AGORA INTERNATIONAL JOURNAL OF JURIDICAL SCIENCES

https://univagora.ro/jour/index.php/aijjs/issue/view/179

Year 2022

No. 2

Publisher: **Agora University Press**

This journal is indexed in:

International Database

International Catalog

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AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 1-3

THE FUNDAMENTAL LAW – A REVIEW?

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ABSTRACT

Constitutional revisions, in the majority of them, are determined by internal considerations, considerations that can be of a political or legal nature, revisions through which political commitments are introduced into the constitutional texts through cosmetic changes, thus creating the premises for constitutional and legislative reform.

KEYWORDS: Constitution, revision, President, Parliament, Government, Referendum

INTRODUCTION

In the Constitution of Romania, through the revision of 2003, new constitutional provisions were introduced for the creation of the constitutional legal framework necessary for the integration of our country into the Euro-Atlantic structures, thus introducing two articles: article 148, called "Integration into the European Union", and article 149 called "Accession to the North Atlantic Treaty".

The provisions of the current Constitution have not allowed any institution to concentrate power excessively, but its provisions contain a potential for inter-institutional conflict, both with regard to the power relations within the executive, between the President and the Prime Minister, as well as with regard to the relations of power between the central executive authorities and the legislative forum.

1. POSSIBLE REVISION PROPOSALS

We thus question the structure of the Parliament, is a bicameral Parliament too dense, too slow in the elaboration of normative acts? Should this parliamentary structure be revised and thus move to a flexible, unicameral Parliament, according to the 2009 referendum? We argue for bicameralism by maintaining the principle of specialization of the chambers in terms of the exercise of the legislative function, but also by the fact that the bicameral structure of the Parliament is found in the democratic tradition of the Romanian people.

The method of electing parliamentarians is seen as being able to be part of the package of constitutional norms subject to revision, through the provision according to which the presence in Parliament, next to the elected parliamentarians, of some representatives of the interests of local communities, of the university, economic and financial environment is necessary.

The number of parliamentarians has always raised political discussions, a topic used in electoral campaigns as a weapon with quite a lot of success

In the 2009 referendum, Romanians demanded a unicameral Parliament and a maximum of 300 parliamentarians. The Constitutional Court maintained that "the referendum

is consultative and produces an indirect effect, in the sense that it requires the intervention of other bodies, most often the legislative ones, in order to implement the will expressed by the electoral body", and the referendum remained without effect.

It is also worth analyzing a revision proposal by which the trasists lose their mandate with the date of resignation from the political formation from which they ran in the elections, having as an argument the fact that the parliamentary mandate is obtained from the voters and not from the party, however, we have the situation in which the respective parliamentarian will continue his mandate as an independent and will be able to vote according to his political convictions.

The report on the imperative mandate and the assimilated practices, adopted by the Venice Commission, at the 79th plenary session, on June 12-13, 2009, states that "one of the problems faced by modern democracies, from the perspective of parliamentary stability and respect for voters' options is represented by the practice of elected officials leaving the parties on whose electoral lists they were elected. Once elected, deputies are primarily responsible to the voters who voted for them, not to the political party they belong to . This follows from the fact that the mandate was entrusted to them by the people, not by the party. Therefore, the resignation or dismissal of a deputy from a party should not lead to his exclusion from Parliament."

The term of office of the president, according to the 2003 revision of the Constitution, is 5 years, and it was then desired that by changing the term of office from 4 to 5 years, the President would be separated from the party from which he comes or which supports him. Having the role of mediator between the powers of the state, as well as between the state and society, we could propose, as a revision, the existence of a unique mandate for the president, a mandate that would determine the President not to be permanently in an electoral campaign in order to win a new mandate and focus on achieving the general interest.

The constitutional provision by which the President can revoke and appoint, at the proposal of the Prime Minister, some members of the Government, could be subject to an amendment. As the Constitution now provides, the Parliament is excluded from the procedure for recalling and appointing ministers. We believe that the introduction of the Parliament, through the obligation to obtain the vote of the parliamentarians in this procedure, would guarantee the democratic legitimacy of the Government.

According to the current provisions of the Constitution, after consulting the presidents of the two Chambers and the leaders of the parliamentary groups, the President of Romania can dissolve the Parliament, if it has not given the vote of confidence for the formation of the Government within 60 days from the first request and only after the rejection of at least two investment requests.

Another situation in which the Parliament can be dissolved should be analyzed, a situation that is not provided for in the current fundamental law, the one in which the Parliament is dissolved by law in the situation where the President suspended under the conditions of art. 95 is not dismissed by referendum with the majority of votes validly cast. Here we can discuss a political sanction applied to the Parliament, the sanction applied to the legislator appears as a natural consequence in the mechanism of the functioning of the state institutions within the constitutional democracy, since the decision of the Parliament does not have popular support, manifested in a democratic way through a referendum.

CONCLUSIONS

Not infrequently, following the elections, we have the situation where no political party has obtained that majority of 50 plus 1 of the number of voters, a majority that would give the party the opportunity to present a candidate for the position of prime minister to the president. The current constitutional regulation grants the President unlimited competence in nominating the candidate for the position of prime minister, any person chosen by him can be proposed.

If the phrase were to be inserted in the constitutional text during the future review "The President nominates the candidate for the position of Prime Minister the person chosen by the parliamentary majority, and if there is no such majority, the President will negotiate with all parties or political alliances represented in Parliament until a majority is reached to nominate a candidate for the position of Prime Minister -minister", we would avoid institutional blockages between the President and the parliamentary majority and would ensure the formation of the Government.

Revision of a constitution represents, first of all, an essentially political problem both in terms of assessing its necessity and opportunity, as well as establishing its objectives.

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AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 4-9

CREDITOR'S RIGHTS IN CASE OF NON-PERFORMANCE OF CONTRACTUAL OBLIGATIONS. RESOLUTION, TERMINATION AND EXCEPTION TO NON-ENFORCEMENT

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ABSTRACT

Protecting the interests of the parties to a contract in case of non-execution by the other party has always been a current issue, and the remedies that the wronged party can enjoy have undergone changes in accordance with the development of contractual relations.

KEYWORDS: *Contractual non-performance, non-performance of obligations, remedies for non-performance, resolution, termination, exception of non-performance*

Introduction

Remedies for non-execution of contractual obligations are not a novelty brought by the current Civil Code, they were also dealt with by the previous regulation, but their qualification was "sanctions of non-execution". Resolution and interest damages were the most common such "sanctions". The ideas underlying the old terminology were based on the moral content implied by the legal sanction.

Over time, the penalty applied to the defaulting debtor turns into support given to the creditor to help him satisfy his right. Thus, at present the relatively uniform conception by which the creditor is supported, is rather a variant for the execution of the contract and not a punishment for the debtor. Only relatively uniform because the legislator has not completely abandoned the idea of a penalty in case the debtor does not fulfill his obligation

I. Creditor's rights in case of non-performance of contractual obligations

1. General considerations. Terminology

The phrase "creditor's remedies in case of non-performance" we believe should be replaced by remedies in case of non-performance, as this would be in line with European and international codification trends, and moreover, would not leave room for confusion between what they represent nowadays and what was meant by them under the old civil code[1].

Moreover, part of the doctrine considers that justice, in private relationships, involves correcting or remedying injustice, not punishing it. An idea similar to the one presented previously also receives our support. The choice of the name of the remedy in favor of the sanction or another name is based on two ideas; the first would be that the name remedy is gaining more and more ground, from the common law system, to the continental law systems, even in projects of unification of law[2]

[1] In the previous Civil Code, the remedies were insufficiently regulated, the only ones that the legislator dealt with were: the resolution, the penal clause, forced execution in kind, interest damages.

[2] E.g. Art. 3.2.4 from the UNIDROIT Principles it is called "Remedies for non-performance"; Art. 4:119 PECL bears the name of „Remedies for non-performance".

or even in Romanian specialized literature. The second reason that supports the choice of this notion of remedy is that of the etymology of the word. The word comes from Latin, meaning healing; thus, the idea was reached that the jurist will try to heal, to repair the imbalance produced by some non-execution. Moreover, the idea of sanction will attract the existence of a fault on the other side, but, as we will see further, there is no need to establish a fault in order to exhaust the remedies.

With regard to the phrase creditor's rights in case of non-execution, or his means, we draw attention to the fact that there are certain remedies that will operate by law, indeed they operate in favor of the creditor but not at his choice[3].

In the current Civil Code, remedies are regulated in Book V, "On Obligations", Title V "Execution of Obligations", Chapter II "Enforced Execution of Obligations", art. 1.516 - art. 1.557 C. civil.

We rely on a part of the doctrine that claims that the name of the chapter "Forced execution of obligations" is not the most faithful, because it deals with the resolution of the contract, contractual liability, which are not actually forms of enforced execution of obligations.

This chapter deals with the means that the creditor can use in the situation where the debtor does not fulfill his obligations, with justification[4] or without, whether he is at fault or not[5], regardless of whether it is a contractual or extra-contractual non-performance (there are certain exceptions).[6]

2. Classification of remedies

The classification of remedies is done according to the way in which they lead to the achievement of the result, thus there are natural remedies and substitute remedies.

Natural remedies are those by which the expected result is met through a normal performance of obligations; among these remedies, at the moment, we find the following: additional term of execution, forced execution in kind, correction or correction of execution, repair or replacement, exception of non-execution of the contract.

Among the substitutive remedies we find the following: resolution and termination, reduction of benefits, damages.

II. Termination

1. General considerations

The resolution is regulated in the Civil Code by art. 1.549 – 1.554 (Section 5), in Chapter II, Enforcement of obligations, from Book V, along with termination and reduction of benefits.

Moreover, the resolution is also regulated in the texts in the field of named contracts (e.g.: resolution of the sale – art. 1.700, 1.710, 1.711, 1.724, 1.725, 1.727 – 1.729, 1.743 ff., 1.756 ff. C. Civ.; termination of the lease - art. 1.791 ff., 1.794, 1.800, 1.803, 1.817 ff., 1.872, 1.830 C. Civ., resolution of the joint venture - art. 1.872, 1.873 C. Civ. resolution of life annuity - art. 2.251 C. Civ.,

[3] e.g. the termination of the contract as a result of the application of the resolution in the presence of a commissary pact - art. 1.553 Civil Code.

[4] In the presented situation, it is mainly about the exception of non-execution and especially about the fortuitous impossibility of execution.

[5] We mention the fact that the remedy of execution by equivalent operates only in the situation where the non-execution is based on the fault of the debtor.

[6] *e.g.* resolution and termination can only operate when there is a contractual non-performance; instead, statutory interest will apply even if the obligations are extra-contractual.

resolution maintenance - art. 2.263 of the Civil Code; in matters of gambling and gambling - art. 2.264 seq. of the Civil Code; in matters of insurance - art. 2.206 para. (4) of the Civil Code, etc.).

Despite the fact that resolution does not have an independent definition within the Civil Code, countless authors have tried to define it in the most complete way possible.

According to the Explanatory Dictionary of the Romanian language, the resolution is the retroactive termination of a contract with immediate execution for non-execution of one of the mutual obligations of the parties.

Another often encountered definition is that according to which, resolution is the termination of a sinalagmatic contract with execution uno ictu (at once), at the request of one of the parties, as a result of the fact that the other party has not executed its obligations, culpably current contracts.

The essential conditions for the judicial resolution provided by the Civil Code were the following: a) the non-execution must be an essential one; b) the non-execution must be culpable; c) the debtor must have been in arrears. These conditions were also the basis of the resolution in other legal systems, such as the French and Belgian ones, which over time abandoned the fault condition. Despite the modernization of other systems and daily needs, Romanian law did not choose to abandon this condition of fault, although part of the doctrine proposed this.

The legislator, by adopting the New Civil Code, tried to modernize the resolution, but kept some of its features found in the previous Civil Code.

The field of application of the resolution is the same as that found in the V. C. civil, respectively that of synalagmatic contracts.

To begin with, we will point out the issue of unilateral contracts with onerous title. These contracts are subject to some discussion regarding the extension of the resolution's applicability to them as well. According to a part of the doctrine, the resolution is not the way to terminate these contracts, but the forfeiture from the benefit of the suspensive term of execution, thus the debtor will be obliged to return the asset in the situation in which it is forfeited. Another part of the doctrine considers that these contracts have a regime similar to synalagmatic contracts, so that the resolution will occupy a place among the ways to terminate these contracts. Both under the V. C. civil empire, and under the new C. civil empire, the doctrine did not conclude in any way. To try to clarify this issue, we will refer to the regulations of unilateral contracts in the new Civil Code. It can easily be seen that there is no mention of the resolution of unilateral contracts, thus, we cannot consider that the legislator wanted to widen the applicability resolution and on them.

The right of option of the creditor of the non-executed obligation allows him to choose one of the existing options for satisfying the non-execution. Specifically, he has the possibility to opt for the in-kind execution of the obligation, if this is possible, the forced execution of the obligation, the resolution or termination of the contract, the reduction of the benefit or for "another means provided by law for realizing his right".

These so-called remedies by which the creditor's right can be realized, cannot be requested, in any case, by the debtor who has not performed his obligation or by the court, the only one who has this right is the creditor.

A modernization brought by the new Civil Code consists in offering the creditor of the unexecuted obligation, the possibility to appeal to the judicial resolution or to the extrajudicial resolution. According to paragraph 1 of art. 1550 Civil Code, "The resolution can be ordered by the court, upon request, or, as the case may be, it can be declared unilaterally by the entitled party". The creditor's right to choose one of the two options presented above cannot be restricted, except by inserting a clause in the contract that removes the possibility for him to opt for the judicial resolution or in the situation where there is a legal norm that removes it the possibility of choosing unilateral, extrajudicial resolution. It can easily be concluded that this right of the creditor of the unexecuted obligation is an entirely discretionary right.

The novelty brought by the new Civil Code consists in the unilateral resolution, which grants greater decision-making power to the creditor of the unexecuted obligation. This power consists in the extrajudicial way to resolve the contract, which the creditor can enjoy, in the event of non-performance of obligations by the debtor, even in the absence of an express commission agreement provided for in the contract. In order for such a unilateral extrajudicial resolution to take effect, it is mandatory to comply with certain conditions provided by the Civil Code (art. 1.550, art. 1.551, art. 1.552 Civil Code). We would like to emphasize that in the presented situation, the creditor does not have the obligation to appear before the courts with a request to request the extrajudicial resolution, the courts having no role in this process.

Adjacent to the two types of resolution presented previously, para. 2 of art. 1550, regulates the full right resolution, according to this art. "in the specific cases provided by the law or if the parties have agreed so, the resolution can operate as a matter of law". From this text, it can be deduced that the legal resolution is of two kinds, legal and conventional respectively.

On the other hand, the conventional law resolution produces effects through the commission agreements inserted in the contract, and according to para. 1 of art. 1.553 C. civ, "The commission contract produces effects if it expressly provides for the obligations whose non-execution leads to the legal resolution or termination of the contract".

On the one hand, the resolution of legal right is the one expressly found in the texts of the new Civil Code and finds its application in the situation where the law expressly provides that the non-execution of the obligation within the established term, entails the resolution[7]. This statutory resolution does not limit the right of the creditor, who may choose to apply any other remedy to satisfy the debtor's unenforced obligation.

III. Termination

1. Termination considerations

In the current Civil Code, there is no clear definition of termination. According to the Explanatory Dictionary of the Romanian language, termination is "the action of terminating and its result; dissolution of some contracts, in the event that one of the mutual obligations has not been executed, maintaining those effects of the contract that occurred until the date of its dissolution."
In doctrine, most often termination is defined by its differences from resolution. Thus, termination is a way of terminating, of undoing a synalagmatic contract, in which execution is successive
[8] and as a result of the operation of the termination, the effects of the contract will cease only for the future.

In the current regulation, resolution and termination are treated together, in the content of art. 1.549 – 1.554 Civil Code According to art. 1.549 para. (3) Civil Code, the termination may be invoked under the same conditions as the resolution.

Another similarity between resolution and termination is that of significant non-performance, but in the case of termination, the legislator instituted an alternative to this significant non-performance. According to art. 1.551 para. (1) sentence II, "in the case of contracts with successive execution, the creditor has the right to terminate, even if the non-execution is of little importance, but has a repeated character. Any contrary stipulation is considered unwritten". Thus, the legislator offered the creditor the right to terminate even in the situation where the non-execution is not significant, the only additional condition is that of repeated character.

[7] The text is based on the regulation found in art. 1.459 Italian Civil Code – Risoluzione nel contratto plurilaterale.

[8] Unlike termination, which operates only with respect to contracts with immediate execution.

The situation exposed during the discussions regarding the resolution, the one in which I referred to the need to enter the resolution in the land register or, as the case may be, in other public registers, will also be applicable in the case of termination.

The discussion held in the above chapter, the one regarding the anticipated resolution, will also find applicability in the resolution situation. The situation presented being identical, the debtor once forfeiting the benefit of the suspensive term, or waiving this term, makes the obligation enforceable. In this situation, the creditor has the possibility to invoke the common law resolution, as an early termination is not currently regulated.

IV. Non-enforcement exception

1. General considerations

Exception of non-performance, or exception of non-performance, is a contractual remedy, which gives one party the option not to perform its own obligation, as long as the other party has not performed its own, provided that its own obligation to not be due before the obligation of the other party. One of the definitions found in the doctrine of the non-execution exception, presents it as "a legal means of defense, the direct consequence of the principle of the interdependence of the parties' mutual obligations in synalagmatic contracts, by virtue of which any of the parties to such a contract can refuse the execution own assumed obligation, as long as the other contracting party does not itself execute the correlative obligation that incubates it".

The regulation of this exception can be found in art. 1.556 Civil Code whose text is as follows: "(1) When the obligations arising from a joint contract are enforceable, and one of the parties does not execute or does not offer to execute the obligation, the other party can, to an appropriate extent, refuses to perform his own obligation, unless it follows from the law, from the will of the parties or from customs that the other party is obliged to perform first.
(2) Execution cannot be refused if, according to the circumstances and taking into account the small importance of the unexecuted performance, this refusal would be contrary to good faith."

As a first mention, we would like to emphasize the fact that in the Old Civil Code, there was no such text regarding the non-execution exception; at least there was no general article regulating this exception. Indeed, certain applications of the above-mentioned exception were encountered in matters of sale, exchange, remunerated storage. Going further, in order not to give us the wrong impression, the non-execution exception is not a general novelty, it existed even in medieval canon law. In those days, the exception was based on a simple principle, whereby the one who gave his word, as long as he did not perform his obligation, could not ask the other party to perform it.
Returning to the current period, to modern comparative law, we can see that this exception is a common one in continental legal systems, as well as in common law.

Considering the current national regulation, in order to be able to analyze the maturity situation of a certain obligation before another, it makes us follow the route established by common law, that is, that of the simultaneous execution of benefits.

By this rule of synalagmatic contracts, each party must execute its obligation, the performance simultaneously; as an example, we refer to the sales contract, in which the buyer will pay the price at the time of delivery of the good.

The text that is the basis of the principle mentioned above, is part of the current Civil Code, and has the following content: "If the agreement of the parties or the circumstances does not result to the contrary, to the extent that the obligations can be executed simultaneously, the parties are required to execute them in this way"[9].

[9] Art. 1,555 para. (1) Civil Code was inspired by art. 1.591 Civil Code Q.

The second article that helps to complete the regulation of the non-execution exception is art. 1.522 para. (4) Civ.[10], this being also another novelty brought by the current Civil Code.

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[10] Art. 1522: Delay by the creditor

„(1) The debtor can be delayed either by a written notification by which the creditor requests the execution of the obligation, or by a summons.

(2) If the law or the contract does not provide otherwise, the notification is communicated to the debtor by the bailiff or by any other means that provides proof of communication.

(3) By notification, the debtor must be given a term of execution, taking into account the nature of the obligation and the circumstances. If the notification does not grant such a term, the debtor can perform the obligation within a reasonable term, calculated from the day of communication of the notification.

(4) Until the expiration of the term provided for in para. (3), the creditor may suspend the execution of his own obligation, may demand damages, but may not exercise the other rights provided for in art. 1.516, if the law does not provide otherwise. The creditor can exercise these rights if the debtor informs him that he will not perform the obligations within the established term or if, at the expiration of the term, the obligation has not been performed.

(5) The request for summons made by the creditor, without the debtor having previously been put in arrears, gives the debtor the right to execute the obligation within a reasonable period, calculated from the date when the request was communicated to him. If the obligation is executed within this term, court costs remain the responsibility of the creditor."

AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 10-14

THE STATUTE OF LIMITATION FOR CRIMINAL LIABILITY – A FRESH DECISION OF THE ROMANIAN CONSTITUTIONAL COURT THAT BLOWS UP THE CRIMINAL TRIALS

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ABSTRACT

A regulatory deficiency in the new Romanian Criminal Code, in what regarding the ways of interrupting the course of the general term for the statute of limitation of the criminal liability, determined, in June 2018, a decision of the Constitutional Court which clarified the situation. Surprisingly, after 4 years from the moment this decision has been issued, during which the jurisprudence has complied with, another Constitutional Court decision upon this subject was issued in May, 2022. The later decision blows up the entire judiciary because clarify its first decision, in the sense, it is not an interpretative one but shows that due to the legislator's passivity in amending the unconstitutional text from Article 155 of the Criminal Code within 45 days, in the criminal legislation in Romania, there was no provision regulating the interruption of the general term of the statute of limitation for criminal liability during this period, of June 26, 2018 - May 30, 2022, and accordingly, no longer have been a special term for the statute of limitation in Romanian criminal legislation. This decision of the CCR manages to stir up a real storm in the Romanian courtrooms because hundreds of criminal cases, many of them involving large damages or high-ranking accused people from politics or administration, have been closed or are about to be closed, based on the lex mitior principle.

KEYWORDS: *The statute of limitation of the criminal liability, general term, special term, interruption of the term, interpretative decision, performing a procedural act, mitior lex principle.*

INTRODUCTION

In Romanian criminal law, there has always been a substantial legal regulation regarding the *statute of limitation for criminal liability* of the persons who have not been investigated and tried within a certain time, that is, *the general term*, established distinctly for each crime according to its punishment limits. The statute of limitation for criminal liability operates in a double sense: as a tool to sanction judicial authorities who fail to fulfill their duties within a reasonable time; a leniency towards the person suspected of having committed a crime, in the sense that, after certain time in which he has not committed other crimes, he is presumed to be socially rehabilitated, without the need for punishment.

Another aspect regulated in the Criminal Code is that which provides that the *general term* for statute of limitation is interrupted in certain situations, namely when the judicial bodies fulfill any kind of procedural acts. In the old Criminal Code, adopted in 1968, there was a provision stating that these procedural acts interrupt the term for statute of limitation only if they are brought to the attention of the suspect or accused person. If the term for statute of limitation is interrupted, a new term runs from that date. Both the old and the new criminal code provide that however many interruptions may operate in a criminal case, after *the special term* for statute of limitation has passed (one and a half general terms, in the old criminal code and 2 general terms, in the new

criminal code), the suspect or accused person can no longer be prosecuted. The regulatory difference in the new Criminal Code, which entered into force on February 1, 2014, consists in the fact that *the general term* of the statute of limitation is interrupted by the fulfillment of any procedural act, therefore, it was not expressly provided that that act be brought to the attention of the suspect or the accused person.

1. BRIEF CONSIDERATIONS REGARDING THE JURISPRUDENCE

Starting to this point, by its Decision no. 297/2018, the Constitutional Court of Romania (CCR) decided that the new regulation is not constitutional because it lacks predictability and is contrary to the principle of the legality of incrimination because the suspect and the accused cannot know that the term for the statute of limitation has been interrupted[1].

In justifying its decision, the CCR showed that the regulation from the old Criminal Code (which stipulated the condition that the procedural act that interrupted the statute of limitation had to be brought to the attention of the suspect or accused) satisfied all the constitutional requirements[2].

It is necessary to specify that in CCR jurisprudence there are two ways to decide upon the unconstitutionality of an article or provision of the law: (i) a declaration of unconstitutionality, simply, which implies that the article or provision no longer produces its effects and the legislator, within of 45 days, must comply with the decision of the CCR and adopt a new text of law in accordance with the requirements of the CCR; (ii) an assessment of compliance with the constitutional provisions only in case the legal text would be interpreted in a specific way, specified in the CCR decision, in which case, it is assessed as an interpretative decision of the CCR. In the latter case, it is not necessary for the legislator to intervene in order to replace or modify the text of the law.

In the case of Decision C.C.R. no. 297/2018, no measures were taken to initiate a legislative amendment within the 45-day period by the Romanian Government or the Romanian Parliament, most likely because this decision was considered to be an interpretive one. Moreover, after Decision no. 297/2018, judicial practice, in accordance with the European Court of Human Rights (E.C.H.R.) jurisprudence[3], removed doubts regarding the interpretation of Article 155 of the

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[1] Paragraph 31 of Decision no. 297/2018: *"For these reasons, the Court considers that the provisions of Article 155 paragraph (1) of the Romanian Criminal Code are unforeseeable and, at the same time, contrary to the principle of the legality of incrimination, since the phrase "any procedural act" in their content, supposes even documents that are not communicated to the suspect or accused, not allowing him/her to know the aspect of the interruption of the statute of limitation period and the beginning of a new period of statute of limitation for his criminal liability."*

[2] The paragraph 34 of the Decision no. 297/2018: *"Considering the considerations presented above, the Court finds that the previous legislative solution, provided for in Article 123 paragraph 1 of the Criminal Code from 1969, meets the conditions of predictability imposed by the constitutional provisions analyzed in this case, because it provided for the interruption of the general term for statute of limitation of criminal liability only by performing an act that, according to the law, had to be communicated, in the case in which the person concerned had the capacity of being accused."*

[3] The decision-making role given to the courts aims precisely to remove the doubts that persist when interpreting the rules, the progressive development of criminal law through jurisprudence as a source of law being a necessary and well-rooted component in the legal tradition of the Member States. Therefore, Article 7 paragraph 1 of the Convention cannot be interpreted as prohibiting the gradual clarification of the rules of criminal liability through judicial interpretation from one case to another, provided that the result is consistent with the substance of the crime and is reasonably foreseeable (Judgment of November 22, 1995, pronounced in the *Case of S.W. v. the United Kingdom*,

Criminal Code (which regulated the statute of limitation) and it has been uniformly applied to the effect that the interruption of the general term of the statute of limitation for the criminal liability is produced by the performance of an act which must be communicated to the suspect or accused.

After 4 years in which the jurisprudence of the ordinary courts crystallized in the sense depicted above[4], absolutely surprisingly, by its Decision no. 358/2022, C.C.R. analyzed again the same Article 155 of the Criminal Code, and showed, once in addition, that the text of the law is unconstitutional, showing that there is still an unpredictability in its interpretation, as long as the conditions for interrupting the course of the *general term* of the statute of limitation have been established by jurisprudence and not by the legislator. Moreover, despite the jurisprudence consistent with the interpretation of the CCR, in the reasoning of Decision no. 358/2022, CCR shows that due to the legislator's passivity in amending the unconstitutional text from Article 155 of the Criminal Code within 45 days from the issuance of the C.C.R. Decision. no. 297/2018, i.e. from the date of June 26, 2018, in the criminal legislation in Romania, there was no provision regulating the interruption of the *general term* of the statute of limitation for criminal liability until the date of May 30, 2022, with the issuance of Emergency Government Ordinance (E.G.O.) no. 71/2022. (the latter amended Article 155, paragraph 1 of the Criminal Code in the sense that the term for the state of limitation is interrupted by the fulfillment of any procedural act in question, which, according to the law, must be communicated to the suspect or accused). Moreover, from the reasoning of its Decision no. 358/2022, is noted the Constitutional Court opinion that there would no longer have been a *special term* for the statute of limitation in Romanian criminal legislation during this period, of June 26, 2018 - May 30, 2022.

Grace of this later CCR's decision, the jurisprudence of the ordinary courts recorded many different opinions upon this subject, even upon the legal nature of the term for the statute of limitation (substantial or procedural act?), and therefore, the High Court of Cassation and Justice (H.C.C.J.) was called to decide on this controversy through a Preliminary Ruling. By Decision no. 67 of October 25, 2022, the H.C.C.J. decided that" *The legal provision relating to the interruption of the general term for the state of limitation is belonging to the material (substantial) criminal law, and it is a subject from the perspective of application of the principle of criminal law activity, with the exception of more favorable criminal provision, according to the mitior lex principle".*

The removal of the applicability of the *special term* for the statute of limitation, for almost 4 years, in all those criminal cases instrumented in this time, as a result of Decision no. 358/2022 of the C.C.R., is likely to create a systemic risk of impunity at the national level, and not only for corruption, tax evasion and money laundering crimes, but for all crimes except those that do not have a statute of limitation.

The criminal proceedings related to corruption offences, for example, involve some complex and cumbersome investigations, especially due to the fact that, often, the judicial bodies are notified many years after the moment of the commission of such acts. The duration of the

paragraph 36, *Dragotoniu and Militaru-Pidhorni v. Romania*, paragraphs 36 and 37, Judgment of February 12, 2008, pronounced in the *Case of Kafkaris v. Cyprus*, paragraph 141, Judgment of October 21, 2013, delivered in *Del Rio Prada v. Spain*, paragraphs 92 and 93).

[4] Decision of the High Court of Cassation and Justice no. 174/RC/ May 15, 2019; Decision of the High Court of Cassation and Justice no. 251/RC/ June 20, 2019; Decision of the High Court of Cassation and Justice no. 285/A/ October 31, 2018 etc.

procedure for prosecution and trying before the courts is of such a nature, in this type of cases, that impunity in fact would not constitute an exceptional case in Romania, but the rule[5].

We note that this removal of the *special term* for the statute of limitation does not represent the will of the legislator but is a consequence of the Decision of the C.C.R., an institution located outside the judicial system, whose members are appointed in proportion of 2/3 by the legislative power and 1/3 by the president, therefore, with a strong political imprint in the decisions.

2. CONNECTIONS WITH COMMUNITY JURISPRUDENCE

In this sense, we refer to those already ruled by the Court of Justice of European Union (C.J.E.U) in the case of Euro Box Promotion and others (C 357/19, C 379/19, C 547/19, C 811/19 and C 840/19): *"The Article 2 and Article 19 (1) second paragraph of the Treaty of European Union (TEU), and the Decision 2006/928 must be interpreted in the sense that they do not oppose a national regulation or practice according to which the decisions of the national constitutional court are binding on common law courts, provided that national law guarantees the independence of the said constitutional court in particular from the legislative powers and executive as required by these provisions. Instead, these provisions of the TEU and the said decision must be interpreted in the sense that they oppose a national regulation according to which any non-compliance with the decisions of the national constitutional court by the national common law judges is likely to engage their disciplinary liability".*

The connection of the case with EU law it is given by its object, namely the commission of corruption crimes at the highest level, which Romania is obliged to fight against, through the treaties to which it became a party upon joining the European Union.

In this respect, in the case of Euro Box Promotion and others (C 357/19, C 379/19, C 547/19, C 811/19 and C 840/19) C.J.EU. ruled that *"as far as Romania is concerned, the obligation to fight corruption that harms the financial interests of the Union, as it results from Article 325 paragraph (1) of the Treaty of Functioning of European Union (TFEU), is complemented by the specific commitments that this member state assumed at the conclusion of the accession negotiations on December 14, 2004"*. Indeed, in accordance with point I (4) of the Annex IX to the Act of Accession, the said Member State undertook, among other things, to *"considerably speed up the fight against corruption, in particular against high-level corruption, by ensuring a rigorous application of the anti-corruption legislation"*. This specific commitment was later made concrete by the adoption of Decision 2006/928, by which reference objectives were established in order to remedy the deficiencies noted by the Commission before Romania's accession to the Union, especially in the field of the fight against corruption. Thus, the annex to this decision, in which the respective reference objectives are set out, provides in point 3 the objective of *"continuing professional and impartial investigations regarding high-level corruption allegations"*, and in point 4, the objective of *"adopting measures additional measures to prevent and fight corruption, especially in local administration"(par. 188).*

At the same time, C.J.E.U. also showed in paragraph 169 that *"the reference objectives that Romania has thus undertaken to achieve are binding for this member state, in the sense that it is subject to the specific obligation to achieve the respective objectives and to take the appropriate*

[5] In this regard, regarding the systemic risk of impunity, *mutatis mutandis*, see the Decision of High Court of Cassation and Justice no 41/April 7, 2022, file 3089/1/2018.

measures in order to achieve them in the shortest possible time. Also, the said Member State has the obligation to refrain from implementing any measure that would risk compromising the achievement of the same objectives. However, the obligation to fight effectively against corruption and especially high-level corruption, which derives from the reference objectives presented in the annex to Decision 2006/928 in conjunction with the specific commitments of Romania, is not limited only to cases of corruption that harm the financial interests of the Union".

CONCLUSIONS

The need to interpret European Union law results from the impossibility of ensuring compliance with the reference objectives that Romania has undertaken to achieve (referred to above) in the context of the application of Decision no. 297/2018 in the manner imposed by Decision no. 358/2022, a fact that would lead to the creation of a systemic risk of impunity in all criminal cases, including high-level corruption cases.

At the same time, in the Judgment of July 15, 1964, Costa (6/64, EU:C:1964:66, p. 1158-1160), the Court established *the principle of the supremacy of Community law*, understood in the sense in which it enshrines the prevalence of this right over the law of states members. In this regard, the Court found that the establishment by the EEC Treaty of a legal order of its own, accepted by the member states on the basis of reciprocity, has as a corollary the impossibility of the mentioned states to prevail against this legal order, a subsequent unilateral measure or to oppose to the right born from the EEC Treaty norms of national law, regardless of their nature, otherwise there is a risk that this right will lose its community character and that the legal foundation of the Community itself will be called into question.

However, in this factual and normative context, it is necessary to know whether a possible non-application of Decision no. 358/2022 of the C.C.R. would be in accordance with Community law and if leaving the national provisions in the matter of statute of limitation, will violate Article 49, paragraph 1, last sentence of the Charter of Fundamental Rights.

Romania must provide for effective and dissuasive sanctions not only in cases of fraud affecting the financial interests of the Union, but also in cases of corruption, especially at the higher levels.

In conclusion, we note that a decision of the CCR manages to stir up a real storm in the Romanian courtrooms because hundreds of criminal cases, many of them involving large damages or high-ranking accused people from politics or administration, have been closed or are about to be closed, based on the *lex mitior* principle. This is the reason why, the opinion is emerging that the CCR would have given a masked amnesty for white-collar criminals by its decision, an inadmissible aspect for the judicial system and for all the citizens of the country. For this reason, the voices calling for a deep reform of the Constitutional Court in the sense of removing as much as possible the arbitrariness and political influence from its decisions, have multiplied.

AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 15-22

ORGANIZED CRIMINAL GROUP IN THE CONTEXT OF TAX EVASION. THEORETICAL AND PRACTICAL ASPECTS

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ABSTRACT

The fact that following some controls carried out by the fiscal bodies, the crime of tax evasion was apprehended at some commercial companies on financial circuits whose object is different periods of time, those companies being constantly identified in collaboration with certain economic firms on the first criminal level and occasionally with other economic companies in the second financial circuit, does not constitute a sufficient reason to impose the reunification of the cases as long as, on the one hand, none of the situations provided for by article 43 Criminal Procedure Code (C.P.C.), and on the other hand, the resolution of the case is delayed by the ordered meeting. Regarding the crime of constituting an organized criminal group, in the case deduced for analysis, no typical elements could be proven that could objectively invoke that there was such an association between the investigated persons, a fact that led to the delay in the solution criminal investigations. When several people carry out an activity for an insignificant period, without continuity, its "members" do not have determined roles and there is no coordination of actions, an accusation in this sense cannot be proven.

KEYWORDS: tax evasion, organized criminal group, crimes in continuous form, reunification of criminal cases, competence to solve criminal cases.

INTRODUCTION

Committing the crime of tax evasion (frequently in one of the variants provided for in art. 9 paragraph 1, letters a, b, c and e) leads to the prejudice of the collection of fees and taxes, being in fact prejudiced to the state budget.

Concealing the asset or the taxable or taxable source, omitting to highlight the income or the operations performed, the highlighting of expenses that are not based on real operations or other fictitious operations - represent the variants of tax evasion itself, the other forms being adjacent methods of accomplishment.

Regarding the special legal object, the forms of committing the crime of tax evasion assume a common point that indicates the reality that the right of the state to have knowledge of the goods or income subject to taxation or taxation to collect the amounts owed by the taxpayers is violated, and this violation it is done scripturally.

In the annex that is an integral part of the paper, we will present the main aspects of a real situation of illegal conduct in violation of the provisions of art. 9 para. 1 lit. c from Law no. 241/2005 on the prevention and combating of tax evasion by means of reducing the taxable asset through active conduct, respectively by highlighting in the accounting documents or other legal documents the expenses that are not based on real operations, or the highlighting of other fictitious operations committed for the purpose evading the fulfilment of fiscal obligations.

1. DESCRIPTION OF THE CASE

We are in the situation of committing the crime of tax evasion through several companies: "boon" or "phantom" - which involves the successive registration of purchases and sales in the records of several companies, so that in the end the last company that performs the registration of fictitious expenses be the one who benefits from the results of committing the crime[1]. In the case inferred from the present work, numerous files that have as their common object the commission of tax evasion crimes were declined and respectively brought together in the basic file.

Analysing the ordinances by which the refusals were ordered, it was found that the factual reasons are shown in an extremely generic way without being able to identify, concretely, what were the activities carried out by the investigated persons and which, according to art. 43 paragraph 1 C.P.C., impose the reunification of the cases respectively: continued crime, the formal contest of crimes or the cases when two or more material acts make up a single crime.

The same situation is found in the case of the ordinances by which the declined cases were joined to the present file, in the same general and formal manner they were assessed as having met the legal conditions that require the joining of the cases.

The declines and subsequent reunions were ordered by reference to the provisions of art. 43 C.P.C., appreciating that there is a link between the commercial activities carried out by the commercial companies and for a better administration of justice the cases must be brought together.

Apparently, the joining of the cases would have been required, in accordance with the provisions of art. 43 paragraph 2 letter c C.P.C., holding that there is a link between the investigated crimes and the reunification of the cases is required for a better administration of justice, but this reunification can only be ordered if it does not delay the resolution of the case, or this condition has not been analysed.

The fact that because of controls carried out by the tax authorities at some commercial companies, on the invoicing circuits, the two basic companies referred to in the Annex were also occasionally identified, is not a sufficient reason to impose the reunification causes if, on the one hand, none of the provided situations can be concretely identified of art. 43 paragraph 1 C.P.C. and on the other hand, the resolution of the case is delayed.

In conclusion, we consider that the reunification of most of the cases was ordered through the wrong application and without a thorough analysis of the incidence of the previous provisions. of art. 43 C.P.C. a fact which, indisputably led to the delay in the resolution of the case.

The joining of cases is ordered in accordance with the provisions of art. 43 C.P.C:

(1) The court orders the reunification of the cases in the case of the continued crime, of the formal contest of crimes or in any other cases when two or more material acts make up a single crime.
(2) The court may order the consolidation of the cases, if this does not delay the trial, in the following situations:
    a) when two or more crimes were committed by the same person;
    b) when two or more people participated in the commission of a crime;
    c) when there is a connection between two or more crimes and the joining of the cases is required for the proper administration of justice.
(3) The provisions of par. (1) and (2) are also applicable in cases where there are several cases with the same object before the same court.

[1] ANNEX 1 to this document.

The competence to resolve the present case was attracted by the specialized DIICOT structure, for the fact that the commission of tax evasion crimes fell within the scope of an organized criminal group and according to the provisions of art. 22 paragraph 1 of GEO 78/2016, the cases registered at DIICOT prior to the entry into force of this GEO, the specialized structure shall be resolved by it.

According to the law establishing DIICOT, respectively Organic Law no. 508/2004 regarding the establishment, organization and functioning within the Public Ministry of the Department of Investigation of Organized Crime and Terrorism, DIICOT had competence for the crime of tax evasion from the date of its establishment - 23.11.2004 and until 29.12.2006, when GEO no. 131/2006 for the amendment and completion of Law no. 508/2004. Over time, the incident legislation in the matter has undergone several changes. Thus, in the beginning period 2004-2006, the crime of tax evasion was provided for in the opus of the crimes regarding which DIICOT had material competence, detailed opus in art. 12 para. (1) from Law no. 508/2004. According to GEO no. 78/2016 approved by Law 120/2018 (which defines DIICOT's competence at this time), DIICOT does not have the material competence to carry out criminal prosecutions regarding the crime of tax evasion, nor regarding group acts aimed at the crime of tax evasion, for new cases, starting from 22.11.2016 and until now[2].

The delay in solving the criminal case in the analysed case was undoubtedly also due to the insufficiency of evidence to argue that we are in the presence of an ORGANIZED CRIMINAL GROUP.

To incriminate the persons investigated on this criminal level, it is necessary to accumulate several conditions, for which the following must be known:

- Law no. 39/2003 regarding the prevention and combating of organized crime[3].
  - Art. 7 repealed (on 02-01-2014, art. 7 was repealed by point 2 of art. 126 of Law no. 187 of October 24, 2012, published in the Official Gazette no. 757 of November 12, 2012).
- Law no. 187/2012 for the implementation of Law no. 286/2009 regarding the Criminal Code[4].
  - Art. 126: Law no. 39/2003 regarding the prevention and combating of organized crime, published in the Official Gazette of Romania, Part I, no. 50 of January 29, 2003, as amended, is amended as follows:

  1. In art. 2, letters a) and b) will have the following content:

  a) organized criminal group - the group defined in art. 367 para. (6) from the Criminal Code;

  b) serious crime - the crime for which the law prescribes the punishment of life imprisonment or the prison sentence of which the special maximum is at least 4 years, as well as the following crimes..."

  2. Art. 7-10 and 13 are repealed.

  3. Throughout the law, references to art. 7 will be made in art. 367 of the Criminal Code.
- The establishment of a criminal group organized according to art. 367 of the New PENAL CODE[5].
  - Art. 367: Establishment of an organized criminal group

  (1) Initiating or forming an organized criminal group, joining, or supporting, in any form, such a group is punishable by imprisonment from one to 5 years and the prohibition of the exercise of certain rights…

[2] https://www.juridice.ro/650182/necompetenta-diicot-in-materie-de-evaziune-fiscala.html
[3] Law no. 39/2003 regarding the prevention and combating of organized crime.
[4] Law no. 187/2012 for the implementation of Law no. 286/2009 regarding the Criminal Code
[5] Criminal Code of Romania, art. 367 – the establishment of an organized criminal group.

(6) Organized criminal group means a structured group, consisting of three or more persons, constituted for a certain period and to act in a coordinated manner for the purpose of committing one or more crimes.

Thus, the offense of constituting an organized criminal group provided for in art. 367 of the Criminal Code (C.C.), represents a framework criminalization that arose from the legislator's desire to abandon the existing parallelism, prior to the new Criminal Code, between the texts that criminalized the same type of acts (organized criminal group, association to commit crimes, conspiracy, grouping terrorist).

Article 367 of the Civil Code represents, in part, the correspondent of the crimes of: conspiracy, provided for in art. 167 C.C. previous; association in order to commit crimes, listed in art. 323 C.C. previous; initiating, establishing, joining or supporting a group, provided for in art. 8 C.C. previously and initiating, establishing, joining or supporting an organized criminal group, criminalized in art. 7 of Law no. 39/2003 regarding the prevention and combating of organized crime.

The plurality of criminals necessarily implies the plurality of persons, criminal unit, material cooperation and subjective cohesion and, as such, involves a joint effort of several persons materialized in the production of a unique illicit result; the plurality highlights the indivisible character of the contribution of all the perpetrators to the defeat of the criminal law. Plurality of criminals can be realized in three different forms: natural (necessary) plurality, constituted (legal) plurality, and occasional (criminal participation) plurality.

High Court of Cassation and Justice - The panel for resolving some legal issues, by Decision no. 12 of June 2, 2014, noted that:

- by the action of associating is understood the entry into the association at the very moment of its constitution, thus giving birth to the plurality constituted by the perpetrators, a group of persons that is subject to a certain internal discipline, certain rules regarding the hierarchy, the roles of the members and the plans of activity, creating, through the consensus of several people, an autonomous nucleus, in order to exist in time and to prepare, organize and carry out the commission of crimes;
- by the action of initiating the formation of an association is understood the performance of acts intended to determine and prepare the formation of the association, this can be carried out by a single person or several, each having the capacity of perpetrators of the crime, regardless of whether or not the formation has been reached of the association and regardless of whether the person or persons who initiated the establishment entered the association or not;
- joining an association means entering the association as a member of it, and the supporting action consists in facilitating or helping the association throughout its existence.

The organized criminal group must have a certain structure and a precise purpose, and its object of activity must include serious crimes.

In terms of occasional participation in the commission of crimes, this participation will constitute one of the forms of criminal participation in the commission of the deed that forms the object of the group, not an organized criminal group.

The probation on which the accusation of committing the crime is based prev. of art. 367 paragraph 1 and 2 C.C. (previously the provisions of art. 7 of Law no. 39/2003) and as it has been constantly established by the final court decisions, it must aim mainly to establish the circumstances from which it results:

- the manner in which the organized group was constituted;
- the moment when the understanding would have taken place, what was the hierarchy and the role of each member;

- what is the element of subjective cohesion between group members;
- the way the defendant(s) supported the organized group and their knowledge at the time of the support, that all co-defendants had already constituted the organized group.

Regarding the analyzed case, in view of the lack of sufficient evidence administered regarding the commission of the crime of constituting an organized criminal group, the following conclusions can be drawn:

- The circumstances in which the defendants ended up carrying out illegal commercial activities as well as the goal pursued, respectively, that of each obtaining a financial gain, in a short period of time and without continuity, are not specific to a criminal group and cannot be appreciated as being a way in which the alleged group was constituted and acted;
- No evidence could be presented that could establish the moment when the agreement took place, what was the hierarchy and the role of each member, nor the fact that the person who coordinated this whole circuit was one of the representatives of the two incriminated companies and that they are those who had constituted a criminal group;
- The manner in which the defendants collaborated in the illegal activities carried out, through their companies, constitutes a form of criminal participation/occasional association for the purpose of committing the crime of tax evasion, not having met the necessary conditions for the existence of the crime prev. of art. 367 paragraph 1,2 C.C.;
- There is no "solid" evidence to show the moment or the circumstances in which the defendants unequivocally agreed to the association, according to a well-established plan, with assumed roles for each, to obtain material benefits. Undeniably, they related through the companies they owned and through the involvement of other companies, but the existing evidence shows that this was done, in most situations, according to the "opportunities" they identified during their activities.

The accusation of constituting an organized criminal group must result only from the corroboration of all the administered evidence, the prosecutor not being able to substitute their lack with a subjective interpretation.

Without disputing aspects related to the complexity of the case, the large number of people, companies involved, the extent of the damage, these, by themselves, are not likely to attract the competence of DIICOT, the competence being attracted only by the existence of a criminal group that has committed the crimes of tax evasion, money laundering and others.

It is not possible to establish without doubt what the structure of the group is, from whom it was constituted, when exactly it was constituted, possibly which persons joined/supported the criminal group, what was the role of the members, the manner in which they supported/joined the organized group and nor did they know at the time of giving their support that the initiators had already constituted the organized group.

In view of the passage of a long period of time from the date of the execution of the material acts, it was no longer possible to use the means of evidence from which it could be concluded that there was an unequivocal criminal agreement between the investigated persons, regarding their association in a structure organized to act in a coordinated manner, according to well-established rules, and on the other hand, the mere existence in the invoicing chains of common companies cannot prove an element of connection.

When the alleged group carries out an activity for an insignificant period, without continuity, its "members" do not have determined roles and there is no coordination of actions, an accusation in this sense cannot be formulated.

Therefore, the two companies had commercial relations during the years 2009-2011, but with regard to the crime of constituting an organized criminal group, no elements of typicality could be proven that could objectively invoke, that between the persons of above there was such an association.

CONCLUSIONS

The simple fact that a commercial company conducts commercial relations with one/several partners over a period is not sufficient to conclude that organized group-type criminal links have been created between their representatives, even if there are serious suspicions regarding the behavior their escapist.

The present work, without the pretense of exhaustiveness, hopefully at least has the merit of raising and supporting a question whose importance is more fascinating than the certainty of the answer.

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5. National casuistry.

ANNEX 1 - The onset and evolution of the cause

On 03.01.2013, the police bodies from the Brigade for Combating Organized Crime from a county in the center of the country were notified ex officio about the *fact that in the respective* area *of the county they act with an organized criminal group, consisting of the appointees "**MC**" and "**SME**" who, as associates and administrators of the companies "**V**" and "**U**", through special criminal manipulations and attracting in illicit activities, administrators of some companies from counties in the east and north-west* of the *country, have committed the crime of tax evasion.*

The complaint was registered with DIICOT under no. of criminal file ____ regarding the commission of prev offenses. art. 7 of Law no. 39/2003 and art. 9 paragraph 1 of Law no. 241/2005.

Since the date of the notification, during the criminal investigation, it was found that in the case initiated at DIICOT, another 39 files were gathered, coming from various prosecutor's offices, which, in their turn, were notified about the commission of tax evasion offenses and to which other files had previously been gathered.

The declinations and subsequently the meetings were ordered by reference to the provisions of art. 43 of the Code of Civil Procedure, considering that between the *commercial activities carried out by the companies, there was a connection, and for a better achievement of justice, it is necessary to reunite the cases*.

As a result of all these reunions, in the present case, a number of 6 offences were notified regarding the establishment of an organized criminal group, for which the investigations were carried out in some situations, only with regard to the deed and in other situations, the investigated persons acquired the quality of defendants.

I: the acts committed between 01 August 2009 – 31 December 2009 on the relationship: **V > DC > RC > CC > LL > UG > VP.**

At the time of the fact's "V" was not in insolvency and the administrator of the company was "SME". The company went into insolvency starting with 17.06.2010.

"V" was supplied from the foreign market with various goods, in particular rolled products. The acquisitions being intra-Community were exclusive of VAT. As a result of the capitalization of the goods supplied from the external market to the internal market, internal supply with VAT, "V" collected VAT, which he had to transfer later to the State. In order not to pay this collected VAT, "V" recorded in the accounts of the company fictitious domestic acquisitions (with VAT) so that the VAT payable (because of intra-Community acquisitions following domestic supplies) was compensated with the VAT – the registered following fictitious domestic purchases.

Thus, a scriptic circuit of the goods with which the fictitious "V" was supplied was created, a circuit in which the following companies were scriptically involved: V > DC > RC > CC > LL > UG > VP.

Throughout this fictitious invoicing circuit between the above-mentioned companies, the goods were introduced into the "V" invoicing circuit with a value without VAT of 9,208,924 lei (Romanian currency = RON), so that in the end the same goods reach again the same company – "V" but at a value without VAT of only 7,751,653 lei, achieving a decrease in the price of goods (without VAT) entered in invoices of 1,457,271 (9,208,924 – 7,751,653), this represents a decrease in the value of goods by 18.8%, a percentage almost identical to the VAT

rate in the period, which was 19%. The purpose of this fictitious billing circuit was to obtain by the "V" of deductible VAT.
Thus, V:
- delivers the goods with 9,208,924 lei without VAT (VAT = 0 lei).
- repurchases the same goods with 7,751,653 lei without VAT, 1,472,814 lei vat, total 9,224,467 lei.
Related to these fictitious operations, "V" deducted VAT in the amount of 1,472,814 lei.
II. acts committed during 2012:

It was noted that at the beginning of 2012, the accused SMEs and MC initiated and set up, together with the appointees DC and CN, a criminal group organized for the purpose of committing the serious crime of tax evasion and money laundering.
The leaders of the criminal group actually manage the companies "U" and "V". They set up a financial circuit because of which the companies controlled by them registered deductible VAT. The amounts thus obtained from committing the crime of tax evasion were reintroduced into the civil circuit, being used for the current financial operations of the company that registered the deductible VAT. The main task of dn was to find companies and to control them, directly or through intermediaries, companies that were later used in the script circuit of documents, in the sense that they issued invoices to the other controlled companies, excessively increasing the delivery prices, so that the final billing value to "U" to be as high as possible, as a result of which the VAT recorded as deductible should have as high values as possible. DN received 3% of the value of the goods invoiced to the "U".

DN obtained control over the companies: "a", "b", "c", "d", "e", "f", "g". In some cases, to have direct control, he drew up power of attorneys delegating the administration of those companies to himself.
The persons who took over these companies did so from the order of the so-called DN in exchange for sums of money ranging from 1,200 lei to 1,500 euros and in exchange for some promises of help for the construction of a house, the purchase of a land, the construction of a factory, etc. In exchange for these benefits, the appointees AS and SV also filled in the documents of delivery of goods from the order of DN. The named DN found suppliers for these companies, generally of Roma ethnicity, which invoiced him various goods at the requested prices, there being situations when these persons gave him invoices that resulted in the supply from some commercial companies. The latter proved to be "ghost" type companies, respectively companies that do not carry out their activity at the declared registered office and that do not submit the declarations required by law to the tax authorities. Also, no company in Romania declares to the tax authorities that it has supplied these "ghost" companies. Thus, so far, the companies "a", "b", "c", "d", "e", "f", "g" etc. have been identified as being in this situation.
Also, there were situations when those who delivered the overvalued goods, handed over to the named DN fiscal invoices from which the delivery resulted, and after the checks carried out, it turned out that the legal representatives of these companies have no knowledge about these transactions, because of which no payments were made. In other situations, even the companies controlled by the appointed DN did not draw up the declarations provided by law to the tax authorities. The products, which consisted mostly of electrodes, nickel wire, copper wire, bearings, electrical materials, screws, and ferroalloys, were invoiced between the companies controlled by the so-called DN, so that, in the end, only three companies delivered the goods directly to the "U".
After using the commercial companies in this financial circuit, some of them were alienated to the citizens of the Republic of Moldova or the administrator declared his accounting documents as stolen.
Due to the large volume of registered transactions, there were situations when the three companies that invoiced directly to the "U" issued such invoices, without the goods being in stock, this not even being in the written stock.
As regards the payment of the value of the goods invoiced at the overvalued prices, this was generally not done, using the compensation procedure or assigning various claims. There were also situations in which payments were made through the bank, successively, through and to several companies on the billing chain, but there was an amount determined and used for this purpose. Thus, successive payments were made through the bank, the last company on the payment chain took the money out of the bank, which then returned to the representatives of the company "U" and the same amount was again paid through the bank, on several occasions, on the same circuit, thus finally figuring as being paid much higher amounts, although in fact the initial amount was introduced into the banking system, determined, which at the end was also returned to the first payer. After returning this amount, SME and MC made available to DN a part of this amount, and he also "invested" that amount, the origin being from the same "commission" of 3% that he also received from the two. From the resulting money, goods were purchased again, which was introduced on the billing circuit at much overpriced prices.

Their commercial activity, because of the checks carried out, which leads to the suspicion of committing the crime of tax evasion is limited as follows:

"V" declared/made during 2012 intra-Community acquisitions (reverse charge – without VAT) worth 59,902,658 lei, the main suppliers being "M LTD Ireland" – 40,045,323 lei, "PS JSC" – 19,644,190 lei and "AAOM Vek KFT" – 156,715.
The intra-Community goods were recovered to the "U" (main customer), the sale being with VAT.
In order not to pay the VAT collected on domestic supplies, "V" recorded in the company's accounts fictitious invoices for acquisition from the related company "U", supplies justified by "U" with fictitious purchases to the group of companies "a", "b", "c", "d", "e", "f", "g" controlled by the fault of DN.
In the acts of starting the criminal investigation, the setting in motion of the criminal proceedings, it was noted that most of these "goods" fictitiously purchased by "U" from the group of companies "a", "b", "c", "d", "e", "f", "g" was delivered to "V", and a smaller part had as final beneficiary "U". For these fictitious supplies, it was held that:
- "V" deducted **VAT in the amount of 12,512,609 lei**, and
- "U" deducted **VAT in the amount of 3,644,945 lei**.

On the 'U':
"U" evaded the payment of obligations to the state budget with the total amount of 18,298,525 lei, representing:
1. VAT in the amount of 8,951,511 lei (1,802,362 lei + 7,149,149 lei) with accessories in the total amount of 2,865,630 lei;
2. Profit tax in the total amount of 4,766,099 lei with accessories in the total amount of 897,119 lei;
3. Tax on dividends in the amount of 780,395 lei with accessories in the amount of 37,771 lei.
Vat:
1.a. "U" deducted VAT in the amount of 1,802,362 lei written in 22 invoices issued by a and b, representing industrial goods (tungsten bars, bearings, special electrodes for welding) in the custody of the 2 companies mentioned above.
1.b. Between September 2012 and May 2013, "U" recorded in the accounting records in the account 371 – goods, the acquisition of a quantity of 312,982 kg of ferroalloys (ferromangan and ferromolibene) in the total value of 59,750,836 lei, of which taxable base 48,186,158 lei and VAT 11,564,678 lei, from the following companies "a", "b", "c".
Out of the above-mentioned quantity of 312,982 kg of ferroalloys, deliveries were recorded to:
- "V": between September 2012 and March 2013, the quantity of 162,825 kg of ferroalloys would have been delivered; In April 2013, "U" buys back from "V" the quantity of 54,288 kg of ferroalloys based on 3 invoices totaling 11,658,828 lei, of which VAT in the amount of 2,256,547 lei. During the period checked, "U" delivered to "V" the quantity of 108,537 kg (162,825-54,288);
- "IC G INC Panama": between March 2013 and May 2013, "U" recorded the sale to needles ofthe quantity of 204,445 kg of ferroalloys based on 10 external invoices totaling $ 11,812,457, respectively $ 39,753,597.

Between February and May 2013, he made intra-Community acquisitions of goods (rebar) totaling 21,967,423 lei from "MLTD Ireland". For intra-Community acquired goods, the reverse charge was applied. Subsequently, the goods acquired intra-Community were invoiced with the VAT collected to various domestic customers. Given that "U" would not have made other internal acquisitions, for the goods acquired intra-Community and delivered to internal customers would have had to pay to the state budget a VAT payable in the amount of at least 5,272,182 lei.
Thus, in order not to register that VAT payment, the company 'U' recorded in the accounts domestic purchases of ferroalloys (at prices much overvalued from the abovementioned group of companies) some of which were recorded to have been subsequently delivered to 'V' and another part that they had been exported to the company 'ITG INC Panama'.
"U" deducted a VAT in the amount of 7,149,149 lei, related to goods (ferroalloys) registered as purchased from "a", "b", "c" and subsequently exported to "IT G INC Panama".

AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 23-39

THEORETICAL SURVEYS ON PROFESSIONAL CIVIL LIABILITY

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ABSTRACT

The study supports the idea that a general examination of professional liability is justified, liability produced by a non-compliant behavior in the exercise of a profession, whatever it may be.The justification for approaching the genus - not the species - was sought in the common elements that can be identified in each of the professional activities - performed independently or not - as well as in the foundations of legal liability. Firstly, it was noticed that work and enterprise - their object and tools, their regime - can outline a legal space common to all professions, of their exercise. The legal regime of work explains the relativity of science, skill, which make up the content of the notion of profession. This content, in turn, will limit the expectations of the beneficiaries of labor, their rights as creditors. The concept of enterprise projects the fundamental obligations of the one who works as a professional: the investigation, information, advice and limited guarantee of the service committed and executed. Secondly, the foundations of legal liability are indicated, with special reference to the civil one. In essence, responsibility is meant to weigh the interests of people - professionals or not - in their free civil manifestations, by comparison, rationalization and balance. In such a framework, the deed of the professional - a potentially criminal act - will be defining in order to establish his civil liability. The other components - guilt and causation - will be only secondary. The general criterion for assessing the existence (non-existence) of a crime will be identified in the concept of care - the obligation to care - for others and for oneself. Caring for others requires provision or, as appropriate, caution in the activity. Self-care recommends the assertion of self-interest legitimized by an agreed social value. Theorizing is the result of a practical need: the sketching of a general standard of behavior for situations in which the professional operates in a normative environment dominated by uncertainties, behavior that then protects him from liability based on guilt.

KEYWORDS:*professional, profession, professional liability, professional misconduct, criminal civil liability, professional liability insurance, legal uncertainty (decision uncertainty)*

I. Preliminary explanations

The phrase "professional liability", although frequently used, does not indicate much precision. It - in its most general sense - projects the possibility of consequences - some unwanted consequences - as a result of a professional exercise, of the practice of a profession by a subject endowed with specific qualities and with essential but hybrid social functions, the professional. As the professions - no matter how we understand the concept - are very diverse, it is obvious that the reality of professional liability also enjoys the same diversity, a fact that dispersed its analysis (of liability) by categories, by species: the professional liability of the doctor, the architect, the lawyer, the technical expert, the driver, etc. The research of these

typologies or types of liability did not produce unitary results. By tradition, each profession enjoyed - for the legal liability chapter - private studies, adapted to the specifics of its operation[1].

Predictably, the studies also produced the expected arguments to explain and justify - in given situations - in specific areas - the responsibility or non-responsibility of the provider of professional services.

We meet the generic formulation with greater frequency in the field of insurance: the insurer - also a professional - undertakes to pay - under predetermined conditions - the damages produced by subjects engaged in their professional activities: in this field - of insurance - the parties set their free, contractual, obligations. As a result of this approach, doctrinal developments in the field do not and cannot have generalizing significance[2].

Such a finding in itself imposes a question: for what reason are we concerned with the generalizing legal formula?

The answer is obvious: for practical reasons. The segmented study of models of professional responsibility, by species or typologies, could not always provide us with convincing answers - or at least the perspective of such answers - the questions that provide us - in extremely complex social conditions - the responsible exercise of a certain profession. I have come to the conclusion that the arguments - no matter how rich - cannot be sufficiently convincing without a prior conceptual foundation. Or, substantiation inevitably assumes an understanding of the phenomena, as far as possible, in their entirety. If the responsibility of a professional is discussed - following a systemic methodology - we will have to indicate, first, the foundations of legal responsibility and, then, find the generic purpose of the social function of the professional from which to deduce his legal status and regime; or, why not, the approach could also be done the other way around.

This leads to another preparatory question: is the consequence of the professional attribute associated with civil liability due to the association with the professional or with the profession, or with both? Could the connection of the attribute "professional" with either concept have applied importance? This, in the context where the legal (civil) definition of professional does not refer to the idea of profession.

II. The professional and the profession

1. Identifying him, the professional, seems an easy task because the positive civil norm consecrates him conceptually: all those who "operate an enterprise" are professionals. The exploitation of an enterprise implies "the systematic exercise, by one or more persons, of an organized activity consisting in the production, administration or disposal of goods or in the provision of services, regardless of whether or not it has a profit-making purpose"[3].

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[1] Gh. Piperea, Asigurarea de răspundere manageriala, în https://www.juridice.ro/32223/asigurarea-de-raspundere-manageriala.html , accessed on 18. 11. 2022; A. Haratau, *Răspunderea penala a medicului pentru culpa profesionala - teorie si practica judiciara*, Editura Universul Juridic, București, 2021, p. 28; there are, however, also general approaches, such as professional liability. To be seen: L. B. Luntraru, *Răspunderea civilă pentru malpraxisul profesional*, Editura Universul Juridic, București, 2018

[2] I. Sferdian, Asigurări. *Privire specială asupra contractului de asigurare din perspectiva Codului civil*, Editura C. H. Beck, București, 2013; A. Besson, *Le contract d assurance*, 5-eme edition, L.G.D.J, Paris, 1982, pp. 9-53

[3] Art. 3 din Codul civil, text republicat în Monitorul Oficial, Partea I nr. 505 din 15 iulie 2011, în vigoare de la 1 octombrie 2011; doctrina bogată a dezvoltat conceptul civil al art. 3 din Codul civil; selectăm: E. Chelaru, *Drept civil. Persoanele*, ediția 5, Editura C. H. Beck, 2020, p. 17; P. Perju, Gh. Piperea, *Despre legea civilă* în Fl. A. Baias, E. Chelaru, R. Constantinovici, I. Macovei, coord., *Noul cod civil. Comentariu pe articole*, Editura C. H. Beck, București, 2012, pp. 4-5; B. Țene, *Elemente definitorii ale noțiunilor "profesie/ profesionist", "comerciant" și "întreprindere" în reglementarea noului C. civ.* , în Revista Romana de Jurisprudenta nr. 31/07/2017 (Universul Juridic nr. 3 / 2017), în https://lege5.ro/Gratuit/gi3tgmjzgaya/2-elemente-definitorii-ale-notiunilor-profesie-profesionist-comerciant-si-intreprindere-in-reglementarea-noului-c-civ , accessed on 6. 11. 2022; legea nr. 71/2011, pentru punerea în aplicare a Legii nr. 287/2009 privind Codul civil , publicată în Monitorul Oficial, Partea I, nr. 409 din 10 iunie 2011 – în art. 8 al. 1 - makes another clarification - for explanation,

From the wording of the text, we note that the professional's activity - which would determine his civil status - would be characterized by two essential features: 1) it takes place in a systematic and organized manner, as well as 2) among other things, it involves - as an object - the provision of services.

The civil formula produces two significant consequences, of major legal impact. We have in mind, first of all, the consequence of economic protection of the professional debtor: the professional is allowed to constitute patrimonial assets intended for the exercise of his activity; that is, he - the professional - who can carry out operations with economic and legal risk - if he wants and for personal or family protection - allocates - in advance - to the execution of his professional obligations only the patrimonial assets he wants and affected by the exercise of the profession[4].

Separately, the civil norm stipulates that the fault of the professional - put in a responsible position - is evaluated in relation to his person and not anyway, but in a more severe version. That is, the professional - in the assessment of his fault - is treated more demandingly than others, the latter being considered to be bearers of a liability under common law[5].

As long as we analyze professional responsibility, this last expression of the norm will have - in the logic of the study - overwhelming importance. That is, if the professional is evaluated more demandingly when he is exposed to the consequences of a professional liability, it is important to know if this "professional" character is related only to the professional or to the exercise of a profession.

This, in the context in which the rules governing the field are equivocal and the doctrine and jurisprudence have not given significance to this distinction.

2. We examine, first and by way of example, the rules:

At the level of principle, art. 1358 C. civil is unequivocal: professional civil liability is associated with the professional. If the conditions of liability are met and their provider is a professional, these conditions are interpreted strictly in favor of the victims.

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for particularization - in relation to the notion of professional: "the notion of "professional" provided for in art. 3 of the Civil Code includes the categories of merchant, entrepreneur, economic operator, as well as any other persons authorized to carry out economic or professional activities, as these notions are provided by law, on the date of entry into force of the Civil Code"; however, we note that the indicated explanatory regulation does not change the meaning of the concept of professional. Separately, we also note that it is not the only legal definition of a professional; in a special field the professional is seen as an "authorized natural or legal person, who, on the basis of a contract that falls under the scope of this law, acts in the framework of his commercial, industrial or production, artisanal or liberal activity, as well as any person who act for the same purpose in its name or on its behalfin art, 2 para. 2 of Law no. 193 of November 6 on abusive clauses in contracts concluded between traders and consumers, republished in the Official Gazette, Part I, no. 305 of April 18, 2008, amended on 31.01.2013; such a definition considers a very narrow area of economic activity - that of consumer protection in relation to financial institutions in receiving certain loans - this, in relation to the conceptual generality of the Civil Code.

[4] For details see V. Stoica, *Drept civil. Drepturile reale principale*, ediția a III-a, Editura C. H. Beck, București, 2017, pp. 13 - 16; in the logic of the foundation we propose, such a possibility - by the way, very important in the new philosophy of civil law - is not interesting.

[5] Art. 1358 C. civ.: „*for the assessment of guilt, account will be taken of the circumstances in which the damage occurred, unrelated to the person who committed the act, as well as, if applicable, the fact that the damage was caused by a professional in the operation of an enterprise"; the idea is supported and deepened, in another formulation, in*: A. R. Bulcu, *Răspunderea pentru malpraxis în contextul noului Cod civil*, Universul Juridic, din 12/07/2016, nr. 7 / 2016, în http://revista.universuljuridic.ro/raspunderea-pentru-malpraxis-contextul-noului-cod-civil/ , accessed on 5. 11. 2022; or in R. I. Motica, G. M. Mara, *Răspunderea magistraților și riscul în activitatea judiciară*, Universul Juridic din 25/02/2020, nr. 2 / 2020, https://lege5.ro/gratuit/gm3denbwga4q/raspunderea-magistratilor-si-riscul-in-activitatea-judiciara , accessed on 5. 11. 2022; L. R. Boilă, *Izvoarele obligațiilor*, în Fl. A. Baias, E. Chelaru, R. Constantinovici, I. Macovei, coord., *Noul cod civil....*, op. cit., pp. 1425 – 1426; the doctrine - noting the aggravating liability formula of professionals - notes the tendency to legislate this civil liability - at least on certain components - in the model of objective liability: P. Perju, Gh. Piperea, *Despre legea civilă* în Fl. A. Baias, E. Chelaru, R. Constantinovici, I. Macovei, coord., Noul cod civil....op. cit., p. 5

Other rules do the association differently. So:

The criminal code when fixing a professional fault[6] - premise of a type of repressive liability – refers to the profession, to those who exercise professions, trades or other activities[7]. Criminal jurisprudence explicablely follows this model of understanding and expression, applying the express norm of incrimination: the driver was considered as the bearer of an aggravating professional fault, when he was discussed the fault following a benefit, which led to a traffic accident[8]; or it was debated whether there is professional culpability in the case of the reckless killing of a victim by a subject who did not fulfill the specific tasks of the hired service, respectively, who inappropriately carried out a completely casual activity (he cut a tree off his leg)[9].

Separately, special laws - issued for different fields - frequently use the wording "profession" and "professional responsibility"[10], however, in these rules, the "professional" attribute - intended for liability - is linked to the performance, to the performance of the tasks that define the performance, more precisely, to the profession and in no way to the subject of the performance.

Civil doctrine[11] and even jurisprudence [12], both inclined towards particularization, they examine the civil liability produced in a professional environment in a segmented manner: the liability of merchants, doctors, lawyers, notaries, architects, etc., i.e. professionals, is analyzed. The model is simplistic and effective: the one who applies the norm - in offering solutions - has at hand the general norm from the civil code and the special regulations made up of the various professional statutes. Moreover, the developments in order to observe faults, when fixing

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[6] The law does not use the phrase professional liability; the expression belongs to the doctrine: see also: V. Cioclei, *Infracțiuni contra persoanei*, în G. Bodoroncea, V. Cioclei coord., Codul penal. Comentariu pe articole, ediția a III-a, Editura C.H. Beck, București, 2020, p. 700; the norm of criminalization treats the legal situation of interest as a circumstance of aggravation of criminal liability.

[7] Art. 196 of 3 of the Criminal Code: when the injury ...." was committed as a result of non-compliance with the legal provisions or the measures prescribed for the exercise of a profession or trade or for the performance of a certain activity, the punishment is imprisonment..."; Art. 192 para. 3 of the Criminal Code: "manslaughter as a result of non-compliance with the legal provisions or the measures prescribed for the exercise of a profession or trade or for the performance of a certain activity is punishable by imprisonment..."; The criminal code of July 17, 2009 (Law no. 286/2009), published in the Official Gazette, Part I, no. 510 of July 24, 2009, entered into force on February 2, 2013; the same expressions were recorded in art. 178 para. 2 and art. 184 para. 3 of the old Criminal Code, in https://www.beck.ro/tag/culpa-profesionala/ accesed on 18. 02. 2022

[8] Criminal decision no. 4987/1972 of the Supreme Court, in the Collection of decisions from 1972, p.424; criminal decision of the Bucharest Court no. 2251/1084, definitive, in Criminal Judicial Practice, vol. III, in coordination G. Antoniu, C. Bulai, Publishing House of the Romanian Academy, Bucharest, 1992, p. 38; criminal sentence no. 13/20. 02. 2020 Sebeș Court, Alba County, final, unpublished; decision no. 70/2011 of the Court of Appeal Târgu Mureș, Criminal Section, in https://www.avocatura.com/speta/181730/actiune-in-raspundere-delictuala-tribunalul-maramures.html, accessed on 25. 03. 2022

[9] Criminal decision no. 825/2018 of 1. 11. 2018 of the Alba Iulia Court of Appeal, final, unpublished.

[10] For example, art. 12 and art. 55 para. 2 of Law no. 188/2000 regarding bailiffs, republished in the Official Gazette, Part I, no. 738/20. 10. 2011; or art. 1 of the Statute of the profession of legal advisor, published in the Official Gazette, Part I, no. 684/29. 07. 2004; Art. 4, 30 of GEO no. 86/2006, regarding the organization of the activity of insolvency practitioners, published in the Official Gazette, Part I, no. 724/13. 10. 2011; and the examples can go on.

[11] D. Sîngeorzan *Informarea precontractuală a pacientului* (II) în Universul Juridic din 5/03/2019 , nr. 3/2019, în https://www.universuljuridic.ro/informarea-precontractuala-a-pacientului-i/ , accesat la 7. 05. 2021; C. M. Florescu, *Răspunderea civilă profesională*, teză, Universitatea „Nicolae Titulescu" București, file:///C:/Users/Vasile/Desktop/statut%20notari%20Romanai%20idei%20rezumate/teza%20doctorat%20rasp%20profesioanala.pdf . accessed on 20. 02. 2022

[12] We exemplify the association of professional liability with the quality of the professional - notary - decision no. 225/2015 of May 20, 2015 of the Maramureș Court, final, in https://www.avocatura.com/speta/181730/actiune-in-raspundere-delictuala-tribunalul-maramures.html accesed on 25. 03. 2022

possible civil liabilities, have in mind - in general - the free professions[13]. In other cases, professional liability is examined by reference to the way the profession is practiced[14]. Or, at other times, professional liability is related to both elements: both subject matter and performance[15].

There are also analyzes - far-reaching - which - keeping in mind the strict specificity of the field - avoid using the professional attribute for the eventual civil liability of the subject who exercises a function, a dignity[16] and moving away from the generic expression of art. 3 of C. civil.

3. As long as the civil norm does not define the profession and we give meaning to the distinctions stated before, we try a conceptualization adapted to the need for analysis.
In an extremely simplistic formulation, we could note that the professional is the one who operationalizes the profession indicated by the general civil norm: organizing and ensuring the functionality of the enterprise or - by detailing - ensures the systematic exercise of an organized activity in the form of production, administration or disposal of goods or by providing services. Expression does not help us, however, because - logically - it throws us into a vicious circle. We can only remember - from this association of terms - that the professional would be the subject in manifestation and the profession would locate the potentiality of the object of his work (in the legal sense, of the performance). More precisely, the profession would be the condition for fulfilling the professional's performance, the condition for fulfilling his social function.

This observation directs us to the meaning of the notion in the common expression: the profession is an occupation, a business that someone exercises on the basis of a qualification and which necessarily implies a status that indicates an assembly of knowledge and skills[17]. Whatever the professional assumes, whatever and however he is tasked, the fulfillment of his functional performance depends on his will as an active subject, as well as on the fulfillment of a double condition: his level of qualification and the model of its application (of the qualification).

Juridically, as a legal framework, with reference to the conditions of the production of liability, the performance - the execution and the sufficiency of its quality or quantity - is the productive source of an obligatory legal relationship with double potential[18]: 1) if the performance is properly fulfilled, the subjective right of a specific creditor is fully realized and, conversely 2) if the performance is defective, the same creditor's right to compensation arises.

The performance, the fulfillment of the objectives of the profession, will be the subject of the subjective right or, as the case may be, of the obligation from this relationship. In such a framework, the elements of the profession, of whatever kind they may be, describe from a specific perspective the debtor of the benefit, illustrate his personality, professional personality,

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[13] For developments in this regard, see also: S. Spinei, *Organizarea profesiunilor liberale*, Editura Universul Juridic, București, 2010

[14] M. Mihail, *Unele consideratii in legatura cu natura juridica a activitatii notariale*, în Revista Dreptul nr. 3/1997, pag. 51; I. Les, *Manual de drept notarial*, Editura All Beck, Bucuresti, 2001, pag. 38; M. C. Dobrilă, *Aspecte juridice ale profesiei de fizioterapeut/kinetoterapeut în România – implicații în plan european. Considerații pe marginea malpraxisului în fizioterapie*, în Revista Dreptul , nr. 9 / 2019.

[15] I. Leș, *Secvențe asupra răspunderii patrimoniale a titularilor unor profesii juridice liberale*, https://www.afdl.eu/rjl/files/Prof.%20univ.dr.%20Ioan%20LE%c8%98%20.pdf, accessed on 3. 11. 2022

[16] With reference to the magistracy, G. M. Mara, *Prejudiciul patrimonial cauzat prin eroare judiciară*, Editura Universul Juridic, București, 2020, pp. 25 -87..

[17] See: https://www.google.ro/search?q=profesie+dex&sxsrf=ALeKk016EiGJ2odsHNEHvA9vag8I91- accessed on 7. 05. 2022.

[18] The model is described in I. Dogaru, N. Popa, D. C. Dănișor, S. Cercel, Basics of civil law, vol. I, General theory, C. H. Beck Publishing House, Bucharest, 2008, pp. 392 – 393; D. C. Dănișor, I. Dogaru, Gh. Dănișor, General theory of law, 2nd edition, Publishing House C.H. Beck, Bucharest, 2008, p. 295

professional status. In the dynamic of obligations, the professional status - a component of the owner's private life - is presented as a condition for the fulfillment of the performance, of the object of the obligation: if the elements of the condition are met, the professional performance closes the legal relationship, the subjective right being executed. If the conditional model fails, the right to damages arises.

III. Effects of conceptualization

1. The scheme described above assumes the elements, steps, producing the relationship of responsibility: the norms of objective law, the subject that expresses itself socially, through action or inaction, bearer of a defined personality and through a status given by the profession, the manifestation that provides the situation subjective legal fixed - in case of non-fulfillment of the professional condition - in the current framework of civil liability and, finally, the claim for damages.

The model does nothing more than follow the general scheme of civil liability with a single differentiation. Something extra is added to the personality of the debtor-provider with special legal significance: a professional status, a profession. The diversity of professions, trades, activities, their details, all included in the scope of the notion of "professional" indicate its complete relativity and, equally, the lack of practical perspective of attaching this attribute to the liability mechanism. The use of the notion to frame a certain responsibility - which the doctrine or jurisprudence practiced and still practices - rather accidentally than systematically - seems to depend more on the fluency of expression that the generalization would provide and less on the provision of a unitary legal regime of this responsibility

2. However, we posed the problem of whether we cannot find a common foundation for this diversity of professional practice - which segments the study into the types of professional liability, from which we can then deduce a general legal regime for subsequent civil liability . We would be concerned with the possibility of obtaining some guiding principles for observing the liability conditions that would result from the non-compliant exercise of the profession in any field.

What would uniquely characterize the exercise of any profession is work and the product of work: any professional exercise - individual, direct or intermediate, organized - involves work, a place of work: the interested subject rents his work capacity to provide the beneficiary (creditor) the expected performance. Such an observation of maximum generality gives a common point to all benefits, regardless of how they are organized, the work regime indicating the principles of the exercise of the professions[19]. Here are two elements - the exercise, the object and the regime of work, as well as its product - of the community of all professions, functions and any regime of activity, regardless of how they are initiated, provided, organized or executed.

[19] This reality was also captured by the guiding jurisprudence: although the profession of magistrate has a very special character, we cannot fail to observe - with reference to this specificity - otherwise, of a constitutional order, that in a dispute regarding remuneration rights, it was admitted - as a matter of principle - that the labor law norm can be - as an exception - common law for defining the special function relationship; in this regard, decision no. 46 of 15 12. 2008, issued in an appeal in the interest of the law, published in the Official Gazette, Part I, no. 495/16. 07. 2009; or in doctrine - and particularly significant - the hospital - state institution - is analyzed - among others - as a professional - starting - essentially - from the same premises: the common elements specific to the exercise of the profession, regardless of what they are: Ioana -Anamaria Filote-Iovu, An x-ray of tortious civil liability regulated by the provisions of art. 320 of Law no. 95/2006, in https://revista.universuljuridic.ro/o-radiografie-raspunderii-civile-delictuale-reglementate-de-dispozitiile-art-320-din-legea-nr-952006/ , p. 6, accessed on 14. 05. 2022

3. The exercise of work - the performance - therefore also the profession - involves an assembly of knowledge, skills, dexterity, skills, ideas, assembled more simply or more complex, of a manual, technical or intellectual nature, which are acquired individually and in actuality or through transmission over time, between generations, organized or improvised; the beneficiaries become aware of the skill of the provider, on their own initiative or as a result of an advertisement - whatever its model - and have confidence in the level of his skill (it is not excluded that the provider offers or is obliged to give a guarantee in relation to the level of this training ; or it is possible that society systematically produces a model of guaranteeing the level of professional qualification).

However, the level of knowledge is perishable, volatile, constantly evolving and completely uncontrollable. Science, technique - the support of professional qualification - has its general, sequential or regional limits. It is an indisputable reality that science is capped, that at a reference moment we have a model, a content, so that a leap is immediately produced, the effect of a discovery; or the phenomenon can take place in reverse: to lose a level of knowledge. Not all practitioners have the same professional level, individually or regionally, in a wider or narrower area. Information regarding the profession does not arrive instantly in the mastery of a subject, but over a certain period of time or never arrives.

There is also a huge inequality between the professional levels of practitioners, inequalities that can have a subjective source or are produced by social organization.

Knowledge is capitalized in a social framework organized by the beneficiary or by third parties, which the practitioner can control, bypass, or not. In principle, then, it is admitted that the practitioner does not know and cannot know, does not control and cannot control, everything in the field of his specialization, neither now nor in the future.

The exercise of the profession - supported by science - is also based on imagination, creativity, inspiration, each of these personal developments can produce benefits or a certain level of uncertainty, more or less controlled. Then, each professional has a percentage of skill that - by virtue of a well-defined personal interest - justified or not - he does not want or, as the case may be, is not obliged to reveal.

All these characteristics - which we observe as common to the work - produce two consequences: one of a subjective order - the practitioner has or reserves by his will a certain level of independence in the use of his qualification, independence which - in essence - describes his personality in general (not the professional one); and another objective, which is the result of the environment in which he operates and which he (the practitioner) cannot overcome and which, in turn, gives a level of uncertainty about the effects of his performance.

4. The work product consists of a work and its execution is subject to the principles of the undertaking: an amount, an assembly of operations, documents, manual or intellectual supplies, which a partner requests and wants to benefit from.

We understand the concept of joint venture in the sense of positive regulation (art. 1851 al. (1) C. civ.[20]; art. 3 al. (2) and (3) C. civil[21]): the execution of a work, material or intellectual, or the provision of a certain service; or in the sense given by the doctrine, where along with the fixing of the basic elements indicated by the law, a few other characteristics are observed: the

[20] Art. 1852 of (1) C. Civ.: "through ...enterprise, the entrepreneur undertakes, at his own risk, to perform a certain work, material or intellectual, or to provide a certain service for the beneficiary, in exchange for a price".

[21] Art 3 C. civil: "al (2) All those who operate an enterprise are considered professionals. (3) The exploitation of an enterprise is the systematic exercise, by one or more persons, of an organized activity consisting in the production, administration or disposal of goods or in the provision of services, regardless of whether or not it has a profit-making purpose".

entrepreneur undertakes the work at his own risk, a complex business that accumulates, combines, associates operations and acts, skill, science, tools[22].

We note, separately, the differentiation between work performance (under joint regime) and entrepreneurial performance, which the doctrine emphasizes: the employee (official) operates under orders, the entrepreneur independently assumes his own risks and pursues - very important in our opinion - his own interests[23]. Then, we distinguish between the position of the agent, the employee and the entrepreneur: the agent is a representative, an intercessor, an intermediary; the employee is a subordinate and the contractor is himself and on his own account[24].

This approach from a double perspective (work - entrepreneurship) gives practical consequences, consequences that we find in the general principles deduced from the concepts and that we can selectively apply to the performing professions, by species and separately, according to how independent the one who performs the work is .

First of all, the work product must be efficient, according to the beneficiary's expectations: the criteria by which its efficiency will be evaluated can be discussed (efficiency burden)

Moreover, the operator exploits his work in a context that, in principle, he does not know: he must investigate this environment, retain what is important in the exercise of his activity in favor of the efficiency to which he is obliged (obligation to investigate) .

The relativity of knowledge, of his skill, the imprecision of the system, the inevitable uncertainties of the operating framework or of his science, the risks of the work, present or future, subjective or objective, the possibility of executing the work in versions, imposes on him the task of informing the beneficiary. Then the knowledgeable specialist must advise, advise, the beneficiary - ignorant of the field - in relation to the version most suitable to the latter's needs. And finally, he will have to perform the work. Its typology - of the work - indicates the nature of the obligation of the executing operator: an obligation of means or one of result: The classification of the task of completion - of diligence or result - will give the level of care, of the guarantee, that the operator must carry and provide the beneficiary's interests[25].

IV. Common and special in professional liability

Placing the analysis of professional liability in the space of the two concepts provided us with some principles of maximum generality that outline the way a practitioner of the profession must behave in his relationship with the beneficiary of his work. The relativity of the value of the knowledge that makes up the profession, the personalization and regionalization of the professions, the uncertainty produced by the operating framework itself[26], respecting one's own interest - not only that of the beneficiary or the third party - of the practitioner, are the specific principles of the execution of a professional work.

These principles charge the practitioner with fundamental obligations, unwritten, therefore inferred, too little expressed but unavoidable: investigation, detailing the possibilities, information, advice, efficiency and guarantee on the work product.

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[22] Fr. Deak, Treatise on Civil Law. Special contracts, 4th edition - updated by L. Mihai and R. Popescu, vol. II, Universul juridic, Bucharest, 2006, pp. 188-2014; V. Ursa, The need for a unified legal regulation of the provision of services to the population, Legal studies and researches, no. 3/1973, p. 417 et seq.; F. Țuca, C. Munteanu Jipescu, Actuality of the contract, commercial law magazine no. 4/2002, pp. 68-90; I. Popa, Civil contracts from theory to practice, 2nd edition, Universul Juridic Publishing House, Bucharest, 2020, pp. 424 – 437; PhD Malaurie, L. Aynes, P, Y. Gautier, Contractele speciale, 3e edition, Defrenois, Paris, 2007, translation in Wolters Kluwer, Bucharest 2009, pp. 391-425.

[23] Ph. Malaurie, L. Aynes, P, Y. Gautier, *Contractele speciale*...op. cit., p.400.

[24] Ph. Malaurie, L. Aynes, P, Y. Gautier, *Contractele speciale*...op. cit., p. 395

[25] Jean Luc Aubert, *La responsabilite civile des notaires*, ediția a V-a, Defrenois, Paris, 2008, pp. 71 – 142.

[26] With the specification that the law itself or jurisprudence can produce uncertainty

They are common for the execution of any work, any undertaking. Only the professional species and circumstances will differ. There follows a number of norms of the most diverse nature, generality, hierarchy, all placed in a chaotic sequence, difficult to follow and, therefore, difficult to apply. In general, a significant part of the professions enjoy specific regulations, by law[27], by statute[28], more or less complete or systematized. Other professions derive their norms from regulations framed in negative patterns: what is forbidden to perform, for personal protection or that of others[29]

They are constituted - and we regard them as such - as special regulations in relation to the deduced principles that we stated. All these normative principles - producers of rules or standards - will indicate the general or special framework of the behavior of those who exercise a certain profession.

Theoretically, the existence of the details that the special rules make would give a level of safety for those who want to have correct behaviors, absolving them of liability. The idea is very generous, seems to be operationally valid, but is clearly inaccurate.

When we move, in the area of the daily activity of a practitioner, the subjective legal situations that have arisen demonstrate - in a way that has not been allowed for a long time - the opposite: there are too many uncertainties related to the standards of behavior of the professional in his services, too many excesses on the part of the beneficiaries services, too much hesitation on the part of the administration and, most unpleasantly, too many contradictory jurisprudence that the courts produce[30].

For this reason, we dealt - in order to fix the conditions of professional liability - whatever type of liability we analyze - with the principles of the exercise of the profession and we will go to the foundations of the production of legal liability phenomena in general and, concretely, to those of civil liability.

V. Fundamentals of civil professional liability

1. Civil liability works on the basis of a logical scheme explained and established in doctrine over time [31] and jurisprudence [32]. In order for liability to exist, an illegal act must be culpably committed that produces damage, damage in a causal relationship with the act. The model is unchallenged and produced the expected results in almost all of the assumptions.

If we look at civil liability not through the doctrinal statements of its components - deed, damage, fault, causality - but through its reparative function, we will have to preliminarily

[27] We give an example: Law no. 188/2000 regarding bailiffs, republished in the Official Gazette, Part I, no. 738/2. 10. 2011

[28] We exemplify: the professional status of legal advisors, 2004, updated, republished in the Official Gazette, Part I, no. 684/29. 07. 2014

[29] We have in mind the many labor protection rules: We exemplify: General labor protection norms issued by the common content of orders no. 505/20.11. 202 of the Minister of Labor and Social Solidarity (M.M.S.S.) and no. 933/25. 11. 202 of the Minister of Health and Family (M.S.F.)

[30] Let's give an example: civil decision no. 1205/3. 10. 2016 and no. 1787/14. 12. 2015 of the Hunedoara Court, definitive, unpublished; both rulings rule on identical issues – the qualification as abusive of some credit contractual clauses, followed by the granting of compensation – in the opposite direction. So, we have a contradictory jurisprudence and it is obvious that, for the banker - as a professional - there is a real uncertainty in knowing, for the future, what would be the behavior absolving liability.

[31] The developments of the doctrine are very numerous; we indicate, by way of example: L. Pop, I. Fl. Popa, S. I. Vidu, *Tratat elementar de drept civil*. Obligațiile conform noului Cod Civil, Editura Universul Juridic, București, 2012, pp. 421- 423; Ioan Albu, *Drept civil. Contractul și răspunderea contractuală*, Editura Dacia, Cluj Napoca, 1994, pp. 244-245; Paul Vasilescu, *Drept civil. Obligații*, Editura Hamangiu, București, 2012, p. 581

[32] For example, civil sentence no. 3231/ 16.09.2020 of the Court Tg. Mureș, definitive, in https://www.avocati.info/jurisprudenta/actiune-in-raspundere-delictuala-pentru-provocarea-unui-accident-de-circulatie/, accessed on 11. 05. 2022

remember that any damage will have to be covered. The safety of those around, of the victims, in relation to the initiatives of others is defining for liability.

But it is, from its essence (of liability) that only the delict - the impermissible deed - is responsible and only to the extent that the provider of the deed produces the harmful effect and foresees it (or should have foreseen it). And vice versa, even if there is damage on someone's account, the one who manifested himself legitimately will not answer. The responsibility in this case will be borne by someone else who, in a common conjunctural framework, produced by apparently concurrent facts, acted criminally. The burden of damage will be transferred from the one suspected of unauthorized manifestation - but who acted in full legitimacy - to another, the true producer of the crime.

Therefore, if we admit that one's legitimate expression absolves liability and that another, a third party, is liable, we must admit that between the legitimate expression and the true tort there is independence, even if the appearance would suggest their concurrence.

The positive norm records with great accuracy this approach which would be deduced from the reparative function of civil liability, because it indicates in a simplified and essentially its scheme: "the one who causes damage to another through an illegal act, committed with guilt, is obliged to fix"[33]. That is, the text indicates the delict as a fundamental element of the observation of liability, guilt will be deduced casuistically from the compliant or non-compliant deed, and the concept of causality matters less due to its imprecision[34].

The practical problems arise when the one who has the initiative and the interest of the manifestation does not know from the beginning whether he is operating legitimately or not, even if he anticipates the possibility of causing damage. The ambiguity of legitimacy appears against the background of the uncertainties produced by the special norms that regulate the subjects' behaviors or the uncertainties offered by the circumstances in which they operate.

So, we have in mind the situations in which the one who acts, although he has the desire to proceed in a correct manner, which does not produce liability, does not know or cannot deduce how to proceed. In practice, there are frequent cases where even the magistrate - the one who determines liability - does not know how the general norm of behavior should be understood[35]. Thus, a delicate problem arises: to what extent - and if so, why - will the active practitioner respond while no one knows from the beginning how to behave.

2. The concern to capture - in generic, but more pragmatic formulations - the criteria for identifying appropriate behaviors leads us right to the foundations of liability phenomena.
Man lives in freedom, freedom being a constitutive principle[36] and indisputable. The one who initiates something through free expression - as a result of the general need for safety - has a

[33] Art. 1357 al. (1) C. civ.

[34] For details, by way of example, see: L. Pop, I. Fl. Popa, S. I. Vidu, *Curs de drept civil*, Editura Universul Juridic, București, 2015, pp. 344 – 348; G. Antoniu, *Raportul de cauzalitate în dreptul penal*, Editura Științifică, București, 1968, pp. 29 - 50; from the multitude of these theories - products of necessity - it follows that in a world in a universal connection it is very difficult, sometimes even illusory, to identify the causal relationship, from the concrete act to the harmful effect.

[35] We indicate as an example - out of so many possibilities - the decision from the council chamber no. 21/2021 of 11.02.2021 of the Hunedoara Court, unpublished, definitive: in a car accident, followed by a death, the question arose of the liability - criminal and civil - of the driver, employee, professional, who - on the public road , at night, in full swing of his transport activity, coordinated by the demands of economic efficiency and subject to a standard of behavior – he had to reduce the speed below a certain limit or not; the prosecutor of the case - with all his authority to assess culpability - held that he should not have reduced the speed; the preliminary chamber judge decided the opposite: he was at fault because the speed had to be reduced; in the appeal, the prosecutor's point of view was maintained; in an explicable way, the limits of the clichés of substantiating liability based on fault (which, in turn, implied the provision) were observed, when no one knew from the beginning how the principles of the standards should be interpreted (not even the judge).

[36] Pentru detalieri, a se vedea: George Burdeau, *Droit constitutionnel*, Editura L.G.D.J, Paris, 1984, p.133

fundamental obligation from the moment of the initiative: caring for others[37]. The fundamental, subjective rights - their recognition - are only the flip side of this fundamental obligation: the others, the third parties, in turn have the duty of care towards the rights holders. Practically, the rights are defined - not as essential attributes of the holder - but by the opposition of the fundamental duty of care that others have towards the holder.

Care – the fundamental task – would have a dual application: care for others and care for oneself. Concern for others would require the adoption of preventive or, as the case may be, cautious behaviors [38]. Personal protection involves asserting and promoting personal interest in competition with other interests that claim to be injured [39].

Civil life, in society, naturally assumes a state of equilibrium, the only state that can support the reality of freedom. In practical terms and starting from the meaning of the fundamental obligation, this balance presupposes the coexistence of rights, freedoms and interests that are valued through the initiative of the holders (bearers) in the general framework organized by objective law[40]. The collision, the conflict, of the components of civil life, their excessive exercise, against the duty of care, gives the phenomenon of responsibility[41]. Liability indicates, therefore, the imbalance and the essential function of liability will be to restore balance in society (through reparation or sanction)[42].

Such a theoretical premise gives a certain perspective: it can provide solutions for the hypothesis in which we cannot know in advance what behavior would absolve liability due to the generality of the standard of behavior. That is:
We note that the distinction between rights, freedoms, interests is relative: in reality we have interests but with particularities - they can be observed and underlined - and, above all, different degrees of protection[43]. The model is not completely alien to the expression of the Romanian positive norm[44].

It would matter, therefore, in the assessment of the conditions of liability, from the perspective of art. 1959 C. civ., legitimate interest. However, neither the law nor the Romanian doctrine could accurately specify what a legitimate interest is[45].

In the conceptual framework offered (responsibility is the result of the clash of interests and the excess is observed only in the non-conformity of the deed), we deduce that the legitimation of the interest must inevitably be sought in the behavior of the one who - in the exercise of his freedom through social manifestation - harms the interest of another. The harm

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[37] It is the famous Atkin thesis that legal doctrine considers to be of Christian origin; for details, see: Feng, Tan Keng, *"The Three-Part Test: Yet Another Test Of Duty In Negligence*." Malaya Law Review, vol. 31, no. 2, 1989, pp. 223–251. JSTOR, www.jstor.org/stable/24865449. Accessed 5 May 2021 și Ph. Brun, *Responsabilite civile extracontractelle*, 5e edition LexisNexis, Paris, 2018, p. 100

[38] D. Tapinos, *Prevention, precaution et responsabilite civile*, L Harmattan, Paris, 2008, pp. 429 - 484

[39]For extensive developments in relation to the role of interest in fixing civil liability, see: M. Dugue, *L interet protege en droit de la responsabilite civile*, L.G.D.J, Paris, 2019, pp. 215 – 254.

[40] I. Deleanu, *Drepturile subiective și abuzul de drept*, Editura Dacia, Cluj Napoca, 1988

[41] L. Thierry, *Conflits entre droits subjectifs, libertés civiles et intérêts légitimes. Un modèle de résolution basé sur l'opposabilité et la responsabilité civile*, teză, UCLouvain - Saint-Louis, Bruxelles, 2004, publicată în Bruxelles de Larcier, 2005, în https://dial.uclouvain.be/pr/boreal/object/boreal:168645, accessed on 3. 05. 2022.

[42] Ph. Brun, *Responsabilite civile extracontractelle*...op. cit., p. 112

[43] For details, see: A. Gervais, *Quelques réflexions à propos de la distinction des « droits » et des « intérêts*, in Mélanges en l'honneur de P. Roubier, t. I, Paris, Dalloz-Sirey, 1961.

[44] Art. 1359 C. civ.: *„the author of the illegal act is obliged to repair the damage caused and when it is the result of the damage brought to an interest of another, if the interest is legitimate, serious and, by the way it is manifested, creates the appearance of a subjective right". The wording of the text does not fully confirm the thesis, but it does not exclude it either, which entitles us to interpret it in the sense of our argumentation.*

[45] On the contrary, the limits of this recording of the law are emphasized - this, in the context in which we try to outline its qualities; to be seen: S. Neculaescu, *Repararea prejudiciului cauzat prin vătămarea unui interes*, Universul Juridic, nr. 4/2017 din 4. 04. 2017, http://revista.universuljuridic.ro/repararea-prejudiciului-cauzat-prin-vatamarea-unui-interes/ accesat on 5. 11. 2022

would consist - in the most general formulation - in the violation of the fundamental obligation: care towards others. In relation to this criterion we can evaluate, then, the culpa, the provision, the possibility of provision, of the one who acts.

Such premises lead us to another preliminary conclusion: the basic function of legal liability - reparative or repressive - will be the weighting of conflicting interests (interests are not excluded, not canceled, when they collide, but are weighted)[46]. And the weighting is finally carried out by the magistrate through comparison, proportionality, balance [47].

3. We apply the formula on the liability that would result from the exercise of a profession, we observe and gather the consequences[48].

Positive law does not depart from the classic formula, with all its limits: the civil liability of the perpetrator - professional or not - is, in principle - personal and based on fault, on the slightest fault. In the event of a contest of action, the liability will be divisible and main and by exception joint[49] and, as the case may be, subsidiary[50]. In turn, liability for another and liability without fault[51] they are derogatory and must be indicated by law.

We find the source of civil liability in the deed not conforming to a rule or a standard - indicated by the norm or deduced according to general principles - and, finally, if we cannot identify them, from the fundamental obligation of each one. The other conditions of liability – culpa and causation – will be deduced from the point-by-point analysis of the reality of the deed's compliance with the standard. Harm is the premise, not the source. It is illustrated by the existence of the disturbance of the social balance.

4. Everything I have described so far is valid for any form of civil liability. Does, then, professional liability have any particularity of a legal order, apart from the title that provides so much imprecision?

We noted that the source of the standard can be found in the scope of the profession and that the profession implies work, a work regime. The realization of the work is done by capitalizing on the knowledge, practices, skills, dexterities, which due to their volatility give a lot of imprecision in describing what the professional has to do in the activity. The weight of imprecision will have little significance as long as I have stated that - in the absence of an express regulation - the standard deduced from the fundamental obligation can be applied.

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[46] G. Burdeau, *Droit constitutionnel*....op. cit., p. 139

[47] L. Thierry, *Conflits entre droits subjectifs, libertés civiles et intérêts légitimes*....op. cit., p. 72

[48] It should be noted that the jurisprudence - in other formulations - applied the proposed model, the court carrying out an identification of the interests and a weighting of them: see, ÎCCJ, Second Civil Section, decision no. 635 of February 19, 2013, in https://coltuc.ro/2013/11/raspundere-civila-delictuala-criterii-de-apreciere-a-caracterului-ilicit-al-faptei-cauza-exoneratoare-de-raspundere-jurisprudenta-iccj-2014/ , accessed on 14. 11. 2022. In the case, the foundation of the action for compensation of a farmer started against the State was debated, the plaintiff who requested - among other things - compensation for the killing of his birds, ordered to combat an epizootic; when the existence (non-existence) of the illegal fact was motivated, the court observed: it is necessary to "maintain a fair balance between the requirements of the general interest of the community and the imperatives of the fundamental rights of the individual"; practically, the judgment achieved - even if it did not express it explicitly - a weighting according to the criteria I stated.

[49] L. Pop, I. Fl. Popa, S. I. Vidu, *Curs de drept civil*, Editura Universul Juridic, București, 2015, p. 449.

[50] A theorization of the meaning of subsidiary tort liability can be found in L. R. Boilă, Considerations regarding the tort liability of the person lacking discernment regulated by art. 1368 of the current Civil Code, Law no. 5/2014, p. 28; for particular situations of subsidiary liability we note: Gh. Piperea, Legal personality and limitation of liability in the New Civil Code. The end of a myth, in https://www.curieruljudiciar.ro/ 2011/12/07/personalitatea-juridica-si-limitarea-raspunderii-in-noul-cod-civil-sfarsitul-unui-mit/, accessed on 13. 11. 2022; for subsidiary liability in labor relations, see: A. Țiclea, T. Țiclea, Specific liability for damages in legal labor relations, in the Romanian Journal of Labor Law no. 3/2014, p. 33.

[51] For an example of objective liability, expressly indicated by the rules: Law no. 240/2004 regarding manufacturers' liability for damages caused by defective products, republished in the Official Gazette of Romania, Part I, no. 899 of December 28, 2007

The design of the profession in the area of entrepreneurship highlighted, however, a particularity with significance: in a professional activity, the entrepreneur enjoys independence in putting his skill to work and operates at personal risk.

However, the independence of the facts can be an absolving cause of liability while discussing the eventual competition of crimes producing liability, competition that may arise between the entrepreneur and the beneficiary or between the entrepreneur and the third party claimants. In an apparent contest of torts, the precision of the exercise of the profession proves the independence of the act of the entrepreneur and leads, indirectly, to his absolution from liability: the damage was caused by another.

Moreover, in the entrepreneurial area, control of the entrepreneur in the practice of the profession is excluded. This implies the exclusion of the liability of another (the State, a possible client) for his crime.

All in a context where the civil law enshrines - in delictual matters - both solidarity and divisibility, in case of bankruptcy action (entrepreneur, victim, third parties, fortuitous events, as the case may be) for the production of damagei[52].

Separately, the establishment of practice norms of the profession - whatever the form of expression - from which the delict and then the culpa are deduced, sends the non-compliant facts into the field of tortious liability even if the commitments to perform the work are made contractually. We find the specificity of contractual liability only for deviations related to the exercise of the profession.

VI. Practical consequences that would result from theorizing.

1. We follow the practical effects of theorizing on two levels: first, we note the eminently technical character of the components of the profession (specific knowledge is essentially technical in nature and is also subject to similar rules); separately, the actual exercise of the profession takes place in a social framework that operates according to its own norms.

Therefore, the validity of the exercise of the profession, of the solution offered by a professional, results - in principle - from the pursuit of intrinsic, technical legitimacy, and less from compliance with the social environment in which a job is practiced (even if we cannot completely deny the influence of the environment). The technicality of the professional solution gives a level of autonomy, independence, of the act of the professional who offers it. The evaluation of this act as a crime will obviously be done in relation to intrinsic rules and only secondarily according to other contextual rules. This distinction – the actual exercise of the profession, on the one hand, and the social operating framework, on the other – produces consequences.

2. The general standard of behavior of the professional (discharger of liability) must differentiate between the two postures of the exercise of any profession: the technical, fundamental and the environmental, contextual. Even if - in the absence of rules - we refer to the most general standard (duty of care), the distinction should be followed. The formula can give significant results, clarification, more certainty.

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[52] Art. 1370 Civil Code: "if the damage was caused by the simultaneous or successive action of several persons, without being able to establish that it was caused or, as the case may be, that it could not be caused by the act of any of them, all these persons will be jointly and severally liable to the victim"; Art. 1371 Civil Code: " (1) if the victim contributed intentionally or negligently to causing or increasing the damage or did not avoid it, in whole or in part, even though he could have done it, the person called to he will be held responsible only for the part of the damage he caused. (2) the provisions of para. (1) it is also applied in the event that both the act committed by the author, with intention or through fault, as well as force majeure, fortuitous event or the act of a third party for which the author is not obliged to answer contributed to the cause of the damage"; for details and controversies, see L. R. Boilă, Sources of obligations in Fl. A. Baias, E. Chelaru, R. Constantinovici, I. Macovei, coord., New civil code. Comment...op. cit., pp. 1438 - 1439

We exemplify: the medical act, its technical elements, should be the same: the same disease, the same approach; the reality is different: it is one thing to go to a specialist from a small national provincial town and another will be the medical result offered by the best performing German hospital; in the analysis of medical malpractice – although theoretically it should follow the same guidelines – the indicated distinction will yield different results. And this, without taking into account the doctor's personality.

From here, another consequence related to the injured party's behavior follows: his option towards a specific professional, towards a specific framework in a specific space, indicates the acceptance of the technical standard of the professional, of the framework, of the place. That - the victim's option - will indirectly, but clearly, indicate the technical and contextual standard in which the professional's eventual offense will be judged.

3. The independence of the technical evolution of the professional, of his deed - in relation to the framework in which he operates - distinguishes between the forms of civil liability under which the professional will be judged: professional malpractice is subject to tort rules and the operational framework, possibly, to contractual ones.

We supported[53] that work and enterprise constitute the common element of all professions. Such an observation now compels us to a further explanation.

We have in mind the object of the work, of the undertaking: the exercise of the profession, the implementation of skill, skill which in turn has technical content. The realization of this desired is done legally - as a matter of principle - through contracts. In this mechanism, the content of the profession - contractual object - is not negotiated (eventually, the result of the work, the contract, the versions of the exercise can be negotiated, but never the essential technical components that define the profession itself).

Practically, we will always have a technical professional standard, the non-compliance of which gives a professional offense and a standard of use, as the case may be, of the result, of the professional content that can fall under the contractual regime[54].

4. The independence of the deed - a deed that constitutes a professional exercise - can give reasons for non-responsibility of the professional who followed the technical tasks accurately.

In this situation, the deed causing the damage will belong to the beneficiary. That is, there will be no criminal competition, but a deed located exclusively on account of a single subject. The phenomenon appears in professional environments where the technique operates with supplementary (not imperative) norms, where the autonomy of will is wide and this happens mainly in the civil operational space, in the legal professions specialized in civil relations[55].

As the professional environment produces by itself uncertainty or in the hypothesis where the parties enjoy autonomy of will and a supplementary regulation, the appropriate

[53] See above points III, 3 and 4

[54]The model, although known and generally applied, is not always accurately followed by jurisprudence. For example: the banker, after paying the client damaged by the embezzlement committed by his account manager - employed with an employment contract - requested, retroactively, compensation consisting of the amount already paid. The courts debated whether the dispute falls under the procedural regime of labor or delict and directed the dispute to the labor records - conclusions no. 100/4. 02. 2021 and no. 698/12. 12. 05. 2021 of the first civil section of the Hunedoara Court, final, unpublished. However, in our assessment, the damage was caused by the non-compliant exercise of the management profession; the accompanying employment contract does not regulate the functions or mechanisms of management, but the general set of work in which a professional, a technician (a manager) would operate. In the model we propose, we start from the premise that the technique is performed, applied, only as it is, according to its content and rules, and not as the parties want, and the distinction is necessary. The options are made only in relation to the professional levels, by directing towards a certain professional, towards a certain professional space, towards a certain professional regionalization.

[55] For extensive developments in relation to the implications of operating with supplementary norms in different professional environments, see: C. Peres-Dourdou, La regle suppletive, L.G. D.J., Paris, 2004

behavior of the professional requires that the beneficiary of the benefit is informed in relation to the possible work versions as well as the risks of the options in relation to the need for the economic or technical efficiency of the work. If the beneficiary opts for a certain formula - in full knowledge of the case - and suffers or causes damage, the responsibility will not belong to the professional but to the one who made the option for a certain solution out of several possible ones[56].

5. In such a context, dominated by the autonomy of will, the question arose as to whether or not the professional is obliged to the beneficiary - at his explicit and adequately remunerated request - to expose him to the illegal versions as well. This starts from the premise that the professional delimits himself from the beginning - and undoubtedly proves the delimitation - from the non-permitted version. In this case, if the beneficiary has operationalized the non-compliant version, will the professional be liable?[57]

The problem becomes completely insoluble when we locate ourselves in the area of legal professions that give expression to the autonomy of will.

As a precaution, we do not provide an answer although the professional environment is waiting for it. It would, contextually, be a premature and risky response. We are only formulating the question and can hope, at most, that the model we are suggesting will provide a conducive framework for achieving it as soon as possible.

6. The independence of the professional stemming from the technicality of his solutions delimits him - from the perspective of responsibility - also from the ineffectiveness of the framework in which he operates and which society offers him. The professional, therefore, will not be responsible for the organizational vices in which he expresses himself professionally.

The doctor will not be responsible for an uncertain diagnosis until he has the necessary technology. Maybe, eventually, he is responsible for not informing the patient of the limits of the space in which he is active or for the lack of advice and direction to others. The notary public will not be responsible for system defects in real estate advertising or for inconsistencies in the tax system. He will be liable, in the same logic, for not informing about system risks.

7. Separately, we cannot bypass the clarifications in relation to the legal significance - in the logic of responsibility - of the personal and immediate interest of the person practicing the profession. In principle, I argued that in the interest weighting mechanism - the defining mechanism for the phenomenon of legal liability - the interest of the person exposed to liability

[56] In notarial practice, the question arose as to whether the notary can instrument a sale of a property in which the seller - spouse - received the asset by donation from the other spouse, as long as the property acquired will be revocable at the pleasure of the donor spouse; the instrumentation was carried out, but in the clauses of the contract it was explicitly recorded that the acquirer was aware of the affectation of his ownership; the question arose whether it was necessary to record this clause in the title or whether a separate clause between the notary, on the one hand, and his clients, on the other, was sufficient; this formula was chosen for the protection of the subsequent acquirers of the operation carried out by the diligent notary (so that the acquirer of the revocable property cannot invoke his good faith towards his subsequent acquirers); it was also questioned whether the notary is responsible for the instrumenting of a power of attorney followed, subsequently, by a sale, in which the seller was represented; everything, in a context in which - at the explicit request of the principal, the power of attorney was not specialized - and, later, the trustee was able to sell below the market price, obviously, to the detriment of the principal warned in advance by the notary (the debate took shape following the conviction of a notary - for such behavior, assessed as insufficiently cautious - by criminal decision no. 101/17. 04. 2014 of the High Court of Cassation and Justice, final). In the logic presented, the notary should not be liable to the principal, but could be made liable - conjuncturally - to a sub-acquiring third party, but this, subject to the omission to record explicitly and in detail in the contract the clauses informing all parties about the risks to which they are exposed now and in the future.

[57] For example: could the architect be held responsible for the design of a building that does not comply with urban planning requirements and that the beneficiary - against the advice of the professional - built without authorization?

also matters[58]. Concretely, the operationalization of this idea is more difficult due to the fact that it is an inferred principle. The analysis may appear to be only speculative.

However, if we accept that the fundamental duty of care towards others prevents the professional from causing harm - damage - to others, the reasoning can also be done the other way around: others, in turn and regardless of the interests they assert, cannot legitimately ask you to - you cause yourself a damage that they could not accept as justified. It's about accepting and achieving a clear balance in judging self-interested behaviors, prior to liability.

This balance derived from the foundations and functions of liability simplifies the premises of reasoning: you cannot ask the professional, any potential debtor, to produce a disadvantageous legal situation, a damage. If we accepted this, there would be no more social life because the freedom of any manifestation, once recognized, implies by itself the protection of the interest that the subject brings to the manifestation[59]

VII. Conclusions

The study supports the idea that a general examination of professional liability is warranted, liability produced by non-compliant behavior in the exercise of a profession, whatever it may be. The justification of the approach to gender - not to species - was sought in the common elements that can be identified in each of the professional activities - carried out independently or not - as well as in the foundations of legal liability.

It was observed, first of all, that work and the enterprise - their object and instruments, their regime - can outline a legal space common to all professions, of their exercise.

The legal labor regime explains the relativity of science, skill, which make up the content of the notion of profession. This content, in turn, will limit the expectations of the beneficiaries of the work, their rights as creditors. The concept of the undertaking projects the fundamental obligations of the one acting as a professional: the investigation, the information, the advice and the limited guarantee of the performance committed and executed.

Secondly, the foundations of legal liability are indicated, with special reference to the civil one. In its essence, responsibility is meant to weigh the interests of people - professionals or not - in their free civil manifestations, by comparison, proportionality and balancing.

In such a framework, the professional's deed - potentially delictual deed - will be defining to fix his civil liability. The other components – guilt and causation – will be only secondary. We will identify the general criterion for evaluating the existence (non-existence) of a crime in the concept of care - the duty of care - towards others and towards oneself. Caring for others requires forethought or, as the case may be, caution in activity. Self-care recommends the affirmation of personal interest legitimized by an agreed social value.

Theorizing is the result of a practical need: outlining a general standard of behavior for situations in which the professional operates in a normative environment dominated by uncertainties, behavior which, then, will protect him from liability based on fault.

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[58] See point V, 2 above

[59] We repeat the motivation scheme of the cited jurisprudence - see note no. 36 - the decision of the council chamber no. 21/2021 of 11.02.2021 of the Hunedoara Court - particularly significant and profound: in essence, not in expression, the judge observed that the mechanism of the provision that the driver had to prove - defining fault -, this in the classic framework of liability (deed, fault, effect, causality) - it is not edifying because, in a justified way, it has been observed that you cannot impute to a driver the lack of a provision that even the judge did not intuit; he did not, however, exclude guilt, but subjected it to another filter, a filter deduced from principles, this time expressed explicitly: the interest of the person engaged in the exercise of the profession; compared the interests subject to weighting - by the fact of the judgment - and gave reasoned preference to the driver: you cannot impose the one who is in the activity to protect the one who is totally unconcerned with his own life (the victim) to such an extent that he sacrifices himself (not to be efficient and to be fired with patrimonial and social consequences for him and his family); for the role of the judge in weighing interests in case of legal uncertainty, see: M. Pinault, Incertitude et securite juridique, en Le traitement juridique et judiciare de l incertitude, Dalloz, Paris, 2008, pp. 5 – 63.

In practical terms, something else was emphasized: the content of the profession - knowledge, skills, practices - has an eminently technical character. Exercising the profession - under a subordination regime or at one's own risk - gives the practitioner a certain level of independence - narrower or wider - which autonomizes his (the professional's) actions in relation to other actions, of others - supposed or real - competing. This autonomy – once identified and defined – can absolve the practitioner of liability for harm caused to a victim by multiple subjects apparently acting together.

The model obliges the one who determines the faults to delimit the behaviors of multiple subjects according to the nature of the rules - express or inferred - technical or non-technical - that govern the subjective legal situation under examination. The consequences follow from this: 1) culpable deviation from the technical rule always gives a delictual liability; 2) the autonomy given by the technique of the profession may exclude the responsibility of the professional; 3) deviating from the rules designating the group in which the professional operated can give contractual or even tort liability, as the case may be, and 4) the criminal activity committed by deviating from the rules of the operating group can attract joint - divisible or joint liability - of the practitioner, along with others

AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 40-44

COMMITMENT OF CRIME BY OMISSION

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ABSTRACT

This article deals with the particular aspects regarding the situations in which crimes are committed, committed by omission or inaction. Any human act is done by the externalization of a person's conduct, which can take the form of an action or an inaction. In a narrow sense it represents the act committed and represents the central part of the crime because it is the actual criminal activity. The ways of achieving the material element of the crime are action and inaction. Inaction implies refraining from what the law orders to be done by persons who, according to the law, had a legal obligation to act. In order for the inaction or omission to constitute the material element of the objective side of the crime, it is necessary that this abstention "be an external and undoubted manifestation of the will, be unjust and be causal".

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KEYWORDS: *crime, omission, norm of incrimination, material element*

1. Criminalization of omissions

When the legislator, within the scope of the incrimination rule, requires a certain conduct to be carried out, the violation of this obligation by the perpetrator occurs through inaction.

When elaborating the legal model of incrimination, the legislator must decide (Antoniu, 1982, p. 11) on what the norm of incrimination must include, that is, express what constitutes the objective side of the crime.

Thus, the deed will be described, showing the ways in which it could be committed.

One of the ways of committing an act is inaction.

The legislature criminalizes acts of omission, acts that can be committed through inaction.

They are the legal expression of the obligation to act in a certain way, under the threat of a criminal sanction, if the legal subject to whom the norm is addressed remains in a state of passivity.

Through the norms of criminal law, the legislator establishes facts that are to be prohibited, thus showing themselves to the members of society, in a specific form of expression, which must be their conduct towards certain social values.

At the same time, through the norms of the criminal law, the members of society are shown what actions are prohibited or, they are ordered, when social values are in danger of being damaged.

The criminal law describes prohibited or ordered conduct, "this legislative technique being considered as the most explicit and suggestive form of criminal legal regulation of the conduct of members of society" (Bulai, 1997, p. 173).

When the conduct prohibited by the incriminating norm is nevertheless carried out by the perpetrator, the crime arises, which is an act contrary to the rule of conduct, generating social conflict, which attracts the application of the sanction provided for its commission.

In today's society, we hope and expect that the efforts to impose the law will become so strong, that those favorable to breaking the law will be overwhelmed (Boșca Rath, 2008, p. 52).

2. Criminal conduct manifested by omission/inaction

One of the essential coordinates that establishes the conditions of existence of the crime is the act of conduct of a person.

The criminal conduct, called in the criminal doctrine the material element of the crime, is the expression of the objective side of the crime. A crime cannot be conceived and cannot exist apart from an outward manifestation of the person.

Crime is seen as an expression of the person's guilt reflected in the act of conduct through which conscience and will are manifested.

The act of conduct represents the material element of the crime through which the activity of a natural or legal person is materialized that produces dangerous consequences, that harms or endangers certain social relationships protected by the rules of criminal law (Pitulescu, Medeanu, 2006, p. 78).

Or in the opposite direction, analyzing the situation, we can state that the production of dangerous consequences takes place only through an act that materially constitutes the crime, being the external objective element of the crime.

The role of the material element of the crime in its content is essential because it marks the distinctions between crimes, or between crimes and acts that are not criminal acts.

Therefore, the specificity of the content of any crime is described by the legislator, first of all, with the help of the elements that characterize the objective side of the crime. (Avrigeanu, 2001, p. 10).

The criminal law clearly establishes the possibility of realizing the material element of the objective side of the crime either through an action or through an inaction.

What distinguishes the two ways of the material element is the attitude of the person who:

- In the case of the action modality, the person has the obligation to refrain from doing something bad, to undertake an action that damages social values and the legal relations that arise around these values. By performing that action he violates a prohibitive norm, a norm that commands not to do something.

- In the case of the inaction modality, this time the person has precisely the legal obligation to do something, because by not executing the command of the law, social values are harmed. By remaining passive and not doing what the law requires, the person violates an onerative norm, a norm that commands you to do something.

We notice that inaction is the opposite of action, so an attitude, a negative behavior.

When the perpetrator was obliged to act in a certain way and does not do it, he remains in passivity.

In order for the inaction to be criminally relevant, there must therefore be a legal duty for the perpetrator to act in a certain way. (Dongoroz and collective, 2003, p. 108).

"Omission is not analyzed as simple passivity, but it is always highlighted by reference to a certain determined action, which is required of the subject" (Streteanu, Nițu, 2014, p. 14).

There are cases in which the criminal law imposes a certain conduct on its recipients.

Remaining inaction determines a conduct contrary to the commandment of the law, which leads to the damage of social values.

By remaining inaction, the natural or legal person manifests a static attitude, although the criminal, legally established obligation was to do something specific, an obligation that the criminal does not culpably fulfill. (Mărculescu-Michinici, Dunea, 2017, p. 541).

Inaction was defined as the failure to perform a possible action that the subject had a legal obligation to perform (Pop, 1923, p.).

This obligation is provided normatively in the text of the law.

The incriminating criminal norm specifies what is the prohibited criminal action and inaction, and in the event that it occurs, the act will be considered a crime (Tănăsescu et al., 2002, p. 179).

3. Special aspects regarding offenses committed by omission

"The crime of omission consists in the failure to perform an action that is required to be carried out by the incriminating norm, in order to avoid a socially dangerous result" (Tănăsescu et al., 2002, p. 180).

The commission of the crime by the inaction modality raises some special problems.

Inaction is the opposite of action, it implies the negative attitude of the perpetrator who, having the legal obligation to act, does not do it.

In order for the inaction to have criminal relevance, there must therefore be a legal duty for the perpetrator to act in a certain way (Dongoroz et al., 2003, p. 108).

Inaction is the second way of performing an illegal conduct which is manifested by the attitude of the perpetrator to refrain from performing an action in the manner required or established by law (Boroi, 2010, p. 165).

However, inaction does not represent any form of passive behavior. It involves the non-performance of a certain action, prescribed by law, such as non-payment of the maintenance pension, non-return of an entrusted property.

The dominant opinion in the doctrine is that the omission acquires criminal relevance only in relation to the existence of a legal obligation, by which a certain conduct is imposed on the subject that can be fulfilled for them, no one is obliged to do the impossible.

So, the source of the obligation to act can be found either in criminal or extra-penal norms, even in moral norms or in obligations that are contractual.

Inaction does not do what should be done.

Therefore, omission refers to what the perpetrator is required to do and does not do, i.e. to some determined action.

Thus, we can specify that in order to have criminal relevance, the omission must not be related to any attitude of a person not to do something, it being identified by a reference to an obligation established by law to do something specific.

This obligation to act the active subject does not culpably fulfill (Mărculescu-Michinici, Dunea, 2017, p. 541).

The omission is not accidental, unconscious, but has a voluntary and conscious character, it represents a conduct directed towards the achievement of proposed goals, just like the action.

The legal liability and the realization of the content of the crime occur even if the subject did not remain in total passivity, in the sense that he performed other actions, when, legally, he had the obligation to perform another action from which he refrained.

The subject knew that the danger to the social value protected by the law is pre-existing, unlike the situation of committing a crime by action, when the danger is not pre-existing, the subject's action creating it.

In order to be a material element of the objective side, the inaction must meet some conditions:

a. "The inaction must be voluntary, that is, it must emanate from the conscious will of the omission, the involuntary omission, caused by a physiological process (the fainting or epileptic fit of the mite that intervened at the moment when he had to change the bed) or nature (blizzard, breaking of clouds) cannot belong to the constitutive act of a crime" (Dima, 2004, p. 282).

b. The inaction must exist, the active subject must have remained in a state of passivity when he had to act, which produced the socially dangerous consequence.

c. Inaction to be unjust

From the point of view of the active subject who can commit a crime by omission, it can be any natural or legal person who meets the legal conditions to be criminally liable and of course who had the obligation to act.

He must act culpably.

His attitude of not acting must produce socially dangerous consequences.

Various social values can be violated by omission.

In the incrimination norm, inaction is sometimes provided for, along with action or alone. Regarding inaction, it has been constantly argued that this does not mean doing nothing, but not doing what the law orders.

There are, for example, crimes committed by omission: failure to report (art. 266 Penal Code), which appears as an instant crime, leaving without help a person in difficulty (art. 203 Penal Code), family abandonment criminalized in the non-payment variant credit for 3 months of the maintenance pension established by court (art. 378 paragraph 1 letter c Criminal Code), which appears in the form of a continuous crime, showing an extension in time, failure to take legal measures for health and safety at work (art. 349 Criminal Code), thwarting the fight against diseases (art. 352 Criminal Code).

An important aspect of the crime committed by omission is that of the state of passivity presented by the active subject who does not act in the direction established by the law.

This state of passivity is not to be understood according to the law as a state of total passivity, as a total inaction of the active subject remaining in a state of total inertia, doing nothing.

Thus, the crime is committed by omission even when the active subject undertakes activities other than those required by law and thus commits the crime.

From a legal point of view, there is no difference between total passivity and performing another action (Streteanu, Nițu, 2014, p. 283).

For example: the fact that a person found another person and left him unable to save himself, nor did he notify the authorities about it, becomes alive to the commission of the crime even if he did not remain in total passivity, performing other work or activities during this time.

CONCLUSIONS

A crime can be committed either by action or by omission, i.e. by inaction.

In the attempt to define inaction, it was shown that it represents a state of passivity of the person to whom the law imposes a certain activity.

From a criminal point of view, omission does not mean doing nothing, but not doing what the law orders.

By committing a crime by omission, an onerative norm is violated.

The omission has criminal relevance when the active subject had to adopt a certain conduct, to do something, but he remains in a state of passivity. This state of passivity should not be seen as a state of total passivity, but only the failure to fulfill what the law says to do, the active subject being criminally liable even if he undertakes other activities.

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AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 45-50

SOME ASPECTS ON THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT REGARDING THE FUNDAMENTAL ELECTORAL RIGHTS

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ABSTRACT

The fundamental rights and freedoms of man and citizen are a constitutional reality, with deep implications in the existence of each person, in his relations with the state. It also represents an existential reality of each person, of society as a whole and a dimension of democracy. The regulation of electoral rights in the Romanian Constitution is the result of the existence of the democratic and social rule of law, which assumes that the people have the prerogative to participate in governance through their representatives who reflect their wishes.

KEYWORDS: *jurisprudence, rights, Constitutional Court, elections, right to vote*

INTRODUCTION

The basis of the people's participation in governance through its representatives is art. 2 of the Romanian Constitution which states that 'National sovereignty belongs to the Romanian people, who exercise it through their representative bodies, established through free, periodic and fair elections, as well as through referendums". Also, para. 2 provides that "neither group nor person can exercise sovereignty in their own name". Thus, the people exercise their national sovereignty indirectly through representation and directly through referendum[1].

The supremacy of the Constitution would remain a mere theoretical matter if there were no adequate guarantees. The constitutional control of laws is the main form of constitutional justice and constitutes a basis of democracy guaranteeing the achievement of a democratic government, which respects the supremacy of the law and the Constitution.

Regulated in Title II of the Constitution entitled "Fundamental rights and freedoms", electoral rights are classified in the category of exclusively political rights. The fundamental regulation refers in art. 36, art. 37 and art. 38 to three electoral rights, respectively: the right to vote, the right to be elected and the right to be elected to the European Parliament. These provisions practically constitute the framework regulation in the matter, following that it will be supplemented with those provisions contained in special laws and which also refer to other rights that can be qualified by their nature in the category of electoral rights, such as for example: the right to contest, the right to check the registration on the electoral lists, etc. Therefore, as was natural, the Constitution only regulates the fundamental rights of citizens, the others being mentioned by other laws. Considering the narrow scope of the electoral rights nominated by the Romanian Constitution and considering the superior legal force of this normative act compared to the other special laws, which widens this scope, the three electoral rights (the right to vote, the right to be elected and the right to choose and to be elected in the European Parliament) can be considered to be main electoral rights. Thus, in the Romanian legislative system, a distinction is made between fundamental electoral rights, rights provided by the constitutional provisions, and other electoral rights provided for by special laws.

[1] Ramona DUMINICĂ, Andra Nicoleta PURAN, Again, about the consultative referendum. Pros and cons, Proceedings of the International Conference EUROPEAN UNION'S HYSTORY, CULTURE AND CITIZENSHIP 12th edition, May 2019, CH Beck Publishing House, pp. 429-439 and Consultative referendum debates on the referendum held in Romania in 2009, Ramona Duminică, Andra Puran, in Aktualne problemy referendum, Uniwersytet Zielonogorski, Zielona Gora, Polonia, 2016, pp. 175-184

1. BRIEF CONSIDERATIONS ABOUT ELECTORAL RIGHTS IN THE DOCTRINE

In specialized literature[2], electoral rights are classified in the category of exclusively political rights, these being considered as fundamental civil rights. From this perspective, electoral rights present two major specific features: they allow the participation of the people in governance through the elected representatives, who behave in this position as their "true trustees", and secondly, because of the first feature, as we have stated, these rights belong exclusively to Romanian citizens. Although qualified as fundamental citizen rights, electoral rights differ from other socio-political rights and freedoms that do not have the same purpose, but which to some extent contribute to the exercise of electoral rights as well (for example: freedom of expression or the right of association).

The Romanian Constitution uses in art. 36 the title of the right to vote, but other constitutions use the title of the right to choose. However, there are differences between the two names. Thus, the term election is used when the members of a public authority are elected, and the term voting when the citizens pronounce themselves for or against a rule or decision. We can thus say that there is synonymy between voting and referendum.

It was expressed in the specialized literature that, "the right to vote is the right recognized, under the law, to the citizens of a state to freely express, directly or indirectly, their electoral option for a certain political party or a candidate proposed by a group politics or an independent candidate"[3].

The right to be elected is regulated by art. 37 of the Romanian Constitution and implies the possibility of a person to be elected in the representative bodies of the state if he meets the legal requirements.

The demanding legal conditions necessary for the existence of the right to be elected are a guarantee for a good exercise of public functions in the interest of the community and the general interest. The imposition of these conditions was necessary to propel into these positions only responsible persons "with an increased degree of civic and political maturity"[4].

Romania's adhesion to the European Union brought with it, including the modification of the legislative framework in electoral matters, a fact determined by Romania's participation, as a member of the Union, in the establishment of European bodies, such as the European Parliament.

After the revision of the Constitution in 2003, along with the right to vote and the right to be elected, the right to vote and be elected to the European Parliament was introduced.

Thus, art. 38 of the revised Constitution provides that "under the conditions of Romania's adhesion to the European Union, Romanian citizens have the right to elect and be elected to the European Parliament".

The Romanian Constitution agrees with the international treaties regarding the provisions stating the electoral rights, offering in addition a series of guarantees necessary for their specific exercise.

In Romanian legal doctrine, it is considered that the right to vote and the right to be elected form the category of exclusively political rights, i.e., those rights that, by their content, can be exercised by citizens only for participation in governance.

The jurisprudence of our Constitutional Court is edifying to outline the doctrinal aspects regarding the guarantee of fundamental rights and freedoms[5], especially in situations where their exercise is subject to conditions, limits or restrictions.

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[2] Ioan Muraru, Elena-Simina Tănăsescu, *Constitutional law and political institutions*, C.H. Beck Publishing House, 12th Edition, 2nd Volume, Bucharest, 2006, p.83

[3] C. Gilia, *Sisteme şi proceduri electorale*, C.H. Beck Publishing House, Bucharest, 2007, p. 29

[4] Ioan Muraru, Elena-Simina Tănăsescu, *Constituţia României. Comentarii pe articole*, C.H. Beck Publishing House, Bucharest, 2008, p. 344

[5] For applications, analysis of the general practice of the national and European courts, namely of the doctrine, see also: Aida-Diana Dumitrescu, "Studiu asupra aspectelor teoretice şi practice determinate de modificările succesive ale cadrului normativ în materia despăgubirii persoanelor care au suferit condamnari cu caracter politic sau măsuri

At the same time, the jurisprudence also provides clarifications regarding the scope and content of some fundamental rights and freedoms, as well as their defining elements.

In this article we analyse the edifying aspects of the Constitutional Court's jurisprudence, which we consider to be essential for the application of the rules and principles of the Constitution regarding the guarantee of fundamental rights and freedoms. The analyses of the Constitutional Court are highlighted, in relation to the legislator's compliance with the requirements imposed by art. 53 of the Constitution, regarding the legitimacy of restricting the exercise of some fundamental rights. Jurisprudence states that the principle of proportionality evoked explicitly or implicitly by our Constitutional Court, represents a general criterion for establishing the legitimacy of interferences in the exercise of fundamental rights and freedoms or of a fair balance between subjective rights or diverging legitimate interests[6].

Most of the time, the Constitutional Court refers to the criterion of proportionality in a generic way, invoking the provisions of art. 53 of the Constitution. There are relatively few decisions of our Constitutional Court that include elements of proportionality analysis. It is true that the interpretation and understanding of the principle of proportionality, considered to be one of the guarantees of fundamental rights and freedoms in situations where it is possible to limit or restrict their exercise, presents serious difficulties, given the diversity of concrete situations, the margin of appreciation recognized by the legislator, the nature of the protected right and last but not least the interpretive reasoning of the Constitutional Court, which must be maintained at a high level of abstraction, establishing the constitutionality of a rule by reference to the provisions stated by the Constitution.

The provisions of art. 36 and of art. 37 of the Constitution implies the principle of proportionality to guarantee the exercise of the right to vote and the right to be elected, as they may be subject to conditions or limitations. Also, the exercise of these rights can be restricted, which implies compliance with the condition of proportionality provided by art. 53 para. 2 from the Constitution.

The Constitutional Court, evoking the international legal instruments in the matter, admitted the possibility of conditions and limitations of electoral rights, if they are reasonable, which means respecting the principle of proportionality.

Referring to the provisions of art. 25 of the International Covenant on Civil and Political Rights, the Constitutional Court held that: "the provisions of the first paragraph contain an additional clarification – the respective rights are exercised without unreasonable restrictions, which implies the possibility of the existence of conditions in the exercise of these rights. Under these conditions, the prohibition of any discrimination no longer appears as unlimited, lending itself, in the case of its regulation by law, to the natural investigation of the condition of reasonableness"[7].

Also, in its jurisprudence, the Constitutional Court ruled that "every citizen has the right to be elected in the governing bodies of his country, and this right may be subject to certain reasonable restrictions"[8].

It was mentioned that "the addition of supplementary conditions to the specific requirements of the right to vote, so that a person can occupy elective public positions and dignities, is motivated by their importance, by the role of representative bodies in the exercise of the sovereign power of the people and by the idea of a responsible and efficient representation, which imposes an increased degree of political and civic maturity"[9].

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administrative asimilate acestora", *Dreptul* no. 5/2011, www.ujr.dreptul.ro, pp.31-58; Aida-Diana Dumitrescu, "Reflecții asupra evoluției contextului național și european în materia ajutoarelor de stat, compensarilor și plafonării prețurilor", *Curierul judiciar* no. 8/2021, pp. 457-460

[6] Marius Andreescu, Andra Puran, *Drept constitutional. Teoria generală şi instituţii constituționale. Jurisprudență constituțională*, 4th Edition, C.H. Beck Publishing House, Bucharest, 2020, p. 357

[7] Decision no. 226/2001, published in the Official Gazette of Romania, no. 605/26 September 2001

[8] Decision no. 70/5 March 2002, published in the Official Gazette of Romania, Part 1, no. 234/8 April 2002

[9] Decision no. 736/6 December 2016, published in the Official Gazette of Romania, Part 1, no. 184/15 March 2017

The Court specified that the constitutional norm enshrined in art. 37 para. 1, with express reference to art. 16 para. 3 of the Constitution, which stipulates among the conditions for holding public, civil or military positions and dignities, the fulfilment of the conditions established by law, gives the legislator the right to establish the content and limits of the citizen's right to be elected, taking into account the purpose of this right, as well as the general interest that must be protected. Prohibiting the exercise of the right to be elected in the case of persons who have been forbidden, by a final court decision, to exercise this right is an appropriate, necessary, and proportional measure with the legitimate aim pursued, i.e., the removal of the possibility of occupying elective public positions or dignities by convicted persons, by final court decision, upon the loss of electoral rights[10].

Legal doctrine and the jurisprudence of the Constitutional Court analysed the constitutionality of the provisions of art. 64 para. 1 let. a), referred to art. 71 of the former Criminal Code, which allow the restriction of the exercise of the right to vote, as an accessory or complementary punishment[11].

Analysing the condition of proportionality, it was established that the provisions of art. 64 and of art. 71 C. pen. do not contravene the provisions of art. 36 of the revised Constitution. Are fulfilled the provisions of art. 53 regarding the restriction of the exercise of certain rights, including the principle of proportionality[12].

The temporary suspension of the exercise of the right to vote for a person deprived of liberty or to whom such a complementary or accessory punishment was applied, is not contrary to the constitutional provisions, including the fact that such a restriction does not affect the substance of the right itself. Moreover, these measures are not contrary to the general constitutional principles regarding the exercise of national sovereignty by its holder. In this sense, the constitutional court emphasized that "restrictions regarding a limited category of persons, namely those convicted, who are serving custodial sentences, do not affect the free expression of the people's opinion regarding the election of the legislative body[13].

Confusion should not be made between the right to vote enshrined in art. 36 of the Constitution, as a fundamental right, and the methods of election – direct vote or indirect vote – of some local public authorities, under the law. The Court emphasizes, however, the importance of the direct feature of the vote, such a method being the essence of modern democratic representativeness, in which citizens directly and personally express their option for a certain candidate proposed in the elections. In the case of indirect voting, a smaller number of voters participate in the actual election of representatives, depending on the method of election provided by law[14].

Also, the Constitutional Court specified that in the postal voting procedure, the voter is the one who directly expresses his electoral option, because between his vote thus expressed and the end of the operation, respectively the election of the members of the Chamber of Deputies or the Senate no there is no interposition by any person or any electoral body. Regarding the fact that the voter does not have an appropriate civic conduct or other aspects contrary to the law that can be encountered in the electoral process, do not concern the normative text, but its external elements[15].

Regarding the freely expressed feature of the vote, the Court notes that "the regulation of voting by mail does not put the citizen in the situation of being obliged or conditioned by other possible participants in the electoral process in estimating his vote, nor does it oblige him to vote

[10] Decision no. 715/20 November 2018, published in the Official Gazette of Romania, Part 1, no. 164/1 March 2019
[11] Art. 66 para. 1 let a) related to art. 65 of the current Criminal Code (Law no. 289/2009, published in the Official Gazette of Romania, no. 510/24 July 2009
[12] Decision no. 184/2001, published in the Official Gazette of Romania, no. 509/28 August 2001
[13] Decision no. 1439/2010, published in the Official Gazette of Romania, no. 12/6 January 2011
[14] Decision no. 752/2010, published in the Official Gazette of Romania, no. 495/19 July 2010
[15] Decision no. 799/2015, published in the Official Gazette of Romania, no. 862/19 November 2015

in a certain way, but provides him with all the conditions so that, according to his conscience and political option, he can exercise his right to vote[16].

The provisions of art. 37 of the Constitution do not assume the right of the elected to exercise his office without any limitation, outside of any conditions of the law[17].

In relation to the international documents on the matter and the existing jurisprudence, the Constitutional Court notes that the state can manifest its free option in electoral matters in relation to the establishment by law of an electoral system and electoral procedures, but on the condition of respecting fundamental human rights and, in general, the right to be elected and to choose. The conditions imposed on the exercise of these rights cannot be so extensive as to affect their very essence and to empty them of their content[18].

The constitutional framework of the right to be elected is represented by the provisions of art. 37 of the Fundamental Law, and through intra-constitutional normative acts, the legislator, based on art. 37 of the Constitution details the conditions necessary for the specific exercise of this right. The Court established that the "deposit" provided for by the electoral law represents, along with other conditions regulated by law, a requirement for submitting the candidacy and not a wealth census, considering, on the one hand, the economic and social level at which Romania at present, and, on the other hand, its accessible amount, which the law establishes. Therefore, such a condition does not affect the substance of the right to be elected[19].

The requirement imposed by the electoral law, regarding the submission of a list of adhesion signatures, does not affect the right to be elected, regulated by the Constitution. "The key feature of any mandate acquired as a result of the expression of the political will of the electorate through suffrage is its representativeness (...) this criterion for pre-selection of candidates is an objective and reasonably applicable one under conditions of equal treatment of each of the two categories of participants in elections: independent candidates, on the one hand, and those proposed on the list of a political party, on the other. The establishment of the legal condition regarding the submission of the list of signatures is a way by which the candidate for a public position or dignity proves his representative potential and shows, at the same time, the legislator's concern to prevent the abusive exercise of the right to be elected, on the one hand, but also to ensure, on the other hand, effective access to the exercise of this right, for eligible persons who, indeed, benefit from the credibility and support of the electorate"[20].

The imposition of temporary conditions, specifically the condition that the Romanian citizen had his domicile in Romania at least 6 months before the date of the elections, is contrary to the principle of universality of rights, stated by art. 15 para. 1 of the Constitution, as well as the right to be elected[21].

CONCLUSIONS

As a conclusion, the jurisprudence of the Constitutional Court is essential in the application of the constitutional norms and principles regarding the guarantee of the rights and fundamental freedoms in general.

Undoubtedly, the constitutional justice and its particular form, the control of constitutionality of laws, represent the main guarantee of the supremacy of Constitution, as expressly stipulated in the Fundamental Law of Romania

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AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 51-57

CONSIDERATIONS REGARDING THE SITUATION IN WHICH A SURVIVING SPOUSE DISCLAIMS THE INHERITANCE

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ABSTRACT

Disclaiming an inheritance is a solemn and express legal process by which the surviving spouse is entitled to renounce the rights and obligations that would become theirs by law or last will resulting in the retroactive revocation of the right to inherit. The reasoning behind such a decision may vary immensely from person to person yet in most cases the drive behind such a choice is reduced to the obligations bound to any inheritance outweighing the advantages it may bring[1].

KEYWORDS: inheritance, process, surviving spouse, juridical effects, law.

INTRODUCTION

For a disclaimer of inheritance to produce juridical effects it must fulfil the specific conditions required of any legal act to produce effects but it must also respect some specific criteria.

Fundamental conditions for validity:

1. Generally, a disclaimer of inheritance has to be an explicit action; it cannot be implicit or deduced by observing a subject's actions or via connected legal acts like in the case of accepting an inheritance. Art. 1120 paragraph (1) of the Civil Code imposes that "A disclaimer of inheritance cannot be presupposed except for the situations presented at art. 1112 and art. 1113 paragraph (2)."

As it can be observed, a disclaimer of inheritance cannot be presupposed, it must be expressed in most cases. However, the Civil Code does present some possible exceptions to the rule. Art. 1112 defines the concept of a presumed disclaimer of inheritance as such: "It is presumed that an individual has disclaimed its inheritance, until it is proven otherwise, when they have the knowledge of their right to inherit and that the division of the inheritance has taken place but they have not accepted the inheritance explicitly as stated in art. 1103. The knowledge regarding the inheritance has to be conveyed through a citation. The citation must contain the elements imposed by the Civil Procedure Code and the mention that if the inheritor does not comply with the time limit imposed in art. 1103 of the Civil Code in regards to accepting the inheritance he will be presumed to have renounced the right to inherit. If the citation does not meet the required criteria for validity it will be rendered void. The presumption of disclaimed inheritance is valid only if the citation was communicated to the inheritor at least 30 days before the time limit for them to accept the inheritance."

The presumption of a disclaimed inheritance operates as an exception under the following conditions: after the surviving spouse has been cited under legal conditions, they acknowledged the division of the inheritance and their right to inherit, the citation does fulfil all the conditions specified by the Civil Procedure Code with the mention that they will be

[1] B. Pătrașcu, *Continuitate și discontinuitate în reglementarea opțiunii succesorale, vol. Noul Cod civil. Comentarii (*coord. Marilena Uliescu), Ed. Universul Juridic, București, 2010, pp. 271-272.

presumed to have disclaimed the inheritance if they don't respect the legal term to accept the inheritance. The citation must be delivered at least 30 days before the legal term for acceptance expires, if the surviving spouse does not exercise the right to accept set inheritance they shall lose it[2].

In the case that the surviving spouse does exercise the right to disclaim set inheritance after the legal term has expired it only reinforces the presumption that they have renounced their right to accept, according to art. 1112 paragraph (1) has a relative nature.

The information necessary for the citation to be sent to the right address will be provided by the other persons that hold the right to accept set inheritance. In the situation where no other inheritor knows the place of domicile of the surviving husband or the address at which they reside they are forbidden from using public means of communication, such means may only be used in the case of an estate that has no known inheritors.

Art. 1113 paragraph (2) of the Civil Code presents yet another exception in regards to the rule. If a surviving spouse does not exercise the right to disclaim the inheritance as it is shortened by a court of law it is presumed that they have renounced their right to inherit. This presumption is considered absolute, making it unique from the previously presented exception.

Another crucial aspect is the invalidity of any convention between the surviving spouse and the other inheritors by which the spouse accepts to disclaim the inheritance. The same treatment is to be given to such conventions even if they were done prior to the deceased passing away. Such a convention would be null and void if agreed upon before the death of the testator being a legal action that relies on an undivided estate and in the case of such a convention after the testator's death there would be no legal effect unless the surviving spouse would go through the process of disclaiming the inheritance.

There will be legal consequences only if the surviving spouse disclaims the inheritance, hence, there is no legal effect produced by disclaiming an inheritance if the inheritance was previously accepted. Generally, the right to accept or rebuke an inheritance is non-revocable.

A similarity appears in the process of accepting an inheritance; the surviving spouse cannot accept a part of the inheritance considering the indivisible character act of disclaiming an inheritance.

Another aspect regarding the nature of the act of disclaiming an inheritance is the non-pecuniary and impersonal nature of the act itself. If the inheritance is given to one of the inheritors specifically it would constitute an act of silent acceptance on the part of the surviving husband followed by an act of donation towards one of the other inheritors. Disclaiming an inheritance must be an act of abdication by which the share of the estate[3] that's rightfully deserved by the spouse is turned back to it in the benefit of the other inheritors.

Formal Conditions

A disclaimer of inheritance cannot be presumed in a general sense except for the situations aforementioned, art. 1112 and art 1113 paragraph (2).

According to art. 1120, paragraph (2) of the Civil Code, a disclaimer of inheritance is a solemn act that must fulfil 2 formal conditions. One serves to prove the validity of the act and the other is needed for the act to be opposed in a court of law.

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[2] Case nr. 1115/2020, Costești, Inheritance court, The late disclaimer of inheritance passed the legal term, http://www.rolii.ro/hotarari/5fcc465fe490090c08000029 , Case nr. 12164/2014, Bucharest, Sector 2, Succession court, The late disclaimer of inheritance passed the legal term , http://www.rolii.ro/hotarari/58a12077e49009d03c001a67 .

[3] Art. 1110 para. (1) let. b) și c) Cod civil.

And so:

1. A disclaimer of inheritance must be given to a public notary or to a diplomatic mission or consulate outside the territory of Romania, as it is the case.

It is understood that the surviving spouse can present a disclaimer of inheritance to any public notary, not only to the notary that has territorial competence or the notary that is in charge of dividing the estate in a non-contentious manner. In legal literature[4] we discover that a disclaimer of inheritance can be done in person or through a special mandate. A disclaimer of inheritance will be valid only if it is materialised in an authentic written document, this will provide the document the value of proof in a court of law. If a disclaimer of inheritance is complete under private signature or as an oral agreement it will be considered null and void, hence, the surviving spouse retains the right to accept or disclaim an inheritance as long as the legal conditions for either action to have effects are respected. The nullity of a disclaimer[5] does not imply or presume the acceptance of an inheritance[6].

2. The disclaimer of inheritance must be added to the national notary register and kept in electronic format.

Art.1120, paragraph (3) of the Civil Code imposes that any disclaimer of inheritance must be kept in the notary register. This condition doesn't assure the validity of the act but it has the purpose of informing third parties in regards to the estate and the share rightfully given to the surviving spouse. The validity of the act cannot be questioned in the case that this rule is not respected[7].

The registration of the disclaimer is done at the expense of the surviving spouse. Considering that the disclaimer is recorded in the national registry it can be used in a court of law by the other inheritors. The omission of this rule cannot be used by the surviving spouse in order to invalidate the disclaimer. If the surviving spouse wishes to cancel their disclaimer of inheritance they can do so by following the legal procedures necessary.

The absence of the disclaimer from the national registry cannot be opposed to a good faith third party with whom the surviving spouse has arranged a contract, moreover, if any share or part of the estate is the subject of the contract it is considered a tacit form of acceptance as it is stated in art. 1110 paragraph (1) of the Civil Code.

If the validity conditions will not be respected by the spouse in the process of disclaiming an inheritance the act will be null and void or partially annulled. The legislation offers a special 6-month term for the spouse to cancel the disclaimer of inheritance. According to art. 1124 of the Civil Code the right to renounce a disclaimer of inheritance will expire, in the case of duress, 6 months from the last recorded day of the violence inflicted upon them, in all other cases the term will be calculated from the day that the relative nullity of the act is known by the spouse.

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[4] IlioaraGenoiu, Ilioara Genoiu, *Ce drepturi are soțul supraviețuitor la moștenirea soțului decedat?*, Ed. C.H.Beck, București, 2013, p. 145.

[5] DoinaRotaru, *Opinie privind posibilitatea invocări inulității renunțării la succesiune aparținând descendentului de către creditorii moștenitorii sau eventuali succesori,* UNNPR ActivitateaUniunii, Supliment al BuletinuluiNotarilorPublici, nr. 1/2022, pp. 43-44. This article presents the response to a notary public that filed a dossier to the UNNPR on the date of 09.02.2022 in regards to the possibility of a creditor to use the invalid disclaimer of inheritance in court. In the specific dossier was attached a case in which a debtor has filed 2 separate disclaimers of inheritance, one for the mother which was invalid and one for the father which was valid. The dossier tries to show that the invalid disclaimer of inheritance in reality serves as a form of disclaimer even though it isn't formally functional it's still proof that the inheritor did not wish to have any part of the estate.

[6] C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, *Tratat de drept civil român,* Ed. Națională, București, p. 476; I. Adam, A. Rusu, *Drept civil. Succesiuni*, Ed. All Beck, București, 2003, p. 422; Al.Bacaci, Gh. Comăniță, *Drept civil. Succesiunile,* Ed. C.H.Beck, București, 2006, p. 210.

[7] D. Chirică, *Tratat de drept civil. Succesiunile și liberalitățile*, Ed. C.H.Beck, București, 2014, p. 236; Fr. Deack, *Tratat de drept succesoral,* Ed. Actami, București, 1999, p. 434.

A disclaimer of inheritance will have no legal effects if the surviving spouse if they have accepted the inheritance in an express or tacit manner as it can be understood from art. 1109, 1110 paragraph (1) section a), 1111, 1114 paragraph (1), 1123 and 1326[8].

Disclaiming an inheritance that was previously accepted can be seen as an act of disposition with a gratuitous title done by the so-called renouncing spouse. For example, the intention of the surviving spouse to renounce the inheritance even though a certificate of inheritance was issued in her name in order to satisfy the surviving daughter's needs. In order for the "disclaimer" to be valid it must be modified in order to fulfil the necessary conditions to become an indirect donation and as a necessary prerequisite the beneficiary must accept the donation[9]. (art.676, 1268 p (3), 1754, 1747, 2274 of the Civil Code)

The effects of disclaiming an inheritance.

According to art. 1121 p (1) of the Civil Code, the inheritors that disclaim an inheritance, in our case, the surviving spouse that disclaims an inheritance shall be considered to have never been an inheritor, by this logic the disclaimer of inheritance shall have retroactive effects and shall have erga omnes application if it is registered in the public notary registry. And so, the renouncing surviving spouse will not have any of the pecuniary benefits linked to the right to inherit, meaning that they will not be liable for any of the debts or duties that bind the estate. Of course, the blood bound of the spouse shall remain intact.

The consequences of the disclaimer:

1. The share belonging to the surviving spouse, both passive and active assets, will bring profit to the inheritors that were eliminated from the hierarchy of inheritance or the once that would have been entitled to a smaller share under normal circumstances regardless of the independent will of any other inheritor. In the situation that the surviving spouse would participate in the division of the inheritance with the other 4 classes of inheritors the share disclaimed by the spouse shall benefit the relatives of

[8]*Culegere de practică notarială. Spețe comentate*, vol. V, București, 2018, pp. 105-109. After the legal inheritor has accepted the share of the estate bound to them they can't go back on the decision and forward a disclaimer of inheritance. A successor accepts the share of the estate through a legal document forwarded towards the notary public then wants to disclaim the previously accepted arguing that the legal term for acceptance or refusal of the inheritance has not expired and that other inheritors are present and willing to divide the share. Being a unilateral act, the acceptance of the inheritance becomes an irrevocable legal act, it will become public at the moment of registration in the Notary Public Registry (RNNEOS) held by CNARNN-Infonot. The acceptance of the inheritance consolidates the right gained by the inheritor at the death of the testator, more so, according to art. 1114 para (1) of the Civil Code if a silent act that would result in tacit acceptance there is no possibility of disclaiming the inheritance. In an exceptional manner the old Civil Code of 1864 allowed the annulment of the acceptance on the condition that it was influenced by trickery. With all the aforementioned there is an exceptional situation in which the estate would enter *bona vacantia* the disclaimer of inheritance can be retracted

[9]*Ibidem*, pp. 100-104. The notary public has established, through an inheritance certificate that in a specific case the daughter and mother have the quality of inheritors. After the certificate of inheritance was in effect the surviving spouse handed the disclaimer of inheritance to the notary public and it was integrated in the registry. Ulterior to the disclaimer, the widow asked the notary public to issue a certificate of acceptance encompassing mobile goods, sums of money in a crediting institution, 2 auto-vehicles and a part of an apartment. The public notary has already that the widow did wish to renounce her share in favour of the daughter. More than that, the notary has found a separation paper for the property that the married couple owned in order to give the daughter the entirety of the apartment. Through the separation paper the daughter is the only inheritor of the estate. Due to principle the estate shares already accepted cannot be disclaimed. Based on all the evidence the wife originally has accepted the inheritance and her disclaimer was null. The question at hand that still lingers is if the disclaimer still has any legal effects. It can be considered that a disclaimer affecting an accepted share is realistically an act of disposing of the obtained share to reinforce the share of the other inheritor. The rules specific to the sale of the inherited share apply to other possible actions similar to that in accordance to the Civil Code art.1747, in principle art. 1754 is used to regulate both pecuniary and free of charge transactions in regards to the inheritance, specifically it is considered an indirect donation.

the deceased under the legal conditions in the order of the classes and degree of separation. In the situation that the surviving spouse is the soul inheritor of the estate the inheritance shall be beneficial to the commune, city, municipality and the state under the title of vacant inheritance.

The mentioned potential inheritors shall receive the inheritance at the date that the division will be concluded not from the surviving spouse but directly from the estate of the deceased.

2. The surviving spouse that disclaimed its share that died at a later date cannot be represented by their descendents. They will inherit in their own name in accordance to art. 967 of the Civil Code.
3. If the surviving spouse was given a donation from the deceased they will not be required to disclose it at the moment of division. If it is a gift in excess of the freely disposable portion of the estate the spouse shall be able to keep a part of the gift under legal conditions as long as it does not affect the estate in excessive manner, if it does affect the estate excessively reduction will be used.
4. The reciprocal rights and obligations of the defunct and surviving husband that stopped opelegis through consolidation or confusion will be reborn at the date of division.
5. The surviving spouse shall lose the right to manage the estate or the part rightfully belonging to them. However, the acts of preservation, surveillance and administration that were done prior to the disclaimer of the inheritance will be maintained under the condition that based on the circumstances they do not constitute an act of silent acceptance of the inheritance. If the acts aforementioned were done by the surviving spouse and it indirectly but undoubtedly proves that the spouse had the intention of accepting the inheritance they will not be able to renounce the share according to art. 1110 p (2) and (3) of the Civil Code.
6. The personal creditors of the surviving spouse don't have the right to seek repayment from the estate. Although, if the spouse is exercising the right to dismiss the inheritance in order to defraud the creditors the law gives them the right to ask for the annulment of the dismissal in order to recover their losses. The revocation of a fraudulent dismissal is permitted due to the fact that the share of the estate enters in the possession of the spouse at the moment of the division not at the death of the testator. The creditors have a 3-month term to ask a court to revoke the dismissal from the date that they acknowledged the decision of the inheritor. The term given to the creditors is connected to the term given to an inheritor to disclaim or accept an inheritance[10], a year from the day the testator has perished. Such an action will only affect the debtor-inheritor and only to the extent of satisfying the debt as imposed by article 1122 of the Civil Code. The fraud enacted by the surviving spouse must be proven by the creditor, they must prove that by disclaiming the inheritance the spouse has intentionally made themselves insolvable. Even though the creditor is entitled to request the opening of the succession only the debtor inheritor can be bequeathed with the quality of inheritor or with an inheritance certificate, more precisely, by participating at the division council the debtor gains the benefits of inheritance. The civil law allows the creditor to participate in the case of a notarial action for the division of the estate, it also allows the creditors to engage in some legal procedures such as creating an inventory for the estate and naming a curator[11] for set inventory. Even if the creditor can request the division of the inheritance they don't have the

[10]D. Chirică, *Succesiuni*, p. 383.

[11]Case nr. 1421/2020, Tribunal of Vaslui, Legal Guardian , http://www.rolii.ro/hotarari/5fbf1888e49009480f00002a .

certainty of it happening as the other inheritors must concur to start the procedure[12]. The creditor can obtain information in regards to the negotiations related to the estate from the notary public without infringing upon the oath of confidentiality[13]. In order to formulate a request for the division of the estate the creditor must solicit a public notary in the area that the deceased last inhabited in order to obtain a verified gathering of proof. A simple example is the energy company searching for a debtor's living relatives[14].

Conditions which allow the revocation of a disclaimer.

Art.1123 of the Civil Code offers the possibility to the surviving spouse to revoke a disclaimer of inheritance mainly in order to avoid the estate to enter in *bona vacantia* even though disclaiming an inheritance is mainly an irrevocable legal action.

The conditions for revoking a disclaimer are as follows:

1. The period given to the successor in order for them to decide if they disclaim or receive the inheritance has not expired according to art.1123 of the Civil Code. In practice the expiration of the one-year term is not an automatic end to the right to option. The real term must be analysed concretely and individually in regards to the surviving spouse disclaiming the inheritance and all the rules that govern the option to inherit[15].
2. There is no other inheritors that accepted the share of inheritance that would have been owed to the surviving spouse while they were indecisive. If the other inheritors have accepted the share in question the disclaimer becomes irreversible. The time, form or origin[16] of the inheritance is unimportant[17].

With all the above stated the disclaimer of inheritance is still possible even in the situation where another inheritor has accepted the share owed to the surviving spouse.In regards to the other inheritors their shares must not be affected, the only share a surviving spouse is entitled to is a share which would have remained vacant[18].

If the estate has no more vacant shares the disclaimer becomes impossible to revoke as it was accepted by other inheritors. The surviving husband can revoke the disclaimer in the case that the property would enter in *bona vacantia* even if there are measures that have been taken in order to preserve set estate[19].

The revocation of the disclaimer can only be explicit. It must be materialised in a declaration in front of a notary public or a Romanian consulate and in order to inform third parties it must be recorded in the notarial register, for this operation the spouse shall support the costs. It worth pointing out that a retraction must be always expressed but a disclaimer can be implied.

Under the above stated conditions, the spouse becomes an accepting inheritor. Paragraph 2 of art. 1123 Civil Code states that: "The revocation of the disclaimer is considered acceptance; the goods of the estate shall be given in the state they have been found and under the limitations of the rights that other parties have gained in regards to the estate."

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[12]Culegere de practică notarială, Spețe comentate, vol. IX, 2022, pp. 265-266.

[13]Art. 193, art 687 and next, Civil Procedure Code; art. 1282 Civil Code; art. 31 Normele metodologice și instrucțiunile privind registrele unice ținute de Uniunea Națională a Notarilor Publici din România.

[14]Art. 52 para (1) Law nr. 123/2012 For energy and natural gas distribution.

[15]Fr. Deak, *op. cit.*, p. 436.

[16] Testamentary or legal right.

[17]M. Eliescu, *Transmiterea și împărțeala moștenirii în dreptul Republicii Socialiste România,* Ed. Academiei, București, 1966, pp. 136-137; D. Chirică, *op. cit.* p. 238.

[18]D. Chirică, *op. cit.*, pp. 238-239.

[19]Fr. Deak, *op. cit.*, p. 436.

CONCLUSIONS

Inheritance is a complicated issue to be solved both in legal terms and in personal terms. The death of a loved one hits like a dagger in the cold moonless night even when it may be a predictable event. Such is the way of all living things but in the consciousness of humans many factors are at play as we choose what we keep and what we leave behind from the cross roads of the time shared with people that are no longer among us be it assets in an estate or memories fabled or haunted. At first glance the legal procedures presented in this article may seem cold and robotic and yet the role of all laws regulating inheritance is to offer a semblance of order in a chaos given by faith to a group of people bound through a fulcrum that is no more.

AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 58-65

THE POLITICAL INFLUENCE OF MINOR VOTING BLOCS IN CREATING AMERICAN LEGISLATION

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ABSTRACT

This article works as a succinct guide regarding the connection between the political process, the electoral process, the interweaving functioning of the executive, the legislative and judicial and the possibility of destabilising society in the name of the few.

KEYWORDS: *voting rights, abortion, US Supreme Court, Dobbs v. Jackson, Roe v. Wade, voting blocs*

INTRODUCTION

We live in strange times where little to nothing seems secure or even an image of certainty may be ephemeral or false but a red string crosses all ideas debated in the current media landscape, the state of democracy and freedom in one's life.

After the second world war many countries were directly aided[1] or looked up to the American society as a model of organisation and an image of true freedom, after the fall of the iron curtain America itself assumed the position of the protector of democracy in a more official capacity as the winner of the cold war.

Nowadays this title is highly contested in the face of far-right activism, sardonic terrorism, ideological pundits and civil unrest. In this article I will present one of the more fundamental flaws affecting the political and legal systems that sit at the foundation of America itself, the possibility of a tiny contingent of citizens deciding for all.

1. *Terminology and the connection between laws and voting:*

In order to explain what may look initially as an obtuse or confusing title we must firstly unravel the individual elements of the issue at hand. A voting bloc[2] can be described as a fraction of the population that are driven by common concerns in regards to some societal issues or ideological leanings leading to that specific group of the population always voting a certain way. A small number of voters may create change for better or worse and here appears the tricky question, what is beneficial and what is detrimental to the majority of the population in the long run?

In order for a party to maintain the small but extremely faithful voting bloc any political organisation must compromise and maintain certain ideals that may ultimately be detrimental in the long term for the majority[3]. As soon as a politician reaches the objective of

[1] https://www.archives.gov/milestone-documents/marshall-plan .Through the Economic Recovery Act of 1948 as signed by President Truman the United States has offered some European countries financial aid approximating 13 billion dollars in a period of 4 years in the form of capital and materials in order to rebuild a destroyed continent.

2 http://kolibri.teacherinabox.org.au/modules/en-boundless/www.boundless.com/definition/voting-bloc/index.html .

[3] http://america.aljazeera.com/opinions/2014/9/tax-cuts-economicsreaganbush.html .There is a mythology linked to the beneficial influence of tax cuts on the economy when in reality there is only a short-term benefit for the private sector since most tax cuts can be linked to less spending on the side of the governmental institutions but are generally covered by acquiring debt meaning that in the long term, inevitably, it will hurt the

institutional power in order to maintain it they must "feed" their electorate and financial backers in some form, mainly through legislation that was promised in the campaigning phase.

Now we can see a clear causality link between the will of the few and the ones that hold power in the name of all. The only aspect left to be discussed is regarding personal beliefs, this article is not intended in taking sides in political games but its purpose is to show that unpopular or damaging laws can be passed and enacted upon in the name of holding political power or due to the lack of trust in the voting system allowing monstrosities to occur.

2. The decision in the case of Dobbs v. Jackson Women's Health Organisation

2.1. The case itself:

In the decision of the case Dobbs v. Jackson[4] the original ruling in Roe v. Wade[5] by which abortion was considered legal and should be allowed up to 22 weeks[6] and at all stages in the case of rape, incest or a threat brought to the mother is overthrown. The case was decided 6-3 and triggered anti-abortion legislation adopted by state legislatures during the presidency of Donald J. Trump[7]in 13 states at the same moment[8] creating mass outrage[9] and a

economy. Both Democrat and Conservative leaderships have engaged in various tax cuts for the private sectors and backing it up with private borrowed capital resulting in cracks slowly evolving to right out holes in the current economy. Such tax cuts passed by presidents George W. Bush in 2001 and Donald J. Trump in 2017 ultimately have led to insufficient funding going into the public sector resulting in the need for the Infrastructure Bill passed in 2022 by president Joseph Biden that again backs public sector investment through debt and not tax code modifications. The Infrastructure Bill is needed to fix elements of the American infrastructure that were left in poor condition or not finalised (the lack of high-speed internet, the erosion of bridges and roads, the lack of public transport) exactly due to insufficient funds. Even if low taxes were a good political instrument for most politicians to hold onto power and it isn't the sole cause of poor public infrastructure it can now be seen that for a short-term political gain a problem influencing a vast majority appears and it's directly corelated to policy and political interest.

[4] In this particular case Jackson Women's Health Organisation (the only clinic providing abortions in the state of Mississippi) was trying to fight the Mississippi's Gestational Age Act of 2018 by which the state imposed a 15 week term on all abortions with the exception of severe fetal abnormalities. This law went directly against the constitutional right to privacy as protected in the case of Roe v. Wade.

[5]Roe v. Wade is a Supreme Court case ruled in January 22, 1973 in a 7-2 decision by which the idea of restricting abortion rights is unconstitutional. The case establishes that by outlawing abortion the state of Texas is infringing upon the implied right to privacy, in the specific case the right of a woman to have body autonomy and due process.

[6] Thespecific term for an abortion to be legal varies state by state but it has to keep to the standards as set by Planned Parenthood v. Cassey by which the standard of "undue burden" was imposed, by this standards states can have specific conditions in regards to all aspects of the abortion process as long as it doesn't cause any undue burden.

[7] https://www.npr.org/2022/06/24/1107531644/trigger-laws-have-been-taking-effect-now-that-roe-v-wade-has-been-overturned. Many states had either laws before Roe v. Wade or have adopted them after the victory of Donald Trump in the presidency run or right after the decision in Dobbs. One such bill is Senate Bill 1178 in the state of Indiana by which all drugs or contraception methods are banned if they have the purpose to aid or provoke an abortion.

[8] https://www.guttmacher.org/article/2022/06/13-states-have-abortion-trigger-bans-heres-what-happens-when-roe-overturned . Trigger laws were individually adopted by different states aiming at limiting or outright banning abortions that were unconstitutional with the purpose of being enforced as soon as any legislative or judicial body would permit it to happen.

[9]https://www.bbc.com/news/world-us-canada-62109971 . Before the actual opinion was made public people have started protesting the leaked decision all over the USA protests erupted against the decision, protesters cited the right to bodily autonomy, the right of women to choose when to start a family and even people who would ideologically opposed to abortions marched in solidarity invoking the right to freedom.

plethora of medical problems for women all over the United States[10]. The case itself was justified in the majority opinion with quite a few "inventive" arguments.

Justice Alito was tasked with writing the majority opinion and presented the following questions: does the constitution offer the right to an abortion when "properly interpreted"[11]? The second question at hand was if the idea of abortion is a long-rooted concept in American history[12]?

Not only did the majority opinion consider that the constitution does not confer the right to abortion but it also disconfirmed the idea of abortion being an issue corelated to the gender of the affected parties avoiding the heightened scrutiny in regards to discrimination[13].

The majority of the Supreme Court argues that the right to abortion cannot be considered a substantive right[14] and so it is not protected at a federal level by the Constitution and that for the longest time abortion was considered a crime by many states, further it is considered by the majority to not be deeply rooted in tradition[15]

Justice Alito proceeds to present his argument by saying that until the 20th century the debate of abortion previously called "complicated" in the same ruling was non-existent since in the 18th approximately ¾ of the states banned abortion entirely.

Furthermore he invokes the failure of common law to consider abortion a crime resulting in the state-based legislation, he cites the wisdom of the English jurist Lord Hale[16] in his endeavour to reason his argument.

One more significant statement coming from the majority opinion is that women do not plan their life around the right to have an abortion and as such it is not of vital significance for the majority of people[17].

Another notable concept brought up in the case is the one made by Justice Thomas, in his argument he proposed the "necessity" of the court to analyse the protection extended by the due process clause furtherly. He points out that rights such as same sex marriage[18], the right to contraception[19]or the right to engage in consensual sexual acts outside the purpose of reproduction[20] should be revised in order to "correct past errors"[21]

2.2. The minority dissenting opinion and a counterargument to the majority decision:

[10] https://www.theguardian.com/commentisfree/2022/jul/16/rightwing-rape-abortion-10-year-old-worse. One of the worst situations of this kind was the situation of a 10-year-old girl in the state of Ohio which couldn't get an abortion after she was left pregnant by a 27-year-old. Local politicians belonging to the Republican party that are directly responsible for instating a trigger law in the state of Ohio even denied the validity of the story calling it "a hoax".

[11] Dobbs v. Jackson, paragraph (1).

[12] Dobbs v. Jackson, paragraph (2).

[13] The Constitution of The United States, more precisely, The Fourteenth Amendment and Title Nine provide equal rights between women and men.

[14] In the case of Dobbs Justice Alito has stated the used definition of substantive rights being only the first 8 amendments of the US constitution and what it protects directly.

[15] Dobbs v. Jackson, paragraph 2, page 2: "In deciding whether a right falls into either of these categories, the question is whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to this Nation's "scheme of ordered liberty".

[16] https://lawprofessors.typepad.com/gender_law/2022/05/relying-on-the-precedent-of-witch-trials-in-the-draft-dobbs-abortion-opinion.html. Lord Hale was infamous for putting on trial and killing women for witchcraft and found legal exceptions to not prosecute men practicing marital rape.

[17]Dobbs v. Jackson, majority opinion, page 64.

[18] The right of homosexual couples was established by the case of Obergefell v. Hodges in 2015.

[19] The right for couples that are not married to use contraception was won in the SCOTUS case of Eisenstadt v. Baird in 1972.

[20] SCOTUS found in 2003 the laws against sodomy enforced by the state of Texas to be unconstitutional in the case of Lawrence v. Texas.

[21] Concurring opinion in the case of Dobbs v. Jackson written by Justice Thomas, page 3, paragraph 5.

The minority opinion can be briefly resumed to a simple idea that attacks the omission presented by the majority. Realistically the only people who have the ability to become pregnant are women and transgender men to a lesser degree, the well thought slide of hand executed by the majority exempts the court from the scrutiny of Title 9 of the constitution[22]. By removing a federal right to safe abortion as ratified in Roe v. Wade the Supreme Court is technically infringing on the rights of a protected group hence such a decision should not be based purely on the concepts used in the majority decision.

As for the concepts used in the logical process of overturning Roe v. Wade is ultimately shaky and not solid enough ground to turn the tables in such a drastic way.

In regards to the historical argument even though there is some truth to the statement it is still fundamentally inaccurate. Even before the colonisation and the "manifestation of destiny" by the United States as for the longest part of history woman's business was left up to the women themselves without the intrusion of any other party[23], if an indigenous woman wished to have an abortion a religious ceremony and appropriate herbal remedies would pe prepared.

Furthermore, Benjamin Franklin, one of the founding fathers of America has given a recipe for an herbal solution to have an abortion inside of what would be considered today a math textbook[24].

Even though abortion was illegal in most states at the time the 14th amendment there is a notable error to the history[25] presented by the majority, mainly that until the year 1873 when the Comstock act was passed into law making abortion and contraception illegal as they were considered obscene and immoral endeavours[26]. The man whom the law took its name from even arrested feminist writer Ezra Heywood who in his article named "Cupid's Yoke" declared that all people should be free to exercise their own sexual liberty[27].

The point made by the majority in regards to women planning their lives with the freedom to have an abortion is easily disprovable using statistics. A vast majority of the women that had an abortion in the year 2019 were mothers of one, two or three children[28]. By this metric we can presume that the freedom of a woman to have an abortion is important in

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[22] "No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

[23] https://indiancountrytoday.com/news/supreme-court-could-halt-access-to-safe-abortions-indigenous-activists-say. Historically indigenous women were not allowed the right to have reproductive freedom, indigenous Americans did have herbal remedies in order to practice safe abortions, after the colonialization of America by European nations and the expansion of American settlers many indigenous women were forcefully sterilised or denied the right to abortion, such issues still have cultural and real-life influence upon the few native Americans still living.

[24] https://slate.com/news-and-politics/2022/05/ben-franklin-american-instructor-textbook-abortion-recipe.html. In order to educate young and old immigrants to start a new life in America Benjamin Franklin has modified a book written by George Fisher named, *The Instructor: or Young Man's Best Companion* which fundamentally was a manual intended to teach people who might have been illiterate or lacking in the absolute basics of mathematics but Benjamin Franklin added some ulterior information regarding wildlife, plants and even a recipe for an abortion derived from the book *The Poor Planter's Physician* written by Doctor Tennent. This choice was intentional as other basic algebra and reading textbooks came from England and had such remedies and plant-based solutions for many illnesses and even for abortions but they were mainly focused on the plant life native to Europe.

[25] https://www.wgbh.org/news/national-news/2022/05/24/a-legal-history-of-abortion-in-the-us-before-and-after-roe-v-wade.

[26] https://www.mtsu.edu/first-amendment/article/1038/comstock-act-of-1873.

[27] E. H. Heywood *Cupid's Yoke or The Binding Forces of Conjugal Life*, page 17, Princeton, Massachusetts Co-Operative Publishing, 1879.

[28] https://www.pewresearch.org/fact-tank/2022/06/24/what-the-data-says-about-abortion-in-the-u-s-2/. According to the Pew Research Centre only 25% of the women who had abortions are without children.

the life decisions of a mother that already has children and maybe does not wish to have more or she doesn't have the material means to grow another child.

The last opinion that must be argued against is the one emitted by Justice Thomas who argued that all the previous cases which extended the written ideas of the constitution have to be rethought and overthrown. In his concurring opinion he argues that the 14th amendment was poorly used by precedent courts hence leading to bad precedent and a "false" right to privacy. The reasonable question is what are those bad precedents?

The latest case that was decided on the basis of the right to privacy was the case of Obergefell v. Hodges; in that specific case the Supreme Court decided that person of the same sex have the right to have their marriages recognized as valid by all states resulting in the legalisation of same sex marriages.

Another highly important case based on Lawrence v. The State of Texas[29], the crucks of the case are the illegality of consensual sexual acts between consenting adults without the purpose of reproduction, in reality such a law would forbid people and unmarried couples to have any intimate relation. The Supreme Court ruled that such a law would be infringing on the personal liberties of individuals. The decision in this case forbid states from enforcing the so called "sodomy laws".

If we are to go even further in the past we can observe that the current American ethos of accepting diversity and multiculturalism is derived from the inferred right to privacy.

In the case of Brown v. Board of Education[30] the public-school system was banned from segregating public schools as it is a violation of the constitutional right to equality, the aforementioned case of Eisenstadt v. Baird the right to contraception for unmarried couples was established as a protected constitutional right, and in a bizarre turn of faith the case of Loving v. Virginia[31] which allow interracial couples to marry, the oddity appears in the fact that Justice Thomas is married himself to a white woman[32].

The whole idea of the right to privacy is predicated on the work of jurists Warren and Brandies in the year 1890 in the seminal article *The Right to Privacy*[33]. In this article the authors argued that with the social and economical shifts new rights are bound to be born, the example used is bodily harm, through the evolution of humanity the idea of killing a human became more and more frowned upon until we got to the present where even the intention to inflict bodily harm is punished by the criminal legal system. For a civil law idea, they also bring up the concept of private ownership not only of physical goods but also of ideas and art through copyright. By this metric the writers saw fit to extrapolate a right to privacy from various constitutional articles. By the right to privacy the authors refer to the right to express one's self through all means available to him and to be ultimately left alone to do so by others that are not harmed by such actions of expression.

3. The missing link:

Now, we have established the link between passing legislation and tiny voter groups forcing parties into creating harmful policy and we have analysed the way that the Supreme Court has ultimately stiped women of their choice to carry a pregnancy or not in approximatively 13 US states. These two facts function separately as an argued truth yet there

[29] Lawrence v. Texas, 539 U.S. 558 (2003).
[30] Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).
[31] Loving v. Virginia, 388 U.S. 1 (1967).
[32] This is not intended as an *ad hominem* attack against Justice Thomas but it's undeniably hypocritical for a person that benefitted from the right to privacy to manifest their love without restrictions towards another human when they also wish to take such freedom from other people.
[33] http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html. 1890, Harvard Law Review Volume IV December 1890.

is a missing link between the judiciary and people being sworn in office through the democratic process of voting. The missing link is the method by which Supreme Court Justices are chosen for the role they occupy.

In America the Supreme Court justices are chosen by the president of the USA and voted by simple majority by the senate[34]. Such a procedure already opens up the sacred division of executive, legislative and judiciary to possible political interference in the judiciary system. The 2 main issues that have historical precedent are the following: naming a judge that will inevitably do partisan politics either for the republican or democrat side or a game of chicken between the senate and the presidency to see who will fall first when a new judge must be named.

The first situation happened during the presidency of President Donald J. Trump[35], he appointed 3 judges individually holding conservative views, namely: Justice Neil Gorsuch in 2017 replacing Justice Antonin Scalia[36], Justice Brett Kavanaugh[37] in 2018 replacing Justice Anthony Kennedy and Amy Coney Barrett[38] in 2020 replacing Justice Ruth Bader Ginsburg. In all 3 cases the judges appointed showed a strong conservative leaning making the Supreme Court a super majority of 6 to 3 that will take decisions politically biased towards the republican electorate. The clarity of such a bias is seen in 2 cases, the aforementioned Dobbs v. Jackson being ruled in such a manner that it almost dissolves the long-standing concept of a right to privacy in order to leave such issues up to the state legislature.

Only a week after the ruling the case of New York State Rifle & Pistol Association, Inc. v. Bruen[39] was decided based on the idea of a right to privacy leading into dissolving the right of individual states to regulate the freedom to bare arms as given by the second amendment of the Constitution. Further-more, in the case of Bruen in a concurrent opinion Justice Alito has stated that the effect of guns on the American society is not a relevant parameter in the analysis of such an issue. The logical question to be presented is this: why is a practice such as abortion that was present since before the colonial invasion of America is not considered an essential right with historical standing when the open carry of guns which came with the colonial settlers and was limited outside the fighting of wars on the continent[40] is now given more protection.

Statistically, gun owners are more prone to voting conservative presidents[41], a vast majority of the currently conservative leaning Supreme Court Justices was voted in by a conservative president hence the party loyalty remains unbroken and ends up influencing the decisions of the most important part of the judicial system in the United States.

The second situation caused by the process by which Supreme Court Justices are chosen is the political friction between the President and the Senate. This happened to president Barak Obama, at the end of his presidency Justice Antonin Scalia has died and

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[34] https://www.supremecourt.gov/about/faq_general.aspx.

[35] https://abcnews.go.com/Politics/trump-appointed-supreme-court-justices-previously-roes-precedent/story?id=84470384.

[36] https://www.oyez.org/justices/neil_gorsuch.

[37] https://www.afj.org/document/supreme-court-nominee-report-first-look-brett-kavanaugh/.

[38] https://www.afj.org/nominee/amy-coney-barrett/.

[39] https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf. In this specific case appellants Robert Nash and Brandon Koch have sued the state of New York for the longstanding legislation which specifies that only people who prove that they have a serious motive in order to publicly carry a fire weapon in public that is legally owned.

[40] The second amendment allows al people of the united states to bear arms as part of a well organised militia for the purpose of protecting the country, it does not specify the freedom of individuals to carry weapons in public outside of a militia.

[41] https://sites.uci.edu/energyobserver/2018/02/18/its-not-the-nra-money-its-the-gun-voting-block/. President Donald J. Trump has gained the vote of 61% of all gun owning citizens across the US.

senate leader Mitch McConnellstated that he will not accept any nomination in regards to a replacement for the open seat in the Supreme Court[42] leaving the duty of nominating a new Justice to president Donald J. Trump ensuring a conservative majority for the next few decades[43].

4. The political and legal outcome of the Dobbs decision:

4.1.The legal outcome:

In legal sense quiet, a few happenings have derived from the decision. Most prominently, 13 of the 51 states of the USA have instantly banned the right to abortion resulting in women's health clinics[44] being shut down and creating personal tragedies for families all around the US[45].

In a more light-hearted twist of faith Representative John Bartlett of the state legislature in Indiana proposed a bill by which erectile disfunction medication is to be banned stating that "if a pregnancy is an act of God so is impotence"[46]. In more serious terms he did bring up the fair point of the need for 2 people for a pregnancy to happen and as such the yoke of keeping the child and raising it shouldn't be square on the part of the woman.

In the state of Georgia, the lower courts have been fighting the 6-week abortion requirement in order to allow the citizens of the state to have the right to a safe abortion for 22 weeks, the previously enforced term.

At federal level the United States Senate has passed the Marriage Equality act by which they enshrine the right of same-sex and mixed-race couples to marry, this act can be directly linked to the concurring decision of Justice Thomas questioning the constitutional protection of many previously secure rights.

4.2. The political effects of the decision:

And so, what has the republican side of American politics gained through fulfilling the wishes of a minority of the population? Statistically they have secured an approximate 8% of the US population[47]

On a political level we can observe an anomaly in regards to the US elections that recently transpired. In the last midterm election, the Republican party was set to enact what was called a "red wave"[48], a devouring of the congress whole, both in the Senate and the House of Representatives. The reality was that the Republican party has won a small majority in the House of Representatives and has lost the Senate to the Democratic part. One of the main issues that has influenced the voting patterns of the electorate was the right to have an abortion. Generally, in any 2-party system the pendulum swings with every voting year and yet such an anomalous event is quite rare.

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[42] https://www.npr.org/2018/06/29/624467256/what-happened-with-merrick-garland-in-2016-and-why-it-matters-now.

[43] https://www.supremecourt.gov/about/faq_general.aspx. A Supreme Court Justice has a life long term as they can only be replaced if they die or retire voluntarily.

[44] Jackson Women's Health Organization was the only clinic to offer abortions in the state of Mississippi, the systems ensuring easy access to abortion before the decision in Dobbs made it virtually impossible.

[45] https://www.personalpac.org/the-tragedy-of-illegal-abortion-gerri-santoros-lonesome-death/. The story of Gerry Santoro is a tragedy lived by many women before the institution of a right to privacy allowing them to divorce or to have an abortion, to illegally and unsafely try and stop a pregnancy resulting in her death. Previously the case of a 10-year-old girl in Ohio was mentioned. It is still too early to predict the impact of the current legal predicament in the life of individual people yet we can observe the history and hope it doesn't repeat at the same magnitude.

[46] https://www.scmp.com/news/world/article/3187973/midwestern-us-state-lawmaker-proposes-bill-outlaw-erectile-dysfunction.

[47] https://www.pewresearch.org/religion/2022/05/06/americas-abortion-quandary/.

[48] https://www.rutgers.edu/news/what-happened-red-wave.

5. *Conclusions:*

Even if the issue of abortion is extremely important this article has shown that the democratic process can be profoundly flawed and result in the tyranny of a few hurting the lives of many through political games that are well planned and executed. In the case of abortion, a whole country now has to fight to maintain the flame that is the right to have a private life all due to an 8% margin of the population that is vehemently against any type of abortion regardless of circumstances.

This bigger issue is not about the personal beliefs of any person in regards to the question of when life starts, it isn't about the religious belief of any human occupying our planet, it's and issue of false prophets chanting that the loss of freedom is caused by people exercising freedom, the freedom to love who they wish, the freedom to choose one's own faith and the request that people in power ensure that society does not collapse under the weight of economical and environmental disasters. America was considered since it's inception as the beacon of true freedom and excellence.

In the current climate Uncle Sam is fighting its own social ills that have to be supervised by all other nations that wish to not faulter in the face of rising neo-fascism and hatred artificially engineered by interest groups gnawing at soul of European and American society alike.

AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 66-72

DEBATE AS A PRACTICE OF ACTIVE CITIZENSHIP

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ABSTRACT

This contribution aims to analyse the spread of Debate as a learning methodology in various European and global contexts, also considering the different debate protocols existing. The study considers the following countries: Italy, England, Bulgaria, Estonia, Finland, France, Germany, Greece, Czech Republic, Slovenia and Romania. Each national debating society aims to spread the practice of regulated debate as an opportunity to promote dialogue and active citizenship. Fundamental is the development of the ability to assert one's own ideas in a democratic manner, listening and accepting to different ideas.

KEYWORDS: debate, active citizenship, Europe, dialogue, democracy

1 Introduction

The debate as the "art of knowing how to speak" was born with great Greek and Latin figures such as Plato, Aristotle, Cicero, Quintilian up to the Middle Ages in which there was the first use of the debate for educational purposes with teaching methods of the *lectio* and of the *disputatio* (Monaco, Casertano, Nuzzo, 1997; Conte, Pianezzola, 2010; Russo, 2021). The regulated debate as a teaching/learning method was born in England and its basic elements are cooperative learning and peer education; in fact, the aim is to work together to achieve goals that are common to all members of the group. The Debate is intended as a "gym for democracy" (De Conti, Giangrande, 2017, p.XIII) through which it is posible to develop not only curiosity in the learning environment, but also creative and divergent thinking; the Debate represents "a type of regulated dialogic interaction in which several interlocutors, divided into teams with incompatible points of view, try to make a jury adhere to their position by convincing or persuading it, through arguments, of preferability of their position" (De Conti, Giangrande, 2017, p.1). Recent studies (De Conti, Giangrande, 2017; Sanchez, 2018; Refrigeri, Russo, 2020; Cinganotto, Mosa, Panzavolta, 2021; Russo, 2021; Russo, 2022) have shown how much the Debate favors the development of transversal skills, useful in multiple areas and contexts of the individual's life, but, above all, for the achievement of lifelong learning. The regulated debate allows a tyoe of education whose center of gravity is represented by the student, therefore a tyoe of learner-centered, active and constructive learning, while the teacher acts exclusively as a mediator and facilitator in the costruction of knowledge. Charles Bonwell and James Eison (1991) affirm that a teaching technique focused on the figure of the students is vital thanks to the impact it has on their level of learning; it is precisely the students who favor a type of lesson in which to be an active part.

The Debate, therefore, becomes a reason for student to grow as thinking individuals (reflective and contextualized learning) and is "intedend as a real training that requires constancy and application so that the structure of the format […] and its argumentative logics are made transparent to leave room for the full protagonism of contents and arguments in a virtuous combination of form and substance" (Cinganotto, Mosa, Panzavolta, 2021). The

Debate, thanks to its particular didactic characteristics and the implications of transversal skills, has seen a great difusión in several countries, contexts and according to different debate formats.

2 THE DEBATE FORMATS

A Debate protocol, as De Conti states (2013, p.112), "is the set of objectives, rules and activities that structures, regulates and characterizes the debate itself, allowing a linear and complete development"; the various formats differ from each other according to structural and secondary characteristics, such as the number of team members, the time to devote to individual constructive interventions, the function of the interventions themselves, the time dedicated to the preparation of the arguments, the evaluation and underlying pedagogical objectives (De Conti, 2013). Furthermore, "according to the protocol […] the competences promoted in the students also vary: by modifying each of its characteristics it is possible to intervene on the skills that the students will have to focus and exercise" (De Conti, 2022, p.45). There is also a key element present in all debate protocols, characterized by fair-play, as there is a tendency to reward "compliance with the rules and severely sanction their infringement to promote an ethos of critical discussion […] considering the counterpart not an opponent to be defeated, […] but as a trusted partner in the collaborative search for a critical perspective on the world (Giangrande, 2019, p. 26-27).

Christopher Sanchez (2018) lists and describes all the actors involved in a Debate:

- debaters (also called speakers or players), the main protagonists, who must demonstrate to the jury their skills in the categories provided for in the evaluation of the debates;
- chairperson or timekeeper, moderators of the debates;
- judges, who are tasked with providing constructive feedback to debaters at the end of the debate. This represents the most formative aspect within a regulated debate, "providing the appropriate suggestions […] learning and develop the skills of self-control and self-regulation" (De Conti, 2015, p.35);
- coach, the figure who helps debaters in the construction of arguments.

2.1 *World Schools Debate*

The World Schools Debate (WSD) format originates from the World Schools Debate Championship, an international competition organized for the first time in 1988 in Australia and is currently the most widely used format internationally. The directives for the evaluation of the debates according to this format have only been indicated since 1995 (Giangrande, 2019). The typical motions of this protocol are mainly of a political, economic nature, relating to human rights; each team, alternately, can argue for a total of four interventions and the first three last 8 minutes, while the last, the repeat speech, lasts 4 minutes. Constructive interventions in the first and last minute are defined as "protected", as the opposing team cannot speak or ask questions (De Conti, Giangrande, 2017, p. 20-21). In unprotected minutes, however, the speakers of the opposite team can ask to ask a question, the point of information (POI). These questions are fundamental as they require active listening to all arguments by each debater (De Conti, Giangrande, 2018).

2.2 *Lincoln-Douglas*

It is a type of protocol associated mostly with philosophical issues and ethical values. Logical skills are set in motion and the organization is like a court, therefore, each team is made up of a single element and includes competitions in which the same issue is debated for several months, and each team must also be able to support position. opposite (Fine, 2011). At the basis of this format is the desire to increase the ability of debaters to understand and analyse human, critical and analytical thinking values (Giangrande, 2019).

2.3 *Patavina Libertas*

This protocol is typical of the University of Padua and its name comes from the motto of the University "*Universa Universis Patavina Libertas*". This format has the following pattern that must be followed by both teams: prologue, first argument, second argument, pause, reply, epilogue. For each team there are six participating students and 6 minutes for each constructive intervention.

2.4 *British Parliamentary Debate*

This format usually involves four teams of which each is composed of two elements. It debates on issues of a political, economic and international law nature. The protocol arises from the desire to imitate the discussion methods present in the House of Common.

2.5 *Karl Popper Format*

The Karl Popper protocol requires that the participants in the debate work in groups of three and look for both the pro and the contra sides of each motion. It focuses more attention on the educational aspect and pedagogical objectives, giving greater importance to the content and critical analysis of the motion rather than the style.

2.6 *Global Young G7*

The Global Young G7 is a type of format that provides for the simulation by a student group of the negotiation work of the G7 through the development of greater "global awareness", therefore awareness of the surrounding world and the dynamics that affect it. The peculiarity of the format is that it is inspired by the Model United Nations format, which consists of simulations of the sessions of the Parliament of the various United Nations bodies and provides for the participation of 3 children from each G7 member country who have a good knowledge of the English language. (Cinganotto, Mosa, Panzavolta, 2021).

3 WORLD AND EUROPEAN SCENARIOS

A few years after the collapse of the Soviet Union, in 1994 the Open Society Institute (now called The Open Society Foundations - OSF) launched its first online debate program. In 1999 the International Debate Education Association (IDEA http://idebate.org/) was founded in Amsterdam, with the aim of promoting mutual understanding and democracy globally, supporting dialogue and active citizenship and is currently made up of a network of members who are involved in the organization of debate events and tournaments for young people, with activities in over 50 languages and in more than 50 countries. Other offices were opened in 2001 in the United States and the United Kingdom (London), in 2012 in the Balkans (Skopje, Macedonia), in 2013 in Asia (Bishkek, Kyrgyzstan) and in 2014 in the Middle East and North Africa (Tunis, Tunisia). This is not the only association that aims to

spread the debate around the world; we also remember the Association for Global Debate (AGD http://www.agdebate.com/), the World Debate Institute in Vermont, the National Speech & Debate Association (NSDA http://www.speechanddebate.org/) founded in 1925 in the USA, initially called the National Forensic League, and the Lawrence Debate Association. Gradually, the regulated debate spread to many countries, such as Bulgaria, Latvia, Lithuania, Hungary, Malta, the Netherlands, Poland, Slovakia, Spain; today it is practiced above all in Asia with China, India, Singapore and Australia. In some it has become deeply rooted, with the development of associations designed precisely with the aim of bringing the population into contact with the world of debate.

3.1 *The origins of the debate in England*

England is the cradle of the Debate; there are many associations and organizations founded for the diffusion of the debate and above all it is the nation that has the longest relationship with these associations. We remember the English Speaking Union (ESU http://www.esu.org/) which was founded in 1918 by Sir Evelyn Wrench; it was immediately open to both men and women. In 1927, ESU bought Dartmouth House in the Mayfar district, which was inaugurated the following year by Stanley Baldwin, with the aim of using it as a club. In 1928, eleven British students left for the first time for America, offering them the opportunity to spend a year away from their country for study reasons. In 1945, the ESU pledged to further promote relations between the Commonwealth and the United States through the application of cultural exchanges, scholarships, educational articles and debates.

The first ESU office in Europe was founded in 1976 in Belgium and the following year the Charity Commission recognized it as an educational charity. The first Public Speaking competition took place in 1981 and saw the start of a competition between Australia, England and Wales. In 2004, the doors of the Debate Academy, the ESU summer school, were opened for the first time. Since 2019 all UK primary schools have been given the opportunity to take part in the Discover Debating program for free.

3.2 *Spread to other countries*

In Bulgaria there is a debate association called the Bulgarian Debate Association (BDA http://www.debate.bg/) founded in 2011 by representatives of the Technical University of Sofia to try to disseminate the debate within society starting from schools. It is a non-governmental organization that annually organizes training courses, tournaments and debate meetings. in recent years the BDA has been trying to unite debate clubs across the country with more than 5 members to achieve an increase in the development of hearing practice.

Since 1994, the Estonian Debating Society (http://debate.ee/en) has been founded in Estonia, a non-profit educational association which brings together students, teachers, debate coaches, trainers and volunteers. Most of the activities are carried out in either Estonian or Russian and the most widely used debate protocols are the Karl Popper Format and the British Parliamentary. There is a subdivision into three branches: youth organization for education, social training company for companies and public and private institutions, notice the argument with the aim of encouraging the improvement of the level of reasoning in all forms of social dialogue.

In Finland, Debate is widely used in the university context, thanks to the Finnish Debate Association (FINDA, http://debate.fi/), which was founded in 2015 by some debate companies belonging to different universities. Many teams from Finland have participated in international debate championships, such as the European University Debating Championships (EUDC) and the World University Debating Championship (WUDC); the

most widely used and practiced format is the British Parliamentary. FINDA organizes training courses with the aim of improving the argumentative ability of its citizens.

In 1993, a debate association was founded in France, the French Debate Association (FDA, http://frenchdebatingassociation.fr/); the rules of the association are related to the procedures of the House of Commons, therefore also here of English inspiration. The FDA organizes tournaments that involve teams consisting of at least one manager and no more than eight members per group. Each team has four days to prepare the arguments to be presented during the debate, while for the final of the tournaments the preparation time is 7 days. For the evaluation of the debates, the FDA provides five criteria: arguments (contents and research carried out, relevance), form (the presentation of the arguments, respect for times), teamwork (team spirit, collaboration, respect for roles), engagement (interaction between teams, quality of rebuttals), star quality (body language, facial expressions, gestures).

In Germany there is the Debating Society Germany e. V, one of the most active and well-structured debate associations at international level based in Stuttgart. It was founded in 1996 with the aim of carrying out debates on issues of a political, social, economic and ethical nature. The association coordinates the application of the regulated debate within schools, also dealing with the supply of materials and financing for the premises. The activities are carried out to achieve and develop methodical skills (research, speaking skills, improvement of self-esteem, communication skills) and intercultural skills (tolerance, free exchange of views, diplomacy).

In Greece there is the Debating Society o0f Greece which is made up of a group of debate coaches with the aim of providing appropriate training to students in universities, schools and community centers. It was born with the idea of wanting to contribute to creating a culture based on dialogue in a historical moment in which the economic crisis and its consequences have led to a split in the social fabric and an increase in violent demonstrations within the nation. The association supports university debate clubs by providing useful educational materials, organizing tournaments and workshops.

The Asociaci debatnìch klubů (ADK, http://debatovani.cz/web/) is the organization that aims to disseminate the debate in the Czech Republic; it is often used to improve French, Russian, German and Spanish students. Some debate tournaments are also organized for primary schools, for children with special needs and for secondary schools and universities. The Open Society Fund Prague introduced the Karl Popper protocol in 1995 and managed and financed the program until 1999, when the ADK was born.

The Za in proti association was founded in Slovenia (ZIP, http://www.zainproti.com/web/); it is a non-governmental non-profit and deals with the promotion and development of debate in primary, secondary and universities. It was founded in 1998 from a debate program initiated in 1996 by the then Open Society Institute. Today it brings together over 50 clubs operating across all grades of school and around 1000 students are actively involved each year. The association aims to increase the level of cultural dialogue in the country by involving young people in this activity, with the aim of achieving a better world and society.

3.3 *The Debate in Italy*

In Italy, too, great strides have been made in recent years in the desire to spread and adopt the Debate as a teaching methodology. It all started in 2008 from meeting young debaters in an international forum organized in Busto Arsizio (De Conti, Giangrande, 2017). The following year the ITE Enrico Tosi planned an experimentation of application of the regulated debate also within the Italian panorama, with the help and collaboration of the Trafalgar School of Montreal and in 2012 of the Padma Seshadri Bhavan Senior Secondary School of Chennai (India). The initial project met with great success and great adhesion and

in 2013 the WeDebate Lombardia network was born and the Enrico Tosi school held the reins. The Network is supported by the *Giuseppe Merlini Cultura Formazione e Innovazione* Foundation, which has as its mission the desire to promote culture among young people, with an eye to the world of education. L'INDIRE (National Institute for Documentation, Innovation, Educational Research), the oldest research center of the MIUR, headquartered in Florence, together with the *Avanguardie Educative* movement, aimed at analysing and observing the most significant experiences of transformation of the system scholastic, has initiated manoeuvres to disseminate this methodology throughout the peninsula. For some years now the Provincial Institute for Educational Research and Experimentation (IPRASE) of Trento, in collaboration with the Faculty of Law of the University of Trento, the Municipality of Rovereto and the SFI Trentino-Alto Adige, have started a project from name "To the sound of words", which provides, in line with the idea of the regulated debate, tournaments based on the ability to create valid arguments on topics of a social and civic nature. The debates are held not only in Italian, but also in English and German.

3.4 *Debate associations in Romania*

Asociația Română de Dezbateri Oratorie și Retorică (ARDOR, http://ardor.org.ro/) is the Romanian association founded in 1998 to promote debates as an educational tool for high school students. It is organized in a network of 100 discussion clubs, which are coordinated by six member federations: ARDOR Muntenia, ANED, Asociația Clubutilor de Dezbateri din Vest, AES, ACORD, ARGO Debate. The action plan provides for the accessibility of education programs to regulated debate for all students who want to take part, also because this practice manages to promote education for democracy, which is neglected or treated only privately in the Romanian education system.Turneul Campionilor în Dezbateri takes place every year in Bucharest, a competition that includes a debate tournament between the best Romanian debaters. The "Debate Education Network 2.0" project was launched in 2018, moving in three directions: increasing the quality of debates in Romania, increasing the financial sustainability of the association, maintaining relations with the Ministry of Education and school inspectors , improve the productivity of the ARDOR network.

4 Conclusions

The regulated debate finds wide acceptance in several cultural and political contexts, as it is considered at an educational and didactic level one of the fundamental tools for the development of democracy and critical thinking. It is also used on a large scale for the teaching of civic education, precisely because of its flexible and transversal characteristics. Following the study of the reference literature and the various formats and associations of debate existing on the European and global territory, it is necessary that the existing protocols adapt to the needs of the reference class group. It is possible to create a mixture of multiple formats and multiple ways of using the debate, always keeping the fundamental characteristics of a good debate firmly in place: active listening, the ability to analyse and the active construction of one's knowledge. A solution was identified by De Conti (2022) in the modular conception of the protocol through which "the teacher re-appropriates his design and creative nature as he is free to design, in full autonomy, the format through which to carry out the teaching", providing a greater flexibility according to the needs of users who are involved in a debate.

Acknowledgments.

This work is supported by Agora University from project POSDRU/161/2.1/G/137526.

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AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 73-79

THE IMPACT OF ANTI-COMPETITIVE CARTEL AGREEMENTS ON CONSUMERS AND THE ECONOMY IN GENERAL

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ABSTRACT

Cartels, the most harmful type of anticompetitive behavior, lead to high prices, lower quantities, and lower variety and innovation with a clear welfare loss. Moreover, they do not offer any economic or social benefit to justify the losses they generate, through their actions they can limit or eliminate part of the competition either on a global, European or national level, for this reason being condemned in all legislation of competition.

Keywords: competition, anti-competitive agreements, secret agreements, cartel, leniency, competitive environment;

INTRODUCTION

Considering the need to create a competitive environment, the Constitution stipulates that Romania's economy is a market economy, based on free initiative and competition. [1] Some authors[2] claim that "the most important regulatory force of the market economy is competition", representing the engine of operation and the energy of the development of economic activity.

In the legal sense, by competition we understand the confrontation between economic agents with similar or similar activities, exercised in the fields open to the market for winning and preserving clientele, in order to make their own company profitable[3].

From an economic point of view, we can say that there is competition if the consumer can choose between several alternatives and can thus choose the one most favorable to his preferences[4].

Between companies that produce the same goods or offer the same services, there is a permanent struggle to attract customers for the goods and services offered on the market.[5]

In a free market, business is a game where competitors compete, but sometimes businesses can be tempted to avoid this competition and try to set their own rules of the game. Sometimes a large player may try to eliminate its competitors from the market. The European Commission acts as a referee to ensure that all businesses play by the same rules.

[1] I. Didea, *Dreptul european al concurenței*, Editura Universul Juridic, București, 2009, p. 5;
[2] T. Moșteanu, *Concurența – abordări teoretice și practice*, Ed. Economică, București, 2000, p. 13;
[3] O. Căpâțână, Dreptul concurenței comerciale (concurența onestă), Ed. Lumina Lex, București, 1992, p. 86, I. Băcanu, „Libera concurență în perioada de tranziție spre economia de piață", în Dreptul, nr.9-12. P. 50;
[4] T. Moșteanu, Concurența – abordări teoretice și practice, Ed. Economică, București, 2000, p. 31;
[5] S.D. Cărpenaru, *Drept comercial rom*ân, Ediția a VII-a, revăzută și adăugită, Ed. Universul Juridic, București, 2007, p. 112;

If certain agreements, understandings between enterprises can have beneficial effects on the market, others can negatively influence the competitive process. In fact, reference is made to those anti-competitive practices known as cartels.[6]

Cartels are recognized as the most harmful type of anti-competitive behavior. The protection, maintenance and stimulation of competition and a normal competitive environment is ensured both by domestic legislation[7] as well as through European legislation[8], prohibiting any agreements between enterprises, decisions of enterprise associations and concerted practices, which have as their object or have the effect of preventing, restricting or distorting competition.

With few exceptions, by way of derogation from this rule, para. (3) of art. 101 of the TFEU provides that "the prohibition mentioned in par. (1) may be declared inapplicable for all agreements that contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress, at the same time ensuring consumers a fair share of the benefit obtained, and that do not impose on the companies in question restrictions that are not indispensable for achieving these objectives and does not offer companies the opportunity to eliminate competition on a significant part of the market of the products in question".

The Competition Council represents the national administrative authority in the field of competition that aims to comply with the legislation in the field of competition, and in case they are violated, the sanctions provided for by law will be applied, thus exercising the coercive force of the state[9].

The activity of the Competition Council is carried out on two components: a preventive one, for monitoring and supervising the markets, and a corrective one, for sanctioning deviations from normal competitive behavior[10].

In order to discover and stop these anti-competitive practices, the Competition Council launched the leniency policy[11]- a favorable treatment granted by the Competition Council, according to which the economic agents involved in cartels, who decide to put an end to these illegal practices and provide essential evidence, can benefit from immunity or a reduction of the fine, in the event of the application of a sanction. Thus, companies involved in an anti-competitive practice (agreement or concerted practice), which cooperate with the competition authority in order to discover the respective practice, can benefit from the leniency policy.

The Competition Council applies a policy of leniency under which a participant in such an anti-competitive practice, independently of the other companies involved, cooperates in an investigation carried out by the Competition Council or with a view to its initiation of an investigation, providing voluntarily the information he has about the anti-competitive practice and his role in it and receiving in return immunity from fines or a reduction of the fines that would be imposed for his involvement in that anti-competitive practice.[12]

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[6] http://ec.europa.eu/competition/publications/consumer_ro.pdf

[7] art.5 paragraph (1) of the Competition Law no. 21/1996, republished, prohibits "any agreements between enterprises, decisions of enterprise associations and concerted practices, which have as their object or have the effect of preventing, restricting or distorting competition on the Romanian market or part of it."

[8] art. 101 of the Treaty on the Functioning of the European Union (TFEU) which stipulates in paragraph (1) that "any agreements between enterprises, any decisions of associations of enterprises and any concerted practices that may affect trade between member states and are prohibited are incompatible with the internal market which have as object or effect the prevention, restriction or distortion of competition within the common market."

[9] M. M. Dumitru, *Dreptul concurenței*, Ed. Institutul European Iași, Iași, 2011, p. 97;

[10] https://www.consiliulconcurentei.ro/despre-noi/descrierea-consiliului-concurentei/rolul/

[11] http://www.clementa.ro/politica-de-clementa/

[12] ORDIN nr. 642 din 15 iulie 2019 for the implementation of the Instructions on the conditions and criteria for

General considerations regarding the notion of cartel

Anti-competitive practices or anti-trust law traditionally designates two types of business behavior likely to harm competition: anti-competitive agreements and abuse of a dominant position.[13]

Both European Union regulations and national legislation prohibit anti-competitive agreements, aiming to create an undistorted competitive environment, in which objectives such as: economic progress, stimulation of entrepreneurship and efficiency, promotion of consumer interests, competitiveness of products and services, etc. are pursued.[14]

Considering the negative impact on consumers and the economy in general, the most serious forms of anti-competitive agreements that can affect the competitive environment to a greater extent are secret horizontal agreements, cartel-type, aimed at fixing prices, dividing markets, limiting production and distribution, allocation of customers and territories.[15]

According to the explanatory dictionary of the Romanian language, the cartel represents a monopolistic union in which several enterprises in the same branch of production conclude an agreement, establishing the prices, the conditions of sale and supply, the terms of payment, the quantity of goods to be produced by each and its divide markets in order to limit or eliminate competition.[16] Such monopolistic unions are prohibited both in Romania and in the European Union.

A cartel is a group of similar, independent businesses that join together to control prices, divide their market, and ultimately limit competition in that market. As a rule, cartels involve secret and at the same time illegal agreements between members, so that the profit is maximum. Participants in a cartel can rely on their market share established by virtue of their understanding with others and do not need to offer new products or quality services at competitive prices. As a result, consumers end up paying more for poorer quality, ultimately being the most affected by this type of deal.[17]

According to the Organization for Economic Co-operation and Development (OECD), a cartel is "an anti-competitive agreement, a concerted anti-competitive practice between competitors to fix prices, manipulate tenders, establish restrictions on production or share market shares or geographic markets by allocating customers, suppliers, territories or business types"[18]. This definition is given, more specifically, to a "hardcore" type cartel agreement (eng. "hardcore cartel"), respectively to those forms of cartel that are perceived to determine the most anti-competitive effects.

A company's choice to participate in a cartel has strong strategic implications. Thus, although it represents a "distorting" form of strategy - in the sense that the objective of a cartel is the exact opposite of what the company's strategy should aim at - cartels remain a form of cooperation of a strategic nature, which has effects on the company's competitive position on market.

To identify cartel participants, investigators consider the following factors [19]:

- the most important competitors on the respective market;
- the goods or services concerned;

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the application of the leniency policy, published in MONITORUL OFICIAL nr. 631 din 30 iulie 2019

[13] G. Coman, *Concurența în dreptul intern și european*, Editura Hamangiu, București, 2011, p. 173;

[14] L. Maierean, *Dreptul concurenței comerciale*. Curs universitar, Ed. Cermaprint, București, 2009, p.21;

[15] R.D. Vidican, *The importance of analyzing the main anti-competitive practices in view of creating an undistorted competitive environment*, AGORA International Journal of Juridical Sciences, No. 1 (2022), *p.70;*

[16] http://dexonline.ro/definitie/cartel

[17] Politica UE în domeniul concurenței și consumatorul, Ghid european, Direcția Generală pentru Concurență a Comisiei Europene

[18] http://www.oecd.org/daf/competition/98765440.pdf

[19] International Competition Network, *Anti-Cartel Enforcement Manual. Chapter 5 – Investigative strategy*, p. 7, www.internationalcompetitionnetwork.org .

- the degree of consumer dependence on the products or services of the companies that form the cartel;

- the price formation mechanism.

The European Commission believes that it must be very strict with cartels, especially after the introduction of the single currency, because the positive effects of the economic and monetary union - the increase in price transparency within the Union and, consequently, the intensification of competition for the benefit of users, not to be removed by agreements between enterprises. They will be tempted to avoid confrontation on the market by artificially setting the level of the selling price or other commercial conditions, which may lead in the long term to the undermining of the economic and monetary union. Neelie Kroes emphasized in this sense that "cartel-type behavior is illegal, unjustified and unfair, regardless of its size, the nature or the purpose of the affected business"[20].

In conclusion, the cartel represents a cooperation for obtaining higher profits and for decreasing the degree of business risk. The gains can be huge as we saw in the 1970s when the Organization of the Petroleum Exporting Countries (OPEC) cut production, raising the price of oil, which led to the creation of enormous wealth in the oil exporting countries.

Analysis of cartel agreements

Due to the couple of low quantities/excessive prices with which they operate, the cartels represent the greatest danger, being considered to directly harm the buyers. They also have an indirect destructive effect, in the sense that, by reducing competition, the efficiency of the participants decreases, which becomes the premise of price increases above the level of real competition.

Both theory and practice show that a cartel is an unstable form of cooperation. If a cartel is profitable in the long run for all its members, then they merge into one large enterprise. The cartel thus disappears in this merger. However, if for one or more members the joint action does not prove too profitable, an independent action will, in most cases, destroy the cartel. It is possible that one of the companies forming the cartel, due to its independence, may want to receive a higher production share. The other companies will oppose this request. In this sense, Professor L. Benham affirmed[21]: "the companies that produced a relatively important part of the production quantity in the past will demand the same part in the future. Expanding businesses (due to more effective management, for example) will demand a larger share than they have obtained in the past."

George Stigler suggested that although oligopolists want to maximize joint profits through their union, asymmetric information creates the opportunity to betray the agreement.

If the cartel brings in unusual monopoly profits, firms and producers outside the branch will enter this area of production to benefit from these profits. And if a major competitor emerges and challenges the cartel, it may disappear. It should not be forgotten that the formation of a cartel is prohibited by law in most countries.

The impact of cartel agreements

Evenett, citing several sources, estimates that, on average, the existence of a cartel increases prices by about 20-40% compared to prices in the case of a competitive situation[22].

[20] Neelie Kroes, membră a Comisiei Europene, însărcinată cu politica de concurenţă, The First Hundred Days, comunicare susţinută cu ocazia „Forumului Internaţional privind legislaţia europeană de concurenţă”,Bruxelles, 7 aprilie 2005

[21] L. Benham, Economics, Ed. Pitman Publishing Co, New York, 1941, pg. 232;

[22] Evenett, Simon J. – 'Can Developing Economies Benefit from WTO Negociations on Binding Disciplines for Hard Core Cartels' ,Aussen, June 2003, 58, 2.

In the case of the cartel on the citric acid market, the former EU competition commissioner, Mario Monti, estimated that the price increase was 50%.

This increase in prices, however, makes that market more attractive for producers who are not members of the cartel ("outsiders"). Thus, a "successful" cartel makes the sector more attractive, which attracts other producers - usually foreign - to the respective market (the so-called "price umbrella" effect, created by a cartel-type agreement). Thus, the hypothesis is confirmed that a cartel can only be effective in the medium and long term as a result of the existence of barriers to the entry of new competitors on the respective market.

The main criteria by which the cartels allocated market shares to their members are:

- past market shares. Thus, the cartel is "a picture" of the competitive situation at a given moment on a market. From this point of view, any development on the market that causes a change in competitive conditions (dynamic factor) acts to increase the cartel's instability to the extent that some members of the cartel will consider that the new situation in the sector entitles them to a market share / higher production.

- production capacity from the moment the cartel agreement was concluded. This criterion creates low motivations for the subsequent profitability of the cartel members' activity (which can possibly be achieved by reducing the production capacity in the case of an oversupplied market) and even motivates the cartel member producers to make investments in expanding their production capacity, although this does not it is argued by the reality of the market.

Producers, to the extent that the only criterion on the basis of which market shares are allocated to them is physical production capacity, will do everything to expand this capacity, regardless of whether it is explainable from an economic point of view. Thus, the companies within a cartel become less dependent on consumers/customers for their activity as they become dependent on their bargaining power within the cartel.

Cartels can have other negative economic effects besides the misallocation of resources (effects on economic efficiency): a cartel shields its members from exposure to market forces, resulting in reduced pressure on cost control and innovation.

These effects on productive and dynamic efficiency are more difficult to measure and, as a result, the competition authorities must focus on the illegal profits obtained by cartel operators, which are easier to calculate.

There is another equally important reason for focusing the analysis on the cartel's gains, which relates to sanctions. Their purpose, in the context of cartels, is to prevent their appearance on the market. An optimal sanction should ensure that the operators of a possible cartel cannot expect to gain from it, as they would lose the profits they would have earned from the illegal behavior as a result of the sanctions.

But calculating the profit of a cartel is also difficult, and the simplest form of calculation can be approximated by multiplying the price increase resulting from the agreement in the form of a cartel with the amount of sales (in units) subject to the agreement (ie the trade affected). It is difficult to determine the competitive price or, in other words, the reference price for calculating the illegal price increase. A "benchmark" price can be used, determined by examining several markets where there is no collusion.

The impact of the cartels is very broad, but difficult to quantify. The data collected following an OECD study, regarding the magnitude of damage caused by cartels worldwide, allowed the following conclusion to be drawn: "the damage caused by cartels is much higher than originally thought, exceeding the equivalent of billions of dollars per year"[23].

[23] OCDE, Report on the nature and Impact of Hard Core cartels and Sanctions against Cartels under national Competition Law, pg. 5, disponibil pe internet la: http://www.oecd.org/dataoecd/16/20/2081831.pdf

Although it is very difficult to calculate the effects of a cartel, there are many reasons why it must be done, including the need to inform consumers and the competition authorities about the importance of implementing an aggressive program against this practice, the need to rehabilitate consumers who have suffered from following these effects and the application by governments of the necessary sanctions.

Conclusions

Current modernism emphasizes the explosive development of relations between enterprises, classified as cooperative relations. Thus, we are increasingly talking about strategic alliances, joint ventures or even cartels. If a few decades ago, the state was the one who initiated certain forms of economic cooperation, now we notice that businesses are the ones who initiate such agreements.

In the typology of competition restrictions, agreements between companies in the form of secret agreements constitute the most harmful form. These concerted practices often group together an important number of economic operators, within a sector of activity, and therefore have a very strong effect on the markets in question. The existence of a cartel denotes major managerial deficiencies that represent impediments to efficient, productive and profitable growth for the enterprise and the economy, it blurs the phenomenon of the emergence of new products, preventing the development of more efficient production processes. In addition, they almost always aim to fix sales prices leading to the prevention of competition.

The lack of competition caused by the existence of such cartels also causes a lack of interest on the part of the producers regarding the quality of the product on the market, the quality-price ratio being forgotten in the conditions of a profit ensured in the shadow of the cartel. Those who pay the prices of such cartels are the consumers who are thus forced to pay higher prices for low quality products, thus not having the option to choose.

Among the main negative effects of anti-competitive agreements, we mention: the artificial limitation of competition, the increase of prices, the decrease in the quality of products or services offered to consumers, the reduction of supply, the avoidance of constraints that generate innovation.

In the long term the effects generated by cartels are even more dangerous than those in the medium and short term. Affecting the real competition in the market, the cartels, once formed, tend to attract more and more economic agents, who find it increasingly difficult and practically impossible to face the competition of the cartels. By practically regimenting themselves in these cartels, in order to avoid the direct effects of competition, economic agents lead to the creation, in the long term, of an unstable industrial branch, coordinated by non-economic principles, an artificial industrial branch, which no longer maintains contact with economic reality.

Thus, we gradually reach a decrease in productivity, an artificial maintenance of prices much higher than they would have been in reality if they had been formed by achieving the macroeconomic balance between demand and supply, as well as a stagnation of the process of technological innovation. Precisely for these reasons, finding, accusing and punishing these secret agreements and implicitly the economic agents who were behind them, is one of the central elements of the competition policy of the European Commission.

In conclusion, cartels are considered the worst forms of anti-competitive agreements, considering the negative impact on consumers and the economy in general and the evidence of their existence being difficult to formulate precisely because of the secret nature of the agreement.

Competition often forces players in international and national markets to reach agreements that do not benefit consumers and harm the economy. Many of the commercial

policies of large companies, however, focus on the creation and exploitation of real competition, which causes economic agents to focus on consumers, more precisely on their needs, trying to satisfy them as best as possible by offering differentiated products or services from those of the other competitors. This presupposes the adoption of a certain competitive behavior, behavior that manifests itself in the competitive relations existing in a field of activity or in a market.

Competition is an effective means to eliminate surplus profits made by some economic agents, to allocate resources for certain uses necessary for society, to determine enterprises to produce quality goods at low costs and in the quantities desired by consumers, to stimulate the introduction technological innovations. Therefore, competition must be seen as a dynamic process with beneficial effects on the economy as a whole, the undistorted competitive environment being a basic condition for the existence of a functional market economy.

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AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 80-87

INSPECTION VISITS TO SECONDARY SCHOOLS IN ITALY: THE ROLE OF UNIVERSITY PROFESSORS (1859-1889)

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ABSTRACT

This contribution focuses on an important chapter in the history of education that has not yet been investigated, that is the methods of inspections in government gymnasiums and lyceums in the first thirty years after the Unification of Italy. Starting from the legal framework and on the basis of archival documentation, the historical passages of a system centered on university professors are reconstructed. Between 1863 and 1889, they were called upon by the ministry as government inspectors to visit gymnasiums and lyceums to assess first and foremost the teaching activity of the teaching staff.

Keywords: *19th century, Secondary education, School inspections, University professors*

1 Introduction[1]

The history of school administration in Italy is a completely unexplored field of investigation: there is a lack of research expressly dedicated to the various objects that could constitute its field of study, and the marginal attention paid to the interconnection between the history of administration and the history of teaching is evident. In particular, there are no attempts to highlight the directions taken by the Ministry of Education to inspect secondary schools, although there is a tenuous recovery of studies on secondary education [1] [2] [3] [4] [5] [6]. Thus, the inspection function performed by university teachers as inspectors of government secondary schools, gymnasiums and lyceums, from 1863 to 1889, has not yet been investigated.

In order to proceed with the reconstruction of inspection visits to gymnasiums and lyceums in the Kingdom of Italy, it is necessary, however, to make a brief mention of the law establishing the Italian school, the so-called Casati Law of 1859 [7][2], which originated in the Kingdom of Sardinia but was extended to the annexed territories during the unification process. The law entrusted the supervision and technical direction of all schools, in addition to the *Consiglio Superiore della Pubblica Istruzione*, to three general inspectors, respectively for higher studies, classical secondary studies and, finally, technical, normal and elementary studies.

The general inspectors were entrusted with the effective supervision of the educational trend in their respective branch (Art. 17-22), with the obligation to provide personally, or through the officers subordinate to them, for the visit of all schools and all public and private institutes, for the inspection of which they were in charge and to compile every year and submit to the ministry a report on the state of each part of education placed under their supervision.

[1] The Italian classical school system was divided into two levels: the first level, called "Ginnasio", lasted for five years, and the second level, called "Liceo", lasted for three years. Since there is no exact correspondence of these terms in English, the Latin terms Gymnasium and Lyceum were used. For the same reason, the names of the governing bodies of Public Education were left in Italian. Finally, it should be noted that printed sources are not included in the final bibliography, but are indicated in the footnotes.

[2] Law No 3725 of 13 November 1859, in *Codice della Istruzione Classica e Tecnica e della Primaria e Normale*, Torino, Tipografia scolastica di Seb. Franco e figli e comp., 1861 , pp. 23-112.

However, it was reserved to the minister to have the institutes visited by persons from outside the public education offices. In addition, two inspectors for classical schools and one for normal, technical and elementary schools were placed under the general inspectors for secondary and elementary education, who had to assist the general inspectors in their duties, especially in visiting schools and establishments. As Public Education Minister Luigi Rava pointed out when he presented his draft law on inspections in 1907, the directive part, which was actually the responsibility of the general inspectors, was distinct from the administrative and economic part, as purely administrative affairs were referred to the two divisions that then made up the Secretariat of State for Public Education: "It can be observed that the inspectors-general summarised in themselves, without limits of competence, two different but intimately linked functions, one, continuous, of direction, the other, occasional, of inspection. But this was enough for the small Kingdom of 1859"[3].

2 Minister Matteucci's project

In the aftermath of Unification, the Minister of Public Education Carlo Matteucci [8], with a Ministerial Decree of 29 April 1862[4], set up an Inspectorate Office composed of the general inspectors of primary and secondary schools, the two inspectors of classical secondary schools, the inspector of technical, normal and elementary schools, the inspector of physical, mathematical and technical studies in Tuscany, and the two inspectors of secondary schools in the Neapolitan provinces. The office was to carry out ordinary and extraordinary inspections, interpret laws and regulations, judge the suitability and morality of teachers, supervise the discipline of schools and educational institutes, compile statistics and so on. However, as Rava pointed out in his detailed reconstruction of the history of the inspectorate, frequent and serious conflicts of attributions arose between the Office and the Divisions[5].

Minister Berti tried to reorganize the matter, who, with Royal Decree No. 3382 of 6 December 1866[6], abolished the general and special inspectors and divided the *Consiglio Superiore* into three committees: the first for university education and further education, the second for secondary education, and the third for primary and popular education, which were to preside over the progress of their respective branches of education. Berti's order did not last long, suppressed by Royal Decree 22 September 1867[7] by Coppino, who: "Restored the *Consiglio Superiore* to its original form, and with the regulation of 20 October 1867 ordered a *Provveditorato centrale per gli studi secondari e primari*, giving some central superintendents administrative functions andother technical-pedagogical powers, and all collectively the power to interpret laws, to make appointments, promotions, etc. [...]. This *Provveditorato* lost its unity with the reorganisation of the Ministry's offices by Minister Scialoja with the Royal Decree of 26 March 1873; and was abolished by Baccelli with the Royal Decree of 6 March 1881"[8].

In the meantime, the *Giunta esaminatrice per la licenza liceale* had been established and functioningat the Ministry since 1866, which in 1869 was called the *Giunta superior per gli esami di licenza dei licei*, whose work was sometimes coordinated with that of the *Consiglio Superiore* in various ways: "It had the office of preparing, directing and judging the lyceum graduation exam. But at the same time that it was reviewing examination topics, it had the opportunity to verify the results of teaching in the various schools, and to judgepart indirectly

[3] *Bollettino Ufficiale della Pubblica Istruzione*, Anno 1907, II Semestre, p. 3411.
[4] D.M. 29 aprile 1862, in *Appendici al Codice della Istruzione Classica e Tecnica e della Primaria e Normale*, Torino, Tipografia scolastica di Seb. Franco e figli e comp., 1861, pp. 88-91.
[5] *Bollettino Ufficiale della Pubblica Istruzione*, Anno 1907, II Semestre, p. 3411..
[6] R.D. 6 dicembre 1866, n. 3382, in *Raccolta ufficiale delle leggi del regno d'Italia*, Vol. XI, Torino, Stamperia Reale,1866, pp. 2629-2643.
[7] R.D. 22 Settembre1867, in *Bollettino degli atti del Consiglio Superiore di Pubblica istruzione*, Firenze, Successori Le Monnier, pp. 5-6.
[8] *Ibid.*

(from the results), part directly (from the first corrections of the topics) of the suitability of the teachers. Recently, Fornelli, discussing the inspectorate, recalled the trepidation with which the young teachers awaited the *Giunta*'s response, and emphasised its beneficial effects. This inspection, which did not extend to all schools, nor to all subjects, nor to all teachers responsible for teaching, and therefore could not give a complete picture of school life in its various aspects, lasted until 1885"[9].

Indirect control, however, was not the only system implemented to supervise secondary schools. In the Report of 28 November 1862, Matteucci announced an "extraordinary Inspection" in all gymnasiums and lyceums in the Kingdom, in order "to well govern the schools, to know the needsof public education, to justly estimate the officers to whom it is entrusted, and to give a common direction to all government teaching"[10].

After reassuring on the non-persecutorial intentions of the inspection visits and establishing a contingent timeframe, according to needs and financial resources, the minister assigned the task to ten commissions, divided as follows: "one for Piedmont and Liguria, one for Sardinia; one for Lombardy; one for Emilia, Marche and Umbria; one for Tuscany; three for the provinces of Naples;two for the provinces of Sicily"[11].

It then indicated the number of members, which could vary between two and three, responsible for the 'literary' and 'scientific' parts, and identified the criteria for appointment: "For the selection, then, the Minister will find from among the teaching staff or management, or from among men distinguished in the sciences and letters, those who, associating themselves with the work of the Ministry's Inspectors, are willing and able to carry through an act of such importance and difficulty"[12].

The commissions were to inspect the 99 government gymnasiums and 69 government lyceums that constituted the government education channel in 1862, and were to increase, albeit slightly, overthe next two decades (Tab. 1)

Tab. 1: Government Gymnasiums and Lyceums statistics. Source: Our elaboration based on statistical data published by the Ministry of Education.

Years	N. Government Gymnasiums	N. of teachers and managers	Government Lyceum	N. of teachers and managers
1861-62			43	381
1862-63	99	602	69	612
1863-64				
1864-65				
1865-66				
1866-67				
1867-68	104	632	79	701
1868-69	103	626	78	692
1869-70	103	626	78	692
1870-71	103	626	78	692
1871-72	104	632	79	701
1872-73	104	632	79	701
1873-74	103	626	79	701

[9] *Ibid.*, p. 3412.
[10] *Relazione a S.M. per l'istituzione delle Commissioni incaricate di scegliere i libri migliori per le Scuole elementari e secondarie, e delle Commissioni ispettrici ai Ginnasii e Licei del Regno*, in *Raccolta di scritti varii intornoall'Istruzione Pubblica del Senatore Carlo Matteucci*, Vol. 2, Istruzione secondaria, Prato, Tip. V. Alberghetti e C., 1867, p. 78.
[11] *Ibid*., p. 79.
[12] *Ibid*., p. 80.

1874-75	104	632	80	710
1875-76	104	632	80	710
1876-77	104	632	80	710
1877-78	108	557	81	718
1878-79	109	663	83	736
1879-80	110	669	83	736
1880-81	113	687	83	736
Media	105	631	77	683

The inspections announced by Matteucci completed the project started with the establishment of the Commissions for the choice of textbooks [9] and the institution of the autumn conferences for secondary school teachers[13]. Having provided the schools with textbooks adequate in content and method, the inspections were to identify teachers with cultural and teaching deficiencies, to be sent subsequently to the conferences that were to be set up at the universities of the Kingdom, designed not as "academic lectures", but as "conversations and practical exercises, both in interpreting the classics and in the exposition of doctrines and in the use of instruments and scientific applications"[14].

To allow uniformity in the method of inspections, Matteucci gave precise instructions to the "visiting" Commissions in the annex to the Report entitled *Istruzioni per l'ispezione straordinaria delle Scuole del Regno*. First of all, the Commission in charge of inspecting the schools had the task of ascertaining the way the classes were composed, i.e. the origin of the students and the qualifications with which they had been admitted to a particular year. In addition, the Commission was supposed to obtain all the necessary data to be able to pass an accurate judgement on the actionstaken by the school's officials, both in terms of management and education. The minutes of the Teachers' Council, the arrangements for coordinating teaching and establishing discipline, the choice of topics and the exercises proposed to the students were considered fundamental data for achieving the intended purpose. Direct inspection in the classrooms to observe the lectures of the teachers and interview the students was considered, however, the most important operation to assess the teaching effectiveness of the professors[15].

Matteucci's project was not fully realized, as the inspection visits were not followed by conferences.The inspection system devised by the minister, however, was consolidated as a practice over the next twenty years, with commissions composed mostly of two university professors, one for the literary branch and the other for the scientific branch, who would use the scheme presented in the aforementioned *Istruzioni* in their reports.

3 University professors as government inspectors

On the basis of an initial reconnaissance of the documentation kept in the *Archivio Centrale dello Stato*[16] (Tab. 2), it is possible to state that, in line with the Casati Law, where it indicated the possibility of using staff from outside the public education offices for inspections, and in the wake of Matteucci, the liberal ruling class preferred to use university professors to inspect the gymnasiums and lyceums of the Kingdom, instead of appointing a territorial inspection body on the model of the inspections carried out in primary schools, or resorting to experienced headmasters and teachers as was the case, for example, in Austria.

[13] The Conferences were established by R.D. n. 854 del 5 ottobre 1862, in *Raccolta ufficiale delle Leggi e deiDecreti del Regno d'Italia,* Vol. IV, Torino, Stamperia Reale, 1862, pp. 2313-2315; and R.D. n.. 939 del 2 Novembre 1862, in *Appendici al Codice della Istruzione Classica e Tecnica e della Primaria e Normale*, Torino, Tipografia scolastica di Seb. Franco e figli e comp., 1861, pp. 138-146.
[14] *Ibid*., 144.
[15] *Raccolta di scritti varii intorno all'Istruzione Pubblica del Senatore Carlo Matteucci,* cit., pp. 88-91.
[16] Archivio Centrale dello Stato, Ministero della Pubblica Istruzione, Divisione Scuole Medie 1860-1896, bb. 43,45,59,63,77.

There was no lack of information at the ministry, which obtained important information from the annual reports of the managers and the reports of the prefects and superintendents. Reports gave a picture, sometimes detailed, sometimes synthetic, of the conditions of the schools, the pupils enrolled, the teachers, the syllabus and the educational activities carried out during the year. But at the heart of this information system were the "government" inspectors, who went right to the heart of the school's activities, dwelt in great detail on the pupils' data, checked the minutes of the teachers' council, judged the didactic compliance of the syllabus, scrutinised the management of the institutes and concluded the visit with a "conference" in the presence of the entireboard of teachers, in which they outlined the findings of the inspection and gave suggestions and reminders to remedy the shortcomings and deficiencies found. The report to the minister concluded the inspection.

Tab. 2: Inspection visits Government Gymnasiums and Lyceums

Year	Government Gymnasium and Lyceum	Government inspectors	Chair at the time of the inspection
1863	"Pagano" Campobasso	Giuseppe BARBERIS	Inspector General for Classical Schools
		Cesare TAMAGNI	Latin Language and Literature - Scientific-Literary Academy of Milan
		Emanuele FERGOLA	Higher Calculus and Analysis - University of Naples
1871	"Pagano" Campobasso	Antonio GALASSO	Ethics - University of Naples
		Giuseppe DE LUCA	Geography and Statistics - University of Naples
1872	"Forteguerri" Pistoia	Michele COPPINO	Member of Parliament 11th Legislature
		Francesco ROSSETTI	Physics - University of Padua
1876	"Romagnosi" Parma	Giovanni Battista GANDINO	Latin Literature - University of Bologna
		Camillo PLATNER	Medicine and Surgery - University of Pavia
1877	"Forteguerri" Pistoia	Giosuè CARDUCCI	Italian Literature - University of Bologna
		Francesco ROSSETTI	Physics - University of Padua
1877	"Pagano" Campobasso	Francesco D'OVIDIO	Comparative History of Neo-Latin Literatures - University of Naples
		Salvatore DINO	Descriptive and Projective Geometry - University of Rome
1878	"Dante" Firenze	Domenico COMPARETTI	*Istituto di Studi Superiori* in Florence
		Ulisse DINI	Analysis and Geometry - University of Pisa
1879	"Umberto I" Palermo	Michele KERBAKER	Comparative History of Classical and Neo-Latin Languages - University of Naples
		Emanuele FERGOLA	Higher Calculus and Analysis - University of Naples
1880		Pietro MERLO	Greek and Latin Grammar – *Scuola di Magistero*

	"Palmieri" Lecce		University of Naples
		Vincenzo IANNI	Rational Mechanics - University of Naples

As can be seen from Table 2, drawn up on the basis of the reports traced so far, the so-called 'governmental' inspections were mostly entrusted to academics, with the exception of the appointment of Giuseppe Barberis, Inspector General of the Classical Schools, Michela Coppino a former lecturer in Italian Literature at the University of Turin but on leave of absence at the time of the inspection for parliamentary office, and, finally, Domenico Comparetti, who had nevertheless held the chair of Greek Language and Literature at the University of Pisa before moving to the *Istituto di Studi Superiori* in Florence. Another relevant aspect is the fact that university professors were only used for inspections in "government" gymnasiums and lyceums, an unequivocal sign of the strategic role attributed to these institutes by the liberal ruling class.

In the context outlined above, the figure of Giuseppe Barberis (1823-1896) deserves a closer look. Originally from Piedmont, he was a lecturer at the colleges of Turin and Cuneo and headmaster of the National College of Genoa. In the aftermath of the Unification of Italy, he was called to hold the position of Inspector of Classical Secondary Schools for the literary part of the Ministry of Public Education and it was in this capacity that he visited secondary schools in the Neapolitan provinces in 1863, accompanied by university lecturers, following the "Extraordinary Inspection" announced by Matteucci. From 1867, he held the position of Central Superintendent of I class and later Chief Superintendent for Secondary Education, as well as member of the *Consiglio Superiore della Pubblica Istruzione*. Under Minister Antonio Scialoja, he was appointed Secretary General of the Ministry ofEducation (1872). He also served on many commissions for the compilation of secondary school regulations and syllabus.

Because of his apical role, Barberis was the ministerial figure of reference for classical secondary education in the Kingdom of Italy in the first thirty years after the Unification of Italy, so much so that he deserved a place in De Gubernatis' *Piccolo dizionario dei contemporanei italiani* (1895). The political weight of Barberis did not escape his contemporaries, therefore, but among them there were also those who considered him the *longa manus* of the "Piedmontese" in the management of the public education affairs of the nascent national state [10].

After all, in the years of the *Destra storica*, inspections of secondary schools were dependent "on ministerial arbitrariness", as Minister Cesare Correnti recalled in the sitting of the Chamber of Deputies on 17 December 1871, dedicated to the discussion of expenditure chapters of the Public Education. The matter was never actually regulated, and the arbitrary choice was even referred to in a commentary note to the Provincial School Administration Regulations of 21 November 1867, no. 4050, which specified that as far as inspections are concerned, the Ministry has established that those of secondary schools are to be carried out by its own order, and in the manner that will be designatedby it.

Such a system did not find everyone in agreement. Ruggiero Bonghi, for example, in the same session, as rapporteur of the Parliamentary Commission on Public Education Finance, reminded the ministerof the urgency of dealing with the delicate issue of secondary school inspections, resorting to "ordinaryand normal means" and not to "university professors", in order to avoid: "The harm that Mr Bertani has noted, but of which these professors cannot be censured in this case or in any other. That is to say, what happens? The minister of public education, in June, in July, in May, in the best of instruction in the normal schools, from the faculties of philosophy, is fine arts, takes two professors, one of mathematics, one of Latin or Italian literature most necessary for instruction, and sends them to tour the lyceums of one province to another. What is theeffect? The effect is twofold, i.e. the students of normal schools have no teachers, and they find themselves in the best part of the year at a loss; furthermore,

these inspections are poorly done, because, with all the esteem in which university professors are held, I believe that they are not suited to making inspections of secondary schools.

You have to have been accustomed to those methods, you have to have followed them, moreover you have to have a certain constancy of character in applying them to inspections. What happens? The university professor today has teaching methods that are quite different from those of the lyceum and gymnasium professor; and when he or she addresses a different audience, he or she does it differently from the secondary professor. But there is more: university professors are naturally taken now in one faculty, now in another, and are very different in their ideas about the methods to be followed in secondary teaching. One year there goes a university professor who, for example, greatly esteems the Greek or Latin grammars of the Germans, and washes his head of the lyceum professor for not introducing those grammars; another year there goes a university professor who despises those grammars, and scolds the lyceum professor for adopting them; another year there goes a university professor who holds grammar teaching in high esteem, and demands a great deal of attention to this part; another year there goes one who thinks the opposite, that is, that grammar is of no importance to him, and wants it to be learnt only by practising the classics. In short, the inspection of secondary schools done in this way cannot produce anything useful"[17].

Bonghi was answered by the minister, who claimed the usefulness of the method followed until now and endorsed by the Parliamentary Commission and the *Consiglio Superiore della Pubblica Istruzione*, to which Bonghi also belonged, and specified: "Many trials were made to find the preferred method of effective inspection of secondary schools. Before, there was a special department, the Inspectorate General, a kind of magistracy that kept the teachers under its control, syndicated them, supervised them. The same people were always on top, judging, directing. This was the ancient method of fixed inspections to which Mr Bonghi seems to wish to return. But it was observed that, while on the side of discipline and the exact observance of regulations, this intrusion of a purely official element could bring no small benefit, on the side of the spirit and progress of education, it was much more expedient to use authoritative and competent persons in the office of inspection who could advise effectively and persuasively. This is achieved by electing men of undisputed reputation andimpartiality to the inspection. If there was perhaps some inconvenience at times, it was due to the inappropriate choice. Moreover, I can assure you that the administration has never been able to have a specific and reasoned statistic of the didactic value of its professors until after it delegated eminent professors from the university to visit the schools. So, I repeat, I believe that Mr Bonghi's criticism of the current system of inspections in secondary schools is the effect of some particular impression, some isolated fact, but not a judgement of the parliamentary committee"[18].

Having risen to the top of the Ministry of Education, Minister Bonghi, in spite of himself, had to admit his impotence in the face of Mr Pissavini, who complained, in the parliamentary session of 10 February 1875, about the absence of "well-ordered" inspections: "With regard to the inspections of secondary schools, I could do nothing more than send the professors of the university faculties to visitthem"[19], citing budgetary constraints as the reason. Finally, Royal Decree No. 3254 of 16 April 1885 regulated the matter, but in a direction opposite to that desired by Bonghi, with the establishment of the *Collegio degli esaminatori per la licenza liceale*[20],which replaced the *Giunta Superiore* of 1869. Composed of thirty members chosen from university lecturers, the College, also known as 'of Thirty', was divided

[17] *Rendiconti del Parlamento italiano. Session of 1871-1872*, Rome, Editori Botta, 1872, p. 330.
[18] *Ibid*.
[19] *Atti del Parlamento Italiano. Camera dei Deputati*. *Sessione del 1874-1875*, Roma, Eredi Botta, Vol. 2, 1875, p. 1150.
[20] R.D. n. 3254 del 16 Aprile 1885, in *Bollettino Ufficiale del Ministero dell'Istruzione Pubblica* Anno 1885, I Semestre, pp. 868-869.

into two sections: 20 members for literary subjects and 10 for scientific subjects. Elected by the minister, the members remained in office for five years but could be reappointed. In addition to the functions inherent to composition and the correction of assignments, the members were assigned the role of visiting "the governmental lyceums and gymnasiums". The College did not go beyond its first term (1885-1889), but, as Mr Blaserna recalled in one of his speeches to the Chamber, "under the system created by Minister Coppino, regular inspections were made for the first time" [11][21]. During the five years in office, however, there were numerous criticisms of the College, which was icastically renamed the College of the 'Thirty Tyrants' by its detractors.

4 Conclusions

The literature on the history of secondary education lacks references to the inspections carried out in gymnasiums and lyceums in the Kingdom of Italy in the aftermath of Unification. Through the study of legislation and archival documentation traced so far, we have proposed an initial reconstruction of the inspection function performed by university teachers as inspectors of government secondary schools from 1863 to 1889.

This reconstruction is only a first step in the discovery of new archive sources. Indeed, the inspectors'reports constitute a type of source that offers multiple perspectives of analysis: institutional, social, pedagogical, cultural, etc. Therefore, a broad reconnaissance of archival sources is necessary to further explore the history of classical education in Italy.

The *Relazione sugli istituti governativi classici*[22], written by Giuseppe Barberis, as Chief Superintendent of Public Instruction in 1869, based on data collected in inspections between 1867 and 1868, bears witness to this: school attendance, furnishings, moral order the discipline and temperament of the pupils, performance and teaching practices, and finally the characteristics of theteaching cohort, analyzed by resorting to didactic value, "civil condition" and "moral condition".

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AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 88-99

THE PUBLIC EDUCATION SYSTEM IN SOUTHERN ITALY (1806-1820)

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Abstracts
This contribution reconstructs the origins of the public education system in Naples, established during the period between the French Decade and the Bourbon Restoration. Following the school reform implemented in France during the Napoleonic government, a process of adaptation of the French model to the specificities of the territory began in Naples. The modern public education system was established in three distinct phases: during the government of Joseph Bonaparte (1806-1808), during the reign of Joachim Murat (1808-1815) and in the aftermath of the Second Restoration (1816). In the first phase, the school system that was to be completed in the Decreto Organico (henceforth DO) of 1811 came into being. The return of the Bourbons allowed for a consolidation of the education system through more accurate regulation.
Keywords: *19th century, Kingdom of Naples; Education; Napoleonic reformism*

1 Introduction[1]

The school reform implemented in France between 1802 and 1811 allowed for the creation of a centralised and hierarchical public education system, with a school system divided into three grades: primary, secondary and high. The reform aimed to regulate all educational institutions, both publicand private, both laic and religious, with the objective of training students for a professional career through the attainment of a degree [1].
Following the reform implemented in France, a reform process was also initiated in the satellite states of the Kingdom of France, with the aim of translating the French model and adapting it to the territorial reality.

In the Kingdom of Naples, the modern public education system developed in three distinct phases: during the rule of Joseph Bonaparte (1806-1808), during the reign of Joachim Murat (1808-1815) and in the aftermath of the Second Restoration (1816).
As is well known, scholars agree in placing the expulsion of the Jesuits (1767) as the date of the birth of public education in the Kingdom of Naples and in considering the French Decade (1806-1815) as the period of scholastic reformism.

This thesis, however, supposes the use of an unexpressed axiom: 'public' as an element falling within the interest and organization of the State, whereby public education consequently becomes a function regulated by the State. In reality, the term 'public education' will take on such a meaning only from the Napoleonic era onwards and will impose itself in the course of the 19th century as a notion so self-evident that it will also be used to reread the historical events that preceded Napoleonic reformism, ignoring the 18th century approach that used the term 'public' to designate the collective schools open to the population that were opposed to the individual instructiongiven by private preceptors [2].

Napoleonic reformism thus stands as a watershed between *state public schools* and *schools open to the public* but run by religious orders and congregations, dioceses or private citizens in the previous century.

[1] It should be noted that the normative sources cited in the text are not included in the final bibliography, but are indicated in the footnotes. In addition, the titles of the decrees are cited in the original Italian.

2 The school system in the Kingdom of Naples (1806-1808)

In Naples, the first step towards the modernization of the educational institution took place during the two-year reign of Joseph Bonaparte (1806-1808) with the entrusting of education to the newly founded Ministry of Internal Affairs. The administrative reform of the state was the condition for the birth of a public school system [3].

It was Napoleon's reform process that fundamentally changed the eighteenth-century paradigm: entrusting education to the Ministry of Internal Affairs, the Kingdom of Naples, during the two-year period of Joseph Bonaparte, created an administrative and cultural school system on three levels: primary education, paid for by the municipalities [4] [5] [6]; secondary education, provided in financially autonomous colleges [7]; and higher education, paid for by the Treasury [8]. During the government of Joseph Bonaparte, a decree of 15 August 1806[2] reorganised primary education, following the provisions issued in France in 1793: compulsory opening of a primary school, for boys and girls, "in all towns, lands, villas and every other inhabited place", for the teaching of reading, writing, arithmetic, Christian doctrine and, for girls only, also the "women's arts" (Art. 1); teachers' and schoolmistresses' salaries paid by the municipalities (Art. 2); possibility of still using the individual method in municipalities with less than 3,000 inhabitants and compulsory use of the normal method for all the others (Art. 3). The following year, secondary education was reorganised with the Council of State's approval, on 30 May 1807, of the draft law presented by the Minister of the Interior, Miot, which provided for the foundation of two colleges in Naples, and one in each province (Art. 1): the boarding school, with a five-year cycle of studies, was preparatory to access, for the most deserving pupils, to higher education institutions: seminaries, military school, polytechnic school, school of fine arts, a boarding school for forensic training and one for medical training (Art. 35). These institutions, similar to the French special schools, were all being set up [9]. As far as public education was concerned, Joseph Bonaparte's government could go no further: the new French system of public education was launched with the application decrees of 1808, the very year of his departure for Madrid, leaving his successor Joachim Murat with a reform of the state and a layout of the school system that was the necessary prerequisite forapplying the model of the *Université impériale* in Naples as well.

3 The system of public education in the *Decreto Organico* (1811)

Following the reform implemented in France with the 1806 law and the 1808 decrees, public education commissions were also set up in the satellite states of the Empire, starting in 1809, with the task of formulating plans to reform public education in order to adapt the French model to the different territorial realities: Joseph Bonaparte set them up in Spain, Louis Bonaparte in the Kingdom of Holland, Joachim Murat in that of Naples and similar measures also appeared in the Duchy of Warsaw [10].

The Neapolitan Commission, established on 27 January 1809, was composed of: Vincenzo Cuoco, Giuseppe Capecelatro, Melchiorre Delfico, Bernardo Della Torre and Tito Manzi [11, pp. 229-235]. The Commission presented the Draft Decree for Public Instruction, entrusting the Report to Cuoco, but the Council of State, in its session of 3 November 1809, rejected the Project on the grounds that "the mechanism of education proposed for the Kingdom of Naples" was not "the same as that adopted in the Empire of France" and ruled that it should "to model it on this and thus have the same unity of principle and action, so that everything destined for the public education of the Kingdom forms but one and the same body, the parts of which, scattered in different places according to need [...] recognize only one source from which they all emanate, a source that is to be understood as established in the Capital of the Kingdom" [10, p. 231].

[2] *Collezione delle leggi, de' decreti e di atti riguardanti la pubblica istruzione promulgati nel già Reame di Napoli dall'anno 1806 in poi*, 3 vol., Napoli, Stamperie del Fibreno, 1861-1863, vol. I, p. 3 (henceforth CLDAPI).

It is clear and evident, then, what was the model to be looked to for reform in the Kingdom of Naples: the *Université impériale*, the system of public education that was able to create the "single body" that the 1806 institutive law laid at the basis of the reform of public education in Imperial France. The Project, presented to the council by Cuoco, appeared dissimilar to the imperial mechanism on two vital issues, which can be summarised as follows: a different administrative organization, which did not guarantee "unity of principles and action", and the presence in the Kingdom of as many as four universities, instead of the single Neapolitan University, which was desired as the "sole source". Having wrecked the Project, the Minister of the Interior Giuseppe Zurlo promoted a new design, now lost, which, subjected to numerous rehashes by the Commission called upon to revise it, under the strong influence of Cuoco, was reduced from the initial 102 articles to only 37 in the Organic Decree for Public Education, passed on 29 November 1811. The scholastic reform implemented with the 1806 law and the subsequent 1808 decrees ensured France a public education system that was administratively centralised and verticalised, with an order prospectively divided into three grades, aimed at regulating all institutes, both public and private, both lay and ecclesiastical, aimed at professional training anchored to the qualification through the mechanism of academic grades.

In the Kingdom of Naples the path was substantially similar. Having separately reformed the primary school by decree on 15 September 1810[3], the DO[4] explicitly and unequivocally defined in its first article: public education is that placed "under the control and supervision of the government". It followed that public education was to be provided in the University of Naples, in the lyceums and in "other educational establishments" (Art. 2). Finally, the DO, in listing the series of measures, put forward a clear and categorical concept that could not be ideologically subjugated, nor eluded in substance: public education is that placed under the control and supervision of the government.

As part of this foundation of public education, the DO expressly introduced two grades of secondary schools andidentified the "first grade of secondary schools:

1. in those royal colleges that will not be converted into lyceums;
2. in similar establishments that will be made by municipalities or private individuals.

In these there must be at least four professors, i.e. two in grammar, one in rhetoric, and one in philosophy and mathematics" (Title III, *Collegi*, Art. 13), including seminaries in this grade, albeit dependent on diocesan authority (Title III, *Collegi*, Art. 14). The second degree was made up of the lyceum with annexed boarding school, divided into four different addresses: literary, mathematical, medical, juridical (Title IV, *Licei*, Art. 18) and the subjects taught in the colleges remained common to the four addresses (Title IV, *Licei*, Art. 16). The substantial difference between the French lyceum and the Neapolitan lyceum, which had become a semi-university, arose from the compromise between Cuoco's project, which envisaged four universities, and Zurlo's project, which envisaged only one, so much so that four lyceums - one for each university course - were envisaged in each of the macro-areas into which the provinces were grouped: 1) the provinces of Bari, Otranto and Basilicata; 2) the three provinces of Abruzzo; 3) the two provinces of Calabria; 4) the provinces of Molise, the province of Capitanata, Terra di Lavoro, Principato Ultra and Principato Citra (Title IV, *Licei*, arts. 15 and 19); while the city of Naples, which was granted a special privilege as the capital of the Kingdom and therefore not incorporated into any macro-area, was assigned two lyceums[5].

[3] CLDAPI, vol. I, pp. 81-83. The decree introduced several novelties compared to the 1806 decree: compulsory primary education, extension of the normal method in every municipality, the municipality's obligation to provide premises and teaching materials, entrusting the smaller municipalities to parish priests, setting a minimum wage for teachers and, to relieve municipal coffers, proposing a monthly school tax [4] [5].

[4] CLDAPI, vol. I, pp. 230-238.

[5] CLDAPI, vol. I, pp. 19-20.

Following the French model, the education system encompassed all forms of education: public and private, secular and ecclesiastical institutes, according to a hierarchy that placed the lycée at the top, followed on the same level by those colleges already established by law in 1807, and private institutes (secular or ecclesiastical), flanked by seminaries[6].

At this point, the structural interventions aimed at organising the secondary school were exhausted and the need arose to revise the last stage of the education system, putting the University on a par with the French one: five faculties (Humanities and Philosophy; Mathematics and Physical Sciences; Medicine; Law and Theology) were envisaged (DO, Title V, arts. 22-28) five faculties were envisaged (Humanities and Philosophy; Mathematical and Physical Sciences; Medicine; Law and Theology); it was decided to entrust the teachers of Mineralogy, Botany and Astronomy, respectively: the Museum of Mineralogy (founded in 1801), the Botanical Garden (founded in 1807) and the nascent Astronomical Observatory (1812); in addition, modern scientific laboratories were planned (DO, Title V, Art. 29); three special schools and the establishment of a normal school in Naples for the training of 'professors' were announced (DO, Title V, Art. 33).

The last and fundamental measure, the keystone of Napoleon's system, was the institution of the three academic degrees entrusted exclusively to the University (DO, Title VI), revoking all privileges of conferring degrees, granted to the ancient Colleges of Doctors [8, pp. 479-483] [12, 85-90].

Having assigned the management, control and supervision of education to the State; created the secondary sector; reorganised the university sector, which was entrusted with the control of academic degrees for the attainment of the degree, the system was crowned, along the lines of the French regulation, by the *Regolamento per la collocazione dei gradi della facoltà*[7] , a fundamental act that made it possible to correlate the degree with careers and professions, putting an end to the era of art guilds and colleges of professions.

The Regulations, decreed on 1 January 1812, prescribed the paths to attain the three doctoral degrees (approval, licence and degree) and sanctioned the degrees (approval certificate, licence diploma and degree) required to exercise functions and professions, degrees and titles according to the schematic summary below (Tables 1 and 2):

Tab. 1. Attainment of doctoral degrees

Faculty	**Approval**	**Licence**	**Degree**
Literature and Philosophy (LF)	Minimum age 16 years	Approval and 1 year university course	Examination after showing the Licence obtained at least 1 year ago
Physical and mathematical sciences	Certificate in LF; 2 years of a high school course or one year of a university course	Approval and 1 year university course	Licence obtained at least 1 year ago
Medicine	Certificate in LF; 3 years of high school course or one year of university course	Approval and 1 year university course	Examination after showing the Licence obtained at least 1 year ago
Jurisprudence	Certificate in LF; 3 years of high school course or one year of university course	Approval and 1 year university course	Licence and 1 year university course
Theology	Certificate in LF; 3 years of seminar course and be at least 21 years old	Approval and two-year university course	Licence and 1 year university course

[6] On the observation that an "essential part of public education had been lacking since the seminaries of the various dioceses were closed, or remained abandoned", in 1812, Matteo Galdi, newly appointed Director of P.I., proposed a strengthening, in number and financial resources, of the seminaries since "Art. 14, Title III of the Law of 29 [*Decreto Organico*] suggests that the Seminaries of the Dioceses will be considered in the number of secondary schools", (Matteo Galdi al Ministero per gli Affari Interni, *Interesse da prendere per i seminari del Regno*, Napoli 1 luglio 1812, in CLDAPI, pp. 278-281).

[7] CLDAPI, vol. I, pp. 239-258.

Tab. 2. Qualifications required to exercise functions and professions

Faculty	**Approval coupon**	**Licence Diploma**	**Degree**
Literature and Philosophy	Primary school teachers (if parish priest, approval in theology sufficient)	Professors in colleges Public school teachers	University professors High school teachers Special school teachers
Jurisprudence		Private professors	Court Judges Royal Prosecutors Prosecutor University professors Teachers of lyceum
Medicine		Private professors	Doctors Surgeons* University professors Teachers of lyceum
Physical sciences and Mathematics		Professors in colleges Private professors	University professors Teachers of lyceum Architects**
Theology			Archbishops Bishops Vicars Canons Parish priests*** University professors

*Only if assigned to the army or serving in hospitals
** Only if court experts or directors of public works
***Only if parish priests of municipalities with a population over ten thousand inhabitants

The Arts and Philosophy degree was the starting point for any further course of study and corresponded to the basic teachings common to the four university courses: once obtained, one could follow university courses in high schools or in the faculties of the Neapolitan university, at the end of which one would obtain the respective coupons in the four courses, which allowed access to the other two degrees - licence and degree - that could only be obtained by attending courses taught in the university[8].

For engineering education, a different path was planned, with the establishment of the School of Bridges and Roads and, for the military career, the Military Academy was organised; while, in order to offer a path aimed at technical professional training, which was obviously not part of the academic ranks, the School of Arts and Crafts was established.

In the implementation phase following the promulgation of the 1812 Rules, the titles obtained prior to the institution of the new system were regularised: the "ancient privileges", the Rules stated, had to be converted into titles authorised by the Royal University of Naples (Art. 66-67) during the years 1812 and 1813, "without justifying that they had studied at the University itself, in the lyceum, or in the seminaries" (Art. 66), but simply certifying that they had passed the respective examinations for the degree required. Those who were already exercising a profession or office without possessing any degree could remedy the situation by undertaking to obtain it within the next six years (Art. 67). Regarding the administrative set-up, in the French system there were three distinct administrations: central, academic and prefectural for the control and functioning of the entire school system; the Neapolitan system was different and was the point of greatest contrast between Zurlo and Cuoco: the former aspired to create a body of administrative officials, on the French inspectorate model; the latter aimed to create an enlightened intelligentsia. Cuoco's approach, outlined in these terms by Minister Zurlo, prevailed in the Council of State:

[8] The minimum limit of 16 years to obtain approval in Humanities (Tab. 1) corresponded to the minimum age at which one could leave high school: the entire course, in optimal situations, lasted eight years and one could not enter it before the age of eight.

"It was thought in the first place useful that public instruction [should be entrusted] to the general class of scholars and not to a particular body of clerks, which had been proposed at other times under the name of inspectors This idea gave rise to the project of a college of *giury* composed of the scholars of each province, who would periodically judge the state of the Statutes, the progress of the pupils, the prizes to be distributed" [11, p. 232].

The central administration was entrusted to the *Direzione Centrale di Pubblica Iatruzione* (henceforth DGPI), a body dependent on the Ministry of the Interior, which was flanked by the *Giury di contabilità*, intended to supervise the administration and economy of educational establishments; and the *Giury di revisione* called to assess school performance on the basis of the "compositions periodically sent by the colleges and lyceums" [11, p. 232]. An *Giury d'esame* was to be set up in each province to supervise education. The two presidents of the *Giury di contabilità* e il *Giury di revisione*, and the president of the *Giury di esame* in Naples constituted the boardof the DGPI.

Having fixed the functions by DO, the *Regolamento provvisorio per il Giury della pubblica* Istruzione[9] regulated their activities. The *Giury* were composed of: a president, appointed by the royalty, and vice-president, pro- president and members, appointed by the Ministry of Internal Affairs.

The structure of the *Giury* had three levels: the president, a man trusted by the government; vice-presidents and pro-presidents chosen for their cultural and moral qualities (Title I, Articles 3 and 4).

The *Giury d'esame* consisted of a president, a vice-president and six members who formed a committee divided into three sections: science, literature and languages. Pro-Presidents were also provided for in the districts of the province (Title II, Art. 12).

The powers of the president of the *Giury d'esame* ranged from that of "habitual inspector of all the public education establishments in his province", to the task of seeing to it that 'all the regulations both of discipline and teaching, as well as of economy' were "exactly carried out", reporting continuously to the Director General. In effect, this figure was identified as "the intermediate body between the Director himself and the heads of the various establishments in the province" (Art. 33).

The Vice-Presidents and Pro-Presidents were assigned the task of supervising all schools in the province (Title II,Art. 13).

The regulations prescribed six meetings per year, three of which were held at the beginning, middle and end of theschool year.

In the examination sessions in lyceums and colleges (scheduled in November, April and September), three members of the *Giury* were to be appointed, according to their respective sections: language, literature and science, and they were to assess the pupils, subjecting the examinee to written and oral tests on subjects proposed at the discretion of the president, who was also to attend the examinations in secondary schools or delegate a pro- president.

The pyramid structure, spread from the centre to the periphery, thus also added administrative and control features to the new "education system" rigidly constructed according to the Napoleonic approach: officials and control bodies were not simply branches in the provinces of the state presence, but also, and above all, the functionaries and guarantors of compliance.

4 Regulation (1816)

With the return of the Bourbons to government, a policy of Restoration was initiated, led by Minister Luigi de Medici, the soul of the government of the Kingdom of the Two Sicilies, intent on recovering the reformist work of the Decade in a "state system that was no more than the Napoleonic or administrative state" [13, p. 6]:

[9] *Regolamento provvisorio per Giury della Pubblica Istruzione*, Napoli, Tip. Angelo Trani, 1812.

On the other hand - observes W. Maturi - the absolutism of the state had to be imposed on the new secular ruling classes. To confront them with police measures Medici did not want to because he was alien to violent means, nor could he because of international contingencies.

And so he thought of removing the strong-headed leaders (Zurlo, Poerio, Winspeare, who were exiled), of taming most of them with moderation, keeping them in office, with an enlightened state action and, in the meantime, with the alliance with the Church, preparing new generations more docile, more malleable, more obedient to the government's directives.

The medium for this re-education of the country was to be public education, pervaded by a confessionalist spirit; but, since it was an instrument for the health of the state and not an end in itself, it was to be directed by secular state bodies" [13, p. 10].

In this political framework, "public education - suggested the President of Public Education, Ludovico Loffredo, to the sovereign - if well directed, will be more useful to the king than his army" [14, p. 189]. The school system continued to depend on the Ministry of Internal Affairs, within which the administrative body for the direction of Public Education was retained, renamed the *Commissione di Pubblica Istruzione* (henceforth CPI), which was given all the functions of the previous DGPI[10], but the programme already drawn up by Giuseppe Zurlo, aimed at creating a single centralised structure for management and control, was implemented: abolished the *Giury*, an inspection body of twelve officials was created, the General Inspectors of Public Education, "destined to watch over the execution of the statutes and regulations of the Royal Lyceums and Colleges, of the Secondary Schools of the Kingdom, as well as to attend to the discipline and teaching of the boarding schools and public schools" (*Istruzione per gli ispettori generali della Pubblica Istruzione*, Art. 1)[11].

At a peripheral level, district inspectors and district inspectors were instituted in 1816 for the control and supervision of primary schools[12], and the intendants, assisted by sub-intendents, were given those functions of promotion, management and control of the Public Education in the territory, previously carried out by the *Giury* d'esame[13], constituting a direct administrative channel between the centre and the periphery, through the use of civil servants revolving around the intendant as the representative of the State.

The general framework for the acquisition of the three academic degrees was fully reconfirmed with the *Regolamento per la collocazione de' gradi dottorali* enacted in 1815[14], introducing a few changes aimed at streamlining the path to the degree required to exercise certain professions.

The physiognomy of university education also remained anchored to the DO, with the Statutes for the *Statuti per la R. Università* (March 1816)[15]: the five faculties of the previous period were confirmed, but the number of professorships was increased. The dean remained at the head of the faculties and the university was governed by the college of deans, chaired by the rector, who was elected by the teaching staff, and the scientific structures that had already been set up in the Decade[16] were strengthened.

In the secondary sphere, the *Statutes* of lyceums, colleges and Secondary Schools (February 1816) and the *Regolamento per le scuole private e i pensionati* (July 1816) were promulgated[17].

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[10] The CPI, established by Royal Determination of 2 August 1815, had the same powers as the suppressed DGPI by ministerial decree of 16 August 1815 (CLDAPI, vol. I, pp. 325-326).

[11] Circolare ministeriale 14 febbraio 1816, in CLADPI, vol. I, pp. 361-364.

[12] These inspection figures, although all belonging to the ecclesiastical branch, as the archive documentation attests, mitigated the influence of the diocesan ordinaries and parish priests, who were entrusted with primary education in 1816 [15, pp. 27-52].

[13] Circolare 25 ottobre 1815, in Archivio di Stato di Campobasso, Intendenza di Molise, b. 989, f. 77.

[14] Archivio di Stato di Campobasso, b. 989, f. 77.

[15] *Statuti per la R. Università degli Studi del Regno di Napoli*, 12 Marzo 1816, in CLDAPI, vol. I, pp. 424-442.

[16] In a report of 2 September 1815, President Cardito asked for the powers of the newly established CPI to be extended, only succeeding in obtaining control of the university's scientific structures; see CLDAPI, vol. I, pp. 330-336.

[17] The regulation of public institutes was already carried out by the Napoleons in 1812, with the *Regolamenti pei Licei, Collegi,e scuole secondarie*, printed by Angelo Trani in Naples.

The complex system of macro-areas envisaged by the DO, which was supposed to provide each of them with four university courses (medicine, law, mathematical and physical sciences, and literature) installed in as many high schools, remained only on paper due to insurmountable financial difficulties and the lack of coordination between the centre and the periphery: out of the 17 planned high schools, only three were actually opened, in the four years of Murat's government following the launch of the DO: the Salvatore in Naples, without university professorships due to the presence of the Athenaeum; the medical high school in Salerno and the legal high school in Catanzaro; all the others remained colleges as established by law 140/1807[18].

The *Statuti pe' Reali* Licei[19], therefore, reconfirmed the DO approach, but dropped the scheme of macro-areas and structured a curriculum, defined by Title I, articulated in 16 chairs, entrusted to the same number of teachers, which managed to contain an entire secondary course and all the university courses: this approach would be difficult to understand without first illustrating the keystone of the system, contained in Title II, subtitled "doctoral degrees" and Title III, devoted to "examinations for conferring doctoral degrees".

In the first article of Title II, the cornerstone of the lyceum curriculum was laid down: "In the royal lyceums one can only receive degrees of approval and licence in law, in the physical and mathematical sciences, in medicine, and in philosophy and literature" (Title II, Art. 7). The first article of Title III listed the "examinations to obtain the degrees of approval and licence [that] will be taken in the licei before the Commissions formed by the professors" (Table 3):

Tab. 3. Examination Boards for Approval and Licence Degrees

Commission	Disciplines
Law Commission	Philosophy, Ethics and People's Law
	Kingdom Law and Civil Procedure
	Criminal law and procedure
Commission of Physical and Mathematical Sciences	Synthetic mathematics
	Analytical mathematics
	Mathematical physics
	Experimental physics
	Natural history
Medicine Commission	Anatomy and Physiology
	Theoretical and practical surgery
	Antepractice of medicine
	Practical medicine
	Chemistry and Pharmacy
Literature and Philosophy Commission	Philosophy, Ethics and People's Law
	Rhetoric and the Greek language
	Sublime Latin language

[18] San Carlo alle Montelle and Caravaggio (Naples); Maddaloni (Terra di Lavoro); Avigliano (Basilicata), Cosenza and Corigliano (Calabria citra), Monteleone and Reggio (Calabria Ultra), Lecce (Terra d'Otranto), Bari (Terra di Bari); Lucera (capitanata); Teramo (Abruzzo ultra I) and Sulmona (Abruzzo ultra II) [9, p. 85].

[19] *Statuti pei Reali Licei*, decreto 14 Febbraio 1816, CLDAPI, vol. I, pp. 365-342.

Which professions these commissions were qualified for, what the candidates' examinations should cover, and how they were to be examined had already been outlined in the Regulations of the Doctoral Degrees in conjunction with the Regulations of the Royal University.

Since it was required to grant approval certificate and licence diploma to which precise disciplinary contents corresponded, the lyceum was provided with the corresponding chairs and a consequent curriculum, set out in Title I of the *Statuti*, which we can summarise as follows (Tab. 4)

Tab. 4. Authors and texts to be adopted in the Licei and Colleges of the Kingdom. Source: *Statuti pei reali licei,collegi e scuole secondarie* (1816). Our elaboration.

Chairs	Disciplines	Authors and textbooks
1°	Catechism of Religion and Morals	Printed Catechism for use in primary schools
	Italian grammar	Soave, *Grammatica*
	Practical arithmetic	Practical arithmetic for primary schools
2°	Application of the grammatical rules of the Italian language to the classics, with grammatical analysis	Boccaccio, Casa, Firenzuola
	Sacred history	Sacred history for public education
	Geography	Luigi Galanti, *Geografia*
3°	Latin Grammar	Portoreale, *Compendium*
	Italian language composition exercises	[no indication, as this is an exercise]
	Secular history	Secular history [no other indication]
	Mythology	Tomeo, *Mitologia*
4°	Application of the grammatical rules of the Latin language to the classics with grammatical analysis	Portoreale, *Grammatica latina*; Classici: Fedro; Nipote; Cicerone, *Epistole*; Cesare, *Commentari;* Virgilio, *Egloghe* e *Georgiche*
5°	Humanity with an explanation of the classical prose writers and poets who are most elevated in style and sentiment, noting the graces and precision by which they are distinguished	Portoreale, *Grammatica latina*; Classics: Cicerone, *Uffizii* e *Orazioni*; Virgilio, *Eneide*
	Grammar of the Greek language	Portoreale, *Grammatica di lingua greca*; *Nuovo Testamento*; *Silloge*
	Roman Antiquities	Salvatore Aula, [*Antiquatum romanarum epitome*]
	Greek Antiquities	Oliver Goldsmith, [*Compendio della storia greca*]
6°	Rhetoric	Majelli, *Istituzioni oratorie*; classics: Sallustio, Livio, Tacito
	Italian and Latin poetry	Orazio
	Application of grammatical rules to Greek classics, with grammatical analysis	Classics: Isocrate, Omero, Demostene
7°	Philosophy	Soave, *Istituzioni*
	Natural right	Eineccio, *Elementi del diritto di natura e delle genti*
	Truths of the Catholic Religion	"[the professor] will give a treatise on the truth of the Catholic religion"
8°	Synthetic mathematics	Flauti e Giannattasio
	Analytical mathematics Mathematical physics	Bossut; Fergola, *Sezioni coniche analitiche;* "[the professor] will correct his lectures with Lagrange, Eulero, Monge ed Hachette, e con Biot; per la Meccanica, Fergola"
9°	Chemistry Pharmacy (demonstrations in the chemistry laboratory)	Sementini, *Instituzioni;* "[the professor] will correct his lectures with Mojon; Adet, Brugnatelli; Thompson; Berthollet e Movillon-Lagrange"

10°	Natural history	"Millini; [the professor] corrects his lectures for zoology with Buffon and Lacepede's supplement, with Dumeril and Cuvier, and those for mineralogy with Brougnart, Hauy, Vernier, Breislak, Melograni"
11°	Civil procedure	"Civil Laws of the Kingdom in force"
12°	Criminal procedure	"Criminal Laws of the Kingdom in force"
13	Anatomy Physiology	Francesco Cerio Grimaldi, *Elementi di anatomia*; "[the professor] will accompany his lectures with Goemmering, Bichat, Boyer, having in mind Gall's findings on the structures of the brain"
14°	Theoretical surgery Practical surgery Obstetrics	Richter, *Istituzioni*; "[the professor] will accompany his lectures with Monteggia, Richerand".

The first six chairs of the curriculum provided the cultural elements of the education, hinged on the humanistic tradition (reimposed by the Jesuits with the Ratio studiorum matured at the end of the 16th century and recovered for the Napoleonic lyceum with the 1809 decree) structured in the three progressive courses of Grammar, Humanities and Rhetoric. Only after this literary apprenticeship did the more abstract contents of the seventh and eighth chairs follow: Philosophy, Mathematics and Physics.

The next eight chairs more appropriately grouped together the university and vocational teaching provided by the legal, medical or scientific course of study; while the fourth, literary course, which had already been abundantly absorbed into general education, did not need a further chair among the university ones.

This structure of lyceum could grant two academic degrees: approval certificate and licence diploma, qualifying candidates to pursue administrative careers or the exercise of professions according to the regulations of the academic degrees[20]. The last degree, the bachelor's degree, a necessary title for access to the highest offices and the exercise of liberal professions, could only be awarded by the University of Naples.

The *Statuti* did not omit to regulate: the functions and roles of the staff (rector, vice-rector, prefect of order, dormitory prefects and teachers); the didactic and pedagogical organisation (duration of the course of study, school calendar, lesson timetable; discipline and internal life of the boarding school); the determination of staff salary scales and the regulation of the economic and administrative management of the institute. With regard to textbooks (Table 4), the *Statuti* warned that the works indicated were provisional, pending texts "compiled by order of the Government, so that education may be uniform and progressive" (Title I, Art. 5). By decree of the same date, 14th February 1816, the *Statuti pe' college e per le scuole secondarie*. The curriculum college corresponded exactly, in terms of progression and content, to the first eight chairs of the lyceum, with the option of being able to amalgamate some subjects, allowing only six chairs in the college.

Lastly, the role and function of secondary schools was established, placed at the expense of the municipality: "Secondary schools are considered to be all those where teaching cannot receive the determined extension of boarding schools, and where the course of studies cannot be equally methodical and progressive"[21], making it much easier to open such schools since it allowed the ministry to propose the type of course and number of chairs according to local needs and finances. The approach taken with DO to the public education system was

[20] The examination commissions were in charge of proposing the questions, but were not to express an opinion on the assessment: "the judgement of admission to doctoral degrees, or of refusal, is reserved for the faculties of the Royal University of Studies" (Title II, Art. 19).

[21] *Statuti pe' college e per le scuole secondarie*, Part Two, Title VI, Art. 26, in CLDAPI, vol. I, p. 420.

confirmed, the physiognomy of the public institutes was redesigned, and a few months after the *Statuti* were issued, the *Regolamento per le scuole private e i pensionati* (10 July 1816)[22] were also passed, subjecting them too to state control: prescribed the obligation to submit to the CPI the "plan of literary, scientific and moral instruction" and the possession of the academic degrees of the teachers, and only at a later stage and relative control, the CPI could apply to the Ministry of the Interior for authorisation and the issuing of the licence, subject to annual renewal[23]. In order to guarantee the "uniformity of method and doctrine, each licensed teacher [...] [was] to preferably use the books [...] printed for the use of public education' (Art. 12), and each school or boarding school was subject to the "supervision and protection" of the CPI[24].

Within this framework, the education channels: public (high school, college and secondary schools) and private (lay and ecclesiastical), were complementary, and to them we must add, from the 1920s onwards, the third channel: the seminaries reopened and re-established, since the concordat of 1818.

5 Conclusions

Salvatore Bucci, in 1976, outlining the framework of historical-educational studies dedicated to the educational institutions of the Napoleonic period, lamented the lack of organic works able to account for the "renewal of the school' that took place in the first decade of the nineteenth century by Bonapartean reformism, despite the 'differences in the application of the French school system in Italy" [16, p. 17]. Almost fifty years later, the observation is still relevant.

Our work has attempted to partially fill this gap for southern Italy, in the context of a renewed historiographical interest in the processes of modernization at the hands of Napoleonic reformism [17] [18], by showing how the systemic approach of Neapolitan education was a consequence of the translation of the French system.

The composite course of research provided the framework for the modernisation process of education initiated in Naples. The educational reform implemented in three stages ensured the Kingdom a public education system that was administratively centralised and verticalised, with a system prospectively divided into three orders (primary, secondary and higher), in which the lyceum took on the role of the apex of the secondary segment and the base ofthe higher segment.

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AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
No. 2 (2022), pp. 100-110

EUROPEAN INSTITUTIONS POLICIES ON INTERCULTURAL TEACHER TRAINING

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ABSTRACT

In the new globalized and pluralistic European society, the task of the school is to adapt to the continuous changes taking place, but also to constantly redefine its educational and inclusive function. In this sense, it becomes essential to train a teaching class capable of responding to the challenges posed by the presence of children and adolescents from different cultural contexts, as well as promoting educational and didactic paths with an intercultural matrix. In this regard, the present research work focuses on examining the proposals and indications provided by the European institutions to the various Member States regarding the intercultural training of teachers in training and in service.

KEYWORDS: intercultura, formazione degli insegnanti, scuola, istituzioni europee.

INTRODUCTION

In an increasingly globalized and multicultural society, the school plays a fundamental role in educating future generations in dealing with ethnic and cultural diversity. In this sense, it proves to be decidedly important to have competent teachers with regard to those principles proper to intercultural pedagogy aimed not only at promoting the integration and training of immigrant pupils, but also at educating native students to open up to otherness and intercultural dialogue; as well as, on the one hand, to favor the establishment within the classroom of a climate of comparison, collaboration and interaction between natives and foreigners and, on the other hand, to offer the latter the linguistic and didactic tools to achieve adequate education. On this front, one cannot fail to point out that, despite the undoubted consolidation – already for several decades now – of the multi-ethnic and multicultural character of European schools, as far as teacher training is concerned, there is still a significant gap between the obvious and repeatedly debated need to adapt the training of teaching staff to the new social reality and the effective implementation of adequate training courses focused on intercultural issues.

On a more general level, the factors which, in our opinion, contribute to fueling such a critical situation can be identified in the scarce attention paid to the role of intercultural pedagogy in university training courses for future teachers; as well as, as regards the acquisition or improvement of the intercultural skills of in-service teachers, the economic problems which often prevent schools from providing for this type of need and, in general, the low level of incentives for teachers to continue to update their skills throughout their professional career.

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* The paper is the result of combined work by the authors and their common reflection. The responsibility for the drafting of § 1, 2 is Serena Sani, of § 4, 5 is Luca Refrigeri and of § 3 and References is Alina Angela Manolescu. The authors contributed to the final draft and revision of the work.

In such a context, teacher training becomes "mainly the result of the individual ability to re-elaborate the experience that the teacher conducts every day in the field" and, for many teachers, the presence of immigrant pupils in the classroom represents the only "opportunity from which to draw acquisitions and learning" [1]

Obviously, experience 'in the field' can have a fundamental value as regards the knowledge of concrete situations; by itself, however, it is by no means sufficient. In fact, this must be accompanied by adequate intercultural methodological and didactic skills that allow teachers to "leave the canons of linear transmission to dialogue with particular needs" [2] and above all "to insert the intercultural perspective in school disciplines".

On this front it is worth noting that, regardless of the indications on the contents to be promoted within the curricula, the real challenge of the intercultural approach in the school environment lies in the ability of the teachers and, in general of the school, to guarantee its implementation.

2. The actions undertaken by the European institutions for teachers

The need to provide effective intercultural training for teachers and all those who, in various capacities, work in schools has been reiterated several times over the last few decades, both by the European institutions and by many scholars who have addressed the issue of education and integration of immigrant pupils in schools on the European continent.

In this regard, among the numerous initiatives carried out by the Council of Europe, it is worth mentioning the Recommendation N.R. (84) 18 to Member States on teacher training in education for intercultural understanding particularly in a context of migration [3].

In this Recommendation, starting from the important premise that "The presence in schools in Europe of millions of children belonging to foreign cultural communities constitutes an asset and an important resource in the medium and long term, provided that educational policies are promoted which encourage open-mindedness and understanding of cultural differences", the Committee of Ministers supported the need to provide teachers with "training that prepares them to adopt an intercultural approach, training based on an awareness of the contribution that understanding between cultures and of the value and originality of each of them". Furthermore, convinced of the fundamental role played by teachers in such an educational context, the Committee urged the governments of the Member States to include in initial and in-service preparation "the intercultural dimension and that of understanding between communities" and, in particular, to make teachers aware of the "different forms of cultural expression existing in their national cultures and in those of the immigrant communities". On this front, moreover, the drafters of the document underlined the need to provide teachers with training that would make them capable of opposing ethnocentric attitudes and breaking down stereotypes: "they too - the document stated - must become creators of a movement of cultural exchange, to be able to develop and apply strategies which make it possible to become familiar with other cultures, to understand them, to consider them and to make students consider them; inform yourself about the social exchanges existing between the country of origin and the host country, not only in their cultural aspects but also in their historical perspective; become aware of the economic, social, political and historical causes and effects of emigration; thus becoming aware that the active participation of the migrant child in two cultures and his access to intercultural understanding largely depend on the conditions of stay, work and study in the host country".

In this regard, it was recommended to provide prospective and existing teachers with all necessary information on the countries of origin and host countries; to make them more receptive to cultures other than their own; to help them also to know and appreciate the educational approaches of other countries; to make them aware of the importance of direct contacts between schools and with the parents of the pupils, especially the immigrant ones.

To these important suggestions were added others of equal value, such as for example that of encouraging teachers to prepare and use in the classroom "material suitable for supporting the intercultural approach" or, also that of realizing, where possible, intercultural media libraries" from which you can draw to obtain documents, information and pedagogical aids aimed at providing useful information on the different cultures of origin of immigrant students. It was also proposed to promote the organization of seminars and internships, at national and international level, on the intercultural approach in education, "intended for teachers, teacher trainers, administrators, social operators and those in the market workers who have close professional relationships with the families of emigrants". On this front, moreover, it was also proposed to encourage, in the context of ongoing training, the planning of common internships for teachers from the host countries and for those from the countries of origin; as well as to support, "where possible, exchanges of pupil-teachers and teacher educators, in order to develop knowledge and understanding of different cultures and different teaching systems"; lastly, it was suggested to encourage the dissemination of documents concerning formation and intercultural education elaborated by or for the Council of Europe.

Finally, the Committee of Ministers made some specific recommendations both to the governments of the countries of origin and to those of the host countries. In particular, he recommended to the former that they provide teachers who were preparing to go and teach abroad with sufficient knowledge of the language and of the customs and traditions of the host countries; to think about developing an adequate method for teaching the language of origin to immigrant pupils present in schools in host countries; to prepare teachers to also play the role of intermediary between the school in the host country and the parents of immigrant pupils; to provide teachers with the necessary skills to also solve the educational and linguistic problems that may arise when immigrant pupils return to their country during schooling.

On the other hand, the Committee recommended to the governments of the receiving countries that they introduce linguistic preparation into teacher training which would enable them to effectively teach the language of the receiving country to immigrant pupils and to promote, where the need was , "the possibility of learning the rudiments of one of the languages of the countries of origin", reflecting "on this learning so that [the teachers themselves] open up to a different culture and understand the difficulties encountered by migrant children". Lastly, it was proposed to pay attention, within the framework of national legislation, to the status of teachers in the countries of origin and their role in the educational community; to offer these teachers the opportunity to enhance their knowledge and understanding of the language, culture and education systems of the host countries; to "encourage in parallel the recruitment of teachers who have left emigration for

develop a pedagogy in school programs that integrates the cultural and linguistic elements of the country of origin in relation to the history of integration and the culture of the host society" [4].

In our opinion, this Recommendation assumes particular relevance, since it focuses solely on the intercultural training of teachers and offers concrete indications on how to intervene in this area. In this regard, in fact, the impression one gets from an examination of the large amount of Recommendations, Resolutions and various documents drawn up by the European institutions regarding the education of immigrant pupils or intercultural education - not only in those years, but also in subsequent ones – is that often, the issue of intercultural teacher training is still treated in a marginal way within the documents concerning the general training of teachers or, as we said, in contexts in which integration is mainly spoken of. In these documents, in most cases, we find only the repeated exhortations to the Member States to take the necessary measures for the initial and continuous training of teachers with regard to intercultural competences.

In the face of such a finding, however, one cannot doubt the validity of some indications provided over the years regarding this important problem.

In confirmation of this, here, we will limit ourselves to mentioning some documents drawn up by the representative bodies of the European Union which, in our opinion, testify in a decisive way the commitment undertaken by the European Union itself to encourage and increase the intercultural training of teachers.

Before examining these documents, it seems important to us to mention some reflections expressed by the European Commission, regarding the critical issues present in the general training of teaching staff, in the Communication to the European Parliament and the Council. Improving the quality of teacher training 2007. In this document, the European Commission denounced, in a very direct way, the inadequacy of the progress made in the education sector with respect to the crucial objectives set previously by the Council of Europe as far as concerned the quality of teaching and the reduction of early school leaving. In this regard, the Commission noted a close correlation between these two important issues and specified that teacher training had to become "one of the main objectives of the European education systems if rapid progress is to be made to achieve the common objectives defined in the Education program and training 2010" [5].

Starting from the observation that teacher training systems are often not adequately equipped to offer valid preparation, the European Commission underlined that, according to what had emerged from some recent surveys, "almost all countries didactic skills and difficulties in updating the latter". The gaps related in particular to "the lack of skills necessary to deal with the new evolution of education (including individualized learning, preparing pupils for autonomous learning, the ability to manage heterogeneous classrooms, preparing learners for optimal exploitation of ICT etc.)". In most Member States, there was 'a lack of systematic coordination between the various elements of teacher education', resulting in 'a lack of coherence and continuity, especially between the teacher's initial professional education and subsequent professional development, continuing education and professional development". Quite often these processes were unrelated to academic development and improvement or research in teaching.

Furthermore, the incentives for teachers to keep upgrading their skills throughout their professional careers were too weak: 'investments in teacher training and continuing education are very limited across the European Union, as is the continuous training available to teachers during their working activity". Furthermore, the European Commission complained that continuing training for teachers was compulsory only in some Member States and that, however, even in these countries, teachers were not obliged to follow this type of training.

On this aspect, however, it was also specified that, even where there was the possibility of following training, this generally did not exceed 20 hours a year: "In no Member State does the compulsory minimum training exceed five days a year and in most countries only three days of training per year are compulsory. Furthermore, the fact that continuous training may be compulsory does not in any way indicate what the real participation rate is".

Furthermore, as regards the new school teachers, in the aforementioned Communication to the European Parliament and the Council. Improving the quality of teacher training was done

note that only half of the Member States 'offer them some kind of support at a systematic level (e.g. integration, training, mentoring) during the first year of education. Only in a third of countries are there specific contexts to help teachers who have difficulties in carrying out their work". With regard to the skills needed to adequately carry out the teaching role, the Commission argued that teachers should have been able to acquire, at any stage of their career, not only the skills related to their teaching subject, but also the basic pedagogical knowledge to be able to able to help their students realize their full potential. In particular, they had to show that they possess the skills necessary to "identify the specific needs of each learner and respond to these needs with a wide range of instructional strategies; support the development of young people into fully independent lifelong learners; help young people acquire the skills listed in the Common European Framework of Reference on Skills; working

in multicultural contexts (including the ability to understand the value of diversity and respect for difference); as well as work closely with colleagues, parents and the wider community" [5].

The White Paper on intercultural dialogue «Living together in equal dignity» (2008) [6] was placed on a more specific level, and therefore strictly linked to the question of intercultural competences. In this important document, the Council of Europe, after specifying that "the skills necessary for intercultural dialogue are not automatic: they must be acquired, practiced and nurtured throughout life", underlined the importance of the role of educators at all levels "both in strengthening intercultural dialogue and in preparing future generations for dialogue". In this regard, the document underlined the need to include in teacher training programs "pedagogical strategies and working methods that prepare them to handle the new situations brought about by diversity, discrimination, racism, xenophobia, sexism and marginalization, and to resolve conflicts peacefully". In this regard, teachers' training institutions were also urged to design "quality assurance tools inspired by education for democratic citizenship, taking into account the intercultural dimension", and to develop "indicators and tools for self-assessment and self-centred development "; as well as to strengthen "intercultural education and the management of diversity in the framework of lifelong learning" [6] and to "develop complementary tools to encourage pupils to exercise critical and autonomous judgment which also includes a critical evaluation of their own reactions and attitudes of facing different cultures". All pupils, the document concluded, "should be able to improve their multilingual skills. Intercultural practice and learning should be incorporated into initial and continuing teacher education activity" [6].

3. The Council of Europe guidelines for European teachers

In the same year in which the White Paper on intercultural dialogue «Living together in equal dignity» (2008) was published, the North-South Center (CNS) of the Council of Europe, with the aim of providing teachers with further assistance in understanding and put intercultural education into practice in European schools, published the Guidelines for intercultural education. A handbook for educators to know and implement intercultural education [7].

This document, in addition to representing a valid tool for intercultural pedagogical training, raises a series of questions about the responsibilities of teachers and the role of educational institutions in promoting intercultural education.

In this context, the task attributed to intercultural education is to "develop learning communities" within which pupils and teachers are encouraged to work together and to reflect on global problems through new educational methods aimed at promoting the ability to face these problems "with an open and critical spirit", leading them to reflect and encouraging them "to share points of view in support of new evidence or rational arguments", to evaluate situations assuming different points of view, actively opposing prejudices and stereotypes [7] .

In this regard, some fundamental skills were indicated for the students to acquire and, in particular, it was proposed to help them: "to familiarize themselves with the cultural variety of languages and codes, in order to favor mutual understanding"; to appreciate the importance "of cooperation, within the framework of shared tasks and of working with other individuals and groups who have the same objectives"; to acquire the ability to understand the opinions and feelings of others and, specifically, of those who belong to a different ethnic group and culture; to develop "dialogue skills, such as active listening, respect for the opinions of others and constructive affirmation of oneself", which allows one to interact with others "without denying the rights of others, but neither passive, allowing one's rights to be denied" [7].

On this basis, teachers and educators were urged to become aware of the need to constantly reaffirm the principles and values of intercultural education in all learning processes [7].

Continuing along this path, the Guidelines for intercultural education indicated to teachers a series of methodological approaches of an intercultural matrix and, at the same time, defined the parameters to be followed for the choice and evaluation of educational methods, also highlighting the importance to identify and understand the learning group and to create an environment suitable for this purpose. In particular, with regard to the learning group, the document urged teachers to always keep in mind, when designing intercultural programs or projects, the social and cultural conditions and origins of the learners, their age and needs individuals, and to choose the most appropriate educational methods. As for the learning context of global education, it had to be based on democratic principles, participation, cooperation and experience and had to promote critical thinking, democratic dialogue and integration [7].

The multiple suggestions offered to educators by the Guidelines for intercultural education, in our opinion, have the great merit of going amply into the concrete field and of providing clear and easily accessible indications to all teachers who find themselves working in multi-ethnic and multicultural.

It is not possible here to examine the innumerable suggestions provided on possible methods or approaches of an intercultural nature; we deem it appropriate to mention, however, at least the importance attributed to the interdisciplinary approach of intercultural education, which allows "to link specific knowledge to general knowledge and links with the various disciplines and provides the multi-perspective vision necessary to perceive the knowledge as a unified system, to understand ourselves and others in a complex and interdependent world, in which the realities of our lives can be complementary, but also contradictory. Passing from the culture of individualism to a culture of partnership presupposes the transformation from personal criteria relating to a single truth to collective criteria relating to multiple realities" [7].

In this regard, the importance of starting networking in the classroom is underlined, which makes it possible to establish concrete links with pupils and with teachers or associations from other countries, so that this comparison can arouse in native students the will to actively engage and review one's attitudes and one's system of values, in the awareness that one of the fundamental conditions of intercultural education is to know and learn to appreciate other cultural perspectives and other systems of values [7].

The commitment required of educators is to be aware that it is essential to continuously change, improve, reinvent and reaffirm these principles and values throughout the learning process.

4. The European continuous training of the Pestalozzi Programme

On this front, among the numerous activities of the Council of Europe, it is worth mentioning the Pestalozzi Program launched in 1969 within the framework of the European Cultural Convention and addressed to primary and secondary school teachers, school heads, inspectors, counsellors, teacher trainers, textbook authors, etc. of the signatory states.

This program is centered on a continuous training project and, for this purpose, European seminars are organized every year in which projects considered priorities by the Council of Europe are discussed, especially in the education sector. On a general level, the objectives of the program are: the dissemination of knowledge of the different school systems, of the innovative teaching/learning and training methods in use among the Member States; the broadening of cultural and professional horizons through comparisons of best teaching practices and educational-didactic materials; the sharing of the experiences and knowledge acquired during the courses attended at the educational institution to which they belong [8].

These seminars, in addition to offering teachers the opportunity to learn about the work carried out by the Council of Europe in the field of education, allow teachers to "get involved in an intercultural experience, to exchange information, ideas and teaching material

with colleagues from other countries , to act as multipliers to circulate information between colleagues and much more".

As is known, the Pestalozzi Program also provides for the publication of scientific studies and guidelines aimed at promoting intergovernmental cooperation, human rights, learning, dialogue and intercultural skills, citizenship education, multilingualism, gender equality etc., as well as to provide extensive guidance on the objectives and vision of the Council of Europe with regard to these and other educational and social issues. Specifically, as far as the intercultural training of teachers is concerned, they seem particularly worthy to us

of note some reflections present in the second volume of the Pestalozzi Series published by the Council of Europe in 2012: Intercultural competence for all. Preparation for living in a heterogeneous world [9]. In this volume it is stated that, to ensure the success of intercultural education, it is necessary to broaden the competences of teachers; in fact, these can no longer be considered simply as "discipline transmitters", but must also act as guides and encourage interaction. Furthermore, to meet the specific needs of intercultural education, teachers not only need to be experts in their respective subjects, but they also need to have more skills in general pedagogy.

In this sense, teacher training should include diversity awareness programmes; implement empathy and intercultural knowledge; provide educators with the necessary tools to enable them to build learning communities and implement effective conflict resolution strategies; to create a democratic and impartial learning environment for students, helping them to become more proactive and constructive [9].

Furthermore, this training should also offer teachers the skills necessary to create teaching materials that culturally enhance reactive training and to develop teaching methodologies aimed at promoting cooperative learning and interpersonal relationships.

Quality assurance should foster reflective teachers and professionals who are willing to continue their self-development and also take on the roles of mediator, adviser, director, mentor, coach, learning facilitator, human rights activist, member of a activity group or a learning community [9].

These concepts are also taken up and expanded in the third volume of the Pestalozzi Series edited by the Council of Europe: Developing intercultural competence through education [10], in which, however, we feel, in our opinion, a greater urgency to make contemporary societies aware of the intercultural foundations and principles. The authors of the volume, in fact, point out that faced with a social reality increasingly characterized by racial prejudices, discrimination, hatred and racist manifestations, as well as by social, economic and political inequalities and by problems of misunderstanding between people from different cultural backgrounds , it becomes essential to promote the principle of mutual understanding and the development of intercultural competences. For this reason, intercultural education that aims to develop and improve these capacities can offer an essential contribution to peaceful coexistence [10].

Starting from these premises, the document illustrates the development of intercultural competences through education and offers a detailed description of the meaning of 'intercultural competence', namely: the specific attitudes, knowledge, skills and actions which, together, allow individuals to understand themselves and others in a context of diversity and to interact and communicate with those of different cultural origins from their own.

Furthermore, Developing intercultural competence through education also explains the reasons why it is necessary to promote such competences in a systematic way and describes the pedagogical and methodological approaches considered most appropriate for its development in the various formal, non-formal and informal educational contexts [10] .

As far as the school environment is concerned, Developing intercultural competence through education offers teachers countless suggestions to better understand the educational value of intercultural teaching. On this front, numerous practical activities are proposed to be

carried out in the classroom, such as those aimed at raising awareness of different points of view [10].

The activities mentioned clearly indicate not only the interest shown by the Council of Europe in this question, but also the awareness matured by this institution regarding the urgency of providing teachers with all the necessary tools to apply, also at a didactic level, the intercultural principles.

At the conclusion of this brief analysis, a further document which we think is important to mention is the Proposal for a resolution Learning the EU at school, presented by the European Parliament in 2015. This Proposal reiterates the need to "promote and encourage multilingual skills and intercultural interests of educators, as well as opportunities for mobility, peer learning and exchanges of best practices among teaching staff, for example through the organization of European-level seminars'. In such a context, moreover, the European Parliament underlines the importance of the role played by universities "in the preparation and training of highly qualified and motivated teachers and educators"; calls on the European Commission to support the Member States "who strive to make available, within universities, specialist qualification courses that are open and accessible both to enrolled students and to teachers and educators practicing their profession" ; highlights the importance of programs such as Erasmus+ in promoting "education and training, language skills, active citizenship, cultural awareness, intercultural understanding and various other valuable key and transversal skills"; underlines the merit of these programs in strengthening "European citizenship and notes the "need for strengthened and adequate financial support for these programmes, for a greater emphasis on their qualitative outcomes and for wider access to mobility, paying particular attention to teachers and to the other educators" [11].

As far as mobility is concerned, as can be seen from this and other documents prepared in recent decades, the European Union has often reiterated that, if it is true that the development of knowledge represents the engine that drives growth and social cohesion , it is equally true that the cornerstone of this development must be identified in learning mobility ("mobility for learning"), which has a strong impact on the personal and professional growth of students and workers and provides them with a significant set of skills linguistic, social and cultural.

In particular, as far as teachers are concerned, the European Commission's attention to learning mobility has progressively increased in recent years. Obviously, this interest stems from the awareness of the importance of the educational role of teachers in the European training of the new generations. Today, in fact, teachers are constantly urged to offer their students all the tools necessary to become full-fledged European citizens capable of facing the challenges posed by an increasingly composite and changing society.

In this regard, the emphasis is placed on the need to guarantee all educators the possibility of having formative and personal development experiences that lead them to come into direct contact with other educational and cultural realities and to get to know other points of view and other ways to go to school.

In this regard, it is worth noting that In the Recommendation of 22 May 2018 on the promotion of common values, inclusive education and the European dimension of teaching, the Council of Europe underlined that "One of the objectives of the ET 2020 framework for European cooperation in education and training, i.e. the promotion of equity, social cohesion and active citizenship, was established on the basis that education should promote intercultural competences, democratic values and respect for fundamental rights, prevent and combat all forms of discrimination and racism and provide children, young people and adults with the tools to interact constructively with their peers from different backgrounds" [12].

In the face of such a prospect, however, the European Commission itself has had to ascertain the low adherence of teachers to European mobility programmes, due, in almost all countries, to the persistence of numerous obstacles of an administrative and legal nature [13].

Basically, what emerges from the analysis of the reports on this activity is that "global strategies to actively facilitate and promote mobility are rather the exception than the rule, and the results are not yet up to the real needs" [14] .

Overall, it could be noted that, despite the existence of a Community framework clearly convinced of the importance of supporting mobility as a determining factor in improving the quality of education and training systems, national legislations have not yet fully understood the benefits deriving from transnational mobility

not only for the development of teachers' intercultural skills, but also for the personal and professional growth of the protagonists of training and of the entire education system.

Undoubtedly, since the 1990s up to today, European cooperation has made many steps forward in this field. To confirm this, it would be enough to think of the many interventions implemented by the European Union in the training and education sector - for example, through the Erasmus, Socrates, Comenius, Leonardo da Vinci and other programmes, as well as, currently, through the LLP program (Lifelong Learning programme) which concentrates in one large container all the actions put in place for the development of European cooperation - to increase the mobility of students and teachers, to perfect language skills and renew teaching practices [15]. However, especially at the national level, there are still too many gaps in terms of information, preparation, support and recognition of training experience abroad.

In fact, these critical issues clearly show how much, on a national level, full awareness of the need to promote a transnational European identity that goes beyond the limited state borders to interact with different cultures, to encourage the development of linguistic skills and to learn about new ways of training and carrying out teaching, as well as to promote that intercultural dialogue much desired by many, but not yet fully implemented.

Undoubtedly, in today's society, the challenges that teachers have to face are many compared to the past. In this sense, one cannot fail to note the different and increasingly demanding situations they have to deal with, think, for example, of how classes have changed – undeniably, today, they are more heterogeneous from a linguistic and cultural point of view, with pupils from a multiplicity of socio-economic backgrounds and with different needs – and, in general, the different grades and levels of schools.

In this respect, we seem to be able to agree with what was stated in the document Council Conclusions on European teachers and trainers of the future that, "although many teachers and trainers share many of the same challenges, there also exist, to varying degrees in different Member States, specific challenges related to different levels and types of education and training, including:

a) in early childhood education and care: difficulties in attracting and retaining qualified and adequately trained early childhood education and care professionals; aging workforce and gender imbalances, with a predominantly female workforce; unattractive working conditions, including a high child-to-staff ratio, and a lack of attractive career paths, as well as a lack of continuing professional development opportunities;

b) in school education: attracting and retaining high-potential students in initial teacher education, as well as attracting graduates and retaining in-service teachers are challenging; the teaching staff is ageing; there are also gender imbalances, with a predominance of female teachers, particularly in certain subjects and in some cycles of education; furthermore, the profession may be culturally unrepresentative of the community to which it is addressed; all of this is reflected in the fact that many Member States are facing shortages of teachers, either generally, in specific geographical areas, or in certain disciplines, (...), or shortages of teachers with skills to teach students with special needs special needs, teaching in a multicultural or multilingual environment, or teaching students from socioeconomically disadvantaged backgrounds" [16].

CONCLUSIONS

From what has emerged in this examination of the documents published over the last few decades by the Council of Europe and the European Commission regarding the intercultural training of teachers in training and in service, the will of these institutions to provide school systems with the various member countries the necessary tools to interpret the new demands of the current scholastic and social reality and to offer educational responses that go beyond the traditional conception of education based essentially on mere notional knowledge. Today, in fact, "education must, so to speak, simultaneously offer the maps of a complex world in constant turmoil and the compass that allows individuals to find their own route. In this perspective of the future, the traditional answers to the question of education, which are essentially quantitative and based on knowledge, are no longer adequate. It is not enough to provide a child, at the beginning of his life, with a wealth of knowledge on which he can draw for the rest of his life. Each individual must be enabled to seize every opportunity to learn throughout his life, both to expand his knowledge, skills and attitudes, and to adapt to a changing, complex and interdependent world" [17]. In this sense, both the White Paper and the Guidelines mentioned above represent valuable aid tools for teachers who want to acquire intercultural competences.

In this regard, however, it cannot be overlooked how much European countries still struggle to guarantee such preparation [18] and how much work there is to be done in every European country, including Romania where the intercultural phenomenon is on the rise, even if with different characteristics from other countries. In this context, the contribution of the European Studies Center of Agora University will be increasingly intense.

This work is supported by Agora University from project POSDRU/161/2.1/G/137526.

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