5-th INTERNATIONAL CONFERENCE
Exploration Education and Progress in the Third Millennium
18th-19th of April 2013

Programme and Abstracts


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Thursday, April 18th

12:00 AM: Welcoming participants (Dean's speech)

12:30 AM: Light lunch offered by the organizing committee

1:30 PM – 3:30 PM

I. Round table – *Individual's protection according to the penal law*

Chair: Professor Alexandru Boroi
Keynote contributor: Assoc. Prof. Gheorghe Ivan

II. Round table – *Le déficit démocratique de l'Europe: réalité ou phantasme? Comment rapprocher l'Europe de ses citoyens? (en français)*

Chair: Lecturer Liviu Coman-Kund
Keynote contributor: Professor Michel Fournaux
Keynote speaker: Professor Dana Tofan

III. Round table – *"Expert in labor law" - a new specialist for employer issues*

Chair: Assoc. Prof. Mihnea Claudiu Drumea
Keynote contributor: Lecturer Ana Ştefănescu
Keynote speakers: Ionel Petrea; Assoc.Prof. Dan Țop

IV. Round table – *Mediation in family relations*

Chair: Assoc. Prof. Nadia Aniței
Keynote contributor: Mihai Popescu
Keynote speakers: Assoc. Prof. Simona Petrina Gavrilă; Lecturer Onorina Botezat; Lecturer Nora Andreea Daghie

02:30 PM	Coffee Break
03:30 PM	End of debate
04:00 PM	Danube promenade
08:00 PM	Dinner

Friday, April 19th

08:30 AM: Arrival and registration of participants

9:00 AM – 12:15 AM: Sessions

Each session, moderated by a president, will take place in three stages:

- *Rapporteur's presentation of the session I terms of thematic, communications and questions arisen.*
- *Presentation in a synthetic form of the ideas proposed and analyzed by each author.*
- *Debate between the audience, rapporteur and authors.*

Session 1. a – Public Law

President: Professor Alexandru Boroi
Rapporteur: Associate Professor Gheorghe Ivan

09:00 AM Sessions

ENVIRONMENT IN EUROPEAN CRIMINAL LAW

Mihaela AGHENIȚEI
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania
Prosecuter, National Anticorruption Directorate, Territorial Service Galați,

BRIEF CONSIDERATIONS REGARDING PREVENTIVE MEASURE OF HOUSE ARREST IN THE NEW CODE OF CRIMINAL PROCEDURE

Silviu - Gabriel BARBU
Ph.D. Associate Professor, Faculty of Law, "Transilvania" University Brasov

Nicoleta CHIHAIA
Judge, Galati Court,

THE IMPACT OF ARTICLE 1 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ON THE ROMANIAN LEGISLATION CONCERNING THE RESTITUTION OF CONFISCATED PROPERTIES

Monica BUZEA
Ph.D. Assistant, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania
Prosecuter, Public Prosecutor's Office attached to the Court of Appeal Galati,

APPLYING THE INSTITUTION OF MEDIATION TO CRIMINAL CAUSES

Monica BUZEA
Ph.D. Assistant, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania
Prosecuter, Public Prosecutor's Office attached to the Court of Appeal Galati,

CRIME OF ILLEGALLY CONFINEMENT UNDER THE NEW PENAL CODE

Ion IFRIM

Scientific researcher III, , Institutul de Cercetări Juridice „Acad. Andrei Rădulescu" al Academiei Române

CONSIDERATIONS ON CRIME OF RAPE UNDER THE NEW PENAL CODE

Oana Roxana IFRIM
Ph.D. Lecturer, Facultatea de Drept şi Administraţie Publică, Universitatea Spiru Haret din Bucureşti

10:30 AM Coffee Break

10:45 AM Sessions

THE OFFENCE OF OMISSION ACCORDING TO THE NEW ROMANAIAN CRIMINAL CODE

Gheorghe IVAN
Ph.D. Associate Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania Science Research Associate – ,,Andrei Radulescu Acad." Institute for Judicial Research within the Romanian Academy;
Chief Prosecutor – Galati Regional Department, National Anticorruption Directorate

Mari-Claudia IVAN
Legal adviser

THE CRIMINAL LIABILITY OF EUROPEAN CIVIL SERVANTS

Ştefania-Cristina MIRICĂ
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

TRANSFERRED INTENT. CONCEPT

Călina - Andreea MUNTEANU
Ph.D. Student Lecturer, "Petre Andrei" University of Iasi

CRIMES AGAINST THE EUROPEAN COMMUNITIES' FINANCIAL INTERESTS

Getty-Gabriela POPESCU
Ph.D. Asisstant, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

OFFENCES RELATING TO CAPITAL MARKET

Adriana STANCU
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

MONEY LAUNDERING

Adriana STANCU
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THEORIES REGARDING THE DOMESTIC AND GENDER BASED VIOLENCE

Lavinia Mihaela VLĂDILĂ

Ph.D. Lecturer, Facultatea de Drept și Științe Social-Politice, Universitatea "Valahia" din Târgoviște

Session 1 b – Public Law

President : Associate Professor Florin Tudor
Rapporteur: Associate Professor Mihai Floroiu

09:00 AM Sessions

GENERAL ISSUES CONCERNING EXCISE SUSPENSION SYSTEM

Georgiana COVRIG
Ph.D. Student Assistant, Faculty of Law and Public Administration, Spiru Haret University of Constanta, Romania

THE HUMAN FUNDAMENTAL RIGHTS AND LIBERTIES IN THE TEXT OF SOME DECLARATIONS OF THE COUNCIL OF EUROPE

Nicolae DURĂ
Ph.D. Professor, Ovidius University of Constanța, Romania

Cătălina MITITELU
Ph.D. Lecturer, Ovidius University of Constanța, Romania

INTERNATIONAL ARBITRATION

Mihai FLOROIU
Ph.D. Associate Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

OPINIONS ON COMPLYING WITH THE RIGHT TO A HEALTHY ENVIRONMENT

Oana GĂLĂȚEANU
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

SHORT OVERLOOK ON THE HETEROGENEITY OF HUMAN RIGHTS GENERATIONS

Alina GENTIMIR
Ph.D. Lecturer, Faculty of Law, Al. I. Cuza University of Iasi

A REVIEW OF THE 1552/2011 DECISION OF THE ROMANIAN CONSTITUTIONAL COURT ABOUT THE 42ND ARTICLE OF LAW NO. 188/1999

Mădălina – Elena MIHĂILESCU
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THE EFFICIENCY OF THE CURRENT MEANS OF PROTECTION AGAINST DOMESTIC VIOLENCE AND ABUSE IN FAMILY. THE RESTRAINING ORDER

Andreea Elena MIRICĂ
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

10:30 AM Coffee Break

10:45 AM Sessions

THE ROLE OF THE CIVIL SOCIETY IN PROTECTING HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN RELATION WITH THE PUBLIC MINISTRY

Ruxandra MITICĂ
Ph.D. Student, National School of Political and Administrative Studies

FREEDOM OF EXPRESSION AS A CORE VALUE OF CONTEMPORARY SOCIETY

Carmen MOLDOVAN
Ph.D. Assistant, Faculty of Law, "Al. I. Cuza" University of Iași

THE BALANCED BUDGET – A LEGISLATED DESIDERATUM

Rada POSTOLACHE
Ph.D. Lecturer, Faculty of Law and Social-Political Sciences, "Valahia" University of Târgovişte

LIMITATIONS AND COMPLETIONS OF THE FUNDAMENTAL RIGHTS: ARGUMENTS IN THE CASE OF HISTORICAL REMEDIES

Gabriel RADU
Ph.D. Student, National School of Political and Administrative Studies

ADMINISTRATIVE COERCION AND HUMAN RIGHTS

Dana VULPAŞU
Ph.D. Student, Doctoral School in "Administrative Sciences", National School of Political and Administrative Studies

Session II – Private Law

President : Associate Professor Ioan Apostu
Rapporteur: Lecturer Alexandru Bleoanca

09:00 AM Sessions

PRIMARY QUALIFICATION OF THE MATRIMONIAL AGREEEMENT NOTION

Nadia Cerasela ANIȚEI
Ph.D. Associate Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

SUR L'APPLICATION DE LA LOI DANS LE TEMPS: UN CAS INÉDIT D'APPLICATION DE LA LOI CONTRAVENTIONNELLE LA PLUS FAVORABLE

Alexandru BLEOANCĂ
Maître de conférences, Faculté des Sciences Juridiques, Sociales et Politiques, Université „Dunărea de Jos" de Galați, Roumanie

RESIGNATION - FORM OF TERMINATION OF THE INDIVIDUAL LABOR CONTRACT

Cosmin CERNAT
Ph.D. Lecturer, "Al. I.Cuza" Police Academy, Bucuresti

CONSIDERATIONS ON THE FUNDAMENTAL RIGHTS OF SHAREHOLDERS

Dragoș-Mihail DAGHIE
Ph.D. Assistant, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

LEGAL WILL AND ITS LIMITS IN THE CONTRACT

Nora Andreea DAGHIE
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THE EVOLUTION OF LABOR RELATION REGULATIONS WITHIN 1934 TO 1937

Mihnea Claudiu DRUMEA
Faculty of Law and Public Administration, Spiru Haret University Constanta, Romania

BRIEF CONSIDERATIONS ON CONSENT TO MARRIAGE

Simona Petrina GAVRILĂ
Ph.D. Associate Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

CONSUMERS PROTECTION CONCERNING COMPETITION AND CONSUMPTION

Oana GĂLĂȚEANU
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THE TERM FOR ACCEPTING OR DISCLAIMING AN INHERITCANCE ACCORDING TO THE CURRENT CIVIL CODE

Ilioara GENOIU
Ph.D. Lecturer, Faculty of Law and Social-Political Sciences, "Valahia" University of Târgoviște

10:30 AM Coffee Break

10:45 AM Sessions

THE INVOLVEMENT OF THE HIGH COURT OF CASSATION AND JUSTICE IN INTERPRETING AND APPLYING THE INTERNAL LAW FROM THE PERSPECTIVE OF THE EUROPEAN COURT OF HUMAN RIGHTS (CEDO) JURISPRUDENCE AND THAT OF THE NEW CIVIL PROCEDURE CODE

Gina IGNAT
Ph.D. Student, Assistant, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THE CONDITIONS OF VALIDITY FOR BILL PAYMENT

Ramona Mihaela OPREA
Ph.D. Student, Preparator, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

EUROPEAN UNION DIRECTIVES REGARDING THE COMPANIES

Răducan OPREA
Ph.D. Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THE OWNER'S PASSIVITY IN CASE OF ARTIFICIAL IMMOVABLE ACCESSION

Adriana Ioana PIRVU
Ph.D. Student, Assistant, The Faculty of Judicial and Administrative Sciences, University of Piteşti

EXPERT IN LABOR LAW, A NEW OCCUPATION - FOR THE BENEFIT OF EMPLOYERS OR EMPLOYEES?

Ana ŞTEFĂNESCU
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

UNIQUE COLLECTIVE EMPLOYMENT CONTRACT AT THE LEVEL OF HIGH EDUCATION AND RESEARCH SECTOR NO. 59495/2012 AND INDIVIDUAL EMPLOYMENT CONTRACTS OF UNIVERSITY STAFF

Ana ŞTEFĂNESCU
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THEORY AND PRACTICE ON DISMISSAL OF THE EMPLOYEES RETURNING FROM GROWTH AND CHILDCARE LEAVE

Dan ŢOP
Ph.D. Associate Professor, Valahia University of Târgovişte

Session III – Administrative Sciences and Regional Studies

President: Professor Romeo Ionescu
Rapporteur: Professor Violeta Puscasu

09:00 AM Sessions

LES EAUX DE CRUES ET LES RISQUES D'INONDATIONS DANS LA VILLE DE MAROUA : ENJEUX ET PERSPECTIVES

Daniel Valérie BASKA TOUSSIA
Assistant, Département de Géographie, ENS-Université de Maroua

Violeta PUŞCAŞU
Ph.D. Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THE ELECTION PROCEDURE OF REPRESENTATIVE BODIES IN ATU GAGAUZIA

Oleg BERCU
Ph.D Lecturer, Facultaty of Law and Public Administration, "Bogdan Petriceicu Hasdeu" State University of Cahul

THE 1997 AND 2008 FINANCIAL CRISES CAUSES AND CONSEQUENCES COMPARED

Pierre CHABAL

Maître de conférences, Université du Havre, France

THE ASPECTS OF RISK MANAGEMENT FOR PUBLIC ENTITIES

Neculina CHEBAC
Ph.D. Associate Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

Mădălina ORAC
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

COMPARISON BETWEEN THE OMBUDSMAN IN FRANCE AND THE OMBUDSMAN IN ROMANIA

Liviu COMAN-KUND
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THE APPLICATION OF CITIZENS CONSULTATION PRINCIPLE IN PROBLEMS SOLVING ON ADMINISTRATIVE ORGANIZATION OF THE TERRITORY

Sergiu CORNEA
Ph.D. Associate Professor, "Bogdan Petriceicu Hasdeu" State University of Cahul

DILEMMAS OF THE INTERMEDIATE LEVEL OF THE ADMINISTRATION

Valentina CORNEA
Ph.D. Associate Professor, "Bogdan Petriceicu Hasdeu" State University of Cahul

THE ROLE OF R.MOLDOVA PARTICIPATION WITHIN THE "BLACK SEA" EUROREGION IN THE CONTEXT OF EUROPEAN INTEGRATION PROCESS

Nicolae DANDIŞ
Director of Cahul Pro-Europa Center, , Cahul State University „B.P.Hasdeu"

PRODUCTION DE LA CERAMIQUE ET EFFETS SOCIO-ECONOMIQUE ET CULTUREL DANS LES SOCIETES TRADITIONNELLES DE L'EXTREME-NORD DU CAMEROUN

Remy DZOU TZANGA
Département d'histoire, Université de Maroua(Cameroun)

ANALYSE GÉOGRAPHIQUE DE L'ACCÈS À L'ÉDUCATION PRIMAIRE AU NORD-CAMEROUN

Hervé GONDIE
Assistant, Département de Géographie, Université de Maroua, Cameroun

EUROPEAN UNION FACING THE WORLD COMPETITIVENESS

Romeo-Victor IONESCU
Ph.D. Professor, Danubius University, Romania

10:30 AM Coffee Break

10:45 AM Sessions

GOUVERNANCE LOCALE DES TERROIRS. ENJEUX ET DÉFIS À RELEVER DANS UN PAYS EN MUTATION : CAS DU DÉPARTEMENT DE LA NYA-BÉBÉDJIA AU SUD DU TCHAD

Prosper MBAINDODJIM
Assistant, , Université Cheikh Anta DIOP de Dakar (Sénégal)
Enseignant-chercheur, Normale Supérieure de N'Djaména (Tchad)

THE U.S. ECONOMY FACING THE WORLD CRISIS

Mădălina ORAC
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

Niculina CHEBAC
Ph.D. Associate Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

THE EUROPEAN CULTURAL POLICIES AND THE MAASTRICHT TREATY

Cristina PĂTRAŞCU
Ph.D. Assistant, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

DEMOGRAPHIC PLANNING FROM MALTHUS TO TURNER - MEANINGS OF FREEDOM AND INDIVIDUAL RIGHTS

Violeta PUŞCAŞU
Ph.D. Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

EUROPEAN UNION AND DEMOCRATIZATION PROCESS IN ROMANIA. CASE STUDY: ADMINISTRATIVE REFORM

Mihaela RUXANDA (ALBU)
Ph.D. Student, Faculty of Political Science, University of Bucharest

THE PROBLEM OF LEGAL STATUS OF THE LOCAL ELECTED PERSON AND CIVIL SERVANT FROM THE LOCAL PUBLIC ADMINISTRATION IN REPUBLIC OF MOLDOVA

Natalia SAITARLÎ
Ph.D. Student Lecturer, Facultaty of Law and Public Administration, "Bogdan Petriceicu Hasdeu" State University of Cahul

THE METHODOLOGY OF DESIGNING AND IMPLEMENTING PERFORMANCE MANAGEMENT SYSTEMS WITHIN NOTARY OFFICES

George SCHIN
Ph.D. Lecturer, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

INSTRUMENTS OF CONTROLLING THE RESPECTING THE GOOD ADMINISTRATION IN THE EUROPEAN ADMINISTRATIVE SPACE

Elisabeta SLABU
Ph.D. Student, Faculty of Law, University of Bucharest

SOME CONSIDERATIONS REGARDING CORRUPTION PHENOMENON IN PUBLIC ADMINISTRATION

Isabela STANCEA
Ph.D. Student, "Constantin Brâncoveanu" University, Pitești

PROHIBITION OF DISCRIMINATION AND FUNDAMENTAL FREEDOMS IN TAX

Florin TUDOR
Ph.D. Associate Professor, Faculty of Judicial, Social and Political Sciences, "Dunărea de Jos" University of Galati, Romania

12:15 AM Conclusions

INAUGURATION OF THE EUROPEAN DOCUMENTATION CENTRE AT THE FACULTY OF JURIDICAL, SOCIAL AND POLITICAL SCIENCES

01:00 PM	Welcoming official guests from European Commission Representation

"Dunărea de Jos" University of Galați has been recently included in the network of the European Documentation Centers of the European Commission.

The European Documentation Center (EDC) functions within the universities and the research institutions and provide information and in-depth analyses of the legislation and policies of the EU institutions to the students and specialists in the field. In Galați, EDC is hosted by the Faculty of the Juridical, Social and Political Sciences.

Under the direct coordination of the General Direction of Communication, EDC represents the European Commission in Romania and ensures an efficient dissemination of information towards the citizens and the Romanian public authorities.

The vision of EDC is that of a country representing an integrant part of Europe, thanks to its status of member of the EU, but also thanks to an active involvement of its citizens in the process of the European integration.

Our mission is to contribute to a better understanding of the European Union, of its objectives, fundamental values and its policies, by bringing the information as close to the citizens as possible and in a form which is adapted to their specific needs.

General overview

Conference Thematic

,,Human rights and fundamental freedoms"

Humanity has stepped, not so long ago, into the new millennium, but with every new day and despite the unprecedented technological progress, it has to face new and multiple challenges that put in danger its very existence. The only way to defend its spiritual and material integrity seems to remain its treasury of universal values that it tries hard to preserve and pass to the next generations. Among these values, the fundamental human rights, the juridical expression of the individual's most cherished ideals, hold a special place.

Romania, as an integrant part of Europe, contributes to the maintaining and observance of the human rights playing an active part into the international organizations specialised in the field. Using as a starting point the analysis of social reality, and first and foremost the difficulties with which every one of us has to cope every day, the academic staff of our faculty proposes as topic of debate and scientific research the fundamental human rights. In this context, various scientific events will take place all along the year, including the present conference.

Panel discussion

Given the particularities of our faculty's scientific and educational activity, the two major fields of the debate will be: juridical sciences (public and private law) and administrative sciences. These tow major areas will also determine the organization of the conference's sessions as well as the approach of the various topics.

The Scientific Committee :

Honorary Chairmans:
Ph.D. Professor Iulian Gabriel BÎRSAN
Rector of the „Dunărea de Jos" University of Galați

Members:

Ph.D. George ANTONIU	(Romania)
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Ph.D. Alexandru BOROI	(Romania)
Ph.D. Dana TOFAN	(Romania)
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Ph.D. Michele FOURNAUX	(France)

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Ph.D. Dragoş Mihail DAGHIE (Romania)
Ph.D. Cristina PĂTRAŞCU (Romania)

SESSION I.A PUBLIC LAW

Environment In European Criminal Law

Mihaela AGHENIȚEI
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Prosecuter, National Anticorruption Directorate, Territorial Service Galați

Keywords: environment, criminal law, European Union, framework decision, community law

Abstract
The European Parliament and the Council of European Union having regard to the Treaty establishing the European Community and in particular Article 175(1) thereof, and to the opinion of the European Economic and Social Committee often consulting the Committee of the Regions, acting in accordance with the procedure laid down in Article 251 of the Treaty have adopted the Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law, who obliges the European Union member states to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment. Environment crime is among the European Union's central concerns. The Tampere European Council of 15 and 16 October 1999 at which a first work program for the European Union action in the field of Justice and Home Affairs was adopted asked that efforts be made to adopt common definitions of offences and penalties focusing on a number of especially important sectors, amongst them environment crime. But despite this agreement about the importance of joint the European Union action, environmental criminal law has become the centre of a serious institutional fight between the European Commission, supported by the European Parliament on the one hand and the Council, supported by the great majority of the European Union member states on the other hand.

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***Comments*:**

Brief Considerations Regarding Preventive Measure Of House Arrest In The New Code Of Criminal Procedure

Silviu - Gabriel BARBU
Ph.D. Associate Professor, Faculty of Law, "Transilvania" University Brasov

Nicoleta CHIHAIA
Judge, Galati Court,

Keywords: preventive measure, house arrest, duration, the new code of criminal procedure, ECHR

Abstract
The new Code of Criminal Procedure bring a novelty to the provisions of criminal procedure in our country, a new preventive measure, the Italian-inspired "house arrest", included at Section V, Art. 218-222 (the rights and freedoms during prosecution, the preliminary Room preliminary proceedings and the court room during the trial), custodial preventive measure that can be ordered only by a judge which is the obligation on the defendant not to leave the building where he lives, for a specified period without permission of the court that ordered the measure or before which the case is pending, and shall be subject to restrictions imposed by it.
Although the new criminal procedure legislation regulates house arrest as a preventive measure distinct from detention, the length of which, according to Art. 222 para. 10 shall not be deducted from the maximum period of remand; the European Court of Human Rights ruled that it is a genuine deprivation of liberty within the meaning of Art. 5 of the Convention, on the same level detention.
The paper aims to realize an analysis of the provisions relating to the period for which can be ordered house arrest, considering other preventive measures, especially the arrest. The Romanian legislator, as I said, provided that duration of the two measures are independent of each other, without being able to cumulate, but will be taken into account both at the analysis of the reasonable period of deprivation of liberty of the accused. But going on house arrest interpretation of ECHR case can arise where cumulative duration of house arrest and of preventive arrest exceeds the maximum permissible constitutional norms, Art. 23 para. 5 and 6, regarding the maximum length of preventive arrest. In order to not be reached a breach of the Constitution, we consider that the Romanian legislator should expressly provide the custodial nature of house arrest. Also, it should mention that the duration of house arrest is taken into account and deducted from detention as currently ICCJ ordered by the Decision no. 22 of 12.12.2009, issued at the appeal on points of law in the interpretation and application of the Art. 18 of Law no. 302/2004 on international judicial cooperation in criminal matters, meaning that during house arrest executed abroad must be taken into account in proceedings in Romania and deducted from the term of imprisonment imposed by the Romanian courts.

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Comments:

The Impact Of Article 1 Of The European Convention On Human Rights On The Romanian Legislation Concerning The Restitution Of Confiscated Properties

Monica BUZEA
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Keywords: human rights, private property, indemnities

Abstract
One of the main problems Romania has been confronted with in terms of respecting private property concerned the restitution of properties confiscated during the communist regime, an issue which had also a significant impact on criminal trials, as it brought about numerous complaints for possession disturbance and failing to abide by Court rulings.
The phenomenon can also be found outside Romania, in all the former communist countries of the last 20 years, nevertheless, the means by which it was settled differs greatly.
The hereby issue has also been debated in the Maria Atanasiu et al. vs. Romania cause, in which case the Court considered that the inefficiency of the indemnity or restitution mechanism is still an extended problem and ruled that the state take the necessary measures in order to grant the effective protection of the rights stated in the Convention, followed by an 18 months suspension, starting with the date the ruling became effective, of all the claims resulted from the same general issue.
Currently, a possible solution is sought through the amendment of the manner in which indemnities are granted, as effective means of allocation with regard to the aforementioned indemnities have become mandatory.

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Comments:

Applying The Institution Of Mediation To Criminal Causes

Monica BUZEA
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Prosecuter, Public Prosecutor's Office attached to the Court of Appeal Galati

Keywords: mediation, Penal Code, information, procedure

Abstract
As it includes negotiation based conflict settlement practices, the mediation is obviously based on the trust it is given from the conflicting parties, in order to settle a legal conflict by means of a solution which would benefit both of the parties.
As per the provisions of the 192/2006 law, with its further amendments, the possibility of employing mediation for criminal causes has been approached in Chapter VI "Special provisions concerning the mediation of conflicts", section II, "Special provisions concerning the mediation of criminal causes", articles 60-70, referring to the criminal actions which, as per the provisions of the law, are annulled by the drop of charges or reconciliation of parties, thus revoking any subsequent criminal charges.
From the perspective of criminal law, the mediation procedure is considered to be an option and not an obligation, the only mandatory aspect being the information meeting presenting the parties the posibility of resorting to the mediation alternative.

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Comments:

Crime Of Illegally Confinement Under The New Penal Code

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Keywords: new Criminal Code, observations, formulations Criminal Code in force

Abstract
The author examines the offense of illegal deprivation of liberty of the new Penal Code, showing some similarities and differences to the offense of deprivation of liberty criminalized in the Penal Code in force. Thus, in formulating the basic shape is the same offense over the content of the law in force, the new text presents some differences from existing Criminal Code.

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Comments:

Considerations On Crime Of Rape Under The New Penal Code

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Keywords: new Criminal Code offense of rape, Penal Code in force

Abstract
The author examines rape in the new Criminal Code criminalizing showing that unlike in place, new rules of rape meet the need to include in the description of the offense of rape and other assumptions to commit it.

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Comments:

The Offence Of Omission According To The New Romanian Criminal Code

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Abstract
The offence of omission consists in committing an act forbidden by the law.
Although offences regularly imply committing (doing) an offence, they can also be committed by not doing, by omission: the so-called offences of omission are therefore a particular type of offences.
Article 17 of the new Romanian Criminal Code (Law no. 286/2009) stipulates that the offence producing a result is regarded as an offence of omission if:
a) There is a legal or contractual obligation to act;
b) The author of the omission, by means of an action or lack thereof, has endangered the protected social value and therefore facilitated the outcome.
The legal text seems to refer only to material offences since in their case the immediate outcome that has to consist in a result. However, it is not the case.
As we all know, those offences whose immediate outcome has to consist in a result are referred to as material or result offences (murder for instance). On the contrary, those offences, whose outcomes' consisting in a state is sufficient, are referred to as formal or attitude offences (such as threats).
When incrimination regards injury, the offences are called injury offences whereas when it regards danger alone they are called peril offences.
Material offences are generally injury offences while formal offences are peril offences; this correlation is not unconditional however since there are material offences of peril {arson damage for example; explosion or any other similar means [art. 253 paragraph (4) of the new Criminal Code] etc.} and, similarly, there are formal offences of injury (illegal arrest, abuse, etc.)
As such, as long as both material and formal offences can imply a result (an injury equals a result in the case of the formal ones), the provision of article 17 of the new Criminal Code is questionable and could lead to confusion in practice.
Moreover, there are other aspects rendering the above mentioned legal provision controversial, all of which are minutely presented by the authors who contribute comments and suggestions meant to improve the new criminal law in question.

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Comments:

The Criminal Liability Of European Civil Servants

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Keywords: criminal liability, civil servants, European Union

Abstract
According to the provisions layed down by the Staff Regulation of officials of the European Union we can identify three forms of legal liability of european civil servants: civil, criminal and disciplinary. The Staff Regulation conteins brief provisions on the criminal responsability of european civil servants in two sections of Annex IX which refer to suspension and parallel criminal prosecution.
This type of legal responsability raises several issues because of the fact that in the matter of laying down provisions in the criminal law the Member States have exclusive competence. The most important aspect regarding this matter is to establish which Member State criminal law should be applied.
In this context, we must mention the initiative of the European Union to elaborate a set of rules of criminal nature aiming to protect the financial interest of the European Union. Also, the Treaty on the functioning of the European Union as amended by the Treaty of Lisbon states that in order to combat crimes affecting the financial interests of the EU, the Council may establish an European Public Prosecutor's Office which would be in charge of investigating, prosecuting and bringing to justice those that commit offences against those interest.
A matter of interest regarding the criminal liability of the European Union officials refers to the regime of the privileges and immunities stipulated by the Staff Regulations and by the Protocol on the privileges and immunities of the European Union.
The paper also contains references regarding the provisions stipulated in the Romanian law about the criminal liability of the civil servants.

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Comments:

Transferred Intent. Concept

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Keywords: transferred intent, plurality of offenses, error in persona, aberratio ictus, the principle of the subjective criminal responsibility, mental attitude towards the real victim

Abstract
The transferred intent is regarded in the criminal doctrine as one of the most controversial forms of the unity of offense and it is defined as the offense committed either by diverting action, due to the perpetrator's fault, from the person against whom was directed to another person (aberratio ictus) or by acting due to error of the offender against another person than the author wished to injure or to endanger (error in persona). It is known that, in addition to these forms, there are other forms, aberratio causae and aberratio delicti, analyzed more in the criminal law and doctrine from other countries.
From one point of view, transferred intent is seen as a form of the natural unity of crime. The author has doubts towards this solution, considering that the natural unit of crime, in the form of a single intended offense, is in contradiction with the principle of the subjective criminal responsibility, by denying the mental attitude towards the real victim of the offense.
Under these conditions, the natural unity of crime solution does not take into account all the activities of the perpetrator, which not only killed one person, but also attempted to murder another.
In conclusion, in terms of the transferred intent, the solution proposed by the author should be a plurality of offenses - the attempted crime and the actual crime, committed by the diverted action.

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Comments:

Crimes Against The European Communities' Financial Interests

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Abstract
As per the European Commission's recommendations, Romania, as a member state of the European Union, was required to develop an adequate legal frame concerning the European Communities' financial interests, by adopting certain regulations regarding the incrimination of financial frauds damaging the integrity of the common budget. Moreover, fighting this criminal phenomenon has become one of the main priorities of the member states and a common problem of the international juridical cooperation, therefore leading to the necessity of adopting a common definition of the "fraud" notion and rightfully placing it in the criminal law field.
Therefore, the Law no. 161 of April 21st 2003 introduced in the national legislation the provisions of the July 26th 1995 Convention regarding the Protection of the European Communities' Financial Interests (P.F.I. CONVENTION, the European Communities' Official Journal no. C 316/48 of November 27th 1995), which were included in the Law no. 78/2000 regarding the prevention, discovery and sanctioning of corruption acts, in section 4^1, under the denomination of "crimes against the European Communities' Financial Interests."
The process of adapting the national criminal legislation to the European Union Standards took place as a condition of Romania's adhesion preparations, considering the fact that, in its capacity of candidate state, Romania received funds from the E.C general budget, as well as part of the budget the E.C. are managing and non-refundable financial aids as pre-adhesion funds.

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Comments:

Offences Relating To Capital Market

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Abstract
The modern market economy involves a set of mechanisms and tools aimed at ensuring capital routing to those needing to fund their development projects.
Capital market – securities market – represents the totality of relations and mechanisms by means of which available capital is transferred from those having surplus capital to companies seeking funds, a transfer performed with specific tools and by means of specific operators.
In the world landscape, Romania is a developing financial market where regulations have continued to improve, but where the transitional economy still creates serious difficulties in its development.
Capital market area is a very controversial area due to its novelty in our country, the special technicality it shows and the seriousness of offences already committed in its field.

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Comments:

Money Laundering

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Abstract
Globalization trends, population mobility and the disappearance of financial borders should have helped to a better development of the world economy and a more efficient movement of financial resources. And maybe, in this view, some progress has been made, but at the same time we cannot deny that new sophisticated forms of committing certain types of criminal activity have developed in parallel. Therefore, from this point of view, investigation of financial crimes in general, and money laundering, in particular, appears to be one of the greatest challenges to the judicial bodies, in particular those belonging to the Eastern European States, and among them Romania.
Money laundering phenomenon affects the foundations of the rule of law, whereas it causes the ineffectiveness of Justice, undermines the economy and endangers the stability of democratic public institutions. If we associate the money laundering phenomenon and organized crime, we can say, without risk to err, that society must be defended by the most effective criminal means against business crime.

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Comments:

Theories Regarding The Domestic And Gender Based Violence

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Keywords: causality of domestic violence; women as gender based violence victims; patriarchal-macho model; alcohol as an excuse for gender based violence

Abstract
This article is part of our recent concern to decipher, as much as possible, the issue of domestic and gender based violence. In its content, are presented the most important theories aiming to discover and explain the causes of domestic violence, starting from the 1980s' theories to the most recent ones. Going through the study we discover the psychological and sociological theories, each with certain patterns of explanations for domestic violence, starting from physical and physiological elements to psychopathological elements or to the cost-benefit or resource model, or feminist explanations for this phenomenon. We also have analyzed the ethnological and sociological vision, as well as the explanations of different statistics considering, for instance, the abuse of alcohol or the lack of self-control as causes for violence against women. As a conclusion we have presented a series of statistics conducted between 2002-2009 in Romania, and supporting, more or less, these theories.

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Comments:

SESSION I.B PUBLIC LAW

General issues concerning excise suspension system

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Keywords: duty, excise goods under suspension, tax warehouse, authorized recipient

Abstract
Excises are defined as special taxes levied directly or indirectly on the consumption of certain products, laid down limitatively at European Community level and transposed into national law.
Due to their simple nature, excise regulation, in general, lacks technical complexity that must be assessed in combination with income tax legislation and, although administered by the tax authorities, the issue is similar to custom duties. The amount of tax due calculation is relatively simple. (Michael Michael and Arnold RidoutReviewed, "Customs, Excise Duties and Value Added Tax,", The International and Comparative Law Quarterly, Vol. 47, No. 3 (Jul., 1998), pp. 699-705, Cambridge)
The article 17 of the European Treaty states that the elimination of customs duties between Member States shall apply to (customs) fiscal taxes as well. Normally, custom duties are meant to protect domestic products, i.e. they are discriminatory in nature. Fiscal duties are clearly intended to increase revenue and not only to protect the products to be of national manufacturing.

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Comments:

The Human Fundamental Rights And Liberties In The Text Of Some Declarations Of The Council Of Europe

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Keywords: European Union, international law, international instruments

Abstract
Up to the present, in the Romanian juridical literature the text of some Declarations adopted by the member States of the Council of Europe, that is the Declaration of Vienna (1993), the Declaration of Strasbourg (1997) and the Declaration of Budapest (1999), have not yet been subject to an examination, be it brief, that would also refer to the moral value of their con-tent. That is why, in the pages of this study, we want to evince, above all, some general principles of the natural moral law stated by the text of these Declarations and, at the same time, to assess the way how the human rights have been provided, ensured and defended by the representatives of the member States of the Council of Europe of those times.

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Comments:

International Arbitration

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Abstract
At the international exchange level, there can appear situations of conflict between a client and a provider, which requires the need to remedy any kind of litigation. Such disputes may be resolved either by agreement or by a court of law. But the problem is the lack of a law that governs all countries (only the Swiss law is neutral). As such, international arbitration is seen as the only viable solution to this problem.
Arbitration is a technique, a method of settling disputes in a private manner over the use of State justice. Indeed, by using it, it is not appropriately address to judges sitting in courts belonging to the judiciary of the State, but rather private law persons who are to decide the fate of the conflict, although, like the national courts, they may use the law instead of rule only on the basis of equity. Such arbitrators, conciliators or mediators, may officiate with the assistance of arbitration centers or without these institutions.
Traditionally, the task of rendering justice belongs to the State courts as legally embodied in the State and as justice is an act of sovereignty. But the State cannot really be the source and solution of all legal phenomena. It is in this sense that the admission of legal pluralism allows the theoretical existence of the arbitration. However, unlike the State judge, the arbitrator is not appointed based on a law, as the law sets limits or even restricts access to arbitration. It is therefore the parties' responsibility to determine the competence and scope of the power of their will, through provision of an arbitration agreement.
We can say that the arbitrator is considered a normal judge of trade relations, even if the domestic arbitration plays a minor role. In contrast, the presence of international arbitration has become an usual way of conflict resolution and the ordinary mean and standard solution of disputes in the world of international trade, which shows that the role played by international arbitration is increasingly important.
The inadequacy of State justice to the particularities of international commercial business and the lack of international jurisdictions of private law are the main real reasons that explain that international arbitration is a form of justice that meets the needs of operators in international trade. The right of access to justice in international contracts arbitration seems to have acquired such fundamental importance to the development of international trade, that can now be regarded as a principle of public policy, as the is results from a decision taken by the French Jurisdiction in the HECHT case in 1972 , that stated that "Is international the arbitration which involves the interests of international trade".
International arbitration is governed by The New York Convention of June 10th, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards which, as its title indicates, lays down rules for the recognition and enforcement of arbitration decisions, its object being even larger, since this Convention lays down the main principles underlying the international arbitration, i.e. the principle of validity of arbitration agreements and the confirmation of the autonomy of international arbitration.

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Comments:

Opinions On Complying With The Right To A Healthy Environment

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Abstract
The environment is a common patrimony for all of us and world's states have both rights and obligations towards it, meant to guarantee the normal existing and evolution conditions regarding the quantity and quality of natural resources and of biodiversity, both for the present and future generations.
The right to a healthy environment is one of the fundamental rights recognised to the human being on national and international level. Starting from this reality, we present in this paper a series of aspects that prove that neither all individuals nor all states acknowledge the importance of the surrounding environment for a positive evolution of humanity and that, unfortunately, the actual society based on consumption does not always have positive effects on the environment factors and on the environment as a whole.

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Comments:

Short Overlook on the Heterogeneity of Human Rights Generations

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Keywords: human rights, protection mechanisms, human rights generations, global rights

Abstract
The evolution of the society being constantly characterized by strengthening the core of the framework on which the current universal cultural model relies: liberty, equality, solidarity reveals the origins and development of the human rights movement, seen both as a movement of ideas and as a legal move.
If importance and usefulness of human rights as idea remain indisputable, their imperfection as an instrument of protection becomes undeniable.
The mismatch of consecration and guarantee of human rights is increased by the constant emergence of new situations which claims a continue supplement of human rights catalogue with new rights. Thus, the international and regional instruments in the field of human rights should be rethought so as the concepts contained therein, and as proceedings for protection of the individuals to whom they are addressed. This assignment is not addressed to the mechanisms for human rights protection – Commissioners, judges – but scholars and politicians.
Thanks to their progressive character, human rights have caused steadily intense doctrinal and jurisprudential debate. Exponents of two major systems of law – common law and continental law – have given up the dogmatic differences and contributed to the analysis of reality, originality, invariably challenges of human rights at regional and international levels.
Justified by their multitude, the presentation on the generations of human rights provides the ability to differentiate the rights with regard to their form, but also the historical sequence of phases both in the claim and recognition of human rights.
Whether the rights belong to the first generation rights – civil and political rights, whether they appertain to the second generation - social, economic and cultural rights, whether they are owned to the third-generation - solidarity rights – all are explored from the perspective of their application field, material content and mechanisms at the international and regional level which ensure their observance.
Globalization, as a phenomenon that affects currently the society, makes necessary the outlining of the fourth category of rights: global rights. The allocation of this category to the globalization isn't yet finalized, cultural differences being vehemently supported internationally.
The content of this general goal varies within the preliminary political debate between the need to ensure a healthy environment, protection against biomedical experiments, but also beneficial use of the information and communication technology to the individuals. This political indecision has influenced the delay of a doctrinal development of this new generation of rights.
In the context of the crisis manifested in fields like politics, economy, ecology, humanitarian action, spirituality, occurs as natural the individual or collective reaction to contribute for real remediation of the deficiencies of any kind. The fourth generation rights, once recognized regionally and internationally, will help to improve the situation in the different sectors of social life because of the gearing by States of human rights protection mechanisms that affect splitly the components of the system.

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Comments:

A review of the 1552/2011 Decision of the Romanian Constitutional Court about the 42nd article of Law no. 188/1999

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Keywords: civil servants; exception of unconstitutionality; moral dammages; matterial dammages; discrimination.

Abstract
The 42nd article of Law no. 188/1999, also called The civil servants statute, was often criticized, as it was considered unfair, unequal and immoral. The reason because this article was the object of an exception of unconstitutionality was that the material dammages action cannot be separated from the action that put into discussion the problems of moral dammages.
Trying to motivate this exception, its author sustains that the criticized legal aspects are unconstitutional, because the 8th and the 18th article from Law no. 554/2004 invest the Court with the power to express its point of view both in the material and moral dammages matters. By the contrary, the 42nd article of Law no. 188/1999 can not provide compensation for the damage suffered by the public /civil servant.
Analizying these two laws we can consider that the public servant is allowed to make a complaint in what regards matterial dammages only, being unable to ask for moral dammages in the same time.
In this way it appears that the text of the 42th article introduces a discriminatory treatment for the juridical institution called the moral prejudice that surpasses the other institution, the material prejudice. Both legal institutions are complementary to each othe, and may exist separately, one without the other.
The Giurgiu Court –the civil section –considered that the criticized reglementation cannot be an obstacle for the public servants that consider themselves as being discriminated at work, and said that this category of moral, nonpecuniar prejudices can be repaired by appealing to the common law institutions.
According to art. 6 § 1 of the Convention for the Protection of Human Rights and fundamental freedoms everyone has the right to a fair hearing of his case and to a fair trial by an independent and impartial Court(tribunal) which has the role to determine rights and obligations of a civil nature. The Court from Strasbourg established in its jurisprudence that para 1 of the 6 th article of Human Rights Convention gurantees any person the right to bring before the court any claim concerning civil rights and obligations.
It is well-known, of course, that neither the Convention when referring in Article 6 to "civil rights and obligations", nor the Court's case-law have provided a general definition of the term. Although it seems that the drafters, when preparing the Convention, were in favour of a rather restrictive approach to the notion, the Strasbourg organs have expanded the purview of the term - as they have done with regard to the term "criminal charge" - to cover proceedings which do not necessarily belong to the purely civil sphere.

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Comments:

The Efficiency of the Current Means of Protection Against Domestic Violence and Abuse in Family. The Restraining Order

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Abstract
Although from ancient times human societies have tried to establish precise rules of conduct designed to ensure survival, comfortable and wellness, the cruel reality repeatedly demonstrated that the phenomenon of violence and abuse in various forms are present daily life of human families. We call violence, any interpersonal behavioral manifestation expressed as force, constituting one of the main components of aggression. In legal terms, violence is the use of physical force or other means to bring harm to the integrity of others or harm his property. Violence is usually nothing more than an abuse which aims to establish a relationship of power and imposing that relationships matter against whom it is directed.
The legislative act which amended the law on domestic violence was published in Official Gazette no. 165, of March 13, 2012. Under the new provisions,the acts of jealousy or isolating the victim from family and friends are to be considered violent and abusive and the victim may request, in these cases, restraining order against the abuser. It also constitutes domestic violence the prohibition of employment, imposing the personal will which causes tension and distress, the control personal life, the deprivation of economic means or denial of access to cultural, ethnic and religious violence.
The victim's rights are governed by the article 23 of Law no. on domestic violence which states that the victim has the right to: respect of the personality, dignity and his or her privacy, information about his or her's rights, special protection appropriate to the situation and personal needs, counseling, rehabilitation, social reintegration and the free health care and free legal advice and assistance in the law.
A new and important provision, present in foreign laws and neccesary in our legislation is the introduction of the restraining order, so that domestic violence victim may request the court to issue a protection order and restraining the abuser. The request for a restraining order may be formulated either by the victim or his legal representative, the local jurisdiction is the court to which the victim of the residence.
A very important aspect of the new provisions is that it gives the court the opportunity and to have the abuser to attend counseling, psychotherapy or can recommend treatment or other forms of care, especially for detoxification, drug addiction and alcohol addiction is the main causes of acts of aggression and abuse in the family.
Also, new rules of law refers to the obligations of central governments and local authorities to take measures to prevent domestic violence and to prevent repeated breaches of fundamental rights of victims of domestic violence.

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Comments:

The Role Of The Civil Society In Protecting Human Rights And Fundamental Freedoms In Relation With The Public Ministry

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Keywords: human rights, civil society, Public Ministry

Abstract
The role that civil society plays in a society which upholds human rights and fundamental freedoms, is crucial because civil society answers to the needs of the citizens, needs which end are born from within the society.
The general objective of the present article is to identify and analize which is the role of civil society in protecting and guaranteeing the citizen's rights and fundamental freedoms in relation with the Public Ministry.

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Comments:

Freedom Of Expression As A Core Value Of Contemporary Society

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Keywords: freedom of expression, conflicting rights, limits, constitutional architecture, different approaches

Abstract
Freedom of expression is experiencing a variety of names – it is described as freedom of speech, freedom of communication, freedom of the press, freedom of association, right to assembly and various other rights - academic and artistic freedom - usually associated with the right to group communication. Due to the comprehensive scope of the term "expression", "word" , "speech" and the possibility of opposing interests it was important to show a special care on regulating the content of communication freedoms in all countries with a sophisticated constitutional culture of human rights. The result is the need to define this fundamental right and establish whether it is considered literally to be unlimited or not and to regulate the admissible restrictions carefully so that simultaneously the State to ensure the effective protection of freedom of expression and also to provide enough space for a multitude of other competing rights and interests.
The understanding of the concept of freedom of expression is extremely complex involving a thorough knowledge of constitutional values and constitutional tradition analysis of different legal systems and the international legal framework has been created by states under the influence of traditional constitutional values. At the same time, we need to balance freedom of expression with the value of other fundamental rights, resulting in the establishment of limits of expression, such as the criminalization of hate speech, incitement to violence, Holocaust denial, revisionism. As a particular case, human dignity has become an important element in the constitutional case law of many states that share its main characteristics due to the promotion of fundamental rights. In the absence of a hierarchy between rights and fundamental freedoms, freedom of expression is seen in many cases as a "primary law" (primary right) with prevalence over other rights.
Over time both at national and international level, the discussions and controversies concerned the architecture of freedom of expression and other conflicting rights the common feature of all different systems being the non absolute value of the freedom of expression.
The analytical approach of this paper is to highlight the main differences between the European theory where the European Convention on Human Rights is jus communis and the American theory characterized by absolutism.

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Comments:

The Balanced Budget – A Legislated Desideratum

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Keywords: curative measures, late payments, budget surplus, budget deficit, budgetary constraint

Abstract
The two basic financial laws – Law No. 500/2002 on public finances and Law No. 273/2006 on local public finances – contain different provisions related to the balanced budget, offering a different approach of the latter.
Law No. 500/2002 does not clearly institute the principle of the balanced budget and it does not even define it within the specific terminology instituted at article 2. But since the balanced budget is necessary for the budgetary process, this law contains some provisions, which have nonetheless only a general character, regarding: maintenance or improvement of the balanced budget, according to the case; cover of the budget deficit; use of the registered surpluses. Moreover, the law mentioned before leaves the issue on insuring the balanced budget to some entities specialized from a financial point of view –the Treasury and Public Debt – also known as the "guardian of financial balances"; this institution has the duty to insure the permanent balance between the resources existing in the current general account and the financing needs, under the conditions of the Government Ordinance No. 146/2002 on the constitution and use of the resources which pass through the State Treasury.
Law No. 273/2006 defines the balanced budget, but also its transgressions (unbalance, surplus), upgrading it to the level ob budgetary rule. Given the insufficiency of local public finances, law contains certain measures for balancing them ever since they are forecast, instituting the so-called "completing procedures", which are conditioned by the state budget. Moreover, quite recently there have been instituted true curative measures, meant to insure a balanced budget enforcement, but also the observance of the principle regarding "the continuity of public services". These measures are completed by the measures for fighting against the financial crisis of territorial-administrative units provided by the normative act under discussion, but also by "the budgetary constraint", regulated by Law No. 195/2006 – the framework Law on decentralization.
In the current analysis there will be discussed mostly the special requests instituted by the normative acts mentioned above, regarding the insurance, maintenance or reestablishment of the balanced budgets within the national public budget – state budget, social insurances budget, budgets of territorial-administrative units – by integrating at the same time these conditions in the current budgetary background. Insufficiently analyzed by the financial literature, the balanced budget will benefit in the current study from an analysis which takes into account the requests mentioned above, which points out its content elements and provides integrality to it, while at the end of the study it will be possible to conclude whether "the balanced budget is only a legislated desideratum" or "the balanced budget is a legislated and accomplished desideratum".

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Comments:

Limitations And Completions Of The Fundamental Rights: Arguments In The Case Of Historical Remedies

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Abstract
Articolul îşi propune să prezinte în sinteză principalele linii de argumentare în dezbaterea privitoare la reparaţiile istorice, reparaţii care au făcut obiectul diferitelor analize juridice în cazul deciziilor instanţelor şi comisiilor naţionale şi internaţionale. Limitările şi extinderile survenite în chestiunea drepturilor fundamentale reprezintă elementele esenţiale prezente în abordările doctrinei şi practicii judiciare, în dezbaterile politico-constituţionale. Sfera intereselor şi argumentelor depăşeşte adeseea domeniul ramurilor dreptului, vizând chestiuni de interes interdisciplinar, în zona ştiinţelor politice, istorice şi sociale. Actualitatea drepturilor fundamentale impune operaţionalizări de interes analitic în constituirea unui cadru juridico-moral în soluţionarea chestiunilor reparatorii. Sinteza argumentativă a unei cazuistici bogate în domeniul reparator poate veni în sprijinul clarificărilor doctrinare, al orientării practicii judecătoreşti, dar prezintă un interes aparte în relevarea unor legături între mecanismele juridice tradiţionale şi constructele sociale ale justiţiei.

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Comments:

Administrative Coercion And Human Rights

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Keywords: coercion, illegal behavior, administrative police, human rights

Abstract
Public administration's mission is to enforce necessary rules to ensure the respect of human rights and for this purpose corresponds the exercise of the administrative coercion through the administrative police.
The administrative police is the main form of public administration activity that aims to protect human rights and public order and, by using its authorities, it is the one that sets the rules by which citizens interact.
The purpose of this study is to present which are the means of coercion used by administrative police authorities in order to protect human rights. By using methods such as case study, direct observation or comparison, I will be able to show the specific features and problems of administrative coercion.

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Comments:

SESSION II PRIVATE LAW

Primary Quali fication Of The Matrimonial Agreeement Notion

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Keywords: matrimonial agreement; spouses; law applicable to the matrimonial regime; private international law

Abstract
The rules of private international law are regulated in the Civil Code, Book VII "Provisions of Private International Law", Chapter II is called "The Family".
The conflict of laws in the field of matrimonial agreement is set out in art. 2593 paragraph 1 letter b and art. 2594 of the Civil Code.
Article 2593 paragraph 1 of the Civil Code provides that "the law applicable to the matrimonial regime regulates:
a) .....;
b) the admissibility and validity conditions of matrimonial agreement, except capacity."
Regarding the form conditions of art.2594 the Civil Code stipulates: "The form conditions required for concluding the matrimonial agreement are those stipulated by the law applicable to the matrimonial regime or those stipulated by the law of the place where it is concluded".
To clarify the meaning of the conflict of laws of Article 2590 of the Civil Code in conjunction with 2593 of the Civil Code we need to perform the primary classification of the concept of matrimonial agreement.
Application of private international law is impossible without deciphering the meaning of the legal rules specific to this branch or without classifying the test cases on categories.
The notion of classification is defined by authors differently. According to a first opinion the classification is defined as the operation performed by an authority that is required to solve a conflict, when asked to find the conflict category of the situation, in order to decide what rule should be applied. According to another opinion, the classification establishes the meaning of the notions of legal rules on the subject of regulation and the law applicable to the legal relationship. In a reverse operation, through classification, they determine the legal category to which a fact situation belongs and indicate the competent law.
For the clarification of the meaning of the notion of matrimonial agreement in private international law we need to perform the primary classification of the concept of matrimonial agreement in Romanian law.
In the doctrine, the matrimonial agreement designates the conventional act by which future spouses, making use of the freedom conferred by the legislature, establish their own matrimonial regime or change their matrimonial regime under which they were married during marriage.

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Comments:

Sur l'application de la loi dans le temps: un cas inédit d'application de la loi contraventionnelle la plus favorable

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Mots clés: contravention, loi contraventionnelle plus favorable, application de la loi dans le temps

Resume
Notre essai propose l'étude d'un cas pratique de l'application rétroactive de la loi contraventionnelle la plus favorable.
Le litige est né entre la société commerciale SC et l'Administration financière départementale (en roumain «Garda financiară»). L'administration a établi que SC a vendu d'essence, en novembre 2009, sans être enregistrée comme opérateur économique à l'autorité compétente. Comme l'acte est interdit par le Code fiscal, SC a été sanctionné selon la procédure contraventionnelle, mais SC a contesté en instance le procès-verbal de contravention.
Le premier tribunal a partiellement admis la contestation de SC et a modifié le procès-verbal de contravention en enlever les sanctions. Pour décider de cette manière, le tribunal a comparé les trois normes juridiques successives applicables:
1. la première (applicable jusqu'à 31 mars 2010), qui a établi une sanction avec l'amende de 50.000 à 100.000 lei et la confiscation de la somme résulté de la vente;
2. la seconde (applicable de 1er jusqu'à 27 avril 2010), qui a établi que l'action de SC représente une contravention mais sans édicter une sanction expresse; et
3. la troisième (en vigueur à partir de 28 avril 2010 jusqu'à le moment du jugement définitif), qui a établi une sanction avec l'amende de 20.000 à 50.000 lei, la confiscation de la somme résulté de la vente et la révocation de l'attestât (le permis) d'opération.
Le tribunal a établi que la loi la plus favorable au SC est la seconde, qui est une norme juridique incomplète, ne contenant pas la sanction.
Le tribunal de recours a admis le recours déclaré par l'Administration financière, a modifié le jugement de la première instance et, en rejugeant, a décidé la réduction de l'amende contraventionnelle. L'instance a établi que SC a reconnu commettre l'acte qui représente une contravention. L'adoption par le législateur, avec un certain délai, de la sanction pour cette contravention ne donne pas lieu à l'application du principe de la loi contraventionnelle la plus favorable parce que l'acte de SC a été considère comme contravention tout le temps et parce que l'intention de le législateur de maintenir l'incrimination est sans ambiguïté.
Les deux jugements sont contradictoires. Nous proposons dans notre étude une analyse théorique pour établir qui était réellement la loi contraventionnelle la plus favorable. La conclusion de cette analyse est que la loi la plus favorable pour SC est la seconde qui a établi que l'action représente une contravention mais sans édicter une sanction. En conséquence, seulement le jugement du premier tribunal est légal, tandis que le jugement du tribunal de recours demeure seulement une tentative jurisprudentielle de correction d'une erreur évidente de technique législative.

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Comments:

Resignation - Form Of Termination Of The Individual Labor Contract

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Keywords: employee, employer, employment legal relationship, suspension by law, suspension by employee initiative

Abstract
Individual employment contract execution is a process that takes place over time. In this range of time, certain circumstances, even stated by law, can occur that, permanently and for future prevent the achievement of the object and effect of the contract, and therefore the main obligations of the parties (eg work supply and wages). This situation is different depending on the person who will swou .

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Comments:

Considerations On The Fundamental Rights Of Shareholders

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Keywords: fundamental rights, shareholder, Trade Company

Abstract
Fundamental human rights issue has become, in modern times, of special importance, with the weight of the European Court decisions of Human Rights and their importance in national legislation and jurisprudence. Even if the major material interests of human rights are directed mainly on fundamental rights of individuals in common legal relations, unprofessional, the Convention for the Protection of Human Rights and Fundamental Freedoms, in an abstract formulation, does not limit this matter strictly on these types of people but gives the opportunity to extensively interpret its provisions to include other categories of social relations under its effects.
Compared to these mentions results that there will also be fundamental human rights in other matters, depending on the legal need of the individual and related to the nature of legal relations that it will interact.
As a result, we can open the existence question of some fundamental rights which a shareholder might have in a limited liability company, and not only that, the rights that it has guaranteed so, regardless of its participation in the formation of the company, the minority shareholder situation won't turn into an oppression exercised by the majority shareholder likely to affect the rights and legitimate interests, protected by the legislation.
In developing this idea, the most appropriate form, from the legal point of view, to ensure and guarantee the protection of minority shareholders in the sense of recognition and defense of the fundamental rights of the shareholders, is the corporate governance.

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Comments:

Legal Will And Its Limits In The Contract

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Keywords: contractual freedom, public order, good morals

Abstract
Free will, that the will autonomy cultivates, emphasizes the human consubstantial freedom, which consists in choosing a path over many paths or in that possibility of the human to do whatever does not harm the other.
In a civilized world, every member of the society must respect the moral principles established by customs and traditions, to comply fully aware of the legal system and prevent any behavior likely to harm others.
One of the brightest spirits of the twentieth century Nicolae Titulescu said about the limits of will autonomy: "a great principle, that is not written anywhere, but is admitted by everyone as a kind of natural law principle is this: everything the law does not stop, is allowed". In these circumstances, it is merely to identify what the law stops, which are the limits that the law puts to the will creating legal effects.
Public order and good morals both fulfill the same function: they are social prohibitions which restrict the contractual freedom. They indicate that there is, above the particular interests, the general interests, which by their will, the parties cannot ignore.
The contract has the force of law, unless it conflicts with a rule of public order. In other words, public order is based on a hierarchy of values. It shows that in a legal system, there is an order with a higher value, which is placed above the interests which aims the private conventions and whose respect is necessary for social cohesion. This order with a higher value is the "foundation" on which the society is built.
Good morals can be defined as being the totality of rules of good conduct in society, rules that have emerged in the consciousness of most members of society and whose compliance was imposed as mandatory, through a long and practical experience, in order to ensure social order and common good, namely the achievement of the general interests of a given society.
In modern society it is no longer denied that the law has changed and modified (evolve) in time while under the influence of moral ideas, of social conditions and economic environment. No large encoding, that of Justinian, nor that of Bonaparte could stop the evolution of the law, the legislature is preoccupied only by the possibilities which it has to penetrate into the law, as deep as it can, moral ideas, social needs and economic requirements.
New Romanian Civil Code establishes in Art. 11, indirectly, the freedom of civil legal acts (principle of will autonomy) and, directly, restricting it, for the general benefit, through provisions which interest the public order and good morals.

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Comments:

The evolution of labor relation regulations within 1934 to 1937

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Abstract
On July 16, 1934, workers legislation was supplemented by the Law regarding the usage of Romanian personnel in enterprises (Official Gazette no 161, July 16, 1934). This law was driven by the need of ending the invasion of foreign personnel in Romania, occupying, generally, the best remunerated offices. Moreover, the top managers of foreign roots were leading a deliberate human resources policy as to maintenance Romanian workers at an unskilled level to justify their placement in the lower paid jobs.
On the other hand, the invasion of foreign personnel in Romania led to a relatively large number of Romanian unemployed within the period of 1934 to 1937. Since foreign staff had priority in employment, and besides the preferential treatment, in most cases, was not subject to Romanian jurisdiction. The Article 1 of the aforementioned law states that "economic, industrial, commercial and civil enterprises of all sorts are required to have Romanian origin staff in at least 80% proportion in each of the categories of used personal." (Furthermore, article 3 provides the following categories: senior administrative staff, higher technical staff, lower administrative staff, lower technical personnel, skilled workers, workers.)
On July 26, 1934 the Law concerning the foundation and organization of Work Chambers was published thus amending the Law regarding the establishment and organization of Work Chambers from October 11, 1932.
The amendments to the Act of 1934, the gap was removed, "being assimilated to workers, persons who have not even concluded an employment contract, executing works in other people's name [...] workers at home [...]workers in mine craters, tunnels, land and maritime routes".
Another change brought in 1934 stated that the Work Chambers organization shall include: county offices, work chambers, Chambers union. According to the law, they were established in 14 regions. An element of novelty was also the provision under which the county offices foundation fell under the general meeting of the Work Chamber decision.
On May 11, 1935 the Council of Ministers Journal was published regarding the approval of some of the International Labor Conference recommendations (Official Gazette no 106, May 11, 1935). By this Journal, the Council of Ministers approved the following recommendations adopted at the International Labor Conference: concerning the prevention of work accidents, regarding the age (the admission of children to non-industrial work: under the placement offices decision). The Ministry of Labor was responsible for the enforcement of these recommendations, which it translated into various labor laws and regulations.

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Comments:

Brief Considerations On Consent To Marriage

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Abstract
Human right to marry and to start a family is consecrated by Article 16 of the Universal Declaration of Human Rights, art. 23 of the International Covenant on Civil and Political Rights and Art. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
Marriage is concluded as a simple contract. Manifestation of the will of the spouses important consequences in principle for their whole lifetime, for which consent has certain particularities in this matter.
In practice, enclosed to the consent to marry, there is consent given at the conclusion of the matrimonial brokerage and consent gave for the marriage promise, the engagement.
If the latter institution is regulated, unfortunately matrimonial brokerage contract is not regulated, making it possible hijacking his purpose.

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Comments:

Consumers Protection Concerning Competition And Consumption

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Abstract
The entire production and trade activity is performed with the purpose of obtaining the maximum profit desired. This profit can be obtained only if the interest of consumers is constantly maintained for the goods and merchandise that are produced, distributed and sold onto the market. The quality of products and services onto the market is influenced by the connection created between client and supplier. In economy area, the entire activity "gravitates" around consumers. This is the reason for which both the regulations in the domain of trade competition and those regarding consumption are preoccupied with complying with and promoting the rights of consumers.
In this study, we will try to exemplify this preoccupation met at two young law disciplines, the law of competition and the law of consumption, vis-à-vis the interests of consumers, by underlying some provisions that targets them either directly or indirectly, as well as by presenting the institutions preoccupied with protecting the consumers from both the competition and consumption domain.

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Comments:

The Term For Accepting Or Disclaiming An Inheritcance According To The Current Civil Code

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Keywords: right to accept or disclaim an inheritance; acceptance of inheritance; disclaim of inheritance; author; inheritance worthy; the term for accepting or disclaiming an inheritance

Abstract
The Civil Code in force provides to the term for accepting or disclaiming an inheritance a new modern set of regulations, under many aspects, which is a lot different from the previous one. Thus, the lawmaker expands the length of this term and regulates the possibility for proroguing or reducing it, putting also an end to the controversies within legal doctrine, regarding its legal nature.
Consequently, the term for accepting or disclaiming an inheritance is, by lege lata, of 1 year, which is double in respect to the former one, offering hope to the lawmaker, notaries public and courts that the persons who are inheritance worthy will exert in a clear manner this right, either by accepting or disclaiming the inheritance, in the reasonable period of time available for them, and also that the same persons involved will resort much less frequently to the tacit acceptance of inheritance.
Then, the Civil Code provides for the possibility to prorogue the term for accepting or disclaiming an inheritance, at article 1104, if the person entitled to receive the inheritance demanded the drafting of the inventory containing the inheritance assets before exerting this right. In such case, the term for accepting or disclaiming the inheritance shall not end in less than two months from the moment when the person entitled to inherit receives the report on the inventory.
On the other hand, the current civil regulations allow for the term to accept or disclaim an inheritance to be reduced. Thus, according to the provisions of article 1113 paragraph (1) of the Civil Code: "For solid grounds and on demand of any interested person, someone who is inheritance worthy can be compelled to exert his right to accept or disclaim an inheritance within a term established by the court, which is shorter than that provided for by article 1103, by enforcing the procedure provided for by law for presidential ordinances". Consequently, when it comes to reducing the term for accepting or disclaiming an inheritance, according to law, there will be encountered in practice several situations, which the present work aims to present in a complete manner.
In the 1864 Civil Code, the legal nature of the term for accepting or disclaiming an inheritance was controversial. Most of the opinions argued that this term evinced the legal nature of a statute of limitations. Yet, the current Civil Code states at article 1103 paragraph (3) that the term for accepting or disclaiming an inheritance "… is subject to the provisions included in book VI on the suspension and reapplication of the statute of limitations term". Therefore, the one year term in which it must be exerted the right to accept or disclaim an inheritance has the legal nature of a termination term (given that, once it expires, the subjective right to choose to keep or disclaim the inheritance to which one is entitled is lost); it is subject to the rules on the suspension and reapplication of the statute of limitations term, according to law. It must be mentioned at the same time that the one year term cannot be subject also to the rules regarding the interruption of the statute of limitations, given that, once is exerted within the legal term, the right to accept or disclaim an inheritance is consumed.
Finally, the present work aims to analyze all the issues regarding the right to accept or disclaim an inheritance, under all the aspects that they involve, to point out the novelty elements related to them and to assess, by lege lata, their justness and appropriateness.

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Comments:

The Involvement of the High Court of Cassation and Justice In Interpreting and Applying the Internal Law From the Perspective of the European Court of Human Rights (CEDO) Jurisprudence and That of the New Civil Procedure Code

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Keywords: The High Court of Cassation and Justice, interpreting, applying the internal law, the unentangling of certain law questions

Abstract
According to the jurisprudence of the European Court of Human Rights, the role of the Supreme Court is to adjust the jurisprudence contradictions which were determined at the lower courts, thus establishing the interpretation to be followed, a sine qua non condition of the judicial security - the authenticity of the state of law being essentially dependent on that.
If until the entry into force of Law no. 134/2010 such a desideratum was ensured through the proceeding of the appeal in the interest of law, starting with February 15, 2013, one can also access the proceeding regarding "the notification of the High Court of Cassation and Justice with a view to the finding of a previous decision regarding the unentangling of certain law questions". The new proceeding, inspired by the European Union Law, is appropriate for the exigences demanded by the European Court of Human Rights in interpreting and applying article no. 6 paragraph 1 of the European Convention on Human Rights.
The profile of the lever as it was thought by the Romanian legislator in order to unify the judicial practice, reveals the ability to contribute to the diminution of the European legal department of human rights concerning the Romanian state, as the interpretation of the High Court of Cassation and Justice must be reported to the relevant jurisprudence of the European Court of Human Rights or, depending on the case, of the European Court of Justice. Even if the mentioned proceeding does not refer to the obligation of the Supreme Court to relate, in the formulation of the internal law, to the international one, we appreciate that the substantiation of this interpretation on the jurisprudence of the two European reference courts is implied from the perspective of the significance granted by the Romanian Constitution to the international treaties ratified by Romania.
Next we intend to realize "an introspection" of the new proceeding, trying to reveal the beneficial effects in terms of its application, resorting to a comparative analysis of the proceeding presented by the articles 519-521 of the New Civil Procedure Code and that of the appeal in the interest of law, also taking into account the proceeding of ruling a preliminary provision of the European Union law.

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Comments:

The Conditions Of Validity For Bill Payment

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Keywords: bill, payment, maturity date, drawee, payment risk, currency, value, debtor, refuse payment, proof of payment

Abstract
To be valid, the bill payment must meet certain conditions referred by the Law 58/1934 regarding the bills of exchange and promissory notes, as amended, namely:
1. The person who must pay has the ability to pay and has not been subject of insolvency proceedings.
2. The payment is made at maturity according to the article 10 of the Law, the owner shall not be obliged to accept payment before maturity and the drawee who makes such payment assumes the risk of payment (art. 44 of the Law).
3. The payment is made without fraud or negligence on the payer
In case the bill is payable in a foreign currency that has no appreciation at the payment place, the amount can be paid in local currency, its value from the the maturity date (art. 45 of the law).
The time of payment is the time of receipt of the relevant information and electronic images of the bill by the credit institution (art. 46 paragraph. 8 of the law).
The effective presentation for non-payment of the bill aims to notice the acceptant drawee - mainly debtor – about the creditor's person and to put this in a position to pay or refuse the payment, it also clarifies the position of debtors to regress, which in case of refusal to pay of the principal debtor, established by a protest, the payment will be involved.
The payment in advance may not be required by the bill's owner, as he cannot be forced to accept.
This rule of non-obligatory prepayment knows few exceptions in case the right of regress is exercised.
Geneva Uniform Law entitles the parties to stipulate payment in a foreign currency, solving different issues related to this. Thus the article 41 of the Law provides that a bill is paid in a currency that has no appreciation at the payment place; the amount can be paid in the currency of the country, according to its value on the maturity date.
The payment of the bill proves according to the article 43 of the Law, which provides that the drawee who pays the bill can claim that the bill be delivered with the mention of payment written by the owner on the title. So, the proof of payment can be made by the drawee with the bill and the receipt after the payment.

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Comments:

European Union Directives Regarding The Companies

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Keywords: directive, shareholders, company, capital, nominal value, authorize, establishment, organization, operation

Abstract
Advertising and transparency Directive (68/151/EEC) aims to establish a minimum level of important items regarding the advertising of companies, mainly to protect the interests of third parties and safeguard the commercial circuit.
The Directive sets three basic rules, intended to protect the third parties who contract with the companies:
1. Establishing a record of certain information required for each company in a commercial register covering a given area;
2. Harmonization of national rules regarding the validity of obligations and responsibilities on behalf of the companies for these requirements;
3. The exhaustive establishing of causes for the companies' nullity.
Directive regarding the establishment, organization and operation of the joint stock company (77/91/EEC) aims to ensure the minimum level of protection for shareholders and creditors on company formation, increase or reduction of capital.
Directive aims to protect the company's legal capital as an asset expression of the general guarantee recognized to the company's creditors by restricting its reduction as a result of the distributions to the shareholders.
The content of the memorandum of associates is legally designed as an expression of informing third parties regarding the essential characteristics of the companies. Minimal information subject to registration and advertising means set out in Directive no. 68/151/EEC (Article 3) are: the registered office, the nominal value of the subscribed shares and at least once a year their number, the number of the shares without subscribed value if such shares are permitted by the national law, special conditions to limit the transfer of shares if , the shares are registered or on bearer, any special advantage granted during formation until receiving the authorization to conduct trade by the founders.
The European Directive requires a minimum set of rules that describe a unique shape of the companies in European Union. The minimum capital allowed to authorize the company is 25,000 Euro.
In case the capital increase is made by cash contribution, the shares will be offered respecting the right of preemption of the old shareholders in proportion to the present numbers of shares.
The preemption right may be suspended if the newly special issued shares - have a limited right to participate in distributions and concerning the remaining part in the event of liquidation.

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Comments:

The Owner's Passivity In Case Of Artificial Immovable Accession

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Keywords: accession, property, good-faith, passivity, convention

Abstract
Artificial immovable accession can represent for its beneficiary a true limitation in exerting the ownership right. This limitative feature of accession is best emphasized in case of the works made by a good-faith author. In such a case, the holder of the accession right, if he/she wishes to remain the owner of the land, too, should keep the works erected on it and to indemnify the author of the works.
This is one of the reasons that generated many theoretical and also case law disputes regarding the correct appreciation of the good or bad faith of the author of the work.
One of these disputes was determined by the appreciation of the good faith of the author of the work by correlating his/her attitude with the land owner's. The dogma has ascertained correctly that there is an association between the subjective attitude of the author of the work and the land owner's subjective attitude. Nevertheless, as one of the attributes of the ownership rights is exactly the right of not using the asset (except the cases especially provided by the law), we share the solution in itially proposed in the Project of Civil Code from 2004 and regulated then by the new Civil Code, according to which the owner's passive attitude cannot lead to its sanctioning by considering the author of the work as having good faith.
The land owner's passivity has received different interpretations in the dogma and in the case law. It was considered as the expression of a mutual agreement of construction either in the owner's benefit or in the builder's benefit. When these relative presumptions were overthrown, leading to the birth of an accession law, there were authors and courts which qualified the exercise of this right as a de jure abuse, related to the owner's passivity.
The new regulation wanted to remove these controversies. The dogma, but especially the case law, will emphasize to what extent this regulation can or cannot leave place to further interpretations.

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Comments:

Expert In Labor Law, A New Occupation - For The Benefit Of Employers Or Employees?

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Keywords: Expert In Labor Law, benefit of employers, benefit of employees, dependent work, independent work, occupational standard

Abstract
In the current economic, legal and political framework we can no longer unconditionally look at the idea that labor law would be a law in the favor of employees only. Indeed, it shall continue to protect the employees from the employers's abuses, but it also organises the exploitation of the work performed by the employees. As both sides have great legal competence to create law through legal acts with legislative character, which is particularly important for the employment relationships, a real harmonization of the interests it can be reached, depending on the actual background.
We believe that in this respect an important role falls to the new occupation - expert in labor law. The one who will perform his/her activity in this profession is very much alike with the human resources manager, the specialist in employment relationships/human resources, the inspector/referent in human resources - but this profession is much closer to the legal adviser, without mistaking however for it.
Therefore, the new occupation has not been entered yet in the classification of occupations in Romania, nor under the subgroup "Specialists in the field of human resources and personnel" nor under and the one that consists of "Specialists in the field of law", but in the category of "Specialists in the administrative policies field" (code 242220). However, the occupational standards of all these professions are very similar, being entered in the sector of "Administration and public services".
The professional skills specific to the expert in labor law are relevant to the pointed purposes: the application of domestic, European and international labor and social security law; drawing up of the acts specific to the labor law and social security law; provision of specialized consultancy in the field of labor and social security law; development of strategies, policies and procedures necessary for the application of labor law and social security law; the representation of employers' relationship with authorities, etc.
In the creation of the legal features of this occupation, an active role played the undersigned and University "Dunarea de Jos" Galati - the Faculty of Legal, Social and Political Sciences, of course, along with the initiator of this project, S.C. Work Systems Management S. R. L. Bucharest, the National Union of Experts in Labor Legislation, Labor Law Association, Ecologica University in Bucharest, Labor Inspectorate, law offices, other specialists.
This collaboration, perhaps, makes proof of the transfer of scientific knowledge to the social and economic areas of life, but vice versa also.
Hereinafter, we would like to present this new occupation and its benefits in implementing labor legislation.

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Comments:

Unique Collective Employment Contract At The Level Of High Education And Research Sector No. 59495/2012 And Individual Employment Contracts Of University Staff

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Keywords: university teachers; job description, university work load; duration of work, working program; research; performance standards; part-time

Abstract
Relatively recently – on December 19th, 2012 – the Unique Collective Employment Contract at the level of Higher Education and Research Sector no. 59495/2012 was registered, for the first time ever, with the Ministry of Labor, Family and Social Protection.
This is the date starting from which the legal effects for the units that were represented (referred to in Annex no. V) by the National Trade-union Federation "Alma Mater" have become effective.
Its publication in the Official Gazette of Romania, Part V, was made later - on January 10th, 2013.
Along with the other social partner that has concluded this contract, the Ministry of Education, Research, Youth and Sports, it was decided that its period of validity is of one year, with possibility of extension by right, if none of the parties does not initiate its renegotiation prior to its expiration.
From the date of its registration starts to flow the term of 90 days for the harmonization of individual employment contracts belonging to this sector with the above-mentioned collective contract by means of an addendum to be signed.
Under Annex no. 1 there are even stipulated minimum mandatory clauses.
Of course, by means of individual or collective negotiations which are subsidiary to the negotiation from the Level of Higher Education and Research Sector it is always allowed derogation in favor of employees who are higher education university staff.
We would like to tackle under this material some aspects related to the legal effects of the collective employment contract at the Level of Higher Education and Research Sector no. 59495/2012 over the individual employment contracts concluded with university teachers: duties from the job description reflected in the activities of university work load; duration of work and the distribution of the working program; obligations of higher education institution in relation to the requirement to complete research activities; minimum standards of the results of teaching and research activities; part-time work.
All these have to be examined also in relation to the Statute of higher education and research staff, which is part of Law no. 1/2011 of national education.
In this respect, we would like to indicate that some solutions adopted in the practice of individual employment contracts concluded with university teachers are in agreement with the law and very favorable to them, in relation with those stipulated under the recent collective agreement.
Of course, the undertaking of the social partners is laudable as a whole. But, we believe that in the future some constructive criticism would be of interest to them.

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Comments:

Theory And Practice On Dismissal Of The Employees Returning From Growth And Childcare Leave

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Keywords: firing the employees returning from leave increase child, abolishing the post of the employee whose individual contract work was suspended, the sanction of nullity of the decision to terminate the labor relations.

Abstract
Women employed receive special measures of health protection and the conditions necessary for the care and education of children, also the protection of the worker and the guarantee her rights against potential abuses, Labor Code expressly and exhaustively sets situations when can be ordered dismissal and the procedure fulfilled in her situation.
On the other hand, according to art. 25 par. 3 of Government Emergency Ordinance no. 111/2010, dismissal is prohibited for a period of up to 6 months after her permanent return employees / employee from leave child growth up to 1 year or 3 years (for disabled children). These provisions shall not apply to dismissal for reasons that appear due to judicial reorganization or the bankruptcy of the employer, under the law.
Upon termination of suspension, the employment contract must be back as the suspension does not change anything, neither the function, nor the work. Therefore, the employer can not terminate the position of the employee whose employment contract is suspended. Such a measure will be sanctioned with nullity by the court trial if the employees requires this, if abolishes the post of the employee whose employment contract was suspended.

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Comments:

SESSION III
ADMINISTRATIVE SCIENCES AND REGIONAL STUDIES


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Les eaux de crues et les risques d'inondations dans la ville de Maroua : enjeux et perspectives

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Mots clés: eaux de crues, risques, inondations, enjeux, perspectives, Maroua, Extrême-Nord du Cameroun

Resume
Les eaux de crue dans la ville de Maroua posent de nombreux risques d'inondations dont les corolaires sont des dégâts matériels et des pertes en vie humaines chaque année. Ces risques d'inondations récurrentes s'expliquent par des conditions physiques et anthropiques qui caractérisent Maroua et ses environs. Si les inondations découlant des eaux de crues engendrent beaucoup de dommages dans les zones à risque, la population continue à s'installer dans ces domaines vulnérables. Afin de limiter l'impact des inondations sur les habitants de la ville, de nombreuses parties prenantes, notamment, les pouvoirs publics et ses partenaires au développement, les acteurs privés et la population elle-même, prennent des mesures pour contrer les eaux de crues afin de minimiser les risques d'inondations. Mais les observations directes sur le terrain et les enquêtes auprès des populations, des pouvoirs publics spécialisés en la matière, des organisations non gouvernementales et les autorités traditionnelles, nous permettent de comprendre que ces efforts sont souvent limités par des faiblesses administratives et le comportement individualiste de la population. Cette attitude indique que les enjeux autour des eaux de crues et ses corolaires ne conditionnent pas toujours la prise en charge efficiente des inondations dans la ville de Maroua.
Ainsi, les perspectives d'avenir pour cette localité consistent à intégrer au Schéma Directeur de la ville, un programme d'aménagement et de gestion des eaux et de l'espace pour résoudre à long terme les eaux de crues. Sur le plan législatif et institutionnel, aucune institution ni service de l'administration n'est chargé actuellement au Cameroun de la gestion des problèmes particuliers des crues malgré leurs récurrences. Même si plusieurs départements ministériels ont en charge la gestion des questions relatives à la conservation du milieu naturel et des eaux de crues en particulier, une approche globale des questions relatives à la question de l'eau en vue d'une gestion durable n'est pas pour le moment visible sur le terrain en termes de résultats et d'efficacité. Un secrétariat permanent à la gestion des catastrophes naturelles a même été créé. Son rôle ne devrait pas se figer à ordonner des appuis en cas d'inondations, mais de mener des soutiens reposant sur une bonne connaissance des mécanismes qui sous-tendent le fonctionnement normal du milieu, des interrelations entre les phénomènes naturels, et entre diverses communautés aux intérêts divergents et souvent contradictoires après des études d'impacts préalables.

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Comments:

The Election Procedure Of Representative Bodies In Atu Gagauzia

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Abstract
In Republic of Moldova, the process of democratic values formation took place along with the Declaration of Independence on August 27 from 1991. We can not say that this process was implemented without encountering strong opposition from doers who wanted to keep the USSR. Under the leadership of these factors sometimes the situation degenerates into an interethnic conflict or in a military conflict as in the case of Transnistria. Also we can say that these two separatist regions in a certain extent were limited in human rights, in this case referring to the right to vote and to be elected (such cases were discovered in Transnistria). Judging the realities from that period there was a need to elaborate and vote on a new fundamental law of the Republic of Moldova "Constitution", which would reflect the existing realities. Thus on July 29, 1994 the Constitution of Moldova was voted in which was implicitly stipulated that Gagauzia was formed as an administrative-territorial unit with special status being a form of Gagauzians self-determination.

Therefore the premises were created that Gagauzians could elect their representative bodies at the level of autonomy. According to the Constitution of Moldova, the Law on the special legal status of Gagauzia (Gagauz Yeri), the Regulation of Gagauzia (Gagauz Yeri), the citizens of Republic of Moldova who live on the territory of this autonomy have the right to elect a number of representative bodies at the level of autonomy. In this context we can talk about the Bashkan (Governor) of Gagauzia, designed to govern this autonomy; the People's Assembly of Gagauzia having the prerogative to vote laws, decisions and ordinances which are not contrary to Constitution of Moldova and public bodies of the local administration. To mention that because of the specific organization of this autonomy depending on the representative bodies which must be elected in the process of vote holding on the territory of autonomy it is applied either national legislation or legislation that has legal effect only on the territory of autonomy.

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Comments:

The 1997 And 2008 Financial Crises Causes And Consequences Compared

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Keywords: crises, Asia, Europe, comparation

Abstract
Most commentators of the present international systemic crisis affecting the world banking dynamic tend to focus on the intensity of the phenomenon: its intensity or its scale. To be sure, we are into the hundreds or the thousands of billions of dollars of losses, bail-outs, etc. These amounts are such that the common mind cannot quite fathom them. They are close to many national budgets of States on the UN membership list.

However, the present crisis poses another main question: that of its nature. Is it an exceptional crisis or one set within the cycle of economic crises over, at least, the past century? Indeed, is a crisis some kind of unforeseeable surprise, of irresistible accident, of unavoidable upheaval? One tends to oppose this deterministic view, which alleviates human responsibilities. So, is a crisis, conversely, a recurrent, systemic state, in between two periods of accumulation of human errors in the management of societies? The man-made nature of crises such as the present one seems much more plausible.

This view can be demonstrated while looking at three stages of two very comparable crises, that of 1997/1998 in Asia and that of 2008/2009 in the world: what their causes reveal, what the reactions to them prompt and what their consequences trigger.

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Comments:

The Aspects Of Risk Management For Public Entities

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Abstract
The risk management represents a component of a public entity culture and also for the decision-making processes and structures within it.
The risk management for each public entity level is made by leading factors and also by the personnel involved in setting strategy at the entity.
As phases of risk management can be highlighted the following:

- The risk identification;
- The risk assessment;
- The controlling of risks;
- The risk analysis and reporting.

The risk management is a process that takes time and effort on the part of public entities being done in some previously established time. In view of some British academics the most important risks are:

- Strategic;
- Operational;
- Financial;
- Reputational, information and personnel related risks.

The risk management for a specific public entity has the following objectives:
The risk management as a component key in the management of public entity strategy;
The adopting a positive approach to risks;
Taking into account the risks in any decision taken by the leading factors in the public entity;
The convenient management of the risks and threats that may restrict the occurrence of positive results.
Internal auditors are the professionals who understand the importance to be given to the risk management.
Currently the internal audit directs predominantly on the work not only to control but also to the risks manifest and to implement the general management in terms of risk management.

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Comments:

Comparison Between The Ombudsman In France And The Ombudsman In Romania

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Keywords: human rights, safeguards, ombudsman, the Ombudsman in France (le Défenseur des droits), the Ombudsman in Romania

Rezumat
The fact that human rights are the foundation of Western liberal democracy is an indisputable truth. Experience has shown that at no time and nowhere else in the world are human rights always and fully complied with. That is why in democratic states special attention is given to safeguarding these rights. The most important and user-friendly safeguard for the citizen is considered to be the effective access to a fair trial by an independent and impartial tribunal, within a reasonable time. However, free access to justice has proven insufficient. First of all, justice is not free, and second of all, court proceedings can last a long time, taking into account the existence of at least two degrees of jurisdiction. Thus appeared the necessity of creating an additional, non-contentious, free of charge, safeguarding mechanism for the citizen, by which the public authorities, especially the administrative ones, would be enabled to cease the violations of rights they have committed and repair their effects. Sweden was the first country to introduce, in 1809, an institution meant to meet this necessity, institution which was called ombudsman.
The institution of the Ombudsman in Romania (Avocatul Poporului) represents the accommodation in Romanian law of the ombudsman institution. Currently, the ombudsman is part of the institutional architecture in democratic states and can be found in approximately 120 countries all over the world. In this paper I am aiming at assessing the way in which the ombudsman institution is implemented in Romania. To this end, my goal is to analyze the ombudsman institution in an international context. The only appropriate approach for this endeavor is the use of the comparative method. The right use of this method entails setting the terms to compare and the comparative scheme, with the goal to finally arrive at the comparative synthesis. The terms to compare are the ombudsman institutions in France and Romania, called the Ombudsman in France (le Défenseur des droits) and the Ombudsman in Romania (Avocatul Poporului). The comparison will be made according to the following pattern: the mission and the attributions of the institution, its structure, and its means of action. The analysis of the similarities and differences, encompassed in the comparative synthesis, will allow us to highlight the strong and weak points of the Ombudsman in Romania.

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Comments:

The Application Of Citizens Consultation Principle In Problems Solving On Administrative Organization Of The Territory

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Abstract
The European Charter of local autonomy forecast expressly the need to consult local community in case of amendment of their territorial limits. For Republic of Moldova the Charter takes effect from the 1st of February 1998, which must to respect its forecasts.
The legal principles of Republic of Moldova are analyzed for need and legal form of local community consultation in case of amendment of their territorial limits.
The problem is very important for Republic of Moldova because, here after a series of reform and anti-reform, in generally, has perpetuated the Soviet system of territorial-administrative delimitation, which characterized by existence of local community with human, economic, financial potential and reduced material.
From the perspective of European Integration of Republic of Moldova, the territorial-administrative reform is imminent and in this context is important to involved the local community to solving this problem, based on available resources.

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Comments:

Dilemmas Of The Intermediate Level Of The Administration

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Keywords: intermediate level, democracy, efficiency, effective, decentralization, management, responsibilities

Abstract
The administration and the authority of the intermediate level are organized very different. The invoked reasons for creating this level are varied: for a better democracy, efficiency, effective, decentralization etc. But there are points of view which associate, especially the third intermediate level with bureaucracy amplification, corruption increasing, a bad management of the new structures created, the overlapping of the responsibilities in some technical fields, legislative or financial. The study systematized these points of view, as well as the initiated changes by the European Union on the organizational and structural aspects of the intermediate level.

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Comments:

The Role Of R.Moldova Participation Within The "Black Sea" Euroregion In The Context Of European Integration Process

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Abstract
Cross-border and Euroregional cooperation is an important factor in supporting Moldova's European integration efforts. Although Republic of Moldova has no direct exit to the Black Sea, it is a member of the „Black Sea" Euroregion, a structure created in 2008 with the support of the Council of Europe, which aims to strengthen cross-border cooperation relations in the Black Sea region and at the EU and NATO border. Participation in this Euroregion, allows Republic of Moldova to improve relations with neighboring countries and to attract European funds for cross-border projects in partnership with these countries. In the present article we intend to show how Republic of Moldova participate in this structure, and to analyze the role of this Euroregion in developing regional cooperation in the context of Moldova's European integration process.

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Comments:

Production de la ceramique et effets socio-economique et culturel dans les societes traditionnelles de l'extreme-nord du Cameroun

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Mots clés: Artisanat, techniques, céramique, Sociétés traditionnelles, Extrême-Nord

Resume
La région de l'Extrême Nord du Cameroun est située en plein milieu sahélien. Cet espace fut peuplé par les Sao aux abords du lac Tchad où ils ont développé la civilisation dite de la terre cuite. Puis arrivent les Soudanais, les Foulbé, les arabes Choas à la suite des migrations successives. Ces peuples ont développé des activités artisanales dans les filières comme la métallurgie du fer, la peauserie, le tissage, la vannerie et la céramique qui occupe une place importante dans la production artisanale. Les artisanes appartenant à différents groupes ethniques (Mafa, Mofo, Toupouri, Guiziga etc.) se sont spécialisées dans la confection du mobilier céramique en rapport avec leur environnement socioculturel. Ceci implique l'observance des interdits pendant la production. Les produits fabriqués sont destinés soit à la consommation domestique soit à la vente. Les revenus tirés de cette activité commerciale améliorent substantiellement les conditions de vie des familles des potières. Le présent article ambitionne sur la base des observations faites dans les ateliers, des sources écrites et orales, d'étudier la technique céramique et les effets socio-économique et culturel de cet artisanat.

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Comments:

Analyse géographique de l'accès à l'éducation primaire au Nord-Cameroun

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Mots clés: Education primaire, scolarisation, disparité spatiale, Extrême-Nord

Resume
L'éducation et l'enseignement joue un rôle essentiel dans un processus économique. Elle est d'ailleurs reconnue par plusieurs Etats comme un indicateur indispensable pour le développement. La Déclaration universelle des droits de l'homme de 1948 la reconnait comme un droit fondamental de l'homme. Plusieurs conférences comme celle de Jomtien au Vietnam en 1990 ont été tenu dans le but de trouver favoriser l'éducation pour tous et en particulier l'éducation primaire. Les Nations unies ont de l'accès à l'éducation primaire un des objectifs des millénaires pour le développement. Le problème qui se pose dans le monde en général et au Cameroun en particulier est celui de l'inégal accès à l'enseignement primaire. Cette inégalité est encore plus forte entre les genres. Située dans la partie septentrionale du Cameroun, la région de l'Extrême-Nord a été longtemps confrontée au problème de scolarisation. C'est l'un des grands foyers de peuplement du Cameroun. Cependant, cette région est confrontée à un réel problème d'accès à l'éducation primaire. Même au sein de cette région, des inégalités s'observent entre les départements, les arrondissements et même les établissements scolaires. C'est fort de ce constat que le problème d'égal accès à l'éducation dans cette région a été relevé dans le cadre de cette communication. L'objectif de cette contribution est de comprendre les disparités sur le plan social et spatial de l'éducation de base dans cette région dans une perspective de développement régional. Il s'agit de comprendre les mécanismes qui influencent l'accès à cet ordre d'enseignement dans les communes de la région. Ceci a été faite sur la base de l'exploitation des données statistiques issues de la carte scolaire de la région, des observations de terrain, de l'exploitation rapports d'activités et des données de la littérature. Ces données ont été analysées à travers des méthodes statistiques et cartographiques. Ces analyses ont permis d'observer les disparités spatiales d'accès à l'éducation entre les unités communales régionales et les facteurs socio-économiques qui peuvent expliquer cette situation.

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Comments:

European Union Facing The World Competitiveness

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Keywords: competitiveness, global rank, factor-driven economies, efficiency-driven economies, innovation-driven economies.

Abstract
The present global crises changed the world top of the national economies. The paper deals with the analysis of the EU economy as a component of the global economy, in order to understand the new trends and the worst economic positions of the most Member States. The analysis is based on 12 pillars of the competitiveness and is support by the latest official statistic data. A distinct part of the analysis is focused on the Romanian economy and its future.
There are at least two main conclusions of this paper. First, the EU economy is not yet able to support a real economic recovery. Second, Romania lost its competitiveness and the forecasts are not so good for it.

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Comments:

Gouvernance locale des terroirs. Enjeux et défis à relever dans un pays en mutation : cas du Département de la Nya-Bébédjia au Sud du Tchad

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Resume
Cette recherche postule que les ressources en eau restent les facteurs déterminants de développement des terroirs du Département de Bébédjia, quoique les revenus du pétrole soient importants pour assurer le développement socioéconomique du Tchad dans la globalité. De plus, elle met en exergue la contradiction entre l'émergence des activités du pétrole et le déclin de l'agriculture et l'élevage, activités fort dépendantes des ressources en eau, qui étaient les principales ressources d'exportation et donc fondamentales pour l'économie du Tchad et des sources de revenus en milieu rural tchadien
L'objectif général de la recherche est d'aider les acteurs de développement à articuler les différentes mises en valeur des territoires pour assurer un développement local durable à partir de l'eau et des ressources pétrolières en fournissant des connaissances scientifiques utiles aux collectivités locales et aux décideurs.
Cette recherche met en exergue les différents enjeux dans le contexte de croissance démographie très élevée, le cadre de démocratie et de gouvernance balbutiante, et les grands défis à relever. Les principaux enjeux sont d'ordre fonciers (épuisement du capital foncier, dégradation des ressources, conflits agriculteurs et éleveurs, conflits pétroliers et agriculteurs dus aux tracés des pipe lines, terrassement pour la réalisation des bases vie, etc.), défis de développement local durable (absence de bonne gouvernance des ressources du terroir, impacts socioéconomiques mitigés des revenus du pétrole au niveau local ; gestion rationnelle et efficiente des ressources naturelles, enjeux politiques, (diversité d'acteurs, de perception, d'approches et de perspectives).
L'évolution démographique, le processus de démocratisation et de décentralisation, l'émergence de nouvelles ressources à hautes valeurs économiques tels que les gisements de pétrole et les ressources foncières et hydrologiques qui sont les diverses dimensions de développement, constituent la nouvelle donne.
La démarche méthodologique adoptée combine l'exploitation des outils de la géomatique et les instruments de collecte des données en sciences sociales. Les résultats escomptés seront constitués, à l'aide du Système d'Information Géographique, dans l'approche d'analyse multicritère, pour servir de tableau de bord de développement durable.

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Comments:

The U.S. Economy Facing the World Crisis

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Keywords: real GDP evolution, the rise of consumer spending, unemployment rate, gross savings rate, fiscal deficit

Abstract
This paper provides a relevant and balanced analysis on the U.S. economy through macroeconomic indicators over a period of time ranging between 2006 - 2012, highlighting the evolution of real GDP, exports, consumer spending and the fiscal deficit.
A close scrutiny of the economic reality shows that the U.S. trade deficit led to an increased borrowing on the international market contracted by the U.S. economy in order to cover the necessary imports. Thus, U.S. turned from the largest creditor in the world, in the 80's, into the largest borrower starting with the 90's.
Thus, the U.S. economic policies' inefficiency can be evidenced by a number of factors, such as increased trade deficit, reducing the alarming jobs, direct investment flows change, or fierce competition from the American markets.
In addition to the events of September 11th 2002, the global economic crisis started to show its effects, unemployment and size of the underground economy has increased, the real U.S. economy being no longer able to create 2-3 million new jobs annually, as it did in the 90's.

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Comments:

The European Cultural Policies and the Maastricht Treaty

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Keywords: European cultural space, cultural policies, European identity, identity crisis, cultural rights

Abstract
The European Union (EU) passes today through one of its most terrible crises which, as the article tries to argue, is not only an economic and political one, but also an identity crisis. More often than before, there are more and more voices that speak of the importance of culture and of the creation of a sense of belonging to a common cultural area in solving this major identity crisis. The article aims to bring to the fore the concept of 'European cultural space' and to present an evolution of the cultural policies of the EU institutions. In this sense, the paper discusses one of the most emblematic of the EU's principles, 'unity in diversity', which proclaims the right of the nations to preserve their cultural specificity at the same time with taking an active part in the construction of a common European cultural space. The building of this space stands in close connection with the building of a European identity, since culture and identity are two notions that may be better defined and understood only when analysed together.
In the process of construction of the 'cultural European space' a very important role is played by the actions and policies conceived by the EU institutions, policies that, along the years, have find their way into the EU treaties. Expressed from the outset through the symbolic and famous slogan 'unity in diversity', the cultural policies will be truly articulated in 1992, into the Maastricht Treaty, known as the Treaty on the European Union (TEU). Thanks to the existing debates over the notion of a European identity and over the importance of culture in consolidating the European integration, the cultural policies have finally found their juridical expression into the Maastricht Treaty. This treaty is the first to mention the cultural policies as integrant part of Europe's efforts at consolidating its structure. Back in 1992, as today, voices were heard claiming that too much emphasis has been put on the economic union and on its technocratic aspects, and too little on the sociological and cultural aspects implied by this union. In order to redress the balance, many analysts of the complex phenomenon which is the EU, try to change the focus of attention by moving it to the problems of identity and to the communicational gap existing between the European institutions and its many citizens. The solution to these problems lies not only in the correct answer to the economic issues, but also in the science of giving back to the citizens the confidence that they share the same fundamental values and belong and are actively integrated into the same cultural community.

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Comments:

Demographic Planning From Malthus To Turner - Meanings Of Freedom And Individual Rights

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Keywords: planning, demographic policy, liberty, person

Abstract
Population growth and its evolution in terms of structural complexity determined significant changes including the creation of new societal mechanisms, among which planning is one of the most important. In this context, the present article proposes a synopsis of the demographic planning over the last two centuries, from the perspective of the metamorphoses undergone by its semantic content and of its connections with personal liberty. The association of these two categories concerns the transformations of the demographic system as a result of the socio-economic and cultural dynamics. These changes have been expressed by national policies, as well as by individual opinions and behaviours, situations in which the personal freedom is presumed, but considered differently according to the two different levels. This fact is proved by the diversity of the forms of expressions of the opinions regarding the demographic phenomena and processes, in various stages.
Following a straightforward diachronic model of analysis, the article presents some of the significant moments of the macro- and micro-demographic planning, understood and interpreted from the perspective of the Christian freedom.

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Comments:

European Union And Democratization Process In Romania. Case Study: Administrative Reform

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Keywords: administrative reform, democratization, EU accession, EU conditionality, Romania.

Abstract
The latest decades have witness a flourishing development of international forums denoting a growing eagerness on the side of the majority of states to cooperate at different levels. However, this type of engagement translates into a two-way relationship including not only a state's input in the evolution of the organization, but inevitably, the shape and behaviour of the state in question suffers alterations in search of compliance to the international demands. These considerations have generated the research question around which the whole paper revolves: To what extent has the European Union had a positive impact upon the democratization process in Romania? As any democratic regime needs a certain institutional design, the focal point of this research will be the role played by the international actors in the progress registered in achieving administrative institutional stability.
In order to determine how the European Union influenced the process of democratization in Romania, this research project reveals itself as a longitudinal study, analyzing the period before and after the EU accession. Consequently, it makes use mainly of both qualitative and quantitative data. Additionally, the inductive approach would be used in order to properly answer our research question.
EU conditionality was operationalized in EU imposed reforms and further in one indicator: administrative reform. This very choice is motivated by the acknowledgement of the obstacles encountered by Romania in these areas throughout the accession process. A stable institutional framework, are essential ingredients for a functional democracy. Thus, we shall see how the obligations imposed by the EU have generated positive, negative or no effects whatsoever.
Despite the shortcomings inherent in a case-study, this paper aims at presenting in a coherent manner a series of arguments sustained quantitatively, when such data is available. These would be derived from secondary sources through an unobtrusive method, content analysis. The primary sources that have been used belong to either national legislation or reports and documents issued by international organizations (the EU) and non-governmental organizations. The examination covers volumes and studies published in volumes, academic articles and mass media releases. The challenges concerning the validity of the conclusions of this paper are related to the potential errors presented in the statistical data and the danger posed by bias, which can hardly be reduced to the minimum in these circumstances.

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Comments:

The Problem Of Legal Status Of The Local Elected Person And Civil Servant From The Local Public Administration In Republic Of Moldova

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Keywords: local public authorities, local elected person, civil servant, legal status

Abstract
Legal status of the local elected person and the civil servant from local government, which is well defined, provides these public authorities efficient governance.
Purpose of the present article is to study the literature and the normative acts concerning the legal status of persons of local public authorities, for based on the analysis to make some proposals for improving the Moldovan law on the legal status of the local elected person and civil servant from public local administration.

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Comments:

The Methodology Of Designing And Implementing Performance Management Systems Within Notary Offices

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Keywords: notary office, strategic planning, key performance indicator, performance evaluation, rewarding systems

Abstract
The essential condition to achieve the managerial excellence is represented by the design and implementation of a system for the assessment of organisational performance. This is the main reason for which the notary offices must conceive integrated systems dedicated to their performance measurement.
Analysing the literature focused on the performance measurement, we observed that the fast changes from the last period determined a new managerial vision which reveal the fact that the financial indicators are not sufficient for the processes oriented to the organisational performance assessment. The notary offices adapted to this trend and launched projects oriented to the design and implementation of performance assessment systems based on Balanced Scorecard methodology, taking into account its four perspectives: client, financial, internal processes, learning and innovation.
This paper aims at reflecting several perspectives of performance assessment in notary offices, on the one hand, and an original contribution based on a conceptual model, focused on the adaptation of a methodology for performance appraisal to the context of Romanian notary offices, on the other hand. We outline that the strategic planning of a performance measurement system, customized for notary services needs, involves several stages, focused on integrated processes, which facilitate the monitoring of the activities and the evaluation of the performances, according to specific key performance indicators, applying optimization patterns and rules.
The methodology for performance evaluation of the notary offices activities that we designed and detailed in this article highlights the coordination mechanisms which provide the communication of key performance indicators to the employees' level, the key factors which insure the adequate implementation of the performance management systems, the concrete actions plans developed by the notaries, in quality of public managers, as well as the feedback mechanisms which facilitate the efficient workflows at all the hierarchical levels of the notary offices.
The paper concludes with a challenging future research agenda, focused on the development of a cross-cultural survey which will include researchers from different countries, interested to collaborate on the issues related to performance assessment in notary offices.

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Comments:

Instruments of Controlling the Respecting the Good Administration in the European Administrative Space

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Keywords: administratie publica, buna administrare, controlul administratiei publice

Abstract
The intern and the international political and economical situation puts up to date the "good administration" concept, reasserting the necessity of the public affairs of administration ways rethinking of increasing of the efficiency of public administration activities, of preventing corruption acts and of recuperating the public trust of people who govern us. All these can't be accomplished without a tighter cooperation among all the public life actors from Romania, not only political people but also public right specialists and researchers and also without a way of rethinking the modalities of controlling the activities and results accomplished in administration.
The crystallization process of a public administration which responds to the citizens" need and interests is a long one with ups and downs, with obstacles and crisis.
During the time, European States fought in order to adapt their public administration to a higher and higher expectations of the citizens, to respect the human's fundamental rights and liberties and to recognize the right to a good administration, both European and national level.
The desideratum can be realized only through the assurance of an administration functioning according to the requests of the rule of law and through the assurance of the internal discipline of the administration to make possible a better functioning of it.
Because the control is the "barometer" which points to the way in which the one that applies the decision and also the degree in which the decision corresponds to the purpose for which it has been put forward, the good administration can be appreciated through the results which the control activity will point out.

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Comments:

Some considerations regarding corruption phenomenon in public administration

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Abstract
The existence of corruption and the importance of suppressing this phenomenon does no longer need proof. The degree of danger that it represents for the state, for the socio-economic development, determines precise representation of all needed aspects for detecting and applying the most efficient methods for the prevention and control of this phenomenon.
Corruption existed one way or the other since ancient Rome when there were rough punishments and the permanent search for prevention and control methods.
The sanctions applied to corrupt officials were different. In the Calpurnian law for example, the guilty official was bound to give back the bribery. The Acilian law provided the application of pecuniary punishment establishing the refund of the doubled value of the bribery. The Servilian law provided the loss of the political rights for the guilty officials. In the Roman Empire crimes of the corrupt officials were more severely punished, along with the application of the primary punishments were the exile and the confiscation of the propriety.
Despite these measures, corruption has evolved at the same time with the society, gaining new dimensions and manifestations, becoming more impenetrable and harder to eradicate, as the phenomenon contaminated officials of a high rang, entering thee political field, justice , administration. Some specialists consider that the tendency towards corruption has always existed.
Today the corruption problem is the center of attention of the public opinion in the whole world. Practically every day in the mass media or the press, radio or television and other sources, are made public various acts of corruption that implicate representatives of the authorities, political parties, officials of various ranks.
Being a complex phenomenon under the aspects of the manifestations and areas it entered, but also of the effects it produces, corruption determinates the movement of numerous strategies, methods and prevention methods, reduction and eradication.
Romania as an european democratic state, promotes today an integrated public policy in the matter of consolidating institutional integrity, which is based on a proactive attitude, based on reducing the costs of corruption, on the development of a business environment based on fair competition, on the growth of the public trust in justice and administration, as well as implicating more the civil society in the decisional process.
The national anticorruption strategy for 2012-2015 adopted by the government by Decision no.215/2012 has as politically assumed premises, the importance of ensuring the stability of the legal and institutional anticorruption framework and the adecvate resource allowance for the proper functioning of the public institutions that are in the citizen's service.
The struggle against corruption although hard and more eficient, will not succeed to eliminate this phenomenon. That happens because of the aiding tactics between the corrupt and the corrupted, the corruption phenomenon continues to be understood as a mentality, a tradition, a behaviour.

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Comments:

Prohibition Of Discrimination And Fundamental Freedoms In Tax

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Keywords: fiscal sovereignty, cooperation, protectionist taxation, European policies, fundamental rights

Abstract
The fiscal sovereignty is among the fundamental sovereign rights of the Member States which in this field to, have conferred only limited powers to. the Union. The existence of different tax regimes affects, however, the internal market and the economic and monetary union. For this reason, it was provided for the Member States the prohibition to discriminate, and for the Union the obligation to harmonize.
The objective Of EU tax policy is to guarantee the fundamental principles of the internal market and of the free movement of capital. A systematic distinction is made between direct and indirect taxes. The improvement of cooperation between tax authorities in the European Union is a key element of the fiscal policy, which is also strongly influenced by jurisprudence of the Court of Justice of the European Union.
The prohibitions having as object the discrimination in the tax area referred to in Articles 110 -112 TFEU concerns the Member States should ensure the proper functioning of the internal market. They have also as effect the fact that the ECJ examines the national tax regulations based on them, interpreting them in light of the fundamental freedoms. In the EU is prohibited the levying of higher taxes and the protectionist taxation of imported goods and the excess refund of the national taxes on the goods exported, and border tax offset of direct taxes is subject to prohibition in principle.
Since 1996, the European Commission proposed a new global concept of fiscal policy [SEC (96) 487]. According to this concept, the main challenges are to boost growth and to create new jobs, to stabilize the tax systems and to complete the internal market.
Whatever the type of theoretical and conceptual approach, a general objective underlying the human rights and which refers to the development perspective, aims to improve the socio-economic well-being of individuals and groups.
That is why fiscal policy should avoid any direct violation of the rules, but first of all, it must be ensured the transparency, participation and responsibility. The fiscal framework must be very open and transparent, giving all stakeholders, including civil society and the general public access to complete and timely information regarding the design and the implementation of legislation and fiscal policy. As an illustration, a tax code, with the tax rates and exemptions which are not based on rational, objective and well explained criteria violates the principle of transparency and is unlikely to impose legitimacy.
This study investigates from a comparative perspective how the European policies comply with the right to property and the one to private and how the taxation responds to some commandments that concerns the fundamental rights, the social and economic welfare.

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Comments:

Round table – Mediation in family relations

Cross-disciplinary Approaches to Mediation
Specialized Vocabulary

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Abstract
Mediation has become an activity of which we hear more and more lately in Romania. The profession of mediator gained space in the collective perception once the Law 192 of 2006 regarding mediation and the organization of the mediator profession as modified and added by further amendments came into force. The activity is organized in a distinct profession, registered with occupations classification in Romania, at 244702 in the 2nd major group (professionals, intellectual and scientific occupations) being organized under a Mediation Council that governs the entire activity.
Training providers with the mediator profession deal with a difficult task of settling an operation and an auspicious framework to present and value a new method of solving disputes. The inherent curiosity towards novelty raises both supporters and opponents. For each of them, mediators should have relevant arguments.
A person usually operates with terms that are known, experienced and verified. So, to properly approach the issue, I have checked the mediation definition with the explanatory Romanian dictionary, where the substantive "mediation" (feminine gender) is defined as intercession, mediation (rooted from Latin mediare) whereas the verb "to mediate" brings a similar definition to the modern term of mediation: "to mediate an agreement between two or more adverse parties, to undertake official steps to prevent or end hostilities between two or more States; to make a mediation action." Considering the definition and the scholar and practical interest towards different types of communication applied to various fields of human activity, we may say that the mediation came on a fertile soil. The mediator, as the law provides it, is a person capable of facilitating negotiations among parties in order to solve the dispute in terms of neutrality, impartiality, confidentiality along with the free consent of the involved parties. The legal definition lays down for the mediator a multitude of competences to operate with. To carry out the entire procedure of mediation, the mediator applies knowledge from almost all sciences connected to human activity: communication, sociology, gender studies, psychology, linguistics, history and law (enumerated randomly). The elements borrowed from each field are not distinctive, they are interconnected within the economy and dynamics of the mediation process, and their better mastering contributes to the efficiency of the entire procedure. Comprehension of stereotyping and labeling conjugate sociology with historical imagology, adequate language usage according to the personality profile joins linguistics with psychology, while the correct transmission of a message and the dispute nature delimitation refer to communication and legal studies. Thus the mediator must master communication and negotiation techniques, interpret non-verbal language and track the socio-cultural and historical background of any relation.
Like any other new field, mediation has developed its own vocabulary, and once the necessity of transferring new concepts and terms in an adequate terminology, specialized language draws up. Specialized terminology is characterized by rapid development, opposite to the general vocabulary, due to the socio-cultural environment, convergent to the extra-linguistic realities. The risk of calquing an unnecessary vocabulary loan is inherent to any pioneer engagement.
The rush of sharing new knowledge or visions leads to overloading specialized vocabulary with structures or calqued words from foreign languages, serving as source language for translation of reference work in the relevant field. Due to erroneous translation, or should we say hasty, appear pseudo-prefixed composed words (as "preconflict or post-conflict" examples in Romanian language). In the context of globalization and rapid access to information, the loan becomes the easiest way the

internationalization process of special purposes language terms. Like the study of communication, negotiation techniques, management of different types (I am referring here to the most common areas of training spread out lately) or European integration (the European acquis), mediation, as procedure and process, brought about a whole new entries glossary. At the level of audience's perception, both the loan and the calques overload uselessly the trainer's discourse (progressively, that of the specialist in communication with the parties) in terms of language, on one hand and from the economy of exposure perspective, requiring supplementary explanations, which unavoidably bring up words that resonate better with interlocutory background, thus being easily retained.

As any other translation for special purposes the translation of mediation's language, both for training specialists and for the professional exercise, must take into account the transfer of concepts from one culture to another, from a socio-historical reality to another. This is where concepts like collective mentality, image/ collective history, positioning/ the openness towards the other (be it an alien, belonging to a group, an ethnic group, a nationality), the ability to share their experience, the peculiarity of the legal system according to its source. In the United States, mediation occurred naturally, have been easily accepted by the society, especially by the actors of justice (keeping in mind that in Romania the attorneys-at-law are the hardest to convince), because the whole Anglo-Saxon legal system relies on argumentation and rhetoric, while fairness and trust build any legal construction and by the participants in mediation, because in the modern society concepts such as group therapy, psychological counseling, effective communication, time management are friendly accepted. In Romania, the acceptance of this procedure, at the conscious application and constructive participation levels must overcome self-image of a people who developed proverbs like "A bowed head, the sword does not cut," "The neighbor's goat should die!," "The water passes, the stones shall remain" and other alike, and rebuild the confidence in the concept of justice.

All the aforementioned elements explain the existence of a dense, modern and complex, special purposes vocabulary, characterized by loans of any types: above the borrowed words as such, the mediator operates with social sciences instrumental terminology, in order to achieve the success within the process.

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Comments:

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