UNIVERSITY OF PITESTI
FACULTY OF ECONOMIC SCIENCES AND LAW

Journal
LEGAL AND ADMINISTRATIVE STUDIES
STUDII JURIDICE ŞI ADMINISTRATIVE

Year XVII, No. 2 (19) – 2018

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

Publishing House C.H. BECK
Bucharest 2018

Journal
LEGAL AND ADMINISTRATIVE STUDIES
e-ISSN: 2344-6900
ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018

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

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

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

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THE EUROPEAN UNION

Dumitru DIACONU[1]

Abstract:

The up-to-date article, in view of taking over the Presidency of the European Union by Romania, provides a picture of the European structure in its essential landmarks.

The European Union is presented with a historical view from its creation to the present, in a chronological order, with reference to the states that have joined it and the basic treaties for it enlargement, enumerating the most important community institutions.

This presentation highlights the confusion that can be made between the European Union institutions and other regulated institutions at regional level within Europe or at a universal level.

Finally, the article refers to the Schengen and the Euro area to which Romania will adhere or join.

Key words: *European Union; enlargement; basic treaties; Schengen area; euro area.*

1. HISTORICAL VIEW. EXTENSION. BASIC TREATIES

The European Union (abbreviated to the EU) is an economic and political union developed in Europe, which is made up today of 28 states, including the United Kingdom, whose process of leaving the EU has not yet been completed.

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The origins of the European Union lie with the creation of the European Coal and Steel Community (ECSC) by the Treaty signed in Paris in 1951 by the six founding states: France, Germany, Italy, Belgium, the Netherlands and Luxembourg, which entered into force in 1952, followed by the establishment of the creation of the European Economic Community (EEC) and the creation of the European Atomic Energy Community (EAEC or EURATOM) formed by the same six states by the 1957 Treaty of Rome (distinct) and entered into force in 1958. Subsequently to these European Communities new member states joined reaching the number of 28 today.

The Maastricht Treaty, adopted in 1992 and entered into force in 1993 without replacing the three original Treaties, established the European Union under this current name. The last amendment to the constitutional bases of the EU was the Treaty of Lisbon, signed on 13 December 2007, which entered into force on 1 December 2009.

It should be noted that on the date of the entry into force of the Treaty of Lisbon in 2009, the Treaty of Paris on the European Coal and Steel Community (ECSC) entered into force in 1952, which was limited to 50 years, the ECSC heritage being transferred to the other two European communities named the "European Community" (EC) as a whole.

The Union operates through a system of independent and intergovernmental supranational institutions that make decisions by negotiation between member states, following specific voting procedures, the states giving up some of their sovereignty but enjoying representativeness in the institutions of the European Union.

In fact, the EU treaties are negotiated and accepted by all member states and later ratified by national parliaments or by referendum.

The EU is a unique organization as a place between the federal system in the USA where the states have a relative independence and the UN system where the characteristic is intergovernmental cooperation and not accepting the cession of sovereignty.

The most important EU institutions in number of seven (7) today are, according to the Treaty of Lisbon, the following[1]:
- The European Parliament – represents the interests of the citizens of the member states;
- The European Council – defines the Union's general policy guidelines and priorities;
- The Council – represents the interests of the member states;
- The European Commission – defends the interests of the Union;
- The Court of Justice of the European Union – ensures uniform interpretation of EU law;
- The European Central Bank – ensures the monetary policy of the European Union;
- The Court of Auditors – ensures the legality of using the necessary resources.

Two (2) consultative bodies can also be added to them, namely:
- Economic and Social Committee;
- Committee of the Regions.

It is worth mentioning, generally with reference to these institutions, that the Council and the European Parliament take decisions in the European Union in the co-decision procedure, with the European Commission having a legislative initiative in this regard and implementing it, with the European Council ensuring the fostering of the development of the Union by defining its general political orientations and priorities.

The European Union has developed a single market within a standardized and unified system of laws that applies to all member states. Within the Schengen Area (including EU member states and non-EU states) customs controls have been abolished. The EU policies support and guarantee the free movement of people, goods, services and capital, laws on justice and home affairs have been issued, and common policies

[1] Augustin Fuerea, *Manualul Uniunii Europene,* Ediția a VI-a revăzută și adăugită (Bucharest: Universul Juridic, 2016) , 102.

on trade, agriculture, fishing and regional development are maintained. A monetary union, the Euro area which is currently composed of 19 states, has also been set up. Through the Common Foreign and Security Policy, the EU has developed a limited role in international and security relations. Permanent Diplomatic Missions have also been established in several countries around the world, and the EU is represented within the United Nations, the World Trade Organization, and others.

With a combined population of more than 500 million inhabitants, representing 7.3% of the world's population, the European Union generates a GDP of US $ 17.6 trillion in 2011 (higher than any other country in the world), accounting for 20% of the estimated GDP in terms of purchasing power parity worldwide.

It is considered to be a *sui generis* construction, being considered by some to be a *de facto* confederation. Since 1 December 2009, the European Union has had international legal personality and can conclude treaties.

In 2012, he was awarded the Nobel Peace Prize, "because over six decades he contributed to the progress of peace and reconciliation, democracy and human rights in Europe."

In order to have a more nuanced view of the historical context in which EU today was founded and how its enlargement has evolved, we mention the following:

After the Second World War, the movement of European integration was seen by many as an escape from the extreme forms of nationalism that devastated the continent twice in the same century. One of these attempts to unite Europeans was the European Coal and Steel Community (ECSC), which was declared "the first step towards a federal Europe", starting with the desire to eliminate any possibility of future wars between member states through exchanges between national heavy industries, such as those of coal and steel. The founding members of the Community were the six mentioned countries, Belgium, France, Italy, Luxembourg, the Netherlands and West Germany.

The proposal for placing the iron and steel industries of France and Germany under the umbrella of a single super-state organization, which was ECSC, belonged to the French economist Jean Monnet, being

accredited by the French Foreign Affairs Minister Robert Schuman who assumed the political responsibility for its implementation[1].

Presented as the "Schuman Plan for European Integration" on 9 May 1950 – Europe Day is celebrated on 9 May – the French initiative was accepted by the German Chancellor Konrad Adenauer, also concerned with the problems of the Franco-German reconciliation and the reintegration of Germany defeated in the Second World War between the developed Western states.

Under these conditions it was signed by the six states mentioned above, namely Belgium, France, Italy, Luxembourg, the Netherlands and West Germany in Paris in 1951, and the Treaty establishing ECSC over a period of 50 years, which entered into force in 1958.

In 1957, the six states signed the Treaty of Rome for an unlimited duration extending the previous cooperation within the European Coal and Steel Community to areas other than coal and steel and creating the European Economic Community (EEC) by setting up a customs union by eliminating customs duties between the member states.

At the same time, the same states sign another Treaty, also in Rome, in 1957, also for an unlimited duration, which also creates the European Atomic Energy Community for cooperation in the development of nuclear energy (EAEC or EURATOM).

Both Treaties entered into force in 1958.

It should be noted that these European Communities of 1958, namely the European Economic Community and Euratom, were created separately from the European Coal and Steel Community, which was established in 1952, although they contain the same institutions for the organization and functioning of the communities, namely the Council of Ministers, the Parliamentary Assembly or the Parliament and the Court of Justice, all under the leadership of another supranational decision-making

[1] Stelian Scăunaș, *Uniunea Europeană. Construcție. Instituții. Drept* (Bucharest: All Beck, 2005), 39.

institution, named differently, respectively "High Authority" of ECSC respectively "Commission" in EEC and EAEC[1].

In the 1960s there were tensions with France that wanted to limit supranational power. However, in 1965, an agreement was reached by the conclusion of the Treaty of Brussels on executive merger. It came into force in 1967 and created a single set of institutions for the three communities, which retained their own legal personality but this time had joint institutions: the European Commission (consisting of the merger of the High Authority of the ECSC and the Commission within the framework of the EEC), the Council of the European Communities, the European Court of Justice and the Parliamentary Assembly

Due to the fact that only the institutional system of the three communities became common without it functioning in full, the official documents retained the name "European Communities", but formally until the creation of the European Union in 1992 by the Treaty of Maastricht , the term "European Community" was used, thus using the abbreviations of the EEC respectively EC.

It is worth mentioning that the Parliamentary Assembly has gradually begun to use the notion of European Parliament, but the explicit consecration of this name takes place in 1986 through the Single European Act.

In 1973 the communities expanded by including Denmark (including Greenland, which left communities in 1985), Ireland and the United Kingdom. Norway negotiated accession at the same time, but Norwegian voters rejected the accession plan by a referendum, so Norway remained outside the Union. In 1973 the communities expanded by including Denmark (including Greenland, which left communities in 1985), Ireland and the United Kingdom. Norway negotiated accession at the same time, but Norwegian voters rejected the accession plan by a referendum, so Norway remained outside the Union.

In 1979 the first democratic elections for the European Parliament took place.

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[1] Sean Van Raepenbusch, *Drept instituțional al Uniunii Europene* (Bucharest: Rosetti Internațional, 2014), 42.

In 1981 Greece joined and in 1986 Portugal and Spain.

In 1985, the Schengen Agreement established an area without customs controls between most member states and several non-member states.

In 1986, the European flag began to be used by the Communities and the Single European Act was signed.

In 1990, after the fall of the Iron Curtain, the former East Germany became part of the Community as part of the new united Germany.

With the enlargement towards the former communist states in Eastern Europe, the Copenhagen criteria for EU accession of the candidate countries were agreed, criteria set by the Copenhagen European Council in 1993, namely to have a stable democracy respecting human rights and the rule of the law, a functioning market economy able to compete within the EU and to accept membership obligations, including EU primary and secondary legislation governing the functioning of the EU.

The European Union was formally established, without legal personality, by the Treaty of Maastricht adopted in 1992 and entered into force in 1993, which replaced the concept of the European Community (EC) with the name of the European Union (EU) of today. According to this Treaty, the European Union (EU) is built on three pillars: the community pillar made up of the three European Communities, namely the ECSC, EEC and EAEC the FPCS (Foreign Policy and Common Security) pillar and the JIA. pillar (Justice and Internal Affairs)

The Treaty of Maastricht brought changes to the 3 existing Treaties, established European citizenship and the Economic and Monetary Union (EMU).

In 1995 Austria, Finland and Sweden joined the newly established EU.

In 1997 the Treaty of Amsterdam, which entered into force in 1999, was signed and amended the Treaty of Maastricht, which among others aimed at managing the euro.

In 2002, euro banknotes and coins replaced national currencies in 12 member states.

In 2001, the Treaty of Nice was signed, which entered into force in 2003, the Treaty bringing about changes in the adaptation of the EU institutions to a new reality regarding the enlargement of the Union through the accession of many Eastern European states. This Treaty included the political document and the Charter of Fundamental Rights of the European Union.

In 2004, the EU had the largest expansion in history, when Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia – 10 states – joined the Union.

Also in 2004, the Treaty establishing a Constitution for Europe (Constitutional Treaty) was signed. But ratification by member states was only ratified by 18 states, being rejected by referendum procedures by the founding states of France and the Netherlands.

On 1 January 2007, Romania and Bulgaria became the newest member states.

On 1 December 2009, the Treaty of Lisbon, signed on 13 December 2017 – the political solution for the replacement of the Constitutional Treaty – entered into force and reformed many aspects of the EU. In particular, it changed the legal structure of the European Union by transforming the community system into a single entity identified in the EU that has for the first time an international legal personality.

Moreover, the Treaty of Lisbon[1] consists of two treaties with equal legal value resulting from the amendments to the Treaty on European Union (TEU) and to the European Community Treaty (ECT) which also governed the transfer of the ECSC patrimony, whose treaty ceased in 2002, and which becomes the Treaty on the Functioning of the European Union (TFEU), with these two treaties remaining in force also the European Atomic Energy Community (Euratom) with some amendments brought by Protocol no. 1 annexed to the Treaty of Lisbon.

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[1] Beatrice Andreșan – Grigoriu and Tudorel Ștefan, *Tratatele Uniunii Europene,* versiune oficială consolidată ca urmare a intrării în vigoare a Tratatului de la Lisabona (Bucharest: Hamangiu, 2011), VI.

The Treaty of Lisbon is not such a new treaty – such a new treaty was the previous Constitutional Treaty which was rejected – but it is a treaty to amend the previous treaties in force and also to reform the European institutions and to create new functions.

Thus, the permanent position of President of the European Council and High Representative of the Union for Foreign Affairs and Security Policy, which also holds the position of Vice-President of the European Commission, was created.

The Treaty of Lisbon also provided the ways of leaving the Union by a member state.

It is also worth mentioning that the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union[1] – which has the same content in general, as the European Convention on Human Rights of the European Council but more widely adopted as a political document by the Treaty of Nice has become a legally binding legal document for the EU member states.

In 2011, Croatia signed the EU Accession Treaty, and following a referendum in this country, joining the EU on 1 July 2013, Croatia became the 28th EU member state, the last one.

Besides the 28 states, there are currently five EU candidate countries: Turkey (since 1999), Macedonia (since 2005), Montenegro (since 2010), Serbia (since 2012) and Albania (since 2014).

There are also three possible EU candidate countries: Bosnia and Herzegovina, Kosovo (disputed status) and Iceland.

It should be noted that the four countries that form the European Free Trade Association (non-EU states) have joined in part the EU's economic policies and regulations, respectively Iceland (a possible candidate country for EU membership), Liechtenstein and Norway of the Single Market through the European Economic Area and Switzerland, which has similar links through bilateral treaties. The EU also has relations with the European micro-states, Andorra, Monaco, San Marino

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[1] Andrei Popescu and Ion Diaconu, *Organizații europene și euroatlantice* (Bucharest: Universul Juridic, 2009), 206

and the Vatican, which use the single currency. Also, EU cooperates in some areas with the former USSR countries, namely the Republic of Moldavia, Ukraine, Belarus, Georgia and Azerbaijan, as well as with Israel.

In this general presentation, it is useful to identify certain confusions that can be frequently made in connection with the EU or with other regulated institutions at a regional level within Europe or at a universal level.

Therefore:

- There are three "Councils", respectively the European Council, the Council – both the EU institutions mentioned above – also the Council of Europe, which have separate seats, roles and functions.
- The European Council as an institution of the EU has the role to boost the development of the Union, defining its general political guidelines and priorities, and is made up of state or government leaders from the member states of the European Union.

The Council as an institution of the European Union – this is the current official name, formerly called the "Council of Ministers" without confusing itself with the "Committee of Ministers", a similar current institution of the Council of Europe – is made up of ministers of all member states of the European Union, who meet regularly – not a permanent institution – in certain areas, acting on behalf of the government of the state they represent.

The Council of Europe is not an EU institution. It is the first post-war European intergovernmental organization, set up on 5 May 1949, as a European body of promoting human rights and fundamental freedoms, democratic values.

The Council of Europe is an institutional framework for intergovernmental collaboration between member states in all areas of European society's interest (except those relating to defence).

All the Member States of the European Union are members of the Council of Europe, but not all member states of the Council of Europe are members of the European Union, the Council of Europe has a broader

membership, currently 47 member states, the European Union has 28 member states.

- There are two "Parliaments" respectively the Parliamentary Assembly of the European Council and the European Parliament within the European Union.

Unlike the European Parliament, which has 751 elected MEPs, a certain number each member state by direct and secret vote, the Parliamentary Assembly of the Council of Europe has a membership of 315 representatives and 315 alternates from each state they are not elected by direct vote by citizens but appointed by national parliaments.

- There are two "Conventions" on the protection of fundamental human rights and freedoms, namely the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights of the Council of Europe.

It should be noted that the European Union[1] has also acceded to the European Convention on Human Rights of the Council of Europe, the Charter of Fundamental Rights of the European Union having the same, but more extensive, content of rights and freedoms as protected by the European Convention on Human Rights;

- There are two "Courts" of Justice, namely the Court of Justice of the European Union and the European Court of Human Rights.

The Court of Justice of the European Union mainly ensures uniform interpretation and respect for Community law as well as the protection of fundamental rights and freedoms written in the Charter of Fundamental Rights of the European Union based in Luxembourg and the European Court of Human Rights within the European Council ensures compliance with fundamental rights and freedoms in line with the European Convention on Human Rights and is based in Strasbourg.

[1] Popescu and Diaconu, *Organizații europene și euroatlantice*, 207.

2. THE SCHENGEN AREA

The Schengen area is a free movement area in Europe, in line with the Schengen Agreement. The Member States of this area have removed or will remove checks for people at their borders so that it is (or will be) possible to cross the border between any two such states without presenting identity documents and without stops for check-ups.

The Free Movement Agreement was signed on 14 June 1985 in the small Schengen city of Luxembourg.

The Convention Implementing the Schengen Agreement (CISA) of 1990 following the signature and entry into force of the 1985 Schengen Agreement has been integrated, as is indeed the case with the Agreement, into the institutional and legal framework of the EU in accordance with the Protocol on the Integration of the Schengen Acquis in the EU, annexed to the Treaty of Maastricht (1992) and the Treaty of Rome (1957).

The first countries that implemented the Schengen agreement were Belgium, France, Germany, Luxembourg, the Netherlands, Spain and Portugal, which opened their borders between them in 1995.

Italy and Austria followed in 1998, Greece in 2000, Denmark, Sweden, Finland, Iceland and Norway in 2001, the Czech Republic, Estonia, Latvia, Lithuania, Slovakia, Malta, Slovenia, Poland and Hungary in 2007, Switzerland in 2008 and the last one Liechtenstein in 2011.

So far, 30 states have joined the *Schengen Agreement*, of which 26 have already implemented it of which 22 are EU member states.

As can be seen from the Schengen area, there are also 4 states, Switzerland, Liechtenstein, Norway and Iceland, which are not EU members.

At the same time, the UK and Ireland, member countries of the European Union, opted not to implement the Schengen agreement on their territory.

The member states of the Schengen Agreement, which are also members of the European Union, namely Bulgaria, Cyprus, Croatia and

Romania, have not yet entered the Schengen area, Romania and Bulgaria having repeated delays, especially on political considerations.

For example, within the EU, it was decided that in the Schengen area Romania would be received in 2011, but the entry was delayed for years, although all the technical criteria were fulfilled, invoking other criteria that would include corruption, organized crime, insufficient border security under new migration conditions that would not be met but which are not covered by the Schengen Agreement.

That is why Romania's entry into the Schengen area has been delayed, as it has been so far, but it cannot be stopped because it is provided institutionally in the Treaty.

The countries currently opposed to Romania's accession are the Netherlands, Austria, Germany.

However, the President of the European Commission, Jean Klaude Juncker, argues that Romania's entry into the Schengen area will take place at the end of 2018, until Romania takes over the European Union presidency in the first half of 2019, afterwards publicly asserting that Romania's entry into the Schengen area has to take place in 2019 until the end of the European Union presidency by Romania.

The entry into the Schengen Area of a country like Romania would give more substance to the freedom of movement enshrined in the EU.

The Schengen area countries no longer carry out checks at their internal borders. They carry out harmonized checks on the basis of clearly defined criteria at their external borders (the borders between a Schengen State and a state that is not part of the Schengen area). As a result, both EU citizens and third-country citizens can travel freely in the Schengen area, being subject only to checks when crossing the external border. This means that a flight from one of the States that are not part of the Schengen Area to a Schengen state is considered an external flight and is subject to border checks. However, EU citizens have the right to free movement when travelling within the EU, whether or not the country is part of the Schengen area. However, when entering the territory of an EU member state that does not belong to the Schengen area, the EU

citizens are in principle subject only to a minimum identity check based on travel documents (passport or identity card).

However, in the absence of internal border checks, it was created to contribute to maintaining internal security in the Schengen States the Schengen Information System (SIS) and the Visa Information System (VIS).

The Schengen Information System (SIS), subsequently becoming SIS II, is a large-scale information system enabling police, migration authorities, judicial authorities and other authorities to introduce and consult through an automatic search procedure alerts on missing people, people or objects related to offenses or third-country citizens who do not have the right to enter or stay in the Schengen area. Thus, the SIS is a fundamental component of law enforcement cooperation. At the same time, the SIS contributes to a large extent to the protection of the external borders of the Schengen area.

The member states provide information to this SIS system through the system of national networks (N-SIS) connected to a central system (C-SIS) which is the central element of the system and it constitutes its technical support not having the role of storing information but the task of intermediating the exchange of information.

The information system is complemented by a network known as SIRENE which represents the SIS human interface, SIRENE offices being coordinated with each other through a protected telecommunications system called SISNET, the connection between offices being made especially by telephone[1].

The objectives of the SIS are essentially to maintain public order and security as well as to apply the provisions on the free movement of people to which it has recently been added and the management of migratory flows.

In order to achieve the objectives shown alongside the Schengen Information System (SIS), the Visa Information System (VIS) also functions as outlined above.

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[1] Fuerea , *Manualul Uniunii Europene,* 59.

The Visa Information System (VIS) is an information system linking consulates of Schengen States from third-countries, competent national authorities and all Schengen border crossing points. Through this system, visa authorities in Schengen States can exchange information on visa applications, customs officers can check, using biometric data (such as fingerprints), whether a person presenting a visa is the rightful holder of the visa, and competent authorities can identify people who are on the Schengen territory without documents or with fake documents. The VIS is also used by the competent authorities in the field of asylum.

3. THE EURO AREA

The euro area refers to the 19 countries out of 28 in the European Union that have adopted the euro as the single currency. The euro area is a monetary area.

The 19 member states are:
Austria, Belgium, Cyprus, Finland, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Libya, Luxembourg, Malta, Netherlands, Portugal, Spain, Slovenia and Slovakia. In addition, 4 “micro-states”, through their monetary agreements with their neighbors, are also attached to the euro area: Andorra, Monaco, San Marino and the Vatican.

The area was created in 1999 by eleven countries, including Greece in 2001, Slovenia in 2007, Cyprus and Malta in 2008, Slovakia in 2009, Estonia in 2011, Latvia in 2014 and Lithuania in 2015.

The euro was introduced on 1 January 1999 as a scriptural currency used only for non-cash and accounting purposes. Banknotes and coins were introduced on 1 January 2002.

The adoption of the euro took place within the Economic and Monetary Union (EMU) – the monetary area. Launched in 1992, the union involves the coordination of economic and budgetary policies, the implementation of a common monetary policy and the use of a single currency, the euro. In addition to stabilizing economies, the economic and monetary union and the euro foster the smooth functioning of the single market for the benefit of citizens and companies.

In concrete terms, economic and monetary union means:

- coordination of economic policies between member states;
- coordination of budgetary policies, in particular by setting the limits that the deficit and public debt of member countries should not exceed;
- an independent monetary policy coordinated by the European Central Bank;
- unique norms and supervision of euro area financial institutions;
- a single currency and the euro area[1].

A single currency offers several advantages, including the elimination of exchange rate fluctuations and foreign exchange rates. Companies find it easier to carry out their cross-border business operations, the economy becomes more stable, more easily developed, and consumers have more options. A common currency encourages consumers to travel and shop in other countries. Globally, the euro gives more influence to the European Union, being the second most important currency, after the US dollar.

In order to be able to join the euro area, EU Member States must meet the so-called "convergence criteria". These are the economic and legal conditions agreed by the Treaty of Maastricht in 1992, also known as "the Maastricht Criteria".

The Treaty does not provide for a timetable for joining the euro area, but leaves it to member states to develop their own strategies to meet the conditions for adopting the euro.

Of the nine non-euro member states, only two, Denmark and the United Kingdom are not required to join the euro area, unlike Bulgaria, the Czech Republic, Croatia, Hungary, Poland, Romania and Sweden, which are not yet part of the area but they have an obligation under the Treaties to join the euro area as soon as they meet the necessary criteria and the convergence criteria set out in the Treaties. Countries are therefore evaluated once every two years by the European Commission and the European Central Bank to determine whether they meet these criteria.

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[1] https://europa.eu/european-union/index_ro

As far as Romania is concerned, the data previously assumed to join the euro area, namely 2012 and then 2019, proved to be unrealistic, and our economy still needs reforms to successfully cope with the adoption of the euro.

In connection with the adoption of the euro by Romania, President Klaus Iohannis said that such a date could be 2024 if the reforms are met and the conditions for joining the euro area are met.

At the same time, there is also a National Commission to substantiate a National Plan for the adoption of the euro, established by GEO no. 24/21.03.2018 published in the Official Gazette no. 273/28.03.2018 which suggests that the timeframe for the adoption of the euro is 2024-2026.

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018, pp. 23-32

BRIEF CONSIDERATIONS ABOUT THE RULE OF LAW AND THE CRISIS OF DEMOCRACY

Marius VĂCĂRELU[1]

Abstract:

In the legal and democratic vocabulary terms, the last years were for Europe something special, because like no other time the definition of democracy became a topic for discussion. In fact, the political practices of some countries made a lot of people to think that the relation between the rule of law and democracy is not totally understood by the voters and is – even worse – rejected by a part of politicians. Practices create rules and new laws; is necessary for lawyers to think more about relations between rule of law, democracy and crisis of law. Because the Constitution is the main state law, some shadows of this crisis this level too, with long consequences for future.

Key words: *Rule of law; Constitution; democracy; politics; legal and social equilibrium***.**

INTRODUCTION

In the legal and democratic vocabulary terms, the last years were for Europe something special, because like no other time the definition of democracy became a topic for discussion. In fact, the political practices of some countries made a lot of people to think that the relation between

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the rule of law and democracy is not totally understood by the voters and is – even worse – rejected by a part of politicians.

Jurgen Mackert says about the last years: "There is no threat to Western democracies today comparable to the rise of rightwing populism. ... Moreover, the global economic crisis promoted what has been called left populism in countries that were hit the hardest by both the banking crisis and subsequent neo-liberal austerity politics in the EU, ... Further, we have witnessed the consolidation of autocratic regimes in Poland and Hungary, the establishment of authoritarianism in Turkey after the referendum in April 2017 and the elections in June 2018, and not least the formation of an extreme-right nationalist government in Italy in March of the same year. All these manifestations of right-wing populism share a common feature: they attack or even compromise the core elements of democratic societies, such as the separation of powers, protection of minorities, and the rule of law. The rise of populism has promoted a broad, vivid and flourishing debate in the social sciences that seems to have arisen even in the face of the ties between right-wing populism and the extreme right. Further, political debate has turned into a cacophony of aggressive, racist, misogynistic, and pluralism-adverse voices that has transformed democratic political culture and begun to dominate political debates. Various political parties in democratic systems in Europe, such as conservative parties in the UK, Germany, Austria, the Netherlands and so forth have reacted by adopting 'populist' discourse and positions surprisingly smoothly. Nothing has become more common in politics than politicians instinctively accusing each other of being populists while claiming democratic reason for their own position"[1].

We don't want to underline the political dimension of the paragraph, but the legal one: politicians try to win the national or regional power using words. These words are dangerous not by the emptiness of meanings (when some of them are too much repeated), but also when

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[1] Gregor Fitzi, Jurgen Mackert and Bryan S. Turner, *Populism and the Crisis of Democracy***.** Volume 1: Concepts and Theory, (New York: Routledge, 2018), 1.

citizens are searching something new – and this "new" must fulfil two tasks in the same time: bringing a change and prosperity.

1. It was not a big surprise the last results on elections in Eastern Europe, and not even in the Western part of the continent. Elections are just a moment of something much deeper – "the boring daily politics on a democratic regime". Democracy creates (somehow) dictators and totalitarian regimes; but more than everything, democracy is – on its normal daily life – just something without strong emotions, but with good laws which are applying to everyone.

'Democracy' today seems to be recognized as a universal normative concept, in politics as well as in mainstream political science. Despite its historical origin in a world quite different from that of ours today and the one most probable to evolve in the future, most political scientists seem to believe that mere organizational improvements could secure its future as a regime and its validity as a normative concept[1].

Representative democracy is in dire need of citizens' political confidence in order to maintain its long-term stability and well-being. Since democratic political systems cannot rely on coercion to the same extent as other regimes, citizens' political confidence is an important means to provide political institutions and authorities with the necessary leeway to govern effectively[2].

Following elitist understandings of democracy, political confidence connects citizens to the institutions and authorities that are supposed to represent their interests; reduces the transaction, monitoring, and sanctioning costs of governance; facilitates the implementation of public policies and reforms; and thus extends both the legitimacy and effectiveness of democratic governance in a 'virtuous spiral'[3].

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[1] Michael Th. Greven, *The erosion of democracy – the beginning of the end?*, p. 83, http://redescriptions.fi/media/uploads/yearbooks/2009/Greven_2009.pdf, consulted on 12.12.2018.

[2]Renske Doorenspleet, *Rethinking the Value of Democracy. A Comparative Perspective,* (London: Palgrave Macmillan, 2018), 1.

[3] Ibidem.

In this paradigm, low and declining levels of citizens' confidence in political institutions and authorities are oftentimes equated with the decline of representative democracy itself. Democracy is seen – and, mostly, is presented – like an ensemble of functional institutions and authorities, who act well even if their rule is a consequence of political intervention or by the administrative recruitment. A crisis of institutions is – in this paradigm – a crisis of democracy; maybe at the beginning is just some "individual crisis", but at the end, "whole democratic system" suffers.

There is a story – probably apocryphal, but still enlightening – that Benjamin Franklin, upon leaving the Philadelphia Convention and being asked what it had done, explained its product as "a republic, if you can keep it". This phrase is rather well worn, but not often fully explored or understood. It has become a slogan rather than a piece of practical wisdom. Having investigated the institutional means through which liberal constitutional democracy is both attacked and defended, we turn in our conclusion to the puzzle concealed in Franklin's aphorism: What does it mean for the *participants in a democracy* – and notice that we avoid the loaded and hazardously totalizing term *the People* – to "keep" their political system intact? How, in practice, does one resist democratic erosion?[1]

2. Democracy as a normative concept and historically as a set of political institutions has developed under much less complex circumstances; at least the perception of what is the central political question to which democracy should give an answer historically, has been very simple. The historical experience of Government in the initial phase of modern times was that of personal rule, hierarchy, and privilege on the part of the nobility. The idea of democratic government, especially in its liberal form, which de facto dominated the institutionalization of various forms of modern representative government in reality, was especially critical of the combination of personal rule and privilege, but let

[1] Tom Ginsburg and Aziz Z. Huq, *How to save a Constitutional Democracy* (Chicago: Chicago University Press, 2018), 237.

hierarchy more or less untouched. This was no accident. The tradition of dynastic recruitment of government was in the end replaced by the idea of general elections[1].

A brief analysis of history shows the same topic in almost every country: a strong ruler and communities trying to oppose him: in Asia the result was mostly in ruler benefit (in the Index of democracy, the middle and lowest parts of the top belongs to Asian and African states[2]), but for the European states, the win belonged to citizens and their communities: the right to vote was introduced firstly in Europe, the aristocratic privileges was eliminated on the same continent; administrative transparency is an European concept too, etc. As consequence, every continent recognises the European supremacy on this field (democracy and its benefits) and the migration directions are mainly to this region.

Democratic systems are considered the best. So far, there has been no real alternative, no serious opponent, and it seems none of the other types of political systems have been working better than the democracies. As Winston Churchill eloquently put it during a parliamentary debate more than seven decades ago: "Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time (1947)".

Even democracy is the best, as concept, is not enough to let it alone. In fact, the supremacy of law / rule of law is more important than democracy, if we analyse more Constitution of every state. If we look there, we'll see that the state principles are almost the same, but the order is different (because of history, political traditions, etc.). In fact, we can observe two tendencies: one when the rule of law is settled before democracy, as for example Romanian Constitution (art. 1, par. 3); in some others the democratic character includes the rule of law by legal doctrine definition.

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[1] Michael Th. Greven, *The erosion of democracy – the beginning of the end?*, 92, http://redescriptions.fi/media/uploads/yearbooks/2009/Greven_2009.pdf, consulted on 12.12.2018.

[2] https://en.wikipedia.org/wiki/Democracy_Index, consulted on 14.12.2018.

We can consider that the first option is much better than the second one, because popular vote can be manipulated much easier than any legal and democratic principle. In fact, a Parliament is just the result of people who act in politics, but not of whole population – who can bring the main changes from time to time, on general elections. A group of hundreds of peoples can lose their contact with reality or can be controlled by some leaders among them to adopt bad decision for citizens (but not for their pockets). All of this can happen because democracy is not strongly doubled by the rule of law affirmation in the Constitutions.

3. In this paradigm we must read the annual report for the year 2018 of the General Secretary of the Council of Europe[1], who says in its introduction: "Our human rights, democracy and the rule of law depend on the institutions that give them form. But for populists, who invoke the proclaimed "will of the people" in order to stifle opposition, these checks and balances on power are often seen as an obstacle that should be subverted. This year's report finds nascent trends – illuminated by alarming examples – of exactly this. There have been attempts to undermine institutions at the European level, namely the Council of Europe and the European Court of Human Rights themselves, and at the level of member states which, under the principle of subsidiarity, are at the vanguard of upholding our laws, standards and values".

The rule of law is one of the few (global) norms that few if any would go on record as doubting; indeed it is difficult to imagine a world in which the rule of law was rejected and the good life was maintained. This is not to necessarily claim that the rule of law is indispensable, but rather to note that the norm itself has reached the status of a global common sense. The rhetoric of the rule of law is particularly pervasive and often deployed in political discussions as a criterion of critical evaluation. A common line of political critique is the negative impact on

[1] The Council of Europe, *Report: State of democracy, human rights and the rule of law,* 2018, 4, https://rm.coe.int/state-of-democracy-human-rights-and-the-rule-of-law-role-of-institutio/168086c0c5 , consulted on 14.12.2018.

the rule of law of a particular action, legislative move or continuing political practices: 'doing X undermines the rule of law'[1].

In fact, the rule of law is the common sense for people, because the "power of the people" – the translation of Greek words "demos" and "cratos" is understand in a common sense as "the wish of united people and the equality in front of laws". What is power of the people without an equal application of law? The answer is obvious: is just the beginning of society separation, when some people are excepted by any form of the legal control. In such a paradigm, democracy is rule of law and vice verse, because normal people have a lower level of legal education, to explain these concepts' definitions.

Only in this understanding we see the violation of the rule of law as a threat for democracy, but this not easy to observe on the political discourses. In fact, political discourse is situated before the politician fact and in many cases this order is not useful for citizens, who see the bad changes after a while and the possibility to change something are reduced. In fact, this is the beginning of the debate of the relation between the rule of law and the crisis of democracy: who comes first and where are the first signed observed?

The answer of this question seems to be more relevant for the next years, because even the European continent start to have a crisis of its political practices. Somehow, we can consider that the crisis of democracy being the first, because of populism and the lack of political and historical conscience of politicians and voters. But is the same time, the holes on the rule of law internal network let to escape people who will act against this concept, but using the democracy limits at their maximum possibilities. In fact, we can see that a lower standard in rule of law application as a first step for growing the dangers of democratic society.

If we see the indicators of The Rule of Law Index[1] we'll discover as factors: constraints on government powers, absence of corruption,

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[1] Christopher May and Adam Winchester, *Handbook on the Rule of Law*, (Cheltenham: Edward Elgar, 2018), 1.

open government, fundamental rights, order and security, regulatory enforcements, civil justice, criminal justice. The constraint of executive powers is the most important, but the problem is that always the governments want to "exercise the power", and not to justify their actions to anyone, and mostly to be referred to the criminal justice. When the governmental control of criminal justice grows, is the time when not only the rule of law is violated, but also the moment when democracy – as common sense – starts to lose its meanings.

A too strong government is against the rule of law, but it violates not just the democracy, but the minimum social equilibrium. Without this social balance, the next step is the fight of any group to control its part of regulation, specific justice and maybe, the complete administrative system. Is maybe a paradox, but a good governance must act firstly to its own reducing of administrative powers, without this, the tendency of growing its position inside the social system becomes a daily reality.

CONCLUSION

The popular rhetoric of the rule of law exhibits two opposing tendencies: on the one hand the rule of law is an increasingly ubiquitous political terminology, the term is frequently invoked in the news media, in political discourse, by oppositional pressure groups and in debates about what is wrong with other countries; however, on the other hand there is also a notable lack of discussion of the meaning or definition of the term outside the specialised jurisprudential literature, resulting in it being taken for granted, with the inferred supposition that its (political) meaning is secure[2].

But if we can see those two tendencies on rule of law description, the definition of democracy has much more. In the same time, rule of law is more abstract in the common people's understanding, because law are

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[1] WJP Rule of Law Index, https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018, consulted on 14.12.2018.

[2] Christopher May and Adam Winchester, Handbook on the Rule of Law, (Cheltenham: Edward Elgar, 2018), 2.

changing sometimes, but the "power of people" is always something much easier to catch (for a start of analyses).

However, both concepts are a base of everyday life and every person can offer not only a definition of them, but also a description for their relation. These characteristics are very important, because they can create a pillar for democratic and rule of law education of every new generation.

In this paradigm, any violation of those concepts is understandable by any citizen, even by a simplified way. Anyway, the notion "democracy" is used more often than the "rule of law". So, a crisis of any one of them is seen first as a crisis of democracy, and rule of law is just a part of its dimension. Despite the fact is impossible any citizen in a high legal level to educate, just making them conscious about the relation between rule of law and democracy is a big pillar of social equilibrium, and by nature, any living being wants to preserve a minimum social balance, because a war against democracy is long, dangerous and with less winners than is presumed.

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018, pp. 33-39

SOCIAL SERVICES FROM THE EUROPEAN PERSPECTIVE

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Abstract:

Social services play a vital role in any modern society. The development of this type of public services has represented and still represents a subject of interest for the European Union's authorities, moreover as the social services have the role to insure the social inclusion and the protection of the citizens' fundamental rights. The demographic changes and the globalization have determined numerous modifications in the content of social services and a growth of the number of the activities provided for vulnerable citizens both by national authorities, as well as by NGOs.

The current study aims a brief analysis of the perspectives expressed by European authorities regarding the role and features of the social services.

Key words: *public services; social services; European citizens; social development; European Union.*

According to Art 3 of the Treaty[2], the European Union promotes the economic, social and territorial cohesion, as well as the solidarity between Member States.

Such desiderate cannot be achieved in the absence of the promotion and especially development and modernization of certain

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[2] Treaty on the European Union, published on 26 October 2012 in the Official Journal of the European Union C 326/13

public services to answer the socio-economic needs and challenges of European citizens.

Some of the most important public services at this moment are represented by social services, so that the principles to be complied with are those established by Protocol No 26[1], namely: a high level of quality, safety and accessibility, equal treatment and promotion of the universal access and of the users' rights.

The pressure exercised against the European authorities by those involved in this area – the authorities of the local public administration, service providers and owners – has determined a reconsideration of the role that this type of services should have in a modern society and of the means in which these should be managed.

SOCIAL SERVICES – CONTENT, PRINCIPLES AND OBJECTIVES

Regarding the definition of the social services it must be stated that there is no such step taken neither by the Treaty on the European Union, nor by the secondary legislation due to the universal feature of this term. Moreover, it must be stated that the notion of "social services" is mistaken with other such as: social assistance or social protection.

From the perspective of the European Commission, social services have in their content two big categories of services, namely[2]:

- Those regarding the social insurances covering the main life risks such as health, ageing, work accidents, unemployment, retirement and handicap;
- Services directly related to individuals and which have the role for prevention and social cohesion and are represented by assistance for

[1] Protocol No 26 on services of general interest, published in the Official Journal 115, 09 May 2008, 0308-0309

[2] See also the definition given by the document "Implementing the Community Lisbon Program: Social services of general interest in the European Union" (COM(2006) 177 final of 26 April 2006)

persons facing personal challenges or in crisis/debts, unemployment, broken families, drugs etc. or with health problems or disabilities.

In relation to this content, the European authorities also include social services in the area of public services of general interest[1]. In this meaning, the European Commission stated in 2006 that "almost all services provided in the social area can be taken into consideration as economic activities in the meaning of Art 43 and 49 of the Treaty on the European Community"[2].

The role of the modern social services is to lay the base of the mechanism of social policies aiming the promotion of opportunities for all. The elimination of inequities, the implementation of the principles of solidarity and mutual help represent a desiderate in agreement with the purposes of the European Union.

According to the European Union[3], the objectives and principles of the social services are:

1. Social services are personalized, created to answer vital human needs, especially to the needs of the users found in vulnerable situations;
2. Provide protection against the general and specific life risks and assistance for personal challenges or crisis;

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[1] Public services of general interest are defined as being those services that the public authorities of the EU Member States provides and clasifies as being of general interest and, therefore, are subjected to a specific public service. The term covers both the economic and non-economic activities. The latter ones are not part of the EU legislation specific and are not under the incidence of the norms on the internal market and competition stated by the Treaty. Some aspects of the means of organization for these services may represent the object of other general norms of the Treaty, such as the principle of non-discrimination. See in this meaning, the Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the regions - Brussels, 20.12.2011 COM(2011) 900 final

[2] Commission of the European Communities - Communication from the Commission implementing the Community Lisbon programme: Social services of general interest in the European Union {SEC(2006) 516} – Brussels, 26.4.2006 COM(2006) 177 final

[3] Services of general interest, including social services of general interest: a new European commitment, COM(2007) 725 final

3. Are provided to families in the context of changing the family models, have a role in caring both for youth, as well as for elder family members, as well as for persons with disabilities, aiming to compensate possible lacks within the family;

4. Are key-instruments for the protection of the fundamental rights and human dignity;

5. Have a social prevention and cohesion role and are addressed to the entire population, regardless of wealth or revenues;

6. Contribute to non-discrimination, gender-based equality, health, protection and improvement of life standards and life quality and in the provision of equal opportunities for all, thus increasing the capacity of natural persons to completely participate within society.

THE AREA OF SOCIAL SERVICES

Considering the fact that the social services are mainly addressed to the most vulnerable members of society and aim to cover numerous social needs, from the perspective of the European authorities, the area of the social services would enlist:

- Small children education and care;
- Long term caring;
- Social assistance (assistance granting benefices);
- Social housing;
- Services provided for drug consumers and troubled youth;
- Services based on needs, orientated towards social inclusion and integration on labor market;
- Social services insured for immigrants and asylum seekers.

This area of social services is different in each Member State of the European Union and more than that, the categories of beneficiaries differ, which hindered the definition of a social services at European level.

In relation to these objectives, the European authorities have stated the fact that the national authorities enjoy a complete freedom in the management of public services, having the ability to transfer specific activities towards third parties, mentioning an administrative control over the means in which these are being managed.

Unfortunately, nowadays it has been ascertained that the provision of social services with a high degree of quality still depends on public financing. In this context, the European authorities have requested the national authorities to establish partnerships with the civil society, which has the purpose of easing the financial effort of the state and to determine the increase of the degree of social involvement.

Because the social services have a continuous feature, the interested parties, both from the public sector of the local public authorities, as well as from the private area through NGOs and volunteering have the obligation to draft social policies considering the identification of the needs, planning, development, delivering, monitoring and evaluating services.

More than that, the European authorities request that the provision of public services be performed through workers with the necessary skills, referring to their implication in training programs initiated by social partners. Ensuring decent working conditions, compliance with health and safety conditions are all that will allow the attraction of a large number of workers in this sector and will encourage the early involvement of volunteers, sometimes even from school[1].

CONCLUSIONS

The social services are in the grey area of public services being located between services clearly considered as “economic” and the “non-economic” ones. Tightly related to the national culture and traditions, the

[1] A voluntary European quality framework for social services issued by The Social Protection Committee, SPC/2010/10/8 final

public services of not enjoy a unitary definition, but in the case of all EU Member States, through their content try to cover all situations in which vulnerable persons by protecting their rights. Based on needs and circumstances continuously changing, public services must enjoy a continuity and to function based on the principles of solidarity, transparency and efficiency.

The involvement both of national authorities and of regional or local ones, but also the involvement of the NGOs represents the best example that there can be provided public services characterized by universality, quality and financial sustainability.

Based on prevention and social cohesion, social services are addressed for all population, regardless of wealth or incomes and represent a barometer of the degree of development of the society.

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e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018, pp. 40-49

INTERNATIONAL LEGAL DOCUMENTS ON REFUGEE RIGHTS

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Abstract:

The Refugee concept, as defined in the 1951 Refugee Convention, the 1967 Additional Protocol and the Statute of the United Nations High Commissioner for Refugees, was broadened by the adoption of extended definitions on refugees in the context of legal instruments emerged at regional level. Larger concepts of this type have been introduced in various forms in the legislation of some countries. However, the provisions with the largest application are those contained in the 1951 Convention and the 1967 Protocol.

Key words: *refugee; legal status; protection; international document.*

Human rights protection is a fundamental condition for the evolution of contemporary international society, overcoming the character of a desideratum and becoming a guarantee of international society. However, the simple legal guarantee does not imply effective realization, which requires a continuous effort adapted to the changing needs of international society.

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Our approach is aimed at a particular category of people, which needs, primarily, the protection of fundamental rights and freedoms. Although originated in the history of humankind, refugee issues continue to be highly topical, as a bad consequence of armed conflicts, acts of violence and persecution. Some governments do not want or can not protect their citizens, as they suffer from the violation of their rights and leave their country of origin seeking refuge in other states, which must provide them with the human conditions of existence and the exercise of their rights and freedoms.

THE CONVENTION RELATING TO THE STATUS OF REFUGEES

The Convention relating to the Status of Refugees, adopted on July 28, 1951, by the United Nations plenipotentiaries' Conference in Geneva[1], and entered into force on April 21, 1954[2], is the first international instrument to supplement and improve the treaties prior to World War II setting out a general definition of the refugee[3]. This reinforces the previous international instruments in the field, enhancing their field of application and enhancing their protection, aiming to ensure a permanent stay, assimilation and naturalization of the refugees[4].

Under the Convention, among the privileges enjoyed by the beneficiaries of refugee status, we mention the right to freely practice their religion, the right to religious education of refugee children, access to schooling, public assistance, legal assistance and access to justice, access to housing and the right at work, at least equal to that of the aliens. At the same time, the Convention has also imposed on the applicants a

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[1] The conference was convened on the basis of Resolution no. 429/V of the UN General Assembly of December 14, 1950.

[2] C. F. Popescu, M. and Grigore-Rădulescu I., *Drept international public. Noţiuni introductive*, Ediţia a II-a, revăzută şi adăugită (Bucharest: Universul Juridic, 2017), 140.

[3] For the doctrinal definitions of the concept of refugee, see V. Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1989).

[4] According to Article 34 of the Convention.

series of obligations towards the receiving country in order to comply with the rules of the respective community and not to exploit that community.

The Convention is made up of a Preamble, in which the Contracting Parties express "*their wish that all states recognizing the social and humanitarian nature of the refugee problem do everything in their power to avoid this problem becoming a source of tension between state*s".[1]

The definition of refugee notion determines who can receive this status, and how this status ceases, without linking this status to specific national groups as required by previous regulations. According to the Convention, the term "refugee" shall apply to any person who *"... As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*".[2]

From the interpretation of this definition results that the refugee status will be determined individually, even if that person is part of a category mentioned in the definition. The fear of persecution is intimately linked to the person of each refugee, and must be well grounded in the sense that it results from a concrete, objective situation such as systematic arrest or intimidation (removal from office, removal from home) unbearable psychological pressures, discrimination, measures of persecution against the closest entourage[3]. If a person has more than one nationality, he will not be considered a refugee who,

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[1] Popescu, Grigore-Rădulescu, *Drept internațional public,* 140.
[2] According to Article 1 of the Convention.
[3] A. Achermann, C. Hausmmann „*Les notions d'asile et de refugie en droit suisse*", in *Droit de refugies* (Suisse, Fribourg: Editions Universitaires, 1991), 5.

without justifiable cause, has not requested the protection of one of the States whose citizenship he has.[1]

The Convention also contains a number of provisions defining the legal status of refugees, their rights and obligations in the host state. Although all these rules are irrelevant in the process of determining whether or not a person falls within the definition of a refugee, the enforcement authorities have the obligation to comply with these provisions, taking into account the fact that their decision has unconditional effects, both on applicants for refugee status, and on their families.

The main provisions[2] of the Convention refer to the general definition of the term "refugee" (Article 1), the principle of non-refoulement (Article 33), the establishment of a standard on the legal status of refugees (Articles 2-7), free movement, identity documents and travel and other administrative issues (Articles 25-34) and the obligation of the Contracting States to cooperate with UNHCR in the exercise of their functions, in particular by facilitating the role of UNHCR in monitoring the application of the relevant provisions (Article 35).

The Convention also governs the circumstances in which refugee status is not granted or where its granting ceases. The exclusion clauses stipulate that this legal instrument will not apply to persons who satisfy the conditions of inclusion but who do not need protection or do not deserve protection. These people are divided into three categories:[3]

- persons already benefiting from protection or assistance from the UN (Article 1 D) from agencies or bodies other than the United Nations High Commissioner for Refugees;
- persons who enjoy the same rights and obligations as citizens of the country where they reside;

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[1] *Handbook on Procedures and Criteria for Determining Refugee Status,* Geneva, 1992.
[2] For development and systematization, see R. Miga-Beşteliu, *Drept internațional public*, vol. I, ed. 2nd, (Bucharest: C.H. Beck, 2010), 125; Popescu, Grigore-Rădulescu, *Drept internațional public,* 140-141.
[3] Popescu, Grigore-Rădulescu, *Drept internațional public,* 142.

- persons who have committed a crime against humanity, peace or war crime, a serious offense of common law prior to admission to the country of asylum, which is contrary to the purposes and principles of the UN.

One of the most important rights enjoyed by refugees, which has given rise to controversy since the drafting of the Convention, relates to non-refoulement. According to this principle[1], states are prevented from returning a refugee "*the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*" or in a country where the refugee would not be protected against such a return. However, a distinction must be made between rejection, refoulement and expulsion with the consequence of torture or cruelty, inhuman or degrading treatment. In the case of refoulement, derogations are allowed only for reasons of national security or public security and only in places where the fear of persecution does not amount to the danger of being subjected to torture, cruelty or inhuman or degrading treatment.

The principle of non-refoulement applies also to extradition. The 1951 Convention is not, in principle, an impediment to extradition, as long as the refugee status of the person subject to extradition is respected by the third State. In this case, the obligations of the receiving State to the refugee shall be transferred to the State of extradition. However, if extradition is requested by the country of origin, a thorough analysis of the situation is necessary and, if there are indications that extradition would subject the refugee to the persecution that has triggered its request for international protection, extradition can not take place.

In doctrine, the principle of non-refoulement is today considered by some authors as having the value of a customary norm, thus constituting a general obligation, opposed to all states.[2]

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[1] See Art. 33 of the Convention.
[2] Goodwin-Gill, *The Refugee in International Law*, 97-100.

THE 1967 PROTOCOL ON THE STATUS OF REFUGEES

Whereas, following the adoption of the 1951 Geneva Convention, new categories of refugees have emerged and could not therefore benefit from the provisions of the Convention applicable only to persons who have become refugees as a consequence of events occurring before January 1, 1951 and, with the desire to apply the same status to all categories of refugees covered by the definition given in the Convention, without taking into account the deadline of January 1, 1951, the UN General Assembly and the Economic and Social Council elaborated a series of resolutions[1], including the 1967 Protocol.

The Protocol on the Status of Refugees adopted at the United Nations Headquarters in New York[2] provided the signatory States with the opportunity to apply the individual provisions of the 1951 Refugee Convention, but without the deadline of January 1, 1951, giving the Convention a truly universal character.

Thus, the Protocol was developed to make the provisions of the 1951 Convention applicable to new refugee categories arising after the adoption of the Convention, which, because of this, risked losing the benefit conferred by the Convention.[3]

The 1967 Protocol is an independent instrument to which States may adhere without being party to the 1951 Convention, in which case States are not allowed to introduce a geographical limitation of the application of the provisions of the Convention.[4]

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[1] The General Assembly adopted the following resolutions: 1167/XII, 1388/XIV, 1501/XV, 1671/XVI, 1673/XVI, 1783/XVI, 31/35, 32/6733/26, and the Economic and Social Council: 1655/ LII, 1705/LIII, 1741/LIV, 1799/LV, 1877/LVII, 2011/LXI.

[2] The High Commissioner for Refugees in Russia was extended in 1924 to Turkish, Assyrian and Armenian refugees.

[3] I. Cloşcă, I. Suceavă, *Tratat de drept internaţional umanitar* (Bucharest: VIS Print, 2000), 365.

[4] Popescu, Grigore-Rădulescu, *Drept internaţional public,* 143.

THE CONVENTION OF THE ORGANIZATION OF AFRICAN UNITY

The Organization of the African Unity (OUA) decided in 1963 to draw up a regional convention to supplement only the 1951 Convention, taking into account the large-scale migrations of refugees due to the conflicts that accompanied the end of the colonial era.

The definition given to the refugee by the OUA Convention provides for two parts: the definition contained in the 1951 Convention and a second part which goes further, including a larger aspect providing that the concept of refugee applies to any person who, due to external aggression, occupation, foreign domination or events seriously disrupting public order in any part of the country of origin or whose nationality he has, is obliged to leave his usual place of residence to seek refuge in another place outside his home country or whose citizenship has it. Thus, the legal refugee term was extended also to the persons forced to leave their country due to the pressure of an invasion and/or aggression exercised by another state has been extended.

Although the OUA Convention has extended the refugee concept, it has also set some limits to the refugee definition, laying the basis for regional standards that are different from international standards accepted by UNHCR. These limitations arise, in particular, in treating “freedom fighters” and groups that disagree with them. In line with the OUA's objectives and principles, as formulated in the Charter, the “ freedom fighters “ are eligible for refugee status under the 1969 OUA Convention if their struggle is against a colonial minority or white race government, while the UNHCR stipulates that its activities must have a humanitarian and apolitical character. This mandate made it difficult to fit “freedom fighters” into its rules, whose objectives are obviously political, so they are not eligible to receive UNHCR assistance.

Groups opposing “freedom fighters” may also be treated differently according to OUA and UNHCR standards. They can not receive OUA protection if their activities are seen as an obstacle to the emancipation of African peoples, but they can receive protection from

UNHCR if they do not fall under one of the exclusion clauses of the 1951 Convention.

An important contribution to the OUA Convention relates to asylum, which, in the 1951 Convention, is mentioned only indirectly in the provisions on expulsion and non-refoulement. According to the Convention, no person will be rejected at the border by an OUA Member State returned or expelled if the person would be forced to return or remain in the territory where their life, physical integrity or freedom would be threatened.

UNHCR's acceptance of "group approach" for refugee status determination in situations involving massive flows of asylum seekers and removal from the strict definition of refugee status to a more convenient one for displaced persons prove the impact of the OUA Convention and the larger concept of protecting African refugees.[1]

CARTAGENA DECLARATION

The Central American Nations, together with Mexico and Panama, adopted the "Cartagena Declaration" on November 22, 1984, which was based on the definition of the Organization of the African Unity, adding an additional criterion to the "massive violation of human rights" to the requirement of the 1951 Convention that the refugee must demonstrate that his life and freedoms are endangered.

Although it is not legal in its own right, the Cartagena Declaration has become the basis of the local refugee policy, being incorporated into the national legislation of many Latin American states and introduced new principles for the region, as well as a terminology not found in the Convention 1951, nor in the 1967 Protocol and in any other international refugee document.

In order to acquire refugee status, applicants were required to fulfil two conditions: to demonstrate that there is a real threat to their lives, security or freedom and, on the other hand, these threats must be

[1] It was also adopted by the Executive Committee of the Organization of American States (OSA) and the UN General Assembly.

generated by one of the five situations mentioned in the text: generalized violence, foreign aggression, international conflicts, grave violations of human rights, or events that seriously disrupt public order.

CONCLUSIONS

The integrated approach to the problem of refugees should take into account the links between causes, effects, solutions, amid the realization of effective protection systems at national and international level.

The analysis of the ways and means of solving the major problem of refugee protection, however, necessitates the concentration of the efforts of both the developed countries and the countries of origin for the purpose of developing programs aimed at eliminating the causes of the migration phenomenon.

We believe that only in such an approach the problem of refugee protection will be resolved in the spirit of national and international standards in the field of legal protection of human rights and international humanitarian law.

The extended definitions in the OUA Convention and the Cartagena Declaration offer international protection to a large number of people who were not considered by the 1951 Convention, while highlighting the restrictive and lacunar nature of the Convention. By extending the definition of refugee, a person recognized as a refugee in a region is not necessarily so considered elsewhere.

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018, pp. 50-57

THE INTERPRETATION – OBLIGATION FOR THE JUDGE IMPOSED BY THE APPLICATION OF THE LAW

Iulia BOGHIRNEA[1]

Abstract:

It is unthinkable a state of law outside a legal system, the absence of a true justice meaning "arbitrary and injustice". The name of judicial authority undoubtedly evokes justice – as distinct function and distinct system.

Justice, and in general the jurisdictional activity, is an activity for dispute settlement in the letter and spirit of the Constitution and the laws, the customs, contracts or judicial precedent, depending on the legal system. The judge, who performs justice, seeks the truth, within a specific litigation subjected to trial in order to identify: the violation of the law, the victims, causality, liability and perpetrators.

Key words: *judicial interpretation; application of the law; judge.*

From the oldest times, justice imposed itself as a function of trialing the litigations, of holding accountable persons who cause harm and suffering to others in violation of agreed and established social rules, of canceling illegal or abusive acts. Later, justice has enriched its content, regarding the direct exercise of the political power, in the meaning of performing the control over the means in which the governors act within

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the limits of the Constitution and the law, namely for the achievement of the principle of legality[1].

Thus, if social life is carried out according to normative rules, naturally there should be a state authority recognizing them in order for a correct interpretation and application only when they are violated, when the citizens' rights and fundamental freedoms are disregarded and ignored[2].

The term of *justice* has two meanings. In a meaning, by "justice" it is defined the system of the judicial organs, while a second one defines the activity to solve the civil, administrative, commercial, criminal trials, to apply the sanctions, to recognize and reestablish the violated rights and legitimate interests.

In the common language, "to perform justice" means to do justice. *Fiat justitia pereat mundus* has become the preferred dictum on justice[3].

Seen as an impartial and independent function, justice has imposed itself as an idea and a reality in which individuals believe to protect them when their legitimate rights are violated, as similar to the always triumphing justice.

Traditionally, the interpretation of the legal norm is an intellectual operation establishing the exact meaning of the legal norm required by the need of its application for twill with the purpose of solving certain

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[1] Ioan Muraru, *Drept constituţional şi instituţii politice* (Bucharest: Actami, 1998), 456

[2] Muraru, *Drept constituţional şi instituţii politice*, 456

[3] "Let justice be done, though the world perishes" – the origin of the dictum is found in the book by P.M. Scaevola (Vladimir Hanga, *Adagii juridice latineşti* [Bucharest: Lumina Lex, 1988], 43). The meaning of this dictum is that from now on the eternal righteousness of the Godhead is firm in its firmness, revealing itself under all conditions, even of the collapse of the whole world, just as the judge dealing with a particular case has to carry it out and to resolve it as conscience and science urge him, even though in the meantime the end of the world will come with all his horrors; see also Werner Bergengruen, *Tiranul şi judecata* (Bucharest: Univers, 1983), 174.

litigations[1]. The purpose of this operation resides in the determination of its area of application under the aspect of the validity in relation to other legal norms, as well as its application in space, in time or regarding persons.

Unlike the Roman-Germanic system, for the Anglo-Saxon legal system the issue of the interpretation has specific forms of assertion because within this system the judicial precedent and habit as sources of law prevail, the interpretation is relatively free, the law being only a secondary source, of exceptional nature, because it only makes improvements or corrections. As a source of law less expansive, the law is restrictively interpreted, by emerging as *lex specialis* within this legal system. Hence the tendency to draft the laws in the smallest detail, in order to avoid amending them by common law rules[2].

The legislator, within the Roman-Germanic system, is the authority summoned to create the mandatory, general and impersonal legal norms (namely a standard of certain pre-existent cases). It cannot comprise, in an abstract text, all the cases, all difficulties suspected of giving birth to conflicts.

In this meaning, from the beginning of the work for the French Civil Code, Portalis warns about "the dangerous claim" to state and foresee everything: "To foresee everything is impossible. The needs of society are so expanded that it is impossible for the legislator to foresee everything"[3].

In the legislation of our state, the Code of Civil Procedure[4] states that "*the judges have the duty to receive and to solve any case within the competence of the courts, according to the law. No judge can refuse a trial based on the reason that the law does not state it, it is unclear or incomplete*" (Art 5 Para 1-2).

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[1]Ioan Ceterchi and Ion Craiovean, *Introducere în teoria generală a dreptului* (Bucharest: All, 1996), 97; Eugen Chelaru and Ramona Duminica, *Partea generală a dreptului civil* (Pitesti: Editura Universitatii din Pitesti, 2016), 24

[2] Nicolae Popa, *Teoria generală a dreptului* (Bucharest: C.H. Beck, 2008), 251

[3] Popa, *Teoria generală a dreptului*, 252

[4] Republished in the Official Gazette, Part 1, No 247/10 April 2015

According to Art 124 Para 3 of the republished Romanian Constitution and Art 2 Para 3 of the Law No 303/2004 on the statute of judges and prosecutors[1], "*the judges are independent and subjected only to the law. The judges shall be impartial, having full independence to solve the cases subjected to trial, in accordance with the law and impartially, in compliance with the equality of weapons and the procedural rights of the parties. The judges shall have to decide without any limitations, influences, pressure, threats or interventions, direct or indirect from any other authority, even from the judicial ones. The decisions ruled for the means of attack shall not fall under these restrictions. The purpose of the judges' independence also consists in guaranteeing for every person the fundamental right to have a fair examination of his case file, based only on the application of the law*".

But the mentioned texts do not prohibit for the judge the possibility to take into account the solutions ruled in previous similar cases[2], without this being mandatory.

We must draw attention upon the fact that the national judge must check if the legal norm applicable was interpreted by the High Court of Cassation and Justice through decisions issued in the interest of the law or in prior decisions, by the European Court on Human Rights or by the Court of Justice of the European Union[3]. These decisions, which provide for a mandatory interpretation of the legal texts, make common body with the interpreted norm and can no longer "be read" and applied differently than as stated by the supreme courts.

According to us, these decisions could be called judicial precedents of interpretation.

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[1] Republished in the Official Gazette, Part 1, No 826/13 September 2005

[2] Gheorghe Boboş, *Teoria generală a statului şi dreptului* (Bucharest: Editura Didactică şi Pedagogică, 1983), 248

[3] Ioana Nely Militaru, *Trimiterea prejudiciară în faţa Curţii Europene de Justiţie* (Bucharest: Lumina Lex, 2005), 80-81; Elise Valcu, *Drept comunitar institutional,* (Craiova: Sitech, 2012), 27; Laura-Cristiana Spătaru-Negură, *Dreptul Uniunii Europene- o nouă tipologie juridică* (Bucharest: Hamangiu, 2016), 162

But, for the case in which the applicable judicial norm was not interpreted by a decision mandatory for the national judge, the latter one shall apply the methods and procedures for interpretation of the legal norms in order to establish their precise meaning.

According to an adagio, the interpretation stops when a text is clear (*interpretatio cessat in claris*)[1] which, according to certain authors[2], represents a *contradictio in terminis* because, in order to establish if a norm is clear, it must mandatory be interpreted, the purpose of interpretation always being *the identification of the legislator's will*.

In order to state that a text is clear, first of all it is mandatory that the judge analyze it, thus interpret it[3]. This process implies a responsible activity by the enforcement organs so that they, in faithful observance of the legal norms, take into account all the concrete, objective and subjective circumstances of the concrete case inferred from the judgment or the situation to which or in connection with which the legal norm must be applied[4].

The interpretation of a text means "enlivening"[5] it with certain meanings acquiring, through the text, new coordinates, determined on the

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[1] See in the same meaning the opinion of Savigny who has rejected the idea that the interpretation had as purpose the removal of the ambiguity or the unequivocal nature of some regulations, stating that clear norms do not need interpretation, while the obscure ones cannot be interpreted.

[2] Dan Ciobanu, *Introducere în studiul dreptului* (Bucharest: Hyperion XXI, 1991), 93

[3] Ioana Nely Militaru, "Procedura trimiterii prejudiciare în fața Curții de Justiție de la Luxemburg", *Romanian Review of Communitarian Law*, no. 3 (2005), Bucharest: Rosetti, 26-40

[4] François Gèny, *Méthode d'interprétation et source en droit privé positif,* 1st Volume, 2nd Edition (Paris: L.G.D.J., 1919), 61

[5] „*Interpréter un texte, c'est, le droit, lui donner une vie juridique*", Dominique Rousseau, *La justice constitutionnelle en Europe*. 3rd Edition (Paris: Montchrestien, 1998), 34; "The norm which has not been interpreted is like a song that cannot be played, the normative act becoming a social reality" according to Mihai Constantinescu and Ioan Vida, "Metode de interpretare în contenciosul constitutional", *Revista Dreptul*, no. 11 (2002): 61

one hand by the legislator, and on the other hand by the creative art of the judge[1].

The relation between the normative of the legislative function and the interpretative function, of the law-enforcement person, is often complex and contradictory[2].

Prof. Nicolae Popa stated that "the issue present nowadays refers to the role and functions of the interpretation, to what we call *the establishment of the law*, either directly or by means of judicial interpretation, trying to tilt the balance on either side"[3].

The interpretation of the judicial norms completes the interpretation of the law (interpretation as application by using certain mechanisms, techniques and arguments allowing the performance of activities specific for the execution of the judicial commandment), because the first type of interpretation can only be performed based on the guidelines of the entire legal system, or by the highest jurisdictional courts – the High Court of Cassation and Justice – either based on the reasoning with power of authority originating from the Constitutional Court, for the domestic law, or from the European Court of Human Rights or from the Court of Justice of the European Union, for the communitarian law[4].

The judicial interpretation, in our domestic law, is mandatory only for a specific cause (this is why it is also referred to by literature as the causal interpretation), not being mandatory for subsequent similar cases, as in the Anglo-Saxon legal system.

Lambert was the one supporting the capital role of the judges, who hold the "monopoly of the official interpretation of the law", played by them always throughout times.

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[1] Pierre-André Côté, *Interpretation des lois* (Quebec: Cowansville, Éditions Yvon Blais Inc., 1982)
[2] Claudia Gilia, *Teoria statului de drept* (Bucharest: C.H. Beck, 2007), 271-272
[3] Popa, *Teoria generală a dreptului*, 242
[4] Popa, *Teoria generală a dreptului*, 246

CONCLUSIONS

In order to apply the law, the judge shall have to interpret it first.

The applicable legal norms shall have to be interpreted for the decision to be ruled to be based on the law, so that the arbitrary be as low as possible.

For the judges to fulfil their mission, they shall have to apply the appropriate means of interpretation.

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018, pp. 58-64

INDIRECT EXPROPRIATION – EXPROPRIATION AFFECTING FOREIGN INVESTMENTS

Adriana PÎRVU[1]

Abstract:

The notion of expropriation is relatively easy to understand even for the people without legal studies. But the doctrine has emphasized the use of some newer concepts, such as the de facto expropriation or the indirect expropriation. The latter notions created some confusion among practitioners though. None of those notions benefit from a legal regulation, thus leading to deeper doubts. While the de facto expropriation seems to be a taking over in ownership, without any right, of an asset by a public law subject, the notion of indirect expropriation has rather economic connotations being mainly used for foreign investments.

Key words: *expropriation; indirect expropriation; foreign investments; international treaties.*

The right of ownership, though it is regarded as a fundamental right, is not an absolute right, but it is liable to limitations. It is said that, while they regulated a series of rights and liberties, there is the possibility that the state should have to restrict ones in order to protect others[2].

Expropriation is a legal institution of public law, allowing the forced purchase by onerous title, for a cause of public utility, according

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[2] Ana-Maria Nicolcescu, „Elemente relevante în jurisprudența Curții Europene a Drepturilor Omului cu privire la expropriere”, *Dreptul,* no.1 (2018): 26.

to the law and under judicial control, of some private property real estate assets[1].

Being one of the most severe limitations of the right of ownership, expropriation was carefully regulated by the lawmaker, indicating which are those cases of public utility where expropriation may occur, which are the assets that may be expropriated, the procedure that should be followed and also the way of establishing the compensations. The existence of the judicial control is an additional guarantee of complying with the right of ownership, as a fundamental right.

However, there were situations that indicated the deliberate or non-deliberate avoidance of the legal procedures. For such situations, they often use the notion of de facto expropriation. Thus it is the case of the de facto occupation of some buildings found in private property, by some state authorities, by accomplishing some public interest objectives. They reached such situations mainly by two ways: by the actual extension of some public interest works made legally on a neighbouring piece of land, or as a result of in kind restitution of some pieces of land where they had already made some public interest objectives, based on special laws[2].

In settling some cases it was referred to, the European Court of Human Rights used the notion of de facto expropriation for those situations where the right of ownership was breached by the application of some interdictions that led to the impossibility of a real and complete exercise of the right of ownership. In exchange, for those situations where a building was occupied by public interest objectives, without the application of the legal procedure before, the Court used the notion of indirect expropriation.

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[1] Eugen Chelaru, *Drept civil. Drepturile reale principale în reglementarea Noului Cod civil* (Bucharest: C.H.Beck, 2013), 71.

[2] Ion Popa, „Exproprierea în fapt – o confuzie generală a jurisprudenței românești și a Curții de la Strasbourg”, *Magazine Universul juridic*, no.7 (July 2016): 6-7.

The specialised doctrine pointed put another meaning for the latter notion. The notion of indirect expropriation is incident to the field of foreign investments and supposes, according to the doctrine, an withdrawal by the host state of the investment, unilaterally, of the right of ownership of an investor, by means of the annulment or the transfer of the title (of ownership) or of the rights associated to it, but this reaction would not represent a sanctioning of an illegal behaviour of the investor or a criminal seizure[1].

The economic international law is based on many bilateral treaties on investments. Thus, in the investment international law, there are three main actors: the host state of foreign investments, the state of origin of the private investor, and the private investor that can be a natural or a legal person.

One of the clauses often appearing in the investment bilateral treaties is the one regarding the interdiction of expropriation. Expropriation, as it is regulated by treaties, can be direct, when it leads to the loss of the title of ownership or to the loss of possession of an asset representing an investment, but it can be indirect, too, when it causes a decrease of the investment benefit or it affects the way in which the investor uses the property as a result of a measure taken by the competent state authorities (a disguised expropriation)[2].

Foreign investments represent an important factor in the growth of national economies. They also represent a means of development of private investors and, implicitly, of the states they come from. In order to assure a proper protection of the foreign investors towards the inherent risks of acting in a foreign state, in common law, they established certain international standards representing obligations that have to be assumed

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[1] To see in this regard, Doru Băjan, „Comentarii privind coabitarea între investitorul străin și statul gazdă", on Juridice.ro, accessed on 28.11.2018, https://www.juridice.ro/295169/comentarii-privind-coabitarea-intre-investitorul-strain-si-statul-gazda.html.

[2] To see in this regard, Adrian Năstase and Ion Gâlea, „Noțiunea de expropriere în tratatele privind promovarea și protejarea reciprocă a investițiilor", *Revista de Drept Public,* no. 1 (2014): 49.

and obeyed by the host states. According to the doctrine, such standards are[1]:

- obligation to assure a fair and rightful treatment of investments;
- obligation to guarantee a complete and full security of investments;
- obligation to enforce the treatment of the most favoured nation;
- interdiction of expropriating the investor without granting a fair, immediate and efficient compensation.

We ascertain that expropriation is allowed, for reasons of public utility, as long as it is accomplished according to the law, by granting a fair, immediate and efficient compensation.

Direct expropriation supposes, as I mentioned before, getting through some legal procedure stages, not leaving doubts regarding the start of the expropriation procedure.

It is more difficult, though, to establish if an indirect expropriation takes place. In order to be able to establish the taking place of such an expropriation, two doctrines appeared proposing different criteria of appreciation: sole effects doctrine („sole effects") and police powers doctrine („police powers")[2].

The sole effects doctrine insists on the economic impact, on the impact on the value of investment and takes into consideration only to a lesser degree the purpose for which they adopted the national regulation leading to the decrease of investments[3]. In the arbitration practice, the court has stated in a case that such an expropriation takes place when "an investor is deprived at such an extent by parts of the value of his/her

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[1] Băjan, „Comentarii".
[2] Năstase and Gîlea, „Noțiunea de expropriere", p.53.
[3] OECD (2004), ""Indirect Expropriation" and the "Right to Regulate" in International Investment Law", OECD Working Papers on International Investment, 2004/04, OECD Publishing. http://dx.doi.org/10.1787/780155872321, https://www.oecd.org/daf/inv/investment-policy/WP-2004_4.pdf, accessed on 28.11.2018.

investment”[1]. In another case, referring to the environment regulations, the court has stated that “the expropriation measures adopted in the field of environment law – no matter how beneficial they may be for the community in their whole – are similar to any other expropriations that the state adopts in enforcing its policies: when the property is expropriated (…) the obligation of compensation of the state remains”.[2]

The police powers doctrine takes into consideration the purpose and the character of the measure adopted in the host state. This doctrine states that ”a state is not liable for the loss of property or other economic disadvantages resulting from general good faith regulations concerning, inter alia, taxation, organised crime prevention or other actions belonging to the field of police actions of the state”[3].

Of course, the conciliation of the two doctrines will be difficult to achieve. That is why the best solution would be the definition, the characterisation of indirect expropriation, even by investments agreements.

Since 1975, Romania has been a part of the Convention on settlement of investments disputes between states and nationals of other states, concluded in Washington in 1965, within which it was created the Centre for Settlement of Investment Disputes. The convention regulates the settlement procedure by conciliation or arbitration of the investment disputes.

At the European level, in 2015, by the Notice of the Economic and Social European Committee on investors' protection and dispute settlement between investors and state in the investment and commercial

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[1] ICSID Case No ARB(AF)/00/2 (29 mai 2003), Tecnicas Medioambientales Tecmed S.A. v. The United MexicanStates, para.121, in Năstase, Gîlea, „Noțiunea de expropriere”, p.53.

[2] Compania del Desarrollo de Santa Elena S.A. v. Repiblic de Costa Rica, ICSID Case no.ARB/96/1, in Năstase, Gîlea, „Noțiunea de expropriere”, p.54.

[3] Restatement of the Law Third, the Foreign Relations of the United States Aerican Law Institute, Volume 1, 1987, Section 712, in Năstase, Gîlea, „Noțiunea de expropriere”, p.56.

agreements of the EU with the third countries[1], there were some critics regarding this arbitration practice, appreciating that by such practices, they should not ”elevate the transnational capital status to that of a sovereign state or enable foreign investors to challenge the right of governments to regulate and determine their own affairs”.

CONCLUSION(S)

The notion of expropriation has gradually expanded its meaning, relatively recently being used notions such as: measures equal to expropriation, indirect expropriation or expropriation by regulation. The contents of such notions is not fully known yet as there are no regulations to approve them. The practice and the doctrine in this matter will probably be those which will put a light on the contents of the new concepts until the lawmaker's intervention.

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[1] Published in the official Journal of the European Union on 8.10.2015, https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX%3A52014IE5356, accessed on 27.11.2018.

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LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018, pp. 65-81

BRIEF CONSIDERATIONS ON THE CASE LAW END THE SCIENCE OF LAW

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Abstract:

The case law is one of the concepts of the science of law to which the most contradictory opinions are related. For the Roman law, the case law was recognized with the condition of its undertaking and confirmation through court decisions. In the common law systems, the law is drafted and/or modified by judges, who have the authority and responsibility to create law using the case law.[2] *The role of the judicial precedent derives from its contribution to the creation of the single common law, both nationally, as well as at the level of the branch of law.*

Key words: *case law; jurisprudence; source of law; legal practice; science of the law*

INTRODUCTION

From the perspective of the way in which the law is born, one can differentiate between the *ius scriptum* and the *ius non scriptum*[3].

Ius scriptum is stated by the public organisms, invested with the power to establish compulsory legal norms for the citizens, who have entrusted them with this power. It can be the creation of the legislator,

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[2] *Marbury v Madison*, 5 U.S. 137 (1803)
[3] *Dig.*, 1.1.6 § 1

which is rarely happening, or, may establish norms previously established as customs.

Ius non scriptum includes the norms, arising imperceptibly, through the long-term exercise of the same practice, supported by the knowledge that what it is practiced corresponds to the law in force. In reality, it is a creation of the common good sense. This law so-called *consuetudo, mos maiorum* refers to two elements: a) *usus*, endless and long lasting repetition (duiturna, inveterate consuetudo) of the same actions; b) *opinio necessitatis*, the faith that what is practiced, is in accordance with the legal provisions.

The unwritten law may be based on an error; in this case, the norm established by error cannot extent by interpretation to similar cases[1]. Considered as consuetudinary, it sources from customs, as it is not only resulted from Latin expressions, but also from modern terms: *coutume*, *Gewohnheitsrecht*, *practices*, the custom of the place[2].

For the legal science, the notion "source of law" has two meanings: a material and a formal one. In the material meaning, the source of law refers to the social aspect, the factors configuring the law, which determine the action of the legislator[3], and by source of the civil procedural law, in the material meaning, the social actions generating the norms of this branch of law[4].

In the formal meaning, the source of law refers to the means by which the material source is expressed, the form of the *law* in all its norms, to have mandatory powers. Therefore, the specific form of expression of the norms of the civil procedural law is called the source of civil procedural law[5].

The case law is one of the concepts of the science of law to which the most contradictory opinions are related. Two of the largest systems of law, the Roman-Germanic and the Anglo-Saxon ones, traditionally have

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[1] *Dig*., 1.3.39
[2] Andreea Rîpeanu, *Drept roman* (Bucharest: Pro Universitaria, 2008), 17-18
[3] Irina Grigore-Rădulescu, *Teoria generală a dreptului* (Bucharest: Universul Juridic, 2010), 117-118
[4] Maria Fodor, *Drept procesual civil* (Bucharest: Universul Juridic, 2014), 38
[5] Fodor, *Drept procesual civil*, 39

separate opinions on the recognition of the jurisprudence as source of law.

The term of jurisprudence is a creation of the Roman law, though the seed of this phenomenon has emerged in the Ancient East (Assyria, Egypt etc.) on the base of that law, which had a sacral feature. In Rome, the jurisprudence defined the activity of the jurist-consults (especially their practice). In time, the term would have to define both the legal decisions, as well as the theoretical knowledges[1].

For the Roman law, the case law was recognized with the condition of its undertaking and confirmation through court decisions. The fact that the courts have used for a determined period, the case law that they created, strengthen then belief that they soon will follow it. The challenge of time represented the best proof in justifying the introduction of the case law and a guarantee for its stability. Such approach meant that only few legal decisions could have established a case law. Therefore, the concept of *constant legal practice* was based.

The Roman-Germanic legal system[2], by declaring the continuity of the Roman law, has waived the active casuistic, in favour of the written law. It has recognized the concept of *res judicata*, according to which the legal decision is mandatory only for the parties who have participated in the examination of the case. Thus, the legal decision has been recognized as legal fact. The echoes were different in the continental European states. The case law in the legal system of the northern European states traditionally has a value that high that certain jurists came up with the proposal to include those legal systems in the family of the common law. Among the states of Western Europe, France had the strongest attitude, the *Code of Napoleon* consecrated the fact that the judge cannot refuse to examine the case under the pretext of the inexistence, uncertainty or insufficiency of the legal norm (Art 90 of the

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[1] S. Neculaescu, *Introducere în dreptul civil* (Bucharest: Lumina Lex, 2001), 137

[2] *The Roman-Germanic law system was crystallized in the 13th century, when the European states received the Roman law and mixed it with their own customary law*. Irina Grigore-Rădulescu, *Teoria generală a dreptului*, (Bucharest: Universul Juridic, 2014), 39

French Civil Code), but neither can he rule a decision as a general regulation. These two initial conditions have determined the evolution of the legal case law. Though, initially, in Germany and Austria, at legislative level, it has been stated the fact that the law is not created through legal decisions, later the attitude towards the case law has changed. The Swiss Civil Code states that in the case of ascertaining a gap of the law, the judge must act as legislator, following the dominant doctrine and customs. In Southern European states it is recognized the statute of secondary source of law for the case law (Italy). The Spanish Civil Code proposes to judges, for the gaps of the law to consecutively appeal to customs, legal decisions and the general principles of the law. Thus, in the contemporary law of the states belonging to the Roman-Germanic system it is shaped the trend to form the judicial law and the possibility for judges to verify the result of the constant practice.

In the common law states, the concept of constant legal practice has been completely received. It is a paradox the fact that the technique created by the common law judges is very close to the Roman law: *the jurist of the common law, as well as the Roman jurist avoids generalizations and, as far as possible, the definitions. Their method is the active casuistic. They move from a specific case to another and aim to create a valid mechanism for solving each of them*[1]. After a century, the English law intuitively reached the technique of the Roman law[2]. The active casuistic has influenced the particularities of the common law systems (legal continuity, the specificity of the concept of norm, the structure of the law and the system of the sources).

In the literature of the common law states traditionally it is considered that the case law is created by a few judicial decisions. In the process of counterbalancing different judicial decisions by comparing them was shaped a common norm which needed to be developed[3].

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[1] S. N. Milson, *Studies of the History of Common Law*, (London: Historical Foundations of the Common Law, 1985)

[2] Milson, *Studies of the History of Common Law*

[3] Karl Llewellyn, *Jurisprudence: Realism in Theory and Practice*, (Chicago: University of Chicago Law School, 1967), 595; Rupert Cross, *Precedent in English Law*. 3rd Edition, (Oxford: Clarendon Press, 1977), 261

In the current jurisprudential law, a special attention is paid to single cases, containing the case law (the precedent). The norm, thus recognized has a mandatory feature. According to the most spread conception in the legal literature of the common law states, the judicial law of the case law (precedents) represents the law formed by norms and principles created and applied by the judges in the decision-making process.

To a certain extent, the judicial law is contrary to the case laws. Thus, the judicial case law is the traditional source of law in the common law states. Having this quality, it faced a difficult evolution, its creation lasting for centuries, being finalized by the recognition of the case law (*stare decisis*) in the 19th century, by differentiating the law of the precedent from the judicial law. The principle of the case law has stated that the judges are compelled to follow the decisions of the courts which, according to the law, are placed on a hierarchic superior scale (*the vertical action of the principle of the case law*). The superior courts are compelled to follow their own previous decisions (*the horizontal action of the principle of the case law*). The principle of the case law has proven the general mandatory feature of the legal decision, not only for the parties involved in the case examination, thus permanently shaping the denial in the application of the principle of *res judicata*. The fact that the judges are compelled to consult the case laws and to find the logical connection between cases; the doctrine has examined it as the domination of the law, the limitation of the legislation by the courts, the inner will of the judges. The principle of the case law has permanently recognized the creation of the legal norms by the courts, though subsequently it has been subjected to several modifications[1].

The written form has widened the perspectives of the law, thus contributing to its highlighting among other social norms. The written norms had more advantages (precision, clarity and determination in exposure, the possibility of formulating abstract norms). In the unwritten law is more difficult to determine the content of the norms and to identify the mechanism for its creation.

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[1] Llewellyn, *Jurisprudence: Realism in Theory and Practice*, 595

The jurist has the task to analyze a court decision in order to draft a general norm (*ratio decidendi* and *obiter dictum*). According to the definition of R. Cross, *ratio decidendi* represents a legal norm directly or indirectly examined by the judge, as a necessary step in drafting a conclusion corresponding to the arguments prior adopted by him[1].

Ratio decidendi is a fundamental step in the process of stating the norm of the case law. But, the doctrinarian analysis of this process has not established univocal conclusions until now. As an unwritten norm, the case law has certain particularities for its application. The multitude of the judicial case laws offers to jurists the possibility to select the case law according to their case file. The selection is based on the comparison of the facts grounding the examined case file and of the cause based on whose examination the case law has been issued. The case law has a series of particularities. Thus, it is not possible to determine the moment of its entrance into force because the unwritten form is stated during an undetermined period of time. It is only at a certain stage that we can safely speak of the existence of the norm.

The unwritten feature of the judicial case law makes more difficult the decision to publish them. Publishing the reports which refer to case laws remains an activity of a limited number of commercial entities, the consequence being the publication of certain unofficial editions. These are useful for judges in stating their opinions, without giving them a legal norm. In the same time, such editions cannot objectively comprise all case laws. This is why, in practice, there are controversies regarding the application of unpublished case laws.

For the purpose of exercising the control over the existing situation in the common law states, there were created special councils[2].

Substantial changes in the systematization of the judicial case law have been introduced through informatics. The constant evolution of the case law with the intent of preserving the traditional structure of the

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[1] Cross, *Precedent in English Law*, 261

[2] For instance, in New Zeeland are members of such council (New Zeeland Council of Law Reporting): the General Prosecutor, the General Solicitor, five representatives of the community of jurists and a judge from the Supreme Court.

system of law has generated a series of consequences in the states of the common law[1].

In the virtue of the particularities for its establishment, the case law is retroactive. Thus, although the US Constitution forbids the occurrence of the effects on the past (*ex post facto*), the courts have reached the conclusion that it refers to the statutory law. For the judicial case law, we ascertain the occurrence of the consequences, even if at the moment of the offence there was no legal norm. A less critical evaluation of the retroactive effect is made by the followers of the natural law school. They start from the fact that the judges do not create, but only proclaim a right existing before the adoption of the case law. In this way, judges appeal to the principles of the law to enforce the judgment, which allows a fair precedent to be formulated. In practice, the common law states have initiated multiple attempts to overcome this shortcoming. Thus, it has been solved the question whether such case law shall be established by the judges or it is necessary the normative statement of the action of the case laws, because the law's force is superior to the case law's. Also, the statement of the action for perspective of the case law is connected with the judicial law making, with the attempts to equate the judicial case law with the law.

JUDICIAL PRECEDENT AND THE COMMON LAW

The role of the judicial precedent derives from its contribution to the creation of the single common law, both nationally, as well as at the level of the branch of law. The analysis of this process allows the identification of the connection created between the case law and the courts. Also, it can show us how the case law can contribute to the

[1] First of all, in the law of those certain states was established a different relation between the fact and the law. Thus, the judge by examining that case and ascertaining a gap in the law shall create and apply a new norm. He shall appreciate the factual circumstances, determining their legal value; also, he shall analyze if they condition the occurrence of the legal effects and if they generate a legal norm.

removal of the contradictions between different judicial cultures (states with joint jurisdiction).

Thus, in Great Britain the single common law was formed through legal decisions. This fact has a historical explanation, but not logical[1]. For the English law it is applicable the use of the terms common and case law (precedent)[2]. The establishment of the single law (common) has begun after the Normand conquest. According to English scientist P. Stein, the English law represents a species of the German law, in which the two currents were formed (Anglo-Saxon and Normand). The Normand kings had more success in establishing a centralized governing, managing to maintain the noblemen in a state of dependence, offering the English law a series of specific features[3]. In the creation of the law, a special role was played by the royal courthouses. In case of litigation, the person was entitled to address the local courthouse (the customary law); the church judges (the canonical law); the city court (the commercial law); the baron's court or the royal court (active throughout the country). Initially, the royal courthouses followed the king, settling the litigations. Later, the judges settled in a London's neighbourhood from where they moved for examining the cases. Because in every locality there were a series of customs, the judges tried to take them into account. This situation has been determined by the fact that in the royal courts was used the institution of the jurors, who were locals and in their personal assessment of the litigation were using the local customs known to them. Also the parties had the right to bring witnesses to confirm the existence of a certain custom. Thus, the judges moving around the state became aware of different customs. Returning to London, knowing each other and having the opportunity to communicate intensely (by living in the same neighbourhood), they debated the cases handled and compared the

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[1] A. K. Kiralfy (British journalist), *The English Legal System*, (London: Sweet & Maxwell, 1983), 309

[2] The common law was formed both in the courts of common law, as well as in those of the law of equity. In its turn, the contemporary law was established based on the law of precedent and the law of equity (British judicial dictionaries).

[3] Peter Stein, *Legal Institutions. The Development of Dispute Settlement*, (London: Butterworths, 1984), 236

judgments handed down in similar cases. The common debate of the practice has eased the establishment of a common position of the judges for similar cases. E. Jenks stated that: "*it is not possible the precise determination of the means for establishing the common law. By means which cannot be established, the royal judges, meeting in London after returning from the territory, for the purpose of examining the cases in centralized courts... and Westminster, have agreed upon the need to merge different local customs in a common or single law, which shall be applied throughout the state*".

Even if the judicial precedent suggests the existence of a certain judicial hierarchy, differentiated by a superior and inferior statute, the British legal system has been fundamentally reshaped and reformed in the past two centuries. The reform did not stop the development of the law of precedents, but has had a significant influence. The unification of the courts of common law with those of the chancellor during the reform of 1873-1875 has conditioned the unification of the precedent law with the law of equity. Because the law of precedents is understood as the law of the jurists, a determinant factor was the qualification made by the jurists. It was supported by the professional corporations existent in the 16th century, establishing certain requirements for the persons applying for membership. They have contributed not only to the maintenance of a high professional level and the prestige of the judicial profession, by guaranteeing continuity in the approach of the law, thus contributing to the development of the single national law. In order to be a good jurist, to build a career in the legal area, was necessary the detailed study of the principle of the precedent. This is the reason why, in many common law states, there has been a stage in which the teaching in legal education institutions was insured exclusively by jurists. They combined the theoretical knowledge with practice. The fact that the teaching was pointed in the direction of the practice and especially towards the law of precedents generated a series of consequences. This gave rise to the method of legal thinking and culture, especially directed towards the precedent. In England, for centuries, schools near professional unions have thrived (*Inns of Court*), where the teaching was insured by lawyers and judges. In the same time, universities like Oxford or Cambridge,

until mid 19th century, were specialized in the teaching of the Roman and canonical law.

One of the forms of the scientific activity consisted in the comment of the judicial precedents. In this meaning, the comments of Brakstone and Coke were noted. Nowadays, the science of the law continues to be developed by judges.

Starting from the premise that the law of the precedents has contributed to the establishment of the single national law and that a series of institutions specific to the common law were created by judicial precedents, the British provincial law finds itself in statutes (written laws), as well as in the unwritten law; but just because the unwritten law finds itself in the decisions of the courts and judges, the latter ones being permanently subjected to the legislation activity; also they must relate to the authority of their predecessors[1].

THE LAW OF PRECEDENTS AND THE COMMON LAW

Beside the fact that the law of precedents has contributed to the creation of the British common law, it has had a significant role also in the family of the common law. Simultaneously with the expansion of the British Empire, the English model has spread on other continents, thus guaranteeing its continuity.

In this context, the Australian scholar A. Castles stated that "*for centuries the method, practice and style of the judicial thinking, which were developed using and around the unwritten British law, have created a specific judicial culture. This was the culture in which the judges, same as the legislator, were recognized as spokesmen of the law...*"[2].

Nowadays, the common law is one of the largest families of law, of which there are states whose population represents 1/3 of the world population, but which are economically, culturally and traditionally different (Great Britain, Ireland, USA, Canada, Australia, Oceania, New

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[1] Georg Wilhelm Friedrich Hegel, *Principiile filosofiei dreptului*, (Bucharest: IRI, 1996), 208

[2] Alex Castles, *Australian Legal History* (Sydney: Law Book Co, 1981), 553

Zeeland, Nigeria, Ghana, Kenya, Uganda, Tanzania and Zambia). The common element of these states is that in the past they all were under British ruling, which also determined the direct action of the British law, including the jurisprudential one, thus the reception of the principle of precedent

In the national systems of law two stages are to be emphasized: the stage of the active reception of the British jurisprudential law and the acceptance of the principle of precedent and the stage or the establishment of the national jurisprudential law. In addition, simultaneously with the legal norms were created the judicial thinking, technique and the educational system. In other words, *the entire factory of the common law has been transported by colonists in the new territories*[1].

But the question on how the law of the metropolis has influenced the social progress, the social structures, the socio-professional climate and the culture in the colonies arises. The development of the common law was tightly connected with the judicial professionals. Only that their limited number represented an obstacle in the way of the independent development of the jurisprudential law. Neither the colonists had a clear image of the concept of the British common law. They trusted the laws and the legislative organisms, considering that the wide discretionary powers of the judges may be used for the creation of the arbitrary norms. Thus, they appealed the British jurisprudential law associated with the symbols of the natural rights, equity, reasoning, but not with specific norms, established by judges in the process of examining the litigations. It was well known the fact that the common law follows the colonists.

As a result, the common law (jurisprudential) was seen as a natural law, which eased its spreading. In this context, the French scholar R. David stated that "*the thought that the law represents the reasoning, causes for British, according to tradition, a feeling of supranational. The term of common law is usually used without a national label. The*

[1] Castles, *Australian Legal History*, 553

common law is not intended as a supranational law; it is the legacy of all nations of English language"[1].

The French and Italian literature still continues the disputes on the possibility of using in relation to the common law of the masculine or feminine article (*le common law* or *la common law*). In other words, the notion of common law refers to the notion of the right (*ius, droit, diritto, Recht*) or the law (*lex, loi, legge, Gesetz*). In the specialized contemporary English language, the term of law is used both for the right and for the law.

An important element in the creation of the family of the common law was the fact that for the colonial courts, and later for the dominion ones, the common superior court was the Judicial Commission of the Secret Council, which contributed in the uniformity of the national legal systems in the process of establishment. During the examination of the complaints against the judicial decisions from the Community's states, it has been ascertained the fact that at the base of the law of the member states of the common law system were common approaches and principles: "*no matter the differences between the law of the South-African states, the law of the United States, of New Zeeland, most of the fundamental principles have common roots*"[2].

The purpose of the Judicial Commission was to bring the law of the community states in accordance with the British law, so that *the law from the north to the south of the borders to develop as uniform as possible*[3]. Nevertheless, while the national systems were established, the role of the Judicial Commission diminished and even it began to attach more importance to national specificity in the decision-making process. The Judicial Commission has recognized the fact that the force of the common law does not lie in uniformity, but in its capacity of adjusting to the particularities of the national law.

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[1]René David, *Le droit comparé. Droits d'hier, droits de démain*, (Paris: Economica, 1982), 182

[2]Cheali vs Equiticorp Finance Group Ltd. and others, http://www.uniset.ca/other/css/19921AC472.html

[3]Cheali vs Equiticorp Finance Group Ltd. and others, http://www.uniset.ca/other/css/19921AC472.html

The jurisprudential law has contributed not only to the uniformity of the national legal systems, but also to the adaptation of the western culture to the local conditions and traditions. In this way was achieved the development of the diversity of the national legal systems.

Also, the jurisprudential law has become the base of all legal systems found under British influence. The long-term domination of the British law over the law of the Community, the particularities of the development of the common law have conditioned a special judicial culture developed on different continents, but which received a determinant unity, supported by the attention paid by every state to the judicial precedents from other states. Such borrowed precedents were called *convincing*. The practice of invoking such convincing precedents has contributed to the creation of a single judicial culture in that family. The jurisprudential law acts as the liaison within this family.

For the common law systems, the process of borrowing the precedents is very active. Thus, 50% of the New Zeeland's jurisprudence is borrowed from Great Britain, 10% from Australia and a very small amount from Canada. In Australia, 30% of the jurisprudence is borrowed from Great Britain and 1% from New Zeeland. Even Great Britain borrows approximately 1% from the judicial precedents of Australia, Canada and New Zeeland[1].

The proof of the fact that the judicial precedent allows the unification of different judicial cultures is represented by the joint jurisdictions. Their specificity results from the fact that the jurisprudential law coexists either with the Roman-Germanic law (French, Roman-Dutch) or with the religious law (Muslim, Hindu). From the category of the states with joint laws are part Scotland, Quebec, Louisiana, India, Pakistan, Israel, Philippines, Trinidad and Tobago and the South-African Republic. For certain law systems, the judicial precedent is placed in second plan, in other, on the contrary it has a new development, because its flexible feature allows it to adjust to different conditions and therefore in a legal system certain branches are formed

[1]Cheali vs Equiticorp Finance Group Ltd. and others, http://www.uniset.ca/other/css/19921AC472.html

based on the common law, while in others on the fundament of the Roman-Germanic law (see Louisiana, Quebec).

In India, the courts have succeeded to merge the jurisprudential law with the religious law (Hindu and Muslim). In fact, the judges not being knowers of the religious norms have managed to find the appropriate solution by attracting consultants. Therefore, in courts the norms of the Hindu and Muslim laws have been subjected to a series of changes, and as result were created the Anglo-Hindu law and the Anglo-Muslim law.

Currently, the law of precedents contributes in solving the Europeanization of the British law or, in other words, the development of the process within which takes place the ascertainment of the European Union standards by the national law. Within the European Union are dominant the states whose legal systems have Roman-Germanic roots, which is reflected in the features of the European law. In its turn, the experience of Great Britain and Ireland is relevant only under the aspect of the mechanisms used for the purpose of adjusting the common law to the European law.

THE EVOLUTION OF THE JURISPRUDENCE IN CONTINENTAL EUROPE

In the Roman-Germanic law system it is accepted the reference to the solutions given in similar cases[1], for the solving and reasoning of certain jurisprudential solutions, even if this legal system does not consider as source of law the precedent. The same phenomenon happened with the Praetorian law over the Roman law[2]. The Praetorian law was formed by the creative solutions of magistrates for the purpose

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[1] Neil MacCornick, *Interpreting Statutes, A. Comparatives Study* (Hanover: Neil MacCornick, 1991), 567

[2] All these measures, stated by time, represented *ius praetorianum*, creation of two praetors: urban and pilgrim, established in 242 BC to preside the division of justice between the Romans and the pilgrims (*qui inter cives et peregrinos ius dicit*), Andreea Rîpeanu, *Drept roman. Noţiuni fundamentale. Persoanele. Bunurile*, 1st Volume (Bucharest: Cermaprint, 2015), 65

of supporting, amending and correcting the civil law (*adjuvandi vel supleandi vel corrigenda juris civilis gratia*). Also, the civil and the Praetorian law, often through the abolition of customs, of the judicial practice and the legal experts' opinions influenced each other to such an extent that it could no longer be said whether a norm was of civil or Praetorian origin[1]. Regarding the means in which the praetor reacted to the slow modification of the private law, it must be said that the *ius civile* stated norms mandatory for all citizens (as well as for magistrates). At first the praetors facilitated the application of the civil law, to help it through factual measures[2].

The creative solutions offered by the praetors have represented an importance source of inspiration for the legal norms and institutions of the Roman law.

The legal precedent, as source of law, has played a considerable role also during the feudal age, especially between the 15th and 17th centuries. The centralization of the state power and the establishment of the absolute monarchic regimes have increased the importance of the normative acts issued by the monarch, which has determined the gradual diminution of the judicial value of the precedent. The bourgeois revolutions have created legal systems different regarding its place and role and the recognition of the jurisprudence as source of law.

In its turn, the judicial precedent did not receive the recognition as source of law for the bourgeois continental law. The French civil code of 1804 has prohibited for the courts to rule based on general provisions. This normative act, with considerable influence, has dictated directly the non-application and non-recognition of the jurisprudence as source of law in the legal system of the continental Europe. It is the case of the Austrian Civil Code of 1811 (Art 12) and of the German Code of 1794 which stated that for the decisions to be rendered under no circumstance shall be taken into consideration neither the scientists' opinions nor the

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[1] Andreea Rîpeanu, *Drept roman* (Bucharest: Pro Universitaria, 2008), 47; Kipp, *Geschichte d. Quellen des r. Rechts*, 2nd Edition, p.60; Lévy-Bruhl, "Prudent et Préteur", *Reva historique de droit français et étranger* (1926): 56

[2] Digeste, I.1, *Lex*, 7§1 and *Lex*. 8.

precedent decisions ruled by other courts. As result, with the emergence of codifications, the main source of law has become the law itself, drafted and adopted by the legislative organs. The precedent, though a subsidiary source of law, continued to hold an important role in that particular legal system.

CONCLUSION(S)

Both norms, the written and unwritten law, emerging from the same popular will it is natural to have an equal mandatory force. The difference refers only to the means of creation. In the written law, the popular will is manifested, directly or by delegates and expressly, while in the consuetudinary law the same will makes a path, as *tacitus consensus populi*[1].

It results that the norm originating from a custom can abolish a rule belonging to the written law by the fact that is no longer applicable (*desuetudo*), as a new norm, of the written law, can abolish a rule of the consuetudinary law.

The legal practice, also known as the jurisprudence (Lat. jurisprudentia) represents all decisions ruled by all the courts. It is the science of the law[2] or, in other words, the knowledge of the divine and human things, the science of what is fair and unfair (Ulpian). The jurisprudential law or the common law system (from the English common law, case-law, judge-made law) represents the legal system developed based on the jurisprudence of the courts, auctoritas rerum perpetuo similiter indicatum. In the common law systems, the law is drafted and/or modified by judges, who have the authority and responsibility to create law using the case law[3].

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[1] Ulpian, *Reg.: Mores sunt tacitus consensus populi longa consuetudine inventeratus*

[2] *Dicţionarul Explicativ al Limbii Române*, Romanian Academy, "Iorgu Iordan", Institute for Linguistics (Bucharest: Univers Enciclopedic, 1998), 551

[3] *Marbury v Madison*, 5 U.S. 137 (1803)

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e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018, pp. 82-92

THEORETICAL CONSIDERATIONS CONCERNING EUROPEAN INVESTMENT BANK

Ioana-Nely MILITARU[1]

Abstract:

The paper is structured from the perspective of the European Investment Bank's mission to contribute to the balanced and uninterrupted development of the internal market in the interest of the European Union. In this context of concerns, it highlights B.E.I. activities to priority areas: innovation and skills, small business access to finance, climate change and the environment and strategic infrastructure. The work also stops on investment projects that B.E.I. develops them in the Republic of Moldova, and not least on the investment program for the European Union until 2020.

Key words: *European Investment Bank; capital market; financing; European Parliament; projects.*

1. PRELIMINARY REMARKS

The European Investment Bank (EIB) was created in 1958 under the Treaty of Rome by signing it by the six founding states (Germany, France, Italy, Belgium, the Netherlands, Luxemburg) that established the European Economic Community WHAT).

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B.E.I. was set up for the long-term financing of investment projects needed to develop regions left behind. The bank's initial capital was $ 1 billion, consisting of 25% gold and 75% national currencies of member countries. Shareholders of B.E.I. are the Member States of the European Union[1], each of which has the obligation to contribute to the capital of the Bank according to the gross domestic product (of each state).

In 1958, the headquarters of the institution was established in Brussels, and in 1968 he moved to Luxembourg, where he is still present. Banks are also a regional office network in Europe (Athens, Brussels, Lisbon, London, Madrid and Rome) but also outside.

B.E.I. in particular, to finance projects for the development of trans-European transport, telecommunications, energy supply, environmental protection, increasing international competitiveness and industry and small and medium-sized enterprises, EU infrastructure, but also support programs for developing countries Central and Eastern Europe and former Soviet Union countries in the Caribbean, Pacific and African Mediterranean basin[2].

Denmark, France, Italy, Japan, Switzerland and Austria benefited from the first loans.

B.E.I. borrow from capital markets and provide low-interest loans for infrastructure improvement projects, electricity supply, or environmental improvement in both EU countries. As well as in neighboring or developing countries.

2. REGULATION OF THE EUROPEAN INVESTMENT BANK

B.E.I. is included in Articles 308 and 309 of the Treaty on the Functioning of the European Union (TFU); Additional provisions

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[1] I. Boghirnea, *The reasoning of the Formal Sources of Communitary Law*, Annals of Eftimie Murgu University, Fascicola II, (Resita, 2009), 85-91.

[2] J. Echkenazi, *European Union Guide*, (Bucharest: Niculescu, 2008), 30.

supplementing these Articles are also: Art. 15, art. 126, art. 175, art. 209, art. 271, art. 287, art. 289 and art. 343 T.F.U.E.

In addition, the Protocol (No 5) on the Statute of the European Investment Bank and the Protocol (No 28) on Economic, Social and Territorial Cohesion, annexed to the TEU (Treaty on European Union) and T.F.U.E. The European Investment Bank is self-financing, being independent of the European Union budget.

B.E.I. grants long-term funding for projects, guarantees and advice to promote the Union's objectives, supporting projects both within and outside the EU[1]. Investments are placed in industry, services, education, health, environment and infrastructure.

To create additional funding sources for large-scale infrastructure projects in the EU, in particular in the key energy, transport and information sectors, the Europe 2020 Project Bond Initiative was created to fund projects[2]. B.E.I. supports the implementation of the Europe 2020 Strategy objectives. The pilot phase for the implementation of the concept began in the summer of 2012.

B.E.I. has legal personality[3], acting within the limits given to him by T.F.U.E. and by the status provided for in Protocol (No 5) to the Treaties (Article 308 TFUE).

3. THE RESOURCES OF THE EUROPEAN INVESTMENT BANK[4]

According to art. 309 T.FUUE, is funded from its own resources and from the international capital market. Own resources are provided by Member States, according to Art. 308 T.F.U.E.

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[1] Dario Paternoster and Dražen Rakić, *Declares on the European Union, the European Investment Bank*, http://www.europarl.europa.eu/factsheets/ro/sheet/17/banca-europeana-de-investitii , 2018

[2] Dario Paternoster and Dražen Rakić, op. how; Ioana-Nely Militaru*, European Union Law*, Third Edition, reviewed and added, (Bucharest: Universul Juridic, 2017), 345-346.

[3] Valcu Elise, *Institutional Community Law*, University Course. Third Edition, Revised and Addition, (Craiova: Sitech, 2012), 253

[4] Idem

Each Member State contributes to the EIB's capital, according to art. 4 The B.EI Statute, the contribution being calculated according to the economic power of the Member States.

In order to strengthen the EIB's role in financing the economy and supporting economic growth in the Union, the June 2012 European Council recommended an increase of EUR 10 billion in subscribed and paid-up capital. The Board of Governors of the EIB has taken a unanimous decision [Art. 4 par. (3) of the Statute] on the capital increase, which entered into force on 31 December 2012. The subscribed capital increased to EUR 242.4 billion and the subscribed and paid-up capital increased by EUR 10 billion to EUR 21.6 billion. From the international capital market B.E.I. obtains funds by issuing bonds, this being the main source of financing of B.E.I. The European Investment Bank is one of the most important supranational bond issuers in the world. In order to obtain cost-effective financing, it is important that the institution concerned has a high credit rating. The most important credit rating agencies currently assign the highest ratings to the European Investment Bank, reflecting the quality of its credit portfolio. B.E.I. generally finances a third of each project, but financial assistance can reach 50%.

The main funding instruments used by B.E.I. are loans and guarantees. Credits are mainly granted in the form of direct[1] or intermediate[2] credits.

Additional sources of funding included, among others, an initiative of B.E.I. with a view to materializing large-scale infrastructure projects in the EU, particularly in the key energy, transport and information technology sectors. To finance projects, as we have seen, the Europe 2020 bond issuance initiative has been created. The pilot feasibility phase of the concept, as we have seen, started in the summer of 2012.

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[1] Direct project credits are granted subject to conditions, for example, the total cost of the investment should not exceed EUR 25 million and the credit can only cover up to 50% of the project costs.

[2] Intermediate credits consist of lending to local banks or other intermediaries, which in turn support the final beneficiary. Most of the appropriations are granted in the member states

In addition to long-term funding, B.E.I. it also provides advice on infrastructure projects. For example, JASPERS for New and Future Member States provides technical, economic and financial advice throughout the life cycle of the project in order to optimize the use of Structural Fund funding and the Cohesion Fund.

4. THE B.E.I. GROUP[1]

The EIB's shareholders are the EU Member States. In turn, B.EI is the majority shareholder of the European Investment Fund (FIE), together with it is the EIB Group. Under the Investment Plan for Europe proposed by the Commission, the EIB Group is part of a wider strategy to cover the investment deficit by protecting investors from some of the risks inherent in the projects.

The EIB Group was set up in 2000 and is made up of B.E.I. and the European Investment Fund (F.E.I). The European Investment Fund (EIF) was set up in 1994 and was created as a public-private partnership consisting of three main shareholders, namely: the EIB as a major shareholder with 62.2%, the Commission%) and other public and private financial institutions (7.8%). F.E.I. offers various forms of instruments, such as venture capital. Credits granted by F.E.I. focuses in particular on small and medium-sized enterprises (SMEs) and uses a wide range of innovative tools to improve SMEs' access to finance.

5. COMPOSITION AND COMPETENCE OF THE EUROPEAN INVESTMENT BANK

The members of the Bank are Member States. The bank's shareholders - the Member States of the European Union - subscribe collectively to the capital of the bank, and the contribution of each country reflects its economic power in the Union.

The bank is organized as follows[1]:

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[1] Dario Paternoster and Dražen Rakić, 2018, op. how; Valcu Elise, *European Community Law*, (Craiova: Sitech, 2008), 218

a. The Governing Council shall be responsible for the management of the EIB; is composed of the finance ministers of the Member States. The Governing Council sets out the general guidelines for credit policy, approves the annual balance sheet and report, decides to increase the capital and appoints the members of the Board of Directors of the Governing Board and the Verification Committee;

b. The Management Board has 24 members proposed by the Member States and one proposed by the European Commission. Members are appointed for five years.

c. The Governing Board shall be composed of the Chairman and Vice-Chairmen of the Bank for a period of six years, on the basis of the proposals of the Board of Directors and the Governing Council.

d. The Verification Committee, appointed by the Board of Governors, is responsible for checking the regularity of bank operations.

B.E.I. cooperates with the EU institutions, its representatives participate in the committees of the European Parliament, and the President of the European Parliament. attends Council meetings when the Ministers of Economy and Finance of the Member States meet.

By appealing to the capital markets and its own resources, B.E.I. has the mission to contribute to the balanced and uninterrupted development of the common market in the interest of the Union (Article 309 TFUE). To this end, the Bank facilitates, by granting loans and guarantees and without pursuing a lucrative purpose, the financing in all sectors of activity of the following projects:

a. projects aimed at developing less-debated regions;

b. projects aimed at modernizing or converting entrepreneurs or creating new activities as a result of the establishment of a progressive common market which, by their size or nature, can not be financed entirely by the different means existing in each of the Member States;

c. projects of common interest for several Member States which, by their size or by nature, can not be fully funded by the various means existing in each Member State (Article 309 TFEU).

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[1] O. Ţinca, *General Community Law*, (Bucharest: Didactic and Pedagogical, 1999), 98; Militaru, *European Union Law*, 347.

Also, B.E.I. facilitates the financing of investment programs, coupled with assistance from the Structural Funds and other Union financial instruments.

The European Investment Bank should not be confused with the European Bank for Reconstruction and Development (BERR). B.E.R.D. was created in 1991 with the contribution of B.E.I. - 3%, for the purpose of lending to Central and Eastern European countries, in order to achieve the transition to a functioning market economy[1]. Upon the establishment of B.E.R.D. more than 40 countries participated; more than half of its share capital is constituted, with the participation of the European Union[2].

6. INVESTMENT PROJECTS IN THE REPUBLIC OF MOLDOVA OFFERED BY B.E.I

The European Investment Bank is interested in developing relations with the Republic of Moldova. Thus, B.E.I. provide assistance for the implementation of national road rehabilitation projects and financially support projects aimed at aligning the vocational system with the needs of the labor market in the field.

In 2014, the European Investment Bank grants 100 million euros to Moldovan fruit producers (based on a statement of intent to launch and implement this project). Another project of cooperation between B.E.R.D. and B.E.I. offered to Moldova is an investment of 130 Million Euro for infrastructure, which is very important, transport and water.

In 2018, the representatives of the United Nations Development Program of Moldova (NNU) and the EIB. have reconfirmed the availability of financial support for projects in the field of energy efficiency in the public and residential sector. "Unlocking the Energy Efficiency Market of the Building Sector in the Republic of Moldova". In this context of concern, the representatives of P.N.U.D. and B.E.I. have

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[1] C. D., *European Union. Institutions. Mechanisms*. Ed. III, (Bucharest:C H Beck, 2007), 80-81

[2] Dacian, 80-81

reconfirmed the availability of financial support for public and residential sector energy efficiency projects[1].

"Unlocking the Energy Efficiency Market for the Building Sector in the Republic of Moldova" is aimed at unblocking the financing for public and residential buildings by creating a comfortable legal framework and a favorable investment climate, as well as attracting additional financial resources from global initiatives approach to environmental issues. The projected budget of the initiative is about 86 million dollars, of which $ 60 million is provided by the EIB, and $ 26 million - obtained as non-reimbursable resources from the F.V.C.[2] .

CONCLUSIONS. THE EUROPEAN INVESTMENT BANK AND THE NEW INVESTMENT PROGRAM FOR THE EUROPEAN UNION[3]

In recent years, the European Union has faced a low level of investment due to the global financial and economic crisis, which is why the Union institutions have provided for an appropriate legislative framework for this period, which has materialized in the following legislative initiatives:

- the Commission's Communication, entitled "An Investment Plan for Europe", comes with solutions to ways to boost investment in the EU[4]. , creating jobs and stimulating economic growth and long-term competitiveness;

- the proposal for a regulation[5] of the European Parliament and of the Council on the European Investment Fund (ESF)[6];

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[1] http://www.basarabia.md/republica-moldova-pnud-si-bei-isi-consolideaza-efortul-de-colaborare-in-domeniul-eficientei-energetice/

[2] http://www.basarabia.md/republica-moldova-pnud-si-bei-isi-consolideaza-efortul-de-colaborare-in-domeniul-eficientei-energetice/

[3] Paternoster and Rakić, *Declares on the European Union, the European Investment Bank*

[4] COM (2014) 0903.

[5] I. Boghirnea, *The General Theory of Law*, ed. 3rd, (Craiova:Sitech, 2013), 29.

[6] COM (2015) 0010.

- Legislative resolution adopted by the European Parliament (25 June 2015) on the proposal for a regulation of the European Parliament and of the Council on the European Investment Fund[1]. F.E.I.S. has set out to generate private investment by mobilizing public funds and creating an investment-friendly environment.

To this end, a parliamentary committee evaluates the activities of B.E.I. and report back to the plenary session at which the EIB president is invited. On April 28, 2016, Parliament adopted a resolution on the Annual Report of B.E.I. in 2014. Parliament's resolution proposed that the new investment program should aim to support EU policy objectives. prioritizing investments to speed up economic recovery and increase productivity by:

- promoting employment among young people, innovation and SMEs;
- enhancing environmental sustainability and climate change mitigation measures;
- promoting economic and social cohesion and convergence.

Through its adopted resolution, Parliament specified the need for F.E.I.S. to operate effectively, fully transparent and fair, and reminded that the guarantee for F.E.I.S. is intended to allow B.I.I. to take more risks; Parliament also proposed that B.E.I. to seriously assess the financial, social and environmental impact of the project bonds initiative, to update the external dimension of B.E.I. and to increase the governance, transparency and control framework of B.E.I.

The EIS Regulation also established the European Investment Advisory Board (EIA), which aims to provide advice and technical assistance for identifying, preparing and developing investment projects. E.I.A.H. is a partnership between B.E.I. and the Commission, both of which contribute financially[2]. B.E.I. is responsible for the management of the counseling platform.

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[1] Texts Adopted, P8_TA (2015) 0236.

[2] Paternoster and Dražen Rakic, *Declares on the European Union, the European Investment Bank*

In December 2017, the so-called "F.E.I.S. 2.0 ", which entered into force on January 1, 2018, and extends the duration of F..E.I.S (until the end of 2020), also improving fund and E.I.A.H. One of the main elements is the increase of the U.E. guarantee to EUR 26 billion and of the B.E.I. to EUR 7.5 billion, in order to mobilize additional investment funds worth 500 billion EUR[1].

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e-ISSN: 2344-6900, ISSN-L: 1583-0772
No.2 (19), Year XVII, 2018, pp. 93-98

FUNERAL TRANSPORT

Marian BĂDILĂ[1]

Abstract:

We can say that the degree of development of a country's transport illustrates the country's living standards, as the writer Rudyard Kipling affirmed in a metaphor "a civilization is a road." Thus, transport activity has, over time, been a way of knowing what surrounds us, by facilitating our access to various places in the world. If we relate the transport of persons or by facilitating the arrival of goods at various destinations, according to freight transport, the mode of transport varies. At the same time it is necessary to consider that the funeral transport, which can be considered the last wish of a person, is closely related with the right to the memory of a deceased person.

Key words: *transport; funeral; authorization.*

Concerning the transport contract, the headquarters of the domain is represented by the 1955 Articles and by the following from the Civil Code.

Therefore, through the transport contract it is understood the consent of will by which one part, the transporter, binds himself, with principal title, to haula person or a good from a place to another in exchange for a price that the passenger, the sender or the recipient binds to pay at the place and time set.[2]

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[2] Fl. Baias, E.Chelaru, R. Constaninovici, I.Macovei, *Noul Cod Civil, Comentariu pe articole* (Bucharest: C.H.Beck, 2012), 1967.

The funeral transport is included in the domain of the local public transport, this being carried out only by authorised people in this regard. Provisions relating to funeral transport are contained in normative acts such as Law 102/2014 on cemeteries, cremations and funeral services; Law 92/2007 on local public transport services and the Government Decision on the approval of technical and sanitary norms for funeral services, burial and exhumation of human corpses, cemeteries, crematories, as well as the conditions to be carried out by the providers of such services, adopted on the basis of Art. 40 of Law 102/2014.

The activity of funeral transport performed in the acception of the normative acts, presented above, is exercised by the authorised personnel in this purpose and it includes the actual transport of the corpse, from the place of death to the place where he is given care, but also from this point, to the place where he is going to be kept until burial or incineration, including the transportation to the place of burial or incineration.

Law 102/2014 states on the transport of deceased persons by the Articles 28 and, respectively, 29.

Thus, the Article 28 forsees that the transport of deceased persons will be performed only through well-equipped cars in this regard, in airtight closed coffins, by the authorised personnel, this performing, in case of deaths caused by contagious illnesses, only based on a certificate issued by a specialist in Forensic Medicine or Pathological Anatomy and a certificate of burial issued by the authority of the local public administration.[1]

This local public transport performed with special-equipped cars in this regard, is based on an authorisation issued by the authority of the local council with the purpose of performing this activity.[2]

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[1] Article 28 of Law 102/2014 on cemeteries, crematories and funeral services accessed on-https://idrept.ro/DocumentView.aspx?DocumentId=00164602-2014-07-11&DisplayDate=2018-04-25, published in Official Journal of Romania, I Part, nr. 520/05th July, 2014.

[2] Article 37 of Regulation on performing local public transport of persons by regular rides, the local public transport of persons by special regular rides, the local public

Hence, in case of the administrative centre of Pitesti, the authorisation is granted as a result of the Regulation upon the performing of the local public transport of persons by regular rides, the local public transport of persons by special regular rides, the local public transport of goods under contractual conditions, the local public transport of goods by tractors with trailers and the public transport attained with special vehicles assigned to funeral services, in the administrative centre of Pitesti.[1]

In order to obtain this authorisation, people who possess properly equipped cars in reference to funeral transport, have to submit at the town hall of the administrative centre of Pitesti: a) an application form; b) a copy of the certificate of matriculation issued by the Trade Register with the object of activity for the respective transport service; c) a copy of the matriculation certificate of the car; d) the copy of the lease contract for cars owned in this way; e) the proof of the space required for parking the used vehicles, the space owned in property or through the lease contract; f) the copy of the certificate of the professional competence of the designated person and the proof that he is employed in the domain of transport.[2]

The copy of the authorisation is to be issued in the same number for how many cars owns the physical or the legal person who carries out the funeral transport.

-Therewith, the driver of this type of vehicle must have the following documents with him, to be presented, in case of a control: a) the copy of the transport authorisation; b) the fiscal document which certify that the service was paid in advance; c) the driver's valid ID

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transport of goods under contractual conditions, the local public transport of goods by tractors with trailers and the public transport attained with special vehicles assigned to funeral services, in the administrative centre of Pitesti accessed on - http://www.primariapitesti.ro/portal/arges/prim/portal.nsf/6064D127450E4486C22580EA0032AD88/$FILE/2.Regulament%20transport%20local%20de%20calatori.pdf

[1] http://www.primariapitesti.ro/portal/arges/prim/portal.nsf/6064D127450E4486C22580EA0032AD88/$FILE/2.Regulament%20transport%20local%20de%20calatori.pdf

[2] Article 37 (3) of Regulation on performing local public transport of persons

employment papers, from which to ensue that he is an authorised transport employee, with the exception of the physical people/the family associations authorised as a transporter, in case the driver is the physical person or one of the members of the family association.[1]

The withdrawal of the authorisation is attained by the Mayor's order, as granting it, in the cases provided in the Regulation, namely: a) in the event of a beginning of a legal reorganisation or a bankruptcy of the authorised transporter; b) if the authorisation titular intends to stop providing services; c) the authorised transporter has exceeded the transport authorisation's term of validity with more than 30 days and hasn't requested the visa in due time; d) in case when the authorisation's titular no longer fulfills one of the conditions under which it was granted; e) in case when the authorisation's titular provided douments which contained erroneous information when it was requested the granting or the endorsement of the transport authorisation; f) in case of deviations which have seriously affected public life and health, traffic safety or environmental protection; g) in the event of breaching compliance measures ordered by the authorising authority; h) in case of the refusal of the authorisation's titular to submit to the control or to have the requested data and information at the authorising authority during the control.[2]

In the matter of the international funeral transport, according to the Article 29 of Law 102/2014 on cemeteries, crematories and funeral

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[1] Article 38 of Regulation on performing local public transport of persons by regular rides, the local public transport of persons by special regular rides, the local public transport of goods under contractual conditions, the local public transport of goods by tractors with trailers and the public transport attained with special vehicles assigned to funeral services, in the administrative centre of Pitesti accessed on - http://www.primariapitesti.ro/portal/arges/prim/portal.nsf/6064D127450E4486C22580EA0032AD88/$FILE/2.Regulament%20transport%20local%20de%20calatori.pdf

[2] Article 39 of Regulation accessed on http://www.primariapitesti.ro/portal/arges/prim/portal.nsf/6064D127450E4486C22580EA0032AD88/$FILE/2.Regulament%20transport%20local%20de%20calatori.pdf

services, deceased persons abroad will be transported only based on a mortuary passport.[1]

Therewith, the funeral transport is provided and carried out based on the norms of the international conventions, which is accomplished in the following ways:

- It can be done only under the conditions provided by the country's national legislation and in accordance with applicable international rules;
- Consular staff may provide details about this procedure and may facilitate contact with funeral homes providing transport in Romania;
- For the international transport of dead bodies, the mortuary passport is required; the mortuary passport is issued by the Romanian Embassies or Consulates (there is no need of a mortuary passport for the transport of the urns with the cremated ash).[2]

CONCLUSIONS

Therefore, concerning those mentioned above, we can state that the activity of transport has a variety of ways regarding its carrying out, but also the participating parts and the object of the contract, which may even be represented by a defunct.

As a result of the analysis of the legislative framework in the domain of funeral transport, we appreciate that there is a good regulation, meant to ensure the performing of these activities with the abidance of the order of law, good morals, but above all, the memory of the deceased person.

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[1] Article 29 of Law 102/2014 on cemeteries, crematories and funeral services accessed on - https://idrept.ro/DocumentView.aspx?DocumentId=00164602-2014-

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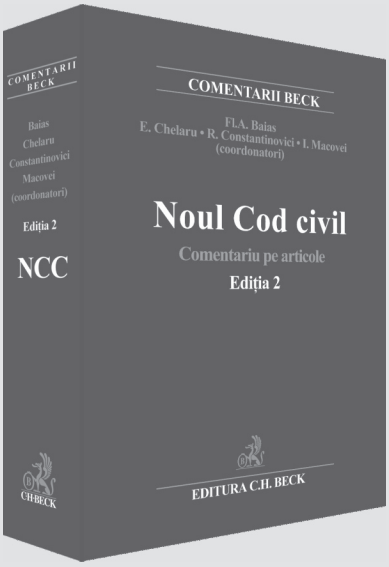
Colecția „Comentarii BECK”

Ediția 2

Noul Cod civil

Comentariu pe articole



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ISBN 978-606-18-0414-6 | **Pagini:** 2960 | **Preț:** 599 lei

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Codul civil

Actualizat la 17.09.2018

Ediție coordonată de prof.univ.dr. Flavius-Antoniu Baias

ISBN 978-606-18-0731-4 | **Pagini:** 600 | **Preț:** 32,90 lei