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WORDS and Rights

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Words and rights

It starts with one word. Then it may continue as literature, laws, discourses, sermon, and talks. It may bring love, war, peace, hate, death, fear, discrimination or put an end to all of the above. Our society regards the freedom of the expression as a supreme value and as a concept of the inherent human right to voice one's opinion publicly without fear of censorship or punishment. The same society is forced to impose restriction on such a generous freedom, in order to protect specific public interest or the rights and reputations of others. Words and rights are in a continuous search of balance, at different levels of society. Therefore, we invite lawyers, social and educational science researchers to put words and rights in specific context. Our aim is not finding an answer, but to put together facets of a volatile mosaic modulated by such a wide range of factors.

THE BALANCE BETWEEN THE RIGHT TO FREEDOM OF EXPRESSION AND THE PROTECTION OF THE PERSONALITY RIGHTS FROM THE JURISPRUDENCE PERSPECTIVE

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Abstract

The article presents, from the perspective of the jurisprudence, namely the European Court of Human Rights case law, the particularities of the freedom of expression, one of the essential freedoms within a democratic society and its limitations imposed by the duties and responsibilities its exercise carries with it. While implementing the best mechanisms to protect this fundamental right, any democratic society should also focus on finding the right balance between protecting both the freedom of expression and the personality rights, among which we can mention the right to one's image or the right to privacy.

Keywords: right, balance, freedom of expression, protection, image.

Introduction: As stated by the doctrine “the idea of rights has ancient roots, which date back to the idea that human beings are unique and that their nature requires the exercise of certain faculties if they are to flourish.”¹

Freedom of expression is considered “not just a human right, but the fundamental human right”², since in its absence all other rights are in danger.

That is the reason why it is widely regulated and protected both at international and national level. The challenge of a Court in protecting this right is to find a right balance between the freedom of expression and the protection of the personality rights, like, for instance, the right to one's image, the right to privacy or the right to freedom of religion.

¹ John R. Vile, *The Bill of Rights and Freedom of Belief and Expression: They Provide for Liberty, Not License in The United States Constitution. One document, Many choices*, Palgrave Macmillan Publishing House, 1849, p. 110 apud https://link.springer.com/chapter/10.1057/9781137513502_7.

² <https://icorn.org/article/what-freedom-expression-and-why-it-important>.

According to the doctrine, this particular freedom, that of expression, must be “conceptualized as a right that belongs to society generally, and one that is practiced by collectives, and not just the media or individuals”.³

Regulation of the right to freedom of expression

The freedom of expression is regulated by Article 19 of the Universal Declaration of Human Rights, as follows “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

Similarly, Article 10 of the European Convention of Human Rights expressly recognizes to everyone the right of freedom of expression, right which shall include “freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.

However, the exercise of these freedoms is not absolute, carrying with it duties and responsibilities, and “may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

At national level, we should first mention the dispositions of Article 30 of the Romanian Constitution, which stipulates in its first paragraph that “freedom of expression of thoughts, opinions or beliefs and the freedom to create in any manner, orally, in writing, through images, sounds or other means of communication, in public, are inviolable.” According to the second paragraph of the above mention Article, “censorship of any kind is forbidden”. However the national fundamental law, expressly regulates the limits in exercising the freedom of expression, which “cannot prejudice the dignity, the honour, the private life of any person, nor his right to his own image”.⁴ The Constitution also prohibits “the defamation of the country and of the nation, the urge to aggression war, to national, racial, class or religious hate, inciting to discrimination, to territorial separatism or public violence, as well as obscene manifestations, contrary to good morals.

The Romanian Civil Code does not define the right to freedom of expression, although it regulates it expressly as part of the rights of personality, stipulating in the first paragraph of Article 70 that “everyone has the right to freedom of expression”, while the second paragraph regulates that “the exercise of this right may be restricted only in the cases and limits provided in Art. 75.”

According to the first paragraph of the above mentioned Article there is no violation of those rights in case of violations allowed by the law or international human rights conventions and pacts to which Romania is a party.

³ Jane Duncan, *Beyond Human Rights Ideology: Struggles for Freedom of Expression in Africa, Human Rights in Africa*, pp 259-284, SpringerLink, 2019, apud https://link.springer.com/chapter/10.1057/978-1-137-51915-3_9.

⁴ Article 30, par. 6 of the Romanian Constitution.

The second paragraph of the same Article, regulates that “the exercise of constitutional rights and freedoms in good faith and in compliance with the international pacts and conventions to which Romania is a party shall not constitute a violation of the rights provided for in this section.”

European Convention of Human Rights Case Law

The ECHR jurisprudence offers many examples of cases dealing with the European Court challenge of finding the proper balance between the protection of freedom of expression and the protection of other personality rights.

In *Axel Springer SE and RTL Television GmbH v. Germany* 21 September 2017, a case concerning “the complaint by two media companies about a judicial order banning the publication of images in which the defendant in a criminal trial for murder could be identified, the Court held that there had been no violation of Article 10 (freedom of expression) of the Convention.”⁵

According to the European Court of Human Rights, “the national judge had carefully balanced the opposing interests. The order had been proportionate to the legitimate aim pursued, namely to protect the personality rights of the defendant – who was not a public figure – during his trial, in the course of which he was to be presumed innocent until proved guilty. The Court noted in particular that the order had not been a particularly severe restriction on reporting; taking images as such had not been limited.”⁶

In another case, *Bild GmbH & CO. Kg and Axel Springer AG v. Germany* 4 December 2018 which “concerned an order prohibiting the publishers of the mass-circulation daily newspaper Bild from publishing or distributing a photograph of a well-known Swiss journalist taken while he was in pre-trial detention, The Court declared the application inadmissible, finding that the German courts had duly balanced the applicant companies’ right to freedom of expression and the right to privacy of the television presenter, who had been in pre-trial detention at the time. In particular, in the Court’s view, although the photograph in question had not been defamatory, depreciatory or degrading for the television presenter’s image, it had nevertheless shown him in a situation – in a prison yard – where he could not have expected to be photographed. As to the penalty imposed on the two applicant companies, the Court observed that the German courts had simply banned them from further publishing or distributing the photograph and ordered them to repay a modest sum in lawyer’s fees.”⁷

In *Constantinescu v. Romania* 27 June 2000, a case concerning the alleged violation of freedom of expression invoked by “the leader of a teachers’ trade union (who) had been convicted of defaming three teachers by calling them “thieves” (delapidatori) after theft

⁵ https://www.echr.coe.int/Documents/FS_Own_image_ENG.pdf.

⁶ https://www.echr.coe.int/Documents/FS_Own_image_ENG.pdf.

⁷ https://www.echr.coe.int/Documents/FS_Own_image_ENG.pdf.

and other charges against them had been dropped”⁸, the Court emphasized once again the limits of the analysed freedom of expression.

According to the European Court of Human Rights, those limitations should also exist, “even if the statements had been part of a debate on the independence of the unions and the functioning of the judiciary, which were questions of public interest. The applicant had a duty to keep within certain limits, in the interests, in particular, of the reputations and rights of others, notwithstanding his position as union representative. Acknowledging the defamatory nature of the remark, the Court held “that it [had been] quite feasible for the applicant to express criticisms and thereby contribute to the free public discussion of trade union issues without using the word *delapidatori*”⁹. It therefore concluded that there had been no violation of Article 10.”¹⁰

The protection of the rights of others in connexion with the freedom of expression is also analysed by the ECHR in *Wingrove v. the United Kingdom* case, where “the Court held that the British Board of Film Classification’s refusal, on the ground of blasphemy, to grant a classification certificate to the video *Visions of Ecstasy*, written and produced by the applicant, was not contrary to Article 10. In such cases, it said, the national authorities were in principle in a better position than the international judge to give an opinion on the exact content of the requirements regarding protection of the rights of others”.¹¹

Conclusions: The freedom of expression, referred to by the European Court of Human Rights “as a key ingredient of a democratic society”¹² is the fundamental human right, linked to many other rights and freedoms that a human being should be guaranteed.

However, as stated by Article 10 of the European Convention of Human Rights the exercise of this freedom should not be considered absolute, as it involves restrictions, duties and responsibilities. Those restrictions are also to be found in the ECHR jurisprudence, the Court emphasizing that “Article 10 of the Convention [did] not guarantee unrestricted freedom of expression, even in press reports on serious questions of general interest”.¹³

⁸ *Constantinescu v. Romania*, No. 28871/95, judgment of 27 June 2000, Reports 2000-VIII, §74 in Freedom of expression in Europe Case-law concerning Article 10 of the European Convention on Human Rights, Council of Europe Publishing Editions du Conseil de l’Europe, 2007, p. 108 apud [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf).

⁹ *Ibidem*.

¹⁰ Freedom of expression in Europe Case-law concerning Article 10 of the European Convention on Human Rights, Council of Europe Publishing Editions du Conseil de l’Europe, 2007, p. 108 apud [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf).

¹¹ *Wingrove v. the United Kingdom*, judgment of 25 November 1996, Reports 1996-V, §§58 in Freedom of expression in Europe Case-law concerning Article 10 of the European Convention on Human Rights, Council of Europe Publishing Editions du Conseil de l’Europe, 2007, p. 105 apud [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf).

¹² *Bowman v. the United Kingdom*, judgment of 19 February 1998, Reports 1998-I, §42 in Freedom of expression in Europe Case-law concerning Article 10 of the European Convention on Human Rights, Council of Europe Publishing Editions du Conseil de l’Europe, 2007, p. 106 apud [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf).

¹³ *Fuentes Bobo v. Spain*, No. 39293/98, judgment of 29 February 2000, §45 in Freedom of expression in Europe Case-law concerning Article 10 of the European Convention on Human Rights, Council of Europe Publishing Editions du Conseil de l’Europe, 2007, p. 107 apud [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf).

Finding a right balance between the freedom of expression and the personality rights should be an imperative, both for national as well as for international Courts, although such a desideratum is not easy to accomplish.

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Echilibrul dintre dreptul la libertatea de expresia și protecția drepturilor personalității din perspectiva jurisprudenței

Rezumat

Articolul prezintă, din perspectiva jurisprudenței Curții Europene a Drepturilor Omului, particularitățile libertății de expresie, una dintre libertățile fundamentale într-o societate democratică și limitările acesteia, impuse de obligațiile și responsabilitățile pe care exercițiul acesteia le presupune. În procesul de implementare a celor mai bune mecanisme de protecție a acestui drept fundamental, orice societate democratică trebuie să fie preocupată de găsirea unei balanțe corecte între protejarea atât a libertății de expresie, cât și a drepturilor personalității, între care putem menționa dreptul la propria imagine sau dreptul la viață privată.

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FREEDOM OF EXPRESSION. SOME CONSIDERATIONS FOR THE DIGITAL AGE

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Abstract

The present article deals with the age-long antagonism between an individual's freedom of expression and the position of authority one or several peoples possess. Throughout history, we have encountered many instances of famous thinkers and philosophers having been censored and denied their freedom of expression. From the time of ancient Greece to the modern Universal Declaration of Human Rights, mankind's struggle to codify the individual's right to free speech plays a paramount role

Keywords: freedom of expression, hate speech, fake news, age of the Internet

Introduction: It was perhaps Italian thinker Umberto Eco who most recently struck a chord with an enormous number people worldwide almost unintentionally. It was during a so-called *lectio magistralis* which he held at the University of Turin in 2015 that Eco formulated the following statement¹:

“Social media gives legions of idiots the right to speak when they once only spoke at a bar after a glass of wine, without harming the community. Then they were quickly silenced, but now they have the same right to speak as a Nobel Prize winner. It's the invasion of the idiots”.

Eco's statement, especially the formulation “invasion of the idiots”, seems to have put the finger in the wound, encapsulating in his affirmation a pervasive feeling of unease with regard to the influence social media has come to play in very recent times and the emerging area of conflict between three main actors: individual countries, i.e. national

¹ In the original: “I social media danno diritto di parola a legioni di imbecilli che prima parlavano solo al bar dopo un bicchiere di vino, senza danneggiare la collettività. Venivano subito messi a tacere, mentre ora hanno lo stesso diritto di parola di un Premio Nobel. È l'invasione degli imbecilli” (in Lupacchini, 2016).

governments, the so-called “tech giants”, most notably Facebook and Twitter, and the general public, i.e. private citizens, which consist of active users of social media, exercising their right to comment upon various political and non-political issues “trending” on social media. More aggressive forms of this phenomena have been termed by media specialists as “fake news”, i.e. willful disinformation campaigns of users (and voters), especially related to political events, such as, for instance, the election of Donald Trump as President of the United States².

This very recent debate rekindled the ancient and everlasting antagonism revolving between, as John Stuart Mill put it, “the struggle between Liberty and Authority”³. Eco’s statement was translated in numerous languages and led to a wide-ranging debate in Western Europe and the US as to whether freedom of expression in new online media, such as Facebook, Twitter and others, has priority over the rules and regulations valid for more traditional media (books, newspapers, journals), given the fact that virtual space has had, up to very recent times, no judicial restrictions whatsoever, given the user’s (putative) anonymity, restricted access of the readership to the published statement (i.e. internet access) and the lack of clear laws with regard to the Internet, mankind’s latest technological achievement.

Cultural, social and political implications of freedom of expression

Even though the Internet is a recent yet revolutionary invention, the principles revolving around what freedom of expression actually constitutes, its limits, and the regulations that apply for any citizen is as ancient as humanity itself. Prior to the age of the Internet, the discussions focused on the idea of what a man was allowed to utter or write when he found himself to be at odds with an established orthodoxy, be it religious, political or social. One of the oldest and best known cases of conflict between an individual and such an “orthodoxy” recorded in literature is the famous case of Socrates’s trial for “impiety” and “corruption of youth” in ancient Greece. In Plato’s *Άπολογία Σωκράτους*, Socrates, upon hearing the charges against him⁴, provides an eloquent and defiant answer which, *mutatis mutandi*, seems to be very similar to the views held by free speech supporters in our day and age:

“And therefore if you let me go now, and reject the counsel of Anytus, who said that if I were not put to death I ought to not to have been prosecuted, and that if I escape now, your sons will be utterly ruined by listening to my words – if you say to me, Socrates, this time we will not mind Anytus, and will let you off, but upon one condition, that you are not to inquire and speculate in this way any more, and that if you are caught doing this again you shall die; – if this was the condition on which you would let me go, I

² The public accusations that online Russian disinformation campaigns influenced the result of the most recent US Presidential campaign have been amply discussed in the US and Western European press.

³ John Stuart Mill, *On Liberty, Utilitarianism and Other Essays*, Mark Philp & Fredrick Rosen (eds.), Oxford: Oxford University Press, 2015, p. 5.

⁴ Socrates was accused not only of the “corruption of youth” by expounding his ideas, but also of impiety against the Athenian pantheon.

should reply: Men of Athens, I honor and love you; but I shall obey rather God than you [...]”⁵.

What Socrates expounds in this passage is in fact the idea that no man should be allowed to hinder another man’s expression of his thoughts, political or religious convictions, even (or especially) if the former has a position of authority over the latter. This idea has been formulated by George Orwell as a form of personal liberty of the individual, Orwell’s view on freedom of expression in this case being that “if liberty means anything at all it means the right to tell people what they do not want to hear”⁶.

The same conflict between freedom and authority manifests itself throughout the Middle Ages, where freedom was the counterbalance of religious authority. A good example of this is the case of the Italian astronomer Galileo Galilei, the champion of heliocentrism. Galileo was brought in front of the Holy Inquisition due to his claim that the earth did not revolve around the sun and not vice-versa.

On a political level, the so-called Bill of Rights in England, signed into law in 1689 by William III and Mary II, as co-rulers of England. The importance of the English Bill of Rights is paramount when it comes to limiting the power of the English monarch and the establishing of unprecedented civil rights, such as the requirement of a permanent Parliament, free elections: “that election of members of Parliament ought to be free;” and freedom of speech in Parliament: “the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”.

In France, following the French Revolution, the “*Declaration of the Rights of Man*” (French: “*Déclaration des droits de l’homme et du citoyen de 1789*”) is passed in 1789. The declaration was drafted by Abbé Sieyès and the Marquis de Lafayette, influenced by Thomas Jefferson and the doctrine of natural law, claiming that man’s rights are universal: they are valid everywhere and at all times. This declaration is included in the French constitutions of 1946, 1958 and is perceived even today as a core value of European Enlightenment.

The US Bill of Rights, ratified in 1791, guaranteed in its first amendment not only free exercise of one’s religion, but also the freedom of speech and of the press: “Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof; or abridging the freedom of speech, infringing on the freedom of the press [...]”.

In far more recent times, the United Nations adopted the Universal Declarations of Human Rights in 1948, which represents the modern cornerstone of civil liberties worldwide, promoting freedom of expression regardless of nationality, religion or any other similar characteristics. As far as freedom of expression is concerned, Article 19 states that “everyone has the right to freedom of opinion and expression; this right

⁵ Plato, *Six Great Dialogues: Apology, Crito, Phaedo, Phaedrus, Symposium, The Republic*, Benjamin Jowett (transl), New York: Dover Publications, Inc. 2012, pp. 11-12.

⁶ George Orwell, “The Freedom of the Press”. *Preface. The Animal Farm*. <http://orwell.ru/~library/novels/Animal_Farm/english/efp_go>, last accessed on 01.05.2019.

includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

In the US, the main legal rule governing speech is the First Amendment to the American Constitution. Moreover, in interpreting this amendment, the Supreme Court has formulated the rule of avoiding contentbased regulation. This interpretation of the First Amendment argues that political speech can only be banned for the way, time and place it is delivered, but not for its content. Accordingly, the banning of speech is acceptable only when it presents a “clear and present danger” to safety and the rule of law. In other words, only direct incitement to breaking the law (not even advocacy for such an action) can be banned⁷.

On the other hand, the European Convention on Human Rights in its interpretation by the Court accepts the banning of hate speech. Article 10 of the European Convention on Human Rights states: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. [...] The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Strongly influenced by a dignitarian thinking, the Convention limits free expression on a rather large number of grounds such as national security, public safety, health and the “rights and reputation of others”. When interpreting the Convention, the ECHR has been unable to formulate a test to distinguish between what hate speech is and is not. Thus, as the legal doctrine pointed out, the ECHR has failed to show a good reason for banning some forms of speech and not others⁸.

However, when it comes to our day and age, and especially to the freedom of expression in virtual reality, online forums and social media, it is Germany that attracts the attention of the informed observer, due to its so-called “*Netzwerkdurchsetzungsgesetz*” (English: Network Enforcement Act), which was passed in the Bundestag in June 2017.

The law was passed to address the very modern problem of “fake news” and “hate speech”, published by users of social media, in an attempt of the German government to regulate the virtual medium and oblige social media giants, such as Facebook and Twitter to review, and if necessary, delete any messages containing either “hate speech” or “fake news”. Problematic is in this case, according to critics of the aforementioned law, the fact that the decision to delete a user comment will be taken by a private

⁷ Michel Rosenfeld, “Hate Speech in Constitutional Jurisprudence: A Comparative Analysis”, in P. Molnár, M.E. Herz, *The Content and Context of Hate Speech: Rethinking Regulation and Responses*, Cambridge University Press, 2012, pp. 242-289.

⁸ Adriana Iordache, “Free Speech in the Jurisprudence of the Romanian Constitutional Court: between Personal Dignity and Anti-Discrimination”, in *Noua Revistă de Drepturile Omului*, 4:5-20, p. 11.

company and not by state institutions after having been given a fair trial. In a way, critics said this law creates a parallel justice system, which not only exercises its authority in accordance with its own rules, but would also be seen as an indirect way to censor the users, contradicting article 5 of the German *Grundgesetzbuch*, which explicitly forbids any instances of state censorship: “Censorship is banned” (our translation).⁹

Very recently, it has been revealed in “*Die Zeit*” that only less than half of the instances in which user comments had been deleted had been lawfully deleted¹⁰. According to the article, only two per cent of the comments represented legal contraventions, with Alexandra Koch-Skiba, director of the Cologne ombudsman, stating that “the current yearly report shows, that the companies remove content which predominantly infringe their own standards”.¹¹ This seems problematic, given the fact that critics of the aforementioned law seem to confirm their fears of a private company implementing its own rules and regulation, thereby circumventing the legal prerogatives set forth by the state.

“*Der Spiegel*” published in April 2019 an article in which it was reported that the German Federal Office of Justice (German: *Bundesamt für Justiz*) intended to launch a lawsuit against a major social network, due to the fact that it failed to vigorously combat “hate speech” comments: “‘In at least 100 cases’, the said company failed to remove hate speech comments and other content in spite of users’ complaints, states the WDR”¹² (our translation).¹³

All in all, the historical as well as socio-political development of the concept of “freedom of speech” doubtlessly proves that the age-old conflict between freedom and power is still as relevant today as it had been throughout mankind’s history.

Another delicate subject in this matter is the establishment of jurisdiction in the case of messages/comments posted online, due to the fact that national laws can vary quite considerably in the extent to which they tolerate hate speech. It is common practice for hate websites to be hosted in jurisdictions that are considered to be favourable to, or tolerant of, hate speech. The practice of strategically choosing favourable jurisdictions in which to host a site is sometimes called “forum-shopping”. It leads to regulatory circumvention and attempts to evade legal liability for hateful content¹⁴.

⁹ In the original: “Eine Zensur findet nicht statt”, Article 5, *Grundgesetzbuch*.

¹⁰ —. “Netzwerkdurchsetzungsgesetz findet kaum Anwendung”. *Zeit Online*. 12. March 2019, <<https://www.zeit.de/politik/deutschland/2019-03/netzdg-netzwerk-durchsetzungs-gesetz-jahresbericht-eco-beschwerdestelle>>, last accessed on 01.05.2019.

¹¹ In the original: “Der aktuelle Jahresbericht zeige, dass die Unternehmen Inhalte überwiegend aufgrund von Verstößen gegen ihre eigenen Standards entfernten“, (*Die Zeit*, 2019)

¹² —. “Bundesamt bereitet Klage gegen soziales Netzwerk vor”. *Spiegel Online*. 5. April 2019. <<https://www.spiegel.de/netzwelt/web/netzwerkdurchsetzungsgesetz-bundesamt-will-gegen-soziales-netzwerk-klagen-a-1261515.html>>, last accessed on 01.05.2019.

¹³ In the original: “‘In mindestens 100 Fällen’ soll das entsprechende Unternehmen Hasskommentare und andere Inhalte trotz Beschwerden der Nutzer nicht entfernt haben, wie der WDR berichtet“, (*Spiegel Online*, 2019).

¹⁴ Tarlach McGonagle, *The Council of Europe against online hate speech: Conundrums and challenges*, Expert paper, 2014, pp. 27-28, <https://rm.coe.int/16800c170f>, last accessed on 01.05.2019.

An interesting example in terms of the theory of freedom expression and its limits, as well as the possibility of applying some rules of foreign proceedings by the national courts was the civil case involving the Internet service supplier Yahoo!, *LICRA et UEJF contre Yahoo! Inc. et Yahoo France*¹⁵, a case which questioned issues relating to the application of the principle of territoriality or ubiquity, respectively, the question of the applicability of the French or US legislation outside the territories of the two states. In the respective case, a French court issued an order requesting Yahoo! to ban the access, in France, to auction sites for Nazi accessories from the Second World War¹⁶.

The need for a balance between freedom of expression and prohibition of illegal speech has been addressed in different ways under different jurisdictions. In this landmark case, the French court opted for the protection against the threats stemming from Nazi propaganda. This interpretation is in line with the European tendency to limit freedom of speech when other fundamental rights are at stake¹⁷.

The nature of public space of social media. Case-law and short incursion into the ancient public – private binary.

Another important element related to freedom of expression online is the nature of space on the Internet, the place where the information is being circulated. A clarification was needed as to how we should perceive the online environment, if it can be considered as private or on the contrary, as belonging to the public sphere. Following the interpretation given in 2014 by the Romanian High Court of Cassation and Justice¹⁸ to social media, as a space where both the opinions and ideas of individuals, and information of public interest, with varied content, originating from legal entities, are circulated and exposed, we can ascertain that as long as the content of messages is available or accessible to the general public or to persons included in the category of friends of the person who displays a certain message, idea or opinion, this message is transmitted in the public space, even if it is virtual, with the result of the application of all the conditions and possible general or special restrictions normatively established regarding one's expression in such a space and their consequences, in case the permissible limits are being exceeded. Although the decision referenced above only refers to a particular social network (namely Facebook), and to the effects produced by the messages posted by a particular user, we consider that the interpretation given by the

¹⁵ *Yahoo!, Inc. v. La Ligue Contre le Racisme et L'Antisemitisme*, 169 F. Supp. 2d 1181, 1186 (N.D. Cal. 2001)

¹⁶ https://sherloc.unodc.org/cld/case-law-doc/cybercrimecrimetype/fra/2000/uejf_and_licra_v_yahoo_inc_and_yahoo_france.html, last accessed on 01.05.2019.

¹⁷ Elissa Okoniewski, "Yahoo!, Inc. v. LICRA: The French Challenge to Free Expression on the Internet", in *American University International Law Review* 18, no. 1, 2002, p. 295. After the judgment of the High Court of Paris, Yahoo! US filed a complaint against UEJF and LICRA before the US District Court for the Northern District of California in San Jose, claiming that the French decision was in breach of the First Amendment to the American Constitution and, thus, not enforceable in the US. The District Court upheld the claim. However, the decision was reversed by the Court of Appeals in 2004.

¹⁸ High Court of Justice and Cassation, Section of Administrative and Fiscal Litigations, Decision no. 4546/2014, of 27 November 2014, <http://www.scj.ro/1093/Detaili-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=131400>, last accessed on 01.05.2019.

High Court of Cassation and Justice can be applied to other social networks or online environments where opinions, ideas or messages circulate, because at the heart of the argumentation the court were the criteria of the nature and purpose of the message or discourse displayed.

The dichotomy of private and public spheres is in fact very old. At the core of it seems to always be a rigid and mutually exclusive private vs. public binary, which is clearly reflected in the definition of the term “private”. *The Longman Dictionary of the English Language* defines “privacy” as “1. being apart from the company or observation of others; seclusion; 2. freedom from undesirable intrusions, esp. avoidance of publicity”.

From an etymological point of view, the English term “private”, from which “privacy” derives, comes from the Latin noun “*privatus*”, meaning “bereaved, set apart from”, which itself is a derivation of the Latin verb “*privo*”, which signifies “to deprive, to bereave, to release, to set free”¹⁹. There are also the dictionary definitions of “apart from the State, peculiar to one’s self” (in Latin opposed to “*publicus, communis*”); referring to a person, it can also have the meaning of “not in a public or official life, private, deprived of office” (ibid.), while when referring to a thing, the Latin term has the meaning of “a private life, withdrawn from State Affairs” (ibid.).

The private vs. public dichotomy expands also to other such binaries, such as for instance the idea of a (private) individual and a (public) group or society. The perhaps easiest way to differentiate between these two opposing binary constituents is to ascertain that the public domain and with it, public life, belongs to a given society at large, which is comprised of citizens. These citizens, as was the case of the ancient Greek city-states (πολις), used the public space, best exemplified by the agora (ἀγορά) for communal activities, i.e. state politics, judicial matters, decision-making in matters of public good. Opposed to the public domain, we find the private domain (or private life), which belongs to the individual, the citizen, it being a space deprived of access for either other individuals apart from the family and friends or for the State.

The Perspective of the European Court of Human Rights when considering the margin of appreciation of the conditions for limiting freedom of expression on the Internet

An aspect which can be analyzed in relation to the freedom of the Internet is the one referring to the existence and extent of the freedom of information via the Internet. We cannot support the idea of an absolute freedom of expression on the Internet, and in determining the legitimacy of the interferences by the national authorities, we must take into consideration important elements such as the content and nature of the message, discourse or opinion expressed²⁰. In what follows, we shall present a case from 2015, *Delfi AS v. Estonia*²¹, regarding the liability of an online news outlet for the content of

¹⁹ Charlton T. Lewis, Charles Short, *A Latin Dictionary*, Oxford: Clarendon Press, 1879, p. 1447.

²⁰ Carmen Moldovan, *Aplicarea principiului libertății de exprimare pe internet – între caracterul absolut și justificarea necesității limitării acestuia*, în *Analele Științifice ale Universității Alexandru Ioan Cuza din Iași*, seria Științe Juridice 2:67-86, 2017, p. 79.

²¹ *Delfi AS v. Estonia* [GC], no. 64569/09, 16 June 2015.

the users' comments. The comments had been posted in reaction to an article published on the news portal. They were denigrating and defamatory since they were vulgar, degraded human dignity and contained threats. The news portal did not remove them until after they were notified by the offended party a few weeks later. The Court found that the comments were not protected by Article 10.

The ECtHR ruled that Estonia did not breach Article 10 of the European Convention on Human Rights. The court conducted a four-part test in determining whether the news outlet's rights had been violated. First, the ECtHR found that Estonia had interfered with the outlet's right to free expression when it imposed civil penalties for the defamatory comments. Second, the court held that the award of damages was prescribed by law, and that the outlet violated Estonia's Civil Code Act and Obligations Act. Third, the court noted that imposing civil penalties on the outlet pursued the legitimate aim of "protecting the reputation and rights of others." Finally, the court engaged in a balancing test to determine whether Estonia's interference with the outlet's rights was necessary in a democratic society; it found that Estonia acted permissibly²².

The Court has made the following observation: "(...) the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. At the same time, the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press." (*Delfi AS v. Estonia* [GC], cited above, § 133)

It was the first case in which the Court was called upon to examine the liability of a company running an Internet news portal because of comments posted by its users. The Court held that the commercial operator of an Internet news portal may be held accountable for offensive comments posted on the portal by users. The problem at hand was not whether the freedom of expression of the authors of the comments had been infringed, but whether finding the portal liable for these third-party comments had infringed its right to impart information.

The Court held: "(...) the recognition of differences between a portal operator and a traditional publisher is in line with the international instruments in this field, which manifest a certain development in favour of distinguishing between the legal principles regulating the activities of the traditional print and audiovisual media on the one hand and Internet-based media operations on the other. (...) Therefore, the Court considers that because of the particular nature of the Internet, the "duties and responsibilities" that are to be conferred on an Internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher, as regards third-party content."²³

Other conditions for limiting freedom of expression on the Internet may be represented by: the defense of morals (*Perrin v. The United Kingdom*, judgment of 18 October 2005; relying on Article 10, the applicants complained about his conviction and sentence for publishing an obscene article on an internet site), defamation and the role of online archives as regards successive consultations (*Times Newspapers Ltd (nos. 1 and 2) v. United Kingdom*, judgment of 10 March 2009, the applicant alleged that the rule under United Kingdom law whereby each time material is downloaded from the

²² <https://globalfreedomofexpression.columbia.edu/cases/delfi-as-v-estonia/>, last accessed on 01.05.2019.

²³ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-8960%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-8960%22]}), last accessed on 01.05.2019.

Internet a new cause of action in libel proceedings accrued constituted an unjustifiable and disproportionate restriction on its right to freedom of expression) or discrimination (*Willem v. France*, judgment of 16 July 2009, the case concerned the call for a boycott of Israeli products by a mayor, notably via the municipality's internet site. The mayor was subsequently convicted of provoking discrimination).

Conclusion: Social media, texting and the Internet have given oppressed people the power to organize themselves, share their dissent with others and help lead revolutions throughout the world. In 2017, the US Supreme Court recognized in *Packingham v. North Carolina* that “[w]hile in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace... and social media in particular.”²⁴ Notwithstanding the importance of free speech as a fundamental human right, as well as a pillar for democracy, rule of law and knowledge, given the tremendous expansion of the Internet, national legislations should envisage legal instruments to carefully limit its application (when abusive), in those situations in which free speech becomes an obstacle for the free exercise of other fundamental rights.

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Libertatea de exprimare. Unele considerații pentru era digitală

Rezumat

Prezentul articol analizează antagonismul vechi dintre dreptul individual de liberă exprimare și poziția de autoritate pe care una sau mai multe persoane o dețin(e). Pe parcursul istoriei, am întâlnit multe cazuri în care filosofi și gânditori faimoși au fost cenzurați, fiindu-le astfel refuzat dreptul la liberă exprimare. Începând cu Grecia antică până la Declarația Universală a Drepturilor Omului, lupta omeniirii de a codifica dreptul individului la liberă exprimare a jucat un rol foarte important.

THE MOTIVATION OF PUBLIC ADMINISTRATION AUTHORITY ACTS - A DIMENSION OF THE RIGHT TO BE INFORMED

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Abstract

Each of us desires a good administration in which public authorities would exercise their competence only to achieve public interest, without any damage to the rights and liberties of the citizens. In order to have such an administration, it must respect some principles, some rules such as the acts they elaborate, whether they are individual or laws, serve the general interest and not a personal benefit of the people who hold public offices. The main principles are that of transparency of decisions and the motivation of administrative acts; once these principles are respected, the administration will be unable to perform poorly. The current paper aims to analyze some aspects regarding the motivation of administrative acts. Thus, we will attempt to identify the constitutional requirement of motivating the administrative acts, as well as the freedom of speech, the right to be informed, by analyzing Romanian constitutional regulations, as well as some regulations of international structures in Europe. We will also analyze the points of view expressed by doctrine regarding the necessity of such a motivation, as well as the extent of this obligation and its dimension in relation to individual administrative acts or texts of law.

Keywords: right, freedom, express, information, motivation of an administrative act.

Introduction: The Romanian Constitution regulates, in article 31¹, the right to information, “a right the Romanian Constitution received from the international legal tools in this domain”².

The right to information is a social-political right whose content is a “complex and dynamic”³ one as it entails: a person’s right to be promptly, clearly and correctly informed in regard to the measures undertaken by public authorities; free access to the sources of public, scientific, technical, social, cultural, sports information; a person’s

¹Article 31 of the Romanian Constitution, republished, states the following: (1) A person's right of access to any information of public interest shall not be restricted. (2) The public authorities, according to their competence, shall be bound to provide correct information to the citizens in public affairs and matters of personal interest. (3) The right to information shall not be prejudicial to the measures of protection of young people or national security. (4) Public and private media shall be bound to provide correct information to the public opinion. (5) Public radio and television services shall be autonomous. They must guarantee any important social and political group the exercise of the right to broadcasting time. The organization of these services and the parliamentary control over their activity shall be regulated by an organic law.

² Ioan Muraru, Elena Simina Tănăsescu, coordinators, *Romanian Constitution, Comments by articles*, C. H. Beck Publishing House, Bucharest, 2008, page 299.

³ *Ibidem*

possibility to directly receive radio and television transmission; the authorities' obligation to create the legal and material conditions for the free and ample dissemination of information of any nature⁴.

The constitutional text, as well as the comments succinctly stated before allow us to see the complexity of this right which is translated, on one hand, by the different and diverse dimension of public information which must be correctly supplied by the public authorities, but also by public information, of diverse nature, to which access must be granted by means of mass information, whether public or private. On the other hand, this right contains a correlative obligation of public authorities to correctly provide public information, as well as personal information, namely the obligation of the mass information means to correctly inform the public, including by guaranteeing the right to antenna for politically and socially important groups.

The text regulates some legal guarantees⁵ of exercising this right, as are the above mentioned obligations, as well as other obligations which can be seen as legal limitations, as is the one according to which the exercise of the right to information can't impair the measures meant to protect the youth or national security.

Starting from the content of this fundamental right, as it is regulated in our fundamental law, we can state that any correct information of a person by a public authority entails the elaboration and communication of a motivation of the decisions which entail that person or any person. This statement is valid regardless of whether such decisions regard public information or personal information.

Concepts presentation:

1. European regulations regarding the obligation to motivate acts elaborated or passed by public administration authorities

The desire of authorities of public administration to exercise their duties by using, sometimes at maximum capacity, the discretionary power which is legally acknowledged, manifested by the avoidance of express regulation of the authorities' obligation to motivate its own decisions.

The creation of a legal background which would respect the elements of a state of law, acknowledged and regulated as such by law, requires that this obligation is regulated in primary law, both an a national level as well as an international level.

Thus, if we discuss the regulations of the two European regional organizations - the European Council and the European Union - we will notice an evolution of the regulations regarding a person's right to public or personal information, provided the latter entails the person in question, as well as the obligations of public authorities.

Thus, the European Convention for the Protection of Man's Fundamental Rights and Freedoms (the European Convention on Human Rights), a fundamental act of the European Council, states several aspects of the right to be informed, in article 10 regarding the freedom of speech; paragraph 1 of this article mentions, in the second thesis, that this freedom includes the "freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of

⁴ Ioan Muraru, Elena Simina Tănăsescu, coordinators, *op. cit.*, pages 299-300.

⁵ See Ioan Muraru, Elena Simina Tănăsescu, coordinators, *op. cit.*, page 300.

frontiers”⁶. The second paragraph of the same article states the limits of exercising the right to information by stating that “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

Article 1 first paragraph of the Charter of Fundamental Rights of the European Union, passed by the European Union, regulates that the freedom of information and expression is regulated for all citizens “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. The text of the Charter takes over the content of this right as it was regulated in the European Convention on Human Rights by expressly stating that it involves a complex freedom which entails not only the possibility to freely express information, but also to communicate information. However, article 41 the Charter of Fundamental Rights of the European Union regulates the right to good administration, expressly stating that it includes, according to the second paragraph letter c) “the obligation of the administration to give reasons for its decisions”.

If we analyze the provisions of the constitutions of some of the member states of the European Union, as well as that of the European Council, we will notice of pattern of regulation in regard to the right to be informed, similar to that seen on a European level, depending on whether the regulations are old or new⁷. Thus, the Austrian Constitution⁸ does not contain express or indirect provisions regarding such an obligation of public authorities, but it expressly states, in article 18 first and second alignment the principle of law stating that “the entire public administration may be exercised only on the basis of the laws” and “every administrative authority may issue ordinances within its area of competence on the basis of the laws”.

The principle of law indirectly entails the necessity to motivate all acts passed by the public authorities. Article 20 fourth alignment of the same constitution states that “all organs entrusted with tasks of [pertaining to] Federal, Land and Municipality administration as well as the organs of other corporations of public law that have tasks entrusted to them, shall provide information about matters pertaining to their area of competence, insofar as this does not conflict”, an obligation of the public workers

⁶ In our opinion, according to this text of law, the individual’s right to receive information, as well as the public authority’s right to provide such information is acknowledged, provided the limits stated by the second paragraph of the same article are respected. Thus, authorities should see the communication of information, especially those of public interest, both as a duty and as a freedom, given that any action should be constantly and continuously performed in order to satisfy public interest.

⁷ We must keep in mind that, in regard to the European Council, the European Convention on Human Rights was passed in 1950, when the Charter of Fundamental Rights of the European Union was passed in 2000, but came into force once the Lisbon Treaty of January 1, 2009 was passed.

⁸This Constitution is available at: https://www.constituteproject.org/constitution/Austria_2013?lang=en, date of last access 25.04.2019.

which, in our opinion, includes the obligation to motivate the acts within the same constitutional limits.

Constitutions such as those of Cyprus⁹, Ireland¹⁰ or Italy¹¹ do not contain express regulations regarding the right to information, namely the obligation to motivate acts, but do acknowledge the freedom of speech for every person. The Italian Constitution regulates, in article 28, the obligation of public workers to not violate human rights.

In other Constitutions, such as that of Croatia¹², Finland¹³ or Germany¹⁴, the lawmaker expressly regulated the right to information within the right to free speech.

The constitutional provisions of other states such as Belgium¹⁵, Bulgaria¹⁶, Greece¹⁷, or Estonia¹⁸, the lawmaker decided to expressly regulate the right to information with a content which is similar to the one stated in our fundamental law.

⁹ According to article 19 alignments (1) - (4) of Cyprus' Constitution „Every person has the right to freedom of speech and expression in any form. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers. The exercise of the rights provided in paragraphs I and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary. Seizure of newspapers or other printed matter is not allowed without the written permission of the Attorney-General of the Republic, which must be confirmed by the decision of a competent court within a period not exceeding seventy-two hours, failing which the seizure shall be lifted.” (This document is available at: https://www.constituteproject.org/constitution/Cyprus_2013?lang=en, accessed on: 25.04.2019.)

¹⁰ Irish Constitution, in article 40 point 6.1., letter i), first thesis states that one of the rights whose exercise is guaranteed by the Irish state, provided it respects public order, is „the right of the citizens to express freely their convictions and opinions”. (This document is available at: https://www.constituteproject.org/constitution/Ireland_2015?lang=en, accessed on: 25.04.2019.)

¹¹ The Italian Constitution states, in article 21 first alignment, that „Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication”. (This document is available at: https://www.constituteproject.org/constitution/Italy_2012?lang=en, accessed on: 25.04.2019.)

¹² The Croatian Constitution states in article 38 fourth alignment that „The right to access to information held by any public authority shall be guaranteed. Restrictions on the right to access to information must be proportionate to the nature of the need for such restriction in each individual case and necessary in a free and democratic society, as stipulated by law”. (This document is available at: https://www.constituteproject.org/constitution/Croatia_2013?lang=en, accessed on: 25.04.2019.)

¹³ The Finnish Constitution states in article 12 that: „Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programs that are necessary for the protection of children may be laid down by an Act. Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.” (This document is available at: https://www.constituteproject.org/constitution/Finland_2011?lang=en, accessed on: 25.04.2019.)

¹⁴ Germany's Constitution states, in article 5 first and second alignments that: „Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honor.” (This document is available at: https://www.constituteproject.org/constitution/German_Federal_Republic_2014?lang=en, accessed on: 25.04.2019.)

2. The right to information and the necessity to give reason

The right to information, as we have previously mentioned above, considers multiple legal aspects “directly entailing the development of human personality by access to information”¹⁹. Its content is a complex²⁰ one, as public authorities, in accordance with their competence, are obliged to ensure the correct information of citizens in regard to public issues and personal interest problems²¹.

Providing such information, especially when they are of public interest, must not be seen by the public authorities as an obligation correlative to the constitutional right to information which is exercised only when such information is requested, but also in regard to information it wishes to provide.

In case of legal acts, especially administrative acts, any law and most of individual acts passed by public authorities must be motivated. Our doctrine points out that this

¹⁵ Thus, the Belgian Constitution states in article 32 that: „Everyone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by the laws, federate laws or rules referred to in Article 134.” (This document is available at: https://www.constituteproject.org/constitution/Belgium_2014?lang=en, accessed on: 25.04.2019.)

¹⁶ The Bulgarian Constitution regulates in article 41, the right to information, by stating that „ Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality. Everyone shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others”, whereas article 57 states certain limitation in regard to constitutionally regulated civil rights. (This document is available at: https://www.constituteproject.org/constitution/Bulgaria_2015?lang=en, accessed on: 25.04.2019.)

¹⁷ Greece’s Constitution states in article 5a that: „All persons have the right to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties. All persons have the right to participate in the Information Society. Facilitation of access to electronically transmitted information, as well as of the production, exchange and diffusion thereof, constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19”. (This document is available at: https://www.constituteproject.org/constitution/Greece_2008?lang=en, accessed on: 25.04.2019.)

¹⁸ The Estonian Constitution states in article 44, the right to information, by stating that: „Everyone has the right to freely obtain information disseminated for public use. All state agencies, local governments, and their officials have a duty to provide information about their activities, pursuant to procedure provided by law, to an Estonian citizen at his or her request, except information the disclosure of which is prohibited by law, and information intended exclusively for internal use. An Estonian citizen has the right to access information about himself or herself held in state agencies and local governments and in state and local government archives, pursuant to procedure provided by law. This right may be restricted pursuant to law to protect the rights and freedoms of others or the confidentiality of a child’s filiation, and in the interests of combating a criminal offence, apprehending a criminal offender, or ascertaining the truth in a criminal procedure. Citizens of foreign states and stateless persons who are in Estonia have the rights specified in paragraphs two and three of this section equally with Estonian citizens, unless otherwise provided by law.” (This document is available at: https://www.constituteproject.org/constitution/Estonia_2015?lang=en, accessed on: 25.04.2019.)

¹⁹ Marius Andreescu, Andra Puran, *Constitutional law. General Theory and constitutional institutions*, C. H. Beck Publishing House, Bucharest, 2016, page 311.

²⁰ Also see Marius Andreescu, Andra Puran, *op. cit.*, page 311, or Ștefan Deaconu, *Constitutional law*, C. H. Beck Publishing House, Bucharest 2017, page 246.

²¹ Ștefan Deaconu, *op. cit.*, page 246.

motivation of the above mentioned acts, especially administrative acts, is supported by the constitutional provisions of article 31.

Thus, if the beneficiaries of this fundamental right - the right to information, must enjoy all the dimensions of this right within constitutional legal limits, than public authorities, including public administration, must meet their corresponding correlative obligation²².

This obligation entails not only the communication of information, but also the motivation of most laws and individual acts passed with the respect of their duties.

Administrative law doctrine sees motivations as “a simultaneous procedural operation”²³ which must be fulfilled when elaborating an administrative act.

The motivation of administrative acts must be seen as a means to ensure decision transparency and prevent public authorities from illegally exercising their duties, in the most serious situation, or even to use discretionary power such as to lead to an excess of power or even an abuse of power. Doctrine states that “in a state of law, with a modern administration, the motivation of administrative acts is seen as a guarantee of respecting the law and protection of citizens’ rights”²⁴.

Even if doctrine states the necessity of regulating the obligation to motivate all administrative acts²⁵, we feel that such a general obligation, without distinguishing in regard to the content and specifics of the administrative act, would be exaggerated and unreasonable.

If we were to consider all administrative acts, we will see that in some cases, the executive authority is always obligated to motivate the need to pass such acts. Indeed, in this case, we are in the presence of legislative technique regulations²⁶ as, according to article 30 first alignment of Law no 24/2000 regarding legislative technique regulations, republished with subsequent changes, all laws must be accompanied by “tools of presentation and motivation”. In case of ministerial orders or Government decisions, there will be an explanatory note, whereas, in case of other laws²⁷, there will be an approval note.

Such a presentation and motivation instrument is extremely complex, stating not only the reason for the act, but also the purpose of the regulation and the impact it has on the legal system or the social and economic impact, for example²⁸.

²² See Antonie Iorgovan, *Administrative law treaty, second volume*, All Beck Publishing House, Bucharest, 2005, page 62.

²³ See Dana Apostol Tofan, *Administrative law, second volume*, C. H. Beck Publishing House, Bucharest, 2017, pages 41-43. In another opinion, motivation is seen as one of the exterior conditions pertaining to the form of the act. See Verginia Vedinaș, *Theoretical and practical administrative law treaty*, second volume, Universul Juridic Publishing House, Bucharest, 2018, page 53.

²⁴ Rodica Narcisa Petrescu, *Administrative law*, Hamangiu Publishing House, Bucharest, 2009, page 326.

²⁵ For example, see, Verginia Vedinaș, *op. cit.*, page 53.

²⁶ Ovidiu Podaru, *Administrative law, first volume. Issues for a different theory*, Hamangiu Publishing House, Bucharest, 2010, page 148.

²⁷ We will not consider projects of law, when this tool is called exposure of reasons or study of impact which is necessary for important and complex projects of law, projects of law for which the Government assumed responsibility, projects of laws by which Government’s Ordinances are approved, which are subject to Parliament’s approval.

²⁸ Thus, article 31 of Law no 24/2000 regarding the legislative technique regulations, republished with subsequent changes, states that the tool for the presentation and motivation includes the content of the evaluation of the impact of legal texts, containing the following sections: alignment (1) a) the reason for

On the other hand, such a tool of motivation and presentation is not a part of the law, as legal provisions, namely article 34 fifth alignment of Law no 24/2000 republished with subsequent changes, states that the reasoning as well as the motivation notes must be published, along with the document in the Official Bulletin of Romania or on the internet. Unfortunately, no such obligation is regulated in regard to the public information or the approval notes required for the other laws, although we feel it would be necessary and useful to regulate such an obligation. We also believe that such an obligation should be regulated for local authorities.

In regard to individual administrative acts, we must state the following: motivation was and is acknowledged as a “given” in case of judicial-administrative acts. As doctrine²⁹ points out, the motivation of judicial-administrative acts was the good example considered when the obligation to motivate acts was extended in case of other administrative acts.

In case of individual administrative acts, we believe it is necessary to distinguish in regard to the content of the act, as it excessive to regulate a general principle of motivating all individual administrative acts³⁰. The before mentioned author states, as an example, individual administrative acts in which case a motivation might appear to be redundant and useless. Such examples are: school degrees (whether high school or college), a passport, a license to practice a certain job. Also, if we consider some examples from the law in which motivation of individual administrative acts is mandatory³¹, we notice that the lawmaker regulated the necessity to motivate individual

which the law was passed - the demands which caused the need to regulate that certain matter with special reference to the insufficiency of the current regulations; the basic principles and the purpose of the regulation, by pointing out new elements; the conclusions of studies, research, statistics, public policy for which that certain law was elaborated. For Government's emergency ordinances the objective elements of the extraordinary situation which requires immediate regulation, as the Parliament's emergency procedure is not sufficient, as well as the potential consequences which might occur if the law is not passed; b) the social and economic impact - the effects it might cause on the economic environment, the social and business environment, including an evaluation of the costs and benefits; c) the financial impact on the general budget both on the short term as well as for the long term (5 years), including information regarding the expenses and income; d) the impact it has on the legal system - the implications of the new regulation on the current laws; the compatibility with European regulations, their exact mention and, if necessary, the future measures to align laws; the decisions of the European Court of Justice and other relevant documents in order to implement the legal regulation; e) the consultation in order to elaborate the project of law, the organizations and specialists who were consulted, the essence of the recommendation which was received; f) the activities of public information regarding the elaboration and implement of the project of law; g) the measures taken for implementation - institutional and functional changes in regard to central and local public administration. Alignment (2) In case the regulation is passed in the execution of a law, the motivation must mention the law which is in force. Alignment (3) The final form of the motivation and presentation instrument must contain reference to the notice from the Legislative Council and the Supreme Security Council, the Financial Court or the Economic and Social Council.

²⁹ See Dana Apostol Tofan, *op. cit.*, page 41, Verginia Vedinaş, *op. cit.*, page 53, or Rodica Narcisa Petrescu, *op. cit.*, page 324.

³⁰ Ovidiu Podaru, *op. cit.*, page 149.

³¹ Article 7 second alignment of Law no 544/2001 regarding the free access to public interest information, with subsequent changes, states that the refusal of communicating the requested information is motivated and communicated within 5 days from when the petition was received. Also, article 16 first alignment of Government's Ordinance no 2/2001, with subsequent changes, states that the document which acknowledges the contravention must contain the description of the fact, the date, time and place where it

administrative acts which can impair on the legitimate interests or rights of another individual³².

In this context, it is believed that the extent of the principle of motivating individual administrative acts should be limited to administrative-judicial acts and administrative acts which might impair on the legitimate interest of individuals; thus, in such cases, the motivation is mandatory³³.

We believe this appreciation is somewhat restrictive as long as only administrative acts which might impair on other individual's rights are considered, as there are situations in which other rights and interests of individual might be affected by the administrative act and the motivation might be useful to them in order to protect their legitimate rights and interests.

In regard to the content of the motivation of an individual administrative act, it is obvious that is not and it must not be very complex as that of motivating a law, but, in our opinion, the motivation should be: complete - sufficient, thus to show the reason for which the act was passed; real - to fully correspond to the reasons which determined the passing of the act and, if needed, it must contain other law regulated elements³⁴.

Conclusions: By their entire activity, public authorities, including authorities of public administration must respect the law, satisfy the public interest and not impair on the rights and interest of individuals. In this context, the extension of the obligation to motivate administrative acts passed by authorities of public administration to other administrative acts, except for judicial-administrative acts, "would be an additional guarantee of lawfulness and effective protection of citizens' rights and liberties"³⁵.

The obligation to motivate administrative acts is regulated in the provisions of article 31 regarding to right to information of the Romanian Constitution, republished, as well as in the right to free speech, as regulated by other constitutions.

Regulating such an obligation to motivate administrative acts by primary texts of administrative law, as is the Administrative Code of the Administrative Procedure Code would be in accordance with the European Union regulations. Thus, article 296 of the Treaty on the Functioning of the European Union states such an obligation to motivate not only administrative decisions, but all legal acts³⁶.

Regulating and respecting such an obligation would meet several demands³⁷, namely: those of the parties - who will know why such an act was passed, those of the individual

occurred, the circumstances which can help appreciate the severity of the deed and the evaluation of the potential damage it caused; the text of law which sanctions that certain deed. Similar are the provisions of article 11 first and second thesis of the Financial Code, with subsequent changes, according to which the financial authority is held to motivate their decisions by pointing out the relevant elements which pertain to the purpose and content of the deed, as well as all the evidence which was considered.

³² Ovidiu Podaru, *op. cit.*, page 150.

³³ *Ibidem*

³⁴ Ovidiu Podaru, *op. cit.*, p. 151.

³⁵ Liviu Giurgiu, Cristian Giuseppe Zaharie, *Administrative law*, Pro Universitaria Publishing House, Bucharest, 2008, page 382.

³⁶ Paul Craig, Gráinne de Búrca, *European Union law. Comments, jurisprudence and doctrine*, Hamangiu Publishing House, Bucharest, 2017, page 613.

³⁷ *Ibidem*

who made the decisions - who will be helped to ensure that the reasoning for passing such an act was evaluated, the courts of law - thus facilitating judicial control in regard to lawfulness and necessity.

The motivation of administrative acts will determine public authorities to respect the legal limits, thoroughly analyze the necessity of the act in order to respect the limits of discretionary power. Thus, they will be able to correctly, effectively, but also legally and morally participate in the exercise of the right to a good administration by any citizen.

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Motivarea actelor autorităților administrației publice – dimensiune a dreptului la informație

Rezumat

Fiecare dintre noi își dorește o administrație bună în care autoritățile publice să-și exercite competențele doar pentru a realiza interesul public, fără a se aduce vreo vătămare drepturilor și libertăților acestora. Or pentru a putea avea o astfel de administrație este necesar ca aceasta să respecte niște principii, niște reguli pentru ca, prin actele administrative pe care le emite, indiferent că sunt individuale sau normative, să nu reglementeze în propriul folos sau în interesul unor persoane care exercită funcții sau demnități publice din administrația publică. Printre aceste principii se regăsesc și cel al transparenței decizionale, dar și al motivării actelor administrative, care odată respectate nu vor permite existența unei administrări defectuoase. Ne propunem prin lucrarea de față să analizăm, succint, aspecte legate de motivarea actelor administrative. Astfel vom încerca să identificăm temeiul constituțional al acestei obligații a autorităților administrației publice în drepturi fundamentale, precum libertatea de exprimare sau dreptul la informație, analizând reglementările constituționale române, dar și ale unor dintre statele europene, precum și ale unor structuri supranaționale de la nivelul Europei. Vom analiza și punctele de vedere exprimate de doctrină privitoare la necesitatea unei astfel de motivări, precum și la întinderea conținutului acestei obligații de motivare, dar și dimensiunea acesteia raportată la actele administrative individuale sau normative.

SOME ASPECTS THE RIGHT TO BE FORGOTTEN FROM THE PERSPECTIVE OF BALANCING THE FREEDOM OF EXPRESSION WITH THE RESPECT FOR PRIVATE LIFE IN THE ONLINE ENVIRONMENT

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Abstract

On 13 May 2014, by the judgment in Case C-131/12 - Google Spain and Google, the Court of Justice of the European Union has established a right to be digitally forgotten that can be exercised against the operator of a search engine independently of the success of any action directed against the publisher of the original web page. Therefore this short study aims to present the distinction between the right to have a link removed from a list of results displayed following a search made on the basis of a person's name, on the one hand, and the right to have the data erased by the publisher of the web page containing information relating to that person, on the other hand. Since the right to privacy and the right to the protection of personal data are not absolute rights, but must be considered in relation to their function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality, our analysis concerns precisely this balancing of the freedom of expression with the respect for private life in the online environment.

Keywords: online, freedom of expression and information, respect for private life, protection of personal data, right to be digitally forgotten.

A few years back, by interpreting the provisions of the Directive 95/46/EC¹, the Court of Justice of the European Union (CJEU) has established a *right to be digitally forgotten* (*le droit à l'oubli numérique*²), a right whose exercise creates the premises of natural oblivion whereas the latter has become inoperable in the context of information technology since any data posted on the Internet can remain accessible for an indefinite period and the Internet has transferred the curse of eternal remembrance to its users³, so that natural persons are under threat that their past will haunt them *ad vitam aeternam*.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, published in the Official Journal of the European Communities L 281 from 23rd of November 1995.

² See Călina Jugastru, *Considerații cu privire la dreptul la uitare - reflexii în online*, in „Acta Universitatis Lucian Blaga. Iurisprudentia” no. 2/2017, p. 19-21.

³ Andreea Verteș-Olteanu, *Art. 17 din Regulamentul general privind protecția datelor – un prim pas în direcția uitării dreptului de a fi uitat*, in Andrei Săvescu (coord.) „RGPD – Regulamentul general privind protecția datelor cu caracter personal. Comentarii și explicații”, Hamangiu, București, 2018, p. 50.

Under this right, the operator of a search engine is obliged to remove from the list of results displayed following a search made on the basis of a person's name links to web pages, published by third parties and containing information relating to that person, also in the case where that name or information is not erased beforehand or simultaneously from those web pages, and even when its publication in itself on those pages is lawful⁴.

It was considered that requiring the data subject to obtain erasure from web pages would not provide *effective* and *complete* protection of data subject, especially because publishers may not be subject to EU data protection law or the publication could be carried out "solely for journalistic purposes" and thus benefit, by virtue of Article 9 of Directive 95/46⁵, from the derogation concerning the processing of personal data and the freedom of expression⁶.

In this respect, the General Data Protection Regulation⁷ also recalls that the right to the protection of personal data is *not an absolute right*, but it must be considered in relation to its function in society and be *balanced against other fundamental rights*, such as the freedom of expression and information, in accordance with the principle of proportionality (recital 4).

However, the balancing is different for the processing of personal data done by the *search engine* and the processing carried out by the *web publisher*. This differentiation is justified by the CJEU by the fact that *the inclusion in the list of results*, displayed following a search made on the basis of a person's name, *of a web page and of the information contained on it* relating to that person makes access to that information appreciably easier for any internet user making a search in respect of the person concerned and may play a decisive role in the dissemination of that information, it *is liable to constitute a more significant interference with the data subject's fundamental right to privacy* than the publication on the web page⁸. Therefore, while in the case of publishers of web pages the freedom of expression is taken into account; in the case of search engines only the economic interest of its operator it is considered.

That is why the CJEU stated that the respect for private life and the protection of personal data override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that

⁴ Court of Justice of the European Union, *Judgment of 13 May 2014*, Google Spain, Case Co131/12, ECLI:EU:C:2014:317, published in the electronic Reports of Cases (Court Reports - general), paragraph 3.

⁵ Art. 9 of Directive 95/46/EC: "Member States shall provide for exemptions or derogations from the provisions of this Chapter, Chapter IV and Chapter VI for the processing of personal data carried out solely for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression". Such exceptions are provided, for example, in Article 7 of the *Romanian Law no. 190/2018* on measures for the application of Regulation (EU) 2016/679 [...], published in The Official Journal of Romania, Part I, no. 871 from 15 October 2018.

⁶ Laraine Laudati (OLAF Data Protection Officer), *Summaries of EU Court Decisions Relating to Data Protection 2000-2015*, 28 January 2016, p. 20, document consulted on 5.05.2019 and available at https://ec.europa.eu/anti-fraud/sites/antifraud/files/caselaw_2001_2015_en.pdf.

⁷ *Regulation (EU) 2016/679* of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, published in The Official Journal of the European Union, L 119 from 4 May 2016, p. 1–88.

⁸ Court of Justice of the European Union, *Judgment of 13 May 2014*, Google Spain, Case Co131/12, ECLI:EU:C:2014:317, published in the electronic Reports of Cases (Court Reports - general), recital 87.

information upon an online search relating to the data subject's name (the freedom of information)⁹. However, the latter can prevail over the data subject's rights when the interference with his fundamental rights is justified by the preponderant interest of the general public in having, on account of its inclusion in the list of results, access to the information in question, for example due to the role played by the data subject in public life.

Practically, the CJEU ruled out the freedom of expression of the search engine operator when it acknowledged the need to recognize a right to digital oblivion in order to counterbalance the effects of posting information on a website coupled with the enhancement of their visibility due to search engines. Thus, when exercised against the operator of a search engine, the right to be digitally forgotten is balanced not against the freedom of expression of the operator of the search engine, but against the preponderant interest of the general public in having access to that information.

This interpretation is also encountered in national case-law¹⁰, Bucharest Court of Appeal – referring to the guidelines issued by Article 29 Data Protection Working Party – considering that the operator of a search engine cannot invoke in favour of maintaining the links in the list of results the journalistic interest of its processing, the guidelines emphasizing once more the fact that the interest of the search engines in personal data processing is one of economic nature, not one of journalistic nature. According to the latter, the respective legal grounds of original publishers and search engines are different¹¹. The legal ground of a search engine derives from *its own economic interest* and that of the *users to have access to the information* via the search engines and using a name as terms of search.

Although Article 29 Data Protection Working Party refers to the fundamental right of *freedom of expression*, provided by Article 11 of the European Charter of Fundamental Rights and understood as “the freedom to receive and impart information and ideas”, which has to be taken into consideration when assessing data subjects' requests, the freedom of expression and information is considered only in terms of the interest of internet users in receiving the information while using the search engines.

The freedom of expression of the search engine operator is not taken into account and Article 29 Data Protection Working Party considers the impact of the exercise of individuals' rights on the freedom of expression of original publishers and users as generally very limited since even when a particular search result is de-listed, the content on the source website is still available and the information may still be accessible through a search engine using other search terms than the data subject's name.

The interpretation made by the CJUE that led to the consecration of the right to be digitally forgotten, understood as a right to obtain the removal of links to web pages from the list of results displayed following a search made on the basis of a person's

⁹ *Idem*, paragraph 4.

¹⁰ Bucharest Court of Appeal, VIIIth section for administrative and fiscal litigation, *civil ruling no. 522 from 19 February 2016*, ECLI:RO:CABUC:2016:023.000522, unpublished.

¹¹ Article 29 Data Protection Working Party, *Guidelines on the implementation of the Court of Justice of the European Union Judgment on “Google Spain and Inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González” C-131/12*, WP 225, adopted on 26 November 2014, p. 6, document consulted on 5.05.2019 and available at https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf.

name, disavowed the Advocate General's opinion, according to which the rights to erasure and blocking of data, and the right to object do not extend to a right to be digitally forgotten, so the data subject cannot address himself to a search engine service provider in order to prevent indexing of the information relating to him personally, published legally on third parties' web pages, invoking his wish that such information should not be known to internet users when he wishes it to be consigned to oblivion¹².

The Advocate General's conclusion was also partly based on the following arguments: an internet search engine service provider lawfully exercises his freedom of expression when he makes available internet information location tools relying on a search engine (recital 132) and a right to be digitally forgotten would entail an interference with the freedom of expression of the publisher of the web page (recital 134).

The CJEU in its wisdom did not take up the opinion of the Advocate General and, leaving aside the freedom of expression, has conditioned the successful exercise of the right to be digitally forgotten on the absence of a preponderant interest of the general public in having, on account of its inclusion in the list of results, access to the information in question. This position is all the more grounded in the fact that, as we have stated, the exercise of this right only counteracts the excessive exposure due to modern information technologies and it doesn't affect the web pages, published by third parties and containing information relating to the data subject, information which can be retrieved via a search engine but using other keywords than the name of the data subject.

The failure to consider freedom of expression in the case of the right to digital oblivion seemed an accepted solution at the level of the Court of Justice of the European Union. However, recently, in a pending case, the Advocate General¹³ has raised the issue concerning the processing of personal data and the freedom of expression, more precisely if the operator of a search engine may refuse to grant a request for de-referencing where it finds that the displaying of sensitive data on the page to which the link at issue leads is lawful because the processing carried out in that respect by the publisher of the internet page is covered by Article 9 of Directive 95/46/EC.

The Advocate General started by finding that, in accordance with the judgment in Google Spain and Google case, a request for de-referencing may succeed against the operator of a search engine but may fail against the publisher of the referenced web page because of the freedom of expression exception. For this reason it may be considered that Article 9 of Directive 95/46/EC does not apply to the operator of a search engine. However, the Advocate General proposed that the CJUE should resist such temptation.

In his view *the right of the public to receive and impart information* made available on the internet is protected by Article 11 of the European Charter of Fundamental Rights and it *concerns both the information on the source web pages and the information provided by internet search engines*. Also, although Article 9 of Directive 95/46 does

¹² Court of Justice of the European Union, *Opinion of advocate general Jääskinen delivered on 25 June 2013*, Case C-131/12 – Google Spain and Google, ECLI:EU:C:2013:424.

¹³ See Court of Justice of the European Union, *Conclusions de l'avocat général Maciej Szpunar présentées le 10 janvier 2019*, Affaire CO136/17 - G.C. e.a. (Déréférencement de données sensibles), ECLI:EU:C:2019:14, recitals 78-92.

not apply as such directly to the activity of the operator of the search engine, *the fact that the data on the internet page in question are covered by journalism or artistic or literary expression*, cannot have the consequence of preventing the operator of a search engine from relying on Article 9 of Directive 95/46, so this *must constitute a circumstance that may allow a request for de-referencing to be refused*.

The Advocate General concluded that, when weighing up the interest of potentially interested internet users in having access to an internet page via a search conducted on the basis of the data subject's name against that data subject's fundamental rights for the respect of private life and the protection of personal data, it is also necessary to take into account the *freedom of expression* and freedom to receive and impart information of *publishers* and internet users guaranteed by Article 11 of the Charter. In support of his interpretation, he also invoked the provisions of the Regulation (EU) 2016/679 which recognises a limitation of the right to be forgotten (right to erasure) for reasons relating to exercising the right of freedom of expression and information.

However, the Advocate General has lost sight of that such an interpretation comes against the very reason for establishing the right to be digitally forgotten, as requiring the data subject to obtain erasure from web pages would not provide *effective* and *complete* protection of data subject, especially because the publication could be carried out "solely for journalistic purposes" and thus benefit, by virtue of Article 9 of Directive 95/46, from the derogation concerning the processing of personal data and freedom of expression.

Instead of a conclusion: If in the future a request for de-referencing would involve balancing the right to respect for private life and the right to protection of data and, on the other hand, not only the right of the public to access the information concerned, but also the right to freedom of expression of the person who provided the information, we could no longer speak of a right which replaces the lack of natural oblivion in the online environment, for freedom of speech should not be affected by the flow of time.

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Unele aspecte ale dreptului de a fi uitat din perspectiva echilibrării libertății de exprimare cu respectarea vieții private în mediul online

Rezumat

La data de 13 May 2014, prin hotărârea dată în cauza C-131/12 - Google Spain și Google, Curtea de Justiție a Uniunii Europene a consacrat un drept la uitare digitală ce poate fi exercitat împotriva operatorului unui motor de căutare independent de succesul vreunei acțiuni îndreptate contra editorului paginii web de origine. De aceea acest scurt studiu urmărește a prezenta distincția dintre dreptul la înlăturarea unui link din lista de rezultate afișată în urma unei căutări efectuate plecând de la numele unei persoane, pe de o parte, și dreptul la ștergerea datelor de către editorul paginii web care conține informații referitoare la această persoană, pe de altă parte. Cum dreptul la respectarea vieții private și dreptul la protecția datelor cu caracter personal nu sunt drepturi absolute, ci trebuie luate în considerare în raport cu funcția pe care o îndeplinesc în societate și echilibrate cu alte drepturi fundamentale, în conformitate cu principiul proporționalității, analiza noastră privește tocmai această echilibrare a libertății de exprimare cu respectarea vieții private în mediul online.

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FREEDOM OF EXPRESSION IN THE ACADEMIC ENVIRONMENT – CONSTRAINTS AND PREJUDICES

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Abstract

Dissemination of knowledge, the search for truth, students' progress, and the wellbeing of society are the goals of higher education, and freedom in research and expression is essential to pursuing these goals. As members of the academic community, students should be encouraged to develop their critical judgment skills, to engage in independent research, and support the truth. The procedure to be followed may vary from one institution to another; however, few minimum standards of academic freedom are essential in any community of students. But in order to benefit from favourable conditions in the classroom, on campus and in academia, in general, students have to use their rights responsibly.

Keywords: responsibility, rights, freedom of expression, critical judgement

Introduction: Freedom of opinion and expression is one of the first political freedoms and, at the same time, one of the most important fundamental freedoms of all individuals.

At an individual level, “freedom of expression is essential to the development and affirmation of each individual, given that by the free exchange of information and opinions people can understand the world in which they live. Free movement of ideas allows the search for truth and the deepening of knowledge, along with participation in the decision-making process”¹.

Without freedom of expression, there can be no democracy, because the freedom of debate allows citizens to form an opinion on the parties involved in elections, to develop their decision-making capacity, to exercise their citizenship duties in a more efficient manner.

¹ La liberté d'expression: dossier pédagogique, Amnesty International, 2011, www.amnestyinternational.be/IMG/pdf/dossier_peda_2011, accessed on 31.05.2019

Also, the freedom of expression is the one that allows authorities to know what society members think, so that they can then respond to their concerns, thus becoming a key element for social stability.

Article 10 of the **Convention for the Protection of Human Rights and Fundamental Freedoms** (1950) is devoted to freedom of expression:

1. *Everyone has the right to freedom of expression.* This right includes freedom of opinion and the freedom to receive or communicate information or ideas without the interference of public authorities and without taking borders into account. This Article does not prevent States from subjecting broadcasting, cinematographic or television companies to a licensing regime.

2. The exercise of these freedoms, which involve duties and responsibilities, may be subjected to formalities, conditions, restrictions or sanctions provided for by law which, in a democratic society, constitute necessary measures for national security, territorial integrity or public security, the defence of order and the prevention of crime, the protection of health, morality, reputation or the rights of others, in order to prevent the disclosure of confidential information or to guarantee the authority and impartiality of the judiciary power.

At the same time, Article 19 of the **Universal Declaration of Human Rights** (1948) affirms this fundamental right: *“Everyone has the right to freedom of opinion and expression; this right includes the freedom to have opinions without outside interference, as well as the freedom to seek, receive and disseminate information and ideas by any means and independent of state borders”*. Since this declaration has no legal value, The UN General Assembly has created a **Human Rights Charter**, the applicability of which is binding.

In 1966, the **International Covenant on Civil and Political Rights** mentions the following rights: the right to life, the right to freedom of expression or the right to respect for private life. A total of 167 states have ratified this **Covenant** and must therefore respect these freedoms.

In Romania, freedom of expression is guaranteed by the **Constitution**. Article 30 thereof provides as follows:

- (1) Freedom of the expression of thoughts, opinions or beliefs and freedom of the creations of any kind, by speech, by written word, by images, by sounds or by other means of communication in public, are inviolable.
- (2) Censorship of any kind is forbidden.
- (3) Freedom of the press also implies the freedom to set up publications.
- (4) No publication may be suppressed.

The democratic limits of the freedom of speech

“At an absolute level, freedom reflects the possibility for the individual to act without constraint. In reality, however, freedom is always relative, for the principle of freedom

must always be correlated with that of equality, which implies respecting the freedom of others. Thus, freedom and equality are two inseparable rights of any democratic state”².

Autonomy – individuals’ capacity for self-determination - is an absolutely necessary condition for the exercise of freedom. But this is a progressive path that must accompany the individual since childhood, as individual freedom is exercised in relation to that of others.

Even if freedom of expression is a fundamental principle of democratic societies, it cannot be exercised outside certain limits as defined by law. We must therefore distinguish between the private and the public space. In private, everyone is free to think and say what they want. But this freedom must not be mistaken with the right to publish everything that an individual thinks with the risk of harming others.

Each country can restrict freedom of expression according to its political regime, its culture, its moral and religious values. Thus, paragraphs 6 and 7 of the **Romanian Constitution** come with the following additions:

(6) Freedom of expression shall not prejudice the dignity, honour, private life of the person nor the right to his/her own image.

(7) The defamation of the country and the nation, the instigation to war of aggression, national, racial, class or religious hatred, instigation to discrimination, territorial separatism or public violence, as well as obscenities, which are contrary to good morals.

Freedom of expression in an educational context

In a social context full of uncertainty, threats, but also promises, education is the lever to allow different generations to understand the complexity of the world today and to invent the world of tomorrow.

In order to allow and encourage active participation of children, adolescents, and young people in making changes, and to ensure their free expression, a series of actions could be taken at the educational level:

- providing space for reflection and expression, spaces in which young people can practice freedom of thought;
- stimulating the participation of the educational spaces in the democratic life;
- developing an open attitude towards the world and cultivating respect for diversity;
- raising the awareness of educational actors to the concepts of freedom of expression and freedom of opinion, their definition and understanding;
- encouraging the manifestation of investigative, value seeking attitudes;

²http://www.eduscol.education.fr/cid85297/liberte-de-conscience-liberte-d-expression-outils-pedagogique-pour-reflechir-avec-les-eleves.html?utm_source=weka_actualite&utm_medium=article-education&utm_campaign=/70/WQ/VAF0102#lien0, accessed on 31.05.2019

- motivating young people to fully engage in social change actions;
- awareness of individual responsibility for engaging in actions aimed at social development.

Some aspects of the freedom of expression in the academic environment

Through all its activities, the university contributes to the development of a society based on the values of freedom, equality, justice, openness, solidarity and respect for the individual. The academic environment must be regarded as a learning ecosystem, with priority being given to: developing human and professional skills, exercising an increasingly autonomous and independent thinking, promoting an open, positive attitude towards oneself and others, cultivating tolerance.

With the aim of advancing knowledge and passing it on, developing critical thinking and the ability to articulate ideas, shaping the skill to build arguments based on reason and existing knowledge, the university operates on the basis of a fundamental principle, that of the freedom of expression.

In such an environment that focuses on intellectual stimulation, it is possible that the perceptions of the members of the academic community be often questioned due to the content of the educational system and the discussions it generates, and to the debates organized in extracurricular contexts. Nevertheless, divergent ideologies are integral to a stimulating academic life, and therefore the university has the mission to strike a balance between expressing the world view of each of its members and respecting the right of others to freely express their opinions. In this way, all members of the community will be able to learn, be taught and live in an environment free of any form of abuse or discrimination. It also militates to protect the health and integrity of the academic community by recognizing every individual's right to be treated, protected, assisted and defended entirely under conditions of impartiality, confidentiality and equity, through appropriate mechanisms.

Constraints and prejudices in respecting the right to free speech at the Petroleum-Gas University of Ploiesti

In order to investigate students' views regarding the respect for the right to free expression in the academic environment, the Petroleum-Gas University of Ploiesti Career Counselling and Career Centre developed a questionnaire, comprising 12 multiple-choice items.

The group of subjects consisted of 828 students of Bachelor's degree programs, students coming from all 5 faculties of the university, as follows:

- Letters and Sciences – 232 subjects;
- Economic Sciences – 261 subjects;
- Oil and Gas Engineering – 113 subjects;
- Mechanical and Electrical Engineering – 106 subjects;
- Petroleum Technology and Petrochemistry – 116 subjects.

The answers we got were highly varied, which means that the “expression of opinion is experienced not only as a common and general possibility, but above all, as a personal situation in which the one to whom the opinion is communicated and those who assist to its communication matter equally. The listeners, active or passive in communication, also have their opinions, interests, attitudes, which respondents take into account when expressing their own opinion.”³

The analysis and interpretation of the data gathered through the questionnaire-based survey led to the following conclusions:

- As regards the circumstances in which students can express their personal choices, most of the respondents (78%) appreciate that they are often required to exercise this right in relation to activities involving a low level of responsibility, such as: engaging in the initiation and development of extracurricular projects (75.8%); distribution of responsibilities at group level (71.7%); solving administrative problems in which they are directly involved (56,2); discussing the subjects taught during class activities (51.4%).
- There are, however, many topics that are not subject to academic discussion. In this case, we can make a distinction according to the barriers that intervene in their approach. We can, therefore, identify: on the one hand, topics that are not debated because professors do not show openness, availability, receptivity - in this category, we can include aspects related to group life, interpersonal relationships, transferable skills, private interests etc.; on the other hand, issues that are avoided as a result of a low level of trust in ensuring discretion is applied; manifesting an attitude of acceptance; generating effective resolution strategies.
- The consultation of students in the elaboration of the curricula (which is also a requirement of the ARACIS accreditation standards) is confirmed by the high degree of consistency (91.6%) between the expectations of the direct beneficiaries of the study programs and the disciplines found in the curriculum.
- Most of the investigated subjects (84.3%) appreciate that the curriculum of the study program corresponds to the requirements of the specialization. Although differences of opinion among students of different specializations are not substantial, we can observe a higher level of dissatisfaction among the students of the Faculty of Economic Sciences. The dynamics of the labour market, the widespread changes in the economic sphere, and the increased applicability of knowledge in this field may be possible explanations for the percentages on record.
- Permissiveness of critical views on teacher behaviour is a way of expressing the right to free expression. Vocational training, the accessibility of courses, the

³ Monica Cuciureanu, M., Dan Badea, (coord.), *Drepturile și responsabilitățile copilului în context școlar*, Institutul de Științe ale Educației, București, 2007, p. 66.

adequacy of teaching methods and proceedings are just a few of the issues that were addressed in the questionnaire. Thus, more than half of the respondents appreciate that the didactic activities differentiate by: accessibility, coherence, systematization, etc. Understanding difficulties are, however, more often encountered in the exact disciplines, and a possible cause is represented by the increased difficulty of technical disciplines, but also by the low level of knowledge / skills that respondents have at academic admission.

- The professional training of teaching staff is rated as very good by 45.8% of the UPG students. Sensible differences of perception can be found among students of different faculties. Thus, if in the case of the Faculty of Letters and Sciences some 63,8% of the students appreciate the professors' level of professional training as optimal, the results are significantly lower in the case of the students of the Faculty of Petroleum Technology and Petrochemistry. The rapid evolution of knowledge in the scientific fields, the difficulty in rendering knowledge accessible and adapting them to students' potential can be arguments that justify the difference in percentages.
- The efficiency of the methods and teaching means used in courses and seminars is favourably appreciated by 84% of the UPG students. Intervention for ameliorative purposes, achieved at the level of didactic strategies, is considered necessary by 16% of the respondents. A careful analysis of the results obtained at faculty level allows us to find that the highest degree of satisfaction is registered by the students of the Faculty of Letters and Sciences (63,4%) and the lowest percentages are found with the students of the Faculty of Mechanical and Electrical Engineering (only 38.6% are very satisfied / satisfied). In this latter case, an explanation can be found in the low rate of graduation, but also in poor student training to be able to meet the requirements of the academic environment.
- Over 80% of the UPG students assess that the evaluation of the results reflects the informative-formative valences of the scientific contents. However, there are also situations where errors occur in the evaluation process, errors caused by the evaluators' lack of objectivity. These are being claimed by a higher percentage of the students of technical faculties, which is justified on the one hand by the difficulties encountered in passing the exams, and on the other hand by the low level of the obtained results.
- Over 80% of students consider that professor-student relationships are based on a number of values such as: respect, trust, and collaboration. However, we can see that a significant percentage (20%) of those questioned assess that the professor-student relationship is based on obedience to authority. High exigency, rejection of any initiative, lack of flexibility, treating students as the object of education, are among the arguments behind these answers
- Some 61.7% of respondents assess that although teachers respect their right to an opinion regarding both their expression and the transformation of opinions into decisions and activities, there are also aspects of the academic life where the opinion of students (at least for some of them) are ignored, dismissed. Informal leaders who polarize and manage power in group relationships in academia

produce many prejudices to members of the academic community, but also to school life as a whole.

- Everyone questioned is realistically aware of their right to freedom of expression. Unfortunately, however, 41.3% of students are unconvinced in their power to generate changes in the education system by formulating well-grounded opinions. They denounce the formal character of consulting their opinions (e.g. when deciding on proposals for optional subjects) and the uselessness of their involvement in formulating proposals of an ameliorative nature, thus explaining reactions such as apathy, indifference, passivity, reactions often manifested as a result of prejudice about the professor-student relationship, the source of authority, their personal ability to produce change.

Conclusions: Academic life is where the main sources of information and awareness for the rights of young people are found, and at the same time there lies the social environment in which these rights acquire specific, consistent and significant manifestations in the life of each young person and in the public opinion.

Securing the right to express an opinion goes from potentiality to actuality under the democratic climate of cooperation for decision-making and of participation in the implementation of the adopted decisions, when the opportunities and the risks of expressing opinions can be ascertained.

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Libertatea de expresie în mediul academic – constrângeri și prejudecăți

Rezumat

Diseminarea cunoașterii, căutarea adevărului, progresul studentului și binele societății reprezintă obiective ale învățământului superior, iar libertatea în cercetare și exprimare sunt esențiale pentru urmărirea acestor obiective. Ca membri ai comunitatii universitare, studenții trebuie încurajați să-și dezvolte abilitățile de judecată critică, să se implice în cercetarea independentă, să susțină adevărul. Procedura de urmat poate varia de la o instituție la alta; cu toate acestea, câteva standarde minime de libertate academică sunt esențiale în orice comunitate de studenți. Dar, pentru a beneficia de condiții favorabile în sala de clasă, în campus și în mediul academic, în general, studenții trebuie să-și folosească drepturile în mod responsabil.

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JOB SATISFACTION – A PREDICTOR OF THE ORGANIZATIONAL CLIMATE IN PUBLIC ADMINISTRATION

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Abstract

In this paper we aim to analyse the specifics of the relationship between organizational climate and the degree of job satisfaction for employees in public administration; the analysis is valid within a socio-economical context dominated by the overturning of values and a very liberally understood freedom of expression. The most important result of the research shows us that an organizational climate where effective leadership, harmonious communication and positive relationships prevail fosters a high level of overall job satisfaction in employees from the administrative system. Also, we note the existence of a 'community culture' within the administrative system which reveals the high degree of sociability and communication, the wide spectrum of relationships established at interpersonal level, the identification of employees with the goals and values of the organization. Another significant result reveals the fact that there's better intradepartmental than interdepartmental communication, illustrating the social values promoted in Romanian society (competition, individualism, focusing on performance), which are found in all areas of activity, including public administration.

Keywords: job satisfaction, organizational climate, community culture

Introduction: *Job satisfaction* is an expression of an average of an employee's attitudes towards the different facets of their work, or a "positive emotional state resulting from an employee's personal opinion on their work"¹. Job satisfaction is generated through the individual's perception of how well his activity on the whole is satisfying to the various needs.

In the literature, researchers have tried to correlate job satisfaction with work efficiency, employee absenteeism, conditions of work, staff fluctuation, opportunities for

¹ Constantin Ticu, *Evaluarea psihologică a personalului*, Polirom Publishing House, Iași, 2004, p.18

advancement, job performance, kind of work performed etc. From our point of view, the increase in job satisfaction is generated by the organizational climate, being a predictor of thereof.

Organizational climate analysis should be a regular practice at the request of the managers of each public administration institution, whether it is aimed at gathering the opinions and suggestions of the employees, or that it seeks to consult them when changes are required in the organization or in running the institution.

According to Michel Amstrong² “the *organizational climate* expresses how people perceive existing culture in their organization (what they see and how they feel about it). The climate is a relatively persistent set of perceptions that members of the organization have about the characteristics and the quality of organizational culture. Therefore, the climate portrays the organizational culture.

According to R. Goffee and G. Jones³, there are four types of organizational cultures with the following characteristics:

a) Network culture: the culture in which communication is lively but formal; work is based on routine and on various rituals that support and maintain a high degree of loyalty and friendship. These relational aspects are not the effect of co-operation, which makes this type of culture a “façade” / gossip one. Office doors are always open, offices are decorated with family pictures, employees use work time to socialize and feel part of the family.

b) “Mercenary” culture: it is characterized by competitive individualism and by personal achievements, but does not exclude cooperative activities when required. Internal solidarity is only achieved under the condition of joint initiatives against “external enemies”. Individuals are strongly goal- and success-oriented, more pragmatic than affective in their working relationships. As a rule, the walls of the offices are decorated with awards, diplomas and trophies, and communication is short, direct and focused on work issues.

c) Fragmentary culture: usually in the case of the organizations with a preponderance of experts, who can work independently to achieve certain goals. Such organizational culture exists in situations where there is a low level of interdependent work and individuals benefit from high degrees of autonomy and independence. Office doors are closed, communication is limited to brief remarks on the hallways or at the phone, and tend to be rather formal. Employees’ private lives are a “mystery” for colleagues but also for the organization.

d) Community culture: it is characterized by a high degree of sociability and solidarity. The ample level of interpersonal relationships can present the risk of conflicts that are gradually producing instability. This type of organizational culture involves members that are passionate about what they do and about their role in the organization; they are able to develop a high level of energy over a long period of time. There are open spaces and communication is on all channels, with oral communication being dominant. Close-

² Michel Amstrong, *Managementul resurselor umane. Manual de practică*, Codecs Publishing House, București, 2009, p.45

³ R. Goffee, G. Jones, apud Georgeta Pânișoară, Ion-Ovidiu Pânișoară, *Managementul resurselor umane*. Third edition, revised and expanded, Polirom Publishing House, Iași, 2016, pp. 81-86

knit working relationships can easily turn into friendships. Work becomes a way of living, of being together, and employees identify with the goals and values of the organization.

Research Methodology

Purpose of Study

Our investigative approach was aimed at looking into the essential aspects of the organizational climate (leadership, communication and interpersonal relationships) and their effect on the job satisfaction of the employees in public administration organizations. In this sense, we start from the following working hypothesis: “An organizational climate dominated by effective leadership, harmonious communication and positive professional relationships fosters overall high job satisfaction for employees in the administrative system”.

Participants, procedure and methods

The micro-research was carried out in three public administration organizations in Ploiești, on a sample of 20 persons, 14 female and 6 male employees (with 15 to 25 years of service).

The questionnaire applied to the batch of subjects (“Satisfaction at Work”)⁴ has four components relevant to measuring employee satisfaction in the workplace: a) remuneration and promotion; b) leadership, communication and interpersonal relationships; c) organizing and performing the work; d) general job satisfaction. The last component is a global indicator of an employee’s satisfaction with their job and is expressed in the pleasure and motivation displayed towards the different facets of their performed activity.

Data analysis and interpretation

In order to verify the hypothesis proposed at the beginning of our investigative approach, we calculated only the percentages of affirmative answers that reveal the organizational climate (leadership, communication and interpersonal relationships) and the overall job satisfaction.

The total percentage for organizational climate is 88,75% (“My supervisor is very competent in their activity” - 100%; “My supervisor is fair towards me” - 90%; “Supervisors understand their subordinates” - 90%; “I like my boss” - 95%; “Communication within the organization is good” - 80%; “There are no arguments and conflicts in my workplace” - 95%).

The total percentage for job satisfaction is 80% (“I like what I do at work” - 90%; “I believe my work is appreciated” - 65%; “I am very proud of what I do” - 75%; “My work is satisfying” - 90%).

⁴ Constantin Ticu, *Evaluarea Psihologică a personalului*, Polirom Publishing, Iași, 2004, p.234

As we can see from the percentages above, the organizational climate (88.75%), in which effective leadership (competence, fairness, affective connections), harmonious communication and positive professional relations prevail fosters high overall job satisfaction for the employees in the administrative system (80%).

Among the items pertaining to organizational communication, the weakest is the “interdepartmental cooperation towards good performance” (70%). The fact that “there are no arguments and conflicts in my workplace” (95%), “colleagues like each other (90%) and “communication inside the organization is good” (80%), shows us there’s better intradepartmental than interdepartmental communication.

This result illustrates the social values promoted in Romanian society, which are found across all areas of activity, including public administration: competition, individualism, and performance-centrism. Unfortunately, we rarely encounter social values such as human solidarity, cooperation (between people and between departments) and constant mutual help in running the organization.

Positive answers in relation to leadership (“My supervisor is very competent in their activity” - 100%, “I like my boss” - 95%, “Supervisors understand their subordinates” - 90%) make a case for either the employees’ fear of authority, or for a democratic leadership style (denoting communication, transparency, collaboration, etc.)

We salute the high degree of overall job satisfaction for the employees in the administrative system (80%), in regards to positive motivation and affective connection in the workplace (“I like what I do at work” - 90%, “I am very proud of what I do” - 75%, “my work is satisfying” - 90%). This result demonstrates the congruence between the work done by public administration employees and their skills. It is fundamental, for job satisfaction, that the work done should be in accordance with each person's skills and talents, with their interests and preoccupations.

Concerning overall job satisfaction, the lowest percentage (65%) was obtained by the item that expresses the recognition of the employees’ work (“I think my work is appreciated”). This result is inconsistent with the answers given to questions regarding the appreciation of supervisors, but is in line with the remuneration and promotion responses.

Conclusions: In the present research we aimed to investigate elements related to the organizational climate and their effect on the job satisfaction of the employees in three public administration organizations. A significant result of the research is the high degree of overall job satisfaction of the employees in the administrative system (80%), demonstrating the positive motivation and the affective connection with their work place (“I like what I do at work” - 90% , “I am very proud of what I do” - 75%, “my work is satisfying” - 90%), as well as the congruence between the work done by the employees in public administration and their skills.

Regarding overall job satisfaction, the lowest percentage (65%) was recorded in the item which expresses the recognition of the employees’ work, which shows that people’s need for recognition and appreciation is not fully satisfied.

Another important result of the micro-research is that the established hypothesis has been confirmed: the organizational climate (88.75%), where effective leadership (competence, correctness, understanding, affective connections), harmonious

communication and positive professional relations prevail fosters the existence of a high overall job satisfaction in employees in the administrative system (80%).

However, at the level of organizational communication, intradepartmental communication (illustrated by the items “I like the people I work with” - 90% and “There are no arguments and conflicts in my workplace” - 95%, colleagues like each other 90%) is better than interdepartmental communication (“departments cooperate towards good performance” - 70%). This result illustrates the social values promoted in Romanian society (competition, individualism, focusing on performance), which are found across all areas of activity, including public administration. On the other hand, organizational communication acquires specific notes within the context of people's activity and feelings of belonging to departments/compartments, with specific identities being developed for each department. In support of this statement, Ovidiu Stroescu mentions three relevant aspects:

- The interdependence of tasks and interpersonal proximity is associated with a greater need for interaction;
- Interpersonal and task differentiation is greater between departments than within them; people compare their own actions and beliefs with those of others; new employees tend to come towards peers from within the same department;
- Interdependence, proximity and similarity determine employees to regard the department as a psychological group where influence is mutual.

In conclusion, the organizational climate in the three public administration institutions mirrors the spirit of the staff, reflecting both the organizational culture and the evolution of the organization. In general, the results show that there is a “community culture” in the current administrative system, which reveals the high degree of sociability and communication, the wide level of interpersonal relations, the employees’ passion for their field of activity, the identification of the employees with the goals and values of the organization.

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Satisfacția profesională – un predictor al climatului organizațional în sistemul de administrație publică

Rezumat

În această lucrare ne propunem să analizăm specificul relației dintre climatul organizațional și gradul de satisfacție profesională al angajaților din sistemul de administrație publică într-un context socio-cultural dominat de răsturnarea valorilor și de o libertate de expresie generoasă. Cel mai important rezultat al cercetării ne arată faptul că un climat organizațional în care predomină o conducere eficientă, o comunicare armonioasă și relații pozitive favorizează existența unei satisfacții profesionale generale ridicate la angajații din sistemul administrativ. De asemenea, constatăm prezența unei „culturi comunitare” în sistemul administrativ, care relevă gradul ridicat al sociabilității și comunicării, nivelul amplu al relațiilor care se stabilesc la nivel interpersonal, identificarea angajaților cu scopurile și valorile organizației. Un alt rezultat semnificativ relevă faptul că există o comunicare mai bună în interiorul unui departament decât cea realizată între departamente, ilustrând valorile sociale promovate în societatea românească (competiția, individualismul, centrarea pe performanță), care se regăsesc în toate domeniile de activitate, inclusiv în administrația publică.

THE SALARIAL DISCRIMINATION OF PUBLIC OFFICERS IN LABOR RELATIONS

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Abstract

Discriminarea presupune un fenomen de aplicare a unor diferențieri în recunoașterea drepturilor salariaților, efectul unor astfel de acțiuni constând în lipsa de utilizare a folosinței drepturilor și libertăților fundamentale ale acestora.

Existența discriminării constă astfel în nerecunoașterea criteriilor protejate precizate în actele normative interne și europene ce au ca obiect egalitatea de tratament, chiar și practicile aparent neutre ale angajatorilor putând determina efecte nelegale. Sub acest aspect, facem trimitere la practicile ce induc direct sau indirect restrângerea, înlăturarea recunoașterii, folosinței sau exercitării drepturilor și libertăților fundamentale ale salariaților în raporturile de muncă.

Articolul detaliază fenomenul discriminării salariale în raporturile juridice de muncă ale funcționarilor publici, prin prisma aplicării noii legi a salarizării, în contextul în care aceasta cuprinde dispoziții contrare actelor normative în materie de nediscriminare existente în circuitul juridic intern.

Keywords: discrimination, rights, pay, criteria, institutions.

Introduction: The acts of discrimination presuppose the creation of a disadvantageous situation for certain employees, namely legal inequality between persons in comparable situations, with effects aimed at restraining the fundamental rights and freedoms.

Discrimination does not, however, concern only situations where certain persons, even if they are in comparable situations, are subject to differential treatment and are also dealt with if they have a different situation but are treated identically if the authors are looking at the similar effects reported restricting some rights.

Differentiated treatment can thus be directed directly¹ against protected criteria such as gender, age, ethnicity, race and belief, or may take the form of actions that seem to have a distinct motivation from discrimination, in which case it is necessary to appreciate related to the objective² or subjective character of the facts of those authors.

¹ Țiclea, A., *Tratat de dreptul muncii*, Ed.Universul juridic, București, 2005, pg. 22.

² Țiclea A, *Codul muncii*, Ed.Universul juridic, București, 2015, pg. 21.

The protected criteria are contained in specific internal or international³ normative acts, which contain rules on non-discrimination, including in terms of remuneration, issues that potential victims may call into question in the competent courts, protection of civil servants' salary rights in matters of administrative litigation.

The role of the courts is thus certain in recognizing some forms of differential and harmful treatment for certain persons, but also in assessing the existence of reasonable and objective justifications for public institution employers.

The unconstitutionality of the provisions of the wage law

The unconstitutionality of the provisions of the Law no.153/2018 on wages derives from the non-observance of the provisions of article 4, point c and e of the Law no.188/1999 on the status of civil servants, rules on equal opportunities and motivation of employees, principles according to which the development the careers of public servants should be based on the support of the authorities and public institutions in supporting such individual professional development initiatives.

In this respect, the provisions of art.27 (2) of GD no.611/2008 for the approval of the norms regarding the organization and development of civil servants' bans prohibit any discrimination between civil servants.

As a result, Article 5 letter b of Law no.188/1999 stipulates the obligation of the public authorities or institutions to elaborate internal policies and tools for human resource management and planning, applying the principles of equal opportunities and motivation of civil servants.

In the sense of the law, it can be considered as unconstitutional that a gained right, even a right of salary, can be canceled, restricted, limited, non-observing implicitly the principle of legality in the case of Law no. 153/2017, with amendments, in violation of the Romanian Constitution. In this respect, Article 15 called Universalality requires citizens to enjoy the rights and freedoms enshrined in the Constitution, provided that equality before the law and public institutions is reflected in the provisions of Article 16 on the grounds of the elimination of privileges and without discrimination. According to the rules, no one is above the law, with Article 41 being related to social protection of labor and equal work, women have equal pay with men, restricting the exercise of certain rights or freedoms is possible only under exceptional conditions, such as defense national security, order, health or public morals only if the measure is proportionate to the factual and non-discriminatory situation.

Conditions of non-discrimination

Under Law no. 153/2017 as a framework law on the remuneration of staff paid from public funds, the basic salaries for management positions are set by the head of the public institution, taking into account criteria related to the responsibility, complexity and impact of the decisions that the person can issue . Contrary to these provisions, in the case of the basic salary for the managerial positions within budgetary institutions, it is specified the application of Grad I or II, but without showing objective criteria of

³ Popescu Andrei, *Dreptul internațional și European al muncii*, Ediția 2, Editura C.H.Beck, București, 2008, pg. 340-341.

framing, also creating the premises of a conflict of interests, naturally, in the conditions in which each manager of a public institution may consider himself the most favorable one for himself.

Thus, for example in case of punishment health directorates Law no. 153/2017, as amended, no longer specifies that by order of the Minister of Health the criteria for classifying the sanitary units and subunits, the establishment of the level of salary per grade for the managerial staff, as well as the indemnity for carrying out tasks, activities and additional responsibilities of the basic function", as provided by the former Law no. 284/2010 of the abolished remuneration, the head of the unit being unable to have a legal basis for the application of the respective normative provisions. Last but not least, the Order 1078/2010 on the approval of the organization and functioning regulation and the organizational structure of the county public health directorates establishes that the staff includes civil servants and other categories of medical and sanitary auxiliaries without these to exercise public power powers, namely contract staff, or Law 153/2017 on the remuneration of staff paid from public funds provides that its provisions apply to staff from public authorities and institutions.

It can be seen from the point of view of wages that the Law 153/2017 on the remuneration of staff paid from public funds provides that the salary of the medical-sanitary staff is done according to Annex II and that the remuneration of civil servants, as well as of the personnel of the administrative and maintenance department, is done according to Annex VIII. Thus, the salary on different criteria of the two above mentioned categories of staff creates unjustified inequalities among employees of the same public institution, the provisions being clearly unconstitutional, introducing unjustified and discriminatory differences between employees.

This form of application fails to comply with the principles underlying the issuance of Law 153/2017, namely non-discrimination, in order to eliminate all forms of discrimination and to establish equal treatment for the staff in the budgetary sector performing the same activity and having the same seniority in labor, equality, by ensuring equal basic salaries for work of equal value, of the social importance of labor, in the sense that the remuneration of the personnel in the budgetary sector is made in relation to the responsibility, complexity, the risks of the activity and the level of studies, as well as of the hierarchy, vertically and horizontally, within the same domain, depending on the complexity and importance of the activity being carried out.

In the same sense, we can observe that the general criteria provided by art. 8, par. (1) of the law, concerning the hierarchy of posts for determining basic salaries, job balances / salary duties and employment allowances, both between the fields of activity and within the same field, namely knowledge and experience, complexity, creativity and diversity of activities, judgment and impact of decisions, responsibility, coordination and supervision, social dialogue and communication, working conditions, as well as incompatibilities and special regimes. Although Art. 2 paragraph (1) of Law 153/2017 states that the provisions of the law apply to the staff of the public authorities and institutions, namely the ministries, the other specialized bodies of the central public administration and the institutions subordinated to them, in conclusion, including the case of civil servants.

The provisions issued for the enforcement of Law no.153 / 2017 thus had the effect of diminishing and not increasing the salaries payable to civil servants, as compared to the gross and net amounts before the entry into force of the law. The decrease in wages was reported in the provisions of Article 38 paragraph 3 of the Law no.153 / 2017, whereas for January 2018 the base salary was calculated in relation to the base salary amount of December 2017 increased by 25% the gross of December becoming the brunt of January. Given that the gross of the calculated monthly salary for the year 2022 of the Law no.153 / 2017, in application of the provisions of art.38 paragraph 6, the amount of the salary in payment was diminished below that of 31 December 2017, resulting in a significant salary cut.

As a result of the application of the law and implicitly the way of determining the salary rights, the legitimate rights and interests of a category of civil servants were damaged by individual administrative acts, which led to the introduction of numerous complaints in the administrative contentious courts.

The case of public health institutions

As regards the legal relationship between civil servants with leading positions and the central body, respectively the Ministry of Health, the provisions of Article 2 (1), 4 (2) and 6 (1) and (6) of the WHO no. 1078 of July 27, 2010 regarding the approval of the organization and functioning regulation and the organizational structure of the county and Bucharest public health directorates, art.62 par. (2) and (4) of the Law no. 188/1999, the statute of civil servants, as well as Article 3 paragraph 3 of the Framework Law no. 153/2017 on the remuneration of staff paid out of public funds.

Thus, under O.M.S. no. 1078 of July 27, 2010 regarding the approval of the organization and functioning regulation and the organizational structure of the county and Bucharest public health departments, art. 2 paragraph (1) specifies the composition of the county public health directorate, within which the committee director including executive directors.

According to the provisions of Article 4 paragraph (2), the executive director of the county public health department has only the capacity of secondary orderer of credits, allocating the budgetary credits approved by the main authorizing officer, in this case the Ministry of Health, for the salaries included in his own budget.

For the purposes of the provisions of Article 6 paragraphs (1) and (6), the Minister of Health appoints and dismisses, under the terms of the law, the Executive Director of the County Public Health Directorates, who has the status of civil servant.

Compared to the provisions of art. 62 par. (2) and (4) of Law no. 188/1999, republished, regarding the Statute of civil servants, the appointment to the public civil service is made by the administrative act issued by the leaders of the public authorities, at the proposal of the National Agency of Civil Servants, the administrative act of written appointment must contain the name of the official public and the name of the civil service occupied and the corresponding salary rights.

As a result, the Minister of Health should have set the basic salary for the position of Executive Director of the County Public Health Directorates. Also, the Ministry of Health had to indicate the classification in the first or second degree of salary, which allowed for a legal calculation of the basic salaries of all the employees of the divisions

and implicitly for all the managerial functions, in the sense of uniform and non-discriminatory application.

Concerning the provisions of the Framework Law no. 153/2017 on the remuneration of staff paid from public funds, the provisions of art. 3 paragraph 3 stipulate that the management of the salary system for the staff of the public health units, the Ministry of Health network and the local public administration authorities, in this case the county public health directorates, shall be ensured by the main credit ordinarators, respectively by the defendant Ministry health.

As regards the possible procedural way of challenging the non-compliant wage provisions, the provisions of Art. 37 of the Special Law no.153 / 2017 on the remuneration of the staff paid from public funds, respectively the filing of the appeal within 20 calendar days from the date of the notification of the administrative act for determining the salary rights, with the possibility of appealing the court against the way of solving appeal within 30 calendar days of the communication of the settlement.

The second route is related to the possibility of applying the provisions of Article 7 of Law no.554 / 2004 of the administrative contentious, when the special law provides for an administrative-judicial procedure, the party did not opt for it, considering that - has been injured in a right or a legitimate interest by an individual administrative act, it has requested the higher authority hierarchically superior to the issuing authority through a preliminary complaint⁴, within 30 days from the date of communication, the revocation, in whole or in part, of the act.

Also, in close connection with the above, Law no. 79 / 28.03.2018 amending Law 153/2017 regulates and rectifies initial wage inequalities but only for hospital managers, specifying that the basic salary of a hospital manager with over 400 beds and the general manager will be at least equal to the basic salary of the medical director increased by 10%, and hospitals with up to 400 beds will be at least equal to the basic salary of the medical director increased by 5%, thus finding solutions in these cases related to the way of granting the salary rights respecting the principle of vertical hierarchy and the importance of the activity, the basic salary being increased over that of a subordinate doctor in the same unit.

As a result, in the case of the provisions of the Law no.153 / 2017 regarding the salaries of the staff paid from public funds in determining the salaries of the management positions within the county health directorates, they violate the provisions of art.5 and 6 of the Labor Code regarding the recognition of the principle of equal treatment to all employees and employers, to prohibit direct or indirect discrimination against protected criteria such as sex, age, race, ethnicity, religion or political option. In this respect, direct discrimination is the act of exclusion, distinction, restriction or preference, which has the effect of not granting, restricting or abolishing the use of rights. Pursuant to Article 6, employees must enjoy working conditions without discrimination, including

⁴ Boroi G, Stancu M., *Drept procesual civil*, Ed.Hamangiu, București, 2015, pag.148.

in the case of public institutions⁵, where equal treatment for all forms of discrimination is not prohibited.

In the same sense, Articles 1 and 2 letters e and i of Ordinance no. 137/2000 on the prevention and sanction of all forms of discrimination recognizes the principle of equality between citizens, exclusion of privileges and discrimination, guaranteeing the exercise of economic, social and cultural rights and the right to equal pay for equal work, fair remuneration and satisfying⁶ the provisions of Council Directives 2000/43 / EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and 2000/78 / EC establishing a general framework for equal treatment in respect of equal treatment in terms of employment and employment.

Non-compliance with non-discrimination provisions

In this respect, Law no. 153/2017 requires art. 19 paragraph (1) and (2) that the basic salaries for the management positions are set by the head of the public institution in relation to the responsibility, complexity and impact of the decisions imposed by the duties corresponding to the performed activity but without indicating objective criteria, which allows drivers to make a subjective choice in this respect.

We can see that Law no. 153/2017 no longer specifies that by order of the Minister of Health the criteria for categorizing the sanitary units and setting the salary level by degrees for the fulfillment of additional tasks, activities and responsibilities are laid down in the basic function, as stipulated by the former law salary no. 284/2010, currently repealed.

It is also noted that by including in the basic salary, for senior positions at both grade I and grade II, the seniority grade graduation, at the maximum, it comes to a situation of direct discrimination based on the age criterion, so that a 30-year-old employee with no experience on the first day of work would have paid equal to an employee who would have a work experience and a 30-year work experience.

As a result, by applying Law no. 153/2017 within the same public institution, the decrease of the basic salary for management positions, the increase of basic salaries for other categories of staff, in this case for the contract staff, but the decrease of the net salary for civil servants of execution, tasks, activities and responsibilities are in 2018 the same as in 2017, and are not modified from previous legislation, creating an imbalance between employees and allowing direct or indirect forms⁷ of differentiation.

Practically, these salary diminishes occur when the tasks, activities and responsibilities are the same as those previously carried out, and even if a deputy executive director of public health, a civil servant, would have a net salary equivalent to that of a direct civil servant, execution staff, inspector with control duties, this being the case when the main reasons why the new salary law was issued was to eliminate the inefficiencies and inequities existing in the public system.

⁵ Iorgovan. A., *Tratat de drept administrativ*, Ed.All Beck, București, 2005, pg.. 589.

⁶ Diaconu Nicoleta, *Dreptul Uniunii Europene, Partea specială, Politicile comunitare*, Editura Lumina Lex, București, 2007, pg .266-267.

⁷ Muscalu Loredana Manuela, *Discriminarea în relațiile de muncă*, Editura Hamangiu, București, 2015, pg.17.

Conclusions: Non-discrimination requires forbidding any actions to apply differentiations in the determination of civil servant's salary rights, which would lead to the non-recognition of their rights in the employment relationship.

Of course, non-discrimination requires recognition of the protected criteria in legal acts on equal treatment, the purpose of which is to prohibit discriminatory practices of employers, including in terms of the civil servants' employment relationships.

In this respect, the normative acts in the field of wage discrimination contain norms that oblige employers to maintain favorable behaviors for employees, both civil servants and those who are part of the contract staff, in the conditions of achieving a full equality of treatment, including in terms of the additions and wage increases.

The unfavorable conduct of employees may result from direct actions by employers against the protected criteria contained in non-discrimination rules, but may also take the form of omissions to act in accordance with the law or indirect actions that are apparently not inconsistent with the rights of potential victims.

In these aspects, the role of the courts becomes extremely important in re-establishing the legal relationship to the equilibrium condition, and the interpretation of the non-discrimination rules is also implicitly made by resorting to the conclusions of the jurisprudence in the matter.

Equal pay is governed mainly by the provisions of Article 41 paragraph 4 of the Romanian Constitution, which also relates to the provisions of art.1 (2) lit.e of GO 137/2000 on the prevention and sanctioning of all forms of discrimination. Ensuring the right to equal pay in the context of equal work implies the need to obtain a fair and satisfactory remuneration, with applicable salary rules being laid down, creating the possibility for staff in public institutions to operate on an undifferentiated basis as compared with their duties on duty.

As a result, the norms of non-discrimination in terms of pay are complemented by the provisions of Articles 63 and 159 paragraph 3 of the Labor Code, for the purpose of granting remuneration conditions in the context of the prohibition of any form of unequal treatment over the conditions and elements of establishment and wage allocation.

From the point of view of the jurisprudence, the High Court of Cassation and Justice's decision no. 23/2016 on the interpretation and application of the provisions of Article 1 paragraph (51) of the Emergency Ordinance no.83 / 2014 regarding the phrase " level "allowed to guarantee the unitary level of pay by function for officials of the same professional category, even if they occupy different posts, provided that they carry out activities under the same conditions and duties.

Practically, the requirement to prove discrimination by identifying civil servants performing their duties in a single department in the composition of public units becomes inapplicable, the reporting being made in relation to the obligation to pay at that place a maximum payment level similar to existing in the case of other employees having the same function or degree under similar conditions of study.

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Nediscriminarea salarială a funcționarilor publici în raporturile de muncă

Rezumat

Discriminarea presupune un fenomen de aplicare a unor diferențieri în recunoașterea drepturilor salariaților, efectul unor astfel de acțiuni constând în lipsa de utilizare a folosinței drepturilor și libertăților fundamentale ale acestora.

Existența discriminării constă astfel în nerecunoașterea criteriilor protejate precizate în actele normative interne și europene ce au ca obiect egalitatea de tratament, chiar și practicile aparent neutre ale angajatorilor putând determina efecte nelegale. Sub acest aspect, facem trimitere la practicile ce induc direct sau indirect restrângerea, înlăturarea recunoașterii, folosinței sau exercitării drepturilor și libertăților fundamentale ale salariaților în raporturile de muncă.

Articolul detaliază fenomenul discriminării salariale în raporturile juridice de muncă ale funcționarilor publici, prin prisma aplicării noii legi a salarizării, în contextul în care aceasta cuprinde dispoziții contrare actelor normative în materie de nediscriminare existente în circuitul juridic intern.

ORGANIZATIONAL COMMUNICATION AND PROFESSIONAL SATISFACTION IN PUBLIC ADMINISTRATION

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Abstract

This paper aim to analyse some important issues of public administration organizations and demonstrate that professional satisfaction of employees is generated more by organizational communication than by salary and the promotion possibility, work organization and implementation. The obtained results show us that more institutes from this field are improving organizational communication, fact that gave them efficacy, flexibility, credibility, durability and performance.

Keywords: organizational communication, professional satisfaction

Introduction: Organizational communication is a complex, dynamic and, sometimes, inciting process through could be transmitted information, rules and procedures, could be developed relations, generated events, adopted decisions, fulfilled duties by employees etc.

Both classical and modern theories¹ about organizations have approached also communication issue. So, if R. Taylor have emphasised the role of vertical communication, for H. Fayol horizontal communication was analysed and appreciated, for E. Mayo the most important become communication relationships between group members, and modern theories bring an integrative perspective on communication.

Alex Mucchielli² considers that the purposes of communication inside organizations are: transmission of information about employees' status and roles; facilitation of the process of adhesion to shared values of their own organization and cooperation with other organizations based on that; mobilization in order to build internal coherence and

¹ See Zelter (căs. Zagan-Zelter), Christine-Diana, *Comunicarea organizațională – premisă a eficienței și eficacității organizaționale. Rezumatul tezei de doctorat*, https://doctorat.ubbcluj.ro/sustinerea_publica/rezumat/2011/management/ZELTER_ZAGAN%20Christine_RO.pdf, pp. 12-13.

²Alex Mucchielli, *Comunicarea în instituții și organizații*, Editura Polirom, Iași, 2008, pp.85-87

collective identity; evaluation of shared norms and of the nature of relationships inside organization (sympathies / antipathies).

According to the communication manner, it could be developed organizational identity, could be internalized organizational values and believes, could be built the commitment and loyalty of the employees etc. Organizational communication is both formal / official (messages are transmitted by predefined channels), and informal (messages are transmitted by channels that are not subscribed in the area of subordination relationships).

Albu Gabriel³ emphasis that *formal relationships* are created inside institutions in conformity with its functional rules and norms, solicits involvement / engagement imposed by persons' status and roles inside organization, and are restrained to the correct and on time fulfilment of their duties.

In comparison with these, *informal relationships* are developed besides institutional pressures, are involving a higher degree of knowing each other and liberty, and are depending on emotional and moral options of the partners.

In public administration, more organizations are improving their internal communication, fact that gave them efficacy, credibility, durability and performance. This purpose offer security and stability to the employees, and professional satisfaction and the feeling of being part of an organization. *Professional satisfaction* indicates a "positive emotional estate that results for personal opinion of an employee on his work"⁴.

Nowadays, professional satisfaction is determined by more aspects than salary, working conditions, ad benefits. Specialty literature indicates for this concept of professional satisfaction three key dimensions:

- *Economical satisfaction* (offered by salary, recognition and promotion);
- *Satisfaction connected with work itself* (gave by work conditions, endowment, attributions, effort, feedback, connection between the work done and individual skills);
- *Psychosocial satisfaction* (gave by the collective to whom the employee belongs, the relationships with colleagues, the relationships between employees and manager, the organizational management, the leadership style, the organization values).

The third dimension, psychosocial satisfaction could be more important than other two, economical satisfaction and satisfaction connected with work itself.

Research Methodology

Purpose of Study

The purpose of present study is to investigate some elements of *organizational communication, salary and promotion possibility, work organization and implementation* and their effect on professional satisfaction of employees of public administration institutions.

According to this purpose, we have formulated the following working hypothesis: "General professional satisfaction of employees for public administration institutions is

³ Gabriel Albu, *Relații interpersonale. Aspecte instituționale, psihologice, formativ-educative*. Editura Institutul European, Iași, 2013, p.61

⁴ Constantin Ticu, *Evaluarea psihologică a personalului*, Editura Polirom, Iași, 2004, p.18

generated more by organizational communication than salary and possibility of promotion, work organization and implementation.”

Participants, procedure and methods

The study involved 20 employees for public administration from Ploiesti city, 14 women and 6 men, with long experience in this area of activity. The questionnaire that we have used to investigate our subjects’ satisfaction degree concerning their work place involved four relevant components (“Work satisfaction” adapted from Ticu Constantin)⁵: remuneration and promotion; communication and interpersonal relationships; work organization and implementation; general job satisfaction.

Data analysis and interpretation

In order to verify the study’ hypothesis, we have calculated the percentages of affirmative answers of our questioned subjects.

Table 1. The percentages of affirmative answers of the items for remuneration and promotion

<i>Remuneration and promotion</i>	Percentage
I believe that I correctly paid for my work.	60%
Salary raisings are only few and rarely.	50%
In my working place there are small chances for promotion.	50%
Those that are doing their job properly have big chances for promotion.	60%
I am satisfied by the salary that I receive.	60%
People would like to promote as it possible in other working places.	95%
Employees are rewarded in small measure for their work.	60%
I am satisfied by actual possibilities for promotion.	60%
	Total = 61,87%

Table 2. The percentages of affirmative answers of the items for communication and interpersonal relationships

<i>Communication and interpersonal relationships</i>	Percentage
My supervisor is very competent in their activity.	100%
My supervisor is fair towards me.	90%
Supervisors understand their subordinates	90%

⁵ *idem*, p.234

I like my boss	95%
Communication within the organization is good.	80%
There are no arguments and conflicts in my workplace.	95%
Colleagues like each other.	90%
Interdepartmental cooperation generates good performance.	70%
	Total = 88,75%

Table 3. The percentages of affirmative answers of the items for work organization and implementation

<i>Work organization and implementation</i>	Percentage
Most rules and procedures from here are facilitating my work.	100%
Most of the time I feel that my work has a purpose.	90%
I have to work too much.	60%
Work duties distribution is well done.	85%
We constantly verify the way that we are doing our job and implement improvements.	90%
Organization priorities are well understood by employees.	85%
I feel that I know a lot about this organization.	90%
Permanently we are looking for new modalities to improve the way of working.	90%
	Total = 86,25%

Table 4. The percentages of affirmative answers of the items for general job satisfaction

<i>General job satisfaction</i>	Percentage
I like what I do at work.	90%
I believe my work is appreciated.	65%
I am very proud of what I do.	75%
My work satisfies me.	90%
	Total = 80%

The obtained results confirm our hypothesis: general professional satisfaction of employees from public administration institutions (80%) is generated more by communication and interpersonal relationships (88,75%), than salary and possibility of promotion (61,87%), work organization and implementation (86,25%).

So, a significant result of our study is that there is a good organizational communication in our subjects' opinion ("there are no fights and conflicts on my working place" – 95%); "communication is good inside organization" – 80%). Considering organizational communication, a smaller percentage (70%) we have found on "departments' cooperation in order to obtain a better performance in activity", and this could indicate that differences in tasks, habits, or values between employees of different departments may be a cause of the defective or diminished communication between them.

The smallest percentages from all indicators have been obtained on the following items:

- "Salary raisings are only few and rarely." – 50%;
- "In my working place there are small chances for promotion." – 50%.

These percentages, although there are quite high percentages, could indicate that employees from public administration organizations are not satisfied by their salaries and their present possibilities of promotion.

Alarming is the negative perception about relation between the work done and the chances of promotion ("Those that are doing their job properly have big chances for promotion.") – only 60% indicated this item as affirmative. Inside Romanian society, every individual could see that personal and professional success is not depending any more by the effort, and human value is not associated any more with knowledge, diligence, and will (as in 19th century), but important is today "relation system" and "others' perception about someone; the public image is more important than reality. In postmodern registry, the image is the reality."⁶ We could say that a persons' image could replace today the effort to become that person.

We have been surprised to see that, in administrative system, the work is perceived by our subjects as very well organised and done (86,25%), and the employees believe that rules and procedures are facilitating their job (100%), their duties are well prescribed (85%), everyone' work has a purpose (90%), organization priorities are well understood by personal (85%) and permanently somebody is looking for new modalities to improve their way of working (90%). Unfortunately, they still consider that they have too much to work (60%) and small chances to promotion to their working place.

Conclusions: The results of present study demonstrate that our hypothesis is confirmed: professional satisfaction of employees from public administration organizations is generated more by organizational communication than salary and possibility of promotion, work organization and implementation.

Unfortunately, employees from public administration organizations are not satisfied by their salaries and their present possibilities of promotion ("Salary raisings are only few and rarely." – 50% and "In my working place there are small chances for promotion." – 50%). Also, is alarming the negative perception about relation between the work done and the chances of promotion ("Those that are doing their job properly have big chances for promotion." – only 60%).

⁶ Emil Stan, *Educația în postmodernitate*, Editura Institutul European, Iași, 2007, p.80

Remarkable is that employees' perception on work organization and implementation is very good (86,25%), result indicated by following items from our research instrument: rules and procedures are facilitating their work (100%), duties are well established (85%), everyone work has a purpose (90%), organizations priorities are well understood by personal (85%) and permanently is looking for new modalities to improve their way of working (90%).

Further direction for research could analyse the differences between organizations and their systems of communication, because studies⁷ have demonstrated that, depending on its profile, dimension and organizational culture, communication is specific for every organization, although there are common elements also. It could be interesting to make a deeper analyse of correlation between professional satisfaction and the way that employees are defining good communication (vertical and horizontal communication).

Our study results indicate that public administration institutions should be aware about the fact that there are important all the efforts for its permanent adaptation to internal and external environmental changes, and maintain its openness, flexibility, efficiency of communication, performance and innovation in organizations.

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Comunicarea organizațională și satisfacția profesională în administrația publică

Rezumat

Această lucrare vizează analiza unor aspecte importante ale organizațiilor din administrația publică și demonstrează faptul că satisfacția profesională a angajaților este generată mai mult de comunicarea organizațională decât de salarizare și posibilitatea promovării, organizarea și realizarea muncii. Rezultatele obținute ne arată faptul că multe instituții din acest domeniu de activitate își îmbunătățesc comunicarea organizațională, fapt ce le conferă eficacitate, flexibilitate, credibilitate, durabilitate și performanță.

⁷ Zelter (căș. Zagan-Zelter), Christine-Diana, *Comunicarea organizațională – premisă a eficienței și eficacității organizaționale. Rezumatul tezei de doctorat*, https://doctorat.ubbcluj.ro/sustinerea_publica/rezumat/2011/management/ZELTER_ZAGAN%20Christine_RO.pdf, p.10.

ETHICS OF PERSONAL RELATIONS AND NEUROSCIENCE

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Abstract

In the area of applied ethics a separate chapter is dedicated to the report between morality and personal relationships. Are they in conflict or not, so that you can not be morally up to the end when it comes to people with whom you have a personal experience? Morality is a universally valid standard of behaviour or, in fact, there are several levels of morality or even more types of morality. The paper analyses this conflict by taking into account a short episode of Plato's dialogues and then by comparison with more recent contributions to this subject. There is, therefore, a philosophical, biological and philosophical perspective, and finally the way in which today's neuroscience can further clarify this dispute.

Keywords: ethics, applied ethics, personal relations, neuroscience, biology.

Applied ethics are built on the boundaries of standard ethics or, more preferably, on failed tests of great ethical theories. The picture that can clarify us about the relationship between ethics and applied ethics is that of a circle. Near the center lies the great ethical theories, ethics of virtues, rationalist ethics, deontology, etc. and each occupies a sector in this circle, but what is most important is that the periphery of the circle is diffused, with no clear edges. From here on, the applied ethics begins, the ethics that give equal moral value to contradictory situations. Our moral comfort is being put to the test by the applied ethics because although very clear situations are being considered, such as abortion, for example, we can not reach a satisfactory agreement that will allow us to decide whether or not to do that is a good thing or bad. After all, ethics have been invented by philosophers to help us have a good and doubtless life if we do the right thing with it. Ethics has an intrinsic role as a lens, it helps you better see the difference between good and evil when it is not seen with the naked eye. Most of the time we do not need ethical glasses, we see far away that a deed, such as theft or murder, is bad. But there are situations where, although we look almost at a deed, we fail to establish its affinity either for good deeds or for bad deeds. A telling example is given by Plato in the Euthyphron Dialogue in which the character of the same name goes to entrust the justice to his father who committed a crime:

Euthyphro: It is ridiculous, Socrates, for you to think that it makes any difference whether the victim is a stranger or a relative. One should only watch whether the killer acted justly or not; if he acted justly, let him go, but if not, one should prosecute, if, that is to say, the killer shares your hearth and table. The pollution is the same if you knowingly keep company with such a man and do not cleanse yourself and him by bringing him to justice. The victim was a dependent of mine, and when we were farming in Naxos he was a servant of ours. He killed one of our household slaves in drunken anger, so my father bound him hand and foot and threw him in a ditch, then sent a man here to inquire from the priest what should be done. During that time he gave no thought or care to the bound man, as being a killer, and it was no matter if he died, which he did. Hunger and cold and his bonds caused his death before the messenger came back from the seer. Both my father and my other relatives are angry that I am prosecuting my father for murder on behalf of a murderer when he hadn't even killed him, they say, and even if he had, the dead man does not deserve a thought, since he was a killer. For, they say, it is impious for a son to prosecute his father for murder. But their ideas of the divine attitude to piety and impiety are wrong, Socrates¹.

Plato argues that good should be treated and transposed into facts as a general rule against which concessions are not admissible, but he also shows that this is not an easy one, if not impossible. In *Euthyphro*, the discussion advances towards reporting just behavior to superior instance, divinity. However, Plato's dialogue makes it easy to see that there are other instances besides the divine, for example the emotional nature of the human soul, that is, affective or family relations. In short, can morality be divided? Are there more types of morality in relation to the degree of emotional involvement with the people involved? Even though from Plato and then from Aristotle the ethical ideal of impartial morality was the almost exclusive field on which moral concepts developed, doubts about the legitimacy of this ideal were felt.

What are personal relationships?

Personal relationships are those that involve us personally, where feelings play an important role in human behavior. This is about my behavior towards those I love, such as my wife, mother, child, friend, etc. To them, morality loses its absolute and impartial character. It is natural to be more careful with them, to be more tolerant and even to be better with them than with all other people. It even seems to me to be natural and as commendable as this differentiated and favored behavior towards the people in my intimate circle. Socrates's hesitation and wonder of young Euthyphro's intention to denounce his father's murder seems reasonable when he says it is a stranger, not a close relative. In relation to people with whom we do not have a personal moral relationship, it generally works smoothly, which justifies us not only to believe that the morgue works between emotionally non-emotionally related individuals, but that since it works at the level of society as a whole, then then it should also work in particular cases, despite the feelings involved.

¹ Plato, *Euthyphro*, in *Five Dialogues. Second Edition* Hackett Publishing Company, Inc. Indianapolis/Cambridge, p.5.

On the one hand, we have before us a logical and rational plan that operates ethics, on the model of the whole-part report, general-particular and on the other a sentimental plan of ethics. In the logical model of ethics, good is a value that is deductively distributed from all men to each individual, regardless of the context of moral action, in other words, a universal moral law (Kant) placed as imperative (must). In the sentimental model of ethics, thinking the good is replaced by feeling the good. The moral value of an action lies in our feelings of compassion, altruism, pity, the desire to make others feel good. This model was described and named by its founder, I.Eibl-Eibesfeldt, the model of natural morality. Natural morality replaces rational morality as an explanatory model of morality in general. Of course, natural morality is rationally grounded, even on a purely scientific, ethological model. Therefore, I think it is useful to analyze the classic conflict of applied ethics between personal relationships and morality from the biology perspective that describes human behavior

Moral philosophy of personal relations

Before analyzing the impact of biological sciences such as ethology or neuroscience on ethics, we need to stop a little while on the philosophical analysis of personal relationships. Philosophers like J. Rachels try to solve the conflict between personal relationships and morality from within, through the conceptual analysis of the idea of a personal relationship. Rachels' approach proposes a review of the idea of a personal relationship starting from relationships within the family, especially of parents to children. Invoking old Chinese philosophical concepts, Rachels proposes a reconsideration of the idea of universal love in which personal relationships are particular cases of a universal morality. Rachels's proposal is to turn the personal relationship into a less personal or at least personal one, to the extent that people's love for the people should be equal, even if they are close relatives. I have to love my child not because it's my baby, but because I have to love children, and my children are my way to love children. We do not have to judge Rachels' idea too harshly, though it is quite tempting. It really seems counterintuitive to accept that love for my child springs not from being mine but because it's just a part of universal love, but Rachels reminds us that if we start from such a universal love we can come to justify fundamental moral concepts of society such as selfishness, racism, sexism and other injuries of human dignity. How much we realize Rachels' universal love is a transformation of the idea of love as a virtue of Plato, a sort of soul-like activity matched with reason. I have to, at Rachels, becomes I get to love in the name of love.

It seems a masked deontological conception, which ultimately dissolves personal relationships. If I still have a personal relationship is because I have not sunk in the eternal ocean of universal love. It resembles Christian love or, in any case, the religious way of understanding love.

Philosophers like B. Williams quickly drew attention to the fact that life itself is based on personal relationships and impartial preferences. The choice of husband or wife is not made in the name of a supposed moral obligation, but on the basis of long-term preferences that justify me and even oblige them to grant further preferential treatment to these persons. It is worth insisting on this change of perspective. Personal

relationships are kinship relationships. Obviously, not all personal relationships are kinship relationships, but all personal relationships can be understood as relationships that multiply in one way or another the relationship of kinship. Attraction, preference, increased sensitivity to certain individuals or to others, reproduce us, confirm us, make us feel together with someone other than ourselves. We mean an enriched self. Euthyphro is embarrassed to denounce in his father's plan by the fact that if he does so, he is like giving up on himself. This always confuses the serenity of the starry sky above Kant, the relatives are our multiplications. Every person I love carries with me. We are divided into all our friends. Perhaps that is why the idea of sharing is so present today, even reaching the idea that if I do not share what I feel, I feel uncomfortably. What's the point of feeling something or feeling in some way, if you're the only one who knows it?

E. O. Wilson is the author who has described most clearly the importance of the concept of kinship in relation to ethics:

This brings us to the central theoretical problem of sociobiology: how can altruism, which by definition reduces personal fitness, possibly evolve by natural selection? The answer is kinship: if the genes causing the altruism are shared by two organisms because of common descent, and if the altruistic act by one organism increases the joint contribution of these genes to the next generation, the propensity to altruism will spread through the gene pool².

Nearly a decade before Wilson, I.-E. Eibesfeldt spoke of the natural morality according to that our moral behavior is encapsulated in the genes that characterize our behavior. In other words, all ethics are based on personal realities, meaning family relations or genetic relationships.

More clearly, on relationships that arise between individuals who share common genes. In the face of these scientific data that lead to a naturalization ethics program, Wilson adopts the path of genetic determinism that there is no free choice of ethical decisions. Our moral behavior is one born and explained entirely by evolutionary biology.

A possible solution, or rather, a reconsideration of the conflict between personal and morality, was indicated by P. Singer who prefers to build his speech on the ethics of inter-human relationships, starting from the biology data provided by man. Even if Singer argues in *The Expanding Circle* against E. O. Wilson's genetic determinism:

Although Wilson is clear that sociobiology should make a dramatic difference to ethics, he is regrettably less clear about exactly what difference it makes. For the next 560 pages of Sociobiology there is nothing to suggest how biology can explain ethics "at all depths" until, in the final chapter of the book, Wilson abruptly suggests that perhaps

² E. O Wilson, *Sociobiology. The Abridged Editions*, The Belknap Press of Harvard University Press, 1980, p. 3.

*"the time has come for ethics to be removed temporarily from the hands of the philosophers and biologized."*³

He opens the way to a useful argument for solving the conflict between personal and moral realities. It is the idea of extending from the intrinsic morality of the human being to a universal ethic, on a model close to utilitarianism. In short, Singer argues that ethics can not be reduced to genetic evolutionism and that it is a product of culture that responds to superior or further needs of man. Singer's model is that of the wider circle of ethics, altruism and compassion.

Until now, we have analyzed the conflict between personal relationships and morality following several tracks. One was Rachels who also proposes an extended circle of universal love. A similar way belongs to P. Singer, who speaks of the impossibility of reducing the whole field of ethics to genetics in the end, because ethics also means social practices, ethical decisions, institutions, etc. In turn, biologist E. Wilson insists that ethics based on free choice is an illusion, and that our genes will always favor those with whom we divide to the detriment of those we do not share with. Turning to the problem of Socrates, we can see a complementarity of morality areas of different intensity.

An area of universal, principled, ideological morality, which is successfully applied to all humanity and which can be normative established from the top down on the model of the rational principle (imperative) followed by a particular deed, or from the bottom up, from a strict preference subjective (the love of a certain person and the harm of all other people) to the love of all people.

Of course, this demarcation of areas of ethics does not make anyone aware of Euthypro's choice or how we should judge that choice. At the end of *The Expanding Circle* P. Singer expresses its readiness to review the point that all ethics are written to our genes before we are born, if new scientific knowledge will make us believe the opposite: *When we know more, we will be able to claim that we are no longer the slave of our genes*⁴. Let's see what he has to say the most vogue field about man at present: neuroscience. It seems like a land of the promise of knowing this new field, so that everyone could look at it as if it were able to elucidate our oldest doubts.

Neuroscience of altruism

When it comes to neuroscience, we need to be mindful of an essential thing about it: Neuroscience is an interpretation of the measurements made with the aid of a magnetic resonance device on a living human brain. Therefore, the acronym fMRI is the functional magnetic resonance imaging. Certainly, neuroscience is not limited to an imaging investigation, but it is the core of this promising field. This shows that neuroscience is a process of interpretation, at least for the time being. It is undoubtedly remarkable that we can look at the activity in our brains, but we still need a process of validating the data obtained in some comprehensive theories. Therefore, we can hope that through these theories we will overcome slavery to our own genes, as P. Singer announced. For the ethics of personal relationships, it is enough to sum up the study of

³ *Ibidem*, p. 55.

⁴ A. Marsh, *Good for Nothing: From Altruists to Psychopaths and Everyone in Between*, 2017.

altruism. Between altruism and morality we can put in the context of our discussion the sign of equivalence. If we elucidate altruism, then we know everything about morality in general. What do evolutionary biology, genetics, sociobiology and altruism have in common? The answer is that altruism is at the center of ethics and biology of behavior that defines the human being. Altruism is a culmination of moral virtue and the last concept that evolutionary biology has to associate with genetic behaviors.

If biology succeeds in including altruism Wilson is right, if not, Singer gains and ethics does not become the chapter of social biology and psychology. Recent studies focused on altruism show that altruism is two-way, normal and exceptional. The normal one is in its turn two ways: inclusive opportunity and mutual altruism. It is Abigail Marsh's merit to integrate into the field of scientific research the exceptional altruism that strongly provoked evolutionism because he had to explain in clear terms how it is possible for a man to be so interested in the good of a similar in order to put without endangering his life⁵. The Darwinian paradigm of comprehension of the living world highlighted the priority of the principle of self-preservation and even of selfishness. Every living being is ruled by the desire to remain alive. Survival is the purpose of life and any form of life, regardless of the complexity of that being. Thus it seemed that selfishness is the one that best defines the human being in evolutionary theory. This issue has even preoccupied Darwin, but today we know that man is also dominated by other instincts associated with survival, such as aggression (K. Lorenz) for example. By instinct is meant here a fundamental inborn or pre-programmed genetic behavior.

Evolutionary biology has proposed to answer the question of the center of ethics: can man be good? From a sociobiological point of view, it is the question of the conditions in which man as a living being and being part of nature, if he can rise up to the level of ethical greek ideal, for example? In other words, the question of the morality of the human being can be transferred from the field of philosophy and conceptual thinking to the field of descriptive science of the living world? Therefore, the issue of the naturalization of ethics reappears with the help of social biology and psychology.

A. Marsh manages with fMRI-based neuroscience to explain in a convincing manner the extreme altruistic behavior. Based on empirical research, it shows how distinct parts of the brain, such as the amygdala, and the brain as a whole manifest itself when we are dealing with extreme altruistic behavior. Through well-grounded correlations, indisputable ties can be found between the size, density and activity of amygdala and extreme altruistic behavior. Here, altruism is no longer a culmination of ideal ethics, but a parametric correlation is a malfunctioning of the human brain. If the arguments put forward by A. Marsh on the nature of altruism are correct, then P. Singer is in a position to review the extension of the ethics circle, as announced above. Recent programs of moral bio-improvement have in mind precisely controlling these predispositions for therapeutic purposes. In this case, we can easily talk about a radical shift in the importance of biology for ethics.

⁵ A. Marsh, *Good for Nothing: From Altruists to Psychopaths and Everyone in Between*, 2017.

As I said normal altruism is either an inclusive opportunism or a mutual altruism. Altruism as opportunism inclusive is responsible for influencing individuals to favor genetic relatives. I especially help those with whom I share a common genetic dowry, because that's how I protect my own genes or characters. It is as such a selfish mechanism open to others. Not to everyone else, but to those who have the same genes with me, not entirely, but enough to remove them from the anonymity of the rest of the individuals. It is an egoism of genetic survival, but it is also for the benefit of my relatives. My genes have bigger chances to move on if I co-operate with those who have them. Here, survival and altruism can be found in Darwin's theory.

This mechanism of fostering a relative with me is present in many animal species on Earth. The higher the degree of kinship, the more self-righteous the behavior increases, as the fewer genes involved, the lesser the altruism decreases. Interesting in this form of altruism is that it also explains the multitude of morals in relation to the universal unique morality (Kant). I'm more moral with those with whom I share one or more genes and less morally with strangers. Not in the sense of doing good to the friends and evil of the enemies, as in the second definition of justice in the Republic of Plato, but in being more sensitive and compassionate to the relatives.

The radius of the circle can change, expand, without always comparing it with an ideal circle in which all people indistinctly enter. Mutual altruism is formulated by A. Marsh in the spirit of sociobiology: *help those who have helped you in the past or might help you in the future*⁶. Having a biologic foundation, mutual altruism in essence says that recirculation is made between people who know each other and who have close relationships, not necessarily related to each other. Therefore, it is no longer a gene perpetuation directly, but it can be a perpetuation of groups, of the community. Socialization is therefore an instinct or an innate behavior. The utilitarians will enjoy mutual altruism, being very close to how they explain the preference of good and cooperation when it comes to moral actions. But is mutually altruism an extended circle in the sense of P Singer? Are we by mutual altruism get rid of the genetic determinism of morality? We think not. Mutual altruism is also an adaptive biological mechanism for the purpose of preserving one's own life, but only in this mission the others has a positive role. As such, it is more beneficial for life to be altruistic, genetically or mutually than not to be altruistic. And then, if neuroscience, produced by all canons of social psychology scholars like A. Marsh, is today's successor to Darwin's old-age evolutionary theory, it means that personal and moral relationships can be reconsidered. First of all, personal relationships are fundamental to life and individual and enable it to develop any social reality in general.

Then morality does not accept a universal standard, a universal moral law as Kant wanted, because morality is in fact a behavior adapted to survival and well-being. Society is the result of such personal biological behaviors, and morality is nothing but the kind of relationship to develop. Famous ethologists like K. Lorenz or D. Morris, and

⁶ A. Marsh, *Good for Nothing: From Altruists to Psychopaths and Everyone in Between*, 2017, (the Romanian translation), Baroque Books & Arts, 2018, p.147.

historians like N.Y. Harari, explains the evil in the world as possible in a dehumanizing context of overpopulation that favors impersonal relationships among millions of people. The adaptive biological response is to widen the circle of the known to one nation. People can more easily hurt each other if they do not know and belong to different groups. In conclusion, as we realize, neuroscience clearly clarifies the dispute between personal relationships and morality, giving more justice to EO. Wilson and I. Eibl-Eibesfeldt. An Euthypro will hardly manage to get his father to trial. On the other hand, slavery to our genes may generate at least a more functional moral than a rigid ineffective deontology.

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Etica relațiilor personale și neuroștiință

Rezumat

În domeniul eticii aplicate un capitol separat este dedicat raportului dintre morală și relațiile personale. Se află ele sau nu în conflict, astfel încât să nu poți fi moral până la capăt când e vorba de persoane cu care ai o relație personală? Morala reprezintă un standard de comportare universal valabil sau, de fapt, există mai multe nivele de morală sau chiar mai multe morale. Lucrarea analizează acest conflict luând în considerare un scurt episod din dialogurile lui Platon și ulterior prin comparație cu contribuții mai recente la acest subiect. Intră, așadar, în discuție un punct de vedere filozofic, altul biologic și în cele din urmă modul în care neuroștiința de astăzi poate clarifica în pluc această dispută.

DIALOG BETWEEN GENERATIONS AND SUSTAINABLE DEVELOPMENT

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Abstract

This paper aims to address an important issue today, namely environmental protection and establish to what extent we can develop without too significant an impact on the resources at hand. The topic sparked nationwide controversy as well as enough international concerns. Humanity cannot survive without genuine care towards natural resources. The paper aims to present issues related to the consumption levels of society and to what extent there are policies for environmental protection.

Keywords: environment protection, economic development, natural resources, public policies.

Motto: “Man thought he can dominate nature,
that he can subject it to his will;
now nature turns on him and he
finds himself trapped.” *Lucian Boia*

Introduction: We live in a world where consumption is encouraged. People consume more resources than they need to survive. The media shows increasingly more reports about natural disasters. Already there are groups supporting one position or the other: we have the group that encourages economic development at any cost, insisting on economic crisis and the lack of jobs that led to a social crisis; we have the group of those promoting environmental protection, especially at the level of international organizations, some of these organizations even becoming extremist, organizing and implementing actions in force, involving law violations; and then there's the group of the moderates who are trying to recycle, using 'eco-friendly' mechanisms but without thinking too much about what happens globally; or the group of the fence-sitters, an easy target for any group that promotes aggressive marketing.

Concepts presentation: When I started this process I didn't aim to promote the return to origins, ignoring technological progress, and living subsistently. It is rather an encouragement to continue development, but to protect resources and avoid misunderstood consumerism. First of all, general concepts must be presented: "Sustainable development is meeting the needs of the present without compromising the right of future generations to existence and development. The overall objective of sustainable development is to find a space for interaction between four systems: economic, human, environmental and technological, in a dynamic and flexible operation process."¹

In theory, economic development and sustainable development do not seem to be opposites, on the contrary, but we observe global damage to the environment and it is caused only by human action through lack of real policy on environmental protection or noncompliance by big polluters that are also usually most industrialized countries.

The paradox that we notice is this: most poor countries have or had valuable natural resources and yet the biggest humanitarian crises emerge in such countries. It is true that these countries have not enjoyed favorable geopolitical context or history. In most cases, they have been colonies of the great European empires that exploited almost to exhaustion not only their natural but also their human resources.

We are dealing with poverty, lack of drinking water or water in general, demographic explosion, and many countries have no access to electricity. According to an estimate of the World Bank, about 1.6 billion people, or one in four, have no access to a source of electrical power. According to this estimate, in sub-Saharan Africa, and excluding South Africa, 75% of households, or 550 million people do not have access to the electricity grid. In India, Pakistan and Bangladesh 700 million people, 50% of the population and 90% of rural population are not connected to such a network. If no measures are taken, in 2030, 1.4 billion people will not have access to electricity.²

A consequence of this is increased air pollution due to smoke emitted by cooking with open fire, it being one of the causes of 1.6 million annual deaths, especially among mothers and small children; the other causes of death are malnutrition, unsafe sex, thus infecting patients with incurable diseases, lack of clean water and sanitation.³

Through coherent public policies, eradicating corruption and especially by will and good faith on the part of international decision makers, all this may change. On the other hand, Europe and North America are wasteful. It can be seen that in these areas, people buy, and ultimately consume more than they need. An average between consumption in these countries and in the very poor yields an acceptable figure; however, some consume too many resources, while others struggle to survive. "Public policy plays a central role in the economy of modern societies. Their scope covers every complex social interaction, from policies that have a direct influence on the economic aspect. [...] Education, health, social assistance, transportation, roads. These are some of the issues that form the social context in which we live our lives. [...] the development

¹ C.R. Romițan, *Dicționar de dreptul mediului*, All Beck Publishing House, București, 2004, p. 61.

² T. L.Friedman, *Cald, plat și aglomerat*, traducere Laura Guțu și Miruna Andriescu, Polirom Publishing House, Iași, 2010, p. 153.

³ Ibidem

of society is closely linked to the commitment of its members that any individual enjoy basic tools of survival and development.”⁴

If public policy is the main instrument of state intervention in a particular field, where environment is concerned this was done under the form of a new policy, introduced and applied since the late '60s, which expresses an awareness of the limited natural resources that we have, but also of the negative effects of pollution of every kind, as a result of goods' production and consumption. This new movement embodied in a new policy was developed simultaneously at national, European and international level. The private sector is not always willing to make expenditures on research that would benefit the entire society, and the ecological stakes is too important for all humanity to leave it up to people who are guided by the principles of competition and profit; therefore, only the state could be a major player in the defense of the environment.⁵

It should be noted that the Treaties establishing the European Communities did not include legislative competence in environmental protection; it was only after clearer results on environmental pollution in the 60's that Community institutions of that time began to take action, but there were factors that hindered long enough the development of a real environmental policy in Europe. Among these factors there were: significant differences in environmental standards of member countries; lack of studies on environmental issues and long-term impact of environmental degradation, of the excessive use of resources and reduction in bio-diversity; classic opposition between economic and environmental objectives; high costs of implementing an environmental policy; low results of environmental research and development of eco-technologies etc.⁶

Member States have taken the necessary steps at national level, but pollution is a transboundary phenomenon and cannot be combated effectively and efficiently within national borders only. Moreover, some of the measures that were taken prevented the free movement of goods within the common market and therefore pressures have intensified for joint actions in environmental matters.⁷

In the European Union taking action on environmental protection is identified with the principle of subsidiarity. In essence, subsidiarity is decision making by authorities closest to the citizen. “[...] subsidiarity has been identified as the most suitable concept to explain and resolve conflicts between different categories of levels, in the avatars of its strengthening in Community law fulfilling this function in relation to the levels of national law or religion matters. [...] contrary to the principle of proportionality, inherent in all regulations made by Community Treaties, there is no explicit mention of the principle of subsidiarity in the institutive treaties. Consequently, it took the Single European Act and the adoption of a Community policy of environmental protection for subsidiarity to emerge in article R (4) of the Treaty of Rome. Under this provision, the Community can not intervene in environmental matters unless the policy objectives in

⁴ F. Bondar, coord., *Politicile publice și administrația publică*, Polirom Publishing House, Iași 2007, p. 20.

⁵ M. Duțu, *Politicile publice de mediu*, Universul Juridic Publishing House, București 2012, p. 13.

⁶ F. Brașoveanu, *Dreptul european al mediului*, Pro Universitaria Publishing House, București, 2013, pp. 85-86.

⁷ *Ibidem*

question *can be achieved at Community level rather than at the level of the Member States taken in isolation.*"⁸

Subsidiarity is also materialized by strategies for achieving environmental policies and there is an attempt to promote an alternative model for achieving the environmental objectives of the European Union. These strategies shall take the form of helpful tools that complement the standard ones and that act as incentives to take steps to protect the environment, as it is also a question of sustainable development which, at doctrinal level, has its sources in the theory of welfare economics and social market economy. Welfare economics is based on the difference between private and social costs.⁹

Apart from the principle of subsidiarity, there are other relevant principles for environmental protection: the principle of prevention of environmental degradation, the principle of precaution, the principle of rectifying environmental damage at source, the 'polluter pays' principle, the principle of integrating environmental considerations into all Community policies.¹⁰ Why are these principles relevant? They are relevant because they focus not only on the economical, social and political development of society, but also on the need for environmental protection.

Preventing environmental degradation is based on the idea that the work of prevention is far less costly than repairing environmental damage, some of which are irreversible. The need arises to take into account, as earliest as possible, incidents regarding the environment in all technical, planning and decision making processes, etc. Regarding precaution, there is uncertainty about the relations established between economic and scientific conditions and environmental protection. A decision of the Court of Justice of the EC justified prohibiting the regional importation of waste in view of the principle of rectifying environmental damage at source, arguing the need to deposit such wastes as close as possible to the place they are generated.¹¹

By the Single Act it was established that the polluter must bear the cost of measures necessary for the correction of damages caused. From a practical standpoint, no rule of Community law considers emissions into the environment as pollution and does not contain any element obliging the broadcaster to take preventive measures to reduce these emissions. The principle of integrating environmental considerations into all Community policies is viewed more as an environmental policy than as a legal action, and community strategies and measures, no matter the field, must take into consideration the requirements of environmental protection. Currently, integration is an important objective of EU policy, because it is a tool of environmental protection *per se*, especially since it is a crucial element in the process of establishing patterns of socio-economic development; there are four sectors as a priority: agriculture, energy, regional policy and development cooperation.¹²

Single Act included among the objectives of the Community: the harmonious, balanced and sustainable development of economic activities, but also a high level of

⁸ R. Bercea, *Drept comunitar. Principii*, C. H. Beck Publishing House, București 2007, p. 330.

⁹ F. Brașoveanu, *op. cit.* p. 96.

¹⁰ M. Duțu, *Tratat de dreptul mediului*, ediția 3, C. H. Beck Publishing House, București, 2007, p. 250 et seq.

¹¹ *Ibidem*

¹² *Ibidem*

environmental protection. Article 174, paragraph 1, sets four objectives of the Treaty: the preservation, protection and improvement of environment quality; protecting human health; prudent and rational utilization of natural resources and globally promoting measures that were intended to protect the environment. It also recalled the principles that governed the environmental action programs: preventive action; correction of environmental damage with priority at source, and very important: the polluter pays.¹³

“Without substantial changes such as those of an institutional nature, the Treaty of Lisbon marks some changes in the environment, in the sense of turning the fundamental values of the EU ‘green’, bringing a series of adjustments in policy and environmental regulations, marking certain procedural developments and in the other sectorial policies, related to environmental protection. [...] the Treaty’s Preamble lists references to environmental protection and the sustainable development principle. [...] In the area of external action, the EU is to *support sustainable development in economical, social and environmental terms in developing countries for the crucial purpose of poverty eradication and to contribute to the development of international measures for environment preservation and improvement and sustainable management of global natural resources, in order to ensure sustainable development.*”¹⁴

Identifying measures for environmental protection is based on the link between economic development and environmental issues. Economic development and growth issues cannot be addressed separately from the ecological ones as economy and ecology come together at local, regional, national and especially international level, through a system of cause and effect. The link between development and environment is a relationship between present and future. If development takes into account the needs of present generations, however, environmental protection is a long term investment for future generations. Environmental protection has become an obligation for all governments, being placed at the forefront on the list of human rights and fundamental freedoms.¹⁵

In the Preamble of the Charter of EU Fundamental Rights it is stated that the EU seeks to promote a balanced and sustainable development. Unfortunately, its provisions have more of a symbolic value and a low impact. Instead, the Charter of Rights integrates the European Convention on Human Rights and enables Community courts to issue convictions for environmental causes. For this reason, the ECHR jurisprudence, including that which refers to the right to a healthy and protected environment, should also be taken over by the ECJ.”¹⁶

“Environmental protection has been strengthened with the emergence of the right to development and economic growth. For over 30 years, starting with the Stockholm Conference on the environment, mankind began to admit that environmental problems are inseparable from welfare and economic processes in general. In this regard, the World Commission on Environment and Development of the UN has completed a series of recommendations, one of them referring to the implementation of the sustainable

¹³ M. Duțu, A. Duțu, *Dreptul mediului*, ediția 4, C. H. Beck, București 2014, p. 39.

¹⁴ *Idem*, p. 41.

¹⁵ D. Marinescu, *Tratat de dreptul mediului*, Universul Juridic Publishing House, București, 2010, pp. 13-14.

¹⁶ M. Duțu, A. Duțu, *op. cit.*, p. 45.

development concept. Moreover, the concept of sustainable development was recommended by UN General Assembly Resolution 42/1987, as a guiding principle of national strategies and policies in the field of economic development and environmental protection. Sustainable development was introduced in the 1987 Brundtland Report and accepted by the representatives of the seven major industrialized countries.”¹⁷

To achieve the objectives of sustainable development it is also important to achieve progress in all four dimensions simultaneously: economic, human, environmental and technological. In this sense, economic policy, environmental policy, investment, research and development, workforce policy, education and health are designed to correlate their actions according to these priorities. In most industrialized countries there is a concern to integrate these policies. The International Commission on Environment and Development stated that the imperatives of national strategy are: eradicating poverty and addressing the significant need for jobs, water, food, energy, housing and health; population growth at an acceptable level and reducing uncontrolled population growth; decentralized forms of government, increasing the involvement in decision-making and unifying the decisions on environment and economy; preserving and increasing natural resources, preserving the diversity of ecosystems and monitoring the impact of the economy on the environment; re-orienting technology and management risk. Specific to strategies for sustainable development is to stabilize population growth, reduce oil dependency, soil conservation, promoting renewable resources etc.¹⁸

To promote and achieve the objective of environmental protection in public policy two methods can be used: regulation and economic instruments. Preventing and limiting the negative effects of human activities on the environment have imposed the specific development of administrative techniques such as: the existence of notifications, agreements and permits to determine the extent to which pollution is permitted or prohibited. Depending on the nature and the negative influence of some factors over the environment there are policies and regulations covering technical rules for classification of products and substances for toxicity and harmfulness; rules on packaging, transportation, storage, handling and use of chemical substances and products; rules on decontamination operations etc.¹⁹

“A number of rules can be advocated by the codes of conduct established by professional bodies or other structures outside the binding rules imposed by authorities. Thus, internationally, rules had been drafted on ISO (*International Organization for Standardization*), non-governmental organization grouping over a hundred national organizations, public or private. In this context we note the ISO-14000 series of standards on environmental management, and environmental auditing, tracking of products during their entire lifetime and providing a ‘green label’ (ecological).”²⁰

There are a number of international bodies that fulfill a range of functions in environmental matters concerning the exchange of information, regulation, research, control and management of natural resources. The most important international organization, but with concerns in environmental protection as well, is the UN. The

¹⁷ D. Marinescu, *op. cit.*, p. 14.

¹⁸ *Ibidem*

¹⁹ M. Duțu, *op. cit.*, pp. 51-52.

²⁰ *Ibidem*

main UN body to protect the environment is the United Nations Environment Programme (UNEP). UNEP has a number of divisions that promote and facilitate a rigorous management on environmental protection to ensure sustainable development.²¹

Also part of the UN is the Commission on Sustainable Development which aims to monitor the implementation of recommendations and commitments adopted in the major conferences and examines the progress achieved by applying the instruments. United Nations Development Programme is a UN body and a network of global development that belongs to the organization and supports the development by ensuring member states' access to information, experiences and resources in order to give people a better life. United Nations Economic Commission for Europe is a body under the UN aegis with competences in economic and social development, but also one of the promoters of researching ways of combating pollution on a regional level. The Commission was created in order to contribute to the recreation of Europe's resources, regional development, including environmental issues.²²

International conferences are organized regularly, aimed at sounding the alarm on pollution that affects us on the long term. Until last years, it can be said that the targets were only met because big polluters identified, usually, with some highly industrialized countries. In 2016, in Paris, for the first time, the United States of America and China have assumed the role they should be playing. One of the conference objectives was to reduce annual temperature increase. Unfortunately, United States of America left the agreement.

Environmental policy is part of the overall policy of economic and social development and can only be conceived in the framework of the overall development policy of a country with economic and social forecasting on the medium and long term. The economy must function rationally and efficiency, taking care of the environment. Any economic development should be subject to effective environmental protection. The success of the fight against pollution is the result of coordination and economic development globally. The link between economic policy and the environmental protection becomes stronger and is based on international incentives. This link requires practical economic relations, not only abstract theoretical relationships.²³

At international level the need is periodically underlined to correlate the economic development with environment protection and concern. „[...] After the momentum of the Industrial Revolution, particularly in the last 50 years, the amount of CO₂ in Earth's atmosphere sky-rocketed from 280 to 384 ppm, a level that probably has never been reached in the past 20 million years - and at a speed rate that Sun took thousands of years every cycle to produce. And now we are about to load the atmosphere with 100 ppm of CO₂ (or more) in the next 50 years. This extra CO₂ comes not from the oceans. It comes from the burning of fossil fuels by humans and from deforestation.”²⁴

²¹ F. Braşoveanu, *op. cit.*, p. 114 et seq

²² *Ibidem*

²³ E. Lupan, *Tratat de dreptul protecţiei mediului*, C. H. Beck Publishing House, Bucureşti 2009, p. 24.

²⁴ Friedman, *op. cit.*, p. 120.

Greater care is needed, especially in terms of green areas. We are witnessing more and more unpleasant events. Part of the Amazon was deforested, in Romania dozens of hectares are disappearing every day. And everything for the sake of resource exploitation and economic profit.

Conclusions: In essence, the two concepts: sustainable and economic development should not be antagonistic. As it has been pointed out, the real economic development requires a component of environmental protection. Internationally and nationally it was observed in recent decades a trend for policy regarding regulations, monitoring and target setting in major international conferences. Social, economic, scientific issues, etc. cannot have long-term solutions if the component of environmental protection is ignored.

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Comunicarea între generații și dezvoltarea durabilă

Rezumat

Prezenta lucrare își propune să abordeze o temă importantă a zilelor noastre, anume: protecția mediului și în ce măsură putem să ne dezvoltăm fără să afectăm prea tare resursele de care dispunem. Subiectul a născut suficiente controverse nu doar la nivel național, și mai ales la nivel internațional. Umanitatea nu poate supraviețui fără o grijă reală față resursele naturale. Lucrarea are drept scop prezentarea unor aspecte care țin de consumul la nivel de societate și în ce măsură dispunem de politici publice de protecție a mediului.