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Foreword

It is with great excitement that we present to you the inaugural edition of *UMFST Law Review*, a project born from the passion, dedication, and collaboration of the students at the University of Medicine, Pharmacy, Sciences and Technology of Târgu Mureș, Romania. This journal marks a significant milestone in our academic community, representing not only an achievement of scholarly dedication but also a firm commitment to fostering legal research and dialogue among students.

The *UMFST Law Review* stands as a testament to the vital role that student-led initiatives play in shaping the academic landscape. Created through the remarkable efforts of an editorial team comprising 18 dedicated members, this journal reflects months of commitment and vision. From its early conception to its official launch, *UMFST Law Review* embodies the idea that students are not only the beneficiaries of education but also its active contributors. Their collective efforts reflect the values that define our journal: academic rigor, integrity, innovation, and a passion for knowledge.

The creation of this journal responds to a growing need in the academic world — a space where students can publish their research, contribute to contemporary legal debates, and grow as scholars and future practitioners. *UMFST Law Review* is a dedicated platform that empowers students to share their work with a wider audience and to experience firsthand the demands and rewards of academic publishing.

The name itself, *UMFST Law Review*, represents more than just a title—it symbolizes a commitment to quality, a bridge between education and professional development, and a promise to uphold the highest academic standards. Through this publication, we aspire to create a tradition of student involvement in research and to inspire generations of legal minds to come.

In its inaugural issue, *UMFST Law Review* brings together a diverse and impressive body of work: **14 legal articles** written by **21 authors** representing **6 different universities** across Romania and abroad. The articles address pressing legal issues of our time, from emerging challenges in human rights law to the evolving dimensions of international trade and technological regulation. The richness of the topics covered not only reflects the dynamism of today's legal environment but also showcases the intellectual vitality of the new generation of legal scholars.

Each contribution has undergone a rigorous editorial process, ensuring that the final publication meets the highest standards of academic excellence. We believe that the perspectives offered within these pages will contribute meaningfully to ongoing legal discussions and provide valuable insights for both students and professionals alike.

As you explore this issue, we invite you to appreciate the depth of research, the critical analysis, and the original thinking demonstrated by our contributors. We hope that *UMFST Law Review* will serve not only as a repository of knowledge but also as a source of inspiration for those who read it and for those who will write in future editions.

On behalf of the Editorial Board, we would like to extend our heartfelt thanks to all those who have supported us along the way: our authors, who entrusted us with their work; our reviewers, who offered guidance and expertise; and our academic mentors, who encouraged and believed in the potential of this initiative.

This is only the beginning of what we envision as a vibrant and enduring project. We look forward with great optimism to the future of *UMFST Law Review*, and we warmly invite all students and scholars to join us in this journey of learning, growth, and discovery.

Editorial Board of UMFST Law Review Journal, Academic Year 2024–2025

CIVIL LIABILITY FOR THE USE OF ARTIFICIAL INTELLIGENCE

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INTRODUCTION

In the era of ChatGPT, Claude, and Deep Seek, one might think that artificial intelligence (AI) is a recent invention of the 2000s. However, the rise of the most well-known AI-based systems was rapid, dominating the notion of AI. The technologies date back to the 1950s, having long remained in obscurity.

In 1950, Alan Turing wondered, *"Can machines think?"*. That year, in the journal *Mind*, he published an article[1] detailing the results of one of the first tests on *"machines"*[2]. Turing aimed at discovering a machine's ability to make decisions like a human being based only on the information initially provided. The famous *Turing Tes*t, an experiment called *"The Imitation Game"*, involved three participants: a man, a woman, and an interrogator, who communicated with the other two without seeing them, using written notes. The interrogator's goal was to determine which of the two was the man and which was the woman, based exclusively on their answers. Turing suggested that one of the participants be replaced with a machine, to evaluate the machine's ability to imitate human behavior in a conversation. In his article, Turing redefined intelligence, suggesting that a machine should be considered intelligent if it could successfully mimic human behavior. Although[3] the machines tested at the time failed to perform the tasks, Turing predicted that in 50 years computers would be able to succeed. In a strict sense, this prediction did not come true. However, today we are witnessing a revolution in AI systems, which daily demonstrate the ability to interact similar to a human being – exactly what Turing set out to prove in 1950.

[1]Computing Machinery and Intelligence. (2025, February 25, 10:19 AM). Wikipedia. https://ro.wikipedia.org/wiki/Computing_Machinery_and_Intelligence .
[2] Term used in computer science for what we know as applications or programs. (Source: Computing Machinery and Intelligence, Wikipedia).

Today, artificial intelligence has become an essential component in many areas of daily life such as transportation, healthcare, and finance. We increasingly ask ourselves whether, in the context of the growing use of AI-based computer systems, human presence will still be necessary for what we today call a "job". The accelerated technological evolution makes us wonder where life will lead. In the not-too-distant future, through a majority takeover of economic activities by these systems, we could reach a point where AI can make decisions impacting fundamental human rights without human intervention. And in that case, who will be held responsible for the damages caused?

The answer is difficult, because of the ambiguity of how AI systems operate. Users benefit from AI technologies, being little interested in the operating mechanism, while the technical process behind is often too hard to understand for people unspecialized in IT. The answer becomes even more difficult when we turn our attention to the legal component. From the earliest times to the present, humans have established fundamental sets of rules for the functioning of societies, the violation of which has been sanctioned in various forms of justice, from tribal forms to modern judicial forms. Currently, there are far too few regulations regarding the limits of the operation of AI systems, so legal liability for damages caused by AI is hard to resolve.

1. ARTIFICIAL INTELLIGENCE – A TECHNICAL AND HISTORICAL PERSPECTIVE

Artificial intelligence is an independent field of computer science that includes the creation of systems capable of performing operations that would normally require human intelligence. AI can be categorized into Weak AI, Strong AI, Machine Learning, and Deep Learning. Based on principles of autonomous learning, *"Machine Learning"* (ML) is a form of AI that allows systems to improve themselves based on experience, without being separately programmed for specific tasks. These systems can analyze a large volume of data and make decisions based on it. *"Deep Learning"* (DL) is a subcategory of the former, which uses artificial neural networks modeled after the human brain. DL technology is quite popular today, forming the basis of functions such as voice recognition in virtual assistants (Google Voice, Siri, Alexa), natural language processing in Google Translate or chatbots (like ChatGPT, Claude, etc.), image or video analysis, and even autonomous vehicles (e.g. those developed by companies like Tesla).

Looking through the lens of AI's evolution from 1950 to the present, it appears that the impact on society has been a beneficial one. Initially, AI was mainly used in industry, for recognizing simple patterns. Today, ML and DL systems allow AI to self-improve and to act similarly to a human being, easily adapting to new situations. Thus, algorithms can offer optimization solutions for social media follower feeds, virtual assistants can answer our questions promptly, and autonomous cars are being tested to minimize traffic incidents[4]. Likewise, AI-based systems used in medical diagnosis can make quick and precise decisions, yet they raise ethical issues[5]. We even encounter AI systems in the recruitment process of companies, which use algorithms to select resumes according to criteria provided to the machine beforehand[6]. This has changed the relationship between humans and technology, creating, over time, a "close friendship" without which many of us cannot imagine life. All these developments make our day-to-day life easier, but the autonomy and evolution of AI bring with them both ethical and legal challenges. One of the greatest problems raised by these systems is assigning responsibility for the decisions made by AI. If a car using AI causes a traffic accident, who is liable? The manufacturer, the machine's programmer, or the user? Another problem is fueled by the AI's learning process, where, the responses given by the system to a test user are "graded" as correct or incorrect, with explanations attached. This testing phase is usually prior to making the AI system available to the general public. Initially, training influences future decision-making, because it may carry over those biased data into unrelated fields, leading to flawed judgments.

But, does AI truly make our lives easier, or does it generate ever more debates about ethical and responsibility issues? Incontestably, artificial intelligence manages to make our lives easier in many areas of human activity. However, its rapid evolution manages to outpace the legislator, due to AI's superior speed of reaction. Legal, ethical, and social questions cannot be left unanswered. It is quite difficult to balance the desire for freedom of research and individuals' fundamental rights. Artificial intelligence can be "the best friend," but also "the greatest enemy," depending on how we manage the rules of conduct and its impact on society.

[4] Tesla Vehicle Safety Report (2023, January) https://www.tesla.com/ro_ro/VehicleSafetyReport .
[5] A. PĂUN. (2024, August 18). Stabilirea unui diagnostic medical cu ajutorul AI: avantaje și limitări GPT-4V ("Establishing a Medical Diagnosis Using AI: Advantages and Limitations of GPT-4V"). Raportul de Gardă. https://raportuldegarda.ro/diagnostic-inteligenta-artificiala-avantaje-limitari-gpt-4v/;
[6] A. McFarland, A. Tardif. (2025, March 1). Cele mai bune 10 instrumente de recrutare AI ("Top 10 AI Recruitment Tools"). Unite.AI. https://www.unite.ai/ro/instrumente-de-recrutare-ai/ .

2. GENERAL NOTIONS ABOUT CIVIL LIABILITY

2.1. Civil Liability – Attempts at Definition

Liability for violating rules of conduct has existed since the dawn of humanity, manifesting in many forms such as social, religious, or economic liability, etc. Nonetheless, civil liability has established its central position within these categories. Likewise, legal liability is classified according to the branch of law to which it pertains, such as criminal law vs. civil law, or domestic law vs. international law, each governed by rules specific to that field. However, the ultimate purpose of legal liability always remains the same: to hold accountable the one guilty of disregarding a rule of conduct. Despite good morals being part of public order, the purpose of legal liability, regardless of the branch of law in question, is fully justified. A doctrinal definition of legal liability views the institution from the perspective of an ensemble of interdependent rights and obligations that arises as a result of an illicit act, giving the state the right to compel the guilty party to bear the sanctions provided by law.[7]

Civil liability did not have the privilege of being expressly defined by the Romanian legislator, likely wishing to avoid sparking further doctrinal debates. Thus, neither national legislation nor related legislation contains an express definition of this institution. Emeritus Professor Dr. Liviu Pop defines civil liability as *"that legal obligation relationship in which one person, called the liable party, is obliged to repair the unjust damage suffered by another person, called the victim."*[8] Most definitions offered by specialized doctrine focus primarily on the damage, as an element of civil liability. For this reason, ultimately a doctrinal consensus was reached on its reparatory character. Assigning responsibility for damage caused by an illicit act involves several coordinates, depending on the type of liability in question. Thus, civil liability includes contractual civil liability and tort (delictual) civil liability. *Contractual civil liability* first presupposes the pre-existence of a contract. This type of liability can be incurred when obligations assumed by contract are willfully unfulfilled.

Regardless of the type of liability, the first condition analyzed will be the existence of fault (culpability). Imputing the damage to an author thus becomes the triggering factor of civil

[7] M. N. Costin, O încercare de definire a noțiunii răspunderii juridice ("An attempt to define the notion of legal liability"), in Revista Română de Drept no. 5/1970, p. 83.
[8] L. Pop, I. F. Popa, S. I. Vidu, Drept civil. Obligațiile ("Civil Law. Obligations"), Universul Juridic Publishing, Bucharest 2020, p. 319, para. 230.

liability, because in its absence, liability cannot be applied.[9] Article 1357 para. (1) of the Romanian Civil Code expressly requires the commission of the illicit act with fault. Furthermore, para. (2) of the aforementioned article introduces the notion of negligence, stipulating that *"the author of the damage is liable for even the slightest fault"*. However, the importance of tort liability lies in the causal link between the illicit act committed with fault and the damage it causes[10]. Indeed, the other elements could exist independently—for example, one person cannot demand that another repair a harm caused unfairly if the harmful result cannot be imputed to the latter. What justifies the institution of liability is the very interdependence of the act—committed intentionally or negligently—and the damage it causes; this interdependence is the causal relationship. We consider the damage to be the harmful or injurious result, from a patrimonial or moral point of view, arising from the violation of another person's rights or legitimate interests.

2.2. Types of Civil Liability

The legislator has continued to provide express regulations for particular situations. In the context of liability for damages caused by AI, we will examine in detail a series of subcategories of tort liability because, given access to these systems and the absence of a contract, no other solution is possible.

Thus, we will first consider civil liability for damages caused by one's illicit act, as a subcategory of tort liability. For legal persons, liability is generally objective, meaning culpability does not need to be proven, except when damage results from decisions made by legal persons' governing bodies, in connection with their duties or purpose. In such cases, individuals within the organization may also be held accountable if their fault and causal link are established. Secondly, civil liability for another's act, especially the liability of principals (*comitenți*[11]) concerning their agents (*prepuși*[12]), could also be interesting to analyze in the context of AI. We are dealing with an extra-contractual illicit act committed by an agent that causes unjust damage to a third party. According to Article 1373 of the Romanian Civil Code, this tort liability requires two conditions: the existence of a principal–agent relationship and the

[9] L. R. Boilă, Răspunderea civilă delictuală subiectivă ("Subjective Tort Civil Liability"), C.H. Beck Publishing, Bucharest, 2009, p. 40.
[10] L. Pop, I. F. Popa, S. I. Vidu, Drept civil. Obligațiile, p. 348, para. 254.
[11] In Romanian civil liability, a comitent is a person or entity that exercises authority over another (the prepus) and can be held liable for the latter's actions performed in the course of their duties.
[12] In Romanian civil liability, a prepus is a person acting under the authority or direction of a comitent, whose wrongful acts committed in the scope of their tasks may result in the comitent being held liable.

illicit and harmful act committed by the agent to be in connection with the duties. Therefore, the imputability of the damage lies with the principal, including the obligation to repair the damage to the injured person, but also the right to take recourse against the agent—though in the latter case, proving the agent's fault is necessary.

Could tort liability for damages caused by things also be relevant in this category and connection with our topic of analysis? It partly depends on the legal status we will assign to the AI systems. But first, let's see what this type of civil liability entails. In general terms, Article 1376 para. (1) of the Romanian Civil Code provides that *"Anyone is obliged to repair, independent of any fault, the damage caused by the thing under their guard"*. Romanian Civil Code[13], thereby eliminating any uncertainty regarding the notion in question. Thus, this "guard" of the thing can be either *de jure*, based on a legal provision or a contract, or *de facto*, referring to the situation of a person who, without having legally acquired authority over the thing, exercises independent control, direction, and supervision over it and uses it in their interest. The Romanian Civil Code's texts do not specify the categories of things covered by this hypothesis. Therefore, anything, regardless of its nature and whether or not it was likely to cause damage, that has caused damage can trigger the liability of the person who had the duty to guard it. The only exceptions to the general regime established by the Romanian Civil Code are things causing damage that are covered by special legislation, such as defective products (Law no. 240/2004).

Thus, among the numerous particular scenarios regulated by the Romanian Civil Code, we also find types of tort civil liability governed by related legislation. Of interest for the topic is *liability for damage caused by defective products*, regulated by Law no. 240/2004, which transposed into domestic law Directive 85/374/EEC of July 1985. The provisions of this law reveal a special legal regime for this type of liability[14] Accordingly, manufacturers' liability is objective: under Article 9 para. (1) of Law no. 240/2004, injured persons may claim compensation. Article 10 of the aforementioned law establishes the mandatory character of these rules and also provides for the absolute nullity of clauses that exempt or limit the liability of manufacturers. Article 3 expressly places tort liability on the manufacturer, under the

[13] Romanian Civil Code Article 1377 (COD CIVIL (A) 04/02/2016 - Portal Legislativ, accessed on 2025, February 28, 02:05 PM).
[14] V. I.I. Bălan, Răspunderea civilă pentru produsele cu defecte în reglementarea Legii nr. 240/2004 ("Civil Liability for Defective Products under the Regulation of Law No. 240/2004"), in Dreptul no. 12/2004, p. 54-70.

conditions of this law, for both present and future damage caused by the product's defect.[15] A manufacturer of a product is anyone who is involved in the production and distribution process. Thus, the producer of a finished product, of a raw material, or a component part thereof, as well as any person who puts their name, mark, or other distinctive sign on the product, can be considered a manufacturer. Moreover, importers of products into Romania or from the European Union for sale, lease, purchase, or other forms of distribution in commercial activities are persons assimilated to manufacturers, and the provisions of this law apply to them. If the manufacturer of a product cannot be identified, liability falls on the supplier, who must either compensate the injured party or provide identifying information about the presumed manufacturer or other suppliers in the distribution chain. The legislator has limited the range of goods for which this type of liability can be engaged. Thus, according to Article 2 para. (1) letter b) of Law No. 240/2004, a product is defined as *"any movable good, even if it is incorporated into another movable or immovable good; the term product also includes electrical energy."* This category may include the goods specified in Article 539 para. (2) of the Romanian Civil Code: *"Movable goods also include electromagnetic waves or those assimilated to them, as well as the energy of any kind that is produced, captured, and transmitted, under the conditions of the law, by any person and used for their benefit, regardless of the movable or immovable nature of their source"*.

3. LEGAL LIABILITY FOR DAMAGES CAUSED BY ARTIFICIAL INTELLIGENCE

3.1. Romanian Law on Civil Liability Applicable to AI

The ethical and legal issues related to civil liability in cases of damage caused by artificial intelligence remain partially unanswered in Romanian legislation. By contrast, the European Union has adopted several normative acts that encompass possible solutions for these situations and thus already apply to AI systems. Although the Romanian legislator has been slow to adopt an express regulation of liability for AI, these cases are not entirely without remedy; for now, the national legal framework is being supplemented by the European one.

In Romania, civil legislation can be analyzed, first, through the lens of certain existing Civil Code articles that concern civil liability in its traditional sense. Article 535 of the

[15]Article 3 of Law no. 240/2004 on the liability of manufacturers for damages caused by defective products (republished and updated) (https://legislatie.just.ro/Public/DetaliiDocument/52850, accessed on 2025, March 1, 11:46 PM).

Romanian Civil Code defines goods as *"corporeal or incorporeal things that constitute the object of a patrimonial right."* Thus, at present, AI systems could fall under the category of goods, but their legal status could evolve over time, as it may not be possible to fit them into this category[16]. Consequently, if we consider an AI system as *good*, under the relevant provisions, the manufacturer, programmer, or user could be liable under civil law. In such a situation, liability for damage caused by a thing under one's guard would be applicable[17]. Secondly, the possibility of holding the producer liable could also be triggered under Law No 240/2004. That law contains provisions regarding the liability of producers for damage caused by defective products. Relevant to the situation at hand is Article 7 para. (1) letter e) of Law no. 240/2004, which provides an exemption from liability for a producer who proves that the level of scientific and technical knowledge at the time the product was put into circulation was not such that the defect could be identified. To determine the applicability of such liability, it would be necessary to analyze the control exercised over the system because, as mentioned in an earlier chapter, AI systems are classified precisely according to the degree of human intervention in the decisions made. However, some authors[18] have identified the existence of a component called the *"black box"* in these systems. By this term, they refer to situations in which programmers might not fully understand how an AI system made a decision, which would create obstacles in determining who is responsible for the damages caused. So-called *"black box"* scenarios have also been mentioned in reports by the European Parliament in the context of adopting regulatory acts regarding AI activity.

Regarding tort liability for damages caused by one's illicit act, applying the relevant regulations in the field of artificial intelligence is unlikely in current practice. Such a possibility could be realized only in a hypothetical future scenario in which AI systems were granted a limited legal personality of their own. Nevertheless, analyzing the legislation in force, the logical progression of the norms leads us to believe that holding a legal person liable on this basis is not fully justified. The legislator seems to guide us towards liability for defective products, rather than classical tort liability. Since AI does not (yet) have the status of a distinct

[16] G. Niță. (2021, June 3). Răspunderea juridică a inteligenței artificiale în materia comerțului electronic ("The legal liability of artificial intelligence in e-commerce"). Revista Română de Drept al Afacerilor no. 3/2021. Sintact. https://sintact.ro/#/publication/151022847?keyword=bun.
[17] Romanian Civil Code Article 1376 (Legislatie.just.ro, accessed 2025, March 1, 11:58 PM).
[18] Prof. Univ. Dr. M. Duțu. (n.d.). Inteligența artificială și răspunderea civilă ("Artificial intelligence and civil liability"), Wolters Kluwer.
https://www.wolterskluwer.com/ro-ro/expert-insights/inteligenta-artificiala-si-raspunderea-civila.

legal entity, and its creation is the result of a producer or developer's work, European legislation, and comparative law promote adopting a liability regime similar to that established by Law no. 240/2004. As for tort liability for damage caused by a thing under one's guard, we understand from the outset that AI systems cannot be classified as a "thing", but as a "product".

3.2. EU Regulations in the Field of AI and Civil Liability

Romanian law currently does not expressly provide for civil liability for damage caused by AI, so in this respect, the general principles of civil liability remain applicable. The main types of liability in Romanian civil law that could be relevant are: tort liability, applicable when a person (such as an operator or developer) causes damage through an illicit act; contractual liability, applicable when damages result from the non-fulfillment of contractual obligations; and strict (objective) liability, similar to that applied in the case of defective products, where proving fault is not required. The European Union has recognized the need for a coherent legal framework for the use of artificial intelligence, taking into account its potential risks and impact on the economy and fundamental rights. The European Commission has adopted multiple regulations in the field of artificial intelligence. The first and perhaps most significant is the "*AI Act*" (*the Regulation on Artificial Intelligence).* Also pertinent are the *Directive on Liability for Defective Products,* as well as the *General Data Protection Regulation* (*GDPR*). Together, these acts should balance the scales both in favor of innovation in the tech field and in favor of protecting European citizens' rights against the risks associated with AI.

In 2024, the first European regulation on artificial intelligence, the AI Act, was adopted, leading to harmonization in the development, use, and marketing of AI systems in the European Union.[19] The regulation establishes a classification of AI systems from a legal perspective, dividing them into systems with *"unacceptable risk"*, which is prohibited; systems with *"high risk"*; systems with *"limited risk"*; and systems with *"minimal risk"*[20]. The AI Act also imposes obligations on developers and operators of AI-based systems, such as ensuring traceability and transparency in how algorithms function, conducting impact assessments on fundamental rights, and implementing risk management mechanisms. The first provisions on sanctions in

[19] D. Andrei (2024, August 31), Uniunea Europeană: instituirea unui regim comun de răspundere extracontractuală (delictuală) în materie de prejudiciu cauzat de inteligența artificială ("European Union: establishing a common extra-contractual (tort) liability regime for damage caused by artificial intelligence"), in *Pandectele Române no. 4/2024*. Sintact. https://sintact.ro/#/publication/151032983?keyword=inteligenta%20artificiala.

[20] Article 5 of Regulation (EU) 2024/1689 of the European Parliament and of the Council. Official Journal of the European Union. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401689 (accessed 2025, March 5, 08:39 PM)

the AI field are found in this regulation, but they concern only the violation of its provisions and are administrative in nature. Another European Union regulatory initiative in the AI field was realized through the amendment of *Directive 85/374/EEC on liability for defective products*. The revision brought digital products and AI systems within the scope of that directive, thereby making tort (extra-contractual) liability applicable. Accordingly, the liability of AI producers and developers was extended, including treating machines as digital products. Also, the burden on victims was reduced by establishing a presumption of causation in the case of a defect in an AI system. Moreover, the strict liability of manufacturers for product defects was affirmed similarly in the case of AI systems, with no need to prove fault[21]. Looking ahead, the amended directive offers concrete solutions for cases where AI generates decisions or responses that cause harm. Regarding the protection of data that users provide in these AI systems, the *GDPR* is applicable, imposing strict obligations on the collection, storage, and use of personal data. Violation of these provisions can incur civil liability. However, *de facto*, in the IT field, a developer or operator of a program has virtually unlimited access to the information provided by users within the program. The GDPR sets out parameters for the processing of personal data by AI systems and is fully applicable. Mainly, these rules are relevant for AI algorithms that have facial or voice recognition functions or recommendation systems. The key GDPR provisions for AI include: informing users about how AI processes their data, the possibility for users to challenge decisions generated by AI through human review, and limiting the collection and processing of data.[22]

3.3. Comparative Law Perspectives: International Approaches to AI Liability

In the United States, civil liability for AI also follows the legislation on defective products, holding manufacturers and suppliers liable if an AI product causes harm due to a "manufacturing" defect, design flaw, or insufficient instructions. However, as observed, these traditional principles are challenging to apply. Regarding federal regulations, the U.S. lacks a unified legal framework for AI.[23] Following Brexit, the United Kingdom adopted its regulations in the field of AI. British legislation also includes existing regulations regarding liability for

[21] D. Andrei. Uniunea Europeană: instituirea unui regim comun de răspundere extracontractuală (delictuală) în materie de prejudiciu cauzat de inteligența artificială..
[22] Conf. univ. dr. L. Georgescu (2018, August 31), Ce este și cum poate fi folosită inteligența artificială (II) (“What is AI and how can it be used (II)”), in *Revista Română de Dreptul Muncii no. 4/2018*.
[23] Software Improvement Group. (2025, January 24). AI Legislation in the US: A 2025 Overview. https://www.softwareimprovementgroup.com/us-ai-legislation-overview/ .

defective products.[24] In Asia, China promotes a proactive approach to AI technologies, imposing strict requirements regarding safety, transparency, and data protection, as well as the responsibility of manufacturers, developers, and users, primarily concerning compliance with cybersecurity norms and ethical standards[25]. Japan and South Korea emphasize a technological ethics framework in the field, along with the importance of integrating these principles into the implementation of AI systems. Japan has developed a regulatory framework that promotes innovation, complemented by safety and transparency standards[26]. South Korea adopted this year the *"AI Basic Act"*, introducing clear rules regarding the responsible use of artificial intelligence and, similarly to the AI Act[27].

Though, globally, several institutions have undertaken regulatory initiatives in the field of liability for damages caused by AI, as well as adopting rules to establish concrete criteria for the responsible, ethical, and safe use of AI. UNESCO issued a set of *Ethical Recommendations for AI*, the *AI Action Summit* took place in France in February 2025, and the Global Digital Compact focuses on promoting common principles for the ethics and sustainability of AI technologies. During the AI Action Summit, which brought together participants from over 100 countries, the *"Statement on Inclusive and Sustainable Artificial Intelligence for People and the Planet"* was adopted. The document emphasizes AI accessibility, ethics, transparency, sustainable development, AI's impact on the labor sector, and international cooperation. Another central element of the Declaration is the *Public Interest AI Platform and Incubator*, aimed at supporting AI developers and allocating investments in infrastructure, data access, auditing, and transparency. Over 60 countries signed the Declaration, including Romania, Austria, South Korea, Japan, Mexico, and others. However, several "global powers", such as the United States, China, and Russia, refused to sign the declaration, citing a desire to maintain existing national regulations in line with local needs.[28]

[24] AI Watch: Global regulatory tracker – United Kingdom. (2025, February 6). White&Case. https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-united-kingdom .
[25]AI Watch: Global regulatory tracker – China. (2024, May 13). White&Case. https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-china .
[26] Mori Hamada. (2024, Decembre 3) *A general introduction to Artificial Intelligence Law in Japan*. *Lexology*.
[27] Caitlin Andrews. (2025, January 16). South Korea's AI Basic Act puts another AI governance regulation on the map. Iapp https://iapp.org/news/a/south-korea-s-ai-basic-act-puts-another-ai-governance-regulation-on-the-map.
[28] Statement on Inclusive and Sustainable Artificial Intelligence for People and the Planet. (2025, February 11). ELYSEE.

Continuing the analysis, the European Parliament's report on AI's opportunities and dangers in the context of the AI Act adoption[29] reveals several factors regarding artificial intelligence. The report states that liability depends on the degree of control exercised over the system, with autonomy being one of the most important factors. If the system functions fully autonomously, without direct human intervention in decisions and responses, identifying the responsible entity becomes challenging. In such cases, liability may be attributed to the developer, programmer, or the company that created and marketed the algorithm to the public. Conversely, if the system's operation is overwhelmingly controlled by humans, the latter can be considered responsible for damages. When an operator affects the core algorithm of the AI, either by introducing new data or by intervening in its decisions, they may be held responsible for any resulting harm. Another factor mentioned in the report is the level of transparency and explainability of the system, noting that many of them are based on DL technology, creating a *"black box"* phenomenon, making processes not easily explainable. Additionally, the type of activity or domain of AI applications influences the associated risks.

Therefore, the question we try to answer is *"Whether AI should be treated as an autonomous agent or as a tool controlled by a human operator?"*. As previously stated, currently, the legislative situation in Romania makes it possible to classify AI systems as products. However, we observe that European legislation tends to confer AI systems the nature of a product. So, depending on the case, liability is assigned to the developer, operator, or user.

CONCLUSIONS

The Need for a Balance between Protecting Injured Persons and Stimulating Innovation

It becomes easy to understand that in cases where a common AI-based system like ChatGPT has been used, the logical approach is strict liability, from the perspective of a defective product. In such a case, the user does not enter into a contract; therefore, we resort to this mixed type of liability. Regarding the responsibility that producers have under the Civil Code, the producer of a product—an AI system in our case—will be responsible for all damages caused by malfunctions of the product or other errors. Thus, AI systems distributed by companies or even those by individual developers will be included. Operators of AI systems

[29] *Inteligența artificială: oportunități și pericole* ("*Artificial Intelligence: Opportunities and Dangers*"). (2025, February 19). Europarl.europa.eu.

are also liable for damages. Turning to a subject more closely related to the field of IT, namely cybersecurity, given that the incidence of cyber threats has increased, it is important to focus on the security of data, regulations, and standards. Of course, depending on the specific circumstances of the case, other types of liability could be invoked, but only as subsidiaries of defective product liability.

For example, in the case of *Uber and the fatal accident in Tempe, Arizona*, in March 2018[30], an autonomous vehicle operated by Uber failed to recognize a pedestrian and caused the death of a woman. Uber was not criminally charged, but the company was criticized for its testing and safety practices, and it temporarily halted its autonomous vehicle program. Likewise, in the case of *Gonzalez v. Google LLC*[31] in the United States, the U.S. Supreme Court examined a claim against Google for damages caused by its YouTube video recommendation algorithm in the context of promoting terrorist content. Google invoked Section 230, a U.S. law, and the Court ruled that online platforms are not liable for user-generated content, unless they actively contribute to harmful content. In addition to these examples, we also highlight relevant European case law. In the case of *Sanofi-Aventis Deutschland GmbH v. Sandoz International GmbH* (C-567/14), the CJEU emphasized the importance of identifying the liable party when dealing with an AI-driven automated system that exhibits a degree of autonomy, based on Directive 85/374/EEC on liability for defective products. Consequently, the manufacturer was held liable for the software defects that led to the vehicle's malfunctioning "behavior". Also, CJEU noted that the vehicle operator could also be held responsible if the system was misused or if there was an intervention contrary to the usage instructions. In the case, *Skanska Industrial Solutions and Others v. European Commission* (C-724/17), an AI-based system integrated into an online platform caused financial damage to users. In this case, the CJEU did not hold the producer directly responsible because the algorithm operated according to the instructions of the operator, who had the obligation to test and adapt the AI system to ensure proper functionality for the intended tasks and implement internal safety mechanisms.

[30] Lauren Smiley. (2023, July 28). The Legal Saga of Uber's Fatal Self-Driving Car Crash Is Over. WIRED. https://www.wired.com/story/ubers-fatal-self-driving-car-crash-saga-over-operator-avoids-prison/.
[31] Gonzalez v. Google LLC. (2025, January 5). Wikipedia. https://en.wikipedia.org/wiki/Gonzalez_v._Google_LLC .

Anyhow, a retrospective look at the facts analyzed in this paper shows a uniform practice of assigning strict liability to the developers or operators of AI systems. In this scenario, compensating affected individuals is facilitated, and the manufacturer's liability falls under specific civil liability regulations. Considering that behind an AI algorithm there is source code, the "autonomy" we discuss in the case of AI is not so "autonomous." In principle, the system cannot exceed the instructions set in its source code, even in the case of ML and DL technologies, which justifies the solution found in existing laws. Such AI can indeed improve itself, but only within the limits set in the source code written during the programming stage. Therefore, barring the realm of Strong AI research, current AI systems can be easily constrained and monitored in their decision-making process by programmers. Consequently, as doctrine has argued, and later the European legislator has established, I consider correct the solution of attributing to AI systems the quality of a *product* and imputing tort liability for damages caused by AI to the producer or operator, as the legal entity that has the civil capacity to be liable and to bear the sanction provided by law.

Future Perspectives on Regulating AI Liability

In the future, we can anticipate the development of a more sophisticated and comprehensive legal framework that takes into account the unique characteristics of artificial intelligence, such as autonomy and continuous learning capability. Moreover, close collaboration between jurists, AI developers, ethicists, and other stakeholders will be essential to create this robust legal framework, which should promote innovation in the field while at the same time protecting the rights and interests of all parties involved.

AI systems do, however, have distinct characteristics compared to the traditional category of products or goods, namely the aforementioned autonomy and capacity of self-learning. These traits can complicate the application of the existing legal framework. To address the challenges generated by liability in the AI field, we can identify several approaches. Firstly, the regulation of strict liability, which assigns responsibility to the producer or operator for the damages caused, regardless of fault—i.e., an objective liability. Directive 85/374/EEC on defective products already serves as a general legal basis in this matter, and through the latest amendments to that act, software operating via artificial intelligence has been brought into its

scope[32]. Secondly, a possible solution would be a system of mandatory insurance for injured parties. In this way, a compensation scheme through insurance for AI system operators would function similarly to the mandatory auto insurance system.

Thirdly, regarding the legal nature of AI, is it possible to create a limited legal personality for it? Although conceptually such an institution is not fully legitimate from a legal standpoint, an approach of this kind would involve granting a limited legal personality to the AI system itself. Certainly, this would concern only advanced AI systems, despite their capacity for self-learning and the autonomy that follows from that process. Such an approach would allow AI systems to be considered entities in themselves, with specific rights and obligations, making it easier to assign liability.

Finally, we recall that the ever-more frequent use of artificial intelligence continues to raise questions regarding civil liability. This legal institution of liability—whose purpose is to repair damage caused by the actions or omissions of others—unfortunately, does not enjoy developed legal regulations, and in Romania's domestic law, we do not find any specific act regulating this field. For now, we shape the applicable legislative framework for AI based on European regulations, which seem to be taking shape. We have already demonstrated how difficult it can be to assign civil liability in the use of artificial intelligence, given the autonomy of these systems and their ability to make decisions; therefore, a certain incoherence in the legislation at the moment is, to some extent, understandable. Updating the existing legal framework and adopting national rules are urgently necessary to define civil liability in the case of damages caused by AI systems. Surely, as these systems continue to evolve and achieve mass adoption, at some point in time—be it in the near or distant future—the legislator will be forced to address this problem.

Moreover, history shows us the importance of experience, because just like artificial intelligence, the human being also self-improves through past experiences. Just as private property, types of legal liability, financial regulations, etc. gradually emerged as a result of previously unknown social conflicts, regulations on AI liability are only at the beginning of their "legislative journey". Therefore, civil liability in the context of artificial intelligence is a

[32] Norbert Varga. (n.d.). *Posibile repere privind răspunderea pentru inteligența artificială* ("*Possible Landmarks on Liability for Artificial Intelligence*"). Chiriță și Asociații. Societate de Avocați. https://www.chirita-law.com/posibile-repere-privind-raspunderea-pentru-inteligenta-artificiala/.

complex and dynamic field that requires a careful and flexible approach from states. As AI technologies continue to evolve and to be integrated into more and more aspects of our lives, new challenges and dilemmas will arise regarding the attribution of liability for harm caused by these systems. Responsible management of the risks associated with AI use needs a clear legal framework in order for AI to develop ethically. Updating the existing framework should extend the applicability of defective product liability rules, especially to algorithms and AI systems. In addition, definitions should be assigned to products that use AI to ensure that situations of liability for damage caused by these products are covered.

It should also be mentioned that regulating liability for AI requires an interdisciplinary approach, which should include updating the existing normative framework as well as implementing new mechanisms for managing liability for damages caused by AI. A reconsideration of traditional legal concepts is also necessary, to adapt to new technological realities. How we manage the two social perspectives—on the one hand, a conservative one, and on the other, a proactive one regarding technological innovation—remains a problem that will be resolved over time.

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COMPARATIVE VIEW OF THE PARLIAMENTARY INDEMNITY IN NATIONAL AND GERMAN CONSTITUTIONAL LAW

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It is of the essence of a functioning democratic regime that those citizens who become public office holders, acquired by the will of the nation through direct, secret, free, and periodic voting, should benefit from a series of guarantees to protect them from politically motivated harassment or abuse. The indemnity, initially regarded as an element of parliamentary or presidential immunity, has gradually become a concept in its own right, being expressly stated or referred to in a strictly descriptive way in the constitutions of most European countries. In this paper, we aim to explore the range of historical meanings of this concept and to analyze the differences in the nuances of the regulation of the indemnity in national law, while also referring to the German constitutional tradition which describes, in particular, the forms of the indemnity and the conditions for its application.

INTRODUCTION

Freedom of thought and the unrestricted expression of opinions and beliefs are the basis for the exercise of the parliamentary mandate. That is why, in addition to the constitutional status of this form of freedom, Members of Parliament enjoy several additional guarantees to facilitate the exercise of the powers resulting from the mandate conferred on them by the free, equal, direct, secret, and regular vote of the people. Members of Parliament enjoy a special status which takes the form of certain safeguards granting them freedom of action in the exercise of their mandate. These guarantees are designed to protect them from possible interference, threats, or intimidation from other state authorities or even from voters, the political parties on whose lists they obtained their mandate or other non-governmental bodies. Independence and

the prestige conferred by these institutions appear as natural conditions for the honest exercise of the mandate with which the elected representatives were invested[1].

Article 72 of the Romanian Constitution regulates parliamentary immunity as a traditional institution of parliamentary law. By immunity is meant, in a broad sense, a form of exemption or exclusion from the exercise of jurisdiction, in consideration of the status held by a particular person[2]. Slightly superficial and somewhat generalizing, but also understandable because of the pragmatic reasons behind the drafting of the text, immunity is presented in two different forms: the absence of legal liability for political opinions and votes cast in the exercise of one's office, and the inviolability of the Members of Parliament. This structure has also been partially taken up by the Constitutional Court in its case law. Thus, in Decision No. 650 of October 25, 2018[3], the Court ruled that "Immunity entails a twofold protection: irresponsibility and inviolability. Irresponsibility is the protection that the parliamentarian is not held judicially accountable for his political opinions expressed in the exercise of his mandate. Its scope encompasses protection against sanctions for acts and deeds committed in the exercise of his mandate, protecting his freedom of expression." But the Court has also opted for the plenary concept of immunity, which also includes protection of the parliamentarian in respect of acts committed in the exercise of his mandate, abandoning the express delimitation of the two institutions.

In this paper, our attention will be drawn to the legal irresponsibility of the MPs, set out in the first paragraph of Article 72: „(a) *No Deputy or Senator*/ (d) *shall be held judicially accountable for*/ (b) *the votes cast or the political opinions expressed*/ (c) *while exercising their office*". In an attempt to decipher the meanings of this institution, but also to get a broader view of how it has evolved, we will refer in parallel to the equivalent institution in the German Basic Law (*Grundgesetz* - GG). Thus, in Art. 46 para. (1) GG we find regulated the indemnity (*Indemnität*): "(a) *A Member [of the Bundestag - BT]*/ (d) *may never be subjected to court proceedings or disciplinary action or otherwise called to account outside the Bundestag*/ (b) *for a vote cast or a remark made by him*/ (c) *in the Bundestag or any of its committees.*/ (b) *This*

[1] C. Ionescu, C.A. Dumitrescu (coord.), *Constituția României. Comentarii și explicații*, Ed. C.H. Beck, București, 2017, p. 401.
[2] D. Nițu, *Imunitatea șefului de stat în dreptul penal*, Editura Universul Juridic, București, 2012. p. 8.
[3]Published in the *Official Gazette of Romania, Part I, no. 97 of February 7, 2019*,https://lege5.ro/Gratuit/gmytqojuhe2a/decizia-nr-650-2018-referitoare-la-obiectia-de-neconstitutionalitate-a-dispozitiilor-art-i-pct-2-cu-referire-la-art-5-alin-11-14-pct-4-cu-referire-la-art-17-lit-a-pct-5-cu-referire-la-art-35-alin-1-fr Last activity: 25.11.2024.

provision shall not apply to defamatory insults"[4]. In our analytical approach, we will use predominantly the German name - *indemnity* also for the observations equally valid for both states, because we consider it more suggestive, but, above all, to avoid any confusion with legal institutions from other branches of law that the name used in Romanian doctrine may cause (e.g. irresponsibility in criminal law).

A. Legal characterization of the institution of indemnity

Etymologically, the concept of indemnity has its origin in the Latin word *indemnitas*, which, in a non-legal translation, means something that cannot be touched, removed, or possess the feature of intangibility. Historically, indemnity emerged in English parliamentary law[5] and was designed to protect the Member of Parliament against the monarchical executive from persecution, harassment, or abuse. Today, the reasons underlying this institution have fundamentally changed. In contemporary democracies, the judiciary is supposed to be independent of the other branches of government, and the government is often the prisoner of a parliamentary majority that gives the government cabinet a vote of confidence, that can be withdrawn, which dismissal of the government[6].

Our analysis will focus on four distinct levels highlighted by deconstructing the two seats of the matter: the holder of the indemnity (a), the object of the indemnity (b), the extent of the indemnity (c), and the lack of legal liability (d).

At first glance, it is not difficult to identify who is entitled to the indemnity (a), as it concerns elected Members of Parliament (deputies and senators/ *Abgeordneter*), not technical staff or civil servants working in Parliament. However, the German doctrine has imagined some special hypotheses, which are very common in reality. First of all, in the case of MPs who also hold the office of member of the Government, it is generally considered that they do not benefit from indemnity, since the executive office to which they have been appointed requires a certain degree of rigorousness of expression and additional self-discipline in their speech.

[4] Art 46 (1) GG - Ein Abgeordneter darf zu keiner Zeit wegen seiner Abstimmung oder wegen einer Äußerung, die er im Bundestage oder in einem seiner Ausschüsse getan hat, gerichtlich oder dienstlich verfolgt oder sonst außerhalb des Bundestages zur Verantwortung gezogen werden. Dies gilt nicht für verleumderische Beleidigungen.
[5] Art. 9 Bill of Rights: That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.
[6] R. Wurbs, Regelungsprobleme der Immunität und der Indemnität in der parlamentarischen Praxis, Ed. Duncker & Humblot, Berlin, 1988, p. 85.

Exceptionally, however, it has been considered that they may benefit from the protection of the indemnity only in those situations in which they are acting in their parliamentary capacity[7]. However, it could more easily find examples to the contrary: they certainly do not act as parliamentarians when they are called upon to answer questions/ interpellations or when they make statements from the Bundestag tribune on relevant political issues or government/ministry work. As it is generally quite difficult to make this distinction, a restrictive interpretation of the holders of the indemnity has been opted for. In national law, the Constitutional Court seems to have admitted an extensive interpretation of the holders: 'no parliamentarian or minister may be held accountable for political opinions or actions exercised with a view to the drafting or adoption of a normative act having the force of law', which it further explains: 'to admit the contrary is to leave, indirectly, the possibility of intrusion into the legislative process by another power, with the direct consequence of violating the separation of powers in the State' (Decision No. 68 of February 27, 2017[8]). The situation analyzed by the Court, however, concerns the specific hypothesis in which the Government acts as a delegated legislator, adopting simple and emergency ordinances, from which it would follow that in the rest of the activity carried out the members of the Government would not be covered by the protection of indemnity.

Secondly, the members of the Bundesrat (BR) (a legislative body with powers to draft and adopt federal legislation, considered to be the upper chamber of the Bundestag), which is made up of the prime ministers of the German Länder and ministers of the regional governments, do not benefit from indemnity[9].

Analyzing the object of indemnity (b), we see that it applies, on the one hand, to votes cast and, on the other hand, to opinions and political statements. It is irrelevant how the vote was cast (open, secret, roll-call, blackballing, etc.), its validity (whether or not it is valid), or the place where it was cast (in plenary, in committee, in a parliamentary group or using distance communication). According to German doctrine, statements fall into two distinct categories: factual allegations (*Tatsachenbehauptungen*) and expressions of opinion

[7] P. M. Huber, A. Voßkuhle, Grundgesetz-Kommentar, 8. Auflage, Ed. C.H. Beck, München, 2024, Art. 46, Rn. 14.
[8]Published in the *Official Gazette of Romania, Part I, no. 181 of March 14, 2017,* https://lege5.ro/Gratuit/ge2teojqgyza/decizia-nr-68-2017-referitoare-la-cererea-de-solutionare-a-conflictului-juridic-de-natura-constitutionala-dintre-guvernul-romaniei-si-ministerul-public-parchetul-de-pe-langa-inalta-curte-de-casatie-si Accessed at 1.12.2024
[9] P. M. Huber, A. Voßkuhle, op. cit., Rn. 15.

(*Meinungsäußerungen*)[10]. Under the earlier majority view, which gradually lost many of its adherents, only the first category of statements fell within the scope of indemnity. The statements may be written, oral or even expressed by certain gestures (e.g. leaving the sitting room in protest[11]), but they must be directly linked to the actual exercise of the parliamentary mandate. Thus, also applying a restrictive interpretation, it was considered that a private conversation between two MPs in the Parliament's hallway (or even in the plenary chamber) or the shouting or chanting of a parliamentarian from his seat are not protected by the indemnity. Political opinions expressed in the exercise of the mandate may, in principle, take the form of speeches from the rostrum of the plenary of the Chambers or in committees on bills/legislative proposals/laws in force, amendments, questions, and interpellations to ministers, parliamentary inquiries, reports and opinions presented on behalf of the committee of which he/she is a member or even the signing of a motion of censure, etc[12].

In the national literature of constitutional law, an attempt has been made to distinguish between political opinion and political statement. Thus, while opinion is a fact of conscience, which arises as a natural result of the subjective assessment of events, data, and political facts, a declaration is mainly a singular statement, a finding, a public assertion about a fact, event, or political conduct, without being formulated as a value judgment. A possible differentiation between the two could also be based on the effect produced (or at least likely to produce): while in certain circumstances political statements may, depending on their content, give rise to legal effects in constitutional (a legal dispute of a constitutional nature between public authorities) or criminal matters, the formulation of political opinions, including on a real event, as the result of a rational, intellectual effort, does not produce legal effects for the addressee and does not in any way render the issuer liable[13].

In the GG there is an exception to the benefit of the indemnity, namely defamatory statements. Based on this exception, the parliamentarian can also be held criminally liable, but this will require the consent of the legislative body to which he or she belongs, and the usual procedure for the waiver of immunity by members of the Bundestag will apply. If it turns out that the BT's measure to waive his immunity to prosecute him for defamation was exaggerated

[10] K. Stern, H. Sodan, M. Möstl, Das Staatsrecht der Bundesrepublik Deutschland im europäischen Staatenverbund, Band 2, 2. Auflage, Ed. C.H. Beck, München, 2022, Rn. 79, 80.
[11] C. Ionescu, C.A. Dumitrescu (coord.),, op. cit., p. 775.
[12] Idem, p. 777-778.
[13] Idem, p. 783.

or disproportionate, the MP may refer the matter to the Federal Constitutional Court (Bundesverfassungsgericht - BVerfG) on the grounds of a constitutional conflict of law (*Organstreitverfahren*).

Romania's Constitution does not provide for such an exception, being not so much a difference of vision as an omission of the constituent legislator. Doctrine is almost unanimous in the sense that speech inciting defamation of the country, discrimination, or territorial separatism or in which serious lying, insulting, denigrating, unfounded statements are made about a person cannot be considered a natural form of manifestation of the parliamentary mandate, for which deputies and senators could not normally be held legally accountable[14]. Moreover, in its Advisory Opinion No. 1/2007[15], the Constitutional Court stated that although a political opinion about a political opponent expressed even in a disrespectful manner does not per se constitute a serious breach of the Constitution, "institutional relations between participants in public life must be conducted in civilized forms, to ensure the respect for the supreme values enshrined and guaranteed by Article 1 of the Fundamental Law". The situation has become somewhat more uncertain with the decriminalization of insult and slander. Thus, the challenge seems to have become that of proving, by the adage *actor incumbit probatio*, that the defamatory statements in question are not connected with the exercise of the parliamentary mandate (it is considered that the benefit of the indemnity also excludes the civil liability of the parliamentarian) and, subsequently, the elements of civil liability: the unlawful act, the damage caused, the causal link between the act and the damage, and the culpability.

As regards the scope of the benefit of the indemnity (c), it can be analyzed by reference to two distinct dimensions: temporal and spatial. The essence of the indemnity is its absolute and perpetual nature, meaning that the Deputy or Senator cannot dispose of it and Parliament cannot raise or withdraw it. The indemnity also protects the parliamentarian not only during, but also after the end of his term of office, since he cannot be held liable at any time (the GG expressly states: *zu keiner Zeit* and the Romanian Constitution is implied). The cause of the termination of the term of office is also irrelevant, as it may be individual or collective (including dissolution of Parliament). The MP acquires the indemnity after the final results of

[14] Ibidem.
[15]Published in the *Official Gazette of Romania, Part I, no. 258 of April 18, 2007,* http://www.monitoruljuridic.ro/act/aviz-consultativ-nr-1-din-5-aprilie-2007-privind-propunerea-de-suspendare-din-functie-a-presedintelui-romaniei-domnul-traian-basescu-emitent-curtea-constitutionala-81245.html Accessed at 1.12.2024.

the elections have been established and validated, as from the moment he or she takes the oath of investiture[16].

The most obvious difference between the regulations of indemnity in the two Basic Laws probably lies in the spatial scope: while, on the one hand, the German constituent legislator opted for an effective and limitative description of the scope of immunity ("in the Bundestag or any of its committees"), the Romanian Constituent Assembly chose a rather generic expression, which is found in most European Constitutions, but which, at the same time, may prove susceptible to multiple interpretations: "while exercising their office". Based on an analysis of these two phrases, it can be deduced that Members of Parliament receive an indemnity for work carried out in plenary (whether in ordinary/extraordinary or public/secret sittings) and in committees. The internal structures for the organization and coordination of parliamentary work - mainly the Standing Bureaux, but also the parliamentary groups - are also assimilated into committees. Over the years, the Federal Constitutional Court (BVerfG) has described parliamentary groups as subdivisions of the BT, characterizing them as "necessary formations of 'constitutional life'" because of their special significance in parliamentary decision-making[17]. German doctrine has also questioned whether or not the work of parliamentarians in certain joint, inter-institutional committees is protected by the indemnity, and the conclusion has been affirmative if these committees are integrated and directly influence parliamentary work, and negative if the separate, autonomous status of these committees is emphasized. The joint committees are composed of members of the BT and the BR, and they are set up if the legislative procedure reaches a deadlock (mediation committees) or for the election and appointment of judges[18].

To what extent MPs receive an indemnity "outside" the Parliament is the subject of intense discussion in the German literature, which has not been fully clarified also in the Romanian constitutional law literature, even though the term "while exercising their office" would seem to have a broader meaning and to be applicable in much more contexts. In principle, the work carried out by parliamentarians in parliamentary assemblies of intergovernmental

[16] I. Muraru, E.S. Tănăsescu, *Constituția României. Comentariu pe articole. Ediția a 3-a, Editura C. H. Beck, București, 2022*, pp. 633-634.
[17] G. Dürig, R. Herzog, R. Scholz, H. H. Klein, M. Herdegen, *Grundgesetz-Kommentar*, 104. Ergänzungslieferung, Ed. C.H. Beck, München, 2024, Art. 46, Rn. 37.
[18] I. v. Münch, P. Kunig, *Grundgesetz-Kommentar*, 7. Auflage, Ed. C.H. Beck, München, 2021, Art. 46, Rn. 11-16.

organizations is covered by the protection of the indemnity, since on these occasions they represent the State and, in particular, the institution to which they belong. Regarding the relations of parliamentarians with the press (whether we refer to press conferences, participation in television or radio programs, or interviews given and published in the written press), the position of German constitutional law doctrine has been mostly negative[19]. Romanian literature also takes the view that political statements and opinions broadcast in the press are covered by the indemnity only if they repeat or reproduce, without developing or expanding, political opinions expressed in parliamentary speeches. In line with the restrictive interpretation, MPs will also be considered not to benefit from the indemnity in the context of electoral or party events in which they regularly participate[20].

To detail the forms of judicial liability from which parliamentarians are protected by the privilege of the indemnity (d), it would be necessary to refer briefly to the legal nature of this institution, starting from some of the descriptions given in German doctrine. It is unanimously recognized that the indemnity eliminates the possibility of prosecution (*Verfolgbarkeit*) and punishment of the parliamentarian, but not the unlawfulness (*Rechtswidrigkeit*) of his conduct or his guilt (*Schuld*)[21]. On the basis of this description, we might assume that indemnity comes closest to the sphere of causes that remove criminal liability or causes of non-punishment. In any case, both descriptions have obvious limitations, because indemnity is not limited exclusively to criminal liability, but also to civil or contraventional liability. In civil matters, the admission of an action for damages would establish the impermissible interference of a judge, as an exponent of the judiciary, in the permanent clash of political ideas and opinions which characterizes, par excellence, the parliamentary decision-making process. In German law, a disciplinary action is a type of proceedings based on the rules of disciplinary law which are addressed to certain categories of civil servants and public officials and whose application is entrusted to the administrative courts[22].

Beyond the enumeration of the types of judicial accountability, the formulation of the German text also captures an essential aspect, namely that the prosecution and holding to account of the parliamentarian by an authority outside the BT (außerhalb des Bundestages) is

[19] P. M. Huber, A. Voßkuhle, op. cit., Rn. 23-25.
[20] C. Ionescu, C.A. Dumitrescu (coord.),, op. cit., pp. 784-785.
[21] G. Dürig, R. Herzog, R. Scholz, H. H. Klein, M. Herdegen, op. cit., Rn. 32.
[22] R. Wurbs, op. cit., p. 86.

excluded. Two aspects are thus clear: (1) the indemnity constitutes a procedural obstacle to holding the Member of Parliament accountable since it precludes per se the initiation of any contentious proceedings before a court of law against him or her, and (2) the Member of Parliament may be sanctioned disciplinary for his or her misconduct based on the rules laid down in the parliamentary rules of procedure.

Articles 36-38 of the Rules of Procedure of the Bundestag (GOBT)[23] contain disciplinary measures to sanction the conduct of members of parliament, which may also constitute significant restrictions on their right to participate in the work of the legislature: a call to order, withdrawal of the right to speak, or exclusion from BT/committee sittings for a maximum of 30 days. The Rules of Procedure of the Senate[24] and the Chamber of Deputies[25] regulate largely the same sanctions in Art. 209 and 248 respectively, except for complete exclusion. There is, however, a sanction relating to the duration of speeches, namely "reduction of the speaking time to a maximum of 10 seconds per speech for a maximum period of 3 months".

Even if the generic purpose of these measures is to ensure proper and efficient parliamentary activity, the fact that they are ordered exclusively by the President of the Parliament (or the President of the sitting, as the case may be) or by him or her in cooperation with the members of the Standing Bureaux/ BT Presidium, may turn them into a method of harassing political opponents. In the application of any sanction, the President of Parliament (or the President of the sitting, as the case may be) has the final say. In most cases, however, he or she is also a member of a parliamentary group, which may influence him or her to apply a partisan standard of judgment to some MPs and a more strict one to those from rival parties, thus unduly restricting their right to free speech. If we take a closer look at the most serious sanctions (complete exclusion or the reduction of the length of a speech to 10 seconds), we see that they largely strip the privilege of indemnity of its substance[26].

Both national and German legislation incompletely regulate the possibility for the sanctioned parliamentarian to appeal against the decision ordering his or her sanction. Article 213 para. (5)-(7) of the Senate's Rules of Procedure describe the mechanism for appealing

[23] https://www.gesetze-im-internet.de/btgo_1980/BJNR012380980.html Accessed at 1.12.2024.
[24] https://www.senat.ro/pagini/reg_sen/REGULAMENTUL_SENATULUI_republicare_ianuarie_2024.htm Last activity: 1.12.2024.
[25] https://www.cdep.ro/pdfs/tab_acte/regul_cdep.pdf Last activity: 1.12.2024.
[26] R. Wurbs, op. cit., p. 97-98.

against the decision of sanctioning: the parliamentarian concerned may lodge an appeal within 15 days from the date of communication; the appeal is decided by the Senate plenary, within 30 days from its registration, by a majority vote of the senators present, in a secret session, and the decision of the Senate plenary is final and enforceable and is made public in the plenary session. In Art. 39 GOBT we find a similar mechanism, the only difference being in the case of the time limit for appeal, which is much shorter - until the next BT meeting when the appeal is put on the agenda. Two questions can be raised in this context: firstly, whether the submission of the appeal suspends the enforcement of the sanction until the appeal is resolved, and secondly, whether the admission of the appeal and, implicitly, the revocation of the sanctioning decision have retroactive effect. The answer to the first question is, in principle, in the negative, while the answer to the second question is highly debatable. If we accept that the citizens use their vote to determine a certain configuration of the legislature and that parliamentary debate is based on the political will of the people, then excluding some parliamentarians from the deliberative decision process, for whatever reason, would represent an impermissible alteration of the parliamentary configuration and therefore of the will of the people.

B. Jurisprudential reflection of indemnity

A relatively recent case decided by the Constitutional Court of Thüringen(VerfGH 40/16)[27] highlights the main dimensions of the indemnity concerning a concrete situation between two members of the Thüringer Landtag: Katharina König-Preuss (Die Linke) and Stephan Brandner (AfD). In the context of a budget debate in the Thüringen regional parliament, Brandner made a somewhat aggressive speech against König-Preuss and her father, which was based on a violent anti-fascist demonstration in Leipzig a few days earlier, where both König (father and daughter) had participated as speakers. Brandner said: *"We are the only party that says it clearly: violence has no place in politics, neither on the left nor on the right. We say this to ourselves every morning in front of the mirror. We say it as a prayer formula. Maybe you could internalize it. The real political thugs, ladies, and gentlemen, are on your left, this Duo Infernale, father and daughter König, who are responsible for the fact that policemen are being beaten up in the streets, police cars are being set on fire and barricades are burning. It is not because of Höcke's wood-burning stove in front of which he drinks his red wine that*

[27] Full text of the decision: https://www.doev.de/wp-content/uploads/2019/Leitsaetze/08/E_0274.pdf Last activity: 25.11.2024.

police cars and barricades catch fire. It is because of them [König's father and daughter] that they are really responsible for all these incidents, because they turn the world upside down."

As a result, Katharina König-Preuss drafted a complaint to the Regional Court seeking to hold MP Stephan Brandner accountable for his defamatory statements, which are not protected by the indemnity. Brandner is being heard and explains that he did not say in the Landtag that K.-P. She had set fire to cars, barricades, and other things. He admitted that he had included some exaggerations in his speech, but in order to provide a counter-reply to an earlier accusation and to make it clear that the Member was in fact responsible for the violence as an instigator. As Brandner could not prove that the MP K.-P. had actually committed a crime during the demonstration, the decision of the Court of First Instance was in favor of K.-P.

The AfD MP Brandner appealed against the decision at first instance to the Thüringen Higher Regional Court, where he won the case, as she invoked the procedural obstacle of the indemnity. The requirements of § 55 (1) sentence 1 ThürVerf, which governs the indemnity of Landtag members, were checked - the person made the statements in question in his capacity as a member of parliament, in a public session of the Landtag, as part of a speech, and the term statement is to be interpreted broadly as the expression of opinions or factual allegations. Even if Brandner did not sufficiently substantiate his allegations, a positive knowledge of the falsity of the factual allegations would rather have been required in this case, which was lacking in any event.

The MP K.-P. lodged a complaint with the Constitutional Court of Thuringia, which, based on Article 80(1) of the ThürVerf, is competent to deal with complaints lodged by any person who considers that his fundamental rights have been infringed by a decision of a public authority, provided that he has exhausted all ordinary legal remedies.

In support of her arguments, the Member pleads that Brandner based his speech on factual allegations, knowingly spreading untruths and thus fulfilling the elements of the crime of defamation described in § 187 StGB.

The complaint lodged is dismissed as unfounded, considering indemnity to be a procedural obstacle and opting for the broad interpretation that indemnity is not limited to criminal liability but covers all forms of extra-parliamentary liability and sanctions. The guarantees of indemnity may sometimes clash with the protection granted by certain fundamental rights (honor, privacy), but this question is set out in the Constitution, which gives

prevalence to indemnity since freedom of expression and voting of parliamentarians is a matter of fundamental public interest.

The right of parliamentarians to engage in the parliamentary decision-making process by providing arguments and counter-arguments is an essential (if not the only) condition for MPs to be able to express the political views they represent in parliamentary debates without pressure from outside. In an intense debate, the Members who speak may also use more polemical, sharp, pointed expressions in their speeches to get their message across more clearly, but Parliament itself must be the only one empowered to take the necessary measures to moderate and shape the debate.

Parliamentary law, through the Rules of Procedure, provides some protection against misuse of the privilege of indemnity, which also provides for disciplinary and internal order measures for statements falling under the indemnity. Moreover, MPs can counter themselves and reject statements about which they feel offended by making new statements.

CONCLUSION

Parliamentary debate is the driving force behind the political will of citizens and, together with the right to vote, is the most eloquent expression of popular sovereignty. Parliament's role is essentially to seek and formulate generally binding answers to questions of the utmost importance to citizens, and this role cannot materialize without real debates based on arguments and counter-arguments. These debates inevitably also lead to acid, critical, even contemptuous statements and/or value judgments, which are aimed more at highlighting the inabilities, shortcomings of the political opponent, and the ineffectiveness of the political measures adopted, to the detriment of the opponent's qualities and achievements. This is how the democratic game works, which is essentially a continuous struggle for influence and power by creating new majorities[28].

In this game, even if, as a result of some speeches, fundamental personal values are subsequently undermined, the legislator has nevertheless chosen to give precedence to the freedom of expression of each parliamentarian, which is considered to be an essential precondition for the functioning of parliament. The indemnity thus appears as a legal reflex of

[28] R. Wurbs, *op. cit.*, p. 93.

this way of functioning, which produces effects in the person of each parliamentarian. If the opposite had been the case, in the sense that parliamentarians could be held judicially accountable for their opinions, there would have been a risk of this mechanism being abused and used as a means of harassment by those who claim to have their rights infringed, particularly against the most implacable political opponents[29].

Taking into account the contemporary socio-political reality of parliamentary democracy, a possible extension of the scope of the indemnity might be appropriate. In the work carried out by parliamentarians, it has become increasingly difficult to separate their fundamental task of participating in the legislative process from the rest of the social and political activities in which they are involved. Given the growing interest of social forces in helping to shape the will of the legislature, parliamentarians have to be particularly active in their constituencies and constantly sound out the mood of the citizens. At present, parliamentarians are increasingly having to take on the role of opinion-formers - if they belong to the governing party, they have to explain the government's decisions and measures to the people in their constituency, and if they are in opposition, they have to constantly propose alternatives to the policies promoted by the executive[30].

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CRIMINOLOGICAL ANALYSIS OF CYBERCRIME

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INTRODUCTION

The continuous advancement of technology has brought with it the continuous evolution of crime in this sector. This development has also brought about significant changes in the criminological, forensic, and legal approaches to tackling this widespread phenomenon. In contrast to traditional crime, cybercrime has the characteristics of anonymity, the elimination of borders of any kind, and the difficulty of gathering evidence, which imposes a continuous legal ultra-marathon.

In what follows, I will develop modern criminological theories that play an extremely important role in understanding the motivations behind these crimes and the possible solutions that can be found to combat them.

A. SUBCULTURE

The term subculture is taken from sociology and is intended to designate a particular group of individuals who share values, principles, norms, behaviors, and lifestyles that are almost identical to the dominant culture of the society in question. This concept has its origins in 20th-century sociological and criminological studies, and has been used to explain how certain groups develop their own identities. One of the founding fathers of this concept is Albert Cohen, who in his work Delinquent Boys - The Culture of the Gang (1955), analyzed how young men from disadvantaged backgrounds adopt deviant behavior to gain status and social recognition within the group. In short, these subcultures cannot be described as mere social groups but can become real criminal environments that facilitate, encourage, and perpetuate criminality, catalyzed by their emergence especially online, where people can gather more easily.

B. CYBERCRIME AND DEVIANT SUBCULTURE

Most criminological theories approach criminality as a result of individual factors, which can be influenced by properly targeted interventions. However, these theories do not investigate in depth the significance of crime for particular individuals and the extent to which they are involved in networks of relationships that facilitate criminal behavior. Researchers who analyze crime from a subcultural perspective can provide a more detailed understanding of the mechanisms and motivations underlying criminal behavior.[1]

From a theoretical point of view, a subculture can be defined as a group that shares a specific set of values, norms, traditions, and rituals that differentiate it from the dominant culture. Subcultures form as a result of the rejection of the dominant culture or around distinct phenomena that are not valued by mainstream society.[2]

The anonymity and distributed nature of the internet allow people to connect to groups that share the same likes, dislikes, behaviors, opinions, and values, regardless of the participants' location in the real world.[3]

Technology allows individuals to connect with others without these fears, and even provide information about behavior or activity to improve their knowledge and minimize the fear of being detected.[4]

Over the years there has been a criminological development and an increased interest in the physical and psychological characteristics of the offender. We refer in this context to the criminal positivist school of thought (the Italian school) - the current legal thought that was prevalent at the end of the 19th and beginning of the 20th century. They considered the phenomenon of criminality to be primarily natural, social, and psychological, and less eminently legal. One of the main writers on this subject was Dr. Cesare Lombroso, former professor of forensic medicine at the University of Turin, who wrote a book entitled "The Criminal Man - L`uomo delinquente" - in which he highlighted the fact that criminals have

[1] Cybercrime and Digital Forensics, Thomas J. Holt, Adam M. Bossler, and Kathryn C. Seigfried-Spellar, p. 482.
[2] Idem.
[3] Idem, p. 483.
[4] Idem.

primitive characteristics transmitted through heredity from distant descendants, and carried out anthropological research[5] and anthropometric measurements[6] on prisoners, thus laying the foundations for the theory of atavism[7].

This article focuses on some modern theories on typologies and criminal environments in the field of cybercrime, as well as on remedies that can lead to the prevention of this criminal phenomenon and to outline the profile of the cybercriminal, all based on the specialty literature. According to "Cybercrime and Criminological Theories" Chapter 131[8], various criminal behavioral typologies of individuals in the cyber environment will be analyzed, along with the determinants of involvement in such illicit activities.

Reiterating the considerations at the beginning of this paper, namely that cybercrime has taken on a global dimension in the full proportions of the word, characterized as being in an accelerated dynamic and a very high degree of complexity. These mechanisms need to be analyzed in detail in order to truly understand the motivation and mechanism that consciously and unconsciously drive individuals to commit such acts.

C. SUBCULTURE THEORY

The first criminological theory that approaches the study of cybercrime from a criminological perspective is the Subcultural Theory[9], which explains that cybercriminals shape their own criminal groups in which they strictly apply their own norms, values, and behaviors, creating closed communities that support, accept and encourage their activities in the criminal spectrum. These artificial, state-within-a-state subcultures provide that sense of belonging, and provide a rational and moral justification for illegal activities through the collective perception of a 'higher' common cause, believing that what they are doing through their actions is - alternative ethics - and not criminal activity. From the legal point of view, of the Romanian legal system but also the international regulations, these actions fall under the prohibition of the law, first of all under the prohibition of the Romanian criminal law, being subject to the crime

[5] On the origin, evolution and various physical types of man in relation to natural and socio-cultural conditions.
[6] Method to identify criminals based on human body description (size, shape, fingerprints).
[7] Hereditary character set.
[8] Cybercrime and Digital Forensics, Thomas J. Holt, Adam M. Bossler, and Kathryn C. Seigfried-Spellar, Cap. 13 - „Cybercrime and Criminological Theories", p. 479-531.
[9] Idem, p 482.

provided for and punished by Art. 367 NPC (New Penal Code) - Constitution of an organized criminal group[10], in conjunction with Art. 48 NPC - Accomplices[11] and various forms of organized crime, regulated also by the Budapest Convention on Cybercrime. From this legal point of view, the justifications that gravitate around the plea of alternative ethics or superior common cause do not exempt from liability before the law but may be the basis of mitigating cases in the criminal process. Drawing a parallel between the cyber-criminal environment and the physical criminal environment, the former has inherited the use of specific, delimiting, and cryptic terms from the latter. The Cybercrime and Digital Forensics handbook highlights the use and importance of terms such as "white hat"[12], "gray hat"[13] "black hat"[14] and "script kiddies"[15], which are intended to define the status of hackers according to their intentions and methods. The language that these individuals use within their community can be valuable evidence in criminal investigations. This specialized language can be used by the investigating bodies and can be classified as indirect evidence leading to the individual's membership in a certain criminal subculture, according to the studies presented in the cited handbook, hackers create and shape a digital identity using both pseudonyms and cryptic terms to hide their illicit activity in the cyber environment, such examples are – „TweetyFish"[16], „Erik Bloodaxe"[17], „Legion of Doom (LOD)"[18]; „Noob/Newbie"[19], „Script Kiddie"[20], „Leet (1337)"[21]. These identities are called "handles"[22] or "nicknames"[23].

[10] TITLE VIII, *Offences against social relations*, CHAPTER I: Offences against public order and public peace, Art. 367 Formation of an organized criminal group, New Penal Code.
[11] TITLE II, Chapter VI, Perpetrator and participants, Art. 48, *New Penal Code*.
[12] White Hat Hacking is mainly based on vulnerability testing and bug hunting.
[13] Their activities are to listen to network traffic and access databases to improve internet networks.
[14] Attack different servers, networks and websites of large companies, stealing IP addresses, emails, etc., also called Cyber Criminals.
[15] is a person who attempts to take control of a system (for example an operating system, a server or a hosting account) by gaining root or administrator access.
[16] a hacker who chose this name because he believed that "no judge will take seriously an offense associated with such a name".
[17] a reference to a famous Viking king, used to suggest aggression and dominance within the community.
[18] a notorious hacker group from the 1980s, specializing in attacks on computer systems.
[19] an inexperienced person, often ridiculed in the hacker community.
[20] a hacker who lacks advanced skills and uses prefabricated tools to carry out computer attacks without understanding their mechanisms.
[21] a term derived from 'elite', used to describe hackers with advanced skills.
[22] Handles are pseudonyms adopted by hackers, used for long-term use and associated with their reputation and activity within the cybercrime subcultures. A handle can become a personal brand in the hacker community, being recognized in small circles or even internationally.
[23] Nicknames are alternative names used by users on various online platforms, but not necessarily related to illegal activities. They can be changed frequently and are not always associated with a fixed identity or reputation in the hacking world.

D. DETTERENCE THEORY

A second criminological theory that concerns the study of cybercrime is Deterrence Theory[24]. This teleports us back in time to when Western nations based their governmental structures and criminal justice systems on classical school principles[25]. This theory is rooted in the fear of experts who are concerned about the ability and capacity of state authority to effectively manage and deter criminal behavior in the cyber environment by threatening and applying punitive measures specific to the criminal act committed. Due to the anonymity offered by the power of the internet, many cyber criminals feel immune to the coercive force of the state. In specialized studies, researchers have shown in a group of subjects at a US college that informal sanctions (e.g. punishments from family or friends) had a stronger impact on them than sanctions laid down in a regulation. Fear of malware infection was, however, not significant. Thus, it is possible that informal levels of social control, such as guilt and shame, could prove more useful in curbing digital piracy than legal action[26]. This theory, which has its origins in Enlightenment thought and the classical school of criminology holds that individuals, in all their complexity, make rational decisions about committing an unlawful act by weighing both the benefits and the risks. Based on these ideas, Cesare Beccaria[27], states that "a punishment is effective to the extent that it is certain, swift, and proportionately severe to the crime". From this statement, 3 key ideas can be extracted that challenge the effectiveness of deterrence, namely - firstly, that there is enormous difficulty in attributing a crime to the offender, in the sense that many cyber attacks are anonymous so that the authorities in charge of dealing with the problem have difficulty in identifying the perpetrators. Secondly, the lengthy delay from the time of the crime to the application of sanctions, thus reducing their impact. Thirdly, the lack of harmonization of international legislation on cybercrime, makes sanctions somewhat ineffective against international groups.

[24] *Cybercrime and Digital Forensics*, Thomas J. Holt, Adam M. Bossler, and Kathryn C. Seigfried-Spellar, p. 499
[25] Idem
[26] Idem, p. 500
[27] Italian lawyer, economist and publicist, one of the greatest thinkers of the Enlightenment.

E. SPATIAL TRANSITION THEORY

The third criminological theory, formulated by Karuppannan Jaishankar[28] in 2008, is the framework that explains how individuals exhibit deviant behavior online, even if the same individuals in real life behave ethically and respect social norms. The cornerstone of this theory is based on the fact that in cyberspace there are distinct conditions that favor cybercrime, which are different from the conditions present in physical life. A real Gyges ring[29]. This theory comes along and proposes 7 postulates that explain how cybercrime is facilitated by the conditions provided in cyberspace. The first postulate of this theory is based on the fact that there is a repressed criminal tendency[30] - people who are highly moral in their physical lives avoid committing crimes because of their social status, but because they perceive a safer environment for themselves, with less risk of real exposure. The second is based on the flexibility of identity and dissociative anonymity[31] - the ability to be anyone in the cyber environment, to change identity and remain anonymous, significantly reducing fears of the coercive force of the state, allows the phenomenon to exist that allows people to commit crimes without fear of being identified and prosecuted. Migration of criminal behavior[32] - cybercrime and thus cybercrime is not an isolated phenomenon, but can easily migrate from online to offline, thus - cybercriminals can adopt criminal behavior in the physical world and criminal groups in the physical world can expand their activities in the digital space. Dynamism and escapability[33] - this element comes as an escape key that helps cyber criminals to easily evade law enforcement filters. This includes the use of various technical methods and mechanisms, such as access to anonymous networks, e.g. Tor[34] or encryption, to hide illicit activities. Formation of criminal groups[35] - the online space allows them to collaborate in their illicit activities, regardless of their actual location on the globe. Here, as in the third postulate, one can migrate from online

[28] Indian Criminologist, Professor of Criminology and Legal Sciences.
[29] a philosophical allegory from Plato that explores the idea that if people could act without fear of consequences, many would abandon their moral principles and give in to the temptation to cheat or commit unjust acts - In Plato's Republic.
[30] Cybercrime and Digital Forensics, Thomas J. Holt, Adam M. Bossler, and Kathryn C. Seigfried-Spellar p. 511.
[31] Idem.
[32] Idem.
[33] Idem.
[34] It protects privacy and anonymity, it has two main properties - 1. Both the internet provider and any other overseer will not be able to track activity on the internet. 2 - The operators of the sites and services used will only see a connection coming from the Tor network, they will not know who is accessing it unless the person discloses this.
[35] Idem, p. 511.

to offline and vice versa. The predisposition of closed societies towards cybercrime[36] - this means that people living in a strict social environment are more prone to commit cybercrime than those in more open social environments with more flexible norms. Finally - The normative conflict between the real world and the digital space[37] - refers to the differences between the rules that govern the physical environment and those that are accepted in the digital environment, in other words, if some behaviors are considered illegal or immoral in physical society, the same behaviors may be tolerated and even encouraged in the digital environment.

F. RECIPROCAL DETERMINISM THEORY

The theory of Mutual Determinism and Cybercrime[38] is a theory formulated by the psychologist Albert Bandura[39], which represents a central concept in social psychology and criminology that explains how internal factors (cognitive, biological, psychological) and external factors (social, environmental) interact with each other, thus influencing human behavior. Firstly, Bandura argues that personal factors, environmental factors, and prior behavior interact in a bidirectional relationship, influencing each other, in the context of committing a digital crime this is manifested through direct exposure to online criminal groups, coupled with the anonymity and lack of fear of consequences (unlike in the real world where fear of punishment can stop someone from committing a crime, but in the digital environment they feel protected and that they will not get caught), as well as the virtual social validation from the individuals in the group, are the factors underlying the whole process. Reciprocal determinism theory also explains how individuals with no criminal history can become cyber criminals through the influence of online social interactions. Bandura describes the process as follows - There is the first step - Initiation - this is where an individual visits a criminal group/forum out of pure curiosity. The second step - Through interaction with other individuals he learns techniques to use the criminal material. The community helps him validate his behavior by taking the activity into an area where it removes the individual's moral barriers. And it all culminates in the reinforcement of the individual's deviant behavior as he receives appreciation and recognition from the group, which motivates him to go further. Also in

[36] Idem.
[37] Idem.
[38] Idem, p. 517.
[39] was a Canadian-American psychologist and professor of social sciences in psychology at Stanford University.

Bandura's view, mutual determinism explains not only the formation of deviant criminal behavior but also its maintenance in criminal activity, on the three factors mentioned.

CONCLUSION

As guidelines, we can draw the conclusion that the criminological study of cybercrime through the theories presented provides a starting point for a complex understanding of the motivation of cybercriminals, so that the legislator considers developing legislative strategies to assist justice, adapting criminal legislation to the perpetual novelty in the field of cybercrime but also to combat individual and group mechanisms.

The criminality in this virtual environment is very complex and is constantly being molded to the new computerized reality, being directly influenced by criminogenic factors specific to this environment. The theories presented throughout this paper emphasize the reality of the existence of these well-defined criminal subcultures, in which even dubious morality takes on a dimension of the normal and the necessary, thus forming what is meant by alternative ethics. Finally, we can see that these modern criminological theories on cybercrime support and help the authorities to understand that not only punitive measures can combat cybercrime, but also preventive measures, digital education of the population, strengthening international cooperation, and adapting legislation to the current cybercrime agenda.

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ECHR AS THE GUARDIAN OF DEMOCRATIC PRINCIPLES. CASE STUDY: THE PRINCIPLE OF JUSTICE

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Long before international institutions emerged in the process of calibrating worldwide policy and law effective application, in the ancient Athens, the idea of democracy had started to thrive as a fitting, people-based system of government. As of today, the key principles embraced by democracy, such as freedom, justice, political pluralism, the rule of law or human rights and liberties, have known numerous shifts in their judicial approach throughout centuries, thus generating different opinions in court. In order to align the national practices among the countries, The European Court of Human Rights, known as ECHR, comes in handy, especially when court decisions do not turn out to be the ones expected by the individual or when the judicial process does not fully comply, in one way or another, with the related legislative requirements and rigours. Therefore, this work proposes to highlight the importance of the democratic principle of justice, including the subsequent factors of free access to justice and the right to a fair trial, in addition to making inquiries into the ECHR case-law regarding the subject in place for a better and practical understanding of the judicial approach.

INTRODUCTION

As the democratic governmental system found its place in different countries throughout centuries, it has come to many peoples that it should be considered a representative way of leading a pro-social, human rights based and policy-including lifestyle. This idea is even more crystalized in worlwide cultures as it is rooted in the Greek words of *"demos"*, meaning "the people", and *"kratos"*, defining the "power of rule", thus shaping a system that enables the belief that the power sits in people's hands.

Statistically speaking, the report *Democracy Index 2023* showed that 74 countries in the world are considered, as of 2023, as being either full or flawed democracies, from a total of 167

countries that were part of the process of examination[1]. The report emphasized that nearly half of the world's population lives in a democratic system, mostly originating from developed or developing countries.

Unless countries that exert a more authoritarian regime soflty become some sort of democracies when it comes to protecting their people's best interests, at least those who are based on a democratic system should keep an eye on the human factor, so as to secure their preservation as a so-called friendly regime.

Even though, at a first glance, it would seem that democracies have nothing to do with containing people's rights and liberties, such actions occur from time to time, referring to different matters. This would be the exact moment and place where national and international institutions should show their strengthmans in what has to be the safeguarding of democratic principles and social well-being of people.

BASIC PRINCIPLES OF A DEMOCRACY

To begin with, democracy is a concept that has known many directions, so its key principles are somehow a bit different based on which part of it was intended to emphasize. In spite of this, a general and more official statement about democracy would be found noted in the *Universal Declaration on Democracy*, in which it is expressed as aiming "essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster the economic and social development of the community, strengthen the cohesion of society and enhance national tranquillity, as well as to create a climate that is favourable for international peace"[2].

Also, if we look into the First Section of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, better known as *European Convention on Human Rights*, we will find the same rights and freedoms conveyed by the foregoing citation, such as the right to life, the right to respect for private and family life, the right to liberty and security or the right to justice[3]. Of course, the ideas submitted in the *European Convention on Human Rights*, as to

[1] Economist Intelligence Unit (2023). 'Democracy Index 2023'.
[2] Inter-Parliamentary Union (1997). 'Universal Declaration on Democracy'.
[3] Council of Europe (1950). 'Convention for the Protection of Human Rights and Fundamental Freedoms', art. 2 - 18.

achieve the prior referred concept of strenghtening the cohesion of society, will more likely appear in the European states base-act, the Constitution.

For example, the Romanian Constitution, through the first article, states the human dignity, the fundamental rights and liberties, the justice, the political pluralism, the separation of the powers and the rule of law as the core values and principles on which the Romanian democratic and social spirit is based on[4]. Obviously, a more careful analysis of it would result in finding many more democratic principles, such as the right to vote or the freedom of speech, another core elements of a healthy democratic system.

In addition to this, the functions of a democracy are expressed, through a work submitted under the `*Action for Strengthening Good Governance and Accountability in Uganda*` project, supported by the European Union[5], as being the protection of human rights and freedom of speech, equal protection under the law and full participation of the individuals in political, cultural and economic aspects of a society.

Summarizing, democracy as a principle-based system is different only at the surface level, due to the various ways of expressing its elements, but the essence still remains the same, no matter what. To be more specific, a democratic system cannot deviate too much from its root shape and from its core foundation marks, since it would arguably result in losing itself over a more authoritarian-like governance.

THE PRINCIPLE OF JUSTICE

As we have seen in the previous chapter, democracy is presenting itself through various principles and values largely applied and accepted, though one would be indispensable for maintaining a pro-social and law-based community, namely the principle of justice. In order to be able to prevent and combat different anti-social behaviours adopted by the individuals, a democratic community really needs to have a consolidated and homogenous justice system, not necessarily aimed at a punishing outcome, but one directed to a result that stimulates the individuals' consciousness.

[4] 5 Art. 1 (3)-(5), Const. Ro.
[5] Office of the Konrad-Adenauer-Stiftung (2011). 'Concepts and Principles of Democratic Governance and Accountability. A Guide for Peer Educators', Action for Strengthening Good Governance and Accountability in Uganda project, p. 3.

To support this viewpoint, it is relevant to reabbfer to the idea expressed by Joshua Kleinfeld, according to which "the only conduct that may justly be criminalized is conduct that violates and expressively attacks the values on which community's social organisation is based"[6]. This idea mostly incorpoates the fact that anti-social behaviours should be seen as a threat to the society's accepted and internalized values, so a lawful response would be totally supported and needed. Additionally, another piece of literature shows that punishment is the result of a criminal behaviour and, in the same time, an organized society's response to any social act endangering its own preservation and social order[7], confirming the position explained before towards the idea of social and criminal punishment.

Nevertheless, having in mind the fact that the justice system does not really need to blindly adopt a punishing conduct towards accused individuals, in the work of Asad G. Kiyani has been mentioned the lately occurrence of a shift in the international criminal courts and tribunals case law, as the ICC has adopted a "slightly more unyielding approach that favours the accused", besides the "degree of flexibility" observed in regard of sentencing practices of these courts[8]. Hence, according to the previously presented allegations, the existence of an effective punishing system in a healthy society should be an essential one, but it clearly has to imply a substantial observation of the human rights factor in connection to the legality of the judicial proceedings.

Moreover, the work of Bright B. S. and Kwak J. implies that "excessive punishment" is a common and important problem that should be approached by countries through proper measures addressed to both reducing mass incarceration of individuals committing minor offenses and solving the reason behind criminal behaviours[9]. The main idea behind punishing resides in the prevention of another crimes and offensive behaviours and that very outcome could be solely obtained through finding and addressing the real root cause.

Also, if we shortly return to the fact that a democracy should include the individual in the political, cultural and economic matters, we will find that it is directly linked to individuals'

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[6] Kleinfeld, J. (2017). 'Three Principles of Democratic Criminal Justice', *Northwestern University Law Review*, Vol. 111, No. 6, p. 1476.
[7] Dogaru, L. (2019). 'Criminologie. Ediția a II-a, revizuită și adăugită', p. 191.
[8] Kyiani, A.G. (2022). 'Prosecutor v Abd-Al-Rhman: Human Rights, Customary International Law and the ICC's non-retroactivity problem', Melbourne Journal of International Law, vol. 23, p. 11-13.
[9] Bright, B.S., Kwak, J. (2023). 'The Fear of Too Much Justice: Race, Poverty, and the Persistence of Inequality in the Criminal Courts'. New York: The New Press, p. 332-341.

level of compliance to rules, precisely due to the human nature, whereas justice would be best achieved when laws are established by the same individuals that subsequently have to obey them[10].

In addition to this, as stated in another work of the Inter-Parliamentary Union, the belief in justice based on the equal protection clause is "inherent in the primitive nature of all human beings"[11]. This means that each individual naturally has to seek for justice, relative to the specific national set of laws which he or she is abiding to. Such an action would be possible only through the national and international institutions and organisms created especially to legally support the individual in achieving his judicial goal, such as national courts, the International Court of Justice, the Court of Justice of the European Union or the European Court of Human Rights.

Furthermore, countries and international organisations are accountable for providing the individual with the specified judicial means of protecting the normal way of things, just as Igor Bâcu stated that justice must operate with maximum efficiency, taking into account its role of protector of the human rights and liberties[12]. Therefore, this represents another point of view which indicates that justice features a key role in regard of a democratic society, due to its power of maintaining the social order at an optimal level.

Ultimately, in order to achieve a comprehensive presentation of the role of justice in a democracy, it is necessary to address two other important issues, specifically free access to justice and the right to a fair trial. Without these, the whole process of seeking for justice would most likely be in vain, on account of various subjective hindrances and legal shortcomings.

Free Access to Justice

As part of the justice term, free access to justice is vastly regulated in many documents, taken into account the fact that it is a need and a right in the same time in order for a fully functional democracy to exist. It could also be considered, just as Igor Bâcu has stated, that free access to justice is part of the social and economic fundamental rights, as a faculty of will

[10] Office of the Konrad-Adenauer-Stiftung. *Op. cit.*, p. 21.
[11] Inter-Parliamentary Union (1998). 'Democracy: Its Principles and Achievement', p. 52.
[12] Bâcu, I. (2017). 'Liberul acces la justiție – premisă a procesului echitabil', *Legea și viața*, nr. 7 (307), p. 27. [14] Bâcu, I. *Op. Cit.*, p. 28.

granted to the individual, besides the fact that free access to justice is primarily granted by the most important international and regional treaties[13].

Legally speaking, it is primarily mentioned in the *European Convention on Human Rights*, as each individual has the right to freely address to a court if justly considered on the matter of acknowledged rights and liberties, though expressed as the right to an effective remedy[14], corroborated with some of the regulations stated by the 6th Article. It arguably states that there shall be no barrier imposed by any of the European states between the individual and its own process of looking for justice.

In addition to this, the 6th Article also reffers to a free justice in financial terms, as the individual has the right to be assisted by a lawyer if he or she doesn't have the necessary funds to hire one. It is also supplemented by the *Charter of Fundamental Rights of the European Union* provisions[15], as it actually states that judicial assistance is to be freely granted for those who do not dispose of the necessary financial resources, as it is required for the effective acces to justice.

On the other hand, free acces to justice also knows some limitations, as could be seen in the *Guide on Article 6 of the European Convention on Human Rights*, such as parliamentary immunity or procedural rules, but it is compulsory to pay attention to the way of implementing them so this right's essensece wouldn't be affected[16]. The presence of some limitations in legal terms is not only normal, but necessary, otherwise another factor of a democracy could be affected by some profiteers, namely the prohibition of abuse of rights, as it is explicitly stated through Article 17 provisions of the *European Convention on Human Rights*.

Finally, we could also find regulations about the idea of free access to justice in the Romanian Constitution, as it states that everyone can adress justice in order to protect the rights and liberties and the just interests[17]. We can observe the same pattern as projected in the first section in which a country, as part of an international treaty, has deployed the fundamental

[13] Bâcu, I. *Op. Cit.*, p. 28.
[14] Council of Europe (1950). 'Convention for the Protection of Human Rights and Fundamental Freedoms', art. 6 and art. 13.
[15] European Union (2012). 'Charter of Fundamental Rights of the European Union', *Official Journal of the European Union*, C 326/405.
[16] Council of Europe (2024). 'Guide on Article 6 of the Convention – Right to a fair trial (criminal limb)', p. 17-18.
[17] Art. 21 (1), Const. Ro.

values and principles according to the provisions of the very same treaty.

The Right to a Fair Trial

As the second element of the principle of justice and the result of the effective application of free access to justice[18], the right to a fair trial adjoins the category of democratic rights, as it is based on a non-discriminatory endeavor in the process of achieving justice. Of course, there are no identical trials, but the approach should not be different in terms of criteria on the basis of which they are judged.

Similar to the concept of free access to justice, the right to a fair trial is widely provisioned in different legal acts, international and national wise. To be more precise, the prior mentioned international and national acts – *European Convention on Human Rights*[19], *Charter of Fundamental Rights of the European Union*[20] and even the Romanian Constitution[21] – have also approached and covered the right to a fair trial.

Talking from the literature point of view, through a work of Clooney A. and Webb P. it was stated that the right to a fair trial also implies the approach of a public trial, as it would promote both the defendant's rights and the public's interest in transparency, especially when covering the whole judicial proceeedings, starting from the pre-trial stage to the appeals, including sentencing and retrial proceedings as well[22]. As we have already seen, such publicity will have a real impact on the community, as it would provide vital feedback on how the justice system succeds in maintaining the rule of law.

Also, when talking about the term of "flexibility" presented in the previous section, we should consider another viewpoint based on the same work of Clooney A. and Webb P., as it conveyes the idea that judges should enter the court with an "open mind", especially in regard to the right to be pressumed innocent matter, an aspect which is considered to be essential to the effective application of the other elements of the right to a fair trial[23]. Of course, this idea

[18] Bâcu, I. *Op. Cit.*, p. 30.
[19] Council of Europe (1950). 'European Convention on Human Rights', art. 6.
[20] European Union (2012). 'Charter of Fundamental Rights of the European Union', Official Journal of the European Union, C 326/405.
[21] Art. 21 (3), Const. Ro.
[22] Clooney, A., Webb, P. (2020). 'The Right to a Fair Trial in International Law'. Oxford: University Press, p. 152-162.
[23] Council of Europe (1950). 'European Convention on Human Rights', art. 6.

is clearly settled through Article 6 of the *European Convention on Human Rights*, as it states that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law"[24].

Finally, if we take a look into the related literature, we will find that the right to a fair trial is enabling human rights and liberties to become effective and materialize[25]. Also, we will identify the right to a fair trial as the right to a good justice, taking into account three distinct dimensions, namely the access to the judicial apparatus, its way of functioning and its performance[26]. So the right to a fair trial is, just like the concept of free access to justice, a base factor in the process of maintaining and preserving of the human rights and liberties, along with the correct and effective application of the rule of law in a democratic society.

IMPACT ON EVERYDAY PEOPLE'S LIVES

Generally, democracy itself is based on the people believing in it and adjusted to it, through the many rights and responsabilities granted by this type of system. Strictly expressive, a study realised on the impact of democracy on the well-being of the society, finally led the authors to conclude that democracy itself impacts on well-being, taking into account the current state of democracy, with the biggest impact being identified on men[27].

For example, we could very well consider the idea of people participating in the policy making process as a big investment in the future of the society they belong to. To support this view, the idea expressed in the Office of the Konrad-Adenauer-Stiftung's work, whereby a good governance should adhere to an "equitable and inclusive" system, in which people do not feel excluded and have the feeling of being part of what is being done[28], is applicably relevant.

In addition to this, a democratic system is unequivocally making an imprint on people's lives, as it is basically considering the individuals as part of the mechanism when it comes to decision making, besides emphasizing the importance of protecting the human rights and liberties in whole. Moreover, as very well stated in the *Universal Declaration on Democracy*,

[24] Clooney, A., Webb, P. *Op. cit.*, p. 243-244.
[25] Bistriceanu, A.M. (2022). 'Aplicații ale dreptului la un proces echitabil în cursul judecății în primă instanță în procesul penal', Revista Themis, nr. 1-2.
[26] Bâcu, I. Op. Cit., p. 29.
[27] Orviska, M., Čaplánová, A., Hudson, J. (2014). 'The Impact of Democracy on Well-being', Social Indicators Research, vol. 115, no. 1, p. 505.
[28] Office of the Konrad-Adenauer-Stiftung. *Op. Cit.*, p. 25.

"peace and economic, social and cultural development are both conditions for and fruits of democracy"[29], encompassing the most important factors of a friendly and thriving international context.

Also, if we look deeper into the problematic and specifically assess the impact of a justice-based society, we will find that people are generally driven by it, as their own sense of justice is widely spinning around the achievements obtained through the judicial process. That is why countries and even international organisations are therefore obliged to create the suitable judicial architecture so the individuals can achieve their goals, justice wise.

Ultimately, as presented before, democracy finds its core milestones in the protection of the human rights and liberties, which itself represents a big enough impact on the development process and the cohesion of a society and the individuals within. According to specific literature, in a particular territory could be found social groups having different beliefs and habits, thus generating a level of friction between their members, especially when it comes to the minority groups[30], so that problem could easily be adressed through democratic and pro-social measures.

ECHR CASE LAW STUDY

As assumed before, countries and international organisations need to laiy the foundation for an objective, reachable and human rights oriented justice system, either through national courts or international ones, such as the European Court of Human Rights. This institution's organisation is legally based on the *European Convention on Human Rights*, as it is stated in the corresponding Rules of Court[31].

In order to better understand the democratic concept of justice and the whole set of democratic rights and liberties, along with the essential need to protect and preserve them, the best way to present it would be through an examination of some judicial outcomes of the very institution that is accountable for it, at least at the European level – European Court of Human Rights. In the next sections, a set of three distinct applications will be reviewed, alongside the

[29] Inter-Parliamentary Union (1997). 'Universal Declaration on Democracy' Butoi, T.B.
[30] Butoi, T.B., Butoi, I.T., Butoi, A.T., Puț, C.G. (2019). 'Analiza comportamentală din perspectiva psihologiei judiciare, victimologiei și tacticii criminalistice', p. 128.
[31] European Court of Human Rights (2024). 'Rules of Court', p. 1.

corresponding judgements given by the ECHR, so we can cover more terrain in what has to be the ECHR case law, in terms of admission of applications and given awards.

It must be noted that the following applications were submitted under Article 34 of the *European Convention on Human Rights* and will be examined mostly with reference to Article 6 of the same act.

Groza v Romania[32]

The application was lodged with the ECHR in February 2019 by a Romanian national, who complained that her rights to a fair trial and the equality of arms and defence, and also the right to a private life and family life were breached by the Romanian courts – in matter, Neamț County Court and Bacău Court of Appeal.

In this case, the Romanian national claimed in front of the national courts that somebody created a fake social-media account on Facebook, using her private information and photos and posting different messages, actions which eventually led to defame her in front of his friends and work colleagues. After 3 years of trials, the Bacău Court of Appeal refused her request of sending the social-media platform an official court order to oblige it to provide the nnecessary information to prove the identity of the person who created that social-media profile, thus leading to a dismissal of her case.

On this grounds, she filled the application to the ECHR in regard to the Article 6 and Article 8 of the *European Convention on Human Rights*, claiming 50,000 euros (EUR) in respect of non-pecuniary damage for the suffering experienced because of her breach of rights. As Article 6 states, "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law", so the applicant felt that these very rights were breached and decided to reach out to higher judiciary institutions in search of justice.

Taking into account the presented facts during the hearings, the ECHR concluded, among others, that the refusal of the Bacău Court of Appeal to the applicant's requests

[32] *Groza v Romania*, no. 12889/19, 21 December 2021.

regarding a court order "put her at a substantial disadvantage vis-à-vis the defendant", considering that the Facebook report including personal information in regard to who created the account in question was "indispensable and could influence the outcome of the proceedings".

Based on the previously mentioned assessments and according to the ECHR final judgement, the application was therefore unanimously declared as admissible and held that there had been a violation of Article 6 of the *Convention*. Besides, the ECHR held that the respondent State (in matter, Romania) was to pay the applicant, within three months, the amount of 6,000 euros (EUR) plus any tax that may be chargeable, in respect of non-pecuniary damage suffered by the applicant. Regarding the Article 8 provisions, the ECHR held that it is not necessary to seseparately examine the corresponding allegations, as they were reviewed alongside the Article 6 based claims.

Dvorski v Croatia[33]

The present application was lodged with the ECHR in April 2011 by a Croatian national, who complained that his right to a fair trial was breached, through the alleged denial of the police forces of him reaching to a lawyer of his own choice during police interrogations and the use of his incriminating statements in the process of convicting him.

In this case, the applicant was arrested in 2007 in connection with a number of crimes and questioned as a suspect by the police forces. The applicant's lawyer, hired by his parents, reached to the police station but he was refused entry, so the applicant was given a designated lawyer. During the interrogations, he confessed to the offenses with which he was charged, confession which was eventually admitted as evidence in his trial. After one year, despite of the fact that, during the court hearings, the applicant complained that he was denied being represented by a lawyer of his own choice during police interrogations, he was finally convicted of aggravated murder, armed robbery and arson and sentenced to fourty years of prison.

Based on these facts and taking into account the failed attempts of finding justice through higher national courts until (in matter, Supreme Court of the Republic of Croatia and Constitutional Court of the Republic of Croatia), the Croatian national decided to file an

[33] *Dvorski v Croatia*, no. 25703/11, 20 October 2015.

application to the ECHR reffering to Article 6 of the *European Convention on Human Rights*.

He complained about his right to a fair trial being breached and claiming 1,795,200 Croatian kunas (HRK)[34] and an additional amount of 400 Croatian kunas (HRK)[36] for each day starting from 26 December 2011 until his release from prison, in respect of non-pecuniary damage and to compensate for the distress caused to him by the criminal proceedings and imprisonment.

Assessing the matter, the ECHR concluded that „the consequence of the police's conduct in preventing the chosen lawyer from having access to the applicant had undermined the fairness of the subsequent criminal proceedings taken as a whole", alongside the fact that "the national courts had made no real attempt to provide reasons supporting or justifying their decision in terms of the values of a fair criminal trial".

Therefore, having in mind the above stated conclusions and following the ECHR final judgement, the application was declared, by sixteen votes to one, as admissible and held that there had been a violation of Article 6 of the *Convention*, related to the fairness of the trial. Also, unlike the first case presented, in which the applicant was awarded an amount of money for his non-pecuniary damage suffered, the ECHR decided, by sixteen votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant. Even so, the applicant was eventually awarded by the ECHR, by sixteen votes to one, the amount of 6,500 euros (EUR) plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred through the judicial proceedings.

Interpretative Verdicts on the Matter

As we have seen in the aforehand reviewed applications, the provisions in Article 34 of the *European Convention on Human Rights* provide the individuals a possibility to reach out to the European Court of Human Rights when the judicial outcomes of the national courts do not live up to the applicants' expectations. Of course, there are many more ECHR applications, alongside the corresponding final judgements, which could be studied in order to outline the role of the ECHR in safeguarding the democratic principles and the efficient functioning of the

[34] As of today, equivalent to roughly 242,000 euros (EUR).

justice national systems among European countries.

The applications previously presented were specifically picked out, so we can cover the different outcomes that could result from the ECHR judicial proceedings. For example, in the *Groza v Romania* case, alongside the determination of a violation of the right referred to in Article 6 of the *Convention*, there has been awarded a just amount of money proportionally corresponding to the level of non-pecuniary damage suffered by the applicant. On the other hand, in the *Simeonovi v Bulgaria* case there was neither a violation of the Article 6 determined nor a pecuniary award being granted to the applicant, based on specific factors, such as the absence of evidence supporting the allegations of the applicant.

However, the second case, *Dvorski v Croatia*, established some middle ground, taking into account that the ECHR final judgement concluded that there was a violation of the provisions of Article 6, but it did not awarded the applicant with any pecuniary reparations. The idea of the finding of violation being sufficient itself for just satisfaction could likely be subsequently used in national judicial proceedings regarding the case in place. As stated in the *Rules of Court*, this decision could be made "where there is a possibility of reopening of the proceedings or of obtaining other compensation at domestic level" or "where the violation found was of a minor or of a conditional nature"[35], alongside other examples. Anyway, taking note the allegations made by some authors, the decision of considering finding a violation as being sufficient itself for just satisfaction should be of exceptional applicability[36], at least in terms of the length of civil proceedings.

Therefore, the European Court of Human Rights has the primary role of protecting individuals' rights and fundamental liberties and has to intervene when national courts do not succeed in doing so. Also, when determined so, they have the possibility of awarding the applicants with different amounts of money, in respect of any pecuniary or non-pecuniary damages suffered by them under any conditions. Nevertheless, such decisions have to be backed by a comprehensive examination of the cases' circumstances and by pieces of evidence provided by the applicants, in support of their breach of law allegations. Thereby, a favourable judgement coming from the ECHR is unlikely to emerge, unless these conditions are fulfilled,

[35] European Court of Human Rights (2024). 'Rules of Court', p. 74.
[36] Mžiková, M., Plevova, M., Fabian, P. (2012). 'Just satisfaction for non-pecuniary damage caused by excessive length of civil proceedings', *European Judicial Training Network / Themis 2012*, p. 17-18.

implying that the applicant's complaints do not have the required legal and factual support backing them.

In terms of literature, it is viewed that the European Court of Human Rights case law, alongside the international renowned treaties, has contributed to the development process of international criminal law, establishing the expansion and reinforcement of the values it primarily guards[37]. Therefore, it arguably contributes to the vast and difficult endeavor of safeguarding one of the key elements of a democratic oriented community and institutional framework, namely the justice system.

But eventually, as far as concerns the right to a fair trial and free access to justice, the European Court of Human Rights really has both the opportunity and the responsibility to oversee and protect the individuals' acknowledged rights during the related proceedings. Moreover, it acts as a guardian in what is known as uniform implementation of the national legislation among European countries, in regards of human rights and liberties, largely contributing to the European community's sense of legal protection and achievement.

FINAL CONCLUSIONS

Having in mind the whole purpose of the present work, a democratic governmental system arguably bears the necessary leverage to adjust and to secure its community's needs, in accordance with the international and regional legal framework. Considering the basic principles on which a democratic society has to build its foundation, along with the social, cultural and economic context which occurs as a result of democracy itself, the idea of a thriving community does not seem such a long shot anymore.

The consecrated concept of justice, as previously presented in a democratic sense, is prone to being unavoidably subjected to a lot of pressure factors, as flaws could occur anytime throughout the process. That is why, as conveyed through the specific literature, the failure in taking action by the executive national and international framework towards the corrupted elements of the system may result in jeopardizing the efforts of maintaining democracy and the rule of law[41]. As so, free access to justice along with the right to a fair trial, as legally established

[37] Ploeșteanu, N., Miron, R., Grigorescu, G., Biro, E. (2024). 'Drept internațional penal'. București: Editura Universitară, p. 15. 41 Inter-Parliamentary Union (1998). 'Democracy: Its Principles and Achievement', p. 34.

absolute rights, are key elements which play a monumental role in an individual's endeavor of seeking justice through national courts, a process closely supervised by their international counterparts.

As we have seen, institutions like the European Court of Human Rights play an important role in managing the European countries' way of applying legislation in terms of human rights and liberties, providing both the judicial framework and the European community with vital feedback on the process of effective law application alongside practice directions and crucial case law. As we know, the ECHR case law is nowadays largely used both in national and international court cases, often changing the course of a trial.

Ultimately, democracy itself stands by the people who are governed by it, as it offers an inclusive context in which individuals have the chance to take part not only in the process of policy-making, but also in the election process, giving them the opportunity to build a national framework that they consider as being the right one for the future generations. After all, as is it clearly stated in the *Universal Declaration on Democracy*, "democracy is a universally recognised ideal as well as a goal, which is based on common values shared by peoples throughout the world community irrespective of cultural, political, social and economic differences"[42], an ideal which would undoubtedly contribute to an international pro-social and evolving background.

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FINDING BALANCE: STATE INTERVENTION, DEMOCRATIC VALUES, AND ENVIRONMENTAL LEGACY IN INTERNATIONAL CONTRACTS

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The study approaches the significance of state intervention in major international contracts, from the angle of the most important social values of democracy, such as the rule of law, property, liberty, citizens participation in important decisions within their communities, representativeness and not least the preservation of the natural environment for future generations. Using pro and cons arguments regarding this intervention, comparisons with relevant international case study, for example Roșia Montană, the specific principles of democracy will be identified and the dynamic architecture of these principles will be highlighted, with green energy policy and solutions as a fulcrum and the will of the nations of the world as the lever.

The work appears in an original light in relation to the need to safeguard the principles which constitute a democracy, because it seeks to reflect them in an economic field and we could say, even if progressively, in a humanitarian field.

INTRODUCTION

The economic interests of the world states manifest itself within a peculiar context, and that being to attract investors, especially foreign, to realize environmental exploitations and, in this way, to have an infusion of foreign capital, with the hope to develop local communities where the investments are being realized. Such exploitations suppose investments and a big capacity to realize them, the strategic lines followed being oil exploitations, natural gases, gold and other important ores, green energy. At the base of these exploitations there are strategic contracts concluded between the host state and private companies which realize these investments. The reality from the last few decades highlighted that the concluding and enforcement of the contracts put a light on an **extremely consistent controversy: gold, oil, energy, other resources *versus* environmental and community protection**. This controversy

oversees three categories of lead actors, which could have different interests: host state; private company; the people who are being affected/influenced by the realization of the exploitations. Whenever there doesn't exist a fair balance between general interests of the local community, fundamental human rights[1], on the one hand and the economic interests of the states, respectively the economic interest of the investing company, on the other hand, reality shows that it will lead to a conflict of principles of democracy, amid social tensions. Obviously, the controversy won't be so broad in states that don't have a democratic regime, the presence of foreign investment doesn't exclude it, because of the necessity to protect international relations as a whole. On the contrary, in countries that at least claim to be democratic, it shall be ascertained that the resolution of disputes arising in the context of the conclusion, execution or termination of exploitation contracts between the state and private companies can play an important and decisive role through the affirmation of one or more principles specific to a democracy: the state of law principles, property, representativeness and sovereignty, each one of these with its own reflexes when we are referring to exploitation of natural resources.

Some typologies of disputes arising in the context of resource exploitation with reference to case studie

The Roșia Montană case. Gabriel Resources v. Romania. Withdrawal and cancelling of exploitation licenses.

The case *Gabriel Resources vs. Romania* refers to the dispute between the companies Gabriel Resources, Canadian and British – which intended to develop a mining project for the exploitation of the gold within the Roșia Montană area, and Romania, which blocked this project following the mass protests of the citizens and the administrative decisions. The company initiated an international arbitration proceedings[2] on the basis of a bilateral treaty for

[1] Ploeșteanu N., David I., Roșia Montană. Pros and Cons Exploitation in Terms of Human Rights, Procedia Economics and Finance, 15 (2014), pp. 1704 – 1709.

[2] Regarding the arbitration process involving investment treaties the International Centre for Settlement of Investment Disputes (ICSID) is the leading institution which administers arbitration proceedings between States and foreign investors. For additional details see Convention on the settlement of investment disputes between States and nationals of other States, "ICSID Convention", Washington, 1965; Gary Born, International Arbitration Law and Practice, Wolters Kluwer, 2012, pp. 411-443.

the protection of investments ("BIT"[3]), accusing Romania of indirect expropriation[4] and infringement of its international obligations[5]. On the other hand, Romanian authorities justified the blockage of the project because of its need to protect the environment, cultural heritage and the collective interests of its population. In essence, the juridical typology of this cause consisted in two main aspects. The first of sorts is that the investor allocated sums of money which consisted of 650 million USD for the realization of the project, ***in the quality of shareholder*** with a percentage of 80,69% in the firm Roşia Montană Gold Corporation S.A., ***alongside a Romanian company***, which held the rest of the percentage from the companies shareholding. In this way, it's sustained that the economical profit for the Romanian state would've been hundreds of millions of dollars, if the mining exploitation would've been realized and, also, it could've developed the region, both from the economical aspect, but the cultural as well, including the gain of a way higher level of protection for the environment, given that the project involved both exploitation and investment to develop the area. The second of sorts, critical, is that the project didn't get realized, even though a big part of the development investments were already made, due to the ***withdrawal of operating licenses*** granted by the administrative authorities in Romania or the ***annulment of these licenses*** by Romanian courts.

The Chevron and Texpet v. Ecuador case. Obligation to pay compensation for pollution.

The *Chevron and Texpet vs. Ecuador* case refers to a dispute related to pollution caused by the company Texaco (Chevron acquisitioned the company Texpet, based on exploitation of oil, in the year 2001) in the Amazonian region of Ecuador, between the years 1964 and 1992[6]. Local communities blamed the company for the destruction of the environment and affecting their health, obtaining an Ecuadorean court ruling forcing Chevron to pay damages of 9.5 billion dollars. Chevron challenged the decision, claiming that the trial in Ecuador was corrupt and politically influenced. The company appealed to an international arbitration tribunal, claiming

[3] Bilateral investment treaties (BITs) are international agreements between two countries establishing the terms and conditions for private investment in each other's territory by nationals and companies of one country to the other country, Legal Information Institute, Bilateral Investment Treaties, Cornell Law School, https://www.law.cornell.edu/wex/bilateral_investment_treaty.

[4] Expropriation is the governmental seizure of property or a change to existing private property rights, usually for the benefit of the public. (Legal Information Institute, Cornell Law School https://www.law.cornell.edu/wex/expropriation) .

[5] Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania, ICSID Case No. ARB/15/31, Award, 8 March 2024, pp. 104-105.

[6] Chevron Corporation and Texaco Petroleum Corporation v. Ecuador (II), PCA Case No. 2009-23.

that Ecuador had violated investment treaties and their right to a fair trial. The legal interpretation of the factual situation characterizing this case highlights some aspects. A first aspect is that the exploitation took place over several decades, without any "environmental" culprits, until the investment company took over the TexPet mining company. A second issue is that the judgement of an Ecuadorian court ordering Chevron to pay Chevron substantial damages was the result of a denial of justice[7], which is a violation of a customary rule of international law that denial of justice is prohibited[8].

The Marion Unglaube and Reinhard Unglaube *v.* Republic of Costa Rica case. Operating ban.

Marion Unglaube and Costa Rica case is based on a dispute on the rights of foreign investors in the context of environmental protection[9]. Marion Unglaube, German citizen, ***has acquired terrains*** in Costa Rica planning to develop them. Later, the government of Costa Rica extended National Wildlife Reserve "Baulas de Guanacaste", a protected zone dedicated to the preservation of marine turtles.

This extension meant that the investor's land was included in ***the conservation area***, which almost completely restricted his ownership. The company could neither develop the land nor sell it. Marian Unglaube considered the extension to be tantamount to ***indirect expropriation*** and accused Costa Rica of failing to provide him with adequate compensation under the Germany-Costa Rica BIT[10].

The Cavalum SGPS, S.A. *v.* Kingdom of Spain case. End of subsidies.

The *Cavalum SGPS S.A. v. Kingdom of Spain case* is focused on Spain's energy policy and the impact it had on foreign investors in the renewable energy sector[11]. Cavalum SGPS, a Portuguese company, has invested in renewable energy projects, relying on a generous subsidy scheme set up by the Spanish government to encourage the development of solar and wind

[7] The principle of "access to justice" is a principle enshrined in the systems of law throughout the world, in which any party is entitled to an equal access to the justice system. Within this case this principle of law was violated. For more information look here: https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ .
[8] Jan Paulsson, Denial of Justice in International Law, Cambridge University Press, 2005, p. 1
[9] Reinhard Unglaube v. Republic of Costa Rica, ICSID Case No. ARB/09/20.
[10] Article 4, Germany-Costa Rica BIT, 1994.
[11] Cavalum SGPS, S.A. v. Kingdom of Spain, ICSID Case No. ARB/15/34.

energy. These subsidies included guaranteed tariffs and other measures to ensure a return on investment in the sector.

Subsequently, following the 2008 economic crisis, Spain decided to gradually reduce these subsidies in order to reduce its budget deficit. The measures taken by the government included retroactive changes to the support scheme, the abolition of certain financial incentives and the imposition of additional taxes on renewable energy producers. Cavalum SGPS claimed that these changes have seriously affected the economic viability of its investments in violation of the Energy Charter Treaty (ECT), which protects foreign investors in the energy sector.

The company initiated arbitration against Spain, supporting that the modifications brought on by the government constituted an infringement on the state's obligation to provide a stable and predictable investment environment, according to the ECT.

Interference of rule of law principles

Rule of law principle

The applicability of the "rule of law" principle, with reference to the Roșia Montană case, can be analyzed through the prism of how this principle influences the decision-making process. The Romanian state had the obligation to respect internal and international legislation on the protection of investments. According to professor Tudor Drăganu, "to be in the presence of a rule of law state it is necessary to have a legal system guided by the constant concern to protect the integrity of the human personality and to create optimal conditions for its development."[12]

On the other hand, taking into consideration the solution pronounced by ICSID[13] in the case of Roșia Montană, the conclusion must be that the defendant must respect the rules based on the recognition and guarantee of human rights and freedoms, “in the most authentic liberal spirit and a broad democracy”. Arbitrators appreciated the blocking of the Roșia Montană project was a just action, bearing in mind the regulations regarding the environment and the protection of cultural heritage. Plus, the Tribunal considered that the measures adopted by

[12] Tudor Drăganu, *Drept Constituțional și instituții politice. Tratat elementar, vol. I,* publisher Lumina Lex, București, 2000, p. 289.
[13] ICSID is the International Center for Settlement of Investment Disputes. It is the main center used to settle disputes regarding investment treaties.

Romania were in conformity with international norms and they did not constitute an illegal expropriation of the investments Gabriel Resources made.

In *Chevron v. Ecuador*, the Ecuadorian courts were politically influenced, which violates the foundation of the rule of law, which requires a fair and impartial trial, "errors or even abuses may occur in the dispensing of justice, and the citizen would be deprived of a genuine remedy[14]. Both parties should benefit from a transparent trial, and any lack of impartiality is contrary to the principle of free access to justice. As for the judiciary, in the rule of law it is vested with the immense power to pronounce judgments which are presumed to express the truth and, after all appeals have been exhausted, become irrevocable[15]. Chevron appealed to international justice through arbitration under the BIT between the United States and Ecuador. This arbitration has been seen as a means by which foreign investors can bypass national courts and obtain favorable solutions in a more favorable international framework. The decision obtained by Chevron underlined the power of international tribunals to intervene in foreign investment disputes, but raised questions about the balance between the rights of investors and access to justice for local citizens. **The principle of the "rule of law" is therefore also found in this legal dispute and highlights the idea that the rule of law is organized on the principle of separation of powers in the state** and "seeks by its laws to promote the rights and freedoms inherent in human nature, and ensures strict observance of its rules by all its organs in all their activities"[16].

The application of the "rule of law" principle aims to protect fundamental rights. In the case of *Marian Unglaube v. Costa Rica*, the Arbitral Tribunal assessed whether Costa Rica had complied with its domestic legal framework and its BIT obligations. **The "rule of law" principle requires the impartial and predictable application of the law, including in relation to the protection of foreign companies' investments. Moreover, any expropriation must be carried out lawfully, for a well-defined purpose and with fair compensation**. The Arbitral Tribunal thus investigated whether the expansion of the national park was necessary from an environmental point of view and whether adequate compensation had been provided to the investor for the losses incurred. The tribunal therefore ruled that Costa Rica had protected the environment, accompanied by adequate measures to compensate the affected investors. The

[14] Tudor Drăganu, *Drept Constituțional și instituții politice. Tratat elementar, vol. I*, editura Lumina Lex, București, 2000, p. 290.
[15] *Ibidem.*
[16] *Ibid.*

decision was a reaffirmation **of the "rule of law" principle, which demonstrated that environmental initiatives cannot subordinate fundamental property rights without respecting legal obligations**.

Cavalaum SGPS v. Spain alleged a breach of the provisions of the Energy Charter Treaty (ECT), in particular **the principle of the protection of legitimate expectations and the obligation to ensure fair and equitable treatment (FET)[17].** The investor claimed that the legislative changes significantly reduced the profitability of investments in renewable energy projects and breached the guarantees originally offered by Spain. The application of the "rule of law" principle in this case is expressed through the protection of investments. The Court emphasized that a State must ensure the stability of the legal framework in which it operates, in particular for foreign investors who rely on that framework to make financial decisions of great importance. The Tribunal also reaffirmed that states must comply with their obligations under international treaties, including investment guarantees. The ICSID tribunal ruled that Spain violated investors' legitimate expectations because its original energy subsidy policies were changed retroactively, creating regulatory instability. Although Spain argued that the adjustments were necessary to balance economic costs, the tribunal awarded damages to investors affected by the changes.

In conclusion, **the principle of the rule of law realizes a concrete mechanism for maintaining fairness, legality and transparency, constituting a fundamental pillar of the legal system, guaranteeing the fair resolution of disputes through the principle of legality, the separation of powers in the state, the guarantee of fundamental rights and freedoms and the constitutionality of laws.**

Property principle – a fundament of democracy

The principle of property in a democracy refers to the fundamental right enjoyed by all citizens of a state. More specifically, the right to private property, which is enshrined in Article 44 of the Romanian Constitution itself. However, this principle refers not only to an individual's

[17] This is a fundamental investor protection obligation found in BIT's that looks to make the host states behave in a manner that is: stable and predictable, non-discriminatory, transparent and in good faith. For example, in the fictitious investment case of the Equatorianian state and the company GreenHydro, the FET clause makes it so the state cannot terminate the contract for convenience as it would not be predictable. For more information, see: https://jusmundi.com/en/document/publication/en-fair-and-equitable-treatment.

private property, but also to public property and the way in which it is regulated (it is regulated by Article 136).

In the Constitution of Romania, more precisely in Article 44, it is not specified to whom the right to property is guaranteed, thus there is a possibility of confusion as to whether this right applies to the State and to citizens. Clarification of this issue is simple: this article is in the title that discusses the "*Fundamental rights, freedoms and duties*"[18] of citizens, so it refers to private and not public property. Besides, the state cannot provide its own guarantees[19].

This principle has the idea of implementing a society of equal rights, where everyone can own property and participate directly in the economy. Thus**, this principle ensures the sovereignty of the people to decide for themselves through their economic aspect**. Because citizens of a democratic state can influence the economy by selling and buying property. This aspect is also closely related to the principle of liberty, as people have the free choice to exercise this right as they wish, with few regulations provided by the law and the Constitution.

Private property, as the term implies, is property owned by a physical or legal person. These people have the freedom to decide for themselves about the property they own, subject to certain limitations laid down by law. In the Romanian Constitution, private property is inviolable. That is to say, once it has been acquired on legal grounds, the law cannot affect the substance of the property and can only limit in a proportional manner the exercise of this right. And the new law cannot affect the substance of the property right that has already been acquired by legal means (e.g. if owner X built a house with a balcony and a law is subsequently passed prohibiting houses with balconies, owner X will not be penalized for this, because at the time of construction he had complied with the law)[20].

Public property refers to property that benefits the state and administrative-territorial units[21]. It is inalienable, but can be rented, leased, granted in concession or "given to autonomous regions or public institutions"[22] or can be given free of charge for public utility institutions. Because of these provisions, the question has been raised whether this provision

[18] *Constitution of Romania 1991* (revised in 2003), title II.
[19] Tudor Drăganu, *Drept Constituțional și instituții politice. Tratat elementar, vol. I*, publisher Lumina Lex, București, 2000, p. 166.
[20] Tudor Drăganu, Drept Constituțional și instituții politice. Tratat elementar, vol. I, publisher Lumina Lex, București, 2000, p. 167.
[21] Constitution of Romania 1991 (revised in 2003), art 136 (1).
[22] Constitution of Romania 1991 (revised in 2003), art 136 (4).

will not cause an impediment in the privatization of the economy, but in the economic life a state will need to alienate some public property in order to carry out a good economic enterprise. This principle provides a stability of liberty and equality that democracy guarantees by the simple fact that it gives people in a democratic society the opportunity to contribute directly to the economy on an equal basis and the freedom to choose for themselves the goods they want, which is not present in all forms of government. This principle is an important pillar in the realization of democracy and the exercise of sovereignty, both economically and socially.

In the Roșia Montană case, the principle of ownership manifests itself in the idea of private and public ownership. Respectively, it was a question of expropriation and national patrimony. Gabriel Resources argued that the Romanian state had expropriated, and Romania counters this by arguing that Roșia Montană is state patrimony. Gabriel Resources argued that the expropriation took place by invalidating the necessary documents to use the mine and by including the area in the UNESCO World Heritage. The company invested 760 million USD and claimed that their investment was invalidated by Romania. On the other hand, Romania argued that the protection of the heritage was in the **common interest of the country**[23], as the area is a historical area and the mining procedure would have polluted the area (cyanide procedure). This clearly illustrates the principle of property in a democracy, where individual rights can be restricted for the good of the interests of society.

The arbitral tribunal's decision was in Romania's favor, asserting that Romania had not violated any international treaty[24]. Thus, the tribunal concluded that Romania only protected its interests and did not violate the right of ownership in a democracy by restricting the company's individual rights[25].

In the *Chevron case,* the principle of property is again manifested by expropriation. Chevron has argued that the Ecuadorian state has carried out an indirect expropriation through legal inactions. It is also manifested by the investor's rights and the fact that Ecuador has violated these rights by delaying the settlement of the dispute (thus violating the BIT). Specifically, the company sought to defend its rights acquired as a result of the properties owned

[23] This relates to the balancing of interests principle. This principle prevents excessive investor protection. For example, when the public deems that a project is no longer suitable, the investor state may be entitled to terminate such said project because the public interest outweighs the private parties interest.
[24] *Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania*, ICSID Case No. ARB/15/31, Award, 8 March 2024, p. 375.
[25] *Ibidem.*

and investments made in the territory. In the end, the arbitral decision was in the company's favor, and it was awarded damages of USD 77 million. The decision was also used in the previous dispute[26].

In the *Costa Rica case*, through various restrictions, Costa Rica considered that it was defending its property rights by not allowing the company to develop on the land[27]. The State considered the area to be ecologically sensitive and a global hotspot, and found that the works to be carried out would affect the biodiversity of the area[28]. In this context, the State respected the property principle by applying equality between private and public interests. In particular, the state had a responsibility to maintain a balance between the use of land for development and the conservation of natural resources.

The arbitral decision was in favor of the State, as the arbitrators found that Costa Rica was right in protecting the area and that it had not violated the BIT. However, the State had to provide compensation to the company because it lost money due to the restrictions imposed on land development[29].

In *Cavalum SGPS S.A. v. Kingdom of Spain*, in the context of the principle of respect for property, we have the confrontation between public property and that of private property. Spain took the view that the law in question was enacted in the public interest and should therefore be applied, whereas SGPS argued that it had been implemented to their detriment and without proper consultation. They argued that the company had been discriminated by this law and that this act violated the ECT[30]. SGPS thus argued that Spain had carried out an indirect expropriation by enacting this legislation, affecting their property rights.

The arbitral decision in this case was in favor of SGPS. The arbitrators concluded that Spain had violated the European Energy Treaty (ECT), and therefore SGPS will receive compensation for the losses suffered due to the legislative changes imposed by the Spanish State.

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[26] *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador (II)*, PCA Case No. 2009-23, Decision of the Dutch Supreme Court nr. 22/03577,17 november 2023, p. 2.
[27] *David R. Aven and Others v. Republic of Costa Rica*, ICSID Case No. UNCT/15/3, Notice of Arbitration, 14 January 2014, pp. 9-16.
[28] *Ibidem*, *Respondents Response to the Notice of Arbitration*, 24 February 2014, pp. 2-4.
[29] *Ibid.*, *Award of the Tribunal (English)*, 18 September 2018, p. 254.
[30] The Energy Charter Treaty in Spain was made to protect foreign investors from unfair treatment, expropriation and discriminatory policies. For more information look here: https://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/ .

Representativeness Principle

The principle of representativeness is a fundamental element of the democratic state, which allows the election of a representative body by the general will of the people[31], and this principle is enshrined in the Romanian Constitution in Article 2 which states that national sovereignty belongs to the Romanian people, exercised through representative bodies, and Article 61 which states that "Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country". Thus, in Romania, the principle of representativeness is manifested by the general will of the people to exercise their national sovereignty by electing the Parliament[32], the representative body.

According to Article 6 of the French Declaration of the Rights of Man and the Citizen of 1789, "The law is the expression of the general will. All citizens have the right to participate personally or through representatives in its formation". However, two major difficulties arise in the wording of this article:

1) It is impossible for the right to participate in the formation of the general will to be recognized absolutely to all citizens because of certain criteria laid down by different states such as the fact that not all citizens have the voting age, that is the age of maturity, depending on the state, at 18, 21, 23 years etc... However, this condition is reasonable, because, like other rights, the right to vote must be exercised by individuals with the necessary discernment. On the other hand, it is indisputable that measures which would exclude women, citizens of a certain race or nationality, citizens of certain professions etc. from the right to vote would be contrary to the idea of the rule of law, since in these ways restrictions would be introduced which would run counter to the idea that in order to prevent the adoption of measures oppressive to certain social categories, the law must be the expression of the general will[33].

2) The second major difficulty encountered in the practical expression of the general will arises as a consequence of the fact that in both direct and representative democracies, the law is often adopted only by a majority of the votes of the legislatures. If this majority acts

[31] Pinzani, Alessandro, *Representative Democracy. Principles and Genealogy*, Chicago University Press, Chicago, 2007, p. 271.
[32] Tudor Drăganu, *Drept Constituțional și instituții politice. Tratat elementar, vol. II*, publisher Lumina Lex, București, 2000, p. 18.
[33] Tudor Drăganu, *Introducere în teoria și practica statului de drept*, editura Dacia, Cluj Napoca, 1992, p. 22.

tyrannically, legislating in disregard of the basic rights of the minority, the embodiment of the idea of the rule of law is invalid[34].

However, in a representative democracy the risk that a law does not express the will of the majority is greater than in a direct democracy, because when voting on a legislative measure, the member of the parliament may be influenced by personal interests or the interests of a small group of individuals, without taking into account the will of the majority. It is precisely for this reason that in some constitutions, including the Constitution of Romania, representative democracy is given a means of appeal designed to make it possible in certain cases for voters to participate directly in legislative activity. The consultation of the nation is not done by gathering it in one place, but by calling them to the ballot box, where they are instructed to express their opinion on various issues, and following these decisions taken by the holders of national sovereignty, the representatives elected by them after exercising the right to vote, must have an immediate reaction in relation to the general will of the people[35].

In the case of *Gabriel Resources v. Romania*, the Canadian company Gabriel Resources initiated an arbitration claim against Romania, following the closure of the Roșia Montană mining project. The company sought damages of billions of dollars to cover all their expenses for the Roșia Montană project, as well as to cover all expenses associated with the arbitration process, because the Romanian state had unjustifiably blocked the project in violation of investment treaty provisions. In this situation, the Romanian state has blocked the project on the basis of environmental and national heritage protection. The citizens also opposed in large numbers the start of this project by the Canadian company Gabriel Resources, and the Romanian state, in its social interest, took into consideration the protection of public opinion, national heritage and the public good, and this decision of the Romanian state represents an action in the interest of the principle of representativeness[36]. This case should be regarded as an important action of the state in making a favorable decision on social interests, because the Romanian state refused immediate economic gains for the welfare of citizens, protection of the environment and national heritage.

[34] Haxhiu, Sadik & Alidemaj, *Representative Democracy its Meaning and Basic Principles*,Volume 17, publisher Acta Universitatis Danubius: Juridica, Galati, 2021, pp. 76-91.
[35] *Ibid.*
[36] *Ibid*, p. 76, para. 1.

In *Chevron vs Ecuador*, the factual situation concerns environmental protection. Between 1972 and 1993, the American oil company Texaco dumped more than 113,562,300,000 liters of toxic waste and crude oil, the unprocessed form of oil extracted from the ground, into the Amazon rainforest in northeastern Ecuador. The case is considered among the world's worst environmental disasters. The forest was contaminated with waste over a 4400 square kilometer radius, rivers were blackened, and local communities suffered in terms of their health and well-being, with radical increases in cancer rates and birth disabilities. So, in 1993, legal action was brought by 30,000 indigenous people and small-scale farmers in the Amazon rainforest affected by the company's irresponsibility. In 2001, Chevron bought Texaco, thus taking responsibility for the disaster. An Ecuadorean court ruled in 2011, after an 18-year legal battle, that Chevron was to blame for the pollution in the Lago Agrio region and ordered the company to pay $18.2 billion in compensation. The decision was upheld by Ecuador's High Court and then by the Constitutional Court in 2018. To this day, the company has not paid the compensation. In 2009, the Chevron company launched an ISDS (Investor-state dispute settlement) lawsuit. They were not only demanding compensation, but also asking the court to intervene in the Ecuadorian court system. They asked to be protected by the 1993 decision and then to have the 2011 decision overturned. Chevron claims that in 1998 they had a legal agreement with the Ecuadorean government, and later that the 2011 verdict was based on fraud and corruption.[37] Indeed, the Ecuadorean government signed an agreement with Chevron (at the time Texaco) in 1998, releasing the company from any responsibility for the disaster. The agreement stipulated that the company was exempt from any liability to the government, and later it was explicitly noted that any accusations from third parties, such as the Amazonian residents, were valid and not part of the legal basis of the contract. What is more, in the company's attempt to solve the environmental problems, they did not clean up the contaminated areas, but covered the oil traces with soil. In this case, the principle of representativeness is first and foremost that the national authorities must represent the interests of the local communities that have been affected by the Texaco disaster. Indigenous groups and affected farmers in the area have been demanding compensation from the company, but it is quite clear that most of them do not have the resources to hire lawyers, so the competent authorities must protect their interests in the best way possible.

[37] The decision made in 2011 in the arbitral proceedings ordered Ecuador to pay up to 96.354.368 US dollars (UNCITRAL Chevron-Texaco v. Ecuador Final Award, p. 142).

In the case of *Marion Unglaube v. Costa Rica*[38], the state of facts concerns certain properties owned by the complainants, either individually or jointly, located in the vicinity of Playa Grande, in the municipality of Santa Cruz, a district of Cabo Velas, Guanacaste province, Costa Rica. Playa Grande is a picturesque beach on the Pacific coast of Costa Rica. It is also an important place where female Leatherback Turtles lay their eggs. Given the endangered status of these large turtles and Costa Rica's fame as an ecotourism destination, the Costa Rican government has taken measures to protect this nesting habitat[39]. As early as 1991, Costa Rica announced its intention to create a national park in this area known as Las Baulas Marine National Park (hereafter referred to as the "Park") and pursued this objective through a succession of legal, administrative and court-ordered measures, the stated purpose of which was to bring the Park into existence. The Playa Grande forms the western perimeter of a narrow peninsula, which was built with the full consent of the government authorities, comprises a few houses, a few hotels and some commercial premises. None of the buildings is more than two stories high. On the opposite perimeter of the island is a mangrove swamp and the Tamarindo estuary, which flows into the ocean just south of Playa Grande and north of Tamarindo and its beaches. The area covers about 63 hectares. The litigation involves a long history of actions. The plaintiffs, Marion and Reinhard Unglaube, and the defendant, the Republic of Costa Rica, appear to be in agreement, at least in principle, on the merits of protecting the turtle area and on the need for environmentally sensitive development[40].

CONCLUSIONS

The principle of the rule of law is a fundamental pillar of democracy, guaranteeing fairness, legality and transparency in the resolution of disputes.

The principle of property in a democracy is a fundamental element of the sovereignty of the people, ensuring a balance between private rights and public interests, as demonstrated by

[38] Within this case there was a BIT regarding the Encouragement and Reciprocal Protection of Investment between the state of Germany and Costa Rica. (Marion Unglaube and Reinhard Unglaube v. Republic of Costa Rica, ICSID Case No. ARB/09/20, p. 1).
[39] This action was brought forth because of the breaching of articles 2(1), 4(1), 4(2), 7(1) from the Germany - Costa Rica BIT. The articles were regarding the expropriation done to the Claimant and the investment protection of foreign investors.
[40] Marion Unglaube and Reinhard Unglaube v. Republic of Costa Rica, ICSID Case No. ARB/09/20, p. 10, para. 39.

various international cases, which emphasize the need to respect international laws and treaties to guarantee economic and social stability in a democratic framework.

The principle of representativeness is an essential foundation of democracy, guaranteeing the exercise of national sovereignty through the general will of the people, but the case study analysis demonstrates the challenges and limitations of this principle in reconciling collective interests with individual rights, especially in the context of environmental protection, national heritage and economic regulation.

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4. David R. Aven and Others v. Republic of Costa Rica, ICSID Case No. UNCT/15/3,14 January 2014, https://www.italaw.com/cases/2959 and https://www.italaw.com/cases/251.
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FORTIFYING DEMOCRACY IN TODAY'S WORLD

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Democracy originates from Greece, where citizens took part themselves, directly, in decision-making processes, thus birthing democracy in its early form. In democratic states, power is exercised by the people, and it is practised directly, or by elected representatives. Safeguarding its principles is achieved by the actions of the people and governmental structures. My paper highlights the aspects of constitutionalism, separation of powers, and the importance of opposition parties in the political system. I also stress principles such as protection of human rights, fair and free elections, and transparency. The aforementioned are all key fundamentals of democracy, and without these, it would cease to exist. Promoting democracy on a global scale is crucial. It promotes peace, the protection of human rights, and fairness altogether.

WHAT IS DEMOCRACY?

Democracy is a form of governance, a system in which power is exercised by the people. It can be divided into two forms: direct democracy and representative democracy. If we want to talk about the origin of democracy, we will have to go back all the way to the ancient Greek period, where it was exercised directly by citizens, who would discuss and debate current issues. That is what we call direct democracy. Furthermore, in a representative democratic system, as we can also tell from its name, power is exercised by elected representatives. They are the "voice of the people".

One of democracy's core principles is the Rule of Law. The Rule of Law is a durable system of laws, in which all persons, institutions, and entities are equal in the face of law, and they are all to abide by laws that are publicly promulgated.

There is no democracy without political pluralism. Open, free, and nondiscriminatory participation by the people is a key fundamental.

How do we fortify democracy, and safeguard its principles? First off, it is important to note that democratic governance is the beacon of hope in order to achieve world peace, human

dignity, and the protection of human rights altogether. Promoting and protecting democracy should be a common goal, globally.

DEMOCRATIC PRINCIPLES

RULE OF LAW

As mentioned earlier, the Rule of Law is a system of laws, in which both government and citizens are subject to the law. It has been around for centuries, as Aristotle, an ancient philosopher wrote: "It is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws.". A commonly used definition would be "no-one is above the law". It is also a principle of equality, as it fosters fairness, and prevents discrimination, being a framework for a fair and democratic society. It holds those in power accountable and prevents them from exceeding their authority.

FREE AND FAIR ELECTIONS

As we all know, the power is exercised by the people through elected representatives. The concept of free and fair elections is fundamental to democratic governance, as it empowers citizens to choose their leaders freely, hold them accountable for their actions, and make sure that they act based on the will of the people. These elections are periodic, and the people have the power to hold those who were elected accountable by re-electing or removing them from power, based on their satisfaction. [1]

POLITICAL PLURALISM

Political pluralism is essential in a democratic system. It recognizes the richness of diverse perspectives and facilitates the idea of freedom of expression. The people can have their voices heard without the fear of reprisal or censorship. It also births a competitive political environment, where different ideas and ideologies can be presented. It celebrates diversity. Furthermore, it is important to mention that it aids in the protection of minority rights and their

[1] Cherif Bassiouni. (1998) Democracy: Its Principles and Achievement. Geneva, Switzerland: The InterParliamentary Union.

representation. Without political pluralism, these may be overshadowed by the majority's preferences, leaving minorities without the representation that they have the right to.

CONSTITUTIONALISM

DEFINING CONSTITUTIONALISM

The boundaries and limits of political power are defined and organized in a constitution, as a system of laws. Every state that has a constitution is a constitutional state. By power, I refer to the three basic government powers: execute, legislative, and judicial power. Democracy, the separation of powers, and state sovereignty are aspects of constitutionalism. [3]

WHY IS IT IMPORTANT FOR DEMOCRACY?

Constitutionalism promotes the Rule of Law. As mentioned earlier, the Rule of Law is vital in a democratic state. It ensures legal fairness and encourages the citizens to comply with the legal norms and abide to them.

Constitutionalism is the backbone of democracy. It strengthens it, encouraging citizens to actively participate in the state's life, holding authorities and the government accountable. It brings awareness to their rights and responsibilities in their society.

Given the aforementioned, it is a key instrument in safeguarding democratic values and principles, as it as limits governmental power and protects individual rights and liberties.

PROTECTION OF HUMAN RIGHTS

The essential elements and basics of human life and existence are all protected by human rights. Every member of the human race, irrespective of gender, age, ethnicity, or political or religious standpoint, is entitled to human rights. By protecting these rights, we uphold principles and elements that are vital for democracy, such as equality, freedom[4], and justice.

[2] Nicholas William Barber. (2018) *The principles of constitutionalism.* Oxford: Oxford University Press pp. 1-19.
[3] Will Waluchow. (2001) *Constitutionalism. Stanford Encyclopedia of Philosophy*, p. 1.
[4] *Ibidem.*

As we know, democracy is highly based on the participation of the people. This is because of the relation between human rights and democracy itself.

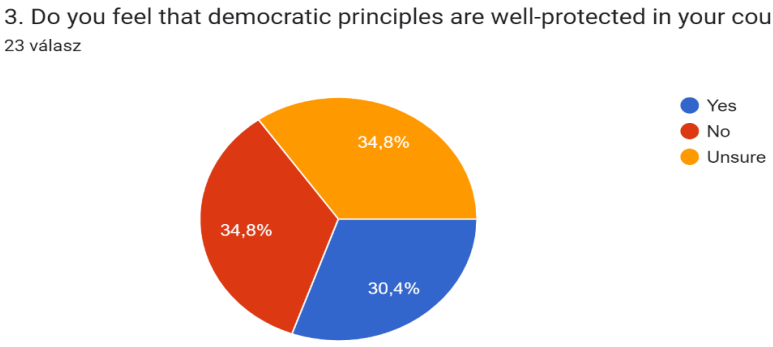
The right to participate and associate are the rights which make democracy possible. When our rights are protected, we can freely participate in the democratic process, and express our ideas.

Also, democracy was built on the idea of equality. By protecting our human rights, we ensure that each individual is valued, and can benefit from their basic rights.

GLOBAL IMPACT

What global impact does democracy have? Crucial. It is the lifeblood of stability and peace. It promotes human rights and liberties.

Democracies are the backbone of global peace, as they tend to have more peaceful relations with each other. Peaceful resolution of international conflicts prevents the disruption of peace and are instruments of de-escalation. However, on the other hand, it also aids in the cooperation and collaboration in order to solve global issues, such as climate change, economic development, or public health. Individual freedom, liberty, and dignity is prioritized, providing a model for non-democratic societies or states, which can improve and advance.



CORRUPTION

The base of democracy consists of transparency, accountability, and the rule of law. One of the biggest dangers that democracy could ever face would be corruption. Corruption goes against the core values of democracy. In order to protect democracy from corruption,

systemic reforms, and civic engagement is a must. But what does that mean? First, we should start off by strenghtening our democratic institutions. That includes independent judiciaries, functioning anti-corruption agencies, and transparency. Civic engagement: free press and active civil organizations can fight off corruption, expose it, and advocate for reform.

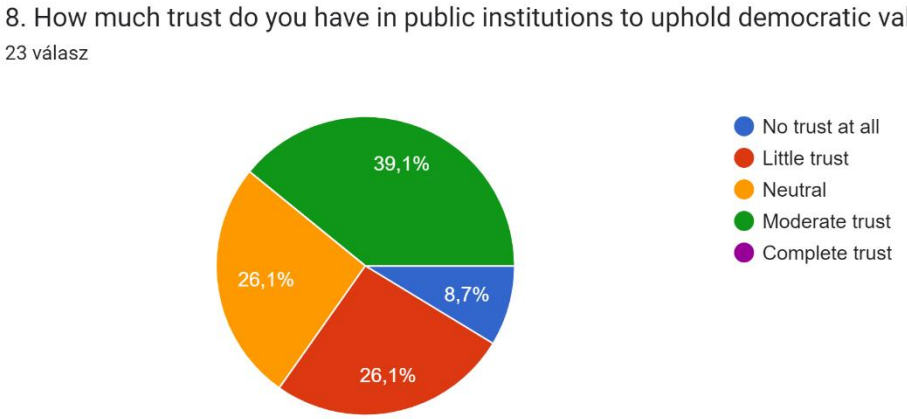
HOW DO STUDENTS FEEL ABOUT THE CURRENT STATE OF DEMOCRACY?

In order to gain more insight on the public opinion on democracy, I conducted a survey among college and university students. In total, 23 students completed the survey and shared their opinions on democracy.

As you can see, none of the participants of my survey are completely satisfied with the current state of democracy in their country. This raises serious concerns because our youth are the backbone of our country.

Furthermore, I also discovered that 34,8% of the participants do not feel that democratic principles are well-protected in their country. This is an erosion of trust and may lead to serious consequences. It undermines both the stability and legitimacy of the democratic system. The citizens of the country should have faith in their government, and feel that it represents their interests.

In addition, none of the participants seem to have complete trust in public institutions



to uphold democratic values. Public institutions shall thrive for more civic engagement, and to fulfill the citizens' needs.

CONCLUSION

Democracy is essential in order to achieve global peace and global well-being. It is our job to make sure that its principles are safeguarded through active participation and engagement, as citizens. The Rule of Law, political pluralism, protection of human rights, and free and fair elections are all instruments in the fortification of democracy. We must hold our leaders and government accountable, and ensure that they all act on the will and needs of the people.

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PROTECTING FREE SPEECH ONLINE - CHALLENGING THE *STATUS QUO*

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Freedom of expression, a fundamental right regulated at the international level in various normative acts and at the national level in the constitutions of many states, as follows, enshrines the fact that everyone has the right to express his or her opinion publicly and to have it respected. Against the backdrop of the development of technology and the emergence of social networks, this right raises numerous problems in terms of guaranteeing it in cyberspace. The factors triggering this situation are: the lack of regulation of the online space, the devolution of powers to internet providers as regards the scope of fundamental rights and the involvement of artificial intelligence in identifying abuses of internet law. In particular, conflicts arise when freedom of expression clashes with other values protected by law, and it is not clear which of the two values prevails.

INTRODUCTION

The need to protect fundamental human rights is paramount in today's democratic society, especially as history has shown that man is capable of going beyond all ethical limits in order to satisfy his own, often unorthodox, interests, acting purely naturalistically against his fellow man. The fact that we now have numerous documents and mechanisms aimed at guaranteeing fundamental rights and freedoms, including at global level, is due to the aspirations for freedom and equality most visibly expressed in the English, American and French declarations[1]. However, having good legislative instruments does not always equate to guaranteeing fundamental rights and freedoms, which is their *de jure* objective, and in practice there are enough examples to cast doubt on their value.

[1] Aurora Ciucă, *International Protection of Human Rights*, Axis Foundation, 2009, p. 20-21.

Freedom of expression, a fundamental right regulated at international level in the Universal Declaration of Human Rights 1948 (art. 19), in the European Convention on Human Rights (art. 10), in the Charter of Fundamental Rights of the European Union (art. 11), but also at national level in the constitutions of many states, is one of the rights that raises problems in application, undermining the authority of the above-mentioned documents, which state that everyone has the right to freedom of opinion and expression[2]. The importance of this right also stems from the fact that it is closely linked to the guarantee of other rights, such as the right to freedom of thought, conscience and religion and the right to freedom of assembly and association. Thus, to violate freedom of expression is implicitly to violate other rights inherent to the human being. The exercise of freedom of expression manifests itself principally through the promotion of personal values and beliefs in someone or something, appropriated as a result of freedom of conscience[3], publicly and in any way, without fear of possible coercion by the state.

Expression implies communication. Today, communication can take many forms, some of which were not foreseen at the time of drafting human rights legislation. In today's reality characterized by the continuous development of technology, the internet is one of the most widely used methods of transmitting information. Although the mechanisms intended to ensure respect for human rights were designed for the physical environment, we believe *a fortiori* that all fundamental human rights and freedoms must be respected in the virtual environment just as in the physical environment. The subject of freedom of expression on the Internet has been and continues to be a concern of several international institutions, with *soft law* measures being one way of responding to the new challenges raised in this area[4]. In the following, we will address some issues concerning freedom of expression *in concreto* on the internet.

[2] Ștefan Deaconu, *Constitutional Law*, C.H. Beck, Bucharest, 2020, p.243.
[3] Alexandru Leordean, "VALUES AND FREEDOM OF CONSCIENCE", in *Journal of Freedom of Conscience*, no. 1/2018, p. 126-132, article available at https://www.ceeol.com/search/article-detail?id=717524.
[4] Carmen Moldovan, "The application of the principle of freedom of expression on the internet - between the absolute character and the justification of the need to limit it", in Analele Științifice ale Universității Alexandru Ioan Cuza din Iași, series Științe Juridice, no. 2/2017, p. 70-71, article available at https://www.ceeol.com/search/article-detail?id=595252.

A. The limits of freedom of expression

Freedom of expression is not an absolute right, in certain situations, in order to protect the general *democratic* interest of society, it is necessary to suffer some restrictions. In view of the fundamental nature of this right, we consider that it cannot be limited except in the cases strictly and limitatively provided for by law. This is in accordance with Article 10 para. 2 of the ECHR which provides that "the exercise of these freedoms (...) may be subject to such formalities, conditions, restrictions or penalties *as are prescribed by law*". The article goes on to set out the grounds on which laws restricting freedom of expression may be enacted, namely when they are enacted "for national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of public order, the protection of health or morals, the protection of the reputation or rights of others, for preventing the disclosure of confidential information or for safeguarding the authority and impartiality of the judiciary" and always in the interests of democracy. We consider that this list is exclusive, since freedom of expression has acquired the status of a fundamental right precisely because of its unquestionable importance in social relations, thus ruling out the possibility of leaving uncertain the hypotheses in which any limitation may be imposed. Summarizing the content of Article 10 para. 2 ECHR, the limitation of freedom of expression may be triggered in the presence of a conflict between it and other legal values, which is particularly important in what follows.

What makes Article 10 of the ECHR difficult to interpret and therefore difficult to apply is the lack of a hierarchy of legal values, which are generally of equal status. In other words, in the event of a conflict between two legal values, which will prevail over the other? Moreover, is such an outcome justified or not? The Convention does not lay down clear standards against which it can be ascertained that freedom of expression does not operate as of right when in conflict with other values. The legal framework is far too general and the court is therefore entrusted with making a simple value judgment on the *specific* case. Thus, in the absence of an objective and comprehensive view by the court of the existing conflict of values, the risk of arbitrariness increases considerably.[5]

[5] Viorel Țuțui, "Freedom of expression and its limits in the context of the conflict between legal values" in Analele Științifice ale Universității "Alexandru Ioan Cuza" din Iași, section COMMUNICATION SCIENCES, vol. 6, 2013, p. 50-51, article available at https://anale.fssp.uaic.ro/index.php/stiintealecomunicarii/article/view/269/202.

Having outlined the general framework of the problem of the limitation of freedom of expression, we will now analyze its content in terms of its transposition online. The main difficulty in terms of the scope of freedom of expression in the virtual environment is the excessively accessible nature of the Internet, which is materialized by the fact that information, regardless of its nature, can be viewed simultaneously from different parts of the world[6] and can be transmitted by an anonymous author and/or to an unknown audience. Another important question is that of the jurisdictional scope of a possible dispute arising in a virtual context, since the regulation of online platforms is usually transatlantic. The position of Internet service providers also has a legal influence on the content of users' rights and their limitation. In one view, the functional system of the virtual environment expresses values and principles independently of concrete legislative instruments[7], the latter allowing for this asymmetry precisely because of their general character. We believe that another reason for this anomaly is the lack of *binding* regulations specifically aimed at the virtual 'community'. So, how is possible abuse of rights in the online environment identified and what are the consequences for the perpetrator and the victim? On the one hand, there are the specific legal mechanisms based on general human rights principles, with reference to various legislative acts and the case law of the European Court of Human Rights (hereinafter referred to as the ECtHR), and on the other hand there are the technical mechanisms set up by providers to coordinate their own virtual platforms.

B. Hate speech - abuse of rights

When we refer to an abuse of the law in relation to freedom of expression, we refer mainly to the concept of *hate speech*, as it is known in the literature. It thus entails a restriction of freedom of expression and possible legal liability. Hate speech involves an approach which goes beyond the words expressed, the intention with which they were expressed being what makes the difference between a simple opinion expressed which is offensive or disapproved of by society and a speech which creates a state of danger to democracy. It is necessary that the person who transmits a message acts, verbally or silently, actively or passively, with hostility

[6] The application of the principle of freedom of expression on the Internet - between absoluteness and justification of the need to limit it", (...), p. 76.
[7] João Pedro Quintais, Giovanni De Gregorio, João C. Magalhães, "How platforms govern users' copyright-protected content: Exploring the power of private ordering and implications", in Computer Law & Security Review, Vol. 48, 2023, p. 6, https://www.sciencedirect.com/science/article/pii/S0267364923000031.

and wishes to cause harm to a specific group of persons with certain common features[8], to incite the public to discriminate or to adopt a conduct that is not in accordance with democratic principles. Such an attitude creates a state of danger to vulnerable persons and may even escalate into the commission of a crime *in concreto*, and restriction of freedom of expression is therefore necessary.

However, there are no clear criteria laid down in law to facilitate the identification of hate speech. In the view of the ECtHR, it is necessary, by reference to Art. 10 para. 2 of the ECHR is that there should be no reservations as to why a possible limitation should be imposed, followed by an analysis of the content of the speech and its social consequences, as well as the context in which it was expressed. Account will also be taken of the subjective condition of the perpetrator: his status in society[9], his general conduct in public and the purpose of his speech.[10]

In general, people have some reservations when there is an intention to convey a message that is "disturbing", with social stigmatization coming as a repressive consequence. The development of technology has made people's reluctance to express what they think gradually and surely disappear, offering seemingly unlimited freedom of expression through social media platforms to anyone at any time[11]. Anonymity, a position from which any kind of information can be transmitted, provides a favorable environment for those who seek to undermine public order. This has led to an amplification of hate speech that cannot be denied or left at this level.

Moreover, in recent years we have witnessed the phenomenon called cyber-terrorism. Basically, when an act of terrorism takes place using IT tools, we are in the presence of cyber terrorism. It seems that the online environment is an attractive and effective means for certain terrorist groups to achieve their criminal aims, with social networks and websites being the way

[8] Carmen Moldovan, "Considerations on the international regulation of "hate speech" as a limit to freedom of expression", in *Dreptul*, no. 1/2015, p. 198.
[9] For example, if the person in question is a public person, occupying a political position in the state, the sanctioning regime will be harsher, as his conduct is not in line with the position he occupies, and the protection and promotion of democracy are obligations from which there can be no derogation.
[10] Idem, p. 204.
[11] Monica Cercelescu, *Freedom of Expression in the Age of Turbulence*, EVR!KA PUBLISHING, Bucharest, 2022, p. 81.

through which harmful information can be easily transmitted, given that there is no generally valid international legislation on the subject.[12]

It can be seen that freedom of expression is taking on new dimensions in the virtual environment, with guaranteeing and setting limits representing a challenge for public authorities at the moment. The way in which it manifests itself goes beyond the possibility of the predictable, as the internet is a tool that offers seemingly unlimited power to the individual.

C. Mechanisms to combat hate speech on the internet

From a regulatory point of view, an attempt is being made in Europe to identify measures that could be effective in combating hate speech on the Internet, but also in line with democratic principles. Regardless of whether we are referring to international or national legislation adopted by the Member States, there is a risk that limiting freedom of expression, in the form of censorship, could lead to abuse by the public authorities, which is undesirable. An attempt is therefore being made to regulate the Internet in a similar way to the audiovisual media, which involves the creation of independent self-regulatory bodies, thereby avoiding possible abuse of rights by the authorities.[13]

We believe that in order to avoid the emergence of such a compromising situation, it is necessary that online control and censorship tools be oriented towards the receivers of information and not towards its senders[14]. In this way, vulnerable individuals are protected from the possibility of suffering moral damage caused by the content viewed, which may not even be directly addressed to them, and the sender is not restricted in the fundamental rights enshrined in law. The guarantee of freedom of expression is a *sine qua non of* democracy, irrespective of the content of the message transmitted, and its limitation need be imposed only in exceptional cases.

[12] Naganna Chetty, Sreejith Alathur, "Hate speech review in the context of online social networks", in Aggression and Violent Behavior,Vol. 40, 2018, p. 108-118. Available at: https://www.sciencedirect.com/science/article/abs/pii/S1359178917301064#preview-section-cited-by.
[13] Monica Cercelescu, op. cit., p.44.
[14] Sabin Taclit, *Libertatea de comunicare în spațiul european*, Lumen Publishing House, Iași, 2019, p. 58.

D. Legislating hate speech

From a normative point of view, a binding document in the European area is the Convention adopted in 2001 under the aegis of the Council of Europe on Cybercrime.[15] which was followed by 2 additional protocols, which aims in particular to combat child pornography and child pornography, copyright infringements and other cybercrimes in the online environment, as well as criminal liability for the transmission of such harmful content. This legislation has been criticized in academic circles as not being sufficiently effective in addressing the problems raised online.[16] nor has it achieved its aim, as cybercrime has increased dramatically even after the entry into force of this Convention. Alongside this convention stand other *soft law* legislative instruments, more or less exclusively intended for implementation in the online environment, including Recommendation CM/Rec(2014)6 of the Committee of Ministers to member states on the Human Rights Guide for Internet Users and Explanatory Memorandum adopted by the Committee of Ministers on April 16, 2014. These international regulations on combating hate speech aim to prohibit this type of speech, but do not specify the mechanisms by which this can be achieved, leaving it up to the States to decide how to implement the legal provisions on the subject at local level, requiring them to respect the principle of proportionality.[17]

It goes on to note that there are some difficulties in the way in which state authorities choose to deal with the above-mentioned issue, as traditional mechanisms cannot control such a vast domain as the Internet.[18] Moreover, it should be borne in mind that the issue of Internet regulation must be dealt with in an interdisciplinary manner, as it has implications not only in public international and constitutional law, but also in commercial and civil law.

[15] Convention on Cybercrime Budapest, 23.11..2001. available at https://rm.coe.int/1680081561.
[16] Carmen Moldovan, "Considerations on the international regulation of 'hate speech' as a limit to freedom of expression", (...), p. 208-209.
[17] Carmen Moldovan, "Particularități ale limitării libertății de exprimare pe internet în cazul discursului hate speech", in *Analele Științifice ale Universității Alexandru Ioan Cuza din Iași, series Științe Juridice*, no. 1/2018, p. 260. Available at https://www.ceeol.com/search/viewpdf?id=674786.
[18] Monica Cercelescu, op. cit., p. 45.

E. Free movement of services in the EU

As far as internet regulation is concerned, there are several legal relationships to take into account. On the one hand there is the relationship between internet service providers and the state/public authorities, and on the other hand the relationship between internet service providers and private individuals, often as consumers.

With regard to the European Community area, the free movement of services, including electronic services, is a principle that must be respected by all EU Member States, imposing on them a certain prohibition on discrimination against service providers on the basis of nationality or residence.[19] Directive 2000/31/EC of the Council and of the European Parliament on electronic commerce establishes the regulatory framework for the relationship between the State and the trader in the main, and between the consumer and the trader to some extent. It also specifies the main activities that are relevant to e-commerce, namely: business-to-business services, business-to-consumer services, services provided free of charge to consumers (financed), online newspapers, online databases, online entertainment, internet access services and so on . It is clear from the text of the Directive that services provided over the internet enjoy a high degree of autonomy in their own right, with no restrictions other than those applied to traditional commerce. However, given the fact that the mechanisms used by the Member States to impose limits on electronic commerce are the traditional ones which, as stated above, are largely ineffective in the online environment, we consider that *de facto* there is much greater freedom for electronic services than for tangible, traditional ones.

It should be noted that the free movement of services is also applicable to those services provided from a non-EU country, hence there are numerous problems in relation to the law applicable to electronic contracts, particularly in situations where there is a discrepancy between the legal values of the countries. For example, with regard to hate speech, in the US hate speech is covered by freedom of speech, unlike in the EU which seeks to eliminate it.[20]

[19] Sabin Taclit, op. cit., p. 117.
[20] Rigas Kotsakis, Lazaros Vrysis, Nikolaos Vryzas, Theodora Saridou, Maria Matsiola, Andreas Veglis, Charalampos Dimoulas, "A web framework for information aggregation and management of multilingual hate speech", in Heliyon, Vol. 9, 2023, e16084, p. 2. Available at: https://www.sciencedirect.com/science/article/pii/S2405844023032917.

Therefore, relationships established on the internet are governed by private law, with the law of the parties taking precedence, within the limits set by law.

However, hate speech is first and foremost a matter of fundamental human rights, their guarantee and limitation alike. Private law cannot therefore be used to derogate from these rights, which are essential and representative of a democratic society. We consider that the State is entitled to intervene where the terms of an electronic contract contravene the principles of democracy, in which fundamental rights are of paramount importance.

F. The issue of self-regulation of technology companies providing internet services

However, the question is whether or not the law, as the first tool used by states to deal with the challenges that arise, can foresee and cover all illegal content on the Internet, which apparently cannot be controlled.[21] At the moment, the answer is no, which is also indirectly accepted by the European authorities in the steps they are taking to resolve this issue. The solution is self-regulation by the large technology companies providing internet services. The European Commission has reached an agreement with Facebook, Microsoft, Twitter and YouTube[22] to give them the power to implement analytical mechanisms independent of state power to combat hate speech online, based on the *Code of Conduct on Combating Online Hate Speech*.[23] There is thus a transfer of power from the public authorities to an entity with any other powers than political, administrative, legislative or jurisdictional.

As a result of such obscure pacts, freedom of expression is restricted on the basis of rules that are not generally valid, but are determined from company to company. *In concrete*, the content of online messages is categorized as hate speech or not by algorithms, and as a consequence is censored or not, manually or automatically as the case may be. We consider that such an approach falls outside the permissible scope of Article 10 ECHR, given that a particular message is categorized as hate speech on the basis of criteria laid down *not* by law, but by the creator of the selection algorithm set up by the provider. Also, the message ends up being censored as a result of a simple judgment made by a robot, without a judicial process and

[21] Monica Cercelescu, op. cit., p. 64.
[22] Later, other social media platforms, including Instagram and TikTok, joined the agreement.
[23] Rigas Kotsakis, Lazaros Vrysis, Nikolaos Vryzas, Theodora Saridou, Maria Matsiola, Andreas Veglis, Charalampos Dimoulas, op. cit., p. 2.

without giving the right of defense/justification to the person who has expressed his opinion. However, freedom of expression can only be limited by law[24] and only when it is unequivocally required on the basis of para. 2 of Article 10 of the ECHR.

The censorship enforcement mechanism is also incompatible with democratic values and because it involves excessive surveillance of users. Every word and every move they make is monitored and passed through filters in the likelihood that it might represent a violation of the rules imposed.[25] By comparison, offline speech will never be treated so strictly in a democratic society. Although opinions are shared and manifestations occur that would easily fall into what we call hate speech, we are not usually dealing with a criminal charge or civil claim *directly* on the basis of what is conveyed, the factual circumstances being of mandatory notoriety. In online speech, however, there is an improper departure from the usual procedural rules, with liability occurring directly, without consideration of other elements.

Moreover, it is essential to note how service providers choose to implement the powers offered to abolish hate speech. There are two main ways in which this can be achieved. On the one hand, through the terms of the contracts between them and platform users, known as *Terms and Conditions*, with consumers accepting the conduct imposed by the provider, and on the other hand directly through artificial intelligence (AI) or semi-automated techniques.[26]

A standard approach is based on user reporting activity, which can lead to the deletion of hate content or blocking the accounts of the creators of hate content. Reporting is defined as a referral by a virtual or human entity, as appropriate, of the existence of a specific problem in relation to a specific content on the platform used. Typically, the reporter has to choose from a predefined list the reason for using this method (Fig. 2), and then identify, also using a standard list, the value that is being harmed by the content. A last step is to present the definition of the content that falls within the variants selected by the reporter (Fig. 3), and the reporter finally has the possibility to send the report for review or to revoke it (Fig. 4).

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[24] the exercise of these freedoms (...) may be made subject to formalities, conditions, restrictions or penalties *prescribed by law"* - Article 10 ECHR.
[25] Llansó, Emma, "No amount of "AI" in content moderation will solve filtering's prior-restraint problem" in *Big Data & Society*, 2020, p. 3.
Available at:
file:///C:/ /Users/Windows%2010/Desktop/article/No_amount_of_AI_in_content_moderation_will_solve_e.
[26] João Pedro Quintais, Giovanni De Gregorio, João C. Magalhães, op. cit., p. 3.

Fig. 1 - Facebook interface (1.12.2024) Fig. 2 - Facebook interface (1.12.2024) Fig. 3 - Facebook interface (1.12.2024) Fig. 4 - Facebook interface (1.12.2024)

The advantage of this approach is that it gives the user the possibility to visualize when a certain content crosses the "legal" boundaries (fig. 4), leaving the user unable to determine the values according to which, in this case, a message is hateful or not and therefore to decide whether or not to censor it. This avoids a referral based on the user's values, which may differ from the 'standard' ones. However, who determines the content of these 'standard' values and the criteria for identifying infringements? A first step is to identify where the provider stands in *relation to* the legally protected values. Ideally, the provider should have as objective and clear a view of these values as possible, and then determine the content of these values and the parameters within which the AI mechanisms operate in order to categorize speech as hate speech and ultimately to apply censorship.

De facto, the robot is the one who "decides" the abusive character that a message may have on the basis of the programming. There is a plethora of techniques (e.g. Machine/ Deep Learning) specifically designed to detect hate speech behind the selection process of content on the internet.[27] We will not go into the technical details of how the algorithms fulfill their intended role. The point is that they, usually given a set of examples of harmful speech and a label for the data, sort the given content by identifying the commonalities it has with these

[27] Laura Maria Stănilă, *Artificial Intelligence. Criminal law and the criminal justice system. Amintiri despre viitor*, ed. Universul Juridic, București, 2020, p. 39-40.

examples. The algorithm is considered more efficient the more such examples are present.[28] The bot's value judgment takes place strictly with respect to a set of words, relevant or not in terms of their frequency in hate speech. The sender's intention itself, the circumstances in which the message is delivered, instantly lose their meaning, at least if they are considered to be essential in categorizing a speech as hate speech.

However, on the assumption that algorithms are programmed to generate a selection as close to the truth as possible, are they likely to be wrong? It turns out yes, they are not exempt from error. In contemporary doctrine the error produced by the use of AI is referred to as "bias". When an automated system consistently produces questionable results for a particular group of people, and its impact on those people is clearly disproportionate to the purpose for which it was set up, we are in the presence of bias. Inevitably, particularly with regard to the issue of hate speech, the existence of bias infringes on the rights of technology users.[29]

The subject of human rights is as sensitive as it is subjective. By subjectivity we mean the way they are interpreted from individual to individual. This is why regulating this area has been a necessity for human society and is proving to be so to this day, all the more so since AI, a non-human 'subject', has come to interpret and judge the conduct of human subjects, which should only be possible *by virtue of a clear law*. The use of AI seriously raises the question of the infringement of fundamental human rights and freedoms in matters as sensitive as the subject at hand.[30]

If a person's message is subject to censorship because it is considered inappropriate on the basis of a robot's reasoning, when in fact he is in full exercise of his legitimate rights, his freedom of expression is undeniably infringed. Moreover, by applying censorship, it is liable in law for an unlawful act which he has not committed, the already existing prejudice taking on new dimensions. As for the procedural guarantees available to a person in such a situation, they are totally ambiguous or simply non-existent.

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[28] Rigas Kotsakis, Lazaros Vrysis, Nikolaos Vryzas, Theodora Saridou, Maria Matsiola, Andreas Veglis, Charalampos Dimoulas, op. cit., p. 3.
[29] Yeung, Douglas, Inez Khan, Inez Khan, Nidhi Kalra, and Osonde A. Osoba, *Identifying Systemic Bias in the Acquisition of Machine Learning Decision Aids for Law Enforcement Applications,* RAND Corporation, 2021, p. 5. Available at: https://www.rand.org/pubs/perspectives/PEA862-1.html .
[30] Laura Maria Stănilă, op. cit., p. 145.

CONCLUSION

Freedom of expression, a representative value for contemporary democratic society, continues to remain a sensitive issue despite the fact that we are witnessing a volcanic evolution of society as a whole, including in terms of the means of implementing mechanisms to protect fundamental human rights. Paradoxically, this development does not contribute to guaranteeing freedom of expression, but rather suppresses it, particularly in cyberspace. The difficulty of regulating the Internet and the failure of the authorities to keep it under control, as well as the lack of clear boundaries to delimit freedom from abuse of rights, are just some of the reasons that contribute to jeopardizing freedom of expression. Although self-regulation seems to be the right solution to the issue raised, thus limiting illegality in the online space, it undeniably undermines freedom of expression, and consequently fundamental human rights and democracy. On the one hand, through self-regulation, the Internet provides some individuals with certain rights, while on the other hand it restricts the freedom of expression for others, without questioning the value of the incident, which must be respected first and foremost. What is more, there is excessive and permanent control of all users of online platforms, which is unjustified in a democratic society. Democracy requires respect for the principles of the applicability of rights in all aspects of daily life, including the online environment. Beyond a possible solution that is intended to be offered in the present situation, we intend first of all to point out the offense that is being caused to individual human freedom, which is currently ignored in Romanian doctrine and jurisprudence. A first step in resolving this issue is full awareness, which is essential in order to find an effective solution. Next, the clear regulation of cyberspace, as well as the establishment of the normative status of the right to the Internet in the sphere of individual freedoms, followed finally by the specific treatment of the controversies raised in relation to freedom of expression would, in our opinion, lead to the resolution of the challenges discussed.

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SOVEREIGNTY IN A GLOBALISED WORLD

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INTRODUCTION

The evolution of the concept of sovereignty has gone through a long historical process, marked by a series of moments or events, which have enhanced and strengthened the essence of the concept. Thus, the signing of the Peace Treaties of Westphalia in 1648, having as consequence the cessation of feudal relations of vassalage between the various state formations, has contributed substantially to the affirmation of the modern concept of sovereignty, which later evolved to transfer the attributes of sovereignty, from the monarch to the nation or to the people, following the industrial revolution and the development of economic relations of the capitalist type. The materialization of these trends is the United States Declaration of Independence of 1776, French declaration of human and citizen rights of 1789 and Constitutions of France in 1791 and 1793.

If in the philosophical conception of Hegel, sovereignty is considered *„an absolute power, not subject to any law"*[1], a fact that allows the state a full freedom of action both internally and internationally, according to Jellinek's theory, sovereignty is self-limiting through self-imposed acceptance by states of international law.

Introduced by Scelle and Rousseau, the theories of delegation of powers in the substantiation of sovereignty, according to which states delegate a part of powers that form sovereignty to international organizations, were followed by assertion of the supremacy of the international legal order over states, without them (the states) „to lose the quality of sovereign state entities"[2].

[1] R. Miga–Beșteliu, *Drept internațional. Introducere în drept internațional public*, vol. I, Ed. C.H. Beck, București, 2005, pp. 90- 93.
[2] G. Geamănu, *Drept internațional public. Tratat*, Vol. I, Ed. Didactică și Pedagogică, București,1981, p. 281.

Theories of adapting sovereignty to some internationally stated requirements, such as peacekeeping and respect for human rights[3] or theories of limited sovereignty[4], are practically circumscribed to the phenomenon of globalization, in the context of the growth and deepening of the international interdependence of states[5], as well as diversification of international intergovernmental organizations.

Considered both the cause and consequence of globalization, the assertion of theories of limited sovereignty marks a new stage of the evolution of society development, which requires states to integrate regionally and internationally. Concerns about defining the concept of globalization have led to the assertion of several opinions, according to which globalization is an expression of the globalization of society or a liberalization, generalized on a world scale, of the circulation of goods and factors of production, finally creating a single market across the globe or a new form of imperialism, of technological and economic-financial nature.

Although national identity remains the most acute problem of the contemporary world in globalisation era, in each approach, globalization influences states' exercise of sovereignty, by voluntarily relinquishing[6] or abandoning part of their national sovereignty or by ceding part of national sovereignty, as Jean Monnet stated, „sovereign nations are no longer the sufficient framework for solving the problems of present"[7].

States positions towards globalization and sovereignty are strictly dependent on the diversity of national interests[8] which they promote, affirm and support within the international community, considering the fact that states differ in size of territory, population, as economic and military power.

[3] R. Miga – Beșteliu, *op. cit*., 2005, p. 94.
[4] In this certain context, there are states that specifically provided the possibility of sovereignty limitations in their constitutions.
[5] M. Duțu, „*Suveranitatea e reflexia geniului propriu fiecărei țări"* – A topic of scientific research truly of public, national interest",
[6] N. Gardels, Schimbarea ordinii globale, Ed. Antet, București, 2003, p. 104.
[7] . Bauman, *Globalizare și efectele ei sociale*, Ed. Antet, București, 2002, pp. 64-65.
[8] N. Belli, *Suveranitatea națională a statelor în strânsorile globalizării*, Colecția „Biblioteca economică", vol. nr. 129-130.

NATIONAL SOVEREIGNTY

National sovereignty[9] is a postulate of international society under which the state has the right to lead, internally, the society, by the prerogative it must elaborate and apply the law and to establish, externally, relations with other states of the international community[10].

The State shall have the right to exercise the attributes inherent to internal and external sovereignty, so, to manifest its independence, regarded as a correlative and intrinsic component of sovereignty, in compliance with the sovereignty of other states and the unanimously accepted norms of international law[11].

Consequently, the failure to comply with or breach of the principle of sovereign equality of States brings serious damage to the principle of sovereignty, affecting the achievement of the mutual interests of States.

Complex content of sovereignty both internally and externally made the United Nations General Assembly adopt, in 1970, a statement on the principles of international law on friendly relations and cooperation between states, in which it established the main constituent elements of sovereignty, respectively[12]:

Every state has the right to freely choose and develop its political, social, economic and cultural system; Each State has the obligation to fully and in good faith discharge its international obligations to live in peace with the other states.

With the evolution of international society and active manifestation of the phenomenon of globalization in all areas of activity, the content of the concept of sovereignty has changed, and the unanimity of the opinions expressed by the theoreticians is in the sense of the non-

[9] P. Roșca, *Globalizarea și suveranitatea națională a statelor*. Available at: https://ibn.idsi.md/sites/default/files/imag_file/25_31_Globalizarea%20si%20suveranitatea%20nationala%20a%20statelor.pdf [accessed at 26.11.2024].
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[11] R. Miga-Beșteliu, *op. cit*., 2005, p. 86.
[12] C. F. Popescu, M.I.Grigore-Rădulescu, *Drept internațional public. Noțiuni introductive*, Ediția a II-a, revăzută și adăugită, Ed. Universul Juridic, București, 2017, pp. 98-99.

existence of absolute sovereignty[13], but, from the analysis of these concepts, three main directions that explain the sovereignty-globalization relationship can be highlighted.

A first view, namely the sovereignist conception, argues that sovereignty is unaffected by globalisation, whereas the participation of states in globalisation can be achieved with the respect and use of national sovereignty prerogatives, not by breaking it.

The second view supports the partial impairment of national sovereignty because of the participation of states in globalization, whereas only certain prerogatives of sovereignty are transferred, the exercise of most of these powers still belonging to States.

The third view, the anti-sovereignist conception argues that national sovereignty belongs to a historically outdated age and hampers the natural course of globalisation.

ANALYSIS OF THE CONCEPT OF GLOBALIZATION

The absence of a legal definition and of a doctrinal definition on which consensus was to be expressed has led to extensive analyses and debates on the phenomenon of globalisation and its impact on national sovereignty of States.

Thus, in the absence of an accurate definition and the multitude of functional definitions specific to the different areas of manifestation and activity, the essence of globalization was deduced by the establishment of the main characteristic features[14]:

a) increase the speed of processes and flow of flows;
b) increasing integration and interconnectivity.

Regarded as a process of globalisation[15] in the vision of UNESCO, globalization affects international economic, social, cultural, financial, communicational relations, as well as population movements between states, thus some authors[16] expressed the opinion that

[13] Declarația Organizației Națiunilor Unite din 1970.
[14] I. M. Anghel, *Subiectele de drept internațional*, Ed. Lumina Lex, București, 2002, pp. 56-59.
[15] L. Kohalmi, *Globalizarea, oportunități la limita haosului*, Ed. Pro Universitaria, București, 2014, pp. 11-12.
[16] Nicolae Beli, *op. cit*., 2002, pp. 10-20.

globalization manifests itself as *„a real assault on the nation-state"* for the purpose of establishing *„new world economic and political orders"* and *„a new system of values"*.

Being a phenomenon with a long evolutionary path, it is necessary to specify that the origin of globalization lies in liberalization[17], period characterized by the existence of gold as an economic standard that was in the age of industrialization, and later, as states have associated the process of social and economic development, the benefits of the globalisation of commerce, investments, free movement of goods and persons, cultural values, ideas, concepts and ideologies have been growing.

A consequence of globalisation, beneficial to people and societies, is rapid access to scientific, technological and informational progress, receiving them in a very short time and global solidarity. The development of transport systems, communications and multinational companies had a strong impact on the evolution of the globalization process, that increased the dependence of national economies on international commercial trade and increased the cooperation of states to address issues such as underdevelopment, environmental protection, reduction of pollution, management of the migration phenomenon and corelated demographic policies.

Like any phenomenon with multiple international implications, globalization also has several disadvantages, whereas it may affect the national, cultural and spiritual identity of peoples and nations, loss of originality, diversity and uniqueness, to the detriment of uniformity and the reception of new practices and habits, reaching up to the most serious challenges of contemporary society represented by organised crime, terrorism, excessive pollution, trafficking in human beings and controlled substances.

Thus, in this context of globalization, the issue of national sovereignty is more actual than ever and occupies a primary place in the national strategies of social and economic development of states[18] and in the analyses and activity of international intergovernmental organizations with universal or regional vocation.

[17] *Ibidem.*
[18] C. Isac, N. Ecobici, *Efectele globalizării*. Available at: https://www.utgjiu.ro/revista/ec/pdf/2007-01/8_Isac%20Claudia%20.pdf, [accessed at 26.11.2024]

CONCLUSIONS

Starting from the premise that national law is the condition and foundation of the international legal order, the current global order does not exclude the national legal order but integrates it into a normative system based on national law systems and on the national identity of the states, as expressed by national constitutions.

Equally imposed and facilitated by technological progress, globalisation is universal in nature, as it manifests itself in all areas, politically, socially, economically, militarily, educationally, religiously, ecologically and is designed to strengthen the identity of states.

In this paradigm, then, globalization is reconciled with national sovereignty, by asserting the supremacy of national law and the supremacy of universal law.

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THE EVOLUTION OF AI AND THE IMPACT ON PRIVACY PRINCIPLE: A COMPARATIVE ANALYSIS BETWEEN AMERICAN AND EU EXPERIENCES

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The widespread use and improved performance of artificial intelligence in the public and private sectors still represents a very important challenge for the state as the regulator of a territory and guarantor of the fundamental rights of its citizens. In particular, today, a state faces a context of hybrid threats arising from the evolution of international conflicts, and AI is also frequently used in national security contexts and as an additional support.

Therefore, technological advancement directly challenges privacy, one of the most important principles for the individual as an individual.

From this focus, a comparative analysis between the US and the EU will be undertaken to understand the balance between the fundamental securitarian interest for states and citizens and that of privacy, which is specific to individuals.

INTRODUCTION

"*From Mary Shelley's Frankenstein's monster to the classical myth of Pygmalion, through the story of the Golem of Prague and Karel Čapek's robot, who coined the word, human beings have fantasized about the possibility of building intelligent machines, often androids with human characteristics […] humanity now stands on the threshold of an era in which robots bots, androids and other manifestations of artificial intelligence appear to be on the verge of starting a new industrial revolution, likely to touch all strata of society,*

making it imperative that legislation considers the legal and ethical implications and consequences, without hampering innovation"[1].

In its strictest definition, AI stands for the imitation by computers of the intelligence inherent in humans. It is the technology that enables machines to imitate various complex human skills. However, defining AI is utterly challenging; indeed, there is no generally accepted definition of the concept.[2]

The European Commission's Communication on AI proposes the following definition of Artificial Intelligence (AI): "*Artificial intelligence (AI) refers to systems that display intelligent behavior by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals. AI-based systems can be purely software-based, acting in the virtual world (e.g. voice assistants, image analysis software, search engines, speech and face recognition systems) or AI can be embedded in hardware devices (e.g. advanced robots, autonomous cars, drones, or Internet of Things applications)*"[3].

Artificial intelligence (AI) coupled with promising machine learning (ML) techniques, well- known from computer science, is broadly affecting many aspects of various fields including science and technology, industry, and even in day-to-day life[4]. It is commonly regarded as the engine (or brain) of the fourth industrial revolution, a term coined by Klaus Schwab, economist and founder of the World Economic Forum[5].

Regardless of the legal definition arrived at, the certainty is that these will be pervasive solutions destined to find infinite fields of application in the public and private sectors, in sectors and market segments that are very different from one another.

This makes it clear that it is impossible to envisage the identification of a regulatory framework that specifically addresses a particular market sector or a specific scientific or cultural area. The artificial intelligences that already live in the contemporary society and those

[1] Longo A. (2020), *Intelligenza Artificiale: L'impatto sulle nostre vite, diritti e libertà*, Milano, Mondadori, p.193.
[2] Sheikh H., Prins C., Schrijvers E. (2023), *Mission AI: The New System Technology*, Den Haag, Springer, p.15.
[3] The European Commission's High-level Expert Group on Artificial Intelligence. Available at: https://ec.europa.eu/futurium/en/system/files/ged/ai_hleg_definition_of_ai_18_december_1.pdf.
[4] Artificial Intelligence: A powerful paradigm for scientific research. Available at: https://pmc.ncbi.nlm.nih.gov/articles/PMC8633405/.
[5] Longo A. (2020), *op. cit.*, p.57.

to come need to be governed, disciplined, and regulated. The ethical, legal, or ethical-legal rules that will have to be identified to govern the peculiarities of artificial intelligence, the protagonist of this fourth industrial revolution, are, therefore, transversal and will have to be equally applicable, with the appropriate distinctions and specificities, to business-to-business and consumer-to-consumer relations, as well as to the most diverse market sectors[6].

European Approach to Artificial Intelligence

The EU AI Act

Over the past decade, artificial intelligence (AI) has become a disruptive force around the world, offering enormous potential for innovation but also creating several risks for individuals, thus bringing new challenges to modern society. The urge to find a neutral and widely accepted regulation for AI has now become unpostponable and the EU has started carrying out efficient regulating proposals since April 2021 when the European Commission proposed the first EU regulatory framework for AI[7]. At the present time, the most comprehensive legal framework in legal force is the "Regulation (EU) 2024/1689 of the European Parliament and of the Council" of the 13th of June[8].

This act is the world's first comprehensive legal framework aimed at regulating AI and ensuring that the same systems, developed and marketed in the EU, comply with users' fundamental rights, seeking to balance technological development and digital protection of European citizens and granting safety and safeguarding ethical principles. The measure, in its complexity, attempts to provide the major guidelines towards an overall responsible usage of AI while at the same time protecting fundamental rights.

As a matter of fact, the objectives of the EU AI act align with the aims of other European regulation frameworks such as the GDPR, the Coordinated plan of AI, Ethic Guidelines for trustworthy AI, Cybersecurity Act, AI Liability directive and so forth. Those together support

[6] Ivi, p.195.
[7] European Commission. "Coordinated Plan on Artificial Intelligence 2021 Review | Shaping Europe's Digital Future." Digital-Strategy.ec.europa.eu, 21 Apr. 2021. Available at: https://digital-strategy.ec.europa.eu/en/library/coordinated-plan-artificial-intelligence-2021-review.
[8] European Union. "Regulation - EU - 2024/1689 - EN - EUR-Lex." Eur-Lex.europa.eu, 13 June 2024. Available at: https://eur-lex.europa.eu/eli/reg/2024/1689/oj.

the AI Act in creating solid foundations for regulating AI systems. Therefore, starting from an analysis of the EU AI Act, an attempt will be made to define which privacy principles and fundamental rights may be challenged and what critical issues the implementation of this European regulation will present for the development of new AI technologies.

The EU AI Act and the Fundamental Rights

The AI Act defines AI systems and then provides risk categories, beginning with a description of prohibited AI practices in "Article 5." This article depicts the unfavourable treatment of a natural person as a result of the use of AI systems to classify or evaluate a person or group of people based on social behaviour, as provided in subsection 1I((i-ii))[9]. Continuing with the assessment of high-risk AI systems, "Article 6" states that all systems that do not harm the health, safety, or fundamental rights of individuals, including those that do not materially affect the outcome of decision-making processes, are not to be considered high-risk, as per Subsection 3(a-d)[10], thus indicating the main categories that represent high risk.

The assessment of a more limited and general risk management system is then the task of "Article 9"[11], which lists all lower-risk systems outside the nominations in Articles 5 and 6.

The AI act is then firm on the responsibilities of the AI systems providers as per "article 16" in which regulations and provisions are provided such as in the undersections (l) of the article in which the theme of accessibility is assessed recalling to Directives (EU) 2016/2102 and (EU) 2019/882; or even with "article 27" in which distributors of AI systems should comply with the Act's requirements in order to prevent the violations of human rights in terms of discriminations or biases of any genre. Despite the proposed new regulation, it is peculiar to take in consideration that the AI act, as per its latest form of 2024, puts firm legislation points on the matter, trying to regulate and contain as widely as possible the eventual menaces the AI could expose.

Nevertheless, it is undeniable that for each very wide legal procedure, above all these particular one with such evolving and unstable nature, there could be the underlying possibility

[9] *Ibidem*, Art.5.
[10] *Ibidem*, Art.6.
[11] *Ibidem*, Art.9.

of misinterpretation depending on how governments and multinational firms will approach to its adherence when implementing the various forms of AI to help fostering and innovating their businesses. Furthermore, since the act through its articles provides significant legislative protection to various fundamental rights treating them in a very specific manner, it could inadvertently rise tensions with broader and more general pieces of legislation such as the "EU Charter of Fundamental Rights"[12] and the "GDPR"[13] which assess the rights, for instance, from another perspective.

In point of fact, "article 5" of the act defining absolute prohibitions on certain AI practices could culminate in over-restrictive measures undermining social and economic rights by limiting advancements in areas like health, or education indirectly. In addition, the bans imposed by art. 5 on practices like social scoring or also real time biometric identification could limit the development of tools to enhance public security innovative uses of AI by business, hence hindering innovation and economic activity, for example developing AI systems for biometric recognition to prevent illegitimate workers' behaviour and prevent criminal activities thus potentially infringing their right to conduct the business freely as per "art. 16" of the CFR[14]. It could also impact in the healthcare system and those art. 5's bans could restrict innovations in healthcare as by prohibiting systems that analyse and monitor patients through biometric systems collecting social data potentially slowing down healthcare progresses and thus not fully granting access to healthcare services as per "art.35" of the CFR[15].

Art 6 assessing high-risk AI systems could provide an overly broad classification risking not to balance the need to protect fundamental rights with proportionality and necessity principles as per "art 52" of the CFR[16], for example a developer of AI systems could argue some high-risk systems to be regulated with slighter restrictive measures. "Art 10" of the act[17], which focuses on data and data governance and its fair use, could come in contrast with "art. 21" of the

[12] European Union. *Charter of Fundamental Rights of the European Union*, 18 December, 2000. Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[13] European Union. "EUR-Lex - 310401_2 - EN - EUR-Lex." Eur-Lex.europa.eu, 27 Apr. 2016. Available at: eur-lex.europa.eu/IT/legal- content/summary/general-data-protection-regulation-gdpr.html.
[14] European Union. *Charter of Fundamental Rights of the European Union*. 18 December 2000, Art.16. Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[15] *Ibidem*, Art.3.
[16] *Ibidem*, Art.16
[17] EUR-Lex. "Regulation - EU - 2024/1689 - EN - EUR-Lex." Eur-Lex.europa.eu, 13 June 2024, Art.10. Available at: https://eur-lex.europa.eu/eli/reg/2024/1689/oj.

CFR[18] because it addresses the quality and fairness of data sets throughout testing but does not ensure the potential for indirect discriminations. Indeed, it can be argued that even if the shallow biases may be overcome due to the huge amount of control and testing, the results could still be influenced with biased data leading to indirect discrimination.

On overall, these are just some of the spotlight examples which can correctly highlight the difficulties which the act faces to legislate in this matter, and it also reveals how the latter aims to regulate the AI systems in conformity with data protection and non-discrimination principles. These challenges won't stop growing in the near future as the complexity of the complexity of these emerging AI systems, requires them to be given space for innovation whilst at the same time setting regulative frameworks able to grant them a secure growth.

For this reason, the European parliament and the Council treated the matter endeavouring to give space to the progressive innovation brought by AI while simultaneously protecting the fundamental human being rights possibly threatened, and one vast sphere, which falls in this category and deserves specific analysis is the treatment of "privacy".

The EU AI Act and Privacy

One of the fundamental and most critical aspects of European AI regulation is privacy and, consequently, its protection. Since many aspects[19] of life today take place on digital platforms, and this cannot be helped, escaping digital surveillance seems impossible and the future increase in AI capabilities outlines a worsening in terms of personal data protection.

The development[20] of generative AI and technologies in this field could compromise the privacy and fundamental rights of users, in addition to the multitude of ways in which personal data are collected and processed (training data).

[18] European Union. Charter of Fundamental Rights of the European Union. 18 December 2000. Art.21. Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[19] Tiedrich L., Caira C., Benhamou Y. (2023), The AI Data Challenge: How Do We Protect Privacy and Other Fundamental Rights in an AI-Driven World? - OECD.AI., Oecd.ai, 19 October.
Available at: oecd.ai/en/wonk/the-ai-data-challenge-how-do-we-protect-privacy-and-other-fundamental-rights-in-an-ai-driven-world.
[20] Ibidem.

This is why[21] privacy has become central in the European legislation on AI since these data are not detectable by the owner of the artificial intelligence system, causing legal problems in some aspects and not ensuring the respect of privacy in the treatment of this data. This[22] is compounded by the fact that personal data are likely to be given away without fully understanding the consequences of the act in question. Eurostat research[23] from 2023 states that only 36% of European internet users read privacy statements before providing their personal data.

These issues that have emerged have raised the concerns of many countries and the European Union itself, which sought to remedy them with specific measures in the AI Act of 2024.

This regulation[24] stipulates that the protection of fundamental rights and non-discrimination in the EU must be ensured in the application of AI, integrating accountability, transparency, anonymization and pseudonymization (art.13-14-15-52). The whole must be in line with the principle of data minimization and the 2018 GDPR to deal with issues related to the complexities and opacity of certain AI applications, called black boxes.

Transparency requirements are also introduced for AI generative systems (those systems[25] capable of creating text, images and other forms of media through the use of generative models) to monitor the capabilities of AI systems and provide a better understanding of these models. They are also required to carry out a thorough assessment with reports on any major accident to the European Commission. The EU AI Act states[26] that data minimization and data protection principles apply to artificial intelligence technologies throughout their life cycle,

[21] Capone F., Iaselli V. (2024), La Privacy Nell'AI Act E Nel DDL Italiano Sull'intelligenza Artificiale: Perché è Un Tema Ineludibile. Agenda Digitale, 4 July.
Available at: http://www.agendadigitale.eu/sicurezza/privacy/la-privacy-nellai-act-e-nel- ddl-italiano-sullintelligenza-artificiale-perche-e-un-tema-ineludibile/.
[22] Miller K. (2024), Privacy in an AI Era: How Do We Protect Our Personal Information?, in Hai.stanford.edu, Stanford University, 18 March. Available at: hai.stanford.edu/news/privacy-ai-era-how-do-we-protect-our-personal- information.
[23] Eurostat, How Internet Users Protected Their Data in 2023, in @EU_Eurostat, Eurostat, 26 January 2024. Available at: ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240126-1.
[24] European Commission. *European Commission -Questions and Answers Artificial Intelligence -Questions and Answers** Why Do We Need to Regulate the Use of Artificial Intelligence?, 2023.
[25] Singh Sengar S., and ot. (2024), Generative Artificial Intelligence: A Systematic Review and Applications, in Multimedia Tools and Applications, 14 August. Researchable on: https://doi.org/10.1007/s11042-024-20016-1.
[26] Sadek T. and ot. (2024). Artificial Intelligence Impacts on Privacy Law, Rand.org, RAND Corporation, 8 August. Available at: http://www.rand.org/pubs/research_reports/RRA3243-2.html.

which is whenever a user's data is processed.

In addition, the European law extends[27] the concept of impact assessment in order to incorporate also fundamental rights not included in GDPR that go to those who work with AI. More specifically, Articles 21 to 27[28] and Chapter 5[29] of the act ensure the balance[30] between technological innovation and privacy protection by introducing obligations on those working with AI applications to fully protect users' privacy.

Although the European approach is primarily based on the defence of users' fundamental rights, this doesn't mean that these are 100% assured.

The first risk which has to be considered when talking about protecting users' privacy is algorithmic opacity[31].

It is simply the lack of understanding by users of how an algorithm works with data or makes decisions based on this data and it can occur for many reasons, for example, through the use of machine learning to generate the algorithm. In this case, the European Union has tried to remedy algorithmic opacity by relying on transparency in its artificial intelligence legislation, especially for high-risk AI systems. These include European Commission, Regulatory Framework on AI | Shaping Europe's Digital Future, European Commission, 2024. Researchable on: digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai. AI technology used in contexts that without proper management would have serious effects on the security and privacy of citizens, for example critical infrastructure, public and private services, administration of justice and law enforcement which may interfere with fundamental rights.

Not by chance, the act[32] place special emphasis on high-risk AI systems as they most threaten the privacy of individuals. These systems must follow strict rules before being put on

[27] Ibidem.
[28] EU AI ACT, Section 3: Obligations of Providers and Deployers of High-Risk AI Systems and Other Parties | EU Artificial Intelligence Act, in Artificialintelligenceact.eu, 2024.
Available at: artificialintelligenceact.eu/section/3-3/.
[29] Ibidem, Chapter V.
[30] European Commission, Regulatory Framework on AI | Shaping Europe's Digital Future, European Commission, 2024. Available at: digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai.
[31] Sadek T. and ot. (2024), Artificial Intelligence Impacts on Privacy Law, in Rand.org, RAND Corporation, 8 August. Available at: http://www.rand.org/pubs/research_reports/RRA3243-2.html.
[32] Ibidem.

the market, including risk assessment, traceability, documentation of data, and human supervision: an example of a high-risk systems is for instance the remote biometric identification (RBI) which raises concerns within the European legislation, as well as for the freedom and privacy of European citizens.

Secondly, the problem[33] arises from the fact that there is no precise definition of what it is, as the AI Act leaves a lot of freedom to member states regarding biometric recognition. Starting from the premise that the use of these systems is subject to the harmonization of European legislation in national laws, each member state[34] may decide to partially or fully authorize the use of real-time RBI systems within the limits set by paragraph one, subsection one, letter h (such as searching for missing children or preventing terrorist threats). Some European[35] states may use such systems to carry out some sort of surveillance on their citizens, disguising it as a functional action to resolve a threat for which the use of biometric recognition is authorized.

The use of biometric data for real-time recognition could call into question Articles 5, 6, and 9[36] of the GDPR, since sensitive data could be processed for reasons of public safety without the explicit consent of the data subject. Beyond that, Article 35 and Chapter 5 of GDPR could also be challenged by the AI Act. Regarding Article 35, the European directive allows the free use of artificial intelligence systems[37] with minimal risk. Falling into this category are the majority of European AI systems, and their free use would mean ousting them from the Data Protection Impact Assessment (DPIA)[38], as well as those high-risk AI systems that for national security reasons would not be subject to an adequate DPIA.

[33] How to Fight Biometric Mass Surveillance after the AI Act: A Legal and Practical Guide - European Digital Rights (EDRi), European Digital Rights (EDRi), 11 July 2024, edri.org/our-work/how-to-fight-biometric-mass-surveillance-after-the-ai-act- a-legal-and-practical-guide/#exec-summary.
[34] EU AI ACT, Art. 5, Prohibited Artificial Intelligence Practices | EU Artificial Intelligence Act. Available at: artificialintelligenceact.eu/article/5/.
[35] How to Fight Biometric Mass Surveillance after the AI Act: A Legal and Practical Guide - European Digital Rights (EDRi), European Digital Rights (EDRi), 11 July 2024, edri.org/our-work/how-to-fight-biometric-mass-surveillance-after-the-ai-act- a-legal-and-practical-guide/#exec-summary.
[36] Intersoft Consulting, "Chapter 2 – Principles | General Data Protection Regulation (GDPR)", General Data Protection Regulation (GDPR), 2013. Available at: gdpr-info.eu/chapter-2/.
[37] European Commission, Regulatory Framework on AI | Shaping Europe's Digital Future, European Commission, 2024. Available at: digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai.
[38] European Union, EUR-Lex - 310401_2 - EN - EUR-Lex, in Eur-Lex.europa.eu, 27 April 2016. Available at: eur- lex.europa.eu/IT/legal-content/summary/general-data-protection-regulation-gdpr.html.

The transfer of personal data to third countries or international organizations, covered in Chapter 5, could be challenged by the fact that the IA may not provide sufficient and adequate control over non-European providers, despite the fact that the European IA legislation states that these providers have the same obligations as European ones (Art.2,4 and 16-29). For this reason, it is possible to affirm[39] that the European law on AI needs to work in conjunction with the GDPR , as well as it isn't to create any kind of rights for people. So, the European law that is going to fill in the gaps left by the AI EU Act is the GDPR, and so joint work between these two European laws will be expected.

Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence

On 30th October 2023, President Biden issued a landmark Executive Order to ensure that America leads the way in seizing the promise and managing the risks of artificial intelligence (AI)[40]. Two days later the previous President released a companion Memo by the office of management and budget. Taken together these two aspects are the clearest indication of how this Administration tend to govern and regulate AI[41].

The Executive Order established new standards for AI safety and security, protects Americans' privacy, advances equity and civil rights, stood up for consumers and workers, promoted innovation and competition, advances American leadership around the world, and much more[42].

The EO anticipate the AI Safety Summit, and the final approval of the European AI Act. Differently from the European anthropocentric vision, the EO approach is well-oriented to promote businesses and AI systems development, probably this is one of the strategies adopted

[39] Kettas J. C, Demircan M. (2024), Europe: The EU AI Act's Relationship with Data Protection Law: Key Takeaways, Privacy Matters, 25 April. Available at: privacymatters.dlapiper.com/2024/04/europe-the-eu-ai-acts-relationship-with- data-protection-law-key-takeaways/.
[40] President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence, October 30 2023. Available at: https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden- issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/ (seen on 11/11/2024).
[41] Data & Society Research Institute, Decoding the AI Executive Order – Brian Chen, in YouTube, November 7th, 2023. Available at: https://www.youtube.com/watch?v=EOmlbzd2UR0&t=22s, in 00.49 second.
[42] President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence, October 30th 2023. Available at: https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden- issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/.

by USA to maintain their leadership.

There is a huge possibility that this is what leads the USA to avoid an organic body of law, taking a different decision from Europe, preferring more fragmentation in order to prevent an excessive and stringent argumentation from limiting the development of systems and competitiveness[43].

While the EO focuses on establishing guardrails for development and implementation of Al in the private sector, the EO also directs the federal government to widely consider the deployment of Al for government functions.

The EO leverages authorities from the International Emergency Economic Powers Act (IEEPA) and the Defence Production Act (DPA), however the limited authorities and appropriations of executive branch agencies tasked with implementing the EO likely means that congressional action will be needed[44].

In this research, we are going to particularly focus on six implementation steps that are potentially significant implications for private company that develop or deploy AI systems in United States.These six are the memo on AI governance and risk management:

1. Mandatory Reporting Developers of powerful AI systems must share safety test results with the U.S. government, particularly for models that pose significant risks to national security, economic stability, or public health. This includes notifying the government during the training of such models.

2. Standards and Testing Tools: The National Institute of Standards and Technology will create rigorous testing standards for AI systems, applicable to critical infrastructure by the Department of Homeland Security. This initiative aims to advance AI safety significantly.

3. Biological Safety Standards: Strong standards for biological synthesis screening

[43] Amedeo G. (2023), L'AI ACT e l'Executive Order a confronto, 23 December. Available at: https://www.altalex.com/documents/news/2023/12/23/ai-act-executive-order-a-confronto.
[44] Brown M. (2024), Implementation of Biden AI Executive Order: The First Six Month, in You Tube, 6 May. Available at: https://www.youtube.com/watch?v=BRQlsTXeb9U&t=10s, especially in minute 3:40.

will be established to mitigate the risks of AI in engineering dangerous biological materials, with compliance required for federal funding.

4. Combatting AI-Enabled Fraud: The Department of Commerce will develop standards for detecting AI-generated content and ensuring the authenticity of official communications, assisting the public in recognizing reliable information.

5. Cybersecurity Enhancement: An advanced cybersecurity program will be initiated to leverage AI tools for identifying and addressing vulnerabilities in critical software.

6. National Security Memorandum: A National Security Memorandum will be created to guide the safe, ethical, and effective use of AI within the military and intelligence sectors, while also addressing adversarial military uses of AI.

Collectively, these measures represent unprecedented governmental actions to ensure the safety and security of AI technologies.

As technology advances, without adequate safeguards, personal information can be extracted and misused making artificial intelligence (AI) a potential risk bearer that could compromise the privacy of individuals across the U.S. To combat these risks, the President urges Congress to come together and create comprehensive bipartisan data privacy legislation designed to protect everyone, especially our children. In order to safeguarding properly Americans' privacy, **prioritizing federal support for accelerating the development and use of privacy-preserving techniques**, is one of the best strategies to achieve the goal.[45]

In this field, the United States has an important background that allows it to address privacy issues adequately, despite legislation in the 1970s and early 21st century (see the Privacy Act 1974 and E-Government Act 2002). Currently, the US has no legislation defending privacy against AI on a national level, and examples of state laws are few and far between in safeguarding privacy.

[45] President Biden issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence, October 30 2023. Available at: https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden- issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/.

CONCLUSION

"*The technique is the essence of man who has had to check progressively how to stand in the world because he lacks an essential component that harmonizes with nature and precisely for this reason he managed to survive in the evolution of the species thanks to the technique. And so the present appears to us as a research as much as the future appears to us as progress*". – Galimberti

This paper aims to compare the latest EU and US regulations on the development of AI systems. Starting from a general description of the importance of AI systems, it was then analysed the difference between the legislations adopted by the EU and the US in this area. Subsequently, it was made a critical evaluation of certain articles of these rules and in particular how they might create eventual tensions with some democratic principles.

Furthermore, the European and US approaches to artificial intelligence have been found to be diametrically opposed. Washington has decided to focus more on business promotion and the development of AI systems to achieve faster technological advancement putting pressure on its competitors with the goal to maintain its global leadership. On the contrary, the EU has decided to adopt a type of legislation that is more focused on the protection of users' fundamental rights and subject to regulation.

Although the EU AI Act fully recognizes throughout its articles the GDPR and the Charter of Fundamental Rights of the European Union as two immaculate legal frameworks, after a careful analysis of the act, there still could be the risk of misinterpretations and possible incoherence between some of its articles and the articles of the GDPR and Charter of Fundamental Rights, and the whiff of different interpretations on the AI systems legislations could rise concerns on the international panorama.

In addition, a substantial difference between the two international players is the funds made available for the technological development of AI systems. Between 2018 and 2023[46], AI's European companies invested 32 billion, while the American ones 120 billion. In 2023

[46] European Parliament, "AT A GLANCE: a Digital issues in focus", European Parliament, 2024. Available at: https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/760392/EPRS_ATA(2024)760392_EN.pdf.

alone, private Americans have spent more than 60 billion on the development of AI systems, well over 9 billion in the countries of the European continent. This difference in investment will not only have implications for technology, but also for military, space, economic and geopolitical influence.

This demonstrates how the advent of AI systems has had a global, cross-sector impact on any sector and how it has transformed social and political economic dynamics in a short time. It is therefore essential to work towards a uniform and shared regulation of artificial intelligence systems, providing tools and practical arrangements for the definition of common standards. This approach would not only allow for global harmonisation of regulations, but also avoid the risk of divergent legal interpretations, which could lead to disagreements and hinder the development of the sector. In an environment of continuous and rapid technological change, the exponential growth of artificial intelligence represents both an extraordinary opportunity for innovation and a potential risk, requiring regulatory coordination to ensure balance, safety and progress.

Unlike traditional technologies, AI can replicate and, in some cases, exceed human cognitive capabilities, paving the way for extraordinary innovations but also introducing unprecedented challenges. This makes it a catalyst for global change, with economic, social and ethical implications never seen before in human history.

Therefore, transparency and cooperation are essential features needed to obtain a uniform framework, which has nothing to do with the writing of a "*lex universalis*", because with such a versatile and constantly evolving subject an approach of hard-line legislation would not last long, but rather the central proposal that summarizes the objectives of this paper is the creation of an entire new internationally recognized body for monitoring and controlling the AI systems. The latter should be set up alongside major international institutions such as the UN, the WTO, the WHO the OECD and so forth, to grant in the best possible way the accomplishment of the task of monitoring AI development. Hence by combining in the new organisation the figures of leading experts in AI systems with diplomatic figures able to connect with other institutions and form an interconnected network it would be feasible to look at the issue from a lot more different point of views, perhaps opening the path to significant reforms regarding the conciliation of technological innovation with legislative regulations. This will not only make it more likely to progress effectively in the innovation of artificial intelligence, but may also make

it easier to protect the most at-risk democratic principles together with the surveillance of the fundamental human rights. Moreover, a new communication body with a strong focus on AI issues in the international context, through the collaboration with other institutions, would achieve democratic management of the problem avoiding individual misinterpretations and the arise of a fragmented legislative system over the matter.

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THE FUNDAMENTAL VALUES OF SOCIETY IN LIGHT OF THE PROVISIONS OF THE CONSTITUTION OF ROMANIA

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INTRODUCTION

Fundamental values are essential for the stability and functioning of society and, in this sense, the Constitution of Romania, as a fundamental law, plays a central role in defining and protecting these values, ensuring the legal framework necessary for a just and equitable society.

The Constitution reflects the nation's democratic ideals and through its provisions establishes fundamental rights and freedoms, protects human dignity and promotes equality and mutual respect. Like this, the Constitution serves as the foundation for the functioning of a modern and democratic state.

A. The fundamental values provided for in the Romanian Constitution

A.1. Human dignity

Recognized as a supreme value, dignity represents the right of every person to be treated with respect and fairness, so that it constitutes the basis of fundamental human rights, as stated in the Preamble of the Universal Declaration of Human Rights: "...recognition of the inherent dignity of all members of the family human rights and their equal and inalienable rights constitute the foundation of freedom, justice and peace in the world".[1]

[1] https://fra.europa.eu/ro/eu-charter/article/1-demnitatea-umana [accessed at 24.11.2024].

In this sense, art. 1 paragraph (3) of the Constitution stipulates that "Romania is a state of law, democratic[2] and social, in which human dignity, the rights and freedoms of citizens (...) represent supreme values and are guaranteed".

A.2. Equality

Equality in rights is a fundamental principle of law, provided by law, doctrinally analyzed and jurisprudentially confirmed.

According to art. 16 para. (1) of the Romanian Constitution "Citizens are equal before the law and public authorities, without privileges and without discrimination". It follows, therefore, that equality is a complex constitutional principle, which is explained by reference to difference and discrimination, and implies the provision of equal opportunities to all citizens.

The meaning of the constitutional provision according to which citizens are equal before the law and public authorities, without privileges and without discrimination, implies that the law must provide equal opportunities to all citizens.

The fact that no one is above the law, enshrined in paragraph 2 of the same article, explains the intention of the legislator is to create a state of law in which the law is the one that governs and must be equal for all.

As it is formulated in the Constitution, the general principle of equality has in mind a formal legal equality and not an equality of conditions, which does not mean that equality before the law and public authorities requires the application of the same legal regime to all citizens, but must be take into account their natural or socio-professional situation.

Consequently, equal legal treatment must be applied to equal situations, and different legal treatment to different situations.

[2] M.-I. Grigore-Rădulescu, *Teoria generală a dreptului*, Ediția a IV-a, revăzută și adăugită, Ed. Universul Juridic, București, 2024, p. 73.

A.3. Freedom

Analyzed as a general principle of law, alongside equality, freedom is one, but it can take on several forms of manifestation, to which correspond various rights provided in the Constitution, such as freedom of opinion, freedom of expression, religious freedom.

Freedom refers to the ability of individuals to act without constraints and, from this perspective, freedoms can be general or individual[3], but closely related to each other and flowing from each other. Thus, freedom of thought is closely related to freedom of expression, freedom of speech, freedom to write and publish.[4]

As for the achievement of social freedom, the role of law consists in removing obstacles and potential discriminations that appear in the way of ensuring equal opportunities for manifestation and progress for all subjects of law.

B. The rule of law

Enshrined in Article 1 paragraph (3) of the Constitution, the rule of law constitutes the foundation of the separation of powers in the state and the observance of laws by all.[5] Established in the Report on the Rule of Law by the Venice Commission, the criteria of the rule of law are:[6]

1. Legality, which implies the existence of a procedure for adopting legal texts that is transparent, responsible , and democratic;
2. Legal security;
3. Prohibition of arbitrariness;
4. Access to justice before independent and impartial jurisdictions;
5. Respect for human rights; and
6. Non-discrimination and equality before the law.

[3] https://www.juridice.ro/699529/conceptul-de-principiu-juridic.html [accessed at 24.11.2024].
[4] *Ibidem.*
[5] M.-. Grigore-Rădulescu, *op. cit*., p. 63.
[6] https://www.juridice.ro/essentials/6117/criteriile-de-definire-a-statului-de-drept-vs-statul-de-drept-in-ue-si-in-statele-membre-evolutiile-statului-de-drept-statul-constitutional-contemporan [accessed at 24.11.2024].

In contemporary society, the rule of law represents both an ideal and a global aspiration, being regarded as the foundation of national political and legal systems, as well as of international relations, since it is supported by individuals, governments, and organizations around the world.

C. Fundamental Values: The Discrepancy Between Law and Reality

There are issues such as corruption, social inequalities, and political polarization, which impact the implementation of constitutional principles. Legal practice often shows that there are significant discrepancies between legal provisions and social reality.

Through the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social, and Cultural Rights, fundamental human rights have reached the peak of their legitimacy and have formed the global legal foundation for the states of the world, aiming to ensure the incorporation of fundamental values into domestic legal regulations.[7] However, in many countries, the fundamental rights collectively agreed upon are not respected, with some signatory states blatantly violating human rights.

D. The Impact of Fundamental Values on Society

These values contribute to maintaining democracy, social stability, and mutual respect. Globally, they promote peaceful relations between states and support Romania's integration into the Union and international[8] space.

The emergence of the bourgeoisie in the 19th century led to the formulation of fundamental values, which became widely established by the mid-20th century and evolved into evaluation standards for states and societies.

[7] C.F. Popescu, M-I. Grigore-Rădulescu, *Protecția juridică a drepturilor omului*, Ed. Universul Juridic, București, 2014, p. 16.
Popescu C.F., Grigore-Rădulescu M-I., Protecția juridică a drepturilor omului, Ed. Universul Juridic, București, 2014.
[8] https://www.juridice.ro/699529/conceptul-de-principiu-juridic.html; (accessed at 24.11.2024).

At the level of the European Union, the fundamental values that underpin society are also recognized, namely respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of minorities.

These values, embraced and shared by all European Union member states, guarantee a society where pluralism, tolerance, justice, solidarity, non-discrimination, and equality prevail. They are enshrined in Article 2 of the Treaty on European Union.

CONCLUSIONS

The fundamental values established by the Constitution of Romania are essential for a democratic and just society, and their protection must remain a priority for the nation's future. At the same time, the national vision of fundamental values must be integrated into a European and international perspective, in the context of globalization, with its opportunities and risks.

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THE IMPORTANCE OF INTERDISCIPLINARY COLLABORATION IN FORENSIC SCIENCE

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I. COLLABORATION BETWEEN FORENSIC EXPERTS, INVESTIGATORS, AND PROSECUTORS

The success of a criminal investigation depends on the collaborative relationship between forensic experts, investigators, and prosecutors. Each plays a crucial role, and none can be considered more important than the others, as they all have equally significant responsibilities.

The forensic expert is a specialist who, by applying scientific methods to analyze physical evidence in a criminal investigation, plays a key role in interpreting, examining, and providing conclusions based on scientific proof, ultimately contributing to uncovering the truth. Forensic experts do not interpret the law nor analyze how it is applied**.** In most EU countries, they are either employed by a state forensic institution or work independently[1].

Investigators are represented by investigative police officers**.** Their role is to gather information from witnesses, victims, and suspects, manage evidence, and prepare reports for prosecutors.

Thus, an interdisciplinary collaboration cycle is formed, as follows: forensic experts must communicate constantly to correlate the evidence they identify with that found in the field; prosecutors must have the ability to understand forensic reports in order to build a strong case; and investigators must maintain continuous contact with forensic experts to ensure the proper preservation and identification of evidence.

Poor communication, carried out superficially, hastily, or carelessly, can have serious consequences regarding a person's guilt or innocence. To improve collaboration between these professionals, various measures can be implemented, such as integrating clear cooperation and

[1] https://e-justice.europa.eu/550/RO/forensic_experts.

communication protocols, creating and using shared databases, or even organizing training meetings in the interdisciplinary field.

II. THE IMPORTANCE OF COLLABORATION WITH IT EXPERTS IN CYBERCRIME

Cyberspace is not only the technological universe used by people to do what they are genetically programmed to do, namely communicate with each other, but also a facet of social reality, an indispensable human habitat[2].

Cybersecurity represents the state of normalcy of digital information, resources, and services provided by public or private entities in cyberspace[3].

In 2002, cyber defense was included for the first time on NATO's agenda during the Prague Summit, and later confirmed as a priority in 2006 at the Riga Summit[4].

The main factors that have led criminal groups to focus on cybercrimes are the potential for large material gains in a relatively short time and with relatively low risks, the transnational nature of the crimes, easy access to modern IT equipment, as well as to software tools and tutorials that can be easily downloaded from the unindexed area of the Internet – the DarkNet. The police cannot fight these forms of attacks alone, especially ransomware, because payments to cybercriminals are made in the virtual currency Bitcoin. The fight against ransomware at the European level requires a joint effort between the police, the Department of Justice, Europol, and IT security companies. Another example in this regard is the collaboration between the Romanian Police (through the Cybercrime Fighting Service) and Bitdefender to obtain the decryption key for the malicious ransomware application Bart[5].

[2] Michel Benedikt, „*Cyberspace: First Steps”*, Editura MIT Press, Cambridge, Massachusetts, 1991, p. 122.
[3] Ioan-Cosmin Mihai, Costel Ciuchi, Gabriel-Marius Petrică, „*Provocări actuale în domeniul securității cibernetice – impact și contribuția României în domeniu”*, Institutul European din România, București, 2018, p. 24.
[4] https://intelligence.sri.ro/securitatea-cibernetica-prioritate-sectorului-de-intelligence-lumea-globalizata/. (accessed at 20.03.2025)
[5] Ioan-Cosmin Mihai, Costel Ciuchi, Gabriel-Marius Petrică, „*Provocări actuale în domeniul securității cibernetice – impact și contribuția României în domeniu”,* Institutul European din România, București, 2018, p. 59-60.

The Romanian Police have a structure called the Cybercrime Fighting Service, which is primarily responsible for preventing, investigating, and prosecuting cybercrime. It operates within the Directorate for Combating Organized Crime[6].

III. CASES WHERE INTERDISCIPLINARY COLLABORATION WAS DECISIVE

In this chapter, we will analyze two cases where interdisciplinary collaboration led to the resolution of the case and the identification of the perpetrator: the famous case of the serial killer Ted Bundy, who was identified through a dental impression left on a victim's body, and the identification of victims from the September 11, 2001 attacks using DNA and biometric data.

In the case of Ted Bundy, several disciplines collaborated, including forensic dentistry, psychological profiling, investigators, and the police.

With the help of psychologists, it was concluded that Bundy was a charming individual who often used his pleasant appearance to lure his victims, fitting the profile of a manipulative and methodical criminal. After many years of studying his behavior, experts concluded that, from a medical standpoint, he exhibited traits of a psychopath. He was able to easily manipulate and maintain his composure in tense situations where he had to conceal the truth[7]. This case reinforced forensic dentistry as a key piece of evidence.

Forensic dentistry made the greatest contribution in this case, as Bundy was caught after a bite mark was discovered on the body of one of his victims during a brutal attack in a student dormitory. The bite mark was clear, allowing it to be compared to his dental impression. The match between the two was perfect, providing indisputable evidence in court.

Regarding the investigators, they played a crucial role in the investigation by interviewing eyewitnesses, gathering evidence, and coordinating between states, as his victims came from various states across the United States.

This case highlights the importance of interdisciplinary collaboration by combining the knowledge of forensic dentists with that of psychologists and, not least, the skills of police officers

[6] Idem p. 60.
[7] https://psychology.as.uky.edu/psychology-researcher-unravels-serial-killer-ted-bundys-mental-health (accessed at 20.03.2025).

and investigators to gather this information, understand it, and share it across America, as the case involved multiple states.

The second case concerns the terrorist attacks of September 11, 2001, where the World Trade Center twin towers were destroyed. Authorities faced challenges in identifying nearly 3,000 bodies, as many were either destroyed by carbonization or fragmented due to the extreme temperatures and internal pressure. Additionally, the tons of debris made body retrieval exceptionally difficult.

Authorities employed identification methods such as DNA analysis by comparing it with the DNA of relatives, dental identification, photographs and databases, fingerprinting, and skeletal analysis[8].

When it comes to such fatalities, DNA is considered the last resort because it is more costly and the analysis takes a long time. However, the nature of the terrorist attack pushed specialists toward this option, as there was no more efficient alternative. In this case, the DNA analysis of the victims took years. Investigators were forced to take material for analysis from the crime scene (bones or tissue) and compare it with material from an object belonging to the victim (such as a toothbrush) or with DNA from a close relative, such as parents or children[9]. The bodies that could be identified through fingerprints were identified in this way.

Another method used was dental identification, as teeth withstand high temperatures. Additionally, less affected bodies could be recognized through photographs from official documents with the help of scanning, and regarding skeletal analysis, this method allowed for the determination of age, sex, and other characteristics of some victims.

The September 11, 2001 tragedy led authorities to engage in long-term interdisciplinary collaboration, with the investigation extending over several years. Therefore, the information had to be transmitted and properly preserved to avoid interfering with the investigation's progress. It also had a huge impact on the development of DNA analysis, as researchers had to come up with new methods, contributing to the evolution of the field of genetics.

[8] https://pmc.ncbi.nlm.nih.gov/articles/PMC128417/ (accessed at 20.03.2025)
[9] https://www.nist.gov/blogs/taking-measure/reflections-assisting-911-world-trade-center-dna-identifications (accessed at 20.03.2025)

Both cases represent human catastrophes, but what can be extracted from them is the immense importance of interdisciplinary collaboration. Without communication, attention, patience, and dedication, their resolution would not have been possible.

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THE ROLE OF CONSTITUTIONAL COURTS IN DEFENDING DEMOCRATIC VALUES

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The aim of the paper is to review the most controversial decisions of the Romanian Constitutional Court, in exercising its fundamental role of safeguarding the supremacy of the Romanian Constitution.

Starting from such an analysis, we aim to identify a standard in which such a Court should manifest its powers.

From this perspective, we shall analyze the most recent judgements of the Constitutional Court to assess whether the Court has remained in its Constitutional limits or not. Most notably, the recent judgement relating to the presidential candidacy of Mrs. Diana Iovanovici Șoșoacă, which raises issues as exceeding the Court's authority, violation of the right of a fair trial, the establishment of double standards regarding the presidential candidacy, as well as the violation of explicit provisions of the Constitution will be analyzed in this paper.

It's the Court, in its current functionality, a guarantor of the Constitution.

INTRODUCTION

In a time of great political turbulence, it is imperative and essential to ensure the continuity in respecting those values regarded as fundamental principles upon which our state is founded.

The Constitutional Courts are one of the most important institutions in a democratic state. As provided in The Constitution of Romania, the Constitutional Court shall be the guarantor for the supremacy of the Constitution.

Following a brief introduction on the scope and legal capacity of the Court, the paper aims at discussing whether the Court has taken steps in expanding its competence, creating dangerous precedents that might affect the reputation of the Court and more so could pave the way for a *jus praetorium* effect of its decisions.

To this end, we shall focus on recent controversial decisions of the Constitutional Court. The presentation of such decision was deemed as a necessity firstly considering the relevance it has for the current time, the decision regarding Mrs. Diana Iovanovici-Șoșoacă's candidacy being one of the most controversial and discussed decision of the Court from the last several years. The presentation of this decision will include the reasons for admitting the complaint, along with the disputes it has provoked in the realm of law on the nature of the analysis that has been conducted in this case and whether the Court had the competence to do these things.

The paper will continue the analysis of the decision regarding Mrs. Diana Iovanovici-Șoșoacă's candidacy presenting those fundamental rights and principles that might have been violated and the possible remediation paths that can be considered, taking into account Mrs. Laura Codruța Kövesi's case against Romania tried at the European Court of Human Rights, case that presents a set of lessons that are needed to be considered in order to strengthen the rule of law in Romania.

Having such a great importance in Romanian state, such controversial decisions of the Constitutional Court are analyzed because of the impact they may have on the quality of being a rule-of-law state, the international implications it might bring and the precedent it might set for electoral fairness and not only. The presentation of this judgement provides insights on the current political climate and on the judiciary's role in the electoral process.

I. THE ROLE OF THE CONSTITUTIONAL COURT IN ROMANIA

"In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory"[1]. This is one of the provisions mentioned in the first article of the Constitution of Romania, being one of the most important characteristics of the Romanian state. To accomplish this goal, the Constituent Assembly at that time considered of great importance to grant this responsibility to an institution. Therefore, article 142, paragraph (1) provides one of the most important roles as follows "The Constitutional Court shall be the guarantor for the supremacy of the Constitution."

Safeguarding the supremacy of the Constitution involves ensuring compliance with constitutional standards, and to do that, there has arisen a need of granting some forms of

[1] Article 1, paragraph (5) of the Constitution of Romania.

constitutionality control to the Constitutional Court[2], forms of control that are exclusively under its jurisdiction.

The constitutionality control has been regarded by some authors as being "the strongest safeguard against the mistakes and abuses of the legislative power"[3], being necessary to add that this control it is not the strongest safeguard only related to the legislative powers, but also to the most important procedures related to the President of Romania[4] and the procedures of the strongest expressions of the sovereignty of the Romanian people- the legislative initiative and the referendum.

The powers of the Court are outlined in Article 146 of Constitution of Romania, which provides the full list of responsibilities the Court has regarding its role of safeguarding the supremacy of the Constitution, and in addition to that, Law 47/1992 regarding the organization and functioning of the Constitutional Court, republished, completes the main legal framework of the Constitutional Court's activity.

Even with such a clear legal framework regarding the Court's responsibilities, there have still appeared controversial opinions on its attributions.

II. DECISION 2/2024 OF THE CONSTITUTIONAL COURT

On 4th of October 2024, the Constitutional Court has been notified with a complaint to the registration of Mrs. Diana Iovanovici-Șoșoacă's candidacy for the 2024 presidential elections in Romania.

Among the criticism raised, were considered the behavior and the opinions on several legal matters of the candidate, as even the Court stated in its decision, "the behavior of Mrs. Diana Iovanovici-Șoșoacă of 'trampling' the values enshrined in the Constitution is well-known."[5]

[2] I. Deleanu, *Drept constituțional și instituții politice II*, ed. Fundației Chemarea, Iași 1993, p. 232.
[3] A. Văleanu, *Controlul constituționalității legilor în dreptul român și comparat*, Tipografia "Ion C. Văcărescu", Bucharest, 1936, p. 45, as cited in D. Valea, *Drept constitutional și instituții politice*, ed. Universul Juridic, Bucharest, 2014, p. 173.
[4] Article 146 of the Constitution of Romania establishes the powers of the Constitutional Court as follows: "f) to guard the observance of the procedure for the election of the President of Romania and to confirm the ballot returns;".
[5] *Constitutional Court of Romania's Decision 2/2024* regarding the complaint to the registration of Mrs. Diana Iovanovici-Șoșoacă's candidacy for the 2024 presidential election in Romania, point 7.

The Court settled the appeal by admitting it, relying on a series of reasons that will be further developed in the paper.

In its decision, The Court outlined the conditions and the role of The President of Romania, declaring that a candidate in the presidential elections should also meet the conditions that result from the formula of the oath taken by the person elected. It also stated that the duty to respect The Constitution along with its two dimensions- individual compliance and societal mediation "it is not a matter concerning the date of assuming the mandate, but rather a fundamental condition for attaining the position of President of Romania"[6], also adding the condition to uphold a conduct of defending democracy.

As The Court considered in the last part of the decision, that public statements, stances, and the expression of beliefs that oppose constitutional values and the principles of a democratic society, along with involvement in certain public events show clearly enough that Mrs. Diana Iovanovici-Șoșoacă through her speech questions and undermines the obligation to uphold the Constitution. Also, The Court considered the candidate's speech as being anti-democratic, antisemitic, aiming to undermine the constitutional foundations of the Romanian state.

Following a comprehensive analysis, The Court has been led to decide in favor of admitting the complaint, aiming to protect the country's future, safeguard its citizens and uphold constitutional values. It is nonetheless true that The Court's decision has undeniably triggered a series of controversies, which are going to be further elaborated.

The first issue that is needed to be settled is the nature of the analysis that the Court made on letter f) of Article 146 of Constitution. It can be either an objective or a subjective one.

According to the arguments and reasoning used by the Court, it conducted a subjective analysis.

Firstly, the main subject of Court's analysis in the decision-making process was the behavior of Mrs. Diana Iovanovici-Șoșoacă, as it can easily be remarked at several paragraphs of the decision.[7]

[6] See Decision 2/2024 of The Constitutional Court of Romania, point 45.
[7] See paragraphs 7-15, 37 of Decision 2/2024 of The Constitutional Court of Romania.

At paragraph 6 of the decision, the Court creates the analogy between two different powers that is has, stating that a behavior that goes against the Constitution in the case of political parties is sanctioned by being declared unconstitutional by the Court[8], and in the case of individuals running for the highest offices of the state, the sanction consists of declaring their ineligibility to participate in elections, even though there are a lot of differences between these two powers of the Court, differences that are to be shown in the following. This is the first indication that shows us the fact that the Court conducted a subjective analysis.

According to Article 52, paragraph (3)[9] of Law 47/1992, the debates regarding the decision on the objections of unconstitutionality of a political party are excepted from the legal regulation that stipulates that only the judges participate at the debates, without notifying the parties, in this case The Court being required by law to notify the parties.

In contrast with that, the same regulation specifies the way that the debates take place when addressing issues related to the presidential candidacies, only the judges being the ones in right to participate, without notifying the parties, this because of the objective character that the debates and the complaint must be defined by, only analyzing the observance to the *procedure* for the presidential elections, and the compliance with the conditions provided for it by the Constitution and Law 370/2004, Article 28. The mentioned legal regulation has a great applicability in this context, given the fact that complaints related to the presidential elections must be resolved in a two-day term, as stated in article 31, paragraph (2) of Law 370/2004[10]. However, there is another opinion[11] that considers that this legal clause might be a violation of the provisions of the *Code of Good Practice in Electoral Matters*[12]- guidelines on elections,

[8] Power of The Court provided by the Article 146, letter k): "to decide on the objections of unconstitutionality of a political party;"
[9] Establishing procedural rules specific to the activity of the Constitutional Court, Article 52, paragraph (3) of Law 47/1992 stipulates: "The debates take place with the participation of only the judges of the Constitutional Court, based on the referral and the other documents in the file and, except for the cases provided for in Article 146 letters d), e), and k) of the Constitution, as republished, without notifying the parties. The President of the Court may invite persons deemed necessary for information."
[10] Law 370/2004, Article 31, paragraph (2) establishes an emergency procedure regarding the resolution of complaints related to the presidential candidacy, as stated: "The Constitutional Court resolves the complaints within at most two days from registration. The decisions are final, are immediately communicated to the Central Electoral Bureau, and are published in the Official Gazette of Romania, Part I."
[11] I. Muraru, E.-S. Tănăsescu, A. Muraru, K. Benke, M.-C. Eremia, Gh. Iancu, C.-L. Popescu, Șt. Deaconu, *Alegerile și corpul electoral*, Ed. All Beck, Bucharest 2005, p. 21-23.
[12] *The Code of Good Practice in Electoral Matters* is a guideline document adopted by the European Commission for Democracy through Law (Venice Commission) in 2002, and it contains guidelines and an explanatory report that provides the foundational principles upon which the guidelines are built.

that stipulates that the applicant's right to a hearing with the participation of both parties must be protected[13], but this is a topic that requires separate elaboration.

Another notable difference between the two powers of the Court is also the subject of the review done by the Court, Article 40, paragraph (2) of Constitution[14] providing the cases in which the political parties are declared unconstitutional, the legal regulation granting the court the authority to verify their purpose and activity. Being a subjective procedure, the parties also have the right to submit a memorandum in defense when their constitutionality is verified by the Constitutional Court.

At paragraph 5 of the decision, the Court stated that the position of supremacy that the Constitution holds in Romanian legal system would allow to *infer additional conditions* for individuals wishing to run for the presidential elections.

Concluding on the mentioned aspects, the Court conducted a subjective analysis in Mrs. Diana Iovanovici-Șoșoacă's case, expanding its jurisdiction.

However, no legal provisions to support the fact that the Court can infer additional conditions for presidential candidates have been found[15], and considering the text of the Constitution, the Court has the power "to guard" the adherence to the procedures for the presidential elections. From the constitutional text it is clearly inferred that it verifies only procedural conditions, and not substantive ones.

Using the grammatical interpretation method, as it was previously considered, when it is referring to the electoral litigation, the text of The Constitution of Romania uses the verb "to guard", while, when referring to the exercise of a control function, it uses the verb "to adjudicate". Thus, The Court is only entitled to oversee compliance with the procedures for the presidential elections, not to exercise a subjective constitutional review.[16]

Article 38 of Law 47/1992 provides that complaints regarding the registration or non-registration of a candidacy for the office of President of Romania, as well as those related to

[13] *The Code of Good Practice in Electoral Matters*, guidelines on elections II, point 3.3, letter h).
[14] Article 40, paragraph (2) of Constitution provides the cases when a political party is considered as being unconstitutional: "The political parties or organizations which, *by their aims or activity*, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional."
[15] Position also shared by the Dissenting Opinion of the Constitutional Court in Decision 2/2024.
[16] See the concurring opinion of The Constitutional Court in Decision 66/2019, paragraph 1.

preventing a party, political formation, or a candidate from conducting their electoral campaign according to the law, are resolved by the Constitutional Court in compliance with the defined procedure. Therefore, any complaint related to the *procedure* for the presidential elections are to be resolved by the Constitutional Court only.[17]

These being presented, it can be concluded that the Constitutional Court is not supposed and entitled to do a subjective analysis, but an objective one when notified with a complaint regarding the presidential candidacy on letter f) of Article 146 of Constitution. The Constitutional Court expanded its jurisdiction and failed to comply with the Constitution and its organizational law, even though the clarity of these legal provisions related to the analysis that the Court should conduct cannot be contested.

More to that, the Constitutional Court is bound by a public law jurisdiction, thus, it cannot enlarge or diminish its jurisdiction, being restricted by the limits provided by law for it. Therefore, the Court cannot interpret the legal regulations that define its powers in an extensive manner, as could sometimes occur in a private law framework.

Even if we were to agree that the Court could also analyze whether the candidate meets the substantive conditions, a number of issues have still arisen. Among those, even if from a systematic interpretation of the Constitution, the Court inferred that it has the jurisdiction to check the candidate's ability to perform the mandate, the fact that it did not expand such an analysis to all the candidates, has brought up several concerns.

It is the first time in Romania's history that the Constitutional Court has conducted a subjective analysis when notified with a complaint regarding the presidential candidates on letter f) of Article 146 of Constitution, not applying the same type of analysis in all cases can raise the issue of a discretionary power exercised by the Court. This way, it is up to the Court the procedure that will be followed in order to make the decision whether the candidate is eligible or not for the office of President of Romania. The issue that is raised is not only that this decision is unprecedented in judicial history,[18] but the precedent it sets is what is more concerning. This precedent it is not only about the candidacy for the presidential elections, but

[17] I. Muraru, N. M. Vlădoianu, A. Muraru, S.-G. Brabu, *Contenciosul constituțional*, ed. Hamangiu, Bucharest 2009, p. 230.
[18] See Decision 1/1996 of The Constitutional Court where it stated that even though that in support of the objections there have been brought to attention statements by Mr. Ion Iliescu or other political figures, philosophical, moral, or political considerations, as well as opinions expressed in the press, "The Court rules only on legal matters".

about the extension of its jurisdiction that the Constitutional Court did, now being likely to be repeated in any other case, on any subject, even though the Constitutional Court has not been granted this discretionary power through any regulation.

The standard that has been applied for Mrs. Diana Iovanovici-Șoșoacă has not been applied in any other case regarding the same subject, this being the most concerning aspect.

As an effect of this practice, there is a set of principles and standards that might have been violated through this decision. Those might be the principle of equality before law, the right to a fair trial, the right to defense, the principle of adversariality, the right to appeal and the right of those over 200,000 citizens that through their signatures sent Mrs. Diana Iovanovici-Șoșoacă to be a candidate, to exercise their sovereignty by choosing the desired candidate, and are to be discussed in the following.

As shown before, the principle of equality before law, which is also a fundamental right enshrined in Article 16 of Constitution of Romania, provides that every citizen is equal before the law, with no privilege or discrimination. In this case, Mrs. Diana Iovanovici-Șoșoacă being the only person to whom such an analysis or treatment has been applied, the fact that there might have been a real form of discrimination and inequity cannot be argued.

The right to a fair trial, one of the most important rights guaranteed by the Constitution, is provided by Article 21, Free access to justice, paragraph (3) stipulating that all parties are entitled to a fair trial. Categorized as a social-political right[19], it is also enshrined in international regulations[20], considering its great importance in order for a nation to maintain its status as a rule-of-law state. The right to a fair trial is ensured through the observance of the right to defense, the principle of adversariality and the right to appeal[21], which are fundamental to any legal proceeding.[22]

The right to defense, stipulated in Article 24 of Constitution, was not ensured for Mrs. Diana Iovanovici-Șoșoacă, as her right to reply or defend herself in any way was not guaranteed. The principle of adversariality has already been discussed in the paper, referring to

[19] Idem, p. 170.
[20] See The Universal Declaration of Human Rights, Articles 8 and 10; The International Covenant on Civil and Political Rights, Article 2, paragraph (3); European Convention of Human Rights, Article 6.
[21] I. Muraru, S. Tănăsescu, *Drept Constituțional și Instituții Politice*, 10th edition, ed. Lumina Lex, Bucharest, 2002, p. 188.
[22] I. Muraru, E. S. Tănăsescu, *Constituția României- Comentariu pe articole*, ed. C.H. Beck, Bucharest, 2008, p. 181.

the provisions of The Code of Good Practice in Electoral Matters, that supports the claim that applicant's right to a hearing with the participation of both parties must be protected. When addressing subjective matters, it is mandatory for both parties to have the right to reply and defend themselves in order for the legal proceeding to respect the principle of adversariality.

The right to appeal is the final infringement on Mrs. Diana Iovanovici-Șoșoacă's rights that will be addressed in the paper but is also one of the most important ones. In the entire decision, the Court did not provide any effective means of appeal for Mrs. Diana Iovanovici-Șoșoacă, stating that the decision is final. This way, the defendant is in a position of being unable to exercise their right to an appeal. As noted even by the European Court of Human Rights, no Court in Romania has the jurisdiction to hear such an appeal against a decision issued by the Constitutional Court of Romania. This was noted by ECHR in the case of Kovesi v. Romania[23]. Noting the existence of similar legal issues in the two cases, the solution adopted by Mrs. Laura Codruța Kövesi to notify the ECHR with the issue should be taken into consideration by Mrs. Diana Iovanovici-Șoșoacă.

Finally, it is mandatory to also consider the Romanian people's rights that might have been violated through this decision, given that Article 2 of Constitution stipulates that "the national sovereignty shall reside within Romanian people" who exercise it through their representative bodies resulting from free, periodical, and fair elections. As mentioned before, over 200,000 people considered themselves represented by this candidate, and sent her to be a candidate with their signatures. It is their right to choose those representative bodies through a free and fair election, and this right should not be infringed, only under those conditions expressly provided by law, and nothing more.

In the end, it is needed to refer to a great well-known Romanian Professor, Tudor Drăganu, that considered that the fundamental rights "become the legal foundation of the entirety of citizens' rights"[24], this statement impeccably expressing the real importance of the rights enshrined in the Constitution, but also helping to highlight the severity of the effects that the violation of these rights can have.

[23] Application no. 3594/19.
[24] T. Drăganu, *Drept Constituțional și Instituții Politice- Tratat elementar*, vol. II, ed. Lumina Lex, Bucharest, 2000, p. 152.

Given the current political situation in Romania, regarding the elections, it is needed to also add that what was mentioned last should be the driving force that animates the leaders and institutions holding power in a state, their motivation being to defend people's essential rights as effectively as possible and to maintain the fullest possible rule of law throughout society.

CONCLUSION

From the very beginning, this paper emphasized the importance and the role of the Constitutional Court of Romania, bringing to light those essential attributes it embodies, stating that it is one of the most important institutions of this state.

To conduct a thorough analysis regarding the manner in which it fulfills the role it has in defending democratic values, the article presents a recent controversial decision of the Constitutional Court regarding the candidacy of Mrs. Diana Iovanovici-Șoșoacă for the Office of President of Romania, as a solution to a complaint on letter f), Article 146 of Constitution of Romania.

For a proper analysis of this decision, firstly it was needed to clarify whether the Court conducted an objective or a subjective analysis in this case, concluding on the fact that the analysis conducted was a subjective one, even though this required an extension of its jurisdiction.

Through a careful analysis of the relevant legislation, it can be concluded that the Court was not entitled to do such an analysis based on the power granted to it by the Constitution, through that power conferred by the Constitution being able to exclusively verify only the procedural conditions that a person must meet in order to eligibly candidate for the presidential elections. Moreover, the public law jurisdiction to which it is bound does not grant the Court the possibility of expanding its jurisdiction.

Even if the Court was entitled to review the observance of the substantive and not procedural only conditions for a presidential candidate, and to decide whether or not the candidate is able to perform the mandate, there still are several law issues.

The first issue that has arisen is the inconsistency of the Court in its jurisprudence, Mrs. Diana Iovanovici-Șoșoacă being the first and the only candidate to whom such an analysis has been applied, the fundamental right to equality before law being compromised. Other rights of

Mrs. Diana Iovanovici-Șoșoacă and legal principles that have been infringed are the right to a fair trial, the right to defense, the principle of adversariality and the right to appeal.

With the aim of rectifying the violation of the right to appeal, the solution used by Mrs. Laura Codruța Kövesi should be taken into consideration by Mrs. Diana Iovanovici-Șoșoacă, an appeal to the European Court of Human Rights being the most feasible course of action.

In the final part, the paper focused on the citizens' rights that might have been compromised, as they were not given the opportunity to vote for the person they considered to be the most representative.

Considering all these, there is a great appreciation towards the Constitutional Court of Romania which is the guarantor of the supremacy of the Constitution, having one of the most important roles in maintaining the rule of law and in defending democratic values. Even in this case, there are situations, such as the one presented, where the Constitutional Court does not meet the standards set for it, necessitating the consideration for remedial measures for such cases.

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9. Decision 1/1996 of The Constitutional Court;
10. Decision of ECHR in KOVESI v. ROMANIA CASE;

11. Constitution of Romania;
12. Law 47/1992 regarding the organization and functioning of the Constitutional Court, republished;
13. Law 370/2004 for the election of the President of Romania, republished;
14. The Code of Good Practice in Electoral Matters;
15. The Universal Declaration of Human Rights;
16. The International Covenant on Civil and Political Rights;
17. European Convention of Human Rights.

THE ROLE OF FUNDAMENTAL PRINCIPLES IN THE GOVERNING THE INTERNATIONAL SOCIETY

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The main objective of our study is to analyze the role and impact that fundamental principles have in the governance of international society. We aim to trace the emergence of these principles and international governance, capturing their evolution and development in close connection with the maintenance of international peace and security. By identifying and assessing the impact of these principles, we seek to draw relevant conclusions that provide guidance for future research and actions in the field of international governance. This paper explores the reasons why fundamental principles play an important role in international relations and analyzes how they influence cooperation and development at the global level**.**

The respect and promotion of fundamental principles provide a solid framework for cooperation and development in international relations, contributing to the core values of all humanity. Thus, fundamental principles form the foundation upon which the governance of international society is built. The role of these principles in the governance of international society and their impact are closely linked to the promotion of international peace and security, human rights, sustainable development, and international cooperation. Currently, the changes occurring within international society are leading public international law into an extensive process of redefinition, as well as emphasizing humanitarian law.[1] Thus, the norms of humanitarian law, both conventional and customary international law, apply to all types of armed conflicts and must be respected by all parties involved. States are obligated to sanction violations of international humanitarian law, to prosecute those responsible for committing serious violations, especially war crimes, crimes against humanity, and to cooperate with other states in this regard. We can observe that public international law represents a legal guarantee

[1] A. Năstase, *Noțiunea de principiu în dreptul internațional în Revista Română de Studii Internaționale nr.5/1989*, p.358;D.Popescu, A.Năstase, Drept international public, Casa de editură și presă Șansa S.R.L., București, 1997, pp. 41-58 și pp.86-109; L.-M. Tocan, Drept international public, Ed. C.H.Beck, București, 2014, pp.95-96.

of both international peace and security, as well as cooperation between the subjects of public international law and the promotion of their progress. The fundamental principles of public international law are characterized by a high level of abstraction, expressing a universally accepted international value that governs the conduct of subjects of international law.

These principles serve as the criterion for the legality of the actions of states and other subjects of international law in international relations. The fundamental principles in international governance have had a complex evolution throughout history, reflecting political, social, and economic changes on a global scale. From the modern system of sovereign nation-states to the development of international organizations in the 20th century, the concepts of sovereignty, equality between states, non- intervention, and peaceful dispute resolution have been fundamental in defining international relations. The evolution of these principles has been influenced by treaties, conventions, revolutions, and armed conflicts, marking the transition from a system dominated by European powers to a global structure in which states from all regions of the world participate[2]. Born from the tacit or express agreement of states, either through customary or conventional means, the fundamental principles have an imperative character and have developed in the practice of relations between states, corresponding to different historical eras and the laws of societal development[3] . We note that the process of forming the common will of states, expressed in the principles and norms of international law, is an extremely difficult one, often marked by the conflicting interests of the states involved.[4] The fundamental principles of contemporary international law that should govern the relations between all states constitute the substance of international relations[5], an essential component of the international political and economic order.

Their strict observance is a *sine qua non* condition for world peace and security, as well as for the democratization of international relations, because they protect international values of exceptional importance for the entire international community. For example, international peace and security, the freedom and progress of peoples, are enshrined as fundamental principles. Building on this idea, the first conclusion we have reached is that the fundamental

[2] M.V. Antonescu, *Tipare de civilizații alter-globaliste în evoluția societății umane* a sec. xxi: spre respiritualizarea civilizației, Revista Univers Strategic, Anul XI Nr. 2(42) aprilie-iunie 2020 p.159-174.
[3] D.Popescu, A. Năstase, op.cit., p.86;Gh.Moca, M.Duțu, *Drept internațional public*, vol.I, Ed. Universul Juridic, București, 2008, p.130.
[4] A. Năstase, C.Jura, F.Coman, *Drept international public*- Sinteze pentru examen, ed. a 5-a, Ed. C.H.Beck, București, 2009, p.52.
[5] I. Gâlea, *Folosirea forței în dreptul international*, Ed. Universul Juridic, București, 2009, pp.75-77.

principles are imperative norms[6], accepted and recognized by the international community of states as a whole, norms from which no deviation is allowed and which can only be modified by a general international law norm of the same character[7]. We believe that the respect and promotion of fundamental principles are essential for ensuring a safer and more stable future for all nations of the world. Thus, the connection between fundamental principles and human rights is crucial for ensuring effective international governance and sustainable development.[8]

At the level of international society, the fundamental principles related to governance play an essential role due to the complexity of the challenges faced by the entire international community. For example, the principle of respecting human rights has become a central dimension of public international law, and the entire international society oversees their respect. After World War II, we witnessed the development of a modern concept regarding the international regulation of human rights. Violations of human rights during the war led the international community to adopt a system of norms aimed at preventing the suffering caused by war, as well as ensuring an effective system for the protection of rights that already existed and were regulated by the League of Nations.

Thus, the United Nations Charter was adopted with the aim of creating the necessary conditions for maintaining international peace and security, justice, and the fulfillment of obligations arising from international treaties. The most important moment regarding fundamental human rights occurred on December 10, 1948, when the UN General Assembly adopted the Universal Declaration of Human Rights. In recent decades, numerous treaties, pacts, and conventions have been signed at the international level, within which human dignity and freedom are protected through the provision of rights that belong to individuals, as well as through their protection and guarantee.

Respect for human rights must be a central pillar of any effective international governance strategy. The European Union's policy and actions in the field of human rights have two main dimensions. One focuses on protecting the fundamental rights of EU citizens, while the other involves promoting human rights worldwide. It can be observed that human rights are at the core of the EU's external actions, which is committed to defending and promoting human

[6] A. Năstase, B. Aurescu, C.Jura, op.cit., p.80.
[7] Idem., p.81; see art. 53 of Convention of Venice.
[8] D.Popescu, A. Năstase, op.cit., p.107.

rights across the globe. Thus, the EU is founded on the values of respecting human dignity, freedom, democracy, equality, the rule of law, and the protection of human rights, including the rights of individuals belonging to minorities. The EU seeks to integrate human rights into all its external actions, including its trade, migration, and environmental policies. All agreements signed by the EU must be in accordance with human rights. The main reference for the EU's activities regarding the protection and promotion of human rights worldwide is the Action Plan on Human Rights and Democracy, adopted in November 2020 for the period 2020-2024. On May 27, 2024, the EU decided to extend the action plan until 2027. The principle of respecting fundamental rights and freedoms represents an opportunity for growth and improvement in international governance, being closely connected to international governance.

Understanding the fundamental principles and their governance in the international context includes international security, sovereignty, cooperation, and the peaceful resolution of international disputes, essential aspects for analyzing and applying these principles in practice.[9] For example, NATO member states form a unique community with shared values, dedicated to the principles of individual liberty, democracy, human rights, and the rule of law, united under the common cause of ensuring that the Alliance remains a community focused on freedom, peace, security, and shared values, without precedent. Dialogue and international cooperation, in accordance with the fundamental principles of public international law, make a concrete contribution to strengthening international security and defending the values upon which the Alliance was founded. At the international level, governance is the process through which states and other subjects of international law collaborate and adopt concrete measures to address and resolve the problems faced by the entire international community. This includes diplomatic negotiations, the creation and enforcement of international norms and standards, the development and management of international relations, the peaceful settlement of disputes, ensuring global security, promoting human rights, providing humanitarian assistance, and fostering economic cooperation.

In the context of globalization, governance is essential for creating an environment conducive to development and addressing the challenges faced by the international community as a whole. For example, the principle of international cooperation is evident in the actions of

[9] L. Lazari, L.Grigoroi, M. Bajan, *Profesia contabilă: principii de etică și angajamentul față de interesul public* în International Scientific Conference on Accounting, ISCA, 2022, pp. 8-16.

states and international organizations, which, through consensus, can contribute to promoting peace, stability, sustainable development, and social justice worldwide. This is part of international governance, providing a solid foundation for building and maintaining an effective international order.

The quality of public administration and governance in a country is a crucial factor for its economic performance as well as for the well-being of its citizens. Efficient public administrations serve the needs of citizens and businesses. It is essential for public authorities to be able to adapt to changing circumstances. The EU Regulation on Artificial Intelligence (AI) is the first law on artificial intelligence in the world. It aims to ensure that AI systems are safe, ethical, and trustworthy. The AI regulation seeks to ensure that AI systems are developed and used responsibly. The rules impose obligations on providers and implementers of AI technologies and regulate the authorization of AI systems in the EU's single market. The law addresses the risks associated with AI, such as biases, discrimination, and accountability gaps, while promoting innovation and encouraging the adoption of AI. Being the first law in the world to regulate AI, the EU's rules could a global standard for AI regulation, similar to how the General Data Protection Regulation (GDPR) has done for data privacy. This would promote ethical, safe, and trustworthy artificial intelligence worldwide.

The European Commission helps EU member states undertake reforms in public administration and governance by providing technical support. Areas of intervention include central public administration, local government, e-governance, public procurement, better regulation, the judiciary, the fight against corruption and fraud, and improving the absorption of European structural and investment funds.

Development cooperation must be carried out in accordance with the principles and objectives of the EU's external action. Its main goal is to reduce, and in the long term, eradicate global poverty by promoting the economic, social, and environmental development of developing countries, in line with the United Nations' sustainable development goals.

In the governance of the international society, fundamental principles play a crucial role in establishing fair and sustainable governance. These principles, such as respecting national sovereignty, non-discrimination, peaceful dispute resolution, human rights, and promoting peace and security, are essential for ensuring the right to peace. They provide the necessary framework for cooperation between states, preventing international conflicts, and promoting

fundamental human values. Thus, fundamental principles ensure the respect for national sovereignty, ensuring the proper functioning of international relations and strengthening global peace and security by promoting non-discrimination, respecting cultural diversity, and protecting human rights worldwide.

In the context of sustainable development, fundamental principles such as respect for the environment, international cooperation in protecting natural resources, and promoting sustainable economic growth are of crucial importance. These fundamental principles lead to the adoption of policies and strategies that ensure a balance between economic development, environmental protection, and social equity, having a positive impact on international society. Contributing to sustainable development involves implementing measures aimed at reducing greenhouse gas emissions, preventing the degradation of natural resources, and promoting their sustainable use, while also considering the needs of future generations.

Fundamental principles play a key role in contributing to sustainable development by providing a conceptual framework for addressing environmental, economic, and social issues. They support the promotion of sustainable practices in industrial, agricultural, and energy sectors, helping to reduce negative environmental impacts and ensuring a balance between current needs and available resources. Thus, by adhering to these fundamental principles, international society builds a sustainable future where economic development is compatible with the conservation of resources and environmental protection, providing significant benefits for both current and future generations[10]. Fundamental principles play an essential role in facilitating international cooperation by providing a common framework for the world's states in addressing global challenges, such as climate change or pandemics. These issues require sustained and coordinated efforts at the international level to be addressed effectively[11]. Through cooperation, states can work together to identify and implement common solutions that protect the interests of all and ensure equitable, sustainable, and prosperous development at a global level.

International cooperation on a global scale is manifested through international treaties, conferences, as well as collaboration in areas such as scientific research, technological

[10] Al.Bolintineanu, A.Năstase, B.Aurescu, *Drept international contemporan*, București, Ed. All Beck, 2000, p.57; I.Brownlie, Principles of Public International Law, 4th edition, Oxford, Clarendon Press, 1990, p.26.
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development, the fight against climate change, poverty, terrorism, and other global threats.

Globalization and technological evolution have redefined public international law, making real and immediate cooperation between states necessary to manage global issues and promote sustainable development. An important aspect is identifying effective ways to implement fundamental principles that can be adapted and integrated into the context of global changes, which have a profound impact on international relations.

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THE RULE OF LAW PRINCIPLE IN THE EU

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Summary

The rule of law principle serves as a fundamental aspect of democratic governance which guarantees equity, consistency and responsibility within democratic societies. Within the European Union (EU), the rule of law is not only a fundamental value but also a legal requirement enshrined in the treaties that govern its functioning. This essay explores the significance of the rule of law in the EU context, tracing its historical development, analysing its key components, and examining the challenges it faces. Through a review of recent controversies and EU mechanisms for safeguarding the rule of law, this essay highlights the complex interplay between legal norms, political dynamics and institutional structures within the EU. By assessing the effectiveness of EU responses to rule of law challenges and reflecting on future prospects, this essay contributes to a deeper understanding of the rule of law's role in shaping the EU's legal and political landscape.

I. What is the Rule of Law?

The Rule of Law is one of the most important principles the European Union was founded on. According to the European Parliament's Decision **Doc. 11343**[1] from 6 July 2007, the Rule of Law states that Law should be the source of power within the states and that the Law is the only one which can limit this power. In this respect, the principle imposes that a right of reviewing the decisions of authorities by an independent judiciary should be granted to the citizens of all member states. According to the European Council[2], The Rule of Law requires that the process of law-making should be democratic, accountable, transparent and pluralistic and that the laws should be clear and accessible to every member of the European society.

[1] Doc. 11343 - Report of Committee on Legal Affairs and Human Rights.
Available at: https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11593.
[2] https://www.consilium.europa.eu/en/policies/rule-of-law/#what.

To be able to fairly understand the true meaning of the Rule of Law, we have to visualise it in harmony with two other fundamental principles of the EU, namely, democracy and the principle of respecting human rights. These two values play a very important role in defining the Rule of Law which would lack substance in the absence of the two principles. This is because, in a very simplistic phrase, the Rule of Law means that states should be governed by the law. Therefore, if democracy and Human Rights, as well as other important principles of the EU, wouldn't collaborate with the Rule of Law, the Law could be very arbitrary, immoral and unethical. This would transform the Rule of Law into the perfect weapon of a totalitarian state which is the exact opposite of everything the EU is pursuing to be.

The Rule of Law is responsible for attaining many objectives that are emblematic for the EU credenda such as freedom, security, democracy, social and economic growth and many other values that ground the EU doctrine. Therefore, consolidating the presence and application of the Rule of Law in internal decisions of member states in its true and fair meaning and purpose will create a steady and beneficial foundation for developing a society where citizens are protected from arbitrariness, inequity and injustice.

II. History of the Rule of Law

The Rule of Law has come a long way since it was first invented by the Ancient Greeks[3]. In the beginning, the principle existed in a very simple form that didn't include all the elements that compose the Rule of Law today. The Greeks believed in democracy, but in a more direct one where the heads of the families were collectively deciding for the community. This form of applying the principle is similar to the pluralism of today's form of the principle. Although the concept was similar, the instruments weren't. At that time the plurality meant only the heads of the families in the community. There weren't any institutions, courts or entities that were chosen by the people for this purpose. Also, the concept of equality existed only between men of similar social status, limiting the existence and development of the principle at that time.

The Romans also adopted a similar form of the Greek Rule of Law with a few particularities. The evolution of rule of law marks a transformative journey from late Roman concepts of royal supremacy to modern constitutional accountability. This fundamental shift

[3] Russell Fowler - *The Rule of Law: Origins, Meaning and Endangerment* in Tennessee Bar Association Journal, Vol. 59, No. 3. Available at: https://www.tba.org/?pg=Articles&blAction=showEntry&blogEntry=90749.

was initiated by the Magna Carta of 1215, establishing that monarchical power was subject to legal constraints and introducing essential elements of procedural justice, including requirements for witness testimony, peer judgment, and protection against arbitrary imprisonment. The constitutional progression continued through the Petition of Rights 1628 and was strengthened by the formalization of habeas corpus in the 1679 Act. The Bill of Rights 1689 completed this foundational framework by institutionalizing parliamentary supremacy in lawmaking and establishing the Crown's subjection to legal action. While the precise scope of rule of law remained somewhat fluid during this period, these sequential constitutional developments established the core principles that would shape modern constitutional democracy.

The great Roman philosopher *Marcus Tullius Cicero* once declared: `It is the law that rules … not the individual who happens to be the magistrate.[4] This was the starting point for what we know today as the Rule of Law.

Over the centuries, the Rule of Law evolved into a set of other principles such as supremacy of the law, equality of all citizens before the law, independence of judiciary institutions, clarity and accessibility of the laws and many other rules of this kind.

III. Rule of Law in EU treaties and case law

Not only the Rule of Law is a fundamental principle of the EU, but it is the most popular one judging by its presence in many political and judicial discourses[5]. Therefore, naturally, it is present amongst numerous treaties and court decisions. The Rule of Law is mentioned in two of the most important EU acts: The Treaty on European Union[6] and The EU Charter of Fundamental Rights. In Article 2, TUE establishes the Rule of Law as one of the fundamental values on which the EU bases its purposes and principles, whilst in Article 7 it provides the manner in which the violation of any of the values mentioned in Article 2 should be punished.

[4] Ibidem.
[5] Brian Z. Tamanaha - *The History And Elements Of The Rule Of Law*, Singapore Journal of Legal Studies National University of Singapore.
[6] *The treaty on european union*. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

The EU Charter of Fundamental Rights[7] also institutes in its Preamble the Rule of Law principle as one of the fundamental values of the EU.

The jurisprudence of the Court of Justice has established the critical importance of the rule of law through landmark decisions that emphasize its foundational nature in the European legal order[8]. Beginning with the Les Verts[9] case, the Court established the fundamental principle that all measures must conform with the basic constitutional charter. Through multiple decisions over time, the Court has consistently demonstrated that Member States and EU institutions must adhere to rule of law principles not only in theory but in practice. The Court's approach has evolved from focusing on individual compliance issues to addressing broader systemic challenges to the rule of law. Rather than treating these principles as mere abstract values, the Court's decisions have transformed them into concrete, enforceable obligations essential for the functioning of both the internal market and the area of freedom, security and justice. This case law development reflects the Court's understanding that effective legal protection and judicial independence are not optional features but fundamental requirements for the European Union's legal architecture.

Case C-216/21, Romanian Judges' Forum Association v. Superior Council of Magistracy[10]

In 2019, Romania's Superior Council of Magistracy approved new regulations modifying the promotion procedure for lower court judges. The new framework replaced the previous merit-based written examination system with a subjective evaluation of candidates' activity and conduct over the previous three years. This assessment was to be conducted by a commission comprising the president and members of the appellate court where positions were to be filled - the same judges who reviewed appeals against candidates' decisions and conducted their periodic evaluations post-promotion. The Romanian Judges' Forum Association

[7] *Charter of fundamental rights of the european union*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT.
[8] https://ceridap.eu/current-challenges-for-the-rule-of-law-and-the-role-of-the-judiciary-in-europe/?lng=en#post-5241-footnote-1.
[9] Case 294/83 "Les Verts", ECLI:EU:C:1986:166. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61983CJ0294.
[10] ECJ Decision from September 7 2023, in Case C-216/21, *Romanian Judges' Forum Association v. Superior Council of Magistracy*, ECLI:EU:C:2023:628. Available at: https://curia.europa.eu/juris/document/document_print.jsf?mode=lst&pageIndex=0&docid=277061&part=1&doclang=RO&text=&dir=&occ=first&cid=10359966.

challenged these regulations, arguing that such a procedure could engender hierarchical subordination attitudes and encourage compliant behavior from judges seeking promotion.

The Court established several crucial principles regarding judicial independence and the rule of law. First, it affirmed that judicial independence guarantees must extend throughout judges' careers, including promotion procedures. The Court developed a comprehensive framework for evaluating the compatibility of promotion systems with judicial independence, requiring that substantive conditions and procedural modalities must not generate legitimate doubts regarding judges' impermeability to external factors or their neutrality. While acknowledging that concentration of power in appellate court leadership is not *per se* incompatible with judicial independence, the Court emphasized the need for objective, verifiable evaluation criteria, robust procedural safeguards including reasoned decisions and appeal rights, and demonstrable independence of the evaluation commission itself. This decision is particularly significant for rule of law jurisprudence as it establishes concrete parameters for assessing institutional arrangements affecting judicial careers, emphasizing that structural guarantees of judicial independence must permeate all aspects of judicial professional development, not merely initial appointment procedures.

Associação Sindical dos Juízes Portugueses v. Tribunal de Contas[11]

The Court of Justice of the European Union issued this preliminary ruling in response to a request from the Supreme Administrative Court of Portugal. The case concerned the temporary reduction of remuneration for members of the Portuguese Court of Auditors as part of budgetary austerity measures. The Court emphasized that the EU is a union based on the rule of law, which requires Member States to ensure effective judicial protection in areas governed by EU law. Article 19(1) TEU entrusts national courts with this task, underscoring the importance of judicial independence.

The Court explained that judicial independence is essential for the proper functioning of the EU's judicial system, as it allows courts to exercise their functions autonomously, free from external influence. This independence is a necessary condition for the preliminary ruling mechanism under Article 267 TFEU to operate effectively. The Court concluded that the

[11] ECJ Decision from February 27 2018 in Case C-64/16 - *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, ECLI:EU:C:2018:117. Available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62016CJ0064.

temporary remuneration reductions applied to the Court of Auditors did not undermine its independence, as the measures were general in nature and limited in duration.

This ruling highlights the central role of the rule of law principle within the EU legal order. Judicial independence emerges as a key element of the rule of law, as it guarantees the effective judicial protection of rights conferred by EU law. The Court's emphasis on this principle demonstrates its commitment to upholding the integrity of the EU's system of legal remedies, which is vital for maintaining mutual trust between Member States and the proper functioning of the entire EU legal framework.

Joined Cases C-558/18 and C-563/18 Miasto Łowicz v. Skarb Państwa – Wojewoda Łódzki and Prokurator Generalny v. VX, WW, XV[12]

This ruling by the Court of Justice of the European Union significantly developed the interpretation of the rule of law principle within the EU. The Court emphasized that the rule of law is a fundamental value of the EU, and that member states must ensure effective judicial protection in areas governed by EU law. Judicial independence is essential for the proper functioning of the EU's judicial system, as it allows national courts to exercise their functions autonomously without external influence. The Court's decision establishes a direct link between the rule of law and the concrete requirements for judicial independence, underscoring that respect for the rule of law is an obligation for all member states.

IV. Challenges regarding the Rule of Law principle

One of the biggest challenges that the Rule of Law faces derives from the paradox that this principle represents. Thinking about the meaning and purpose of law as well as the meaning of the principle, we realise that it is very easy to fall into a trap. The Rule of Law means limiting the power the people have upon one another to ensure freedom and equality between humans. But, if we dive too deep into this reasoning, we might find ourselves in a place where we follow rules that have nothing to do with the society we actually live in, which would lead to exactly what the Rule of Law is aiming to avoid: arbitrariness, corruption and lack of morality.

[12] ECJ Decision from March 26 2020 in Joined Cases C-558/18 and C-563/18, Miasto Łowicz v. Skarb Państwa – Wojewoda Łódzki and Prokurator Generalny v. VX, WW, XV , ECLI:EU:C:2020:234. Available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:62018CJ0558.

Although it might seem like an extreme hypothesis, it wouldn't be impossible to fall into such a trap. In today's legal and political systems, there are many procedures and rules that must be followed. If we go step by step, from a procedure to another, it is very likely for us to only see the letter of the law and forget about its spirit, which is the one we should actually look for when applying the law.

On a more concrete note, amongst many other things, the Rule of Law includes the independence of judiciary institutions. This principle appeared in order to ensure freedom and security, making space for judiciary institutions to apply the law in the most accurate way for each concrete case. Given the fact that the law will never be able to predict every possible situation that might occur, it is the judiciary institutions' responsibility to adapt the law to the case. But our human nature is not always fair and some might take advantage of this independence to claim personal benefits or seek revenge[13]. Therefore, whilst being absolutely necessary to allow this independence, we have to be careful in whose hands this power is placed.

V. Safeguarding the Rule of Law in EU

The Rule of Law is a key principle of the EU's dynamic that dictates the direction in which it goes. Therefore, the EU laws and practices must provide efficient tools that can ensure the respect of the principle as well as suitable sanctions for member states that do not comply with the Rule of Law principle. As we've already seen its challenges, we now have to see the remedies that can ensure the Rule of Law is applied as it was firstly meant to.

The best-known tool of all is Article 7 of the TEU which provides the procedure that should be followed in the occurrence of a state's violation of the values referred to in Article 2, including the Rule of Law. Article 7 states that on the proposal of either a third of the member states or the European Commission with the approval of the European Parliament, the state suspected of the violation of Article 2 should be heard by the European Council which will determine if there is indeed a serious risk of breach of Article 2. If the Council decides with a qualified majority (four fifths) the existence of a violation of the fundamental values, it will make recommendations and can even restrain some of the state's union rights. However, the

[13]Naomi Choi, *Challenges to the rule of law*, Encyclopaedia Britannica.
Available at: https://www.britannica.com/topic/rule-of-law/Challenges-to-the-rule-of-law.

state in question will still be bound by its member state obligations. The restrictions may be revoked by the Council if the situation of the state improves.

Another tool that was shaped specifically for safeguarding the Rule of Law principle is the Annual Rule of Law Dialogue[14]. This is a mechanism that brings together, every year, the European Council, the European Parliament, the European Commission, representatives of all member states, national parliaments and other interested parties to discuss matters in regard to the Rule of Law for the purpose of preventing violations, improving the functionality of the governing systems as well as encouraging cooperation between institutions. Since 2020[15], the dialogue has a more structured course, being held on national as well as on union level. The Commission's report[16] holds a record of these discussions, focusing on four major areas: *justice systems, the anti-corruption framework, media pluralism and media freedom and other institutional issues linked to checks and balances*. Since 2022, the Commission also makes recommendations for each state. In December 2023, the Presidency made an evaluation of the procedure concluding that it is beneficial and useful for improving the functionality of the EU and that the Dialogue will continue to be held annually until a new evaluation will take place in 2027.

VI. Personal opinion on the topic

The Rule of Law's significance as a cornerstone principle of the European Union is incontestable, serving as the foundation upon which the entire European legal doctrine is built. However, its practical application presents a fascinating dichotomy: while it must align with moral standards and common sense, it simultaneously needs to balance societal welfare with individual justice. This delicate equilibrium is particularly challenging in contemporary society, where collective needs often clash with individual rights, requiring a nuanced interpretation that goes beyond mere legal technicalities.

Among the subsidiary principles of the Rule of Law, I think judicial independence emerges as arguably the most critical and demanding element. The human factor in judicial

[14] https://www.consilium.europa.eu/ro/policies/rule-of-law/#toolbox.
[15] https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle_ro.
[16] EVALUATION OF THE ANNUAL RULE OF LAW DIALOGUE, Brussels, 12 December 2023. Available at: https://data.consilium.europa.eu/doc/document/ST-16547-2023-INIT/en/pdf.

decision-making presents an inherent challenge - no matter how well-trained or experienced, judges face situations where absolute objectivity is unattainable, and legislation may not fully address the complexity of the case at hand. However, when judges operate within a robust framework of principles, supported by a coherent legal context at both national and Union levels, they become effective guardians of justice. This judicial effectiveness creates a positive societal cycle: as citizens witness their rights being protected, their trust in the system grows, fostering greater civic engagement and societal development.

The paradoxical nature of the Rule of Law principle presents perhaps its greatest threat. History teaches us that seemingly benevolent legal frameworks can be manipulated to achieve oppressive ends. A prime example is the rise of Nazi Germany, where Hitler's ascent to power uniquely occurred through democratic means. His initial platform emphasized national unity, economic recovery, and traditional values - principles that resonated deeply with the German populace. However, once in power, these same principles were distorted to justify authoritarian control and systematic oppression

Therefore, the true essence of the Rule of Law lies not merely in its literal application but in its spirit. While technical compliance with legal provisions might satisfy formal requirements, bad-faith application can severely undermine justice. The principle demands more than just rule-following; it requires a mindset grounded in morality and equity. This aspect becomes particularly crucial given humanity's natural tendency toward self-interest and individualism. Therefore, as I see it, The Rule of Law serves as more than a legal framework - it represents a moral compass that guides societal development while safeguarding individual rights.

CONCLUSIONS

The Rule of Law principle stands as a cornerstone of the European Union's constitutional architecture, representing more than a mere legal concept - it embodies the fundamental values that shape the Union's identity and operational framework. Through extensive analysis of its historical evolution, from ancient Greek democracy to modern constitutional frameworks, it becomes evident that this principle has transformed from a rudimentary concept of legal supremacy into a sophisticated mechanism of democratic governance.

The principle's contemporary manifestation in the EU context demonstrates remarkable complexity, integrating various components including judicial independence, legal certainty, and institutional accountability. The EU's legal framework, particularly through Article 2 and Article 7 TEU, as well as the EU Charter of Fundamental Rights, establishes robust mechanisms for safeguarding this principle. The jurisprudence presented, along with the broader body of case law in this domain, illustrates the principle's practical significance in shaping institutional relationships and protecting fundamental rights within the Union.

The Annual Rule of Law Dialogue, introduced as a preventive mechanism, represents a significant advancement in the EU's approach to maintaining rule of law standards. This structured dialogue, focusing on justice systems, anti-corruption frameworks, media pluralism, and institutional checks and balances, demonstrates the EU's commitment to proactive engagement with rule of law challenges. The positive evaluation of this mechanism in December 2023 confirms its effectiveness in promoting institutional cooperation and preventing violations.

However, the principle faces inherent paradoxes and practical challenges. The delicate balance between procedural adherence and substantive justice, coupled with the necessity of maintaining judicial independence while preventing its abuse, presents ongoing challenges that require constant vigilance and adaptation of existing safeguards.

In conclusion, the Rule of Law principle emerges not only as a foundational pillar of the European Union but as a living instrument that continues to evolve in response to contemporary challenges. Its effectiveness in protecting democratic values while promoting social and economic development underscores its indispensable role in European integration. As we look toward the future, the principle's continued evolution and strengthening will remain crucial in safeguarding the values that define the European project, serving as a beacon of hope for those who believe in the power of law to protect human dignity and promote societal progress.

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THE STATUTE OF LIMITATIONS REGARDING THE OFFENSE OF ASSAULT OR OTHER ACTS OF VIOLENCE IN THE FORM OF DOMESTIC VIOLENCE IN LIGHT OF THE ICCJ RULING

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The offense of battery and other acts of violence, as defined and incriminated by Article 193 of the Special Part of the Penal Code, involves hitting or any other acts of violence that may cause physical harm and as such, is punishable by imprisonment from 3 months to 2 years or by a fine. The material object of the offense is represented by the body of the person upon whom the violence is exercised[1].

Domestic violence is criminalized under Article 199 of the Special Part of the Penal Code[2], and what distinguishes domestic violence from the offense it refers to, such as the circumstantial element, is the relationship between the victim and the aggressor, in other words, the passive subject must have the quality of a *family member*, regarding the active subject[3]. The term family member is understood to include ascendants and descendants, siblings, their children, as well as people who have become such relatives through adoption, according to the law; the husband, people who have also established such ties that resemble the ones between husband and wife or the ones between parents and children that they live together, as well as, in case of adoption, the ties between the adopted person and their descendants in relation to their natural relatives. This classification leads to an increase in the penalty limits for offenses committed against family members.

THE NEED FOR INCRIMINATION AND THE LIMITS OF THE PENALTY

Physical violence is the cruelest form of abuse, and the established role of the criminal law is to protect the social values, and the relationships connected to them, including human beings

[1] V. CIOCLEI ,,Drept penal, Partea specială I – Infracțiuni contra persoanei și infracțiuni contra patrimoniului " Ed. C.H Beck 2023 București p. 63.
[2] https://legislatie.just.ro/Public/DetaliiDocument/109855 accesat 1.03.2025.
[3] Op.cit p.103.

and their integrity. Therefore, we are in the presence of the criminalization of the offense of domestic violence, as described above. Unfortunately, this phenomenon is widespread in Romania, where tradition still prevails, and violence against family members is often seen as a form of authority and enforcement, it is perceived as acceptable behavior. Cultural norms regard it as a natural practice, deeply rooted in family customs. The effect of this type of behavior highlights wrong and dangerous beliefs regarding the place of women in society, all while it contributes to a silent acceptance of violence in family life.

In Romania, domestic violence represents a significant problem, considering even the legislation which tries to protect the victims and punish the aggressors. Many victims end up in compliance with the situation that they are in, and the call for help from the authorities becomes an unfathomable option on account of the shaming culture, terms of stigmatization and the lack of trust in the system that should offer protection. Therefore, many cases of abuse remain unreported, and the accumulated traumas remain buried deep in the minds of the victims.

Nonetheless, a life lived in fear and suffering cannot be considered a real life. This is an existence marked by pain and fear, deprived of liberty and dignity. Domestic abuse does not only affect the woman directly but the whole social frame, aiding and abetting a whole cycle of intergenerational abuse. It is our responsibility, societies and lawmakers, to actively intervene to ensure a safe and proper space for women.

In conformity with the Penal Code, battery and other forms of assault are punished with imprisonment ranging from 3 months to 2 years, and in the case of domestic abuse, the limits are majored by one-fourth.

THE PROBLEM OF THE STATUE OF LIMITATIONS REGARDING THE BATTERY AND OTHER ACTS OF VIOLENCE IN THE MATTERS THAT REFER TO DOMESTIC VIOLENCE

As we have previously mentioned, the punishment for battery and other forms of assault is imprisonment from 3 months to 2 years, resulting in the statute of limitations being five years, as it is mentioned in art. 154 alin.(1) lit.d).

In high sight, the offence of battery and other forms of assault, committed in its aggravated form, of domestic abuse, may need a different statute of limitations, as per judicial

practice. For these reasons, the Bacău Court of Appeal – Criminal Section and for cases involving minors and family matters, in case no. 2.168/321/2021[4], requested the High Court of Cassation and Justice to issue a preliminary ruling on the following legal matter: "Is the general statute of limitations applicable to the offense of assault or other acts of violence, as provided for in Article 154. alin. (1) lit. c) of the Penal Code, or the one indicated in Article 154 alin. (1) lit. d) of the Penal Code, as it is of a legal nature in art. 199 (1) Penal Code that states:

1. As a standalone (autonomous) offense;

2. As an aggravated form of the offense to which it applies (in the first two cases, the general statute of limitations would thus be 8 years); or

3. As a special aggravating factor for the penalty under certain circumstances (in this latter case, the general statute of limitations would be 5 years).

THE HIGH COURT OF JUSTICE INTERPRETATION IN THE MATTER

In the reasoning of the High Court of Cassation and Justice in Decision no. 58/18.09.2023, published in the Official Monitor on October 25, 2023[5], the legal reasoning supporting the application of the statute of limitations for criminal liability, according to Art. 154 alin.(1) lit. c) of the Penal Code, with the application of Article 199 alin. (1). It derives from the considerations of Decision no. 1/10.02.2015, issued by the Panel for Resolving Legal Issues in Criminal Matters (published in the Official Monitor of Romania, Part I, no. 1045 of February 10, 2015). This decision analyzed the autonomous or mitigating nature, as well as the legal nature of the cause for sentence reduction in the context of Art. 308 of the Penal Code, in relation to Art. 295 of the Penal Code. The High Court of Cassation and Justice in Decision no. 1/2015 established that "an aggravated or mitigated version of an offense requires, first and foremost, the conditions of the standard version, to which circumstantial elements are added. These elements may pertain to the material or moral aspect of the act, its object or subjects, or the place and time of its commission, thereby conferring, in abstract terms, a higher or lower degree of severity."

[4] https://portal.just.ro/32/SitePages/Dosar.aspx?id_dosar=32100000000061731&id_inst=32 , last accessed 2.03.2025.
[5] https://www.iccj.ro/2023/10/25/decizia-nr-58-din-18-septembrie-2023-2/ , last accessed at 02.03.2025.

Therefore, the same act can be incriminated, in addition to its typical form, in one or more aggravated or mitigated versions, which are differentiated by these circumstantial elements and causes for sentence reduction refer to circumstances, situations, or qualities related to the act or the defendant, which can create confusion regarding their effects[6]. The distinction between these lies in the fact that, while the conditions concerning the existence of the offense, although extrinsic to the incriminated activity, constitute a whole part of the content of the incrimination, the causes for the reduction are external to this content and influence only the degree of social danger of the act, serving as criteria for the individualization of the punishment[7].

Considering the aforementioned reasoning, the legal provisions being interpreted do not merely represent a cause for increasing the punishment. Thorough, the legislator's intent, a specific quality of the active subject of the offense (a circumstantial element essential for the existence of the offense) led to the regulations of an additional variant, which reflects, through specific penalty limits, a different degree of social danger.

The provisions in Article 193 of the Penal Code, which criminalizes assault or other acts of violence, establish the objective and subjective conditions necessary for an act to constitute an offense, thus representing the incrimination norm for the standard form of the act. In contrast, art. 199 alin. (1) of the Penal Code refers to the aggravated form of the offense provided in art. 188, 189, and 193-195 of the same code, as well as to the increase by one-fourth of the special maximum penalty prescribed for these offenses when the acts are committed against a family member.

The reference in Article 199 of the Penal Code to the provisions and statutory penalty in Article 193 of the Penal Code constitutes a legislative technique that, according to the Article 16 alin (1) of Law no. 24/2000 on the rules of legislative drafting for normative acts, can serve to supplement, extend, or exclude certain regulations. When this reference serves a supplementary role, the norm to which the reference is made complements the content of the referring norm, avoiding the repetition of existing regulations. Through this legislative

[6]Ștefan Daneș, Vasile Papadopol, "Individualizarea judiciară a pedepselor", Editura Științifică și Enciclopedică, București, 1985, p. 111.
[7] Ștefan Daneș, Vasile Papadopol, op. cit, p. 112.

technique, a normative connection is created between the two provisions, with one serving as the legal basis for the other.

The consequences of this normative relationship are established by Article 5 alin. (1) and alin. (2) of the Law no. 187/2012 for the implementation of Law no. 286/2009 on the Penal Code, according to which the penalty limits are adopted and retained by the incomplete norm (Art. 199 of the Penal Code), even in the event of the repeal of the supplementary norm (Art. 193 alin. (2) of the Penal Code), unless otherwise provided by law. Thus, regarding the provisions in Article 199 of the Penal Code, the reference made to Article 193 of the Penal Code serves to clarify the legal framework applicable in cases where the act is committed against a family member. The basis of the incrimination norm provided by Article 193, extends to cover the qualifications of the subjects of the crime (i.e., family members). As a result of this modification, the legislator has adjusted the upper penalty limits to reflect the degree of social danger of the act, namely by increasing the maximum by one-fourth.

By introducing a special, higher maximum penalty for the offenses provided by Articles 188, 189, and 193-195 of the Penal Code (increased by one-fourth) in cases where the acts have been committed against a family member, the legislator aimed to ensure the protection of family relationships and to discourage domestic violence, without creating a new offense type.

Consequently, the offense of assault or other acts of violence, as provided in Article 193 of the Penal Code, constitutes the prototypical offense, while the provisions of Article 199 of the Penal Code establish an aggravated form of this offense when the act is committed against a family member.

Considering the aforementioned points, for the offense provided in Article 193 alin.(2) of the Penal Code—with the application of Article 199 alin. (1) of the Penal Code— the penalty provided by law, according to Article 187 of the Penal Code, refers to the aggravated form of the offense (i.e., with the maximum penalty increased by one-fourth), namely imprisonment from 6 months to 6 years and 3 months, or a fine. In this context, the general statute of limitations for criminal liability for the offense of assault or other acts of violence within the framework of domestic violence, regulated by Article 193 alin.(2) of the Penal Code with the application of Article 199 alin.(1), is that provided by Article 154 alin.(1) lit.(c) of the Penal Code.

Consequently, for the reasons stated above, the High Court of Cassation and Justice—the panel for resolving legal issues in criminal law—accepted the referral submitted by the Bacău Court of Appeal—Penal Section and for cases involving minors and family matters— in File No. 2.168/321/2021, and ruled that the general statute of limitations for criminal liability for the offense of assault or other acts of violence within the family, as provided by Article 193 alin.(2) of the Penal Code with the application of Article 199 alin.(1) of the Criminal Code, is that provided by Article 154 alin.(1) lit.(c) of the Penal Code, namely eight years.

CONCLUSIONS

We can observe the positive attitude of the Supreme Court judges in defending social values and the life of the individual, which, in light of domestic violence statistics showing an increase in such acts, is achieved by improving the sanctioning regime and clarifying the statute of limitations by setting the offense at an eight-year term. This also reflects a firmer approach by the legislation in the area of domestic violence, aimed at protecting the victim and discouraging abuse within the family.

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