

AGORA International Journal of Juridical Sciences

<http://univagora.ro/jour/index.php/aijs>

Year 2015
No. 2



Publisher: **Agora University Press**

This journal is indexed in:
International Database
International Catalog

EDITORIAL BOARD

Editor in chief:

PhD. Professor Elena-Ana IANCU, Agora University of Oradea, Oradea, Romania – member in the Executive Editorial Board.

Associate Editor in chief:

PhD. Professor Adriana MANOLESCU, Agora University of Oradea, Oradea, Romania – member in Executive Editorial Board;

PhD. Professor Cornelia LEFTER, The Academy of Economic Studies, Bucharest, Romania.

Scientific Editor:

PhD. Professor Ovidiu ȚINCA, Agora University of Oradea, Romania – member in the Executive Editorial Board.

Executive editor:

PhD. Professor Salvo ANDO, “Kore” University, Enna, Italy;

PhD. Associate Professor Alina-Angela MANOLESCU, Agora University of Oradea, Romania

Associate executive editors:

1. PhD. Professor Ion DOGARU, University of Craiova, Craiova, Romania;
2. PhD. Professor Emilian STANCU, University of Bucharest, Bucharest, Romania.

Associate editors:

1. PhD. Professor Alfio D'URSO, “Magna Grecia” University, Catanzaro, Italy;
2. PhD. Professor Alexandru BOROI, “Danubius” University from Galați, Galați, Romania;
3. PhD. Professor Ioan-Nuțu MIRCEA, associated professor “Babeș-Bolyai” University, Cluj-Napoca, Romania;
4. PhD. Professor Ovidiu PREDESCU, “Law Journal” (executive editor), “Criminal Law Journal” (editor in chief), Bucharest, Romania;
5. PhD. Professor Brândușa ȘTEFĂNESCU, The University of Economic Studies, Bucharest, Romania;
6. PhD. Alexandru CORDOȘ, Christian University “Dimitrie Cantemir”, Romania
7. PhD. Szabó BÉLA, University of Debrecen, Debrecen, Hungary;
8. PhD. Professor Farkas AKOS - University of Miskolc, State and Juridical Sciences Chair - The Institute of Criminal law sciences, Miskolc, Hungary;
9. PhD. Professor Jozsef SZABADFALVI, University of Debrecen, Debrecen, Hungary;
10. PhD. Professor Luigi MELICA, University of Lecce, Lecce, Italy;
11. PhD. José NORONHA RODRIGUES, Azores University, Portugal.

Technical secretariate:

1. PhD. Lecturer Florian MATEAȘ, Agora University of Oradea, Oradea, Romania;
2. PhD. Associate Professor Laura-Roxana POPOVICIU, Agora University of Oradea, Oradea, Romania;
3. PhD. Candidate Lecturer Radu FLORIAN, Agora University of Oradea, Oradea, Romania;
4. PhD. Reader Alina-Livia NICU, University of Craiova, Craiova, Romania;
5. Anca TĂȚĂRAN, Agora University of Oradea, Oradea, Romania.

Web Master: Beniamin ȘINCA, Department of Information, Agora University of Oradea, Oradea, Romania.

TABLE OF CONTENTS

Mirela Carmen Dobrilă - UNIFICATION OF CRITERIA FOR THE ASSESSMENT OF GOOD FAITH IN NEGOTIATING CONTRACTS: FROM NATIONAL TO INTERNATIONAL THROUGH THE INTERCESSION OF THE EUROPEAN EXPERIENCE	1
Florentina Nina Mocănașu - MEDIA CONSUMPTION AND SPACE MANAGEMENT IN THE SOCIAL SCIENCE	11
Daniel-Ștefan Paraschiv - BASIC PRINCIPLES OF LIABILITY FOR THE ACTS LEADING TO ENVIRONMENTAL DAMAGE.....	18
Ramona Gabriela Paraschiv - FEATURES OF INTERNATIONAL PROCEDURES OF HUMAN RIGHTS PROTECTION.....	24
Ninel M. Peia - PROPOSALS FOR LEGISLATIVE PREPARATION AND TRAINING IN THE FIELD OF ENVIRONMENTAL PROTECTION.....	29
Miron Gavril Popescu - PRIMARY MATRIMONIAL REGIMEAS REGULATED BY THE CURRENT ROMANIAN CIVIL CODE. MARRIAGE EXPENSES.....	36
Gabriel Ungureanu - ADDICTION, WITHDRAWAL, AND AGGRESSIVENESS IN ADOLESCENCE	44
Andreea Simona Uzlău, Marilena Carmen Uzlău- CONSIDERATIONS REGARDING THE MEASURE OF OBTAINING DATA GENERATED OR PROCESSED BY PROVIDERS OF PUBLICLY AVAILABLE ELECTRONIC COMMUNICATIONS NETWORKS, DETAINED BY THEM, IN THE CONTEXT OF DECISION NO. 440/2014 OF THE CONSTITUTIONAL COURT.....	51/58

UNIFICATION OF CRITERIA FOR THE ASSESSMENT OF GOOD FAITH IN NEGOTIATING CONTRACTS: FROM NATIONAL TO INTERNATIONAL THROUGH THE INTERCESSION OF THE EUROPEAN EXPERIENCE

M.C. Dobrilă

Mirela Carmen Dobrilă

Faculty of Law, Law Department,

"Alexandru Ioan Cuza" University of Iași, Iași, Romania

*Correspondence: Mirela Carmen Dobrilă, Assistant PhD, Post-doctoral Researcher,

"Alexandru Ioan Cuza" University of Iași, Boulevard Carol I, no. 11, Iași, Romania

E-mail: mirela.dobрила@uaic.ro

Abstract

This paper seeks to emphasize the idea and the efforts to unify the criteria for the assessment of good faith in the context of contract negotiation. In this regard, the paper observes the vision of the Romanian legislator regarding good faith in contract negotiation but also the existing vision at European level by highlighting links with existing coding projects at European contract law level and with other foreign civil codes in the context of certain aspects of comparative law.

Keywords: *good faith, bona fides, unification, contract negotiation, European contract law, comparative law*

Introduction

The absence of an express provision for good faith as a general principle in the previous Civil Code has been corrected through the amendment brought by the new Romanian Civil Code (NCC) (Law no. 287/2009, republished, in force since 2011 with the subsequent amendments and supplements) regarding good faith through the express regulation of this principle. Recognition (express this time) in the New Romanian Civil Code of the principle of good faith, as a general principle, is based also on the fact that this principle is expressly regulated in other foreign civil codes and drafted after the model of similar provisions in certain coding projects at the level of European contract law. Taking after the model of other foreign civil codes and the model of similar provisions in some coding projects from the European law of contracts, the Romanian legislature has chosen to introduce a separate text in respect to good faith when negotiating the contract, as an embodiment of the principle of good faith.

Good faith in contract negotiations: from national to international by through the intercession of the European experience

Although in the previous Romanian Civil Code (1864) good faith was not regulated as a general rule, based on the interpretation of the provisions within the Code relating to certain applications of good faith, it was concluded that good faith should be regarded as general rule.

Good faith is expressly regulated in the New Civil Code, Article 14 paragraph (1), under which any individual or legal person must exercise his rights and perform his civil duties in good faith, in accordance with public order and good morals. Reference is made to Article 11 NCC which stipulates that one can not be derogated from the laws that are of interest for the public order or good morals by agreement or unilateral legal acts.

The reference to public order concerns the legal rules that protects a general interest. Moreover, the notion of good morals aims also for a general interest and signifies the entirety of rules imposed by a certain social morality which is a standard of human behavior¹.

Starting from *bona fides praesumitur* of Roman law under Article 14 paragraph (2) NCC, good faith is presumed until proven otherwise. It is envisaged as a model the Article 2085 of the Civil Code of Quebec which provides that good faith is always presumed less when the law expressly requires to be proved. The new Romanian Civil Code enacts the concept of exercising rights and obligations in good faith in accordance with public order and good morals, then logically enshrines the postulate of good faith, under the form of a relative legal presumption with value until proven otherwise².

By regulating good faith in the general part of the Civil Code, this Code aligns to most civil laws (eg. civil codes in Germany, Switzerland, Portugal, Spain, Poland, etc.) which establishes a legal presumption until proven otherwise³.

Article 1170 NCC regards the application of the principle of good faith in contractual matters. It is enshrined as a general subject the principle of good faith in the field of contract since the parties must act in good faith both at the negotiation and at the conclusion of the contract as well as throughout its execution, without being able to remove or limit the duty of good faith. In the previous Civil Code there was a provision relating to the execution of agreements in good faith, agreements obliging both to what is expressly provided but also for the consequences resulting from equity, custom or law (Article 970). Based on this text, naturally, good faith is considered as a principle that should govern all stages involving the conclusion and execution of the contract, including the time of negotiations.

The express regulation of the concept of good faith in Article 1170 of NCC extends the meaning of Article 970 previous Civil Code both in what concerns negotiation (obligation to inform) and of the period of its execution (contractual solidarism), the norm being imperative, without the possibility to derogate from its effects⁴. The regulation of Article 1170 NCC aligns to European trends from the contract field⁵.

As an actual application of the principle of good faith regulated by Article 14 NCC⁶, Article 1183 NCC comes to outline the framework of action for good faith negotiations. Thus, good faith governs negotiations in the sense that the parties must act in good faith in the negotiations: the parties have the freedom of initiation, of conducting negotiations and breaking off negotiations and can not be held liable for their failure [Article 1183 paragraph (1) NCC]. All parties engaging in negotiations are required to comply with the requirements of good faith, this being a mandatory rule that can not be removed by agreement between the parties by limiting or excluding this obligation [Article 1183 paragraph (2) NCC].

Referring to good faith in negotiations, the rules in the contents of this obligation are the correct information, refraining from proposals clearly unacceptable that lead to breakage of negotiations, announcing the decision to end the negotiations for not holding the false hope of the partner, collaboration between parties so that negotiations should not exceed a

¹ P. Perju in F.A. Baias, E. Chelaru, Rodica Constantinovici, I. Macovei, *Noul Cod civil. Comentariu pe articole*, 1st Edition, C.H. Beck Publishing House, Bucharest, 2012, p. 12;

² *Idem*, p. 15;

³ Marilena Uliescu, *Buna credință în Noul Cod civil*, the Volume of the Workshop for scientific papers „Justiție, Stat de drept și Cultură juridică”, The Institute for Legal Research "Acad. Andrei Rădulescu", Bucharest, 13 May 2011, Universul Juridic Publishing House, Bucharest, 2011, p. 362;

⁴ Gh. Piperea, *Introducere în dreptul contractelor profesionale*, C.H. Beck Publishing House, 2011, Bucharest, p. 240; A. P. Dimitriu in A. G. Atanasiu, A. P. Dimitriu, A.F. Dobre et al. *Noul Cod civil: note, corelații, comentarii*, Publishing House, Bucharest, 2011, p. 448;

⁵ Marilena Uliescu, *op. cit.*, p. 364;

⁶ A. P. Dimitriu, *op. cit.*, p. 451;

reasonable duration, no involvement in parallel negotiations and keeping the confidentiality of information transmitted⁷.

It is contrary to the requirements of good faith the conduct of the party that initiates or continues negotiations with no intention to conclude the contract [Article 1183 (3) NCC]. Contrary to good faith in negotiations are unacceptable proposals, failure to respect the commitments, the omission of relevant information for the conclusion of the contract, but also other conducts may be considered contrary to good faith.

The behavior contrary to good faith in contractual negotiations characterized by initiation, continuation or breaking off negotiations contrary to good faith brings liability for the loss caused to the other party. In determining the loss, the New Civil Code allows a fairly broad interpretation: to see which is the loss one takes into account the costs incurred in order to be able to participate in negotiations, the waiver by the other party regarding other offers as by this waiver the party is denied the possible conclusion of a more favorable contract and any other similar circumstances.

Good faith during precontractual period involves the obligation of a conduct characterized by good faith in negotiating the contract or assumes the obligation to correct and complete information, respecting the interests of the negotiating parties and cooperation between parties. Such regulations, with similarities and differences exist in German, Italian, French law etc., unlike the English law where there is no general provision that should rule the obligation of good faith although there is “a duty to negotiate with care.”⁸

Good faith dominates all contractual steps by the fact that it first involves in the precontractual stage negotiations and second to the execution of contracts.

The concept of good faith in negotiations is rather unclear, also the way it is effectively applied is quite uncertain and without an actual shape. It is stated that those involved in negotiations may be sanctioned for certain bad faith behaviors used in negotiations (eg. use of negotiations in order to produce a delay or find out some secret information in another context), being still fairly difficult delineate what is accepted in relation to a particular standard regarding the truth⁹.

According to their will, the parties may supplement the primary obligation of good faith negotiation with a number of other accessory duties that respond to various concerns, including: the exclusiveness of negotiations with a certain partner in a given period of time, a sincerity clause¹⁰.

The solution of introducing specific provisions of good faith in negotiations in Article 1183 NCC cannot surprise as the Romanian legislature had already taken into consideration foreign models, for example, Article 2:301 of the Principles of European Contract Law (PECL) regarding Negotiations Contrary to Good Faith or those from Article 7 of the Gandolfi Code regarding the obligation to inform during contract negotiations but also the fact that many European civil codes enshrined the requirements of good faith in contract negotiations (eg. Article 1337 Italian Civil Code, Article 227 Portuguese Civil Code, Article 197 Greek Civil Code).

Most of the European Civil Codes contain general provisions regarding good faith, some of the codes contain specific provisions related to the concept of good faith while others contain provisions related to its application, but most systems make the distinction between

⁷ M. Noșlăcan, *Obligația negocierii cu bună-credință a contractelor*, Yearly Journals of the West University of Timișoara, Law Series, no. 1-2/2008, p. 285, available at http://drept.uvt.ro/documents/Anale_UVT_Drept_1-2.2008_final-Obligatia-negocierii-cu-buna-credinta-a-contractelor.pdf;

⁸ M. Uliescu, *op. cit.*, p. 365;

⁹ P. Reilly, *Was Machiavelli Right? Lying in Negotiation and the Art of Defensive Self-Help*, 24 Ohio State Journal on Dispute Resolution 481, 2009, p. 30, available at <http://www.law.asu.edu/files/!NoTemplate/AALS/Reilly.pdf>;

¹⁰ M. Noșlăcan, *op. cit.*, p. 286;

the objective meaning of good faith and the subjective good faith: subjective good faith is defined as a subjective state of mind, not knowing nor having to know of a certain fact or event (with relevance in property law, *bona fide* acquisition), and objective good faith is the concept that the general good faith clauses refer to, it is regarded as a norm for the conduct of contracting parties, acting in accordance with or contrary to good faith¹¹.

According to Article 1375 in the Civil Code of Quebec good faith shall govern the behavior of the parties, whether it be at the moment the obligation comes into existence, during its performance or the moment it is extinguished, while Article 6 states that each person shall exercise his/her civil rights according to the requirements of good faith. These articles are connected to Article 2 of the Suisse Civil Code, which has been interpreted so as to impose a duty of good faith during the pre-contractual period (Each person shall exercise his/her rights and execute his/her obligations according to the rules of good faith, and no manifest abuse of a right shall be protected by law)¹². In the same way, Article 227 of the Portuguese Civil Code states that parties must act in good faith when negotiating and executing a contract. Article 197 of the Greek Civil Code provides that in the course of negotiations for the conclusion of a contract the parties shall be reciprocally bound to adopt the conduct which is dictated by good faith; Additionally, Article 198 states that a person, who in the course of negotiations for the conclusions of a contract has through his/her own fault caused damage to the other party, shall be liable for compensation even if the contract has not been concluded, and Article 288 imposes the fulfillment of the obligations from a concluded contract on the basis of good faith.

Good faith embodies a basic principle in the Italian law and the *Italian Civil Code* highlights its importance in various contractual stages: the parties must behave in good faith during the pre-contractual bargaining and contract drafting (Article 1337); contract must be interpreted in good faith (Article 1366); contract must be executed in good faith (Article 1375); in contracts providing for mutual counter-performance, each party can refuse to perform his obligation if the other party doesn't perform his own at the same time, unless different times for performance have been established by the parties or otherwise stipulated by the nature of the contract but performance cannot be rejected if, considering the circumstances, such rejection is contrary to good faith (Article 1460).

The Italian Civil Code of 1942 was the first code that codified the requirement of good faith in the contractual period of the negotiations, while the French Civil Code, the Belgian Civil Code and the Luxembourg Civil Code have not established such a requirement, although the courts in Belgium and France recognized the existence of a general principle of good faith that governs the stage of contract negotiations¹³.

The *buona fede* principle has been interpreted as a synonym of German *Treu und Glaube* even if the Italian case law seems still to place a lot of importance on the idea that the parties enter into a bargaining process under the principle of freedom of contract¹⁴.

In the *Dutch law* good faith is not defined, but Article 3:12 of the Civil Code of the Netherlands regarding the principle of reasonableness and fairness provides that in order to

¹¹ M. Hesselink, *The Concept of Good Faith*, in A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. Mak, C. Edgar du Perron, *Towards a European Civil Code*, Fourth Revised and Expanded Edition, Kluwer Law International, 2010, p. 619-620, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1762630;

¹² B. Fauvarque-Cosson, D. Mazeaud, *European Contract Law. Materials for a Common Frame of Reference: Terminology, Guiding Principles, Model Rules*, Association Henri Capitant des Amis de la Culture Juridique Française, Société de Législation Comparée, 2008, p. 186, available at http://www.legiscompare.com/IMG/pdf/CFR_I-XXXIV_1-614.pdf.

¹³ *Idem*, p. 185;

¹⁴ A. M. Musy, *The Good Faith Principle in Contract Law and the Precontractual Duty to Disclose: Comparative Analysis of New Differences in Legal Cultures*, International Centre For Economic Research, Working Paper no. 19 December 2000, p. 3, available at http://www.icer.it/menu/f_papers.html;

determine the reasonableness and fairness one has to take into account the general accepted legal principles, the fundamental concepts of law in the Netherlands and the relevant social and personal interests which are involved in the given situation¹⁵.

German law distinguishes between *Treu und Glauben* (objective good faith) and *Guter glaube* (subjective good faith)¹⁶. Two meanings can be distinguished when speaking about good faith: the objective sense, good faith may be regarded as a method used to confer moral character contractual relationships, while the subjective sense provides that good faith aims to protect the erroneous belief and to give effect to appearance¹⁷.

In Germany, the principle of good faith and fair dealing marked an important breakthrough through § 242 BGB which states that the duty to perform according to the requirements of good faith is by taking customary practice into consideration. This requires the party to perform in good faith, and this means to show proof of fairness (*Treu*) in the performance of obligation, to respect the legitimate reliance that he has engendered (*Glauben*), to take into account the legitimate interests of the other party¹⁸.

Good faith has been extended beyond a simple principle of performance and has become a general principle of good faith in German law becoming a central pillar of German law, and as a result, the principle of good faith also applies to the pre-contractual period¹⁹. As a general principle, good faith requires a positive or negative conduct, depending on the particularities of each contract. The German Civil Code contains no express provision on *culpa in contrahendo* or on *neminem laedere*, therefore good faith shall be applied as a general principle of law²⁰.

The condition of good faith during the period of precontractual negotiations has its origin in an article by Rudolph von Jhering (*Culpa in contrahendo oder Schadensersatz bei nichtigen oder nicht zur Perfection gelangten Verträgen, Jahrbücher für die Dogmatik des heutigen römischen und deutschen Privatrechts, 1861*): if a party determines the other to believe that the contract will be concluded, then such party is at fault, as a matter of *culpa in contrahendo*²¹.

The Swiss law, similar to German law, recognizes good faith as a general principle: according to Article 2 of the Swiss Civil Code, every person is bound to exercise his rights and fulfill his obligations according to the principles of good faith. Good faith has become a general principle of law and at the precontractual stage there is the precontractual liability for *culpa in contrahendo*, even in the absence of a written provision to this effect, because as soon as they enter into negotiations, the parties must behave in accordance with the rules of good faith and fair dealing, without causing any harm to the other²².

In French law, the case law and legal scholarship have established the principle of good faith as a general principle because the legal provisions concerning good faith were so few (Article 1116 of the Civil Code regarding prohibition on fraud, Article 1135 regarding equity in respect of implied obligations). According to Article 1134, paragraph 3 agreements must be performed in good faith; this article imposed a duty to conduct oneself in good faith, also at the precontractual stage. Although the principle remains that of freedom to break negotiations, the negotiations should be conducted in a fair way, according to good faith: the obligation to fairly inform the negotiating partner; it is prohibited to allow the other party to run up large costs with a view to a future contract and then harshly break off negotiation

¹⁵ B. Fauvarque-Cosson, D. Mazeaud, p. 159;

¹⁶ *Idem*, p. 196;

¹⁷ *Idem*, p. 156;

¹⁸ *Idem*, p. 519;

¹⁹ *Idem*, pp. 519-520;

²⁰ Emanuela Iftime, *Good Faith In Domestic Sales Law*, *Agora International Journal of Juridical Sciences*, no. 4/2014, p. 72, available at <http://univagora.ro/jour/index.php/aijjs/article/viewFile/1603/468>;

²¹ Fauvarque-Cosson, D. Mazeaud, p. 185;

²² *Idem*, pp. 520-521;

without reason; it is contrary to good faith and even sanctioned to encourage the expectations of the other party and then destroy them²³.

There are certain comments to be made regarding the obligation of good faith in French law. There were critics regarding the fact that there is no provision on the applicability of the principle of good faith during the performance of the contract. Therefore, the liability rests on tort principles during pre-contractual negotiations and on contract principles once the contract is formed²⁴.

Unlike in German or Italian law, and like in French law, no special rule of precontractual liability (*culpa in contrahendo*) exists in *English law* when no Contract results²⁵. Like in France, Legal duties may arise between negotiating parties in tort: parties may owe duties of care to each other²⁶. The place of good faith in English law remains controversial with a direct impact on the law of precontractual negotiations, as any requirement of good faith in such negotiations to enter into a contract would not be possible if a similar requirement is not present in the performance of a valid contract²⁷. Despite several critical views to the contrary, English law still refuses to imply general duties of good faith, fair dealing, disclosure and confidentiality at the negotiating stage; in this, it still offers a clear alternative to EU Commission's Common Frame of Reference, the Principles of European Contract Law, the UNIDROIT Principles of International Commercial Contracts, all of which endorse broadly similar versions of a general duty of good faith and fair dealing in negotiating contracts²⁸.

Good faith is often connected with moral standards and considered a moral standard itself, meaning that a party should take the interest of the other party into account. Some systems do not distinguish between equity and good faith, they regard them as the same objective standard.²⁹

Good faith and fair dealing is one of the fundamental ideas underlying the *UNIDROIT Principles of International Commercial Contracts 2010*: Article 1.7 provides in general terms that each party must act in accordance with good faith and fair dealing in international trade and the parties may not exclude or limit this duty; even in the absence of special provisions in the Principles the parties' behavior throughout the life of the contract, including the negotiation process, must conform to good faith and fair dealing³⁰.

According to article 2.1.15 of the UNIDROIT Principles regarding the Negotiations in bad faith, a party is free to negotiate and is not liable for failure to reach an agreement, but a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party. It is considered for a party to enter into or continue negotiations in bad faith when there is no intention to reach an agreement with the other party. A party's right to freely enter into negotiations and to decide on the terms to be negotiated must not be in conflict with the principle of good faith and fair dealing³¹. Other cases of negotiations in bad faith are found when a party has misled intentionally or through negligence the other party on the nature or

²³ *Idem*, pp. 525-526.

²⁴ E. Iftime, *op. cit.*, p. 71.

²⁵ S. Banakas, *Liability for Contractual Negotiations in English Law: Looking for the Litmus Test*, Revista para el análisis del derecho indret no. 1/2009, p. 4, available at http://www.indret.com/pdf/605_en.pdf;

²⁶ A. M. Musy, *The Good Faith Principle in Contract Law and the Precontractual Duty to Disclose: Comparative Analysis of New Differences in Legal Cultures*, International Centre For Economic Research, Working Paper no. 19 December 2000, p. 7, available at http://www.icer.it/menu/f_papers.html;

²⁷ S. Banakas, *op. cit.*, p. 5;

²⁸ S. Banakas, *op. cit.*, pp. 16-17;

²⁹ M. Hesselink, *op. cit.*, p. 622;

³⁰ International Institute for the Unification of Private Law (UNIDROIT). UNIDROIT – Principles Of International Commercial Contracts 2010, Rome, p. 19, available at <http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf>;

³¹ *Idem*, pp. 59-60;

terms of the contract or by misrepresentation of facts or by failing to communicate issues that had to be communicated.

The aggrieved party may recover the expenses incurred in the negotiations and may also be compensated for the lost opportunity to conclude another contract with a third person, but may generally not recover the profit which would have resulted had the original contract been concluded³².

The principle of good faith requires the compliance with a minimum standard of loyalty by the contracting parties³³. At the level of the *Principles of European Contract Law* drafted by the Lando Commission (PECL)³⁴, according to Article 1:201, each party must act in accordance with good faith and fair dealing and the parties may not exclude or limit this duty. According to Article 2:301 regarding Negotiations Contrary to Good Faith (regulated in section 3 regarding Liability for negotiations) it is contrary to good faith and fair dealing for a party to enter into or continue negotiations with no real intention of reaching an agreement with the other party. A party is free to negotiate and is not liable for failure to reach an agreement, but if the party negotiated or broke off negotiations contrary to good faith and fair dealing, she/he is liable for the losses caused to the other party.

In *DCFR – Draft Common Frame of Reference*, the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group) identified as main principles: contractual freedom; contractual security and contractual loyalty (*liberté contractuelle; sécurité contractuelle; loyauté contractuelle*), the latter as a duty to act in conformity with the requirements of good faith and fair dealing, from the negotiation of the contract until all of its provisions have been given effect³⁵.

Article I.–1:103 regarding good faith and fair dealing is placed in Book I entitled General Provisions in DCFR Model Rules, as a general principle; good faith and fair dealing refers to a standard of conduct characterized by honesty, openness and consideration for the interests of the other party to the transaction or relationship in question” (paragraph 1) and it is contrary to good faith and fair dealing for a party to act inconsistently with that party’s prior statements or conduct when the other party has reasonably relied on them to that other party’s detriment (paragraph 2)³⁶.

DCFR regulates the duty to negotiate in accordance with good faith and fair dealing and not to break off negotiations contrary to good faith and fair dealing and this duty may not be excluded or limited by contract. According to Article II. – 3:301 regarding negotiations contrary to good faith and fair dealing, a person is free to negotiate and is not liable for failure to reach an agreement. The person who is in breach of this duty is liable for any loss caused to the other party. It is considered contrary to good faith and fair dealing for a person to enter into or continue negotiations with no real intention of reaching an agreement with the other party³⁷.

Regarding good faith in *Common Frame of Reference (Projet de cadre commun de référence)*, in the documents prepared by Association Henri Capitant des Amis de la Culture Juridique Française and the Société de Législation Comparée, entitled Terminology, Guiding

³² *Idem*, p. 60;

³³ C. Macovei, *Unificarea dreptului contractelor. O perspectivă europeană*. Junimea Publishing House, Iasi, 2005, p. 121.

³⁴ O. Lando, H. Beale, *Principles of European Contract Law (PECL), Parts I and II*. Commission on European Contract Law. Kluwer Law International, Hague, Netherlands, 2000.

³⁵ C. von Bar, E. Clive, H. Schulte-Nölke, H. Beale, J. Herre, J. Huet, M. Storme, S. Swann, P. Varul, Anna Veneziano, F. Zoll, *Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR)*, Outline Edition, The Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), Sellier European Law Publishers, Munich, 2009, p. 11-12, available at http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf;

³⁶ *Idem*, p. 178;

³⁷ *Idem*, pp. 193-194;

Principles, Revised version of the Principles on European Contract Law, the contractual fairness, as guiding principle (among other principles like freedom of contract, contractual certainty) involves, firstly a general obligation to act in good faith and fair dealing (Article 0-301) and secondly an obligation to perform the contract in good faith (Article 0-302). The general obligation of good faith and fair dealing (Article 0-301) provides that the parties must act in good faith and fair dealing from the negotiation of the contract until all of its provisions have been given effect with no possibility to exclude this duty, nor limit it. Complementary, the obligation of performing the contract in good faith provides that each party is required not to do anything that prevents the performance of the contract or that infringes the rights that the other party acquires from the contract, recognizing the possibility of renegotiating the contract in case a party acts in such a way as to reduce the benefit that the other party within the concluded contract (Article 0-302)³⁸.

Good faith and fair dealing presides over contractual negotiations: Article 2:301 (2) provides that a party who has negotiated or broke off negotiations contrary to good faith and fair dealing is liable for the losses caused to the other party; Article 2:301 (3) establishes the fact that a party starts or pursues the negotiations with no real intention of reaching an agreement with the other party is contrary to the requirements of good faith and fair dealing. In addition, even after the contract is entered into, the obligation to negotiate in good faith continues to apply should the contract have to be renegotiated: Article 6:111 (3) provides that damages may be awarded for the loss suffered by a party if the other party refuses to negotiate or breaks off negotiations which practically is contrary to good faith and fair dealing³⁹.

Regarding good faith in precontractual negotiation, according to Article 6 of the *European Contract Code developed by the Pavia Group* - the Academy of European private lawyers (Gandolfi Code or Pavia Contract Code), the parties are free to undertake negotiations without being held at all responsible if the promised contract is not concluded, unless their behavior is contrary to good faith [paragraph (1)]. It is contrary to good faith to enter into or to continue negotiations with no real intention of concluding a contract [paragraph (2)].-Either party who breaks off negotiations without justifiable grounds, having created reasonable confidence in the other, is acting contrary to good faith [paragraph (3)]. The party who acted contrary to good faith shall be liable for the harm it has caused to the other party (the costs incurred in the negotiations, the loss of opportunities caused by the negotiations underway) [paragraph (4)]⁴⁰.

The regulation embodying a general principle of the good faith principle in contract law gives expression to the guiding principle of contractual loyalty under the Principles of European contract law. The guiding principle of contractual loyalty is binding and contractual loyalty covers the duty of good faith, meaning a good contractual behavior, making out of good faith a rule of conduct. Moreover, the terms of good faith and loyalty can be synonymous⁴¹.

Good faith is a notion that comes to show clearly the fact that there are difficulties linked to divergence of concepts because although the notion of good faith is known in all European Union countries, the French notion *la bonne foi* does not identify with the English *good faith* or with the German *Treu und Glauben* or the Italian *bouna fede*, thus the European efforts being difficult in drafting a text containing the contractual common law⁴², including in

³⁸ B. Fauvarque-Cosson, D. Mazeaud, pp. 515-570;

³⁹ *Idem*, p. 516;

⁴⁰ Pavia Group, *European Contract Code*, Accademia Dei Giusprivatisti Europei (the Academy of European private lawyers), 2004, p. 3, available at <http://www.eur.contracts.eu/site2/docs/EuropeanContr.pdf>;

⁴¹ M. Uliescu, *op. cit.*, p. 364;

⁴² C. Macovei, *op. cit.*, p. 88;

what concerns the content and the application of good faith in the precontractual stage, in the contractual negotiations.

Regarding the obligation to negotiate in good faith the search of a definition to explain the content of this obligation is useless, because it can not have content only *a posteriori*, after the decision taking, its limits being observed only in particular cases⁴³.

Conclusions

Express dedication of the principle of good faith in Article 14 of the New Romanian Civil Code and its express recognition as a general principle, along with other provisions which come to complete the application framework of this principle (Article 1170 of good faith during the negotiation, conclusion and execution of contract, Article 1183 regarding good faith in contractual negotiations) was based on the model containing the principle of good faith at European level, either through the considerable importance the German law gives to good faith in the contractual relationships and to the trust established between the parties to the commencement of the contractual negotiations⁴⁴ (by enshrining good faith by Article §242 BGB, with the distinction between objective good faith *Treu und Glauben* and the subjective good faith *Gute Glaube*) or as a general principle in PECL or other coding projects at the European level or in other civil codes.

The importance of the principle of good faith to our legal system allows good faith to be seen as a general obligation, and the current role of good faith is recognized by the Romanian legislature in the New Civil Code.

*This work was supported by the strategic grant POSDRU/159/1.5/S/ 141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

Bibliography:

1. Emanuela Iftime, *Good Faith In Domestic Sales Law*, Agora International Journal of Juridical Sciences, no. 4 /2014, available at <http://univagora.ro/jour/index.php/aijjs/article/viewFile/1603/468>;
2. P. Perju in F.A. Baias, E. Chelaru, Rodica Constantinovici, I. Macovei, *Noul Cod civil. Comentariu pe articole*, 1st Edition, C.H. Beck Publishing House, Bucharest, 2012;
3. Marilena Uliescu, *Buna credință în Noul Cod civil*, Volumul Sesiunii de comunicări științifice „Justiție, Stat de drept și Cultură juridică”, Institutul de Cercetări Juridice "Acad. Andrei Rădulescu", București, 13 mai 2011, Universul Juridic Publishing House, Bucharest;
4. A.P. Dimitriu in A.G. Atanasiu, A.P. Dimitriu, A.F. Dobre et al., *Noul Cod civil: note, corelații, comentarii*, Publishing House. Bucharest, 2011;
5. Gh. Piperea, *Introducere în dreptul contractelor profesionale*, C.H. Beck Publishing House, Bucharest, 2011;
6. International Institute for the Unification of Private Law (UNIDROIT). UNIDROIT-Principles Of International Commercial Contracts 2010, Rome, available at <http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf>;
7. M. Hesselink, *The Concept of Good Faith*, in A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. Mak, C. Edgar du Perron, *Towards a European Civil Code*, Fourth Revised and Expanded Edition, Kluwer Law International, 2010, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1762630;

⁴³ M. Noșlăcan, *op. cit.*, p. 286;

⁴⁴ C. Macovei, *op. cit.*, p. 65.

UNIFICATION OF CRITERIA FOR THE ASSESSMENT OF GOOD FAITH IN NEGOTIATING CONTRACTS:
FROM NATIONAL TO INTERNATIONAL THROUGH THE INTERCESSION OF THE EUROPEAN
EXPERIENCE

8. C. von Bar, E. Clive, H. Schulte-Nölke, H. Beale, J. Herre, J. Huet, M. Storme, S. Swann, P. Varul, Anna Veneziano, F. Zoll, *Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR)*, Outline Edition, The Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), Sellier European Law Publishers, Munich, 2009, p. 11-12, available at http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf;

9. P. Reilly, *Was Machiavelli Right? Lying in Negotiation and the Art of Defensive Self-Help*, 24 Ohio State Journal on Dispute Resolution 481, 2009, available at <http://www.law.asu.edu/files/!NoTemplate/AALS/Reilly.pdf>;

10. S. Banakas, *Liability for Contractual Negotiations in English Law: Looking for the Litmus Test*, Revista para el análisis del derecho indret no. 1/2009, available at http://www.indret.com/pdf/605_en.pdf;

11. B. Fauvarque-Cosson, D. Mazeaud, *European Contract Law. Materials for a Common Frame of Reference: Terminology, Guiding Principles, Model Rules*, Association Henri Capitant des Amis de la Culture Juridique Française, Société de Législation Comparée, 2008, available at http://www.legiscompare.com/IMG/pdf/CFR_I-XXXIV_1-614.pdf;

12. M. Noșlăcan, *Obligația negocierii cu bună-credință a contractelor*, Analele Universității de Vest din Timișoara, Law Series, no. 1-2/2008, available at http://drept.uvt.ro/documents/Anale_UVT_Drept_1-2.2008_final-Obligatia-negocierii-cu-buna-credinta-a-contractelor.pdf;

13. C. Macovei, *Unificarea dreptului contractelor. O perspectivă europeană*. Editura Junimea, Iasi, 2005;

14. Pavia Group, *European Contract Code*, Accademia Dei Giusprivatisti Europei ((the Academy of European private lawyers), 2004, p. 3, available at <http://www.eurcontrats.eu/site2/docs/EuropeanContr.pdf>;

15. A.M. Musy, *The Good Faith Principle in Contract Law and the Precontractual Duty to Disclose: Comparative Analysis of New Differences in Legal Cultures*, International Centre For Economic Research, Working Paper no. 19 December 2000, available at http://www.icer.it/menu/f_papers.html;

16. O. Lando, H. Beale, *Principles of European Contract Law (PECL), Parts I and II*. Commission on European Contract Law. Kluwer Law International, Hague, Netherlands, 2000.

MEDIA CONSUMPTION AND SPACE MANAGEMENT IN THE SOCIAL SCIENCES

F.N. Mocănașu

Florentina Nina Mocănașu

Faculty of Journalism, Psychology and Educational Sciences, Journalism Department,
University Hyperion of Bucharest, Romania

*Correspondence: Florentina Nina Mocănașu, Assistant Professor PhD, University Hyperion
of Bucharest, Popa Nan Street, no. 90-92, Bucharest, Romania

E-mail: motornina@yahoo.com

Abstract:

Social actors claim that sociology studies social reality as a whole, but also concerns the parts, phenomena and processes of this reality, in their many and varied relationship to the whole. In the social space there are many groups that interact in this regard, and because of this there are many types of messages to reach one or the other of the groups. Public opinion is the reaction product of people's minds and the thinking sum of individual form groupthink.

Management then applies individual problem then it analysis the public thinking. The reaction occurs using communication media between the individual and the mass of people bringing the two stakeholders to a common denominator and creating symbols that public thinking to answer.

Keywords: *social actors, social space, group thinking, communication media, public opinion, management.*

Motto:

Courage people can be represented as a rock, their purpose as a road, their doubts can be viewed as a crossroads of a road, difficulties as potholes and stones, progress as a fertile valley.

Public Opinion

Introduction

Contemporary management moves its sphere of interest to the extent that individual man is considered and treated in what he is for real. It must be very clear conceptually the understanding of human-centered management because it is not just a simple change practice about what is required of people but especially a fundamental change to the way the human is designed. The paradigm is the same, instead of subordinating the human to technology as was done in previous years, today we subordinate the technology to the human but on the same principal of treatment on human.

The emergence and evolution of management socio-human space

The term was originally used by management in anglo-saxon countries (England, Ireland, Scotland) but he progressed rapidly all over the globe. The word itself supports Al Graur¹ originates from the latin "*manus*" which means *hand*. This term was used in italian as "*mannegio*" or *processing by hand*, then jumped in french "*manege*" or *school riding* and

¹ Graur Al. Arguments "*for*" and "*against*" adopting the term "*management*" in Romanian, Discussion Forum organized by the magazine, no. 2, 1971

MEDIA CONSUMPTION AND SPACE MANAGEMENT IN THE SOCIAL SCIENCES

came in *romanian* with meaning "*place where horses are trained.*" Then *the british* used the term "*to manage*" which means *tomanage, to lead.* The british continued to use the term with the meaning "*manager*" and "*management*".

Over the years the verb "to manage" passed in the sphere of sport horses to curb the horses into operative areas and military science. It may mistakenly believe that the time management has found resonance in the economy, it is not fulfilled either in the eighteenth century. It is used but in the political sphere and in the field of journalism. We find him and public administration with emphasis in matters of police, military and naval environment. In the last 50 years it has been used in economic activities.

So management can give many meanings of the term but all appeal to man, explicitly or implicitly, more specifically his work.

Just think of the construction of the great pyramids, the Great Wall, the great medieval castles and gothic cathedrals to accept the idea that all this would have been nearly impossible without the existence of a management built on genius measure architectonic constructor. If the antiquity and the Middle Ages have bequeathed a series of books that describe and formulate principles and laws that formed the basis of this stunning building, we may wonder where those documents and books are to be taught the secrets and managerial methods that have enabled them to achieve success, technological conditions of those times. Abrudan (2003, p.4) I consider that such books are "the first management books are the fundamental books of humanity: the Bible, the Koran, books of asian religions, etc. I stated several times that there is a more authentic human resources management theory than Solomon's teachings. Beyond any partisan or religious affiliation, fundamental books of mankind are manual management"²

Claiming a different point of view, P. Drucker states that management was present only in businesses that produce goods or performs economic services and he underlined that "the experience of the management cannot be passed and applied to other institutions management and organization"³

After suffering numerous transformations, management initially resulted in business, but now he has broadened the scope and used in all spheres of activity; culture, medicine, sport etc. accounting activity management, administration.

Definitions of management several senses of the term:

1. Managementul is a process (activity).
2. Management is a group of people
3. Management is a science and an art.

Professor Constantin Pintilie is concerned with the sense of the concept and states that management is a means by which changes can be designed rationally human and disseminated throughout the body in the social field. Activity in management domain is considered one of the basic factors of economic growth, the same importance as advanced technique.

A sense accepted by many is that management becomes a conscious process management and coordination of actions and individual and group activities and resource mobilization and allocation organization to meet its objectives consistent with the mission, the goals and the responsibility of its economic and social.

Multiple explanations of the concept of management made it to L. Brech to believe that its meaning is not always clear or universally accepted⁴. Today, worldwide although management is unanimously recognized as indispensable but has become particularly controversial.

²http://www.academia.edu/5712362/C_Bratianu_-_Management_si_Marketing

³Drucker, PF, La pratique from directiondesentreprises, Les Editions d'Organisation, Paris, 1957, p.8

⁴Petrescu. I, Management, Publishing Holding Reporter, Bucharest, 1991, p.14

Romanian management

In Romania only in the nineteenth century more precisely in recent years that the notion of managerial culture in two forms:

- Processing concepts of management classics
- The development of Romanian works with management implications

DP Martian BPHașdeu, ADXenopol were few specialists who have studied the many problems formation and development of Romanian national economic complex. Romanian school representatives support the idea that there can be an economic science valid for all countries, but rather is necessary for each country to base its economic science.

A supporter of Romania was and PS Aurelian. It argued in 1872 that: Romania is not anybody's colony to be imposed by force not to create any industry, it is an independent country and as such has the right and duty to encourage domestic industry.⁵

In Romania managerial impacts led to significant practical changes. This was possible because they were designed and implemented with a strategy premise.

The characteristics of this strategy can be applied and understood only as part of a group strategy. They are grouped in Romania as follows:

1. territorial and sectorial strategies for ordering accelerated restructuring and privatization;
2. strategy of developing the attractiveness of economic or social domains and subdomains;

After the Second World War following a long interruption and stagnation in the concerns and actions of the management of theory and practice plan in Romania. There have been abolished bodies established before the Second World War. Only in 1965 the question of the scientific organization of businesses and after this year there have been many works of authors who have tackled specific areas of the management domain.

Human beings, said Aristotle is *par excellence* "politikon zoon", namely a social being, he always puts his questions about its existence in society, social groups to which it belongs. According to the Greek philosopher's conception, man cannot flourish only within society to which he belongs. The first industrial revolution resulted in major changes to human working conditions, social and professional relations, social relations between classes for man it is not a "streamlined" a computing machine that operates on the cost efficient principle.

Modern management orientation toward what is termed the "social capital" based on the values, norms, conceptions, social rules of conduct to the companies also lead towards a "spiritualization" of economic life.

Implication of management in sociology

A major influence exercised over management and sociology. With it managers can study the complex relationship management processes and the interplay between social and economic conditions of society. In this respect the manager can study and adopt the necessary measures for the establishment and behavior of groups. According to the statements of Anthony Giddens, sociology is the study of human social life, groups and societies.

Social actors claim that sociology studies social reality as a whole, but also concerns the parts, phenomena and processes of this reality, in their many and varied relationship to the whole. Sociology is a science that uses its own research methods to study the phenomena and processes of social reality. Sociologist goal is to achieve, by using scientific methods, objective and neutral approach in terms of axiological reality.

Sociology has been concerned since its inception by determination of the causes and conditions that determine or favor social movements and their mechanisms as they have

⁵Ibid, p. 82

MEDIA CONSUMPTION AND SPACE MANAGEMENT IN THE SOCIAL SCIENCES

generated a new approach to current management. The rule of the 4 C (Coherence, Courage, Clarity and Consideration) guides effective management levers, while they are also found in sociological paradigms.

Consistency

- Consistency between words and deeds;
- Consistency between decisions;
- Consistency between objectives and funding

Courage - refers to the courage, intellectual and moral, of the manager, not the physical; having courage means taking decisions which are to assume, positively or negatively assess the activity of members, say what's right and what's wrong; psychological and moral courage (resistance to pressure)

Clarity: - Clear information for staff; practicing transparency; means:

- Clarifying the organization's mission, values to be respected, the criteria that will be appreciated subordinates;
- Accurate strategic choices and objectives;
- Regular communication of the results.

Consideration: - Paying attention, listening and respect of subordinates.

A performance management takes into account:

- "Rule of 4C"
- General factors: economic, sociological and political;
- Factors specific organization;
- Personal factors: style and personality of the manager.

Sociology ought to explain social realities as scientific facts and analysis derive from objective scientific truth by means of observation and measurement. Let's say that the evolution of sociological thought showed that, unlike research in the natural sciences interested in the study of causal relationships form because A causes B ,, and has the certain effect of C", human and social sciences analyze the probability that a c ,,case A influence on B and produce C and also effects D, E ". Therefore, these sciences are probabilistic. Social and human sciences studying people in their depiction of the individual and social beings, what the French sociologist P. Bourdieu led to say: "probably a curse that human sciences have to do with an object that speaks"⁶

Management relationships are relationships established between members, between them and the components of other organizations in the fulfillment of management functions.

They can be collaboration or relationship conflict. Human relations management relations are formalized.

Depending on the nature of these relationships, the sphere of competence and the purposes, they can be divided into:

a) relations of authority, which can be:

- Relationships;
- Functional;
- Staff.

b) cooperative relations;

c) control relationships.

Authority relations are relations that are established between persons in the management process, when some have decision-making power over the other.

- The relationship of *hierarchical* authority is that a leader C and only he decides on the contractor's, on the work that is a place for meeting organizational objectives.
- The relationship of authority *functional* specialization occurs due to work and occurs when a specialist S decides, directs and controls the activity of the specialty or E. S has authority over

⁶http://www.academia.edu/Sociologie_romaneasca_modern

E only in terms of the method or methods they will use a smaller art. C remains the leader in all decision-making power on E. In practice these relationships usually occur between the heads of departments specializing in particular subjects or their ingredients and components operational divisions.

- The relationship of authority *staff* is the report established between a person or group of persons specialized (staff) who are delegated by senior management of the organization and departments heads or components involved in solving problems encountered, which led the delegation. A team staff has usually the most competent specialists in a field. The General Staff has no direct subordinates. The skilled staff is a participant in decisions to which the executive manager can be located on the same hierarchical level. However one or the other of the two may have another specialist on the other, depending on the contents of the relationship between them.

Between M1 executive manager and a specialist SM staff ratios may occur:

- M1 may decide without consulting the SM. SM's role is reduced to that of advisor, which uses voluntary M1.
- M1 can decide only after having consulted the SM.
- M1 cannot take a decision contrary to SM's proposal, in which case MS has upward decision on his M1.

The problem is solved unequivocally whether formalize concrete situations.

Cooperation ties designate the ratio of people on the same hierarchical level, but are part of different compartments. Such relationships arising from the necessity of carrying out complex activities involving several compartments. They consist of a correlation of shares exchanging information in order to achieve objectives.

Control relationships consist of the established specialized control bodies and persons contained in compartments organization. The relationship assumes the obligation to provide controlled by those who control all information requested but not as one who controls have decision-making power over the control.

The objectives of any organization carry out a set of *work processes*. In turn, work processes fall into two categories:

- Management processes, which are performed by managers;
- Execution processes performed by performers (subordinates).

The management process consists of phases that determines the overall objectives of the organization, the resources to achieve them and their contractors, which integrates and controls the work of staff using a complex of methods and techniques to achieve more efficient tasks.

Process management is exercised by managers, which is *the system manager*. Milestone management process is the *management decision*.

In the management process is delimited *functions* (after H. Fayol) provision, organization, command, coordination, control and evaluation.

Underlying all management functions and management decisions are information and communication.⁷

Management of media consumption

Public opinion is the product of people's mind reactions and the amount of individual thinking forms group thinking. In social space thinking there are many groups that interact and from this point of view there are many kinds of messages to reach one or the other groups. Interest groups and their desires overlap and influence each other inevitably. Progress results from

⁷<http://www.scribub.com/management/notiuni> General

continuous interaction of these groups and giving up some ideas for new ones. This happens after consumption. The area consumption is a field where goods and structured social needs and other cultural traits transiting from one group to the other categories social model as it transforms itself.

Consumption is based on information system which was dominant in the late twentieth century through a direct and continuous information. This has contributed to the transformation of political and social life as can be seen especially in the media because television gave a dominant position in the media system, press and radio obliging in relation to redefine it. Today is the whole social actors who had to learn the rules of media to promote their activity. Also changes lead to alterations in the interests and viewpoints of those whom they affect and change default group and individual reaction. This should be done with a man-centered management and aspirations.

Conclusions

All these transformations of management concepts were developed over time in the social space because it is a symbolic space, cultural, communicational but particularly important for business management.

Management then applies by analyzing the individual problem then analyzing public thinking. The reaction occurs using communication media between the individual and the mass of people bringing the two stakeholders to a common denominator and creating symbols that public thinking to answer.

Bibliography

1. Androniceanu, A., *Change Management*, All Educational Publishing, Bucharest, 1998;
2. Baudrillard, Jean, *Consumer society. Myths and structures*, Comunicare.ro, Bucharest, 2008;
3. Bondrea Aurelian, *Sociology public and media*, Publishing Foundation "Romania tomorrow", Bucharest, 1997;
4. Mihai Coman, *From the backstage of the fourth powers*, Publisher Carro, Bucharest, 1996;
5. Burduş, E., *Management Treaty*, Economic Publishing House, Bucharest, 2005;
6. Certo, S., *Modern management*, Teora Publishing House, Bucharest, 2002;
7. Ciobanu, I., *Strategic Management*, Polirom, Iaşi, 1998;
8. Drucker, PF, *La pratique de la direction des entreprises*, Les Editions d'Organisation, Paris, 1957;
9. Guy Lochard, Henri Boyer, *Media communication Uh*, European Institute, Iasi, 1998;
10. The starling. *Arguments "pro" AND "cons" of the country adopting the term "management" in Romanian language*, Discussion Forum organized by the magazine, no. 2, 1971;
11. Mucchielli, Alex, *Art of influencing. Analysis handling techniques*, Polirom, Iaşi, 2000;
12. Petrescu. I, *Management*, Publishing Holding Reporter, Bucharest, 1991;
13. Petrescu, I., *ManagerialPsychosociology* Publishing Lux Libris, Braşov, 1998;
14. Petrescu, I., Cindrea, I. (eds.), *Theory and practical in human resources management*, Publisher Lux Libris, Braşov, 1998.

F.N. Mocănașu

*** http://www.academia.edu/Sociologie_romaneasca_modern

*** http://www.scribub.com/management/Noțiuni_General

*** http://www.academia.edu/Sociologie_romaneasca_modern

*** http://www.scribub.com/management/noțiuni_General

BASIC PRINCIPLES OF LIABILITY FOR THE ACTS LEADING TO ENVIRONMENTAL DAMAGE*

D.-Ș. Paraschiv

Daniel-Ștefan Paraschiv

Faculty of Law, University Spiru Haret Bucharest, Bucharest, Romania

*Correspondence: Danel-Ștefan Paraschiv, Lecturer Professor Phd, Faculty of Law, University Spiru Haret, Bucharest, Ion Ghica Street, no.13, Bucharest, Romania

E-mail: bnp_daniel-stefanparaschiv@hotmail.com

Abstract

The international community considers that one of the achieving means of the environmental protections consist in the liability for damages caused to the environment, yet the establishment of an international systematic regime of this type of liability is still a difficult thing to achieve, taking into account the diversity and complexity of problems which resides from committing multiple damages for the environment.

Keywords: *environmental protection, pollutant, damages, liability, damage repair*

Introduction

Due to the diversity of fields in which the liability acts for damaging acts, the boundaries of legislations and legal institutions are exceeded, representing a universal term, specific to the human society in its whole¹.

Legal liability, is manifested as a severe form of social liability/responsibility, has a legal character, therewith it cannot exist without a legal ruling in regard to sanctioning some illicit behaviours, in the purpose of conservation of the relation and social values system² – in the researched case, the defence of environmental values.

In environmental protection field the legal liability is triggered as a primitive measure against the ones who commit damaging acts to the ecological equilibrium³, in the purpose of sanctioning and re-education them, as well as for the establishment of rightful violated order⁴, respectively of the ecological equilibrium necessary for human life development and of other beings in proper conditions.

By violation of a legal normative from the environmental field, a legal liability report arises, that has a settlement of sanctioning the one guilty for committing such an illegal act, which in return insures the effectiveness of the right, maintaining social order and preventing behaviour, according to law⁵.

* This paper has been financially supported within the project entitled “**Horizon 2020 - Doctoral and Postdoctoral Studies: Promoting the National Interest through Excellence, Competitiveness and Responsibility in the Field of Romanian Fundamental and Applied Economic Research**”, contract number POSDRU/159/1.5/S/140106. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. **Investing in people!**

¹ Ladislau Lorincz, Mircea Străoanu, *Răspunderea juridică, parte integrantă a răspunderii sociale*, in „Studii și cercetări juridice”, nr. 1, 1970, p. 7-21.

² Nicolae Popa, *Teoria generală a dreptului*, Bucharest University Publishing house, 1992, p. 281.

³ Active topics illegal acts committed in violation of the rules of law are at home, people, their conduct unlawful in that context with different causes and manifestations nuanced (See Nicolae Popa, [2], p. 280).

⁴ Sofia Popescu, *Fundamentul răspunderii juridice. Câteva remarci*, in „Studii de drept”, vol. 2, Publishing house Universitas Timisienses, Universitatea de Vest Publishing house, Timișoara, 1998, p. 74 and fol.

⁵ Sofia Popescu, *Teoria generală a dreptului*, Lumina Lex Publishing house, Bucharest, 2000, p. 299.

Arisen in the affirming content of the environmental particularities right and of need of a proper response to the prevention and repair of the ecological damage, the environmental liability has a distinctive legal nature, with borrowings from other forms of legal liability, but also with irreducible features to them, configuring a distinctive status and an own content⁶.

Specific principles of legal liability in the environmental field

The liability for acts that affect the environment are delimited by other forms of legal liability which are traditional through a series of characteristics, yet until present time the specialty doctrine did not study systematically the specific principles which sit on the basis of this form of liability.

- Firstly, we find that this is not, mainly, a punitive liability but one of a patrimonial type, determined by the risk of appearance or existence of damages brought to the environment, which constitutes the institutional mean of promoting and achieving specific overcoming/prevention mechanisms and of repair to specific damages. Also, the main purpose of the liability in the environmental field, in general, consists in the ceasing of damaging activities and recovering the done damages.

- A series of elements of the its legal regime is somewhat linked to the civil liability, yet in many ways the civil regime is completed by the public one, thus insuring the full repairing of damages brought to the environment⁷; its public character comes from major attributions awarded to „competent authorities” for the identification of the one who provoked the ecological damage and insuring the legal means of prevention and repair.

- The specific principle situated at the basis of the legal liability in the environmental field is that the „*pollutant pays*”, consecrated differently by national legislations and international texts, being inspired from the economic theory, according to which the external social expense which is followed by the industrial manufacturing needs to be internalized, meaning taken into account by business operators for establishing the production expenses, it being expressed initially and fundamentally in a legal way at an European level, but reaches out to achieve a universal gratitude and consecration⁸.

Widely, the principle sees the imputation of the manufacturer of the social expense of pollution for which it generates, thus determining the trigger of a liability mechanism for ecological damages which needs to cover all aspects of a pollution, not only over the goods but also for the people, and over the nature itself (in these economic terms the liability is expressed through the notion of internalizing external expenses or the theory of externalizations)⁹.

Also, in essence, the principle of „*polluter pays*” is one of economic principle, which sees to allocate by the manufacturer of pollution expense and of damages brought to the environment, supported by the public authorities¹⁰.

This principle was consecrated officially for the first time by the Organization of Economic Cooperation and Development (OECD), which included it, starting with the 70s in a series of recommendations, as: Recommendation C(72) 128 from 1972 regarding the directive principles referring to the international economic aspects of environmental policies,

⁶ Mircea Duțu, *Introducere în dreptul penal al mediului (Introduction to Environmental Criminal Law)*, Hamangiu Publishing house, Bucharest, 2013, p. 101.

⁷ Public liability scheme has some restrictions regarding the application (type of environmental damage, types of activities that affect them), character (strict liability only in certain cases), enlargement (civilian and unlimited liability limits public when it is objective).

⁸ Michel Prieur, *Droit de l'environnement*, Dalloz Publishing house, Paris, 1991, pp. 170-181; P. Girod, *La réparation du damage ecologique*, LGDJ, Paris, 1974, pp. 84-91.

⁹ Mircea Duțu, *Tratat de dreptul mediului*, Edition 3, C.H. Beck Publishing house, Bucharest, 2007, pp. 271 and next.

¹⁰ Patricia W. Birnie, Alan E. Boyle, *International law and the environment*, Second edition, Oxford University Press Inc., New York, 2002, p. 92.

BASIC PRINCIPLES OF LIABILITY FOR THE ACTS LEADING TO ENVIRONMENTAL DAMAGE

Recommendation C(74) 223 from 1974 regarding the implementation of the principle the polluter pays, Recommendation C(89) 88 from 1988 regarding the appliance of the principle the polluter pays to the accidental pollutions.

Internationally the principle „polluter pays” was stated in *The Stockholm statement* from 1972 (principle 21), and again in *The Rio de Janeiro statement* from 1992 (principle 2), as well as in other international legal instruments, as for example: The Geneva Convention regarding the atmospheric pollution on long distances, from 1979; The convention seeing the right of Montego Bay seas, from 1982 (art. 194 pct. 2); Convention regarding the cooperation for the durable protection and use of the Danube river, from Sofia, from 1984 (art. 2 par. 4) etc.

At start, the principle „the polluter pays” taking into account the issue of supporting generated expenses by preventive measures for the protection of environment, which need to be reflected in the goods and services expenses caused by pollution over the production time and/or consumption”, according to the Recommendation OECD C(74)223, without referring to the measures expenses regarding *ex post facto*.

The pollution generators supporting directly diminished expenses, due to execution of pollution prevention expenses only (equipping with devices and filtrations, technology adaptation etc.), while the society as a whole supports, immediately or in time, costs regarding the diminishing of negative effects of pollution of human health, generated by economic and social activities, which alter the environment as a whole.

To correct a such inequitable situation, the expenses of „externalizations” needed to be „internalized” by legal recognition of the principle „polluter pays”, which was developed, afterwards considering that the polluter needs to support not only the costs for prevention measures but also for the reparatory measures; in this way OECD recommended that, besides expenses for the taken measures to overcome and control petrol spills at sea, to be taken into account the expenses regarding „reasonable reparatory actions”, which need to be supported by the polluter (Recommendation C(81)32).

The principle also consist in 2 aspects: 1 *preventive*, representing the internalization of external social expenses (theory of externalizations) and 2 *reparatory*, according to which the one that cause a pollution is in owe to repair the done damage¹¹.

In 1989 OECD extended the appliance of this principle, including in the task of the polluter the accidental pollution expenses, which needed to be found in the schemes regarding expense allocations for the pollution prevention and control.

As initially adopted, the principle did not cover border pollution or the possible ecological issues of the developing countries, thus the extent was imposed regarding the allocation of these costs, to keep the pollution under control¹².

Ruling this principle is different in national state legislations, member of EU or of OCDE¹³.

This principle was incorporated in the EU legislation through unique European document from 1987 (art. 130R) and then through the treaty from Maastricht from 1992 (art. 130R.2 and art. 130S.5), being mentioned in the treaty from Amsterdam from 1997. An appliance of the principle is founded in the Council Regulation no. 1013/2006 *regarding the supervision and control of waste transportation within, in and outside EC* (published in JOUE no. L190 from 12 July 2006). Likewise, this represents the fundament of the directive 2004/35/EC, regarding civil liability seeing the prevention and repair of the damage caused to the environment.

¹¹ Monica-Elena Oțel, *Răspunderea internațională în domeniul mediului*, Tome 3, Universul Juridic Publishing house, Bucharest, 2009, pp. 27 and fol.

¹² Daniela Marinescu, *Tratat de dreptul mediului*, All Beck Publishing house, Bucharest, 2003, p. 54.

¹³ Mircea Duțu, *Dreptul mediului*, Edition 3, C.H. Beck Publishing house, Bucharest, 2010, p. 119.

In the right of EU the notion of „polluter” was defined in the Council Recommendation EC from 7 November 1974, as being „the person who directly or indirectly causes damage to the environment or creates the conditions which lead to a damage”.

The principle has a reduced efficiency, therewith in present time is mainly a convenient way to finance policies of environmental kind, and less a legal instrument which needs to obligate the one responsible to assume the consequences harmful to the environment.

In case of indetermination to individual liability, the principle has a right of consequence in imposing to certain industries to support the global liability of expenses for antipollution struggle.

Establishment of a causing linkage between the pollutant activity and the done damage needs to become on from the conditions of put in practice of the principle „*polluter pays*”, also, taking into account the particularities of the field, there cannot be the discussion of a certitude causality, thus, it can be accepted a probable existence of eminent.

Mainly, the principle suggests that the pollution needs to be imputable to a business operator, which needs to be designated as payer, therewith the national budget never needing to support the environmental caused damage expenses through private activities.

- Another principle, from the general one of the international public right regarding the liability of states for which illicit international acts, is the one of *state liability for ecological damages done due to international violation of liabilities*.

It has been stipulated explicitly or indirectly in different international texts as well as in some national regulations. Thus, for example, *principle 21 of Stockholm statement* foresees that the states have the liability to do such so the activities under their jurisdiction or control not to cause environmental damages to other states or common areas situate outside. Likewise, in *the treaty concluded between Holland and RF Germany, at 8 April 1960* foresees that each of the contracting parties is liable to protect the waters against pollution and will be responsible for the caused damages due to the disrespect of this liability. At national level, for example art. 31 from *Framework Bulgarian law from 1991 regarding environmental protection* refers to the necessity to diminish harmful effects of border pollution and foresees their repairs based upon a treaty or in lack of it, according to general rules of the public international right.

The specialty doctrine has accepted, mainly, the principle of state liability for ecological border damages, but in practice there were few registrations of such complaints, situation which is due to problems generated from long and difficult international procedures regarding the administration of proofs, amplified by special circumstances which rise a series of specific aspects in settling the legal department on environmental themes, as well as determining the guilt degree or of legal necessary basis for the establishment of the liability.

- Related to this principle is the one on the holder right to invoke the international responsibility for harmful acts to the environment, which is usually the injured state in its rights by the wrongful act or was otherwise affected by that act¹⁴.

Another state may invoke the responsibility of a guilty state, that state not acting as injured, but as a member of a group of states from which there is no violated obligation, the fundament of this act consisting by collective obligations, meaning those obligations which protect collectively an interest or interests of the international community as a whole.

There is even the possibility that a state, several or all states parties to the convention have incentive to plead guilty state responsibility, even if none of the requesting Member has not been particularly affected by the wrongful act - a situation that has regard to the obligations *erga omnes*.

Invoking state responsibility for acts harmful to the environment requires certain measures that have a relatively formal character, such as for example, the submission of a

¹⁴ Monica-Elena Oțel, [11], pp. 121 and fol.

BASIC PRINCIPLES OF LIABILITY FOR THE ACTS LEADING TO ENVIRONMENTAL DAMAGE

request by another state (or another state) or the commencement of proceedings before an international court; a protest or criticism of a state does not mean that the State has submitted the protest or criticism of liability to the State concerned.

- Action for certain damages caused to the environment can be engaged and on the basis of strict liability, negligence independent, which is used to recover damages by making a polluting human activities.

The possibility of recovering damages liability under "character objective, independent negligence" only requires the victim to prove the damage and the causal link between the act and the damage, removing the obstacle of proof of fault - particularly difficult in organic matter, due to the need of investigations involving the discovery and identification of the precise source of the damage, which requires some cooperation from the polluter.

Following establishment of this principle, the evidence of guilt is unnecessary for liability, so that environmental quality assurance obligations no longer belongs to the middle class, but becomes one by the result. In these circumstances will interest the final result, not only the diligence exercised to avoid pollution or environmental degradation.

- Environmental law establishes a strict liability derived from the law, starting from the fact that there are numerous technical and administrative regulations and requirements that must be met in activities so that non-compliance is sufficient for liability to be established.

Researching home situations on strict liability laws, we find that there are some environmental tort regimes specialized regulated by law, such as those regarding nuclear damage (Law no. 703/2001 on Civil Liability for Nuclear Damage¹⁵) or ship owners' liability for any damage resulting from the discharge of polluting hydrocarbons (Brussels Convention of 29 November 1969 on Civil Liability for Oil Pollution Damage)¹⁶, amended by the London Protocol of 27 November 1992 (CLC 1992).

Conclusions

Along with the principles set out in environmental law may be other specific basic rules of liability for acts affecting the ecological balance.

Liability for environmental damage - just ecological damage to persons or property damage caused by environmental pollutants, harmful actions and disasters - it can hold essentially that they can be recovered through: torts, under the Civil Code, as based on the "polluter pays" (liability for the acts of its own, based on guilt, fault liability, the act of things, liability for abnormal disorders neighbourhood) Member liability for acts affecting environmental liability environmental objectives (covered by Directive no. 2004/35 / EC, transposed into Romanian Government Emergency Ordinance no. 68/2007 and art. 95 of Government Emergency Ordinance no. 195/2005) and strict liability derived from the law.

Each of the forms of liability requires its own rules of engagement and achievement. Thus, besides the specific mechanism to prevent and repair environmental damage, can be held liable polluter based on different legal foundations, the victim having the right to choose between liability for negligence, liability for the acts or the specific work of neighbourhood disorder¹⁷.

A correct and efficient implementation of forms of liability requires accurate delineation of the field of action, making correlations and completions needed and their integration as far

¹⁵ Published in the Official Gazette, Part I, no. 818 of 19 December 2001, as amended and supplemented.

¹⁶ Ratified by Romania through Government Ordinance no. 15/2000, published in the Official Gazette, Part I, no. 35 of 29 January 2000.

¹⁷ Each of these actions is autonomous, the applicant is asked to judge which way is most appropriate procedural conditions and adequate concrete nature of his injury.

as possible, within a system of principles, so the responsibility to be as complete and appropriate damages incurred in connection with the environment¹⁸.

Bibliographic references

1. Mircea Duțu, *Introducere în dreptul penal al mediului (Introduction to Environmental Criminal Law)*, Hamangiu Publishing house, Bucharest, 2013;
2. Mircea Duțu, *Dreptul mediului*, Edition 3, C.H. Beck Publishing house, Bucharest, 2010;
3. Monica-Elena Oțel, *Răspunderea internațională în domeniul mediului*, Tome 3, Universul Juridic Publishing house, Bucharest, 2009;
4. Daniela Marinescu, *Tratat de dreptul mediului*, All Beck Publishing house, Bucharest, 2003;
5. Patricia W. Birnie, Alan E. Boyle, *International law and the environment*, Second edition, Oxford University Press Inc., New York, 2002;
6. Mircea Duțu, *Tratat de dreptul mediului*, Edition 3, C.H. Beck Publishing house, Bucharest, 2007; Sofia Popescu, *Teoria generală a dreptului*, Lumina Lex Publishing house, Bucharest, 2000;
7. Sofia Popescu, *Fundamentul răspunderii juridice. Câteva remarci*, in „Studii de drept”, vol. 2, Publishing house Universitas Timisienses, Universitatea de Vest Publishing house, Timișoara, 1998;
8. Nicolae Popa, *Teoria generală a dreptului*, Bucharest University Publishing house, 1992;
9. Michel Prieur, *Droit de l'environnement*, Dalloz Publishing house, Paris, 1991;
10. P. Girod, *La reparation du damage ecologique*, LGDJ, Paris, 1974;
11. Ladislau Lorincz, Mircea Străoanu, *Răspunderea juridică, parte integrantă a răspunderii sociale*, in „Studii și cercetări juridice”, nr. 1, 1970.

¹⁸ Mircea Duțu, [6], pp. 103 and fol., which also uses the notion of „environmental damage” and the concept of „ecological damage”.

FEATURES OF INTERNATIONAL PROCEDURES OF HUMAN RIGHTS PROTECTION*

R. G. Paraschiv

Ramona Gabriela Paraschiv

Faculty of Law and Administrative Sciences

“Dimitrie Cantemir” Christian University

*Correspondence: Ramona Gabriela Paraschiv, Lecturer Professor Phd, “Dimitrie Cantemir” Christian University, Splaiul Unirii Street, No.176, Bucharest, Romania

E-mail: ramonaparaschiv@rocketmail.com

Abstract

The idea of developing mechanisms to protect human rights emerged with the Declaration of the Rights of Man and of the Citizen of French National Assembly, on August 26, 1789, which states that “the purpose of all political association is the preservation of the natural and imprescriptible rights of man”. State Concerns for the international protection of human rights have increased but from the second half of the twentieth century, after the establishment of the United Nations Organization, who proposed that one of the aims to be achievement of international cooperation in promoting and encouraging respect for fundamental rights and freedoms of man, thus spurring the creation of protective mechanisms at global and regional levels, able to control the actual translation of regulations enshrining rights.

Key words: *human rights, protection mechanisms, protection procedures, non-judicial, judicial procedures*

Introduction

Atrocities during the Second World War required a new approach on human rights protection mechanisms¹, namely *their approach internationally*, their perfecting becoming a major imperative of the world community².

Mechanisms for promoting and guaranteeing the rights and fundamental freedoms is based on rulemaking activities in the field, the observance of which is achieved through a comprehensive institutional cooperation within organizations and institutions with a universal vocation, regional and national, using a variety of *procedures*³.

States commit by international treaties to respect certain rights of persons under their jurisdiction to the international community, thereby creating an international public order.

* This paper has been financially supported within the project entitled “**Horizon 2020 - Doctoral and Postdoctoral Studies: Promoting the National Interest through Excellence, Competitiveness and Responsibility in the Field of Romanian Fundamental and Applied Economic Research**”, contract number POSDRU/159/1.5/S/140106. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. **Investing in people!**”

¹ Adrian NĂSTASE, Bogdan AURESCU, Cristian JURA, *Drept internațional public*, All Beck Publishing House, Bucharest, 2003, p. 194.

² Ionel CLOȘCĂ, Ion SUCEAVĂ, *Tratat de drepturile omului*, Europa Nova Publishing House, Bucharest, 1995, p. 31.

³ Nicolae PURDĂ, Nicoleta DIACONU, *Protecția juridică a drepturilor omului*, Second edition supplemented and amended, Universul Juridic Publishing House, Bucharest, 2011, pp. 110.

FEATURES OF INTERNATIONAL PROCEDURES OF HUMAN RIGHTS

To ensure the international protection of human rights, legal norms establish a set of *procedures*, which run in front of specialized international organizations⁴. The internal organs of the states, which have responsibilities in this area, are also integrated into the organisms that contribute to the observance of human rights, so that their specific activities are performed in accordance with the general procedures designed to protect the rights.

By *nature*, the procedures for monitoring the way in which human rights are respected are: *non-judicial* (characteristic mainly to universal system of rights protection) and *judicial* (specific to regional systems)⁵.

International non-judicial procedures for the protection of human rights

Non-judicial Control, which may be *administrative* or *political*, are carried out internationally by: *state reports, reports of body control, notifications* (state, individual, collective, internal of organs or international organizations), *surveys, general observations, advisory opinions or political and diplomatic means*.

a) *Control by the reports* of States parties to the relevant conventions allow the competent body to make an analysis of the general situation on human rights, based on data provided by the report states.

This non-judicial technique of human rights protection is the most commonly used being promoted mainly by universal conventions in the field, without being ignored by regional conventions.

The state report remains the common law technique, the control technique in the application of human rights⁶, which can perform a periodic assessment of the results obtained internally and specific national policy guidance.

Reporting is entrusted to states that pledged by international conventions to provide information on legislative, administrative or judicial measures taken to implement the provisions of the conventions governing human rights.

When the state becomes a party to an international convention specialized in human rights is prepared the first state report (also called initial report), which presents the promotion and observance of human rights at that time, in that State. At *regular intervals* state reports show the progress made by the state in promoting human rights. Such reports can be produced on *demand by the control body*, targeting human rights situation in certain respects.

Control on how human rights protection belongs to *administrative law* when analyzing reports from the state is entrusted to an independent body, and when it is entrusted to an intergovernmental body, the control is *political*.

The existence of this form of control does not constitute grounds for inadmissibility of a *referral* on a case of human rights violations on the grounds of *res judicata*, so that the referral can be analyzed when this case is governed by state party conventions.

b) *Control by using control body reports* supposes the existence of specialists in international bodies that carry out checks on how to respect human rights in the countries party to certain agreements in this field.

Reports of control bodies active in the field of human rights are annual and are based on spot checks conducted by representatives and are addressed to the body which compiles them, but can also take the form of general comments based on state reports

c) *Control performed following complaints* (referrals) implies an advanced non-judicial procedure of international control over how states comply with human rights obligations; they

⁴ Corneliu-Liviu POPESCU, *Protecția internațională a drepturilor omului – surse, instituții, proceduri*, All Beck Publishing House, Bucharest, 2000, pp. 16 and fol.

⁵ Frédéric SUDRE, *Drept european și internațional al drepturilor omului* (translation), Polirom Publishing House, Iași, 2006, p. 495.

⁶ Pierre-Marie DUPUY, *Droit international public*, Sixth edition, Dalloz, Paris, 2002, p. 244.

provide individualized research of cases involving alleged violations of rights, with the consent of the states concerned.

This way of checking facts relate to concrete facts that consist of violation of human rights express contractual obligation invoked by a State Party to the Convention against another State. This procedure, however, can be triggered by an individual against a State Party, by collective subjects or by internal referrals of organs belonging to international organizations that are requesting control.

- *Control generated state referrals* also contributes to international public policy defense created by human rights norms.

Internationally there is no body with the role of public prosecution, as there are internal, so to promote “public action” for human rights violations, to find the solution of any state recognition of an international convention, a right to sue against another State Party, on which it is assumed that the rights enshrined in the Convention are not observed. Thus, states are supervising each other in the issue of human rights, acting not for their own interest, but in the interest of other States party to the international convention.

- *Overall control of individual claims* is the most effective non-judicial international procedure for verifying compliance by states of human rights obligations, as it allows direct access of victims to an international body to control how to observe the rights enshrined in international conventions.

While state notifications can cover both general situations of alleged breaches of human rights and particular situations, individual complaints aim, in general, the particular circumstances of failure of one or some of the rights guaranteed to a particular individual or to a group of individuals.

- *Overall control of collective complaints* on human rights violations is triggered upon notification of some collective subjects belonging to the domestic legal system without public powers but with right to social action.

- *Control generated by internal referrals* regarding violation of human rights can be triggered by internal organs of an international organization in which it shall exercise control, such as, for example, checking triggered by an internal organ of the International Labor Organization.

d) *Control by surveys* is a way of checking how to ensure the protection of human rights carried out by specialized bodies. This involves visits by working groups (restricted collectives) or Special Rapporteurs who have the task of examining the human rights situation in a particular State Party to the International Convention. Also check may relate to compliance with a particular law by all States Parties to the Convention or certain members of an international organization.

e) *Control by general observations* is achieved by interpreting of the control body in the abstract, with respect to certain provisions of the conventional instrument whose application it monitors this organ. Interpretation is made as a guide for countries party to the international convention as it lays down rules regarding the rights shown in the convention and the means to enforce them.

f) *Control by advisory opinions* is generally a matter for regional international tribunals, specialized in human rights.

This monitoring procedure of how to respect human rights is of conventional nature and does not produce binding legal effects.

Advisory jurisdiction of international regional tribunals specialized in human rights cannot conflict with their judicial power, cannot replace it and cannot prevail against it. Therefore, requests for advisory opinions to the international specialized regional courts are admissible only if they refer to cases relating to disputes within the jurisdiction of that court or organ with which it forms a system.

g) *Control by political and diplomatic means* is through the political organs of international organizations that are concerned with human rights through monitoring,

FEATURES OF INTERNATIONAL PROCEDURES OF HUMAN RIGHTS

resolutions, declarations and other such means, under the Treaties constituents of the organization or based on internal documents adopted by them.

International judicial procedures to protect human rights

Judicial review, as described in the whole doctrine, can take two forms: one triggered by state demands and one triggered following the individual applications (complaints).

International judicial procedures to protect human rights are pending before international tribunals or bodies forming with them a system.

From the point of view of international judicial body that can resolve the causes of human rights violations are:

- Proceedings before international tribunals specializing in human rights or international parajudicial bodies;

- Proceedings before certain international courts not specialized in human rights.

Specialized international tribunals in human rights are only regionally operating today: The European Court of Human Rights, Inter-American Court of Human Rights and the African Court on Human and Peoples Rights.

As a non-specialized international courts on human rights, but of importance, by their jurisprudence on this issue, we remember: the International Court of Justice, the Court of Justice of the European Union, *ad hoc* international criminal tribunals (the Nuremberg, Tokyo, for the former Yugoslavia for Rwanda, etc.) and the International Criminal Court, which have jurisdiction in the *strict-sense* international crimes, most of them covering violation of human rights⁷.

Apart from the foregoing judicial proceedings, protection of human rights is also achieved through *parajudicial and execution procedures* carried out in front of organs that are in the same system with certain specialized tribunals in human rights. *Parajudicial procedures* are conducted in front of international bodies such as the Committee of Ministers of European Council (the substantive decision-making powers) and the Inter-American Commission on Human Rights and *execution proceedings* are carried before international execution bodies, such as the Committee of Ministers of European Council, which has responsibilities in the execution of judgments of the European Court of Human Rights.

Conclusions

In international law, human rights protection activities are procedural, as conferring the ability to trigger different procedures with the participation of international bodies, as in most cases, a right to control and less judicial one, which is the essence of law of the states.

Non-judicial control procedures are diverse and generally impose burdens states concerned: *to assess by reports*, how to respect the rights enshrined in the conventions joined, or *to cooperate* with international committees to *verify claims* initiated by other States Parties or by some individuals (within their jurisdiction) to determine possible violations of human rights and the measures to be taken to remedy these violations. Non-judicial control has the advantage that does not affect in any way the sovereignty of states by the methods and procedures used, and the solutions are accepted in principle by the States Parties, being taken amicably and through their involvement in the verification activities performed.

Judicial review has the advantage that is achieved through the *effective* protection of human rights, rulings being legally binding. This procedure, however, requires time and a large amount of work by international judicial bodies, involving many people and great expenses⁸, while *non-judicial control* requires less effort and expense, sometimes contributing

⁷ Daniel-Ștefan PARASCHIV, Gavril PARASCHIV, Ramona-Gabriela PARASCHIV, „Evoluția pedepselor în dreptul intern și internațional penal. Reflecții critice privind noul Cod penal”, Pro Universitaria Publishing House, Bucharest, 2014, p. 145.

⁸ Frédéric SUDRE, [5], p. 415.

to strengthening the accountability of States Parties, provided their involvement in application of human rights regulations and compliance with measures taken that are not binding.

Since there are currently governed by certain conventions, procedures of uncorrelated protection and relatively different, which are made of a variety of disparate organizations and bodies, specialized or which have responsibilities related to this matter, it is necessary to conduct an exhaustive institutional structures, consisting of international bodies (universal and regional) and national integrated to take measures to ensure optimal conditions required for the human rights and carry out effective procedures, designed to investigate how to respect the rights, but the facts that they are injured, having the necessary measures to defend the legal order in this area.

References

1. Adrian NĂSTASE, Bogdan AURESCU, Cristian JURA, *Drept internațional public*, All Beck Publishing House, Bucharest, 2003;
2. Corneliu-Liviu POPESCU, *Protecția internațională a drepturilor omului – surse, instituții, proceduri*, All Beck Publishing House, Bucharest, 2000;
3. Daniel-Ștefan PARASCHIV, Gavril PARASCHIV, Ramona-Gabriela PARASCHIV, „*Evoluția pedepselor în dreptul intern și internațional penal. Reflecții critice privind noul Cod penal*”, Pro Universitaria Publishing House, Bucharest, 2014;
4. Frédéric SUDRE, *Drept european și internațional al drepturilor omului* (translation), Polirom Publishing House, Iași, 2006;
5. Ionel CLOȘCĂ, Ion SUCEAVĂ, *Tratat de drepturile omului*, Europa Nova Publishing House, Bucharest, 1995;
6. Nicolae PURDĂ, Nicoleta DIACONU, *Protecția juridică a drepturilor omului*, Second edition supplemented and amended, Universul Juridic Publishing House, Bucharest, 2011;
7. Pierre-Marie DUPUY, *Droit international public*, Sixth edition, Dalloz, Paris, 2002.

**PROPOSALS FOR LEGISLATIVE PREPARATION AND TRAINING IN THE
FIELD OF ENVIRONMENTAL PROTECTION
N. M. Peia**

PhD Candidate Ninel M. Peia,

Deputy, Parliamentary Office no. 284, Electoral District 25 Ilfov

PhD Candidate “MIHAI VITEAZUL” National Intelligence Academy (Romania)

E-mail: ninelpenia@yahoo.com

Abstract

The assessment of environment legislation drafting is an essential component in the process of modern and sustainable planning to which the well-being of human society at global, regional and local level, is directly connected. Maintaining the balance between the two categories of legislative structures, the environment and environmental protection, contributes to providing an appropriate level of environmental goods and services, limiting the scale of environmental conflicts, streamlining institutional flows and maintaining a high standard of the sanogenesis state of the environment and, therefore, of the population.

Keywords: legislation, environmental protection, proposals, institutional, professional training, cooperation, education

Introduction

The future development of environmental legislation will focus on an integrated assessment of legislation drafting in advanced countries, a comparison with what we have and the improvement of the structure and operability of environmental infrastructures. In this sense, integration into international research networks, publishing the results in internationally-visible publications and the transfer of knowledge and work tools to the legislative environment, are the main modes of implementation thereof.

Solving environmental problems through modern legislative proposals

Legislative rules used in order to solve environmental problems should be increasingly categorical, drastic and exclusive, so that, finally, they might exclude intervention or totally remove the detrimental consequences of certain human activities¹.

The enforcement, as of 2015, of the legislative provisions laid down by EU Directives imposes itself as a priority, and by enforcing EU regulations, industrial units can maintain market competitiveness through:

- the optimization of the operation of facilities by implementing the measures specified by the reference documents on the best available techniques specific to industrial activities, of which an important share belongs to the improvement of energy efficiency of the production processes;

- in the long term, the implementation of CCS technologies, involving the capture, transport and geological storage of CO₂, especially applicable in the case of electricity producers and highly polluting industries;

Increasing the efficiency of technological processes will diminish the effects of this increase, but on the other hand reducing the assigned ceiling will lead to an increase in expenses per product². This will impose:

¹ Eckhart Rehbinder, *Democracy, Access to Justice and Environment at International Level*, 2006, page 147

² Marinescu Daniela – *Tratat de dreptul mediului (Environmental Law Treatise)*, Editura Universul Juridic (Universul Juridic Publishing House), Bucharest, 2007, page 93

PROPOSALS FOR LEGISLATIVE PREPARATION AND TRAINING IN THE FIELD OF ENVIRONMENTAL PROTECTION

- The need for the development and implementation of an assessment and data collection system (reporting such data should be an obligation on the part of economic operators provided by the law);
- The study of the old organizational structure of the energy sector with companies based on primary (nuclear, hydro-, thermal) energy resources, developed on the basis of new technical possibilities: Tesla battery and renewable energy;
- The establishment of energy companies with mixed fuel structures requires the development of a new optimization study of the loading of power plants so that electricity generation costs should be minimum;
- As regards the certificate portfolio management, it must be properly assessed so as to minimize the impact of the price of certificates;
- It is necessary that the potential certificates available should not be “wasted” until year 2017, they should be used strictly for investments to reduce emissions in case of resuming the trade in these certificates;
- Proposals for legislative changes on establishing provisions in order to take over the EU-induced impact will be required, after year 2015;
- The non-enforcement or delay in adopting the recommended measures may have economic consequences that are hard to recover, which could lead to the start of an environmental crisis: diluvial floods, desertification of deforested areas, etc.

Proposals in the field of institutional environment

EU Member States have the duty (at least morally) to implement the rules of law that create the framework for sustainable development and, at international level, this can be achieved through treaties, agreements and conventions in different areas of international law such as outer space law, maritime law, biodiversity conservation and protection law – which lay down the rules of the common heritage of mankind in institutional and legal terms.

Laws and normative acts tend to be prescriptive and contain detailed provisions regarding the organization and implementation of the issues being regulated, establishing the manners of control or indicating the location of the structures established in order to implement them. Laws and normative acts are structured on the basis of a separate approach to environmental sectors. This is also the case for Romania, which takes action through:

- a) The Ministry of the Environment:
 - granting logistic assistance to the Romanian Government, to central and local government institutions, non-governmental and academic organizations (institutions) in the activities implemented and promoted by our country through the institutional framework of the EU directives;
 - implementation of the projects and programs in the “Environment” field,
 - which provide the following activities:
 - development and implementation of activities for the creation of the National Environmental Framework;
 - assessment of negative risks for the biological and socio-economic components of the country;
 - development and implementation of measures regulating the use of genetically modified organisms (GMOs);
 - assessment of the technological needs and promotion of the implementation of biotechnologies, which do not pose risks to the environment and human health, and contribute to the sustainable economic development of the country;
 - facilitating the creation of databases and of the information and monitoring system concerning the use of GMOs, participation in the Information Exchange Mechanism
-

concerning GMOs, even in cases of accidental release into the environment;

- strengthening national capacity to address issues related to the environment;
- promotion and implementation of activities targeting the sustainable use of biological resources;
- cooperation, promotion and implementation of activities, projects and programs provided by the Information Exchange Mechanism with regard to the GMOs, as well as other mechanisms and tools provided by EU directives;
- development of project proposals, project concepts, project documents, etc. And presenting them for funding to the national and international institutions competent in the field;
- implementation and facilitation of the activities for awareness and information of civil society, of specialists and decision makers.

b) The Ministry of Agriculture and Food Industry is the central agriculture and food industry body of the State and bears responsibility for the:

- sectoral monitoring, the control of the enforcement of legislation and of the standards pertaining to the use and management of pesticides and chemical fertilizers;
- testing of chemical and biological substances, and delivery of the licences for the import/export of pesticides and fertilizers, as well as keeping their records;
- analysis and quality control of pesticides and fertilizers, and monitoring their presence in the soil, fodder and agricultural products;
- ensuring the food security of the population in terms of quality, quantity and availability of agricultural products;
- monitoring the compliance of agricultural products certified in the field of agriculture and food industry with the requirements of the legislation in force;
- ensuring compliance with ecological restrictions in the agricultural and agro-industrial sectors.

c) The Ministry of Health is the central health body and bears responsibility for:

- quality assurance of public health and providing the full spectrum of medical services;
- developing policies and programs, draft laws and normative acts, standards on human health and the sanitary and epidemiological situation;
- implementation of human health and sanitary-epidemiological activity business management, carrying out sanitary control and monitoring.

Research in the field is also carried out in higher education institutions:

- Universities in the field (environment) in Romania;
- Universities of Medicine and Pharmacy;
- Agricultural Universities.

As regards the latter situation, the fields of biotechnologies developed in these institutions will probably be taken into account, which include non-traditional methodologies and techniques for plant breeding, namely:

- tissue culture;
- methods of transmission of the genetic material through the technology of merging protoplasm or recombinant deoxyribonucleic acid (DNA);
- vegetative regeneration of plants.

Within the research institutions, a series of laboratories and structures that undertake activities related to new biotechnologies must be in place.

Integrated environmental professional training

Areas in which the integrated training of the management staff in the environmental field is carried out;

- Knowledge of international languages necessary for environmental cooperation.
- Depending on needs, the training may include other areas necessary for the carrying

*PROPOSALS FOR LEGISLATIVE PREPARATION AND TRAINING IN THE FIELD OF
ENVIRONMENTAL PROTECTION*

out of tasks and missions (e.g. inter-institutional cooperation).

The departments responsible for the professional training of employees of institutions/bodies with environmental responsibilities will establish their own systems for the control of the manner of organization and conduct of training of their own staff in the field of reference.

The departments responsible for the professional training of staff in the institutions/structures with environmental responsibilities will assess the level of employee training and the quality of the initial and continuous professional training provided within their own system.

Continuous professional training provides the main environment for cooperation in the process of implementation of the Integrated Training Concept.

Continuous professional training is carried out throughout the entire career, involving staff who have completed the initial training and who work in institutions/bodies with environmental responsibilities.

Continuous professional training is conducted through current training activities in the workplace and other types of training supplied by specialized providers or various institutions that have the necessary training capacity.

Continuous training in the workplace will be directed at specific issues related to amending the legislation and working procedures, the entry into force of new categories of technology and equipment, changes in the environmental status, as well as those regarding issues involving the specialization, improvement, updating and development of environmental knowledge and professional skills.

Environmental cooperation

In the reports of the environmental status of Romania, the following basic principles of international cooperation³ in the field of environment and sustainable development are identified:

- Strengthening of the institutional capacity through participation in international and bilateral agreements;
- Bringing national environmental legislation closer to the requirements of international conventions and EU legislation, in view of the accession to the European Union;
- Mobilizing financial and technical assistance for the implementation of national environmental policies.

Also, among the principles of environmental law established by the legislation in the field, two more main principles are mentioned:

- the polluter pays principle or the principle of cooperation⁴.
- the principle of prevention and that of protection.

As regards the principle of cooperation, international environmental law does not yet contain any general, universal rules, that would stipulate very clearly the cases in which the responsibility of states comes into question, these issues being more often inferred from such principles as: *sic utere tuo* (according to which states have an obligation to make sure that their activities within their national jurisdiction do not cause damage to the environment of other states), the principle of good neighbourliness (it is established that in environmental law neighbouring states may also be those that are separated by large expanses of water or land), the principle of protection of the common heritage of mankind.

In order for international liability for an ecological damage to be engaged, a number of

³ Eckhart Reh binder – Protection of the European Environment after the Treaty of Amsterdam, M Duțu, *op. cit.*, page 35; the Council decides with regard to the proposals of the Commission after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.

⁴ Brief presentation: “Administrative Law – Administrative Contentious Law – Criminal Law”, seminar held under the aegis of the European Commission, Bucharest, pages 24-27, May 2014

conditions must be met, which are quite difficult to prove in practice, such as:

- a) *identifying the perpetrator of the pollution* (in order to grant them the capacity of liable party).
- b) *the existence of prejudice (of the ecological damage).*
- c) *establishing a causal link between the criminalised act and the damage occurred.*

It is admitted in particular that, given the complexity of the environmental factors, their protection is a highly technical sector. It has also been pointed out that, in the context of the ecological crisis that manifests itself worldwide, the rules set up for environmental protection⁵ are still insufficiently and ineffectively enforced.

If, with regard to environmental protection at international level through other forms of legal liability, there is a rich jurisprudence and doctrine, criminal liability has been relatively little regulated at international level. As environmental criminal law begins to assert itself increasingly more as an autonomous branch of law, international environmental criminal law gradually emerges. However, there are a multitude of causes that are (still) in the way of this goal: the major differences between national criminal law systems, the mechanisms of distinct sanctioning, the principle of state sovereignty, of non-extradition of nationals, the principle of dual criminality, problems pertaining to extraneous crimes being within the reach of criminal law, the possibility for the legal person to be held criminally liable⁶.

Introducing novelty in the environmental field through change

Senior management in today's organizations are required to operate in a constantly changing environment, characterized by an increasingly higher competitiveness, by an unstable balance, with successes and setbacks through social adaptation.

Change should not be seen as an end in itself, but as a means to adapt to new conditions, to maintain or improve organizational competitiveness, performance and effectiveness.

For the success of the change process, it is important for each manager to identify staff who are innovators and to act, together with them, through constant motivation, communication and direct engagement for the creation of an attitude favourable to change in the staff that fall within the broader category of the silent majority. Regarding also the emotional and volitional attitude of the staff, we consider it important to highlight that they will have a sinuous evolution throughout the implementation of the change process.

The role of the human factor in the success of the organization's change and development process is extremely important. Moreover, change must also occur at the level of individual behaviour. It is known that behavioural changes are the most difficult to induce.

Proposals for education on environmental issues

In preschool classes, children become familiar with certain aspects of the environment. In early 2014, a comprehensive and well-thought ecological training system for elementary, primary and secondary schools, was introduced. The Ministry of Instruction rejected the option of a separate course on ecology. Instead, environmental matters have been integrated into the mandatory curricula of natural sciences (biology, chemistry, physics, geography) and other subjects (such as, "Man and Society", "Civic Education" and "Life Skills").

Methodic guidelines have been published. Optional curricula include "Environmental Education", "Human Ecology" and "Man and Nature".

⁵ Mirela Gorunescu "Protecția juridico-penală a mediului" ("Environmental Criminal Law Protection"), article published in the Journal "Dreptul" ("Law"), issue 10/2003, page 159

⁶ Maria Magdalena Neagu "Ocrotirea dreptului fundamental al omului la un mediu sănătos prin mijloace de drept penal" ("Protecting the Human's Fundamental Right to a Healthy Environment by Criminal Law Means", PhD thesis, "Ștefan cel Mare" Academy, Chișinău, 2014, page 54

PROPOSALS FOR LEGISLATIVE PREPARATION AND TRAINING IN THE FIELD OF ENVIRONMENTAL PROTECTION

Each school year begins with an ecology class. Such lessons are also organized on Earth Day in April. However in some schools special ecology lessons are held, with the support of NGOs.

Many higher education institutions include environmental subjects in their curricula for various subjects (botany, zoology, geography, chemistry). The Academy of Economic Studies has introduced special courses such as energetics and environment, environmental monitoring and assessment, environmental management, environmental insurance and environmental standards. The Agricultural University offers courses in ecology and environmental protection, ecotoxicology and agro-ecology. The State University of Bucharest has curricula for ecologists, environmental lawyers, meteorology engineers and hydrology engineers. Timișoara Polytechnic University (Universitatea Politehnică) has a course for engineers on environmental issues⁷.

There is no system of teacher training in the field of environmental protection. Some NGOs have organized environmental training courses for teachers as part of international projects.

In 2012 the former Ministry of Environment developed a draft law on environmental (ecological) education. The Ministries of Economy and Finance blocked the adoption of the law arguing that it might have considerable budgetary implications. The need for a law on ecological education is more urgent than ever. For example, it impedes interested secondary schools from acquiring the status of colleges specializing in ecology. Studies of environmental education or education for sustainable development are becoming more and more necessary.

Proposals for a better legislative correlation at NATO and EU level

By admitting that many of the environmental legislative issues specific to the region of operation are of a global and cross-border nature, Romania will continue to contribute to regional and international environmental initiatives aimed at solving these problems.

As part of its mandate, our country will support through investments the implementation of the agenda and of global (UNO and NATO) and regional (EU) agreements associated with the environment and sustainable development, including the Framework Convention on Climate Change, the Stockholm Protocol, the Convention on Biological Diversity, the Convention on Environmental Impact Assessment in a Transboundary Context and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters⁸. Each of these Conventions may provide specific topics for environmental activities. Romania will support the countries in which they operate in order to include the commitments and provisions of these international environmental agreements.

To make sure that the strategic directions mentioned above are observed, our country will assign the resources necessary to the effective implementation of its Environmental Policy. Romania will have sufficient human resources to oversee the assessment and monitoring processes and to initiate and develop environmentally-oriented operations.

Conclusion

Romania does not have a tradition in terms of environmental protection, both the Administration and civil society being beginners in matters of environmental protection by comparison with the states with established democracies. The environment, often seen as a minor problem in Romania, is actually one of the most important European Union policies

⁷Alexandre Charles Kiss, *Current Trends and Possible Future Developments of Legislative Training in International Environmental Law*, 2009, page 67

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0218:FIN:EN:PDF>

which has a decisive influence on all other Community policies. Romania needs to become aware and learn about environmental policies and rights in order to ensure a real integration and protection of the environment in Romania in the spirit of the European approaches.

The conclusions of the IPCC⁹ (Intergovernmental Panel on Climate Change) reflect a consensus of scientists worldwide, are apolitical and are an equilibrium factor for the tumultuous political climate of climate change.

Climate change is the greatest environmental, social and economic threat. Scientific data show intense increases of the temperature of air and ocean waters, the melting of glaciers, extreme weather including unusual heat waves, floods, etc. These disturbances have a negative impact on ecosystems, human health, water resources, the agricultural sector, tourism, etc. At this moment these developments are determined by the increase in Europe of the average temperature by a degree and by 0.8 at global scale since the pre-industrial age¹⁰. It is estimated that a temperature increase by another degree will generate phenomena that will cause irreversible, catastrophic damage, and may even lead to the disappearance of present-day civilization.

“This work was funded by the contract POSDRU(SOP HRD)/159/1.5/S/141699, strategic project ID 141699, co-funded by the European Social Fund, through the Sectoral Operational Programme Human Resources Development 2007-2013”

Bibliography

1. Chertes Dan - Sebastian – „Unele aspecte privind protecția penală a dreptului la un mediu sănătos” (“A Few Aspects Concerning the Criminal Law Protection of the Right to a Healthy Environment”), Revista Caiete de drept penal (Journal of Criminal Law Notebooks), Publishing House C.H. Beck, Bucharest, 2008
2. Eckhart Rehbinder – Democracy, Access to Justice and Environment at International Level
3. Daniela Marinescu – Tratat de dreptul mediului (Environmental Law Treatise), Universul Juridic Publishing House, Bucharest, 2007
4. Eckhart Rehbinder – Protection of the European Environment after the Treaty of Amsterdam, M Duțu, *op. cit.*, page 35; the Council decides with regard to the proposals of the Commission after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.
5. Brief presentation: “Administrative Law – Administrative Contentious Law – Criminal Law”, seminar held under the aegis of the European Commission, Bucharest, pages 24-27, May 2014
6. Mirela Gorunescu – “Protecția juridico-penală a mediului” (“Environmental Criminal Law Protection”), article published in the Journal “Dreptul” (“Law”), issue 10/2003
7. Maria Magdalena Neagu – “Ocrotirea dreptului fundamental al omului la un mediu sănătos prin mijloace de drept penal” (“Protecting the Human’s Fundamental Right to a Healthy Environment by Criminal Law Means”, PhD thesis, “Ștefan cel Mare” Academy, Chișinău, 2014
8. Alexandre Charles Kiss – Current Trends and Possible Future Developments of Legislative Training in International Environmental Law
 - ❖ Annual Report 2013 (www.curia.europa.eu/jcms/jcms/Jo2_7000/)
 - ❖ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0218:FIN:EN:PDF>
 - ❖ http://www.ipcc.ch/organization/organization_history.shtml
 - ❖ http://unfccc.int/essential_background/feeling_the_heat/items/2917.php

⁹ http://www.ipcc.ch/organization/organization_history.shtml

¹⁰ http://unfccc.int/essential_background/feeling_the_heat/items/2917.php

PRIMARY MATRIMONIAL REGIME AS REGULATED BY THE CURRENT ROMANIAN CIVIL CODE. MARRIAGE EXPENSES

M. G. Popescu

Miron Gavril Popescu

Faculty of Humanities and Social Sciences, Social Sciences Field

Aurel Vlaicu University of Arad, Arad, Romania

*Correspondence: Miron Gavril Popescu, Aurel Vlaicu University of Arad, Faculty of Humanities and Social Sciences, Elena Drăgoi Street, no. 2, post code 310330, University Complex M (Micălaca, zone III), Arad, Romania

E-mail: miron.popescu@yahoo.com

Abstract:

Renouncing the binding nature of the legal matrimonial regime¹, upon adoption of the new Civil Code, the Romanian lawmaker consecrated the patrimonial freedom of the spouses to decide as they deem appropriate and fit with regard to the property that is the object of their property relations.

The New Civil Code establishes the principle of the freedom of choice of the matrimonial regime, the future spouses having the choice to enter, outside the regime of the legal community of property (the only possible matrimonial regime according to the previous regulation of the Family Code), into a matrimonial convention, on the basis of which they shall “join” either the separation of property regime or the conventional community of property regime.

Regardless of the matrimonial regime chosen, whether legal or conventional, there is a common core of imperative, non-derogatory rules, which provide a minimal protection of the property relations between spouses.

The imperative primary regime is enshrined in the Civil Code in force, in Book II, About Family, Title II – Marriage, Chapter VI – Property Rights and Obligations of Spouses, Section 1 – Common Provisions, Paragraph 1 – About the General Matrimonial Regime (Art. 312-320), Paragraph 2 – The Family Dwelling (Art.321-324), Paragraph 3 – Marriage Expenses (Art.325-328).

In this article, the property obligations of the spouses present in the text of the law under the name of Marriage Expenses (Art. 325-328 Civil Code) are the subject of a legal review, highlighting a higher degree of concern on the part of the lawmaker, as compared to the current one, in drafting the Family Code, in terms of their regulation in relation to the accelerated dynamics of social relations.

Keywords: *primary regime, marriage expenses, income from the profession, right to compensation, right to dispose, unwritten convention*

Introduction

By virtue of the principle of unification of the legal rules governing the relations of private law, the new Civil Code reintroduces regulations of family law which, traditionally, are a part of civil law, not a separate branch of law.

¹ Under the Family Code, which was abrogated with the entry into force of the current Romanian Civil Code, the matrimonial regime of the spouses was that of the community of goods, unique, mandatory and immutable. For development, see Vasilescu, P. *Regimuri matrimoniale. Partea generală (Matrimonial Regimes. The General Part)*, Rosetti Publishing House, Bucharest, 2003, page 258;

*PRIMARY MATRIMONIAL REGIME AS REGULATED BY THE CURRENT ROMANIAN
CIVIL CODE. MARRIAGE EXPENSES*

By putting to use the allegations of the distinguished professor Jean Carbonnier², according to whom the family is the *oldest custom of mankind*, the editors of the current code provide an approach of the legal institution connected to the new realities emerging in the field of family life, realities which in their turn justify their metamorphosis on the basis of two *main sources*. On the one hand, the evolution of the relationship between individual freedom and family interest has given rise to a greater independence of property for each spouse, and, on the other hand, a new interpretation in terms of the protection of the higher interest of the child has emerged.

It is in this line of thought that the legislative content of what the French doctrine³ referred to as the primary imperative regime (synonyms: basic property status, fundamental status, basic imperative status or primary matrimonial regime is enshrined in the Civil Code, Title II–*Marriage*, Chapter VI–*Property Rights and Obligations of Spouses*, Section 1 – *Common Provisions*, Paragraph 1 –*About the General Matrimonial Regime* (Art. 312-320), Paragraph 2 –*The Family Dwelling*(Art. 321-324), Paragraph 3 –*Marriage Expenses*(Art. 325-328).

In accordance with the assignment by the doctrine of an imperative nature, the lawmaker decided to regulate this regime, with certain exceptions, through *rules of public order*, stating, in Art. 312, para. (2) of the Civil Code, as follows: *whatever the matrimonial regime chosen, the provisions of this section cannot be derogated from, unless the law provides otherwise*.

It is imperatively necessary to mention that the primary matrimonial regime should not be confused with the legal matrimonial regime, the first being the species, and the second – the genus, which make up one inseparable whole together. Thus, if civil legislation regulates the primary system as sole institution, which includes only mandatory legal provisions, the Romanian matrimonial regime has three different forms, of which the future spouses may choose one under the law, the primary regime applying to any marriage, together with the matrimonial regime chosen by the spouses.

While the primary system contains only provisions intended to provide a minimum protection of the property relationships established as a result of marriage, the legal matrimonial regime includes rules regarding the property of the spouses, their debts and the manner of managing them.

In addition to the legal tenets taken from the Family Code, the Civil Code of Quebec Province of Canada had a significant influence on the drafting of the new Romanian Civil Code.

As mentioned even by the Romanian lawmaker in the Memorandum of Reasons and in Decision no. 277 of 11th March 2009 approving the Preliminary Theses of the Bill – the Civil Code, published in the Official Journal no. 213 of 2nd April 2009, the recodification of Romanian civil law was achieved with the support of modern legislations, namely the Civil Code of Quebec Province, the French Civil Code, the Italian, Spanish, Swiss, German, Brazilian Civil Codes.

In accordance with these provisions, the Romanian lawmaker focused on the regulation and protection of *family property*⁴, as the mass of goods necessary to the household of the spouses. Thus, the Romanian Civil Code in force puts an emphasis on the family dwelling,

² Jean Carbonnier (1908-2003), the most important French jurist of the 20th century, civil law specialist and professor of private law at the University of Poitiers (1937-1955), respectively Pantheon Assas University of Paris where he taught until 1976. His vision of law is influenced by realistic, skeptical and empirical elements of Protestant doctrine.

³ Carbonnier, J. *Les régimes matrimoniaux, 9^e édition mise à jour*, PUF, Paris, 1997;

⁴ According to Art. 415 of the Code of the Province of Quebec, family property includes: the family residence or the rights conferred by the use thereof, the corresponding furniture, vehicles used to transport family members, pension rights accumulated during marriage.

housing rights over the rented dwelling, acts of disposal that seriously threaten family interests, marriage expenses, institution which subsumes legal issues related to the *contribution of the spouses* (Art. 325), *household work* (Art. 326), *income from the profession* (Art. 327), the *right to compensation* (Art. 328).

In accordance with the provisions of Art. 325 New Civil Code, *spouses are obliged to provide material support for each other and contribute, depending on the means available to each of them, to the marriage expenses.*

As already pointed out in the doctrine⁵, the analysis of the said text reveals the existence of two distinct obligations, the difference between them being an extremely fine one⁶. The first of the two, the obligation to *provide material support for each other*, confirms its belonging to the primary regime by the imperative nature of its wording. Like any rule of public order, it cannot be subject to any mitigation by way of matrimonial convention.

The second obligation, regarding the *effective contribution to the family expenses*— as a means of providing *material support for each other*— although included by the lawmaker in the public order core meant to govern the essential relations in a marriage, can be related to other criteria than the one mentioned in the law, by means of a matrimonial convention.

The limitation formulated by the legislator appears to be also derived from the mandatory nature of the primary regime. Although the amount of the contribution can be established by the parties to the convention, what cannot, however, be altered through the matrimonial convention is the *common nature of these obligations*, regardless of the matrimonial regime chosen. The sanction specific to the violation of this rule, by which a *contractual clause* would establish the unilateral obligation of one of the spouses to bear the family expenses and the exemption of the other spouse from this obligation, is deemed as *unwritten (unwritten convention)*.

If the spouses do not decide how to allocate their expenditures between themselves, common law provisions in the matter shall be applicable, the amount of participation in the marriage expenses shall be established according to the means available to each of them.

Specifically, both the assets and the debts of each spouse shall be taken into account. The assets taken into account shall be assets owned individually, as well as assets owned by shares with the other spouse or with other persons, and assets owned jointly. Likewise, in determining the debt, one's own debt, as well as the joint debt with the other spouse or with other persons, shall be considered.

In the literature⁷, it has been considered that the participation of the spouses in the marriage expenses depending on the means available to each of them, even if *contrary to the principle of equality* between the two, is a rational and realistic legislative solution. On the contrary, the obligation of the spouses to contribute equally to the marriage expenses would mean, for the spouse who does not have the necessary means, to have an obligation that is excessively onerous and impossible to fulfill.

In conclusion, we can say that participation in the family spending is the only area of the imperative primary regime where spouses can manifest their right to derogate from the express reference of the law – namely, *the means available to each of them* – being allowed to establish the share of their contribution, regardless of their financial possibilities, without violating, thereby, any of the mandatory rules mentioned above.

Also, the amount of the execution of the obligation to participate in the marriage expenses may undergo certain fluctuations throughout the marriage of the spouses. At the same time, depending on the specific possibilities applicable to each moment, the

⁵Bacaci, Al., Dumitrache, C., Hageanu, C.C, *Dreptul Familiei (Family Law)*, 7th edition, C.H. Beck Publishing House, Bucharest, 2012, page 72;

⁶Bodoșcă T., Drăghici A., Puie I., Maftai I., *Dreptul familiei (Family Law)*, Universul Juridic Publishing House, Bucharest, 2013, page 117;

⁷Bodoșcă T., Drăghici A., Puie I., Maftai I., *op. cit.*, page 118;

*PRIMARY MATRIMONIAL REGIME AS REGULATED BY THE CURRENT ROMANIAN
CIVIL CODE. MARRIAGE EXPENSES*

participation can be in the form of cash payments, in-kind contributions (provision of movable goods, food, ensuring the use of a building as family dwelling, etc.).

Art. 326 Civil Code provides, in the form of an express regulation, a solution proposed by the doctrine⁸ and enshrined by the legal practice⁹ related to the Family Code, establishing that *the work of either spouse in the household and for child rearing is a contribution to the marriage expenses*.

Once again, a single article of law establishes two distinct obligations for the spouses. As the content of the concept of *household* is not indicated by the provisions of civil legislation, by resorting to the Explanatory Dictionary of the Romanian Language, we can say that the household means all the goods which make up the movable and immovable property of a person or family, or the unit consisting of a dwelling and the persons who live together on its premises¹⁰.

Child rearing is, according to the provisions of the Civil Code, an obligation derived from the provisions established by the Constitution of Romania, in Art. 48, para. (1), *the family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children*. The wording of the fundamental law indicates, in relation to the parents' obligation, the absolute right of the unmarried minor child to benefit from the conditions necessary for his/her harmonious physical and mental development. Thus, Art. 326 Civil Code imposes as a rule of the imperative primary regime from which the spouses cannot derogate through a matrimonial convention, the *obligation to do* consisting in the care, surveillance, support and education of their unmarried minor children. These provisions have an impact on the partition action, in establishing the shareable mass.

Art. 327 New Civil Code provides, in accordance with Art. 57 of the fundamental law¹¹, the right of each spouse to freely exercise a profession and to use as he/she finds fit the income earned, on condition of having fulfilled his/her obligations in the context of the marriage expenses.

Given the many controversies arisen in the doctrine as regards the content of the concept *right to dispose*, we shall consider as follows, joining the views already expressed in the literature¹², that it should not be understood as an attribute of the ownership right, but as a prerogative of the holding spouse which cannot be challenged by the other spouse. Thus, the spouse holding these rights may use them, while respecting public order and morality, as general limits of the exercise of any rights or freedoms (Art. 14, para. 1 of the Civil Code), and also respecting the obligations he/she has regarding marriage expenses, as special limits (Art. 327 Civil Code).

As regards the *income earned*, this phrase must be interpreted depending on the actual matrimonial regime in a specific case.

If marriage is under the matrimonial regime of legal community, the provisions of Art. 327 shall be concurrent with those of Art. 341, *income from work, amounts due as social security pension and the like, as well as the income due under an intellectual property right*

⁸Filipescu, I.P., Filipescu, A.I., *Tratat de Dreptul Familiei (Family Law Treatise)*, 7th edition, Universul Juridic Publishing House, Bucharest 2007, page 69;

⁹For details, see the Supreme Court, Civil Division, Decision no. 730/1980, in the Collection of Decisions (CD) 1990, page 22;

¹⁰ See the Explanatory Dictionary of the Romanian Language (DEX), page 429;

¹¹*Romanian citizens, foreign citizens and stateless persons shall exercise their constitutional rights and freedoms in good faith, without any infringement of the rights and freedoms of others*, Art. 57 of the Constitution. Thus, specifically, a restriction may be ordered by law. It is also worth mentioning the restriction of the exercise of certain rights on the basis of a criminal judgment of conviction of one of the spouses and the enforcement of a complementary sanction. See Art. 66 of the New Criminal Code;

¹²Bodoaşcă T., Drăghici A., Puie I., Maftai I., *op. cit.*, page 120;

are common property, regardless of their acquisition date, but only if the claim for their collection becomes due during the community.

Given that the rule stipulated by Art. 341 is a special rule, as compared to the one stipulated by Art. 327, which is a general one, according to the principle *specialia generalibus derogant* (special departs from general), the income earned by one of the spouses during legal community, including income resulting from the exercise of his/her profession, being commons property, is subject, as regards the acts on conservation, use and management, to Art. 345 para. 2¹³. On the other hand, alienation and encumbrance acts are subject to the provisions of Art. 346 Civil Code, as follows: *acts of alienation or encumbrance of real rights covering common goods cannot be concluded without the consent of both spouses.*

In the case of the matrimonial regime of the conventional community, the special, derogatory, provisions of Art. 341 can only be incident where the spouses do not decide otherwise by matrimonial convention. In this regard, the provisions of Art. 368 Civil Code are unambiguous, *to the extent that it is not provided otherwise by matrimonial convention, the legal regime of conventional community is completed by the legal provisions regarding the legal community regime.*

In the context of the matrimonial regime of the separation of property, the common right established by the principle stated in Art. 327 is incident, because in the case of this type of regime there is no concurrence between general and special rules.

By virtue of the material support obligation imposed by Art. 325 para. (1), one of the spouses can support financially the other spouse in initiating or carrying out a professional activity. In case of surpassing the limits of the obligation of material support or contribution to the marriage expenses, a *right to compensation* of the other spouse is born.

The specialized literature has considered this situation as a *sui generis* case of *unjust enrichment*.

For the emergence of a *right to compensation*, three conditions must be met *cumulatively*: there should be an effective participation of a spouse in the professional activity of the other spouse, by acts and deeds belonging to the content of the duties or activities imposed by the profession practised by the spouse.

The second condition is that participation should exceed the limits of the legal obligations of material support and contribution to the marriage expenses, and the last requirement indicates the lucrative nature, of unjust enrichment, as a result of carrying out the respective professional activity. From this latter condition we can conclude that the spouse in question did not participate in the professional activity of the other spouse pursuant to a legally binding onerous act concluded with the other spouse or another person, but for the benefit of the latter.

What the legal text does not specify is at which time can the right to this compensation be exercised, whether it could be claimed during the marriage, or just upon liquidation of the matrimonial regime.

Conclusions

In the context of the new regulations, it can be seen, from a first analysis, there is an increased concern on the part of the lawmaker for the standardization of the property rights and obligations of the spouses, on the one hand, through a broader and more thorough regulation of the patrimonial effects of marriage (61 articles, from 312 to 372 of the Civil Code, being dedicated to this field, unlike the Family Code which only reserves 8 articles for it), and on the other hand, through the regulation of certain new aspects: *the conventional*

¹³Art. 345 para. (1) Each spouse has the right to use the common good without the express consent of the other spouse.

(2) Also, each spouse may enter into single acts of conservation, acts of management on any of the common goods.

*PRIMARY MATRIMONIAL REGIME AS REGULATED BY THE CURRENT ROMANIAN
CIVIL CODE. MARRIAGE EXPENSES*

mandate and the judicial one (Art. 314-315 New Civil Code), the patrimonial independence of the spouses (Art. 317 New Civil Code), the income from the profession (Art. 327 New Civil Code), the precipt clause (Art. 333 New Civil Code), etc.

Although the lawmaker puts an emphasis on the freedom of choice of the spouses by providing a plurality of matrimonial regimes, under the imperative of legal protection, it does, however, limit their freedom by establishing a core of non-derogatory rules, the primary regime, applicable to any matrimonial regime. Regardless of the matrimonial regime chosen by the spouses, the purpose of the existence of such a set of legal rules is to provide rules of public order intended to protect the essential relationships in a marriage, in normal situations, as well as crisis situations.

The lawmaker has thus expressly enshrined, as a distinct sub-chapter, *marriage expenses*, a legal institution subjected to a thorough analysis in this article.

Bibliography:

1. Avram M., Nicolescu C., *Regimuri matrimoniale (Matrimonial Regimes)*, Hamangiu Publishing House, Bucharest, 2010;
2. Bacaci Al., Dumitrache V.C., Hageanu C.C., *Dreptul familiei (Family Law)*, 4th edition, All Beck Publishing House, Bucharest, 2005;
3. Bacaci Al., *Raporturile juridice patrimoniale în dreptul familiei (Patrimonial Legal Relations in Family Law)*, 2nd edition, Hamangiu Publishing House, Bucharest, 2007;
4. Bacaci Al., Dumitrache V.C., Hageanu C.C., *Dreptul familiei în reglementarea noului Cod Civil (Family Law under the Regulation of the New Civil Code)*, 7th edition, C.H. Beck Publishing House, Bucharest, 2012;
5. Bacaci, Al. *Corelația prevederilor legale referitoare la obligațiile comune ale soților cu cele privind drepturile lor asupra bunurilor comune (Correlation Between the Legal Provisions on the Joint Obligations of the Spouses and Those Regarding Their Rights over Common Property)*, R.R.D. no. 6/1986;
6. Banciu A. Al. *Raporturile patrimoniale dintre soți potrivit noului Cod civil, (Patrimonial Relationships Between Spouses under the New Civil Code)*, 1st and 2nd edition, Hamangiu Publishing House, Bucharest, 2011;
7. Banciu, A. Al., *Unele aspecte ale raporturilor patrimoniale dintre soți reglementate pentru prima oară ca instituții juridice de noul Cod Civil (Some Aspects of the Patrimonial Relations Between Spouses Regulated for the First Time as Legal Institutions by the New Civil Code)* in the journal *Fiat Justitia*, no. 2/2010 of Dimitrie Cantemir Faculty of Law, Cluj-Napoca, Argonaut Publishing House, Cluj-Napoca, 2010;
8. Bodoșcă T., Drăghici A., Puie I., Maței I., *Dreptul familiei (Family Law)*, Universul Juridic Publishing House, Bucharest, 2013;
9. Dobre A.F., *Convențiile și regimurile matrimoniale sub imperiul noului Cod Civil (Conventions and Matrimonial Regimes under the Rule of the New Civil Code)*, in *Dreptul (Law)* no. 3/2010;
10. Filipescu, I.P., Filipescu, A.I., *Tratat de Dreptul Familiei (Family Law Treatise)*, 7th edition, Universul Juridic Publishing House, Bucharest 2007;
11. Florian E., *Dreptul Familie în reglementarea noului Cod Civil (Family Law under the Regulation of the New Civil Code)*, 4th edition, C.H. Beck Publishing House, Bucharest, 2011;
12. Hageanu, C.C. *Dreptul familiei și actele de stare civilă (Family Law and Civil Status Documents)*, Hamangiu Publishing House, Bucharest, 2012;
13. Imbrescu, I., *Tratat de dreptul familiei (Family Law Treatise)*, Lumina Lex Publishing House, Bucharest, 2006;
14. Turianu C., *Dreptul Familiei. Practică judiciară comentată și adnotată (Family Law. Legal Practice Commented and Annotated)*, Penguin Book Publishing House, Bucharest 2004;

15. Roșu C., *Necesitatea revenirii la libertatea convențiilor matrimoniale (The Need of Recovering the Freedom of Matrimonial Conventions)*, in *Dreptul (Law) 7/1999*;

16. Uliescu, M, *Noul Cod Civil. Comentarii (The New Civil Code. Comments)*, third edition revised and expanded, Universul Juridic Publishing House, Bucharest, 2011;

17. Vasilescu, P. *Regimuri matrimoniale. Partea generală (Matrimonial Regimes. The General Part)*, Rosetti Publishing House, Bucharest, 2003.

ADDICTION, WITHDRAWAL, AND AGGRESSIVENESS IN ADOLESCENCE

G. Ungureanu

Gabriel Ungureanu

Scientific researcher at the Institute of Philosophy and Psychology “C.R-Motru” within the Romanian Academy.

* Correspondence: Gabriel Ungureanu, Institute of Philosophy and Psychology C.R-Motru, 13 Septembrie Route, No. 13, Bucharest, Romania

E-mail: gabriel.ungureanu.acad@gmail.com

Abstract

In a tolerant and evasive environment, when the psychological conflict between aspirations and possibilities occurs, naïve, uneducated, and disoriented adolescents often wind up in deviant entourages, surrounded by dubious individuals who promise them the end of “suffering” and the gain of a state of gratification and satisfaction with the help of drug use. Subsequent to these well-intentioned contacts, “white death” drug dealers become violent, demanding very high prices for the “fixes” of this habit. It is the beginning of the end

Key words: addiction; withdrawal; aggressiveness; adolescence; drugs.

Introduction

The striking gaps of present day society, overhyped without taking corrective measures, the economic elitism of a minority, and the public minimization of young people’s self-achievement through work and education have artificially enlarged the category of the socially underprivileged; the romantic optimism typical of the age of adolescence in the time of past generations is nowadays darkened by depression and disengagement. The statistics for high school success rate are always decreasing up to 16-20% (in the autumn of 2014). The situation is familiar, it is assessed, and linked to the economic state of affairs of the country, but also to the lack of interest or the shocking ignorance of those who are directly concerned: the families of these teenagers. This serious situation impels the youngest members of the society to take refuge in the spirit of groups in which alcohol and drugs are being used.

1. Drug addiction

As it is pointed out in the *Larousse Dictionary of Psychology*, addiction is defined as “a situation of dependence perceived subjectively as alienating, the whole existence of the individual being centered on the repetition of an experience detrimentally to emotional or social investments. The concept of addiction encompasses those of “toxicomania” and “dependence”, yet it goes beyond the frame of psychoactive substances dependence to expand to the drug-free toxicomanias or behavioral addictions” (Larousse, 2006, p.25). With respect to the concept of *drug* one might say it comes from the Persian term *droa* which translates by “aromatic”. According to other sources, it comes from the Hebrew term *rakab* which means “perfume”. The closest to the truth seems to be the Dutch term *droog* which refers to the vegetal substances sold by pharmacists (Bengescu, 2009). In relation to the phenomenon of *withdrawal* (the lack of the substance used in addiction), the psychosomatic symptomatology highlights the following types of reactions: 1) psychic: insomnia, anxiety, depression, agitation or excitation; 2) digestive: nausea, regurgitation, stomach aches, anorexia; 3) pain-related: muscle aches, bone pain, visceral pain; 4) neurovegetative: rhinorrhea, ague, sweat (Larousse, 2006, p.1109).

The psychic profile in the adolescent with addictions is difficult to compile because we can distinguish various social categories among them: marginal, outcasts, mingled, going to school, educated or not and finally drug addicts who come from literally all social structures, large or small. If drug effects are relatively well spelled out, still the individual causes that motivate and lead to drug use are manifold in the neurophysiological spectrum of the “reward” and they are connected to the proper functioning of the systems which comprise: dopaminergic neurons, limbic structures and certain hypothalamic regions (Rășcanu., 2004, p.44). These thinking malfunctions that motivate substance use are highlighted in psychoanalysis, the individual personality traits, as well as in crises.

As a “surface” profile, addiction can be clearly observed: the predisposition to seclude from the community, hanging out at clubs and gardens to contact dealers, significantly diminished school activity, the subject is not interested in ethics, split and inner conflict between the self and personality, ambiguous orientation in terms of goals and values, frequent vengeful feelings against society, perceived as being responsible for their problems.

There is thus a discrepancy between organic maturing and personality development, between the three great modules of psychic calibration: emotional, volitional and cognitive; the adolescent drug addict becomes grumpy and avoids interrogative family discussions; drowsy, visibly tired, with red eyes and dilated pupils; they lie about the groups and locations they frequent and make up financial needs to satisfy urgently; when they can no longer ask for money within the family, they turn to relatives or acquaintances to obtain money or assets which they could sell to get the money they need; given the financial deadlock and being in debt to loan sharks, dealers or even friends, they begin to have antisocial behaviors of violence and theft.

Researchers Molto and Radel, quoted by Vezure (2010), outline an etiological and behavioral diagnosis for the onset motivation of the use of psychedelic, analgesic and stimulating substances: seeking pleasure through an illicit course of action; adherence to groups of drug users; spiritual curiosity; social bluster against adults; social isolation, poverty, lack of perspective on life. Pronounced melancholy and depression are signs of risk based on which measures of prevention against social maladaptation can be initiated.

1. The classification of illegal drugs and the effects on humans

Psychoactive substances produce a state of specific consciousness, in a vastly studied succession: sleep, oneiric dynamics, hypnosis, meditation, feedback (Zlate, 2000). The illegal psychoactive substance is defined as “a chemical substance, natural or synthetic, which, unlike medication, acts on the brain, producing euphoric states, psychic disorders, hallucinations, paranoid reactions” (Vezure., 2010, p.13). R.L. Atkinson et al. have come up with the following classification of psychoactive substances in terms of effects: 1) depressive (sedatives): alcohol, barbiturates, tranquilizers; 2) narcotic: opium and its derivatives (codeine, heroin, morphine); 3) stimulating: amphetamine, cocaine, nicotine, caffeine; 4) hallucinogenic or psychedelic: LSD, mescaline; 5) cannabis: marijuana, hashish (Zlate, 2000, p.322). Some drugs are legal: tobacco, alcohol, caffeine, tea and even chocolate (Macovei, 2009). The others are illegal, except for their use in scientific experiments and medicine. According to the degree of dependence which is generated by the use of these substances, the following types of psychosomatic effects are mentioned: psychic, physical and mixed dependence.

Opioids can be classified as follows: natural opioids – opium and opiates; semi-synthetic opioids – alkaloids; synthetic opioids e.g. – morphine. Thus, this drug is extracted from the raw seeds of a poppy variety called “*Papaverum somniferum*”. The main derivatives extracted from opium are: *heroin, morphine, laudanum, codeine, synthetic derivatives*. The psychosomatic effects appear as a state of euphoria, followed by an accentuated exaltation of imagination; during the secondary stage, they produce somnolence and immobility. Through habitualness, the somatic effects become devastating: vertigo, qualmishness, headache, sexual

dynamics disorders; they produce physical and psychic dependence with high tolerance. (Țical.,2003, p.50).

Narcotics: a) *heroin (diacetylmorphine)* is a morphine synthesized opioid. In terms of effects, intravenous heroin immediately causes an intense reaction of pleasure, euphoria and rush. Then there's a relaxing stage and an intense brain activity of self-searching. This state is called in slang "*planet*" and it lasts between two and six hours. After repeating heroin administration using the same quantity, the drug addict can no longer get to those intense feelings of pleasure, which is why one calls him "suspended". Given these circumstances, it is highly necessary that the drug quantity be increased in order to obtain the same perceptions. Gradually, a psychosomatic addiction sets in, as well as a degree of tolerance which is irremovable without the help of certified medical assistance. Psychiatric therapy consists of methadone administration in order to sustain psychosomatic balance given the symptoms produced by withdrawal, followed by: individual psychological counseling, psychotherapeutic groups organized in 12 modules, as well as vocational counseling insurance in residential locations vs. on site (Țical, 2003); b) *morphine* is an opium derivative which is frequently intravenously administered: it acts at CNS level, producing significant pain relief up to total inhibition (by increasing the perception threshold), thus it determines a state of indifference to painful stimuli. Depending on the administered dose, morphine induces a euphoric state followed by a strongly depressing effect, accompanied by convulsions and low blood pressure as a result of veins and arteries dilation. Repeated administration can determine a toxicomania characterized by physical and psychic dependence, but also by the increase of the organism's level of tolerance, which is why it is included in the list of stupeficients (Țical, 2003); c) *codeine (methyl-morphine)* is a mono-ethylene compound of morphine, a white crystalline solid substance. It is administered either intravenously, or orally, in which case the effect is much weaker, and it also determines a series of adverse effects such as hypoventilation, nausea and regurgitation. The first cases of codeine toxicomania were reported in the US in the '30s, when patients were treated for morphine dependence; d) *methadone (diphenylpropylamine)* is a synthesis product with a psycho-clinical activity similar to morphine. It looks like a powder that can be administered orally or intravenously. The effects can last up to 72 hours in some subjects, after a single oral dose. Methadone has all the properties of opioids, causing a sedative, analgesic and anti-cough effect through cerebral activity. Overdose can be deadly, by hypoventilation. Because of the prolonged half-life (it goes up to 25 hours), methadone can be prescribed as a single daily dose. Since it has a relative effect in calming down withdrawal, it is used for the treatment of opioids addictions (Țical, 2003).

Stimulating drugs: a) *cocaine* is a natural substance extracted from the leaves of coca tree. At present, it is considered illegal, except for medical purposes. It has a stimulating effect similar to that of amphetamines. The effect of body invigoration is general, causing a rapid physical addiction as well. During dose consumption (snorting), the cocaine addict feels a state of wellbeing associated with a delusive feeling of the increase of physical and psychic effort abilities, given the inhibition of sleep need. The euphoric state manifests as absolute happiness and omnipotence, the increase of mobility, disinhibition, the need to communicate and sexual activity. Later on there is a decrease in the quality of thinking, aberrant interpretations of reality, mixed hallucinations, threatening voices materialized in a paranoid medical chart. Finally, given this exhaustion, depression sets in, clinically manifested by indifference and passivity (Țical, 2003); b) *amphetamines* are stimulants of the CNS, known for their euphoric effect. They suppress appetite and the state of somnolence, and they combat insomnia. Later on the user becomes irritable, depressed, and lethargic. The repeated use of amphetamine produces effects that resemble those produced by cocaine. Similarly, amphetamine addicts need to increase their dose in order to obtain the euphoria effect. They sleep only for a few hours a night and they end up in the psychiatric facility with a state that differs insignificantly from acute psychosis. The addicted user feels threatened and stalked by

any stranger around him or her, they have auditory hallucinations and they are completely confused; they feel pains, they present a delirious state and they develop an aggressiveness with paranoid source (Iftene, 2007); c) *methamphetamines* are synthesis chemical derivatives: for e.g., *Yaba* is a stimulating mixture of methamphetamine and caffeine which is found in Southeast Asia. Overdose can become deadly because of the increase of blood pressure and other heart rhythm disorders (Iftene, 2007); d) *MDMA* or *Ecstasy* is a stimulating and energizing drug, yet it was never merchandized as medication. It was sometimes administered to the military for its special effects of weariness control; it triggers euphoric stimulation that lasts up to 6 hours, during which weariness disappears and the communication ability increases. The sense of time is lost, light memory disorders appear, and in certain cases, hyperthermia appears; this state is followed by depression and exhaustion, anxiety reactions and the desire to act violently, after which there is a state of somnolence which is accompanied by muscular pains. In the long run, cardiovascular problems occur, as well as renal and hepatic ones (Vartic, 2007); e) *AMT/ alpha-Methyltryptamine* is a hallucinogenic derivative of tryptamine. It was synthesized in the early '60s in the URSS, being used under the name of *INDOPAN*.

Hallucinogenic drugs: a) *Indian hemp (cannabis indica)* - is a dicotyledonous herb with a high concentration of THC (tetrahydrocannabinol), the active ingredient. From the resin produced by cannabis *hashish* is prepared, which is usually smoked. From the flowers and buds of the female cannabis plant *marijuana* is prepared, often smoked mixed with tobacco. According to the stories of a great number of drug addicts, cannabis preparations induce a state of moderate euphoria which momentarily makes them forget daily problems, increasing the social appetite and ensuring a state of wellbeing. Although It acts on the CNS, cannabis is used in medical issues (Iftene, 2007); b) *khat (catha edulis)* is a shrub from the leaves of which *cathinone* is synthesized, an alkaloid that has effects on the organism similar to those of cocaine and amphetamines. Repeated use leads to the settlement of hallucination and paranoia states; c) *LSD* (lysergide) is a semi-synthetic hallucinogenic drug rated as one of the most powerful known stupeficients. It gives photophobia, physical illness and regurgitation; it produces perceptive changes: geometric shapes that appear eyes closed or open; *flashes* of intense colors, still objects appear to move, synesthesia (hearing colors). The experiences during LSD exposure are related to individual expectations regarding the use, as well as the suggestions they receive from their social environment. A characteristic of these LSD hallucinations is that the user realizes that what he or she feels and sees is not real. (Iftene, 2007); d) *peyote-cactus (Lophophora Williamsii)*- is a cactus that contains a main alkaloid, mescaline. Those who use preparations from this plant have fantastic visions of greatness or, on the contrary, hilarious ones. These intoxications manifest throughout two to three days, and then they disappear. This drug used to eliminate the state of fear and it gave Native Americans the courage for unequal fight. (Iftene, 2007); e) *mescaline* was and is still considered a sacred plant. After consumption, it triggers an effect lasting about 12 hours: reactions with neurovegetative symptoms of physical illness, nausea, regurgitation, muscular contractions; an hour after the administration an oneiric state sets in, characterized by the delusion of the visual field and space and time disorientation (Vartic, 2007); f) *hallucinogenic mushrooms psilocybin* - is an alkaloid extracted from hallucinogenic mushrooms. The hallucinogenic effect sets in after about 20 minutes and it lasts up to 6 hours, being associated with nausea, muscular contractions and movement lack of coordination; effects of reality distortions and difficulty to orient in space and time (Iftene, 2007); g) *PCP-phenyl cyclohexyl-piperidine* or *Angel Dust* acts on the CNS, leading to psychic addiction. Drug addicts who use it frequently manifest a violent behavior: hyperexcitability, irritability, convulsion, depressive-like dysphoria, paranoid states, memory loss, and verbalization difficulties. It can be smoked or administered intravenously (Vartic, 2007); h) *volatile substances*, such as anesthetics, lacquers (ether), dyes, diluters can have certain depressor and anesthetic effects (Țical, 2010). They are used by marginal groups who can't afford other risk

substances in order to induce hallucinogenic states. Given these circumstances, users are disinhibited and they sometimes turn verbally or physically aggressive in relation to the degree of intoxication (Iftene, 2007).

3. Alcohol addiction (legal drug)

Alcoholism is a synonym for toxicomania. In both situations the common factor is dependence, but just like in the case of drugs, the drinking onset is psychological. In this regard, personality factors are obvious; first of all, the subjects' volitional, cognitive and emotional mechanisms change within a psychopathological spectrum, presenting as labile, ineffectual structures, and they highlight the difficulty to overcome life hardships in the absence of alcohol. The recourse to alcohol has psycho-sociological connotations marked by "positive" interactions at a group level within the initial phase. During the first phases of the bacchanal behavior people become more sociable, more honest and communicative to one another (*In vino veritas!* -Latin- *in wine there is truth*). In our country it is frequent to incite the other to drink alcohol as a tradition: they drink at weddings, but also at funerals, they drink at a newborn's baptism, at various anniversaries, in joy or sorrow, all the same any occasion can bring about the reason for a bacchanal relaxation, individual or in a group. In these situations, the members of the group in most cases become "cheerful" but those who go over the line and become dizzy end up in a state of acute alcohol intoxication or common drunkenness (Ionescu, 1997). Phil et al. quoted by Constanța Vasile (2009) have confirmed the hypothesis according to which there is a well-determined correlation between the degree of aggressiveness produced through the reduction of inhibitions and the blood alcohol concentration.

Unfortunately, at the level of age consumption, Romanian adolescents come in the first positions in alcohol consumption, 47% of whom being male subjects, admitting that they have a clear bacchanal experience before the age of 15. A study of the Organization for Economic Co-operation and Development, quoted by *Washington Post*, highlighted that 18% of Romanian female adolescents have admitted that they had drunk alcohol at least two times before the time of the interview. Also in this study performed at European level, in the top of alcohol consumption chart come in adolescents from Denmark, Lithuania and Latvia (www.ziare.com). Alcohol consumption in young people and adolescents is an everyday reality that takes mass proportions, in private habitats or in public places, even if merchandizing to persons under 18 is prohibited. Unfortunately, for many adolescents, this behavior leads to the settlement of addiction and chronic alcoholism symptoms, which appear along with all their retinue of specific social malfunctions: job loss, dropping out school, spending personal resources and those of the family on alcohol and, later on, on hospitalization needs (Macovei, 2009).

Vasile Preda argues how the socio-emotional, the ethical, as well as the family's economic climate is more disrupted when in the family there are cases of alcoholism, immorality and criminal record, favoring the children and adolescents' lapse into delinquency by means of a persuasive negative model. Research shows that alcoholism in the families delinquents come from manifest three times more than in the families of non-delinquents. The immorality of the family environment in which alcohol was consumed eventually leads to a permissive atmosphere that favors girls' drinking onset, prostitution, and later on various serious crimes in which they get involved (Preda, 1998).

Clinical manifestations according to George Ionescu (*note de curs*, 1997) entail two major dimensions of alcohol intoxication: 1) psychopathological manifestations of acute intoxication (common drunkenness) and 2) idiosyncratic alcohol intoxication (pathological drunkenness). If subjects wake up from the first state only with hangover, dizziness and headaches, in the second state of drunkenness (the pathological one) the phenomena are devastating for the individual's health.

Therefore, in certain cases we encounter the occurrence of the withdrawal phenomenon, when the subject cannot administer the alcohol dose from various reasons.

These psychic disorders of withdrawal can be found in the following clinical forms: 1) alcohol withdrawal syndrome; 2) alcohol withdrawal delirium; 3) Kandinsky syndrome – alcohol amnesic disorder; 4) alcoholic hallucinosis; 5) alcohol related dementia (Ionescu, 1997). However, in adolescence withdrawal and its psychotic symptoms are found seldom, because there must be at least five years before the occurrence of alcohol tolerance and before addiction sets in. The phases of alcoholism onset stretch between three months and two years, and two sub-phases stand out: occasional consumption and continuous consumption. In the second period stretching between six months and four years, in affected subjects one can notice memory loss, the difficulty to describe details, feelings of self-blame and at the same time the ingested quantity of alcohol increases. In the third phase they lose control and they feel the need to drink more and more. The subject is inclined to aggressiveness, low libido up to the point of sexual anesthesia and the annulment of sexual desires. Rationalizations and culpability towards the uncontrollable behavior are produced. Total abstinence without specialized support is attempted and multiple relapses occur that stimulate depressive ideation. Also, a reduction of food appetite is noticed and in most cases social activity (job) is abandoned. In the final phase of chronic alcoholism serious psychopathological phenomena can be distinguished: *dipsomania* (high level of alcohol consumption within periods of 5 to 6 days) accompanied by violence, hallucinations, and drunkenness during the day, hooliganism and abusive parlance. In this phase, alcohol consumption can take the simple form (with the possibility to abstain) or toxicomania alcoholism (Răşcanu, 2004).

Alcohol use disorder can be described according to ICD (*International Classification of Diseases*) as having the following dimensions: the alcoholic has a strong desire to drink, he or she cannot control the quantity, the time and place in which they behave that way, the phenomenon of withdrawal occurs when they cannot administer the usual quantity of alcohol. The organism's tolerance to alcohol increases so that it craves for increased doses of alcohol. There's the ignorance of the activities that used to bring them joy as well as the ignorance of destruction caused by alcohol within the organism (Iftene, 2007).

Among the direct consequences which immediately affect alcoholic adolescents we note their positioning as victims or aggressors in situations of violence that are triggered within risk groups. These adolescents experience random sexuality with a high risk of contracting STIs, to which the obvious risk of accidents within the public space is added, because of the difficulty to move given the deficit of orientation in time and space. Social rejection and psycho-moral degradation are obvious, and last but not least, the danger of suicide must be taken into account, lying in wait at every turn because of the internal conflicting states generated at the level of self-esteem, which is getting more and more altered and reduced.

4. Tobacco addiction (legal drug)

Tobacco is a plant brought from the US to Europe in the sixteenth century. It is smoked in a pipe, as cigarettes, cigars, cheroots, and sometimes it is chewed. It was noticed that the smoking onset produces around the age of 16, in a social environment, through inter-influence within unsupervised school groups. When one quits smoking, withdrawal produces depression, irritability, frustration or anger, anxiety, difficulties to focus, unrest, and the reduction of cardiac activity. Somatically, a continuous cough reaction occurs, as well the decrease of daily performance. Second, it induces nutritional disorders followed by weight loss or gain. Nicotine contained in tobacco produces “treacherous” addiction effects: statistics show that only 50% of smokers quit this habit of slow but certain self-ruination of health (Sipos, 2007).

5. Digital addiction (no substances: computer, Internet, TV)

Addiction as a phenomenon also refers to other repetitive behavioral manifestations that promote a high level of dependence. Therefore, some adolescents meet the need for

interaction by practicing in a group various games of strategy or virtual interaction on the computer. As they wish to gain the acknowledgement of the “online” group, they spend hundreds of hours in front of monitors to gain points and to implement their virtual victories. If manifested excessively, this behavior leads to physical and mental exhaustion often causing serious illnesses and psychosomatic conditions.

Watching television or looking at aggressive or cruel images on the computer sometimes triggers unconscious curiosity, being actually preferred by some frustrated adolescents. Computer games with fights or war strategies are also accessed by many pupils, and these activities hold an important position in the formation of their thinking.

As it is statistically assessed, before the age of 16, the child can watch 13.000 murders and aggressive attacks on television. Scientific inquiries targeting the influence of aggressogenic films on the adolescents’ manifest behavior have shown that some of them appropriate scenes from films *per se*, without making the distinction between pro-social aggressiveness and the antisocial one, being mainly interested in the assault techniques which they learn spontaneously (Preda, 1998).

Studying the emotional correlation with dependence as to video games and comparing them to the indicators of emotional dependence as to gambling, D. A. Gentile and J.R. Gentile have come to the conclusion that 15% of the studied adolescent gamblers are addicted. Research showed that dependence is significantly correlated to the emotional feedback of aggressive video games, hostility and fights that start in the close environment (Tarasov, p.63).

Attempting to regulate this social issue, as early as 1993 the classification of video games was asserted as follows: “E (everyone) for anyone, T (teen) young people, and M – mature; this aspect led to the limitation of children’s access to games that were not appropriate to their age.

Thus, in 2003 *Entertainment Software Rating Board* presented an improved classification starting with the age of three, up to adults over 18. Although research in the scope of this phenomenon is scarce, one can still state that policies formulated as a result of scientific salience have significantly reduced the rate of dependence behaviors (Tarasov, p.64).

Other adolescents are emotional and they cannot communicate to one another unless they are behind the relative anonymousness ensured by the *chat* or *email* relationship. This technology first appears as being salutary for these children who can thus interact easier; but there are many counterexamples that prove the contrary with respect to the usefulness of Internet, since many adolescents in pursuit of pleasure and easily made money collapse into promiscuity and *online* prostitution dependence, bringing illicit revenue.

Conclusions

It is interesting that in this scope of addictions, *drug addicts* do not crave to change their addiction and they become for instance *workaholics*. Neither are those who buy compulsively (*shopaholics*) drawn to the adherence to dependence altruistic behavior.

Being aware that they are different “*ideologically*”, with a “bluster” attitude towards the large majority of people, each of these persons who are temporarily deviated from normality maintain their philosophical-attitudinal typicality, but also their behavioral manifest towards other people and towards society, even if sometimes they practice and even provoke co-dependence in addictions. It seems that these people are searching for an intense hedonistic compensation for their inability to find solutions to life challenges.

Addiction behavior with no substances is no less harmful, through the negative processing of cognitive-emotional sets of adolescents who waste their time on public games in bars or at home in front of the computer, ending up most often ruined and stuck with debts. Inveterate gamblers of casinos are recruited among them. Most of them end up being socially excluded, in debt for life to banks and loan sharks. Frequently, these teenagers without a

“compass” become depressed, out-of-balance, they have suicidal thoughts which unfortunately many times they bring off (Joiner, 2013).

Bibliography:

1. IONESCU G., (1997) *Tulburarea personalității* Editura Asklepios, București, p. 80-167;
2. IONESCU G., (1997). *Note de curs*;
3. PREDA, V., (1998). *Delicvența juvenilă*. Cluj-Napoca, Presa Universitară Clujeană;
4. ZLATE, MIELU., (2000) *Introducere în psihologie*. Editura Polirom, Iași;
5. ȚICAL, GEORGE, M., (2003) *Manual antidrog: Prevenirea și combaterea traficului și consumului de droguri: Elemente de indentificare și efectele drogurilor: Curs universitar*. Editura Pildner & Pilner, Târgoviște;
6. RĂȘCANU, RUXANDRA., (2004) *Alcool și droguri. Virtuți și capcane pentru tineri* Editura Universității din București;
7. TARASOV, A., (2006) *Psihologia jocurilor video. Agresivitatea și sugestibilitatea la adolescenții expuși jocurilor video violente*. Iași, Editura Lumen;
8. BLOCH, H., ROLAND, C., ERIC, D., ALAIN, G., (2006) *Larousse- Marele dicționar al psihologiei*. București, Editura Trei;
9. EFTENE, FELICIA., (2007) *Comportamente adictive ale copiilor și adolescenților. Ghid pentru medicul de familie*. Editura Alma Mater, Cluj-Napoca;
10. CHIPEA, FLOARE., STANCIU, SIMONA., (2007) *Tinerii și drogurile. Dimensiuni psihosociale și politici de prevenire a consumului de droguri* Editura Universității din Oradea.
11. BENGESCU-BELLU, C., (2009) *Ghidul voluntarului antidrog care acționează pentru prevenirea și reducerea consumului de droguri în școli* Editura Universitară București, p. 14.
12. MACOVEI, R, A., (2009) *Toxicodenendența. Impact social. Aspecte medicale. Consecințe juridice*. Editura PrinTech;
13. VEZURE, DANA, EUGENIA., (2010) *Toxicomania în școală. Specific și modalități de prevenire*. Editura Sitech. Craiova;
14. JOINER, T., (2013) *Mituri despre sinucidere* Editura trei, București.

Webliography

www.ziare.com/articole/statistici+consum+alcool

www.despresuflet.ro. Constanța Vasile, *Factori determinanți în creșterea nivelului de agresivitate. Influența drogurilor asupra agresivității*.

**CONSIDERATIONS REGARDING THE MEASURE OF OBTAINING DATA
GENERATED OR PROCESSED BY PROVIDERS OF PUBLICLY AVAILABLE
ELECTRONIC COMMUNICATIONS NETWORKS, DETAINED BY THEM, IN THE
CONTEXT OF DECISION NO. 440/2014 OF THE CONSTITUTIONAL COURT**

A. S. Uzlău C. M. Uzlău

Andreea Simona Uzlău

Faculty of legal and administrative sciences,

"Dimitrie Cantemir" Christian University of Bucharest

*Correspondence: Andreea Simona Uzlău, "Dimitrie Cantemir" Christian University of Bucharest, Splaiul Unirii Street, No. 146, Bucharest, Romania

E-mail: stoicaandreea76@yahoo.com

Marilena Carmen Uzlău

Faculty of Economics

Hyperion University of Bucharest

*Correspondence: Marilena Carmen Uzlău, Hyperion University of Bucharest, Călărașilor Street, No. 169, Bucharest, Romania

E-mail: carmen_uzlau@yahoo.com

Abstract

The work analyzes the practical effects in national plan of the preliminary judgment delivered by the Court of Justice of the European Union concerning Directive 2006/24/EC on the retention of data generated or processed by providers of networks and electronic communications services for the public and amendment of Directive 2002/58/EC and of decision of the Constitutional Court No. 440 of 8 July 2014

Key words: *retention of data, special research methods, the new Code of criminal procedure*

Introduction

The study analyzes the practical effects in national plan of the preliminary judgment delivered by the Court of Justice of the European Union concerning Directive 2006/24/EC on the retention of data generated or processed by providers of networks and electronic communications services for the public and amendment of Directive 2002/58/EC and of decision of the Constitutional Court No. 440 of 8 July 2014.

The analysis is conducted from the perspective of criminal procedure legislation and is structured around the main themes arising from this topic, namely the judgment of the Court of Justice of the European Union, the internal assessment of specific consequences of the invalidation of the directive, the assessment of the consequences of the decision No. 440/2014 over domestic laws. The study aims to analyze the institution, in order to facilitate understanding and deepening of it, and to suggest any necessary legislative changes.

1. General context

By the decision of the Court of Justice of the European Union dated on 8 April 2014, rendered in joined cases C-293/12 (Digital Rights Ireland) and C-594/12 (Seilinger and others), with the object of interlocutory decision requests issued pursuant to art. 267 of the Treaty on European Union, the Directive 2006/24/EC on the retention of data generated or

CONSIDERATIONS REGARDING THE MEASURE OF OBTAINING DATA GENERATED OR PROCESSED BY PROVIDERS OF PUBLICLY AVAILABLE ELECTRONIC COMMUNICATIONS NETWORKS, DETAINED BY THEM, IN THE CONTEXT OF DECISION NO. 440/2014 OF THE CONSTITUTIONAL COURT
processed by providers of networks and electronic communications services for the public and amendment of Directive 2002/58/EC was declared invalid.

The Court found that "the obligation imposed by articles 3 and 6 of Directive 2006/24 to the providers of publicly available electronic communication services or of public communications networks to retain data for a certain period, related to a person's private life and his communications, as well as those set out in article 5 of this directive, constitute *per se* an interference with the rights guaranteed by article 7 of the Charter of fundamental rights of the European Union".

In addition, the Court also found that Directive 2006/24 does not provide clear and precise rules governing the extent of interference in fundamental rights enshrined in articles 7 and 8 of the Charter and does not provide sufficient guarantees to ensure the effective protection of data stored against the risks of abuse, as well as any access and any use of such data. Therefore, this directive "contains an interference in these fundamental rights, which is of great magnitude and gravity in the Union legal order, without such interference to be clearly framed by provisions which may ensure that it is effectively limited to the minimum necessary."

This ruling, through which it was declared the invalidity of Directive 2006/24/EC, deprived the legal effects of the legislative act of the European Union from the date of its entry into force.

2. Evaluation of specific internal consequences of the invalidation of the directive

The judgment of the Court of Justice of the European Union mentioned above is mandatory not only for the Court which solves the dispute in which the preliminary inquiry has been made, but also for other national courts which are notified with a similar problem.

It has not yet produced any direct effect on national legislation, legislative authority not being obliged automatically and immediately to repeal the normative acts which have transposed the directive 2006/24/EC.

In our country, this transposition was achieved by the adoption of Law no. 82/2012 concerning the retention of data generated or processed by providers of publicly available electronic communications networks and providers of publicly available electronic communications services, as well as for the modification and completion of the Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector.¹

In addition, the new Code of Criminal Procedure regulates, in article 152, the getting of data generated or processed by providers of publicly available electronic communications networks and/or providers of publicly available electronic communications services, other than the content of communications, and retained by them.

3. Constitutional Court decision no. 440/2014

By decision no. 440/2014², the Constitutional Court *upheld the plea of unconstitutionality and found that the provisions of Law no. 82/2012 concerning the retention of data generated or processed by providers of publicly available electronic communications networks and providers of publicly available electronic communications services, as well as for the modification and completion of the Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector are unconstitutional.*

¹ Republished in Official Gazette No. 211 of 25 March 2014.

² Published in m. Of. nr. 653 of 4 September 2014.

At the same time, the *plea of unconstitutionality in respect of the provisions of art. 152 of the new Code of criminal procedure*, regarding the claims directed, was rejected as unfounded.

The motivation of the decision stated, in essence, that Law no. 82/2012 represents the transposition into national law of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of electronic communications services available to the public or public communications networks and amending Directive 2002/58/EC. However, Directive 2006/24/EC was declared invalid by the judgment of the Court of Justice of the European Union on 8 April 2014, delivered in joined cases C-293/12, *Digital Rights Ireland Ltd v. Minister for Communications, Marine and Natural Resources and others*, and C-594/12, *Kärntner Landesregierung and others*. By the decision mentioned, the European Court found that the analyzed directive infringes the provisions of article 7, art. 8 and article 52 para. (1) of the Charter of fundamental rights of the European Union.

Analyzing the provisions of Law no. 82/2012, the Court noted, firstly, that the interference in the fundamental rights relating to personal, family and private life, secrecy of correspondence and freedom of expression is on a large-scale and should be regarded as particularly serious, and the circumstance that preservation of data and their subsequent use are carried out without the subscriber or registered user to be informed of this is likely to print in the consciousness of the subjects feeling that their private lives are under constant surveillance.

Specifically, the envisaged data lead to very precise conclusions on the privacy of persons whose data have been kept, conclusions that may concern the customs of everyday life, the places of permanent or temporary residence, daily movements or other movements, activities, social relations of these persons and social environments frequented by them. However, such a limitation of the exercise of the right to personal, family and private life and secrecy of correspondence, as well as freedom of expression must take place in a clear, predictable and obvious manner, so, as far as possible, the event of arbitrariness or abuse of the authorities in this area to be avoided.

Also the criticized law doesn't contain clear and precise rules about the content and implementation of the measure of retention and use of data, so that persons whose data have been kept to receive sufficient guarantees to ensure effective protection against abuse and any access or illicit use.

It was noted, however, that owing to the nature and specificity of it, since the legislator finds necessary retention and storage of data, by itself, only this operation does not conflict with the right to personal, family or private life or correspondence secrecy. Neither the Constitution nor the case-law of the Constitutional Court do not prohibit preventative storage, without a certain occasion, of traffic data and location information, under condition that the access to these data and their use to be accompanied by guarantees and to respect the principle of proportionality.

In terms of access of judicial bodies and other State bodies involved in the field of national security to the data stored, the Court found that the law does not provide the necessary guarantees of protection of the right to personal, family and private life, correspondence secrecy and of the freedom of expression of persons whose data are accessed.

Thus, the prosecution is required to comply with the provisions of article 152 NCCP, this obligation not being intended for State bodies with powers in matters of national security, which can access the data in accordance with the "special laws in the matter", as provided for in art. 16 para. (1) of Law no. 82/2012. Therefore, only the request made by the prosecution to the providers of publicly available electronic communications networks and providers of publicly available electronic communications services, to send the data retained, is subject to prior authorization of the judge of freedoms and rights.

CONSIDERATIONS REGARDING THE MEASURE OF OBTAINING DATA GENERATED OR PROCESSED BY PROVIDERS OF PUBLICLY AVAILABLE ELECTRONIC COMMUNICATIONS NETWORKS, DETAINED BY THEM, IN THE CONTEXT OF DECISION NO. 440/2014 OF THE CONSTITUTIONAL COURT

Requests for access to data retained for the use in the purpose prescribed by law, formulated by the State bodies with powers in matters of national security, are not subject to authorization or approval of the Court, thereby depriving the guarantee of effective protection of data stored against the risks of abuse, as well as against any access to any illicit uses of such data. Circumstance is likely to constitute an interference with the fundamental rights to personal, family and private life, correspondence secrecy and, therefore, contrary to the constitutional provisions enshrining and protecting those rights.

Accordingly, taking into consideration the definitive and compulsory nature of its decisions, the Court pointed out that, since the publication of the decision of the Constitutional Court of Romania, the providers of publicly available electronic communications networks and providers of publicly available electronic communications services *no longer have any obligation, and no legal possibility to retain data generated or processed in connection with their work and to put them at the disposal of the judicial organs and those with powers in matters of national security.* By exception, it may be retained by these providers only data necessary for billing or interconnection payments or other data processed for marketing purposes, only with the prior consent of the person whose data are being processed, as provided for in Directive 2002/58/EC, currently in force.

Correlatively, pending adoption by Parliament of a new law on the retention of data, consistent with the provisions and constitutional requirements, as they have been identified in this decision, the judicial authorities and State bodies involved in the field of national security *no longer have access to data which have been detained and already stored on the basis of Directive 2006/24/EC and the Law no. 82/2012 for use in the activities defined by art. 1 paragraph (1) of Law no. 82/2012.* In addition, judicial organs and those with powers in matters of national security *do not have legal and constitutional basis for accessing and using the data retained by the providers for invoicing, payments for interconnection or other commercial purposes,* and to use them in the context of prevention activities, research, discovery and prosecution of the serious offences or for solving cases with missing persons or for the execution of a warrant of arrest or execution of a penalty, precisely because their different character, nature and purpose.

With regard to the provisions of art. 152 of the new Code of criminal procedure, the Court noted that the criticized text does not regulate the procedure to restraint and storage data generated or processed by providers of publicly available electronic communications networks and providers of publicly available electronic communications services, to retain data generated or processed, but sets out only the procedure for prior authorization by the judge of the rights and freedoms of the request addressed to those providers by the prosecution, for access and use data retained.

At the same time, it has been shown that, in terms of the lack of a law regulating the procedure to retain and store data, the article 152 of the new Code of criminal procedure remains without a practical applicability, the text following to become incident immediately after a new law concerning the retention of data is passed.

In accordance with the provisions of art. 147 of the Constitution of Romania, republished:

“(1) The provisions of laws and ordinances in force and those of the regulations, established as unconstitutional, cease their legal effect within 45 days since the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, as the case may be, do not agree with the provisions of the Constitution, the unconstitutional regulations. During this period, provisions recorded as unconstitutional are suspended by law.

(4) The decisions of the Constitutional Court shall be published in the Official Gazette of Romania. Following its publication, the decisions are generally binding and only have power for the future.”

In relation to these laws, the Constitutional Court's decision, handed down on 8 July 2014, has produced general binding effects starting from the date of its publication in the Official Gazette, date from which the provisions of Law no. 82/2012 are suspended by law, for a period of 45 days. After this period, if the provisions of this law are not in accordance with the Constitution of Romania, the normative act mentioned ceases its effects.

4. The pursuit method provided by art. 152 of the new Code of criminal procedure

The probation method provided by art. 152 of the new Code of criminal procedure do not fall within the concept of technical supervision and cannot be provisionally authorized by the prosecutor in case of emergency.³

The pursuit method provided by art. 152 of the new Code of criminal procedure is very shortly regulated, the text from the law making reference only to the fact that *the judge of the rights and freedoms authorizes it*, without determining the procedure.

The article 152 of the new Code of criminal procedure sends to the special law in matter, namely the Law no. 82/2012 concerning the retention of data generated or processed by providers of publicly available electronic communications networks and providers of publicly available electronic communications services.

As a result, regarding the decision of the Constitutional Court, the measure of obtaining data generated or processed by providers of publicly available electronic communications networks or providers of publicly available electronic communications services, other than the content of communications, and retained by them in relation to the current provisions of art. 152 of the new Code of criminal procedure will acquire the practical efficiency in the context of a subsequent legislative change.

By declaring the Law no. 82/2012 unconstitutional by the Constitutional Court and in the absence of the adoption at European level of a new legislative act of the European Union concerning the retention of data generated or processed by providers of networks and electronic communications services for the public, it has been created a legal vacuum with possible negative consequences on the activities of criminal investigation bodies, courts and State bodies involved in the field of national security.

Thus, being given the fact that the provisions of article 152 of the new Code of criminal procedure were expressly maintained in force by the Constitutional contentious Court, a legislative intervention is necessary to define the limits within which communication data can be obtained by the prosecution.

4.1. Regulation object. The provisions of Law no. 82/2012 gave the possibility for the prosecution to ask, *with the approval of the judge of rights and freedoms*, the providers of communications the data they store, other than the content of conversations or communications. According to the article. 1 of the law referred to, the providers of publicly available electronic communications networks and providers of publicly available electronic communications services had an obligation to retain and communicate to criminal investigation bodies, under the conditions laid down in the Code of criminal procedure, data traffic and location of natural and legal persons, as well as the data needed to identify a subscriber or a registered user. These data do not include the content of such communication or information accessed while using electronic communications network.

According to the provisions of Law no. 82/2012, the list of data that was supposed to be retained by electronic communications providers was quite broad-art. 3-10 of the law⁴-,

³ M. Udrouiu, *Procedură penală. Partea generală. Noul Cod de procedură penală*, ALL Beck Publishing House, Bucharest, 2014, p. 338.

allowing criminal investigation bodies the identification of all elements which could determine a person's identity, its location, the traffic he carried, etc. The data were stored by communications service providers for a maximum period of 6 months, during which they could be requested by the judicial authorities. For the efficiency of the measure, in an upcoming legislative change it will be necessary to provide for the categories of data that may be subject of it.

4.2. The offences for which authorization may be required. In the case of data stored by communications service providers, the offences were provided by article. 2 para. (1) let. e) of Law no. 82/2012. Accordingly, in order for the measure to acquire practical efficiency, it is necessary to mention, even in the article 152 of the new Code of criminal procedure, the categories of serious offences for which the measure may be ordered.

It is found in the research methods a lack of standardization of the list of offences for which it may be ordered these probation procedures, practical for each activity, list is different, the differences being small in the methods covered in the Code of criminal procedure, but considerable in the norm of reference, as is the case for data storage pursuant to art. 152 of the new Code of criminal procedure.

4.3. Procedure to be followed. For the issue of the warrant for technical surveillance for the purpose of intercepting conversations and communications, the procedure to be followed and the conditions to be issued are those provided by art. 139 of the new Code of criminal procedure.

For the approval of the request by the public prosecutor of the data stored by communications service providers, the procedure is similar to that of the technical surveillance, with a few exceptions. Thus, *the conditions for the approval of the request* are:

- a) authorization is given by the judge of rights and freedoms;
- b) the application of the Prosecutor shall be made in the course of criminal prosecution;
- c) conditions for the approval of the request:
 - there is a reasonable suspicion of committing a serious infringement, as defined in article 2 para. (1) let. e) of Law no. 82/2012;
 - there are grounds to believe that the data requested are evidence;
- d) the application shall be solved within 48 hours in the Council Chamber, by a reasoned closing.

To authorize the request of data transmission, the legislature departed from the rules laid down both for technical surveillance, and for research methods, because there are no longer set as conditions the proportionality, the necessity of the evidence and the failure to obtain it by other means. It was considered, wrongly we believe, that the intrusion into the private life of a person is minimal, because the required data does not concern the contents of transmissions; however, as noted in the decision of the Constitutional Court and referred to above, these data, if related to each other, can be a pretty clear portrait of the life of a person-who speaks with on the phone, how often, where he connects or the itinerary followed in certain periods, what sites he visits and how often.

⁴ The data necessary to trace and identify the source of a communication; the data necessary to identify the destination of a communication; the data necessary to determine the date, time and duration of the communication; the necessary data for identification of the type of communication; the data necessary for the identification of the user's communication equipment or devices serving as user equipment; data necessary to identify the location of mobile communication equipment.

Providers of publicly available electronic communications networks and providers of publicly available electronic communications services that work with the criminal prosecution bodies have the duty to keep the secrecy of the operation performed.⁵

4.4. Getting data during the trial. In practice of the courts arose a situation that is unique to the rule according to which the prosecutor asks the authorization of the judge of rights and liberties during criminal prosecution. Specifically, it is given the question of what is the solution where, in the course of administering the probation in court, it comes the need to check the date of the first phone call, and the itinerary followed by the injured party, in order to determine specifically whether, given his physical condition, he was able to travel a certain distance within an hour.

Through its provisions, art. 152 of the new Code of criminal procedure refers only to the case Prosecutor which will require the authorization of the judge of rights and freedoms. Also, neither for other methods of surveillance and investigation there has not been provided the hypothesis that the judge of the case may order, during the trial, the use of probation procedures. The assumptions where there is necessary the use of special methods of surveillance and investigation are rare, evidences being already gathered when the Court is notified with the judgment of the case. Moreover, for a number of methods, confidentiality of operations is essential to be effective, and at the end of prosecution the subject must be informed of the activities. These considerations are valid for technical surveillance, due to the fact that, to be effective, the person concerned does not have to know the measures ordered against him, but some investigation methods, such as getting the listing of phone calls, location, data transmission on a given period of time, financial data transmission, may constitute evidence in the criminal trial, helping to establish the truth. Furthermore, if these evidences were requested by the defendant in the course of criminal proceedings and were not administered by the judicial bodies, it is all the more necessary as they may be required and brought in the probation.

Another argument in support of the idea that the judge of the case may, in the course of the judicial investigation, to order ex officio the administration of any evidence he considers necessary, evidence which during prosecution would have required the authorization of a judge of rights and freedoms, is based on the rule that who may more may less. As long as the judge of the rights and freedoms may authorize action against the suspect, even more a judge sworn with the judgment of the case may require and administrate, when deemed necessary for forming his belief, the evidence which may lead to finding out the truth.

Conclusions

The study analyzes the practical effects in national plan of the preliminary judgment delivered by the Court of Justice of the European Union concerning Directive 2006/24/EC on the retention of data generated or processed by providers of networks and electronic communications services for the public and amendment of Directive 2002/58/EC and of decision of the Constitutional Court No. 440 of 8 July 2014.

The analysis is conducted from the perspective of criminal procedural legislation and is structured around the main themes arising from this topic, namely the judgment of the Court of Justice of the European Union, the assessment of specific consequences on internal plan of the invalidation of the directive, the assessment of the consequences of the decision no. 440/2014 over domestic laws. The study aims to analyze the institution, in order to facilitate understanding and deepening of it, as well as to suggest any necessary legislative changes.

⁵ Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, V. Văduva, *Noul Cod de procedură penală. Ghid de aplicare pentru practicieni*, Editura Hamangiu, București, 2014, p. 134.

CONSIDERATIONS REGARDING THE MEASURE OF OBTAINING DATA GENERATED OR PROCESSED BY PROVIDERS OF PUBLICLY AVAILABLE ELECTRONIC COMMUNICATIONS NETWORKS, DETAINED BY THEM, IN THE CONTEXT OF DECISION NO. 440/2014 OF THE CONSTITUTIONAL COURT

Without issuing the claim that through our intercession the theme has been addressed fully, we appreciate that through advanced theoretical considerations we have managed to bring into focus the main issues which will arise from the application of the institution and to identify possible preferable legislative solutions.

Bibliography

1. M. Udriou, *Procedură penală. Partea generală. Noul Cod de procedură penală*, ALL Beck Publishing House, Bucharest, 2014;
2. Corina Voicu, Andreea Simona Uzlău, Georgiana Tudor, V. Văduva, *Noul Cod de procedură penală. Ghid de aplicare pentru practicieni*, Hamangiu Publishing House, Bucharest, 2014.