings by using Litigation Only versus Mediation then Litigation MONEY (In Euro)

Source: European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs (2014). *'Rebooting' the mediation directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU*. Brussels, p. 7

A comparative analysis of legal regulations in mediation of the 28 member states and the effects of these laws led to the conclusion that only a system that requires mediation as being mandatory will result in a significant increase in the number of judicial mediations. In this respect, the results presented by the study *'Rebooting' the mediation directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU,* are convincing (Figure 3).

A good example is the sense is the case of Italy, thus until 2011, when mediation was optional, the number of mediations reached an average of 2,000 per year. During the period March 2011 - October 2012, when it became mandatory, the number of mediations rose to 220,000, while increasing the number of voluntary mediations to 45,000 in total. Since October of 2012, when mediation became optional again, the number of mediations decreased greatly, reaching almost zero. At this time, the number of mediations began to grow, this procedure becoming mandatory for certain situations again since September of 2013.

Figure3. Most Effective Legislative Measure to Increase Mediation Use



Source: European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs (2014). *'Rebooting' the mediation directive: Assessing the*

limited impact of its implementation and proposing measures to increase the number of mediations in the EU. Brussels, p. 8.

Despite efforts made by the European Union institutions, it seems that the effects are not by far those visualized thus, currently judicial mediation is used in less than 1% of cases in the EU Member States. Only four states have reported a number of mediations over 10,000 annually. Three of these were a little more than 10,000, only Italy reaching an average of 200,000 cases. The remaining states have recorded a very low number of mediations (Table 1).

Table 1. Estimated Number of Mediations per Year in European Union Member states

Number of mediation	Countries	No. of countries	% of countries
More than 10.000	Germany, Italy, Netherlands, UK	4	14%
Between 10.000 and 5.000	Hungary, Poland	2	7%
Between 5.000 and 2.000	Belgium, France, Slovenia	3	11%
Between 2.000 and 500	Romania, Austria, Denmark, Ireland, Slovakia, Spain	6	21%
Less than 500	Bulgaria, Croatia, Cyprus, Czech Rep., Estonia, Finland, Greece, Latvia, Lithuania, Luxembourg, Malta, Portugal, Sweden	13	46%

Source: European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs (2014). *'Rebooting' the mediation directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU*. Brussels, p. 6.

Currently in Europe several types of mediation are used:

- Private mediation is the system in which private mediators who are specially trained professionals, licensed lawyers or other private professionals (in law) are employed by the parties. It is currently used by 31 European countries;
- Private mediation proposed by a judge or mediation annexed to a court. It is the case where it is needed intervention of a judge or a prosecutor who recommends, decides on and / or approves the procedure. It is used in 26 European countries;
- Mediation conducted by a public authority other than a court. It is used in 23 states;
- Mediation conducted by judges or court personnel appointed as mediator ("in - house" service (domestic) - the "multi - door courthouse" principle (court with multiple programs of dispute resolution)) exists in 15 European countries (European Commission for the Efficiency of Justice, 2012:136).

Case study - implementing the mediation procedure in Romania

1. Introduction notions

Law no. 192/2006 on mediation and organization of the mediator profession was published in the Official Gazette of Romania dated May 22nd 2006 and promulgated by Decree no. 738/2006. Since then, the law was amended four times, namely by Law no.370 of 2009, Law no. 202 of 2010, Law no. 115 of 2012 and Law no. 214 of 2013. Besides these laws, which explicitly amended Law no. 192/2006, several legal documents have marked the content of the law such as: OG 13/2010, OG 90/2012, Law 76/2012, OG 4/2013, OG 80/2012, Law 255/2013.

Romanian law defines mediation as "a way of resolving conflicts amicably with the help of a third party specialized as mediator, in conditions of neutrality, impartiality, confidentiality and with free consent of the parties" (Law no. 192/2006 , art. 1, par. 1).

In order to organize the activity of mediation it was established Mediation Council, an autonomous body with legal personality, of public interesat (Law no. 192/2006, art. 17, par. 1). This Council is organized and operates according to the law, as well as its own rules of organization and operation.

According to art. 20 of Law 192/2006, updated, the Mediation Council has the following main attributions:

- promotes the mediation activity and represents the interests of authorized mediators in order to ensure the quality services of mediation;
- develops mediation training standards;
- authorizes the programs of initial and continuous vocational training as well as the specialization of mediators;
- draws up and updates the list of professional training providers who have obtained authorization;
- authorizes mediators, as provided by this law and the procedure established by the Regulation of organization and functioning of the Mediation Council;
- cooperates, through the Information system in the internal market, with competent authorities of other Member States of the European Union, European Economic Area and the Swiss Confederation, to ensure control of mediators and the services they provide, in accordance with Government Emergency Ordinance no. 49/2009;
- establishes and updates the board - certified mediators and keeps the records authorized mediators' offices;
- oversees the compliance training in mediation;
- issues documents proving professional qualifications of mediators;
- adopts the Code of ethics and professional conduct of authorized mediators, as well as their disciplinary rules and ensures the compliance with the provisions contained in these codes; etc. (Law no. 192/2006, art. 20).

Until April 2014, there were 8,765 authorized mediators by the Mediation Council, 104 trainers, 49 examiners and assessors accredited by the Council, 21 mediation centers and about 16,300 people who attended mediation courses (Mediation Council - official site, European Parliament, 2014: 55). In Romania in this moment, there are four ways to practice mediation, through a mediation office, as an associated mediation office, by a professional civil company or non-governmental organization.

2. Persons who can perform the mediator profession

According to Law no. 192/2006 for a person to be able to perform the mediation profession, he/she must fulfill the following conditions: Have full legal capacity; Have higher education; Have a working experience of at least 3 years; To be able, medically, to exercise the mediator activity; To enjoy a good reputation and never have been convicted for committing an intentional crime, to prejudice the reputation of the profession; To have completed the mediator training courses or a postgraduate Master's program in the field, approved by the law and approved by the Mediation Council; Be authorized as a mediator in the conditions of the law (Law no. 192/2006, art. 7).

3. Cases in which parties must participate the briefing on the benefits of mediation

According to article 60 paragraph 1 of the Law on mediation and the profession of mediator, the parties and/or interested party, as appropriate, are required to provide proof that they attended briefing on the benefits of mediation in the following litigations:

- in consumer protection, when the consumer invokes the existence of an injury as a result of purchasing a defective product or service, the failure of contract clauses or granted guarantees, the existence of unfair terms contained in contracts between consumers and economic operators or the violation of other rights provided in the national legislation or EU consumer protection;
- in family law, in cases of disagreements between spouses on continuing the marriage; division of joint property; exercise of parental rights; establish children's residence; the parents' contribution to children maintenance; any other disagreements that arise in the relationships between spouses on the rights they may have under the law;
- in litigation on possession, delimitation of property broundries, displacement of borders, as well as any other litigations regarding neighborhood relations;
- in the area of professional liability that may be incurred by professional liability, malpractice cases, respectively, to the extent that by special laws is not provided a different procedure;
- in labor disputes arising from the conclusion, performance and termination of individual employment contracts;
- in civil disputes whose value is less than 50,000 lei, excluding litigations that have reached an enforceable judgment decision to open insolvency proceedings, actions on the trade register and cases in which parties choose to use the procedure provided by art. 1013-1024 (order for payment) or the one provided in art. 1025-1032 (low value claims) of Law no. 134/2010, republished and amended;
- in case of offenses for which withdrawal of prior complaint or reconciliation of the parties removes criminal liability, after formulating the complaint, if the author is known or has been identified and the victim consents to attend the briefing with the author; if the victim refuses to participate with the author, the briefing takes place separately (Law no. 192/2006, art. 60^1). The information procedure, including formalities for convening the parties, may not exceed 15 calendar days. The legal provisions governing the unfolding and punishment procedure on the obligatory information are represented by article 60^1, article 2, paragraph 1^1 and 1^2 of Law no. 192/2006 introduced by Law no. 115/2012, by article II of the Law no. 115/2012 amended, by article III in the OUG no. 90/2012 amended by article VII of OUG no.

4/2013, by article VI of OUG no. 4/2013 and article VI[1] introduced by point 4 of the Law no. 214/2013.

4. Voluntary procedure versus mandatory procedure

The mediation procedure in Romania is optional. It becomes mandatory only the *information procedure on mediation*, prior to trial by the court, and only in certain non - criminal cases expressly provided by law (for other cases, information on mediation remains voluntary, according to art. 227, par. 2 of the Code of Civil Procedure). In our country the mediation procedure can be initiated by one of the conflict parties, or attending briefing on the benefits of mediation may be recommended by the court. Regardless of the time of initiation of this procedure and the person who initiates it, the duration of the mediation process can not take place for more than three months. Judicial, arbitral bodies and other authorities with jurisdictional competencies must inform the parties in conflict about their possibilities of using mediation and they have to advise the parties to use mediation for resolving their conflict. Performing the briefing on the benefits of mediation can be conducted by a mediator, judge, prosecutor, legal advisor, lawyer or notary.

In Romania, unless otherwise provided by the law, the parties, natural or legal persons are obliged to attend the briefing on the benefits of mediation, including, if necessary, after the start of a trial before the competent courts, in order to resolve in this way civil, family, criminal and other conflicts, as provided by law (Law 192/2006, art 2, par. 1). According to article 2, item 1, index 2 of the Law of mediation, the court shall reject the application for summons as inadmissible for failure by the plaintiff of the obligation to attend the briefing on mediation prior to the request for summons, or after the start of the process until the deadline given by the court for that purpose, for litigation in the matters specified by art. 60, index 1, par. 1, point a - f (Law 192/2006, art. 2, par. 1 index 2).

5. **Results of mediation**

The mediation procedure is completed, if applicable: by the conclusion of an agreement between the parties after the conflict resolution; by the finding of the mediator of the mediation failure or by submitting the mediation contract by one of the parties.

When the conflict parties have reached an agreement a written agreement can be drafted, which will contain all the terms agreed by them and that has the value of a document under private signature (Law 192/2006, art. 58, par. 1), provided that this agreement does not contain provisions affecting law and public order. Parties may request the court to seal the agreement or the notary public to authenticate their understanding.

However, in cases relating to transfer of ownership of real property and other real rights, share and inheritance cases, under penalty of nullity, the mediation agreement written by the mediator will be presented to the notary public or court to issue an authentic act or a judicial decision (Law 192/2006, art. 58, par. 4).

6. The situation of mediation in Romania

The only official statistical data in Romania have been issued by the Superior Council of Magistracy and contain information on the years 2010 and 2011. According to the report, in 2010 there were 258 cases of mediation completed through an

agreement between the parties after conflict resolution, and in 2011 there were reported 1525 such cases.

Since then there are no longer official statistics issued by our state institutions. However, the report *'Rebooting' the mediation directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU* issued by the European Parliament in January 2014, indicates that in mid - 2013 in Romania there were recorded between 500 and 2,000 cases of mediation. However, the data provided indicates the situation before the entry into force of legislative changes in mediation, changes which by their nature has increased considerably the number of judicial mediations (European Parliament, 2014: 6).

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ORIGINAL PAPER

Brief considerations on the impact of the European Convention on Human Rights on the Romanian civil trial

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Abstract
The new legislation concerning the Romanian civil procedure law presents new elements relating to its application, institutions and principles that are introduced and, as a consequence, certain institutions and principles of law that we were used with, are eliminated. The European Convention on Human Rights contains several rules in this matter, rules that are tools through which the European Court attempts to find a fair balance between the various rights and interests involved in this issue.
The aspects which will be analyzed concern in particular the changes of the administrative courts' competence in case of some special laws, the possibility of a counterclaim only along with the reception under the pain of loss of that right especially in relation to the facets of the right to a fair trial from the European Convention on Human Rights in civil matters, they concern the appeal of enforcement, aspects of the summons warranty filed by plaintiff, elimination of the special procedure of disputes between "professionals" and the interferences between fundamental rights and arbitration as an alternative jurisdiction of private nature.

Keywords: the administrative courts' competence, fundamental rights, counterclaim, summons warranty, arbitration.

The civil lawsuit appears to be a special form of judicial constraint. This activity is carried out by competent jurisdictional bodies following a certain procedure, in the form provided by law. Through civil lawsuit, justice duties are fulfilled, defining both its teaching and sanctionary roles. These objectives are regulated by many provisions belonging to domestic and international law. Therefore, Article 21 of the Romanian Constitution provides that: "everyone has the right to initiate legal proceedings in order to defend one's rights, freedoms and legitimate interests" and the second paraghraph of the same article stipulates that "no law can restrict the exercise of this right". Paragraphs 3 and 4 of the constitutional Article 21, introduced through the Revision Law, provide that

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"everyone is entitled to a fair lawsuit and public hearing within a reasonable time" and that "special administrative jurisdictions are optional and free". In this way, Romanian legislation experienced a process of harmonization with relevant international regulations, especially with the European Convention of Human Rights, which stipulates in Article 6 paragraph 1 that: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". "Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the lawsuit in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

The notion of "rule of law" represents one of the main characteristics of the European constitutionalism. Through this concept, the state itself restricts the field of its action, in view of its own values system.

The New Romanian Civil Procedure Code entered into force on the 15th Feburary 2013, save certain provisions which were postponed through the Law no. 2/2013 related to certain measures meant to reduce the activity of courts, as well as to prepare the enforcement of the Law no. 134/2010 related to the Romanian Civil Procedure Code. Therefore, certain provisions were postponed until 1st January 2016, such as those regarding the assessment of the case in the council chamber, those related to the preparation of the application file, when accessing legal remedies, which is to be taken care of by the court whose decision is being reviewed. The Law no. 76/2012 related to the enforcement of the Law no. 134/2010 established certain rules concerning the enforcement of the New Romanian Civil Procedure Code in order to settle the conflicts arising from the application over time of the new laws of civil procedure and to harmonize the procedure rules abolished through the enforcement of the new legislation with the principles newly introduced. The new civil procedure legislation provides expressly the civil lawsuit principles in Articles 5-23 of the New Code. These articles represent the legislative expression of certain principles previously stated by the doctrine, bringing to light the case-law principles developed by the European Court of Human Rights.

The Article 4 of the New Romanian Civil Procedure Code provides that: *The enforcement with priority of international treaties regarding human rights*

"(1) With regard to the matters regulated by this code, provisions regarding the rights and freedoms of individuals shall be interpreted and enforced in accordance with the Constitution, the Universal Declaration of Human Rights, pacts and the other treaties joined by Romania.

(2) If there are differences between the pacts and the treaties on individuals fundamental rights, signed by Romania, and this code, international regulations take precedence, save the case when this code contains more favourable provisions".

Also, the Article 3 of the New Civil Procedure Code provides – *The priority enforcement of international treaties concerning human rights*, Article 4 deals with *The priority enforcement of the European Union Law* and Article 6 regulates the *Right to a fair lawsuit, within reasonable and predictable time*, whereas Article 7 concentrates on the *Legality and fundamental principles of the civil lawsuit* and Articles 8, 13, 14 and 15 deal with principles, such as: equality, right to defend oneself, contradictoriality and the orality.

The European Convention of Human Rights represents the natural connection between individuals fundamental freedoms and democratic society requirements, as the jurisdictional case-law of the Court of Strasbourg emphasized it many times *"the important place that the right to a fair lawsuit hods in a democratic society"*. In the same time, the case-law regarding the application of the Convention underlined many times: *"The Convention's objective is not the protection of non-theoretical or illusory rights, but of those rights which are real and effective"*.

With regard to the national law system, both the relevant legislation and the courts case-law are much less systematic and coherent, thus much less predictible. For example, the court has the obligation, during the first public hearing, after the verification of competence, the clarification of legal framework and the settlement of pleasraised by the parties, to ask the parties whether they want that the evidence administration procedure should be carried out through lawyers or counsellors. Moreover, there are some discussions as regard to the counterclaims. Thus, whenever the plaintiff modifies its claim, the counterclaim is to be submitted no later than the timegiven to the defendant for this purpose.

As far as reasonable time – as a component of the right to a fair lawsuit – is concerned, we underline the fact that a number of decisions of the Romanian Constitutional Court stated that the alteration of the Romanian Civil Procedure Code in the sense of granting the general prosecutor the right to use the extraordinary remedy of action for cancellation only within a time of 6 months as from the day the judgment given by the court became final – and not anytime – as previous Procedure Code provisions stipulated – was constitutional, thus satisfying the reasonable time requirement. Decisions no. 29, 52 and 79/1997 are examples thereof.

The access to justice is also regulated by Article 6 of the European Convention of Human Rights, as well as Article 6 of the Law 304/2004. The right to justice cannot be deemed restricted through imposing pre-trial procedures or stamp duties. The fair settlement of a case means the observance of certain fundamental principles of the lawsuit such as contradictoriality, debates publicity, the right to defend oneself, the *right to opportunity equality*, as well as the establishment of procedural guaranties capable of protecting these rights.

Optimal time replaces *reasonable time* provided in the abovementioned laws, especially for the amplification of its significance. This notion suggests the fact the legal act should be characterized by efficiency, readiness, taking into consideration nonetheless the circumstances of the case brought before the court (its nature, the complexity of the lawsuit, the agglomeration of the court, etc.).

The settlement of cases within a reasonable time is stipulated by the Constitution (Art. 21°), the Law no. 303/2004 (Art.91), Courtsrules of procedure and by Article 6 of the European Convention of Human Rights. Reasonable time is appreciated in accordance with the ECHR case-law depending on the case's real circumstances. For this purpose, the law establishes guaranties and procedural means:

- the lawsuit duration estimation – Art. 238 *(on the first public hearing, when parties are legally summoned, the judge, after hearing the parties, shall estimate the necessary duration of the lawsuit, taking into consideration the circumstances of the case, so that the lawsuit should be settled within an optimal and predictible time)*
- the division of the lawsuit into two phases, the exam of the lawsuit and the debate on the merits
- ensuring the rapidity – Art. 241

- establishingtimes and sanctions for failing to exercise procedural rights within times given

The court has the obligation to order all measures allowed by law in order to ensure a fair and rapid lawsuit. The independance and the impartiality of the court are ensured by principles such as the separation of powers, judges' irremovability and independance. According to Article 174 of the Romanian Constitution, judges are independant. The independance can be functional (justice independance, separation of powers principle) and personal, which refers to the requirement that disputes are to be settled without any intrusion. The judge's independance ensures impartiality. The independance is ensured by debates publicity, the deliberation secret and irremovability. Judge's independance is provided by Article 124 of the Romanian Constitution and Articles 1 and 3 of the Law no. 303/2004.

The right to defend oneself is a fundamental principle of the civil lawsuit regulated by Article 24 of the Romanian Constitution and Article 15 of the Law 304/2004. The right to defend oneself has two meanings – a material one and a formal one. Materially speaking, the defense is a multitude of procedural rights and guaranties established by law in order to give the opportunity to the parties to state their personal claims. Under this definition, the right to defend oneself allows parties to state their claims, to have access to the application file, to submit evidence, to disclaim competence, to exercise remedies, to ask for the approval of forced execution, etc. According to Article 13: *Parties have the possibility to participate in all lawsuit phases. They have access to the application file, can submit evidence and express their claims either in writing or verbally, to exercise remedies. The Court can order the parties to be personally present at the hearing, even when they are represented.* With regard to the right to defend oneself principle, in order to respect this right, the Court has the obligation to let the parties speak before the end of discussions, otherwise the judgement is null and void. Also, the Court cannot change the date of the hearing initially fixed but with the knowledge of the parties by sending them summons, otherwise the judgement is also affected by nullity. Finally, in order to respect the right to defend oneself, the lawsuit will be judged respecting the order it has on the list of lawsuits of that session, if the parties or their legal representatives are absent. Formally speaking, the defense can be ensured through a lawyer or a counsellor. Parties have the right, during the whole lawsuit, to be represented or, where required, assisted under relevant provisions.

The New Romanian Civil Procedure Code brings a major novelty: before the recourse court, the parties' claims and conclusions have to be uttered only through a lawyer or, where appropriate, a counsellor. The postponing of the judgement for lack of defense can be ordered, upon the interested party's request, only exceptionally, for solid grounds that cannot be attributed to the respective party or his/her representative. Whenever the court refuses to postpone the hearing for this reason, it will postpone, upon the party's request, the judgement in order for the respective party to submit written conclusions. The law also provides free legal assistance, under the form of judicial public support, upon the request of the persons who prove not to have sufficient means in order to pay lawsuit expenses (the Government Ordinance no. 51/2008 related to judicial public support).

Judicial public support can be requested, under the relevant legal provisions, by any natural person, whenever they cannot pay the expenses of a lawsuit or those related to legal advice in order to defend a right or a legitimate interest before the court, without endangering his/her welfare or the family's maintenance.

The importance of the right to defense is obvious. This principle is regulated by all modern law systems of civilized states. It has to be continually strengthened in our legal system, as a guarantee of the free exercise of human rights. The right to defense is regulated by the European Convention of Human Rights in Article 6.

The civil lawsuit comprises two phases: the judgment and the forced execution, because the idea of justice is not fully completed when a legal decision is not carried out. The right to a tribunal, as it is depicted by the European Court case-law, also refers to the right to obtain the forced execution of a judgment, besides the legal effective possibility to have access to a tribunal in order to settle a civil "claim".

The right to a tribunal would be illusory if the judicial system of a state member of the Convention, which respects the preeminence of law, allowed in the end that a mandatory judgment should remain inefficient for one of the parties and it would be inconceivable that Article 6 of the Convention should describe in detail procedural guarantees granted to the parties, without protecting the right to have the judgments carried out (Ciobanu, V.M ; Nicolae, M. *coordonatori*, 2013: 3).

The Convention regulates two procedural rights which are given concrete form by the guarantees highlighting the personal freedoms which have to be recognized before the court. We are talking here about Article 13 which grants the holders of these rights that the Convention regulates "the right to an effective remedy" before national courts, whenever these rights are breached by domestic authorities. These conventional texts underline that regulating certain substantial rights is not enough and there is need that these rights should be implemented through adequate mechanisms, that is through fundamental procedural guarantees (Bîrsan, 2005 : 393). Therefore, one has to bear in mind the fact that the state does not have only one negative obligation not to harm rights and freedoms, but also a positive obligation, that to ensure that all necessary means are deployed so that rights are exercised and a democratic regime functions through established mechanisms (Răduleţu, 2008 : 28). And for that, it is important to mention that this procedural right analysed according to its substance, can be studied as a true substantial right, with its specific sanction whenever one of its components is not observed (Bîrsan, 2005 : 394).

Article 11 of the Romanian Constitution established, as a principle, the Romanian state's obligation to fulfill correctly and in good faith the duties established by the treaties signed by Romania, as well as the fact that treaties ratified by the Parliament are part of the domestic law. This is a *monist system* which excludes, in principle, any duality between the domestic legal order and the international one. This means that the monism established by Article 11 eliminates the need to adopt domestic rules comprising conventional international rules. At the same time, Article 20 of the Romanian Constitution provides that the rights and freedoms of the individuals will be interpreted and enforced in accordance with the treaties that Romania is part of. Moreover, the paragraph 2 of the same article stipulates that whenever there is a conflict between domestic and international laws related to human fundamental rights, international treaties take precedence, save the case when the Romanian Constitution or domestic laws contain more favourable provisions.

Taking into consideration that Romania ratified the European Convention of Human Rights in 1994, its principles are reflected in Articles 11 and 20 of the Romanian Constitution, thus being a part of the domestic legal order with supralegislative power. Consequently, the right to a fair lawsuit provided by the Convention presents a special importance, the knowledge of the European Court case-law being necessary. And this

because it provides a "unique case-law-based system, which represents an international customary right and an autoreferential regime" (Chiriţă, 2007: 6).

The manner of interpretation and enforcement of conventional principles was also taken into consideration by the Romanian Constitutional Court dealing with the non-constitutionality plea of the provisions comprised in Article 4 of the Law no. 165/2013 related to measures meant to lead to the finalization of the restitution process, in nature or by equivalence, of propertiesunduly taken by the communist regime in Romania – Decision no. 88/27.02.2014 of the Constitutional Court.

The plea was brought up in cases dealing with claims submitted under the Law no. 10/2001 on the legal regime of certain propertiesunduly taken away between 6 March 1945 – 22 December 1989, republished, with subsequent alternations and additions. The non-constitutionality plea is motivated by declaring the fact that application files already lodged with the court need to be settled according to the material law in force at the moment when the legal relationship took place. Also, it is asserted that, taking into consideration the long times during which the legal procedure would have to be suspended under Article 4 related to Article 33 par. (1) and (2) of the Law no. 165/2013, the criticized rule does not respect the right to a lawsuit within a reasonable time, having direct consequences on the right of property. These times start from the 1st January 2014, times which, according to the provisions of Article 4 of the Law no. 165/2013, would apply to disputes already brought before the court, the law being evasive concerning the fact that disputes already brought before the court, lodged with before the Law no. 165/2013 entered into force, are regulated only by the rules regarding the restitution finalization, in nature or by equivalent, of the propertiesunduly taken away by the communist regime of Romania, and provisions related to the administrative procedure, provided by Articles 33, 34 and 35 of the Law no. 165/2013, regarding judgments admitting or rejecting claims formulated under the Law no. 10/2001, are not applicable.

The Romanian Constitutional Court finds that, in cases which determined the bringing up of the non-constitutionality plea, the applications were lodged with the court before the Law no. 165/2013 entered into force, being already pending when this law entered into force. After the Law no. 165/2013 entered into force, in these cases,it was raised the problem of the application of Article 33, that is the non –exhaustion of times provided by this law, with the consequence of rejecting the cases as they became "premature". The provisions of Article 33 of the Law no. 165/2013 established certain procedural times within which claims should be settled by bodies legally authorized to participate in the restitution process of wrongly taken away properties, times starting from the 1st January 2014 and within which the entitled persons cannot address to court on that matter. The Romanian Constitutional Court finds that the application of the new procedural times in the cases abovementioned was the result of the judicial interpretation given to the legal content of the Law no. 165/2013, determined by a certain lack of accuracy of provisions comprised in Article 4 of the 165/2013, which do not make the difference between procedural and substantial rules, generating confusion during their enforcement in cases already brought to the court on the date of entering into force of the law.

It is important to stress the fact that the New Romanian Procedural Civil Code (NCPC) regulates the ***complaint regarding the lawsuit dithering*** *(Art. 522-526). Any party, as well as the prosecutor participating in the lawsuit, can formulate claims through which, invoking the infringement of the right to a lawsuit within a reasonable and predictible time, they can ask the court to take legal measures to stop this situation.*

The complaint can be made in the following cases:

1. when the law established a time within which a procedure has to be done, a judgment has to be given or motivated, but this time has been reached without any result;

2. when the court established a time within which a participant in the lawsuit had to fulfill a procedural act, and this time has been reached, but the court did not take legal measures towards the party failing to fulfill this obligation

3. when a person or an authority which does not have the quality of party in a lawsuit was forced to produce in court, within a certain time, a certain document, data or other information resulted from their records, necessary to the settlement of the lawsuit, and this time has been reached, but the court did not take legal measure towards the party in breach of this obligation;

4. when the court did not respect its obligation to settle the case withtin an optimal and predictible time, by failing to take legal measures or failing to carry out, where the law requires, a procedural act necessary to the settlement of the case, even though the time elapsed from its last procedural act were enough for taking the measure or fulfilling the procedural act.

The complaint can be withdrawn at any time until its settlement. The complaint is formulated in writing and is submitted to the court competent to settle the lawsuit in relation to which the judgement dithering is invoqued. The complaint can be also made verbally during the public hearing, when it will be written down, together with the reasons shown by the party, in the minutes.The submission of the complaint does not suspend the case. The complaint is settled by the court competent to judge the case as soon as possible or within at least 5 days, without summoning the parties.If the complaint is deemed to be grounded, the court delivers the minutes which cannot be disputed, through which it takes all necessary measures to stop the situation which determined the dithering of justice. In this case, the plaintiff will receive a copy of the minutes.When the court considers the claim not grounded, it will reject it, motivating the decision in the minutes.The plaintiff can disputethe minutes within 3 days from the reception. The complaint is to be submitted to the court which delivered the minutes, and this court will forward it as soon as possible, together with a certified copy of the application file, to the superior court.When the lawsuit is judged by the High Court, the complaint is settled by another court of the same division.

The European Court of Human Rights has hardened the conditions concerning the requirement that the lawsuit should be settled withtin a reasonable time, deciding that an excessive duration of procedures represents a violation of Article 6, and because the applicant has not an efficient remedy at his disposal, Article 13 of the Convention is also deemed infringed. Therefore, granting the party the possibility to exercise a complaint against the dithering of the lawsuit, the new procedure grounds its existence on the European Court of Human Rights case-law, being in accordance with the decisions of the Court which sanctioned the lack of legal means necessary to take legal action whenever the reasonable time condition is not respected.

Returning to the idea of this paper, the Romanian Constitutional Court, in the Decision no. 88/2014, found that there were several hypotheses. Thus, according to the nature of the provisions of the Law no. 165/2013, the Court finds that, on the one hand, the existence of certain provisions with procedural character, establishing certain times, provisions containing the criticized rules, and on the other hand, the existence of certain provisions with substantial character, concering the amount and the modality of granting compensatory remedies. Also, according to the moment of introducing the application in

cases concerning the restitution of propertiesunduly taken away, the Court notices that these applications, either they were introduced before the entering into force of the Law no. 165/2013 and they were already in pending, or they were lodged after this law entered into force.

Therefore, with regard to the immediate enforcement of the new civil lawsuit law, the Romanian Constitutional Court finds, as far as consumed legal effects are concerned, that this law can generate infringment of constitutional provisions regulating the principle of non –retractivity. With regard to this matter, the Court found that the settlement of the time conflict of civil procedural provisions, which from a constitutional point of view aims at respecting the principle of non – retroactivity, needs to be analysed differently. Thus, in its case-law for example, in the Decision no. 546/18.10.2005, published in the Official Gazette of Romania, Part I, no. 1.004 of 11 November 2005, the Court stated that, if the respective regulation refers to a legal situation of a continuity character,giving birth to facta pendentia, with which the legislator can interefere in the future, there is no infringement of the non – retroactivity principle. The Court also finds that it is mandatory to analyse to what extent the criticized provisions determine the possibility to invoque the prematurity of the application, introduced before the entering into force of the Law no. 165/2013 and whether they have the same legal nature as the abovementioned provisions. The plea of application prematurity is that procedural plea through which one has the possibility to invoque the factthat the subjective right is not yet an existing one. In this context, the Court finds that the prematurity is a procedural sanction which intervenes whenever the pre-trial procedure is not respected as well as whenever a dilatory or prohibitive time is infringed. Thus, the prematurity of the application is transposed into a conditionning of the right to legal action by suspending it or into a harm brought to the procedural right by a suspensive time. Therefore, the prematurity of a legal action imposes an analysis of conditions under which the legal procedure has to be initiated, conditions that are stipulated by the law in force at the moment of lodging the claim. Consequently, the Court finds that the prematurity cannot stem from a civil procedural rule subsequent to the introduction of the claim.

Therefore, the Constitutional Court stated that according to Article 25 par. 1 of the Law no. 10/2001, *„within 60 days as from the registration of the notice or, where appropriate, as from the date of submission of evidence [...], the competent authority has the obligation to deliver a decision or a motivated order, concerning the claim of restitution in nature”*. Thus, at the moment of the introduction of claims, previous to the moment of entering into force of the Law no. 165/2013, the entitled persons has a subjective existing right, which, from a procedural point of view, involved only the obligation to respect the time of 60 days provided by Article 25 par. 1 of the Law no. 10/2001. Thus, Article 4, together with Article 33 of the Law 165/2013, which provides that newly established settlement times for claims under the Law no. 10/2001 also apply to cases concerning the restitution of propertiesunduly taken away, that are pending, have the only role to establish an condition of exercising the access to justice, which at the moment of the introduction of the claim did not exist. In other words, such a hypothesis does not take into account the fact that the claim has to respect the formal and material conditions which are regulated by laws in force at the moment of its introduction. Therefore, the consumed effects of legal relationships that took place under the Law no. 10/2001, republished, are not recognized as far as the exercise of the right to legal action is concerned.

Thus, the Court found that Article 4, second thesis, which can be interpreted in the sense that Article 33 of the Law no. 165/2013 applies „to pending cases belonging to the restitution of properties that were unduly taken away", gives to the new procedural rules retroactive effects, which comes in contradiction with Article 15 par. 2 of the Romanian Constitution. Moreover, the European Court of Human Rights found that organizational difficulties reported by competent authorities in implementing the measures concerning the restitutions, are the consequence of repeated legislative modifications of the restitution mechanism. The European Court considered already that these modifications were ineffective and created a climate of legal uncertainty, reflected by Romanian courts decisions, including the Supreme Court, which have tried, withtout succeeding on a long term though, to eliminate „the ambiguity of uncertain legal situations" and „to sanction the lack of diligence from the part of competent authorities" (Judgement from 9 December 2008, in the Case *Viaşu against Romania*, par. 7 of 29 May 2009).

Esentially, the Romanian Constitutional Court established that the retroactive application of criticized provisions is likely to break a procedural balance, with the consequence of infringing the right to a fair lawsuit, as far as equality of opportunity in civil lawsuit is concerned, right provided by Article 21 par. 3 of the Romanian Constitution and, also, found that the principle of free access to justice gives any individual the right to have access to court in order to protect his or her rights. As the European Court of Human Rights established through its case-law, the mere regulation, even at the supreme level, through Constitution, is not enough to ensure a real efficiency of the right, as long as, in practice, its exercise encounters obstacles. The access to justice has to be ensured, therefore, in an effective and efficient manner.

Finally, we underline the fact that the immediate enforcement of the new law for the pending lawsuits comes also in contradiction with the constitutional principle of equality before law which "prohibits the immediate application of the new law whenever it creates for the holder under the old law an inferior situation in comparison to the legal relationship holder under the new law"(Ciobanu, V.M ; Nicolae, M. *coordonatori,* 2013: 79). Thus, the application of the new procedural law has to abide by the legitimate trust principle, the observance of the right to a fair lawsuit, the equality of opportunity, goals that in principle cannot be attained through the immediate and general enforcement of the new law.

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ORIGINAL PAPER

The quality of Romanian education after 1989: theoretical and applied approach in official reports on the secondary education

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Abstract
The article is thought of as a correlation between the theoretical and the applied approach to make a cutting up on the issue of state of education. Thus, we intend to submit to discussions a number of indicators on which are based educational policy documents and assessment reports on the status Romanian education in the last 20 years.
Based on our pedagogical concept, as trainer of trainers, but also by the documents studied, is described the structure of the education system, identifying some changes introduced also in relation to key indicators detached from studies issued by Institute of Sciences of Education, Ministry of National Education (MEN) and so on.
Such indicators refer to human resources (pupils/students, teachers), participation in education, quality of results, the correlation of outcomes with labor market. A major milestone of analyses is the national context and the specific of the statistics, a context that has a definite explanatory value. Also, very important is the comparison with European context, being given our desire of connecting our education to the requirements of the European Commission, the compatibility of study programs at the European level. Starting from the educational ideal, from the principles assumed in education, can be summarized the trends of current system.
In terms of application, we present the results of the investigation of representations and opinions of a part of the students preparing to be teachers about the contemporary education, following administration of Osgood semantic differentiator.
Critical analysis is constructive if it is complemented by proposing solutions and directions for future development, which by their reflective character, remain open to additions. These possibilities of ameliorative action are formulated by the perspective of skills development for the teaching profession, one of the key-factor of education system in any school.

Keywords: quality, Romanian education, European, indicators

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1. Introduction: What does the quality in education mean, specifically in instruction system?

According to the National Vocational Qualifications Framework, the quality is the level of satisfaction offered by the efficacy of the educational offer from the instruction field and professional training, reached by achieving the required standards and some excellent results that are required and to which contribute the participants in the learning process and other interested factors. A service, a product may become appropriate to its purpose, as well as to the needs of the beneficiaries.

The instruction quality assessment refers to identifying the extent to which the instruction offer meets the quality requirements specified by standards and indicators on the degree of achieving the activity by its goals, and also depending on the satisfaction or the appreciation by the beneficiaries. We stress the fact that we shall refer to the quality of the pre-academic instruction as the essential step of the instruction system, where, in an institutional way, the internal evaluation is conducted in each school by the Commission for Assessment and Quality Assurance and the external evaluation is made by the Romanian Agency for Quality Assurance in school Education (ARACIP).

This choice is motivated both by the specific of the professional activity that we perform in the initial and continuous training of the teachers through the Teachers Training Department and by the adherence to the idea that "the compulsory education has a strategic and specific position (...) The future of the Romanian society depends on the quality, extent and efficiency of the compulsory education "(Vlăsceanu, 2001:10). Iosifescu, (2008: 82) even speaks of this new culture of quality as a concern to the organizational level, which has been transferred also in education/instruction, showing that it is necessary to exist a coherency, unity, both in the conceptions of design and the strategic, methodological, procedural level.

Thus, the quality criteria currently established for the Romanian education are:

a) Institutional capacity resulting from the internal organization, available infrastructure, consisting in their turn of: institutional, administrative, management structures, material base and the optimization of the material base and in our opinion the most important factor, of human resources;

b) Educational efficacy, which is to mobilize resources in order to achieve the expected learning outcomes by the content of the study programs, the learning outcomes; the employability of the graduates and considering the financial activity of the schools;

c) The quality management, which includes strategies and procedures for quality assurance: for initiating, monitoring and periodic review of the programs and carried activities, for the objective and transparent assessment of the learning outcomes, for the periodic evaluation of the teaching staff; for making accessible the appropriate learning resources; to update the internal database on the quality assurance, to ensure the transparency of the public information on instruction/education, for the functioning of the structures of quality assurance in education and to provide accurate reports provided (required) by the law.

The quality of education is provided by the following processes:
1) planning and effective achievement of the expected learning outcomes;
2) monitoring the results;

3) internal evaluation of the results;

4) external evaluation of the results;

5) the continuous improvement of the education outcomes.

The principles of the quality education assumed by ARACIP – the Romanian Agency for Quality Assurance in School education – (in http://aracip.edu.ro.) refer to the fact that the quality education:

- Is focused on the customers and beneficiaries of the educational services;
- Is provided by the institutions responsible;
- Is focused on results;
- Respects the autonomy of the individual and is based on the institutional autonomy;
- Is promoted by educational leaders;
- Assures the participation of the educational actors and valuing human resources;
- Is realized by dialogue and partnership with institutions, organizations with direct and indirect beneficiaries of education.
- Is based on innovation and diversification;
- Approaches the educational process in a unit manner, in a systemic way;
- Aims to continuously improve the performances;
- Requires interdependence between the suppliers and beneficiaries involved in the educational offer.

The quality is linked to the values and expectations of the participants in the training process (pupils, teachers), employers and the society in general. Essential for achieving the aspirations of the quality plays the improvement of the education and training process with a focus on pupils` learning outcomes, on their proper professional guidance, on support to participants.

It is promoted the lifelong learning by stimulating for the youth, adults, elders a culture on engaging in the lifelong learning. Also, an important role belongs to the participants 'needs in the instructiv-educational process and to the community and employers' requirements, expressed in a well-planned environment, based on coordination and cooperation. The European quality assurance initiatives are about to improve the access to education and professional training, the development of the job employability capacity and a better match between the supply and demand for training. Therefore, in developing and implementing the quality assurance framework in Romania must be an adequate representation of the interested factors, meaning all the social partners.

Addressing the quality of education creates a series of connections with aspects related to culture and learning climate, highlighting the different types of the organizational cultures in a school considered an organization that produces learning and learn at the same time. In actuality, the role of the school is determined by its function to socialize, the function of transmission of values promoted by the society and all these issues that provide an organisational insight are useful in understanding the change management process in education.

Another macro-social aspect, where is integreted the quality of the education is the quality of life. As showed the authors of a study conducted for the period that followed the 1990 "From the research data we can conclude that although as a whole we can speak about a relatively modest quality of life in Romania, one can observe an increasing trend of several indicators since 2003 and that continues in 2006 "(Mărginean, Precupeţu, Preoteasa, Pop, 2006: 198).

In the same analysis is noted that "the changes in the Romanian society after 1989 are valued by a proportion of 42% of the respondents as" somewhere in the middle ", while a third of the respondents consider them as negative." (Idem: 199).

The concept of quality, as a theory, but also the quality assurance and assessment, as practical action proves to be multifaceted aspects and therefore they provide references to the professionalism of the actors involved, to the continuous building of the competencies and even to the issue of the competitiveness. Professionalism of teachers is closely related to teacher training, with its scientific, technical and vocational components, which develop themselves over time, together with experience, but also a number of appropriate attitudes: initiative, responsibility, team spirit are required. At the same time, education/training must keep pace with the changes taking place at social level: the internationalization of education, multi-enlightenment, globalization, online education development. In its turn, the structure of the teaching competence is given by: the goal setting competencies, even together with learners, operating with the learning contents, the use of the training and evaluation methodologies, skills in networking and communication with the pupils and the educational community, class management skills, the educational -formative competence, the research skills and self-improvement.

The assessment domains of the work of teachers, as an assessment achieved by scholar inspections (Jinga & Negreț, 2005) refer to: to design an effective curriculum, ie pupils' educational journey; implementing the curriculum; the assessment of the learning outcomes; the achievement of the extracurricular activities; the professional development, to conduct methodical and scientific activities; the contribution to the overall activity of the school and promote its image.

The purpose and objectives of the ascertaining study. As teachers concerned with the training of the trainers, it shows clearly the fact that we subscribe to the principle of quality and hence, we considered as desirable to identify reports, general overviews made by specialists in education, but also to find, empirically, the representations and attitudes of the students we work today with.

It is important to take into account the fact that, the evaluation activity, the objectivity or subjectivity are perceived and more intense analyzed by the one interested in a direct way by the finalist-pragmatic aspect: by the evaluated one (and not the evaluator). The objectivity in the assessment occurs when the assessment of the results reflects them undistorted, impartially and realism, regardless of the conscious, the will of those involved, the resulted assessments being independent of the opinions, beliefs, interests and personal moods in that moment. A purely objective assessment is almost impossible as long as it is performed an and by the human factors; an assessment where there is a reduced dose of subjectivity can be considered as significant, customized, all these features giving it a role engaging, motivating-valuing for both the teacher and especially for his pupils.

According to one of the postmodern paradigms in education, the subjective knowledge is not sufficient, it is only the starting point to reach, by debate to objective knowledge. Therefore we had this idea as a premise that, when we try to analyze the quality of the instruction, it is necessary to properly relate it to a number of indicators and to interpret these indicators in the context. Also, given the different social conditions, we wanted to identify if there are differences between the way that instruction is perceived before and after 1989 and if the status of the instruction has changed obviously, if improved.

2. The methodology chosen:

In order to know the issues that require changes in instruction/teaching may be used methods as: the problems list, the box with ideas, the documents analysis, the questionnaire, the discussion, the SWOT analysis and so on, and to identify the methods for implementing the educational changes is needed a research methodology complex, comprehensive, longitudinal and transverse applied. Of these methodological possibilities we chose, in theory, the method: the curricular document analysis method, and the applicative plan, we used the questionnaire.

2.1. At the theoretical level, based on the documentation using the internet, it can refer to a number of the systematic concerns with respect to the current quality of the instruction. We appreciated as relevant, given the level of expertise of the institution which has made a report compiled by the Institute of The Education Sciences, Ministry of Education, Research, Youth and Sports (now the Ministry of the National Education - MEN). The study is structured on the National System of Education Indicators and the outcomes were synthesized by Otilia Apostu, Magdalena Balica, Ciprian Fartusnic, Florian Bogdan, Irina Horga, Mihaela Jigou, Andreea Scoda and Lucian Voinea in 2011. This report refers to the state of the school instruction in Romania and is made for the period after 2005 -2011 (included). The mentioned report comprises date on:

- the human resources in instruction/education;
- pupils participation in education;
- education outcomes on labor market.

It shows that in the Romanian instruction there are a satisfactory number of qualified staff and an optimal pupils/teachers ratio. Regarding the students' participation in education is reported a decrease in participation, closely related to the demographic decline; the gross participation rate is 77%; with a decrease in the percentage of completion the studies, especially for the secondary education, in rural areas, compared to previous years and to other European countries. One example is for the year 2009-2010, the passing rate of the baccalaureate exam was 51.9%. According to the report, the people aged 15-24 are experiencing the most the integration difficulties into the labor market, compared with other age groups, and the girls record more difficulties than boys, the employment rate is lower in rural areas than in urban. Such issues are closely linked to the phenomena of economic crisis and unemployment. The pupils` outcomes, understood in terms of 'added value' and 'value created' are the ones that define best, the quality and excellence. Regarding the analysis of these results there are a number of terms that come from economic field and were transferred to analyze the learning process. As they are often mistaken, it is necessary to clarify the concepts of efficacy and efficiency.

By Radu (2005: 74-78) the efficacy shows the comparison between the results obtained and the expected outcomes or objectives, and efficiency refers to the ratio between the results and the resources used. Other terms that overlap with the analyzes about the efficiency of the learning are: the progress - estimated by the comparison of the results obtained in the present and the previous results; the effectiveness – understood as the relationship between efficiency and the usefulness of the work carried out, the optimum – which refers to the appropriate/suitable outcomes, which provides the highest efficiency, that best meet the aims pursued.

Another axis of analysis that we followed was to analyze an essential curriculum document, the Education Law. According to the Education Law No 1 of January 5th,

2011 (updated as the national education law, applicable from February the 1st,2014) the state assumes that the education system in Romania is oriented to: values, creativity, cognitive capacities, action and volitional capacities, fundamental knowledge and knowledge, competencies, skill of direct utility to the profession and society. If we consider the main change that has influenced the Romanian social and educational system, we can notice some improvements brought in various stages of the pre-accession to EU period, accession (1 January 2007), the post-accession to the European Union. Not any change is reform, the latter assuming the conceptualization of a substance changes and making it concrete in a complex strategy, with the steps to be taken in a coherent way, and this inconsistency is "accused" to the sets of changes made to the current education. Even the Emergency Ordinance no. 75/2005 on the quality assurance in education, amended with the changes and completions approved by the Law no.87/2006 and by Emergency Ordinance no. 75/2011 states the desire and at the same time, the consequence of focusing on quality: "The quality is a fundamental criterion of public funding of education." (article 5, paragraph 2). In a report made by a team of renowned experts in the science education in 2001, coordinated by Lazar Vlăceanu and invoked at the beginning of our article, it is shown that after 1989 the change of the contents and the school legislation was a permanent priority.

The compulsory education comprises the primary and secondary education (from pre-school class to grade X, inclusive), as the levels of the free education with an open character. It can be seen also the expanding of the existing educational types: mass education and special education; national or belonging to minorities; military, art and sport; secular and religious; public and private; subsidized or with fee; full-time/with frequency face-to-face, and with low frequency, distance education, with acceptance of the educational alternatives. The training providers are accredited by the MEN and they may be related institution of pre-academic instruction. In this stage of the school education there are some programs such as "The second Chance"; "After school", "The school otherwise."

Another change is given by the concern for diversifying the curriculum, as the learning pathways through its types, by addressing the contents in a number of diverse organizations, mono-, multi-, multi-, inter-, trans-disciplinary, the modular organization and others (Ciolan, 2008). The trans-disciplinary organization type, with its benefits and difficulties, is applied in the primary school in the pre-school class, and the trend is that to be extended to teaching, learning, assessment and other levels.

The educational ideal of the Romanian school after 1989 is the free, full and harmonious development of the human individuality, the building of the autonomous and creative personality, based on real ownership of a set of values necessary for their development and personal fulfillment and social and professional integration in a knowledge society. The European key competencies that underlie building the general skills of the pupils are: 1. The communication in the mother tongue; 2. The communication in foreign languages; 3. The Mathematical competencies and basic competences in science and technology; 4. the digital competence; 5. the social competence and civic competencies; 6. Learning to learn; 7. Initiative and entrepreneurship; 8.Cultural awareness and sensibility. The principles stated by the Education Act are: the principle of equity, quality, relevance, efficiency, decentralization, public accountability, (inter)- culturalism, national identity, minority rights, equal opportunities, university autonomy and academic freedom, transparency, freedom of thinking, social inclusion, education centering on its beneficiaries,

participation and responsibility of the parents to promote health education, organization of education as required by the recognized religious confessionals, participation in decision-making, respect for the right to an opinion.

The most obvious trend in the existing pre-university education includes an increased duration of the education, its flexibility, its methodological modernization, by the concern for the early childhood development through the implementation of the development projects in education. Concerning the assessment, the Organization for Economic Cooperation and Development (OECD) initiated PISA studies for assessing according to certain general indicators, in a compared manner, of the results of pupils from different countries. The evaluation system has changed (in the primary classes, the assessment by marks); an assessment for grade II, IV, IV, VIII (national testing), changing the system of admission to college, Baccalaureate and university admissions, examinations for completion of the university studies. Also by the evaluation system was argued the role of the educational portfolio as a method of evaluation and was built the professional qualifications system with ISCED levels for a better compatibility of the national education with the European one, by relating to the European Qualifications Framework. The vocational graduates can continue their studies in high school, as full-time pupils. As a measure to solve the motivational problems, that arise in pupils` learning, was established the family-school educational contract. A new proposal for this year, from the Ministry of Education is the introduction of the digital textbooks to pupils.

Moreover, we could appreciate that there are progresses in the recent years in the development of infrastructure and educational equipment, in the endowments with communication and information technologies to train the pupils, but also for providing a greater security of schools while conducting the national examinations or other extra-activities. Overall, all of the education reform strategies pursued the progress, the compatibility with the European and international education and with these steps, the Romanian education to meet the domestic and external requirements of the quality.

It could be said that from the organizational aspect, the school culture develops, the attitudes and working practices change, it seeks the implementation of an inclusive education, the integration of the new explanatory paradigms of postmodern type in the education (focused on activism and interactivity). A global analysis from the perspective of the main current pedagogical paradigms –the modernism and the postmodernism – shows that they had the following main consequences on education: changes in the structure of the educational system and management level; changes in the curriculum (resources, contents); requirement to achieve the interdisciplinarity; the change of the strategies, networking, and communication; the concern for the organization of knowledge and learning.

In conclusion, there are "two strongly correlated planes of the change and progress of the school organization:

a) the development of the educational establishment (school improvement), involving refurbishments, adaptations and structural and managerial changes.

b) Staff development (staff development) involving processes of teachers` training and improvement, but not only. "(Păun, 1999: 159-160).

2.2. In the applicative plan, our research sought to identify, in a concrete way, the assessments that students have in terms of instruction quality, with a comparison among perceptions, attitudes, social representations of the Romanian education, based on a questionnaire Osgood. The sample was composed of 27 students who prepare to be

teachers, level I, undergraduate, third year specialization French-Translation, University of Craiova. It was used a natural sample, a group consisting of all the students attending the psycho-pedagogical studies. We considered the fact that in the second and the third year of study, based on the study of the following disciplines: The Theory and Methodology of Training, The Theory and Methodology of the Assessment, The Classroom Management, teaching practice, the students have formed own pedagogical concepts and they can assume to a large extent a meaningful assessment of the current Romanian education as beneficiaries. Even if they are not able to achieve judgment Romanian education until 1989, because most of the students are aged 20-21 years and have not directly experienced this type of education, the students have made certain representations about the characteristics of the education and instruction system , thanks to the parents and the media reports.

The semantic differentiator seeks to find out the direction and intensity of attitudes, as a reaction to a specific stimulus (the Romanian education). The small the difference is, the closer the opinions, attitudes, perceptions are. It can be an alternative in the empirical research for the surveys, and in our case, the choice was made for reasons of economy of the investigation. The Osgood questionnaire that we applied comprised a number of polar attributes and the used instrument asked the students to complete for each pair of adjectives, the corresponding figure of the appreciation of that concept. We intended to check if there is a difference in how students surveyed consider the Romanian education before and after 1989. The results obtained were as follows:

Table 1. The values assigned in the comparison of the Romanian education before and after 1989 (The average of the grades)

Values obtained				Values obtained		
„The Romanian Education before 1989”				„The Romanian Education after 1989”		
Sweet	3.81	Bitter		Sweet	3.70	Bitter
Good	4.03	Bad		Good	3.33	Bad
Correct	3.77	Incorrect		Correct	4.29	Incorrect
Beautiful	3.88	Ugly		Beautiful	3.70	Ugly
Active	3.70	Passive		Active	3.33	Passive
Strong	3.33	Weak		Strong	3.88	Weak
Coherent	3.40	Not coherent		Coherent	3.62	Not coherent
Simple	3.96	Complex		Simple	4.14	Complex
Warm	4.07	Cold		Warm	3.62	Cold
Bright	4.00	Dark		Bright	4.14	Dark

The interpretation of the results and conclusions:

From the perspective of the students, the average values assigned show an appreciation of the two types of education as being similar, with an assignment of some values very close to the average values (4), even if individually we could notice a large amplitude of the values given (for example, for the Romanian education after 1989, for the characteristic Sweet-Bitter, were awarded the following values: 3, 3, 4, 3, 2.7, 4, 1, 4, 7, 7, 4, 3, 2, 4, 2, 3, 1, 3, 5, 7, 5, 2, 5, 2, 7, 1).

However, after 1989 the Romanian education is perceived slightly sweeter, better, more beautiful, more active, complex, warmer than Romanian education until 1989, which is considered more accurate, more powerful, more coherent and brighter. This last feature proved surprising for us, and the explanation of students referred to the pessimism that they have about finding a job after completing their studies. We believe that these awards have an internal coherence, logical, even if the sample size and the research methodology applied were not complex. The assessments of the students had a pronounced tendency to the central/average values and between the two periods are not shown too large differences. In our opinion, through its very obvious concern to quality, the efforts made in the education, through the renewing measures applied, the Romanian education after 1989 has another coordinates, an another configuration, the other way to be carried out, much different from its axis before 1989. Some explanations about the interpersonal variability of the assessments of the Romanian education may be correlated with the existence of some processes such as the decentralization in education (Herczyński, 2005 Neacşu, Suditu & Popescu, 2009).

This measure was adopted in the secondary education aiming to distribute the responsibilities and the decision-making activities from the central level of the Ministry of Education to the local level, of the educational community and of each school, for a better focusing on the educated one, on his needs, for a better closeness of the school offer and the real needs of the labor market (efficiency), to achieve the desideratum of the equalization of the opportunities, the flexibility of the educational offer (social justice), to increase the quality of education.

Even if at the level of the education policy are established many education development strategies, in practical terms, it must be recognized that, in present, the instructional-educational activities are focused more on the training, not on the pupils` learning. The modern pedagogical paradigms and even the postmodern ones require and have effects of restructuring the conceptions and the behaviors of the students, teachers, so that they accept more and more that the new roles of the teachers are related to training, facilitating, organizing, directing, stimulating learning, monitoring and regulation the discussions, advising the pupils, for them to be active in the relational plan: to participate, collaborate, elaborate, argue, negotiate, to criticize, to reformulate and evaluate themselves.

All these behaviors are favorable to the desideratum to obtain the quality in the training and current education. According to ARACIP directives, the quality assurance will be regarded as an individual and institutional learning process, aimed to identify the areas for development and guidance of the personal and institutional development towards beneficial directions. The quality education management requires reporting to the performance indicators for evaluating the education quality: the relevance, the visibility and the measurability, the informative character, the acceptability, the motivation, the efficiency, the efficacy. Also, an important aspect is related to the material and financial resources of the education. The criteria for allocation of the funds for investment for facilities and school infrastructure are:

- number of the beneficiaries;
- number of schools;
- spaces required for laboratories/various activities;
- existing units in the area;
- necessary facilities and upgrades to carry at European standards the educational process;

- the funds absorption process recorded in the previous years for each county;
- creating new positions.

The educational school projects are the natural result of the changes that have occurred in the life of the school organizations as a result of the implementation of the process of democratization and reform of the national public school education. In the recent years, the orientation of the education has evolved under the influence of the fundamental social, economic and political changes, from the mere acquisition of knowledge and practical skills training to developing social and professional attitudes and competencies that enable the individual to develop as a creative, adaptive person, and thus the greater chances of social integration. The school educational institutions were gradually transformed from rigid organizations to flexible organization, and that is, in the terms of the final product – the young trained in all aspects for the social integration - have to solve an essential objective, the quality assurance in education. This task is complex, at the school level it is conditioned both, by subjective factors generated specifically by the conservative mentalities (both in the internal and external environment of the organization) and insufficient information, but also objective factors related to the material base, financial resources and the human resources expressed qualitatively, especially through the training level of the teachers and school managers.

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ORIGINAL PAPER

The Protection Ability of the Main Social Assistance Benefits within the Romanian Social Security System since 1989

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Abstract

Communist welfare system has played an important role in preventing and combating poverty and, accordingly, social exclusion, being more efficient than the current social security system to providing replacement income of wage earnings for those who are unable to work because of old age, disability or illness, as well as to encouragement of births by supplementing the income of families with children, through various supportive measures, by providing free health care. After the Romanian Revolution of December 1989, social security has undergone numerous transformations generated by the decline in the standard of living, inflation, rising unemployment, deepening poverty and extending it to the blankets of the broader population. By using the analysing of these indicators and the comparison with the previous regulations as methodology, the authors intended to measure Romanian social assistance system's performance and determine the causes of non-performance. The main conclusion of this paper is that economic difficulties and budgetary restrictions have led to the decrease in the protection capacity of main social assistance benefits provided by the new law on social assistance system no. 292/2011: income support, minimum insertion income, family allowances and indemnities.

Keywords: income, allowance, family, poverty, security

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Introductory considerations on the reform of the Romanian social assistance system since 1989

Communist social security system has played an important role in preventing and combating poverty and, in consequence, social exclusion. Unlike the current system, severely affected by the transition to a market economy and, in recent years, by the global economic and national political crisis, the Communist regime was more effective in providing replacement income for wage earnings of those incapable of working due to old age, disability or illness, has encouraged the birth rate by supplementing the income of families with children through various measures of family support, has eradicated unemployment by providing jobs and regulating compulsory employment, has provided free health care. The construction of the Communist social security system was not, however, based on the idea of combating poverty and ensuring a minimum level of living for those in need, social protection schemes being meant mainly for active population (not for jobless, disabled people, poor peasants). Social welfare institutions were underdeveloped, the services provided to children and elderly people in specialized care institutions being "particularly precarious, even miserable" (Molnar, 1999: 184).

After the revolution of December 1989, the effects of the transition to a market economy were reflected on the social security that has undergone numerous transformations generated by the fall in the standard of living, inflation, rising unemployment, deepening poverty and its extension on an increasingly broader category of population. Measures of economic and social protection and social security reform were of liberal inspiration, having as main objective the involvement of the State in combating poverty and social exclusion. Thus, the post-revolutionary period was waived many of the basic elements of the old Communist system, being gradually introduced the guaranteed minimum income scheme, public social aid and social aid canteens, the guaranteed minimum wage on national economy, various types of family benefits, the system of social protection of disabled persons, etc. Also, a minimum level of unemployment benefit was introduced, another compensation scheme of medicine prices was set up, public pension system was reformed, family allowances were based on universality principle, the conditions of assistance to orphans and children or elderly deprived of their family's support have been improved. Unfortunately, all these measures have not had the expected outcome, excessively pressing on the state budget, fact which has led in practice through "the impossibility of fulfilling the function of maintaining the standard of living achieved before the risk production in the field of social insurance and family benefits, the shifting of the social security system towards the models characterized by minimal protection and, what is more serious, the inability of social benefits to ensure a minimum level of protection for a large number of those placed in the social security net" (Molnar, 1999: 186).

The political and economic crisis that has plagued Romania in the last few years had extremely harmful effects on the ability of the State to protect its citizens, as provided for in the Constitution. The level of social benefits and their ability to ensure a minimum standard of living decreased increasingly more drastically in terms of inflation, compression of the national public budget resources, severe budgetary restrictions, decrease of the number of people active on the labor market and ageing phenomena.

Social assistance is regulated by Law no. 292/2011 which provides that the national system of social assistance means the combination of measures and institutions through

which the State, represented by the central public administration authorities and local civil society, intervenes for preventing, limiting or removing temporary or permanent effects of situations which may give rise to marginalization or social exclusion of the person, family, groups or communities. Social assistance system provides both cash benefits and social facilities and services provided for the development of individual or collective capacities for fulfilling social needs, increasing quality of life and promoting the principles of cohesion and social inclusion: family counselling, vocational guidance, counselling and support for social integration of persons at risk of exclusion (Buzducea, 2005: 35).

Social assistance is "represented by a system of legal norms meant for implementing social protection programs for the support of benefits for families with children, certain categories of minors, elderly, retirees, adults with disabilities, and other beneficiaries" (Athanasiu, 1995: 348).

The purpose of social assistance is to ensure the minimum level of living to those members of society who "are in need" or "in a state of poverty" (Ghimpu, Țiclea & Tufan, 1998: 347), the issue of the right to social assistance being closely linked to the notion of "social need" (Athanasiu, 1995: 348).

The need, as the legal foundation of the right to social assistance, represents the lack of necessary means for an individual to sustain his living. Social need, according to article 5 of the Law on social assistance no. 292/2011, means the indispensable requirements of each person to enjoy the necessary conditions for living, in order to ensure social participation or, where applicable, social integration. Unlike the previous legislation (Law no. 47/2006 on national social assistance system), the new law on social assistance focuses on purpose – social participation – and introduces the notion of "special need", consisting of "the indispensable requirements for ensuring the social integration of persons who, because of health problems, genetic or acquired during life, had a disability, and of individuals who, for various reasons of a social nature, are disadvantaged in their personal development" [Art. 6 let. x) of Law no. 292/2011]. Also, one of the new principles introduced by Law no. 292/2011 is the activation principle, according to which social support measures have as their ultimate goal the encouragement of labor force employment for the purpose of integration/social reintegration, life quality's growth and family nucleus' strengthening.

The right to social assistance is guaranteed by law to all Romanian citizens who are domiciled or resident in Romania, without any kind of discrimination. Citizens of other states, stateless persons and any other person who has acquired a form of protection and has his domicile or residence in Romania are entitled to social assistance, in accordance with Romanian legislation and agreements and treaties to which Romania is a party.

Unlike the previous regulation, which provided that rights to social assistance shall be granted on request or *ex officio*, as appropriate, Article 16 par. 1 of Law no. 292/2011 stipulates that "the right to social assistance benefits shall be granted on written application of the person entitled, of family representative or of the legal representative of the person entitled", hence they can no longer be granted *ex officio*.

Law no. 292/2011 highlights the alternative or, where appropriate, complementary character of the national system of social assistance in relation to the social insurance system, which prevails. The purpose of social assistance, in addition to building individual, group or collective capacity to ensuring social needs and increasing quality of life, lies in promoting the principles of cohesion and social inclusion, integration on the labor market being a priority objective.

According to the article 6 par. 4 of Law no. 292/2011, the measures and actions for social assistance are put into practice so that:

a) benefits of social assistance and social services constitute a unified package of related and complementary measures;

b) social services prevail over social assistance benefits, if their cost and impact on beneficiaries is similar;

c) social assistance measures and actions should be evaluated at regular intervals in terms of their effectiveness and efficiency to be continuously adapted and adjusted to the real needs of beneficiaries;

d) benefits of social assistance and social services contribute to the labor market integration of beneficiaries;

e) prevent and limit any form of dependency upon the aid granted by the State or by the community.

Social assistance benefits

Social assistance benefits are a form of supplementing or substituting individual/family income derived from work in order to ensure a minimum standard of living, as well as a form of support in order to promote social inclusion and increase quality of life for certain categories of persons whose rights are expressly provided for by law. Social assistance benefits are paid in money or in kind and consist of allowances, social assistance services and facilities.

Depending on the eligibility conditions, social assistance benefits are classified as follows:

a) selective social assistance benefits, based on testing the livelihoods of the single person or the family;

b) universal social assistance benefits, granted without testing the livelihoods of the single person or the family;

c) categorical social assistance benefits, granted to certain categories of beneficiaries, with or without testing the livelihoods of single person or family.

Depending on their purpose, social assistance benefits differ as follows:

a) social assistance benefits for preventing and combating poverty and the risk of social exclusion (social aid, emergency aid, scholarships and financial aids for facilitating access to education, aids in kind, food and materials for children and young people coming from disadvantaged families, aids for refugees, facilities for the use of in common transportation means);

b) social assistance benefits for children and families support (allowance for child; allowances for children, temporarily or permanently destitute from the care of their parents; indemnities for rising children; other facilities, according to the law);

c) social assistance benefits for supporting people with special needs (allowances for persons with disabilities; care allowances; other facilities);

d) social assistance benefits for unpredictable situations.

The conditions for granting these benefits, mainly aim at the same goal – to encourage the participating of beneficiaries on the labor market. Thus, where persons who are granted social assistance benefits get employed or return to their job, resume professional activities or start an activity on their own, they may benefit, where appropriate, under the conditions laid down in the special laws, from:

a) increase of granted social assistance benefit, whether they fall within the conditions of eligibility;

b) extension of the period for granting social assistance benefit with a maximum of 3 months beginning with the month of their employment;

c) incentives for the substitution of social services;

d) other rights provided by law.

Refusal of employment, of participation in training /qualification /requalification courses or in other active measures provided by law may result, under special laws, in reducing the amount of social assistance benefit or in termination of its payment and prohibition of receiving a new benefit of social assistance for a limited period of time.

On the other hand, employers who hire people receiving social assistance benefits are supported and encouraged to make such hires; they can also benefit, in accordance with the law, from tax breaks or other facilities.

An illustration for the way and the extent to which social assistance benefits meet the requirements of the fight against poverty is article 9 par. 9 of Law no. 292/2011, according to which social assistance benefits financed from the state budget and, where appropriate, from local budgets shall be subject to payment only if the recipient pays his obligations towards the local budget.

According to article 14 of Law no. 292/2011, the amounts of social security benefits are determined in relation to the reference social indicator (ISR) by applying a social insertion index. Unlike the previous system, where all the social benefits were established by government decision, the new regulation introduced a uniform calculation method for all social security benefits.

Starting with 2012, all social benefits are reported to the ISR and, as subsequent laws of the new code of social assistance (Law no. 292/2011) have entered or enter into force, all the 54 social benefits will be reduced to seven types of allowances, indemnities and facilities, measure aimed, mainly, at reducing financial costs, saving budgetary funds, by reducing errors and frauds in the social assistance system (Ministry of Labour, Family and Social Protection, 2011: 2-3).

ISR means the unit expressed in lei which social assistance benefits, paid from the state budget, are related to. Modifying the amount of social benefits will be only possible by modifying the ISR.

Social aid

Within the social protection system most developed countries provide a benefit of guaranteed minimum income for all categories of disadvantaged population. As it results from Law no. 416/2001 on guaranteed minimum income, such a system based on the principle of solidarity is also operating in Romania and it is for the first time when a law is focused on the homeless people (Belu, 2005: 230-231). On its turn, Law no. 292/2011 defines such persons as “a social category made up of singles or families which, for single or cumulative reasons of social, medical, financial, economic, legal nature, or due to force majeure, live in the streets, staying temporarily with friends or acquaintances, are incapable of supporting a home for lease or are in risk of evacuation, are detained in institutions or prisons from where are likely to be expelled within two months, and have no domicile or residence”.

Regulated for the first time in 1995, social aid is a form of social protection founded on the principle of solidarity and consists in granting differential allowances financed from local incomes and supplemented by the state budget, meant to assist families and single people with incomes under a considered basic minimum, as well as homeless people in need (Țiclea, 2009: 336; Molnar, 1999: 208).

Social aid benefits are non-contributory, consisting of cash and benefits in kind granted to persons or families whose income is insufficient to meet minimum basic needs.

As pointed out in the specialized literature, the social aid is a form of social protection based on the principle of social solidarity, representing "concrete" help for families belonging to the poorest category of society but it is unable to get the beneficiaries out of poverty and thus represents "the last safety net" of protection against poverty (Ghimpu, Ţiclea & Tufan, 1998: 414; Molnar, 1999: 208).

The level of protection provided by the social aid benefit to its beneficiaries is very low and has continued to decline since 1995 to present. While the guaranteed minimum income level is reported to the reference social indicator (0.25 ISR for single person; 0,45 ISR for families consisting of 2 persons; 0.63 ISR for families consisting of 3 persons; 0.78 ISR for families of 4 persons, 0.93 ISR for families consisting of 5 persons; 0,062 ISR for each person over 5 people, that is part of the family, in accordance with the law), the amount of social aid benefit is established as a social difference between these levels, converted into lei, and net monthly income of the family or of the single person. If the calculation results in a social aid amount of less than 10 lei, 10 lei are given to the beneficiary.

Except those who have undeclared income, the beneficiaries of the aid are to be found in a state of extreme poverty, social aid representing "rather a limit up to which the society affords, in the present circumstances, to raise income for all those who cannot do this by their own effort" (Molnar, 1999: 208).

One of the causes for which the social aid has an amount so low it is the abusive access to this benefit of social assistance of persons carrying out very large incomes from the black economy (typical example of many Roma families), pressing so excessively the State budget and so hijacking this form of protection from its aim: combating poverty.

In order to combat the shortcomings of law, art. 16^1 of Law no. 416/2001 laid down that, starting from 2012, for the maintaining of the entitlement to social aid, beneficiary families are required to pay their legal obligations towards the local budget for the assets they hold in the property, as provided for in Law no. 571/2003 regarding the Fiscal Code, as amended and supplemented. Checking out the accomplishment of this obligation is carried out on an annual basis, no later than January 31 of each year for the payment obligations to the local budget incurred in the previous year. In the event that, before January 31 each year, the Mayor finds out that this obligation was not fulfilled, it shall suspend the right to social aid payment for a period of five months, beginning with the rights associated with the month of February. Payment of legal obligations towards the local budgets within the period of five months determines the resumption, by the Mayor's disposal, of the social aid payment starting with the month following that in which the obligation has been paid, including proper rights during the suspension period. In the situation when, after the expiration of that period, the obligation to pay legal taxes is not fulfilled, the right to social aid will cease by Mayor's order. The advantage of these legal provisions is that State recovers part of the amounts due to him in the form of taxes and duties, but the risk is that social aid would not reach families in serious condition of poverty and that would have really needed it.

Insertion minimum income

Insertion minimum income is the main form of supporting the prevention and combating poverty and social exclusion risk, being granted from the State budget as the difference between the levels laid down by special law and the net income of the family or single person made or obtained in a given period of time, in order to guarantee a minimum income for each person in Romania.

Insertion minimum income is a form of support for low-income families set up through the unification of guaranteed minimum income, of the current allowance for family support and aid for house's heating, which has been applied as starting with 2013.

The benefits for the child and family support

The most important measures in support of the family are family benefits, those benefits in money allocated by the social welfare system. The term "family benefits", encountered in the literature, identifies all allowances and benefits awarded in favor of the family. These benefits represent the main tool of family policies which seek to ensure family protection, perpetuation and development in order to enable it to fully exercise its social and economic functions. Family benefits are granted to families with children and take into account, primarily, children's birth, education and rising.

Law no. 292/2011 introduced the term of "social assistance benefits for the child and family support" which, according to article 10, are awarded by the State to increase the quality of life in the family and maintain a proper supportive family environment for the achievement of its basic functions.

The purpose of granting social assistance benefits for family support consists of supplementing the income of families with children, for the family standard of living not to be drastically deteriorated with the birth of children (Avram, Popescu & Radu, 2006: 98). They primarily fulfil a function of social protection and financial supporting for families with children: "Family social assistance measures are not granted for compensation of its specific tasks, but also as a form of supporting child rising inside the family and overcoming a difficult reconciliation of family life with professional life, encouraging employment on the labour market" (Art. 67 of Law no. 292/2011). In time, they have acquired a demographic function: the function of stimulating birth; in practice it was proved, however, that their role in this matter is minor (Molnar, 1999: 202).

State allowance for children

State allowance for children is "one of the main social assistance benefits which consists of a sum of money given by the State to families with children in order to cover the needs of children's growth and education" (Ghimpu, Țiclea & Tufan, 1998: 397; Țiclea, 2009: 370-371).

Law no. 61/1993 introduced the principle of the universality of the right to state allowance for children, by providing, since October 1993, of a monthly indexable allowance. The principle of the universality of family benefits is "the main legal criterion for granting state allowance for children" (Athanasiu, 1995: 62).

Decree no. 410/1985, the past regulation of the state allowance for children, provided allowance for children with the condition that the parent of the minor child have the legal status of employee. According to Law no. 61/1993, all children benefit

from the allowance, regardless of the parents' quality of being employed (Avram, Popescu & Radu, 2006: 100).

The amount of the allowance for children is established in relation to the reference social indicator as follows: 0.4 ISR for children up to 2 years (or up to 3 years in the case of disabled children); 0.084 ISR for children aged between 2 and 18 years, and for the young people referred to in article 1 par. (3); 0.168 ISR for children aged between 3 and 18 years, in the case of children with disabilities, in accordance with the provisions of article 58 par. (1) of Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities.

Parental allowance

For children born, adopted, entrusted for the purpose of adoption, children taken into foster care, into emergency foster care or guardianship, persons who, in the last year before the child's birth or before the events mentioned have done for 12 months professional income subjected to income tax under the provisions of Law no. 571/2003 regarding the Fiscal Code, benefit from parental leave of up to two years or, in the case of disabled child, of up to 3 years, as well as a monthly allowance in the amount of 75% of the average revenue in the last 12 months (Radu, 2009: 73). Starting with January 2012, parental allowance is determined in the amount of 75% of the average net income achieved in the last 12 months and may not be less than 1.2 ISR nor greater than 6.8 ISR. The amount of parental allowance is increased by 1.2 ISR for every child born of a twin pregnancy, triplets or multiplets, starting from the second child born into such a birth.

Another measure introduced in 2011 aimed at supporting the family, but also at encouraging the maintenance of prospective beneficiaries as employees lies in the fact that persons who, during the period in which they are entitled to parental leave and the monthly allowance, get income subjected to tax on profit, before the child reaches the age of one year, shall be entitled to an insertion stimulent in the monthly amount of 1 ISR for the period remaining until the child reaches the age of 2 years.

The purpose of these new changes regarding parental leave and parental allowance is to reduce the cost and the period for granting the allowance in order to achieve budgetary savings.

Allowance for family support

Government Emergency Ordinance (O.U.G.) no. 105/2003 on additional family allowances and allowance for monoparental family expressly abrogated Law no. 119/1997 on supplementary allowance for families with children. Thus, the supplementary allowance for families with children has been replaced by additional family allowance, which is provided including for families with a single child, if they meet the legal requirements.

O.U.G. no. 105/2003 maintained the principle of selectivity, namely the granting of family benefits according to the net monthly income per family member and depending on the number of children, but it has widened the scope of beneficiaries, including families with a single child, taking into account that, in Romania, more than half of families with children had one child. The adoption of this solution presents the advantage of providing protection to a large numbers of poor families with a single child (Molnar, 1999: 203-205).

In the literature, the universal scheme is considered to be much more expensive than the selective one taking into account the expenditure on allowances payment. Practice has shown, however, that the selection of those who have low incomes is extremely difficult and costs a lot if we take into account, on the one hand, the administration costs and, on the other hand, the losses involved in tax evasion, the development of black labor market and the abusive access to allowances. In the case of Romania, the administrative costs involved in verifying incomes are increased by the large number of potential beneficiaries, the share of families in need of financial aid for children raising being very high (Molnar, 1999: 203-205).

Like the supplementary allowance for families with children, additional family allowance and allowance for monoparental family support were non-contributory benefits which consisted of a sum of money that was supported by the state budget in favour of families with children, according to the number of children, in order to mitigate the consequences of economic reform (Radu, 2009: 176).

Law no. 277/2010 concerning the allowance for family support introduced a new family allowance that represents the result of the consolidation of the two previous allowances – additional family allowance and allowance for monoparental family support, regulated by O.U.G. no. 105/2003, which is no longer into force.

Under the new law, the allowance for family support is a form of assistance for low-income families who are growing and taking care of children under the age of 18 years, with the aim of supplementing the income of families in order to ensure better conditions for the education, care and upbringing of children, as well as boosting school attendance by school-age children being in the care of low-income families.

For family consisting of husband, wife and children in their care, living together, and whose average monthly net income per family member is up or equal to 0.40 ISR, the monthly amount of the allowance is determined by reference to the ISR, as follows: a) 0.06 ISR for family with one child; b) 0.12 ISR for family with 2 children; c) 0.18 ISR for family with 3 children; d) 0.24 ISR for family with 4 children and more. If the average monthly net income per family member is less than 0.40 and up to 0.740 ISR including, the amount of the allowance is established as follows: a) 0.05 ISR for family with one child; b) 0.1 ISR for family with 2 children; c) 0.15 ISR for family with 3 children; d) 0.2 ISR for family with 4 children and more.

For the single-person family and dependent children, living together, and whose average monthly net income per family member is up to 0.40 ISR including, the monthly amount of the allowance shall be determined as follows: a) 0.1 ISR for family with one child; b) 0.2 ISR for family with 2 children; c) 0.3 ISR for family with 3 children; d) 0.4 ISR for family with 4 children and more. If this family has an average monthly net income per family member over 0.40 ISR and up to 0.740 ISR including, the amount of the allowance is: a) 0.09 ISR for family with one child; b) 0.18 ISR for family with 2 children; c) 0.27 ISR for family with 3 children; d) 0.36 ISR for family with 4 children and more.

In terms of rising unemployment, social benefits for supporting family are an important contribution to the increase of the income of families with children, a fact that presents the disadvantage of birth stimulation in poor families, as well as of family dissolution.

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ORIGINAL PAPER

"The Danube Strategy" project: a new dimension of the EU's policy

Karina Paulina Marczuk*

Abstract
Bearing in mind such initiatives as the Eastern Partnership of the European Union, the acceptance of the so-called Baltic Strategy in June 2009 and, finally, the plan of launching a similar strategy for the states located in the Danube Basin, it seems obvious that the EU chose a new way of conducting its regional policy. The author points out that nowadays it is a regional policy which might be the most crucial activity on which the EU is focused currently. The so-called macro-regional dimension of the EU's regional policy is perceived as "a new added value" of the European territorial policy. "The Danube Strategy" project seems to be the most relevant example to confirm the above-mentioned thesis. Consequently, the article provides a couple of data regarding origin and history of cooperation of the Danube states and its current state. The author used mainly original contemporary sources as well as papers issued during the interwar period*.

Key words: Danube, Danuta Hübner, regional policy, Romania, Rotterdam, Vienna

Introduction

The Danube, except for Volga, is one of the longest rivers in Europe and it might be perceived as a link between states which are located close to that enormous waterway. Taking into consideration geographical determinants, it is possible to call these countries as *riparian states* what means the states that possess the Danube on their territory or the river is a border for them. Therefore, not only Germany, Austria, Slovakia, Hungary, Croatia, Serbia, Bulgaria, Romania, Ukraine and Moldova are called *riparians*, but also "(...) three countries not bordering the Danube but in the

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* For the purpose of the article the author has used her previous article entitled *Projekt "Strategii naddunajskiej" UE jako konsekwencja ewolucji wielostronnej współpracy państw region Dunaju ["The Danube Strategy" project: The EU as a consequence of the evolution of multilateral cooperation of the Danube region]*. In Popławski, D. (editor), *Państwa naddunajskie a Unia Europejska*, Warszawa: Aspra-JR, 2010, pp. 225-246.

drainage basin, including the Czech Republic, Slovenia and Macedonia" (Linnerooth-Bayer & Murcott, 1996: 522).

Crossing the core of the European continent and connecting with other rivers by a network of water canals, the Danube links Constanţa harbor in Romania and Rotterdam port in Holland. This fact proves the importance of the river what, consequently, provokes development of an enhanced Danube cooperation process in the region. Nowadays, the importance of the Danube was appreciated by the European Union (EU), as well. The EU considers the group of the riparian states as a huge macro-region: "(…) the Danube links ten European countries – Germany, Austria, the Slovak Republic, Hungary, Croatia, Serbia, Romania, Bulgaria, the Republic of Moldova and Ukraine – six of which are EU Member States, and in a broader territorial context the region also comprises the Czech Republic, Slovenia, Bosnia Herzegovina and Montenegro" (*European Parliament resolution of 21 January 2010 on a European Strategy for the Danube Region*, 2010). Nevertheless, geopolitical importance of the Danube as an European corridor was appreciated through the history, as well: "Napoleon, who campaigned several times on the upper Danube above Pressburg, the present-day Bratislava, called it, although he knew well both the Rhine and the Nile, 'the King of Rivers', and Talleyrand's assertion in 1815 that at the mouth of the Danube lay the centre of gravity of European politics rings oddly, until it is realized that he based it in political rather than economic consideration" (East, 1932: 321).

Bearing in mind the fact that the Danubian countries had cooperated also in previous centuries, it is necessary to point out that early cooperation was mainly focused on navigation of the river. For that reason, the Paris Treaty (1856) called for the first time the Danube an international waterway: "The navigation of the Danube cannot be made subject to any obstruction or tax not expressly intended by the agreements comprised in the following article" (*The Paris Treaty*, art. 15. In Sherman, 1923: 446). Moreover, the Paris Treaty had established the European Commission of the Danube which controlled the free navigation of the river (article 16); it was the first organization focused on the institutionalization of the Danubian cooperation process. After the First World War, when the League of the Nations was established and the member states were tending to cooperate in order to maintain world's peace, the group of riparians planned to develop the Danube cooperation, as well. Once again the issue of free navigation was touched as well as economic cooperation between the riparians. Hence, two decades, the period between 1918 and 1938, was called the International Regime of the Danube (see further: Popper, 1943: 240). Consequently, Austria, Germany, Yugoslavia, Bulgaria, Romania, Great Britain, Italy, Czechoslovakia, Belgium, Hungary and Greece confirmed an international statute of the Danube. As well, these countries signed the Convention Instituting the Definitive Statute of the Danube in 1921 in Paris. The first article of the document proved that "navigation on the Danube is unrestricted and open to all flags on a footing of complete equality over the whole navigable course of the river, that is to say, between Ulm and the Black Sea" (*Convention Instituting the Definitive Statute of the Danube*, 1923: 14). Moreover, the Convention established the second international institution, except for a previous European Commission of the Danube, which was the International Commission of the Danube (article 3).

A serious economic crisis in 30's and, subsequently, the outbreak of the Second World War stopped the process of institutionalization of the Danubian cooperation. In fact, it was only then that the war was finished when the navigation of the Danube was

reestablished. In 1948 in Belgrade was agreed the Convention Regarding The Regime of Navigation of The Danube and the Danube Commission was reestablished. However, due to the fact that the document was signed mainly by the states which were under the Soviet influence, the activity of the Danube Commission was criticized strongly: "One of the finishing touches in consolidating the Soviet sphere in Eastern Europe was the drafting of a new convention for Danube navigation in summer of 1948 in Belgrade. (...) In 1948 there was only the illusion that the West still had a voice in the future of the Danube. (...) The 1948 Danube Convention was drafted not only to terminate Western involvement in the Danubian basin but it was designed to conform to the Soviet control pattern for Eastern Europe" (Cattell, 1960: 380-382).

Towards a new dimension of Danubian cooperation

The changes, which have been occurred since 1989 in Europe, characterized the political landscape of the Danubian region, as well. Firstly, the dismantling of the USSR and, consequently, the thaw in international relations as well as the transition to market economies in the Eastern countries and the growing importance of the EU had effects on the riparians. The division of Czechoslovakia and the Yugoslavian crisis led to creation new Danubian states: Slovakia, Croatia and Serbia. Finally, Ukraine and Moldova raised as well as the states situated in the drainage basin: the Czech Republic, Slovenia and Macedonia.

On the other hand, during the 90's natural environment of the Danube seemed to be an international concern. In 1991 the Danube Delta became a part of the UNESCO list of the World Heritage Sites; in 1994 in Sofia riparians established The Convention on Co-operation for the Protection and Sustainable Use of the River Danube (Danube River Protection Convention) which came into force in 1998. The document established a new organization called the International Commission for the Protection of the Danube River (ICPDR). However, the activity of the ICPDR is devoted mainly to the environmental issues, so the aim of that institution is to work to ensure the sustainable and equitable use of waters and freshwater resources in the Danube River Basin (see further: *The Convention on Co-operation for the Protection and Sustainable Use of the River Danube (Danube River Protection Convention)*, 1994).

One of the most important consequence of the Yugoslavian crisis was acceptance so-called Stability Pact for Europe, an idea proposed by a French government of Édouard Balladur. Subsequently, the concept was developed in the latter document entitled Stability Pact for South-Eastern Europe (1999). Its aim was to revive a political cooperation in the South-Eastern Europe; therefore, relations between riparians become more harmonious. Moreover, the European Commission supported a new dimension of the Danubian cooperation. It was pointed out that especially Austria and Romania, the main Danubian countries, should be interested in development the trans-danubian cooperation: "in the process of launching of the Danube Cooperation Process, special responsibility was taken by Romania and Austria, together with the European Commission and the Stability Pact for South-East Europe" (*Danube Cooperation Process. Principles and working methods for the functioning of the Process*, 2002). Finally, in 2002 in Vienna the riparians agreed a common Declaration on the Establishment of the Danube Cooperation Process.

The above-mentioned Declaration is focused mainly on political cooperation between the riparians. Taking into consideration the fact that some riparians were members of the EU, while some of them only were applying for membership "[all of

them agree to] give the Danube Cooperation Process (the Process) a multi-dimensional character, whose main feature shall be its political dimension (...)"(*Declaration on the establishment of the Danube Cooperation Process*, 2002). Moreover, signatory states decided to "*broaden and deepen* present Danube cooperation and give to it clear political and economic dimensions, *without creating new institutions*, but taking stock of and using the existing structures and, where necessary, harmonizing their objectives and efforts, providing a focus, where appropriate, for their efforts within the Danube Region" (*ibid.*).

Therefore, it is possible to state that the political cooperation of the Danubian states hadn't been yet institutionalized due to the lack of new bodies. On the other hand, close ties between the Danube Cooperation Process (DCP) and the EU may lead to conclusion that: firstly, this initiative had been used as a political support for non-member countries (Romania and Bulgaria) on their way to the EU and, secondly, as a powerbase for the Danube Strategy project. During the third ministerial conference of the Danube Cooperation Process in Belgrade in 2007 everybody agreed that "the DCP will continue to provide political support to Danube-related cooperation initiatives in the region, in particular within the existing frameworks of the International Commission for the Protection of the Danube River (ICPDR) and other established institutions. At the same time, the DCP will try to facilitate Danube – Black Sea cooperation projects and synergies, strengthening cooperation with the Black Sea Economic Cooperation Organization (BSEC)" (*Final Document of the Third Conference of the Danube Co-operation Process*, 2007). Hence, the Danube Cooperation Process becomes also a platform for a closer cooperation in the Black Sea region what was mentioned also in the so-called Black Sea Synergy issued by the EU in 2007. Undoubtedly, the DCP had a very strong impact on a further development of the cooperation between riparians as well as it has on a new concept of the Danube Strategy.

On October 2008 the European Commission launched the Green Paper on Territorial Cohesion. The document provided a new concept of the regional policy of the EU as well as its territorial policy – an idea of introducing macro-regional strategic concept. The EU highlighted a need of collaboration of states within macro-regional structures. Firstly, the EU has recognized the Baltic Sea basin as the first macro-region, the second is the Danube basin. The term "macro-region" for the EU means "(...) a region where all countries are facing similar challenges, but one which also has several specific features which call for increased cooperation across the whole region (...)" (Hübner, 2009a: 19).

The European Council during the meeting on June 2009 claimed the European Commission to agree the European Strategy for the Danube Region by the end of 2010. In an official report of the former EU Commissioner responsible for regional policy Danuta Hübner it is stated that: "The European Council of 17–19 June 2009 has recognized both the progress made with the Baltic Sea Region Strategy and the wider potential of the macro-regional approach, by calling for the Commission to prepare a similar Strategy for the Danube region" (*ibid.*: 20).

The Danube Strategy was preparing using the Baltic example. Previously, for the Baltic region the EU proposed four objectives: environmental sustainable development,

welfare, accessibility and attraction, safety and security[*] (further see: Hübner, 2008a). The Danube Strategy might involve the same set of objectives what was confirmed by Danuta Hübner (further see: Hübner, 2008b). Commissioner D. Hübner was responsible for a project of the Danube Strategy by the end of 2009. Hence, a critical analysis of her official speeches provides a comprehensive picture of development of the Danubian process.

First and foremost, the accession of Romania and Bulgaria to the European Union was the main reason for intensification of multilateral cooperation of riparians: "With the accession of Romania and Bulgaria to the European Union in 2007, the Danube has become much more a European Union river, its basin a real European macro-region..." (*ibid.*: 2).

The Danube has been admitted as an internal river of the EU due to the following issues: transportation (the waterway Danube – Mein – Rhine), environment problems, bio-diversity as well as socio-economic issues. These are the concerns which are shared by all the riparians. Thus, these questions would be included to the Danube Strategy project. To sum up, the European Commission took into consideration the three key elements: a previous Baltic Strategy as a model for the Danube Strategy; the concept of the territorial cohesion provided by the Green Paper; a forthcoming policy of the EU referring to the regional issues (further see: Hübner, 2009b).

It is necessary, however, to point out that the aim of the Danube Strategy is not to institutionalize an early trans-Danubian cooperation. The Strategy should use bodies which have already been established such as the Danube Commission, the International Commission for the Protection of the Danube River as well as the Danube Cooperation Process. Commissioner Hübner highlighted that "there are also some things people do NOT want to see: 1. No new institutions: there are plenty of organizations out there, and adding to their number risks increasing duplication and confusion more than improving effectiveness. 2. No empty declarations without assigned actions to back them up within specific deadlines" (Hübner, 2009c).

On the other hand, regarding to the cohesion policy as well as provisions of the Green Paper, the European Commission has perceived the problem of diversity of the riparians. Therefore, the Commission says that "sustainable development must remain a central concept" (Hübner, 2008b) and it puts emphasis on "coming back to territorial cohesion (...). Cooperation in the Danube area (...) has a significant importance (...)" (Hübner, 2008c). Furthermore, the European Commission wants to perceive the Danube macro-region as a wider area what means to include thereto non-member states of the EU, as well: "The Danube Strategy brings me to encourage you to extend the cooperation further on to countries like Ukraine and Moldova" (*ibid.*). Additionally, the EU is going to establish "(...) other potential macro-regions such as (...) the Mediterranean and the Adriatic" (Hübner, 2009d).

On June 2009 the European Commission enumerated key issues which would be the subject of the cooperation of the riparians. These are the transport on the Danube, the environmental dimension and the economic development along the Danube (Hübner, 2009e). Moreover, the Commission called the Danube countries to appoint contact persons at a high level who might be responsible for the Danube Strategy issue (it means negotiators).

[*] The project of the EU Strategy for the Baltic Sea Region was officially presented on September 2008.

A previous cooperation which has been developed by the Danubian states was appreciated by the EU obviously. The European Commission names the cooperation of riparians as various forms of partnership: "Danube *partnerships* are already established: the Danube Commission has been operational for many years, more recently the International Commission for the Protection of the Danube River has also achieved concrete results, the Danube Cooperation Process is seeking to become more effective. At the regional and local level, the Danube Cities and Regions are currently considering establishing their own formal network" (Hübner, 2008b). A close cooperation of all partners was appreciated by Commissioner Hübner who pointed out that "[this] what has been particularly impressive during the preparatory work on the Danube has been the close cooperation between Member States and regions" (Hübner, 2009f).

Inter-institutional cooperation as well as partnerships of the riparians and regions together is perceived by the EU as a key issue during the process of launching the Danube Strategy (further see: Hübner, 2009e). Particularly, the partnership principle is the most important, because "(...) partnership contributes to effectiveness, efficiency, legitimacy and transparency (...)" (Hübner, 2009d).

The breakthrough during the process of agreeing the Danube Strategy was the acceptance by the European Parliament on January 2010 a resolution on the European Strategy for the Danube Region. The document provides an action plan for it: "(...) the Action Plan should include the following elements: environmentally friendly use of the Danube by inland navigation, inter-modality with other transport modes along the Danube through the improvement of all infrastructures (with priority for the better use of existing infrastructure) and by creating a multi-modal transport system all along the river, environmentally-friendly use of water power along the Danube, preservation and improvement of Danube water quality in accordance with the Water Framework Directive, stringent vessel safety requirements, development of environmentally friendly tourism and improvements in the fields of education, research and social cohesion" (*European Parliament resolution of 21 January 2010 on a European Strategy for the Danube Region*, 2010).

Furthermore, once again the partnership principle was highlighted as well as it was announced a set of conferences devoted to the Danube Strategy project. The first conference was held on February 2010 in Ulm and members decided that: "the Commission intends to adopt a) a framework for Danube cooperation (decision making mechanism, reporting mechanisms, governance mechanisms) and b) a common action plan (necessary improvements, urgent actions and interventions). All these actions must be done with the respect of the three "no's": NO additional budget; NO new institutions; NO new legislation. (...) The Danube strategy is meant to take into consideration not only the river as the whole, but also the whole area depending on the river, as well as the areas strictly connected to the river (Black Sea, Sava River, the Rhine River etc.). (...) Three main issues must be borne in mind: 1) economic and social disparities – the area is made up of some really poor area and some very rich areas; 2) environmental issues (water quality guarantee, protection of flora and fauna, drinking water, disaster prevention and management, wetlands protection etc) 3) infrastructure (the interventions are necessary due to the lack of border crossings, missing transport links and the inland waterways are not used optimally. These three issues however must not be considered separately, because they are all interdependent" (*Report: Conference on the EU Strategy for the Danube Region*, 2010).

Conclusion

Considerations on the development of the Danube countries cooperation led to conclusion that the Danube Strategy project is a consequence of evolution of multilateral collaboration of the riparians. The activity of the European Danube Commission in the XIXth century was a prelude to call the Danube an international waterway. Later, the process of establishing other institutions which were focused mainly on the navigation or economic cooperation could lead to institutionalisation of the Danube cooperation, however, due to the unhappy historical events, it hadn't happened. Nowadays, the Danube Cooperation Process as well as the International Commission for the Protection of the Danube River and the Danube Commission is still operational what means that the trans-Danube cooperation is developing smoothly. Therefore, the EU's Danube Strategy project might be perceived as a consequence of the trans-Danube cooperation, nonetheless it hasn't been institutionalised yet, while the Danube officially become a river – symbol of the united Europe.

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ORIGINAL PAPER

Applying Wallerstein's Theory to Explain the Change of the Global Power and Economic Poles during Financial Crisis

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Abstract
The purpose of this article is to analyze how the theory of Wallerstein can be applied to the analysis of relations between different societies of the world, during the economic recession. During the economic recession, the structure of international relations and the positions in different hierarchies (economic, political, military, etc.) registered a permanent dynamics as each power aspired to play a hegemonic role. Since old times, the rivalry between the most powerful states on the globe occurred on multiple levels: politic, economic, military, technologic, and scientific

Keywords: *world system theory, economic recession, power pole, economic hierarchies*

In his paper "The modern world system" (1994), Wallerstein offers us an interpretative model based both on the Marxist theory and on the globalization theories, developed by Fernand Braudel. The third approach that bases its ideology on the world system theory is the "dependency theory," which talks about the division of the world into the center (the core), periphery and semi-periphery. Wallerstein believes that the current global system polarization stems from the gap between central and peripheral regions.

In the centre (the core countries) Wallerstein puts some Western countries that are engaged both in trade and in industrial production (Wallerstein, 1994). At the periphery there are situated societies specialized in the production, in order to export a limited range of primary goods that will be consumed in the core. The novelty that Wallerstein's theory is bringing is that between the core and periphery are a group of countries – semi-periphery - that have an intermediate production, more diversified than the periphery, but less diversified than the centre (Wallerstein, 1994: 23).

The first two societies accumulate wealth and, implicitly, take advantage of the world economic power, while the peripheral countries are exploited by both central and

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semi-peripheral countries. This structure of the international relations also generated a competition for catching up with wealthy countries and states like India or other countries from Latin America or Eastern Asia were strongly involved in this process. At the same time, Wallerstein considered that the economies from Western Europe, China, Japan, and Brazil registered rapid and significant growth, which multiplies the power centres in the world and announce the end of the American political hegemony (a process that started in the '70s in his opinion).

The semi-periphery has an important role (similar to middle class in society), thus "the top layer can not be put in a position to face the united opposition of all the others, because the middle layer is so exploiter and exploited "(Wallerstein, 1994: 31).

The structure of international relations and the positions in different hierarchies (economic, political, military, etc.) registered a permanent dynamics as each power aspired to play a hegemonic role. Since old times, the rivalry between the most powerful states on the globe occurred on multiple levels: politic, economic, military, technologic, and scientific. Thus, for example, if in the years before the crisis, the first places of the tops of the financial institutions in the world were held by the American banks, presently, the first four places are held by the Chinese banks ("China Merchants Bank", "China Citic", "ICBC" and "China Construction Bank"), while "Unibanco do Brasil" is on the fifth place. Of course, nowadays, China is perceived as a zone of financial-bank stability and, consequently, investors prefer working with Chinese banks that are considered more secure. West-European and American banks are considered still vulnerable. For example, the American banks "Goldman Sachs" and "J.P. Morgan" are found at the lower part of the top, on the 22 respectively 31 place, while the Chinese banks are leaders by far.

In 2010, the Chinese succeeded in overcoming also the well-known American ranking agencies, such as "Standard&Poor", "Moody", and "Fitch". These agencies are well-known mainly due to the fact that 'they granted maximum ranking to certain bonds guarantied by real estate investments the emitants of which became insolvent' in 2009. We mention that, in 2009, China took the lead over Germany in the exporters' top. Thus, the Chinese state exported goods and services of more than 1.2 trillion dollars, while German exports totalized 1.17 trillion dollars (816 billion euros). For German economists, losing the first place in the exporters' top is the best proof that the country faces a hard recovery after the crisis. Official forecasts show that exports will reach a level similar to the one before the crisis only in 2014 (Morrison, 2013).

In 2008, the biggest five world powers were the USA (a GDP of 14,204 billion dollars), Japan (4,909 billion dollars), China (3,860), Germany (3,652), and France (2,853). For a couple of years, China has been registering an outstanding growth trend. It is worth mentioning that in 2007 it exceeded Germany reaching the third place in the top of the most important economies of the world after the USA and Japan; certain experts considered it would become the second after 2010.

In the period 2007-2009, the evolution of the Asian giant was extremely prosperous, while other countries fought against the effects of the economic crisis. China has multiple chances in the future: it has an enormous potential as a producer of goods and services, as well as consumption market; it has more than 1.3 billion inhabitants (the USA has 303,290,000 inhabitants; Japan – 127,076,183; Germany – 82,400,996), which means it is open to any kind of consumption and, most of all, it benefits of one of the cheapest labour force; it is the first in the world in terms of

exports and bank system; it became the largest car market in 2009, due to the measures imposed by the state and government to support car industry (Morrisson, 2013).

The economic growth of China during the last years is obvious if we analyse the increase of GDP with 9.8% in 2010; this growth is also reflected by the increase with 76% of car sales. If the previous economic crises were surpassed mainly due to the American consumers, the present saviour might be China, which seems to be the real 'engine' of the world economy in the future. In the first trimester of 2011, the economy of China increased with 9.7% and the country remained the second in the top of the most developed economies in the world. The researchers of the social realities of the country remark that the recovery of the world economy by millions of Chinese consumers is restricted by the reflex of saving money, which has a millenary tradition among the Chinese people (for example, a family with middle incomes from the urban environment saves about 28% of its annual income), as well as by low living standards of the inhabitants from many rural areas, where 'poverty continues to wreak havoc (Morisson, 2013).

According to the estimates of the experts from "Standard Chartered", the economy of China will be two times bigger than that of the USA until 2030, as it will represent 24% of the world GDP compared to 9.8% in 2010. India will exceed Japan and it will become the third economy of the world in the next ten years. "Goldman Sachs" and OECD also anticipate that the economy of China will become the greatest in the world until 2027 (OECD, 2007).

Another study performed by the International Monetary Fund draws our attention upon the risk that China's ascension to be restrained by the present over-consumption and the boom registered in the real estate field. One of the conclusions of the study (published in December 2010 in the journal *The economist*) is that, in 2016, the GDP of China will reach 19,000 billion dollars compared to 11,200 at present, while in the USA, the GDP will register a slow growth of about 3,000 billion dollars (from 15,200 to 18,000 billion $).

In this context of great changes in the world economic and political hierarchies, we can mention that one of the beneficial effects of the crisis might be a radical change of people's mentality, who, before the start of the crisis, used to buy everything because products were cheap or just because credits were easy to be accessed. The crisis might teach them to establish other criteria and priorities and, eventually, to buy only what they need based on sustainable values (such as good, beauty, etc.) and not only on the futile material utility. According to this study, achieved in our country by *Unilock Market Research* and called *Crisis Monitor*, it came out that, after the first year of crisis, the Romanians became more selective when they purchased goods and they started to make shopping lists (including only what was strictly necessary), to postpone or even give up to certain wishes.

Referring to consumption and investments – the study about Romania concludes, for example – the tendency is to rationalize expenses. <<Quite a few interviewed people are worried about not being able to maintain a decent standard of living and less than 50% are worried about not being able to pay their bills. The present state of the economy, as well as the uncertainty of jobs (mentioned by 50% of the questioned people) or the impossibility of obtaining a loan, postpones investments>> (*Crisis Monitor*, 2009).

The present world financial and economic crisis raised the issue of the value and future of capitalism as a way of organization and functioning of social life and

economic, political activities etc. In the book *Decline of the American Power*, as well as in an interview for a French newspaper (*Le monde*, January 2009), the American philosopher and sociologist Immanuel Wallerstein considered that we are presently experiencing a period of crisis in term of capitalism, as it gets closer to its own end after a history of almost 500 years. The philosopher came to this conclusion based on the theories of some prestigious sociologists – such as the French sociologist Fernand Braudel (1902-1985) – and economists, such as Nicolai Kondratiev (1882-1930) and Joseph Schumpter (1883-1950). There are equally capitalized some core conclusions rendered by Immanuel Wallerstein in his well-known book *The Modern World System* (Academic Press Inc., New York, 1980).

Capitalism means, first of all, profit and technical civilization. This social system is defined, in economic terms, through the predominance of private property and its mass extension, through free initiative and unlimited profit, perfecting of work means and serial production, dynamism of activities and wealth.

The capitalist way of living appeared as a natural answer to people's desire of earning more and living better. As this is the purpose of each normal individual, capitalism stood as the most compatible social system to human nature. Thus, it was possible the appearance, promotion, and respect of the fundamental human rights: the right to life, health, liberty, property, and happiness. By assuming these values, the capitalist society created the necessary conditions for the potential development of all individuals (Wallerstein, 2005: 47-49).

Socially, the capitalist economy produced vital goods, necessary to all people, as well as goods affordable only for a reduced part of society, interested in its own progress, merciless with failure, and thus amplifying its glory desires. Personal intelligence, capitalization of physical and intellectual capacities, of individual talent propelled certain persons on prosper social positions, imposing gradually higher living standards and behaviour patterns most people strived for. The serial production technique made possible the coverage of mass needs, but, at the same time, induced consumer-oriented mentality, a thinking pattern based on quantity rather than on quality and authentic values. Thus, consumption became the purpose of production and production became consumption ration. Consequently, there appeared a wide range of goods and wealth, inaugurating an unprecedented consumption epoch.

Capitalist economy offered not only the most adequate answer to the eternal issue of mankind's relations to nature and the material environment, but also the most profitable one during the entire history of humankind. Due to this answer, people's social life radically changed, which represented not only a benefit in material terms, but it was also legally regulated and permanently directed towards civilization. In his fight with vicissitudes of the natural environment, the capitalist working technique allowed him to build his own *home*, but it also provided the necessary means of provoking irremediable destructions. Thus, most of the world natural resources considerably diminished, some of them reaching different stages of exhaustion.

According to Kondratiev's conception, capitalism, during its historical evolution, underwent alternant progress and decline phases, noted by the philosopher with A and B. Starting from this typology, Immanuel Wallerstein considers we are presently experiencing a B phase of capitalism, which, in order to bring profit, needs financing and speculation (after phase A, when profit was generated by industrial production). The American philosopher observes that three decades ago, there emerged a quasi-general practice, namely everybody used to take loans in order to cover their needs and

support investments (state, firms, private households, individuals). After this prolonged financial assault, there appeared consequences: bankruptcy, monopole, unemployment, economic recession. Wallerstein's opinion is that in the last 30 years humanity started experiencing the final phase of the capitalist system; the difference from the other previous cycles resides in the fact that it no longer reacts as a social system (capable of stability and functional balance) and its real possibilities of accumulation reached its limits. 'I believe in progress possibilities – underlined the American philosopher – but not in its unavoidability' (Wallerstein, 2013).

Wallerstein's reflections belong to a savant sincerely preoccupied by humankind's faith and by the role the USA will further play as a country that still represents the biggest political, military, and technological power in the world. The present economic crisis obviously affected all the world states and, of course, their role in the international arena. The state interference for saving the representative national companies, inclusively in the USA and the countries of the European Union, confirms Wallerstein's prediction that capitalist economy is in decline and classical mechanisms that used to regulate it are no longer valid in the contemporary period (Wallerstein, 2005: 123-124).

In these new social-historical and economic circumstances induced by the manifestations of the world crisis (2007-2010), the liberalist conception itself lost its logical justification because the state is really called to interfere as people and institutions' saviour during crisis times and it does no longer play a passive role in economy (resumed to collecting taxes and fees), as it happened during the classical stage of capitalist evolution.

It might seem that we undergo the emergence of a new general type of capitalism – state capitalism due to the financial force it represents and, especially, to its capacity of decisively interfering during crisis times. Of course, this situation that generates implications all over the world will have an influence, hard to evaluate at this moment, upon the hierarchy of the institutional roles in any society. This means that the government will control economy (a tragic consequence of the crisis!) and the state may become a fiscal dictator and an oppressive instrument serving the interests of a political party that gained power. This would be an equivalent of the authoritative order or of the model of the political management specific to communist society. The changes occurred in the rapports between state and economy will surely be reflected in social relations or the framework values of any society.

We believe that, on the whole, the capitalist society will continue functioning in the same way, but under other circumstances generated by the crisis period that has not finished yet. The world undergoes a huge economic and social experiment, where the crisis on the one hand and the states leaders' incapacity of surpassing it on the other hand, do not make room for tranquillity and motifs of certitude to humanity.

In the history of the 20th century, there were numerous situations when the state nationalized certain companies of national importance (when debt amount was too high), after which they were sold to private investors (for example, Renault Factories in France). The fact that, in the last three years of the world crisis (2008-2010), the state role in saving certain firms from different western countries increased clearly indicates that these states had a budget high enough to support exceptional measures only state can be able to take. However, particularly or generally, society is still the same – capitalist.

However, in the future, capitalism as an economic, social, and political system may undergo major changes able to ensure a controlled evolution, especially during crisis times, but, in our opinion, it will not disappear as type of social order as it functions in 218 societies and, moreover, its dissolution means it must be replaced by something else. So far, economic-financial crises have not benefited from a special management assumed by both private investors and state institutions and, thus, induced the mentality that each bankruptcy is a necessary effect of a free economy (the responsibility belonging to the person involved – owner or manager, as competence eliminates the others and selects the strongest ones).

Presently, each national economy, especially if it is developed, is connected to other national economies within the framework of a world network. The consolidation and prosperity of the national economy is the target of each state, in the same way profit increase is the target of any owner or manager of any economic organization. The lack of state interference for protecting firms, especially of those firms of strategic national importance, would mean the weakening of the national economic power.

Consequently, capitalist economy and society will continue their existence in spite of all negative effects and dysfunctions induced by the recent world financial crisis, but, they will surely find new auto regulation rules and mechanisms, able to support their interference in case of financial turbulence. The most important thing is to learn from past experiences and the world leaders to act unitary and concomitantly as the present financial-economic crisis manifested itself all over the world.

Presently, capitalism is the main way or social life type spread all over the world and including 79.1% of the 6.8 billion people population of the planet (in 2010). Out of the 223 known states, 218 are organized on capitalist basis while only 5 are communist. We underline that in 1989, the disappearance of the communist states from Europe did not mean the disappearance of communism in the world. On the contrary, about 21% of the world population live in communist societies: in China – 1.335 billion inhabitants, Cuba – 11.2 million inhabitants, Vietnam – 85.7 inhabitants, North Korea – 24.1 million inhabitants as it (United Nations World Population Prospects, 2008)

The capitalist system, through the 218 states populated by 5.336 billion people really represents a world system, the drastic change of which is practically and historically impossible, as it still disposes of an evolution potential high enough to make it resists. However, it is also true that capitalist countries greatly weakened during the global crisis, fact that was noticed in the case of communist societies (except for China) that had undergone a prolonged social-economic crisis before being affected by the world crisis.

The economic role of China played at international level is interesting and remarkable as it is a communist country, has a state-party, a social order based on the rules and values of the communist way of living, but, at the same time, a prosperous economy that competes with the strongest world economies. Also known as 'one country, two systems', China represents a unique case study, as here the political factor (of communist orientation) paradoxically cohabitates with the economic factor (the economic life underwent a major correction for many years getting more and more free and organized on capitalist basis). Moreover, China became much stronger during the first years of the world crisis, while the USA borrowed money from the strong Asian state and the Chinese banks took the first positions in the international tops, in front of the American banks. This situation obviously makes us wonder if the present world

order is the same, namely the USA in front of the top and China experiencing an upward trend or if the humankind future is capitalism or communism (Morisson, 2013).

Until the disappearance of the communist block from Europe in 1989, there was a real 'iron curtain' between the communist and the capitalist worlds and we experienced an intense 'cold war' between the two types of social systems, a war that ended with the political, ideological, and economic 'insolvency' of communism within our continent. In the last two decades barriers disappeared as well as the political-ideological polemics between the promoters of the two types of social systems. The fact the communist order still resists in different places on the globe and the Chinese economy became a viable competitor for other important economies (mainly due to the capitalization of its own labour force that is very cheap and numerous) does not mean that this is the historical trend of the world or that it should become humanity future. For the moment, the communist society did not generate general wealth or essential freedom for human beings and it is still known for the lack of will in terms of ensuring individual's fundamental rights that are frequently violated and discredited. Moreover, the poor living standards of most of the population characterizes all communist societies and, consequently, this is not the future a person eager for freedom and a prosperous, civilized life might aim at.

The contemporary world is a diverse, contradictory and turbulent world that seeks for a way without suffering, pain or failure. For the moment, the economic crisis, the wars from Iraq and Afghanistan, the natural catastrophes, the riots from the Arabian world, and the nuclear disaster from Fukushima, in north-eastern Japan, show us there are no reasons of tranquillity and certitude on the Earth. In this historical context, we naturally wonder how humankind will evolve until the end of this century. The appeal to the sociologic paradigm of analysis force us establish a number of relevant indicators able to reflect concrete life and social activity of the world community, on the basis of which there could be made certain simulations, descriptions, and scientific forecasts. A synthetic answer, something like 'the world will live better', 'the world will be the same' or 'the world will live worse', is impossible to be rendered in professional terms. Not even the best futurologist would dare to answer to such tricky questions.

Certain data regarding the evolution of humankind are constant, while others are permanently changing. On a short term, the aleatory factors, hazard might prevail in the future behaviour of humankind. A huge nuclear catastrophe for example might be fatal for the human species in the same way a meteorite might generate the end of life on the Earth. Nobody could ever count exactly the global effect of a major natural hazard. Moreover, we do not know all the possible natural factors that may act upon human beings.

Consequently, present forecasts related to humankind future rely on certain facts and social phenomena occurred in the past that might also occur in the future with a certain frequency. But, with regard to the influences or conditionings originating in the natural, cosmic space, they could rise our interest only on a short term.

In order to decipher and anticipate the humankind evolution until the end of the 21st century, it is necessary to take into account the following factors and indicators the life of each society depend on and that might be considered indicators of sociologic analysis:

1. The demographic factor or population, without which humankind could not exist. As we have already mentioned, there are 6.8 billion people on the globe and, in case the present reproduction rhythm will prevail, then, according to UNO estimations,

the world population will count about 14 billion people in a century. Obviously, the most important increase will occur in the areas where birth rate is higher, namely in underdeveloped societies, the Asian and African ones, where the level of living is very low and poverty and contagious diseases affect most of the people. Certain experts estimate that, presently, 1.7 to 2 billion people live in poverty and their number will continue increase, so that, in a hundred years, one of three people on the earth will live in poverty.

The life expectancy will continue to be high in developed counties (which presently exceeds 80 years old). The last demographic rapport of the European Commission emphasizes the average life expectancy increased with 2-3 months per year at the level of the 27 member states of the European Union. The data rendered in the rapport show that the Romanians live eight years less than the French, but the age is comparable with that of the Bulgarians and the Hungarians, which are our neighbours.

People's quasi-general desire of living in cities, as well as the present birth rate will bring to a gradual increase of the number of megalopolises all over the world. At the same time, the number of settlements will also increase and they will be not only more numerous but also bigger, forcing the architects to design more vertical constructions if we want not to invade completely the natural environment without which life is not possible.

A population of about 14 billion people needs not only living space, but also food (an issue that might be solved through the capitalization of the marine and oceanic environment at a large scale), education, means of transportation, etc. We estimate that the expansion tendency of the main religions in the world will maintain – we refer to the Christian and Muslim religions, which might become dominant during this century.

When population is numerous, there occurs not only an increase of the population's density on square meter, but also of the density of *social connections*, namely of the interhuman and intergroup reports, which, unavoidably, will be based not only on cooperation, but also on opposition, rejection, conflict (especially when it comes to take control over food and energy resources);

2. Natural resources and environment conditions. The need of food and fresh water is a planetary issue even now, but this need will have to be satisfied for a potential double population. In a far future, the improvement of sea water desalinization technology and equipments might solve one of the compulsory demands of humankind. For the moment, the studied sponsored by the World Bank inform us that water sources exhaust at a higher rate than their recovery capacity all over the planet. Consequently, it is possible that about 130 million inhabitants from China and 175 million people from India, who live almost exclusively on cereals and water, will no longer rely on drinking water, as consumption exceeds the natural recovery capacity of the aquifers.

The food problem recently forced Robert Zoellick, the president of the World Bank, draw our attention (by mid April 2011) that, during this year, humanity might confront itself with a large-proportion food crisis due to the political and social instability occurring in the Middle East and North Africa that will bring to a rapid increase of oil products price and, implicitly, of the main food products (the production and transportation of which surely supposes a certain consumption of fuel). Consequently, in the first trimester of 2011, there was already registered an increase of prices compared to 2010, 74% for maize, 69% for wheat, 36% for soya, 30% for veal, only rice registering a decrease of 2%. In the last 12 months, food global price increased with 36%.

Moreover, climate change and intensive exploitation made the soil poorer in the areas that used to be known as cereal granaries of the world. Thus, it is considered that about one third of the terrain used in agriculture loses its fertility and becomes totally unusable for crops. Numerous countries will depend on imports, such as Saudi Arabia, which used to produce wheat, but, according to certain experts' opinion, this will cease starting with 2012.

Robert Zoellick declared that the world is 'a step before total crisis' due to the increase of food prices, which made 44 million people within the world live in extreme poverty conditions. 'Everything started with a financial crisis, followed by an economic crisis and, in the next months, there will surely occur a job crisis because the slowing down of the economic growth will generate unemployment, which will stress even more the food and fuel crisis', stated Robert Zoellick, quoted by BBC.

In its essence, contemporary society is built upon an exacerbated individualism, economic competition, and progress of top technique. Such vectors of present civilization may raise people on short term, but, at the same time, they represent a merciful trap on long term. Individualism nourishes egoism in family life and economic competition at the working place up to the limit of the estrangement from our own human condition. All economic activities and politics of the organizations that promote them aim at our irremediably becoming one with the working place so that to ensure secure profits and uncountable winnings. A fulfilled desire (profit, wealth) gives birth to another desire (acquire more), which means the life of the person involved in capitalist economy is exclusively dedicated to perfecting the means necessary for earning even more money. This race tends to become endless and presents numerous risks: failure, envy, worry for income protection, sickness, etc.

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ORIGINAL PAPER

Global Banking - The New Rules of the Game

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Abstract
In the new global context, the concept of trust, which stays at the very basis of banking, seems to be often challenged and more and more banks are struggling to regain it. The main objective of this study is to answer the questions "Why should we trust our bank?" and "What should banks to gain our trust?".
To achieve this objective, it has been conceived a comparative study of the causes of the present financial crisis connected with the idea of integrity- as a solution for stability and competitiveness, using available literature, critical analysis and professional experience of the author. The study itself is a dialogue with academicians, as well as with professionals, offering examples of principles that, once implemented, had a very positive effect for banks.
As practical implications, the study shows, through case studies, how to address change and how to implement the concepts. The originality and value of the study comes from the suggestions that are made regarding concepts and methods that would contribute to competitive, stable and trustworthy banking institutions.

Keywords: Integrity, competitiveness, bank management, transparence,

Introduction

The global financial crisis that has begun in the US in 2007, once American investors lost their trust in asset based securities, has rapidly spread perturbing the whole international banking system (Stiglitz J.E., 2010). Thus the risky adventure had become a real problem when interest ratios were increased, and individual could no longer refinance their loans and more and more people could no longer pay their installments (Wheeler Ch, Irchola D., 2007: 48-57).

In February 2008, the crisis makes the first important victim - the British Bank Northern Rock which has been nationalized. It was expected other banks to be strongly affected. The period September- October 2008 could be considered a temporary peak of the crisis due to the many events that happened during that time: nationalizations (ex. Fannie Mae, Freddie Mac, Fortis, Landsbanki), acquisitions (ex. Bear Sterns, Merrill

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Lynch), and bankruptcies (ex. IndyMac, Martinsa-Fadesa, Lehman Brothers) (International Monetary Fund 2008b, p: 16, F. Mueller 2011, p: 2). Despite the strong implication of national governments, international organizations, central banks and the changes in corporate behavior of banks, it is expected for post-crisis effects to be felt in the banking system all over the world in the following years. (International Monetary Fund 2008b, p: 62; Păun C., 2008). These effects are already visible; banks still strive to find an adequate way to do business in order to maintain portfolio of customers and attract others.

Another important issue of the financial crisis is the human cost. For instance Lehman Brothers had been considered ideal for pension funds' investments and their bankruptcy lowered the value of pension funds. Due to the incapacity of paying their loans, many people lost their homes or were forced to relocate with the entire family. According to an OECD report (OECD, 2010), in the summer of 2010, the unemployment rate, in the OECD countries, rose at 17 million people, higher than in 2007. The unemployment was followed by other consequences such as governments being more indebted through the bailouts and stimulus packages, they face reduced tax revenues and potentially expanded welfare.

In the book "Banking with Integrity. The winners of the financial crisis?" (Spitzeck H., Pirson M., Dierksmeier C., 2012, p:6), the authors quote from HSBC CEO Stephen Green who said "*Banks have clearly done things wrong. Some of the practices did not contribute, by any reasonable standards, to human Welfare.*"

But what have the banks done wrong? A basic, common sense explanation can be found in Anna Bernasek's book "The Economics of the integrity" (2010). She states that "*the seeds were sown as great numbers of people sought their own short-term advantage, knowing that they were putting others at risk.*" The same author compares the financial universe to "*a casino where gamblers were risking mountainous piles of other people's money. Before the chips fell, those gamblers claimed a lion's share of false winnings and absconded with fortune intact, leaving behind a generation's worth of toxic residue for the eventual contemplation of investing clients and the taxpaying public*". These are truly relevant metaphors for what really happened.

One of the main cause of the financial crisis was **the opportunistic behavior of the banks**, an opinion that I share and it can also be found in many books, (Spitzeck H., Pirson M., Dierksmeier C., 2012, Muleller F. 2011), behavior that manifested itself in three main forms: 1. increasing profitability by creating the illusion that the investors can make money out of money and thus encouraging them to make risky decisions; 2.establishing compensation schemes that encourages opportunistic behavior, 3. lobbying for lax regulation arguing that tighter regulation would reduce their competitiveness.

There was always the promise from banks that by investing what they did not actually have, customers will make profit, just like investing in finding Aladdin's Lamp.

We have understood the causes, the main issues is to identify a possible solution. The financial crisis of 2008 was mainly a crisis of integrity (Bernasek A., 2010). The present paper analyses these aspects of the behavior of banks as possible causes of the crisis, but in the same time it analyses integrity as a possible solution for avoiding future crisis and for regaining the necessary trust in the banking system. We truly believe that a fair play approach will actually solve the confidence problem.

Our perspective is that banking is not a dirty game, where all players seek profit, but it's an industry where everyone has a meaningful role to play- the banker who believes is

a business plan, the customer who trusts the bank, the employee who devotes precious time to business and its owners.

Objectives

This paper aims to show that banks acting with integrity are less affected by the financial crisis, thus proving that an ethical behavior is a solution for competitiveness and stability. The concept of integrity could be applied to banking industry in three main forms: **more transparency, standards for risk and a long term thinking system of compensations and incentives.**

It will analyses the structures, the policies, the framework, the executive compensation schemes and the behaviors of banks that proved to have an ethical behavior and stood firmly against the waves of crisis. It will also show a model of banking with integrity. Applying principles of integrity will lead not only to a better functioning of the markets and it will lead to real benefits for the banks, for the state, for the companies and for the population.

Methodology

The present study is based on the secondary data. In this regards, a study by SPITZECK H., PIRSON M. AND DIRKSMEIER C. (2012) document analysis is very useful for systematic analysis of this particular theme. Therefore, data were collected from published and unpublished materials, books, newspapers and ongoing academic working papers. The collected data were processed and analyzed in order to make the present study useful to the readers, interested parties and policy makers of the concern area. Before analyzing the behavior of banks that successfully face the challenges of the crisis, I consider necessary to clarify the main concepts of this paper.

The concept of business ethics has been largely commented and analyzed over the years. The Dictionary of Management (Nicolescu O. - Coordinator, 2011, p: 225) offers a concrete perspective stating that business ethics is "*a systemic reflection of the moral consequences of the decisions taken in business relationships and of potential damages caused by these decisions to the internal staff as well as to customers and competitors*". The words moral and damages are to be underlined. Ethics refers to moral and lack of it has concrete consequences in the business environment.

A very interesting perspective for business ethics is the one posted on his blog by Chris MacDonald, (2010, http://businessethicsblog.com/2010/03/21/ethics-definition/) who analyses two aspects about ethics – the "critical" and then "structured". In his opinion moral beliefs and practices should be examined and critiqued. If I extend the idea to banking, I consider necessary for norms and procedures, as well as practices, to be periodically compared to internal values to see if they are not mutually contradictory or to understand what actually matters most. About the " structured" aspect of business ethics, MacDonald considers that it is not only about expressing an opinion, that it is necessary to find higher order principles and theories in order to attempt to rationalize and unify diverse moral beliefs.

If business ethics could be put in a code, business integrity is rather a choice. The key to success in banking lies in the ability of the bank to grow and to protect the money of the customers. Thus, banking is all about trust and trust depends heavily on the concept of integrity. But what is business integrity? Integrity is defined by dictionaries by adherence to a code of moral values, but when it comes to business the discussion is far more complex, I could consider it an important asset that brings financial and economic

rewards. Basically I could define integrity in business as doing business based on trust. Zwilling M. (2012) in article exemplifies how entrepreneurs should or employees show their integrity: 1. Meet your commitments, 2. Be honest to a fault, 3. Have a strong and consistent moral code, 4. Treat everyone with respect, 5. Build and maintain trust. This perspective could easily be applied to any field and to banking in particularly. These are common sense and basic education rules that any child is told, but so many adults forget about when it comes to business. They refer to a decent human and professional behavior.

The integrity of the banking system involves two basic aspects**: the rules of the game and the conformity to the rules** – the regulation established by the institutions such as central banks and international organizations, as well as the interior side, the aspects that deals with corporate governance. I decided to entitle this article "the new rules of the game", but in fact I wanted to underline that the basic rules should be again applied. It is time for common sense, transparency and decency, mutual respect to rule the customer-bank partnership just as it happened at the beginning of time.

A concept that is strongly connected to the principles of integrity is that of **corporate governance**, which has as main purpose to ensure a proper protection to investors, customers as well as to financial institutions. Corporate governance is considered to have a strong positive influence on healthy economic growth of companies as well as of society as a whole. The corporate governance is "the system through which companies are being led and controlled" (Matis E.A.,2009, p:136) or the aggregate of managerial rules and control mechanisms that aim to protect and harmonize the interests of the stakeholders (an adapted definitions based on the one in The Dictionary of Management, Nicolescu O. – General Coordinator, 2011) . In the banking industry, the corporate governance aims to (Matis E.A., 2009, Nicula I. 2012, Spulbăr C., 2008):

1. Permanently monitor the activities of the bank, the management of the institutions and the part of the staff that deals with risk control.
2. Define standards for risk, but also creating a unit that has risks as main responsibility and which will control the significant risks.
3. Provide a general evaluation of the system of control by the internal audit.
4. Create an internal report system that varies from a bank to another depending on size or complexity.
5. Analyze of the opportunity of externalizing different activities based on the risks involved.

It is obvious that the banking system must obey laws and rules of function, an activity that is generally called compliance (Nicula I., 2012). The necessity of (recommendations on banking regulations)—Basel I, Basel II and Basel III—issued by the Basel Committee on Banking Supervision (BCBS). Regulations are determined, mainly, by providing a good functioning of the banking system and by the protection of the customers.

A bank, when it comes to compliance, has to have clear and concrete means for respecting the rules. Compliance involves everybody working in the organization, from the Board to any person working in front office. It is much easier, of course, to apply principles of compliance when there is a strong organizational culture that encourages and applies standards of honesty and integrity, respecting the spirit as Ill as the letter of the laws. If banks do not take into consideration the impact of its actions on its shareholders, customers, employee and competitors, this may result in significant reputational damages or significant negative publicity (BIS 2005).

But how do banks apply compliance? They apply compliance by laws, rules and standards that cover proper standards of market conduct, conflicts of interest, and treating

customers transparently and fairly, providing sustainable customer advice. Compliance also includes specific area such as money laundering and terrorist financing.

I could not speak about regulation in banking without mentioning the Basel Accords (recommendations on banking regulations)—Basel I, Basel II and Basel III—issued by the Basel Committee on Banking Supervision (BCBS).

In 1988, the representatives of central banks from all over the world met in Basel, Switzerland, set up the Basel Committee (BCBS), and published a set of minimum capital requirements for banks. This agreement was enforced by law in the Group of Ten (G10) countries in 1992. It established a minim requirement for own equity of 8% of the value of all assets. **Basel I** was a model and a first step towards such agreements. But since 1988 the world has changed as financial conglomerates, more complex financial products and new forms of risk management appeared. The Basel II Accord reviewed the existing frame, its main objective being to create a more flexible scene for establishing capital requirements as well as for proper risk profiles of banks (Căpraru B., 2011, p. 132-133, Nicula I., 2012, Spulbăr C., 2008, pp: 63-70). The Basel II agreement involves including the following types of risks: loan risk, operational risk, market risk and it is based on three pillars: minimal capital requirements, individualized control process and market discipline.

In the same time the Basel II Accord offers to banks the possibility to choose from three implementation options (Căpraru B., 2011, pp: 132-133):

• The standardized approach – it is similar to the Basel I Accord but it uses different, more refined conditions and it allows the utilization of derived financial instruments for limiting loan risk and reducing capital requirements.

• Foundation rating based approach (IRB) – that allows banks to use their own rating systems, including own calculations regarding the probability of payment deficit, but the losses registered when the counterpart enters in payment deficit are provided by the surveying institution.

• Advanced IRB approach – banks calculate their own capital requirements, approved by the surveying institutions including the losses when the counterpart faces incapacity of payment.

The financial crisis made necessary more developments to the Basel Accords as a response to the new global context. The updates Ire formalized in the **Basel III Accord**. This new accord is a regulatory model on bank capital adequacy, stress testing and marketing liquidity risk agreed upon by the members of the Basel Committee on Banking Supervision in 2010-2011. Basel III meant new regulatory requirements on bank liquidity and bank leverage. Basel III will demand banks to hold 4.5% of common equity (up from 2% in Basel II) and 6% of Tier I capital (up from 4% in Basel II) of risk-weighted assets (RWA). Basel III also imposed additional capital buffers, (I) a mandatory capital conservation buffer of 2.5% and (ii) a discretionary countercyclical buffer, which permits national regulators to require up to another 2.5% of capital during periods of high credit growth. Basel III introduces a minimum 3% leverage ratio and two required liquidity ratios. The Liquidity Coverage Ratio requires a bank to hold sufficient high-quality liquid assets to cover its total net cash outflows over 30 days; the Net Stable Funding Ratio requires the available amount of stable funding to exceed the required amount of stable funding over a one-year period of extended stress. (Căpraru B., 2011, pp: 132-133, Spulbăr C. 2008, p: 63)

Critics suggest that greater regulation can be hold responsible for the slow recovery from the late 2000 financial crisis and that the Basel III requirements will increase the incentives of banks to game the regulatory framework, which could further negatively affect the stability of the financial system.

After having reviewed the main concepts connected to integrity in banking and the regulatory framework, I ask three questions: 1. why regulation did not succeed to prevent the financial crisis? 2. What would be a valid alternative to regulation?

Analyses

Why regulation did not succeed to prevent and solve the financial crisis?

The general mechanism was -problem-new rule, and everyone supposed that rules will simply be followed and accepted. Thus, the problem of financial disequilibrium is delegated to the regulation framework. Central banks provided a "systemic airbag" and encouraged banks to take too many risks (Spitzeck H., Pirson M., Dierksmeier C., 2012, pp: 192-195). Without any risk to financial results and individual bonuses, financial experts deliberately ignored their own role in assuring the integrity of the system. The banks could easily focus on profitability while staying compliant and formally with the rules of the game.

After the crisis stroke affecting the entire world, a wave of blame and finding responsible was created and maintained by the media. Bankers were blamed for lending easily to customers who weren't credit-worthy. Then, the regulators were also blamed for not setting a more restrictive legal frame. The customers were also blamed for their greed and for taking loans beyond their payment capacity. The rating agencies Ire blamed for not recognizing all risks and even for being paid by the banks they should have analyzed more carefully. Business schools and even the academic world were also blamed for forming managers with a mindset for short term results. I consider that there no point in finding a single entity guilty, the crisis was systemic and there is conjunction of factors that led to those effects. (Spitzeck H., Pirson M., Dierksmeier C., 2012, p. 192-195).

Responsibility and integrity should come from all actors and everyone should stay faithful to basic principles of trust and loyalty in order to rebuild confidence in the system. Often people follow the letter, but not the spirit of the law. In order to make them follow also the spirit, it is essential to make them understand the spirit of the law, to make them see the long term advantages of following the laws.

What would be a valid alternative to regulation?

In her book "The Economics of Integrity" Ana Bernasek (2010) considered that "today I have far better tools at hand. In the aftermath of a crisis, strategic thinking about integrity can lead to significant economic gains". I strongly agree that the context is favorable to learn the lesson and understand that there is a clean and proper way to continue the game.

In a very interesting and Ill documented study Heiko Spitzeck, Michael Pirson and Claus Dierksmeier (Banking with Integrity. The winners of the financial crisis?, 2012) offer concrete examples of banks remained stable and profitable in times of crisis simply by applying principles of banking integrity. The table below provides examples of competitive advantages used by banks during the crisis.

Table1 **Competitive advantages used by banks during the crisis**

Competitive advantage	*Examples*
Increased market share	Banco Santander, ABN AMRO Real
Increased loan portofolio	People's United Bank, Wainwright Bank and Trust, Triodos Bank
Low exposure to bad debt	Cooperative Bank of Chania, Wainwright Bank & Trust
Customer loaylty	Wainwright Bank & Trust

Source: SPITZECK H., PIRSON M., DIRKSMEIER C., Banking with Integrity. The winners of the financial crisis? Palgrave Macmillan, Hampshire, UK, 2012, p. 195

In "The Future of Management" Gary Hamel and Bill Breen (2010) offers another very interesting case study of a bank that puts its customer's needs on the first place in its priorities and succeeds by simply doing things differently. It is the amazing Grameen Bank from Jobra, Bangladesh. It was founded in 1976 and from that time it became a pioneer in micro financing. Its mission was to lend also to people having low incomes or no incomes at all considering that poverty is simply a consequence of the lack of capital and opportunities, not of the lack of abilities. Thus, the bank offers small loans to syndicates made of five people, without requiring guarantees. 95% of the customers are women, which uses the money of the bank for starting small business such as making cloths or baskets, or small farms. In essence bank is a cooperative as 94% of the shares are owned by the debtors. In 2006, Grameen Bank had 2185 branches and 6, 4 million customers. The default ratio was less than 2%.

I consider that in order to be stable and competitive banks need new strategies. One major aspect is the strengthening of the customer-bank relationship, relationship that must be based on ethics and responsibility from both parts (Spulbăr C., 2012). In order to follow the new measured imposed by the above mentioned Basel III Accord, banks must stabilize their activities and redefine their business model with a long term focus. I believe that the future of banking will be strongly influenced by innovation and service quality and the future strategies should include these aspects.

Banks involved in the financial crisis were accused that they had privatized the gaining during sunny times and socialized losses in bad times. The benchmark for success was "the quarterly earnings report to shareholders". The Nobel laureate Joseph Stiglitz (2011) emphasizes the difference between creating value based on market values and creating value in real economy. The banks mentioned above chose to have a more humanistic approach to business and created real economy value.

The real questions for banks nowadays should be "Why do I exist? Why do people need us? How do I create sustainable economic value?" The answer to these questions should be reflected in formulating the mission, but also in business strategies. Experience has shown that there is a direct relation between improving the quality of life in the communities where they act and the level of profitability of banks. Some banks (Banca Prossima) proposed a surprising"low profit model" (Spitzeck H., Pirson M., Dierksmeier C., 2012) to allow a fair distribution of profits and proved to be successful. Similarly, Banco Popolare Etica distributes profits to all people who guaranteed its creating. Other banks use profits to fund activities of not-for-profit organizations.

Although profit is necessary in order to have healthy financial bases, I share the opinion that banks should be more profit-satisfiers than profit-maximizes. One solution

for this proving excellent client service is employing the right persons and transparently and fairly remunerating them and realizing that results of the bank are highly connected to the success of the communities in which the bank operates. " (Spitzeck H., Pirson M., Dierksmeier C., 2012, Spulbăr C., 2012).

The institutions providing the regulation framework have realized that the rules they imposed have proved to be inefficient in preventing the financial crisis. Thus they were forced to intervene in order to save major financial players, which received help from states. As a consequence, it is very important also for rules to be reanalyzed and redefined in order to re-establish trust. As I have explained before, rules are not sufficient if they are not assumed by institution through corporate governance, a more firm and robust one that would focus traditional banking actives and not on encouraging excessive risks. The system should also enforce values such as prudence, responsiveness, empathy and transparency.

Conclusions

In the abstract of this paper I was asking "Why should we trust your bank?" The best answer in the context I consider to be – because it acts with integrity. It has always acted with integrity, it has a clear mission to provide real value for the society, and it has adopted a more humanistic approach improving community in both good and bad times. Your bank has solid corporate governance and an organization culture that emphasis on prudence, responsiveness, empathy and transparency. The cases mentioned above could be an inspiration for all banks that integrity could bring enormous social and image advantages, as well as good financial results.

The nucleus of integrity assets (Bernasek A., 2010) is formed by three main concepts: disclosure, norms and accountability. Applied millions of times and verified by natural market selection these elements are the key to investing in integrity. To summarize the ideas above, in order to rebuild trust banks need: more disclosure, standards for risks and a transparent and fair system of compensations and incentives.

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ORIGINAL PAPER

Interpreting Continuity and Change in Post-Communist Policy-Making: Applying the New Historical Institutionalist Approach to the Study of Public Organizations

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Abstract
The original analytical framework favoured by the historical neo-institutionalism approach allows for diachronic interpretations of organizational evolutions and changes in different political and institutional contexts, highlighting the importance of causality and of constraints generated by already-existing rules/institutions. The research analytical design builds around interpreting the organizational continuity and change through the operationalization of historical events, cultural factors, political opportunities as explaining variables. Thus, by integrating the diachronic dimension of the organizational phenomenon through historical neo-institutionalism one could interpret the heterogeneous evolutions of public organizations within a certain geographical area based on the constraints triggered by past events (regime changes, social, political conflicts, social and political crises etc.) and the *path dependence* approach (patterns of administrative structures, power dispersion between the central and local governments, existing institutions etc.) on the present public policy-making and enforcement processes.

Keywords: New Historical Institutionalism, approach, institution, public organization, path dependence, incremental change.

Introduction

The interest into public organizations is not new in itself. However, the manner in which public organizations are analysed and their dynamics interpreted evolved in time with the introduction and/or contestation of new approaches of study. For a long period of time public organizations constituted the field of researches which concentrated

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mainly along three dimensions: the public-private dichotomous comparative approach, the politics-administration divide and the state-society dichotomy encompassing the relation between bureaucracy and democracy. However, others were interested in identifying different relations between other variables in order to explain the different patterns of public policy or organizational evolutions, either after identifying a convergent trend towards a line common to a cluster of cases mostly according to the supranational/international coordination (Timo Weishaupt, 2011: 23), or in order to explain the diverging policy or organizational paths. Such interests concentrated mainly on explaining the cross-national differences or similarities in policy-making and on tracing their paths since their establishment in order to identify continuity and/or change.

Continuity in policy-making was mainly explained through the impact of pre-existing political institutional structures and context which seem to condition actors' decision-making preferences (Steinmo, 2009: 270-272) and accordingly policy-selection, determinism styled in the literature as *path dependence*. Coining political institutions as "rules of the game", *institutionalists* explain the architectural design of the political system through the institutional constraints (Steinmo, 2009: 274). *Institutionalism* thus provides an explanation to the existing social order, while, in comparative perspective, it suggests that identifies cross-national differences are determined by the institutional context which shapes the rules along which relations are established and actors' expectations on the results (*returns*) of these interactions. In particular, *historical institutionalism* concentrates on the causality between institutional constraints and organizational evolution.

Our academic interest is to activate the new historical institutionalism into a wider research on public organizations historicity and dynamics in order to trace cross-national patterns of convergence and/or divergence, continuity and/or change within South-Eastern Europe following the fall of Communism. A couple of questions can be raised on this topic: in terms of the evolution of public organizations within South-Eastern Europe following the fall of Communism can we speak of convergence or divergence? Can we identify patterns of continuity or rupture from the path?

Current approaches, future challenges: recovery of a discipline or renewal of an investigative approach?

The study of public organizations witnessed an intense and seminal academic interest especially in the Western states. The current stage of knowledge in the field cannot be accused of a lack of heterogeneity; however, a critical analysis of the present conceptual framework of researches in the field reveals an almost exclusive preoccupation for three lines of research.

Firstly, we have to note the research direction on the dichotomy between public and private organisations which is analysed through researches on imposing structure dimensions and measures, complexity analysis, focusing on public organisations through open systems theory and models, reforming public organisations and the New Public Management. Through comparative analyses between the public and private sector organisations the researches build on the public character of public organisations operationalised in terms of influence exerted by political authority by opposing it to the formal legal statute binding public property (Bozeman & Bretschneider, 1994) or in terms of public managers behaviours and perceptions on formalism (Rainey &

Bozeman, 2000). The public character was also analysed in terms of excessive "bureaucratization" and public managers' organizational involvement (Boyne, 2002).

Secondly, the politics-administration dichotomy (and the rather opposed model on the complementarity between politics and administration) with some researches focusing on the relations between politicians and top-hierarchy administrators, or on the role of public organisations leadership within the political process, the institutionalisation of political discretion within civil services, the relation between technical expertise and political power, and proposing the logic of conflict in the analysis of the relations between politicians and public managers. Researchers explored the influence of the political and institutional environment over public organizations coining it as a basic concept in their study. However, some consider that even though it was intensely studied, due to its complexity, complications and difficulty, due to the governmental structure in which public organisations exert their activity and encompassing the human factor, one has not conceived an exact science within management to study organizational environment (Rainey, 2009: 89-90).

Thirdly, the state-society dichotomy and the relation between bureaucracy and democracy – from a historical point of view, many civil servants and many public organisations, that operated within the traditional bureaucratic model played a vital role for the economic and social growth and for the support of democratic institutions, reaching the phase of considering "modern organizations" synonymous to "bureaucracy". Within the historical context of reforming bureaucracies and public administrations from the developed countries, the study on the administrative phenomenon was claimed almost exclusively by managerial perspectives. The concept of public management thus appeared, passing, a decade later, to a new stage which demanded the prerogatives of a new management model for the public sector organisations. The model united diverse approaches, differently defined and theorised by the literature: "managerialism" (Pollitt, 1993), „New Public Management" (Hood, 1991), „market-oriented public administration" (Rosenbloom, 1992), „post-bureaucratic approach" (Barzelay, 1992), „entrepreneurial governance" (Osborne & Gaebler, 1992). With the study of David Osborne and Ted Gaebler (1992) on public management reform and the presentation of the new paradigm of "entrepreneurial governance", controversies appeared with theoreticians as regards the possibility of rendering "bureaucracies" the character of "innovative, flexible and responsible organisations". The change of paradigm, passing from the bureaucratic system paradigm to the post-bureaucratic system paradigm, thus demands innovative strategies in order to direct organisation results towards clients satisfaction (consequently, market-oriented). However, the model of the "New Public Management" as explaining variable for institutional changes cannot explain all the institutional and organisational transformations, thus, appreciating the existence of this limitation, we argue for the establishment of other variables such as institutional variables, historical events, cultural factors, political opportunities.

Appreciating these tendencies, the current stage of the knowledge in the field shows an acute lack of studies on the dynamics of change, historical conditionalities and political and juridical implications of institutional transformations on public organizations. Moreover, the accomplishment of disparate studies which discuss the opportunity of introducing and/or enforcing an administrative model or which make punctual notes on a state of being do not represent a complex and unitary analysis on the evolution of public organisations consolidation, but at most, they represent a

transversal image of some practices, of a particular phenomenon from a certain geographical space. We argue for the introduction of the time factor into any analysis on the dynamics of public organisations and for the study on a long-term basis of their creation, evolution and/or changes. We thus argue for the identification of historical determinants in the evolution of public organisations within a certain area which cannot be identified solely by studying the architecture of inter- and intra-organisational relations within their environment, but necessitate a closer analysis of the organisations' paths and institutional patterns.

Moreover, administrative history cannot be taken for the history of managerial thought (theories). The publication of valuable studies which systemise all the major theoretical contributions of administrative thought into an actual history of the study of public administration, such as the case of the work authored by Brian Fry & Jos Raadscheiders, *Mastering Public Administration from Max Weber to Dwight Waldo* (2014), cannot replace the study of the institutional and organizational evolution in a certain geographical area marked by a rich history which contributes to the determinism associated to changes during transitions. The history of the administrative thought is not a history of public administrations dynamics. The research based on the new historical institutionalism is thus consistent to the latest tendencies of the literature which theoretically outline the field of administrative history from constitutional history, law history, political history.

Notorious handbooks of administrative history such as Jos C.N. Raadschelders' *Handbook of Administrative History* (2000) and, also, Ewan Ferlie and Laurence E. Lynn Jr.'s *The Oxford Handbook of Public Management (Oxford Handbooks)* (2007) (and especially in the chapter authored by L. Lynn Jr., *Public Management: A Concise History of the Field*) relate to the history of public management as a field of study, Jay M. Shafritz and Albert C. Hyde's *Classics of Public Administration* (2012) describe the history of managerial analytical currents since 1880 until the present moment for the United States. Other attempts on capitalizing the temporal dimension include the work of P. Aimo, *The History of Public Administration: Some Brief Reflections on an Uncertain Discipline in an Administrative History Perspective* (2002) and T. Christensen, P. Laegreid (ed.), *Transcending New Public Management* (2007). The temporal dimension in the study of management is conceptually enriched in Christopher Pollitt, *Time, Policy, Management: Governing with the Past* (2008) through the analytical perspective over time factors (path dependence, tendency cycles etc.) which puts the process of historical evolution under the influence of independent variables such as political relations, management systems, cultural norms and inherited attitudes.

The present paper traces the theoretical and methodological path of wider researches which imply the analysis of the dynamics peculiarities of institutions' creation and institutional change. Researchers submitting along this line are interested in explaining this institutional dynamics in the context of the theoretical paradox supported by considering institutions the promoters of social order and of stability (Delpeuch & Vigour, 2009: 86). The analysis must be carried out on the basis of the *path dependence* theory which asserts the power of precedents to infringe or/and guide future evolutions (Delpeuch & Vigour, 2009: 88).

New Historical Institutionalism: applying institutional variables to policy-making and policy change analyses

In our opinion, any history of public organizations should identify its grassroots in the interrogation on the possibility of interpreting and explaining changes and reforms at the level of administrations from the point of view of the evolution and impact of institutions and historical events. The research should thus engage and follow the formulation of research questions such as: How can one explain organizational change within the context of institutional structures conceived to create and mantain social order and actors' expectations and behaviours? How do institutional and non-institutional actors from the local level perceive their position and status within the administrative reform process? How can one best describe the evolution of the relations among the local, regional, central and supranational (if any) levels within the reform process? Is there room for the improvement in the methodology of studying this topic? Appreciating the originality of the solutions one can receive in the research approaches, the answer to the last question serves as reason and justification for the design and development of analytical studies using complete approaches based on which innovating models of analysis are built to study the administrative reform process.

In a period marked by regime changes, confliction events, internationalization and/or globalization, certain geographical regions witnessed asymmetrical evolutions. A series of studies polarized their attention on shaping the institutional context of transition based on empirical studies (Steinmo, 2009), rather than on assessing and analyzing changes at the level of local public organizations. This paper aims at discussing the prospects of applying a methodological view circumscribed to the logic of historical evolution analysis and of changes appeared at the level of the diversity of organizing and functioning systems of local public organizations during post-communist transition periods. By carrying out a complex longitudinal analysis of historical processes of democratic organization and functioning of public organizations and following the logic of the comparative approach, the method allows the identification and analysis of implications for public policy-making within a certain administrative space.

The research thus centred on addressing the challenges identified in the literature on public organizations dynamics in a peculiar historical and geographical context embraces the historical institutionalism approach. Intensely applied in researches authored by Walter W. Powell and Paul J. DiMaggio, Wolfgang Streeck and Kathleen Thelen, and again Sven Steinmo, Kathleen Thelen and Frank Longstreth, Bruno Palier, Suzanne Berger, Peter Hall, Peter Katzenstein, Theda Skocpol, J. Timo Weishaupt, Ellen M. Immergut, Colin Hay and Daniel Wincott, Ira Katznelson. Historical institutionalism, one of the three *new institutionalisms* (rational choice institutionalism, sociological institutionalism and historical institutionalism) establishes the analytical process on an innovative descriptive and analytical approach using chronological narratives, descriptions and interpretative arguments on the birth and transformations of institutions and on the manner in which institutions influence organizations and actors' behaviors (Steinmo, 2009). Rational choice institutionalism, with its optics on maximizing actors' self-interest (Thelen & Steinmo, 1992: 8), historical institutionalism, with its understanding of institutions shaping national governmental strategies and objectives (Steinmo, 2009: 272; Thelen & Steinmo, 1992: 8), and sociological institutionalism with its interest in tracing the cultural dimension and the peculiarities of community and organizational thinking are highly applied to interpret cross-national differences in policy-making by relating them to institutional structure selection (Steinmo, 2009: 270-272).

Historical institutionalism (HI) in particular is overly interested in explaining the continuity in the evolutions of societies and national policies rather than the discontinuities and breaking-up with national patterns and policy paths. However, though centred on explaining the adoption and maintaining of a peculiar continuous path in policy-making through the dependence on the founding institutional context (*path dependence)*, historical institutionalism does not exclude change and the impact of political opportunities. Moreover, organisational change is pursued gradually in an incremental manner outlining the pressures of observing political and/or individual interests for preserving the status-quo due to the current advantages it presupposes.

At this point we have to make a couple of statements. Firstly, by highlighting the benefits of the use of historical neo-institutionalism, this study is not intended to shadow the value of the researches accomplished so far on the evolution of public organizations, although the details of the isolated, disconnected case studies can hardly be generalized for the entire framework of institutional, structural differences etc. Secondly, the research of public organizations has been accomplished using concepts and methodology from the sphere of (public) management mainly, rather ignoring the impact of historical aspects and the specific methodology. The research based on historical institutionalism approach contributes to the address of this loophole though the establishment of innovating models of analysis generating knowledge in the field of local and central public administration reforms.

Applying historical neo-institutionalism to institutional dynamics analyses

The new historical institutionalism allows the innovative interpretation of the evolution of institutional structures consolidation at national and local level in a certain geographical area and historical context building on the premises of agenda setting models, contingency theory and path dependence approach (Steinmo, 2009: 274).

Agenda setting models, contingency theory and path dependence approach allow a rational analysis of the path of public legislative, governmental and administrative interventions and, implicitly, of the political and juridical implications on national public policy-making. The analysis of institutional transformations and dynamics can also imply complex researches of the media and political mobilizations for the legitimacy of agenda setting activities which reveal aspects concerning the manner in which the issue is defined, imposing a certain issue on the public agenda and, finally, imposing the solutions to follow. The agenda setting theory proposes patterns for policy-agenda studies in order to determine the entities interested in the proposed results and the actors' behaviours to trigger that result.

The dynamics of institutional transformations must be dealt with in relation to the pre-existing policies and rules (thus path dependency), which can become constraints and even obstacles in the process of institutional and political configuration and re-configuration (Palier, 2009: 194-195).

The working analytical framework favoured by the new historical institutionalism approach allows the establishment of interpretations of organisational evolution in a diachronic manner and in different political and institutional contexts, also highlighting the impact of causality and of the constraints imposed by already existing rules and institutions. Appreciating the originality of the solutions proposed by the new historical institutionalism, the research analytical framework builds itself around the interpretation of organizational change through institutional transformations studied by the operationalisation of historical events, cultural factors, political opportunities as

explaining variables for change. Consequently, by integrating the diachronic dimension of the organisational phenomenon through the new historical institutionalism approach, one may interpret the heterogeneous and asymmetric evolutions of public organizations in a particular geographical area and historical context based on the constraints that past events (such as regime changes, social and political conflicts, social and political crises etc.) and the institutional path dependence (administrative structures, dispersing power among central and local governments, institutions creation and institutional change) can cause to the process of policy-making and enforcement of present public policies.

Thus, the research implies applying institutional analysis theories in general and historical neo-institutionalism in particular to identify the patterns of institutional change against the cross-national diversity. Historical institutionalism has been applied to explain diverse situations of policy continuity across periods of time such as the European integration and Europeanization policies and patterns (Lasan, 2012: 76-85; Tolga Bolukbasi & Ozcurumez, 2011: 524-542), the role of critical junctures and of key decisions in establishing institutional balance (Capoccia & Kelemen 2007: 341-II), even explaining institutional evolution (Lustick, 2011: 179-209), political regimes evolution (Erdmann, Stroh, & Elischer, 2011) and internationalization (Farrell & Newman, 2010: 609-638). Some scholars employ in the analysis both institutional and ideational variables to explain policy formation and transformations (Thelen & Steinmo, 1992; Stiller, 2010; Timo Weishaupt, 2011), others push the theoretical research further by proposing and coining a new theoretical and analytical approach under the form of discursive institutionalism (Schmidt, 2010) or of other forms of "constructivist" institutionalism designed to explain change (Bell, 2011). The change process is thus analytically pursued by studying the influence of actors' beliefs conceived as ideas (Timo Weishaupt, 2011: 22) as an additional variable to the already employed by scholars under the form of path dependence, power dispersion, environment.

Incremental theory and path dependence approaches: explaining current paths instead of "ideal" alternatives

The statement according to which national policy strategies and goals follow the institutional context (Thelen & Steinmo, 1992: 8) is central to the new historical institutionalism approach. Applying the logic of path dependence – a concept interwoven in historical neo-institutionalism – allows for sustaining explanations of the existence of institutional divergence instead of convergence (Palier, 2009: 192-195). Thus, historical contingency and path dependence approaches are followed to explain the present and predict the future "reasonable" public policy-making and enforcement processes within a certain institutional context against the selection of a different mode of action. Path dependence model is used to explain the continuity of a national institutional pattern and, consequently, the rejection of alternatives having in view the different costs associated with importing and enforcing these new institutional structures and revolutionary public policies. The arguments thus differ substantially from those proposed by rational choice theory which assumes the selection of ideal alternatives capable of triggering the best or at least higher returns (Palier, 2009: 193-195).

In fact, the incremental theory circumscribed to historical institutionalism in comparative analysis is consistent to the political approach to decision-making within public organizations identified by David H. Rosenbloom & Deborah D. Goldman

(1993) along with the rational-comprehensive theory based on the managerial approach, and the legal approach to decision-making (Rosenbloom & Goldman, 1993: 320-349). Analyzing organization and management structures, Fred A. Kramer (1984) also claims to have placed the decision-making process within the administration at the middle of the two extremes: decision-making according to rational-comprehensive theory grounded on economic rational choice and political-based decision-making circumscribing the fundamentals for incremental theory (Kramer, 1981: 244). Hence we have to observe that rational choice neo-institutionalism and historical neo-institutionalism meet at this point by considering the "muddling through" of the incremental-based political approach (Rosenbloom & Goldman, 1993: 22) as another type of rational choice, administrators' optics changing according to the specific interests of decision-makers.

Entire collections of volumes based their research on historical institutionalism due to its success in explaining public policy dynamics over longer periods of time. In fact, historical institutionalism, due to its integrating the incremental change approach, is not inclined to analyse the contextual dimension of a public policy but rather to follow its long-term evolution in order to observe institutional patters (Tolga Bolukbasi & Ozcurumez, 2011: 524-542). The successes obtained by historical institutionalists in explaining the welfare state reform and cross-national differences of public policy long-term observed patterns. For instance all the Changing Welfare States Collection from the Amsterdam University Press embarked upon de-constructing the public organisations reform process towards supra-nationally EU-coordinated national convergence or towards divergence based on institutionalist approaches. This approaches allow the identification of a linear pursuit of the policy path or sudden changes and/or drops and, consequently, complex interpretations of these changes by identifying intervening variables.

Explaining change in historical institutionalism analytical perspective

Institutions creation and institutional change represent other topics of academia interest (Delpeuch & Vigour, 2009: 86). Why is the institutional creation stage so important to scholars? How is institutional change perceived by historical institutionalism? And, moreover, how do historical institutionalists accommodate change into the path dependence framework?

Researchers developed a model to explain the shift in preferences or policy discontinuity in the form of the *policy window* model which interprets the policy change and the different timing associated to policy design and enforcement in terms of contingent events and unexpected influences which push the issue on top of the public policy agenda (Ravinet, 2009: 128-129). However, in relation to change and organizational dynamics, what some believed to be the shortage of historical institutionalism is the fact that it has not explicitly relate to evolutionary theory although it employs most of its instruments such as the incremental change and "punctuated equilibrium" theory (Lustick, 2011). Others have sought to answer the critique of historical institutionalism according to which it reduces change to incrementalism and prefers a rather conservative evolution of policy-making based on established patterns and path dependence, by introducing political conflict and ideational legitimising for change as explaining variables for institutional change (Peters, Pierre & King, 2005). Other critiques involved the enquiry of the relation between democratic consolidation and path dependence theory by lodging the

continuous character of institutions and path dependence and proposing that democratic consolidation is acquired by limiting or neutralising non-institutional instability factors (Alexander, 2001).

A different optics is pursued by scholars who argue that continuity is conditioned by a set of internal institutional context and/or international formal or informal institutions (Timo Weishaupt, 2011: 23). In this individual perception, historical institutionalism scholars embrace either an all-encompassing view on "institutional stability" or a view subordinated to a type of evolutionary theory on institutional adaptation (in this case styled as convergence). In either way the common denominator is path dependence which is employed to explain the continuity of a certain course of action and cross-national peculiarities (Timo Weishaupt, 2011: 24). However, this view does not entirely exclude change, viewed not as a deviation from the path, but envisaged as gradual, incremental, and even lists the analytical instruments and stages put to use in such a comparative study (Timo Weishaupt, 2011: 24-25).

What is equally interesting to note is the fact that scholars do not necessarily make a discrimination in attributing the label of institutional evolution to the concepts of institutional convergence, institutional persistence and/or continuity and institutional divergence (Timo Weishaupt, 2011: 22). In fact, what interests them is to identify an appropriate explanation to *continuity* and *change* of a certain institutional context.

That is why scholars opted for identifying endogenous (derived dynamics) and exogenous (assumed influences under the form of opportunities and limitations) variables for political change (Krehbiel, 2008: 223-240; Delpeuch & Vigour, 2009: 86-90). Olimid (2013) analyses the transition process and democracy building in Eastern Europe within the dependence relation between exogenous and endogenous variables. The research is based on a political interpretation of all major transition theories in search for a correct identification of political system inputs and outputs (Olimid, 2013: 9-18). Gherghe (2013) interprets the legislative framework after the fall of Communism in terms of the dependence relation between the institutionalisation of political parties and the consolidation of democracy. In this vision, the legislative framework follows the pattern imposed by the pre-established institutional context of political parties' configuration (formal institutions, norms, decrees etc.) (Gherghe, 2013: 19-24). A similar view is pursued in the examination of the relationship between institutions and organisations by highlighting the dependence relationship between the institutional system of democratic pluralism and the configuration and re-configuration since 1989 of the political pluralism and competitive ideological market (Vlăsceanu, 2005: 59).

Conclusions

Institutional analysis has become the nesting point for a rich literature which claims a temporal dimension for public policy-making surrounding the relations between specific institutional contexts and actors' references and behaviours. The analytic view is strongly influenced by the perception that already-established institutions matter as they condition actors' action through a returns-based analysis. Thus, continuity seems to be preferred to discontinuity and change since maintaining the status-quo implies lower costs than changing the system. This does not mean that change is unconceivable, rather it is expected to occur in a slow, gradual pace, according to incremental theory which assumes that reforms follow an institutional pattern and are constrained by "veto-points" exercised by the decision-making body (Immergut, 1992: 57-89; Delpeuch & Vigour, 2009: 89-90).

The new historical institutionalism approach pursues diachronic analytical studies of organizational evolutions, including changes, with the identification of certain contingent elements which mark the political and institutional context. Causality and constraints originating in pre-established institutions constitute a guiding line for the interpretation of organizational evolution. According to the arguments described above, the comparative analytical approach focuses on identifying and explaining patterns of organizational continuity and change through the operationalization of historical events, cultural factors, political opportunities as explaining variables. Consequently, the methodologies argue for embracing the study according to a diachronic dimension of the organizational phenomenon through historical neo-institutionalism. Thus researches grasp the heterogeneous evolutions of public organizations within a certain geographical area on a path-dependence basis catalysed by elements such as patterns of administrative structures, power dispersion between the central and local governments, existing institutions etc. and considering into the analysis the constraints triggered by past events (such as, but not limited to, regime changes, social, political conflicts, social and political crises etc.) to explain cross-national or cross-sectorial differences or convergence.

The study thus imposes the correlation of interpreting the impact of historical facts and specificities from a certain geographical space in terms of culture, mentality, identity, legislation and a theoretical specialisation which presupposes the use of key-concepts from the field of political sciences and public organisations. This correlation of the different conditionalities renders relevance to the scientific contents of any research, and, moreover, maintains a strong interdisciplinary character probed by the correlation among the fields of history, politics and law in the analysis of public organisations development under institutional change established on the new historical institutionalism approach.

Consequently, the main purpose of the research is circumscribed to the logic of the historical evolution and transformations analyses within cross-national diversity of organising and functioning systems of public administration. This requires a complex longitudinal analysis of historical processes of administrations organisation and democratic functioning allowing for the identification and analysis of the implications for the public policy-making within a certain administrative space.

Thus, in interpreting *continuity* and *change*, both institutions and time matter.

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ORIGINAL PAPER

Building Liberal theory in the Age of Modern Constitutionalism: Judicial Interpretations and Political Thinking in Emanoil Chinezu's Studies

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Abstract
Constitution drawn up by Emanoil Chinezu was based on the principle of the separation of powers within the State, the legislative power was collectively exercised by "the national representation" and the Prince, the executive power being entrusted to the Senate, while the judicial power was exercised by courts and tribunals. Just as the Paris Convention of 1858, it was provided an elective, but not foreign monarchy, the Prince had to be a Romanian citizen. The value of this document lies in the attempt to present in a new form, influenced by the West spirit, the old traditions of the Country and the desiderata constantly expressed by the nobility in its various memoirs. The author of the constitution draft pursued the organisation of a State subject to the rule of law, founded on the principles of the French revolution and the old Romanian settlements, in order to give the Country a Constitution.

Keywords: Constitution, separation of powers, representation, state, rule of law.

The beginnings of the Romanian constitutional life are to be found in an aristocratic-democratic constitution draft from 1802, inspired by the Declaration of 1789 and the first French constitution of 1791, a draft in which the small boyars ruled in favour of an aristocratic republic, based on the consultation and the collaboration of "all the people" (Banciu, 1996: 22).

In the Romanian society he made himself well-known with a special force due to a group of politicians whose views enjoyed a strong popular adhesion, most of them standing out through an intense activity before the revolutions of 1848. The liberal ideas existed within the programs of certain secret political societies, conspiratorial

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groups and cultural societies, which pursued the political, economic and cultural emancipation of the country.

These reforming and constitutional ideas and principles begin to take more shape within the memoirs and drafts in the years 1821-1822: the Revolution of Tudor Vladimirescu, the Hetaerists action and restoring the autochthonous domains, and afterwards to be included in the Cărvunari Constitution, drawn up by the small and middle boyars in Moldavia led by Ionică Tăutul, constitution that A.D. Xenopol, the author of the discovery of this document original treaty - characterized as being ”the first political manifestation of the liberal thinking”, and ”the first embodiment of a constitutional thinking in the Romanian Principalities” (Xenopol, 2005: 90), taking into account that its text clearly stated ”the constitutional principle: the rule of law”, meaning that the prince’s authority was limited and subordinated to the representative body - the National Assembly.

The Cărvunari draft of 1822, improperly named ”constitution” announced some of the modern constitutionalism principles, principles unknown until that moment in the Romanian Principalities: the respect for property, individual freedom, freedom of work and trade; ensuring people’s honour; equality before the laws etc. (Xenopol, 2005: 91-93), which were inspired by the French Revolution ideology.

Following the entry into force of the Organic Regulations of 1831-1832 the Romanian Principalities shall have the use of the tool intended to provide a regulatory framework for governance, due to which the State, in its modern meaning, is created along with its specific mission and functions.

The Organic Regulations resulted from a collaboration of the Petersburg cabinet with the committees consisting of the great Wallachian and Moldavian boyars and integrate the previous projects of the State life organisation representing, according to Nicolae Iorga, a true constitution having the purpose of ”achieving, according to the interests of the great boyars of the programme sustained by the all levels boyars and especially the small boyars, starting from the 18th century” (Iorga, 1990: 52). The Regulations conferred to both Romanian Principalities the same political organization.

The Regulations do not constitute a law in order to meet all the aspirations and the needs of the Romanian society. They were not created following the classic pattern of the western constitutions being rather constitutional and administrative codes than true constitutions (Drăganu, 1991: 39). Although they have the value of fundamental law they cannot be considered as a constitution because they were adopted with the approval of the foreign powers, Russia and Turkey, without the consultation and the consent of the people and they do not contain provisions relating to rights and freedoms.

The Organic Regulations represent an important moment in the history of the Romanian constitutionalism even if they are not ”constitutions”, we can assert they have a constitutional nature as they include provisions necessary for the organisation of the State institutions. Taking into consideration the constitutional evolution as a whole, the position held by the ”Organic Regulations can be assessed starting from the occurrence of some principles specific to the constitutional architecture” (Stanomir, 2005: 18-19).

The two Regulations both from Moldavia and from the Romanian Country provide for education to be taught in the national language because it would make it easier for schoolchildren to improve their learning of the homeland language, but also because all public affairs were to be treated in this language. Another important article introduced

in the Organic Regulations is Article 426 which states that the establishment of a joint commission from the government of both principalities, aiming to transform into one body the laws of Moldavia and Wallachia, the identity of the legislation being one of the most suited means to fulfill this moral unification articles which by the common statutes introduced gave new possibilities to organize the fight for national unity.

Taking part in an active manner in the revolution of 1848 in the Romanian Country, Emanoil Chinezu stated that the revolution of 1848 was made by the nation, by a few men, like D. Heliade and the nation is rightly credited as one which has molded itself with suffering and sighs, with its aspirations. He emphasizes that an important role during the revolution had the liberals and the nationals both in the Romanian Country, Moldavia and over the Carpathians, many good and liberal thinking men who took part in the foundation of a provisional government. By the revolution of 1848, it was shown even to the most blinded, that liberalism, in its entire splendor, was coming out of all the pores of Romania. All social classes took part in the consolidation of liberalism from the highest to the most modest.

One of the fundamental constitutional principles introduced by the Organic Regulations is the State organization based on the principle of the separation of powers. The separation of powers introduces, unlike the Old Regime, a democracy making possible the occurrence, even in an embryonic form, of the classical powers system, the executive power was entrusted to the Prince, the legislative power was jointly exercised by the Prince and the National Assembly (the Parliament), and the judicial power was held by the courts of law, the county courts, the appeal courts in Iași and Bucharest and the Great judicial Committee as the final court competent to hear civil, commercial or criminal cases. For the first time it was provided by art. 212 ”the separation of the executive and judicial powers necessary for the good organization, for regulating the disputes and for defending the individual rights, these two executive branches shall be different from this point forward” (Stanomir, 2005: 19). The introduced judicial reform established a network of well structured courts, each of them with clear and accurately formulated competences missions which will remain valid, with minor changes regarding the competences and titles, until the middle of the 20th century.

From the period 1831-1840 are known many memoirs and reform drafts of the Wallachian and Moldavian boyars culminating with the draft drawn up on November 5th /17th 1838 by the ”National Party” from Wallachia, under the signature of the boyar Ion Câmpineanu where is presented a series of legal requirements, which are also found in the provisions of the Constitution of 1866. The undeniable difference between the Constitution draft drawn up by Ion Câmpineanu and the Organic Regulations lies primarily in the article which stipulates that: ”all the Romanian people are equal before the law”, the admissibility in the ”civilian and military positions” as well as ”the individual freedom is guaranteed” corresponding to the ”individual freedom” after 1866 (Stanomir, 2005: 24). The document provided as well the freedom of printing and speech: the introduction of the universal suffrage; the legislative power should be held by the sovereign etc.

Therefore, the two documents drawn up by the National Party, the Unification and Independence Act and the Romanian sovereigns appointment Act, included a real constitution draft, based on the principles of the political and economic liberalism, in line with the local memoirs, but also the synchronization with the French-Belgian line (Bodea, 1982: 120 and fl.). The text of the constitution draft includes two versions that are juxtaposed: one in Romanian language, and the other one in French language,

between which the differences are very small. It should be noted that this draft, written in Romanian and French, was taken over by the Romanian revolutionaries from 1848, in the Izlaz Proclamation, by Mihail Kogălniceanu in "The Desires of the National Party" and later by Emanoil Chinezu in the elaboration of the constitution draft of 1857.

Therefore, the decade that preceded the revolution of 1848 witnessed numerous actions that contributed to the work of the national regeneration of all the territories inhabited by the Romanians.

The revolutions of 1848 in the Romanian Principalities joined the wave of revolutionary movements that included the entire Europe. "The political instabilities present in 1848 across Europe - shows Emanoil Chinezu - found us as well willing to receive them with open arms [...]. Therefore the entire country received our revolution of 1848 with no surprise, as something very natural and with general acclamation" (Chinezu, 1873: 183).

The Constitution draft elaborated by Mihail Kogălniceanu in 1848 in Cernăuț, proclaimed Moldavia as a "constitutional State" with internal autonomy, the legislative power was to be exercised by the National Assembly composed of deputies appointed by poll tax vote, and the executive power was entrusted to the Prince who benefited from lack of political responsibility for its actions. The person of the Prince should be inviolable. The judicial power was entrusted to courts, the judges being independent. The draft also included a modern regulation of the citizens' rights and freedoms, following the French constitutional model (Ionescu, 1997: 26). Furthermore, among the objectives included therein, a special importance was given to the independence and national unity. But the most important document of the revolutions of 1848 was the Izlaz Proclamation (June 9th /21st 1848). Its importance results from the incorporation, for the first time, of a set of principles of constitutional essence: the principles of freedom, equality of political rights, independence, undertaken by a government and from which resulted its political legitimacy. The proclamation included 21 points providing among others: the dissolution of noble ranks and censorship, the freedom of speech (freedom of printing), the adoption of the national tricolour flag with the slogan "Justice, Fraternity", the instruction generalization, the abolition of the capital punishment, emancipation of day labourers, gypsies liberation and the requirement for the religious tolerance, the maintenance of the national elective monarchy "The responsible Prince elected for five years and searched in all the society's layers", the legislative power was entrusted to a general assembly, "composed of the representatives of all the layers of the society", modernization of the administration and legislation etc.". It was also stipulated, in art. 22, the immediate convening of a Constituent Extraordinary General Assembly elected with the attribution of drawing-up the "country Constitution based on the 21 articles declared by the Romanian people" (Drăganu, 1991: 81-86). The Revolution of 1848 brought to light the first embodiment of the liberal and egalitarian ideas.

The independence, the state unity, the democratic reform and modernization of the Romanian society enter a new stage after the end of the war between Russia and Turkey concluded by the Treaty of Paris of March 18th /30th 1856 which establishes, among others, their organization and a new international status of the Romanian Principalities.

According to article 22 of the Treaty the two principalities remained under the suzerainty of the Porte and under the collective guarantee of the Guaranteeing Powers (Turkey, France, England, Prussia, Austria, Russia, Sardinia), no unilateral action of any power being allowed. The Porte undertook to observe and maintain for the

Principalities ”an independent and national administration as well as complete freedom of worship, of the law, trade and navigation” (art. 23 of the Treaty).

From the constitutional point of view art. 24 of the Treaty provided the convening of each Principality of an ad-hoc Committee as a representative body of the ”Interests of all the society’s layers. These committees shall be called on to express the people’s wishes in terms of the final organization of the Principalities” (Ionescu, 1997: 28).

In 1857 ad-hoc Meetings are convened, their role being consultative. Nevertheless, the activity developed by the ad-hoc Meetings was organized following the model of true deliberative assemblies, ignoring their qualification by the firman as mere expressions of the statuses, highlighting the need to adopt the parliamentary regime as a basis for organizing the Romanian countries and state unity. The establishment of the parliamentary regime within the Principalities shall become a complete reality only after the period of application of the Convention in Paris in 1858, the document intended to regulate the domestic and international status of the two Romanian Principalities.

Since 1856 the political vocabulary of the Romanian intellectuals will include more often the term ”constitution”. The end of Russian protectorate and its replacement with the collective protectorate of the European powers participating in the Congress, imposed without saying the change of their status of internal organization, the issue of the unification between Moldavia and Wallachia, and at the same time the position of the great powers towards this historic act of the Romanian people. Furthermore, we shall make reference to a less known constitution draft, drawn up by the lawyer and politician Emanoil Chinezu (1817-1878). We owe to Emanoil Chinezu the elaboration of a Constitution Draft entitled the Reintegrated Romanian Constitution or Skitza for a Constitution in Romania, published in 1857, the elaboration, adoption of this fundamental document representing in his opinion the first and the most important objective of the State (Chinezu, 1857). The work Romanian Constitution was printed in Brussels using Slavic letters and contained the following chapters: Foreword, Skitza for a Constitution in Romania, Introduction, Government, the responsibility of the government representatives, Application of the preceding theory to Romanian Institutions, the Constitution Drafting, General Provisions, the Constitutive Assembly, the Prince, the Court, the Senate, the Judges.

Emanoil Chinezu thought that “the only and first concern (of the government a/n) must be to give the country a constitution [...] the convention is not a constitution, but a diplomatic document of European public law by which, integrating our State within the European political republic, shall be recognized the right to elaborate a constitution as free as it will desire [...]. No person has the right to give us a constitution. The right to give us a Constitution is ours.” (Chinezu, 1866: 191). Strongly influenced by the French ideas, Chinezu stated that ”no country could exist” without freedom, equality and fraternity. That is why he sets family and property as the basis for elaborating the constitution draft. The property in the sense of having an intimate relation with freedom. The person who attacks property attacks freedom and vice versa. According to Emanoil Chinezu’s vision the general principles of the country shall be “Freedom, Equality, Fraternity, family and property” (Chinezu, 1866: 35).

In drawing up the Constitution draft Emanoil Chinezu was influenced by Benjamin Constant (1767-1830), the main theorist of the modern French political liberalism, exceeding him in terms of vision and thinking.

In Emanoil Chinezu's conception, an indispensable condition of the State was sovereignty. All the State powers must come from the nation, which means that the holder of sovereignty was the nation.

The people (nation a/n) cannot directly exercise the legislative power, nor the executive or judicial power and therefore it must appoint pursuant to elections in "electoral colleges" the deputies and senators. The National Party continued its vigorous action to ensure the presence of unionists representatives in the Ad Hoc Assembly. Since the future of the Romanian Country was in question, Emanoil Chinezu advocated for uniting all political groups to support the idea of the Unification of the principalities. Under these circumstances - shows Emanoil Chinezu - there are not and there can not be parties, the object (the unification - our note) that concerns us does not divide itself, but brings us together, unites us, inspires the same principles to us, the same determination, the Romanian ideal being above the interest of the party. The unification was considered the only way to achieve social and economic progress of the Romanian countries, the only way by which one could gain both our outer and inner security. In the Chinezu's liberal thinking, the body of the State legislature was conceived as an expression of the national will, and the government as an emanation of the majority of the representatives of all social classes. The legislative body of the country must be seriously reformed by choosing new items, called in to participate in the reorganization of the State. Pleading for the principle of the separation of powers within the State, the Romanian lawyer confers to the executive power representative, either king, prince or "whatever else", the duty to be "the moral creator of the necessary reforms, a friend of the progress, a protector of the suffering persons" (Gherghe, 2009: 192).

Emanoil Chinezu sustains the separation of the powers in the State, showing that "there are three powers that constitute the government: the legislative power, the judicial power and the executive power; the legislative power in its exercise is entirely independent; it only depends on the sovereignty of the people whose will has to express". The legislative power is formed from the delegates elected by "the citizens sent by the electoral colleges, acting as the people legislators, for a term of five years". They initiate draft laws that are sent "by their representatives in a Constituent Assembly". When the Constituent Assembly adopts them, these drafts become laws without any penalty from the Prince and shall be called constitutive laws. The press, the meeting and the petition, as sovereign rights, are independent and they are subordinated to their legislative authority.

The executive power is part of the sovereign activity that gives effectiveness to the decisions of other powers. According to Chinezu, the executive power "lies in a Senate appointed by the Prince from the nation core - the Senate, is therefore, the vigilant sentinel of the country" (Chinezu, 1857: 78). The senators are by excellence the defenders of the constitution.

With particular competence, the lawyer Emanoil Chinezu presents the principle of the judicial independence towards the other powers, the essential feature of a representative or constitutional political system. The judicial power had to be a part of the sovereign activity intended to maintain all the particular activities within the legality circle. It is entrusted to a body formed of judges appointed by the Prince. A special chapter presents the responsibility of the government and of the Prince. Emanoil Chinezu pays a particular attention to the State and to the modalities which lead to its strengthening and development. The State is even more powerful, stronger, more

prosperous and more sustainable - wrote Emanoil Chinezu in his book *How to give Romania to the hands of Romanians*, foreshadowing the policy <though ourselves> - as it will satisfy more completely the moral and material interests of the members of the society it protects, or if you want it, in a more general manner, as it achieves in a greater measure the social interests.

Extensively presenting, in the chapter „General provisions", the rights of the Romanians, Emanoil Chinezu foresaw the most important and fundamental freedoms, such as: the freedom of conscience, of the press, of education, of association and meetings, while abolishing the privileges and the titles of foreign nobility, "no Romanian will be able to wear foreign signs or titles". There were guaranteed the inviolability of the person and of residence, the equality of all the Romanian citizens before the law, "the law is for all the Romanians", a Romanian person can only be "condemned for offense committed" (Chinezu, 1857: 96), was the author's conclusion. Therefore, the guiding principle of the civil law is, for Chinezu, that according to which property represents freedom.

Chinezu, as Montesquieu as well, declared himself the partisan of the constitutional monarchy, of a regime in which the Prince does not hold the entire power, but it shares it with the National Assembly, representing the legislative power, and with the judicial power, while he holds only the executive power. In these circumstances, the State is no longer ruled by one single person, as is the case in the despotic regime, but by a certain number of persons that are neutralized. Then it follows the actual elaboration of the constitution draft. Emanoil Chinezu was noticed through the militancy of his position, through its historical and political view, being situated in the most radical wing of the Romanian liberalism in its first constitution and affirmation process. He states that liberalism in Romania is not dated starting today, nor is introduced by the modern ideas, it is much older and more original on our land than is generally believed. In his work "*Adevăru-lu asupra căderii ministerului Brătianu* (*The truth on the fall of the Brătianu ministry*) Emanoil Chinezu tells an interesting history of the emergence and development of the Liberal Party starting with the revolution of Tudor Vladimirescu and up to 1872, saying that the Romanian national party was constituted for the first time as a rising opposition against the Greek item and the first victory of the Romanian in the political area was the downfall of the Phanariot reigns.

In his study, Emanoil Chinezu concluded that only when the Liberal Party will be organized on moral principles not on interest, the three factors of human civilization: Order, Progress and Freedom will contribute to the development of the Romanian society. He argued the need for a democratic Republic, which he considered to be the most appropriate to the Romanian realities. According to his view, the Republic represented the "best form of government for Romania. Democracy represented equality as the Republic was the freedom itself. Only a democratic Republic or if you want a democracy in the Republic, appreciated Chinezu, can achieve freedom for all; that is at the same time, and equality and freedom in the broadest sense, in the truest meaning of morality and merit, in due measure for humanity. Convinced and ardent follower of the democratic Republic, of the propagation of the idea of sovereignty, Emanoil Chinezu wrote: The Universal vote, the equality of the Public Assembly, the democracy upon the establishment of the power of the State and the permanent electivity of the heads of the governments which we must have and which is the delegation of the Public powers, that it the Republic. Emanoil Chinezu is one of the leading personalities which is representative of that period, an outstanding exponent of

the spirit of political and cultural transformation that characterizes the decade before the revolution of 1848.

The political activity developed within the liberal trend, more sustained or more balanced, according to the time that he did it, had a special importance in the battle plan for the development of the national consciousness, of the spirit of solidarity and unity, as he is considered the founder of the Romanian political liberalism of the mid-nineteenth century because of his contribution to the formation and spreading of the liberal values. In all of his writings, Emanoil Chinezu has fought for the Freedom of the press; the freedom of gatherings; the freedom in elections; the freedom in the public education which implicitly lead to all political freedoms, so necessary for the democratization of the country.

Approaching the principles that are applied to the individual within a representative political system, pointing out that by establishing such a system, anywhere ”the privilege and the exclusivism had to stop”, Emanoil Chinezu presents a review of the main rights and freedoms of the citizens representative for a democratic system: the right to vote starting from the age of 25 years old, and to exert power starting with the age of 30 years old; no preventive arrest can be longer than three months without a court decision according to all forms; no imprisonment can be longer than 30 years; no residence can be violated without a written court decision; a Romanian citizen can only be ”condemned for the offense he committed; the People exercise its freedom making use of the press, meetings or organizations; all the valid and independent Romanians are citizens; the Prince is entitled to appoint a regent from the Senate; only the Prince bears the title of ”His Majesty” as he is the only prince in the country (Chinezu, 1857: 18-20).

Emanoil Chinezu provided the following constitutional powers of the state: executive, legislative and judicial. Their organization and functioning relied on the principle of the relative separation, which also implies the constitutional powers hierarchy and their collaboration within the limits set by the constitutional act. The prerogatives and the responsibilities of the Prince were specifically expressed in the Constitution draft elaborated by Emanoil Chinezu. In the name of the Prince was set the law, administration and court decision were made, the Prince had to be Romanian and a Romanian citizen and he was elected for life by the people by means of the Constituent Assembly. His person was sacred and inviolable. The Constitution granted the Prince the privilege to rule and the right to govern. Therefore, the constitutional monarchy became the source of the internal stability within the State. According to Emanoil Chinezu, the legislative power of the country should be entrusted to the Chambers of Tribune. It must be composed of 100 members who had the responsibility to draw up law drafts and to elaborate the State budget. Emanoil Chinezu gave great importance to the Senate which represented the executive and administrative power of the country. The senators had to be ”the defenders of the country and of the Constitution”. In the Senate was put ”all the care and solicitude for the improvements and the establishments of all that is necessary for the happiness, glory and power of the Romanians country”. The senators had to be elected by the Prince for life. A senator could only be arrested following the decision of the Senate.

Regarding the judges, Emanoil Chinezu suggested two courts: Courts of first instance and the High Court, whose decisions were without appeal. The legislative chamber had the duty to determine the courts number and the staff as the need should be. Chinezu stated that ”no person should be punished in an arbitrary manner without

having been judged; judged only by virtue of the laws decided and following the prescribed forms". A constitution should represent the guarantee for these principles.

The constitution draft initiated by Emanoil Chinezu in 1857 was in some aspects influenced by the French constitution of 1852 and the Belgian constitution of 1831, as well as by the Belgian electoral law.

The draft completely expresses the national political thinking in the middle of the 19th century and represents an attempt to grant the country a constitutional foundation.

It lays down the principle of the rule of law, of the observance of the individual rights and freedoms, of the idea of political representation within the National Assembly of the Country. It represented the passage from the unicameral system, stipulated by the Organic Regulation and the Paris Convention, to the bicameral system, the legislative power being collectively exercised by the Prince, the Collective Assembly and the Senate.

Emanoil Chinezu also paid particular attention to the electoral law. He suggested "a national electoral law" by which "we should call to elections, by universal suffrage, the entire nation that can read and write" (Chinezu, 1869: 61).

The introduction of the universal suffrage replacing the electoral law represented for Emanoil Chinezu "a clear revolution: it means substituting democracy to oligarchy" (Chinezu in Gherghe, 2009: 200).

"The citizens gather in country colleges in order to elect their delegates for the constituent power and for public authorities, was stated in art. 28 of the General Provisions, and art. 4 of the chapter "The Constituent Assembly" mentioned: „Each college elects any number of delegates that are sent to the Capital in order to form the Constituent Assembly".

The Constitution drawn up by Emanoil Chinezu stipulated a legislative power organization that resembles the one contained in the Developer Statute of the Paris Convention.

The executive and administrative power of the country was held by the Senate. The senators were elected for life by the Prince and took care of the laws constitutionality control, as in the time of Al. I. Cuza and represented the second chamber of the Parliament. The State budget was exclusively adopted by the Chamber of Tribunes (Deputies Assembly), this right resulted from the English constitutional law, incorporated in the French, Belgian Constitution and afterwards in the Romanian Constitution of 1866.

In conclusion, the Constitution drawn up by Emanoil Chinezu was based on the principle of the separation of powers within the State, the legislative power was collectively exercised by "the national representation" and the Prince, the executive power being entrusted to the Senate, while the judicial power was exercised by courts and tribunals.

Just as the Paris Convention of 1858, it was provided an elective, but not foreign monarchy, the Prince had to be a Romanian citizen.

The value of this document lies in the attempt to present in a new form, influenced by the West spirit, the old traditions of the Country and the desiderata constantly expressed by the nobility in its various memoirs. The author of the constitution draft pursued the organisation of a State subject to the rule of law, founded on the principles of the French revolution and the old Romanian settlements, in order to give the Country a Constitution.

With its limits and errors, the Romanian Constitution drawn up by Emanoil Chinezu in 1857 created the general framework for the development of a modern national State.

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