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CONTENTS

SOCIOLOGY AND ANTHROPOLOGY	7
Coposescu S.: <i>Defining Identity in the Context of Globalization</i>	9
Dancu A.: <i>Investigating the Social World through Photography</i>	15
Marzano M.: <i>"Secrets and Lies": (Not) Telling Bad News in Italian Oncology</i>	22
Onuț Gh.: <i>Application of Six Thinking Hats with the Theme „Profession of Sociologist”</i> . <i>Transcript Of The Sequence Of Green Hat</i>	31
Rățulea G.: <i>Minorities Protection, Democracy and Cultural Pluralism</i>	42
Sava A.: <i>Community of Predeal ≈ General Descriptive Elements ≈</i>	52
Sandru C.: <i>Current Outlook upon Ethnography</i>	61
Ungurean Ș.: <i>Sociology and Literature; a Postmodern Analysis of the “Răscoala” Novel</i>	69
PSYCHOLOGY AND PEDAGOGY	77
Clinciu A. I.: <i>Conceptualization, Cognitive Process between Image and Word</i>	79
Cocorada E., Luca M., Pavalache-Ilie M.: <i>Perceived Assessment Style and Learning Motivation</i>	85
David L. T., Clinciu A. I.: <i>Psychological Measures of Spatial Abilities</i>	93
Indreica E.-S.: <i>Artistic Language in Non-Verbal Communication</i>	99
Niculescu R. M.: <i>Trying to Understand Curriculum in a New Millenium</i>	105
Paola N.: <i>Evaluating Training Outcomes: Some Reflections on an Online and in Presence Modality</i>	113
Truța C., Broidioi B.: <i>A Romanian – Belgian Comparison on Work Related Stereotypes and Behaviours</i>	123
Voinea M.: <i>The Training of Teachers in Information and Communication Society</i>	129
SOCIAL WORK.....	135
Bodi D.-C.: <i>Role of the Family and of the Social Services in Elderly Persons’ Life</i>	137
De Angelis M.: <i>Immigrants in Italy and Their Right to Health Services: The Importance of Health Services for an Easier Integration</i>	145
Zanca R.: <i>Contraceptive Attitudes and Practices in the Roma Communities</i>	155

LAW	161
Aldea A.: <i>Tax Dodging. The Offence Stipulated by Article 9 alin.1 let.a from Law 24/2005. Considerations.....</i>	163
Bianov A.: <i>The Dilemma of Positive Legislator or the Difficulties of the Constitutional Procedural Law</i>	167
Cepillo Galvín M. Á.: <i>The Case-Law of the Court of Justice of the European Communities Concerning the Law of the World Trade Organization and the Autonomy of the European Community in the Implementation of its Common Commercial Policy</i>	173
Del Valle Gálvez A., Remi Njiki M.: <i>The Use of Spanish Regional Official Languages in the Court of Justice of the European Communities</i>	180
García Soto M.: <i>The Right to Privacy and the Right to Intellectual Property in Internet: the Promusicae Case, a Significant Judgement of the European Court of Justice.....</i>	188
González García I.: <i>Gibraltar and the European Parliament Elections before the European Court of Justice</i>	195
Manea L., Manea A. C.: <i>The Investment of the Payment Instruments with Executory Formula</i>	203
Mureşan L., Gheorghe C. A.: <i>The Relation between the Romanian Banking Commercial Companies and the Corporate Social Responsibility..</i>	207
Spiridon C.-C., Şaramet O.: <i>“Equal Work Require Equal Salary” – Side of the Principle of Equality Treatment between Men and Women</i>	213
Verdú Baeza J.: <i>Towards a Right to the Environment in Europe: Noise and Jurisprudence of the European Court of Human Rights</i>	219
PHILOSOPHY AND HISTORY	227
Borcoman M.: <i>A Page from the History of the Principality of Transylvania</i>	229
Sorea D.: <i>Observations with Respect to the Future of Religion Prefigured by R. Rorty and G. Vattimo</i>	237
Tomelleri S.: <i>Social Relations in the “High Place” of Technology</i>	243
Authors Index	249

SOCIOLOGY AND ANTHROPOLOGY

DEFINING IDENTITY IN THE CONTEXT OF GLOBALIZATION

Silviu COPOSESCU¹

Abstract: *The paper focuses on problems of individual and social identity-construction in the context of globalization. The author analyses the concept of identity from modernity and post-modernity perspectives. As a conclusion the author claims that a new approach strategy of defining and interpreting the epoch of globalization is necessary in order to explain and understand the social changes at local, regional and world levels.*

Key words: *identity, crisis identity, globalization, social changes..*

1. Identity and Change

In a changing world, the English poet and essayist T.S. Eliot remarked, there is one thing that remains unchanged, the continuous struggle between Good and Evil. But, as David Massey (1) observes, there are still other things that do not change. For example, the never-ending longing for identity that grows as times change. And the 21-st century seems to be the epoch of globalization and of changing times. In this context of profound and accelerated changes, individuals, groups and (small as well as large) communities are fearfully and hopefully searching for their identity. Identity is present – whether explicitly or not – on the lips of ordinary people, in the halls of governmental offices, in the seminar rooms, in the social science research laboratories, and among the topics of international conferences.

These common sense observations suggest that identity is perceived, at different levels and in various manners, as an issue of our times. “Identity has become one of the unifying frameworks of intellectual debate in the 1990s”, states Richard Jenkins (2). He notices that

everybody has a saying on identity: sociologists, anthropologists, political theorists, psychologists, historians, philosophers, etc. Moreover, identity is not only a topic of intellectual debates, but a practical issue as well. Business people have understood that in order to sell goods and services it is necessary to sell an “identity” as well. Purchasing a new product means a new brand. Thus, identity is constructed and purchased in corner shops, in school, at the workplace, during business trips or holidays, in families or groups of friends. A new brand (new dressing style, new diet, new hair style, new interior design, new job, new organisation, new group of friends, etc.) means a change, with regard to the epoch and the others. Consequently, identities change: new identities occur, the traditional ones are revived, or the existing ones are transformed (de-constructed and re-constructed). However, identity is not the only issue of our times, perhaps more importantly, social change is another. The fact that identity is searched for and disputed at all levels of human existence and practice, suggests an identity crisis and

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uncertainty concerning the direction of change.

2. "Crisis of Identity" or "Identity Crisis"?

From a somehow nostalgic perspective, we could suggest that identity might be "the illness of the century". If "crisis" is the brand of our times (see for instance the present-day financial crisis, the economic crisis, the political crisis, and the social crisis), then "identity" could be the brand of future research.

In fact, what is identity?

Of course, identity as experience and as a concept constructed from various elements suggests various perspectives in formulating an answer to the question. For example, from a disciplinary, multidisciplinary and interdisciplinary perspective, each author aims at specific theoretical, methodological, and ideological advantages, and specific practical applications. My perspective in this paper is interdisciplinary (anthropological, sociological and philosophical).

From such a perspective, identity is first and foremost an ideological strategy which "symbolises" the antinomic specificity of human condition. Identity symbolises my, your, our, their need for fulfilment as autonomous human beings/entities. On the one hand, there is the need for continuity and belonging, by relating to others, on the basis of some real or imaginary common characteristics (of the species, of the group). On the other hand, there is the need for differentiation, discontinuity, and individuality, on the basis of some real or imaginary unique, individual characteristics. However, difference is something else than identity. It is something more or less, a plus or a minus. Identity is a pattern. In order to be fulfilled, it needs to follow the pattern that is constructed or inherited, and to become the

master of the pattern. To be master of the pattern means to be in the centre. Centrality is constitutive for the concept of identity. Understood in this way, identity is an emergent socio-cultural concept, relatively and relationally opposite to static, or, for that matter, dynamic substantialism. The emergent identity bears the label of context. But, like any other construct, it is never definitely finalized. Given, declared identity is permanently re-constructed, innovated, and ascertained through a set of expressions and conventionally symbolic forms that are negotiated and shared by the members of the group or community.

Claude Levi-Strauss considers that "identity is a kind of virtual foyer, indispensable in explaining a number of things, but without having a real existence" (3). This number of things could be: the family, the lineage, the place, the home, the name, the profession, the belief, the language, etc. So, when we feel that these benchmark-things, such as the place, the home, the parents, the life styles and customs that we inherited are disappearing, when we loose our origins, when group solidarities are breaking, we can certainly say that there is an identity crisis.

The crisis refers to the existential as well as the conceptual aspect of identity. The solution to the crisis could be similar to the "puzzle" strategy (re-formulation, re-construction), or the "revolution" strategy (radical change). In both strategies, a critique is indispensable. There is a "traditional" critical strategy, the way the majority of us perform, which aims at clarifying inadequate concepts by adding or adjusting them in order to get to some positive knowledge. But there is also a kind of critique which places the concepts "under eraser" (Foucault, Derrida, Deleuze), the radical post-modernist critique, which aims at "de-constructing" the key concepts that cannot be replaced

with others (and identity is such a key-concept) in order to construct, explain and interpret socio-cultural phenomena. According to Stuart Hall(4), Derrida has described such an approach as thinking to the limits, in intervals, a kind of double writing, which hides and reverses the intervals. By reversing the intervals a new concept emerges which can no longer be included in the old paradigm. Thus, present-day identity operates, in our post-modern society, undercover/under eraser, in the interval between revival/replacement/elimination and emergence/complete change. Such an approach is radically new and is a strategy of approaching the issue comprehensively, as a whole.

Then the question arises: In relation to which set of problems does identity become an irreducible dimension, an invariant of human existence, and what factors determine the emergence of a new type of identity? The answer seems to be related to the issues of centrality and localisation that are present in the processes and forms of individual identity as well as in the processes and forms of collective (community or societal) identities, such as family dynamics or the identity of political movements, present or past.

But the notions of centrality and localisation are also the focus of critical analysis and interpretation, due to the phenomenon of globalization. We can notice, at present, that the roller of globalization profoundly affects processes and forms of organization, as well as the content of individual and social lives everywhere. Consequently, globalization is one of the factors that determine the reconstruction/replacement and emergence of new types of identity.

3. Globalization and Identity

The process of globalization is generally characterised by two main, opposing forces. On the one hand, there are the economical and technological forces that support expansion and a growth in the efficient functioning of organisations (for example, the trans-national organisations) beyond traditional national borders. On the other hand, there are the social and cultural forces which resist the expansion of trans-national structures and organisations. According to a research done by Galit Ailon-Souday and Gideon Kunda (5), the offensive of trans-national organisations, based on their economic and technological power needed to achieve their objectives (for example the profit), ignoring the national borders and identities, is counter-balanced by the opposition of the national, regional, local social and cultural forces. In order to understand the significance of the opposition between the two tendencies and its implications for the construction and affirmation of national or local identities, it is useful to briefly put forward some theoretical aspects concerning the concept of “globalization”, which seem to be similar to and linked with those of the concept of “identity”.

According to R. Roberston (6), the present-day situation concerning globalization is a major contemporary example of the way in which concepts and theories, previously developed by social scientists, are then used in the “real world” in a manner that threatens their analytical and interpretative validity.

Anthony Giddens considers that it would be a mistake to conceive globalization just in its quantitative and substantialist sense, as a medium which is expanding and homogenizing, and within which certain societies are developing and changing. The general term of globalization denotes the social, economical and political interdependences that cross boundaries

between countries and condition decisively the lives of the people that live in those countries

In a deeper sense, globalization “should be understood primarily as the reordering of time and distance in our lives” (7). So, the process approach suggests the pre-eminence of the structural, qualitative sense of the concept of globalization.

Globalization does not mean just a process of increase of interdependences between nations and the formation of a single, structurally homogenous, world system, but a process of intensification and deepening of differences and a process of construction/re-construction, hence negotiation, of identities. Such a tendency suggests that globalization implies complex, on-going, ontological relations between the universal and the particular. From the perspective of the relation between the universal and the particular, it is more appropriate to consider that it is not only globalization that influences the identity features of national systems, but national systems, in their turns, also affect the evolution and features of globalization.

The confusing usage of the notion of globalization in different contexts and with different meanings can be considered, in my opinion, not just negatively, but also positively, stimulatingly, innovatively. Namely, as a challenging signal of the diffuse and still vague character of the profound/hidden changes that take place in the world system as a whole. The fact that the factors which determine the on-going changes are difficult to identify as analytical units has led to the common-sense perception of globalization, primarily in its economic sense, as one of the explanatory factors of present-day social changes. The probable cause of the focus on the economic dimension is the universal character of satisfying the human subsistence needs. Perhaps this aspect of globalization brought organizations in

general and economic organizations in particular to the attention of researchers and to the common-sense perception as the main factors of change and of the emergence of new types of identities.

4. Social Change and the Globalization of Identity

It is natural to emphasize the fact that social change nowadays is dramatic in its amplitude, rhythm, and complexity. I understand by social change the continuous process of transition of a society from one type of structural organisation to another, with phases of slowing down and acceleration. Human history, in continuous change, represents an entirety of human acts of knowledge, creations, and actions. These human acts involve individuals associated in groups, families, households, organisations, state communities. Historical and social reality has shown us that, on the one hand, these human associations generate the emergence of political, economical, religious institutions/organisations. On the other hand, there is a close link between institutions and social changes. Institutions are structural, functional components of real societies. They are made of “a complex of values, norms, and customs shared by a number of individuals” (4, p.137). Institutions or organisations are ensembles of individuals who associate in order to cooperate for the achievement of some goals (needs/interests). In order to cooperate, individuals need to adhere to, to share and to commit themselves to the values, norms and rules of the organisation. Values, norms and rules represent the nucleus of the organisational culture. Culture expresses the identity of the organisation. Consequently, it is natural for the group if individuals associated to achieve a common goal, to construct, maintain and promote the identity of the organisation, as a strategy of

expressing their autonomous identity in relation to other groups.

Who and what changes? Does the individual and its identity change? Does the community/society and its identity change?

According to the modern paradigm of identity, what kind of identity can an individual or group develop, who finds out overnight that his/her institution/organisation has gone bankrupt, or has merged?

Or what kind of strategy for identity construction can a person develop, who has had a great number of professions or occupations? Is profession or occupation still an identity dimension? In reality, as a group of French researchers found out, the identity crisis “is in a relation of exteriority with the occupation and is in instrumental relation with the work, and such relations turn ‘reconversion’ to other roles, in particular the family ones, into a delicate issue” (8, p.121).

Or, what kind of identity can a child/adolescent construct, who has experienced successive parent divorces, changes of paternity, of schools, of place of residence?

Also, in the process of intensification of globalization, what identity can a trans-national organisation develop, whose individuals construct and negotiate their identities instantly, depending on the context?

In the context of globalization, it is clear that the autonomy, and consequently the constructed and expressed identity, is being continuously attacked through commercial, financial, communication, and migration strategic networks. Through these strategic networks, globalization alters, breaks down, and threatens the identity of communities, individuals, their forms of organisation, and their identity patterns. In such a context, individuals search for strategies for conserving and

defending their actual identities by reviving past patterns of identity (such as family lineage, professional/occupational associations, fundamentalist religious movements, ethnic movements) on the one hand. On the other hand, individuals search for strategies of reconstruction or construction of new identities, in an emergent virtual world, which is evolving, in an accelerated rhythm, towards new forms of structuring identities, perceived as uncertain and confusing. Perhaps the tension between the past, the present, and the future, as well as the tension, subjectively experienced, between the real, the virtual, and the imaginary is similar to the tension between good and evil, mentioned in the beginning of this paper. This dramatic tension must have a meaning which we are going to decipher some day.

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INVESTIGATING THE SOCIAL WORLD THROUGH PHOTOGRAPHY

Andrei DANCU¹

Abstract: *Visual representations found in the written press are approached through a social semiotic analysis that explores the way in which the non-verbal speech is handled at visual level and examines the notion of stereotypy in visual representation. Analyzing the basic structure of images, a structure comprising coded messages, reveals a conventional representation of mass media images. The display method is a simplistic and standardized one, achieving an outline of a world of values which is rather made up and of poor content. Thus, there is the assumption that the representations of written publications enforce and reflect distorted perspectives of the reality, and the ones generating them are in their turn subject to conformism by the organizational framework they serve.*

Key words: *photography, journalism, visual sociology.*

The basic elements in visual communication represent the source of composition for a variety of visual messages, objects and experiences. The primary visual element, i.e. the point, is a space marker; it is the line which articulates the shape; the shape designates the basic contours, the circle, the triangle and the square; the direction orientates the movement and gives character to basic shapes; the value, the elementary aspect of all elements, refers to the presence or absence of light; the shade and the saturation define the colour - coordinate the value adding chromatic elements; the texture, either optical or tactile, is the characteristic surface of the visual material; the scale, namely the relative size and measure of an image; the size and the dynamics, the two dimensions that give "force" to the image. These are the visual elements from which we are extracting the basic support for the construction of the visual intelligence levels. By

understanding these elements, the viewer can manage to understand the visual syntax. To be visually literate means to have the ability, acquired as a result of knowing the basic visual elements, to grasp the significance and the components of the image.

Those who want to use photographic materials in the area of social science - to do what is more recently known as visual sociology - reach a dead end more often than not. The photographs achieved by the advocates of the visual sociology resemble to such a great extent the ones performed by others, who assert that they make documentary photography or photojournalism, that there arises the question whether there is a difference between these subjects. There is an attempt to eliminate confusion by identifying essential differences and defining orientations of each subject, as if it is only a matter of definition.

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Such labels do not refer to the essences of platonic nature, whose meanings can be deciphered through a deep analysis, but are rather representing what people considered useful to make them be. One can identify what people achieved using the documentary photography or photojournalism. However, one cannot identify the actual significance of the respective terms. Their meanings derive from the organizational framework in which they are used, from the cumulated actions of all those involved in such organizations, and the aspects vary from one period to the other and from one location to the other. In the same manner in which paintings are building their meaning in a world of painters, collectors, critics, likewise photographs are building their meanings from the way in which people involved in achieving them understand and use them.

Visual sociology, documentary photography and photojournalism are thus what they got to represent for the regular use of photographic production. They are merely social constructions. To this effect, they are like all other investigation means that we know or of which we have heard, like ethnographic reports, statistical summaries, maps a.s.o. (H. Becker, 1986). This use to designate and assign meanings directs the speech to two perspectives:

Organizational: when people designate fields of activity, as they have done with respect to these forms of image recording, they are not merely aiming at making things easier for them and the others by creating labels. They are almost always trying to achieve other purposes, as well, like: establishing certain boundaries around the activities, specifying the position of each within the organization, establishing the management, assigning tasks and duties. Thus, there arise a few questions regarding the different ways of approaching the research through

photography. Who uses these terms? What is to be expected from a type of work described by such terms? How do we mean to identify a certain type of work within an organization? Conversely, what type of work and what type of people are to be excluded? More briefly, what is the purpose of such differentiations?

Historical: Where did these terms come from? How were they used in the past? How does their prior use create a current contextual framework and how is this determined historical contextual framework appropriate to enforce what can be said and done at present? "Documentary photography" represented a type of activity around the beginning of the past century, when great waves of social change reached the U.S., and photographers had a public trained for receiving images representing the bad, as well as a lot of sponsors ready to pay them to achieve such images. "Visual sociology", if one may speak about such a thing at that time, mainly consisted of roughly the same types of images that were published in the *American journal of sociology*. Today, neither of the terms mean what they meant at that time. Organizations responsible with the social reform changed their character, the of photographs became subsidiary to other techniques, whereas the sociology became more "scientific" and less open to other practices than the ones using words and numbers.

The three terms have their history and different current uses. They are each connected to (and are drawing their meaning from) a particular social context.

Photojournalism represents what journalists do, namely producing images as part of activity of editing daily newspapers and weekly magazines. How is photojournalism supposed to be? Unbiased. Factual. Complete. Attention catcher, narrative, bold. The image of photojournalism, created based on famous

characters in the field, point out figures like Weegee, sleeping in his car, writing his stories on the typewriter from the trunk, smoking cigars and chasing fires and disasters; this is what he said: "*crimes and fires, my two bestsellers, my bread*". The second character is Robert Capa, rushing in the middle of the war to catch a foreground of the death and destruction (his motto was "*If pictures are good enough, it means your weren't close enough*" - 1986). The last character is Margaret Bourke-White, in aviator clothes, with the camera in one hand and the helmet in the other, flying around the world and producing classical photo essays for magazines like *Style*.

The reality is however less heroic. Photojournalism is what the nature of journalistic business made of it. The way in which daily newspapers have changed due to competition with radio and television has determined the change in the typology of photojournalists, as well. Nowadays, photojournalists are literate, have graduated from an university, are capable to write articles, and are no longer mere illustrators of articles written by reporters. They have a coherent ideology, based on the concept of the image speaking for itself. Undoubtedly, contemporary photojournalism is, like its early variants, constrained by the limited space available, by prejudices and reports prefabricated by direct managers (Ericson, Baranek and Chan 1987). Nevertheless, the most important thing is that readers do not want to waste time deciphering any ambiguities or complex elements from the photographs appearing in daily newspapers or in news reports. These images shall be able to be first and foremost intelligible and capable to be construed immediately (Hagaman 1994, 1996).

Likewise, photojournalism is constrained by the way in which editors control the tasks given to the photographers. Except

for photographers from the sports press, who specialize in that field, photojournalists, unlike reporters, never develop in a specialized direction, an aspect of the urban life that they are permanently covering so as to result in a serious analysis and a complete comprehension. Since the pictures they take unavoidably reflect their view on the rendered subject, the ignorance determined by the nature of work shall refer to the fact that the resulting images reflect almost unavoidably a superficial understanding of the social events and phenomena they photographed. There are also accounts on a number of photographers - Eugene Smith, Henri Cartier-Bresson - who were sufficiently capable and independent to overcome such obstacles. But these accounts are only meant to cast into the shade the ones whose work is still a reflection of such constraints. See, for instance, Epstein 1973, Hall 1973, Molotch and Lester 1974, Schudson 1978, Tuchman 1978, and Ericson, Baranek and Chan 1987. Hagaman 1996 provides a detailed analysis of photographers from the written press and of constraints that the work enforces on pictures they take. *Documentary photography* has been historically connected both to exploitation as well as to social reform. Certain early documentaries have presented features of the environment, like the work of Timothy O'Sullivan, that accompanied the geological investigation of parallel 40^o between 1867 and 1869, and the study of the south-west of the U.S. lead by George M. Wheeler, during which he has achieved the images of Chelle Canyon that are currently famous (Horan 1966, 151-214 and 237-312). Others have rendered unusual lifestyles, as John Thompson did in his pictures on London street life (Newhall 1964, 139), Eugene Atget in his study of people and places of Paris (Atget 1992), or August Sander in his

monumental study of Germanic social typologies. The last two projects, although massive in content, were not connected to any immediate practical utility.

What is expected from documentaries? In their reformist version, they are supposed to dig deeper, to reach what Robert E. Park (a sociologist who worked as a journalist for several well-known American daily papers) called the great stories, to be "careful" towards the society, to play an active role in the social change, to be socially responsible, to be interested in the society that represents the target of their appreciations. Photographers like Hine have seen their work, and this use was perpetuated, as having an immediate effect on citizens and legislators. A chauvinistic view on history explains the prohibition of physical labour for children by law as being the direct result of Hine's work.

The documentary did not intend to represent anything special, since the studies were not made for somebody in particular. Sander described his studies as representing "the existing social order" and "a temporary physiognomic exposure of German typology" (Sander 1986, p. 23-24). Today, we construe these studies as having an investigative character, closer to the social science. Contemporary photographers, whose work is overlapping the social science, have become aware, similarly to the anthropologists, that they must take into account of/and justify the interactions with people they photograph.

Visual sociology is at its beginnings (however see the collection edited by Jon Wagner 1979, reviewed by Chaplin 1994, as well as the publications of International Visual Sociology Association). It represents almost completely the creation of the specialized sociology, an academic subject, and is not in the closest relation with the visual anthropology (Collier and Collier 1986), which has a closer relation

with the subject from which it originated; in anthropologic tradition, that required that the researchers travel in faraway places to gather bones and linguistic texts, to carry out diggings in order to discover archeological materials, as well as to gather conventional ethnographic materials, performing pictures merely represented an additional task to do on site. As images have not been used in sociological research ever since it was closer connected to the social reform, most of the sociologists do not only accept this method, but they do not even consider legitimate the use of visual materials, unless maybe for "didactical purposes". More briefly, the use of visual materials seem "unscientific", probably because "science" in sociology got to be defined as objective and neutral, namely the exact opposite of what the beginning of the use of photograph meant in the field of social research (Stasz 1979).

Defining visual materials as unscientific is unfair, as natural sciences regularly use this type of materials. Biology, physics and astronomy are unconceivable without any support from the photographers. In social sciences, only history and anthropology, the least "scientific" subjects, use photography. Economy and political sciences, the most "scientific" subjects, do not. Sociology, in an effort to win a so called scientific character close to the ones of the latter category, does not use photography. Consequently, the few active sociologists in the field of visual sociology are people that have studied photography in another field and have subsequently introduced it in their research technique.

What is the visual sociology supposed to "achieve"? We can answer this question by describing what sociologists in this field should do to get attention and respect for this subject. What they should do to persuade the other sociologists that their work is an integral part of the sociologic

activity. But it is not just an issue of persuading the others. They must convince themselves that what they do is really sociology, and not merely some interesting pictures. To achieve this, they should prove that their work is supporting the sociological activity. As there are different opinions of sociologists with respect to what sociology should be, the mission of visual sociology is also confused. Briefly, it should answer the question specific to the field in a manner agreed upon by one or more disciplinary fractions.

Moreover, it may add something that is missing. Are there any reasons for which photography would constitute a valid research method? Douglas Harper, a researcher in the field of visual sociology, suggests the following possibilities: studies on interaction, exteriorization of emotions, use of pictures to “drag out” information during interviews, and studies of material culture (Harper, 1988). The boundaries between these fields are fairly blurry, as the circumstances in which people carry out the study and the reasons for which they take pictures represent a reality that depends on the context.

Pictures take their meaning, like all cultural objects, from the context. Even paintings or sculptures, that seem to exist in isolation, take their meaning from a context made up of what was written about them, either on the tag attached to them, or present in other visual objects, present physically or at representation level in the viewer's consciousness, as well as from the disputes that occurred around the subject reflected in such works. If no context may be identified, this only means that the author of the work trusts the capacity of the viewer to construct his own context.

As opposed to the picture taken as art, the three photographic genres discussed herein intend to provide a large amount of what is meant by explicit social context. Pictures from contemporary art (for

instance those of Nicholas Nixon) present what might represent the subject of the documentary photograph (image of poor children gathered on a dirty street, for example). However, this image does not provide anything more than information on the date and place where it was taken, hiding elementary data of social nature that we usually use to relate to the others, leaving the viewer to construe images according to clues like clothes, position and attitude of the people in the picture. What seems to be an artistic mystery does not represent more than the ignorance generated by the photographer that refuses to provide basic information (which, usually, he personally does not hold either)

The three genres in discussion – documentary, photojournalism and visual sociology – usually provide enough data to make the images intelligible. A classical example from the visual anthropology is the one given by Gregory Bateson and Margaret Mead in *Balinese character* (1942). Each picture is part of a two-page presentation, one dedicated to pictures, and the other two for two types of texts. one or two paragraphs dedicated to interpretative essay, describing subjects like "The dragon and the space fear" or "Boys' anger" or "Surface of the body"; these essays are anticipated by a large theoretic introduction on culture and personality, as well as by a whole informative paragraph on each photograph, describing when it was taken, who is in it and what they do. (See the debate in Hagaman, 1995).

Certain papers in the documentary field, usually influenced by the education of the researcher in social science, provides a detailed text, sometimes even the explanations of the ones involved. The text may sometimes be a mere description of the portrait of the photographed person, like in or Jack Delano: „Frank Williams, working to repair of an agricultural machine. Mr. Williams has eight children,

two of which are in the army. Chicago. November, 1942.” (in Reid and Viskohil, 1989, p. 192). Specialised books usually offer detailed introductions and essays rendering social and historical details concerning the presented images.

However, things are not so simple. If the context is left to be implicit in an image, this does not make it art, the same as explaining the context does not make it a documentary, social science or photojournalism. Not all specialized work in the documentary field provides such a context. The work of Robert Frank, *The Americans*, does not provide a more detailed textual support than most art pictures, but it does not make it sensitive to the above criticisms. And this is because the images per se, sequenced, repetitive, with variation on a theme line, provide their own context, helps the viewer to understand what he needs, to draw certain conclusions. *A possible approach from the dramatic art perspective of the communication through images is meant to provide an innovative explanatory model complementary to current debates, as it exploits concepts like non-verbal communication, visual semiotics, conventional vision and stereotype visual representation.*

In conclusion, the context is the one that provides meaning to images. If they do not provide an explicit context, the viewer may or may not construct not using his own resources. Generally, photographers try to find theoretic legitimacy for their work and, consequently, they try to classify it in a certified scientific branch. This legitimacy shall be nevertheless always given by the reaction of the viewer, of organizations and audiences that will construe and analyze photographic works.

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“SECRETS AND LIES”: (NOT) TELLING BAD NEWS IN ITALIAN ONCOLOGY

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Abstract: *The problem that I treat in this paper is about the fact that people who are about to die in hospital are not usually informed about the fate awaiting them. In Italy, this attitude has remained intact over time despite the extraordinary changes which have taken place in clinical techniques and therapies, and despite the spread of hospices and palliative care wards. In this paper I shall describe the strategies adopted by Italian oncologists to prevent the dying from knowing their fate, the exceptions to this rule, and some of the structural and organizational factors which make changing the situation difficult. The discussion conducted in this paper is based on an ethnographical research carried out by the author in a large hospital in northern Italy.*

Key words: *imminent death, conspiracy of silence, “no tell” policy, communicative strategy.*

In Italy, as probably happens in other countries of the world (Seale et al. 1997; Elwyn et al. 1998; Seale 1998; Field and Copp 1999), people who are about to die in hospital are not usually informed about the fate awaiting them. To use Glaser and Strauss’s expression, a context of “closed awareness” prevails. In Italy, this attitude has remained intact over time despite the extraordinary changes which have taken place in clinical techniques and therapies, and despite the spread of hospices and palliative care wards. The policy of ‘not telling’ has been adjusted to the new circumstances.

In this paper I shall describe the strategies adopted by Italian oncologists to prevent the dying from knowing their fate, the exceptions to this rule, and some of the structural and organizational factors which make changing the situation difficult.

The discussion conducted in this paper is based on a year of ethnographic

observation of social interactions at an oncological ward of a large hospital in northern Italy and on dozens of interviews carried out by the author in the same place in the same period.

For the good of the patient: the truth concealed by Italian oncologists.

When faced by a patient afflicted with an incurable tumour, Italian oncologists generally choose to lie about the prognosis (but not always about the diagnosis). This, of course, is a ‘morally legitimate’ lie, in the sense that according to the oncologists it is an untruth intended to protect patients, to insulate them against the terrible truth of their imminent death [Gordon 1990; Surbone 1992; Gordon and Paci 1997, Campione 2004]. This behaviour is justified by the so-called benevolence principle, according to which doctors have some sort of mandate deriving from the fact that patients have placed their trust in them [Pellegrino 1992; Pellegrino,

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Mazzarella and Corsi 1992; Beauchamp and Childress 1994; Engelhardt 1996]. This principle purportedly requires doctors to work for what they believe is the good of patients, or indeed in consideration of health and life itself (or of their duration) as *goods in themselves* not freely and immediately available to persons. The patient thus enters the state which Glaser and Strauss [1965] called ‘closed awareness’.

The strategy of concealing the truth from patients is made feasible because many people do not recognize (or they remove) the signs of their imminent death, or they simply do not feel authorized to talk about them with a doctor. Whatever the case may be, for the strategy to be successful, secrecy must be strictly maintained, and a so-called “conspiracy of silence” must be activated [Ariès 1991].

For this reason, all available forces must be immediately enlisted. The first actors to be involved in the conspiracy are relatives and friends: in short, those people closest to the patient and who are able to filter and control the flow of information about the illness. Unlike the patient, these people are rapidly and expressly informed of the diagnosis and the prognosis. In many cases, it is they who activate the conspiracy by beseeching the doctor not to reveal the dramatic nature of the prognosis to their loved one.

In this regard, also an ability to lie – or, better, to “pay lip service” – may prove useful. An oncology intern told me how useful he had found his experience as a waiter in Brussels, where he had learned how to communicate with people and give them “that feeling of warmth and affection which allows a human relationship to be established”, greeting them by looking them in the eye, inviting them to sit down, then asking about their jobs, and finally joking and laughing with them.

The decision not to reveal the truth holds firm even when patients explicitly ask for information. In these cases, the replies are evasive, or they concentrate on aspects and particular details of the therapy, or on secondary symptoms. This induces the patient to think that if the doctor is concentrating on these relatively minor problems, the situation cannot be so serious [McIntosh 1977]. The same function is performed by the witticisms of doctors (in these cases, patient tell themselves, “if the doctor dares to make jokes, it must mean that I am not so badly off”). Doctors often respond to more specific requests for information – for instance, whether the illness will have disabling consequences – with probabilistic paradoxes of the type “there’s more chance of me dying of a heart attack in two years’ time than of you becoming a paraplegic”.

A door may be left open to justify future deterioration in the patient with expressions like “We’re working as hard as we can to get the best results, but you know ... it’s very difficult. Let’s hope we succeed”, or by pointing out the dangers of not taking therapeutic action (“Of course, if you stopped the chemotherapy, the consequences would be unpredictable”).

In any case, the strength of the ‘no tell’ policy – Glaser and Strauss (1965) again point out – resides in the large-scale deployment of resources (those of the doctors, nurses, family, etc.) against one man – the patient – or in the fact that the medical staff and family join together as a team against a single individual weakened by disease. The weakness of policy resides in the instability of the structural conditions i.e. in the difficulty of maintaining it unchanged over time.

The main advantage gained by the hospital from restricting the patient’s decision-making capacity is control over a potential source of environmental

turbulence which might disrupt the organization's routine. The greatest costs are aggression by patients made anxious by the uncertainty of their fates, and the amount of resources that must be deployed to keep patients ignorant. Maintaining patients in a psychological state of 'closed awareness' inevitably involves construction for them of a 'fictitious' future where, upon conclusion of the treatment, they will resume their normal lives. In the meantime, however, there arise events and circumstances which contradict that scenario. The first is the persistence of (indeed, in many cases, an increase in) the painful symptoms signalling the disease's progress. The second is hospitalization. Once in the hospital ward, the patient makes the terrible discovery that he is surrounded by others subject to devastating cycles of high-dose therapy or awaiting the death that often occurs in hospital. Dreadful questions now begin to preoccupy the patient: "Am I also one of these dead men walking? One of these temporary survivors?". Whence derives the necessity for the doctors to dispel these 'harmful imaginings' with constant and increasingly difficult creative effort.

Doctors justify the choice of this communicative strategy by saying that they do not want to inflict, with gratuitous cruelty, further suffering which would make the life left to the patient unbearable. Or, more rarely, they cite one or two cases where disclosure of the diagnosis has had tragic consequences (primarily the patient's suicide). Some doctors, indeed, deny the cognitive importance of communicating a grim prognosis. When I asked a female oncologist how she communicated bad news, she told me "What's the point of telling someone they're going to die? Don't we all have to die? Why tell him and not someone else?". In other cases, I was told that it is

impossible to make accurate forecasts in oncology. And yet such forecasts are formulated with precision and immediately communicated to the patient's relatives.

Doctors very often maintain that patients "know". The fact that patients do not ask for explicit confirmation of their conjectures is interpreted as signalling a desire not to discuss their condition, to maintain reserve and silence about it. The problem is that, as we shall see, this situation comes about at a rather advanced stage of the disease when communication has ceased: that is, at a stage when it is unlikely that the patient's imminent death will be a topic of conversation with those around him or her.

1. For Love or Money: when the Truth Can Be Told

Saying that Italian doctors generally lie to their patients by not disclosing their prognoses is not, of course, to imply that such behaviour is universal – that is, adopted without exceptions in all circumstances. Of importance, in fact, is the choice by the patient of a particular communicative strategy and the presence of specific conditions.

In regard to the latter, among the conditions justifying the truthful disclosure of the prognosis, doctors regularly cite the presence of large economic assets or a business, and the presence of children.

In other words, the truth can be disclosed more easily when the patients show that it has some 'practical importance' in that it concerns a realistic and socially approved project, such as managing a business or caring for children. As an oncologist told me: "You're always asked for the truth by people who somehow want to plan their lives. A person who doesn't have affairs to set in order is less interested in knowing the truth".

My impression on this point is that at least two other factors favour communication of the truth:

- 1) the first concerns maintenance of the social order within the healthcare organization. If the doctor receives from the patient 'good reasons' for telling the truth, s/he somehow obtains a guarantee that the patient will make good use of the information and will not, for instance, use it to commit suicide or engage in alienated behaviour or reject treatment;
- 2) frankness in a doctor's communication with a patient may be facilitated if the latter belongs to the same social class [The 2002 1], or by some other form of identification (for example, being of the same age, having children of the same age, etc).

These conditions enable the doctor to establish an otherwise difficult intimacy with the patient and be sincere with him about the prognosis.

2. Truths, Half Truths, Lies: how Much Information?

Whilst doctors generally try not to reveal to patients the gravity of their situations, it is also obvious that they cannot abstain from giving them at least some information about the diagnosis or the therapy. *The 'line' of doctors on this point is to disclose only the information deemed essential for implementation of the therapeutic decisions taken by the medical team.*

In accordance with the benevolence principle, patients are never abandoned by the healthcare organization even after the worst of prognoses. Instead, the decision is often taken to give them radiotherapy or chemotherapy intended to prolong their lives (for some weeks or months at most) or for palliative purposes, that is, to reduce pain pharmacologically.

It is essential to ensure the cooperation of the patient, who must agree to the

therapy, keep his/her appointments at the day hospital (and often wait many hours for the first phlebotomy), undergo all the examinations required, or agree to hospitalization and accept the harsh discipline of hospital. Consequently, a completely false diagnosis (a liver tumour passed off as an ulcer) is usually only given to patients for whom therapy is foreseen.

For the same reason, the truth may be disclosed 'for therapeutic purposes': as in the case of a 70-year-old woman, of low education, with a metastatic tumour of the oesophagus, for whom a 'first line' of palliative chemotherapy was decided. Her relatives implored the attending doctor not to reveal anything about the prognosis to the woman. As almost always happens in these cases, the doctor complied and prescribed chemotherapy for the woman, without informing her about the diagnosis. The woman's body reacted well enough to the treatment, with few undesirable side-effects (nausea, vomiting, asthenia, etc.). However, after the first chemotherapy sessions, the woman began to waver and then resisted continuation of the therapy, because she could not understand why such drastic treatment had to be inflicted on her to deal with a minor problem (a cyst, so she had been told). Whereupon the doctor decided to tell her truth and informed her that without the chemotherapy she would soon be dead, because she had a tumour and not a cyst. The lady thanked the doctor and decided to continue the therapy.

In general, full or partial disclosure of the diagnosis serves three main purposes: a) to get patients to accept that, at least for a certain period, they will not be able to lead their usual lives; b) to get them to cooperate; c) to give them the impression that the organization is doing something for them.

To achieve these purposes, doctors very often engage in sophisticated language games where the semantic ambiguity of the terms ‘control’, ‘containment’, ‘recovery’ is skilfully used to induce a certain reaction in the patient. This is what happens when a doctor says to a patient that s/he cannot fully recover, but in compensation the doctor can help him/her contain the disease and indeed make it retreat. This is not an outright lie. Rather, it is a half truth, because being kept hidden is the fact that the former expression refers to the prognosis, the latter to the tumour. The doctor sometimes also provides a concrete measure of this action, for instance by saying that “Your tumour has got smaller by two centimetres, diminishing from 5.8 to 3.8 centimetres”, without specifying, however, that a decrease in the size of the cancerous mass does not signify that the patient has a chance of surviving even a single day longer. Likewise, the language used by doctors in communication with patients is devoid of reference to the most dreadful consequences of the disease. The words *cancer*, *metastasis* and *malignant* are never used (Herzlich and Pierret 1994), being replaced with more reassuring expressions like ‘cells gone mad’, ‘anomalous activity’, ‘suspicious formation’, ‘problem’ [2]. The use of dubitative expressions [Mc Intosh 1977] indicates to the patient, together with the presence of a real danger that often justifies violent and invasive therapy, an uncertainty which induces hope: the patient thinks that «if the situation was really so bad the doctor would not have any doubts and would expressly talk of ‘tumour’ or ‘cancer’».

The expressions ‘failed recovery’ on the one hand, and ‘containment of the disease’ and ‘remission’ on the other, belong to two different semantic codes, to two different “chains of signification” [Barley 1983] with different implications for social

action.[3] The former refers to constant cohabitation with the disease and evokes, together with irreversible changes in lifestyle and expectations, the need for constant medical tests, more or less intensive therapies, a regime of strict clinical control. The latter instead promotes the idea of peaceful cohabitation with the illness, and indeed its *slow* (because this is a remission, not a victory) disappearance. Their simultaneous and ambiguous presence in the discourse favours the transmission of two messages which though contradictory are equally crucial for the medical discourse: that of discipline and control on the one hand, and that of hope on the other [Del Vecchio Good et al. 1990; Perakyla 1991; Nuland 1993]. The implicit objective is to persuade patients of the gravity of their condition while simultaneously convincing them that final victory is possible, and therefore of the need to cooperate and meekly accept the specialists’ instructions.

Continuation of the therapy is one of the conditions essential for patients to be kept in a state of unawareness, the principal means with which they are distracted from inquiring about their prognoses, and so that they suppress their worst forebodings [The 2002]. For many patients, suspension of the treatment means that nothing more can be done to save them, and that the organization has declared its defeat by the disease.

3. “The First Move is the One that Counts”: the Imprinting of Communication

The communicative decisions taken in the early stage of disease heavily condition all subsequent events through an ‘imprinting’ effect whereby “it is first move that counts”. This effect stems from the action of trust mechanisms and is therefore related to the “context of expectations with positive value for the

social actor and formulated in conditions of uncertainty". Studies on the matter have identified two main dimensions of trust: the systemic or impersonal one where the recipient of the expectations is the natural and social organization as a whole, or in its single institutional and collective components; and the personal dimension, where the recipients are other social actors (Mutti 1996). The object of former type of trust is the production and stability of the social order, whilst that of the latter consists in interpersonal relations, and in particular the expectation that the communication will not be altered or manipulated and that the behaviour of the actors will be sincere. In social interactions whose object is truth about life and death, and which involve complex organizations like modern hospital structures, personal trust and systemic trust interweave and fuel each other [Giddens 1990]. Consequently, if doctors are to get patients to obey their instructions, and in order not to lose 'face' [Goffman 1967], they must offer sufficient guarantees that the personal communication will not be manipulated and that they will not resort to concealment, or indeed to lies, fraud, or deception. But they must simultaneously acknowledge the goodness of all the decisions taken in the past by their colleagues. They must, that is, support the patient's 'systemic trust' in the healthcare system, the hospital, the medical community, and therefore in all the 'abstract systems' for whose safeguarding they are jointly responsible [Giddens 1990]. If this does not happen, for instance if a doctor gainsays a diagnosis made by a colleague, the risk is that patients will start to doubt the sincerity of their interlocutors, imagine themselves as victims of a conspiracy, and in the worst cases become angry at the thought of everything that they have had to suffer without being informed. What the maintenance of a high level of

systemic trust serves to protect, therefore, is the social reputation of the 'care system', whose representatives are recognized as being equally competent and skilled, and whose superiority is guaranteed by possession of a consolidated stock of technical-scientific knowledge. To be prevented, by contrast, are conflicts which would confirm the discretionary nature of therapeutic decisions and would culturally disclose the cognitive limitations of bio-medical culture and the culturally connoted nature of modern medicine.

It is for this reason that the first information given to the patient is so important. This information delimits the level of legitimate expectations to which the patient's hopes of recovery can aspire. Consider the effects that denial of the original diagnosis would have on the patient, not so much on cognition as on his or her trust in the care system. The many doctors who will examine the patient in the weeks and the months following the first tests, and who are convinced that the patient's greater awareness is advisable, will ask themselves a question which runs as follows: "How do I tell this person, who for weeks or months has been subject to often devastating therapies, that he is terminally ill and that the treatment which he has suffered has only been palliative?". It is precisely for this reason that many interactions between doctors and new patients start with the question "What do you know about this illness?". The reply immediately marks out the boundaries of the doctor's responsibility, establishing the cognitive limit which he or she cannot go beyond.

The main perverse effect of this interweaving between systemic trust and personal trust is therefore the fact that errors cannot be corrected. In order to maintain trust in the 'system' of which they are members, doctors are forced to keep on lying to patients even when they

are aware of the numerous harmful consequences of that communicative strategy on the mental health of the sick.

Another factor that explains the onset of this effect is the particular *organizational structuring of the care system*. Oncological care is organized in Italy like any other specialist branch of medicine. Indeed, the exceptional complexity and dangerousness of cancer have increased the specialist fragmentation of care services and heightened the likelihood of the 'imprinting effect'. From the beginning of the disease, a patient comes into contact with, and receives information on his/her illness from, a medley of doctors, from the general practitioner to the surgeon, to the oncologist, and finally to the specialist in pain therapy and palliative care. Furthermore, in every operational unit, despite the constant efforts by patients and family members to construct a privileged relationship, the doctors constantly 'rotate', and patients can never be sure that the next doctor to examine them will be same doctor that examined them previously. In other words, patients with advanced-stage tumours are very likely, and often in the same hospital, to come into contact with (and be informed by) dozens of different doctors (some belonging to the same unit, others to different ones), none of whom is able fully to assume the task of following the patient's case at first hand. Hence, patients are deprived of single referent within the organization, and they are forced by these communicative difficulties to concentrate more on collecting and selecting reliable clinical information than on managing the disease as a whole.

On the other hand, the harmful effects on patients notwithstanding, it is difficult not to recognize the benefits of this organizational structure for the hospital system. These benefits consist mainly in:

1. the reduced risks of burnout to which the doctors would be exposed if they were required to accompany patients until death. The death of a patient is, as we shall see, not only a professional 'defeat' for the doctor but also an emotionally painful event if proximity with the patient has been close and prolonged;
2. the decreased likelihood that a single doctor will be held liable for therapeutic choices and possible errors of assessment, responsibility for which is shared by all members of the team;
3. avoidance of conflicts over the amount of information to give to the patient [McIntosh 1977];
4. the homogeneity of the criteria applied when decisions are taken, without explicit socialization, by newcomers, the reduced complexity of decision-making, a reliable routine, and simplification of the doctors' cognitive work when dealing with patients.

This last point should be expanded further. The fact that doctors know that they do not have to inform patients about prognoses relieves them from having to decide from case to case. This concerns a routine useful and important for the taking of critical decisions [Taylor 1988]. Let us see why. Doctors maintain that they apply different strategies according to the 'real desires' of patients. But these desires are very difficult to identify with certainty. For example it is highly plausible to argue, as do many doctors, that patients who ask for information about their state of health really want only reassurance, not accurate information; that is, they want to receive only positive news from their doctors. In this case, lying can be considered a legitimate action by the doctor. The point is that the doctor knows too little about the patient, his/her personality, his/her possible reactions, his/her relationship with the disease and death, to be able to decide

from case to case according to individual exigencies. And how could it be otherwise if the interaction between the two lasts no longer than the half hour of an out-patient examination?

The only alternative is therefore to choose between two "policies of communication": telling the truth to all patients or not telling it to any of them [Mc Intosh 1977]. The intermediate solutions are either too costly (they might, for example, require the regular intervention of a psychologist and careful evaluation of the patient's clinical history) or too risky, both to the team's social cohesion and to its legal and moral responsibility, which thus remains collective.

Individualization, or treatment differentiated case by case, is therefore mainly a rhetorical strategy used in interaction with patients [Schou 1993] in order to:

- (a) prevent them from learning of their fates through comparison of their condition with that of other patients. I frequently heard doctors making statements of the kind "Don't look at what's happening to the person in the next bed, Mrs Brown. Every case is different. Your neighbour has a different disease from yours. Concentrate on your own case". In this way, the doctor sought to reassure the patient and convince her that what she saw in her room-mate did not anticipate her own demise;
- (b) indicate the *body* of the patient, of that specific patient, as the source of the disease and the resistance to the care therapies and the healing actions of the medical team. The fact that the disease does not have an external manifestation, that it is not immediately visible, and must be diagnosed by complicated and precise tests, convinces many patients that they are ignorant of their bodies and the dangers that lie within them [Lupton 1998]. The message is that

chemotherapy must be beneficial because it fights the treacherous disease that lurks in that body.

It is by now quite clear that the decision not to inform patients and the principle of collective responsibility interweave and sustain each other. The lie becomes anonymous; it does not assume the features of a specific face and it does not involve single responsibility or a real choice. It becomes practicable without the system being required to bear excessively high human and organizational costs.

From the more general point of view, what the Italian oncological care system does not recognize is the exceptionality and the force of cancer as a disease, the extreme difficulty of medicine in fighting and defeating it, and its contiguity with the end of life. Tumours are instead equated with diseases of other kinds, to which the principles of specialization and collective responsibility are less problematically applicable. In the case of curable diseases, in fact, it is simpler to justify the concentration of the medical team's efforts on the organs to repair or the functions to restore, without too much concern for the persona of the patient as a whole. In these cases, in fact, the patient's condition is provisional, just as his/her absence from everyday life is temporary.

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Notes

1. Also according to The (2002), better-educated and better-off patients often ask for more precise and detailed information; they possess modes of

- communication that facilitate dialogue with doctors; and they want to participate more closely in decisions on therapies.
2. Schou and Hewison [1999] have observed the same behaviour among English doctors, who seek to 'to minimize' and to conceal the gravity of the disease by speaking of a 'growth' rather than a 'cancer', resorting to humour to conceal the seriousness of the news to be announced, delaying disclosure of the diagnosis as long as possible, reducing to the minimum the time devoted to interaction with the patient, or again, leaving the task of giving bad news to junior doctors, and failing to mention that further treatment will be necessary after surgery.
 3. The [2002] has signalled the ambiguity that also surrounds the terms 'to treat,' 'treatment', 'treatable' so often used in communication about tumours.

APPLICATION OF SIX THINKING HATS WITH THE THEME „PROFESSION OF SOCIOLOGIST”. TRANSCRIPT OF THE SEQUENCE OF GREEN HAT

Gheorghe ONUŢ¹

Abstract: *The study is the transcription of the sequence of green hat from the application of the creative technique Six Thinking Hats (Edward de Bono's creation) that I did at the workshop with the theme „Profession of Sociologist”, of the international colloquium of social sciences ACUM 2008. The colloquium ACUM is the most important of the scientific manifestations organized by the Faculty of Law and Sociology of „Transilvania” University of Braşov.*

Key words: *Profession of sociologist, creative techniques, direct analogy, symbolic analogy, directed brainstorming, six thinking hats.*

Technique Note

Date: Saturday, 29.11.2008, time 10.20 – 11.55

Place: Braşov, „Transilvania” University, „U” building, „under the ladder”

Guests: Dana Ababei, sociologist, graduate 2002, Braşov

Raluca Buzea, sociologist, graduate 2002, Braşov

Luciana Cristea, sociologist, graduate 2004, Braşov

Andreea Filip, sociologist, graduate 2008, Braşov

Roxana Florescu, sociologist, graduate 1998, Braşov

Monica Kovacs, sociologist, graduate 2003, Braşov

Ramona Năstăsache, sociologist, graduate 2004, Braşov

Romulus Oprică, sociologist, graduate 2004, Braşov

Marius Pleşcan, sociologist, graduate 2001, Braşov

Vera Ţugulschi, sociologist, graduate 2004, Braşov

Moderator: Gheorghe Onuţ, sociologist, graduate 1976, Bucureşti

Instructions *Green hat* is the equivalent of the *exuberant* of the directed brainstorming:

- an ultra-typical participant to brainstorming;
- an avalanche of ideas, perfectly unreasonable, fantasist, arbitrary;
- essential role in maintaining the divergence and of a very high imaginative standard of the discussions;
- typical for the directed brainstorming, *exuberant* is the only launcher of new ideas. These ones will be the ideas that the others criticize, support, modify etc., evolving this way towards the solution.

¹ Dep. of Sociology and Philosophy.

From under the *green hat* we exploit the creative possibilities offered by the problem.

This is the typical creative hat. Wearing it on our heads, we make propositions, we formulate alternatives, we challenge to the change.

Transcription

M. Down with it (previous hat). We will wear the green one, which is with a star.

Roxana Florescu: What are we doing with...?

M. I will tell you right away, let me put it on my head, otherwise I don't know (...) So, pass on to the green hat. The green hat is the typical creative hat; now we are making brainstorming-brainstorming. Please shoot out of speed (saying) any stupid thing crosses your mind in connection with the profession of sociologist. I will attack first: it is like a Puma helicopter. On the helicopter Puma 330 you may set a tank hunter, but you may also set an evacuator of injured soldiers out of the first line, you may set a tactic carrier of troops, you may set a crane, you may set a fire extinguisher. So I think the sociologist is, you may set on it almost whatever crosses your mind.

Romulus Oprică: I think it is my father's Dacia...

M. Shoot.

Romulus Oprică: He drove with it up the mountains; he carried with it whatever was needed in order to ensure the stability of the family. He took us out for a drive, we felt good and I think it is very versatile.

M. More.

Raluca Buzea: I think it's a baby, around 2 years old...

M. Baby?

Romulus Oprică: (imitating a child) „But why?”

Raluca Buzea: ... who starts to speak, and who says with so much serenity ... Everything he says, he firmly believes, no

matter if the ones around him do not understand, do not agree, it seems stupid to them, a crazy thing. For him it is super, it is his world.

M. More. Ideas, ideas, ideas. How to make a cooler faculty at sociology, how to find work, what to work.

Raluca Buzea: To make the site of the faculty to be ok, to create a forum on the site, which should also be accessed by us, not only by the students who have access, if it is still exists ...

M. (looking towards the „sky” of the institution) Hear or not? (laughs)

Vera Ţugulschi: To reactivate the existing site...

Romulus Oprică: Do you know it works?

Raluca Buzea: So... To make mail-s on groups and crazy things...

Luciana Cristea: Hey, I have not succeeded.

M. Common, pull out more. Do not argue anymore, otherwise we reach the black hat.

Raluca Buzea: Let's have festive evenings, because during the years of study we could not have them, not even in the end we could not have them...

M. What?

Raluca Buzea: Festive evenings! Didn't you enjoy last night?

M. Yes, it is obvious.

Monica Kovacs: Yes, but only you. We didn't... (laughs)

Raluca Buzea: So let's have festive evenings, so that we should meet among ourselves.

M. I want more ideas.

Vera Ţugulschi: It is something like an ipod.

M. I don't know what that is. It seems to me that the ipod is a sort of myriapod with a single leg (laughs).

Vera Ţugulschi: No, it is that sort of thing on which you can cram music and movies and figures and data and staff ...

Raluca Buzea: You have it all the time, in case of need.

Vera Țugulschi: and a documentary and a funny thing. You may listen to it in your ear, you may make it yell... You may do whatever you want with it.

M. Does it wash the dishes?

Vera Țugulschi: No, but you can press in the back pocket of the blue jeans.

Luciana Cristea: You can throw it. (laughs)

M. I know here a gentleman in the room whom that cheeping thing of radar took him in some two thousand times, whom police stopped to beat and eventually he decided to put it off, and until I managed to shout his mouth, his something, you understand, he opened the window and vijjj, sent it into the landscape. So with the ipod, I see.

Luciana Cristea: That means with the sociologist.

Andreea Filip: I think it has to be like a boomerang. Which means we go to the client and we explain – you know, we know to do this, and he throws us away. But we return to him and try to convince him, we really know how to do this.

M. I heard yesterday Mircea Badea saying that there are women so ugly that not even the boomerang returns to them (laughs).

Andreea Filip: We return!

M. More, more. In case nothing comes up, bang! (we commute): which is the animal that you would liken the sociologist to?

Monica Kovacs: I was just thinking. With a monkey.

M. With a monkey? Shoot!

Monica Kovacs: Yes, it is like at the zoological garden, everyone is looking to it, and do not know how to use it, they know it is intelligent and from time to time it also knows to show its red buttocks, if it has them (laughs).

Romulus Oprică: And it is also funny.

Monica Kovacs: (gesture from the shoulders: isn't it so?) Yes.

M. Other animals?

Marius Pleșcan: I would assimilate him with that character from the cartoons, the Tasmanian...

Vera Țugulschi: The Tasmanian devil.

M. Yes, Taz, Taz.

Marius Pleșcan: He razes everything, at a given moment he realizes he has sawn off the bough on which he was sitting, but he goes further, he turns around, he looks up... At a given moment, poor thing, he stops, he does not know where he is, but he continues, he continues with this staff. It seems to me sometimes I am in this situation, I go, I go, I go.

Vera Țugulschi: Sometimes it is like a giraffe. It has a long neck, it sees much, it sees far, however it is kind of awkward. Until it reaches, until ... and it cannot bow.

M. Two commuting men from Ardeal, who had missed their course and had to stand about town, went to the zoo and were looking at the giraffe and one of them said „Hey, pal, do you realize when this thing drinks a glass of brandy, until it flows down that throat, to its stomach, wow, how cool it must be!, one of them rejoices.” The other one: „Hey, how stupid you are. Do you realize when, poor thing, it throws up?” (laughs) Other animals, please.

Roxana Florescu: I don't know, I am thinking about an animal which throws away, changes its skin.

Luciana Cristea, Monica Kovacs: Chameleon?!

Roxana Florescu: Or which changes its colour. Or which throws away its skin...

M. ... but not its habit...

Roxana Florescu: ... or which changes its colour.

Romulus Oprică: Political colour, right?

M. You can say, right, your own staff? Let man say one's own animal. So, say

more, an animal which changes many times, in all sorts.

Roxana Florescu: Yes.

Dana Ababei: I would compare it with a pet. When you don't have it, you don't realize how it is, when you have it, you rejoice. You say ah!, what a good choice I made. Something like that.

M. Pets are also fleas..., flies.

Dana Ababei: Well, of company! For instance cat, dog, anything. Guinea pig...

M. No, I was not criticizing you. I was trying to imagine how a pet flea sociologist would look like (laughs).

Dana Ababei: you never get rid of them... (she makes the gesture of catching a flea on her sleeve).

M. Yes, yes, yes, yes (laughs)

Romulus Oprica: You don't see it. Only the traces it leaves.

M. Shoot, animal!

Andreea Filip: What I have said, I have nothing more to say.

M. Right, but with another animal. What would liken it with? With a marmot, with a bicycle, with...

Luciana Cristea: What would I liken the sociologist with or how do I feel, the sociologist within myself?

Andreea Filip: With something that fits everywhere.

M. Now you make me enter into details. What you would liken the sociologist with. How would I know what it is to become of you?

Luciana Cristea: Well. I was just saying I feel very superior.

M. Very, the most superior. And what precisely are you, a lion?

Luciana Cristea: No, a tiger!

M. Tiger? And how are you like a tiger, my dear?

Luciana Cristea: Do you know how?

M. Tell us.

Luciana Cristea: Like a tiger at the zoo, when I feel like doing nothing and when I

crawl effectively. Well, but when I get into the mood! Then I can tear...

Romulus Oprica: And when you get into the mood, you turn round the cage!

Luciana Cristea: No! Then I get out! And when I get out!...

M. She gets out, she gets out. She tears the grates. Which is your animal? Say!

Andreea Filip: With something small, which should fit everywhere. However, if it is to be an earth worm or something, if you cut half of it, it still hangs on. You cannot kill it from the very beginning. It still lingers a little.

M. I see...

Vera Ţugulschi: Have you been badly tormented? (laughs)

Marius Pleşcan: The psychologist said.

Vera Ţugulschi: No, but I think you have had a very tormented professional evolution...

M. Leave the man alone!

Andreea Filip: I have had no professional evolution. I have just graduated...

M. Poor thing, she is still little. „And they have no father, and George still has not come.” Which is your animal?...

Raluca Buzea: With an animal like that Tasmanian devil, which purposely enters into all sort of ..., However let's not speak dirty. Therefore seemingly on purpose. It is like a pig which pokes one's nose into every corner, like a Paul Pry, but this way he is much faster ..., he is...

M. Getting dirty is good, in order to quote a noteworthy...

Raluca Buzea: Yes, yes. So he pokes his nose into every corner, like a Paul Pry, afterwards he realizes that was not the best place. I don't know, but it is like that, it is very fast, it changes.

M. Rapid, it changes, it squeezes, it is Paul Pry.

Raluca Buzea: Yes, yes.

M. You? Ramona...

Ramona Năstăsache: Me, with a ram.

M. Ram?

Ramona Năstăsache: Yes. It gets obstinate; it pushes with its head forward. And even if it sees it can't, it still hits once more, as it seems to it that it can. It seems to all of us that we can.

Romulus Oprica: Come on, at a given time, you come into your senses. (laughs)

Luciana Cristea: And you try again! (laughs)

M. And once again! A little dizzier, but you don't give up.

Romulus Oprica: I don't necessarily know it is the fittest, but there are also the suricates. You know, those with big eyes, which always look at the horizon.

M. A, those with big eyes. Like a radar.

Luciana Cristea: And they stay?!

Vera Țugulschi: They run, they run. And afterwards they get up.

Luciana Cristea: But do you stay?!

M. No, pal, she moves, but from time to time she stops in order to see in perspective. How do you see yourself? Well, pardon, what animal do you see in me?

Marius Pleșcan: Beside Taz, I don't know... I had a Guinea pig at a given moment. It used to poke his nose everywhere, including his own shit. So it seemed to me ... Now, well, it is also a sign of stupidity in the end, as, poor things, they have the brains quite small, these ones, the little pigs. But it used to poke its nose everywhere. So they are, quite so.

M. Plant? With what plant would you...

Ramona Năstăsache: With a liana.

M. A liana?

Ramona Năstăsache: Yes, with a liana. Which enters everywhere and tries to cover as much as possible ... And as fields of activity in which we may enter.

M. More. Come on, do not determine me make roundabouts, otherwise you will get used to the idea that I am here to call you to account.

Vera Țugulschi: Sometimes cactus.

M. Cactus...

Luciana Cristea: Aaa, I wanted to say the very same thing!

Vera Țugulschi: When it is small, it is fluffy, afterwards it grows up and forms thorns bigger and bigger.

M. Two balloons in the desert, you know? And one of them says: here it is a cactusssss!

Vera Țugulschi: Don't challenge me! Crack!

M. Say more about the cactus.

Luciana Cristea: I was completed with the cactus, as the cactus resists everywhere.

Vera Țugulschi: But why? I had a cactus which died...

Luciana Cristea: Sadist!

Vera Țugulschi: I did not pour water on it, until it died. So the cactus may die, too...

M. Hey, take care. So, because of the water. Take care with the water, it is not good. Water is not good (laughs). Especially when it runs out! Say about that cactus!

Raluca Buzea: Yes, it is beautiful in the beginning, usually the smallest ones make a little flower, they are really superb. Only they sting at a given moment, like this.

M. More! What other plants?

Romulus Oprica: They bring you down to earth. They make some superb flowers.

M. Yes. Rare, but really superb.

Vera Țugulschi: Edelweiss.

M. Edelweiss?

Vera Țugulschi: Yes. Everybody heard about it, however nobody knows how it really looks like. (laughs)

Luciana Cristea: But, you know, there began to be cultivated plantations of edelweiss. This is pathetic. (laughs). So, when there are several, you don't know which the valuable one is.

Romulus Oprica: And now increasingly more people are going to see it, and they will realize they do not need it.

Luciana Cristea: And they tear it away... and they don't even...

M. Hey, we have left the feelings aside, haven't we? Come on, other ideas, other plants ...

Monica Kovacs: Fir tree.

M. Fir tree?

Monica Kovacs: It is tall, it is beautiful, it ramifies, you may sit under its shadow...

Vera Ţugulschi: Romi, stand up.

M. Like the fir tree'?

Romulus Oprică: And put the star like this, Vera?

Vera Ţugulschi: Right, right.

M. However thrust a little deeper.

Monica Kovacs: It may be adorned. It never loses its leaves...

M. Heeey!

Luciana Cristea: This one resists, too!

M. However this one has thorns, too, I don't know if you realize! (laughs)

Romulus Oprică: And usually the poacher comes and cuts it down.

M. Its peak!

Luciana Cristea: And it also smells nicely!

Raluca Buzea: You see, these are plants like this, colder, we don't liken ourselves with warm plants. Would you for instance see a sociologist like a lily-of-the-valley? (laughs)

Luciana Cristea: Spare me that!

M. Look at me!

Monica Kovacs: Snow drop! (laughs)

M. Dane. Shoot Dane.

Dana Ababei: A tree that faces strong winds.

M. Pine tree?

Dana Ababei: I don't know which that tree is, as I am not up to... biology.

Luciana Cristea: Poplar. We are in the poplar. (laughs)

M. Birch?

Dana Ababei: I told you ...

M. You are not up to dendro, dendro-I-don't-know-how, dendro-something.

Dana Ababei: Philodendron. (laughs)

M. So which hangs on. It has deeply thrust roots.

Dana Ababei: Yes. It is about how flexible it is.

M. Fir tree has another trick. There are many which stand one close to the other, this is why they are not pulled down, by the way of what Raluca said, with us among ourselves. We should be a little like fir trees.

Dana Ababei: We should, but we aren't!

M. *Les notres comme les coniferes.* (laughs)

Dana Ababei: Now we are the Christmas tree. Which is alone in a big house.

M. I feel really afraid. In a big house, something unique.

Luciana Cristea: But this necessarily pertains to our profession of sociologist, to our formation as sociologists?

M. Other plants, other plants.

Luciana Cristea: Ooh! You criticised me and you stopped me. Well I think it is up to ourselves.

M. Yes, it is up to ourselves.

Raluca Buzea: This is not true! Well, we will speak at the black heat.

Luciana Cristea: Criticize me in your turn! (laughs)

M. Come on, other plants. Do we have other plants? Does it mean you can no longer? Come on, I have one more and here we are.

Marius Pleşcan: I think we are...

Vera Ţugulschi: Coconut tree.

M. Coconut tree? I don't know what's that. Which makes cocottes? (laughs)

Vera Ţugulschi: Which makes coconuts! Whoever has the chance to taste them, they are good, some of them break and the milk pours out.

M. So it seems to me: coconut tree is the one who deals with cocottes. (laughs)

Monica Kovacs: Pine plant.

M. Pine plant?!

Monica Kovacs: Because everybody knows pineapple grows in the tree, and it is in fact a plant which grows, like the potato, in the ground. So there is wrong perception about the ...

Roxana Florescu: Yes, every body knows it is good...

Monica Kovacs: So it is sweet but rough...

Vera Țugulschi: Everybody searches it upwards, and it, as a matter of fact...

M. The only cactus, pardon, pineapple... Hey, it is a cactus, too, hey! Damn it, with your cactuses. End it up with the cactuses, I am fed up with them! (laughs) Musical instrument. The last round before changing the hat: with what musical instrument would you liken the sociologist with? Of course comment it a little.

Andreea Filip: With a reed pipe...

M. With a reed pipe? Let's have a pipe... (laughs)

Romulus Oprica: Pipe cigarette, pipe cigar. (laughs)

M. Say, say, say!

Andreea Filip: With a reed pipe as it has many little whistles.

Luciana Cristea (soto voce): Holes!

M. She says because it has many holes. (laughs)

Andreea Filip: And holes.

M. So, it enters through one year, it leaves through all orifices, to say so (laughs)

Andreea Filip: Yes, yes.

Monica Kovacs: With a drum.

M. Drum?

Monica Kovacs: Yes. It may beat hard when it wants to...

M. Drum is not also a Romanian dish?

Romulus Oprica: Oh, yes, with garlic. (laughs)

Monica Kovacs: A battery. So it beats strongly if... So it sounds loud.

M. But it has to be beaten. (laughs)

Monica Kovacs: Yes.

M. Yes?!

Monica Kovacs: Yes. Yes!

M. Dear God! Other instruments?

Dana Ababei: Me with an accordion. It is very complex. It has that staff like this and that staff like that and you also have to do like that. (laughs)

Monica Kovacs: So this one has to be beaten, too! (laughs)

Romulus Oprica: With a sociologist you work a lot...

M. Yes, yes, yes. And you make this to him – smash, smash... (laughs)

Ramona Năstăsache: Or with a saxophone. It seems too equally complicated.

M. At three in the morning?

Monica Kovacs: I wanted to say that it expresses your feelings when it wants to.

M. When it wants to? It expresses them clearly.

Monica Kovacs: Yes. It beats loudly or it beats quietly...

M. Yes. And it is quite obvious, like this, and you cannot confound it with something else. (towards Ramona) Say with that saxophone. It is three in the morning, there are only the two of us, the rest went to sleep, and we still have vodka left...

Ramona Năstăsache: Which means there are again all sorts of holes and little buttons there, you don't know which to press upon, and if you press, what will all come up to, and it is very hard to imagine what is there within. I don't know what it is in there. Probably it is the same with the sociologists.

Monica Kovacs: In the saxophone you have to know how to blow. This is very important.

Marius Pleșcan: I wouldn't choose a saxophone, I would choose a trumpet.

M. Trumpet? Say a little more. Shiny?

Marius Pleșcan: It has three buttons!

M. There also are some without buttons, you know?

Marius Pleșcan: I refer here to the trumpet with three buttons. It is relatively

simple when you take it, when you look at it. The idea is that it may make an awful noise...

M. Haven't you heard a „well treated” violin...

Marius Pleşcan: ... but the combination of three buttons can make really fabulous things.

Luciana Cristea: I see it as a harp.

Roxana Florescu: Among all instruments I would choose a conductor.

M. Let's hear.

Dana Ababei: The conductor's stick. (laughs)

Raluca Buzea: Baguette.

M. Tell us a little.

Roxana Florescu: What more should I say? Don't you want it so?

Vera Ţugulschi: It should be so.

Monica Kovacs: Yes, I would like that.

M. More. Other instruments.

Luciana Cristea: Harp, I keep on yelling...

M. Harp, Shoot. But they say Hark! Come on, say.

Luciana Cristea: As is has many strings, you never know until somebody starts to caress it. You don't know in fact how it plays, in fact, what sounds it produces.

Raluca Buzea: But everybody knows it is beautiful.

Luciana Cristea: Yes. And that it is difficult!

M. Beautiful, difficult to play it. You cannot play approximately as an expert player. So you really have to be up to it in order to make it play.

Luciana Cristea: Not anybody knows how to make this. You must have abilities.

M. But do you know how it is? If you have passed your finger on harp, it has already sounded well. Therefore, the simple fact of pulling incompetently, so as on a fence with the stick, it has already sounded well. It sounds cool, it produces a fine sound.

Luciana Cristea: Well, but if you put in a place with proper acoustics, if there is the harpist, then it really makes a good job. Good.

M. But I don't understand why there is a harpist and not a she-harpist. This really...

Luciana Cristea: But usually they are women!

M. More instruments.

Vera Ţugulschi: Harmonica.

M. Harmonica?!

Vera Ţugulschi: When it wants, it can be very playful, it can play, it may seem unserious.

Romulus Oprica: What are you talking about?

Vera Ţugulschi: About a sociologist. (laughs) When one wants so, one may play, one may seem unserious. It may leave gravity aside.

Romulus Oprica: I don't like the idea of comparing the sociologist with an instrument, with...

M. Sentiments have already been, so you say an instrument...

Romulus Oprica: ... a band, a jazz band.

Vera Ţugulschi: Whoops!

Marius Pleşcan: As it is not easy to listen.

Vera Ţugulschi: Let's ask the public?

M. Let the man alone, so that he might say something, don't you see he cannot say two words? Please, sir...

Romulus Oprica: I was on the point of not being allowed. (laughs) I rather see the sociologist, what he gives as a result of a formation. Professional. OK, the instrument plays its part.

M. So, say faster. Therefore a complex instrument.

Romulus Oprica: Very complete. And it can make many things, it can change ... Why do I like jazz? As it can easily change the register, as it can adapt to the audience, as it understands what the audience wants.

M. Hear that? I want other instruments.

Luciana Cristea: But do you see around him other instruments or?...

M. Other instruments? (...) There are no other instruments. Now I will surprise you, as gone out of the scenery from the point of view of the time. Please put your toys in your bags and (...)

Let's close it. Shall I introduce you? Vera Țugulschi, sociologist, graduate 2004. Now you say what you want to say.

Vera Țugulschi: I work in a multi-national, I cannot say I really do what a sociologist should do. I can say however that I did many things that other could not possibly have done, due to the fact that I am a sociologist. I am creative, I don't like routine. I work on development, and I hope to reach one day a high position of sociologist.

M. I hope you won't reach that, as there is no position of sociologist, as there is no such thing. You will see that you will read our book, to put it in an elegant manner. You will see that there is no position slip for the sociologist, as there is no position slip for a helicopter which is but set, therefore has nothing in the field. What slip should you make for it? It is a platform on which you can set whatever you want. Marius Pleșcan, sociologist of Brașov, graduate 2001.

Marius Pleșcan: On my work record there is really written sociologist.

M. This is a bad thing.

Marius Pleșcan: I think this has been written since the very beginning. I have been working for five years for an American company, which deals with projects sponsored by the World Bank or RAIS. We work in the area of education, health, poverty, statistic analysis and whatever follows up.

M. Romulus Oprică, sociologist of Brașov, graduate 2004, father to be.

Romulus Oprică: I think I have been doing the sociologist work, which is for two years I have been dealing with a start-

up business. I learned how it is to graze the bankruptcy, although you have a sum of two thousand euros, they are easily spent, but I don't give up. So they say: I am a little ram at this thing. I think I have learnt in two years of business what is to use yourself or what you should do in order to gain using the platform of sociologist.

M. The platform of sociologist... I like this word. Ramona Năstăsache, sociologist of Brașov, promotion 2004.

Ramona Năstăsache: I am currently program manager within a foundation...

M. Whom I met a few months ago in a subway station, in Bucharest, – heavy-hearted, upset, loathing Bucharest. And I said to her: yes, you people from Brașov loath Bucharest and in six months you become managers. She e-mailed me after four weeks: I am manager!

Ramona Năstăsache: As I have just said, I am program manager in this ONG, and this allows me to do what the sociologist thinks he or she can do, that is everything, which is very good.

Roxana Florescu. What ONG?

Ramona Năstăsache: „Chance for life”. I work in the social field. This is the activity.

M. Raluca Buzea, sociologist, graduate of Brașov 2003.

Raluca Buzea: 2002. I changed three jobs, in which I was sociologist in different forms, in the last it is written I have been working as sociologist, in the first that I activated in politics, in the second in a private company I was manager of marketing programs, of whatever you want, so it did not matter. And in the third I am really a sociologist officer, in police. We are unique in our kind, of course. They employed us as we would talk earlier and then in all ipj-s throughout the country there was employed a sociologist, and afterwards they asked: what could you do? We were made to fill in a job slip, so there is a job slip for every sociologist position

in all IPJ-s throughout the country, that they kindly asked us to write and we signed our agreement. We do all sorts of analyses. So I really feel here as a sociologist, as I searched, I grasped and I read Mr. Ungureanu's courses and I read theories as I had to do research and I had to frame them, I read Mr. Bujdoiu's courses, as we were confronted with a lot of juvenile delinquency. I really used that book I had had ever since studentship. The small, cherry-coloured one, with Lugoj, it is really worn out. And I wrote passages from it, I turned over the leaves, so many things I learnt in faculty I have seriously used. As regards methods and techniques, there is no use talking about. So I really felt here as practicing sociologist on the research side of the job. And as a side job, I think we should invest in sociologists, I deem we are the best in writing projects. Structurally, they are N, nobody applies them and I think sociologists are the best in making projects.

M. In other words developers.

Raluca Buzea: Yes. In a certain sense, yes. Therefore it should be insisted much there and delved into the matter.

M. Thank you a lot. I have already made them write projects, as exam subjects. Andreea Filip, sociologist, graduate of Braşov 2008, the freshest sociologist we have.

Andreea Filip: I have not started up work yet. Or I have begun since Tuesday to work at Libris, I take a downward start, like this. What is cool, is that we plucked up courage to make a company of event organization, me and two other colleagues. Relatives and friends tell us it won't work but we know we will make things out, we really trust ourselves. Even the colleagues congratulated us. Hey, you really enjoy doing this, you really did this.

M. Roxana Florescu, graduate of sociology, Braşov, 1998, the second series

of sociologists. The first series is Claudiu's.

Roxana Florescu: I am glad you still remember me after ten years.

M. I don't forget you.

Roxana Florescu: For the last six or seven years, I have dealt with the creation at Braşov of a German cultural centre, which I dare say it works as it should. So I thing I have been using this very development side.

M. I think none of you has been in Roxana's state of misery. She was the chief of the series of graduates. It seems awful to me.

Roxana Florescu: Me, too. It had already seemed awful after the first two months, that I had left with certain expectations, that they would stay in line at my door, fight and planes. And after turning sheets of paper on each side I said: let's do it. And we did it. And as ideas of proposition, it would seem OK to me, not only for Braşov, but for this country, it would be cool to be the specialization in cultural management, as it has been missing.

M. Dana Ababei, graduate of sociology, Braşov, 2002.

Dana Ababei: 2002...human resources ever since I graduated. I worked for the Germans, for the Swiss, I returned in the country. Now I have been making human resource strategy for the company Petrom.

M. Hear that? Monica Kovacs, who still has the mail address m_bilitki, graduate of Braşov 2003.

Monica Kovacs: At present mother as profession. In the meantime, during the June campaign, manager of electoral campaign.

M. Manager of electoral campaign. Her candidate lost, but he nearly beat Bebe Căncescu. Her most consistent professional experience is this campaign and the one for Mr. Seche, although president PCJ. Among these, human

resource manager for a company which no longer exists.

M. The youngest manager of the human resource department in the world. The following year, after her graduation.

Monica Kovacs: So... and patron of a nearly bankrupt company.

Romulus Oprica: The bullet will graze you right away, like in „Matrix”.

M. Luciana Cristea, graduate 2004

Luciana Cristea: At present I am development agent, at the Direction for Development of the County Council of Brașov. I graduated, I wanted to return as school master in my village. Due to Sir, who said: go to an interview to the County Council, I entered the City Council. With dreams about what was happening there and what cool it must be. So everything went, everybody have me a kick.

M. You thought it was necessary for them, but nothing was necessary for them

Luciana Cristea: Neither I was necessary for them... I became more and more realistic. I wanted to leave the

County Council, to become hall manager in a bank, I really mean it. I don't know if I am capable of making an event organizing company, exactly what you said, only I did not set up that company, I was surprised by the events and I organized four weddings, after which I said I could do something and I was employed at the development company. I work a lot, for which reason I almost did my blood tests last week. At present I work at a project whose deadline is the 8th of December, so I am in a perpetual time crisis. And I feel so. Therefore I have no time to call my friends, to go out. Because I have a lot to do. And that's all.

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MINORITIES PROTECTION, DEMOCRACY AND CULTURAL PLURALISM

Gabriela RAȚULEA ¹

Abstract: *The instauration and the maintenance of a stable democratic government within a plural society are difficult to be realized. The social homogeneity and the political consensus are considered compulsory premises for a stable democracy in which minorities rights are protected, or are considered extremely favourable factors for this one. Recognizing the cultural pluralism means to respect the principles of democracy, to instate harmonious intercultural relationships, ensuring that every member of the community can express himself and benefits of the same rights with the majority.*

Key words: *minorities protection, cultural pluralism, democracy, tolerance, equality.*

1. Introduction

Two thousand years ago the Greek philosopher, Aristotle, sustained that “*The purpose of the State is to be, within the possibilities, a society of equal human beings*” [1]. Nowadays the cultural pluralism answers the need of different cultural components of the society to express themselves.

The "cultural pluralism" concept was born in the 60s in the US, with the purpose of making it easier to understand the diversity of today's world. This is about the existence within a state or a larger region of some minority groups that are different from the majority population by elements such as language, race or religion. In the work "How to compare nations", Dogan and Pelassy analyze this phenomenon. "All analysts who have seriously studied the cultural pluralism have denounced the naivety of those who expected that the industrialization and development of communications will prevent the segmentation. In reality, the economic,

social and political development usually revives the competition between rival groups that are therefore competing for new services provided by the government. The modernization brings with it an overdevelopment of the main cities, a consolidation of the political centers that control the mass-media, as a redistribution of the incomes. Such development starts the riot of suburbs - what Jean Gottmann defines as defying of the centralization. Urbanization, education and communication, far from operating a radical opening of the cultural collectivity, offer them the ability to create an elite, to develop a conscience, to transform their dialect into a real language and their legends into cultural patrimony". [2]

The authors present the content of this concept: overcoming the intercultural antagonisms, access to all forms of culture, acceptance of diversity - the basis of this concept, as a factor of individual and collective improvement, elaboration of new synthesis to overcome and eliminate

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all forms of conflict, including the latent ones, recognition of the creative force and the energy released by the interaction of differences without transforming them in conflicts.

These principles ensure the implementation of harmonious intercultural relationships, not leading to a leveling of differences, to a suppressing or marginalization, guaranteeing, on the contrary, that they will continue to exist, but without generating conflict anymore.

For a better understanding the concept is usually associated with the field to which it refers to: cultural pluralism, ideological pluralism, political pluralism, ethnic pluralism or religious pluralism. [2]

Cultural pluralism is the dynamic by which minority groups participate fully in the dominant society, yet maintain their cultural differences. A pluralistic society is one where different groups can interact while showing a certain degree of tolerance for one another, where different cultures can coexist without major conflicts, and where minority cultures are encouraged to uphold their customs. A Jewish philosophy professor, Horace Kallen, coined the term pluralism in the early 1900s. He was proud of his country, and concerned for his beliefs and the beliefs of immigrants. He did not want to be assimilated by the majority. He felt that various distinguished cultures could offer a greater contribution to progress than a single culture could. Cultural pluralism itself can break down at the practical level. Equality among men and women is one of the great accomplishments of Western society. Western adherence to cultural pluralism, and its tolerance, will break down, for example, the mistreatment of women.

Cultural pluralism can breakdown at the philosophical level as well. In order for cultural pluralism to have any application, it must itself be a belief held by all, or one

that is enforced within the society. If cultural pluralism is to be understood as a correct philosophy, then it must exist in an authoritarian manner. It is a self-defeating philosophy. Furthermore, the notion that cultural pluralism is a false concept must also be tolerated within a pluralistic society. This results in those who adhere to absolutes opposing those who disagree, and this notion again defeats the principles of cultural pluralism.

2. The Education and its Role in Promoting the Cultural Pluralism

The education must make individuals aware of their own roots, so that they are able to have points of reference in order to find their place in the world, but it must also teach them the respect for other cultures.

According to the Declaration of Tolerance Principles (proclaimed and signed on 16th November 1995) the Member States of the United Nations Organization for Education, Science and Culture (UNESCO) reunited between the 25th of October and the 16th of November 1995 in Paris in the 28th session of the General Conference, regulated that tolerance is: "the respect, acceptance and appreciation of the wealth and diversity of our world's cultures, our ways of expressing our quality of human beings. It is encouraged by knowledge, free spirit, communication and freedom of thinking, awareness and faith. Tolerance is also the harmony in differences. It is not only an ethical obligation; it is also a political and juridical necessity. Tolerance is a virtue that makes peace possible, and which contributes to the replacement of war culture with a peace culture. Tolerance is not a concession, or condescendence or indulgence. Tolerance is especially an active attitude generated by the ascertaining of the universal rights of the human person and the fundamental

freedoms of others. Tolerance cannot be in any way invoked to justify the violation of these fundamental values. Tolerance must be performed by individuals, groups and States (art. 1 of the Declaration). Moreover, tolerance is related to the pluralism as follows: it is the responsibility that sustains the human rights, the pluralism (including the cultural pluralism), the democracy and the lawful State. It involves the rejecting of dogmatism and absolutism and confirms the norms listed in the international instruments with respect to the human rights. According to the observation of the human rights, to practice tolerance does not mean to tolerate social injustice, or to renounce to one's own convictions, or to make concessions in this respect. It signifies the acceptance of the fact that the human beings, naturally characterized by the diversity of their physical look, their status, way of expressing, behavior and values, have the right to live in peace and to be who they are. It signifies also that nobody must impose its own opinions on another.

3. Minority Protection in the Context of Multiculturalism

The issue of minorities protection, whether ethnic, religious or cultural can be analyzed starting from two different ideologies. The issue is about the identification of the relation between the "majority culture" on one side and the "culture of minorities" as a relation of possible antagonism which, under uncontrolled conditions, can lead to mutual social exclusion, and on the other side, by the need of preserving some *particular cultural identities* within the context of a cultural pluralism, as benefic stability factor at macro-social level. [3] At this point we may examine, as an example, the situation of Romanians in the Austro-Hungarian Empire after the dissolution of

the Empire. The geographic component of most Romanians in Hungary was not a stable part of a Romanian historical province - from Transylvania or Banat, neither from the traditional "countries" or lands (Țara Zărandului, Țara Moşilor) in the close vicinity - but the Romanian ethnics have always formed small islands spread over the Hungarian territory, throughout the actual border with Romania, at the eastern extremity of Romanian territory at the south-east of the Hungarian Field. The ethnicity of Romanians in Hungary was preserved until the creation of modern Romania, by a spontaneous ethnic separatism ensured especially by the language and the Orthodox Religion and encouraged by the presence of a considerable mass of Romanians on the territory of the same political formation. The main support of the ethnic separatism was the group endogamy. Especially after the separation from Transylvania and Banat, the reduced Romanian community in Hungary was placed in the position of the cultural pluralism phenomenon, a social form of accommodation where the ethnic group keeps its distinctive cultural features and traditions, cooperating in the political, social and cultural life of the majority. In this case, the cultural pluralism is just a transition phase to integration/assimilation. The cultural and linguistic leveling, loss of traditions lead to the destruction of group identity. Preponderantly rural, the Romanian ethnic group in Hungary began to lose its identity with the raveling of the traditional existence forms. After 1920, when the Romanians formed just small enclaves in the south-east of Hungary, politically and administratively isolated from the mass of Romanians in Transylvania and Banat, the prestige of the own language and culture diminishes, especially due to the citizenship process that disintegrates the closed societies.

In the context of the post-modernism, we are confronted with an unprecedented ethnical, cultural and religious diversity. This diversity, generated by secularization, globalization and by the demographic modifications, spreads into the area of values and concepts about the world and life, of the morality and religious practices. In human communities all over the world and in schools we can find Christians, Jews, Muslims, Hindus, Buddhists, Confucianists, atheists and agnostics not only in the spatial proximity, but also in complex economic, political-social and religious cultural interrelationships.

4. Democracy's Role in Promoting Cultural Pluralism

Within the Western cultural space, the democratic political regime constitutes no recent subject of debate. Twenty-five centuries ago, it stood in the middle of the debates with respect to the political life at the ancient Greeks. Nowadays, it constitutes a privileged subject. The 20th century, marked by the "war of the political regimes"[4] not only attracts the political scientists' attention, but also that of the sociologists, of the jurists, of the philosophers. The collapse of the totalitarian regimes led to the reanalysis of the ethic principles, the idea of democracy being renewed this way.

The concept of democracy is used within several universes of discourse, but in the first instance within the one of daily political life. We currently understand democracy as "the political regime in which sovereignty is exercised by the people"[5] in which every citizen has the liberty to express his convictions. At the same time, democracy stands for a concept used by philosophers, jurists, sociologists. For the philosophers, it often constitutes the occasion of making actual the issue of the political values. This way, referring to democracy, the philosophers raise issues in

connection to justice or the good governing of society. For the jurists, the concept is useful in identifying the institutional forms and in distinguishing the other types of political regimes (authoritarian or totalitarian). As regards the sociologists, they have in view the democratic phenomenon, both in its judicial dimension, and in its political and social dimension. We must not neglect the essayists' discourses upon democracy, as their influence upon modelling the social representations is not to be neglected, given the fact that, through their arguments or the media debates they entertain, they influence the citizens' perception upon the political regime.

Anton Carpinski [6] submits the compliance with the political phenomenon from the perspective of the paradigm of the whole and the part. In the framework of this model, the whole designates the dynamic unity of the generic agents of the political game: power, civil society, human individual. The whole is, therefore, the social whole, society consisting in the political society (State, parties, lobbies) and civil society (economic, cultural life etc., extra-political, individual and collective). The parts are represented, according to the submitted paradigm, by every agent of the mentioned triad, as well as by the different classes, social groups and political parties existing within a society. Democracy will be instituted when there is a dynamic equilibrium between the different parts (classes, groups, parties, individuals) and the social whole. When the competing positions and interests legally confront and conciliate, there being affected neither the interests of any minority, nor of the social whole. The free and creative individual, civil society in its diversity and legitimate political power adjust their relations in a rightful manner; the person's rights and liberties are

observed, and the State functions according to the lawful standards.

5. Pluralism, Democracy, Citizenship

The instauration and maintenance of a stable democratic government within a plural society is difficult to achieve. The social homogeneity and the political consensus are considered compulsory premises for a stable democracy or are considered extremely favourable factors for a democracy. On the contrary, the profound social divisions and the political differentiations within plural societies are considered the causes for the democracy instability and its collapse. Arend Lijphart considered that only a certain form of democracy, the consociational one, makes possible the maintenance of democracy within a plural society. In such a democracy, „the centrifuge tendencies inherent to a plural democracy are neutralized by the cooperating attitudes and behaviour of the leaders of different population segments” [7]. As a matter of fact, the cooperation among the elites stands for the main distinctive feature of the consociational democracy. However, we do not have to infer that the individual’s role is minimized. Within modern democratic society, the connection among people is a political one. To live together means no longer to share the same religion, the same culture or to submit, together with the others, to the same authority, but to be citizen of the same political organization. Citizenship stands for the source of social connection [8]. Citizens’ society, through their political and social institutions, through daily exchanges, is a democratic society. Every citizen, independently of his/her religion, ethnic origin, race, gender etc., has the right to the same respect, to the recognition of his/her dignity. The relations among people are based on every one’s equal dignity.

Only within a democratic society, citizenship is, in principle, open to all individuals, beyond cultural, social or biological differences. In the name of the values of modern democracy, political order assumes as ambition the integration of the ethnic groups with the help of citizenship, through rising above their concrete diversities, their particularities. The democratic State is based on the principle of the citizens’ inclusion and of the non-citizens’ exclusion from the political practices. It includes the former ones, ensuring their equal participation to the political life; it excludes the others from the practises in direct connection to the citizenship that they dispose of within another society. From the judicial point of view, „any person has the right to citizenship” (*Universal Declaration of the Human Rights*, art. 15) and to the afferent civil rights. Democratic society has however the vocation to open itself for all those who may participate in the political life, independently of their particular features, it being more open to foreigners than any other form of political organization (for instance, French, Swiss, German etc citizenship may be obtained, through naturalization). From the fact that the right to citizenship is open, there does not ensue the fact that nationality may be unconditionally granted to all individuals present on the national territory, as this would mean the denial of difference between the nationals and the foreigners. Only the citizens of a democratic nation are fully entitled to their political rights. However, all foreigners who are legal residents, non-citizens, therefore deprived of their political rights in connection to the citizenship, are granted the same civil, economic and social rights as the nationals. Foreigners enjoy all individual liberties. They have the right to travel freely, to marry, they have the right to the presumption of innocence, in case they are

deferred to justice. Gradually, after the end of the second World War, the foreigners' judicial status in Europe was assimilated to the nationals' one, as regards the salaries, the right to work and the right to social protection. The legislation that regulates the equality of the civil, of the economic and of the social rights is based in fact on the fundamental idea of the human rights, as being inalienable and universal. In this respect, Dominique Schnapper considered that the „observance of the foreigner's rights as human being means in a way to reassert the values around whom t modern democracies were built"[8].

6. Education and Democracy

Education is placed at the centre of the democratic project, as it has to offer to everyone the possibility to really participate in public life.

School, either directly organized by the State, or controlled by it, is undoubtedly a democratic institution. Within the Greek democracy during antiquity, the absence of public school limited the real political participation to rich citizens. The idea that every citizen should be allowed to concretely exercise his rights is connected to modern democracy. Only since the Revolution of 1789, in France, for instance, the teachers in the schools, were no longer called „regents", turning into „institutors", their task being to establish the „nation", source of the political legitimacy, in the sense of the 3rd article of the *Declaration of the human and civil rights* („The principle of any sovereignty essentially resides in nation. No organism, no individual can exercise an authority that does not expressly derive from this one").

By establishing the bases of the public school, the republicans, starting from J. J. Rousseau's observation that the general interest cannot be confounded with the sum of the particular interests, aimed at creating the abstract citizen, destined to

embody and to define the general interest.[8] Henceforth there comes the unique and centralized organization of the system of education. The republic is aimed at emancipating people in the name of equality for all and at ensuring the promotion of the best.

The access to education for everybody means equal chances of promotion. School has to ensure the promotion of the best, to allow social mobility and to favour the equality in chances. Here there may be introduced for discussion the essential role of the study grants, which allow the endowed children, independent of their social or ethnic origin, to benefit from the possibility of promotion and continuation of study.

There has to be enhanced the fact that school has a double function. On one hand, through the content of education, there takes place the assimilation of a language, of a culture, of a national ideology and of a historic memory. The schooled persons within the same institution share not only the same language, but also the entirety of knowledge and references, implicit and explicit. On the other hand, school constitutes an integration space. In its framework, independently of their ethnic origin, of their appurtenance to a church or of their social origins, they are equally treated.

From the intercultural perspective, the school should promote the „ethnic attachment and understanding and to help pupils acquire skills and attitudes that should allow the ethnic group to acquire power of signification of the great worldwide culture [9]. It is also necessary to include the study of ethics, in the curriculum[10] in order to facilitate for the children the acceptance of the “others”.

7. „Cultural Rights” and Democracy

Legitimacy and democratic practices cannot be conceived outside the nation.

The problem is if there's possibility for it to function on the supranational or infranational level. The reflections with respect to the multiculturalism and to the infranational rights, on one hand, and the new conceptions which will be elaborated starting from the European construction, make actual the connection between nation and democracy. The problem of acknowledging the special cultural rights of the ethnic groups within a nation may be also raised in connection with the cultural rights of the nations in the framework of the new political entity which is intended to be Europe of the future. Cultural rights, as well as other rights like the economic ones must be protected not only by the state, but also through citizens associative forms, because this is the only way to practice the citizens fundamental rights at a higher level. [11]

Modern democratic society managed to ensure for all citizens, including foreign citizens, legally settled, civil, economic and political rights. The question which is being raised now is how it could take into consideration the claim of the „cultural rights" of the societies which are nowadays more diversified and more open.

Any society is, through definition, multicultural, consisting in groups that differ from the cultural point of view. According to the democratic principles, it is necessary to correlate the citizens' civil and political equality with the observance of their ethnic or religious particular attachments, ensuring at the same time, the unity of society through common citizenship and individual liberty.

Interculturality implies the acknowledgement of the „cultural rights" as being an integral part of the individual rights. When we refer to „cultural rights" we do not act in the intellectual sense of the concept (the right to scientific knowledge, to reading etc.), but in the sense of the „individual's rights to possess

and to develop, possibly in common with others within a group defined through shared values and traditions, his/her own cultural life, that should correspond to a cultural identity distinct from the one of the other individuals or groups." [12]

The assertion of the particular cultural rights implies certain risks. In the first place, there is the possibility for the individuals that belong to a certain cultural group to subordinate themselves to it, sacrificing their personal liberty and the possibility to maintain relations with the members of other groups. According to the principles of democracy, the individual does not belong to a certain group, isolated from the others; society does not consist in juxtaposed groups, to whom individuals belong, but in persons with multiple social roles. The second risk is connected to the social integration, in the sense that it is possible for the citizens to retreat within the community of origin, instead of opening towards other groups. Moreover, the recognition of the cultural rights may lead to different political, economic, social rights.

8. Civil Society and Citizenship

The public space of citizenship and political participation is not limited to the political sphere, the one in which key personnel or national or international deciders express themselves. On the one hand, various kinds of public spaces appear, disseminated in the social space (that of the civil society). These are at the same time spaces of public discussion between „ordinary" citizens and participatory spaces through associative life and initiative networking. It is necessary to analyze the various forms of public space in order to examine the conditions for the emergence of a European civil society. On the other hand, a trans-national civil society certainly misses problems that are common to all

citizens, whatever their nationality. It is mainly the case of technological mutations that affect profoundly the forms of life and the conditions for civic action, both at individual and collective level. To think about the conditions for the exercise of citizenship in a trans-national society also means to measure these common ethical and political problems.

As for the first point, we will start from the clarification of the very concept of public space, in order to identify its places. The research must focus on the social and political conditions (guarantee of human rights, effective possibilities of action etc.), but also on the strictly space-related conditions (architectural, geographical, urbanistic, technical) of public space. We have to deal in particular with examining the possibilities to create and practice the public space in post-communist countries. These countries have emerged from a world where the distinction public-private has been systematically denied and the values of initiative repressed. In these countries, it is necessary to reassert the rules of public space and retrace the spatial delimitations that define the action framework, especially the separation line between private and public. At the same time, the question is to know to what extent the public space of concerted action can be freed from the profit-oriented communication system, dominated by commercial media. The European integration of post-communist countries implies the awareness of their responsibility on the part of all those who contribute to the creation of opinion (teachers, researchers, journalists, politicians). This responsibility must take into account the values of knowing and respecting the liberty of speech. We must also analyze the relationships between space and the construction of identities, between the feeling of identity and the landscape (natural, urban, industrial) as a

territory that is constituted and occupied by people. It is not only the historical legacy, the culture and the values of a given society, but also the environment, its resources, its aesthetic dimension which need to be considered. The complex question of identity will thus be tackled through concepts (like the one of landscape) that concentrate historical, aesthetic and sociological approaches. As for the second point, we have to analyze the transformations of civil society brought about by the scientific and technical mutations. These mutations operate an in-depth modification of civil society and of the possibilities of action that are open to citizens. They affect to an equal extent the perception and the expression of identities. The technological process is manifested mainly through the computerization of the society, a fact that misses a number of questions concerning the protection of private life (like practical means of communication, the guarantee of fundamental rights). The progress in the fields of biology, genetic engineering, etc., puts into question the perception of individual identities, the relation to the body, personal integrity, and leads to the growing involvement of the political power in the fundamental issues of health, reproduction, nutrition, aging. The issue of the democratic control of this "bio-power" is raised particularly in all the fields that are linked to the relationships between life, technology and political power. It is a question common to all members of the emerging "international" civil society, especially in Europe.

It is necessary to identify this bio-power, by analyzing the way it functions and the representations on which it relies. The questions that arise are: What does an organism mean nowadays and how can we define its physical integrity? Is one the proprietor of one's body, within which limits, and how can the political body

decide upon legislation or the history of a body? How does an individual think and insert him/herself in his/her personal history, with the appearance of realities such as organ grafts, donations and trafficking, the techniques of assisted reproduction etc.? What becomes of the definition of an identity once science and technology raise the problem of the control or absence of control an individual has over one's own body? Starting from these questions, it will be possible to dwell on the analysis of the conditions for exercising citizenship in a society where the question of identity is also affected by the progress of science and technology. Only this will allow us to circumscribe the principles of ethical evaluation and the conditions for the political control of the decisions pertaining to the life and the integrity of the human person.

9. Identities and Communication in the Context of the European Community

The central hypothesis in the matter of citizenship and identities is that the issue of identity cannot be reduced to the problem of social and cultural determinism. This is based largely on the diversity of historical experiences and social worlds. This diversity creates a "horizon of expectations" versus the European Union that varies from one country to another. The plurality of horizons and expectations and of points of view is not in itself an insurmountable obstacle, as certain principles can be adjusted, thus leading to consensus — at least a partial or provisional one. Nevertheless, the diversity of historical experiences opens up the possibility of misunderstanding. In certain cases, it can block the whole discussion process. It can render impossible the elaboration of a common interpretation of problems, which creates a prerequisite for all collective decisions. Consequently, a reciprocal

understanding of the "social and cultural worlds" of the diverse European nations is a necessary prerequisite for all possibilities of political cooperation. This reciprocal comprehension implies joint historical and linguistic analyses — linguistics here being considered in the sense of discourse analysis. On the one hand, we aim at better understanding the history of Europe and its contemporary political reverberations. We will resort to political history, but also to social and cultural history. From this perspective, we will try to replace the construction and the issue of European identity in the context of a theory of history that would take into consideration both the end of the metaphysics of history and of the plurality of historiographies (especially from the point of view of each nationality). On the other hand, we aim at examining the conditions for the possibility of communication of the lived experiences, especially the collective ones. From this perspective, we need to focus on the history of ideas and cultural practices. We must examine, for example, the reception of great authors, of new models and concepts in Europe; we must study how the ideas have circulated and transformed representations in key periods of European history: Middle Ages, Renaissance, Reform, Enlightenment, Industrial Revolution, the two World Wars etc. The principle of such research is that there is no specific European thought, if this concept is understood as a thought that would be specific to Europeans in opposition to all other civilizations. What exists, though, is a European practice of thought, which we can circumscribe by analyzing the history of intellectual practices and the circulation of scientific, aesthetic, philosophical ideas in Europe. European identity does not rely on predetermined ethno-cultural characteristics, but on the history of these practices, the way in which the ideas and

ideals have been forged, transmitted, received and re-interpreted from a nation to another. At this point it is important to mention also the role of long life learning especially in higher education. [13]

10. Conclusions

In the communitarian law, which is the core of the European Union, the principles, which are granted the same power as the communitarian treaties by some people, are characterized by their active involvement in the daily communitarian law, in the enforcement of the norms and competence system within the European Union. Their role is essential to transmit a cultural pluralism respectful to the traditions and basic values of Europe.

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COMMUNITY OF PREDEAL ≈ GENERAL DESCRIPTIVE ELEMENTS ≈

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Abstract: *The objective of this article is to perform a general description of the community of Predeal. The data submitted herein, together with aspects in connection with the social problems that the community of Predeal is confronted with will serve to outline a strategy of community development.*

Key words: *community, community development, census.*

1. Introduction:

As the majority of the Romanian communities of our days, the community of Predeal likewise presents acute necessities of development. The census of the population from Predeal, performed during the summer of the year 2006, as well as the opinion poll about the inhabitants' perceptions with respect to the social problems of the town, performed during the same period, unveiled many of the problems that the inhabitants of this area are confronted with and, implicitly, part of their solutions and the possible directions of development. An important aspect as regards the success in identifying and implementing a strategy of development is that the Townhall of Predeal has already been endeavouring to outline this strategy, and it may be a collaborator of great help in realizing and implementing this strategy.

2. Theoretical Aspects:

The Encyclopedia of Social Development (2007) defines community as „an enduring social formation, gathering a relatively small number of individuals, with a similar cultural background and social statuses, who inhabit a little

extended surface and among whom there are well defined and persistent relations of cooperation, there succeeding thereby the exercise of an efficient social control on the level of the respective group”.

Sandu (2005) states the fact that this one (community) „designates a human grouping characterized through an increased probability of their members' value unit. Operationally speaking, the community is acknowledged through at least one of the following three attributes: its members' cultural similarity; intense interaction among the members of the group; status similarity among the members of the group (occupation, education, age, localization etc.)”.

Encyclopedia Universalis specifies the fact that this word, community, raises issues that have not been solved yet. It identifies two types of non-operational definitions: general definitions, among whom there is C.M. Arensberg's definition, for whom „communities stand for structural units of organization and cultural and social transmission”. A second definition of this type, inspired by the works of G.A. Hillery, who in 1955 gathered 94 definitions of the community from the Anglo-Saxon literature, takes into

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account all types of possible communities: „a community is a collectivity whose members are connected through a strong feeling of participation”. In the category of the particular definitions, we find the definitions of rural communities.

International Encyclopedia of the Social Sciences defines community as a „population living within the legally set limits of a town”. There is further specified that the term is very rarely used so as to describe a regular metropolitan area, a commercial area or an entity defined by other functions than the political ones. The issue of determining the borders of a community is unsolvable (excepting the arbitrary means) as it is acknowledged the fact that decisions taken *externally* may have a significant impact upon the allotment of the values and upon important private or public decisions *within* the community. The main preoccupation enhanced in the literature with respect to the community power consists in outlining and sharing these values and decisions.

Gemeinschaft und Gesellschaft (Community and society)

Ferdinand Tönnies was the first to make explicit the nature and use of ideal types, or „normal types”, as he called them. Stimulated by Maine as well as by Marx and Hobbes, he developed two such types which gave their names to his book *Gemeinschaft und Gesellschaft* (1887). Tönnies' theory and typology rest on his view of the nature of human volition, of which he distinguished two types—*Wesenwille* („natural will” or „essential will”) and *Kurwille* („rational will”). The former refers to volition that springs from an individual's temperament, character, and habits. With rational will, however, the distinction between means and ends becomes important, and volition is dominated by thinking.

Gemeinschaft cannot be accurately translated. It refers to the „community of

feeling” (a kind of associative unity of ideas and emotions) that results from likeness and from shared life-experience. Natural will predominates in *Gemeinschaft* relationships, which are best illustrated by the links between mother and child, husband and wife, and brothers and sisters.

The predominance of rational will characterizes *Gesellschaft*. In *Gesellschaft* relationships, Tönnies says, „everybody is by himself and isolated, and there exists a condition of tension against all others ... intrusions are regarded as hostile acts ... nobody wants to grant and produce anything for another individual ... all goods are conceived to be separate, as are their owners” (1887, p. 65). In such a society, rational will operates in terms of the logic of the market place. Relationships are contractual; values are monetary. Profit is the sole end of trade, and one man's gain is another's loss. As the merchant tries to free himself from all relationships that might conflict with commerce, he becomes, as Adam Smith pointed out, an individual who is not bound to any particular country; indeed, every man becomes, in some measure, a merchant.

„In the history of the great systems of culture”, Tönnies wrote, „a period of *Gesellschaft* follows a period of *Gemeinschaft*”. The latter period begins with social relations based on family life and on domestic economy; later, with the development of agriculture and rural village life, there is a shift to cooperative patterns based on locality. Then follows the growth of town life and the mental community of religious faith and artistry. The *Gesellschaft* period of history opens with the growth of city life based on trade and contractual relationships. Industrialization and the rational manipulation of capital and labor are accompanied by the growth of the state and of national life. Cosmopolitan life, toward which Tönnies thought society was moving, would be based on the ultimate

expressions of rational will—science, informed public opinion, and control by „the republic of scholars” (*International Encyclopedia of Social Sciences*).

Mechanical and organic solidarity

In his book *The Division of Labor in Society* (1893), Émile Durkheim examined the relationship between two facts that had already been noted by Auguste Comte and Herbert Spencer - that the division of labor in society was a source of social solidarity and that primitive society was relatively homogeneous in character. Noting the impossibility of observing social solidarity directly, Durkheim took variation in types of law as a symbol, or reflection, of types of solidarity. Maine afforded him the basis for further analysis in the observation that law in ancient societies was characteristically penal or criminal law, while civil law predominates in modern society. Durkheim called the first type of law „repressive” and identified it with *mechanical solidarity*, or social unity based on likeness. He held that the moral sentiments common to all members of a society constitute a „collective conscience”; criminal acts are those that violate the common conscience and call forth passionate reactions of vengeance. Violent punishment of the offender can expiate the act because the punishment protects the collective conscience of the society from further violation.

In contrast to repressive law, which deals with criminal acts against society, civil law deals with relationships between special parties in society. The sanctions of civil law involve restitution rather than punishment, and such „restitutive” law presupposes cooperation derived from the division of labor. The associated type of social solidarity is based on the interdependence of specialized parts; using the biological analogy, Durkheim called it

organic solidarity. To the type of society it characterized he gave no specific name, although he referred to it as „occupationally organized”.

Finally, Durkheim used the legal indices of solidarity to demonstrate that as one basis of solidarity develops the other regresses. It is always organic solidarity that wins out over the mechanical, he contended. The evolution of society can therefore be seen in terms of the passage from mechanical solidarity to organic solidarity, with „mechanical” or „organic” referring to the dominant type of solidary relationship at each evolutionary stage. Durkheim saw a connection between this evolutionary process and such factors as increasing population size and density, the growth of cities, and improvements in communication. In the increasing competition resulting from rising population density and increasing social interaction, he found the cause of the increase in division of labor.

Parsons' „pattern variables”

Four pattern variables constitute the basic components of Talcott Parsons' system of analysis of social action (1951, pp. 58-67; 1960). The variables are „ranges which, in their simplest form, can be defined as polar alternatives”. In Parsonian analysis, the pattern variables figure as dichotomies: each expresses a „dilemma” of choice between two distinct alternatives that are faced by the „actor” in every social situation. The nature of the variables is suggested by the way each relates to the definition of behavioral expectations. *Affectivity* versus *affective neutrality* refers to whether immediate self-gratification or its deferment is expected. *Specificity* versus *diffuseness* is concerned with whether the scope of the relationship is seen as narrow, like that between a clerk and customer, or broad and inclusive, as between spouses. *Universalism* versus *particularism* has to do with whether action is governed in terms of

generalized standards or in terms of a reference scheme peculiar to the actors in the relationship. Finally, the *quality* versus *performance* dichotomy (also called *ascription* versus *achievement*) is concerned with whether the characterization of each actor by the other is based on who or what the person is or on what he can do - for example, on whether he has royal blood (ascription), or on whether he is a college graduate (achievement).

Classification of societies. Parsons used combinations of two of these dichotomies - universalism-particularism and ascription-achievement - to define four principal types of society. He pointed out that all societies organized around kinship fall under the particularistic-ascriptive pattern. The scheme, therefore, has evolutionary implications, as it distinguishes three social structural „types which tend to emerge when major types of cultural development in the literate cultures have occurred" (Parsons 1951, p. 182). The emergent type characterized by the universalistic-achievement pattern is exemplified by the most industrialized societies. Division of labor in such societies emphasizes the specificity and affective neutrality of occupational roles, which contrast with the diffuse and affective character of kin roles in primitive societies.

If one disregards the two other possible types in favor of the universalistic-achievement pattern and the particularistic-ascriptive pattern, there is obviously a continuum between these ideal-typical roles. In empirical terms, one extreme characterizes all primitive societies and even feudal ones, while heavily industrialized societies resemble the other pole. There is a clear tendency for the four pattern variables to covary between these extremes, although all actual societies show mixtures of the two sets of characteristics. It is only the relative

emphasis that differs (*International Encyclopedia of Social Sciences*).

3. Description of the Community of Predeal

3.1. General Data

Geographical placement

Predeal, a town also known as a ski resort, is placed at the partition line between the basins of Prahova and Timiș, within the pass bearing the same name. It is the Romanian town situated at the highest altitude (1097 m). Predeal resort is at a distance of 142 km from Bucharest, on DN1, at 25 km from Sinaia and at 25 km from Brașov.

Surface

The town-resort Predeal stretches on a surface of 58,4 Km² (total internal territory in 2000: 930 ha)

Stable population: 5000 persons (1.07.2006), 2100 families

3.2. Climate

- **Climate:** continental-moderate
- **Average temperature:** 14,9°C (in the month of August); -5,1°C (in the month of January); Annual average: 4,9°C; annual amplitude 19,6°C
- **Humidity:** 65% summer; 85% winter
- **Predominant wind:** North-West
- **Average data of the last snowing:** 26th of April
- **Average data of the first snowfall** 24th of October
- **Average data of the last snowfall** 21st of April
- **Average number of the days with snow** 118/annually
- **Average precipitations:** multi-annual average 742,2l/mp; 1255 l/ mp in rainy years; 179,3 l/ mp in droughty years

3.3. Flowing Direction of the Waters

● **The closest possible water course**

In the town-resort Predeal, there are the spring of the river Prahova and of the brook Timiș.

The hydrologic regime of the area Timiș-Predeal disposes of a well organized hydrographical network with high flows along the whole year. The major hydrographic channels that collect the waters on the slopes are: Prahova and Timișul.

● **Flooding**

The water volume during the period of the abundant precipitations has not created problems that should have generated particular floods. The area which is most affected by freshets is the valley of Poliștoaca.

3.4. Access

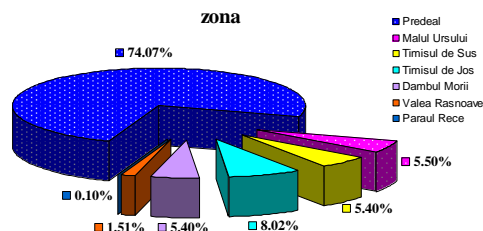
- **Airport.** Accessible airports : Otopeni, Băneasa București – 140 Km; Tg. Mures – 150 Km; Sibiu – 130 Km.
- **Railway:** The access to the station is ensured through connecting roads on trajectories with a maximal length of 10 Km. There are railway stations in Predeal, Timișul de Sus and Timișul de Jos.
- **Main road**
- Main roads in the town: 2 (DC 15; DJ 102P)
- Length of main roads: 10,7 Km; Surface of main roads: 75.000 square meters

- Town-resort Predeal is placed on E-60-DN1. European and national roads: E60-DN1; County roads: DJ102P.

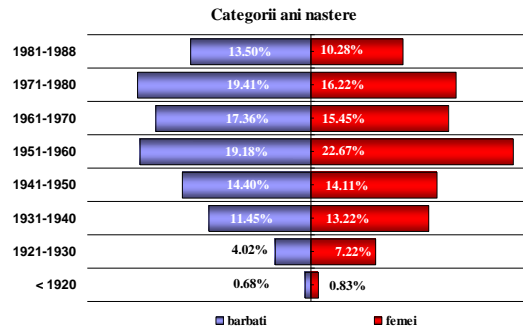
3.5. Population

Note: The data comprised in this section are obtained following the census of the population in Predeal organized in July-September 2006. The objectives of the research were the following:

- ◆ identifying certain characteristics of the community of Predeal: schooling, occupational domains, incomes, structure of the family, characteristics of the dwelling and of the household endowment, etc;
- ◆ performance by the citizens of a brief evaluation of the main public services, of the firms and institutions supplying local public services;
- ◆ identifying the inhabitants' opinions with respect to the main issues with which the local community is confronted with, possible solutions;
- ◆ identifying the inhabitants' opinions with respect to the tourism development during the last years, as well as the opinions with respect to the possible directions for development;
- ◆ identifying the inhabitants' opinions with respect to the different aspects of the waste management.

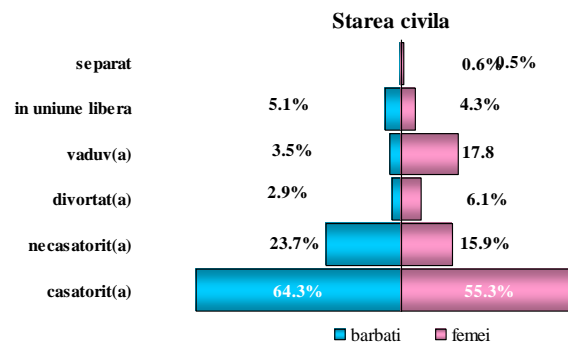


► Categories years of birth:



		Birth year	
		Men	Women
Number	Valid	1319	1566
	Missing	663	416
Average		1960.12	1956.99
Median		1961.00	1957.00
Modulus		1949	1954

► Marital status:

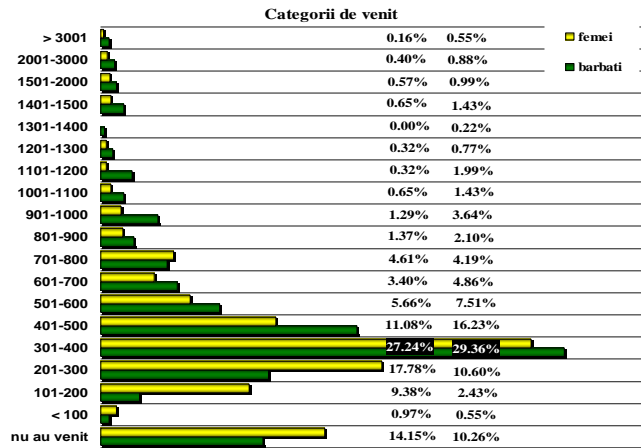


► Schooling:

-26,3% among the women and 25% among the respondents are high school graduates with diploma.
 -27,74% among the men and 16,44% among the women are vocational school graduates / apprentices

-11,51% among the men and 11,26% among the women are secondary school graduates.
 -Higher education (including non-graduated faculty) have 13,95% of the men and 13,5% of the women.

► **Categories of income:**



Out of the categories of income higher than 301lei, the men's percentage is greater than that of the women for every category of income in part.

The women's percentage is higher than that of the men for incomes smaller than 300 lei.

► **Commuting persons:**

Total commuting persons: 346 (inclusively commuting persons within the locality: Predeal, Timiş, etc.).

In Timişul de Sus, 40% among the men and 18,4% among the women commute.

In Timişul de Jos, 36,4% among the men and 31,7 among the women commute.

In Dâmbul Morii, 32,9% among the men and 31,6% among the women commute.

Most of the commuting men in Predeal, Timişul de Jos and Dâmbul Morii commute to Braşov. Most of the commuting men in Timişul de Sus commute to Predeal or to Braşov.

Most of the commuting women in Predeal, Timişul de Sus, Timişul de Jos and Dâmbul Morii commute to Braşov.

Out of a total of 346 commuting persons, men and women, 195 (which is 56%) commute to Braşov.

● **Structure of the labour force**

- Wage earners – total about 2000

- Average number wage earners in electrical energy, gases and water 60
- Average number wage earners in civil engineering 250
- Average number wage earners in commerce 150
- Average number wage earners in transportation, storage, post, comm. 40
- Average number wage earners in finance, banking and insurance act. 20
- Average number wage earners in public administration 50
- Average number wage earners in education 50
- Average number wage earners in health 20

(approx 65, with the working place in different localities, including Predeal)

44,5% among the men are permanent wage earners working full time.

29,7% among the men are retired (inclusively those who are both employers and employees).

40,9% among the women are permanent wage earners working full time

34,3% among the men are retired (inclusively those who are both employers and employees).

3.6. Education

- **Theoretical high school "Mihail Săulescu" from Predeal has classes**

for the primary, secondary, high and vocational cycles: 30 classes, 644 pupils.

● **Number pupils/teacher:** approximately 13/1.

● **Courses for adult training/available programs:**

Distance university courses offered by the University of Bucharest.

3.7. Utilities

● **Electricity:** LES 6 KV - 31.488 m; LEA 6 KV - 2612 m; LES 20 KV - 7765 m; LEA 20 KV - 27972 m; LEA 0,4 KV (Classic + Tyir) - 35643 m; LES 0,4 KV - 49980 m; LEA 0,4 KV public lighting (for the separate ones) - 14590 m; LES 0,4 KV public lighting (for the separate ones) - 11437 m; LEA 110 KV - 26 km.

● **Water**

- Sources of water: capture springs 3; capture accumulation 2; subterranean drilling 0; number of reservoirs: 6.
- Necessary water: 145,8 l/s
- Potable water introduced within the network: 1001 thousands mc/year, among whom potable water distributed to the consumers: 893 thousands mc/year
- Potable water distributed to the consumers, recorded by the watermeters: 670,0 thousands mc
- Type network: ramified and annular, Dn: 100-500 mm
- Total length of the simple distribution network: 58,4 Km, among whom
- Length of the streets with water distribution networks: 36,3 km
- Pressure: 6-10 atm
- Water losses in the network: about 2%; Breakdowns in the system: 0,14/day (maxim 1/week)
- Pumping stations: 2 units. Hardness of the water: 30 German grades.

● **Canalization**

- Type system canalization: - unitary 30%. Depuration station - capacity 140mc/h
- Simple total length of the canalization pipes: 16,9 km
- Length of the streets with canalization pipes: 12,9 km
- Number of streets with canalization out of the total streets: about 60% din 93 streets

● **Telephony** - Romtelecom. Level of telephonization: 80% ; Number of public telephones: 6

Suppliers of Internet services (ISP): main suppliers- Astral, XNET. Internet Cafe - 2

3.8. Public Services

● **Police**

Number of employees: 1 Police section with 38 employees; Number of vehicles: 5 motor vehicles

● **Firemen:** Number employees: about 60 persons within the unit, without appointed military men. Number of vehicles, equipment: 2 water machines+froth, 1 auto-ladder, 1 truck 1 aro - all with complete equipment.

● There is no public transport within the locality.

● There are Codreanu buses and minibuses which ensure the connections towards Braşov and Bucharest.

● **Policlinic:** 6 doctors. Ambulance system: 2 doctors, 10 nurses, 5 drivers, 1 unqualified worker; 2 motor vehicles. The closest hospital and the closest maternity are at 25 km, in the city of Braşov.

3.9. Community Endowments

● **Streets:** Total: 93

Total: 65,046 Km, among whom: 46,864 Km modernized; 18,182 km with simple

paving or with stones, macadam, paving in rough stone or in river stone

- **Local newspapers: none. Local radio / television: -**
- **Intravilan surface (ha):** Total 1470,8 (among whom: Predeal: 950,2; Timișul de Sus: 229,6; Timișul de Jos: 208,3; Pârâul Rece: 82,7).
- **School camps: 2** (one at Timișul de Sus and the other at Timișul de Jos).
- **Hotels / motels:** Hotels: 22; touristic villas: 70; Guesthouses: 40; Entertainment parks: 1.
- **Sports bases: 1 sports club** with national and international representation at: alpine and cross-country ski **Sports bases:** 1 stadium, 2 sports halls.
- **Club & and Youth club: 2 cinemas.**

3.10. Structure Of Economic Development

- **Organization: Townhall of the town-resort of Predeal. Associations:** Owners' associations: 19; Dwellers' associations: 7; Non-profit associations: 39.
- Total firms,** with activity (la 30.06.2006): 340 (among whom: with private capital 334; with mixed capital 6).

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CURRENT OUTLOOK UPON ETHNOGRAPHY

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Abstract: *This paper delves into the main dimensions of ethnography today. According to common sense, ethnography is understood as a domain that deals with the description or with the study of humankind's lifestyles in different cultures. This fact is true, but not exhaustive. In order to demonstrate this statement, this article will deal with some dimensions of the contemporary ethnographic research field: the ethnographic study as an instrument for becoming acquainted with the traditional events, the ethnographic method in social sciences and a relation between ethnography and mass-media.*

Key words: *ethnography, traditional events, ethnographical method, exploratory research.*

1. Ethnography – Description of Peoples' Lives

Within everyday communication or in mass-media, we often hear about *ethnography and folklore*, about *museums of ethnography* or about *great ethnographers*. In a vision specific to common sense, ethnography stands for a field that deals with the description or with the study of mankind's lifestyles in different cultures. This is true but not exhaustive.

Ethnography is connected to folklore and this fact makes us think about our ancestors' cultural productions or about those of other people who lived during pre-modern times. This is why we have numerous museums of ethnography. They comprise elements of material and non-material culture pertaining to the past, however, unlike the museums of history, where the main exhibits highlight outstanding events and historical personalities, in an ethnography museum we rather find out regular life facts,

specific to a certain population: which was the epoch's garment, which were the main production means, how the events in the lifecycle unfolded (baptism, wedding, funeral) and even what happened during leisure time.

Etymologically, ethnography comes from the Greek words "*ethnos*" / people and "*graphein*" – to describe. For a long time, the terms of ethnography and ethnology had undifferentiated use, with reference to the study of primitive societies. However, after the Second World War, the two branches of anthropology were defined in a different manner. Ethnography was attributed the task to collect data and ethnology the task to interpret them, to the purpose of carrying out the comparative analyses among the different communities and societies.

This way, "in contemporary vision, ethnography stands for the first step of cultural anthropology – which is the empirical step of picking up the concrete data and of illustrating the enunciations

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with pretension of generality” (Geană, G., 1993).

Ethnographers are those professionals who pick up information about the culture of communities, through the method of the ethnographical survey, which implies carrying out direct observations and collecting the data directly from the community members. The main techniques used by the ethnographer are the participative observation and the semi-structured interview. In both cases, the collected information is audio and/or video recorded.

Folklore is integrant part of the data collected by the ethnographers. Folklore is defined as “the totality of the artistic, literary, musical, plastic etc. creations, of the popular customs and traditions of a country or of a region.” (source: DEX, 1998).

Ovidiu Densuşianu (1873-1938), Romanian linguist and folklorist, stated that „folklore has to show us how the different manifestations of life reflect the basic people’s soul, how this one feels and thinks either under the influence of the ideas, of the beliefs, of the superstitions inherited from the past, or under the one of the impressions that the everyday occurrences arouse” (apud Pop, 2006, p. 12)

2. Ethnographic Study – an Instrument for Becoming Acquainted with the Traditional Events

In this part of the article, I will submit an ethnographic study that I performed during the 90-ies, with a rather weird theme in the scenery of the specialized literature. It is about a comparison between two events with no apparent connection: New-Year’s Eve and death watch. However, at a close analysis, the two events have many common elements. They are connected by the people’s very belief in renewal and the

manner in which they perceive the lapse of time.

Older researches have shown that the Romanian people used as unit for measuring time not only the calendar time, with its multiples and submultiples, but also another unit: “human life” or “human epoch”, expressed not necessarily through a number of years, but through indicators that marked “the biological and social-cultural fulfillment or non-fulfillment of life: marriage, birth, children’s upbringing and education, including their marriage” (Ghinoiu, 1992).

Starting from the two fundamental dimensions of time present in Romanian popular culture – *annual time* and *human time* – we will note that New Year’s Eve and death watch embody, in fact, the same idea, but they are constructed, each if them, on a certain dimension of time. If New Year’s Eve means death and rebirth of annual time, death watch expresses death and rebirth of human time.

In traditional culture, human being has personified not only nature, but also *time*. However, time is not absolutely seen as an arrow with irreversible trajectory, which means the linear representation of time is not a pure one. There will be added the cyclical representation, time seen as a circle, undergoing the logic of a perpetual return. Annual time swiftly dies and is reborn, after 365 or 366 days. Human time dwindles and is rekindled in the rhythm of the “human life”: every death is accompanied by a birth; a man disappears but another one takes his place.

To the purpose of illustrating the idea which brings together New-Year’s Eve and death watch, we will make a short stop in the space full of significations of these two popular manifestations, the way they appear within Romanian culture.

First of all, what is New-Year’s Eve and what particularizes it? New-Year’s Eve is the feast which marks the moment of a

year's closing and of another calendar year's beginning. The Old Year is old and dies; the New Year barely opens its eyes towards the world. On this occasion, people are practicing rituals for the time restoration. This restoration process comprises a period of several days: the last of the old year and the first of the year that just begins. At midnight on the New-Year's Eve, time experiences a spiritual breakage, renewing itself. It is the night of huge energy unchaining, the night when the control upon behavior diminishes, when, within the humans' conception, supernatural forces intermingle with human forces creating disorder, chaos. The old year grew old, degraded and it will die. Another year, maybe better, will rearrange what can currently no longer be chained. Hence, the necessity of the purification rituals practiced during the beginning hours and days of the New Year (illuminations, production of noise, water sprinkling), to the main purpose of chasing away the malefic spirits, the evil from among the people.

The Romanian ethnological literature deposits a great richness of the New-Year's Eve's practices. This is the time for parties, prognostics, charms and love spells, this is the time for good wishing and for making up calendars such as the one of onion sheets, in the desire of finding out how the year to come will be. For instance, in Moldavia, the custom called "Malanca" or "Țurca" is still practiced.

"Malanca" is a hoard of youngsters who bear different masks, every mask having a certain role in popular theatre plays which are played in the householders' courtyards or on the streets.

The masks have a profound signification in the moments of temporal crucial moments. According to Mihai Pop, the games with masks stand for the bringing forth of all tensions accumulated during the year (apud Ghinoiu, 1994). The mask

may be an escape from the everyday normative regime, an avoidance of the social control, but may also be a tentative of exceeding the borders of one's own personality. Bearing a mask, you are *another*, anybody, real or imaginary. There are put into function important psychic mechanisms of simulation and dissimulation, but also of identification, as through a mask the individual may be what he wishes to, identifying this way with the model, with his referential which may be divinity himself.

In the manifestations of Malanca, there appear simulations of the death and rebirth of some characters of significance for the life of the respective community. The idea that time cannot be reborn but through paying the "mythical tribute of the god's or his substitute's death and resurrection" (Ghinoiu, read literary works) determines people to sacrifice the deity in his zoomorphic hypostasis (masks which represent revered animals) or phyto-morphic one (wheat in guise of knot-shaped bread and cracknels).

In the game of Malanca, **the bear**, for instance, as a mask, is a character undergoing this ritual. Divined during the pre-Christian periods, the bear enrolls in the rhythms of the annual time, dying and being reborn once with this one.

The game of Malanca brings into stage numerous characters, occupations and behaviors from everyday life, most of them being however parodied, bantered. For instance, boyars are satirized as they appear dressed in ugly, dirty, poor clothes. Other masks illustrate public or military personalities: emperors, ministers, generals. The masks cover a wide range of social roles, the community of the village creating for one day, only for a day, a world for itself, a society in miniature, in which regular order is reversed.

During this time the decisive moment, when the world order is affected, the

gypsies appear, the “coppersmiths”, who divine the future. Then there appear the most turbulent elements, the “devils”, who top the disorder goblet, realizing an orgiastic picture in its true sense.

“Their role is reduced to the creation and maintenance of an atmosphere of exuberant mirth”; “they turn somersaults, they climb onto houses, into trees, they glide under the bed, they hinder the others’ game, they soil the girls with soot” (Jula and Mănăstireanu, 1968, page 13)

The Old Year, personified in guise of a “tired, hunch-backed and ragged old man” (ibidem, page 56) speaks with the New Year, represented by a lad disguised as bride, probably a symbol of the purity, of the fertility and of the fruitfulness of the year to come.

Numerous other customs of the New-Year’s Eve are to be found over the entire Romanian cultural space. They attest for the fact that, far from being a poor event, the New-Year’s Eve not only connects two calendar years, but also millenaries of spirituality, through the traditions transmitted from generation to generation.

On the other meridian of time, *human time*, the ethnological literature identifies numerous manifestations associated to the moments in which a human being departs for ever from this world. It is about the manifestations specific to the *death watch*. Death watch comprises an assembly of rituals which unfold at the dead person’s house during the nights subsequent to the death up to the day of the burial. On the basis there lies the belief that the dead person does not have to be left alone for a single moment at night, as his spirit, who wanders round the house, is being lurked by malefic spirits.

To this purpose, at the dead person’s house there gathers almost the entire village, regardless of age, sex or of other nature.

The manifestations that we will make reference to as follows have been kept up to our days in very few places in our country. They are to be found nowadays in certain isolated villages from Vrancea or in a few localities from the mountains of Apuseni (Graur, 1971)

The atmosphere which emerges at the dead person’s house during the death watch is of an uncommon mirth and dynamism. Everybody laughs, cracks jokes or screams. The so-called “death watch games” are also very numerous, staging everyday occupations, significant events from the community life or elements pertaining to the Christian religious practices.

Sometimes the dead person himself is caught into game, his movements being rendered by the participants through different supporting systems and body movement systems. Many of these games symbolically enhance the pregnancy and the sexual behaviors. These moments are charged with significations, as they draw very close life and death, love and death, dual terms, but which cannot exist one without the other.

The mirth and the exuberance from the death watch reach maximum levels when the dead person is an old man. An explanation would be that, in the popular conception, the deceased old man would have a very high potential fertilizing power (Ghinoiu, 1992), which means that there is an increased chance for the place of the respective man to be soon taken in the community by a new-born.

Consequently, all this mirth from the death watch is justified through the people’s belief that the life of the one who died will be replaced by another life, of a child who will be born, the continuity of life being this way ensured. At the New-Year’s Eve - as we saw - the mirth was brought forth by the birth of a new year instead of the old and degraded one. The

death watch marks in its turn the joy of a new life which will be born instead of the dead person's closed life.

The masked persons are not missing from this event, as from the New-Year's Eve. They bear masks which represent hideous figures or heads of savage animals. Together with the youngsters, the masked persons enter into foolish games. The uproar from the courtyard is covered by the rhythmical trampling of the steps and by the unusual screams, with apotropaic character, in order to chase away the demons.

The death watch is therefore the moment which marks the end of a unit of time: "human life". This is why "the appearance of the masked persons at the death watch is inscribed in the same ritual of time restoration" (Ghinoiu, 1994).

In the unfolding of the New-Year's Eve and of the death watch, there are many common elements. We saw that the games, the masked persons, the party elements that may even reach orgiastic levels, and likewise the state of mirth are present in both events. Beyond these ones, there are other similar aspects, such as lighting a ritual fire.

The ritual fire appears also during the death watch. In the middle of the courtyard there is kindled a great fire, fed with fir tree chips, the whole night, creating strange effects through the play of lights and shadows. Round the fire, there dance the masked persons. This is a cathartic fire, a fact proven by testimonies which attest for the fact that, very long ago, the dead person himself was passed through the fire. There appears here an aspect which places very deep in past millenaries the origin of the inhabitants of the Romanian land: fire as sacred, purifying element, which at death destroys the body, anchoring nevertheless the soul into eternity.

Both New-Year's Eve and death watch unfold during the night. This is in fact the

time when there occur the most important feasts of the popular calendar or of the Christian calendar. "Darkness, which on the symbolic level is associated to the initial chaos, stands for the frame propitious to the great transformations" (Ghinoiu, 1992). Night is the time when a life takes the place of another one; night is the time of love, of procreation, but also of the Fatal Sisters who appear at a child's birth in order to unveil his destiny. During the night of the New-Year's Eve, people tried to enter into relation with the spirits; if during the entire year, they were afraid of them – resorting to various apotropaic practices – now they were asking their help in unveiling the future (Ghinoiu, 1994).

Another common element, which we mentioned before, is represented by the purification acts. The illuminations, the crossing over fire, even the passing of the cattle through the fire, the fumigations, the water sprinkling, the noise production are both met during the New-Year's Eve, and during the death watch. Likewise, all orgiastic elements, comprehending through these ones all excesses which would be condemned during everyday life (parties, drunkenness, obscene jokes etc) are, during these nights, behaviors which nobody has the right to elude. Maybe here, belongs the dance where the kiss is rendered official and compulsory, the **perinița [little cushion]**, whose origin seems to be placed in the death watch games.

As a conclusion, these would be a few elements which allow us to make a connection between the feast of the New-Year's Eve and the custom of the death watch, climax moments on the thread of annual and human time. The two events have a particular importance as they mark crucial moments of existence. These are moments in which people unveil the power of their soul: the power to hope and the power to make their life better, which

inscribes in the cosmic rhythm, which they can nevertheless not resist.

3. Ethnographic Method in Social Sciences

Nowadays, in social sciences, “ethnography” means more than the description of some cultural elements of the various communities or peoples. On the methodological level, we speak about a certain type of making research, about a way of collecting and presenting data specific to the social. It is about “the ethnographic method”, a form of qualitative research which implies observing and describing the main aspects of an object to be studied (a social unit, a phenomenon, a process)

Giampietro Gobo, Italian professor of methodology, considers that the main attributes of the ethnographic method are the following: 1) the researcher establishes a direct relation with the social actors; 2) living for a certain time in their natural life environment; 3) to the purpose of observing and describing behaviors; 4) interacting with them and participating to their everyday activities; 5) learning their communication codes in order to understand the significance of their actions; 6) systematically taking “ethnographical notes” (source: <http://www.sociol.unimi.it>).

The research of the ethnographic type may be defined as “an interpretative activity in which, through the intermediary of the observation, of the in-depth interviews and of other types of interviews, the researchers attempt at grasping the signification of the communication through analyzing the perceptions, the shared information and the activities of the social actors” (source: <http://www-1.unipv.it>)

During the year 2004, another Italian professor, Marco Marzano, published the work “Scene finali. Morire di cancro in Italia [Final Scenes. To Die of Cancer in

Italy]” The author says that this book stands for an example about how a sociological research can be carried out on the basis of the ethnographic method. I will briefly submit the fundamental elements of the content of this work:

- the Research Issue: how is/what means to die from cancer in contemporary Italy?
- the Study is substantiated on a personal experience, the author’s father being a victim of this disease. The study is focused on the interactions among the social actors involved in this world which is being built around the disease and around the cancerous person, and the method of research is the ethnographic one, based on direct observations upon the places, persons and events.
- the Basic Sentence of the Study: to die from cancer is a social process, in the sense that a person “has begun dying from cancer from the social standpoint” ever since the moment he/she found out the diagnosis and/or the moment somebody (the doctor or another person) has known the patient will die in a relatively short time.
- Consequences: place major, dramatic changes occur on the level of the social interactions “round the ill person” and the main elements around whom there are structured the social relations among all those involved in this social micro-universe are: therapeutic decisions (choices in connection to the treatments) and informative decisions (choices with respect to the information and to the communication of the information with respect to the gravity of the disease).
- the main parts of the study: a) in the first part there is described the so-called “mistake in the communicative process” with the person sick of cancer, part of the author’s personal experience. It is about hiding the truth from the sick person and about creating “frail conspiracies”, which are however discovered by the sick person

and which are cumbersome. Therefore the author of the book opts for the alternative of the sincerity, of communicating the diagnosis ever since the very beginning. In the second part, there is described, on the basis of the observations carried out through the ethnographic method, the professional context of an oncology hospital, the doctors and the nurses being called by the author “the professionals of death”. There are afterwards described, on the basis of interviews and of direct observations, the interactions within the patients’ families, there being identified the problems and the needs of the members of these families. An important part of the book is dedicated to describing the patients’ *telling*. Interested in the way the patients relate themselves to the disease, the author identified four types of “stories” that reflect four types of attitude towards cancer: the stories of “persecution” (sick person as victim, disease explained through external causes), stories of “restitution” (state of sickness seen as transitory state, the patient being optimistic), the stories of “salvation” (sufferance seen as a path towards salvation) and stories of “liberation” (out of the social control, obligations, constraints; the sickness interpreted as “gift”).

The ethnographic research is used, as we illustrated through the study above, not only for describing the social units (groups, organizations, institutions, communities etc) but also for obtaining typologies or for identifying the social networks (Berg, 2007).

The identification of the typologies or of the social types is an approach specific to sociology, and the ethnographic method is of great help in this respect. As regards the identification of the social networks, in sociology there is the Network Analysis – specialized on the analysis of the data of a relational nature – but the ethnographic

method may very well be of help in collecting the information and may complete the network analysis in interpreting the data, through collecting information about the significations and the interpretations that the social actors give to their own relationships.

4. Ethnography and Mass-Media

In the 80s, social research upon mass-media targeted the identification and the measurement of the effects that the means of mass communication had upon the public. In the framework of these preoccupations, the methods resorted to were the surveys (that should produce quantitative data about mass-media consumption) and the experiments (used for identifying and measuring the effects of the media consumption) (Dayan, D. 2007) Many such experiments tracked the effects that the productions with aggressive or non-aggressive charging had upon the children’s behaviour. Others had as target the identification of the effects of the subliminal stimuli upon the social representations or upon the ethnic prejudices.

During the 80s, many researchers directed their attention towards descriptive approaches, trying to analyse mass-media within various contexts: geographic, sociologic and historic. There began consequently the description of different types of media programs and productions, the analysis of the institutions that produce them and the conditions of reception for these productions. For instance, in Australia, during the 80s, as an answer to the uncertainties or to the fear produced by the globalization processes, mass-media granted high importance to the cultural programs about the native populations, the main message being cultivating the respect for the customs, the mythologies and the rituals of these populations.

A new theme in this field of mass-media ethnography is represented by the *media landscapes*. They are part of the mass-media ethnography, being placed in the framework of the preoccupations for analyzing the “globalization reception”. This way, every society has its own media landscape, in which the media products in circulation on the worldwide level may be available or not, have certain costs, are broadcast at hours of higher or lower audience etc.

The media landscape of a society may be rich or poor, formulated in a single language or in several, of the state or commercial, and each disposes of a certain “configuration” of the reception of the worldwide circulation productions.

Conclusion

Current ethnography does not represent only a branch of anthropology, destined to collect and analyze the field data about the culture of the various peoples or communities. The concept of “ethnography” is also used in the methodology of social sciences, designing a special type of research of qualitative nature.

This way, the ethnographical study exceeded in comprehension the popular customs and the traditions, turning into an independent method in sociology, or in the communication sciences, a method used especially in the exploratory researches or in the research approaches, which intend to identify social types or even social networks.

Ethnography penetrated a new field, the one of the communication sciences, where the ethnographical study supplies important information which forms the basis of the comparative analyses of the media sceneries.

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SOCIOLOGY AND LITERATURE; A POSTMODERN ANALYSIS OF THE “RĂSCOALA” NOVEL

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Abstract: *The present study tries to sociologically explain the Romanian society from the beginning of the XXth century, starting from the reality of a “literary text” – Liviu Rebreanu’s novel, “Răscoala”. Moreover, the study is thought to be a demonstration of the way in which literature can serve not only the Illuminist ideal of soul creation, but also the understanding of the world.*

Key words: *terrorist-hostage relation, bestialisation, sovereignty, “disinhibitory” behaviors.*

1. Introduction

One can use sociology in many areas of literature, from the macro social to the interpersonal ones, from the political to the economical ones. The portfolio of social analysis contains the study of the social frames in which a literary production is written, distributed, read and evaluated, the study of the actors from the literary sphere, the centers of symbolic power, the social networks. Social analysis can take the literary text as a reference point for understanding the reality it reflects or anticipates, being interested not in the aesthetics of the text, but in the logics of the social actions of the characters, focusing on the way in which reality is produced inside the text.

2. Paradigm

The present paper analyzes Liviu Rebreanu’s novel “Răscoala” from Deleuze’s point of view – as an act of sodomy, taking an author from behind, giving him a child “*that would be his offspring, yet monstrous. It was really*

important for it to be his own child, because the author had to actually say all I had him saying. But the child was bound to be monstrous too because it resulted from all sorts of shifting, slipping, dislocations and hidden emissions that I really enjoyed.” [1]. The purpose of the present paper is to force Rebreanu to give us arguments for the modernization of the Romanian society from the beginning of the XXth century and we intend to “attack” the novel from different points of view, using multiple analysis.

3. First Analysis: the Economical Condition

The economy is overwhelmingly agrarian. The dominant social relation is the one between peasants and entrepreneurs, the latter being either old landowners, or contractors that live and activate in the urban environment. As the rate of the urban population not involved in agriculture is small, we can define the situation as “a path-dependency”, dependency on which an entire social

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scaffolding was built and it still functions. In such situations, any damage of the dependency system can easily block the entire society.

The economy functions by coupling capital and work. In the Romanian society at the beginning of the XXth century capital is exclusively an urban product, such as work is dominantly rural. In this context, from the first time and in the first pages of the book we can see that the author raises the question of "Union", seen from the eyes of a finance man from Bucharest as "the conquest of Transylvania". This is the sign that tells us that Rebreanu uses the analysis of the 1907 rebellion as a social radiography offered to the Transylvanians as a way of understanding this society and, by derivation, of the consequences of the act from December 1, 1918.

The agriculture was based on the arrangement between the entrepreneurs and the peasant, a mutual agreement. The system was built on a cycle: starvation – work – threat with starvation. Because the peasant was starving at the end of the winter, he had to accept all the conditions the entrepreneur had in the agreement, conditions that threatened the peasant with starvation the next winter but forced him to rapidly begin working the fields. To sum it up, work produced starvation. Agriculture and even society depended on this process of "bestialisation" of the peasant and on the constant threat to his being, the only concern being that the "beast" to become hostage, a "tamed beast", incapable of escaping the social park it was imposed to. History is written here differently: we can talk about the biology-social dyad meant not to get the men out from the "animal" condition, for him to overcome his nature condition, but to fix the nature condition into the social one using the economical-social-political mechanism.

As there were no non-agricultural alternatives, the peasant could not escape the "captive beast" condition nor could he protest. The way the machinery was built, it did not have emergency solutions; it did not have the elements that could make it capable of grasping the dysfunctions and produce changes. And because "the beast" has no soul, the machinery bases neither on the peasants' soul, nor on the agreement the soul would give inside domination, but on the control of his body. The dominator-dominated relation is one of submission, not of "obedience", as Rousseau stated, of volunteer agreement. This machinery functions as long as the power controls the peasant's body. If the peasant "recovers" his soul and wins the battle he fights with the entrepreneur over the control of his own body, then the entire economic mechanism catches the flu, and the entire "society" is in danger. In 1907, getting out of the "beast" state and the desire of the majority of the population for a human existence determined a disorder in the social life. It is hard to believe that the Transylvanian reader would not be shocked with this reality just ten years before the Union, he who was living in a different life equation.

This machinery is not perfect. It has two safety valves. The first one is the possibility of re-negotiating the frame-contract with the peasant on the "terrorist" position. It's the case of the emergencies in the field work when, due to weather, the entrepreneur is at the hand of the peasant. The solution for the peasant's blackmail is threatening with the import of workforce from Transylvania. As well as the idea of "occupation", this couldn't be pleasant for the Transylvanian reader. The second valve is stealing. If in the first case we talk about a public exposure of the positions and also a negotiation; in the second case, "the renegotiation" is outside the communication rules. Theft is, in fact, a

sort of communication in absence, sending messages with an anonymous transmitter, a unilateral communication. Blackmail and theft have in common the fact that peasants understand that their social relations are, in fact, social reports, and meaning decoupling and coupling between the same actors, based on the "force's" logic of the moment.

This characteristic of the economic phenomenon has a double moral meaning. The first one expresses the clear break between the economic and ethic axes. Economy functioned only if the peasants' life was permanently under threat. Theft meant partial salvation, thus deviant acts were emptied of their immoral content and could not be sanctioned. When people are forced to do actions with no moral content we find ourselves in a situation of anomy. If an onerous contract, imposed by making the other incapable to negotiate, is answered with theft, how immoral is this behavior? Trifon Guju: "*is still our work!*" In other words, one can find truth in work, not in law. Theft is historically justified: "*as if one has not been stealing since the beginning of the world*", is a tradition legitimated habitus, a sign of unquestionable validity. An immoral contractor, a peasant brought to incapacity to be a moral subject, and a historically anomic society, these are the characteristics of the beginning of the last century.

Which is the answer to theft? In the absence of a moral code, the answer cannot be but institutional. The investigation is carried out by a gendarme that uses in his action the local administration apparatus - the mayor, which has to go and see how much was stolen "*but don't take it so easy, uncle Ionuț! said the sergeant! 'Cause then you'll be in trouble, I tell you*" [2]. Therefore, the costs for social control in the private sphere are paid by the state; as such, the contractor cannot see them in his

balance sheet. The 1907 Rebellion is strongly connected to a management error, giving the politicization of bookkeeping. Why is this important? Both the slave system and the feudal one were based on the labor force monopoly, on threat; both of them collapsed because of the surveillance costs. The Romanian society had, in 1907, all the characteristics of a feudal society, the only difference being that the state was surveying work which led to minimizing the peasants' problem. The political aspect is seen as a sequel of the war with more or less pacifist means. Obviously, such a state is a weak and endangered one, giving the fact that it devours its resources on internal control.

Besides, the gendarme's future, his professional and, implicitly, his human condition depend on the way the landowner Iuga sees the situation, given the direct relation the two of them have with the ministry of interior. The government is not equidistant in its relation with the political subjects; it represents an enterprise owned by the political subject capable of imposing the economic contract, as it results from the way in which the ministry official reacts to the peasants' complains: "*be calm, people, listen to the landowners and work! Work hard and don't listen to bad advice! You are the foundation of our country...*" and then, he responds: "*hold your tongue, or else I'll send you to the police where they'll beat you, you miserable!*". The social conflict between the peasants and the contractors becomes a conflict between the former and the government; hence, the problem of "sovereignty" is raised; so the legitimacy of sending to death the one that infringes upon sovereignty is just one step away. As peasants cannot be charged with treason, they are considered "only" "state enemies"[3], enemies seen not as people, but as "beasts" without control. As "enemies", they can be killed, as "beasts"

they do not have the right to a proper funeral. We presume that for Rebreanu the resemblance with the way that the 1784 Transylvanian rebellion was suppressed was more than obvious.

What would have been the solution to the agrarian problem? For a better understanding of this problem, we will use the factors of production concept and will project a ox-oy system, where Ox is the variable capital (manual labor) and Oy, the constant capital (equipment), and a profit curve. When the point shifts on the curve on the Ox, this means that the profit is based on the intense use of the human resources, and when it shifts on the Oy, this means that the profit is based on intense use of the constant capital. The present situation indicates the place of the profit point very close to the Ox ax, meaning that profit comes from intense use of human resource. As Marx theory states, a high profit rate is obtained when surplus value is high and when the constant capital value is low. Why is this happening? The high cereal export demand, the low costs of manual labor due to the monopoly obtained from the agreement system, the blocking of cereal imports and, moreover, the elusion of workforce surveillance and control costs are just a few of the factors that can explain this situation. Because the contractors did not invest in industry, this didn't develop, so it didn't demand rural workforce, which determined the monopoly on human resources but also a low demand of agricultural products on the internal market; so, the export dependency induced a permanent "threat". Hence, the association between an internal threat and an external one was one step away.

The status-quo was maintained also because of psychological reasons. The traditional landowner, Miron Iuga in the novel, belonged to a world that confounded land with identity and that considered that identity meant avoiding

technology. Identity meant also working the field with the peasants and assuming responsibility for peasants by "spending" in this case, schooling costs. The landowner wants to represent a sort of pastoral power[4]; he wants to care for each and every "sheep"; this is one of the symbolic sources of the peasant's "bestialisation" mechanism. This is how the dominant relationships interweave with the communitarian and solidarity ones. Not fortuitously the death of Miron Iuga, the landowner, is described as an accident, a moment of great emotional confusion.

Each and every gain a landowner or a leaseholder had was a result of peasants' loss, and any idea of peasants' life improvement was seen as a threat to the landowners and leaseholders' welfare. The structure of relationships generates the perception of the actors and vice versa, and they are in conflict in both cases. At the level of representation, we see a malthusian vision: "*people multiply, but lend does not stretch like jelly*" and another one, about the deadlock in solving the problem: "*if people had their own piece of land, who would work the landowners' one!*". In conclusion, we will say that, independent of the proportions of the wealth, the dominant relation – "terrorist-hostage" – is a zero sum game, both at the level of mechanism and representation; this can explain the perception of the inevitable, a social conflict with a "win/lose" solution. It is obvious that, on this ground, the social order is precarious.

Wealth is not meant to produce "public good" or social solidarity generated by "spending"; wealth will rather associate with the idea of sufferance induced to the other major social group. Can we see now another example of genealogy, the one of "popular opposition" towards wealth and aesthetics, capable of explaining the social

attachment to the proletcultist politics that will flourish half a century later?

"Răscoala" describes how collective "disinhibitory" behaviors form and develop. It has a lot of happenings that carry the same reason, the "radical contingency" one, the one of the chance that cannot be missed. The material and symbolic expression of disinhibition is fire. Burning "beauty" and wealth means the transformation of the peasant from "beast" to human. The burning of the mansions brings "the former man", the contractor, in the state of a scared, hunted animal. "The sovereign power", based on the controller's body capacity to move, disappears in fire. When peasants burn the crops they actually announce their new state of the soul. And when they burn the mansions, they try to nullify the landowners and contractors' right to a place in the rural space. Purification of the place means, in fact, destroying the "terrorist-hostage" relation and radically changing the social game. Through "Răscoala", Rebreanu tells the Transylvanians that The Union meant entering a feudal world.

4. Second Analysis: the Urban-Rural Relation

The city is the place of public servants, intellectuals, press, politics, but not of the industry. The city dominates, thanks to the financial mechanism, the rural world. The landowner, Miron Iuga, says: "*there are the masters of the cities that exploit us as they want*"; "*they couldn't subjugate us neither through their banks, nor through their credits and their industry. It's only us who resist them*". Otherwise, the lawyer Baloteanu, the future prefect, in charge with the repression of the rebellion, is accused by the young Iuga, the son of the landowner, that by buying the land he stopped the peasants from buying the estate! In other words, instead of finding

solutions for the agrarian problem, the rural world complicates the situation. Hence, the consequences: first, the absence of a political will able to define itself through autonomic interests as against agriculture; one of the characters in the novel says that the opposition is represented by pensioners and clerks, exactly the ones that were independent of agriculture, hence the logical implication: "*as a matter of fact, clerks and pensioners are the pillars of our bourgeoisie. That's why they imagine that the state has to take care only of them and that everything belongs to them.*" The phanariot era also used the state as a source of personal enrichment. The XXth century continues this tradition – private property is built upon resources obtained through public property control. In this reality we can see that a new one is borne, the one of property transfer, the one of changing old landowners with Romanian, Greek, Jewish contractors, the one of old landowners' sons (which discover the joy of urban life and to which property means law) selling their properties to the contractors, to whom property means work, economy, efficiency, in a lockean way. This is the mechanism in which property is transferred from an owner to another one. Popescu-Ciocoilui says about the contractor who forces out his master from his own land: "*you can see how well he worked the land if he managed to get his master out of his own house and to settle himself here – but the owner might have deserved it, I had never seen him around the estate.*" The capitalist rationality is closer and closer. Secondly, if the government depends on the city's financial capital, the city depends on the agrarian production. The urban inhabitants cannot project their interests into a new possible situation; hence, change cannot be but difficult. Agriculture and peasants' condition represented political debate themes, so that the

opposition, although critical towards the government, is caught in the same economic gearing. Hence, two consequences: on the one hand, democracy, as alternative, did not exist, on the other, the inconsistency between words and practice seemed natural. Language becomes the expression of duplicity, and duplicity is seen as normal. The significant distance between the exposed culture and the real one is also considered natural. The power tries to enforce truth using the language.

5. Third Analysis: the Problem of Speech

The dominant speech is a derivation of the romantic spirit in which peasants represent “the pillar of the country”. Domination and social conflict are disguised under a “Tönnies” ideological veil, under the community idea, under the supremacy of common good over private interests, so that any attempt of unveiling can be considered an attempt to the interest of the state. Another definition of the peasant, still a part of the dominant speech, is the one that comes from the situation in which he was seen as a “terrorist”, making him double-faced, immoral. The contractor Ilie Rogojinariu says: *“you talking like that means that you don’t know the real Romanian peasant! Or it means that you know him from books and from speeches, and this is sadder, because it means that you imagine him as a martyr when, in fact, he is only bad, stupid and lazy”* and he argues: *“but I swear: God forbid if you need the peasant, because that is the moment when the peasant fights you, when you need him the most!”*. Nadina thinks that peasants are *“wild and mean”* and the old landowner Miron Iuga *“had for the first time the impression that these people, which he always considered faithful, are hostile to him in their hearts”*. These two themes, the legality and the

immorality of the peasants, complete and sustain themselves reciprocally in using violence against them. It’s easy to understand why we will not find this in the speech of the political and economic elite. Language cannot be the home of the being; in fact is the prison of what is left of the being, and the violence against it. As a matter of fact, community did not exist; there was just a conglomerate of sub-worlds in a contiguity relation, a spatial proximity and a psychological-affective distance.

Giving this reality of the language defined as a dominator-dominant relation, Rebreanu brings in the novel the speech of the one that can be free [5], the minoritarian, in his ethnic-social state. The first example: Misu, the worker, with communist convictions, who has the courage to speak about the class injustice: *“in other parts of the world people fight against it, fret about it, scream, but us, we see it as normal”*. The second example is the journalist Rosu, who saves his freedom using a game of simulation in the public sphere and one of authenticity, in his private space. The last example is the one of the Transylvanian Titus Herdelea, who can open doors because he carries the signs of the national ideal, because he has no interests in the given situation, being both inside and outside, at the same time, free and oppressed, foreign and “of ours”. Rebreanu announces the entering in modernity using the urban social conflict, the ideology and the idea of nation.

6. The Question of the Body

We said earlier that one of the social machinery wheels is the couple between body and soul, both at the level of peasants and of the elite. In the first case, escaping the dominance mechanism was related to the peasant’s ability to control his body using his soul. The body-soul relation is connected with the love-family dyad. The

absence of property and the absence of autonomy drive the young into a strategic game, with great existential dilemmas, a game of rationality, played by the girl, and a game of affectivity, played by the boy. The young girl had to choose: she could either get married at the moment that she controlled the situation, meaning before the boy's enrolment, exposing herself to a risk – the boy being injured in the army and leaving all the hard work on her shoulders, or she could wait, but then the risk was she could lose her seduction monopole, because the boy, freshly discharged and mature, could make another choice. The boy was rather tempted to get married, driven by "desire" (*"her hot mouth that promised him the joy"*), which gave him the lower hand in the relation, but he was still willing to accept the position because he wanted to avoid the possibility to be forgotten or *"she become in love with another"* thus his desire remaining unsatisfied.

At the other social pole we can talk about the triad desire-pleasure-erotism, which is not exclusively masculine and agrarian; the character that best illustrates the theme is Nadina, "the urban-woman". Messenger of the future - meaning capital shifting, producer becoming consumer, and distance annulment looking for a favorable comeback rate - Nadina is the impersonation of pure desire, as Baudrillard says "the quality of any body that rotates around its own self until it loses its meaning and then shines in its pure and void form." [6]. Rebreau describes her: *"as a matter of fact, she had love feelings only for herself, she considered she deserved anything, she didn't refuse herself anything [...] She used to go around naked in her apartment all morning, so that she could admire herself freely."* We have here the description of the extatic idea of the emptied, self-sufficient body, "the body without organs"

(deleuzian concept), emptied body which, mirrored, offers confirmations, omnipresent body, multiplied in its truth. The mirror is the one that, a hundred years later, will be a current architectural and urban fact, the big companies' mirror walls, mostly banks.

The second truth structure that Nadina procures it's the photo that will make Petre go mad in the scene that comes after the rape and that will make him burn the place, in a saving effort, through memory, of his feelings' uniqueness. But the photo announces exactly the opposite: *"almost naked, fallen over a bearskin, with her arm resting on the beast's head, her small breast seemed stone-still in a voluptuous spasm and her warm hips frolic, while her entire being smiled with a virginal false cando."* The public impudicity, eternalized in the photo, multipliable, announces the upcoming vulgarity, as Simmel says, the repetition of a behavior valuable in his uniqueness but degradable by repeating, and all of these talk about the same mechanical assemblage of the financial capital, of the consumption, of the desire-pleasure machine, of the space that can be quickly occupied thanks to the new "war machine" – the automobile, the expression of an exacerbated body looking for adventure, in the same meaning Simmel gave it, as pure, never-ending living, trying to escape everyday life.

The killing of the main female character is preceded by rape, rape as the suspension of death and death generating conflict, as a way of possession of the body that "escapes", as a meeting place of the "desinhibited", as a sign of change. Killing means suspension, means trying to make this reality, with so much virtues, disappear, means trying to stop the becoming, the speed, hence the peasants' destroying the automobile, means settling things in the land reality as a unique and independent god. For the moment, the

photo, the information visually captured and capable of reproduction will not engage yet with the automobile as a war machine capable to occupy any space. Their concubinage will give birth to an “uncontrollable child” – television – the disinhibitor itself, the magician that will create the illusion of eternity, and will take vulgarity beyond its limits, in pornography.

But Nadina’s photo brings into discussion another element – the hunting: “on a bearskin, with her arm resting on the bear’s head”; the dead bear and the woman-desire, targets of the same obsession or, as Marx announces it, man’s domination over nature is man’s domination over man and vice versa and the first act of domination is man’s over woman during sexual intercourse. Hunting is one of the first moments in the process of labor division and hunting and erotism have a secret relation. In the photo, disinhibition is a unique fact that announces the force of the great erotic-industrial-commercial future disinhibition based on sexual relation and on man’s rape over nature.

7. Epilog

The novel reveals its true meaning in the epilog. We witness the suppressing of the rebellion; hence we witness the triumph of the discipline and inhibition mechanism. Death cancels the temporary victory of disinhibition. We can see the interference of the disciplinary force into the sacred-profane relation; the (military) force defines what is sacred and what is profane, tells who should live or die. We can also understand the way in which Rebreanu suggests we read the national problem. Coming from Transylvania, horrified by

the way the social conflict is solved, Titus Herdelea will still shake hands, at the funeral feast, over the table, as a sign of conciliation, with the soldier that led the suppression, as a sign of submitting values to force. As Sloterdick argued, we can say that this novel is a confession letter that Rebreanu sends to his Transylvanian friends from the future, a sort of “*mea culpa*” in which the author admits the fact that he could have read the implications of The Union if he had analyzed more carefully the 1907 episode. At the same time, the novel is an impulse for us not to lose faith: the young landowner Grigore Iuga marries Olga Predeleanu, a more temperate and well-balanced Nadina, the two of them leaving by train, not by car; the train symbolizes controlled movement, is a symbol of solid modernity – characterized by the fact that space is more important that time, telling us that things will change, slowly and under control, sometimes with high costs.

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PSIHOLOGY AND PEDAGOGY

CONCEPTUALIZATION, COGNITIVE PROCESS BETWEEN IMAGE AND WORD

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Abstract: *The study explores the process of constituting and organizing the system of concepts. After a comparative analysis of image and concept, conceptualization is reconsidered through raising for discussion the relations of concept with image in general and with self-image mirrored in body schema in particular. Taking into consideration the notion of mental space, there is developed an articulated perspective on conceptualization which has the images of mental space at one pole and the categories of language and operations of thinking at the other pole. There are explored the explicative possibilities of the notion of Tversky's diagrammatic space as an element which is necessary to understand the genesis of graphic behaviour and to define a new construct, graphic intelligence.*

Key words: *conceptualization, mental images, body schema, diagrammatic space, graphic intelligence.*

1. Considerations on the Concept-Image Relation

The basic unit of thinking is the concept and its fundamental activity is conceptualization which represents “the process of organizing concepts” [1]. The remarkable power of human intelligence results from the fact that essentially it is a mechanism of getting into relations: the content of concepts with reality, some concepts with others, and all of them with the formal exigencies of logics. Therefore, we can state that the articulation of the basic units of thinking subjects to a triple system of constraints: of language (observing the syntactic-morphologic rules of generating valid enunciations), of logics (observing the rules of producing valid enunciations) and of reality (observing congruency with reality and thus verifiability of abstract enunciations in the real plan).

Some of the fundamental features of concepts must be mentioned here as basic postulates of our approach, in order to subsequently develop the idea of visual-spatial conceptualization. Thus: concepts simultaneously involve informational level and operational level, namely memory and thinking. Concepts have a strong operational nature, involving both correlative operations (analysis-synthesis, abstractedness-generalization), comparison and logical concretization. Concepts are the outcome of the differentiation and integration process [2]. Concepts are correlative, they exist only ones through others and define themselves only ones through referring to the others. Concepts tend towards a systemic-hierarchical organization (pyramid of concepts), the relations between them being of ordination, subordination and superordination. Concepts have a dynamic and

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evolutionistic nature. The evolutionistic nature of concepts results from the fact that they are permanently open units of thinking. Concepts have a sphere and a content, their defining assuming the specification of proximal gender and specific difference, namely the process of determining the sphere and content. Mental operations are initially external operations, which are internalized by exercising and settled in mental schemata [12].

In the tradition of classic psychology, the concept or notion constitutes the element that links thinking with language (Rubinstein), the beneficiary of the conceptualization process – the basic activity of thinking – being the language. Moreover, the most eloquent expression of the degree concerning the development of somebody's verbal intelligence is firstly given by his or her capacity of defining concepts, the tests of definitions included in the classic batteries of intelligence being the most saturated in *g* factor.

The present study proposes to approach conceptualization from another angle, emphasizing less its relations with word and language and more with mental images, “a ubiquitous presence of our psychic life” [11]. From our point of view concepts are at one of the poles of thinking, at the other pole being mental images. In their quality of linguistic representations, concepts are the smallest meaning units of thinking that can be aggregated by using adequate linking elements, in super-ordination structures (clauses, sentences, discourses) which convey knowledge and have value of truth. Oppositely, mental images can be indefinitely decomposed without reaching a last meaning unit, they do not have linking elements between parts and do not have value of truth, consequently they do not convey knowledge [5]. They belong to an intelligence that is preponderantly implicit, concrete and basic, in contrast

with concepts which belong to an intelligence that is preponderantly explicit, they are abstract and superior as instrumental value. The image-concept relation is equivalent to the fundamental-superior relation in philosophy. If, through conceptualization, thinking summarizes itself and shapes itself in the language frameworks in order to be useful for settling and communicating its results, and to efficiently act upon reality as well, the function of mental images offers concrete support to psychic life and gives inner coherence to the subjective world.

In accordance with Freud [7], images are products of an unconscious thinking, therefore they bear the sign of personal subjectivity but they can also be products of human species' functioning as an entirety like archetypes [9]. In their quality of products of unconscious mind, they are always empowered with a quantity of affect, their role being not that of communicating but of obscuring the significances which the unconscious mind disguises under the form of the images appeared in the nocturnal or diurnal dreaming, appealing to the mechanisms of unconscious symbolism. Moreover, images are present in the infrahuman world, too, as an expression of unconscious thinking or implicit thinking.

In terms of cognitive psychology, mental representations are the product of descending processing (appeared secondarily as a result of activating the database), being cognitively penetrable. In psychoanalytical terms they are affectively penetrable because in image the affective and the cognitive coexist, the image offering, through the process of symbolizing, a satisfaction which is substitutive for the dissatisfied desires in the real plan. That is why mental images have simultaneously a role of knowledge but also of unconscious purgation of undesirable impulses and thus of

preserving the unity and coherence of the person with itself. The mental image is little differentiated, syncretistic and archaic as the cognitive and the affective are amalgamated in it. The way in which dream operates is centred preponderantly on image because – being independent from the constraints of the rules generating logical enunciations and also the constraints of reality (among which the most severe is the one of verifiability) – it has an unlimited combinatorial freedom. Images reading is analogical, holistic and closer to intuition rather than logical thinking. Through its syncretism, the image is closer to creativity than to logical thinking. This is one of the reasons for which Jung [9] considers the unconscious, in its quality of images keeper, an “incomparable guide” in terms of creativity.

The semantic contents do not exclude image and based on the above affirmation we mention the fact that a little child comes to understand a significant situation even before having the concepts or representations that are adequate to the respective situation. This means that the elementary forms of intelligence get ahead of the symbolical function [12].

2. Visual-Spatial Conceptualization

“The most characteristic element of man’s intelligent behaviour is his aptitude of developing and integrating concepts”, Delay and Pichot state [4]. For these authors there is no clear distinction between the genesis of intelligence and the one of organizing concepts in a coherent system through the activity of conceptualization. If Galton proposed a model of notions forming which is preponderantly grounded on images, the notions being a kind of collective photography which would result from images superposition, Vygotsky emphasized the integrating verbal nature of concepts, their organization on the vertical

being made in accordance with levels of generality, which is a fact that is also found in the theory of semantic networks of Collins & Quillian [ap. 11]. Vygotsky overvalued the role of word in this process because he considered it the key element in notions forming.

In his turn, Galperin moved the weight centre of concepts forming from word to action. For him, action, image and orientation in task are the elements that are capable of explaining the process of conceptualization Collins & Quillian led the process of notions forming at infra-verbal level because each time thinking remakes the synthesis of the defining characteristics of the concept, displayed at various levels, in accordance with their degree of generality. Miclea appreciates that the model of semantic networks is available only for the knowledge belonging to well structured fields which are neutral from the affective point of view. The affectively coloured knowledge does not organize in accordance with purely semantic relations, but they are structured all around some “emotional knots”, being closer to image and affectivity rather than concept.

To sum up, we can make the following synthetic considerations: conceptualization is not exclusively imagistic-figural or verbal because image and word find, in variable proportions, in the structure of any concept. The empirical concepts are closer to the holistic and undifferentiated unit of image, the scientific ones progressively decant from the intuitive elements and from those of image, becoming “purer and purer”, as they are more abstract.

In the absence of verbal language (at the ages of small childhood or at the deaf-mute) conceptualization remains preponderantly visual-kinesthetic, abstracting being strongly quartered in figural and image. The relation of complementary between image and word

is equivalent to the relation implicit intelligence – explicit intelligence.

A theory of intelligence, conceived as an activity of forming and organizing concepts, will have to start from the first image which is the one of the own body through the body schema [14]. Due to the fact that image gets ahead of word and understanding ahead of its linguistic expression, the process of the Self incarnation and building the body schema, the first co-ordinations in action on the horizontal (between pair-organs such as eyes, ears or hands), or on the vertical (between perceptive organs and effectory-motor in integrate actions) are at the basis of intelligence building [12].

The first cognitive crystallizations due to conceptualization are rather libidinally invested images [7] or “emotional-affective knots”. Thus the emotional intelligence (understood in psycho-analytical sense as a capacity of the Self to manage the unconscious conflicts and to bring the principle of pleasure into accord with the principle of reality) gets ahead of the cognitive-rational one. At the beginning of the process of concepts building, therefore of intelligence, there was not the action (as the representatives of the active school claim), but the own body which, being involved in carrying out activities, was the starting point of the first image (the self-image through the body schema).

The man’s first language does not refer to word, it is the emotional and mime-gesture language which, as Ribot showed, is the last to disappear. The child’s first “reading book” is his or her mother’s face because this is the place where the first affective meanings emerge. Prosopagnosia (the inability to recognize familiar faces) is an important indicator concerning the severity of some types of neurological disorders. The image-concept dichotomy does not have to be generalized and

similarly neither does the terminological couple explicit intelligence – implicit intelligence. In each word there is a variable border, whose limits are hard to mark, between denotation and connotation that produces effects of meaning reverberation which the poet or the man of letters uses deliberately. Through metaphor, metonymy or synecdoche he produces artistic images. In its turn, the mental image becomes explicit and gains the full attributes of the concept when it is empowered with the schemata, operations and way of producing of the latter. Geometrical representations stand for the ideal case in which image fully expresses the attributes of concept. This occurs because they have explicitly integrated in their own structure elements that were initially implicit (symmetry, proportion, geometric place, etc.) [6], [13].

3. Primordially of Space in the Genesis of Cognitive Structure. Mental Space

As genesis, image is obviously closer to the spatial framework than the temporal one, while concept, which is so tightly bound to the discourse structure of language, is carried out rather within a temporal framework. As Predescu & Ionescu showed [8], almost all psychic diseases are preponderantly diseases of time and less of space, because the latter is perceived as being concrete, perceptible, controllable and reversible while time is immaterial, uncontrollable, irreversible and anxiety generator.

Because images are anterior to concepts and intelligence for space precedes the one relating to temporality, the first of images being that of the own body [14], the external space is more quickly interiorized and turned into mental space. We summarize below some of Tversky’s conclusions about mental space, which are very useful with regard to the purpose of the present study. Thus, although it has a

multitude of similarities with linguistic knowledge, space knowledge does not reduce itself to that (“speaking in evolutionistic terms, space knowledge precedes language knowledge” [15]). Both of them are, in variable proportions, explicit and implicit, having a lot of cerebral locations. Both are the result of differentiation and integration that produce the co-ordination of the characteristic elements in a hierarchical structure. The mental space does not reduce itself only to images because they refer rather to the memory of objects, while the spatial memory aims at the relations between objects. Therefore, it supposes a structuring through integration. The mental language and space are the result of some various forms of conceptualization: “the conception of space is often schematic, simplified and categorical [15].

Space organization has in view three systems of reference, successively integrated, which are the dietic one (centred on the own person), the allocentric one (centred on the object) and the one which is centred on the environment. The space memory prioritizes the memory of places that has characteristics which no other form of memory shares, its organizing being fundamentally guided by the gravitational vertical. A fundamental role in the conceptualization of mental space is kept by the space around the own body which is a tri-dimensional one. The most important axis, which has a correspondent in the gravitational vertical, is the head-legs axis, followed by the head-back axis (in which the front part is super-represented) and the left-right axis, which super-dimension the left part of the perceptive field.

4. Diagrammatic Space and Graphic Intelligence

A category taken into a special consideration by Tversky is diagrammatic

space, namely the two-dimensional space of the sheet of paper. This is a space of an overwhelming importance for the entire period of time which marked man’s jump, through writing, from prehistory to history. The diagrammatic space can equally refer to the plates of burnt clay belonging to the cuneiform writing or to the papyrus leaves belonging to the hieroglyphic writing. Once the alphabet was invented by Greeks during the Socratic period, this space became a two-dimensional one. This fact have been generalized on a mass scale after the appearance of the printing art and Gutenberg era [10].

The space of the sheet of paper is vectored just like the space around the body, but its essential component for the western culture is the horizontality and secondarily its verticality. The perceptive pointing to a sheet of paper or a photography lays stress upon the importance of the upper left corner and exploration from left to right. To control this special type of space means whole years of exercising, the fundamental elements for its taking into possession being infantile graphicness (drawing), followed by the most refined and intellectualized human motor behaviour which is writing. Moreover, as graphology approaches of writing or drawing analysis have shown, this space has its own symbolism: the left side of the sheet represents the past, the right one the future, the upper side represents the conscious mind, the lower side the unconscious mind. The diagonal line left-low – right-up symbolizes the rising and development, while the reverse orientation signifies the decay, decline etc. The full development of graphic behaviour, and especially of writing, means years of training under the control of a qualified person, the stake of this skill being inestimable, because it is its development on which depends the access to the huge fund of knowledge which

constitutes the patrimony of the humanity's written culture. The importance of the diagrammatic space tends to be overtaken only by the computer display which is more capable to suggest the third dimension and the movement. The real window towards the virtual space, cyber-space, moves the humanity's evolution on the coordinates of another epoch in which only reading-writing cannot constitute sufficient adaptive elements any longer.

The conclusion of our study is convergent with the one of Tversky's: "the spatial knowledge is rather seen by many authors as representing a basis for the linguistic acquisition than vice versa" [15]. The external space is at the origin of the mental space, the place where thinking becomes the "eye of mind", making possible the vision of ideas and launching the real actions or the resolute-creative process. Due to the fact that in phylogenetic and ontogenetic order, it is constituted before image and word, its starting point being the gravitational vertical and its inner correspondent being the body schema, the mental space can be considered the mysterious element from before action, image and word. It offers the expressing framework for building relations between these structures, getting itself structured in the same time with all the others.

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PERCEIVED ASSESSEMENT STYLE AND LEARNING MOTIVATION

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Abstract: *The assessment behaviour of the teacher plays a key role in giving students feedback on their performance and enhancing learning motivation. According to orientation of the evaluation and the level of exigency, four assessment styles are described: normative, formative, popular and conventional.*

The research was conducted on 394 students aged 16-18 years, 253 girls and 141 boys, in 16 classes of upper higher secondary schools in the city of Brasov, and the chosen subject was English language. The perceived evaluative styles of five teachers were measured, by students in 2-3 classes for each of them, in relationship with their learning motivation.

The results show that the extrinsic motivation- reward is associated with the perception of the style as lenient, the perceived performance is associated with norm-oriented. There are differences between the evaluative style perceptions of the students in the same class according to their learning performances.

Key words: *assessment styles, motivation, learning performances.*

1. Introduction

Evaluation is a component of the teaching activity having pedagogical functions, such as the fixing teaching process, regulating students' learning and influencing their personalities. At the same time the evaluation has social functions, such as ensuring formal validation of the knowledge/competence and establishment of social safety by a fair hierarchy of the competences (Figari, 2006). Evaluation is never totally rational (Vial, 2006) it has controllable and incontrollable determinants configured in a particular evaluative style which is a component of the learning environment.

Pedagogical practices of teachers influence students' motivation; the structure of the goals proposed to students could be focused on competence and

mastery or on performance, but only the pursuit of competence and mastery is associated with the involvement of the student in learning (Galand, 2006). An educational environment which is not focused on external rewards, punishments and pressure and which proposes moderate difficulty tasks facilitates the adoption of mastery goals and the development of intrinsic motivation. There is a relationship between the structure of goals proposed to students and the teacher–student relationship: performance goals induce feelings of threat, inequity, tensions, competition, but there are differences of gender, age, type of school in this respect (Galand, Philippot & Frenay, 200).

Modern approaches of the learning motivation (Pintrich & Schunk, 1996; Pintrich, 1999) focused on three general

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types of motivation: the self-efficacy beliefs (judgments of one's capabilities to do the academic task), the task value beliefs (beliefs about the importance of interest in, and value of the task), and goal orientations (whether the focus is on mastery and learning of the task, grades or extrinsic reasons for doing the task, or relative ability in relation to social comparisons with other students).

Viau (2000) uses a model of motivation encompassing the following dimensions: perceived value of the activity, perceived of self-competency in learning tasks, perceived task control, persistence, cognitive involvement, performance, and choice of activity. Amabile (1996) uses a bi dimensional model of activity: intrinsic vs. extrinsic motivation, with four subscales, two intrinsic (Pleasure and Challenge) and two extrinsic (Acknowledgement and Reward).

Assessment style and its implications

The assessment style is defined (Cocorada, 2004) as a pattern of knowledge, attitudes and procedures coherently expressed at behavioural level as an effect of the principles, norms, and methods of evaluation which are adopted by the educator/ teacher in a particular situation. The author proposes a bi-dimensional model of the evaluation styles, with the axis: orientation of the evaluation (towards persons vs. norms) and level of exigency (high/ over-particular vs. low/ lenient). It results four styles: normative, formative, popular and conventional. Teachers try intentionally to adapt their evaluation behaviour to educational aims, establishing and consequently developing the evaluation strategies. For example, in the frame of formative evaluation strategy, teacher considers the needs, difficulties and the potential of student, while in the summative evaluation strategy he considers norms and standards in order to ensure the comparability of results.

The normative style – The main guiding values in evaluation are "rules", "work" and "necessity". Teacher classifies students, gives frequent or difficult evaluation tasks, and maintains stable assessment criteria and a high "cutting point". He strictly penalizes errors and considers performance as resulting from student's effort and involvement. He shows emotional neutrality and poor empathy. For him, student is rather labelled by grades than perceived as a person.

The formative style - The main guiding values in evaluation are "liberty" and "responsibility". The teacher considers the needs of the students, adapts the objectives, has flexible standards, has in view the progress of the students, but is not lenient. The cutting point is kept high, but he encourages the students to get over it.

The popular style - Teacher tends towards a relativism of values; he presents himself as a generous person. He tries not to be stressful, avoids difficult objectives, gives easy evaluation tasks, the cutting point is kept low. He/she diminishes the importance of errors and considers results depending on circumstances. He is empathic, very popular with students, overestimates them, requires less effort, and avoids conflicts with students or their families. The cosy climate covers on the underachievement of objectives.

The conventional style - Teacher focuses on conventions such as syllabus, objectives, but standards are of medium importance. He makes evaluations because it is necessary in order to avoid conflicts with school authority or students' parents. The evaluation tasks are of medium difficulty, with rigid criteria and simple evaluation technique. He/she shows poor empathy and does not make personalized assessments. He/she avoids encouraging students too much and feels good when succeeds to be correct in giving rewards and punishments.

According to Galand (2006) and Galand, Philippot & Frenay (2006) the structure of goals proposed to students and the teacher–students relationship influences the learning motivation of students and is involved in generating educational climate. The teacher’s assessment style plays a key role in this mechanism.

The Lewis’s theory (1947) on the perceptual field identifies a connection between students’ perception (climate) and their learning performances (apud Seeman & Seeman, 1976). The dynamics of student's learning leads to readiness for activity as determined by the type and force of the motive, expectancy and incentive value of acting, all put together in a multiplicative relationship (Atkinson and Feather, 1966).

The relationship between the evaluator and evaluated student is moderated by the student’s perception of the teacher in the evaluation situation. Even there is a "core of truth" in social cognition (Yserbit & Schadron, 2002) the perceptions of the students are inevitably distorted by individual and situational factors. Thus, the same teacher gets different labels and issues various reactive attitudes.

2. Research Design

The general objective of the research is to identify the relationship between perceived assessment styles and the students’ learning motivation.

After ensuring them of the confidentiality of their answers, the students were asked to fill three questionnaires – the first concerning the perceptions on the evaluation style of the English teacher, and the last two concerning their learning motivation. All participants received in exchange for their participation a written feedback consisting in descriptions of their motivational characteristics.

2.1. Hypotheses

Four subordinate hypotheses were derived:

H1. The perception of the teacher's assessment style varies according to the motivational dominant themes in students.

H2. The perception of the teacher's assessment style varies according to the grades students received on the topic.

H3. The asserted learning motivation varies according to the grades students received on the topic.

H4. The learning motivation of the students varies according to gender.

2.2. Instruments

The instruments used in the research were the following:

1. Perceived Assessment Style Inventory – PASI (Cocorada, 2004) – a set of 42 items consisting in forced choice between 2 opposite answers, describing behaviours specific to each of the poles of the assessment dimensions: “Orientation of the evaluation” (towards persons vs. towards norms) and “Level of exigency” (high/over-particular vs. low/lenient).

The internal consistencies (Cronbach α) of the four scales of the new version are the following: orientation of the assessment towards persons – 0.45, orientation of the assessment towards norms -0.54, High level of exigency -0.46 and low level of exigency -0.56.

Example of item: When evaluating, the teacher: a) is impartial as the goddess of justice; b) has a generous heart.

2. Intrinsic-Extrinsic Learning Motivation Scale – IELMS (adapted from Amabile, 1996) - a set of 30 items consisting in evaluation on a 4-step scale of the intensity of motivation. The internal consistencies (Cronbach α) of the four scales of the new version are the following: Extrinsic motivation Reward - 0.60; Extrinsic motivation Acknowledgement - 0.67, Intrinsic motivation-Pleasure - 0.71 and Intrinsic motivation-Challenge -0.74.

Intrinsic motivation is associated with positive emotional experiences success, high self-esteem, and effective learning strategies (Eccles & Wigfield, 2002; Wigfield, 1994).

Example of items:

I would rather prefer to have someone to set clear aims/objectives for my learning. More difficult a problem is, more I like to try to solve it.

3. Learning Motivation Questionnaire – LMQ, translated and adapted into Romanian from Viau (2000) consists in a set of 19 items with different types of answers, grouped on 6 dimensions of learning motivation. The internal consistencies (Cronbach α) of the six dimensions of the new version are the following: “Utility” - 0.51; “Competence” - 0.59; “Task control” - 0.29; “Persistence” - 0.54; “Cognitive involvement” - 0.65; “Performance” - 0.902.

Example of items: Generally, do you consider yourself as competent to succeed in school? Mark the number better corresponding to your self-perception. Higher the mark is, higher the competence is. 1 – not at all competent; 2 – less competent; 3 – competent; 4 – competent enough; 5 – very competent.

Task Control - the individuals with the strong sense of internal locus of control will be more likely to involve in academic tasks.

Perceived value of learning activity – the extent to which the learning is useful for the aims of the individual - is considered to be the reasoning the student makes on the utility of the activity with regard to objectives he set (Viau, 1997).

Perceived competence or "perceived self-efficacy" (Bandura, 2003) is a crucial variable for the cognitive involvement and for the performance in a given task.

Perceived performances are observable results of learning, i.e. behaviours that indicate the use of either declarative or procedural knowledge, either learning or self-regulation strategies by the student

Persistence – the time the student assigns to learning activities. Persistence is a good predictor for performance, but, in order to lead to quality results, it is necessary to be accompanied by effort and cognitive involvement.

2.3 Sample

The unrandom sample consisted in 394 students aged 16-18 years, 253 girls and 141 boys, in 16 classes of upper higher secondary schools in the city of Brasov. The teachers evaluated in the research were 4 English teachers, 4 female and 1 male. Their evaluation style was assessed by students in 3-4 classes for each.

3. Results

The personal data of the subjects were solicited by items that looked at age, gender, and the average grades for English.

H1. The perception of the teacher's assessment style varies according to the motivational dominant themes in students.

The present research shows that the Lenient pole is associated positively with Extrinsic Motivation, and negatively with the perceived value of learning activity and the perceived performance (Table 1).

The student's perception of performance is influenced by the teacher's behaviour: the more the teacher is focused on norms, cutting points and student's responsibility, the more the last one perceives his own performance as poor and assigns less time for learning (persistence). The students which perceive the evaluation style as over-particular feel frustrated, have lower grades and are extrinsically motivated, the exigencies of the teacher being incongruent with their personality.

Table 1 *Correlations between perceived dimensions of the assessment style and motivational themes*

	Extrinsic Motivation-Reward (Amabile)	Perceived value of learning activity (Viau)	Perceived performance Viau)
Lenient (versus Over-particular)	$r = 0.108, p = 0.031$	$r = -0.117, p = 0.02$	
Person-oriented (versus Norm-oriented)			$r = -0.147, p = 0.004$

H2. The perception of the teacher's assessment style varies according to the grades students received on the topic

The "high-grade" students perceive in a larger extent the teachers as being over-particular, norm oriented than the "low-grade" students (Table 2 and Table 3). The

students with high grades accept the high standards of the teacher ($r = -0.244, p = 0.001$) because these are congruent with personal attributes and objectives/ aims. Our results are congruent with those of Schmuck (1980) and Good (1980).

Table 2 *t test for the significance of independent sample differences for the four poles of the assessment styles*

	Groups by average grades on topic	N	Mean	t	Sig.
Person oriented	Low graders*	123	11.68	4.07	0.001
	High graders**	271	10.45		
Norm oriented	Low graders	123	9.32	4.07	0.001
	High graders	271	10.55		
Lenient	Low graders	123	12.41	3.28	0.001
	High graders	271	11.41		
Over-particular	Low graders	123	8.59	3.28	0.001
	High graders	271	9.59		

*Low-graders: under $m - 1\sigma$; **High-graders: over $m + 1\sigma$.

There is a slight tendency of differentiation of the perceived assessment style according to gender: the girls tend to perceive the teacher's evaluation style as being rather norm-focused, while the boys perceive it as person-focussed ($t = 1.9, p = 0.058$).

There are significant differences of perception between students in

"mathematics-computer science" and "environment protection" programmes.

The students in the first programme perceive the teachers as being over-particular ($t = 6.93, p = 0.001$) and norm-oriented ($t = 3.31, p = 0.001$), while the students in the second one perceive them as being more lenient and person-oriented.

Table 3 *t* test for the significance of independent sample differences for two assessment styles

Perceived assessment styles	Groups by average grades on topic	N	Mean	t	Sig. (2-tailed)
Populist Style	Low graders*	123	24.0894	4.543	0.000
	High graders**	271	20.0406		
Normative Style	Low graders	123	17.9106	4.542	0.000
	High graders	271	21.9594		

*Low-graders: under $m-1\sigma$; **High-graders: over $m+1\sigma$.

H3. The asserted motivation varies according to the grades students received on the topic.

Students with good performances in English perceive themselves as being more

competent, more persistent, with higher perceived competence (Table 4).

The present research did not identify variances of the perceived value of learning and extrinsic motivation – reward according to the grades in English.

Table 4 *Correlations between students' average grade in English and dominant motivational themes*

	Perceived competency (Viau)	Perseverance (Viau)	Perceived performance (Viau)
Average grade in English	$r = 0.294$ $p = 0.001$	$r = 0.220$ $p = 0.001$	$r = 0.433$ $p = 0.001$

H4. The learning motivation of the students varies according to gender.

The scores for the dimensions of motivation were significantly higher for girls than for boys for the following dimensions:

- Perceived value (utility) of learning ($t=5.66$, $p < .001$);
- Personal competency ($t = 3.7$, $p < .001$);
- Persistence ($t = 7.23$, $p < .001$);
- Cognitive engagement ($t = 6.04$, $p < .001$).

The annual average grades in English were also significantly higher for girls than for boys ($t = 7.21$, $p < .001$). The study confirms the results of other researches (such as Pintrich & Schrauben, 1992, apud Viau, 1997) in which the perceived

performance positively influences the actual performance ($r = 0,433$, $p = 0,000$).

The results of our research confirm the previous studies which concluded that the beliefs about competence are influenced by gender stereotypes (Eccles, Wigfield, 2002).

4. Conclusion

The student with poor grades in English and who perceives the evaluation style as over-particular aims to maintain a positive image in the eyes of others and to avoid blame; he will prefer the lenient style. For him, the core steak of success is social acknowledgement. Elliot (ap. Bourgeois, 2006) asserted that the negative effects of performance objectives are the loss of

social esteem; the student tends to adopt the strategy of least risk, avoiding any involvement in situations which could affect his self image and self esteem.

The researches of Pintrich *et al.* (ap. Viau, 1997) prove that more a student believes that he possesses the competences needed for a learning task, more he will persist and will be cognitively involved, even if he find the task difficult or boring, and he will have higher performances.

For the student, the performance becomes a source of influence for the perceptions concerning the self, which are related to the motivation. The effect of the performance on the perceptions of the student may be a positive one, if he is satisfied with his achievements. When succeeding, the student will improve his opinion on his competence and will value more the learning activity.

It is difficult, however, to have an objective measurement of all the evaluative behaviours of the teacher during the year. Accepting this idea involves that teacher's modulation in the evaluative style is actually a strategy. This strategy is good for the formative evaluation, but not for the summative evaluation, in which grading must be based on standards that ensure comparability of the students' performances.

The variance of the perception of the assessment styles could be attributed to perceptual selectivity in students. This could be influenced by internal variables such as gender, dominant motivation themes, and actual school performance.

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PSYCHOLOGICAL MEASURES OF SPATIAL ABILITIES

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Abstract: *Spatial abilities are divided into three categories: mental rotation, spatial relation and visualization. Several tests are cited in foreign literature that are frequently used in order to assess these abilities, but for Romanian specialists they are not on hand. The present paper is introducing new assessment tools for static spatial abilities that were successfully used along with already validated instruments. Data on statistical qualities of the new instruments are also discussed.*

Key words: *spatial abilities, validity, psychological tests.*

1. Introduction

Spatial abilities are recognized as an important type of cognitive ability, frequently presented in parallel with verbal abilities. There is also a trend to present spatial abilities as opposed to the verbal ones. Some reason for doing so are: the different dominance of cerebral hemisphere implication, the gender differences involved in both type of abilities and differences in performance noticed in the same person [4, 18].

The specialists in cognitive abilities are inclined to accept one classification of spatial abilities, which resulted from a meta-analysis conducted in 1985 by Linn and Peterson [11]. There were identified three categories as follows: mental rotation, spatial relation and visualization. Mental rotation is defined as the ability to mentally rotate two or three-dimensional figures rapidly and accurately and to imagine the aspect of the figure after it was rotated around an axis with a certain number of degrees. Spatial relations are involved in determining spatial relationships with respect to the orientation

of your own body. Visualization involves multiple and complex manipulation of spatially presented information and flexible activation of different operational strategies [11].

This classification was maintained over time and recent research added subtypes or clarifications upon the place of the above abilities in the field of cognitive psychology. Other research claimed that an important type and ignored by the mentioned meta-analyses is represented by dynamic spatial abilities [12]. In present many specialists consider that for static spatial abilities the most suitable tests are paper and pencil, hand written or virtual simulation and for the dynamic ones computer tests and digital format.

2. Objectives

In the present research we used a battery consisting in seven tests all related with spatial abilities. We anticipate that the whole battery is centered on two factors: one, more general, of non-verbal intelligence and the other, more specific, centred on spatial ability. The paper will

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introduce three tests that can be used to assess spatial abilities, completing the frequently used ones.

3. Material and Methods

3.1. Participants and General Procedure

The present research is a part of a larger one aimed at evaluating the relationship among computer games and spatial abilities. The sample selected for this presentation is constituted of 303 subjects (mean age 14,2, minimum 10,7 and maximum 19,2), coming from four schools from Brasov (48% from 2 secondary schools – Scoala Generala Nr. 15, Scoala Generala Nr. 28 and 51% from 2 high schools – Colegiul National Grigore Antipa, Colegiul National Kristian Kertsch). In order to assure the representativity of the sample, the selected schools are common, middle range schools, testing all children from a class.

The sex distribution is 58% of males and 42% of females.

There were used seven psychometric tests, administered individually and in-groups in two sessions, during September – November 2007. The first testing session was a group testing that took one hour (15-19 participants). The second one was individual session and lasted around 30 minutes.

3.2. Measures

Standard Progressive Matrices Test (Raven, 1938) a paper and pencil nonverbal intelligence test, contains 60 items of increasing difficulty, grouped in five series [9]. In order to give the solution one must operate with abstract figural stimuli, understand the gestalt and activate flexible strategies of solving. The test was administered in-groups with a time limit of 25 minutes.

Bender-Gestalt Test was used in a new version adapted by Clinciu [6, 7] starting from Kulcsar version presented in volume I of Psychodiagnostic Guide. The task of

the test is to copy the five figures, and the results are judged in respect with: shape, size and distance constancy, proportion, orientation of the elements of the figure, angles, parallelism and perpendicularity. The task was administered in-groups, taking around 7 minutes to complete. Responsiveness of the test is high for scores at extremes, age but not gender requiring different standards.

Bender-Gestalt Test from memory is a recent version of the prior test in which the subjects had to redraw the five figures, from memory, 5 minutes apart from the first drawing. The task is a measure of the mental representation of bi-dimensional space. Cronbach α coefficient is $\alpha=.90$, and Split-half reliability for both Bender Gestalt tests = .82.

Mental rotation task is a component of a cognitive abilities battery proposed by a psychologist's team from Babes Bolyai University [19] and it measures the ability of a person to transform mental images especially through rotation. Each participant was tested individually, having five minutes to respond to 10 problems.

Spatial orientation task [19] in which three dimensional figures placed in a target position are shown to the subjects and they are required to indicate from a changed perspective which two of four images are identical with the target one. There are 10 situations, 20 maximum points for correct answers and five minutes time limit.

Image generation test [19] is a measure of visualization ability and consists in two series of 15 cardboard's depicting black squares in certain positions. The task was administered individually and took around 7 minutes to be solved.

Blocks test - Clinciu version [6, 7], adapted by Block design subtest from Wechsler Intelligence Scale for Children-Revised consists in 12 models which have to be reproduced using red, white or red/white sides of three dimensional

blocks. It requires spatial visualization, gestalt comprehension and manual action combining nonverbal intelligence and spatial conceptualization. The test showed a satisfying internal consistency in the present research (Chronbach α = .78 to .82).

3. Results

In this paper the focus is on the results obtained by Bender Gestalt, Bender-Gestalt Test from memory and Blocks tests and the characteristics that can be drawn out of these results.

The data showed an ontogenetic evolution of the scores ($F_{2, 276} = 37.64$ for Bender Gestalt, $F_{2, 276} = 54.13$ for Bender Gestalt from memory and $F_{2, 284} = 32.92$ for Blocks), which support the need of different standards depending on age.

Table 1 *Reliability Coefficients for Blocks Test*

Blocks	Scale mean if item deleted	Corrected item-total correlation	Alpha if item deleted
Block_1	121.45	.00	.79
Block_2	121.49	.15	.79
Block_3	120.57	.22	.79
Block_4	119.83	.17	.79
Block_5	117.92	.35	.78
Block_6	118.65	.52	.77
Block_7	117.66	.55	.77
Block_8	116.05	.44	.78
Block_9	113.10	.70	.74
Block_10	116.16	.76	.72
Block_11	115.97	.80	.72
Block_12	114.12	.83	.72

The internal consistency of each of these three tests were high (table 1 and table 2), with the alpha Cronbach = .78 for blocks (N of cases = 287, N of Items = 12) and alpha Cronbach = .90 for the two forms of Bender Gestalt (N of cases = 270, N of

Items = 10). Separately measured, Bender Gestalt has an internal consistency of $\alpha = .85$ and Bender Gestalt from memory an Alpha Cronbach $\alpha = .80$.

The test-retest reliability for Blocks is also statistical significant and with a satisfactory level ($r = .88$ for one month time elapsed between assessments).

Table 2 *Reliability Coefficients for Bender Gestalt and Bender Gestalt from memory*

Item of the test	Scale mean if item deleted	Corrected item-total correlation	Alpha if item deleted
BG_1	52.98	.69	.89
BG_2	53.11	.67	.90
BG_3	54.94	.72	.89
BG_4	56.50	.71	.89
BG_5	55.11	.70	.89
BGm_1	53.67	.70	.89
BGm_2	53.60	.56	.90
BGm_3	55.77	.67	.89
BGm_4	57.27	.65	.90
BGm_5	56.20	.63	.90

The entire battery was submitted to a factor analysis (see table 3) and the results confirm the above hypothesis. The results separated in two major factors: one of nonverbal intelligence and the second on spatial abilities.

An interesting result is the fact that image generation, a test that is a component of spatial ability battery from BTPAC, is saturated in general intelligence probably due to the complex strategies that are required to solve its tasks.

The analysis also showed that the first factor explain 45.26 % of total variance and the second one another 21.22 % of total variance, so the analysed battery demonstrates its value in testing nonverbal and spatial abilities.

Factor analysis –VARIMAX method

Table 3

Tests	Factors	
	1- non-verbal intelligence	2 – spatial aptitude
Raven	.767	
Mental rotation		.839
Spatial orientation		.766
Image generation	.620	
Blocks	.793	
Bender Gestalt	.871	
Bender gestalt –m	.872	

The correlation matrix presented in table 4 is also relevant for the way the tests are grouping. We mentioned before that Blocks, Bender Gestalt and Bender Gestalt from memory showed an increasing of

scores with age. The same variation is present in Raven scores and in Image generation scores, but is missing for metal rotation and spatial orientation.

Correlation coefficient among the tests used in the battery

Table 4

Tests	Raven	Rot_or	Gen_im	Blocks	B G	B G_m
Raven	1.000					
Rot_or	.219**	1.000				
Gen_im	.331**	.192**	1.000			
Blocks	.432**	.241**	.450**	1.000		
B G	.289**	.081	.239**	.365**	1.000	
B G_m	.292**	.135*	.176**	.382**	.790**	1.000

So, the ontogenetic characteristic common for some tests may explain also the common variation. The correlation matrix (table 4) shows significant results for all the tests, with values varying from small to moderate.

We noticed the correlation between

Blocks Test and Image Generation test ($r = .45$) and also between Blocks Test and Bender Gestalt and Bender Gestalt from memory ($r = .36$, respectively $r = .38$). These correlations signify the possibility that visualization process is involved in solving the tasks of all of these tests.

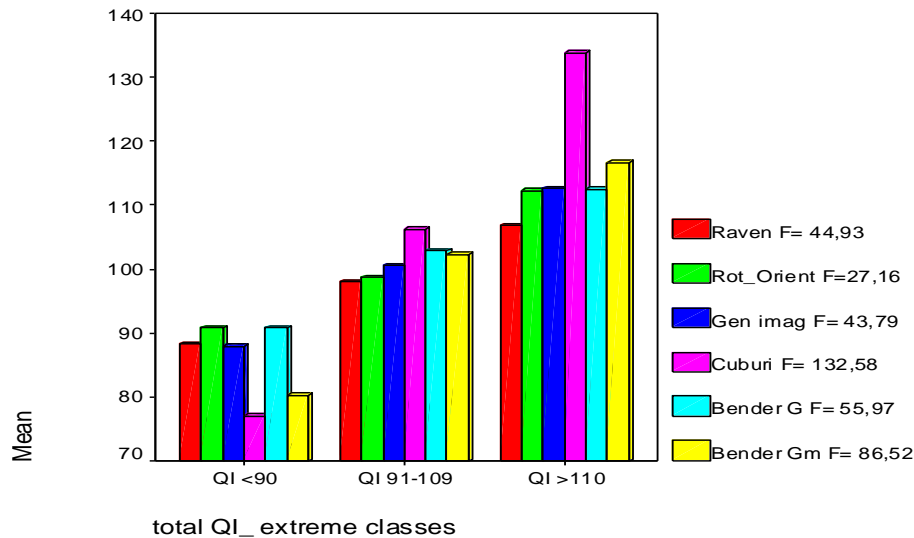


Fig. 1. Results of the tests' scores grouped in three classes

4. Discussion

The present data support the data found in specialized literature. The new instruments can be used in order to assess spatial visualization in human subjects. Visualization is the most complex spatial ability and is important to obtain test results from different tasks. This ability is involved in some academic courses such as: geometry, chemistry, physic, design and also in professions like: construction engineering, architecture, surgical investigations, traffic controller, or in daily activity like: route finding, orientation, sports, driving, etc. [3, 8, 10, 13-17].

The presented tests were all selected because they are involved in visual input processing, and they may be used to assess spatial ability.

The spatial orientation test corresponds more to the description made by Carroll [5] than the one of Linn and Peterson [11]. Nonverbal intelligence is supraordinated to spatial visualization that is a larger ability than mental rotation and spatial orientation. In Carroll's theory and also in Allen and Rashotte [1, 2] mental rotation,

visualization and spatial orientation are presented as parallel forms. In the present research visualization seems to incorporate the other two types and testing this hypothesis can be a valuable contribution in both theoretical and practical field.

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ARTISTIC LANGUAGE IN NON-VERBAL COMMUNICATION

Elena Simona INDREICA¹

Abstract: *This article deals only theoretically with a possible reading of non-verbal language through artistic language items, covering the field of teacher's self-image guidance. An adaptation of the hexadic model of analyzing a static image was tried to analyze a dynamic image (the visual artistic composition being the human body involved in communication).*

Key words: *nonverbal communication, artistic language, reading the body image.*

1. The Communication through Image and Non-Verbal Communication

When communicating non-verbally, one uses not only mimics and gestures, but also the posture, clothes, colours and accessories, make-up, or hair styling. Being aware of this aspect, image counsellors transferred the elements of plastic language in the transformation of their clients' appearance, following the principles of plastic composition with the purpose of transmitting specific messages. Our attempt of transferring the hexadic model of lecturing a plastic image to the reading of the human body image involved in communication, even though only at a theoretical level, aimed to improve the techniques of decoding non-verbal messages.

Throughout this article I intend to outline general issues that are found in construction of various images that help in reading and understanding them; to show some characteristics of the visual-artistic composition and to transfer theoretical issues of structural-systemic composition to the possible points of view for analyzing *non-verbal messages*; to propose a model

for reading body image in non-verbal communication through artistic language elements.

Relations between teachers and students are particularly important for the educational process to run optimally, but in most cases, their complexity makes difficult the didactic communication. Concerns for the study of teachers-students relationship [11] have emerged from the need to find viable solutions to improve communication. In addition to noises (of internal and external nature) that distort the messages transmitted between the participants in the didactic communication, there is also recorded a deficit in the area of intersection between the teacher's repertoire and the student's, both at language level and in the context of the taught subject [7], [13] and at non-verbal level (information we receive in the nonverbal communication have a higher share than those from the area of verbal communication in achieving the overall significance of the act of communication) [6], [9].

We are in contact with the outside world through various senses - visual, auditory,

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olfactory, gustatory, tactile. All these channels transmit sensations from the environment which we come in contact with, process them and integrate them into information which is translated and expressed in different languages - verbal, non-verbal, visual, mathematical, musical, artistic. We get most of the information about the world through sight. In this century we are talking more and more about the power of image (induced by audio-visual means alongside with the news papers and magazines) which imposed the cultural power. There is now a real invasion of the visual throughout our lives, through magazines, newspapers, cinema, photos, video, television, cartoons, comics, dance, advertisements, shop windows, electronic games, etc. The importance of visual elements, mental images, imagination, fantasy, visual architecture in general can be found in numerous references, in the treaties of philosophy, psychology, physics (optics), theology, anthropology, pedagogy.

Although it may be believed that non-verbal language, among the variety of languages through which we communicate, is first manifested in human life when human beings need to communicate with their fellow, it would not be possible only through the primary image [12].

Daily, in our visual field, there are n images - from natural to processed or virtual ones. Their perceptual (visual) exploration involves exploratory, search, analysis, comparison actions. Perceptual experience [3] of the individual tends to organize itself in integrated assemblies according to a series of laws: the proximity law (the closest elements are perceived as belonging to the same form), the similarity law (objects similar in size, shape or color tend to form the same configuration or gestalt); the continuity law (elements facing the same direction tend to be organized in the same form), the symmetry

law (figures that have one or two symmetrical axes are perceived more easily), the closure law (visual perception avoids as much as possible equivocal interpretations leading to incomplete routes, it tends to be trapped in a closed configuration, well defined; an incomplete figure strives to resemble a well-known one). Perception has not only an informational role, but also a role of guidance and regulation of human beings' actions [14, p.142]

Modern life has brought along with social, economic and cultural transformations in several means of communication - based on image processing: posters, photographs, illustrations, comics, movies. Communication through such images has a one-way direction. A great importance of this form of communication is given by linguistic message, message accompanying the image, completing or explaining it. Context has a great importance too, because it is involved in validating the significance of the image. Multiplicity and omnipresence of communication through the processed images is considered by some authors as representing a real phenomenon of "cultural regression" of this century [4], [10]. It is considered that this phenomenon would hinder the development of other forms of communication, for certain categories of population, the taste for reading, for perceiving musical works, for performing artistic activities (sculpture, painting).

Voluntarily or involuntarily, we use non-verbal language (coded images), replacing, enhancing, repeating, contradicting verbal message. Non-verbal communication is done through gestures, mimics, space or territory, image. The image means not only the visual exposure of the human body (clothing, hair style, accessories), but also its perception (self-image, the image perceived by others) [9].

2. The Human Body - as an Artistic Image

Why do we like some people even when they transmit the most undesirable messages? Image stylists and advisers know the answer to this question, because they are the ones who analyze/read the natural artistic image of the human body in order to change some elements of composition, so as to create an illusion. In didactic communication this aspect does not interest us, but the reading/analysis of the artistic image of the human body.

This reading could be accessible to children, too, as from an early age they communicate through artistic language, giving expression - through drawings - to their emotions, states, feelings, ideas... Treating the body as an artistic composition in motion, it can be used as a teaching tool in the teaching-learning.

The elements of artistic language identified in the body image would be:

- *Line* - shown in this context as the intersection of two surfaces (clothing lines, lines obtained by joining two spots of color) or the trajectory of the human body (lines drawn by the hands, feet, head, lines set up by gestures, succession of movements). The general meaning of straight lines (accuracy, steadiness, strictness, severity, aggression, masculinity) and curves (dynamism, elasticity, malleability, gentleness, warmth, femininity) is specified according to modulation and context.
- *Type* (aesthetically capitalization of the body conformation).
- *Surface, colour* (colours used in clothing).
- „Eclerage” or lighting, composition (the organization of a certain number of elements identifiable by sight). The „eclerage” or lighting of the human body’s image in the process of non-verbal communication is an external

factor that can be manipulated. The interlocutor’s look can be deliberately led by moving the center of interest using the game of lights and shadows (light areas attract eyes instantly). In addition, light can become plasticizing, by channeling its direction and effects of volume, of shape, of making more beautiful, of deployment from the background etc. are also achieved - in order not only to influence the reception of the message, but also to make it aesthetic.

- *Centers of strength or interest* (they are mandatory stops required by eyes examining the image).
- *The point of view* (the angle from which the image is viewed) - has a particular role in reading the image because the angle from which a three-dimensional image is viewed matters very much - its perception depends on the area covered by visual field. An object can be seen and represented from its front, from one side (left, right), top down, bottom-up, totally, partially, close or very close, from a distance, etc. - always being achieved a different image. In non-verbal communication, the interlocutor’s point of view is often frontal and from a short distance, maintaining contact mostly in the area of eyes without offering an overview on the composition of the visual image involved in sent message. For a good reading of the non-verbal image is recommended the *subject’s point of view*, the distance being given by the sum of the intimate distances, which permits the whole human body’s image to be included in the visual field. The view *from behind* should be avoided, as it makes the non-verbal message undecipherable. Sometimes the views can turn into gestures (e.g., the view from the top down has as correspondent the gesture of looking down on

somebody, with a negative connotation, expressing superiority, dominance, pursuit of power).

- The linear perspective (which is based on optical illusion, used to blur defects).

3. Reading and Analysis of Images

Because our main concern was to find a possible way of reading the image of the human body during non-verbal communication, we transfer the hexadic model of reading artistic work in this area [5], [10]. The hexadic model presents the landmarks of reading:

- **L** (lecturer or lecture agent - passive, active, dilettante, grown; he is the one the image addresses to, and is under the influence of the context in which the image is located);
- **A** (the interlocutor's image of the author's image with stable elements and variable elements according to the context);
- **S** (purpose of reading the image; rarely clearly defined, often reading/ decoding the visual messages of the communication is done unintentionally or at an unconscious level);
- **F** (forms, methods, techniques and styles of analyzing the image – to take a distance, to cooperate, to adapt, to assimilate, to analyze, to synthesize, etc.);
- **R** (semantic restorative ways - through attendance, anticipation, approximation, etc.). It means understanding the image and the operationalization of decoding the image, here we have degrees of understanding an image: 1. Explicit understanding where lecturer only records the significance of forms, color and composition of the composition; 2. Implicit understanding, lecturer managing to see beyond the image itself and to capture the possible connotations of the composition; 3. Referential understanding, which involves lecturer's previous access to the code of symbols and meanings used in

communication, as well as a wide range of information from the interlocutor's former experience);

- **I** (instauration of semantic means - leading to the restructuring of semantic image matrix, imposing the meanings by unusual permutation, combination and arrangement of multiple elements from the image, from the group of pictures or from other groups of images, respectively personal lecturer's contributions, what we call subjective interpretation. **I** is the focal point in an image and place of convergence or divergence between the author's and lecturer's image - indicating that in the act of communication, the author becomes the lecturer and the lecturer becomes the author, the roles of transmitter and receiver being in a continuous dynamism).

The proposed model, called hexadic contextual-situational brings more additional information in reading the image than the hexadic simple model, noted above, since it takes into account several factors. In reading the guidelines of lecture listed above, there can be added:

- **PE** - the physical environment (external or internal architecture of the building, furnishing, arrangement of objects in ambient, temperature, humidity, brightness, chromatics).
- **PSE** – the psychosocial environment (the formal or informal frame, the interlocutors' status, their roles, the emotional atmosphere).
- **CE** – the cultural environment (national culture, general culture, etc.).
- **SR** – the sensible reality, that is the reality perceived by senses (i.e., the smell of the environment may influence the visual reception of the message).
- **AR** – the abstract reality (consisting in words, ideas, concepts, categories, laws, principles, theories, concepts, opinions, dogma, mental representations, prejudices, etc.).

- Sp - space (closed, open)
- T - time (objective and subjective).
- L - language (volume, codes, symbols, a certain syntax - issues of composition, a certain semantic - meaning, meanings, etc.).
- V - the subjective value (the investment of effort in transmitting or receptioning a non-verbal message gives subjective value to non-verbal communication, quantified in the presence or absence of interest)
- EC – the capacity of assessment and decoding received messages.

4. Visual-Artistic Composition of the Human Body and Reading its Image

Aspects of visual artistic composition are numerous, complex, but important to establish image and to read it. For not conveying the wrong message of the image, another one than what the author intends to be decoded correctly and to be harmonious, the composition must compile a unit, being organized in a structure, based on some principles and the meanings of symbols must be correctly used.

Visual-artistic composition of the human body must have a form and content; these are made by lines, colors and accessories. The image involves the following structural-constructive aspects [2], which group together and organize expressively the artistic language, for transmitting meanings: composition, pressure, construction, proportion, movement, rhythm, and harmony.

Composition (the internal organization of image) is an entire item in which there are intersected lines and surfaces, active areas with passive areas. The elements are in a relationship of support, completing each other (e.g., fashion style with straight lines and sharp angles are part of a harmonious composition when the person involved has vigorous gestures, rough movement, with the right trajectory).

In terms of space [1], visual-artistic component of the human body embodies a *centric system* (where the space is ordered by *curved roof framing*, and the network of vectors faces inwards) or *an eccentric system* (where space is ordered by *roof framing straight*, and the network of drivers is oriented outwards). The two systems always coexist, but the one which imposes itself in the field of visual forces prevails.

The visual-artistic composition of an image, in general - regardless the type of image, implies the observation of certain conditions aimed at combining elements of plastic language:

- The existence of a form, chromatic or linear dominant. The dominance should be emphasized through modulation, accents and details.
- The existence of a type of relation between the parts of a whole (analog or contrast *report* or, disagreeing report, disonantic or accidental by quantity).
- The existence of a sense of the whole organization – towards inwards (closed composition, communication barriers) or outwards (open composition, stimulating communication). The direction is outlined by the lines of force (tensional axis), centers of interest, rhythm.
- The existence of a biunivoque interconditioning between elements.

Tension is created by the centers of interest, their arrangement by drawing an imaginary line that links them (a person who uses in the non-verbal message, a single center of interest will bore the interlocutor, creating the feeling of fatigue). Centers may also be specifically marked or indirectly created by perceptual induction.

Construction (the hidden structure of the composition) consists developing the parts of composition – letting us not forget that the body image in non-verbal communication is

a dynamic one, the art being the distribution of breaks, the use of space and time, sequence of movements etc.

Proportion (the quantitative aspect of the artistic elements of language) and rhythm (movement, changing gestures) give the didactic speech harmony. Movement (sometimes suggested by colors, clothing lines or trajectories of gestures) is designed to conquer the audience, and to actively involve the audience in communication.

Movement – suggested by the shifting (sinuous, sharp, flabby, feline, quick, nervous) from the immobility state, can be vertical or horizontal.

Rhythm – the succession or diverse or balanced grouping of the signs: alternative, successive, asymmetrical

Harmony – internal organization of the image, in accordance with the structural logic and based on sustaining reports.

5. Instead of Conclusions

We aim at practical application of these ideas, the experimental plan having already been developed.

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TRYING TO UNDERSTAND CURRICULUM IN THE NEW MILLENNIUM

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Abstract: *This paper is focused on presenting curriculum as a core issue of any educational reform, and as a very controversial concept. Two core concepts are underlined within curriculum definitions: learning situation and learning experience and their complementary relation is analyzed. The pyramidal model of curriculum is explained as a new approach. All this presentation aims to present a point of view about the thorny issue of curriculum and it tries to synthetically put together different approaches of the topic in modern and post-modern society. The necessity to rethink and enlarge the competence concept represents a conclusion which could be the basis of a further more detailed analysis of the curriculum development.*

Key words: *curriculum, learning situation, learning experience, values, competence.*

1. Curriculum as a Controversial Concept

It will be clear that the curriculum can be considered a controversial concept and my concerns begin with the reality that there is no common agreement around which (key issue(s)/ dimension or component) curriculum should be designed. Some definitions consider 'content' to be the core issue of curriculum, others hinge around learning experience, social context or defined goals or outcomes.

No matter what core issue is at stake, curriculum theory and curriculum reforms often begin by recounting the corpus of existing models or theories and then beginning a new proposal from the one that is deemed to be superior to existing alternatives. The term curriculum is thus applied to a whole variety of structures and can be made to carry a range of classes of meaning.

One class of meaning concerns the breadth of the area of curriculum

reference. The same term can concern a classroom, a specific university faculty or even a national program. It is applied to formal structures and to informal education. It is applied equally to youth-clubs, to pre-schools and even to industrial training

A second class of meaning concerns time-frames for curriculum and can refer to a moment in life, an entire life or to a cycle of activity. It can refer to a three year degree program or a single week of specialized field-work.

The term curriculum is also used to refer to the actual material that comprises curriculum. Curriculum in these terms can be a syllabus to be transmitted or it can be a product or an intention. The material can be concerned with praxis or a manual of detail. It can refer to something that is supported by research or an on-going process guided by the preferences of the user. Some scholars have even talked about the take-away curriculum or the

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MacDonald's curriculum to describe what is actually taken away by the student. This is the amalgam of the effects of formal activity within a school as it is mediated to a child who for instance, has been persistently bullied. What is then taken from the institution is far from the declared curriculum. Equally a university graduate may be crippled by a take away curriculum that has been the result of experiences that have induced a low sense of self-worth or an obsession with personal appearance.

Each manifestation of curriculum claims somewhere a supporting model which lays claim to a fundamental philosophy about the learning process or the nature of education. We can see examples of this in work by Franklin Bobbitt (1918; 1928); Ralph W. Tyler (1949); Lawrence Stenhouse (1975); Grundy (1987); Newman & Ingram (1989) and Smith, M. K. (1996, 2000).

Typically a teacher in a pre-university system is confronted with a package of syllabus and support materials provided by a higher educational authority. However good these materials, this curriculum is not the one received by pupils. A teacher-perception process intervenes, turning these official materials into something that is personal to the teacher, but which is never identical to the received materials. This perceived curriculum is the reality of curriculum that is implemented in the classroom. Thus we could talk about the perceived curriculum as an important regulatory mechanism in turning the ideal curriculum (that is the curriculum as it was originally designed), into real curriculum.

Because of this teacher-perception mechanism there have been examples of innovative curriculum activity that have "failed" because it was impossible to include a clone of a charismatic innovator with every resource booklet!

There are comparable situations at university level. Here it is the academic

staffs that are charged with the design and implementation of curriculum. As they make their plans, staffs is aware of pressure from political sources, international innovation and concern as well as the establishment view of how a graduate should be. There are further pressures from the real and imagined processes of intra and extra-institutional peer-review.

There is some common ground among the many definitions and manifestations of curriculum. All hold the main players to be the student and teacher and there is generally a reference to the educational context in which the curriculum is to be applied. Normally, there is also reference to the content that has to be delivered and in consequence, the 'content' that needs to be learned.

I have also noticed that almost all definitions of curriculum seem to use the term learning experience. Whilst this can be a useful term I am concerned that it is generally used without definition both at the 'design level' of curriculum and at the same time to day-to-day curriculum realization. I want therefore to consider the term learning experience alongside its near conceptual neighbor, learning situation.

Inside the formal education, people normally experience quite distinct and different learning situations as they progress through schooling and then higher education. At the same time those same people are asked, or choose to put themselves in many different non-formal learning situations. Indeed, life itself frequently places us in non-formal education without any preparation and without any apparently related context. These chosen or random learning situations, (whether shared without others or not,) become for the learner a private learning experience. The personalization occurs when a shared educational experience is filtered via the learners'

personalities which are also influenced by a variety of personal contextual factors. I note for instance that every teacher has a private learning experience each time he/she interacts professionally with a group or even a single student.

2. A New Definition of Curriculum

With this confusion in mind, I would like to suggest this working definition of curriculum for the purposes of this paper. Curriculum could be considered, in its widest possible manifestation as the totality of learning situations connected to the subsequent learning experiences which occur during a human being's life. The learning situations are specifically designed and implemented within formal education (1) but are also specifically designed in non-formal education (2); the life itself, for sure, put us into various learning situations, without a previous project but with doubtless educational outcomes (3). Each learning situation, purposely designed or incidental, shared or not with others, becomes a private "learning experience" being filtered through the learner's personality, and influenced in this filtering process by a lot of contextual factors. It is important to not forget that even the teacher is a "learner" involved within the learning situation created or projected by the teacher himself or herself.

As we then look at informal education we see a process that lacks intentional educational design, but it comprises a large number of learning experiences. These experiences may have positive or negative connotations, according to the power of the individual to filter or to utilize the diffuse surrounding educational field of influence effectively. Where this power comes from? It is obvious that the value of the outcomes preserved by the learning experiences of the learner involved in learning situations

within formal or non-formal contexts are the source of this power.

The relationship between the learning situation and the learning experience has now become a key curriculum issue.

Both terms embrace nuanced connotations according to their domain of reference; however, they maintain a defined structure no matter in what context.

The structure of a learning situation/experience in education now requires certain following revisions to some familiar elements:

- **Outcomes** are now considered in terms of a learner, who having been put into a learning situation is living out the more or less permanent consequence of a learning experience. These outcomes are described in terms of competencies or components of competencies: knowledge, capacities, (as operational structures), attitudes and attributes of personality. Generally speaking they are determined by the socio-educational context (Cornbleth, 1990) in which the student learns and they will be nuanced by the social and professional context in which the graduate will operate and specifically by the occupation towards which the training is aimed. Outcomes appear in formal and non-formal education as being planned. In informal education we see outcomes as accidental.

- **Aims, goals, and objectives** now become *paths to be followed* by the educational process in order to achieve designed outcomes (components of the competence); they are to be considered explicitly only in formal and sometimes non-formal education (Corte et al., 1996; Voogt, 2004).

- **Content** is selected according to specified outcomes and in formal education, structured according to the philosophy of the curriculum designers. However we recognise non-formal and unplanned educational 'content' in every

learning situation of life. No matter where the contents are considered they should not be understood as genuine targets to be learnt but as vehicles towards desirable competencies.

- **Suggested methodologies of teaching and assessment** are determined by aims, goals, objectives and desired outcomes. They are related to the selected and structured contents. Methodologies in this context must respond to the specific situations of each learner as he or she relates to each concrete designed learning situation.

- **The appropriateness and timetabling of elements of activity and the allocation of time to units of curriculum activity.** This planned structural component of curriculum is obvious in relation to formal education and partially to non-formal education. However, it is important to be aware that timing and appropriateness are also essential components of informal education

3. The Pyramidal Model of Curriculum

These five structural elements lead to the so called pentagonal model of curriculum structure, which has been suggested by Wragg (1997) in his “Cubic Curriculum”.

The author suggestion is focused on the idea of the necessity for a multiple view of analysing curriculum. What I consider as being important is the three dimensional perspective involved in Wragg’s presentation.

Whilst these five core structural elements of a learning situation are strongly interconnected we must also recognise that the concept is essentially a functioning system. Because of this every change in one element necessarily calls for adjustment in each other. Unfortunately the pentagonal paradigm of curriculum structure cannot adequately express this complex, almost kinetic systemic activity.

It is because of this weakness that I propose the pyramidal model of curriculum structure. (Fig. 1) and offer its explanation as a possible basis for a new paradigm of curriculum design appropriate to all educational levels.

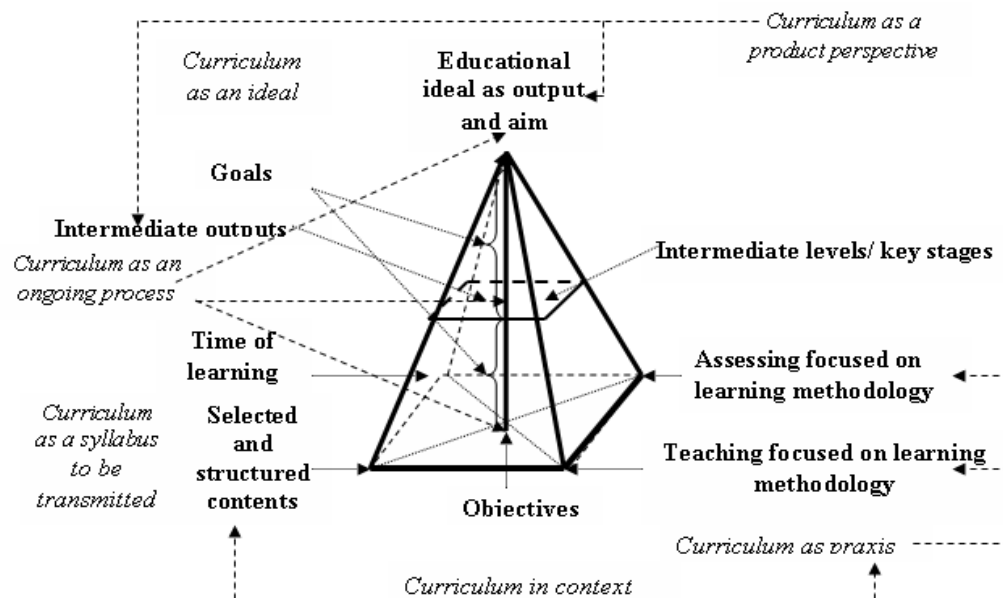


Fig. 1. The pyramidal model of curriculum

I have already emphasised the strong interconnection among the five structural elements of a learning situation and I am reluctant to add to the debate over the priority, importance and timing of these five elements.

When we turn to consider the priority of importance of one or another among these five elements, we move into the philosophy of curriculum. The literature of speciality abounds with “curriculum models” which are founded upon the priority of importance of one or other structural element. Rather than engage in unprofitable analysis of these models I suggest that educational reform will be better served by discussion of the balance between the focus on competence and the focus on taught and learned content according to the effectiveness of teaching-assessing methodology, in curriculum design and implementation.

Notionally there is unanimous recognition that attainment targets or overall expectations (in Canadian curriculum terms) are the most important issues and the first to be determined.

In my opinion these overall expectations should be expressed in terms of competencies detailed in their components: knowledge including understandings and not remaining memorized information, operational capacities, attitudes and values. I consider that the topic of competence and competencies is another extremely interesting one, but it should be the issue of another paper. It then becomes the nature of these growing competences during the personality-genesis process that determines both the selection of content and the ways in which content is structured. Some competencies call almost naturally for working within a single discipline, inter-disciplinary activity, and a topic approach or plural-discipline exploration. Here we recognise, of course, that these terms

themselves are not beyond controversy. However, experience has shown that each competency tends to commend itself to specifically structured contents and, further to specific methods of teaching and assessment.

A further distraction from the proper concerns of curriculum, in my view, is the thorny and extended debate about objectives. Whilst I accept that it is not unproductive to have in mind (not necessarily to write) detailed objectives for each sequence of an educational plan, I would argue that defining and reaching objectives should not be the core task. Instead, we suggest an alternative significance for aims, goals and objectives, (depending on the level of their generality) as redefined instruments which become routes to be followed by the educational process itself in order to achieve the designed outcomes. A teacher who has decided the competencies to be developed, and the nature of the intended content has then to set out his or her particular route by which to enrich the outcomes, to particularise the aims and the goals, and to formulate the objectives for study units. These will recommend specific methodologies for the teaching-assessing process which are focused on learning. In arriving at such design decisions the teacher will have taken account of the rhythm of learning of the particular students concerned. The teacher will be the final decision maker in respect of the detailed timing for each learning situation.

I have stressed those competencies as outcomes are the pivotal determinants of curriculum design. Competencies are determined objectively by the requests of the professional fields.

4. “Over” or “behind” Curriculum a Trans-disciplinary Approach

A curriculum approach focused on outcomes (defined in terms of competencies) could be considered as a trans-curricular one; this means that no matter what contents are considered, in what kind of structure they are put, or

which are the methodological way of teaching and assessing process involved within the designed learning situations, the core issue of the educational concern is to enrich the outcomes as expression of genuine learning experiences, behind or over the curriculum as set of learning situations. This becomes a principle of designing and implementing curriculum. I suggest a deeply thinking about the education as a process and a product connected to these two terms: behind or over curriculum.

When we consider the education in the hypostasis of a product we should think in terms of overall expectations/ outcomes; they will be enriched after the learning situations turn into learning experiences. So, somewhere behind curriculum design and implementation the educators have as main target to obtain assessable competencies. Their main concern should be the resulted leaning experiences. When we consider the education in the hypostasis of a process we should think in terms of aims, goals and objectives leading the educational process, on different levels of generality, towards the overall expectations. The educators' main concern should be in this case the curriculum design and the implementation of the designed learning situations. The term "over curriculum" may be appropriate for this hypostasis of education.

Several sets of competencies may become transversal competencies, or general ones, having real possibilities to perform in different areas of work. They aim to develop what is usually named, within the cognitive area, as "lateral thinking", a topic which focused the interest of a lot of specialists and open the door for interesting sequences within the context of international debates (Burt, Bird, Beynon, 2005). Other competences may be strictly associated to a specific professional field.

5. Instead of Conclusions

The great debate among the traditional, modern and post-modern theories of curriculum should be reconsidered from the point of view of the curriculum determinants and its beneficiary- the educated human being of a new millennium. Centring curriculum on competence means to rethink the concept of competence itself. It is not the aim of this paper to analyse in deeply this concept but, together with the post-modern representatives and "ultra-modern" philosophy (Negreţ –Dobridor, 2008) I underline the necessity to go back to the values, to reconsider the structure of competence in terms of focusing it on accepted attitudes and active values. We do need a curriculum which develops a complex human personality able to understand the world with its history, to prefigure its future, to be adapted to a reality no matter how complex it is and to be enough creative to contribute to change the reality in a right direction.

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EVALUATING TRAINING OUTCOMES: SOME REFLECTIONS ON AN ONLINE AND IN PRESENCE MODALITY

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Abstract: *The paper offers a discussion about the concept of training from a psychological point of view. In a life-long learning perspective adults' training is developing relevant. Innovative technologies and methodologies demonstrate to be very needful to answer to new learning requests, and this is also because requests mainly come from workers. Even Universities are restyling their paths, organizing online courses in addition to traditional classes. But is it possible to do e-training? And, if possible, in which way the assessment has to be conducted? A study case is provided to deal with these questions.*

Key words: *learning design, life-long learning, assessment, self assessment.*

1. Introduction

According to the objectivist point of view, *knowledge consists in correctly conceptualizing and categorizing things in the world and grasping the objective connection among those things and those categories* (Lakoff, 1987, p. 163). So there is only one correct possibility to reach this kind of correspondence and only one correct understanding of any topic (Vrasidas, 2000). In this framework the work of learners consists in the achievement of the correspondence between abstract symbols and real world. Evaluation is goal-driven (Jonassen, 1992a) and it can be very similar to a paper and pencil test (Bennet, 1998): trainers ask students to make a activity, then the answers can be compared to a correct model by teachers or students themselves. This is a quite easy way to do an evaluation and also a self-evaluation. There are also software able to provide this

kind of assessment, both in presence and in online experiences (Rafaeli & Tractinsky, 1989; 1991; Rafaeli, Barak, Dan-Gur & Toch, 2003).

On the contrary, in a constructivist perspective, the world is mostly created by the human mind (Piaget, 1970) so that knowledge is mainly considered as an interpretive process (Kuhn, 1996). In addition, in socio-constructivist approaches knowledge is considered the result of *construction of meaning* and *negotiation* that happens within social exchanges (Bruner, 1990), so that teaching is not just a simple transfer of information, but an active building of data and understanding situated within authentic relationships and activities (Scardamalia & Bereiter, 2002). *As there is not one correct understanding and there is not one correct way of solving problem* (Vrasidas, 2000, p. 10), the exclusive use of testing is clearly not adequate to individuate this kind of

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learning achievements (Lesh & Doerr, 2003; Sternberg 1997). Constructivist and socio-constructivist teachers allow learners to have an active role along the whole training path and in the evaluation process (Jonassen, 1992b). *Evaluation of one's own work promotes self-reflexive processes, which is another goal of constructivist learning* (Vrasidas, 2000, p. 12). Self-regulation is also enhanced by peer interactions.

2. Training: Towards a Definition

According to socio-constructivist theories, we assume learning as an outcome of social interactions, both disagreeing and concerted (Doise & Mugny, 1981; Pontecorvo, 1993; Carugati & Selleri, 2001). In this approach, teaching is mainly regarded as an activity of scaffolding offered to students to facilitate an active and self directed learning (Scardamalia & Bereiter, 2002). It means at least to start with any concept or knowledge is already available for students and to facilitate a better form or re-organization of concepts. The basic role of prior knowledge in training process is evident: trainers have to deal with previous opinions, ideas and judgments of the trainees to promote new understanding. Training can be considered not a simple grow of information, but a real cognitive and affective conceptual change (Mason, 2001; Mason, 2006). The new contents have to be translated in individual competence, what permits to learners an adequate application and creative use of knowledge and expertise (Gardner, 1991). The change can be achieved only on the base of direct experience and a subsequent reflection (Bion, 1961; Knowles, 1986; Arfelli Galli, 1997; Brusaglioni, 2002).

We followed the socio-constructivist assumptions in different versions of the same course, the Workshop for observing children at school. We now intend to

illustrate and discuss this model, to provide a study case.

3. A Case Study: the Workshop for Observing Children at School

The Workshop for Observing Children at School is an obligate formative course at the University of Macerata. It is addressed to students that will be teachers in their professional future. Assuming observation as a specific competence required to teachers, the Workshop is finalized to train skills in observation method. In fact teachers are supposed to adopt an expert approach when observing learners at school.

3.1. The Educational Design of the Workshop for Observing Children at School

The Workshop consists of a system of progressive proposals, both subjective and collective. The online version of the Workshop is articulated in 8 activities related to specific goals. In the first activity the participants have to write their observation text using the video available online. The video reproduces a real school situation, in which some children are building a tower. The video has a duration of 60'. The goal of the first observation activity is to activate knowledge and competences owned by the students before the study of the textbook. The students are then asked to discuss (within the forum in online modality, in face to face interaction in the in presence lessons) about analogies and differences aroused among the individual observation texts (activity 2). The peers' discussion is finalized to recognize differences, limits and errors of the subjective point of view (Chinn & Brewer, 1993). Moreover while the students do argue their divergent point of view to support their own opinions, they are building a new and stronger structure of ideas (Nussbaum & Novick 1982). At this point there are bases to activate a

negotiation of meanings (Bruner, 1990). In fact, in the third activity the students are asked to negotiate a shared list of indicators for child observation, looking for a possible agreement (Doise & Mugny, 1981; Carugati & Selleri, 2001; Pojaghi, 2000). Then the students have to read the recommended books (activity 4). The understanding of scientific theories is supposed to be facilitated by the naïve theories recognition and activation. Another peer discussion (activity 5) provides the possibility to further revise the list of indicators. In the fifth activity the participants have to write a new observation text. The video is similar to the first; it shows two children collecting a puzzle in an infant school. This activity aims to enable the students to experience observation in the light of the just learned concepts. The participants are then invited to speak about the previous activity within their group in a web forum, expressing an assessment on the Workshop and formulating a self-assessment of their own learning process (activity 6). To conclude the curriculum, the students are requested to send a personal dossier (activity 7) composed by written texts of every activity. Collecting and composing a

personal dossier is a further strategy planned to promote considerations and metacognitive attentiveness. It is a way to support self assessment.

The in presence version of the Workshop has the same activities and goals: there are 7 meetings of 2 hours each, along two months time. The only difference is in the third activity, that is replaced with a teacher lesson. The interactions in web forums are substituted with face to face discussions.

3.2. The Samples

The online and in presence version of the Workshop developed during the academic years 2007-2008 have quite the same number of participants (125 subjects online, 117 in presence). In both cases the great majority are women, the course was attended by younger students with respect to the online Workshop. Besides in the online course there are a lot of students already graduated, whereas the Workshop in presence is mainly attended by students with a high school degree. The table below shows the characteristics of the participants (Table 1).

The characteristics of participants Table 1

	In presence Workshop	Online Workshop
Number of participants	117	125
Year birth range	1966-1986	1956-1985
High school degree	96	30
University degree	21	95
Full time students	98	30
Workers	19	95
Geographic origin	5 South of Italy	68 South of Italy
	110 Centre of Italy	55 Centre of Italy
	0 North of Italy	1 North of Italy
	2 Foreigners	1 Foreign

3.3. Training Evaluation

To compare the observation text made by every student at the very beginning of the

course and the text written in the sixth activity can be a possibility to assess the training efficiency. This kind of analysis

has been carried out by two independent researchers by the means of a list of features, as in the following table (Table 2). Using the above indicators we identified three quality level of observation text:

- **Low Quality (LQ):** short and not structured texts, without separation between description and interpretation, characterized by the presence of generalizations, deductions without

argumentations, use of personal point of view as an absolute one;

- **Medium Quality (MQ):** longer and more structured texts, with a better separation between interpretative and descriptive data, the point of view more frequently expressed as relative;
- **High Quality (HQ):** texts which present all or most of the indicators typical of an expert approach.

Examples of observational texts are soon provided.

Indicators to evaluate the qualitative level of observation texts

Table 2

Naïve observation text	Expert observation text
Text structure	
Short and free text	Long and structured text (titles, paragraphs, bullet points, tables)
Context	
Absence of information about the focus of attention and the aim of the observation	Presence of information about the focus of attention and the aim of the observation
Absence of personal hypothesis about eventual aims of observation	Presence of personal hypothesis about eventual aims of observation
Mishmash of description and interpretation of data	Separation between description and interpretation of data
Use of daily language and incorrect use of technical language in adequate contexts	Correct use of technical language in adequate contexts
Linguistic expressions	
The text shows generalizations, abstractions, deductions without argumentations, all-encompassing conclusions	The text shows analysis of events and concrete objects with argumentations; conclusions supported by descriptive and concrete elements, with reference to details and intermediate passages
Use of his or her own point of view as an absolute one	Use of his or her own point of view as a relative one
References to unobservable data such as thoughts, feelings, intentions of the observed subject	References to observable data such as actions, language of the observed subject and observer's internal world
Use of impersonal linguistic forms	Use of personal linguistic forms
Absence or deficiency of cognitive verbs	Presence and explicit use of cognitive verbs

Example 1: LQ observation text

This videotape presents two children playing together with a table, in a free context, in an Infant School. They establish a cooperative atmosphere, both of them are engaged and both are helpful, trying to attain the same

result: to put some pieces in the table following a criterion. Actually it seems neither one dominates the other, although there is always a leader in every situation, in this case the child who adds the toy pieces. This kind of playing expresses cooperative intelligence, or rather,

the child skill of cooperating with others, of helping, of receiving help, of accepting or asking for it, consequently respecting the other. This situation leads the children toward knowing themselves, since they can discover their limits. At the same time, it expresses bodily-kinaesthetic intelligence which is the skill of using the body to work with objects that require fine finger movements. Finally there is an atmosphere characterized by joy, cheerfulness, curiosity, hope for mutual success and empathy.

We consider the above text to be of LQ because:

- the student produces generalizations such as - *there is always a leader in every situation* -;
- there is an incorrect use of text references – *This kind of playing expresses cooperative intelligence, or rather, the child skill of cooperating with others, of helping, of receiving help, of accepting or asking for it, consequently respecting the other.* In this case the quote is correct, with regards to the content. Nevertheless it is not coherent with the actions of the children in the video;
- the personal point of view is expressed as an absolute one - *there is an atmosphere characterized by joy, cheerfulness, curiosity, hope for mutual success and empathy.* Actually feeling an atmosphere is a very personal response, which means that different people might experience a different atmosphere in the same situation;
- there are references to unobservable data such as thoughts, feelings, intentions of the observed subject, like in the phrase - *joy, cheerfulness, curiosity, hope for mutual success and empathy*;
- there is no separation between description and interpretation - *This situation leads the children to know themselves, since they can discover their limits.*

Example 2: HQ observation text

Regarding the cognitive, social and effective development of the children in the videotape I

could recognize the relationship between children and objects. Children are playing with a puzzle that they have to construct in order to compose a series. According to Piaget, the child forms concepts through action, even if the action is guided by the adult. One of the phases during which the relationship between children and objects develops consists of the identification of object functions and the attribution of meaning to them. Through the videotape I could understand:

THE OBSERVER: he/she doesn't participate in the activity, because he/she is engaged in video recording.

OBSERVATION SUBJECT: two children are present, engaged in a free time activity which in this case is completing a puzzle. The puzzle is composed of four kinds of figures: monkeys, bears, elephants and giraffes.

SCENE: the videotape is recorded in a section of an infant school, where I can see low yellow tables used by the children as a base for the puzzle. The floor is blue and behind the tables, on the wall, there are shelves with several toys and didactic objects.

OBSERVATION MODALITY: video camera

OBSERVATION DURATION: 1 minute and 14 seconds

START/END TIME: I don't know the start/end time

CONTEMPORANEOUS FACTORS: in the section I can see other children engaged in other activities. A child is disguised with a long skirt and a bag; other children are running in the room, and some are engaged at the yellow tables. I couldn't distinguish the dialogue among the children, because there are voices and noises.

BEHAVIOUR DESCRIPTION: at the beginning the video camera frames only a child (A) with a light jumper. He's engaged in completing a puzzle. After few seconds a child with a red jumper arrives (B), holding a piece of the puzzle in her hand. She puts it in the first line. A observes the object placement, saying something and he places other figures. A collects all of the elephant figures in the third line, while B is moving to the left keeping in her hand three pieces. B observes the composition, waits a little and then shows the puzzle in his hand to A. B points to a place on the table, saying: "You have to put this figure

here". A tries to take the piece that B is keeping in his hand [...]

HYPOTHESIS AND CONCLUSIONS: the atmosphere is positive, the children seem to appreciate the activities.

The above text can be evaluated as a HQ one because:

- it is a long and structured text;
- there are details about duration and observational method adopted;
- the focus of attention is intentionally declared - *I could recognize the relationship between children and objects;*
- there is a clear separation between description and interpretation of data;
- there is a coherent and correct reference

to scientific theory – *Piaget;*

- there are particulars and conclusions supported by descriptive and concrete elements;
- there are references to observable data such as actions;
- the student uses overall personal linguistic forms;
- there are cognitive verbs - *I couldn't distinguish.*

3.4. The Outcomes

The Table 3 shows a general improvement in the observation competencies of the participants, both in online and in presence Workshop.

Outcomes of online and in presence Workshop

Table 3

Online Workshop		
First observation text: tot. 125		
LQ: 39 (31%)	MQ: 65 (52%)	HQ: 21(17%)
Second observation text: tot. 125		
LQ: 8 (7%)	MQ: 49 (38%)	HQ: 68 (55%)
In presence Workshop		
First observation text: tot. 117		
LQ: 81 (69%)	MQ: 36 (31%)	HQ: 0 (=%)
Second observation text: tot. 117		
LQ: 3 (3%)	MQ: 40 (34%)	HQ: 74 (63%)
-78	+4	+74

The quality of the majority of the observation texts produced as first activity of the online course are between LQ to MQ. At the starting point, the participants seem to have moreover a naïve approach to observation methodology. Only 21 texts on 125 are HQ ones. On the contrary in the fifth activity the HQ texts raise up to 68 (+47): there is an increase from 17% to 55%. At the same time the LQ texts decrease from 31% unto 7%.

With regards to the in presence students, nobody writes a HQ text in the first essay. The LQ texts are 81 while 36 are MQ. The second texts, written for the fifth activity, are visibly better: 74 texts are HQ, 40 MQ and 3 LQ, with an increase of

HQ texts from 0% to 63%, and a decrease of LQ texts from 69% to 3%.

These results give an evidence of the possibility to train competencies like those we are dealing with, online as well as in presence courses.

3.5. On Self Assessment

We intend to provide some further considerations on the self-assessment process. In the original form of the Workshop used during the academic years 2004/2007, the self assessment was only at the end of the course, when the students were asked to reflect about the training course in an unstructured way, without any points of reference.

During the last two versions of the Workshop we introduced a more detailed way to conduct self assessment. In the edition 2008/2009 our hypothesis was that, if the students could know our criteria (shown in Table 2) and could be involved in self-assessment without delay, then their metacognitive processes would be activated, facilitating them in the transition from naive to expert approaches. During

the current academic year we included two phases of self assessment using two different tools: the list built by the students and the list shared with trainers. Before dealing with the outcomes of our choice, we will illustrate the similarities between the list of criteria developed by the students and the list built by the trainers (Table 5).

Criteria of trainers and trainees

Table 5

The evaluation criteria of trainees	The evaluation criteria of trainers
	TEXT STRUCTURE INDICATORS
Detailed description of event	Long and structured (titles, paragraphs, bullet points, tables)
	CONTEXT INDICATORS
Observer and observation context	Presence of information about the observer and the context of observed situation
Time of observing	Presence of information about video tape duration and time of observing
Methodology	Presence of information about tools and observational method adopted
Clarify what and why do you observe	Presence of information about the focus of attention and the aim of the observation
Descriptive language. Express interpretation in adequate way	Separation between descriptive and interpretative data
Selection of useful data	Presence of hypothesis about the aim expressed; selection data focused on aim expressed
Reference to theoretical frame	Presence of textbook references and quotations
	References to concepts coming out from the book or the forum
	Use of technical language in adequate context
	LINGUISTIC EXPRESSION INDICATORS
Use of adequate language	Presence of analysis of events and concrete objects, with argumentations; conclusions supported by descriptive and concrete elements; references to details
	Use of his or her own point of view as a relative one
	References to observable data such as actions, verbal and non verbal languages of the observed subject and observer's internal world
	Use of personal linguistic forms
	Explicit use of cognitive verbs

3.6. The Outcomes of the Workshop for Observing Children at School 2008/2009

We deal with the outcomes of the 2008/2009 version of the online Workshop. Our analysis is preliminary, in fact it is based only on a part of the texts

produced by the students, because the course ended in February 2009, and we are still collecting the data. Of the 220 participants, we have now analyzed the work of 135 subjects. As the characteristics of the sample are the same of the previous Workshop, it makes sense

to compare the data. Table 6 shows the improvement of observation skills among this group: it is evident that the percentage of students who wrote a HQ final

observation text is larger than in the previous versions of the Workshop. Only 4 subjects wrote LQ final texts.

Outcomes of the Online Workshop 2008/2009

Table 6

Online Workshop 2008/2009		
Initial observation text: tot. 135		
LQ: 62 (46%)	MQ: 57 (42%)	HQ: 16 (12%)
Final observation text: tot. 135		
LQ: 4 (3%)	MQ: 18 (13%)	HQ: 113 (84%)
-58	-39	+97

To provide and share the evaluation criteria in the first part of the course with the students seems to be helpful. In addition, from a qualitative point of view, some students clearly affirmed in their final dossier that they could understand their errors through the activities of self-assessment, as the below quotations show.

Comparing the observation text done at the beginning of the course with the one done at the end, I noted very much differences. I understood these differences using both the indicators negotiated with my group and the indicators offered by the trainers (I noted several common points between the two lists). I believe that the second text is better than the first one because I can identify in it the typical figures of an expert approach.

Through the self-assessment and the comparison between the two texts, I discovered by myself the difference between a naïve observation and an expert one, and understand how my own thinking changed.

During the evaluation of the first movie, within our group different positions have emerged and this, of course, led to some conflicts. This is not bad! In fact, I personally think that conflicts will help people to source better ways of understanding. Interacting and openly

confronting gave the opportunity to develop professional skills in observation method.

The relevance of eliciting metacognitive reflection in learning process is evident. We can conclude that in this way the students become protagonists of knowledge building in every aspect.

4. Conclusions

The analysis of the study case seems to reach two important results: on one hand the considered Workshop conducts to quite the same outcomes both in the in presence and in the online version. This result puts in evidence that a direct intervention of teacher seems to be not so relevant in the training process. This kind of result is confirmed by the final judgements that online and in presence participants obtained for the acknowledgment of the Workshop. In the online course 47 students had a *very good* evaluation, 57 a *good* evaluation, 12 an *average* evaluation, 9 a *sufficient* evaluation. In the in presence Workshop 69 students had a *very good* evaluation, 31 a *good* evaluation, 13 an *average* evaluation, 4 a *sufficient* evaluation.

On the other hand it is possible to affirm that a positive correlation exists between high performance in observation method and self-assessment activities. Our research seems also to demonstrate the

importance of sharing with students the criteria that establish the difference between a naive and an expert way to develop an observation text. Usually the different levels of knowledge and competencies between trainees and trainers represent a problem. In order to reduce this gap, the student can be asked to devise criteria for evaluation. The trainers' criteria can be made available to the students, thereby promoting a comparison and a reorganization. The next step in this direction could be to encourage a peer-to-peer review. After the final individual self-assessment, it could be useful to ask the students to participate to another web-forum. The aim can be to give a reciprocal assessment of their own works, analysing the quality level of the final observational texts within the small group. The activity of reciprocal assessment might help students to understand not only the changes in their own activities, but also the possible mistakes and improvements of the other participants. Through this modification the students would receive at least three different kind of evaluation: self-assessment, peer to peer review and curricular evaluation of trainers.

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A ROMANIAN – BELGIAN COMPARISON ON WORK RELATED STEREOTYPES AND BEHAVIOURS

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Abstract: *In the larger context of controversies on West-European – East-European countries differences, the present paper analyzes a more specific intercultural difference that may have its roots in the dominating values of a West-European society vs. an East-European one. We refer mainly at the differences between the Romanian and the Belgian culture regarding the way individuals from the two countries see work, the way they relate to work, their beliefs and stereotypes regarding work, and their work related behaviours. The paper tries to outline the fact that the cultural differences on work related stereotypes and behaviours surpass the existing similarities that are a result of the multiple influences both societies were subject of.*

Key words: *work stereotypes, behaviours at work, Romanian culture, Belgian culture.*

1. Introduction

A Romanian – Belgian comparison may always be considered as being a mere example of the larger comparison between West-European countries and East-European countries. But the reality sometimes contradicts common sense. Despite the fact that the two cultures belong indeed, from either an historical, cultural, and/or economical point of view, to very different regions of Europe, the two analyzed cultures have many common aspects.

Both the Romanian and the Belgian culture are eclectic cultures. The Romanian culture is an eclectic one as a result of multiple influences to which it was the subject of along its history [9]. The many immigration waves from Italians, and, more recently, North Africans, turned Belgium into an eclectic society also with

a wide appreciation for many forms of culture and identities. Being submitted to the Romans, the Spanish, the Austrians, the French, the Dutch and the Germans, has turned Belgian culture into a rich influenced estate but also turned it into an individualistic culture, despising authority [14].

A direct consequence of the eclectic culture is the diversity that characterizes both countries.

Diversity, as well as equality and freedom, are important values for Belgians and are manifested in anti-discrimination laws, and even more in common habits such as clothing, eating patterns and the expression of physical relations [6]. The existence of opposite elements in the same geographical space or in the same space of thinking and action is the modality in

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which diversity manifests in the Romanian society [9].

These are just few of the cultural aspects that could be considered as criteria for an intercultural comparison between the Romanian and the Belgian culture. The present article intends to make a pertinent comparison regarding only work related practices and behaviours in the two societies. Even though the cultural dimensions, especially the dominating values of the two cultures, might be the underlying factors behind the analyzed differences, we do not intend to find a cultural explanation for the identified differences but, merely, to accurately describe them in terms of practical implications for the working environment.

2. Romanian – Belgian Cultural

Differences on Hofstede's Dimensions

The main criterion when making an intercultural comparison in the area of work and organizations is Hofstede's theory on cultural differences. According to his study's results, cultures can be defined through a number of five characteristics [17]. These characteristics are bipolar dimensions: power distance – the equity or inequity between superiors and subordinates in an organization; uncertainty avoidance - lack of tolerance toward ambiguity and the need for formal rules or the openness toward change; individualism vs. collectivism – the distribution of attention, resources and personal commitment toward the self or toward the belonging community; masculinity vs. femininity – the focus on personal objectives (material rewards, promotion) and assertiveness which are in opposition with interpersonal purposes (friendly climate) and tolerance; short-term vs. long-term orientation [9-17].

The Romanian culture is characterized by a rather collective orientation [1] while Belgium's culture has an individualistic

orientation [10]. In a rather individualistic country, people tend to have more loose relationships than in the countries characterised by collectivism. In Belgium people stress on personal goals, achievements and individual rights. It is expected from each other to fulfil their own needs. In Belgium, group work is important, but everybody has the right to give his own opinion.

Concerning the distance to power, both Romania and Belgium have a rather high power distance [9-17]. In Romania the inequity between different social classes or between superiors or subordinates is high. Belgium, on the other hand, exhibits an unequal distribution of wealth. Belgium does not have an enormous gap between the wealthy and the poor, but they have a very strong belief in equality for each citizen.

Another common characteristic of the two analysed cultures is the fact that both are rather feminine cultures [1-17]. Masculine traits such as assertiveness, materialism/material success, self-centeredness, power, strength, and individual achievements are not main characteristics of the two countries. The stress on quality of life and social security makes Belgium a less masculine state as opposed to other European countries.

Uncertainty avoidance is the dimensions that differentiate both Romanian and Belgium culture from the rest of Europe Union countries. Both societies have high level of uncertainty avoidance [9-17]. Belgians are not keen on uncertainty; by planning everything carefully they try to avoid the uncertainty. The vast amount of rules also reveals the high level of uncertainty avoidance. Romanians avoid uncertainty by finding easy temporary solution to encountered problems.

A particularity of the Romanian culture is the strong short-term orientation [1]. Values associated with short-term

orientation are respect for tradition, fulfilling social obligations, and protecting one's face [17]. Thrift and perseverance are the main values that characterize a culture with long-term orientation such as the Belgian one [10].

3. Work related stereotypes in the two cultures

Many of the stereotypes and work related behaviours in the Romanian organizations derive from the main values of the Romanian culture as presented above.

One common stereotype in the transition period after the fall of communism was that Romanians do not work. When stating that Romanians are lazy, individuals do not refer to themselves, but to the others [5]. The identification is not with the whole population, but only with those who are considered to have positive characteristic. This stereotype is slowly changing. Studies made on high-schoolers and students [7] show that this category of population considers Romanians are hard-working and ambitious.

In the Romanian public institutions the state is still seen as impersonal. The practical consequence is the belief that not working affects no one [5]. In Romania the capitalism principle "time is money" is taken into account rather in a symbolic perspective than in a practical one. Many Romanians lose a great deal of time in order to benefit from cheaper services but request punctuality and time efficiency from the institutions or organizations perceived as having occidental claims [5].

Another powerful stereotype in the Romanian society is that there is corruption at all levels. This leads, in particular situation, to superficiality at the workplace [5]. The work in Romanian organization is governed rather by values related to personal relation than work related values [9].

On the other hand, Belgians workers are known for compromise, negotiation and common sense [13]. They are known for appreciating clear facts and figures. This is confirmed in practice. Belgian managers for example are often praised for their compromises. Belgians don't place themselves on the foreground, but they perfectly know how to cope with different cultures [15].

Organizational structures are mostly horizontal and simple in Flanders, with participatory management, active consensus and delegation of responsibility. Walloons opt for structure, formal organization, clear hierarchical systems and directive leadership. Job titles and ranks are important for Walloons as well as for Flemish.

Finally, stereotypical Belgian values such as motivation and perseverance are appreciated abroad, in combination with their flexibility and down-to-earth attitude. However it also has to be stressed that it's not always 'all work and no play' for a Belgian. They might work a lot but also take time to thoroughly enjoy their (often) scarce free time [11].

4. Attitudes toward work in the two countries

Every individual seeks in a job specific characteristic which motivates him to perform that work. The motivational values of work differ not only from one individual to another but, also, from one culture to another.

For Romanians the most important characteristics of a job are related to security and big earnings [2]. For 75% of the Romanians the security of the job is the most important motivational value. The promotion opportunities, an interesting work, working independently or being helpful to the society are less important characteristics. Between 30% and 43% of the Romanians are driven to work by these characteristics.

On the other side, Belgians are not motivated by the big earnings. Only 18% of the Flemish population consider this aspect as the most important in a job [2]. The safety of the job and doing an interesting work are much more motivating aspects. Despite the fact that only 2% of the Belgians consider that their jobs assure them big earnings [2], they are the second most productive workers in Europe [13].

When asked about the importance of work Romanians have different answers depending on the interviewing conditions. In informal and unstructured situations, many declare that, in general, Romanians are not hard workers, while in structured and formal interviews the respond is completely different. Heintz argues that Romanians work rather for the results of their work than for the work itself [5]. In the services business, the motives of doing a good job lay in the responsibility toward the manager, the co-workers or toward the clients rather than in the responsibility toward a professional demand.

Only 46% of the Romanian place work as the main solution to succeed in society. The rest of the population considered luck and faith as determinants of the successful social adaptation. In the Romanian organizations work is seen as superficial, disorganized, unequal, and efficient only in the presence of superiors [3].

The situation is quite different in the Belgian culture. Belgium is a genuine collective bargaining economy in which a great deal is regulated by agreements between worker and employer representative organizations [13]. In a 2009 study made by the British Psychological Society, Belgians rated themselves higher on competency than they did on warmth [4]. Belgians consider themselves hard workers, with an appreciation for culture [16].

In analyzing work related attitudes and behaviours, we must also take into account

employment commitment. According to the result of the Soros Foundation Study [2], only 6% of the Romanians consider the jobs as being more than just a source of money. 17% of the respondents would still work even if they didn't need money. These low percentages indicate that a third of the Romanian adult population has a low level of employment commitment [2].

Comparative studies show that the Belgians are even less committed to work than Romanians (the calculated index for Belgium is 10 while for Romania is 13) [2]. Still, Belgians have different responses on the two dimensions. 12% of them agree that the job is more than just a source of money, but only 7% would still work if they didn't need the money.

According to the same study, Romanians are more willing to overwork for their organization than Belgians are [2]. This means that Romanians are more committed to their organizations. This result is intriguing if we take into account the fact that Romanians are less satisfied with their jobs than Belgians [2]. A possible explanation of this result might be that the most important characteristic of a job for the Romanians is security. Even though they are not completely satisfied with their job, they do not intend to leave a job that is considered to be safe.

Romanians prefer to work rather for someone else than on their own (63% of the working population prefer to be an employee for someone else and only 30% to work on their own) [2]. The need for safety is also seen in the preference for working in a big company and for the state rather than in a private company [2-5].

Belgians, on the other hand, prefer in a significant greater measure to work in a private company (52% of the investigated population) [2]. In concordance with their stereotypes, they also prefer to work as employee for someone else (65%).

5. Comparative Analysis of Communication Practices at Work

One last aspect that we would like to take into account in this article is related to the cultural differences in the communication practices at work.

Romanians' discursive practices vary between words and silence. In the public speeches, argumentative speeches, or even in the informal situations, communication focuses mainly on the speaker, on what he/she has or want to say, and less on the listener's needs. This tendency is easily observed even in work situations like meetings or in the educational environment [9]. Romanians prefer oral instead of written communication, many business agreements are first made only through oral communication. Face to face communication is preferred to mediated one.

In many communication situations, the degree in which the two interlocutors focus on the information is low: subjects are discussed from a general perspective and the speaker assumes that the listener share the same information as he does.

The persuasive components of the communication lay not in the transmitted information but in the personal relation between the interlocutors [9]. The communication, as well as the work, is governed by the values of interpersonal relation and the desire to keep the personal relation with the interlocutor [5].

Lack of assertive behaviour in communication is a consequence of the previous mentioned prudence. Not stating clearly something leaves the opportunity for modifying the meaning of communication without affecting the personal relation. In some situation questions are seen as a threat and, therefore, the listener avoids asking them.

In Western European countries, such as Belgium, oral tradition is less present than in other cultures. Written communication

is still much preferred. Especially at work, where business communication is even subjected to a set of rules, depending on the goal of the text [8]. E-mail is often used, even in formal situations, whereas face to face contacts are no longer a must. The stress lays on the information of the message. The listener stands critical towards the information he receives and it is common that he reacts and questions the content of the message [12].

As mentioned before, Belgians are fond of clear facts and figures. Therefore the content of the message in formal situations such as lectures and presentations is neutral and objectively approached in order to keep the information from being distorted.

6. Conclusions

Both Romanian and Belgian work related stereotypes and behaviours lay in the cultural particularities and in the main values of the two countries. As part of a collective, short-term oriented and collective culture, Romanians seek security and big earnings in a job. Despite the fact that work is seen most as a source of money and does not motivate through itself, Romanians are not likely to easily leave their job. Romanians behaviour in interpersonal or work situation is still governed by the traditional values. Interpersonal relations are of great importance for Romanians; unwritten rules that govern this type of relations are considered to be the norms for behaving in every kind of situation.

Unlike in Romania, stereotypes about work related behaviour in the Belgian society are grounded, they are productive and more motivated by the nature of the work than by its profit. Like in many other West-European countries, a lot of activities in Belgium are abided by implementation and regulation even though there is a strong sense for freedom of speech, free opinion and tolerance.

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THE TRAINING OF TEACHERS IN A SOCIETY OF INFORMATION AND COMMUNICATION

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Abstract: *This article is focused on the impact of the information and communication society on the teacher and teaching. The contemporary society requires a new type of culture and civilization. The teacher training must redefine itself according to the new standards of society and students' needs. The teacher should be able to create a learning context in which students can develop active and constructive processes of acquiring knowledge and skills that stimulate students to set their goals and take responsibility for their own learning activities and processes. The constructivist paradigm can help the teacher to assume the new role.*

Key words: *teachers training, communication society, competences, innovative teacher, constructivist paradigm.*

1. Introduction

The problem of teacher education and training is a contemporary problem, because the social impact of school and teachers is major. We cannot speak about school without taking into consideration the relationship between society and school.

The contemporary society, which is dominated by change and diversity, by globalization and postmodernist values, affects the school world. The communication society requires a new type of culture and civilization to impose new capacities in order to cope with the change and the information.

Teachers are the main factors who can make the change because they are “forces of changes” [5].

Therefore we need teachers who are innovative, who have social competences, who are able to promote the desirable changes.

The teacher training must redefine itself according with the new teachers' role. The constructivist paradigm is a real solution for teacher training and teacher career development.

2. The Training of Teachers in the Communication Society

The roles of teachers today are more and more complex.

Some roles are being extended (for example the classic role of teaching is today very rich: to teach means more than transmitting information. To teach means to create an adequate learning context, to use ICT, to monitor students' learning, to help students become active participants in learning etc.).

These challenges in teachers' roles and competences determinate challenges in teachers' training. “Undoubtedly, the teaching profession is currently facing new kinds of pressure and undergoing profound

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changes regarding roles, competences, values, the basic knowledge of teacher training, training strategies, the assessment system and professional certification” [11, p. 217].

Today teachers must use collaborative learning strategies, cooperative learning and project-based learning to develop social competences in students. Another requirement for teachers is to integrate and use ICT in schools.

“Teachers will also have to learn how to organize group activities and conduct individual and collective projects, not only with pupils, but also in the context of team work with other teachers, whether single-subject or inter-disciplinary projects.” [3, p. 24]

The teaching profession is facing new kinds of responsibilities, roles and competences. “The teaching profession is currently in a phase of transition, which will end in the emergence of a new type of professionalism” [11, p. 218].

Therefore, the teacher training and teacher education should be matched with the new social demands and students’ needs. The competent teacher is an innovative teacher who is able to make multiple decisions in particular contexts.

A lot of studies approach this topic: who is the innovative teacher? What are the pedagogical qualities of the innovative teacher?

The studies [2], [5], [9] show that the teachers who are reflexive, who promote the educational change and who have a clear self image (a professional self image) are innovative teachers. This type of teacher is very important for school, because he or she can induce an “innovation wind” in school culture.

For example, a research on the way of propagating change into population has demonstrated that: 4% are innovators, 18% follow innovators, 32% are the early

majority, 32% are the late majority, 6 % are conservatory. [9]

It is the same relatively automatic process after the innovators succeed to convince “follows innovators” and they are opinions leaders.

The same conclusion has been emphasized in a national study on the curriculum impact in May-June 2001 in our country. This study has demonstrated that teachers can be classified in: the reformers, the opportunists, the conservatives.[12]

The reformers are consistent in applying the new curricula. They represent $\frac{1}{4}$ of the teachers but they are not encouraged in the institutions.

The opportunists represent $\frac{1}{4}$ of the teachers. They do not oppose and do not promote news. The conservatives represent $\frac{1}{3}$ of the teachers; the youngest and the oldest are yet in the “routine didactic zone”.

The general conclusion is that “the teachers’ culture is dominated by conservatism and conformity”. Because the reformers are few, teachers shall be encouraged and other teachers must be trained to be innovative.

Stenhouse, in a study about teachers as keys to the changes of the curricula, emphasizes three major characteristics that teachers who are involved in the curricula change:

1. permanent self-evaluation as the base for self development
2. skills and desire to study his/ her own didactical behavior
3. concern to introduce in practice new ideas and to evaluate them

Another study shows the correlation between the capacity of reflection and the innovation. [apud. 9]

Fullan identifies four characteristics for a teacher who is “the change agent”: ” I see four core capacities required as a generating foundation for building greater

change capacity: personal vision / building, inquiry, mastery and collaboration” [5, p. 12].

All these opinions underline that the innovator teacher is a teacher who is a change agent, a teacher who learns continuously, who is reflective and has a high level of mastery and collaboration with his colleagues.

We consider that the innovative pedagogical behavior can be analyzed at two levels:

The first level of the innovative didactic behavior is: to use the new assessment methods, the cooperative learning, to develop critical thinking in their students, to develop emotional intelligence in their students, to reflect on the personal didactic level of competences etc.

At the second level, the innovative didactic behavior is: to propose new curricula, new assessment and teaching methods, to develop and test new interactive methods, to develop and account new strategies of self assessment etc. [13].

In other words, the innovative teacher can be “a user of didactic innovation”, this is the first level of innovation or he can be “a producer of didactic innovation” – the second level.

A lot of competent teachers are situated at the first level. The goal of teacher training is to develop the second level of didactic innovation.

The strategy to develop competent and innovative teachers is represented by the constructivist strategies.

The constructivist paradigm represented by J. Piaget, L. S. Vigotski etc. states that cognition must be built by experience.

If the constructivist paradigm is present in students’ learning, then the constructivist paradigm must be present in teacher training and teacher education too.

Because the constructivist learning involves sharing experience and the capacity to reflect on personal learning

strategies, to reflect on personal qualities and weaknesses, it is a strong argument for teacher training.

“Teacher-educators should treat teachers as they expect teachers to treat students” [apud 11, p. 237].

Another aspect of the innovative teacher is the school culture. This can promote or stop the innovation in school.

It is necessary to create what Rosenholtz calls: “a dynamic school”, which consists of: a high level of agreement, high level of abnegation, collaboration, cohesion, rich learning, certainty of pedagogy. [apud 7, p. 106]. The teachers need a culture of change.

The constructivist paradigm in teacher education and teacher career development is a real solution to produce an innovative teacher who creates a culture of changes.

3. Research Design

We were interested in identifying the characteristics of innovative teachers, the impact of school culture for innovative teachers and the training for innovative teachers.

The research has been developed over three years and 200 teachers, 200 students and two schools have been involved.

In this paper we present only the experiment with the teachers involved in constructivist teacher training. We organized a natural experiment with 100 in-service teachers who were involved in a teacher training.

Our general hypothesis was this: if the teachers follow a constructivist training to examine personal pedagogical behaviour, then they became teachers with a clear professional self image and consequently, innovative teachers.

The dependent variable was the professional self-image and the independent variable was the constructivist teacher training program. The variables were measured at the beginning and at the

end of the teacher training program. The methods which were used were: the test “Who I am”, the participative observation, the interview.

We applied a teacher training program basis of constructivist paradigm. We used a test called “I, the teacher”, who was adapted from the test “Who I am”. The test is adequate for our goal because it invited the teachers to know themselves, to reflect on themselves and helped us know the level of self image of the teachers.

The teachers must be able to critically analyze personal didactic behaviour (personal pedagogical values, motivation, didactic style etc) in a composition with the title “I, the teacher ...”. The test was applied at the beginning and after the training program.

The training program targeted goals such as:

- to develop the capacity of reflection

- to develop critical thinking on personal didactic behaviour
- to develop motivation to progress in teaching career
- to develop innovative didactic behaviour
- to develop the consciousness of teaching identity

The training program used critical thinking methods and the teachers were asked to reflect on their teaching style, assessment style, communication style, their didactical qualities and weakness.

We analyzed the compositions from a qualitative and quantitative point of view.

4. Results and Discussions

The quantitative results show that at the beginning of the training program the capacity of reflection was weak. The frequencies of topic are presented in table 1.

The frequency of topics at the beginning of the training program

Table 1

Topics in teachers' composition	Frequency
1. Personal qualities	68%
2. Teaching behaviour	67%
3. Teaching motivation	65%
4. Relationship with students	63%
5. Professional identity	60%
6. Career progress	55%

After the training program, the composition was more profound and the approach more professional. The results are presented in table 2.

The frequency of topics after the training program

Table 2

Topics in teachers' composition	Frequency
1. Lifelong learning	55%
2. The extended didactic experience	50%
3. Share the didactic experience	48%
4. Personal qualities	45%
5. Teaching behaviour	44%
6. Relationship with students	40%

The qualitative analysis shows that the composition style has changed at the end of the training program.

If at the beginning, the composition style was formal and superficial, in the end, after reflection and critical analysis of personal didactic behaviour, the composition style was deeper and more professional.

We reproduce a fragment of a teacher's composition: "I can say that I have learned something new. We must continue to change ourselves. We must have the courage to give opinions as we give them in this course." (U.M. S.)

Another fragment of the teacher's composition is important: "I am 50 years old and I understand that I must change my attitude. I should be more tolerant and creative. I should be a partner for my students" (I.F.)

This result was confirmed by the observation which we used. We wrote down the number of active participants of debates and the contents of the debates.

The content of debates was centred on teachers' needs: to share didactic experiences, to collaborate with colleagues, to develop the didactic competences, to develop a teaching career.

The results show that the teacher training must begin by clarifying the professional identity, which is the core of didactic professionalism. Regarding the priorities in the continuous training of the teaching staff, modernisation of the training ways and methods plays a very important role. Thus the constructivist paradigm is a real solution for teacher training and trainers' training.

When teachers are aware of their role and responsibilities, they can engage their students in exploring and constructing the knowledge and positive attitudes of

learning.

Thus the continuous professional development is a necessity for all today's teachers.

"Creativity and creative self image can be developed and nurtured to a great extent through professional development." [apud. 10, p. 56].

4. Conclusions

The results of our research show that the teachers who were involved in a constructivist teacher training program have developed their capacity of reflection and the motivation to progress in their teaching career. This training program offered the opportunity to reflect and develop personal pedagogical behaviour, including innovative behaviour.

The constructivist training can help the teacher to assume the new role as partner, co-learner with his students.

The majority of teachers have expressed the need to share the didactic experience with their colleagues: they need to experiment the constructivist learning in teacher education and teacher training: they need the constructivist trainer and the constructivist school culture. The training program offers the opportunity to ask themselves about their professional identity and professional competences.

A training program based on development of innovative behaviour is necessary in our contemporary society, because "unless teachers are seen as agents of innovation in the educational system, it will be very difficult for them to hold on to an important role in schooling at all" [8, p. 244].

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SOCIAL WORK

ROLE OF THE FAMILY AND OF THE SOCIAL SERVICES IN ELDERLY PERSONS' LIFE

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Abstract: *The structure of the ego, the manner in which there are exercised the person's needs and impulses in his/her relations with the environment, meets, once with the retirement, a new psychological context. This way, the retired person enters a crisis of the interests and of the professional capacities trained up to the retirement, to which there adds the prestige crisis. This paper brings to the forefront the elderly person's identity, which may be maintained or modified by the persons whom the former interacts with.*

Key words: *elderly person's identity, "the nestle emptying", volunteering, elderly employees.*

1. Introduction

Longevity, associated with as good a health of elderly persons as possible, creates conditions for the period after retirement to become longer and longer, a positive thing, which brings however a series of problems. One of the problems refers to the funds of the social insurance, both for health, and retirement, the necessity of which is ever-increasing. Another major problem within a society with a high percentage of the elderly population is connected to the constitution of a social and occupational frame for elderly persons, so that these ones might lead a civilized life. The researches in the field reveal the fact that the elderly persons and couples undergo a diminution of the living standard, in the majority of cases [9]. To these there adds a special social-psychological situation, that we may have difficultly in understanding unless we experience it. This is the professional unemployment, the retirement from the

work of the persons who are still capable, available both intellectually and culturally. Subjectively driven in a process of recovery of the structures of the personality and of the self awareness through the dissolution of the professional sub-identity, third age persons are for society a source of experience, intelligence, aptitudes, which, within contemporary world, are totally neglected.

2. Family – Factor of Maintenance of the Elderly Person's Identity

For the elderly persons, family constitutes itself in a vital, essential factor, its behaviour considerably influencing their state of health, the quality of life and their life expectation. The family and the appurtenance group maintain in elderly persons the viable condition of identity and the appurtenance to the self awareness.

In order to understand the familial system, we have to note its members' behaviour in time [4]. Much of what we do

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daily is due to habit, which may be transmitted from one generation to the other. Consequently, the nature of the domestic organization or disorganization, the adopted roles, the distribution of the tasks within the family, the manners of communication, as well as of verbal and non-verbal expression of the feelings, have to be taken into consideration when we explore the signification between interaction and elderly persons.

In the second part of life, any person goes through several stages [4]:

- “the nestle emptying”, after the children leave the parental home and move alone;
- crisis of the middle age which, both for women and men, occurs between 35-55 years old;
- preparation for retirement, between 55-64 years old;
- retirement or “the youngest elder age”, between 65-74 years old;
- elder age, between 75-84 years old;
- eldest age, between 85 years old;
- outlining of death, as certain event in non-predictable time.

These stages are characterized both by the feeling of loss, and by the feeling of gain: loss of the children who leave home and gain of a greater comfort and space. The modality in which the respective person perceives the changes may be influenced by the manner in which the other members of the family and the society perceive them.

The person’s retirement from the professional activity and from the afferent social circuits incurs upon himself/herself the restriction and the loss of the professional and social responsibility, which determines an accentuated focus upon the family relation, where he/she finds, many a time, insufficient understanding.

The conclusion has been reached that the system of family relations, the

psychological and affective climate influence the development and the formation of the young generation, the health of the middle generation and pre-eminently of the elderly generation.

The mutations appeared in the family, due to the evolution of contemporary society, brought about the change of the elderly persons’ familial status and of the roles deriving from this status (rights, responsibilities, authority, degrees of autonomy). There were also produced changes in the attitude of the “non-elderly members of the family”, who no longer observe the elderly person’s anterior status, thereupon adding the brusqueness, the tactlessness and the lack of training with whom these changes are made [1].

The family is the place for learning affectivity, for the mutual comprehension of the feelings (listening, self-giving), but also of the conflicts (aggressiveness, despise, irony, neglect).

Only a warm familial climate may delimitate a balanced, complete and happy life for one’s own person and for the rest. Many a time, a conflicting reality lies at the basis of an institutional placement of the elderly persons, the family hiding, in this case, the real motives for the placement. Another important element that intervenes in the elderly person’s relation with the world is his/her deficit, on the somatic and psychic level. Likewise, the restriction of the activity field implies the restriction of the relational field, and the elderly person focuses his/her entire attention on the family and on the relations within it.

In the families in which there are elderly persons, there may come up a series of problems with respect to who is responsible. For many years there may have been a relationship of friendship between two generations of adults within a family, each one leading one’s own existence independently. However, a crisis

or an event more or less expected may intervene and change this relation into one of interdependence. The experience of turning from a child into an adult entails taking over the filial responsibility towards a parent or an elderly relative. In order to describe this stage as interdependence, we have to admit (according to the theory of the transactional analysis) the reversal of the roles, the child turned into an adult being the one who takes care of his/her parent.

To take care and to assume one's responsibility for one vulnerable elderly person implies the existence of a considerable moral courage, courage which tends to appear especially in women. It is a complex experience, which reunites love and affection with duty and obligation. Moral courage is also necessary in the case of the elderly persons who have to realize what is happening and not to oppose.

The harmonization of the relations between generations is very important in order to positively influence the elderly persons' adaptive capacity and entails:

- adaptation of the family members to the elderly person's behaviour modifications and not the opposite;
- enhancement of the positive features given by age;
- comprehensive attitude towards the negative notes of growing older;
- taking into consideration that growing older is hard to experience even by the elder person himself/herself.

The adequate behaviour of the family towards an elderly person entails the observance of certain rules [1]:

- maintaining a field of initiative within the family for the elderly persons;
- taking into consideration the elderly persons' opinions;
- solicitation towards attempting to overcome the frustrations specific to the age;

- motivational driving into useful activities.

Family has to offer to the elderly person a protective climate of equilibrium through avoiding conflict, the psycho-affective traumas, the affective deficiencies and frustrations, as well as the factors of over or under-solicitation.

Family, which takes over all elderly person's tasks makes him/her feel useless. The state of sickness and the intra-familial conflicts generate behaviour troubles, a fact which obliges to ensuring an adequate emotional support for the entire family.

The impact of the attendance granted to an elderly person depending on the family member taking care of him/her, also depends on every one's personality, on the personal values and on the relation existing previous to the stage of attendance.

3. Role of Social Services in Modifying the Elderly Persons' Identity

The attention granted nowadays to oldness is equivalent to adopting new approaches: a conception upon development that lasts during the entire life, the idea of a change possible at all ages, individual and familial evolving tasks that have to be stimulated and supported.

Working with elderly persons is not very easy. There have to be equally taken into consideration both the capacity of the context to promote well-being, reciprocal exchange, integration between generations, groups, subjects, as well as every individual's competences, every one having his/her own history, motivations, creative and evolving potential that he/she may consume in the context of the most intimate relations and in the wider context of society [10].

Although habitude makes us think that life identifies with traditional domicile, with family, and the institution with their denial, with the end, the death, the two

alternatives coexist [2]. Current services of social assistance for elderly persons are:

- community attendance
- geriatric universities
- occupational therapy
- geriatric club
- protected dwelling
- social pharmacy
- social washing
- "wheeled" warm meal
- centres for collecting and redistributing the prostheses, the materials necessary for the dependent elderly persons with no possibilities;
- daily centre for elderly persons
- temporary housing
- institutionalization
- animation

As it may be noted, social services are aimed either at institutionalizing or at maintaining elderly persons in the community, although these are not always viable solutions. We cannot say that an elderly person, isolated in his/her own house, who has few social contacts, is less dependent than a person within a residential centre of attendance and assistance.

The elderly persons' social assistance is regulated, in Romania, through the Law nr. 17/2000 and especially aims at evaluating the situation of the elderly persons who need attendance.

The elderly persons' needs will be evaluated through the social inquiry, which is elaborated on the basis of the data with respect to the affections that require special attendance, to the capacity of setting up house and of fulfilling the natural requirements of everyday life, to the dwelling conditions as well as to the effective or potential income considered minimal for ensuring the current needs of life.

The services for elderly persons are carried out with their assent and they aim at:

- temporary attendance;
- temporary or permanent attendance in a hostel for elderly persons;
- attendance in daily centres, clubs for elderly persons, houses for temporary attendance, apartments and social dwellings, and so on and so forth.

The best and the most efficient attendance is the one offered in one's own family and the community one (in the social environments of origin, among his/her neighbours and fellow citizens that the elderly persons know and with whom they have lived along time). There are however difficulties in ensuring such an attendance from various reasons:

- the original families broke apart;
- the children went across the country and even abroad;
- even if some children are close from the spatial standpoint, they may be very far from the affective-human standpoint (they refuse their own parents, they chase them away from their own dwellings);
- other relatives have their own problems and even if they want, they cannot engage in such problems;
- the neighbours do not take over such responsibilities.

Despite the effort of putting into practise the maintenance to one's home, the institutions with beds remain a necessary reality for the cases who cannot benefit from the attendance to one's home.

The hostel for elderly persons is the institution of social assistance which ensures the adequate conditions of housing and food, medical attendance, recovery and re-adaptation, activities of ergo-therapy and spending the spare time, social and psychological attendance. These hostels function with sections for: dependent persons; semi-dependent persons; persons who are not dependent.

The main objectives of a hostel are:

- to ensure for elderly persons the maximum possible of autonomy and safety;
- to offer attendance conditions that should observe the elderly person's identity, integrity and dignity;
- to allow the maintenance or the amelioration of the elderly persons' physical and intellectual capacities;
- to stimulate the elderly persons' participation in social life;
- to facilitate and to encourage the inter-human connections, inclusively with the elderly persons' families;
- to ensure the necessary supervision and medical attendance, in compliance with the regulations with respect to the social health insurances;
- to prevent and to treat the consequences in connection to the ageing process.

The services guaranteed for elderly persons within residential centres are:

- social services that consist in: help for the householding; judicial and administrative counselling; modalities for preventing the social marginalization and for social reintegration in relation to the psycho-affective capacity;
- socio-medical services that consist in: help towards maintaining or readapting the physical or intellectual capacities; ensuring programs of ergo-therapy; support for accomplishing the body hygiene;
- medical services that consist in: consultations and treatments at the medical cabinet, within specialized institutions or at the person's bed, in case they is immobilized; services of attendance-nursing; provision with medication; provision with medical devices; dental consultations and attendance.

The social and medical-social activities are monitored and evaluated by the specialized staff within the apparatuses of

the local counsels and of the general directions of labour and social solidarity.

The decision with respect to the long-term institutionalization is a very hard decision which has to be elaborated by a multidisciplinary team consisting of a social assistant, medic, psychologist and of course the elderly person in cause, eventually his family too.

The causes of the institutionalization in the long term are [3]:

- loneliness and the lack of the support network;
- elderly person's manifest desire;
- absence of the incomes;
- different chronic affections;
- physical and mental handicaps;
- loss of one's dwelling;
- lack of adaptation in the framework of the services to one's abode;
- "crisis" in the original family;
- immobilization to bed;
- domestic violence or of those who undertook to attend to the elderly person.

These causes interfere; mostly the causes of the institutionalization are multiple, which makes the institutionalization decision to be very difficult.

The institutionalization decision has psychical, moral, financial repercussions and modifies the elderly person's identity. This way, from an energetic, active person, with plans and responsibilities during the life before the institutionalization, the elderly person may turn into a passive person, with no motivation, with no activities, only waiting for the time to pass.

Here are a few descriptions of the day to day life made by institutionalized elderly persons (research 2007):

*"A **bleak** day, I have no purpose, no thirst for life".*

"Always the awakening "early in the morning", specific to our age, I watch TV, the morning news, afterwards I am brought the meal, after which I start

*reading a magazine or a newspaper and, for the rest, again television, meal, exchange of opinions with my roommate, a little exercise not to atrophy myself completely and sleep at leisure. And here passed another day of **my miserable life**".*

The same research enhanced the activities developed by institutionalized elderly persons (multiple answer):

- household labours: 7.5%
- audition/visioning radio/TV: 20%
- walking: 25%
- frequentation of the church: 20%
- crocheting/knitting: 7,5%
- excursions: 12.5%
- festive meals with different occasions (anniversaries, Christmas, New Year's Eve, Easter): 7.5%
- visits to relatives/friends: 15%.

Being asked what other activities they would like to unfold, there was surprising the fact that part of the subjects would rather do "nothing": "I am tired and sick". The subjects blamed their lack of activity at the expense of the sickness and of the age, however those who are still active and have different physical activities (for instance gardening, excursions, maintenance gymnastics) criticize and blame them. .

Elderly persons, because of the fact that they do not participate in various activities, do not structure their program, so as to be active and useful, perceive their own life as monotonous "with no purpose".

On the other hand, the other services offered to elderly persons may be labelled, through their very destination: for elderly persons. There is possible to reach the situation of subculture formation, there being known the fact that subcultures form under two sets of circumstances [7]:

- when people share the same interests, problems and preoccupations or when they have long term friendships ;
- when groups of people are excluded from full participation within society.

In order to see which are the elderly persons' desires in relation to their identity, to their past, present and future, it is necessary to ask them in the first place what they want.

The request made by groups of elderly people is to be offered more instruments of knowledge, of communication so as to participate actively in the concrete aspects of everyday life within the appurtenance community. This means, not necessarily universities for elderly persons because, as [8] noted, long life formation and education may induce, on one hand the fear of much too pressing experiences, through the characteristics of novelty and modernity, and on the other hand, the lack of interest for re-experiencing the periods within traditional school, in the framework of a totally asymmetrical relation between professor and student.

Within a field research with respect to making up a project for a centre of meeting and association for elderly persons, there was noted that the persons were interested in a project for a type of open centre for adult and elderly persons, without excluding moments consecrated to the young persons. This way, the majority underlined that the exchange between generations focused on common interests could be reciprocally enhanced. Likewise, elderly persons also thought the respective centre as a place open for persons in difficulty, both the psychological and on the physical level. They wanted the centre to pertain to the entire community, not to be exclusively a club for elderly persons. [10].

The promotion of the newly retired persons' abilities is a point upon which also Marshall insisted [5]. Retired persons should be the "spine" of the different organizations of volunteers, from the gardening clubs, to the charitable activities and to friends of the museums. They represent a vital dynamic force for any

activity situated beyond everyday toil of work. In developed countries, where ageing has been intensely studied for a few decades, the volunteering is seen as a main activity of the independent elderly persons.

However, the employment in socially useful occupations and the employment in volunteering to the persons' benefit are fields that were considered, with an excessive superficiality, as a panacea for filling the gap that unexpectedly occurred in the "young" retired person's life [10].

In order to contribute to the promotion of volunteering among elderly persons, in order to make them collaborate for developing initiatives, it is necessary for us to start from the acquisition of a cultural attitude, which makes us acknowledge the volunteers' action, as seen by Melluci [10]: "a vital component of the renewal process, of a «civil society» worthy of this name: *civitas publica*, and individual at the same time, capable of leaving the diversity to manifest itself and to consolidate solidarity" (p. 355).

4. Conclusions

People often associate ageing with the loss of sensory capacities and mobility changes; however, for the majority of the elderly persons, these changes are neither so cumbersome, nor so obvious as we might imagine. After having successfully faced the events during life, elderly persons give signs of resistance from a physical and emotional point of view. The confirmation of this fact lies in the beliefs of the Asians and of the inhabitants of the Pacific islands, who see elderly persons as "those who take the decisions in the family and who are the depositaries of the familial and cultural wisdom" [6] (p.279).

Nevertheless, ageing also supposes the existence of opportunities, such as:

- once with ageing, there changes the manner in which we think, we form relations with the others;

- ageing does not suppose more elderly persons to attend to, but more mentors;
- elderly persons are a valuable source, they do not represent our connection with the past, they also are our connection with the future through their experience and through their appurtenance to the national traditions and values.

There is necessary to admit that elderly persons bring important contributions to society; if we remove the existing barriers and if we create more opportunities for them, so that they should offer more of their wisdom, creativity, experience and knowledge, they will contribute even more. An example in this respect is represented by elderly employees, who are an important mass of human capital.

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IMMIGRANTS IN ITALY AND THEIR RIGHT TO HEALTH SERVICES: THE IMPORTANCE OF HEALTH SERVICES FOR AN EASIER INTEGRATION

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Abstract: *This article aims to show how the legislator has outlined a regulatory framework putting forward a diversified regulation that goes from equal treatment for both citizens and non citizens to insuring a basic package of health services also to those people who are residing illegally (calling it a grading of health protection). And it is pointed out that an immigrant's right to health is a preferential case as regards the concept of "social citizenship" that goes beyond the status civitatis as well as beyond the workings of equality which is supreme principle for everybody.*

Key words: *right to health – grading of health protection – patchy services.*

1. Migration and Integration for Accessing Health Services

Migration from economically and socially underprivileged countries is a global phenomenon that registers millions of immigrants in many parts of Europe. In Italy, where there is no strong tradition of immigration, unlike countries such as France, England and Belgium, the problem of immigration has taken on significant proportions only after the 80s. There have been some closely linked factors leading to an increase in the presence of immigrants in Italy: geographical location, with extensive boundaries, in an area that has strong migratory pressure (close to the continents of Africa and Asia); a *flow plan* that is quantitatively weak and operationally ineffective, a phase of economic recession and of restrictive policies activated by Central-North European countries that are directed towards shifting the flow of immigrants

towards the European countries in the Mediterranean region [2].

In the past ten years, in subsequent attempts, a *necessary* regulatory framework concerning immigration has been brought to perfection in Italy. However, this framework does not seem to be quite clear and defined and does not help the current circumstances as it states that even other European countries do not have a specific and satisfactory legal framework. Perhaps, even for this reason, in a report on the health conditions of immigrants in Europe and in a recent essay published by *Eurohealth*, it was underlined how little is known about the access to health services by 35-40 million foreigners living in Europe [3]. In all member States, immigrants are identified as subjects that risk poverty and social exclusion, but despite this knowledge, no country is able to provide a sufficiently detailed analysis of the factors that lead to these conditions.

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If health is a useful indicator to better understand the willingness to accommodate and to the degree of social integration that a member state can offer, in that case it is worth indicating the poor attention that Europe pays to the political policies for immigrants. It is a disregard that today is considered unacceptable from a European integration as well as from a human rights perspective. One must not forget that the phenomenon of migration, though controlled (more or less restrictively, keeping in mind all the political, social and economic elements related to each country), brings along with it social and cultural needs which institutions at every level have to face with adequate measures of social inclusion in different sectors and above all in the health sector [4]. Hence the rise in an interest in integration policies and especially in the legal framework which represents the starting point of every serious and long lasting system for receiving immigrants.

2. The Right to Health for Foreigners in Italy: is Care and Treatment Different?

Regarding immigrants' access to health services, only in 1998 was the total right to health provided to foreigners in Italy in two respects, as in art.32 of the Constitution, which states it as a fundamental right and of interest to society. The *constitutional vision* entails that the right to health cannot be limited to citizenship and that all those living on national territory have to be guaranteed the best health care in the safeguard of public health. Constitutional jurisprudence has always acted upon these lines which also states that health care has the role of public service and it refers to a subject's total and unconditional right: and as such, citizenship has no relevance to a user of the national healthcare system. Precise regulations, regarding procedures for

foreigners to access the services provided by the National Health Service can be found in Law no. 40 of 1998 which has been merged with the Unified Body of law on immigration [5] and with the subsequent implementation act (Presidential Decree no. 394/99): immigrants, who have regular permits are included in the healthcare services with full rights which are at par with those of the Italian citizens. A part of these measures are likewise extended to those who are present in Italy without legal stay permits or are clandestine depending on the rules summarized later.

The present healthcare framework for foreigners is in the form of a package of measures that have been diversified according to the foreigner's *status*. Depending on the above-mentioned Implementation Rule, it is best to distinguish above all measures for *foreign citizens belonging to the European Community*, and among these it is worth pointing out the services provided to European citizens who are legally resident in Italy. Foreigners having European Union citizenship and who are legally residing in Italy are obligatorily registered with the NHS and are at par with Italian citizens. Registration with the NHS gives the right to freely choose a family doctor or paediatrician; to specialist treatment prescribed by family doctor or paediatrician (but unnecessary for dentistry, gynaecology and obstetrics, paediatrics and ophthalmology) paying, where required, a prescription charge; normal admission and day hospital; pharmaceutical drug assistance (for purchasing medicines). Registration is made at the Local Health Authority (basic public health offices, LHA) where the subject is resident and covers the entire time period of the residence permit or card for the holder and his or her family [16]. Special regulations also exist for the

so-called *brief stay period*: the European Union citizens can directly access health services by showing their “European health insurance card” [7].

Then, there is a category of *foreigners who do not belong to the European Union and, stateless people*. Among these there are foreigners who have regular stay permits and have requested renewal of their stay permits (art. 34 TU) [8]. They have the obligation/right to register with the NHS and are at par with Italian citizens as regards healthcare provided by the NHS (including assistance to their families legally settled in Italy) when they find themselves in the following situations: self employment, subordinate employment, enrolled on the unemployment list, family motives and family reuniting, political asylum, humanitarian asylum [9]; request for both political and humanitarian asylum [10]; awaiting adoption, in foster care and purchasing citizenship and health problems [11].

As regards providing *healthcare to foreign prisoners*, regulation no. 230 of Decree 22/6/1999 is in force, which states that all foreign prisoners (legal or clandestine) under part-time detention or those are undergoing alternative measures to their sentences, be registered with the NHS during their detention period. They are at par in terms of rights with free citizens and are exempt from paying the prescription charge.

The current regulation in force likewise provides for *a voluntary registration scheme with the NHS*. This registration can be requested by: 1. on payment foreigners with legal stay permits having a duration of more than three months but who do not come under those who by right are registered with the NHS; 2. from foreigners staying for study reasons and from those working as *au pair*, even if they hold a stay permit that is less than three months.

As regards *foreigners staying without NHS registration or rather foreigners holding a stay permit not above three months* and not registered with the NHS they are provided services by the NHS on full payment of related services [12]. For foreigners who are waiting for their legal stay permits, their case is entrusted to Regional regulations. Finally, there are rules for *foreigners without regular stay permits with entry and stay regulations* [13]. In these cases, whenever foreigners are not economically self-sufficient, healthcare is guaranteed by a card having an STP code (Temporary Stay Foreigners) which is issued by a Local Health Authority (LHA), General Hospital Authority, Italian scientific and education research activities (IRCCS) and the University Hospital. The card is issued on the condition that the subjects declare that they are not economically self-sufficient. They have to fill in a form provided by the Health Ministry which is then filed by the issuing authority. No identity card is required to fill in this form, and the information registered by the authority is protected under the current privacy regulation. In fact, as for Italian citizens, access to health services does in no way lead to any notification, except in cases where the report is obligatory [14]. Foreigners who do not have legal entry and stay permits are insured in public accredited health facilities, emergency or essential treatments in clinics and hospitals for illnesses and accidents even if continuative. Preventive medicine for safeguarding individual and collective health (art. 35 TU) is extended to them too. Except for the prescription charge, the following measures are particularly guaranteed by the NHS: social safeguarding pregnancy and maternity, at par with Italian citizens in terms of treatment; safeguarding the health of minors; health assistance for preventive

medicine; prophylaxis, diagnosis and cure for infectious diseases; vaccinations done according to regulations and, in the context of assistance and collective prevention campaigns authorized by the Regions which are carried out by NHS vaccine centres. Foreigners who have an STP card are exempt from paying their quota and are at par with Italian citizens in the following cases: first level and emergency health services; pregnancy; diseases exempt from payment; having an age below 6 and above 65 (if less than a certain income); serious incapacitating condition; clinical tests and medicines connected to pathologies according to Ministerial Decree DM 329/99 [15].

3. Implementation and Qualification of the Right to Health for Foreigners. A First Report Ten Years after the Issuance of the Unified Body of Law

Almost ten years after an organized regulation on the rights of immigrants was issued, many questions still remain unanswered. In particular, as regards the right to health, which is a guaranteed constitutional right, immigrant citizens face some difficulties in relation to their possibility of accessing health services. These regard difficulties connected to the interpretation of psycho-social discomfort in cultural terms that is borne by the immigrant, as well as difficulties having juridical origins. This probably occurs because health is the result of a series of factors - genetic, personal, social, cultural and environmental - and its safeguarding is influenced by different elements, such as: everybody's health needs and the consequent availability of resources, need for treatments, technological and organizational innovations and the political, institutional and economic context.

Concrete measures to eliminate the above-mentioned difficulties exist and they

can also be identified in all NHS' action plans issued in the past few years both at a national as well as local level. For further clarification the "National Health Plan from 1998-2000 can be consulted". For the first time, the health of the immigrants is recognized as a primary objective by the NHS with the effort to boost activities for the development of intersectorial policies that are meant to safeguard it. These activities involve: drawing up of systematic instruments of recognition, monitoring and assessment of the immigrants' health needs; health operators' training that is aimed at intercultural approaches for safeguarding their health; organizing assistance aimed to encourage the immigrant to turn immediately to health services and compatibility to their cultural identity. Attention given to these issues is evident also in the subsequent three-year Health Programs. There is a plan to make public health service visible and easily practicable for everyone. From this viewpoint, many planned actions are aimed at increasing the spread of information on health services actually offered by the health facilities in the country. Moreover, more effort has been asked for in the field of personnel training not only for an in-depth study of the legislation but also for acquiring competence in relationships with different cultural contexts. Then, with the objective of socio-health integration, identification of the right personnel is required in order to be able to relate with immigrants in each Local Health Authority. However, at a juridical level, it is important to note how the decisions of legislative policy regarding the health of a foreigner comes within a framework of revising the concept of "citizenship" that goes beyond the legal-formal notion of citizenship itself which is based on the assumption that the citizen belongs to the State (*rectius* based on a stable relationship with the country and its

institutions). Today, right to health (which practically is the same for all fundamental rights) seems to be bound to a concept of a more fundamental citizenship, to a *way of existence* of the individual, that is interpreted in legally attributing specific rights and duties following the idea of the citizen that the illuminists had in the 18th century: one was not a citizen just because he/she belonged to the population of a State, but because he/she held a wealth of rights and duties. From this angle, the rights *of the citizen* will always be more and more meant as the rights *of man*, in this way making less significant, within possible limits, the difference between citizens and non-citizens (foreigners) [16]. Closely examining the current regulation on the rights of immigrants leads us to affirm that the legislator definitely takes into account this new perspective [17]. We can take a look at the provision that “allows a foreigner at the country’s border or within the national territory to have his fundamental rights recognized which are provided by the regulations of internal right, by international conventions in force and by the principles of generally recognized international right” (art. 2 1° comma, T.U.): where reference to “foreigners” is applied “to citizens of States who do not belong to the European Union and, to the Stateless” (art. 1, 1° comma, T.U.) [18]. As far as health services are concerned, we have seen in previous pages, how the safeguarding of a foreigner’s health is disciplined by the legislator in different ways on the basis of the subject’s *status*. Nonetheless, this protection must never go under a *basic package* for all, otherwise it damages the constitutional principle of human dignity. This differentiation in safeguarding is due to the fact that a foreigner’s right to health, as that of the citizen, forms part of the other rights, and turns out to be “influenced” according to the resources

available [19]. The legislator will therefore be able to legitimately treat a foreigner differently compared to a citizen, but only in the context of decisions that are politically reasonable without damaging his/her major fundamental rights. As such, we agree with those who affirm that an immigrant’s right to health is a preferential case as regards the concept of “social citizenship” that goes beyond the *status civitatis* as well as beyond the workings of equality which is supreme principle for everybody [20].

4. Grading of Health Services and a Basic Healthcare Package: Effectiveness of Safeguarding an Immigrant’s Health and Recent Proposals for Modifying the Juridical Framework

As seen before regarding the exercise of the right to health, the legislator has outlined a regulatory framework putting forward a diversified regulation that goes from equal treatment for both citizens and non citizens to insuring a basic package of health services also to those people who are residing illegally (calling it a *grading of health protection*). This is in consideration of the fact that the right to health, fundamentally unsuppressable, is a right of an individual. The possibility for immigrants to safeguard their health constitutes a significant aspect in the integration process and, giving value to human capital in the country [21] is an integrating part of a strategy. Putting into action this right implies that foreigners have the possibility to access and use health services at par with other citizens, taking account of the cultural and social peculiarities wherever possible. To this end, for some years the regulations have allowed administrators and other operators to adopt concrete measures for making the above rights effective. In quite a few instances investment has been made by

introducing cultural mediators and by opening counters or offices in local health facilities in addition to other ad hoc institutions [22]. Thanks to these kinds of initiatives, there has been an increased awareness among immigrants about what it means to safeguard their right to health and about the ways and means to access health services. This awareness has increased also because of the information that has been spread through health facilities and other immigrant get together public places[23].

However, if on the one hand it is true that in the course of the past few years the conditions for accessing health services have improved, it is also evident that there is a “patchy” situation where some areas in Italy are well equipped while others are less or poorly equipped. In the latter case, poor awareness of regulations, complexity regarding distribution of services and the presence of strict rules on access to health services, makes it difficult to even inform the users on the services that are being made available. The socio-health operators themselves do not know the provisions and lack training and professional support necessary to face users who come from diverse cultural backgrounds.[24] It is therefore clear how the impact of immigration on health services at medium term depends, and will always depend more and more, on the ability of the local operators to integrate health, environmental, town, work and social policies, even though the competence of laying down the general rules and measures in terms of immigration is entrusted to the State [25]. Moreover, it is on the effects of the actions of public/local dichotomy that significant incongruence can come to pass. As regards the growing demand for health services by foreign citizens, on the one hand local health authorities are notably sensitive, i.e., in a local health authority, the quality and access to services for foreigners depend

more and more on the work of the managers and on their ability to put forward effective actions locally and admirable results have also been seen. But on the other hand one cannot deny the fact that there is a widespread feeling of refusal and fear towards immigrants whose presence is growing together with their increasing demand for services. This *refusal* has been perceived by some political forces (that are presently in majority and therefore in power), and has been translated into legislative proposals such as the much discussed amendment i.e., the so-called “security package” (a series of measures in order to *oppose the widespread phenomena of widespread illegality linked to illegal immigration and organized criminality*) that no longer prohibits doctors and other operators to report to the police foreigners without legal stay permits who come to the health facilities: a prohibition that factually translates into a limitation to access medical treatment for illegal foreigners and therefore to actually exercising their right to health [26]. As such, it does not surprise us so much when we talk about the effectiveness of the right to health for immigrants in Italy. We use the expression “patchy” to mean services that are available only here and there but not everywhere. Differences from area to area exist depending on the way the regulations are implemented and on how provisions, policies, organization and human willingness are concretely composed. We can neither ignore the fact that with respect to the overall efforts made at local level (i.e., those who are mostly in contact with the world of immigrants) to improve integration between Italian citizens and non Italian citizens, the presence of an opinion change by the public legislator can negatively influence the progress of integration or the slowing down of its implementation. It is certain that our

system – the Constitution first of all – has overcome the distinction between citizens and foreigners and has recognized the exercise of fundamental liberties and basic social rights (healthcare and education) to the individual irrespective of his or her nationality. However, the management of health policies for the immigrant requires concrete actions and no backing out. They definitely have to start, even for reasons of subsidiarity principle, from the local level which will always have to look more to the type of immigration that involves the local area along with its level of total wellbeing because health cannot simply mean medical treatment results but is made up of different elements that are strictly related to each other, such as the subject's history, social structure, culture and country of origin, social position and exposure to risk or protection factors.

Notes

1. Dipartimento di Scienze sociali, Facoltà di Economia "G. Fuà", Università Politecnica Marche, Ancona, Italy.
2. To get an idea of the impact of immigration in our country, it is sufficient to note that, according to ISTAT data updated to 1 January 2006, in the last 10 years, foreign resident population has increased to about 2 million people. ISTAT estimated that at the beginning of 2008 there would be 3.5 million foreign nationals residing in Italy (5.8 per cent of the total residents), an increase in the last year of over 454 thousand, the highest value recorded so far in our country (Source: ISTAT Report 2007).
3. European Commission, DG Employment and Social Affairs, under the European Observatory on the Social Situation, under the project Health Status and Living Conditions (VC/2004/0465);. Mladovsky P in <http://lse.ac.uk/collections/LSEHealth/pdf/eurohealth/VOL13No1/Mladovsky.pdf>. At Community level, it should be remembered that, in early 2005, the Commission drew attention to immigration with the Green Paper on EU approach to managing economic migration.
4. See De Angelis M., Gli immigrati e il diritto alla salute tra effettività e problematiche giuridiche, in *Passaggi di liberazione. Atti dei seminari formativi del progetto "Diritto d'accesso"*, a cura di Mancini R., EUM, Macerata, 2008, *passim*.
5. Decreto Legislativo 25 luglio 1998, n. 286, in *Gazzetta Ufficiale* n. 191 del 18 agosto 1998 - n. 139.
6. For registration, an EU citizen must submit: the permit or residence card, the residence certificate, the tax code to the LHA. It is important to point out that from 11 April 2007 (d. lgs. February 2007, n.30, accomplishment of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States) EU citizens who wish to settle in Italy, or in another state of the European Union, no longer have an obligation to ask for a residence permit. Three months after the entry, the person has to go to the General Registry Office and submit documentation indicating his or her activities regarding work, study or training. Otherwise, the individual has to demonstrate whether he/she has necessary funds to stay and have health insurance.
7. Refer to Community Regulation n. 631/2004. on the right to registration with the NHS for EU citizens. Recently the Ministry of Health issued a ministerial memorandum: in <http://www.stranieriinitalia.it/briguglio>

- /immigrazione-e-asilo/2007/agosto/circ-salute-3-8-2007.pdf. As regards healthcare for EU citizens, it should be noted that at the moment a project of the directive is being discussed on a safer EU healthcare, high quality and efficient services.
8. See also Ministero della Sanità Circ. 14/03/2000, n. 5; D.P.R. 28/07/2000, n. 272.
 9. In this category the following are included: a. residence permits for social protection; b. those underage; c. pregnant women and those during puerperium (up to six months); d. residence permits for humanitarian and exceptional reasons; e. foreigners accommodated in reception centres.
 10. This category is exempt from paying the prescription charge and is therefore at par with the unemployed registered in the employment list.
 11. These are foreigners who have obtained an extension of their residence permit because they contracted an illness or had an injury that does not allow them to leave the country.
 12. It should be remembered that the rates of medical care are determined by Regions and Autonomous Provinces. Foreigners with special cards establishing their right to healthcare because of bilateral treaty agreements, signed between Italy and other countries like Australia, Brazil, Tunisia, Switzerland, are exempt from paying these fees. The LHA issues them a *Carnet della Salute* (health vouchers) which provides healthcare at the same level as Italian citizens (with the exception of having a family doctor and pediatrician). See Cilione G., *Diritto sanitario*, Maggioli, 2005, pag. 262 e ss.
 13. D.Lgs. 25/07/1998, n. 286 art. 35; D.P.R. 31/08/1999, n. 394; Ministero della Sanità Circ. 24/03/2000, n. 5 and regional detailed regulations.
 14. An STP card lasts six months, renewable in case of stay in Italy and is valid throughout the country. These provisions primarily are of use for public health: *health clandestinity* does not benefit anyone, as has been rightly emphasized in the "Decalogue for the healthcare professional" (<http://www.sanita.interbusiness.it/sanita/bacheca/welcome/decalogo.pdf>). Indeed, "if this happens, in a short time illegal people would not go to health facilities anymore and this is what we must avoid: there would be no other efficient way to check the health of those illegal people still present on our territory, to protect the health of the all community". However, regarding the provisions related to *health clandestinity*, at the moment, there is a project under revision, as you can read in the last §.
 15. This decree states that whoever is affected by an illness is required to hold an exemption fee card for pathologies at par with Italian citizens. It should be noted that foreigners with an STP card who are unregistered or who are not able to register with the NHS can not have a family doctor or paediatrician of their choice. For essential care (first check up and requirements for specialized medical check ups) they may contact local health authorities surgeries, hospitals, etc.
 16. It is the interpretation by the Constitutional Court that allows a reading of the concept of citizenship from a non-legal point of view. See M. Zana, *Cittadinanza e tutela della salute: considerazioni bioetiche*, in

- <http://www.tsd.unifi.it/cittadin/papers/zana.htm>.
17. For details about TU, see Bellagamba G., La disciplina dell'immigrazione: commento articolo per articolo al Testo unico 25 luglio 1998, n. 286 (come modificato dalla legge 12 novembre 2004, n. 271), 2005
 18. Zana M., *cit.*, notes that when determining that "the foreigner regularly resident in the State has the same civil rights attributed to an Italian citizen" (article 2, 2nd paragraph, TU), there is a clear correlation between legal and non legal aspects of citizenship.
 19. You can find this extensive guideline also in an important decision taken by the Constitutional Court: decision n. 252, 17 July 2001: see Patroni Griffi A., *La cittadinanza sociale e il diritto alla salute degli stranieri: alcune considerazioni*, in <http://www.filodiritto.com/diritto/pubblico/costituzionale/cittadinanzasocialepatronigriffi.htm>. About the right to healthcare as a financially conditioned right see De Angelis M., *Spesa sanitaria e prestazioni nel Servizio Sanitario Nazionale: profili normativi e organizzativi*, in Atti del Convegno "La spesa sanitaria: i controlli, le violazioni, la tutela penale e amministrativo-contabile", Ancona, Guardia di Finanza ed., 2007.
 20. See Patroni Griffi A., *cit.*
 21. Today, this framework has changed in comparison with the traditional points of view: for example, people who do not hold Italian citizenship can vote for the local elections. See G. De Francesco, *Riconoscimento della capacità elettorale e della cittadinanza agli stranieri immigrati: due possibili vie per l'integrazione e la coesione sociale in Italia e in Europa*, in Amministrazione e contabilità dello Stato e degli Enti pubblici, 2006, fasc. 5/6, p. 441-461 e i *dossier* su <http://www.cestim.it/12cittadinanza.htm>.
 22. Like ISI (Health Information for Immigrants), facilities have come up in the Piemonte region that are characterized by high flexibility and less bureaucracy. See http://www.regione.piemonte.it/sanita/program_sanita/assistenza.htm
 23. Just think to news that you can find on *web* like www.stranieriinitalia.it; <http://www.salutemigrante.org>; www.meltingpot.org e www.saluteeimmigrazione.it. Or to a new institution like Istituto nazionale per la salute dei migranti e malattie della povertà (Inpm). See http://www.governo.it/GovernoInforma/Dossier/istituto_salute_migranti/index.html
 24. Moreover, many health organizations are not aware of the funding opportunities for illegal foreigners offered by healthcare institutions. Only some regions have started a National fund for migration policies which aims to finance policies in order to restore equality between foreigners and Italians. Several investigations coordinated by the Istituto Superiore di Sanità (Italian National Institute of Health, (www.iss.it)) show a substantial territorial differentiation in health services, with consequences for new health problems of the immigrant population. See *La salute è un diritto? Dipende da dove vivi* in <http://www.epicentro.iss.it/focus/globale/diritto.asp>. The situation in Italy, however, is not different from other countries. It was recently published "Taking Action on Health Equity" Report, a part of the project "Closing the Gap: Strategies for Action to tackle Health Inequalities (2004-2007)". This

- report considers the health inequalities in many EU Member States. According to the report, even if European countries are among the most developed in the world from an economic and social point of view, there's a big difference between the higher and lower socio-economic classes everywhere. These inequalities differ in each country. As far as Italy is concerned, the report explains that medical coverage extended to the entire population is a key feature of the system, but the overall picture is very patchy, depending on the different regions. It is interesting to note that, in the past few years, to historical inequality to historical inequalities migration issues have been added and this fact seems to exacerbate differences. See Costa G. (a cura di), *Rapporto sulle Diseguaglianze di salute in Italia*, Epidemiologia e prevenzione *ed.*
25. See Geraci S., Martinelli B., Politiche locali per il diritto alla salute, in http://www.edscuola.it/archivio/handicap/salute_immigrati%20pdf.pdf. When you deal with a healthcare Government you also have to refer to the concrete measures of social inclusion introduced by the regions, the holders of the organizational and managerial role in the health sector. As regards the instruments developed by the Italian regions to manage migration at local level and to open opportunities in their territories and practices of social inclusion and economic culture for foreigners, see Attanasio P., *Le leggi regionali sull'immigrazione*, in http://www.labsus.org/media/Attanasio_immigrazione.doc.
26. Who does not hold a permit card and needs medical care can be reported to the authorities (Amendment n. 39.306 – bill n.733. The amendment wants to delete paragraph 5 of Article 35 of Legislative Decree n.286/1998). The amendment is currently under discussion. What would practically happen in case of its approval: when the foreign patient has to declare his/her identity for medical treatment, the hospital can file a complaint. No residence permit can lead to a procedure of expulsion in the police headquarters, as the afore-mentioned draft law calls it a crime of clandestinity. Hence, those who have no residence permit commit a crime and have to pay a fine of up to 10,000 Euro. They will then be sent to a centre of identification and deportation. Therefore, if there is a disease that requires medical treatment, the foreigner would then be persuaded to hide it and without running the risk of being reported and consequently expelled. In this way they are faced with the possibility of either seek treatment and later be expelled or remain in Italy hiding their illness. Or, immigrants may turn to their "trusted" doctors, perhaps their fellow countrymen, who do not have any appropriate knowledge or qualification to cure them but are ready to keep them safe without reporting them to the police. The result could be an increase in illegal procedures of care in health organizations outside the legal systems for public health monitoring and control.

CONTRACEPTIVE ATTITUDES AND PRACTICES IN THE ROMA COMMUNITIES

Raluca ZANCA¹

Abstract: *The process of adopting a contraceptive behaviour is determined by a series of factors, having a slow progress in time. The use of birth control methods by the Roma women is influenced by a series of specific elements. This article wants to highlight an image containing the degree in which the Roma women are aware of the birth control methods and family planning. To this end, I have used the technique of group interview. In the first stage I applied a number of group interviews on the Roma women from the Gîrcin community. Afterwards I examined the interviews using inductive analysis. The results were grouped into thematic categories.*

Key words: *Contraception, Family planning, Birth Control Methods, Contraceptives.*

1. Introduction: General Considerations about Contraception

I considered that a point of interest for my research was emphasizing the subjects' degree of awareness vis-à-vis family planning, contraception and birth control methods. This topic is important because the first step necessary for adopting a positive behaviour towards birth control methods is to know how and what to use.

From my research, it resulted that Roma women know the significance of the family planning concept, correlating it either with the idea of not having children or with the idea of planning a pregnancy, when it is wanted.

The man's authority in the Roma family is reconfirmed in this case, even though, in its basic sense, family planning is an endeavour addressed to the couple. Roma women recognize man's decisional authority regarding this aspect.

At a declarative level, especially as a result of their need of social desirability within the group discussion, but also literally, the Roma women mention the existence of a dialogue with their husbands or consensual partners regarding contraception. Most of the time though, these discussions are not about choosing a birth control method, but mostly about keeping the pregnancy that has already appeared or about making an abortion.

For reasons that I have already presented above, the group interviews were not attended by Roma men. Keeping that in mind, however, from previous discussions and direct observation within the community, and also from discussions with the family planning doctor and the sanitary mediator, it resulted clearly that they do not agree to the idea of family planning. A woman's state of pregnancy, her continuous preoccupation with raising and caring about her children represents an

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expression of the control exercised by her husband, a guarantee of loyalty in the couple (a value listed among the most important in the hierarchy of masculine values by Roma men), husbands or consensual partners do not agree to the idea that their wives should attend these services or use contraception.

In certain situations, however, it is preferable for Roma women to access the family planning services without the consent of their partner, instead of giving birth to an unwanted child.

The attempts to inform and educate in order to change the reproductive behaviour are usually addressed to the couple. In the particular case of the Roma population, taking into consideration the man's dominance at decisional level and the woman's lack of autonomy, the campaigns to inform and educate were meant mostly for women, because they are the main contraception users and furthermore, the idea of avoiding an unwanted pregnancy came first. An unwanted pregnancy could generate abortion, or other associated phenomena: child abuse, child abandonment, domestic violence etc. Thus, women were encouraged to use contraception even if their partner did not agree at first.

The Roma women that were included in the interview groups proved to have precarious knowledge regarding modern birth control methods. Even though they managed to catalogue modern birth control methods, their knowledge is superficial.

The subjects possess knowledge regarding empirical methods that are medically unaccepted, especially in the form of vaginal washings.

A method often used, even though it is not among the conventional methods is the so called *withdrawal method* (*fereala* in Romanian) or *coitus interruptus*. It is a frequently used method especially in the Transylvanian region, with quite a low

efficiency, but it is among the most frequently used methods in the Roma communities.

There is also vague and unsuitable knowledge about the natural methods, like the calendar method or the breast-feeding method.

An often encountered practice in the case of disadvantaged populations, implicitly in the studied group, is the use of abortion as a method to avoid an unwanted pregnancy. It results that, in fact, abortion is considered to be an extremely facile method of regulating fertility, with a "saving" effect when a woman becomes pregnant. The interviewed women list it as a birth control method while, in fact, it represents a counter-gestation method.

2. From where Do They Get Information Regarding Birth Control Methods?

The study of the group interviews' transcriptions allows me to formulate the following conclusions regarding the information sources of Roma women:

- *Specialized sources*, represented by the sanitary mediator, the family doctor, the doctor specialized in family planning, the gynaecologist or persons from various governmental or nongovernmental organisations that develop campaigns to inform and educate in the field of reproduction health.

We could be tempted to believe that Roma women give great credibility to the most suited sources, respectively authorized sources. Direct work experience with these persons, including the experience gained at a family planning cabinet, shows us that even though they admit the legitimacy of the above mentioned sources, these women do not approach them with ease.

Even though the subjects agree that specialist doctors have the utmost

competence in this field, the family planning services are less accessed by these persons.

The explanation of this fact is linked with the state of inhibition determined by social distance, by different positions in the social hierarchy, which limits or even cancels subjects' disposition to access these sources of information. Thus, their addressability remains at a low level.

- Another source of knowledge is represented by *mass media*, but the subjects included in the interview groups did not indicate it frequently.

The explanation is obvious: the cultural and educational level of this population segment is very low and the TV programmes and designed informative materials fail to adapt information to the low level of knowledge and comprehension. In fact, from a technical point of view, it is rather difficult to adapt the message to a production of this type. Furthermore, many of the interviewed women are able to read only the simplest texts, even though from a formal point of view they attended school for a certain number of years, which should offer this ability.

Another barrier is connected with the precarious economic condition in which the targeted population finds itself, this meaning that most families do not own a television set. That is why the dissemination of information via mass media or various leaflets is not an effective solution for this population segment.

The members of all four groups on which the interview was applied indicated as an information source their group of friends, or in certain cases, their sister or their mother. In this case, the valorisation of formal competence does not occur anymore – like the competence of specialists – but the principle of direct experience.

3. The Birth Control Methods – Representation, Attitudes and Practices

Examining the transcriptions of the four interviews, I have gathered all the information regarding the birth control methods and their use. I have found the participants to be manifesting openness and a lack of inhibition in discussing these aspects, the Roma women referring easily to their direct and practical experience.

These references can be corroborated with the indirect and attitudinal references of other participants, which avoided describing directly their practical experience, avoiding topics like what and how they do, and limiting themselves to statements like “I’ve heard that...”, “someone used ...” etc.

The subjects' discourses contain a series of prejudices and incorrect information about the ways of using different birth control methods, about their potential effects, and even myths that were made up on this topic.

3.1. Oral Contraceptives

The interviews have illustrated that this type of contraceptives are positioned at a great cultural distance from the Roma women. The only thing that they know is the obligatory character of administering the daily dosage. The lack of daily dosage makes oral contraception ineffective.

There are however subjects who do not know the proper way to use contraceptives and who were not direct users of this method.

The combined oral contraception is a theme filled with a series of myths about the negative effects that this method has upon users' health: hepatic and gastric problems, increase of hairiness, the emergence of cancer etc.

The success of implementing oral contraception in the Roma communities is dependent on “surpassing the cultural distance that makes the pills' cognitive

control difficult” (Hatos, 2004, p. 94). First of all, it is necessary to increase the degree of women’s awareness regarding the usage, the action mechanism and the benefits of using “the pills”. Another indispensable element for implementing this extremely effective birth control method is the need to change the perception of Roma women regarding this method, to “demolish” the myths about its negative effects and to emphasize its significant benefits.

3.2. The Intrauterine Device (IUD)

This seems to be one of the more accepted methods by the interview participants. As it resulted from the group discussions, there are users among the interviewed women who appreciate positively their experience with this method. Obviously, we cannot generalize the preference for the IUD at the level of the entire Roma population, but we can affirm that IUD is one of the methods used more frequently than oral or injected contraceptives, for example.

From the preparatory conversations and from the work experience with this community, I could state that IUD is preferred because it is more comfortable and it does not require a strict procedure to administer it, which assures a certain degree of comfort. Furthermore, it is a device that once inserted, can be kept for long periods of time and it does not require frequent visits to specialized medical services.

A part of the interviewed women are informed about the need to have a state of proper health of the genital organs, and the importance of a periodic control that has to be undergone.

As in the case of oral contraceptives, a series of reactions that have nothing in common with the way the IUD actually works, are nevertheless considered to be real. In other words, there are a series of myths also regarding this method,

concerning especially the idea that this device could move, could perforate other organs, or it could lead to the appearance of tumours.

3.3. Injectable Contraceptives

Being a relatively new method, it has its share of myth regarding possible negative effects.

Nevertheless, the fact that this method does not require daily administration, or every time a sexual contact occurs, determined it to be used by some of the women from the interview groups. These women tend to recommend it to others. Also regarding this method, there are a series of incorrect beliefs, based on the lack of information.

3.4. The Condom

The condom is considered to be exclusively for men; therefore it is scarcely discussed in the group discussions about birth control methods. Many of the participants to the discussions claim that their spouses do not want to use condoms, and they as their wives or consensual partners could not change this attitude.

4. Sexually Transmitted Diseases – Cognition and Prevention

The degree of awareness regarding the sexually transmitted diseases (STD) is alarmingly low. Even though they “heard” of these diseases, the participants see their existence as an exterior and distant reality, with which they won’t come into contact. Thus, there is no constant concern for learning about their transmission and prevention mechanisms and also for learning about the risk factors.

The means of transmitting these diseases are known only by a small number of participants, and information about them is incomplete or even partially wrong.

The only method of preventing the transmission of these diseases was identified by the interview participants to be the *condom use*.

This element contradicts however the attitude regarding condom use, respectively avoidance, rejection, which outlines an alarming image regarding the risks incurred by the Roma population. More participants do not even know a condom's role in preventing the transmission of this type of infections, considering that insuring a proper hygiene is enough in this regard.

5. The Family Planning Services Network – Subjects' Specific Requirements. Information Promotion

By examining the interviews transcripts, an ideal model for offering family planning services—from the subjects' point of view - could be designed. This model contains not only elements linked with the services' location, accessibility, and cost but also characteristics belonging to those that will promote the specific information. In a nutshell, these are the requirements, as they emerged from the interview analysis:

- The services must be within the subjects' proximity, because the costs for transport cannot be covered, thus the women would not be able to access family planning services;
- The services must be projected and offered so that they respect the client's rights: confidentiality, privacy and to possess an indiscriminate character;
- The services offered and also the distributed contraceptives should be free of charge;
- The specialty consultations should be offered by qualified personnel; i.e. doctors and nurses;
- The specialized services should be offered by a woman (the Roma women feel the gender barrier and avoid discussing the topic with a man, even if the latter has proper qualifications).

Regarding the attempts to increase the level of awareness, the participants thus stated:

- The specialized consultations should be performed by a specialized doctor or nurse and should have a personal and individual character (a fundamental request for any family planning service)
- The efforts to increase the level of awareness can also have a personal character (i.e. personal discussions), but also a group nature (i.e. group discussions, proceedings etc.) and could be moderated by various types of specialists: doctors, sanitary mediators, social workers etc.

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LAW

TAX DODGING. THE OFFENCE STIPULATED BY ARTICLE 9 PARAGRAPH.1 LET. A FROM LAW 24/2005. CONSIDERATIONS.

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Abstract: *The publication of Law no 241/2005 led to achievement of the mostly desired systematization of the deeds that represents offences of tax dodging, the new law proving to be more compelling related to the definition and the approach of the offence than the previous legal frame. This article tackles the concept of tax dodging from the perspective of being one of the most frequent offence as presented by art. 9 paragaraph. 1 let.a from Law no 241/2005.*

Key words: *offence, tax dodging, elude, taxable income.*

1. Introduction

Within the law no. 241/2005 the concept of tax dodging is no longer legally defined unlike the previous one which stipulated this domain. Description of the concept is comprised within Chapter II from Law 241/2005, articles 3-9, its legal content being pointed out among article 9.

Within the law no 87/1994 republished, the concept of tax dodging was defined as eluding, by any means, from declaration or payment of taxes, duties, contributions or other amount owed to the state budget, local budgets, social securities' budgets and special funds' budgets by the Romanian or foreign individuals or companies, all called tax payers. In contrast with the old stipulations, the new statements gave up the explanatory note „completely or partially”.

Therefore, the tax dodging consists of an illicit activity through which the tax payer eludes the obligation to pay to the state some taxes, duties, contributions that he

legally owes because his permanent or temporary activities generate taxable incomes. The activity may appear as an action or as a lack of action, still maintaining the specific illicit character and the specific effects (the trial and even the success to harm the state budget).

As a consequence of the modifications brought by the law 161/2003 the concept of tax dodging additionally comprised, in comparison with the old law, the activities of eluding from taxes declaration in the stage when they do not become exigible yet. The new stipulations from law 161/2003 show the compliance between the definition of tax dodging and the offences of tax dodging regarding both the activities of „eluding from taxes' declaration” and of „eluding from taxes' payment”. In these circumstances the tax dodging is considered to be an offence of menace or an offence of effect, by case.

These legal definitions no longer belong to the content of law 241/2005, but they

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can be determined based on the analysis of the offences presented within this law and of their immediate effects.

2. Tax dodging Types

In relation to the means of execution and if there are infringed certain norms through the method of fiscal obligations' avoidance two types of tax dodging can be emphasized: legal or tolerated tax dodging and illicit or fraudulent tax dodging.

2.1. Legal Tax Dodging

The doctrine's opinion is shared between its experts regarding the notion of legal tax dodging. Some authors^[1] consider this type of tax dodging as being the action of the tax payer through which he avoids the law applying an unforeseen combination of legal stipulations, therefore being „tolerated by losing sight”. Other authors^[2] mention that through this type of tax dodging the elusion of some parts of the taxable source is allowed without considering this conduct to bring harm to any law and to be penalized as an offence or as a contravention.

In my opinion, in this case it only can be considered the existence of some inadvertencies or gaps of the law and this type of tax dodging has a high probability of occurrence when new forms of enterprises or new categories of taxes are established (major changes in legislation without correlation with internal existing law, in fact a serious mistake of legal conception).

After all, the tax payers find some deficiencies of the law, use them and legally elude the payment which they were obliged to made because of the legislative shortages. Acting in such a manner, the tax payers remain within the strict limit of their rights. The state can only defend itself through a well structured, clear, precise, scientific legislation. On these terms, the one who carries the guilt for this negative phenomenon is only the state.

In conclusion, even if the state will suffer any prejudice, the means which led to this situation does not entail any penalty from the specific authorities.

Some authors^[3] even offer examples of legal tax dodging based on legislation's insufficiency or favorable interpretation of the law:

- usage within certain limits of legal stipulations regarding philanthropic donations, no matter if they took place or did not;
- deduction from taxable income of protocol and advertising expenses with a higher level than the one that results from applying legal rates;
- favorable interpretation of legal stipulation regarding important facilities for contribution to support social activities;
- making up depreciation or reserves' funds in a higher ratio than the ones justified from the economic point of view, in this way decreasing the taxable income.

2.2. Illicit Tax Dodging

This type of tax dodging consists of all the tax payers' actions which break a legal stipulation with the purpose of not paying the related taxes. This is based on fraud and dishonesty of the tax payer.

Illicit tax dodging is incriminated and punished by the law through contraventions and offences. This is the role of the law 241/2005 regarding prevention and control of tax dodging which, in comparison with the old law 87/1994, republished and modified by the law 16/2003, does not mention dangerous deeds socially punished through contravention, but only through offences.

3. Offence Stipulated by Article 9 Paragraph.1 letter a

A. Legal Content:

The offence consists in „concealing the taxable good or source” with the object of

eluding from fulfillment of fiscal obligations as presented in paragraph.1 of article 9 from Law 241/2005.

B. Constitutive Elements:

I. The special legal object and also the **passive subject** are common with the ones of other offences and refer to social relations regarding the development of economic and financial activities whose achievement assumes honest fulfillment of fiscal obligations by the tax payers, the passive subject being represented by the state or administrative units.

II. Material object. Some authors^[4] consider that the material object of this offence has a high degree of complexity: on one hand, mainly, the taxation statement counterfeited by the tax payer and on the other hand, subordinately, the amount of money obtained by the tax payer.

The material object of the offence is made up of the taxable incomes, object or source.

III. Active subject. Active subject is qualified, he/she being a tax payer liable to fiscal obligation. In absence of this quality the deed does not represent an offence. The attribute of tax payer is conditioned by the existence of a fiscal juridical report enforced by the law.

IV. Objective side: The material element of this offence lies in eluding the fulfillment of fiscal obligations through concealment of the taxable object or source.

Concealment of the taxable object or source means the action of taking away from the fiscal authorities' sight either the object that generates payment of some amounts to the state budget (for example when passing over the state frontier some goods for which custom duties must be paid are hidden in the boot of the vehicle) or the entity which represents the computation ground for taxes or duties (carrying out services like taxicab services,

seasonal work, consultancy, real estate securities, inheritance right).

In the experts' references[5], the deed of an usurer that declares in front of the notary, while authenticating a loan contract, that he grants the loan without charging interest, a statement which proves to be unreal afterwards, performs the method of concealing the taxable source (interest).

Similarly[6], it can be considered the deed of the person that declares a lower price than the real one, while authenticating a loan contract in front of the notary.

Another example can be mentioned: the administrator of a private enterprise who did not register significant amounts of money obtained from selling goods which results in eluding from profit tax payment.[7]

The administrator who frequently and according to the same resolution resold important quantities of merchandise to another private company at a lower price than the acquisition price or disguised manual labor, based on an agreement contract, committed a fiscal offence by recording the price difference on costs' side (without real ground) that leads to purloining from the payment of profit tax and value added tax (VAT). [8]

Also the culprit deed that, as a tax payer, had the obligation to declare to the Financial Authority the incomes achieved from renting his office building to another company (monthly rent is cash-in), but he avoided the payment of fiscal obligation, was qualified as an offence by the Supreme Court.^[9]

Immediate consequence is represented by giving rise to a menacing frame of mind regarding incomplete collection, from all tax payers who own taxable goods or sources, of the amounts owed to the state budget as taxes or duties. In this respect, the above-mentioned offence is a formal

one because the law does not demand that the aim should be achieved by the tax payer, but be pursued by him.

Causality report, that must be determined between the deed and its effect, is presumed by the law without being necessary to establish it and to prove it by the judicial authorities.

V. Subjective side: The offence is committed exclusively with direct intention, meaning that intention is qualified by the purpose. The person who commits the deed knows that he/she achieves taxable incomes or owns taxable goods, but does not declare them to competent authorities with the determined end in view to elude from fiscal obligation fulfillment.

C. Forms. Methods. Sanctions.

I. Forms. The offence can be considered to be committed when the time limit for any taxable income's declaration expired as stipulated within the Fiscal Code or within the law that states the tax or duty and followed by no declaration from the tax payer regarding the taxable source or good, through concealing them. If this concealment lasts, after the offence was committed there will be a continuous offence, whose ending will take place at the moment of legal and complete declaration of the deed.

II. Methods: The offence presents one single normative method consisting in concealment of the taxable good or source with the object stipulated by the law. Various factual methods comply with this normative method; for example, when the possession of the good is subject to taxation on customs, when vehicle possession is implied, etc.

III. Sanctions: The penalty stipulated by the law for this offence described within **paragraph 1** of article 9 from the law, is represented by the imprisonment from 2 to 8 years and forbiddance of some rights.

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THE DILEMMA OF POSITIVE LEGISLATOR OR THE DIFFICULTIES OF THE CONSTITUTIONAL PROCEDURAL LAW

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Abstract: *The Constitutional Court is definitely one of the most disputed public authorities in the Romanian constitutional system. The difficulties in approaching the constitutional procedural law come from the lack of juridical tradition in dealing with such a public institution and its decisions. In this essay we want to emphasize the errors encountered in jurisprudence due to the misunderstanding of the constitutional role of the above-mentioned authority.*

Key words: *Constitutional Court of Romania, decision, freedom of speech.*

Freedom of expression is one of the real gains of the Romanian society after 1989. Commonly known as *freedom of speech* (even if we prefer the juridical term “expression”, since we do not deal only with the verbal statements in this case), this individual right is contained in the most important documents ratified or adopted by Romania, such as Universal Declaration of Human Rights, European Convention of Human Rights or the Constitution of Romania. Even if Romanians tend to give an absolute power to this particular gain of a democratic society, freedom of expression is not an absolute right.

The Constitution of Romania also provides explicit restriction of freedom of expression. Thus, freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one's own image. Any defamation of the country and the nation, any instigation to a war of aggression, to

national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law. The Romanian Criminal Code used to incriminate in the articles 205 and 206 the offences related to human's dignity in order to offer a serious counterpoint for the Art. 30 paragraph 6 of the Romanian Constitution. By means of the offences of slander and libel the Romanian legislator desired to protect the right to dignity, honour, privacy of a person, as well as the right to one's image. Slander is a type of defamation. Slander is an untruthful oral (spoken) statement about a person that harms the person's reputation or standing in the community. If the statement is made via broadcast media - for example, over the radio or on TV - it is considered libel, rather than slander, because the statement has the potential to reach a very wide audience.

But for a greater protection of press

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freedom and independence, the Minister of Justice initiated in Parliament a project of amending the Criminal Code, a project that repealed the offense of slander and libel. The two chambers of the Romanian Parliament adopted the project and it became Law No. 278/2006 for amending the Romanian Criminal Code after being promulgated by the President of Romania. Promulgation is the constitutional act by means of which a legal text can be sent to Romanian Official Gazette to be published. Three days after publishing, the law comes into force and produces juridical effects.

Due to these circumstances, in front of the Timisoara, Targu Jiu and Sibiu courts, three different persons invoked the objection of unconstitutionality. The three courts admitted the exception and addressed to the Constitutional Court of Romania to solve this litigation.

The Constitutional Court represents, as defined in Article 142 of the fundamental law, the guarantor for the supremacy of the Constitution of Romania. The Constitutional Court has the following powers: a) to adjudicate on the constitutionality of laws, before the promulgation thereof upon notification by the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, a number of at least 50 deputies or at least 25 senators, as well as ex officio, on initiatives to revise the Constitution; b) to adjudicate on the constitutionality of treaties or other international agreements, upon notification by one of the presidents of the two Chambers, a number of at least 50 deputies or at least 25 senators; c) to adjudicate on the constitutionality of the Standing Orders of Parliament, upon notification by the president of either Chamber, by a parliamentary group or a number of at least 50 Deputies or at least 25 Senators; d) to decide on objections as

to the unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration; the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People; e) to solve legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, one of the presidents of the two Chambers, the Prime Minister, or of the president of the Superior Council of Magistracy; f) to guard the observance of the procedure for the election of the President of Romania and to confirm the ballot returns; g) to ascertain the circumstances which justify the interim in the exercise of the office of President of Romania, and to report its findings to Parliament and the Government; h) to give advisory opinion on the proposal to suspend from office the President of Romania; i) to guard the observance of the procedure for the organization and holding of a referendum, and to confirm its returns; j) to check the compliance with the conditions for the exercise of the legislative initiative by citizens; k) to decide on the objections of unconstitutionality of a political party; l) to carry out other duties stipulated by the organic law of the Court. As settles in Art.147 of the Constitution of Romania, (1) the provisions of the laws and ordinances in force, as well as those of the regulations, which are found to be unconstitutional, shall cease their legal effects within 45 days of the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, as the case may be, cannot bring into line the unconstitutional provisions with the provisions of the Constitution. For this limited length of time the provisions found to be unconstitutional shall be suspended de jure. (2) In cases of unconstitutionality of laws, before the promulgation thereof, the

Parliament is bound to reconsider those provisions, in order to bring them into line with the decision of the Constitutional Court. (3) If the constitutionality of a treaty or international agreement has been found according to article 146 b), such a document cannot be the subject of an objection of unconstitutionality. The treaty or international agreement found to be unconstitutional shall not be ratified. (4) Decisions of the Constitutional Court shall be published in the Official Gazette of Romania. As from their publication, decisions shall be generally binding and effective only for the future.

The Constitutional Court has the power to decide on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration; the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People. Therefore, the Constitutional Court was the only institution liable to solve this problem. After studying the case, the Court admitted the exceptions and decided that the repeal of the offences of slander and libel is unconstitutional.

The Constitutional Court was notified by the Court of Timisoara, the appellant being Mihaela Marza in the case no. 3.003/325/2006, the Court of Targu Jiu, the appellant being Sofia Țămbălaru, in the case no. 2.414/P/2006 and the Tribunal of Sibiu – the Criminal Section, the appellant being Elena Iulia Ștefănescu in the case no. 1.462/85/2006. The debates took place in a public session on 11th of January 2007 in the presence of the author of exception, Elena Iulia Ștefănescu and of the representative of the Public Ministry.

The decision of the Constitutional Court was published afterwards, since the constitutional judges had pronounced no opinion in the public session. In its motivation, the Court found that, by repealing the deeds of slander and libel, the

person's dignity and honour cannot be defended. No matter in which modality these offences are committed, or the quality of the persons who commit the offences, these deeds represent a serious attack to the person's image, honour and reputation. If these deeds are not incriminated by the Criminal Code they shall conduct to a de facto reaction of the persons offended and thus to a permanent social conflict, since the only civil law cannot be the best juridical defense for the one who suffered such an injury. In the Court's opinion, the amendments brought to the Romanian Criminal Code created a legislative vacuum since the possibility admitted for the injured person to obtain moral damages in a civil law does not represent a real juridical defense. A lawsuit based upon the provisions of Art. 998 from the Romanian Civil Code with regard to the patrimonial liability for the prejudices produced by means of licit deeds is definitely not an adequate juridical protection since dishonour cannot be repaired, and human dignity cannot be evaluated in money or compensated. Therefore, the repeal of the deeds of slander and libel infringe upon the provisions of Art. 21 – free access to justice - and Art. 30 – freedom of expression.

The Constitutional Court of Romania observed that the free access to justice does not mean only the possibility of addressing the courts of justice, but it also means that the persons must take benefit of adequate methods of preserving the infringed right, according to the seriousness and of the degree of the social damage of the deed that infringed upon one's right. In the same way, the European Court of Justice stated constantly that in its jurisprudence (see for example the cases *Aydin vs. Turkey* - 1997, *Conka vs. Belgium* – 2002), that the essential effect of the provisions of Art.13 from the

European Convention resides in imposing the existence of an internal recourse that abilitates the national court to offer an “adequate repairing”, the recourse being effective as well as in the legal disposals as well as in the practice of applying the legal settlements.

Or the removing of the criminal methods of guarding the human dignity, as a supreme value of the state of law, determines the infringement upon the effective nature of the access to justice in this matter. Still, the Court observes that as an effect of the repeal analyzed in this case, as contrary to the persons whose rights were infringed – others than honour and good reputation – and who can address the courts of justice to defend their rights, the victims of the deeds of slander and libel have no real and adequate opportunity of taking benefit, on judiciary term, of the defense of their dignity – the supreme value guaranteed by the fundamental law.

The juridical object of the deeds of slander and libel settled in Art.205, respectively in Art. 206 of the Criminal Code, is represented by the person’s dignity, reputation and honour. The active subject of the offences analyzed isn’t circumstantiated and their deed can be produced directly, orally, by written texts published in media or by means of audio-visual communication. No matter the modality in which these deeds are committed or the quality of the people involved – no matter they are common people, politicians, or journalists, etc. – the facts that represent the legal content of these offences damage seriously the human personality, the dignity, the honour or the reputation of those who are thus aggressed. If such deeds weren’t discouraged by the modalities of the criminal law, they would conduct to the reaction *de facto* of those offended and to permanent conflicts that can make impossible the social living based upon mutual respect of the members

of the collectivity and by the just value of one’s reputation. Therefore, the values mentioned above, preserved by the Criminal Code, have a constitutional dimension, the human dignity being consecrated in Art.1 paragraph 3 of the Constitution of Romania as one of the supreme values. Thus, the quoted text from the fundamental law settles that “Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed”.

Taking into consideration the outstanding importance of the value preserved by the disposals of Art.205, 206 and 207 from the Romanian Criminal Code, the Constitutional Court of Romania observed that the repeal of these texts infringes upon the settlements of Art.1 paragraph 3 from the Constitution of Romania.

The Court observed also that the repeal of Art. 205, 206 and 207 of the Criminal Code infringes upon the disposals of Art.30 paragraph 8 from the Constitution of Romania, since in the cases in which the offences of slander and libel are committed in media, the constitutional text mentioned above states that „the indictable offences of the press shall be established by law”. In the absence of any distinction, it results that the press offenses can be settled in a

special law – for example a law of press as in the case of France – or in a common criminal law, as the case under discussion, namely the Criminal Code. Therefore, the constitutional dimension of the press offenses imposes that they cannot be eliminated from the legislation, but they can be submitted to a penalty regime chosen by the legislator.

The limits of the freedom of speech, settled in Art.30 paragraph 6 from the Constitution of Romania are in accordance with the term of liberty/freedom that cannot be understood as an absolute right. The juridical and philosophical conceptions promoted by the democratic societies admit that the freedom of a person ends where the freedom of another person starts. In this sense, Article 57 from the Constitution of Romania settles that „Romanian citizens, foreign citizens, and stateless persons shall exercise their constitutional rights and freedoms in good faith, without any infringement of the rights and liberties of others”. An identical limitation is settled in Art.10 paragraph 2 from the European Convention of Human Rights - „no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State” – as well as in Art.19 paragraph 3 of the International Covenant on Civil and Political Rights – „the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided

by law and are necessary: a) for respect of the rights or reputations of others and b) for the protection of national security or of public order, or of public health or morals”.

From the normative disposals quoted above it results without doubt that there is no incompatibility between the principle of freedom of expression and the incrimination of the slander and libel that imposed in the first case the repeal of the offences mentioned above.

Surely, this decision was historical since its effects were for the first time so disputed. But we agree upon the majority decision, even if we admit that indirectly the Court becomes a positive legislator. The Constitutional Assembly couldn't imagine all the possible social relations when it settled the general disposals concerning the activity of the Constitutional Court. And definitely the legislator did not stipulate expressly what decision should the Court take when dealing with the repeal of a legal text, repeal that is considered unconstitutional. If we only think in a limited way that the unconstitutionality of the repeal has as an effect the coming into force of the former juridical text that was repealed, than we agree that the Court becomes a positive legislator. But we must observe that the Court does not behave as a legislator. The only legislator was the Parliament. The Parliament incriminated the offences in the first place, as well as the Parliament repealed the same offences. The question to ask in this particular case is whether the unconstitutionality of a Law of repeal could or not be sanctioned, and in our opinion any unconstitutionality of a legal text must be sanctioned since the Constitutional Assembly did not make any difference between the legal texts what so ever. Since the main role of the Constitutional Court is to observe and sanction the unconstitutionality of a legal

text, the Court completed its role in the case. The Parliament could take act of the decision and make a change. The legislator could find another modality of incriminating the offences of slander and libel, but as no action was taken, slander and libel found their previous expression.

Unfortunately, the public prosecutors do not share the same opinion. In a resolution given on 7th of April 2008, to a plaintiff formulated by O.I. with regard to a libel, one of the prosecutors of the Prosecution Department of the Court of Braşov stated the following point of view: the plaintiff is rejected, and the offender M.L. is out of criminal action based upon Art.228 from the Criminal Proceedings Code, with regard to Art.10, paragraph 1 letter be of the Criminal Proceeding Code, since his deed is not incriminated by the Criminal Code. The prosecutor takes into consideration the Decision No.62/2007 of the Constitutional Court of Romania regarding the unconstitutionality of the disposals of the Law No.278/2006 for amending the Romanian Criminal Code, but she considers that in order to incriminate the libel, the legislator should have interfered after the moment the Constitutional Court issued the above mentioned decision. The prosecutor considered that only the Parliament could make any legislative changes, therefore since the legislator didn't modify the Law No.278/2006, the deeds of slander and libel are not incriminated by the Criminal Code.

The resolution is quite outstanding, we may say. It is perfectly true that the Constitutional Court of Romania is not a legislative body. Its own purpose is to sanction any infringement brought upon the Constitution by a legal text, but since its decisions are mandatory for the

constitutional subjects, no one can say that a decision of this institutional body does not have juridical effect. The prosecutor must understand that the Constitutional Court does not replace the Parliament in a democratic state where the principle of the separation of powers functions. Its only purpose is to verify if the constitutional subjects respect the provisions of the Constitution of Romania. And in the cases when the Court observes any infringements upon the constitutional settlements, it is entitled to issue sanctions. In this particular case the sanction established is the abrogation of the provisions considered to be unconstitutional. And this sanction was applied for the only reason that the Parliament, the sole legislative body, did not take any action in 45 days, the legal period for modifying the provisions found unconstitutional. And that means, from the constitutional and legal point of view, that libel and slander are offences and are sanctioned on the ground of articles 205 and 206 from the Criminal Code that came into force 45 days after the Constitutional Court of Romania issued the Decision No.62/2007.

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THE CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES CONCERNING THE LAW OF THE WORLD TRADE ORGANIZATION AND THE AUTONOMY OF THE EUROPEAN COMMUNITY IN THE IMPLEMENTATION OF ITS COMMON COMMERCIAL POLICY

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Abstract: *In the last years some authors have questioned the autonomy of the European Community when implementing its commercial policy, due to the amount of trade agreements signed by it and especially because of the commitments acquired in the WTO. There is no doubt that the compulsory fulfilment of these commitments is a conditioning factor with regard to the implementation of the Common Commercial Policy, but that doesn't make the autonomy of the EU disappear in order to put its model of commercial policy into practice. In this respect, it's necessary to underline the ample discretionary margin in the management of the commercial policy that the Court of Justice of the European Communities recognizes in favour of the EU institutions within the framework of its case-law related to the denial of the direct effect of the WTO agreements, as we analyze in this paper.*

Key words: *WTO agreements, Direct effect, Common Commercial Policy.*

1. Introduction

Since its creation in 1957, the European Community has carried out important activities internationally, which has consolidated its position as a vital player in the international field.

This role has particular significance in the economic and commercial sphere [1], which is unsurprising if we bear in mind that the European Union constitutes the main trading power on a world level.

This performance of the European Union on an international level becomes particularly important in the current climate, as we are witnessing the increasing globalization of the economy and a strengthening of the multilateral trading system following on from the strong boost that it received as a result of the creation of the World Trade Organization in 1995.

In fact, the European Community has shown itself to be particularly active both

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on a multilateral level, taking on a leading role in the World Trade Organization (WTO), as well as on a bilateral or regional level, when it comes to finalizing trade agreements with non-member countries, thus acquiring numerous international agreements within the commercial sphere.

Although, in principle, one could maintain that a limited margin of discretion currently exists for the EU institutions as regards the management of the Common Commercial Policy, specifically due to the commitments agreed on in the World Trade Organization and those arising from the intense network of preferential agreements signed by the European Community with non-member countries, in our opinion this position is more than debatable.

There is no doubt that the compulsory fulfilment of the international commitments that link the European Community is a conditioning factor with regard to the implementation of its Common Commercial Policy, but that does not make its autonomy disappear in order to achieve its own model of commercial policy.

In this respect, it is necessary to underline the ample discretionary margin in the management of the Common Commercial Policy that the Court of Justice of the European Communities recognizes in favour of the EU institutions, despite the existence of such international engagements.

This recognition takes place within the framework of its case-law related to the denial of the direct effect of the General Agreement on Tariffs and Trade (GATT)[2], and subsequently of the World Trade Organization's agreements[3], in which the Court specifically emphasizes the flexibility of such agreements. We will hereby proceed to briefly analyze the

position of the Court of Justice of the European Communities on this matter.

2. The Case-Law of the Court of Justice of the European Communities Concerning the Direct Effect of the World Trade Organization Agreements within the European Union

As is well known, in accordance with the aforementioned case-law, the Court of Justice of the European Communities has made it clear that the international agreements that are legitimately signed by the European Community form an integral part of the EU legal system, and that the regulations included in such agreements that are sufficiently necessary and unconditional may produce direct effect. However, the Court of Justice of the European Communities denies this possibility in relation to the regulations included in the GATT, due to this agreement's great flexibility when taken as a whole, in particular those regulations through which the possibility of repeals are conferred, as well as the possibility of adopting measures against situations of exceptional difficulty and the system considered for the resolution of conflicts between the contracting parties.

The Court of Justice of the European Communities equally denies the possibility that the regulations included in the WTO agreements produce direct effect, due to reasons similar to those mentioned in relation to the GATT, in other words the flexibility of such agreements. Indeed, the changes involved in the WTO's new legal framework have not led to so many changes for the Court of Justice of the European Communities that it is necessary to adopt a different position to that held with respect to the GATT[4], despite recognising the notable differences that are included in the WTO agreements in

relation to the regulations of the GATT of 1947[5].

Indeed, the flexible nature of the agreements can lead to a change in the duty of fulfilling the commitments that arise from them and, therefore, widen the WTO Members' scope for action, which at the same time means recognizing a sufficient level of autonomy of the members in the implementation of their trading policies.

The flexibility of the World Trade Organization agreements is mainly established by the important role that is reserved for negotiation between the Parties in the framework of the system resulting from such agreements (as was the case with the GATT).

In this sense, the Court of Justice of the European Communities emphasizes that even though the main objective of the WTO's dispute settlement body (as emerges from the understanding relating to the regulations and procedures that govern the settlement of disputes) is, supposedly, the withdrawal of certain measures if they are proved to be incompatible with the regulations of the WTO, this understanding had however anticipated the possibility of obtaining a clearance as a provisional solution until the withdrawal of the incompatible measures, in the case that it is not possible to immediately withdraw such measures[6].

In light of these circumstances, it also states that imposing the judicial bodies with the obligation of refraining from applying the domestic legal regulations that are incompatible with the WTO agreements would consequently deprive the contracting parties' legislative or governing bodies from the possibility (granted them in article 22 of the aforementioned Understanding) of reaching, although only temporarily, negotiated solutions[7].

Likewise, the Court of Justice of the European Communities also argues its refusal to recognize the direct effect of the WTO agreements based on the principle of reciprocity, since it states that the lack of reciprocity of third parties (who have reached the conclusion that such agreements are not included amongst the regulations that their judicial bodies take into account when controlling the legality of their domestic legal regulations) entails the risk of an imbalance being produced in the application of the WTO's regulations if direct effect were to be recognized for its regulations in the European Union.

In this respect, the Court of Justice of the European Communities emphasizes that the agreement by which the WTO is established, as well as its Annexes, continues to be based on the principle of "reciprocity and mutual advantages" (as already occurred with the GATT), with the High Court declaring that "*to accept that the role of ensuring that those rules comply with Community law devolves directly on the Community judicature would deprive the legislative or executive organs of the Community of the scope for manoeuvre enjoyed by their counterparts in the Community's trading partners*"[8].

3. The Autonomy of the European Community in the Implementation of the Common Commercial Policy

As we have seen in the previous paragraph, the Court of Justice of the European Communities emphasizes the need to maintain the same "*discretion*" for the Community as that which the legislative or executive bodies of the WTO's Members dispose of, in order to negotiate temporary solutions for the non-fulfilment of certain commitments arising from the agreements taken in the framework of the WTO.

In this respect, one can declare that the EU institutions continue at present to enjoy

a high level of autonomy in the implementation of the Common Commercial Policy, despite the commitments acquired by this policy in the framework of the World Trade Organization[9].

Furthermore, as is pointed out by the Court of Justice of the European Communities, the WTO Agreements “do not determine the appropriate legal means of ensuring that they are applied in good faith in the legal order of the contracting parties”[10], and consequently the “discretion” of the European Community goes beyond the negotiation of temporary solutions for the specific non-fulfilment of such agreements, by also covering the free choice of the measures that it considers to be most appropriate to fulfil the commitments arising from the agreements.

The report of the Special Group in charge of examining, in the heart of the WTO, a difference between the Community and the United States in relation to sections 301-310 of the North American Trade Act of 1974, fully coincides with the above statement.

This report shows that in order to assess whether the national legislation of a WTO Member complies with the obligations arising from the WTO’s regulations, one must take into account the huge diversity of the Members’ legal systems. Thus, compliance can be achieved by different means in the different legal systems, with the final result being what counts, and not the way in which the result is reached. The Special Group concludes this reasoning by stating that only by understanding and respecting the specific features of each Member’s legal system, can a correct assessment of compliance be carried out[11].

Therefore, a significant level of discretion exists for the Members of the WTO when it comes to ensuring their legislation is in accordance with the

obligations arising from the regulations of the WTO, and in this respect these must be given “*the maximum autonomy (underlined by the author) in ensuring such conformity and, if there is more than one lawful way to achieve this, (it) should have the freedom to choose that way which suits it best*”[12].

Consequently, it is not always necessary to substantially alter the domestic legislation in order to fulfil the obligations arising from the WTO agreements, meaning that the European Community continues to maintain considerable room for manoeuvre in this respect as well.

In fact, in relation to the Anti-dumping Agreement, the European Community makes known the Agreement on Subsidies and the Agreement on Safeguards, all of which are annexes to the Agreement by which the World Trade Organization is established, which “*decided that in view of the extent of the changes brought about by these new Agreements and in order to ensure an adequate and transparent implementation of the new rules, it would be appropriate to transpose the texts of the new agreements into Community legislation to the extent possible, and for this purpose the above Agreements, rather than the prior Community legislation, were directly taken as the basis for the new legislation*”[13].

Consequently, the close link that exists between EU legislation in these fields and the different WTO agreements appears to be the result of an independent decision made by the European Community in order to comply with the commitments arising from the above-mentioned agreements, and not an inevitable obligation imposed by such agreements.

However, it must also be stressed that, in the light of the case-law of the Court of Justice of the European Communities, not all the commitments that the EC takes on in a conventional manner can be

compared. In this respect, the High Court distinguishes between the WTO agreements and the agreements signed by the Community with non-member countries that create special relations of integration or that introduce a certain asymmetry of obligations, because the latter are not based on the principle of “reciprocal and mutually advantageous arrangements”. This justifies the fact that the High Court acknowledges that certain stipulations of the latter agreements may produce direct effect[14].

In this way, one can maintain that the EU institutions’ margin of discretion is greater when it comes to complying with the commitments taken in the heart of the WTO than in the case of those arising from bilateral or regional agreements.

In other words, the conditioning factor of the European Community’s commercial policy from a domestic point of view is less intensive when the commitments are taken on in the setting of the WTO, rather than when commitments are agreed on at a bilateral or regional level.

4. Conclusions

We can therefore reach the conclusion that the European Community enjoys a sufficient level of independence that allows it to present its model of commercial policy in the different acts that it takes on unilaterally[15].

Indeed, the obligatory compliance by the Community of the international agreements is a conditioning factor as regards the implementation of the Common Commercial Policy, but it does not remove the Community’s autonomy to carry out its own model of commercial policy.

In this respect the Court of Justice of the European Communities has commented, recognizing a wide margin of discretion in favour of the EU institutions as regards their case-law relating to the denial of the

direct effect of the GATT, and subsequently of the WTO agreements.

Similarly, it must also be emphasised that, in the light of the case-law of the Court of Justice of the European Communities, not all the agreements made by the Community in a conventional manner can be compared, distinguishing in this respect between the WTO agreements and the agreements signed by the Community with non-member countries creating special relations of integration or introducing a certain asymmetry of obligations.

Consequently, one can declare that the European Community’s margin of discretion is greater when it comes to fulfilling the commitments made in the heart of the WTO than for the commitments arising from certain bilateral or regional agreements.

In short, the intense activity displayed by the European Community regarding trade on an international level, through the numerous agreements with non-member countries as well as the commitments made within the framework of the WTO, does not prevent the European Community from continuing to use its own model of commercial policy in the relations that it maintains with non-member countries and international organisations, nor does it prevent the European Community from having its own perspective when creating the model.

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- active participation in the regulation of international economic relations*". Similarly, ESTEVE, F. & PI, M. (eds.): *La proyección exterior de la Unión Europea en el Tratado constitucional. ¿Mejora o maquillaje?*, Fundació CIDOB, Barcelona, 2005, p. 15, point out that the importance of the role played firstly by the European Community, and then by the European Union, internationally in this economic and commercial sphere, cannot be disputed.
2. See Judgment of 12 December 1972, *International Fruit Company* (21-24/72, *Rec.* p. 1219); judgment of 24 October 1973, *Schlüter* (9/73, *Rec.* p. 1135); judgment of 19 November 1975, *Nederlandse Spoorwegen* (38/75, *Rec.* p. 1439); judgment of 16 March 1983, *SIOT* (266/81, *Rec.* p. 731); judgment of 16 March 1983, *SPI and SAMI* (267-269/81, *Rec.* p. 801); judgment of 16 March 1983, *CSS and GS* (290-291/81, *Rec.* p. 847); judgment of 5 October 1994, *Germany/Council* (C-280/95, *Rec.* p. I-4973).
 3. See Judgment of 23 November 1999, *Portugal/Council* (C-149/96, *Rec.* p. I-8395); judgment of 14 December 2000, *Dior/Assco* (C-300/98 and C-392/98, *Rec.* p. I-11307). See the following on these judgments CASTILLO DE LA TORRE, F.: "OMC, competencia prejudicial y efecto directo – la sentencia *Dior/Assco*", *Revista de Derecho Comunitario Europeo*, n.º 9, 2001, pp. 281-302; DÍEZ-HOCHLEITNER, J., ESPÓSITO, C.: "La falta de eficacia directa de los Acuerdos OMC (A propósito de la sentencia del Tribunal de Justicia de 23 de noviembre de 1999 en el asunto C-149/96, *Portugal c. Consejo*)", *Gaceta Jurídica de la UE*, n.º 206, pp. 10-23; EGLI, P., KOKOTT, J.: "European Community – WTO agreements – effect of international agreements in European Community law – ability of individuals and member states of European Community to rely on WTO agreements", *American Journal of International Law*, vol. 94, n.º 4, 2000, pp. 740-745; MENGOZZI, P.: "La Cour de justice et la applicabilité des règles de l'OMC en droit communautaire à la lumière de l'affaire Portugal c. Conseil", *Revue de Marché Commun et de la Union Européenne*, n.º 3, 2000, pp. 509-522; ZONNEKEIN, G. A.: "The Status of WTO Law in the EC Legal Order. The Final Curtain?", *Journal of World Trade*, vol. 34, n.º 3, 2000, pp. 111-125.
 4. This interpretation is corroborated in the statement of the last legal reason of the Council Decision 94/800/EC, of 22 December 1994, concerning the conclusion on behalf of the European Community of the WTO agreements (*OJ L 336*, 23.12.1994, p. 1), which literally reads as follows: "Whereas, by its nature, the Agreement establishing the World Trade Organization, including the Annexes thereto, is not susceptible to being directly invoked in Community or Member State courts". It is worth mentioning, as do DÍEZ-HOCHLEITNER, J., ESPÓSITO, C.: "La falta de eficacia directa de los acuerdos OMC en la Unión Europea", in REMIRO BROTONS, A., ESPÓSITO, C. (eds.): *La Organización Mundial del Comercio y el Regionalismo Europeo*, Dykinson, Madrid, 2001, pp. 163-164, that in an order on 2 May 2001, pronounced in the case C-307/99, the Court of Justice of the European Communities considered its case-law on this matter to be consolidated.

5. There are many references on the GATT's and WTO's agreements' lack of direct effect. As well as the bibliography mentioned in previous notes, see, DÍEZ-HOCHLEITNER, J.: *La posición del Derecho Internacional en el Ordenamiento comunitario*, McGraw-Hill, Madrid, 1998; BOURGEOIS, J. H. J.: "The Court of Justice of the European Communities and the WTO: Problems and Challenges", in WEILER, J. H. H. (ed.): *The EU, the WTO, and the NAFTA. Towards a Common Law of International Trade*, Oxford University Press, Oxford, 2000, pp. 71-123; EECKHOUT, P.: "The Domestic Legal Status of the WTO Agreement: Interconnecting Legal Systems", *Common Market Law Review*, vol. 34, 1997, pp. 11-58.
6. See Judgment of 23 November 1999, *Portugal/Council, cit.*, section n.º 37.
7. See section. n.º 40 of the judgment of 23 November 1999, *Portugal/Council, cit.*
8. *Ibid.*, section n. 46.
9. Although, as stated by DÍEZ-HOCHLEITNER, J. & ESPÓSITO, C.: "La falta de eficacia directa de los Acuerdos OMC en la Unión Europea", *loc. cit.*, p. 167, the important role given to the negotiation between the parties in the heart of the WTO should not lead us to the conclusion that we are not before true legal obligations.
10. Judgment of 23 November 1999, *Portugal/Council, cit.*, section n.º 41.
11. See Report of the Panel, *United States – Sections 301-310 of the Trade Act of 1974*, WT/DS152/R, of 22/12/1999, Section 7.24.
12. *Ibid.*, Section 7.102.
13. WTO: Trade Policy Review. European Union. 1995. Report by the European Communities, WTO Publications Service, Geneva, 1995, vol. II, p. 36.
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THE USE OF SPANISH REGIONAL OFFICIAL LANGUAGES IN THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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Abstract: *Currently an important issue in the EU is the status of languages spoken in member state countries which are only official in a limited part of their territory. The political activism in countries such as Spain, in response to internal requests from nationalist parties, has played a key role in having EU institutions acknowledge the demand for recognition of those languages. The friendly approach of EU institutions to that claim is justified not only by the need for a greater involvement of EU citizens in the integration process, but also by the commitment to respect the national identities of member states. The agreements signed by Spain and several EU institutions, including the ECJ, contribute to the rise of a new category of languages to be recognized along with the EU official and working languages. Spanish citizens and residents are therefore granted the ability to send written communications to the ECJ in any of the official regional languages of Spain. The scope and ambit of these agreements are still very limited and symbolic. They might generate some practical problems. But, it's an opportunity for the EU to define an incipient linguistic policy.*

Key words: *Spanish co-official languages; European Court of Justice; EU linguistic policy.*

1. Introduction

Europe is an authentic linguistic mosaic[1]. It conglomerates an important variety of languages. In addition to the diversity of languages, there is also a diversity of linguistic regimes in the Member States.

Specifically, the linguistic regime of the EU (European Union) has traditionally been a very complex and sensitive question. Due to both its complexity and sensitivity, a confusing system has been developed to respond to the need to protect the important linguistic heritage acquired

from the long and dynamic political and cultural history of the continent.

The recent enlargement of the EU that included Eastern European countries has increased considerably the number of official languages. This and the debate on the *Treaty Establishing a Constitution for Europe* (TCE) have raised questions about the status of other languages spoken in Members States which are only official in a limited part of the Member States' territories. Still more important is the fact that there are regional official languages spoken by a significantly larger number of

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people than some of the EU official languages [2].

Recognition of these regional languages with respect to EU Institutions has been one of the priorities of the elected 2004 Spanish government which has signed several agreements allowing citizens to benefit from the right to choose to communicate with the EU institutions in any of the Spanish co-official languages. Among all of the agreements that have been signed, one of the most important is the Administrative Agreement signed recently[3] with the Court of Justice of the European Communities. This particular agreement is interesting in many respects and we will examine it more closely here.

2. Official Regional Languages in the EU

Art. 6.3 of the EU Treaty[4] states that “*the Union shall respect the national identities of its Member States*”. For this reason, preserving the linguistic pluralism and cultural diversity of the of the EU countries is identified as one of the most crucial[5] aspects of the unprecedented European integration process. Indeed, the option to implement an official multilingualism policy as an intentional political project for the EU is certainly an original initiative. However, experience has revealed that this important task for the EU institutions is quite laborious. Concerns about the remarkable increase in the number[6] of official languages due to the accession of new member states and therefore the risk to drift into a less operative linguistic system has also been a constant issue. As a result, a pending dilemma exists regarding how to guarantee legal security[7] to EU citizens protecting their rights entitled by this position, like for example the right provided for in paragraph 3 of art. 21 of the ECT[8] (European Community Treaty), and at the same time on how to guarantee a good administration of the EU institutions.

The Treaties have not been especially explicit in regard to the status of

languages. The status of official languages can be inferred from the primary law treaties when enumerating the languages considered authentic, and listed in art. 29.1 of the Rules of Procedure of the Court of Justice of the EC. Official languages of the EU coincide by principle with the official languages of the Member States. Meanwhile, Irish can be seen as an exception because it is formally an official language of the EU but not used on a daily basis by the official Journal of the EU. Irish is used in the treaties and primary law[9] acts.

Council Regulation N° 1/1959 determining the languages to be used by the European Economic Community distinguished between “treaty languages” and “working languages”[10]. Formally that distinction doesn’t seem to be relevant, and in practice the EU institutions have developed internal mechanisms to help insure a pragmatic and efficient use of official languages which involves reducing their number for efficiency purposes.[11]

A new category of languages called “co-official languages” is now emerging in the EU as a result of the political advocacy of countries like Spain that is seeking the recognition and use of these languages by EU institutions. Simultaneously, according to regulation 1/1958 and other foundational treaties of the EC, these languages can’t be considered “treaty languages” or “working languages” by the EU institutions, because they aren’t official languages of the EU.[12]

Co-official languages have nothing to do with the languages referred to in art. 8 of the Council Regulation 1/1958 which declares that, if a Member State has more than one official language “*the language to be used shall, at request of such State, be governed by the general rules of its law*”. This regulation is in reference to countries with more than one national official language. Illustration can be found in the situation of Ireland which has two official languages and requested a change from English[13] to Irish[14]; the latter

becoming one of the 23 official languages of the EU.

3. Spanish Co-Official Languages in The EU

For the purpose of this study, co-official languages refer to regional languages that have, at the same time, regional official status. This is true of Catalan, Basque, and Galician in Spain[15]. Their official status is alluded to in art. 3(2)[16] of the Spanish Constitution of 1978. Consequently, other types of regional languages are excluded from this ambit.

Since 1986 Spanish(Castilian) has been considered one of the official languages of the EU, despite the constant claim from nationalist political parties that other languages besides Spanish be official -or somehow used languages- in the EU.

It is only through the political activism of governments[17] that the role of regional official languages in the EU linguistic regime has been discussed. In fact, Spain is the first country to have filed official requests[18] and signed several Administrative Agreements[19] with EU institutions emphasizing the need to recognize co-official languages as semi-official languages of the EU. At the same time Spain has carefully avoided asking for a fully official status for these languages. In its Memorandum[20] on the 12th of December of 2004, the Spanish government proposed a modification of Regulation 1/1958 aimed at guarantirect written communication between citizens and EU Institutions, and promoting the specific use of co-official languages in particular oral communication situations and passive interpretation (E.g., in the EU Parliament, in the Committee of the Regions and in ministerial sessions of the EU Council). Additionally, Spain proposed that the final texts of the decisions adopted through the co-decision procedure between the EU parliament and the EU Council be published in these co-official languages. In this way, Spain called for a specific concession instead of full official status.

The foundation of this request was their claim that using the co-official languages with respect to EU institutions would *strengthen the identification* of the people with *the political project* of the EU [21]. These agreements have given the official regional languages a semi-official stature in these EU institutions even if their recognition seems to be, to date, very symbolic.

The EU Parliament Resolution *on languages in the Community and the situation of Catalan* [22], invites the Council and the Commission to take whatever steps are necessary to publish in Catalan the EC's treaties and basic texts; to use Catalan for disseminating public information concerning European institutions in all information media; to include Catalan in the programmes set up by the Commission for Learning European Languages; and to promote the use of Catalan by the services of the EU Commission in its written and oral communication when dealing with the public in the Autonomous Communities where that co-official language is spoken(e.g. Catalonia and Valencia).

The progressive recognition of the regional official languages as necessary for the construction of a culturally diverse and integrated EU has also been recently stressed by the Council Conclusion on June 13, 2005 which commented on, *the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union*[23]. In this document the Council encourages the use of any "additional languages" whose "status is recognized by the Constitution of a member state in all or part of its territory or the use of which as a national language is authorised by law". The signing of Administrative Agreements with EU institutions encourages citizens to share ownership of its projects and makes available the opportunity to use their own mother tongue to communicate with EU institutions. At the same time, the Council affirms [24] that, in an effort to bring the

EU closer to all its citizens, the richness of its linguistic diversity must be taken into consideration. EU Institutions would bear no financial responsibility for the use of an official regional language by Member States' citizens but, on the contrary, the cost will be covered by the Member State who requested the use of an official regional language.

Council Conclusions quoted above allow the use of co-official languages for *passive interpreting* by Member States' governments in speeches in the Council meetings and "possibly in other Institutions or bodies (European Parliament or Committee of the Regions)". In the case of the Council, this passive interpretation is subject to some limits. The request would be approved when made "reasonably in advance" of the meeting and when the "necessary staff and equipment are available"[25].

In the final phase of the negotiation of the *Treaty Establishing a Constitution for Europe* in 2004, the Spanish Delegation that emerged out of the elections in May of 2004 requested the inclusion of the following paragraph in art. IV-448: "*This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council.*" The paragraph quoted is identical to provisions in art. 55.2,[26] the consolidated version of the EUT (European Union Treaty) modified by the Treaty of Lisbon whose ratification process was stalled after Ireland refused by referendum to be bound by it.

If the Treaty of Lisbon is adopted, official regional languages will, for the first time, obtain the status of "translation languages" in the primary EC law. This would signify the recognition of a new status for these languages despite the fact

that they wouldn't be considered authentic versions of EU treaties. The translations would have no legal effect, and would have to conform to the authentic versions, that is, the "treaty languages" versions[27].

4. Spanish Co-Official Languages in the Court of Justice of the European Communities

The Administrative Agreement between the Court of Justice of the European Communities and the Kingdom of Spain was signed on the 27th of April, 2009. This agreement builds on the Council Conclusion from June, 2005 *on the official use of additional languages within the Council and possibly other Institutions and Bodies of the European Union*. This document prepared the way for the adoption of the agreement between Spain and the European Court of Justice. The Conclusion approved by the EU Council was initiated by the Spanish government in compliance with the political pact signed with various political parties from Catalonia. This alliance[28] gave the Spanish Socialist Party the necessary majority in the national parliament to govern the country. On the basis of this political pact, the Spanish government promoted various agreements with other EU institutions which have been mentioned earlier in this paper.

The Administrative Agreement with the Court of Justice authorizes the official use of Castilian, as well as other languages that are recognized by the Spanish constitution of 1978. Spanish citizens and residents are granted the ability to send written communications to the Court of Justice of the EC in any of the official regional languages of Spain. This permission excludes judicial communications and those related to the enforcement of a legal text. Communications whose purpose is to obtain a particular advantage (e.g. a public grant), or benefit (e.g. being awarded a contract), or applying for a job aren't covered by the Agreement.

The effective *modus operandi* on the use of the administrative facility granted by the Agreement is detailed under point 1.3. A special administrative unit from the Ministry of Territorial Policies of Spain called “Oficina Para las Lenguas Oficiales” (Office for Official Languages) will be the intermediary between the citizen and the EU Institution. Its task will be to send to the Court of Justice of the EC written communications that are originally in one of the regional official languages accompanied by a certified translation in Spanish. In its response, the Court will use Castilian. The Office for Official Languages will ensure the transmission of the reply in as short a time as possible to the interested party in the co-official language used in the original communication. The European Court of Justice refuses liability in the case of a translation that wouldn't be reliable. This position is understandable given that a third party is involved as an intermediary and could potentially alter the translation of the response sent to the citizen or resident.

It's mandatory that any written communication using co-official languages from a citizen to the court pass through the Office for Official Languages. Art. 2 of the Agreement states that any communications not accompanied by a certified translation from the Office for Official Languages will be rejected and returned to the sender. The time limit which the court has to answer a written communication from a citizen is determined from the moment it receives the official translation in Castilian. Paragraph 2nd of art. 3 says that the time limit will come to a close when the Court sends the written answer in Spanish to the Office for Official Languages.

Spain has committed itself to bear any direct and indirect costs that the Court might incur as a result of the implementation of the Agreement. This cost will be refunded annually.

The implementation of the Agreement is conditioned on previous notice to the

Secretary of the Court by the Spanish Ministry of Territorial Policies which must certify that the Office for Official Languages is ready to take responsibility for the cost of the translation of written communications in official regional languages from citizens or residents.

It's important to observe that this Administrative Agreement is not a typical act of the categories encompassed by EU law. Nevertheless, they are part of the *sui generis* categories of act. These acts are mandatory for the parties who have the power to amend or terminate them based on mutual consent.

The Agreement doesn't interfere with the regulations addressed in art. 29(4), *Rules of Procedure of the Court of Justice of the EC* because, as mentioned earlier, the Agreement excludes *ipsis verbis* legal communications. Indeed, art. 29(1) makes clear that for legal issues the language used will be one of the 23 listed official languages of the EU to be chosen by the applicant except if the defendant is a Member State or a natural or legal person who holds the nationality of a Member State. In that case, the “language of the case” will be the “official language of that State” or any of its official languages if it has more than one official language. Meanwhile, in a case situation, official regional languages can only be used when the witness or expert put forward that he is unable to adequately express himself in one of the official languages of the EU[29].

Lastly, the difference between this specific Administrative Agreement and the other Agreements signed by Spain must be highlighted. The Agreement with the Committee of the Regions and the Council of the EU identifies “Spanish citizens” as the only persons with the right to send written communications to the court. Contrarily, the Administrative Agreement with the Court of Justice states that Spanish citizens, as well as natural or legal persons residing in Spain are granted the right to use the official regional languages

in their communication with the court. For this reason the personal ambit of the rights granted by the administrative agreements signed by Spain need to be unified.

5. Conclusion

The enlargement process and the need to reform the EU have catalyzed a new debate and new interest in the status of co-official languages in the EU. The Council Conclusion of June 13, 2005 has propelled the issue from an individual Spanish request to a common interest problem in the EU. This Conclusion established regulations regarding the way Members States should proceed when interested in having their citizens communicate with EU Institutions in one of their regional official languages. Concern about the increasing number of official languages in the EU and the simultaneous risk of functional disruption or collapse of the EU Institutions has limited the admission of the use of co-official languages through the signing of Administrative Agreements which are restricted in their scope and material ambit. In the Court of Justice of the EC written communications must be separate from any judicial or legal matter and must not be filed with the intention of obtaining any advantage or benefit. Neither should they have anything to do with personal matters like applying for a job or a work position.

At the same time, seeing as the work of the Court is primarily judicial, citizens or residents who exercise the right to use co-official languages will also be limited in number since it is likely that people will not communicate with the Court unless they have a legal case.

The risk of slowness due to the intervention of a third party (the Office for Official Languages) who must translate the original documents to Castilian and from Castilian to Spanish, and translation to the working language of the Court (French) might obstruct the fluid exchange between the Court and citizens.

Moreover two key factors jeopardize the process, on the one hand the risk of an incorrect translation from the third party, and on the other hand, the confidentiality of the written communication.

The recognition of the use of co-official languages with respect to EU institutions is a very important achievement, even if this recognition is still very symbolic or political. Certainly it gives the opportunity to define an incipient linguistic policy for the EU. Additionally, their new status as semi-official languages of the EU helps defuse important and persistent political claims in Spain regarding the status of regional languages

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3. Agreement between the Kingdom of Spain and the Court of Justice of the European Communities (See: http://www.lehendakaritza.ejgv.euskadi.net/r4810572/es/contenidos/informacion/euskera_ue_gral/es_11146/adjuntos/euskera_ue_tjce_es.pdf), signed on the 27.04.09.
4. OJ C 325, p.12, 24.12.2002; See also art. II-82 of the Charter of Fundamental Rights of the EU and its Preamble (OJ C 310, 16.12.2004).
5. ATHANASSIOU PHOEBUS, "The application of multilingualism in the European Union context", Legal working papers Series, nº 2, February 2006, European Central Bank, p. 8
6. It's important to observe that the linguistic regime of the EU has moved from a very simple, serviceable and original mechanism to a complex and confusing one with the many mutations it has experienced due to the

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7. MARÍ ISIDOR AND STRUBELL MIQUEL, “The linguistic regime of the European Union: Prospects in the face of enlargement”, p.1 (www.europadiversa.org/eng/pdf/strubell_mari_eng.doc).
 8. “Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language” , OJ C 325, p. 33, 24.12.2002; see also art. 2 of Regulation 1/1958 (OJ 017, p. 0385 – 0386,06.10.1958).
 9. See note 12 and 13.
 10. See art. 1 of Regulation 1/1958 (OJ 017, p. 0385 – 0386, 06.10.1958).
 11. Some institutional frameworks like the meetings of the troika for external policy matters have adopted a “variable geometrical system” that includes the use of a reduced number of languages among which French, English, German and other languages depending on the needs of the participants are predominantly used. This is also the case for the major use of English in the Council and the Commission and the use of French in the Court of Justice of the EC and the European Court of Auditors : See ESTEVE GARCIA FRANCINA, “El nuevo...” op. cit., p. 459 and See also MCAULIFFE KAREN “Enlargement at the European Court of Justice: Law, Language and Translation” *European Law Journal*, Vol. 14, Issue 6, November 2008, pp. 808.
 12. See art. 314 ECT, OJ C 325, p. 154, 24.12.2002
 13. Art. 8 of the Irish Constitution of July 1st 1937 states that English is recognized as the second official language.
 14. Irish has become a fully official language of the EU on the 1st of January 2007: See Council Regulation (EC) N° 920/2005, OJ L 156, p3-4, 18.6.2005.
 15. See DEL VALLE GÁLVEZ, ALEJANDRO “ Spanish Regionalism in International and European Law” in *Regioni e autonomie territoriali nel diritto internazionale ed europeo*, Editoriale Scientifica, Napoli, 2006, pp. 291-312.
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20. See note 14.
21. See "Memorandum...", note 12.
22. OJ C 19, p.42, 28.01.1991
23. OJ C 148, p.1-2, 18.6.2005.
24. See paragraph 2, OJ C 148, p.1.
25. See Point 5(b) (OJ C 148, p.1-2, 18.6.2005).
26. OJ C 115, p.45, 9.5.2008; See also Declaration 16 on Article 53(2) of the Treaty on European Union(OJ C 306, p.256, 17.2.2007) and comments by SCHILLING THEODOR, "Language Rights in the European Union", *German Law Journal*, Vol. 09, No. 10, 2008, p. 1233.
27. Art. 314 ECT (OJ C 325, p.154, 24.12.2002).
28. See MORATA FRANCESC, "European Integration and the Spanish State of the Autonomies", *Zeitschrift für Staats- und Europawissenschaften*, Vol 4, Issue 4, March 2007, p. 508: "As a result of the victory of the PSOE in the March 2004 elections[...]”without having an absolute majority, like Gonzalez and Aznar before him, Zapatero had to negotiate with a series of political parties about the required parliamentary support and, especially, with the eight ERC deputies and the four ones of Izquierda Unida/Iniciativa per Catalunya-Verds. Both groups had among their priorities the participation of the Autonomous Communities and the use of the co-official languages in the EU. From there, with all eyes set on the referendum (for the approval of the Constitutional Treaty project) called for February 2005, the government quickly took the initiative.”
29. The Court Registrar shall arrange for translation in the language of the case: See art. 29.4 of the Rules of Procedure of the Court of Justice of the European Communities((OJ L 176 of 4.7.1991, p. 7, and OJ L 383 of 29.12.1992 (with various amendments) and Point 5 of EU Parliament Resolution *on languages in the Community and the situation of Catalan* (OJ C 19, p.42, 28.01.1991).

THE RIGHT TO PRIVACY AND THE RIGHT TO INTELLECTUAL PROPERTY IN INTERNET: THE PROMUSICAE CASE, A SIGNIFICANT JUDGEMENT OF THE EUROPEAN COURT OF JUSTICE

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Abstract: *The difficult conciliation between the protection of the right to respect for private life, specially the confidentiality of personal data, and the rights to protection of copyright and to an effective remedy is the key issue decided by the Judgment of the Court of Justice in Case C-275/06, Promusicae. In order to safeguard other persons' rights, the Court approves of limits to the privacy and these limits are sanctioned to damage the confidentiality of personal data, generated by the traffic in the electronic communications. In our opinion, in spite of the Court's praiseworthy efforts to balancing the rights concerned, the judgement creates an instrument that entails a danger for freedom.*

Key words: *information society, rights to protection of copyright, right to respect for private life, confidentiality of personal data, right to an effective remedy.*

Living in the information society brings into the daily life of every citizen features and services that incorporate a new perspective in the protection of fundamental rights.

The new technology, the massive access of population to the worldwide system of communications, the use of formats and supports different from the traditional ones and subject to constant changes, are some of the elements that make up that new perspective, the one of the virtual world, for whose treatment the habitual legal mechanisms, those that are used in the real world are not effective.

Community law is not alien to this recent problematic that concerns the settings needed for the accomplishment, without obstacles and on equal conditions, of the

inner market in electronic communications sector. In this new scenario, there are two fundamental rights especially involved, often opposite, the right to private life or to privacy, and the right to intellectual property.

Therefore, when dealing with those settings, Community rules, and thus national rules, must pay attention to some aspects related to the protection of the fundamental rights that can be affected in a significant way by using the electronic communication networks and services.

The right to privacy, whose basic status was already defined by Warren and Brandeis in 1899, protects «*the sacred precincts of private and domestic life*» [1], and, in their perspective, provides to every person «*the right to be let alone*».

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Nevertheless, the potential attempts to private life, and specifically to personal data, issued from the technological progress, have added an active perspective to enable an individual to control all management and processing data which could concern him or her. As a result, many States guarantee the right to be informed when personal data was processed, the right to know the reason for this processing, the right to access the data and if required, the right to have the data amended or deleted. [2] But these legislations are not always coincident and, in the European Union, the differences could raise some troubles to the flow of information among States. On the other hand, copyright holders can see their legitimate expectations frustrated because of a fraudulent use of telecommunications system.

One of the conflictive situations brought about by the information society gives rise to the sentence of the European Court of Justice (hereafter, ECJ), C-275/06, of January, 29, 2008, the *Promusicae case*. [3] That is the problem derived from the hard conciliation between the respect to personal privacy with the protection due to intellectual property and particularly, to copyright. The infringements of copyright using the network of internet are at the origin of the lawsuit before the national judge, although the consequences of the ECJ conclusions could be applicable, beyond this illegal use of the network, to other situations developed through the telecommunications system. The Court approves of limits to the privacy to safeguard other persons' rights, and these limits are sanctioned to damage the confidentiality of personal data, generated by the traffic in the electronic communications. In spite of the Court's praiseworthy efforts to balancing the rights concerned, the judgement creates an instrument that entails a danger for freedom. The task was not easy for the ECJ and so the judgement is long, complex, with a cautious approach to the

problem, finally leaving the decision to the Member States.

Productores de Música de España, (hereafter, *Promusicae*), is a Spanish non-profit-making organisation, acting on behalf of its members, copyright holders and holders of related rights (producers and publishers of musical and audio-visual recordings). It applied, in November 2005, to the *Juzgado núm. 5 de lo Mercantil de Madrid* against *Telefónica*, an internet services provider, for preliminary measures to oblige the latter to disclose personal data of peer to peer users, in order to start civil procedures. *Promusicae* alleged that these persons, whose direction «IP», dates and hours of internet connection were known, made use of KaZaA file exchange software to store and exchange music files which *Promusicae* members were copyright holders. The Spanish judge, at first, acceded and ordered *Telefónica* to disclose the personal data required, but *Telefónica* opposed and argued that Spanish law authorized the communication of these data only in a criminal investigation or for the purpose of safeguarding public security and national defence, not in civil proceedings or as a preliminary measure relating to civil proceedings. *Promusicae* replied by arguing the interpretation of Spanish law accordingly to Directives 2000/31, 2001/29 and 2004/48 and with Articles 17.2 and 47 of the Charter of Fundamental Rights of the European Union (hereafter, the Charter), provisions which would not allow Member States to limit solely to the purposes expressly mentioned in that law the obligation to communicate the data in question. [4] The Judge stayed the proceedings and consulted the ECJ for a preliminary ruling, submitting the following question: «Does Community law, specifically Articles 15(2) and 18 of Directive [2000/31], Article 8(1) and (2) of Directive [2001/29], Article 8 of Directive [2004/48] and Articles 17(2) and 47 of the Charter ... permit Member States to limit to the context of a criminal investigation or to safeguard public security and national

defence, thus excluding civil proceedings, the duty of operators of electronic communications networks and services, providers of access to telecommunications networks and providers of data storage services to retain and make available connection and traffic data generated by the communications established during the supply of an information society service?»

In her opinion, the Advocate General, Julianne Kokott, considering the rights implied in the case, found it was necessary to extend the parameters of Community law that would serve like interpretative canon of the national norm that provokes the preliminary ruling. Consequently, five Directives would form the judgment Community law framework. Three of these are the Directives mentioned by the national judge, 2000/31, 2001/29 and 2004/48 [5] (hereafter, the three together as Directives on E-commerce and intellectual property). The other two norms, that the ECJ will also count on, are the Directive 95/46, on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and Directive 2002/58 [6], a specific regulation concerning the processing of personal data and the protection of privacy in the electronic communications sector (hereafter, these both together, as Data protection Directives).

However, despite this common initial criterion of analysis, the Advocate General proposed a thesis that is not assumed by the ECJ. A well contrived discourse leads the Advocate General to declare compatible with Community law the national regulation that denies the possibility to disclose personal traffic data to private persons to be used in civil procedures. The Data protection Directives (95/46 and 2002/58) would act as a framework and would take precedence over the E-commerce and intellectual property Directives (2000/31, 2001/29 and 2004/48), although that does not mean primacy of Data protection Directives but necessity to find a suitable balance.

Besides, she stresses the link between data protection and fundamental rights, particularly the right to private life, included in the Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (hereafter, the ECHR), confirmed by the Charter that includes specifically the data protection in Article 8. From these norms derives the exigency of legal foreseeability that, for data protection, expresses «*in the criterion – expressly mentioned in Article 8 (2) of the Charter – of purpose limitation*». Personal data may only be collected and processed (Article 6(1)(b) of Directive 95/46), for specified, explicit and legitimate purposes and «*not further processed in a way incompatible with those purposes*». Only a pressing social need can justify an interference measure into private life that must always be proportioned to the purpose. Certainly, the fundamental rights to property and to an effective judicial protection of holders of copyrights may be considered as a legitimate purpose, deserving of protection. Nevertheless, the Advocate General does not find, among the exceptions to the protection of private life stated in Data protection Directives, the possibility to compel internet service providers to disclose personal traffic data and to provide them to private persons in order to pursue in civil proceedings the infringements of copyright. Nor in the Directive 95/46, neither in the Directive 2002/58 is there a legitimate cause to interfere in private life in the way *Promusicae* applied. She, particularly, analyses the relation between Article 13 Directive 95/46 and Article 15 Directive 2002/58 (both articles containing the list of exceptions referred to the protection of personal data) to conclude that this one, as the specific data protection law in telecommunications sector has chosen the exceptions applicable in this field and has not included the protection of rights and freedoms of others as one of these exceptions. This is the major point of

disagreement with the ECJ statement, even if there is a basic coincidence to declare that «*the authorities and courts of the Member States are not only required to interpret their national law in conformity with the Data Protection Directives, but also to ensure that they do not act on the basis of an interpretation of those directives which conflicts with the fundamental rights protected by the Community legal order or the other general principles of Community law*».[7]

In its judgement, the ECJ found that the communication of the names and addresses of users of KaZaA involves the transmission of personal data [8] and constitutes the processing of personal data within the meaning of the first paragraph of Article 2 of Directive 2002/58, read in conjunction with Article 2(b) of Directive 95/46. So, first of all, the ECJ determines if the legal framework formed by the Data protection Directives and the Directives on E-commerce and intellectual property compels Member States to enforce the duty to disclose personal data in civil proceedings to warranty the effective protection of intellectual property. Its analysis of secondary legislation on data protection concludes that the Member States are not precluded from laying down an obligation to disclose personal data in the context of civil proceedings, though they are not compelled to lay down such an obligation.[9] In second place, the ECJ infers from the E-commerce and intellectual property Directives that they do not contain an obligation for the member States to lay down an obligation to disclose personal data to be used in civil proceedings to protect the rights of holders of copyright.[10] Thirdly, it considers the exigencies issued from the articles 17.2 and 47 of the Charter that the national Judge alleged. Since the fundamental right to property, that includes the right to copyright, and the fundamental right to effective judicial protection have been declared general principles of Community law, the ECJ examines if they would be violated by an interpretation of the

Directives on E-commerce and intellectual property, that would not oblige the Member States to lay down the obligation to communicate personal data to ensure the protection of the right to copyright in civil proceedings. Doing so, the ECJ comes to the essential question in the national process, this is, the conflict between the fundamental rights and the necessary conciliation of the different interests protected. As the ECJ remembers, it is necessary to take care of, not only the right to property and the right to effective judicial protection, but also the right to data protection, as part of the fundamental right to privacy. The Directive 2002/58 is the specific norm that protects the privacy in the telecommunications sector, directly related to the articles 7 and 8 of the Charter which recognises the right to privacy and the right to data protection, being Article 8 of the Charter a transcript of article 8 of the ECHR. But the way to make possible the conciliation of both protected spheres is the Gordian knot that must be cut to solve the problem raised by the national judge. According to the ECJ, the mechanisms to find the fair balance are contained, first, in the Directive 2002/58, the specific protective norm of private life in the field of electronic communications, and also in the E-commerce and intellectual property Directives. Secondly, these mechanisms are contained in the measures for implementation and application adopted by the Member States that must respect the rights protected by the Community law and the other general principles of Community law, such as the principle of proportionality.

The *Promusicae* judgement confirms the relevance to Community law of the fundamental rights, whose balancing becomes a singular principle of interpreting European and national law. These balancing requirements, together with the other principles of European Law, such as the principle of proportionality, are clearly and strongly stated in the *Promusicae* case.[11] Member States must take special care to protect this balance

when adopting national rules to implement Community law, as well as measures to carry out their related obligations, but further more there are no concrete recommendations from the ECJ to accomplish this difficult task. The *Promusicae* judgement goes on with the ECJ traditional case-law about the fundamental rights at the European Union and reaffirms their enhanced force, lack of a binding real catalogue. Nevertheless, admitting the possibility of attempts to personal data and thus, to private life, the ECJ brings into existence an instrument whose danger we can not ignore. The legitimate cause for these attempts would be the rights of others but the limits for these interventions or the kind of rights that would give way to these interferences are not defined by the ECJ. We could consider that only other fundamental rights can justify the attempt to personal data but the ECJ dose not specify or concretise.[12] As a result, an uncertainty remains that could be avoided by the reference made to the principle of proportionality which links to the rich ECJ case-law in the field of fundamental rights.[13] However, it doesn't lighten the immanent difficulty for every measure channelled to give satisfaction to a conflict of rights. The ECJ does not give precisions to illustrate how Member States must reach, in the practice, a fair balance between the right to copyright and the right to privacy, specifically the right to protection of personal data. If it meant that Member States should have included additional exceptions to the Directive 2002/58 to allow the eventual communication of personal data in civil proceedings, there is no indication about it or about the situation of States, like Spain, that have made a literal transposition of this Directive.[14] Finally, it must be considered that the exigency of foreseeability of any limits to the fundamental rights is fixed for data protection in the criterion of purpose limitation. The data can only be collected for the specified and legitimate purposes,[15] and loyally processed in a

way compatible with those purposes. This exigency prevents from processing personal data to attain any other objective.

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Notes

1. Samuel-D. WARREN, Louis-D. BRANDEIS, *The right to Privacy*, HLR, 1890, n 4, p. 195. These authors are considered to have set the «bases técnico-jurídicas de la noción de privacy» which is configured as a right to loneliness or «to be let alone», though the roots of this individual private sphere claim date back to the emergence of bourgeoisie, as an aspiration of this new social class to accede to a noblesse privilege. Antonio PEREZ LUÑO, *Derechos humanos, Estado de Derecho y Constitución*, Tecnos, 6ª ed. Madrid, 1999, pp. 321-323.
2. In Spain, for instance, the Organic Law 15/1999 of 13 December, on the

- Protection of Personal Data states in Article 6. «Consent of the data subject: 1. Processing of personal data shall require the unambiguous consent of the data subject, unless laid down otherwise by law». The Charter of Fundamental Rights of the European Union enshrines the right to the protection of personal data: «Article 7 Respect for private and family life. Everyone has the right to respect for his or her private and family life, home and communications. Article 8. Protection of personal data 1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority.»
3. European Court of Justice, *C-275/06*, *Promusicae vs. Telefónica*, 29 January 2008, *Official Journal C* 64, 08.03.2008, p.9.
 4. Paragraphs 29-34 of the English version of the Judgement.
 5. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market («Directive on electronic commerce») O.J. n° L 178 of 17.7.2000. Directive 2001/29 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *O.J. L* 167/10, of 22.06.2001. Directive 2004/48 of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, *O.J. L* 157/45, of 30.04.2004.
- Hereafter, we will refer together as the E-commerce and intellectual property Directives.
6. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *O. J. L* 281/31 of 23.11.95. Directive 2002/58/EC of the European Parliament and of the Council, of 12 July 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), *O.J. n° L* 201/37, of 31.07.2002. We will call them together the Data protection Directives.
 7. Paragraph 56 of the Opinion of Advocate General. The ECJ use almost the same wording «...*the Member States must, when transposing the directives mentioned above, take care to rely on an interpretation of the directives which allows a fair balance to be struck between the various fundamental rights protected by the Community legal order. Further, when implementing the measures transposing those directives, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with those directives but also make sure that they do not rely on an interpretation of them which would be in conflict with those fundamental rights or with the other general principles of Community law, such as the principle of proportionality (see, to that effect, Lindqvist, paragraph 87, and Case C-305/05 Ordre des barreaux francophones et germanophone and Others [2007] ECR I-0000, paragraph 28).*» Paragraph 68 of the English version of the Judgement.
 8. This is, «*information relating to identified or identifiable natural*

- persons, in accordance with the definition in Article 2(a) of Directive 95/46» as was already defined in Case C-101/01 *Lindqvist* [2003] ECR I-12971, (paragraph 24). Paragraph 45 of the English version of the Judgement.
9. Paragraphs 53 and 54 of the English version of the Judgement.
 10. This obligation can not either be based on the Agreement on Trade-Related Aspects Of Intellectual Property Rights (TRIPS), Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, in the light of which must be interpreted Community law «as far as possible» if it regulates a field where TRIPS are applicable. Paragraph 60 of the English version of the Judgement.
 11. Christopher KUNER, «Data Protection and Rights. Protection on the Internet: The Promusicae Judgment of the European Court of Justice», *European Intellectual Property Review*, Issue 5, 2008, Thomson/Sweet & Maxwell Limited, London p. 201
 12. We refer to the possibility to apply in the telecommunications sector of article 13, 1. g) of Directive 95/46, this is, the exception that admits the attempts to the privacy in order to protect the rights and freedoms of other persons. The phrasing of article 13.1.g) is very similar to article 8.2 of the ECHR that admits the interferences in private and family life for the protection of the rights and freedoms of others. As a limit let to the appreciation of States, and without an insurmountable limit in the case-law of the European Court of Human Rights, it could be acceptable to think about interferences in any aspect of private life, if the States argue serious reasons. Carlos RUIZ MIGUEL, *La configuración constitucional del derecho a la intimidad*, España, Universidad Complutense de Madrid, 2005, p. 142.
 13. ECJ Allué II, joined cases C259/91, C-331/91 and C-332/91, 2.08.1993 [1993] ECR I-4309; Baumbast, C-413/99, 17.09.2002 [2002] E.C.R. I-7091; Oteiza Olazábal, C-100/01, 26.11.2002 [2002] ECR I-10981. The measures must be necessary (inexistence of other measures less serious for the fundamental rights), appropriated to attain the objective pursued and not to go beyond what is necessary to attain this objective (this is what some authors call proportionality itself and it means that the sacrifice of fundamental rights must not be excessive with regard to the seriousness of facts and the existing suspicions). These are the requirements to be used to judge «*la finalidad de la intervención estatal y su repercusión sobre los intereses tutelados por el Derecho comunitario*», BARNES, J., «Introducción al principio de proporcionalidad en el derecho comparado y comunitario», *Revista de Administración Pública*, núm. 135, septiembre – diciembre 1994, pp. 495-535, especially, pp. 516-529.
 14. Anthony DAWES, «Droit de la propriété intellectuelle (“Promusicae”)». Arrêt du 29 janvier 2008, affaire C275/06», *Revue du droit de l’Union Européenne*, n° 2, 2008, p. 377. See also L. GONZALEZ VAQUE, «El TJCE se pronuncia sobre la obligación de comunicar datos personales a fin de garantizar la protección de los derechos de autor en un procedimiento civil: la sentencia “Promusicae”», *Unión Europea Aranzadi*, vol. 35, n° 5, 2008, pp. 5-14. The author emphasizes that the ways to give form to this «... equilibrio inestable pueden ser problemáticas... y desarmonizadas».
 15. That is what stresses the article 8.2 of the Charter.

GIBRALTAR AND THE EUROPEAN PARLIAMENT ELECTIONS BEFORE THE EUROPEAN COURT OF JUSTICE

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Abstract: *The judgment under study (ECJ - judgment of September 12, 2006, Spain/United Kingdom, C-145/04) concerns the controversy between Spain and the United Kingdom on the sovereignty of Gibraltar and affects the legal status of Gibraltar in the European Union. The point of departure for this study stems from the adoption by the United Kingdom of the European Parliament (Representation) Act –EPRA 2003, in order to comply with the judgment of the ECHR in the case of Matthews vs UK, 1999. Spain points out that its action covers solely elections as they are held in Gibraltar and not the United Kingdom’s recognition of the right to the so-called Qualifying Commonwealth Citizens (QCCs) residing in its territory to vote for the European Parliament. The ECJ dismissed the action of Spain. In our opinion, a Spanish argument focused on the limitations of the annex I of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage (1976) would have been able to direct the arguments of the parties and the foundations of the ECJ to a different ending.*

Key words: *European Parliament – Elections – Right to vote – Gibraltar – Citizenship of the Union, Commonwealth.*

I. Introduction

Gibraltar holds an unusual position within the European Community/European Union (EC/EU), being a non-autonomous territory that is dependent on a Member State, the United Kingdom. It is also well-known that a controversy has existed between Spain and the UK concerning Gibraltar as a territory that is under British sovereignty since the Treaty of Utrecht in 1713, and that nowadays it is the subject of negotiations between the two nations with respect to the United Nations decolonisation process.

The unusual idea of Gibraltar as a non-autonomous territory meant that the United Kingdom initially excluded

Gibraltar from the European elections, according to the terms of Appendix II of the Act relating to the election of Members of the European Parliament by direct universal suffrage [1] (hereafter, the 1976 Act).

Two judgments by European courts have examined this situation from different perspectives, leading to regulatory reforms that have changed this political and legal scene, while creating a regulatory framework that is the subject of judicial controversy. In fact, the judicial decisions made by these European courts have allowed Gibraltar to take part in the European Parliament (EP) elections in 2009.

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Thus, on the one hand we have the *Matthews* judgment of the European Court of Human Rights in Strasbourg [2]; and on the other hand, the *Spain/United Kingdom* judgment of the European Court of Justice (ECJ) in Luxembourg [3].

On the 4th June 2009 Gibraltar took part for the second time in the European Parliament elections, included in the region of South West England. This change follows the proceedings of the British legislator in compliance with the *Matthews* judgment of the European Court of Human Rights in 1999, as a result of the appeal made against the United Kingdom by Mrs Matthews, of British nationality residing in Gibraltar. In this judgment, the European Court of Human Rights declared that the United Kingdom had infringed article 3 of the first Protocol of the European Convention on Human Rights (ECHR), by not having organised European Parliament elections in Gibraltar [4].

Consequently, in order to guarantee compliance of the European Court of Human Rights' judgment in the *Matthews* case, and faced with Spain's refusal to withdraw annex II of the 1976 Act [5], the United Kingdom issued a Declaration in which it assured that it would make it possible for the Gibraltarian electorate to vote in the European Parliament elections as part of a constituency of the United Kingdom [6]. This Declaration, on the 18th February 2002, included the agreement reached between Spain and the United Kingdom, of which the Council and the Commission took note [7].

On the 8th May 2003, the United Kingdom adopted the European Parliament (Representation) Act 2003 (hereafter EPRA 2003), with the aim of guaranteeing the right of the Gibraltarians to participate in the European elections.

This study aims to analyse the judgment pronounced by the European Court of Justice in 2006 with respect to an appeal

made by Spain against this British Act relating to the European Parliament elections in Gibraltar, determined by the Spanish-British agreements of the Declaration of 2002.

2. Appeal Made before the European Court of Justice by Spain against the United Kingdom Due to Failure to Comply with the Law

The Act relating to electoral representation for the European Parliament elections (EPRA 2003) formed a basis for the appeal made by Spain against the UK in March 2004, due to failure to comply with EU law [8], in accordance with article 227 of the Treaty of the European Community.

Focusing on the analysis of the judgment of the ECJ on the 12th September 2006, Spain considered that the EPRA 2003 violated the Treaty of the European Community and the 1976 Act, and that the United Kingdom had not respected the commitments it made in the Declaration of the 18th February 2002.

The declarations presented by Spain in the appeal against the United Kingdom focused on two specific aspects:

Firstly, on the way in which the United Kingdom has organised the European Parliament elections in Gibraltar [9], giving the right to vote to nationals from other countries that are not EU citizens. This is the case of Commonwealth citizens that fulfil certain requirements (known as *Qualifying Commonwealth Citizens* or QCC [10]) and that reside in Gibraltar. For Spain this is a violation of EU law, upholding that a clear relationship exists between EU citizenship and the right to active and passive suffrage in the European elections.

Secondly, on the incorporation of the territory of Gibraltar, and not the Gibraltarian electorate, in the constituency of South West England, violating,

according to Spain, the 1976 Act, whose Annex I (in the current version) obliges the United Kingdom to only apply the corresponding regulations within its own territory, consequently excluding Gibraltar. Spain likewise considers this to be a clear breach of the commitments made by the United Kingdom in its Declaration in 2002.

3. EU Citizenship and the Right to Vote in European Parliament Elections

If we focus on the first plea in law, the following arguments are those upon which the Spanish government based its appeal that the EPRA 2003 was contrary to EU law as a result of giving the QCCs resident in Gibraltar the right to vote in the European elections: Spain declares that articles 17, 19, 189 and 190 of the Treaty of the European Community, interpreted historically and methodically, only recognise the right to active and passive suffrage for EU citizens. Furthermore, Spain declares that due to the recognition of this right being a matter that depends on the EU, only EU law can make an amendment to its field of application *ratione personae* [11]. Likewise, Spain refuses the idea that rights that arise from EU citizenship can have different fields of application, as this would mean the breaking up of citizenry. The Spanish government supports its arguments with the Charter of Fundamental Rights of the European Union, in which article 39 refers to the citizens of the EU as holders of the right to vote and stand as a candidate at elections, understanding that this expression is not open to a country's own interpretation. The Spanish government also supports its argument through the Treaty establishing a Constitution for Europe, considering that the link between the right to vote in European Parliament elections and being a EU citizen is clearly stated in its articles.

For the United Kingdom, recognising the QCCs' right to vote is considered part of its constitutional tradition and, supported in this sense by the European Commission, it understands that the right to active and passive suffrage in the European elections may be extended to British nationals from other countries, since no EU law exists that opposes this idea [12]. Thus, the UK states that EU law does not have full control over the matters relating to the right to active and passive suffrage in the European elections, and that the 1976 Act does not define the categories of who holds this right, consequently understanding that this matter could be regulated by the EPRA 2003 [13]. Furthermore, the UK believes that not only EU citizens enjoy the rights conferred by the Treaty of the European Community [14], stating that the Treaty establishing a Constitution for Europe is established is not valid and that its regulations do not aim, at first sight, to exclude those nationals from other countries from the right to vote, nor to prescribe the way in which Member States must set the requirements for the right to vote.

According to the interpretation of the ECJ in this matter, in accordance with the law in force, the decision of who has the right to vote in the European elections is the responsibility of each Member State, while respecting EU law, adding later on that the articles of the Treaty referred to by Spain in its allegations are not opposed to the Member States recognising the right to active and passive suffrage of certain people that have a close tie to them and that are not actual nationals of the country in question or citizens of the EU that reside in their territory.

The European Court of Justice has stated that the idea behind the EU's statute of citizenship is to turn it into the fundamental statute of nationals of Member States, allowing those that find

themselves in the same situation to obtain, regardless of their nationality and without affecting the exceptions clearly anticipated to this respect, the same legal treatment; a statement that, for the Court itself, does not necessarily mean that the rights recognised by the Treaty are reserved only for EU citizens.

Finally, recognising that Britain's decision to concede the right of active and passive suffrage in the national elections and in those of the legislative assembly of Gibraltar to the QCCs that fulfil certain requirements is related to the constitutional tradition of the UK, the European Court of Justice understands that this country's decision to extrapolate to the European elections, organised in Gibraltar, the requirements established in its national regulations for being able to vote or be elected, in those other elections (national and for the legislative assembly of Gibraltar), does not go against EU law.

As a result, the European Court of Justice declares that Spain has not proved that the United Kingdom, by adopting the EPRA 2003, has infringed the aforementioned articles of the Treaty, and it considers that the first plea in law put forward by the Spanish government is unfounded.

4. The Creation of a Combined Constituency for the Territory of Gibraltar

We will now analyse the second plea in law put forward by the Spanish government, according to which the United Kingdom infringed the 1976 Act and the commitments made in the aforementioned Declaration of the 18th February 2002, by creating a combined constituency for the territory of Gibraltar.

As has been mentioned, in accordance with what is set out in Annex I of the 1976 Act, the United Kingdom cannot apply the regulations of this Act to Gibraltar [15].

Spain therefore considers that in order to ensure the *Matthews* judgment is complied with, as well as the terms of the Declaration of the 18th February 2002, the EPRA 2003 should have been limited to assigning the Gibraltar electorate to a British constituency. In other words, the United Kingdom should have included the Gibraltar electorate that are British nationals into an existing constituency, rather than the territory of Gibraltar as a whole, and to have done so without involving the authorities in the electoral proceedings [16].

However, the United Kingdom considers the contents of the EPRA 2003 to be in accordance with the 1976 Act, since the latter should be interpreted in accordance with the fundamental rights, as is recognised and guaranteed in the European Convention on Human Rights (ECHR) and interpreted by the European Court of Human Rights in the *Matthews* judgment. Furthermore, the UK declares that it has respected its commitment to ensure that the necessary alterations were introduced in order to allow the Gibraltar electorate to participate in the European Parliament elections under the same conditions as the electorate of any existing constituency in the United Kingdom, extrapolating its legislation to Gibraltar and adapting the requirements, *mutatis mutandis*, to the Gibraltar electorate [17].

Similarly, the ECJ considers the United Kingdom to have acted in line with the *Matthews* judgment, rejecting Spain's declaration. Furthermore, as regards the inclusion of Gibraltar in an existing constituency in England, the ECJ reminds us that by organising the voting in this way, the UK manages to place the Gibraltar electorate in a situation that is similar to that of a voter in the UK, without having to face obstacles arising from the legal system of Gibraltar that may not

allow them to use their right to vote, or that may dissuade them from doing so.

In relation to the second plea in law put forward by the Spanish government, the ECJ declares that this is also unfounded and does not provide sufficient reasoning[18].

Consequently, the ECJ decided to reject the appeal made by the Spanish government against the United Kingdom, while ordering Spain to pay the costs, and that the European Commission pays for its own costs.

5. Final Thoughts

In our opinion, the first plea in law set out by Spain in the appeal against the United Kingdom due to a breach of the law was not appropriately supported. Spain argues that by EPRA 2003 extending the right to vote to non-EU nationals residing in Gibraltar (like the QCCs), it has violated certain regulations of the Treaty of the European Community that, according to our government, link Union citizenship with the right to active and passive suffrage in the European Parliament elections.

However, we consider that if, by applying the *Matthews* judgment, Spain accepted the Gibraltarians' right (as Union citizens with British nationality) to vote in the European Parliament elections, perhaps the Spanish government should have based its first cause for appeal on the boundaries that can be applied to Annex I of the 1976 Act, one of them being the recognition of a fundamental right that the QCCs lack. Thus, the extension of the right to vote to non-EU nationals could not constitute an exception to the 1976 Act, since it would not have been imposed as a result of the need to guarantee the possibility of exercising a right of this nature.

Since the subject of the appeal is not the organisation of the European Parliament elections in the United Kingdom, but

rather the way in which the UK has organised the elections in Gibraltar, we understand that the legal basis upon which the accusation of violation of EU law should be based on Annex I of the 1976 Act. This Act excludes the territory of Gibraltar from the European elections, and not the violation of certain regulations of the Treaty that affect EU citizens.

The violation of Annex I of the 1976 Act would equally serve as a legal basis upon which the second plea in law could be based, meaning that the United Kingdom would have violated EU law by creating a combined constituency for the territory of Gibraltar, without taking into account the commitments it made in the Declaration of the 18th February 2002; a Declaration upon which the ECJ bases its justification of the extrapolation of the UK's regulations to the territory of Gibraltar, *mutatis mutandis*, and the recognition of the Gibraltar electorate's right to vote under the same terms as the electorate in the South West of England constituency.

Also in this case one could have argued that the unilateral declaration of a State cannot act as an exception to an original rule of law (Annex I of the 1976 Act).

However, the inclusion of the electorate and not the territory of Gibraltar (an idea upheld by the Spanish government), would have guaranteed the EU citizens' residing in Gibraltar right to vote in the European elections (whether they were British or nationals of other EU countries). Solutions do exist in order to ensure such a situation[19].

We must not forget that the exclusion of Gibraltar from the European Parliament elections complies with its international legal status. On a constitutional level, Gibraltar does not form part of the territory of the United Kingdom. It is a colony, and according to the Act relating to the terms of accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great

Britain and Northern Ireland, and to the adaptations of the Treaties, certain parts of the Treaty of the European Community do not apply to Gibraltar.

In summary, we believe that if the Spanish appeal before the European Court of Justice had focused more on the boundaries of Annex I of the 1976 Act, it would have led to other arguments before the ECJ, which may have given a different result to that of this judgment.

One must not forget that the judgment by the ECJ in 2006 has been that which, in short, has interpreted the specific electoral regulations established *ad hoc* for the European Parliament elections and the Declaration between Spain and the UK in 2002, thus allowing the British electoral law of 2003 to be applied. And by virtue of this British law, the Gibraltarians participated in the European elections on the 4th June 2009, the territory of Gibraltar having been included in the constituency of the South West of England.

Notes

1. Act annexed to Council Decision 76/787/CECA, CEE, EURATOM of the 20th September 1976. This annex was converted into annex I in the version modified by the Council Decision 2002/772/CE, EURATOM, of the 25th June 2002 and the 23rd September 2002 (*O.J.* L 283, p. 1), in effect since the 1st April 2004.
2. Judgment of the European Court of Human Rights on the 18th February 1999, *Recueil des arrêts et décisions* 1999-I.
3. Judgment (Grand Chamber), of the 12th September 2006, *Spain / United Kingdom*, *Rec.* p. I-7917. (Case C-145/04, European Parliament – Elections – Right to Vote – Commonwealth citizens residing in Gibraltar and not having citizenship of the Union). An analysis of this judgment has been published by the author in the journal *Revista de Derecho Comunitario Europeo*, Year 12. No. 29, Jan/April 2008, pp. 215-232.
4. This obliges the contracting parties to organise free elections at reasonable intervals by secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature. The European Court of Human Rights pointed out in Section 64 of its judgment that the plaintiff, as a resident of Gibraltar, was deprived of any possibility to express their opinion on the election of Members of the European Parliament.
5. The 1976 Act could only be amended by unanimous agreement of the Member States gathered together in the Council, requiring subsequent ratification by each of them according to their respective constitutional regulations.
6. This Declaration was made in the Council session of the 18th February 2002, in which the Decision amending the 1976 Act was passed (Council Decision 2002/772, which renumbers the articles and annexes to the 1976 Act). Annex I was withdrawn, but Annex II (which is now Annex I) was maintained in its original terms: “The United Kingdom will apply regulations of this Act only with respect to the United Kingdom”.
7. This is a bilateral agreement, as stated by the United Kingdom in the Declaration of the 18th February 2002, reflected in the minutes of the Council meeting on the same date.
8. Appeal made on the 18th March 2004 against the United Kingdom of Great Britain and Northern Ireland by the Kingdom of Spain, *O.J.* C 106, on 30th

- April 2004. Case C-145/04.
9. In this sense, Spain emphasises that the only objective of its appeal is the way in which the elections are organised in Gibraltar and not the fact that the United Kingdom recognises the QCCs' (that are in the territory of the United Kingdom) right to vote for the European Parliament.
 10. According to article 16, section 5 of the EPRA 2003, QCCs are considered to be those people that: do not need, in accordance with Gibraltar law, to have any permit in order to enter or stay in Gibraltar or; that have a permit that authorises them to enter and stay in Gibraltar (or those that, according to Gibraltar law, would have the right to such a permit).
 11. Sections 38 and 39 of the judgment of the ECJ, case *Spain vs. United Kingdom*.
 12. Sections 48 and 49 of the ECJ judgment.
 13. Section 50 of the ECJ judgment.
 14. In this sense, supported by the Commission, it states that this Treaty grants certain rights to people that are not EU citizens, such as the right to make a request before the European Parliament or the right to turn to the European Ombudsman (articles 194 and 195 of the Treaty), and understands that the extension by Member States of certain rights to nationals of other countries (such as the right to protection of diplomatic and consular authorities or the right to participate in politics) will not lead to a "breaking up of EU citizenship" (Section 54 of the ECJ judgment).
 15. This responds to the colonial status of Gibraltar, as is defined in article X of the Treaty of Utrecht and in the resolution 2625 (XXV) of the General Assembly on the 24th October 1970, which states that the territory of a colony must have a status separate and distinct from the territory of the State administering it. Spain believes that Annex I of the 1976 Act is an implementation of this principle (section 83 of the ECJ judgment).
 16. The EPRA 2003 anticipated the existence of an electoral register in Gibraltar organised by a local government employee (articles 13 and 14), with anybody that is registered being able to vote in Gibraltar (article 15). In order to do so, such people must meet the following requirements (article 16, section 1): residing in Gibraltar; to not incur any cause of incapacity; to be at least 18 years old; and to be a citizen of the Commonwealth fulfilling certain specific requirements (QCC) or to be a citizen of the European Union. Gibraltar's local legal bodies must also be responsible for understanding the litigation regarding elections (section 84 of the ECJ judgment).
 17. According to the United Kingdom, the requirements necessary for voting are identical to those set out in the electoral law of the UK, namely, those of citizenry, residence and inscription in the electoral register, having adapted such requirements, *mutatis mutandis*, to the Gibraltar electorate.
 18. For the ECJ: "The extrapolation of the UK's regulations to the territory of Gibraltar, *mutatis mutandis*, is even less disputable if one takes into account that, according to what can be seen in section 59 of the *Matthews* judgment ..., the European Court of Human Rights did not see, in Gibraltar's legal system, any factor that expressed local needs that had to be taken into account, in line with article 56, section 3 of the ECHR, for the application of this agreement to a territory whose international relations

are the responsibility of a Contracting State” (section 96 of the judgment).

19. The following statement by Ruiz-Jarabo is of great interest: “... is it feasible that EU citizens residing in Gibraltar should vote for a parliament that does not represent their territory? Absolutely. Once more, a territorial matter should not be confused with a personal matter. Article 190 aims to ensure the representation of citizens, and not territories, in the Parliament... In fact, the votes of the Gibraltarians could be added to those of an English constituency, or even (and why not?) to a Spanish constituency. As regards the form of the vote, there would not

be great problems there either: one can vote by post, in a polling station set up in the colony... Not only are there numerous solutions - as highlighted by the judgment (referring to that of the ECHR in the *Matthews* case) when mentioning the States’ wide margin of interpretation for organising elections – but these have already been put into practice on other occasions with no great problems”. See P. RUIZ-JARABO, “Por una interpretación pacífica de *Matthews contra Reino Unido*. Colonialismo y Derechos Fundamentales en Gibraltar”, *ADI*, vol. XVIII (2002), pp. 229-252, specifically, pp. 250-251.

THE INVESTMENT OF THE PAYMENT INSTRUMENTS WITH EXECUTORY FORMULA

L. MANEA ¹ A. C. MANEA ²

Abstract: *The judge-made-law is not unitary regarding the necessity to invest with executory formula the cheque and the bills payable to order, and the same courts interpreted the dispositions from the civil procedure code excluding the special laws which established the juridical conditions for the cheque and bill payable to order. At the same time, other courts grant priority to the special laws which established the regime of writ of execution for this payment instruments. Because of this disparity the attorney general has filed an appeal in the interest of law and the solution of the Highest Court of Cassation and Justice was to admit the appeal and to dispose to invest them with executory formula.*

Key words: *cheque, bill payable to order, writ of execution, appeal, executory formula.*

We have been writing before about this subject [1] regarding the necessity of an unitary application and interpretation of the article 374¹ from the Civil Procedure Code relative to the article 61 from the Law no.58/1934 [2] and article 53 from the Law no.59/1934 [3], and at that moment the Highest Court of Cassation and Justice did not pronounce the sentence. We agree then to the second opinion that sustained that it is not necessary and compulsory to invest with executory clause the promissory note ,bill payable to order and cheque because article 374¹ from the Civil Procedure Code represents the special rule in the domain of the execution without the executory clause based only on the law which recognized the character of the writ of execution.

Our juridical argument at the moment of appeal in the interest of law was that Law no. 58/1934 and no. 59/1934 haven't been amended in essence until today, and the actual amendments brought to the Civil Procedure Code through Law no. 459/2006 [4] have priority as special rules when they concluded that "the judgment or other titles execute themselves only if they are invested with the executory clause mentioned in article 269 paragraph 1, except for the enforceable judgment, the provisional enforceable judgment and other judgments or documents mentioned by law which execute themselves without the executory clause".

In accordance with article 61 paragraph 1 from the Law no. 58/1934, "the promissory note has value of a writ of execution for

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the capital and premises, settled in accordance with article 53, 54 and 57”.

At the same time, the identical law confers equally through article 106 the same character to the bill payable to order. The bill payable to order has the same juridical regime as the promissory note. The character of writ of execution is also recognized to the cheque, and so article 53 paragraph 1 from the Law no. 59/1934 settled :”the cheque has value of a writ of execution for the capital and premises, settled in accordance with article 48 and 49”.

We have taken into account all these arguments when we sustained our point of view about the priority as special rules of the amendments brought to the Civil Procedure Code through the law no. 459/2006, especially the provisions of article 374 ^1 from the civil procedure code.

The opinion of not investing with executory formula the payment instruments was also sustained by the General Prosecutor of Romania in the appeal filed in the interest of law.

The first opinion that sustained the necessity of investment with executory formula for the cheque, promissory note and bill payable to order, also mentioned in the appeal filed in the interest of law by the General Prosecutor of Romania, was based exactly on the dispositions of article 374 paragraph 1 from the Civil Procedure Code, as it was changed through Law no.459/2006 :”the judgment or other title execute themse;ves only if they are invested with the executory clause mentioned in article 269 paragraph 1 (...)”. Starting from the character of special act for Law no.58/1934 and Law no.59/1934, documents which settled expressly to

invest with executory clause the promissory note, bill payable to order and cheque notwithstanding the legal provisions from the article 374^1 from the civil procedure code, some courts sustain that the investment with the executory clause of the commercial titles is necessary and is imposed expressly by the legislator.

The divergent opinions of the judge-made-law are argued each against the normative texts mentioned above, in accordance with the legal dispositions which are considered to represent the special law, respectively the laws about promissory note, bill payable to order and cheque;and on the other hand with the dispositions of article 374^1 from the civil procedure code against the amendments brought in 2006 through the Law nr.459/2006.

On 19th January 2009, the Highest Court of Cassation and Justice pronounced the appeal in the

interest of law in the file no.24/2008, and the judgment was to admit the appeal within the meaning of the dispositions of article 374 ^1 from the civil procedure code, referred to article 61 from the Law no.58/1934 and article 53 from the Law no.59/1934.It must be interpreted in the way that the promissory note, bill payable to order and cheque must be invested with executory formula in the application of forced execution. At the time of writing this article, the Decision no.4 from 19th January 2009 of the Highest Court of Cassation and Justice is not motivated and not published into the Official Gazette of Romania, but the solution is imperative for all the courts, in accordance with article 329 from the Civil Procedure Code.

Opposite to the opinion sustained by the General Prosecutor of Romania, the

solution of the appeal in the interest of law is in accordance with the special laws, which are law no. 58/1934 and law no.59/1934, and it isn't in "the spirit" of the general law, which is the Civil Procedure Code.

Analyzing the arguments sustained by the courts who ask for the executory formula in case of promissory note, bill payable to order and cheque before the solution of appeal in the interest of law, it results without doubt that the solutions were based on the text from the special laws (article 61 paragraph 2 from the Law no.58/1934, respectively article 53 paragraph 2 from the Law no.59/1934) which speak about the investment with executory formula of the payment instruments.

The only required condition asked by the special laws for the forced execution procedure of the payment instruments is to invest with executory formula the promissory note, bill payable to order and cheque, and for that the legislator, from the beginning, settled expressly that the competence to invest with executory formula belongs to the courts, respectively to the Court of Justice or to the High Court of Justice [5].

It is true that at the moment of the adoption of special laws no.58/1934 and no.59/1934, the disposition from the Civil Procedure Code article 374 was in the way that "no other judgment can be executed if it is not invested with executory formula, the only exception being the provisional enforceable judgment and the preparatory judgment". With that condition, the formality of investment with executory formula has the effect to confirm that the title is susceptible to be applied in forced execution, and that there is no temporary

suspension from the forced execution procedure.

Even if some courts and authors consider that laws no.58/1934 and no.59/1934 aren't the special law, because they have taken into account the rapport between the general and the special precept, reproduced „specialia generalibus derogant”, we can agree with this only under the directive of the former procedural civil law.

Starting from the above mentioned principle, even if „*actus interpretandus est potius ut valeat quam ut pereat*” (the law must be interpreted in the way to produce its juridical effects, and not in the way of its non application), and even if "*Ubi lex non distinguit, nec nos distinguere debemus*" (Where the law is not distinguished, neither can we distinguish it), we cannot interpret that Laws no.58/1934 and no.59/1934 are the special law.

Also, after the modifications brought to the Civil Procedure Code through the law no.459/2006, if we take into account the dispositions from the article 374¹, we can still consider hereinafter that the dispositions from article 61 paragraph 3 from the law no.58/1934 and article 53 paragraph 3 from the law no.59/1934 are still not out of date, because we are in the position to apply with priority a special disposition of the law towards the general disposition of the law, which are the Civil Procedure Code.

The lapse intervenes only in case when our legislation lacks dispositions about the necessity to invest with executory formula, and that's because a general precept can not modify a special precept.

It is true that regarding the investment with executory formula the civil procedure code (the general precept) settled the cases

in which the investment with executory formula is necessary, and in the new view of the settlement the Civil Procedure Code's dispositions exclude expressly from the investment with executory formula the documents which recognized

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THE RELATION BETWEEN THE ROMANIAN COMMERCIAL BANKING COMPANIES AND THE CORPORATE SOCIAL RESPONSIBILITY

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Abstract: *The relatively recent legal regulation regarding the field of the banking service consumer protection has been determined by the abusive commercial activity of the commercial banking companies. If the commercial banking companies had been aware of the need to comply with certain ethical principles in their relation with consumers – having a socially responsible behavior –, then these principles would not legally have been sanctioned. That is why we consider that the significant sanctions to which the banks expose themselves at present are a consequence of the flagrant and repeated breach of the ethical principles in the field of consumer protection.*

Key words: *banking commercial company, corporate social responsibility, business ethics, consumers, consumer protection legislation.*

1. Introductory Aspects regarding the Corporate Social Responsibility

The social responsibility of the commercial companies is a moral liability, a voluntary liability of the respective commercial companies regarding the interaction of their own activity with: the natural environment, clients/consumers, own employees.

In order to understand the term social responsibility of the commercial companies, the stakeholder term must be explained.

The stakeholder term derives from the following terms: *stake* meaning interest, *holder* meaning owner, both English terms. The stakeholders are those categories of persons who have an interest in the development of the activity of the respective commercial company.

The stakeholders are divided into two main categories:

a. external stakeholders – including business partners, suppliers, consumers, local communities, natural environment, future generations,

b. internal stakeholders – including employees, shareholders, and managers/owners. [4]

We shall further on consider the relation between the banking commercial companies and their main external stakeholders – consumers.

2. The Romanian Commercial Banking Companies

The commercial banking companies have a very important role in the commercial field, especially in the relations with the consumers (natural

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persons); for this reason, we will try to briefly describe this special type of commercial company.

The commercial banking company is defined [2] as the commercial company which has a specific object of activity, i.e. fund attraction from natural and legal persons, under the form of deposits or non-negotiable instruments, payable at sight or fixed term, as well as credit granting. Besides these main activities, a bank can perform several banking services, represented by the related operations. Thus, the only element strikingly differentiating a commercial banking company from another commercial company is the object of activity.

The commercial banking companies are universal credit institutions. Legally, these are joint-stock companies, according to the commercial legislation and to Government Emergency Ordinance no. 99/2006. [3]

Thus, the banking commercial company is constituted under the form of a commercial joint-stock company. The main differences between another commercial joint-stock company and a banking commercial company are the restriction, in the case of the banking commercial company, of the object of the cash contribution made by the partner, and the minimum amount of the social capital of 37,000,000 lei, much higher as compared to the rest of commercial joint-stock companies for which the minimum amount of the social capital is 100,000 lei.

As far as the commercial joint-stock company is concerned, it is considered [1] as being the most complex and most evolved form of commercial company. In the case of this type of company, the contributions of the partners are more important than their personal features. In general, the partners make their contribution to the social capital, without operating any activity within the company. These contributions are also important for

the third parties, as the liability of the partners for the social obligations is restricted to these contributions. Due to the importance of the contributions to the social capital and blurring of the partners' personal features, the joint-stock company is also known as an anonymous company.

The commercial joint-stock company is intended to accomplish great businesses requiring significant capitals. This type of commercial company is conceived in order to form great capitals, required for the achievement of far-reaching investments. For this purpose, the joint-stock company is authorized to appeal to the public subscription.

Due to the importance of the activity performed by the commercial banking companies, they are constituted only under the form of commercial joint-stock companies. Moreover, the commercial banking companies, due to their size, always have a marketing department. Thus, we can check whether their marketing strategies are or are not socially responsible, although a few of these commercial banking companies perform philanthropic activities labelled as "socially responsible".

The banks are organized as commercial companies, and pursue the obtaining of a profit. By means of this purpose, the banks do not distinguish themselves from other commercial companies; the difference consists in the ways of achieving the purpose in mind. However, the profit is not the only factor which must be considered by the banks in establishing their investment policy. They are obliged to provide an active balance between profitability, liquidity and risk. [2]

The commercial banks perform all types of banking operations. The main operations remain however the deposit constitution and their use for the purpose of granting credits to the traders – legal

persons – and consumers – natural persons–.

Thus, the bank has as its main function the concrete mediation by resource attraction and its redistribution in the economic circulation. Money and credit can form the object of the circulation, i.e. the object of certain commercial operations.

The Romanian banking system is made up, on the one hand, of the National Bank of Romania, the central bank of Romania, whose activity is regulated by the B.N.R. Statute – Law no. 312 of 2004 –, and the banks constituted as commercial companies, according to Law no. 31 of 1990 regarding the commercial companies and G.E.O. no. 99 of 2006. [2]

The commercial activity performed by the banks is mainly controlled by the National Bank of Romania.

In their relation to the banks, the National Bank of Romania performs crediting operations for the banks; establishes the crediting conditions and costs; opens an account for each bank; monitors the payment systems; can provide compensation, storing, discounting and payment services, as well as data and information collection and issuance services, for the purpose of preventing and restricting risks. One of the most important activities performed by the BNR in relation to the banks is their prudential supervision, expressed by means of the exclusive competence to authorize the operation of the banks, and through the fact that B.N.R. is responsible for the prudential supervision of the credit institutions which they have authorized to operate. After they have been subject to the constitution control and operation authorization, the banks must be and continue to be controlled. This control considers the assumed risks which must not endanger the solvability of the respective bank and the credibility of others. At community level,

the quality of the prudential control performed by the competent authority of each member state is mutually acknowledged, by harmonizing the prudential control rules.

3. Consumer Protection – Element of the Corporate Social Responsibility In the Romanian Banking System

The abuse of the banks operating on the Romanian market towards the banking service consumers, has determined the recent modification of the consumer protection legislation. Thus, Emergency Ordinance no. 174 of 19.11.2008 for the modification and completion of normative documents regarding the consumer protection [5] modifies, first of all, Government Ordinance no. 21/1992 regarding consumer protection, republished in 2008. Thus, at art. 2 of Government Ordinance no. 21/1992, three new definitions are included.

The total cost of the consumer credit includes all costs, including interest, commissions, taxes and any other type of costs which must be borne by the consumer, related to the credit contract, and which are known by the creditor, except for the notarial fees. The related service costs concerning the credit contract, especially the insurance bonuses are also included here, in case the obtaining of the credit is conditioned by the conclusion of a service contract.

The total value payable by the consumer represents the sum between the total value of the credit and the total cost of the credit for the consumer. The total value of the credit represents the ceiling or the total amounts made available based on a credit contract.

Emergency ordinance no. 174/2008 adds two new articles 92 and 93, according to which the banking service consumers are protected.

Thus, any form of publicity related to the credit contracts indicating an interest rate or any other figures regarding the credit cost for the consumer shall include the following standard information: the interest rate related to the credit, fixed and/or variable, together with information related to any costs included in the total credit cost for the consumer; total credit value; actual annual interest, according to the specific legal stipulations; duration of the credit contract and total value payable by the consumer.

The previously presented definitions explain the extent of these obligations in the field of the publicity performed by the banking commercial companies operating on the Romanian market. Moreover, in the case of any form of publicity, the information related to costs shall visibly be written and easy to read, in the same visual area, and with characters of the same size. In the cases in which, in order to be granted the credit, the consumer is obliged to conclude an insurance contract, this shall be mentioned in the publicity.

As for the contracts concluded by the banks with the consumers, the banks are obliged to comply with certain rules to be presented next. Contracts shall be prepared in writing, visibly and easy to read, with a font size of minimum 10, on paper or other durable support, in at least two copies, an original being distributed to each party; the background color of the paper on which the contract is prepared must contrast with the one of the used font.

The interests, as well as all commissions, fees, tariffs, bank expenses or any other costs related to the granting and development of the contract, i.e. services regarding which the consumer does not have the freedom to choose, shall be mentioned in the contract, without aiming at the general business conditions of the bank, list of tariffs and commissions or any other document.

If an anticipated refund right is provided, the anticipated refund commission of the credit is determined in close connection to the losses of the creditor related to the anticipated refund, and must not be a disproportionate obstacle in the exertion of the consumer's right to early refund the credit.

In the credit/deposit contract, the costs related to the administration, cash withdrawal and/or deposit related to the current account, which are the consumer's task, shall also be mentioned, if the banking commercial company collects such commissions.

Moreover, without prejudicing the stipulations related to the modification of the interest, during the development of the contract, it is forbidden to increase the commissions, fees, tariffs, banking expenses or any other costs mentioned in the contract, as well as the introduction and collection of new fees, commissions, tariffs, banking expenses or any other costs which have not been mentioned in the contract. In the contract signed between the bank and the consumer, the type of interest, variable and/or fixed shall be mentioned, and if the interest is fixed only for a period of time, this shall precisely be mentioned.

In the credit contracts with a variable interest, the variation of the interest rate must be independent of the will of the banking commercial company, related to the fluctuations of certain checkable reference indexes, mentioned in the contract, or to the legislative modifications enforcing this. In this type of contract, the interest can vary depending on the reference interest of the bank, on condition that the interest is unique for all financial products intended for the natural persons of the respective bank, and is not increased over a certain level, established by the contract. The formula, according to which the variation of the interest is calculated,

must expressly be indicated in the contract, while mentioning the periodicity and/or conditions under which the modification of the interest rate occurs, i.e. it increases or decreases.

The law forbids the contractual clauses allowing the banking commercial company to unilaterally modify the contractual clauses without signing an addendum, accepted by the consumer. Any notification related to the modification of the content of the contractual clauses regarding costs shall be sent to the consumers with at least 30 days before its coming into force. The consumer has 15 days from the date the notification is received, to communicate his option to accept or refuse the new conditions. The failure to receive an answer from the consumer within the mentioned deadline is not considered an implicit acceptance.

For any modification of the credit cost level, according to the contractual conditions, the bank is obliged to notify the consumer, depending on his written option, expressed in the contract, by means of one or several methods: registered letter, e-mail, sms, and shall put a new refund schedule at his disposal. The banking commercial company has the legal obligation to take action in order to repair, within maximum 15 days, the possible damages caused to the consumer by means of the failure to observe the obligations assumed according to the contract, and prove the measures taken in this respect.

The credit contract shall necessarily contain a stipulation according to which the consumer is informed on being reported to the Credit Office, Banking Risk Central Offices, and/or to other existing institutions, in case the consumer is late in paying his due installments, if there is such a reporting obligation.

When the contract is terminated, including by completion, cancelation or unilateral denunciation from the consumer,

the banking commercial company shall offer the consumer, free of charge, a document certifying the fact that all the obligations between the parties have been solved. At the same time, the accounts related to the main financial service supplied shall also be closed, without requiring the submission of another request by the consumer, and without the payment of additional costs.

The infringement of the previously presented legal dispositions is sanctioned with a contraventional fine from 5,000 to 50,000 lei. It can be noticed that the value of the sanctions applied to the banks are higher in case the legal provisions for the banking service consumer protection are infringed.

These new legal regulations of the Romanian banking activity are a reaction of the state to the irresponsible and unethical actions of the banks.

4. Conclusions

We have previously presented in detail the situations which have legally been regulated in the field of banking service consumer protection because these have been determined by the abusive commercial activity of the banks. In other words, each situation which has been provided in the normative document, and shall be sanctioned in case of breach, has been based on at least one case of abusive infringement of the ethical principles.

It is sad to notice that the banks have not been aware of the fact that, if they had complied with certain ethical principles in their relation with the consumers, these principles would not legally have been sanctioned, i.e. they would not have been protected by the state. Ultimately, the significant sanctions to which the banks expose themselves at present if they continue to perform an unethical commercial activity are a consequence of

the flagrant and repeated infringement of the ethics principles in the field of the consumer protection so far.

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“EQUAL WORK REQUIRE EQUAL SALARY” – PART OF THE PRINCIPLE OF EQUALITY TREATMENT BETWEEN MEN AND WOMEN

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Abstract: *Enlarging the provisions of Universal Declaration of Human Rights, The Convention no.111 from 1958 regarding discrimination in the field of employing manpower and practicing profession, has pointed out the effect of discrimination: to suppress or to prejudice the equal opportunities or treatment in the field of employing manpower and practicing profession.*

Key words: *equal opportunities or treatment, employing manpower, practicing profession.*

The European Union promotes among the member States the human fundamental rights and liberties; the non-discrimination and the opportunity of equality being a main field of action upon which this, through its own structures, has concentrated its activity especially as, according to the Regulation 1083/2006 of the European Union Council, the equality of opportunity is deemed one of the intervention principles of the Structural Funds. A proof of this statement is the declaration by the European Parliament and by the European Union Council of the year 2007 as the „European Year of the Equality in Opportunity for Everyone”, there being pursued four targets through the actions and through the programs developed within this frame: rights – the accent being laid on the rise of the degree of awareness upon the right to equality and to non-discrimination, as well as upon the issue of the multiple discrimination; representation – stimulation of the debates

upon the means for the increase of the participation within society of the groups which are victims of the discrimination and of the men’s and women’s equal participation, this being one of the objects of this target; recognition – which implies the facilitation and the celebration of the diversity and of the equality; respect – which focuses upon promoting a society based on a greater cohesion.

Under the perspective of the community documents, which constitute a legal basis for protecting and for guaranteeing this principle, there have to be reminded not only those on the level of the European Union, but also those of the Council of Europe, its constitution previous to the one of the first European Communities entitling us to give priority even to the latter.

This way, art.14 of the European Convention on Human Rights imposed on the States the observance, among other requirements, even of the one according to

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whom the exercise of the recognised rights and liberties has to be ensured with no discrimination especially based on sex, race, colour, language, religion, public opinions or any other opinions, national or social origin, appurtenance to a national minority, wealth, birth or any other situation, the Protocol 12 of the Convention stipulating in the same direction and forbidding in a general direction, the discrimination. Such a requirement will be imposed even if through the European Convention of the Human Rights, there is made reference only to the civil and political rights, the former having to be regulated through other documents – conventions, among whom the most important are the European Social Charta of 1961, together with its additional Protocol of 1988, the European Code of Social Security from 1972 and the European Convention with respect to the migrating worker's judicial status of 1977.

On the level of the European Union, Title III of the third part in the Treaty with respect to the constitution of the European Economic Community – Treaty CEE -, respectively art. 117-128, bearing the name „Social Policy”, contained, except dispositions relative to the closeness of the legislation and to the European Social Fund, some others with respect to the sex equality, an equality that has to be considered likewise under the aspect of the treatment equality – „equal in work, equal in wages”. *Considered a genuine standard-frame in the field, this disposition stipulates that through **payment** there is understood „the minimum or regular wages, either in cash, or in assets, that the worker receives, directly or indirectly, for his work, from his employer **and equal payment without discrimination based on sex** implies that „that payment for the same work in units of products should be calculated on the basis of the same unit of measure, as well as that payment for the*

work in the unit of time should be the same for the same activity”. Currently, the Treaty of Lisbon of the 13th of December 2007 for the modification of the Treaty with respect to the European Union and of the Treaty for instituting the European Community, in full process of ratification by the signing States, however already ratified by Romania through the Law no. 13/2008, published in the Official Monitor of Romania no .107/2008, has reminded, through art.2 paragraph. (3) thesis II, the fact that the European Union promotes, among other things such as the social protection, the solidarity among generations, the protection of the child's rights, also the equality between man and women. More than that, through its own jurisprudence, the European Court of Justice admitted the right to this equal treatment as a fundamental right in the community law, so that this principle should be developed through a series of directives elaborated by the European Union or by the communities that have preceded it. The fact should be pointed out that these documents cannot produce judicial effects but between the signing States, States that confine themselves, under the geographical aspect, to the space of the European continent, are based on the provisions of the Universal Declaration of Human Rights and, implicitly, on all the standards of the International Labour Organization (O.I.M.) which „express the reflection of the will of the Member States to ensure, through international regulation, a fundamental right of the human being: the right to labour and social security, as well as the rights connected to this one”. In fact, the Convention nr.111 of 1958 with respect to the discrimination in the field of employment of the workforce and of the exercise of the profession has defined, in art. 1 paragraph 1 lett. a), the discrimination as any differentiation, exclusion or preference based on race,

colour, sex, religion, political beliefs, national or social origin, which causes the suppression or prejudice the equality in opportunity or in treatment as regards the occupation of the workforce and the exercise of the profession. The sphere of application of the Convention reaches fields such as professional training, access to employment of the workforce and the exercise of various professions, as well as the conditions for the employment of the workforce. During the year 1988, through the declaration O.I.M. with respect to the principles and the fundamental rights, the signing States enhanced the values which are of a primordial importance for the economic and social life of any society, among these ones, besides the liberty of association and effective recognition of the right to negotiate, besides the elimination of any form of forced or compulsory work and besides the effective abolition of the children's work, there being found the principle of eliminating the discrimination in the subject of the employment and of the profession. Starting from the fact that the human being's fundamental rights, such as the right to work and social security, have to be guaranteed, under all its aspects, for all humans, with no discrimination, we appreciate that these two documents of the International Labour Organization cover, through these provisions, all facets of this right, therefore including the one with respect to the fact that for equal work, the wages have to be equal. One of the arguments for this statement is to be found in the Declaration from 1988 of O.I.M. with respect to the principles and to the fundamental rights, which settles, with no doubt and without allowing any unfavourable interpretation of its own provisions, that the rights previously mentioned are universal and they are applied to all populations and to all States, independent of their level of economic development. Therefore, the applicability

of these dispositions has to reflect on the level of each individual, but because the right to work and social security is appreciated as a right of the second generation, implying consequently actions of the State, as they cannot be carried out by the citizen on his own, there is needed „a helping hand from the State” for the accomplishment of this right. The issue that emerges in this situation is the different economic situation of the States, more precisely their level of development, a reason for which the same Declaration from 1988 of O.I.M. has imposed the elaboration of annual reports with respect to the progresses realized on the national level, in the approaches for the implementation of these provisions. In our opinion, such a regulation should be transposed on the European level, too, not only through the recording in documents, but also through projects with clear, precise and pertinent targets, which should grasp all facets of this right without ignoring, in any way, the impossibility to impose any discrimination.

Starting from the facts mentioned above, but also taking into consideration that the enhancement of the cultural, ethnic diversity and of the differences in gender, age constitutes and has to constitute premises for the development of society, we cannot but observe that all social relations are based on values such as tolerance and equality, however the equality in treatment that we consider refers not only to the aspect – „for equal work, equal payment”. Consequently, in the second part of this paper, we will formulate and develop, succinctly, the principles that contribute to outlining the principle of the equality in treatment – „for equal work, equal payment” – aspect of the equality of the sexes.

In compliance with the international and European regulations from the domain that were mentioned in the first part of this

paper, without ignoring the consideration of the cultural, ethnic diversity as well as the gender and age differences that constitute and must constitute premises for society's development, it is obvious that all social relations are based on values such as tolerance and equality, without the mentioned equality of treatment to be reduced only to the aspect – „for equal work, equal salary”. Thus, there shall also have to be specified the following principles mentioning that that particular component of discrimination that was taken into consideration is that concerning gender:

- The principle of equality of treatment of men and women – Directive 76/207 CEE This directive, which concerns the equality of treatment of men and women regarding the access to employment, training and professional promotion and working conditions has established the obligation of the member states to insert into their national legislation the necessary dispositions to assure equality of treatment between men and women in what concerns the access to jobs, training, professional promotion, as well as the working conditions, defining, in art. 2, this principle as being the one that states that “there shall be no discrimination directly or indirectly based on gender, through reference to the material of familial status”.

However, the directive has also admitted, as an exception, certain derogations from the principle of equality of treatment. Thus, there has been specified, in art. 2 paragraph 2, that for certain activities due to their nature or to the environment in which they are being carried out, the gender of the employee may constitute a determinant factor, and paragraph 3 of the same article imposed, introducing thus into the communitarian legislation the concepts of “indirect discrimination” and „positive action” in favour of the people, the assumption of dispositions concerning

women's protection, especially in cases of pregnancy and maternity. “Equal payment for equal value work” is an expression of the derived communitarian legislation which merely develops, under the aspect of regulation, the principle of nondiscrimination based on gender, imposing on member states the harmonization of the legislation concerning the application of the principle of equal remuneration between men and women. Therefore, right from the first article, the principle of remuneration equality is defined, which implies for the same work or for a work for which an equal value is considered, the elimination of any gender based discrimination. As a result, whenever a professional classification system is used for the establishment of remunerations, this will have to be based on common criteria both for men and women, which allows, together with the fulfilment of other conditions, that the protection granted to the internal doer, by the unions and patronages extended to equal value also works The Directive has imposed on the member states the following obligations: to introduce in the national legislation the measures necessary to allow employees considered to have been affected by the non-application of the principle mentioned, to sustain their own claims in a judiciary trial after a possible recourse to other competent authorities; to apply equality of normative documents, in regulations, in collective conventions, and in individual labour agreements; to compulsorily correct or declare as null the individual or collective agreements that do not comply with the equal remuneration principle; to take the measures necessary to protect employees against any dismissal that would constitute a reaction of the employer in a complaint submitted at the level of the company or in a court action, as a result of

infringement of the equal remuneration principle.

Romanian legislation admitted this fundamental principle of equality of treatment, first, by art.5 of the Labour Code, with the subsequent modifications and additions, that foresees as fundamental the principle of right to work and the principle of equality of treatment for all employees and employers. Other two normative documents, Government Ordinance no. 137/2000 concerning the prevention and the sanctioning of all forms of discrimination, approved with the modifications and additions of Law no.48/2002, ordinance that was published in the Official Monitor, Part I, no.137/2008, in which there are defined the notions of discrimination, harassment and victimization, its provisions being applicable to all natural or juridical persons, public or private, as well as to public institutions with attributions in what concerns the occupational conditions in the work place, recruiting criteria and conditions, selection and promotion, access to all forms and levels of professional orientation, training and improvement. The second normative document worthy to be reminded is Law no.202/2002 concerning the equality of opportunity between women and men, republished in the Official Monitor, Part I, no. 150/2007, that targets the harmonization of the internal legislation with the communitarian norms concerning the promotion of equality of opportunity between men and women. But, being prior to the above mentioned regulations, the constitutional provision of art.16 of The Romanian constitution, republished must not be omitted, as it consecrates as constitutional value the principle of equality of women and men.

We would like to mention moreover that the principle of equality of treatment under its most visible aspect – equal work for equal payment – has been the object of the

jurisprudence of the European Court of Law which through its decisions stated that art.119 from the CEE Treaty is directly applicable, including what concerns the private, collective or individual conventions (Garland case no.12/81), but the equality of the salaries is not subject to the existence of any professional classification being enough if the work carried out is of equal value (case Commission c. United Kingdom no.61/81), and the equality of salaries must not be interpreted just as an equality between the employees who simultaneously work with the same company but equality between the workers who successively occupy the same function (Wendy Smith case no.129/79), etc.

In conclusion, we can state that both the communitarian legislation or that of the European Council, and the internal legislation must warrant individuals – both women and men – equal rights to participate in the economic and social life, to prepare and train in a certain profession, to get employed and promoted and to participate in the distribution of the benefits, to enjoy social protection in certain situations, a reason for which it was necessary in the professional segregation of women, a phenomenon which persists and is highlighted through the existence of gender differentiated occupation models, determining salary differentiation, to be eliminated.

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TOWARDS A RIGHT TO THE ENVIRONMENT IN EUROPE: NOISE AND JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract: *The purpose of this paper is to point out that there is not a clear and direct right to enjoy an environment of quality in the European Convention of Human Rights. Nevertheless, the jurisprudence of the Court has played an important role in creating a specific category of a fundamental right to the environment. An interesting interpretation of the European Convention of Human Rights has been done in the judgements quoted in this article expanding the limits of the Convention through a wide interpretation of the “traditional” human rights.*

Key words: *Noise – Noise Pollution - Human Rights – European Court of Human Rights.*

1. Introduction

If in recent decades, during the rapid creation of international environmental law, a general principle has been gradually devised that establishes a general duty of the Member States to protect the environment, quoted in certain regional legal instruments [1] and clearly declared in article 192 of the United Nations Convention on the Law of the Sea [2], what is certain is that we are still very far from being able to conclusively confirm the existence of appropriate measures that protect man’s right to the conservation of the environment in order that we may enjoy a high quality of life.

In international instruments of certain importance, such as the Stockholm Declaration of 1972 [3], we are able to find references stating that “man has the fundamental right to adequate conditions of life in an environment of quality”, but

they are no more than programmatic statements, commonly heard when talking about protecting the environment, but not providing subjective rights to those people that are potentially affected by specific interferences to the environment in which they live to such an extent that they invoke that right before administrative and legal bodies that may be able to provide help.

It is also true that the so-called latest Declarations of Rights, as well as including traditional fundamental rights, also include new rights that open up interesting points of view and developments. In this sense, with regards to Europe we must give special mention to the Charter of the Fundamental Rights of the European Union [4] or Charter of Nice [5], which is generally positive as regards the political and dogmatic contribution to the creation and development of fundamental rights, but uncertain as to its

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legal efficiency, and whose future is closely tied to the Lisbon Treaty. Article 37 of this instrument includes the protection of the environment [6], but doubts concerning the Charter coming into force and its true impact on EU law make it necessary to stay cautious.

This study aims to discuss the importance of jurisprudence in European courts in the design of a specific category of fundamental right to the environment, through the wide interpretation of existing texts, which has taken shape around the problem of noise. Despite certain developments in the European Court of Justice [7], it is in the European Court of Human Rights where a development really worth mentioning has been reached. With respect to noise pollution, a specific category of fundamental right has been being created that, although technically linked to the right to inviolability of the home, could emerge as the basis for a specific right: the right to the environment.

2. Noise, the European Convention on Human Rights and the European Court of Human Rights

Traditionally, the protection of citizens against noise pollution has not been a subject of great priority for the administrations, when to our understanding it is an element of great importance for people's quality of life and health. In its fight against noise pollution, the European Union has established a common approach aimed at preventing or reducing the damaging effects of being exposed to environmental noise. The key regulation is the Directive 2002/49/CE of the European Parliament and of the Council of 25 June 2002, relating to the assessment and management of environmental noise [8]. However, administrative proceedings aimed at preventing the effects of noise pollution have not traditionally been very

efficient or top priority in the majority of European States.

In this respect, we would like to highlight the very interesting jurisprudential line of the European Court of Human Rights, which considers noise interference in a private home to be a violation of a fundamental right. Consequently, in the ruling of the case known as *Moreno Gómez v. Spain* [9], the Court considered there to have been a violation of article 8 of the European Convention on Human Rights [10], as a result of the respondent State not having provided the appropriate support to the appellant in order to protect her home against the noise emissions that prevented her from enjoying her right to peace [11].

This interesting interpretation of the European Convention on Human Rights, relating to the protection of respect for private life and the home that is the indirect protection of rights that are not specifically recognised in the Convention, expanding the protection of the right to the environment [12], is not new. It began with a judgments, also against Spain, in the case *López Ostra v. Spain* [13]. All things considered, the Court establishes that the violations of the right to respect for the home are not only those of a material or physical nature, such as the entry of an unauthorised person into the home, but they are also attacks that are neither material nor physical, such as noises, emissions, smells and other interferences. If the attacks are serious they can deprive someone of their right to respect for the home, because they are prevented from enjoying being there.

The Court had already had the opportunity to make a declaration with respect to the specific subject that we are dealing with: noise pollution and the problems affecting those living in the proximity of an airport, in a case against the United Kingdom [14]. The case is

Powell and Rayner v. United Kingdom, which was a ground breaking resolution concerning noise pollution for neighbours produced by air traffic [15]. The ruling of the 21st February 1990 recognised that a serious noise interference in a home produced by aeroplanes could eventually imply the violation of the right recognised in article 8 of the Convention, taking as a starting point the fact that “*the quality of the applicants’ and the scope for enjoying the amenities of his home have been adversely affected by the noise generated by aircraft using Heathrow airport*” (paragraph 40). However, in this case and following the idea of the margin of interpretation of the States, sign of the tendency towards judicial self-control [16], the United Kingdom was not found guilty, as it was considered that it was necessary to safeguard the balance between the legitimate interests of the individual and those of the community as a whole, and that in the assessment of both interests “*the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention*” (paragraph 41 of the ruling). The sentence concludes that “*in forming a judgement as to the proper scope of noise abatement measures for aircraft arriving at and departing from Heathrow airport, the British government cannot arguably be said to have exceeded the margin of appreciation afforded to them or upset the fair balance required to be struck under Article 8*” (paragraph 45).

In this way, the European Court of Human Rights has been qualifying its position and establishing a framework of indirect protection of the right to the environment (not specifically recognised in the Convention passed in 1950) in its jurisprudence [17].

3. The European Court of Human Rights’ Ruling of the *Hatton* Case

The ruling of the *Hatton and others v. the United Kingdom* [18] case on the 2nd October 2001 is of particular interest for the subject matter of this study, as the applicants argued the violation of the right concerning respect for private family life that is set out in article 8 of the Convention, in relation to the noise caused by air traffic in a British airport [19].

One of the main reasonings of the Court is to remember the positive duties that the States party to the Convention have to adopt in order to ensure the effective enjoyment of the rights recognised in the Convention and its Additional Protocols. Therefore, even though neither Heathrow airport nor the aircraft operating there are controlled by the British government (ie. there is no direct interference on the part of the public administrations), they must ensure the effective compliance with the Convention.

However, the main reasoning of the Tribunal, and one that is of particular interest to this ruling, is that relating to the principle of proportionality. Interestingly, the Court does not specifically invoke this principle, despite referring to the two elements that are implicit in it: on the one hand, the duty of respecting a fair balance between the interests in play (paragraphs 96 and 97), and on the other hand, the duty of the States, as regards interference in the exercising of the rights recognised in the Convention, of not subjecting individuals to an unnecessary danger, understanding this to mean not choosing less costly paths from the point of view of human rights, for the securing of the legitimate ends being pursued with this interference (paragraph 97). In short, the Court is going to recognise a small margin of interpretation for the authorities of the State being accused, such that the State must clearly and convincingly justify the need for

interference and the impossibility of using other measures.

In the sentence, the Court reached the conclusion that the importance of the economic contribution of night flights for the national economy had not been assessed critically, and only one limited investigation had been carried out into the nature of sleep disturbance, and that, in short, it was unacceptable that the modest steps taken to improve the problem of night-time noise were capable of constituting the necessary measures to protect applicants' position and rights. Furthermore, the Court concluded that the government had not found the correct balance between the economic well-being of the country and the effective enjoyment of the applicants' right to respect for their home and private lives. Consequently, the Court considered that a violation of article 8 of the Convention existed and condemned the United Kingdom.

However, the British government appealed the judgment, and so the case passed to the Grand Chamber of the European Court of Human Rights [20]. The Grand Chamber, in the judgment on the 8th July 2003, considered the appeal and largely revoked the first ruling, deeming, amongst other matters, that there had been no violation of article 8 of the Convention (although it did maintain the United Kingdom's sentence due to violation of article 13, the right to an effective remedy; a procedural aspect that is not the focus of this study).

The Grand Chamber reasons that in previous rulings in which the protection of the environment was an issue, the national administrations had infringed the regulations that came from their own laws. Nonetheless, as regards this lawsuit, the British government had acted in accordance with its legal guidelines by introducing in 1993 (in accordance with the law) a quota system. The Grand

Chamber also considers it reasonable to imagine that night flights contribute significantly to the development of the national economy. Given that the applicants had not reliably proved, with the ruling underway, that the night-time noises had caused their homes to drop in value, and since they could easily have moved house, as well as due to the fact that the British administration had carried out a series of investigations and studies, the Grand Chamber believes that in search of a fair balance, the margin of interpretation has not been exceeded. Finally, with twelve votes against five, it considers that there was no violation of article 8 of the Convention [21].

4. Final Thoughts

In any case, these judicial decisions have, in our opinion, the value of shaping a concept that up until now has been rather vague, but which is being made acceptable: the citizens' right to an environment as a fundamental right. It is true that such a right does not appear as such in the main Conventions and international instruments [22] that relate to the protection and safeguarding of fundamental rights and public liberties, although in certain instruments a relationship does clearly exist between human rights and the protection of the environment, such as the *African charter on human and peoples' rights* in 1981, the *Additional protocol to the American convention on human rights* passed in San Salvador in 1989, the *Convention on the rights of the child*, also in 1989, and the *Convention of the International Work Organisation relating to indigenous peoples established in independent countries*, in 1989 as well. In this respect, a wider concept relating to the protection of the environment as a fundamental right has been gradually developed in sectorial and regional instruments.

Without wishing to go into too much depth, we must describe the adoption in Europe of an instrument of enormous relevance due to the depth of its specific contributions to the rights of individuals, known as the Aarhus Convention. This convention was adopted on the 25th June 1998 by a ministerial conference that was taking place under the auspices of the Economic Commission for Europe [23], signed not only by a large number of European States, but also by the European Community. The Convention's preamble establishes the express recognition that everybody has the right to live in an environment that ensures their health and well-being, and the duty (both individually and as a whole) to protect and improve the environment for the sake of current and future generations. It adds that in order to make this right worthwhile and to fulfil this duty, the citizens must have access to information, be authorised to participate in the taking of decisions and have access to justice in environmental matters. These three factors (participation, information and access to justice) help develop with great success within the European framework what is being called, in an ambiguous manner up until now, environmental democracy.

In conclusion, despite the lack of a specific definition for a fundamental right to the environment that provides the individual with genuine rights, a jurisprudential line is developing in Europe that consolidates the individual's genuine right to a suitable environment, carrying out an extensive interpretation of the existing legal instruments.

In short, noise is one more element that contributes to the deterioration of quality of life, but there is no doubt that its features (objectivity of its measurement, ease of identifying its impact on a specific area, existence of scientific studies on the effect it has on people's health etc.) have

helped it become the object of complaints made by individuals, who have received the support of the European Court of Human Rights through the rulings that have been described.

The social repercussion of such judgments, along with their development through the individual legal systems of Member States, will contribute to an ever-growing pressure for the development and consolidation of a fundamental right of the human being to enjoy an environment with a greater level of protection that guarantees a decent quality of life in balance with the fragile ecosystems of our damaged planet.

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6. The article states: “A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”.
7. Edwards, V., “European Court of Justice: significant environmental cases 2007”, *Journal of Environmental Law*, 2008, vol. 20, n° 1, pp. 137-150.
8. *DO L* 189 of the 18 July 2002.
9. Judgement of the European Court of Human Rights, Fourth Section, application n° 4143/02, 16 November 2004.
10. Article 8 of the European Convention on Human Rights states: “1. *Everyone has the right to respect for his private and family life, his home and his correspondence.* 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic country in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder and crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*”.
11. Spain signed the Convention on 24 November 1977 and ratified it on 4 October 1979 (*BOE* n° 243, 10 October 1979), when Protocols 3 and 5 were already in force. Spain signed the additional Protocol on 23 February 1978 and ratified it on 27 November 1990 (*BOE* 12 January 1991). Spain has also signed the additional protocol number 4 on 23 February 1978, but it has still not been ratified, meaning that it is not a party State in this protocol. However, according to article 18 of the Vienna Convention on the Law of Treaties, on the 23 May 1969, it has the duty to avoid acts by virtue of which the subject and the purpose of the additional Protocol number 4 are thwarted. The additional protocol number 4, relating to the abolition of the death penalty, was ratified on 14 January 1985 (*BOE* 17 April 1985). The additional protocol number 7 was signed on 22 November 1984, and has not yet been ratified. The important Protocol number 11 that recognises the individual *ius standi*, was published in the Official Spanish Bulletin (*BOE*) on 26 June 1998. The consolidated text was published in the *BOE* on 6 May 1999.
12. CARRILLO SALCEDO, J. A., *El Convenio Europeo de Derechos Humanos*, Madrid, Tecnos, 2003. p. 107.
13. Judgment of 9 December 1994, series A, n° 303 – C, 51.
14. By way of a precedent, the appeals made by the British citizens Baggs and Arrondelle, who were affected by the noise from the airports, also exist. The applicants reached a friendly settlement with the United Kingdom, after the Commission had accepted their appeals. Case *Arrondelle v. United Kingdom*, 7889/77. Decision 15 July 1980 and the Report of 13 May 1983 (*DR* 26, p. 5). Case *Baggs v. United Kingdom*, 9310/81, Decision 16 October 1985 (*DR* 44, p. 13) and the Report of 8 July 1987.
15. An appeal made by two neighbours with properties near Heathrow airport, who regularly suffered from the noise made by the aircrafts landing and departing from the airport.
16. CARRILLO SALCEDO, J. A., *El Convenio Europeo de Derechos Humanos*, *op. cit.*, p. 91.
17. As well as the rulings and decisions that are mentioned, the following cases are particularly interesting:

- Vearncombe and Others v. Federal Republic of Germany* (noise), appeal n° 12816/87, Decision on 18/1/1989, DR n° 59, p. 186; *X. v. France* (noise and other inconveniences), appeal n° 13728, Decision on 17/5/1990; *Zander v. Sweden* (water pollution), appeal n° 14282/88, Decision on 14/10/1992; *Guerra and others v. Italy*, ruling on 19/2/1998; *Öneryildiz v. Turkey*, ruling on 18/6/2002.
18. As regards the ruling in question, see: GARCIA SAN JOSE, D. “Ruido nocturno e insomnio: los derechos a la vida privada y familiar y al respeto del domicilio frente al interés general de los vuelos durante la noche. Comentario a la STEDH de 2 de octubre de 2001, en el caso Hatton y otros contra el Reino Unido” in *Revista Española de Derecho Constitucional*, Year 22, No. 64, Jan-Apr 2002, pp. 239 – 260; DOMENECH PASCUAL, G. “La obligación del Estado de proteger los derechos humanos afectados por el ruido de los aeropuertos. Comentario a la STEDH de 2 de octubre de 2001” in *Revista de Derecho Urbanístico y Medio Ambiente*, vol. 36, n° 192, 2002, pp. 57 – 82; and on the subject in general, see MARTIN-RETORTILLO BAQUER, L. “El ruido de los grandes aeropuertos en la jurisprudencia del Tribunal Europeo de Derechos Humanos” in *Derecho de Medio Ambiente*, Centre of Legal Studies of the Justice Administration, n° 16, 1995, pp. 117 – 134.
 19. The causes of the matter lie in the alteration in 1993 of the legal system controlling night-time air traffic movements (taking off and landing) that take place in airports in the United Kingdom. The system changed from one in which a maximum number of night movements permitted was established, to a system of quotas, thus considerably increasing the air traffic, such that the applicants (living near Heathrow airport) argued that they found it difficult to sleep after four o’clock in the morning, and impossible after 6 o’clock. The sound levels exceeded eighty decibels, whereas according to the World Health Organisation, it is advisable to not exceed a maximum of sixty decibels.
 20. The amended Protocol number 11 of the Convention introduced a two stage jurisdiction system, reinforcing the features of independence of the European Court of Human Rights’ protection mechanism “*through a commitment solution consisting in maintaining the principle of the reexamination as a structural component of the new mechanism, allowing the cases of particular importance to be reexamined twice by means of two different formations of the new Court, the Chambers and the Grand Chamber*” (SANCHEZ LEGIDO, A.; *La reforma del mecanismo de protección del Convenio Europeo de Derechos Humanos*, Colex, Madrid, 1995, p. 285).
 21. The judges Costa, Ress, Türmen, Zupancic and Seiner cast an individual vote of great interest, in which they stated their disagreement with the ruling and expressed their opinion that there had been a violation of article 8 of the Convention, based on a *human right to the environment*, not originally existing in the text of the Convention.
 22. The inclusion of the right to protection of the environment in article 37 of the European Union’s Charter of Fundamental Rights or Charter of Nice implies a certain original nature, despite its very significant limitations,

which literally reads as follows: “*In accordance with the principle of sustainable development, the policies of the Union will comprise and ensure a high level of environmental protection and the improvement of the quality of the environment*”. For more on this subject, see HERRERO DE LA FUENTE, A.; “El derecho a la protección del medio ambiente y el artículo 37 de la Carta de Derechos Fundamentales de la Unión Europea” in HERRERO DE LA FUENTE, A. (Ed.), *La Carta de Derechos Fundamentales de la Unión Europea. Una perspectiva pluridisciplinar*, Cuadernos del Instituto Rei Afonso Henriques de Cooperación Transfronteriza, nº 2, Zamora, 2003,

pp. 113 – 136. The article mentioned can nowadays be found inserted in the text of the Treaty through which a Constitution for Europe is established, with the number II-97.

23. See PILGRAU SOLER, A., (dir.), *Acceso a la información, participación pública y acceso a la justicia en materia de medio ambiente, diez años del Convenio de Aarhus*, Barcelona, Atelier, 2008. PEÑALVER CABRÉ, A., “Nuevos instrumentos para la aplicación de la legislación ambiental ante la inactividad administrativa: de las acciones ciudadanas al Convenio de Aarhus”, *Revista de Administraciones Públicas*, 2007, nº 172, pp. 439-485.

PHILOSOPHY AND HISTORY

A PAGE FROM THE HISTORY OF THE PRINCIPALITY OF TRANSYLVANIA

Mariana BORCOMAN¹

Abstract: *The history of the Principality of Transylvania was marked by great political unrest. The small region was coveted on one hand by the Turks and on the other hand by the Hapsburgs. The internal policy led by the princes of Ardeal contributed for Transylvania to keep pace with the evolved Occident. Through the participation in the War of 30 years, the small principality asserted itself as a power that should be taken into consideration at the demarcation between Central and South-Eastern Europe.*

Key words: *principality, religious reform, autonomy, politico-diplomatic arbitration.*

1. Introduction

The historical period of Transylvania, comprised between 1540-1699, is known under the name of Principality. This is the period when the expansion of the Ottoman Empire in the central part of Europe reaches a maximum level. The Turkish army led by the sultan Soliman the First conquered Serbia and great part of Hungary, following the victory from Buda 1540. The Turks' initial intention was to further advance towards the centre of Europe, however they came across the Hapsburg Empire. This way, in the middle of the 16th century, great part of Hungary had been transformed into pashalik (province of the Ottoman Empire) and Transylvania, through the policy of its princes, had managed to maintain its autonomy. Its status was as autonomous Principality under Ottoman suzerainty and it paid tribute to the Porte. This situation, was however, much more advantageous than the one of Hungary. Under this situation, Transylvania will turn into a place of refuge for great part of the

Hungarian nobility and the policy of the princes from Ardeal was quite permissive in this respect. The nobility that had taken shelter there had stated for all that period that in Transylvania there was being remade part of the lost kingdom of Hungary. The policy of the princes from Ardeal within the external framework led to the positioning of the small Principality among the great European powers of the time and to the participation in the War of 30 years. These actions were also accompanied by a powerful cultural effervescence manifested through the dissemination of the Reform in Transylvania, through the development of education and of the printing houses.

2. Principality of Transylvania between Autonomy and the Intervention of the House of Hapsburg

2.1. Policy Led by the Emperors of the House of Austria

The Hapsburg Empire represented a danger for the independent Principality, reformed and reorganized from the

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interior. That one carried on negotiations with the Ottoman Empire with respect to Transylvania and Hungary. The result of the Austrian reforms was their offensive in the 17th century against the Turks.

This way **Maximilian the First**, regent at 1486 and emperor between 1508-1519 aimed first of all at solving the financial situation. That one was to be subordinated to the *Hofkammer*. His entire policy was based on a strong centralization and on a strong control of the provinces. In the middle of the 16th century, there were felt within the Empire, as well as in the majority of the European countries, the effects of the Reform. Rough measures against the Protestants were taken by **Ferdinand the First** (1531-1564). During his entire reign, he had to face the reaction of the protestant noblemen, powerful and numerous in Superior Austria and Steiermark. He even attempted at achieving conciliation with the Protestants in the framework of the Council of the Protestants from Trient, however with no result. Ferdinand's death made the empire to be theoretically divided among his three sons: Maximilian- who would control the Austrian lands of the Danube, Bohemia and Hungary; Ferdinand- Tirol and Carol- the areas within Austria.

Also supported by influent people from the Court, the elder son **Maximilian the Second** would become emperor between 1564-1576.

His main energy was channelled towards the efforts of fighting against the Turks (that was the moment of the Turks' great offensive under the leadership of Soliman the Magnificent) and towards the attempt at controlling Transylvania. A second side of his activity was the fight against the Protestants (he led rough actions, he imprisoned the supporters and confiscated their wealth).

His reign suddenly stopped and there came to the throne **Rudolf the 2nd**

(1575-1612), who would reign in parallel with his brother Mathias. Rudolf was a great lover of the arts, of the beauty by excellence. He fully developed this taste by edifying another capital at Prague. That time was a very tense period between the Catholics and the Protestants, and the army had to face the frequent wars with the Turks. Finally, Rudolf made a compromise and elaborated in 1619 a decree with respect to the Protestants' liberty within the empire.

2.2. *The War of 30 Years and its Consequences for the House of Hapsburg*

In the framework of that European conflict there were involved two branches of the House of Hapsburg: the one from Vienna and the one from Madrid. At the leadership of the Spanish universal monarchy there was Carol and at Vienna there were successively **Ferdinand the 2nd** and **Ferdinand the 3rd**. Mathias' main policy was to drastically control the provinces and to enforce the Catholicism. That last direction was one with small momentarily concessions, such as the *Majesty Letter* from 1619, through whose intermediary there were given some political liberties to the Reformed Czechs. However, their rights were not observed and that automatically determined the outburst of a conflict.

The episode is known in history as the *Defenestration from Prague*, in which 2 members of the Council of Regency were thrown out of the palace, in fact a reaction of the Czech noblemen against Catholicism and absolutism.

The **Czech period** (1618-1620) confronted two camps: Czechoslovakia which had on its side the German protestant princes (on whose side Gabriel Bethlen- the prince of Transylvania entered into conflict, in the hope he would conquer again the throne of Hungary) and Austria- Spain. On the throne of Austria,

there came in Aug. 1619 Ferdinand the 3rd, younger and more determined to do so that the balance would turn on the Catholics' side. Between the 2 camps, there began negotiations, the emperor also personally treated with Gabriel Bethlen and Vienna gained therefore time to defeat the Czechs at the White Mountain on the 8th of November 1620, a decisive victory, which again transformed Bohemia and Moravia in provinces of the empire. Here, Vienna would lead again a policy of forced catholicization.

The second stage of the war was the **Danish period** (1625-1629), which presented a much greater proportion of forces than at the beginning of the war. Against the Hapsburgs' interests, there gathered the great forces: England, the United Provinces, Denmark and Sweden. The allies' stake was not to allow the Hapsburgs to reach the Baltic Sea and prejudice the interests of Hansa. The most active power was Sweden. Ferdinand entrusted the leadership of the empire armies to Albert of Wallenstein- military with high ambitions and able politician (he introduced the policy of the maintenance of the armies by the territories in which they were cantoned, very profitable for the Austrians). Following the general's several defeats on the sea and on the land, Ferdinand could again harm the Protestants and issued an edict through whose intermediary all their assets should be confiscated. That would function only temporarily, as Vienna had to change its position in this respect in order not to lose its main allies-the German princes.

The Swedish period (1631-1635) created many difficulties for Vienna, through the intervention of the king of Sweden, Gustav Adolph, and of France, in Germany. Ferdinand appealed again to Wallenstein and, following small victories, the peace from Prague was clinched 1635.

The emperor apparently controlled the German spaces.

The French period (1635-1642). Ferdinand the 3rd moved to determined actions against France. That was the period when Transylvania, under the leadership of G. Rakozi the 1st, entered into war beside the French camp (however military actions were not led, because the prince of Transylvania had to correct his attitude in accordance with the Porte he depended on). Following several victories of Sweden, Austria was compelled to ask for peace.

The peace was clinched at **Westphalia**, in fact the treaties were clinched in two localities: **at Osnabrück and Münster**. That peace greatly meant the reorganization of the system of forces in Europe. Among the losers, there also was the Hapsburg Empire, which had to cede certain territories to France, respectively: the episcopates Metz, Toul and Verdun, beside Alsace. The emperor's authority power from the past was now diminished by the obligation to consult the German princes and the Diet. The Court from Vienna began being interested in the territories from the Danube and respectively in Transylvania. It enforced its possessions however outside Europe.

3. The Fights for the Throne in Transylvania during the 16-17th Centuries

3.1. The Principality of Transylvania after Ioan Zapolya's Death

Ioan Zapolya, after a few military actions, was recognized in 1526 as prince of Transylvania and as king of Hungary. The Principality would pay tribute to the Porte for the freedom of organization and leadership. Zapolya led a policy in favour of the young Principality, achieving a diplomatic balance between the Turks and the Hapsburgs. This way, in 1538 he clinched with the king Ferdinand the 2nd a

treaty at Oradea through whose intermediary Transylvania, after Zapolya's death, would revert to Austria. That would not be applied and, in 1570, Zapolya's son, **Ioan Sigismund** would come to the throne, helped by his mother, Isabela. During that period, the young prince clinched in his turn at Speyer- 16th of August 1570 a treaty with Maximilian the 2nd, through whose intermediary there would be acknowledged his title of prince of Transylvania and of Partium and the one of „Rex Hungarie”. In exchange, after his death, Transylvania had to revert to the Hapsburgs. His reign was not at all a calm period – the Hapsburg troops led by the general Castaldo alighted in Transylvania (1551-1556) a period which stood in fact for Austrian military occupation) and likewise those of Martinuzzi- who led the troops of the noblemen from Ardeal, to whom there also added the Turks. During the greatest part of his reign, Sigismund collaborated with the ranks in Transylvania.

The last three decades of the 16th century meant the coming to the throne of Transylvania of the **Bathory** family. The first among them, **Ştefan Bathory (1571-1583)**, created the Polish-Transylvanian union, and had a period of peace. He would make oath of faith to the emperor of Austria and he would also occupy the throne of Poland. He saw Transylvania „in the Polish-Russian-Swedish alliance in conflict for the Baltic sea and wanted the constitution of an empire from the Baltic sea to the Black Sea”[1]. From that position he let the leadership of Transylvania to his brother Cristoph. The most ambitious among the brothers was **Sigismund**; adventurer and ambitious, he many a time renounced the throne of Transylvania, in 1597 and 1599. those periods were marked by the intervention either of the Austrian troops, or of the Turks. He likewise had on his side leaders

of the noble factions from Transylvania (Jan Zamoyski, Polish, believed in the continuation of Stephen Bathory's and Istvan Csaky's plans). Sigismund adhered to the Christian League, joining the Principality to other anti-Ottoman powers. Very irresolute, he left the throne for the second time and as a result it was taken by Andrei Bathory: authoritative representative of the catholic camp, with a direct attitude, hostile to Michael the Brave. As regards Sigismund Bathory's reigns, we have several documents which enhance the anti-Ottoman policy he led, beside the emperor Rudolf the 2nd of Austria. (A.V. Hof. F. 95| 1 doc. 21, f. 203 r° - v° of the 28th of Oct. 1598 and r. Nr. 1, F. 1540-1614, f. 554 of the 5th of Dec. 1603). Likewise of a special linguistic beauty, there is the treaty between Sigismund's widow, Maria Cristina and Andrei Bathory, from 1599, through whose intermediary there was ratified an annual tax destined to maintaining her assets from Transylvania, representing 15.000 thalers (A.V. Hof. F. 95| 2, doc. 10, f. 256).

Michael the Brave's actions in Transylvania, from the fall of 1599-1600 determined that, for a little time, the Romanians' hopes to participate in the political life should be revived. However, Transylvania turned into scene of operations and the troops of the general Basta would stay there for a long time. There were there at least two powerful factions – the one around Moise Szekely and the one of Bocskai.

Moise Szekely „had as important objective the control of Transylvania, however he did not dispose of the financial means, he made appeal to the High Porte”[2]. And the armies of the general Basta were still in Transylvania. In the archive from Vienna, there still is a document, issued by the general Basta, in 1605, through whose intermediary he was named governor of Transylvania

(A.V. Hof. r. Nr. 1. 1540-1614, f. 891 r° and v°). The attitude of the privileged ranks was different towards those ones – the Saxons and the Szecklers from Transylvania had other interests than those from the counties. Moise Szekely was in connection with Sigismund Zapolya and planned to create a powerful protestant State in the Centre and East of Europe. With that period, there began in Transylvania the reformed policy.

3.2. The Moment Ștefan Bocksay (1604-1606)

Exponent of the nobility in Hungary, who hoped to keep his rights, he managed to defeat the factions who supported Szekely and Gabriel Bathory. He was likewise acknowledged by the Porte. He assembled a powerful army of mercenaries, in order to fight against the Turks, and in exchange of a substantial sum, the Sultan acknowledged him in 1604, as prince. Because of that anti-Ottoman policy, Bocksay was also well seen at Vienna. The Saxons from the districts Brașov and Bistrița and from the seats Sighișoara and Sebeș were against the Hapsburgs, and Sibiu was pro Hapsburg. The Szecklers were constantly part of the Romanian voivodes' armies. At 21 XI 1606, before his death, Bocksay signed against the Turks a treaty with Maximilian the 2nd, through whose intermediary there was recognized, for him and for his heirs, the title of King of Hungary. The groups around the catholic bishop and the great magnates who sought for various privileges were constantly faithful members of Vienna. The general Basta was obliged to leave Transylvania under the conditions in which he had no longer money so as to support his army. Vienna was weakened and therefore it clinched a treaty with the Ottoman Empire in 1606 at *Zsitvatorok*. Likewise in 1605

there had been clinched the treaty with Țara Românească of Radu Șerban.

3.3. Gabriel Bathory (1608-1613)

During his few years of reign, he led an anti-Ottoman policy and he even clinched the first anti-Ottoman treaty of Transylvania during 1608, in parallel with Moldova and Țara Românească. His reign intermittently unfolded: in 1611 he returned to the throne of Transylvania after having punished the Saxons from Brașov who had betrayed him and he confronted himself with the allied armies of the imperials and the voivode from Muntenia Radu Șerban. The confrontation eventually led to Gabriel Bathory's death.

3.4. Gabriel Bethlen's death (1613-1629)

Through his long reign for that epoch, Gabriel Bethlen inscribed himself within the reformed princes. Within, he developed a dense administrative apparatus, but at the same time efficient. In the economic field, he led a mercantilist policy, encouraging the craftsmen and the tradesmen. He set up an Academy at Alba Iulia in 1622, and, following his initiative, there were published and printed books in German, Hungarian and Romanian. His prestige was nevertheless outstanding for his external policy. Through his marriage with Ekaterina of Brandenburg, he drew closer to the Protestants of whose camp he would be part until the end of his reign. He had very high ambitions, he wanted to remake the kingdom of the great Dacia under his crown and in this respect he entered into connection with the orthodox patriarch of Constantinople – Kiril Lukaris. His most important diplomatic action was driving Transylvania into the war of 30 Years.

Transylvania was part of the Protestant camp, and in 1619 the troops from Transylvania were defeated under the walls of Vienna. In order to consolidate his position, Gabriel Bethlen clinched in March 1620 a treaty with the Czechs. The imperials feared them more

therefore the emperor Ferdinand the 2nd clinched treaties with Transylvania, endeavouring to put it off the game: the one during Jan. 1620, through whom there were promised to Bethlen the counties from Partium and the one during 1622 at Mikulov, through whose intermediary Bethlen renounced the throne of Transylvania. Those ones would be renewed in 1623 and 1624. Until his death, he controlled Hungary several times. (the part pertaining to the imperials). His attributions were too great and in 1625 he clinched a treaty as defeated, in which there was however settled that after his death, the throne of Transylvania should revert to his wife Ekaterina of Brandenburg.

3.5. Rakozi Dynasty (1630-1660)

a. Rakozi The First (1630-1660) – policy of the personal assets

Supported by a strong faction of known magnates, he managed to reach to the leadership of Transylvania and he defeated Ştefan Bethlen (Gabriel Bethlen's son) at *Salonta* and in 1636 he received the confirmation of the Porte for his reign. Within, he led a policy of control of the taxation system, to the purpose of raising funds for the military actions; he confiscated the wealth of the political opponents and he brought again in the patrimony of the principality the monopoly of the salt and of gold. His main quality manifested however on the level of the political life, this way Rakozi the First was a mediator between Țara Românească and Moldavia, respectively between Vasile Lupu and Matei Basarab. He separately clinched with them treaties - in 1635 with Matei Basarab and in 1638 with Vasile Lupu. His ambition went beyond and he wanted to occupy the throne of Poland and to place his son Sigismund on it. He clinched an alliance with the Cossacks against Poland. Driven by ambition and by

the desire to place Transylvania among the European powers, he continued the immixture in the War of 30 years.

However, his actions from 1644, after he had clinched the previous year a treaty with Sweden, would be a failure, and the reaction of the Porte would be decisive. During that time, the administrative and fiscal policy was rough (A.V. Hof. r.Nr. 2, f. 245 are a series of fiscal registers for all the localities in the comitats, the assets of the capital who pertained to the diocese Alba). Likewise, the Bishop of Strigoniu G. Lippany complained on the 6th of June 1645 to the emperor of Vienna for the prejudices brought to Transylvania by the wars fought by Rakozy the 1st (A.V. H. H. St. A., F. 423 Konv A 1630-1647).

b. Rakozi the Second (1648-1657;1660)

He continued his father's policy, however of greater proportions: in 1649 he received firman of reign from the sultan. He clinched alliance treaties with Țara Românească, respectively with Matei Basarab and Constantin Şerban against Vasile Lupu and the Cossacks. He attempted through his actions at controlling the two voivodes: this way, in 1653 he helped Gheorghe Ştefan to reach the throne of Moldavia (but he would be defeated at *Popricani* during the same year by the armies of Vasile Lupu, who benefited from the Cossacks' help). In view of assembling the anti-Ottoman common front and after Matei Basarab's defeat, at the initiative of Rakozi the Second, there would be achieved in 1655 the alliance between the leaders: Constantin Şerban, Gheorghe Ştefan and Rakozi the 2nd.

His ambitions were however higher and they were connected to the throne of Poland. Like his father, he treated with Sweden and he accepted its plan of dividing Poland. Those plans he would relate in a testament from the 26th of December 1666, addressed to his son

Francisc Rakozi and to his wife Sophia Bathori, comprising much advice for the leadership of the country (A.V. H. H. St. A. F. 424 Konv. A 1648-1669). In the campaign of 1657 from Poland, the troops of Transylvania remained alone. The special expenses for the army and his extravagant plans brought him many enemies especially from among the noblemen, who at the Diet of Gherla, in 1657, chose and recognized as prince Francisc Rhedey. The Turks had likewise a candidate and they intervened in Transylvania, beside the Tartars and placed Acațiu Barcsai on the throne of Transylvania.

The principality turned into a scene of operations between the armies of Racozi the Second, and those of the noblemen. Racozi defeated the Turks at Lipova and would control the North-Western area of Transylvania, and within a year he would conquer the rest of Transylvania, however he would be killed at Florești in June 1660 during the confrontation with Acațiu Barcsai's armies.

Between 1660-1661, Ioan Kemeny was prince of Transylvania, who would be killed at Seleușu Mare, after he would have been acknowledged by the Hungarian noblemen and by the German towns.

3.6. Apaffistians Mihai Apaffy the First (1661- 1690) had to face the Hapsburgs' incursions and the imposition of supporting the Hapsburg troops. He gave frequent „indications” such as the instructions with measures against the armies led by Ștefan Bocskái at the 8th of March 1666 (A.V. H.HSt. A., F. 179, doc. 3).

4. Conclusions

The space of Transylvania witnessed numerous convulsions during the period 1540-1699. Placed at the confluence of the two empires, the principality managed to maintain a certain position towards the

great powers. Many times, however, during those years, the conflicts unfolded on the territory of Ardeal. A fact which determined that some periods of famine and pandemics should be felt during those two centuries. The population from Transylvania was in its turn divided according to the interests: the Saxons supported the Hapsburgs (starting from their German origin), the Szecklers supported their own candidates to the throne of Transylvania (such as Moise Szekely' case) and the Romanians, who saw in Michael the Brave's short presence in Transylvania, a possibility for the recognition of their rights. Unfortunately, the plan of the voivode from Muntenia was dismantled by the numerous interests of the nobility from Transylvania, who appealed to the House of Hapsburg and by the intervention of general Basta's troops in Transylvania. The ambitions of the princes from Ardeal were likewise a factor of political instability. Those in the family Bathory wanted to assemble a great kingdom through the fusion with Poland and at last, Andrei Bathory gave up the throne of the principality in favour of the Polish one. The princes from the Rakozi dynasty attracted Transylvania in a conflict which was meant to remove the Hapsburgs' pretensions and pressures with respect to the principality. The first years of the events in the so-called conflict of 30 years placed Transylvania in a good position, the second period was however a military disaster, which also attracted a difficult situation for Transylvania. The position of arbiter that the two princes had undertaken asserted itself also through the treaties that they separately clinched with the voivodes of Moldavia and Țara Româneasca. The ones in the Bathory family were suspected of accumulating outstanding wealth, a fact which attracted the envy of the nobility from Ardeal.

The history of the Principality of Transylvania also knew periods of quietness and prosperity during Gabriel Bethlen's reign. Adept of the religious reform, the prince Bethlen encouraged the development of the new confession, which led to his very positive internal image among the reformed Saxons and the Szecklers. He was not however seen the same way at the Court of Vienna. During his reign, education of all degrees developed. There were set primary schools in the villages on the domains pertaining to nobility, on the land of the kings and on the territory of the Szecklers. Those ones were supported through the partial expense of the State and that of the nobles on the domains, of the community within the settlements or by the Reformat Church. Under the prince's guidance, there came into being the College from Alba Iulia, with high school status, and the University of Cluj benefited from numerous funds. There were likewise developed numerous printing houses, among whom the greatest was placed in Alba Iulia. From the letter presses, under the beneficial influence of the reform, there appeared books in the languages of the nations within Transylvania: Hungarian, German, and Romanian. This was a period of cultural effervescence for Transylvania, with visible effects in time.

The political status of Transylvania during the second half of the 17th century turned deeply worse. The policy of the House of Hapsburgs as regarded

Transylvania became more aggressive, especially after the lessening of the Turks' authority in these areas, and the Austrians' increasing presence on the territory of the principality became a reality. That fact was facilitated by the particularly conciliating policy of the princes in the family Apaffy. Therefore, towards the end of the 17th century, in 1699, through the peace from Karlowitz clinched between the Turks and the Austrians, Transylvania would turn into a province of the Hapsburg Empire until 1918.

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OBSERVATIONS WITH RESPECT TO THE FUTURE OF RELIGION PREFIGURED BY R. RORTY AND G. VATTIMO

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Abstract: *G. Vattimo and R. Rorty outline a faith without precepts and without a metaphysical God, as future of religion, after the deconstruction of Western ontology. The present paper signals the fact that the reductionist vision of the religion of the times to come, as undertaking of the law of love and of its charitable consequences risks to annul the religious character of love. A faith that programmatically undertakes charity in the absence of a metaphysic God is at most conviction. The rational-discursive approach mines the logic of religious faith. The restoring dimension of hermeneutics is more involved in the future of religion than its reductionist dimension.*

Key words: *deconstructivism, hermeneutics, religion, charity.*

1. Introduction

The shift of the philosophical interest in the field of language and of its relation with the being has affected the philosophers' options of reference to religion and religiosity. Richard Rorty and Gianni Vattimo agree in founding in liberty and charity the future religious attitude of humanity. The present paper sets out to signal the argumentative frailty of this basis.

2. Hermeneutics, Postmodernism and Religion at G. Vattimo

The history of metaphysics is comprised in the history of social institutions, G. Vattimo shows [5]. There is a history of the being and there is a fracture of history: before and after Christ. Atheism is possible in the history of revelation, salvation and dissolution of the being. In contemporaneity, the being must be constructed as event of the logos. The being is the result of the human dialogue.

The dialogue occurs in the political life. The future of religion is connected to the one of the church, with its structure, discipline and norms. Christianity is born by the church.

Heidegger presented his enunciations as answers to the situations in which he was involved, the Italian philosopher shows. Knowledge is always interpretation, Heidegger shows, and interpretation is the only fact we may talk about. Any tentative of surprising the authenticity of the interpretation unveils its historical character and even the thought that there are no facts, only interpretations has to be related to a determined historical context. Heidegger's ideas naturally place themselves in the epoch, resounding with the end of euro-centrism, with the psychoanalytical dethronement of the conscience and with the plurality of the sources of information, Vattimo deems.

„Christianity introduces within the world the principle of interiority, on whose basis

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objective reality gradually loses its determinant importance.” [5, p. 61], Vattimo shows. Hermeneutics is, from this perspective, development and maturation of the Christian message. The presupposition of the objectivity of the religion truth pushed religion in the deadlock of assuming as true the scientifically disputable enunciations in the Bible. The same presuppositions impede, Vattimo show, overcoming the inter-confessional misunderstandings in Christianity and of Christianity with other great religions. The solution comes, of course, from the renunciation of the objectivity pretensions. The only truth developed by the Scripture is „the truth of love, of caritas” [5, p. 66]. For Vattimo, postmodern nihilism, as dissolution of the concept of truth, is the truth of Christianity. The ideas of Nietzsche, Heidegger and Rorty are tributary to the biblical message founding the civilization in which they are formulated. Due to Christianity, the contemporary Westerners live the truth as experience and interpretation.

Vattimo proposes the explicit undertaking of the Christian historicity and deems charity the only chance for the survival of the West.

3. Hermeneutics, Secularization and Law of Love at R. Rorty

To go out of the metaphysical logos means to declare your incapacity, contenting yourself with charity, R. Rorty shows [5]. The Christians’ shift towards the illuminist ideals signal the passage from God adored with strength to God adored with love. The passage from the metaphysical logos to the post-metaphysical reasoning and from strength to charity indicates at the same time the human’s inclination to stake on oneself rather than on an infinite power beyond oneself.

The decisive event, the fracture moment in the history of the being is not, as for Vattimo, Jesus’ birth, but the French revolution simultaneous to Romanticism. The contemporaries’ duty is directed towards the fellow citizens and civic responsibility may exist independently of the reason or of the religious belief.

Hermeneutics is for the intellectual world what democracy is in politics: a manner of taking over the Christian message about love as the only law.

Vattimo, Rorty shows, uses his philosophical strength in order to support the return to the religiousness from his youth. His theology, liberating religion from truth and sin forgiveness, is addressed to the lukewarm in faith. The embodiment is the sacrifice of the divine strength, of the divine authority and of the divine alterity. In embodiment, Gods cedes everything to people. This way, at Vattimo, secularization is the „constitutive feature of an authentic religious experience” [5, p. 48] and Jesus necessarily identifies Himself neither with truth, nor with strength, only with love. Vattimo places himself this way at the intersection of the reasoning traditions coming from Nietzsche and Heidegger, on one hand. and respectively, W. James and J. Dewey, on the other hand. In the point of intersection of the traditions, there is the undertaking of the research upon the truth as inter-subjective agreement. This undertaking pushes religion beyond the public and intellectual space. Rorty considers secularization as achievement of the embodiment promise, as God’s Self-giving to people, this implying the recognition of the private character of religion.

„The differences between Vattimo and myself reduce to his capacity of perceiving the sacred in a past event and my manner of having the feeling of the sacred as something that might dwell only into an

ideal future.” [5, p. 54] Rorty also shows. His feeling with reference to the sacred is connected to the future placement of society as a whole under the law of love. „This mystery, as the one of embodiment, is about the coming into being of a sort of docile, patient love, capable of bearing anything.” [5, p. 55].

4. The Future Prefigured to Religion by R. Rorty and G. Vattimo

Both Rorty, representative of the American pragmatic post-empirism, and Vattimo, representative of the European Latin postmodernism, deem that humankind is in the era of interpretation, era in which science, philosophy and religion interweave their competences, Santiago Zabala shows in the introductory study to these two papers upon the future of religion. [5]. For the philosophers of this era, the deconstruction of metaphysics prepares the undertaking of objectivity as linguistic consensus. The language structures the experience. In the field of interpretation, the language has historical character. Rorty and Vattimo deem that hermeneutics impede the philosophical research from assuming as object something that exists independently of the researcher. Any theoretical position is tributary to its historical conditions.

Philosophy opposes the authority's imposition of truth. The latter cannot be for the philosopher but the interpersonal dialogue unfolding in shared language. Historicity replaces therefore eternity, the philosopher undertaking this way a weak or weakened reasoning of the ontological. Consensus imposes historical truth, not the truth builds consensus.

Rorty and Vattimo are skeptical as regards the conditions of use of any concepts. In the encyclical *Fides et ratio* from 1998, Pope John Paul the 2nd indicated as the only source of the contemporary mistrust in truth and in the

cognitive resources of the human being, the shift of the interest in modern philosophy from the being to the human capacities of knowledge. Underlining its limits and conditionings, the philosophers seeded agnosticism, relativism and skepticism. Their fruit is the post-modern unfitness for essential questions regarding sense and the grounds of life. Zabala deems, on the contrary, that „the very loss of the trust in truth and the achievement to a substantial equivalence of all positions is the greatest success obtained through the deconstruction of metaphysics.” [5, p. 24].

For Rorty and Vattimo secularization is history of the weakened reasoning. Without being the abandonment of religion, secularization stands for paradoxical realization of its vocation. Numerous philosophers, scientists and theologians are non-religious or anti-religious from inertia, as an answer to dogmatic absolutism. The post-metaphysical era reopens for them the possibility of faith. Postmodern man has learnt to live in a world he cannot rely on, a world that does not supply ultimate grounds for knowledge and ethics and that guarantees in no way or time happiness. Secularization is, from this perspective, liberation and occasion for bringing reason in the proximity of the commandment of love. Solidarity, charity and irony are practices associated to the liberating undertaking of postmodern human condition.

Hermeneutics may help religion to liberate from the metaphysical tasks alien to itself, liberating reasoning from the pretensions of objectivity and connecting salvation to interpretation and edification. According to Rorty and Vattimo, faith evolves towards a sphere of the private, individualizing itself and gradually losing its appetite of the assumed appurtenance to a church. Overcoming the absolutism and the superimposition of the truth and

authority opens the possibility of approaching God fearlessly. The only truth of Christianity is the call to love. Postmodernism overcomes the requirement of the objective truth. For this reason, Christianity can no longer fulfill its doctrinaire, moral and disciplinary functions. Rorty and Vattimo outline a belief without precepts and without a metaphysical God as future of religion after the deconstruction of Western ontology.

5. Critical Observations

A first observation aims at the inconsistency of a faith with no precepts and without God. Such a faith, imposing charity, may be easily deemed as grounds for a beneficial human character. However it is not necessarily religious. Religion constitutively needs the believer's relation with another ontological register. The metaphysical tasks are not alien to religion; they are intimately and by definition connected to outlining a representation of the transcendent.

The post-metaphysical liberation from dogmas and dogmatic absolutism reopens for the contemporaries the possibility of faith, Rorty and Vattimo state. However, faith is constitutively transcendental and therefore valuating. Faith is crediting, trusting and entrusting. It implies undertaking a system of values and placing into a hierarchy the world values, in compliance with this system. Faith operates deductively, the manifestations it determines are substantiated by the value assumed as supreme. Crediting and trust may be inductively justified. They generate convictions. Entrusting, as transfer of the self-responsibility upon the bearer of the supreme value, means its implicit acknowledgment. As gift and abandonment, entrusting differentiates faith from conviction. The contemporaries may be convinced that there is a good

thing for humankind the charity as generalized practice. Their conviction may be the result of the experiences registered in humankind's recent history. In order to become religious, the valorization of charity has to be supported through anchorage in transcendent. It needs, in the way in which Kant settled this, a guarantor. In his absence, it is an approach for the camouflage of the profane within the sacred. This approach would occur inversely to the camouflage of the sacred within the profane that M. Eliade spoke of [3]. A faith that programmatically undertakes charity in the absence of a metaphysical God is at most conviction.

From this perspective, the religion of the future as it is outlined in the writings of Rorty and Vattimo is at most heresy, which places the human instead of God, similar to the manner in which communist regimes did.

Another observation aims at the reductionist character of the rational-discursive justification of the charitable behavior as being religious. The rational-discursive approach mines the logic proper to faith. G. Simmel showed that if an aspect of life acquires the status of ultimate instance of the latter, this generates the feeling of inexistence of a certain contradiction. Out of the understanding of religion as coherent totality there ensues its immovability. There is a logic proper to religion, as there is a logic of art. The religious men live a different life from the theoretical, artistic or practical men, a life with rhythm, tonality, ordination and proportions of one's own soul energies. The religious vocation imposes experiencing as religious all dimensions of life. The religious tonality may be enhanced pre-eminently in the human's behavior towards nature, towards destiny and towards one's fellow men. Certain facts have religious significance, as their

rough material was undertaken through the category of the religious. [6].

The feeling of the numinous cannot be described through feelings with human reference but through analogy, as Rudolf Otto showed [4]. He deems the logic-descriptive approach as inadequate to the comprehension of the numinous.

In extension of the idea of inadequateness, there takes shape another observation, seeing the role attributed to hermeneutics in transforming religious thinking. Rorty and Vattimo connect the hermeneutic idea of the multitude to the paths of knowledge equally enabled by the abolition of the metaphysical pretension of the objective truth. This connection exploits the reductionist dimension of hermeneutics. Hermeneutics also has a restoring dimension. G. Durand deems the latter as prevailing in the economy of the evolution of humanity [2]. In this order of ideas, the path diversity legitimated by hermeneutics unveils its compatibility with the Christian idea of personal and personalized salvation. Only under the sign of this compatibility, the shift of religion from the public towards the private is the surviving condition of religion. Only to the extent in which it programmatically allows the individualized relation with the transcendent, supporting the behavior determined by this relation, hermeneutics is responsible of the evolution of religion.

In the same order of ideas, the defining operation with the symbols also points out for the restoring dimension of hermeneutics. For G. Durand, the symbol is a non-arbitrary sign in which the significant is concrete and the signified is impalpable and invisible. The relation of inadequateness between the significant and the signified predestines the symbolic type of sign under the form of expression of the religious expression. In relation to the transcendent, any manifestation of the sacred in the religious experience remains

inadequate [2]. Hermeneutics, in its strong heideggerian vision, as specific manner of being meets, thereby with Eliade's idea of religiosity, as essential, defining human feature [3].

From this perspective, the secularization is in decline. At this point, there will be inserted another observation, aiming at the reason of metaphysics deconstruction in the evolution of the human. Rorty and Vattimo pre-eminently signal the liberating dimension of deconstructivism, dimension correlative to the awareness by the human being of the fact that he cannot rely but on himself. The reverse of this liberation is however the loss of the meaning and of the trust in truth. The success obtained at this price through the deconstruction of the metaphysical reference to the world is the success of the human against the human. This last one has intrinsically the need for sense and trust. For this reason, deconstructivism should be deemed rather as interval of reorganization than moment of success in the history of thinking. Humankind seems to cyclically exercise the faculty of methodic doubt. Deconstructivism may be deemed a contesting approach within this range. However, such a vision values it not through its demolishing dimension, but through the future constructions made possible through the initial purification of the terrain. Deconstructivism is a useful stage in the development of human knowledge not because it liberates the human from the constraint of attributing a sense to his behavior, but because it prepares the terrain for the undertaking of future sense.

In the light of these future assumptions, a last observation obediently places itself hermeneutically in the proximity of the first. The observation refers to the status of love in the future of religion. Rorty and Vattimo deem love as the only truth predicated by the Gospel and the

imposition of the law of love as sufficient ground for the post-metaphysical religion. However love should be perceived as soul-uplifting and soul-saving in order to be religious. Does love have in itself a transcendental dimension? Does love transfigure the loving one, prefiguring the transcendent? These questions of platonic filiation naturally insert in the proximity of asserting the religious character of love. They operate openings towards the ontology of the human. If and only if their answers are affirmative, the law of love as unique law of humankind and universal charity, its corollary, acquire religious character. However in this case, love changes the parameters of the human, producing a methanoia, a conversion.

6. Conclusions

The reductionist vision upon the religion of the future as undertaking of the law of love and of its charitable consequences risks to annul the religious character of love. Without losing its beneficial character, without transcendent guarantor, the commandment of love does not generate faith, but civic convictions.

Operating with symbols, hermeneutics can support the evolution of religion and religiosity. However, deconstructivism is of use to religion only to the extent in which it prepares a future reconstruction of the sense of human life.

From the deconstructivist perspective, the concept of charity, around which Rorty and Vattimo build their position with respect to the future of religion, is used as little legitimately as any of the concepts with whom metaphysics ever operated. From the perspective of the different logics which rule laic logic and religion, any non-religious cognitive approach aiming at

religion and religiosity is illegitimate and inefficient, failing its target. God's existence is not proved, it is observed, Paul Evdokimov deemed [apud. 1], differentiating the Western and Eastern traditions of Christianity. "7. What we cannot talk about should be silenced", Wittgenstein stated [7]. Philosophical writings upon religion of Rorty and Vattimo do exactly the contrary. Which is the very thing the present approach does, too, wishing to be the very wittgensteinian throwing of the instrument after its use.

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SOCIAL RELATIONS IN THE “HIGH PLACE” OF TECHNOLOGY

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Abstract: *During the last years, Intensive Care Unit (ICU) has recorded a massive progress in knowledge and operating possibilities, especially thanks to the techno-scientific innovations concerning biomedical technologies. The reflections expressed in this paper are the result of an interdisciplinary qualitative survey, which involved, through the creation of focus groups, about 50 health operators, doctors and nurses, working in six Italian intensive care units. The partakers have been asked to express their personal point of view concerning end-of-life decisions. The original aspect of this narrative is a critique to the image of medical technology as being able to take successfully part in any situation and doctors' narratives aimed at rediscovering the importance of social relations.*

Key words: *Narrative medicine, Intensive Care Unit, Technology, Social relations, End-of-life decisions making.*

1. Introduction

It is a common notion that techno-scientific medical knowledge has currently gained an unprecedented therapeutic efficacy. In the last years we have witnessed a faster and faster advancement in both pharmacologic research and the use of techno-instruments in medicine. This has greatly improved the success of therapeutic interventions, explaining the present widespread trust in expert systems as well.

In spite of the plurality of icons about such a recent development in medicine, Intensive Care Unit is the real place, which evokes, more than any other, the salvific power of new technologies [4].

2. In the Beginning of our Research

When I entered into an Intensive Care Unit for the first time – in order to carry out a qualitative research on end-of-life-decisions, on a sample of six Italian ICUs

(4 North, 1 Centre, 1 South) with two colleagues of mine, a health psychologist and a philosopher – I was really surprised to see a so high presence of techno-equipment surrounding the patients' bed.

In each Intensive Care Unit, three focus groups were organized, where the participants were asked to express their personal point of view concerning end-of-life decisions related to a specific topic of discussion: the action and the impact of technology in the medical practices, the success and the failure in the end-of-life decisions, the image of ICU seen as a context of relations and interactions. Through the textual analysis of the accounts, we have tried to underline, among the single discussions, the most meaningful critical polarization of the communicative knowledge [2-5].

2.1. The “High Place” of Technology

The big light displays, the racks in pots that continuously control the parameters and the

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large use of any sort of high-tech made me imagine to have come to the most advanced frontier of medical science. In other words, I was in a place where medicine seemed to focus the very modern idea of therapeutic intervention: illness is a natural process that hits the body.

Crossing the threshold of Intensive Care Unit – after a careful wearing ritual to avoid any sort of outside contamination within the ICU aseptic environment – I felt I was entering the “high place” of technology.

In the last thirty years, the developments in the techno-scientific field provided new opportunities of intervention to care workers: from the replacement or support of vital functions (such as artificial breathing devices, the cardiac pump or the kidney emunctory) passing through the inhibition of consciousness by extended sedation, to the diagnose of the brain death in despite of the beating heart using well-defined neurological principles and rendering possible, this way, organ transplants [6].

2.2. The Starting Hypothesis

In the beginning of our research, I was firmly convinced that care workers engaged in ICUs were culturally influenced by a kind of magic and salvific idea of their profession.

I believed that there was no remarkable difference between common sense and medical knowledge with reference to such an issue; I believed that both of these sorts of knowledge shared an idea of technology as a powerful, omnipotent expert system able to solve even more controversial issues included those concerning end-of-life conditions.

3. The End-of-Life Decisions

The end-of-life decisions concern more precisely admissions and discharges to/from ICUs and the limitation of intensive treatments.

To be clear, the limitations of treatment deal with those cases in which the

monitoring or the treatment have become inappropriate: they are heavy in excess because of the presence of irreversible case histories, the failed response to the medical treatment, or the explicit patient’s revocation of a previous consent or even the achievement of a therapeutic limit that was agreed before [1].

3.1. Technical Equipments and Human Frailty

The firm belief in the resolving power of technology and protocols as in decisions about admission, discharge and limitation of intensive treatments, was perhaps also due to the sharp contrast between technical equipments and the evidence of human frailty exposed in naked bodies depending on technological devices to stay alive and often unconscious, in a coma due to ongoing clinical pathologies or to pharmacological treatments in order to satisfy therapeutic needs.

3.2. Types of Patients

Taking into account the framework we have described, we can argue that there are two types of patients entering the Intensive Care Unit: those who experience an acute organ shortage and who are defined by doctors as *critical patients* (corresponding to 70% of total admissions) and those, labelled as *monitored patients*, who can seriously risk to die because of possible complications. Although about half of them become critical patients, they are commonly soon discharged.

4. Meaningful Narratives in the Medical Practice

I was convinced that the meaningful narratives of about sixty care workers (doctors and medical attendants) – we met during our focus groups (we organized three focus groups in each Intensive Care Unit and, thus, a total of eighteen meetings) – could be interpreted following the narrative structure of a doctor’s narration. He has been working in Intensive Care Unit for few

years and I will call him with a fictitious name – Dr. Antonio Porta – in order to encourage the personalization in the present account:

What about the presence of a sort of ghost, who is neither the sick person nor the other human beings but a ethereal presence that does not exist and is able to unplug the machine?... What I would like to say is that we are maybe afraid to act in first person. We cannot even claim that a friend of ours unplug the machine instead of us because this would be a way to shift the blame to him. However, would be right or wrong, if there was something – neither us nor the patient – that removes our responsibility to decide?... How would be possible to cope with the problem if there was a third person – not us – that is willing to do that and is able to intervene in what we can define as a “aseptic way” without religious, moral scruples and what have you? What would we do? Would we tell to this third aseptic, ethereal person: “Don’t move! I must decide!”? Or would we leave the decision to its destiny? This is what I was thinking about. (Focus Group Beta I)

4.1. Technology as Third Neutral Actor

In this reflection, what clearly emerges, in my opinion, is the concept of technology as a *third neutral actor* within the process of treatment. More precisely, I find that the foregoing reflection remands to an idea of technology that we can define as a *universalistic standardization*, i.e. based on the absolute certainty to be able to clearly divide the quantitative cognizable aspects which can be controlled – such as, for instance, the numerical indicators – from the interferences which can be caused by the peculiarities and the idiosyncrasies of biographic, relational and cultural aspects. The desire of removing the pain prevails and the limit tends to become a removal of the anthropological and social dimension of the disease.

In other words, it seems that social relations could be put aside since they cannot be understood according to parameters of verifiable predictability that is they cannot be read using what we can define as a *semiotics of the evidence* (Evidence Based Medicine) of objective facts that can be grasped by an omniscient mind in their pretended absolute transparency. In this ideological perspective, calculation and quantification are assumed as regulating principles to read the disease: a quantifiable knowledge of facts would allow us to foresee and control causes and effects of future events. Planning as well as *formal and rational organization of time and space* would be normative rules useful to reduce reality to decipherable and predictable *quantitative schemas* and to drastically simplify the cultural, religious variety and the different values that each patient expresses.

Briefly, the idea of a standardization of medical practice determines the removal of contingent, occasional and chaotic aspects of such a practice which are considered to be marginal. This ousting of biographic or cultural peculiarities and idiosyncrasies of ordinary life would increase even more the trust in abstract systems and particularly in expert systems: that is the *third neutral actor*.

4.2. Initial Hypothesis was Wrong: a Disenchanted Relation with Technology?

Attending the “high place” of technology and the care workers who daily work there, I have realized that my initial hypothesis was wrong.

In Intensive Care Unit you don’t only experience, indeed, the power of science and technology but also their limits, since you clearly perceive that it is too often very difficult to establish a relation with the patient and her relatives due to the high death rate. One out of six patients dies in Intensive Care Unit.

Doctors and nurses must deal with death, the limits of their intervening capacity, the disappointment and pain of patient's relatives, who painfully experience the failure of medical technology on their own.

In our analysis of what emerged in the discussion groups we have noticed a neat mismatch between common sense and the emerging most meaningful cultural attitudes within the medical practice. The narratives of the participants in the research reveal, indeed, a disenchanting (a disillusioned) relation with technology. Such a relation could sometimes be ironic, but it is often clearly bothered by technology. I believe that the very new aspect you can find in these narratives is linked to the fact that doctors and nurses are working out an adverse criticism to the dominant image presenting technology and medical science able to intervene successfully in any situation and solve it; they highlight, in turn, the difficult rediscovery of the social dimension of treatment which can not be eliminated.

After Dr. Porta's aloud reflection on the possible benefit of the presence of a third neutral, aseptic ethereal actor, most of his colleagues reacted producing a general buzz and a squawk in the background that was interrupted by Dr. Giorgia Rizzo's statement:

We can say thus that we are no more concerned with this issue... We should follow the example of Ponzio Pilatus in order to be concerned anymore or, in alternative, we could not escape from being involved in the issue (Focus Group Beta I)

Suddenly, the sarcastic words of another colleague, Paolo Lombardi, followed, raising a hold laugh due also to the presence of nurses:

Or, in alternative, you wait to shift change (Focus Group Beta I)

Dr. Lombardi's crushing remark highlights that in spite of its objective parameters, the protocol can be strategically

unheard by the medical practice, according to different sorts of situation. The problem at stake in social interactions among doctors and nurses in Intensive Care Unit – that is also in the true heart of the debate within sociology – concerns the crisis of the very idea of objective, universal standardization in a context where it seems to have become a moral imperative.

The introduction of sophisticated equipment and the pharmacological innovation have produced an ability – which was impossible before – forecasting and controlling the new biological, physiological and social conditions experienced within the Intensive Care Unit. To be sure, it is a condition in which a human being is linked to technical equipment in an indissoluble way: life depends on the equipment. Following this, the very point at stake here is that the medical staff is concerned with approximations and failures of such an equipment, being responsible, at the same time, for the treatment in a context that can not be isolated, aseptic, and neutral since it is always part of organizational situations where a great number of interweaved day-to-day professional interactions are involved [3].

Paradoxically, the more technology asserts itself and gets stronger as therapeutic action, the more this produces new relational and social horizons, as well as, new tensions which demand re-thinking the traditional mechanistic conception of the body and the illness, the very basis of the present development of medical techno-science. Following this, the myth of the objectivity of techno-science - that excludes perspectives, values, aspirations, and sufferings of the observer (the doctor) from the analysis of the patient's situation, refusing to point out the inter-subjective nature of what happens between doctors, the patient and her relatives - is thrown into crisis [8].

5. Rediscovering the Importance of Social Relations

Doctors’ narratives witness a high presence of meaningful contents aimed at rediscovering the importance of social relations and are characterized by four main narrative themes, closely interweaved:

- the relation with patient’s relatives should be cared more and more;
- the understanding of the organizational nature of the treatment;
- the instrumental acting of expert knowledge;
- a criticism – that can be more or less consciously expressed – to the idea of an omnipotent doctor, who has the power to save.

In this regard, it is worth mentioning here Dr. Mario Colombo’s story. He has been working in Intensive Care Unit for more than twenty-five years; he was involved in accepting a child due to the moral pressure applied by a young medical practitioner under the eyes of the same child’s relatives:

The child was lost by then and these other doctors started with the usual discourse: “But if...because if...if he rides out this phase, if he shouldn’t have, if...if...it could occur that...”. Such a discourse took place between a doctor who was there and me. There was no wall, but a big window that divided us from the corridor where the child’s parents were standing “outside” in front of us following the dialogue between the onco-hematologist and me as they had followed a tennis match. At a certain point my colleague told me: “Well! I absolutely don’t want to force through a decision – you know – make a decision for yourself whether accept the child”. I looked at the parents, who had before moved their heads from side to side, but, at that point, kept still on me, looking at me...so I decided to accept the child here (in Intensive Care Unit) and he died straight after. And it was my flop, since I told to the parents: “Remember that the child come in there –

in Intensive Care Unit – but the very fact to be attached to a life-support system doesn’t give him the chance to survive”. I tried to explain them that the child didn’t breathe anymore and we wanted to make him die without suffering: “We want to send him to sleep. This way, he does not suffer but this phase can last only few hours”. In other words, the child doesn’t come in there to give you hope that there still is something to do, but he comes in there to die without pain.”. By the way, this kind of decisions is also taken according to a certain background. I was obliged to do something I was aware it was wrongful, because the child didn’t suffer since he was in a coma. However, there were two parents staring at me and making me feel the weight of deciding...I was put in a difficult position and I could decide in the wrong way only. (Focus Group Delta II)

In Mario Colombo’s story, there are multiple reasons at the very basis of the critical situation he describes: the pressure exercised by the parents, the instrumental behaviour of the colleague, the context of the communicative interaction (the big window), the critical conditions of the patient and mainly the young age of the dying person.

However, a very problematic aspect characterizing the interactive dynamics, described in the story, is closely linked to the relational nature of the treatment. It refers, more precisely, to the fact that beyond what medical indicators announced – according to the resuscitator – a sure prognosis for death, the pressure exercised by the medical practitioner under the eyes of the same parents make the doctor feel bounded: such a pressure is so binding for him that he had no choice but to accept the child in Intensive Care Unit.

Consequently, technical, expert medical knowledge, concerning resuscitation practices, risks to become a device that other medical practitioners can use

regardless the objective technical knowledge, involved in order to solve relational problems. The specialist division of the treatment – which makes the patient get lost in a network of wards, sections and units – overdraws the relational ambivalence whenever it is possible an instrumental use of specialist knowledge.

In the end, although there was no hope to save the patient, Dr. Colombo decided to accept him and, that is why, he perceives his choice to be unjust. He took his decision according to relational parameters that took into account the parents' point of view, acknowledging that technical knowledge is part of interactive dynamics, that can push clinical parameters and quantitative indicators into the background.

6. Conclusion

We can state, in conclusion, that the stories, we have previously mentioned, point out how doctors, who work in Intensive Care Unit perceive the relation doctor-technology-patient not only according to the clinical dimension of the disease, which is a kind of objective diagnosis and prognosis, but also considering the subjective interplay that takes part in the final decision process [7]. The relatives and patients' pressing aspirations to the power of technological equipment, as well as, the risk of an instrumental use of specialist knowledge by other care providers, makes it difficult for the doctor in Intensive Care Unit to communicate the uselessness of an eventual admission to Intensive Care Unit. Such a difficulty – which can sometimes occurs in using technical parameters to legitimate a clinical decision – facilitates to recognize that quantitative indicators are to be understood as part of interactive social contexts, which can encourage (or not) specific interpretations and operative decisions.

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AUTHORS INDEX

A	
Aldea, A.	165
B	
Bianov, A.	167
Bodi, D. C.	137
Borcoman, M.	229
Broidioi, B.	123
C	
Cepillo Galvin, M. A.	173
Clinciu, A. I.	79, 93
Cocoradă, E.	85
Coposescu, S.	9
D	
Dancu, A.	15
David, L. T.	93
De Angelis, M.	145
Del Valle Galvez, A.	180
G	
Garcia, M. S.	188
Gheorghe, C.	207
Gonzales Garcia, I.	195
I	
Indreica, E. A.	99
L	
Luca, M. R.	85
M	
Manea, A. C.	203
Manea, L.	203
Marzano, M.	22
Mureșan, L.	207
N	
Nicolini, P.	113
Niculescu, R. M.	105
O	
Onuț, Gh.	31
P	
Pavalache-Ilie, M.	85
R	
Rățulea, G.	42
Remi Njiki, M.	180
S	
Sava, A.	52
Sorea, D.	237
Spiridon, C. C.	213
Șandru, C.	61
Șaramet, O.	213
T	
Tomelleri, S.	243
Truța, C.	123

U

Ungureanu, Ș. 69

V

Verdu Baeza, J. 219

Voinea, M. 129

Z

Zanca, R. 155