

# **STRATEGII MANAGERIALE**

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## **MANAGEMENT STRATEGIES**

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## SECTION IV LAW AND PUBLIC ADMINISTRATION

### LEGAL IMPLICATIONS OF THE DOUBLE QUALITY STANDARD OF PRODUCTS AND SERVICES IN THE EUROPEAN UNION

Asoc. prof. dr. Gheorghe Bonciu<sup>1</sup>

**Abstract:**

*In this article, the author analyzes the legal implications of the double standard of quality of products and services in the European Union, so that competitive relations are carried out in a framework of legitimacy, loyalty, fluency and the market operates under normal conditions, with distortions being prevented. Traders have the right, under EU law and single market principles, to differentiate their products according to the sales markets, but it is forbidden to deceive consumers by presenting a different product as identical as long as there are no legitimate and objective reasons for such of difference. The minimum harmonization creates the conditions for raising the level of protection for consumers, by the member states; but it does not automatically lead to better protection. The CJEU decided that member states can extend the protection granted to consumers by European law, provided that the national measures are compatible with the Treaty, maintaining the necessary balance between access to justice and the prevention of possible abuses. In such an environment, the practices of the double standard of quality of products and services in the sphere of trade and production are to be repressed and consumers must be protected by judicial and extrajudicial means.*

**Keywords:** *equal treatment; exercising the right to non-discrimination; double standard of product and service quality, judicial and extrajudicial means, European Union law.*

#### **1. Introductory considerations.**

The European Union, by its composition, organization and objectives, represents the most complex economic and political structure existing on the European continent. The Union began its activity under this name on November 1, 1993, following the entry into force of the Maastricht Treaty)[1], with a number of 27 countries in its composition)[2], after the exit of Great Britain in January 2021. The efforts of some organizations of increasing its financial efficiency can lead to a partial abandonment of problems related to the quality of products and services. The effect is an increase in the costs borne by the customer due to defects or deficiencies appearing in the product after its purchase, which contributes to the decrease of the market share and turnover of the supplying organization. That is why it is obvious that the performance of the organization can be improved by acting on the causes that determine the respective decrease, that is, by improving the quality of the products or services provided.

Under EU law and single market principles, traders have the right to differentiate their products according to the markets in which they are sold. However, it is prohibited to deceive consumers by presenting a different product as identical as long as there are no legitimate and objective reasons for such a difference[3]. In April 2018 the European Commission presented the "New benefits for consumers" package on double quality products which clarifies that misleading consumers about the composition of products can be considered, following a case-by-case assessment by to the competent authorities, an unfair commercial practice prohibited by EU law[4]. It is also recognized that there are legitimate and objective factors for which traders may adapt their co-branded goods for different geographical markets. In addition, it is also in the interests of producers to ensure that consumers are informed about the differences between products. If they are not properly informed,

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consumers cannot understand and appreciate when they decide to buy a product that it has been reformulated to be, for example, healthier or to contain local ingredients.

Consumer protection is implicitly integrated into the principles that define the action of the Union, at least at the declarative level: sustainable development and the implementation of the social market economy with a high degree of competitiveness, which tends towards social progress (art. 3 TEU)[5]. According to the Charter of Fundamental Rights of the European Union, Union policies ensure a high level of consumer protection (art. 38). Directive no. 2161/2019 on consumer protection has as its object the adoption of measures regarding the sanctioning of the double standard of quality of products and services for consumers, in order to inform the latter about the differentiation of goods due to some objective factors.

The problem of quality differences (double standard) between products depending on the member state or the region or locality in which they are sold can be found in the following situations: the manufacturer introduces products with a different flavor and different composition to the market; products/services of a different quality; products of a different weight, which, however, have an identical or similar appearance or with differences that are impossible for consumers to detect; a new product or a new service, using better quality ingredients, but after a period of time there is a change in the recipe, with no obvious change in the product packaging, except for the composition of the product, which is indicated in small letters on the side from the back of the label.

Minimal harmonization favors differences in legal regime, which is likely to discourage the exercise of freedom of movement specific to the internal market. The Court has consistently recognized consumer protection as a justified restriction on these freedoms[6]. However, minimal harmonization creates the conditions for raising the level of protection for consumers, through legal and non-legal means, by the member states; but it does not automatically lead to better protection, since a superior legal protection for consumers encourages the "passive" circulation of goods and services[7].

## **2. Consumer protection and circulation of products/services in the European Union**

Consumer protection at the European level is characterized by fragmentation, for two main reasons: there is no European instrument of general applicability, but numerous directives that regulate various segments of consumption[8]; and the rule of minimum harmonization and the use of directives led to 27 protection systems, more or less similar.

Most of the European instruments regarding consumer protection are based on minimum harmonization, "being aware that total harmonization could not even be expected or achieved"[9]. As an example, we mention directives 85/577/EEC (consumer protection in the case of contracts negotiated outside commercial premises)[10], 87/102/EEC (concerning consumer credit)[11], 93/13/EEC[12] (concerning unfair terms), 97/7 /CEE (regarding contracts concluded at a distance)[13]. The common feature of these directives is given by the clauses that allow states to maintain or impose stricter protection measures for consumers, in the areas covered by the directives. The CJEU decided that member states can extend the protection granted to consumers by European law, provided that the national measures are compatible with the Treaty[14]. More recently, however, the Court nuanced its position, controlling the proportionality of a national measure adopted in the scope of a directive on minimum harmonization with the objective of consumer protection[15].

The basis of the Union's legislative or other action in the matter of consumer protection is represented by art. 169 TFEU (ex – art. 153 TCE). The Union benefits from a concurrent competence, considering the provisions of art. 4 TUE regarding the achievement of the internal market and consumer protection, as well as those of art. 169 TFEU para. (2). Therefore, its action is framed by the principle of subsidiarity. The European measures

adopted in order to establish and operate the internal market should ensure, at the same time, a high level of consumer protection (art. 114 para. (3) TFEU). According to art. 12 TEU, "requirements in the field of consumer protection are taken into account in the definition and implementation of other policies and actions of the Union". At the same time, the interests of consumers are mentioned by the Treaty in the context of the common agricultural policy, competition and state aid.

Protection levels and dispute resolution measures are heterogeneous. The definitions given to the consumer in the member states are an example of this[16]. The Consumer Law Compendium, an academic study carried out at the initiative of the Commission, published in 2008, regarding the transposition of a number of eight directives in the member states identified differences in the already harmonized areas, the causes being the incoherence and ambiguity of the existing *acquis*, differences between the language versions of directives, deficiencies in directives, treated differently by member states and minimal harmonization[17].

Full harmonization may be a solution, but its limits are political and legal. Several directives were built on this philosophy: Directive 85/374/EEC on liability for defective products, Directive 2002/65/EC on the distance marketing of consumer financial services[18], Directive 2005/29/EC on unfair commercial practices[19], etc. The Court of Justice defended the principle of complete harmonization, when it was imposed by the European legislator[20], applying, in addition, an extensive interpretation. "The Court specified that Directive 85/374 seeks, in its field, a total harmonization of the legislative, regulatory and administrative provisions of the member states"[21], although it did not include a general harmonization clause.

### **3. Competition and the double standard of quality of products and services in the European Union**

Competition policy in the EU is made for the direct benefit of European citizens, and the promotion of consumer welfare and protection is a primary concern for the European Commission. This policy has evolved and improved quite a lot in the last 20 years, and its positive effects have been quite significant on the standard of living of European consumers. Started as a negative harmonization in a praetorian way (in several famous decisions of the Court of Justice of the European Communities, the interests of fair competition on the common market, with its accessory, the interests of the consumer, justify the limitation of the principle of free movement of goods and services)[22], the phenomenon is progressively doubled by an intervention of the European legislator, which is rapidly evolving from a policy of consumption to a true consumer right[23].

The interests of consumers are highlighted at the beginning of the 70s in the context of social Europe, through political statements and soft law instruments. The representatives of the member states, gathered in the European Council in Paris in 1972, appreciated that social well-being must represent the finality of economic development: "economic expansion, which is not an end in itself, must, as a priority, allow the alleviation of the disparity in the conditions of life. It must continue with the participation of all social partners. This must lead to an improvement in the quality, as well as the standard of living.

Art. 169 of the Treaty on the Functioning of the European Union (TFEU), provides that the Union must contribute to protecting the economic interests of consumers and promoting their right to information and education. In this sense, the European Commission adopted, on June 14, 2018, a new common methodology for comparing the quality of food products on the territory of the European Union. The methodology is based on key principles such as: transparency, comparability, selection of similar samples and product testing. Thus,

under the coordination of the Joint Research Center, laboratories from several Member States will apply this methodology in a pan-European testing campaign to collect data on the extent of the problem represented by the double standard of product quality. In addition to this methodology, other measures were also adopted, among which we mention: a set of guidelines on the application of Union legislation in the field of food and consumer protection to products with a double quality standard and a proposal for a Directive to amend some directives, on basis of the "New benefits for consumers" initiative, which was adopted by the Commission on 11 April 2018, in order to ensure clarity regarding the assessment of potential cases of double quality standards in the marketing of products and services for European consumers in the member states.

#### **4. Legal security and the double quality standard of products and services in the European Union**

"The full harmonization of key regulatory aspects should significantly increase legal certainty for both consumers and traders. Both consumers and traders should thus be able to rely on a single regulatory framework, based on clearly defined legal concepts, to regulate certain aspects of the relations between traders and consumers within the Union. The effect of such harmonization should be the elimination of barriers that originate in the fragmentation of norms and the finalization of the internal market in this field. Those barriers can only be removed by establishing uniform rules at the Union level. In addition, consumers should benefit from a high common level of protection throughout the Union"[24].

Most of the regulations relate to unfair commercial practices, enforcement of existing rules on misleading advertising and hidden advertising of "double quality" products, and consumer rights by introducing the right to individual redress. Regarding the "double quality" of the products, art. 6 para. (2) of Directive 2005/29/EC expressly states that: "a commercial practice that involves placing a product on the market as identical to the same product marketed in several member states, if these products have significantly different composition or characteristics that cause or may cause the average consumer to take a commercial decision that he would not have taken otherwise, is a deceptive commercial practice that competent authorities should assess and sanction on a case-by-case basis, in accordance with the provisions of the directive".

Therefore, consumers must have the same right to pre-contractual information and a 14-day withdrawal period to cancel the contract, regardless of whether they pay for the service in money or by providing personal data. It is recognized that EU consumer protection legislation entails low compliance costs for businesses. However, in some areas certain provisions have become obsolete with technological changes or impose unnecessary costs on companies. In the document "New benefits for consumers" it was proposed to remove disproportionate burdens on businesses, for example in the field of communication with consumers. Traders must have more flexibility in choosing the most appropriate means of communication with them, making it a necessity to be able to use new means of online communication, such as web forms or chat windows, instead of email, with the condition that any consumer can keep track of the communication with the trader. Regarding better possibilities for consumer redress, we state that these are achieved through effective enforcement of legislation and increased cooperation between public authorities in a fair and secure single market. Thus, in situations of collective damages, consumers must have the opportunity to claim their rights not only individually, but also through collective actions[25].

Through the "New benefits for consumers", the Commission recommended a modernized system of representative actions, starting from the Injunction Directive[26]. The system allows qualified not-for-profit entities, for example consumer organizations or independent public bodies, to defend the collective interests of consumers in cases of collective harm, ensuring that



individual consumers' rights are respected, being particularly useful for consumers who, for various reasons, are discouraged from bringing individual legal actions. Some safeguards will also be integrated into the system, such as limiting the possibility of bringing actions against entities that meet certain criteria and the obligation of transparency regarding funding sources. In this way, the necessary balance between access to justice and the prevention of possible abuses will be maintained, through a specific approach different from the dispute resolution model characteristic of the United States of America.

## **5. Strengthen existing tools for consumers – alternative dispute resolution and online dispute resolution**

Thanks to alternative dispute resolution and online dispute resolution[27], consumers have access to simple[28], fast and fair procedures for resolving domestic and cross-border disputes with traders, without going to court. The online and alternative dispute resolution framework also encourages traders to develop effective customer relations systems[29]. The effective application of legislation is an important position in the Digital Single Market Strategy, in which an initiative was also proposed to update the way in which consumer protection rules are applied, so that they are appropriate for the digital age, namely the revision of the Regulation on cooperation in consumer protection (CPC)[30].

The CPC Regulation provided for a set of powers for national authorities, a new procedure for redressing breaches of consumer protection legislation at the European Union level, as well as a better supervision system. The Commission has a stronger coordination role and can initiate coordinated enforcement investigations into Union-wide infringements[31]. Thus, in order to strengthen the application of the rules and the cooperation between the public authorities, the Commission took the following measures: more effective sanctions, support for the member states in strengthening the capacities for the benefit of the national authorities, coordinated application of the rules[32]. In terms of training, education and capacity building, in March 2018, the online project "Consumer Law Ready"[33] was launched, and from the third quarter of 2018, the new database on consumer protection legislation for consumers (Consumer Law Database) is available on the e-justice portal[34]. The database gives all people, in particular lawyers and law enforcement authorities, access to national rules transposing the main Union directives on consumer protection. It will also provide access to the relevant jurisprudence of the Member States and the Court of Justice of the European Union, as well as to national administrative practice.

At the same time, the European Commission supports a self-regulatory initiative of European companies, which aims at the principles of a better presentation of information intended for consumers, including standard terms and conditions, and contributes to the development of the Guidelines based on Directive 93/13/EEC on abusive clauses in contracts concluded with consumers, which protects European consumers against unfair standard contract terms used by traders. Following the REFIT fitness check, it was found that the principled approach used in the Unfair Contract Terms Directive maintains its effectiveness and contributes to a high level of consumer protection. Based on numerous judgments handed down by the Court of Justice of the European Union, the guidelines aim to clarify the problems arising from the application of the directive, for example with regard to the legal consequences of the non-binding nature of abusive contractual clauses and the obligation of national courts to evaluate, on their own initiative, to what extent is a contractual clause that falls under the scope of Directive 93/13/CEE abusive.

As markets continue to evolve and change rapidly, legislation in the field must adapt and evolve in order not to lose its relevance and ability to handle the new types of challenges consumers will face. These can take the form of new complex and non-transparent transactions. To this end, the Commission aims to monitor consumer markets to identify

emerging issues to support its policy-making by exploring the following areas: artificial intelligence – deepening the understanding and promoting transparency of applications that operate on the basis of artificial intelligence, in order to strengthen consumer confidence; the Internet of Things, etc., the Commission having the role of assessing the adequacy of the current legal framework regarding product safety, by creating a group of experts that will assess whether and to what extent the existing systems of apportionment of responsibility are adapted to the new realities on the market, such as intelligence artificial intelligence, advanced robotics, the Internet of Things and cyber security issues[35]; mobile e-commerce – the Commission has launched a behavioral study focusing on the impact on consumers of marketing and information practices used online, namely retail financial services, in particular how they are presented and marketed via mobile devices; sustainable consumption – consumers must have the ability to make informed purchasing decisions and have free access to organic products, in the sense of greater awareness of the various labeling instruments specific to the Union[36], such as the European Union's ecological label, as well as to ensure their correct understanding.

## **6. Conclusions**

The protection and assurance of consumer rights are priorities underlying European and national policies. At the community level, the representatives of the European institutions have carried out and are carrying out an intense activity in order to achieve a unification of the community policies in the field of consumer protection. The percentage of consumers who feel adequately protected by existing measures varies considerably from one Member State to another. About half of Europeans believe that the existing measures ensure good consumer protection. Most of the EU consumer protection provisions are based on the principle of "minimum harmonisation". The legislation explicitly recognizes the right of member states to apply stricter rules imposed by the threshold established by Community law. This approach was fully justified at a time when consumer rights varied greatly from one state to another and when electronic commerce did not yet exist.

Respecting and ensuring the application of European Union harmonization legislation on products, which aims to strengthen the framework for market surveillance of products, both within the single market and at external borders, including through exchanges with international partners within the cooperation process for structural market surveillance. Thus, with regard to international cooperation, the Commission proposes the conclusion of cooperation agreements to intensify coordination with partners outside the Union, through the development of bilateral or multilateral agreements in the matter of ensuring consumer protection between the Union and important jurisdictions, such as the USA, Canada and, in the future, China. These agreements can establish: mutual assistance mechanisms between authorities; a new 'one-stop shop' procedure for redressing large-scale violations of consumer rights by businesses worldwide and a more effective supervisory system. Product safety is a global challenge, and for this reason, international cooperation is essential to maintain consumer safety in the Union, both with producing states and with countries on whose markets similar products are found. The European Commission will continue to promote effective consumer protection in future bilateral and multilateral trade negotiations, by including in trade agreements specific cooperation rules on product safety. They will enable the exchange of information on dangerous products, including with producing states, as appropriate.

The practice of marketing a product in one Member State as identical to a product marketed in other Member States, despite the fact that that product has a significantly different composition or characteristics, may constitute a misleading commercial practice on a case-by-case basis as the case may be, unless the differences are justified by legitimate and

objective factors. Only when both consumers and the authorities know their rights that are granted to them and their obligations, rights and obligations that they implement, only then can we say that the European Union regulations and the national regulations have effectively achieved the purpose for which they were adopted.

### **Bibliographic notes:**

[1] The Treaty establishing the European Union, signed on February 7, 1992 in Maastricht (entered into force on November 1, 1993), specifically regulates consumer protection (art. 129 A). This legal basis was taken up by subsequent revision treaties, with a series of important changes, especially aimed at the implementation of the ordinary legislative procedure and the consolidation of health, safety, as well as the economic interests of consumers.

[2] Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden.

[3] In September 2017, the Commission published guidance on the application of EU food and consumer law to dual quality products to help national authorities determine whether a company is in breach of EU law when it sells products that appear to be identical but which have a different composition in different countries.

[4] The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Council, "New benefits for consumers", adopted on 11 April 2018, builds on existing consumer protection policy and proposes modern rules, appropriate to current markets and commercial practices, constantly changing, stronger public and private tools to ensure compliance with the law, with the possibility of consumer redress.

[5] The founding treaties of the European Communities were not concerned with the protection of the consumer itself, being drawn up in a period when this concept had not yet been affirmed in the social sphere, and European economic integration (whose actor will become the consumer) was at the beginning. However, the Treaty of the European Economic Community contained provisions that can be considered precursors of a social policy, the member states being concerned with improving living conditions and raising the standard of living. The notion of consumer appears in the context of the common agricultural policy (art. 39) and the competition policy (art. 86).

[6] CJCE, C 176/11, judgment of 12.07.2012, unpublished.

[7] G. Howells, N. Reich, *The current limits of European harmonization in consumer contract law, Extent of Harmonisation in Consumer Contract Law*, the study is available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/imco/dv/study\\_howells\\_reich/study\\_howells\\_reich\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/imco/dv/study_howells_reich/study_howells_reich_en.pdf). (date of last consultation 11.10.2024), p. 40-41, citing Conclusions of AG Trstenjak in *Quelle* (15.11.2007).

[8] European legislation concerns areas such as contracts concluded at a distance, contracts negotiated outside commercial premises, abusive clauses, liability for defective products, labelling, misleading advertising, price indication, electronic commerce, general product security, etc. For an inventory of European acts in the field, see [http://eur-lex.europa.eu/fr/dossier/dossier\\_22.htm#2](http://eur-lex.europa.eu/fr/dossier/dossier_22.htm#2).

[9] M Dean, *Legislation: Unfair Contract Terms: The European Approach* (1993) 56 MLR 582, quoted by A. D. Chiriță, *The Impact of Directive 2011/83/EU on Consumer Rights*, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1998993](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1998993) (last consultation 11.09.2013), p. 5.

[10] JO L 372, 31.12.1985.

[11] JO L 101, 01.04.1998, p. 7.

[12] JO L 095, 21.04.1993, p.29.

[13] JO L 144, 04.06.1997, p. 19.

[14] CJCE, *Buet*, 382/87, \ the decision of 16.05.1989, Rec. 1989, p. 1235; *Di Pinto*, C-361/89, the decision of March 14, 1991, Rec 1991, p. I-1189; *Ausbanc*, C-238/05, the decision of 23.11.2006, *Quelle*, C-406/06, the decision of April 17, 2008, Rec 2008, p. I-02685.

[15] CJCE, *Gysbrechts*, the decision of 16.12.2008, C-205/07, pct. 53.

[16] The current form of the legal definition of the notion of "consumer" corresponds to the vision of the community legislator; as an example, we mention Regulation (EC) no. 593/2008 of the European Parliament and of the Council of June 17, 2008 regarding the law applicable to contractual obligations (Rome I), Directive of the European Parliament and of the Council no. 97/7/CE of May 20, 1997, Directive 1999/44 of May 25, 1999. This definition, present in most community documents, contains the same characteristic features. For details see: M. Kingisepp, A. Väriv, *The Notion of Consumer in EU Consumer Acquis and the Consumer Rights Directive - a Significant Change of Paradigm?* *Juridica International*, 2011, No. 1, p. 44-53.

[17] The study is available at [http://ec.europa.eu/consumers/cons\\_int/safe\\_shop/acquis/comp\\_analysis\\_en.pdf](http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/comp_analysis_en.pdf) (date of last consultation 11.10.2024). See p. 745 et seq).

[18] JO L 271, 9.10.2002, p. 16.

- [19] JO L 149/22, 11.6.2005, p. 260.
- [20] CJCE, the decision of 25.04.2002, *Commission v. France*, C-52/00, Rec. 2002, p. I-03827;
- [21] CJCE, judgment of January 10, 2006, *Skov and Bilka*, case C-402/03, Rec p. I-1999; the judgment of April 23, 2009, *VTB-VAB*, related cases C-261/07 și C-299/07, Rec. p. I-2949.
- [22] CJCE, the judgment of February 20, 1979, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein* (Cassis de Dijon), cause 120/78, Rec. 649.
- [23] Juanita Goicovici, *Dreptul relațiilor dintre profesioniști și consumatori. Curs universitar*, Ed. Hamangiu, București, 2022.
- [24] Directive 2011/83/EU, cit. above, Preamble, point 7.
- [25] For example, in a case like "Dieselgate," remedial measures for victims of unfair trade practices could be brought collectively through a representative action. The Volkswagen scandal began on September 18, 2015, when the United States Environmental Protection Agency (EPA) warned the Volkswagen car manufacturer about fraudulent programming of TDI diesel engines produced between 2009 and 2015. They complied with nitrogen oxide (NOx) pollution standards only under laboratory conditions, exceeding up to 35 times the legal limit under normal operating conditions. The EPA considers this type of programming illegal, and VW has admitted the practice is fraudulent.
- [26] Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions with regard to the protection of consumer interests, OJ L 110, 1.05.2009, p. 30.
- [27] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on the alternative resolution of consumer disputes and amending Regulation (EC) no. 2006/2004 and Directive 2009/22/EC (Directive on ADR in consumer matters), OJ L 165, 18.06.2013, p. 63.
- [28] Regulation (EU) no. 524/2013 of the European Parliament and of the Council of 21 May 2013 on the online resolution of consumer disputes and amending Regulation (EC) no. 2006/2004 and Directive 2009/22/EC (Regulation on SOL in matters of consumption), OJ L 165, 18.6.2013, p. 1.
- [29] On 11 November 2017, the Commission organized a launch event in Berlin for the 'TRAVEL-NET' network of 15 ADR entities dealing with travel/passenger transport consumer disputes from 11 Member States. Among the participants of the event, there were representatives of major passenger transport companies. On 13 December 2017, the Commission organized a round table with key industry leaders in the clothing and footwear retail sector and launched a consumer communication campaign on SAL/SOL.
- [30] [https://ec.europa.eu/info/review-consumer-protectionregulation\\_en](https://ec.europa.eu/info/review-consumer-protectionregulation_en).
- [31] The CPC Regulation also provides a framework for cooperation between the various national authorities responsible for ensuring compliance with the sectoral legislation covered by it.
- [32] This activity takes the form of a coordinated check of websites ("sweeps" - [https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumerprotection/sweeps\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumerprotection/sweeps_en)) or a coordinated actions to solve problems affecting a large number of consumers in the Union ([https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/consumerprotection-cooperation-framework\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumers/enforcement-consumer-protection/consumerprotection-cooperation-framework_en)).
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- [34] <https://e-justice.europa.eu/home.do>.
- [35] See also the Cyber Security Initiative adopted by the Commission in September 2017, [https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-477\\_ro](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-477_ro).
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# UNJUST ENRICHMENT

Nicolae Gradinaru<sup>1</sup>

## Abstract

*Unjust enrichment, also known as unjust enrichment, is a lawful legal fact, by which a person's patrimony is unjustifiably increased, on account of the corresponding reduction of another person's patrimony, and from which the obligation is born, for the one who unjustifiably increased his patrimony, to return to the one whose patrimony has thus decreased, the part that represents the increase without just cause of his patrimony.*

**Key words:** enrichment, just cause, restitution, legal fact, equivalent.

Unlike the legal act, which is a manifestation of will made with the express intention of producing legal effects, the legal fact represents a human action made without the intention of producing legal effects, but these are produced, based on the law, independently of the will of the perpetrator.

Due to their large number, as well as their variety, the legal doctrine divides the legal facts generating civil obligations into two groups, as follows:

- a) Legal facts - also called "quasi-contracts";
- b) Illicit acts - some called "delicts" and others "quasi-delicts".

## *Lawful legal facts*

Licit legal acts are those that do not violate the legal provisions. They are lawful legal facts; managing the interests of another person; payment of unpaid work and unjust enrichment.

The management of another person's affairs and the payment of unpaid work are called "quasi-contracts".

From a historical point of view, quasi-contracts are a creation of Romanian law, which sought to distinguish this category from legal acts, from contracts, considering that the one who benefited, from a patrimonial point of view, from the lawful action of another person, is a debtor to pay (to reward) the service rendered (in the case of business management) or to return what he received improperly (for unpaid payment).

In all these cases, we are dealing with legal facts that, based on a legal provision, independently of the will of the parties, produce certain legal effects.

Another lawful legal fact, considered by doctrine and judicial practice, as a source of civil obligations, is "unjust enrichment". The obligation without just cause is based on a moral principle, according to which you must return what does not belong to you.

According to art. 1345 of the Civil Code, the person who, in an imputable way, enriched himself without just cause at the expense of another is obliged to restitution, to the extent of the patrimonial loss suffered by the other person, but without being kept beyond the limit of his own enrichment.

*Unjust enrichment, also known as unjust enrichment, is a lawful legal fact, by which a person's patrimony is unjustifiably increased, on account of the corresponding reduction of another person's patrimony, and from which the obligation is born, for the one who unjustifiably increased his patrimony, to return to the one whose patrimony has thus decreased, the part that represents the increase without just cause of his patrimony.*

It is considered unjust enrichment that legal fact by which one person's patrimony is increased at the expense of the decrease of another person's patrimony, without there being any legal support for this<sup>2</sup>.

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<sup>2</sup> Decision of the Supreme Court no. 140 of January 19, 1972, published in Collection of Decisions 1972, page 246

In the Civil Code there is an express text of the law that enshrines the principle of restitution of unjust enrichment as an independent source, as are regulated business management and unpaid payment, namely art. 1345 of the Civil Code, the one that, in an imputable way, was unjustly enriched at the expense of another is obliged to restitution, to the extent of the patrimonial loss suffered by the other person, but without being held beyond the limit his own enrichment.

*Justified enrichment*

Enrichment is justified when it results:

- a) from the execution of a valid obligation;
- b) from the injured party not exercising a right against the enriched person;
- c) from an act performed by the injured party in his personal and exclusive interest, at his own risk or, as the case may be, with the intention of gratification.

There are other texts in the Civil Code that make this principle applicable, such as:

According to art. 550 paragraphs 4 and 5 of the Civil Code, the one who, without the consent of the owner, advances the necessary expenses for the production and collection of the fruits or products can ask for the restitution of the expenses.

In this case, the products or their value may be retained until the expenses are reimbursed. However, the owner can request the obligation of the possessor to hand over the products or their value if he provides a sufficient guarantee.<sup>3</sup>

According to art. 577 of the Civil Code, Constructions, plantations and any other works carried out on a building belong to the owner of that building, unless otherwise provided by law or legal act.

When the work is carried out by the owner of the building with his own materials or with the materials of another, the ownership right over the work is born in favor of the owner of the building from the moment the work begins, to the extent of its completion, unless the law or legal act provides otherwise.

According to art. 580 of the Civil Code, if the work was carried out with someone else's materials, the owner of the building becomes the owner of the work, not being able to be obliged to abolish it or to return the materials used.

The owner of the materials has only the right to the counter value of the materials, as well as to the repair, under the law, of any other damages caused.

In the event that a third party carries out autonomous or added permanent works on the property of another person, the owner of the property becomes the owner of these works and has the right:

If the author of the independent permanent work on someone else's property is in good faith, the owner of the property has the right:

- a) to ask the court to order his registration in the land register as the owner of the work, paying, at his choice, to the author of the work either the value of the materials and the labor, or the increase in value brought to the building by carrying out the work; or
- b) to demand the obligation of the author of the work to buy the building at the market value that he would have had if the work had not been carried out.

If the author of the autonomous work of permanent nature on another's property is in bad faith, the owner of the property has the right:

- a) to ask the court to order his registration in the land register as the owner of the work, with the payment, at his choice, to the author of the work, of half the value of the materials and workmanship or of the increase in value brought to the building; or
- b) to request the obligation of the author of the work to abolish it; or

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<sup>3</sup> N. Grădinaru – Civil law. Civil obligations. Ed. University. Danubius. Galatians 2024.



c) to demand the obligation of the author of the work to buy the building at the market value that he would have had if the work had not been carried out.

The cancellation of the work is done, in compliance with the legal provisions in the matter, at the expense of its author, who is also required to repair any damages caused, including for lack of use.

In the case of added works, the owner of the building acquires the right of ownership over the necessary added work from the moment of its execution, paying the author the reasonable expenses incurred by him, even if the building no longer exists.

If the work was carried out in bad faith, the value of the fruits of the building reduced by the costs necessary to obtain them may be deducted from the amount owed by the building owner.

If the author of the useful work is in good faith, the owner of the building becomes the owner of the work from the moment of its execution, with payment, at his choice:

- a) the value of materials and workmanship; or
- b) of the increase in value brought to the building.

If the author of the useful work is in bad faith, the property owner has the right:

a) to become the owner of the work, depending on its regime, with or without registration in the land register, as the case may be, paying, at his choice, to the author of the work either half of the value of the materials and workmanship, or half of the increase in value brought to the building; or

b) to request the obligation of the author of the work to abolish it, with the restoration of the building in its previous situation and the payment of damages.

In both cases, when the value of the work is considerable, the owner of the building can demand that the author be obliged to buy it at the market value that the building would have had if the work had not been carried out.

In the case of voluptuous work, the property owner has the right:

a) to become the owner of the work, without registration in the land register and without any obligation to the author of the work;

b) to demand the obligation of the bad faith author of the work to abolish it, with the return of the building to its previous situation and the payment of damages.

The bona fide author of the work can remove it before the property is returned to the owner, on the condition of returning the property to its previous state.

The idea of restitution of the thing that belongs to another starts from the moral precept *sum cuique tribuere* and it was capitalized in Roman law through *actio in rem verso*.

As one of the principles of Romanian civil law is that of equity and justice, it seems natural that this principle finds legislative support for certain situations.

In this order of ideas, the obligation of restitution based on unjust enrichment is regulated. Various applications of this principle can be found in other matters, such as those regulated in art. 2122 regarding the depositor's obligations or art. 2491 regarding preservation expenses in the case of the pledge, of the Civil Code.

However, unjust enrichment can only be invoked when the person who has suffered a decrease in patrimony has no other legal basis at hand. Given this specificity of unjust enrichment, it is appropriate to distinguish its similarities and differences in relation to the other legal facts considered sources of obligations.

With regard to business management, it can be observed that if this implies the intention to generate the interests of another, therefore a subjective element, unjust enrichment only takes into account the objective side - the increase of the patrimony; then, business management creates obligations for both the manager and the debtor, while unjust enrichment establishes the obligation only for the one who is enriched.

The similarity of unjust enrichment with unpaid payment, appears only when the accipiens is in good faith (as we have seen in this case he returns only within the limit of

enrichment), but it is also distinguished from this by the fact that the legal basis is different. When the accipiens is in bad faith, the restitution obligation is much more extinguished, including the fruits, the increase in value and any interest damages.

Unjust enrichment also differs from tortious civil liability, in that, in the case of the latter, the reparation of the damage is based on an illicit legal act committed with guilt, and the reparation is full (*damnum emergens* and *lucrum censans*).

The particularities of unjust enrichment recommend it as a distinct source of obligations in the sphere of civil law.

The restitution of the increase of one person's patrimony due to the decrease of another person's patrimony can be requested as we have shown through the "in rem verso" action.

If the deed causing damages was committed in the interest of a third person, the injured party will be directed against him on the basis of unjust enrichment (art. 1362 of the Civil Code).

The conditions that must be met for the promotion of such an action are of a material and legal nature.

The material conditions are:

a) there is an increase in a patrimony, which means the receipt of some advantage, appreciable in money; even the settlement of a debt improperly can be considered the increase of a patrimony;

b) at the same time there is a decrease in the patrimony of another person, through some monetary loss. This loss may consist of an expense or the provision of an unpaid service;

c) the existence of a causal link between the increase of one person's patrimony and the decrease of another person's patrimony. Such a causal link can be direct, when a value passes directly from one patrimony to the other, or indirect, when by impoverishing one patrimony, the patrimony of a third party has been enriched (example: when the commissioner enriches the patrimony of the supplier by impoverishing that of the beneficiary);

d) that there is no cause that legitimizes the enrichment of one person's patrimony and the impoverishment of another person's patrimony.

The legal conditions for promoting the rem verso action are:

a) that there is no legitimate cause for the enrichment of one patrimony and the impoverishment of another patrimony or, in other words, the absence of a legal title or a legal provision. Thus, unjust enrichment does not apply in the case of<sup>4</sup>:

- the increase of one patrimony and the decrease of the other have a legal basis, for example through usufruct;

- the court decision;

- from the non-execution by the injured party of a right against the enriched one;

- from an act performed by the injured party in his personal and exclusive interest, at his own risk or as the case may be, with the intention of gratifying;

- the increase of one property and the decrease of the other are based on a contract, i.e. a valid obligation, for example the tenant and the owner of the thing agree that the improvements of the thing that the tenant will make remain the owner at the end of the contract.

b) the owner of the reduced patrimony does not have another legal basis to file a legal action against the enriched person. Here, it must be specified that the action in rem verso cannot be promoted to circumvent other provisions of positive law, this action has a subsidiary character, that is, it can be exercised only to the extent that there is no other action for the valorization of the right.

According to art.1348 of the Civil Code, the request for restitution cannot be admitted, if the injured party has the right to another action to obtain what is owed to him<sup>5</sup>.

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<sup>4</sup> N. Grădinaru – Civil law. Civil obligations. Ed. University. Danubius. Galatians 2024.

<sup>5</sup> Decision no. 358 of February 4, 2015 of the High Court of Cassation and Justice. Civil II Section

The action cannot be admitted if:

- the owner can initiate a claim action;
- a personal action can be brought, stemming from the contract.

#### *The effects of unjust enrichment*

The main effect of admitting the action in rem verso, is the responsibility of the one whose patrimony was increased, who is the debtor of the restitution obligation to the one who decreased his patrimony. Thus, the burden of the unjustly enriched person is born with the obligation to return to the impoverished the value by which his patrimony was reduced.

Restitution is made in kind, and when this is no longer possible, it will be made "by monetary equivalent".

The restitution obligation is assessed according to the size of the increase in the patrimony.

Compensation cannot be claimed through this action, because the action for compensation assumes the fault of the defendant, and the action for restitution has a subsidiary character, which excludes the fault of the party obliged to pay.

When the good with which the patrimony was increased has accidentally perished before the filing of the action, the restitution obligation ceases.

The person who reduced his patrimony cannot claim more than the value by which he decreased his patrimony.

According to art. 47 of the Civil Code, the person without capacity for exercise or with limited capacity for exercise is not obliged to restitution only within the limit of the benefit achieved.

According to art. 1347 of the Civil Code, the restitution is not due unless the enrichment exists at the time of the referral to the court.

The one who has become rich is obliged to restitution, under the conditions provided for in art. 1639 – 1649 of the Civil Code.

The restitution action is subject to the general limitation period of 3 years. The term begins to run from the moment when the person who reduced his patrimony knew or should have known about the increase of another patrimony and the person whose patrimony was increased.

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The High Court of Cassation and Justice decided that when one of the ex-spouses requests the other, through an action having as its object unpaid payment or unjust enrichment, the restitution of sums of money representing work income acquired and deposited in an account during the marriage, the plaintiff does not have active procedural status, since the patrimonial relations between the spouses based on the legal community regime are characterized by the fact that the assets acquired by either of these are, from the date of their acquisition, common property under joint ownership, and the termination of joint ownership is achieved only through sharing.

# PAYMENT NOT DUE

Nicolae Gradinaru<sup>1</sup>

## Abstract

*According to art. 1341 of the Civil Code enshrines the principle according to which "He who pays without owing has the right to restitution." Therefore, the payment of the unpaid thing means the execution by a person of an obligation to which he was not bound and which he did without the intention of paying the debt of another. In such a case, the one who made the unpaid payment is called solvency again the one who received it is called the accipiens. By making an unpaid payment, a legal relationship is born under which the creditor becomes the obligee of what has been paid, and the accipiens becomes the debtor of the same obligation substantiates the legal fact of the payment of the unpaid work is found in art. 1341 of the Civil Code, the one who pays without owing has the right to restitution.*

**Key words:** unpaid payment, restitution, legal fact, delict, quasi-delict.

Unlike the legal act, which is a manifestation of will made with the express intention of producing legal effects, the legal fact represents a human action made without the intention of producing legal effects, but these are produced, based on the law, independently of the will of the perpetrator .

Due to their large number, as well as their variety, the legal doctrine divides the legal facts generating civil obligations into two groups, as follows:

- a) Legal facts - also called "quasi-contracts";
- b) Illicit acts - some called "delicts" and others "quasi-delicts".

## *Lawful legal facts*

Licit legal acts are those that do not violate the legal provisions. They are lawful legal facts; managing the interests of another person; payment of unpaid work and unjust enrichment.

The management of another person's affairs and the payment of unpaid work are called "quasi-contracts".

From a historical point of view, quasi-contracts are a creation of Romanian law, which sought to distinguish this category from legal acts, from contracts, considering that the one who benefited, from a patrimonial point of view, from the lawful action of another person, is a debtor to pay (to reward) the service rendered (in the case of business management) or to return what he received improperly (for unpaid payment).

In all these cases, we are dealing with legal facts that, based on a legal provision, independently of the will of the parties, produce certain legal effects.

The obligation is extinguished by payment when the service due is performed voluntarily.

The payment consists in the remittance of a sum of money or, as the case may be, in the execution of any other service that constitutes the very object of the obligation.

By payment is meant the execution of an obligation as agreed by the parties in the contract.

According to art. 1470 of the Civil Code, a fundamental principle in terms of obligations is established, namely: "Any payment implies a debt." Therefore, as a legal operation, payment presupposes the existence of an obligation that must be extinguished. If such an obligation does not exist, and possibly, a payment was made, it is not validly made and will have to be returned, because it is without "cause".

Undue payment is the execution by a person, by mistake, of an obligation that he was not bound by and that he did without the intention of paying the debt of another<sup>1</sup>.

According to art.1341 of the Civil Code, the principle according to which "He who pays without owing has the right to restitution" is enshrined. Therefore, the payment of the

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<sup>1</sup> N. Grădinaru – Civil law. The general theory of obligations. Ed. Aius. Craiova 2011, p. 114.

unpaid thing means the execution by a person of an obligation to which he was not bound and which he did without the intention of paying the debt of another. In such a case, the one who made the unpaid payment is called solvency again the one who received it is called the payee. By making an unpaid payment, a legal relationship is born under which the debtor becomes the creditor of an obligation to return what has been paid, and the accipiens becomes the debtor of the same obligation. The basis of the restitution obligation on which the legal fact of the payment of the unpaid thing is based is in art. 1341 of the Civil Code, the one who pays without owing has the right to restitution.

Undue payment excludes any idea of guilt on the part of the one who received it (the recipient) and as such, his obligation to restitution can only be based on the legal fact of the unpaid payment. It was rightly said that the solvency is not entitled to restitution who, when making the payment, pursued a goal contrary to moral rules, because he cannot invoke his own turpitude in claiming something<sup>2</sup>. Under this aspect, we cannot accept the points of view expressed in the doctrine which considers that the unpaid payment would be based either on unjust enrichment (when the accipiens was in good faith) or on tortious civil liability.

According to art. 1635 of the Civil Code, the restitution of benefits takes place whenever someone is required, by virtue of the law, to return the goods received without right or by mistake or on the basis of a legal act which was subsequently abolished with retroactive effect or whose obligations have become impossible to execute due to a force majeure event, a fortuitous event or another event assimilated to them.

What was provided on the basis of a future cause, which did not take place, is also subject to restitution, except if the person who provided did so knowing that the performance of the cause was impossible or, as the case may be, prevented with science its realization.

The restitution obligation benefits from the guarantees established for the payment of the initial obligation.

According to art. 1341 paragraph 2 of the Civil Code, what was paid as a courtesy or business management is not subject to restitution. In these cases, there is no question of refunding the payment because:

- Liberality is according to art. 984 of the Civil Code, liberality is the legal act by which a person disposes of his assets free of charge, in whole or in part, in favor of another person.

Donations can only be made through a donation or a bequest contained in a will.<sup>3</sup>

- there is business management when, without being obliged, a person, called manager, voluntarily and timely manages the affairs of another person, called manager, who does not know the existence of management or, knowing the management, is not in a position to appoint a trustee or otherwise take care of his affairs.

Presumption of payment

In the case of unpaid payment, there is a relative legal presumption, namely according to art. 1341 paragraph 3 of the Civil Code, it is presumed, until proven otherwise, that the payment was made with the intention of paying off an own debt.

In order for the unpaid payment to give the right to its restitution to the solvency, the following conditions must be met:

- a) there must be a payment, so the performance made by the solvency must have the meaning of a payment, i.e. the execution of an obligation, whatever its object.

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<sup>2</sup> Decision of the Supreme Court no. 807 of April 23, 1980, cit. C. Stătescu, C. Bârsan, op.cit. page 128.

<sup>3</sup> Art. 985 of the Civil Code

The donation is the contract by which, with the intention of gratification, one party, called the donor, irrevocably disposes of an asset in favor of the other party, called the donee.

Art. 986

The legacy is the testamentary disposition by which the testator stipulates that, upon his death, one or more legatees will acquire his entire patrimony, a fraction of it or certain determined assets.

The payment must be made by virtue of the obligation to give and to do, the remittance of a sum of money or an individually determined or generic thing<sup>4</sup>.

If the payment consists in the execution of a repair to a thing, restitution has as its legal basis unjust enrichment and not unpaid payment;

b) the payment is unpaid. A payment can be unpaid either because the debt does not exist or because it never existed, being only imaginary for solvency purposes, or because it existed but was canceled or resolved by fulfilling the resolvable condition or became lapsed; the debt does not exist even when it does not appear between the solvent and the accipiens; the solvency paid another creditor, and the accipiens, although he is a creditor, does not have the solvency as a debtor;

c) the payment is made by mistake, i.e. the solvency is believed to be the recipient's debtor. The absence of this condition of payment made by mistake could lead to the conclusion that the solvency sought to make a liberality or a management of the interests of another person, paying the recipient. However, the condition of error of the solvent is not required when the solvent paid a debt to the payee a second time, but did so because it had lost the discharge receipt and wanted to remove a foreclosure. In this case, he will be able to ask for the restitution of the second (undue) payment even if he was not in error. Also, the condition of error is not required even in the case of payment of an absolutely void obligation when the solvent can request restitution even if it is not in error.

#### *Effects of unpaid payment*

Undue payment gives rise to a restitution obligation for the recipient.

#### *Refund of advance payment*

According to the provisions of art. 1343 of the Civil Code, what the debtor has paid before the suspensive term has expired can only be returned when the payment was made by deception or violence. Also, the payment made before the fulfillment of the suspensive condition is also subject to restitution.

The main effect of the unpaid payment is the establishment of the obligation of the accipiens to return to the solvent what he received due to the latter's error. The obligation is wider or narrower according to whether the accipiens was in good or bad faith and differs depending on the object of the performance.

The scope of the recipient's restitution obligation is different, according to whether it was in good or bad faith, as well as depending on the object of the benefit.

If the accipiens was in good faith (that is, he did not know that the payment being made to him was not due), he will only return within the limit of his enrichment, that is:

- a) will return the thing but keep the fruits;
- b) if he disposed of the thing, he will return the amount of money received;
- c) if the thing was lost due to a fortuitous circumstance, it will be exempted from the obligation of restitution.

According to art. 1342 of the Civil Code, restitution cannot be ordered when, following the payment, the person who received it in good faith allowed the limitation period to expire or deprived himself, in any way, of his title claim or waived the claim guarantees.

In this case, the one who paid has a right of recourse against the true debtor under legal subrogation in the rights of the paid creditor.

If the accipiens was in bad faith (when realizing that the payment was not owed to him, he nevertheless received it) then:

- a) will return both the good and the fruits;
- b) if he alienated the asset, to return the value of the asset from the moment the action was brought to the court by the solvency, regardless of the payment received;

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<sup>4</sup> N. Grădinaru – Civil law. The general part. Ed. Economic Independence. Pitesti 2024.

c) if the good was lost in a fortuitous circumstance, he will return the value of that good from the moment when the restitution was requested by the solvency, except for the case when the accipiens proves that the thing would also have been lost in the solvency - art. 1642 of the Civil Code<sup>5</sup>.

Regardless of whether it is in good or bad faith, if the object of the obligation is a sum of money or similar things, the accipiens must return the same amount or a good of the same quality and in the same quantity.

To the extent that the accipiens made certain expenses for the preservation of the asset, object of the non-debted part, the solvency will be obliged to return those necessary and useful expenses.

#### *Solvency obligations*

The solvent is obliged to return to the recipient, in good or bad faith, the expenses he incurred in conserving the thing and those that increased its value, but not the voluptuous ones.

#### *The action for restitution of unpaid payment*

The owner of the action is the solvency and its unsecured creditors through the oblique action.

The action is personal<sup>6</sup> and is subject to the general limitation period of 3 years, it begins to run from the moment the solvency knew or should have known that he made an unpaid payment and the person obliged to make restitution.

The obligation to return the unpaid payment does not exist in the following situations:

- in the case of imperfect (natural) civil obligations, i.e. when an obligation is executed for which the extinguishing prescription of the correlative law has intervened;
- when the payment was made on the basis of a voidable contract due to the incapacity of one party. In this case, the solvency has at hand the action based on the unjust enrichment, since the incapacitated person only repays to the extent of the enrichment (art. 1476 of the Civil Code)<sup>7</sup>;
- when the payment was made on the basis of a void contract due to serious immorality.
- when the payment was made by a person other than the debtor, and the recipient destroyed the title confirming his claim.

The restitution of the unpaid payment can be requested by means of an action in repetition. It can be promoted by the solvency and even by its unsecured creditors, through an oblique action.

The real creditor, that is, to whom the payment would have been due, cannot file the action in repetition, but he can ask for the eventual restitution, on the basis of unjust enrichment.

The action in repetition is prescribed within 3 years from the payment.

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<sup>5</sup> Art. 1642 of the Civil Code

If the property subject to restitution has accidentally perished, the debtor of the restitution obligation is released from this obligation, but he must cede to the creditor, as the case may be, either the compensation received for this loss, or, when he has not yet received it, the right to receive this allowance. If the debtor is in bad faith or the restitution obligation stems from his fault, he is not released from restitution unless he proves that the asset would have perished and in the event that, on the date of the destruction, it would have already been handed over to the creditor.

<sup>6</sup> Legal action that is based on a personal right (claim) and serves to exercise or defend that right.

Through actions of this kind, the rights arising from contracts, from other legal acts, from the law, from facts causing damages, etc., are capitalized.

<sup>7</sup> Art. 1476 of the Civil Code

Payment made to a creditor who is unable to receive it does not release the debtor except to the extent that it benefits the creditor.

# CONSIDERATIONS ON THE IMPORTANCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Raluca - Viorica Lixandru<sup>1</sup>

## **Abstract**

*The observance of human rights is a concern for almost every state in the world. The European continent is noticeable through more advanced human rights regulations. We must admit, however, that for some groups of the population this problem remains an unknown, abstract, theoretical or partially understood subject, the significance of these rights for the evolution of the state as well as for the life of the citizens not being sufficiently acknowledged.*

*The Court's mission is to ensure the compliance with the provisions of the European Convention on Human Rights and the additional protocols by the signatory states.*

**Keywords:** human rights, European Court of Human Rights.

**JEL classification:** K 38

Regional bodies and organisations hold special importance in the evolution of human rights issues. Thus, at European level we distinguish: the Council of Europe and the Conference for security and cooperation in Europe.

### *a) The Council of Europe*

On May 5<sup>th</sup>, 1949, the representatives of ten European states (Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, the United Kingdom, Norway and Sweden) signed the Statute of the Council of Europe in London (The main international human rights instruments to which Romania is part, vol. II, Regional Instruments, Romanian Institute for Human Rights, Bucharest, 2007). In its preamble it is mentioned that the aim of the Council of Europe is to achieve greater unity among its members in order to safeguard and accomplish the ideals and principles that are their common heritage and to facilitate their economic and social progress. Furthermore, another main objective is also the creation of a system of human rights protection. The main sources of this body are the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter (Scăunaș, 2003).

The observance of the human rights in Europe has long been the concern of the Council of Europe, and the willingness to defend and promote freedom and democracy is the dominant note of the status of the Council of Europe (Sudre, 2006).

The conditions to be met by the European states that acknowledge the Statute and which are members of the Council of Europe are the following:

- accept the principles of the rule of law;
- accept the principle by virtue of which every person under its jurisdiction must benefit from the fundamental rights and freedoms of the human being;
- undertake to collaborate, sincerely and effectively, in achieving the purpose of the organization.

Human rights, democracy and the rule of law are the essential values of the Council of Europe, grouping the European states with a similar conception regarding these social values.

Within the Council of Europe, there is a number of independent subsidiary bodies with human rights concerns, such as the European Commission on Human Rights and the European Court of Human Rights.

The Council of Europe provides the most effective mechanism for the protection and promotion of human rights through the European Court of Human Rights, but also by identifying new threats to human rights and human dignity, promoting education and training in the field of human rights (Zlătescu, 2008).

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Until May 10, 1994, when Protocol no. 11 was adopted at the European Convention on Human Rights, the *European Commission on Human Rights* was at the top of the mechanism created by the Council of Europe for the protection of human rights (Bîrsan, 1998).

The Commission, based in Strasbourg, is made up of representatives of the member states of the Council of Europe, which have ratified the European Convention on Human Rights in 1950.

The European Commission for Human Rights is elected by the Committee of Ministers from a list of candidates drawn up by the Bureau of the Consultative Assembly, whose term of office is of 6 years.

The High Contracting Parties, through their representatives, present three candidates in the Consultative Assembly, out of which at least two will have the nationality of the respective state. The term of office for the members of the Commission is of 6 years, with the possibility of being re-elected. The members of the Commission cannot perform functions incompatible with the requirements of independence, impartiality and availability during the term of office.

With regard to the powers of the Commission, it can be notified by an application by any natural person, any non-governmental organization or any group of persons who consider that they have been victims of a violation by a State party of the rights defended by the European Convention on the human rights.

The Commission shall rule on the inadmissibility of the requests made by individuals. Thus, according to article no. 26 of the European Convention on Human Rights, "The Commission can only be notified after the exhaustion of the domestic remedies, as established in accordance with the principles of generally recognized international law and within a period of 6 months, starting with the date of the final internal decision."

The preliminary examination of the application can be completed in the following ways (Purda, 2001):

- The Commission detains the request;
- The Commission will not withhold the request if it is anonymous;
- The Commission declares the application inadmissible, if it was considered incompatible with the provisions of the Convention, manifestly unfounded or abusive;
- The Commission rejects the application as inadmissible on the ground that it is premature.

The Commission's solutions can be:

- solving the case through a good understanding;
- dismiss the application as inadmissible;
- the request is dismissed;
- ascertains the facts and determines whether they prove a breach by the State concerned of its obligations under the provisions of the Convention.

If a case withheld for examination is not resolved by good understanding, it is not rejected as inadmissible and it is not dismissed. The Commission then draws up a report in which it ascertains the facts and issues an opinion in order to establish whether the facts ascertained proved, on the part of the State concerned, a breach of the obligations under the provisions of the Convention.

The report shall be transmitted to the Committee of Ministers and communicated to the interested states, as well as to the applicant, if the application has been submitted by a private individual. The Commission may formulate, by transmitting the report of the Committee of Ministers, the proposals it considers necessary. Within 3 months from the submission of the Commission's report, the dispute may be referred to the European Court of Human Rights, provided that the State concerned in the application has accepted the compulsory jurisdiction of this international court.

If, within 3 months from the submission of the Commission's report to the Committee of Ministers, the case is not referred to the Court, the Committee of Ministers, through a vote by

a two-thirds majority of the representatives having the right to join the Committee, takes a decision on whether or not the Convention has been violated.

*The European Court of Human Rights* represents a body with jurisdiction attributes over human rights and functions within the Council of Europe. It is made up of judges, equal in number to that of the members of the Council of Europe, each state being able to have only one representative. The Consultative Assembly shall elect the members of the Court. They must enjoy the highest moral consideration and must meet the conditions required for the exercise of the high judicial functions or be lawyers of recognized reputation. It is the only genuine legal body created by the European Convention on Human Rights.

The European Court of Human Rights, often informally referred to as the “Strasbourg Court,” was created to systemize the procedure for human rights complaints from the member states of the Council of Europe.

The Court’s mission is to ensure the compliance with the provisions of the European Convention on Human Rights and the additional protocols by the signatory states. The system of protection of fundamental rights and freedoms introduced by the European Convention on Human Rights is based on the principle of subsidiarity. The Court intervenes only when the states have failed to comply with their obligations. The control exercised in Strasbourg is mainly activated through individual applications, through which the Court can be referred by any person, natural or legal, under the jurisdiction of the States Parties to the Convention.

The European Convention establishes a mechanism for controlling the enforcement of the Court judgments. The European Court of Human Rights is an important element of European cooperation and integration. The evolutionary interpretation of the Convention by the Court and the effective supervision of the execution of its judgments and, of course, the adoption of all necessary measures, both legislative and other, in order to remedy the found violations of the fundamental human rights, lead to a constant improvement of the legal and judicial system in the Member States (Zlătescu, 2008).

The jurisprudence of the European Court of Human Rights has repeatedly shown that respecting the rights stipulated in the European Convention on Human Rights imposes on the states the obligation to take positive measures (Mowbray, 2004) from an economic and social point of view.

The procedural subsidiarity finds its primary role in observing the human rights, and the remedy of the situation in case of their violation lies with the states. Only in case the state mechanisms were unsatisfactory do the international bodies intervene. This is what is called the principle of exhaustion of the internal remedies, that is to say, the compulsory completion of the internal remedies before the notification of an international body. Otherwise, the request will be rejected as inadmissible, being premature, but the procedure can be resumed after the exhaustion of the internal methods.

The main purpose of the European Court of Human Rights is not to punish the guilty states, but to respect the human rights, that is, to restore the violated rights and to repair the damages suffered by the victim.

The European Court of Human Rights has the role of a subsidiary international court (Beygo, 1995) for the exercise of domestic remedies.

The subsidiarity principle strengthens the protection of human rights nationwide, doubling it with a control system that operates as a safety net (Callewaert, 2000).

According to article 44 of the European Convention on Human Rights, only the States Parties and the Commission may appear before the Court.

In order for the Court to be invested, it is necessary that the Party States have recognized its jurisdiction as compulsory. Thus, according to article 46 any Party State may, at any time, declare that it recognizes as binding by law and without a special convention the jurisdiction of the Court on any matter concerning the interpretation and application of the Convention.

The Court has the possibility when a party has been harmed by a decision or measure, which is in total or partial opposition to the obligations arising from the European Convention on Human Rights, and domestic law does not allow for the complete removal of the consequences of the measures, to grant fair satisfaction to that party (Article 50 of the Convention).

*b) Conference for security and cooperation in Europe*

The Conference for Security and Cooperation in Europe, which opened on 3 July 1973 in Helsinki and continued in Geneva on 18 September 1973 until 21 July 1975 was signed in Helsinki on 1 August 1975.

The Helsinki Act of August 1, 1975 represents a code of good conduct for the East-West relations, dedicated to peace, security, justice and cooperation in Europe (Sudre, 2006). The final act upholds the general principle of respect for human rights and fundamental freedoms, including freedom of thought, conscience or religion.

The Conference for Security and Cooperation in Europe, was endowed, through the documents of Vienna from January 15, 1989, and Copenhagen of June 29, 1990, with a detailed catalogue of human rights, largely inspired by the universal texts and the ECHR, which grants special attention to religious freedom, the principles of justice, the right to free elections or the rights of national minorities (Sudre, 2006).

The Paris Charter (1990) asserts the protection of human rights, the first chapter being entitled “Human rights, democracy and the rule of law,” which is also the main objective of the Conference for security and cooperation in Europe.

Outside the European continent, we notice in America: the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and in Africa, the African Commission on Human and Peoples’ Rights.

*c) In America*

The American continent is a second example of “regionalization of human rights” within the Organization of American States and inter-American cooperation, giving rise to a sophisticated protection mechanism, largely inspired by the European system (Sudre, 2006).

The Charter of the Organization of American States was adopted in Bogota on April 30, 1948 (Sudre, 2006), during the 9th international conference.

This regional political organization has created a number of specific bodies on the legal protection of human rights, such as the Inter-American Commission for Human Rights and the Inter-American Court of Human Rights, “the institutional mechanism of protection reproduced after that of the ECHR” (Sudre, 2006).

*1) The Inter-American Commission for Human Rights*

The Inter-American Commission for Human Rights was established on the basis of the provisions of article 33 of the American Convention on Human Rights (American Convention on Human Rights of November 22, 1969).

It consists of 7 members, who must be people of high moral standing and recognized competence in the field of human rights. The General Assembly of the Organization of American States selects these members from a list proposed by the governments of the States Parties.

Article 41 of the Convention contains the main attributes of the Commission:

- it performs functions of protection of human rights consisting of individuals and states’ right of appeal (Articles 44 and 45 of the Convention);
- it promotes human rights among the people of America;
- it prepares the studies and reports necessary for the performance of its functions;
- it makes recommendations to the governments of the Member States, when they deem it necessary, to adopt progressive human rights measures;
- it calls on the governments of the Member States to provide it with information on the measures taken in the field of human rights;
- it adopts the measures in respect of the petitions and other communications received;

- it submit annually a report to the General Assembly of the Organization of the American States;
- it provides the requested consultations on human rights issues to the Member States through the General Secretariat of the Organization of American States and provides the necessary opinions.

At the request of the Commission, the Party States undertake to provide information on how to apply the Convention in their national law.

The petitions sent to the Commission may come from:

- any person or group of persons, any legal government entity claiming to have suffered a violation of the rights provided for in the Convention;
- any State which has recognized the power of the Commission to receive and examine communications concerning the violation by another State of human rights stipulated in the Convention.

In order to be admitted, the communication must meet the following conditions:

- the internal ways of resolving the case have been used and exhausted;
- to be introduced within 6 months from the date when the injured party in his/her rights became aware of the final decision;
- the case is not being examined by another international court;
- indicate the name, nationality, profession, residence and be signed, in the case of a particular person or group of persons.

The settlement procedure, in case of receiving a notification by the Commission, invoking the violation of any right provided in the Convention is regulated in article 48-51 of the Convention.

## *2) The Inter-American Court of Human Rights*

The Inter-American Court of Human Rights is made up of 7 judges, citizens of the member states of the Organization of American States, elected from among the lawyers with a high moral reputation and recognized competence in the field of human rights.

The Court can only be referred to the Commission or a party State. Only 21 Party States to the Convention have recognized the jurisdiction of the Court (Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Uruguay, Venezuela). The Court took its first ruling on July 29, 1988 (Sudre, 2006). A cause can only be tried after having passed the stage before the Commission.

The Court may be consulted by Party States regarding the interpretation of the Convention or other treaty on the protection of human rights in the American States. The jurisdiction of the Court concerns all cases concerning the interpretation and application of the provisions of the Convention.

The judgment of the Court is final and without the right to appeal, and separate opinions can be expressed. In the case of contesting the decision, the Court shall rule within 18 days of its communication.

Annually, the Court presents the General Assembly of the O.S.A. a report on the activity, specifying the cases of non-observance of its decisions and recommendations.

## *d) In Africa*

The African Commission for Human and Peoples' Rights was set up under the coordination of the Organization of the African States. In 1963, in Addis Ababa, the Charter of the Organization of African Unity was adopted, on the basis of which (Article 30 of the Charter) the African Commission on Human and Peoples' Rights was established. It is an independent technical body, made up of 11 members elected on the basis of personal qualities, charged with the promotion (documentation and transmission, research and consultation, etc.) and the protection of human rights, the Commission being able to be notified, for any non-compliance of a state with the conventional provisions, by another Party State or by individuals (Sudre, 2006).

In accordance with the provisions of the Charter, the Commission has the following powers:

- it elaborates studies, documentation and research; it organizes seminars, colloquiums, conferences; it issues opinions and makes recommendations to governments for the promotion of human rights and peoples;
- it cooperates with other African or international institutions whose objective is to promote human rights;
- it ensures the respect of human rights within the limits mentioned in the Charter;
- it elaborates the principles and rules regarding solving human rights issues by African states;
- the interpretation of any provision of the Charter at the request of a party State, an African organization recognized by the O.U.A or an institution of the O.U.A;
- it fulfils other tasks that may be entrusted to it by the Conference of Heads of State and Government.

The Commission's Rules of Procedure (Adopted on 13 February 1988) provide for two types of individual communications, namely: communications presented by a person who claims to be the victim of a violation of one of the rights set out in the Charter and communications presented by a person or organization, supporting the existence of a serious violation of human rights. These communications only allow the petition to be listed, the Commission being notified by communication only at the request of the absolute majority of its members.

### **Conclusions**

The European Court of Human Rights represents a body with jurisdiction attributes over human rights and functions within the Council of Europe. It is made up of judges, equal in number to that of the members of the Council of Europe, each state being able to have only one representative. The European Court of Human Rights, often informally referred to as the "Strasbourg Court," was created to systemize the procedure for human rights complaints from the member states of the Council of Europe.

The Court's mission is to ensure the compliance with the provisions of the European Convention on Human Rights and the additional protocols by the signatory states.

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# SOME ASPECTS REGARDING THE FORMAL SOURCES OF ROMANIAN CIVIL LAW

Daniel - Ștefan Paraschiv<sup>1</sup>

## Abstract

*In addition to the material sources, within Romanian civil law, there are also formal sources, as specific means of civil norms, namely the law, usages and general principles of law, although there are also some opinions according to which the last category (among those listed) would not constitute a real component of them. Regarding the law - the main formal source of civil law, we can observe that, in civil matters, it includes both internal normative acts, such as constitutional norms, organic laws, ordinary laws, Government ordinances and decisions, orders, instructions and regulations of the heads of central state administration bodies or normative acts established by local public administration authorities, as well as regulations adopted at international level, respectively, on the one hand, by Romania together with other states, such as treaties, conventions, pacts, agreements or other such international instruments, but only to the extent of their ratification by the bodies of our country, empowered in this regard, or, on the other hand, by the institutions of the European Union, which apply directly to the social relations covered by our civil law. Usages, the second formal source of Romanian civil law, consist, according to the Civil Code, of customs or traditions and professional usages.*

**Key words:** *formal sources, customary practice, custom, professional usage.*

**JEL classification code:** K15.

## 1. Introductory notions

### 1.1. General considerations

Since the earliest times, any human community felt the need of (Paraschiv, 2007, p. 1) some rules on behaviour, inside it, without which coexistence would have been impossible. Over time, due to this necessity, different rules of conduct have been established, whose observation was compulsory, and, along with the evolution of society, certain organizational forms have been set up, for the elaboration and implementation of law.

The defense of the social values, pertaining to our construction as national identity, is achieved, to a large extent, along with the provisions of the other legal systems, and by the civil law norms - defined as representing those general and abstract rules that are binding and relate to the patrimonial and non-patrimonial relations between people situated on equal positions from the legal point of view - at the same time ensuring the perfecting and intangibility of the moral rules, as well as the configuration of an adequate legal consciousness.

### 1.2. The meanings of the phrase „the sources of the civil law”

The concrete modality in which a rule of civil law appears in the society, is conceptually identified with the syntagm „source of the civil law”, considering, in this situation, the formal sense of the said phrase. Apart from this formal sense, one more meaning is identified in the legal literature, namely the material sense of the phrase „the sources of the civil law”, which refers to the material premises pertaining to the existential phenomenon, present within a certain society, at a certain moment, a determining factor in the emergence, amendment or repealing of the rules of civil law.

In addition to the factors configuring the law, such as human reason or natural law, the factors related to the legal consciousness, the economic level, social, cultural or ideological realities are also included in the content (Paraschiv, 2007, pp. 3-22) of the material sources, also called real sources or substantive sources, whereas the formal sources imply a preexisting

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legal reality, more specifically a wide range of legal relations requiring certain compulsory rules of conduct, of a general character.

The sources of the law in the formal sense and the sources of the law in the material sense (Uliescu, et al., 2012, pp. 53-54) have often been the subject of some doctrinal debates, particularly with the aim to establish a delimitation between the two categories of sources of the legal norms, which was actually accomplished, but there were also opinions according to which the sources of the law - and, implicitly, the sources of the civil law - comprise more meanings, of which only two are considered important, namely, on the one hand, the totality of the social, psychological, economic and political conditions influencing the transformation of the legal system, and, on the other hand, the sum of all elements of the most varied kind, such as desires, necessities, events, recent cases, ideological evolution and the like, defined by some law specialists as real sources of the law or forces causing the emergence of the legal norms.

### ***1.3. The categories of the formal sources of the Romanian civil law***

In Romania, with respect to the formal sources of the civil law, the Civil Code (2009) sets out, in the first paragraph of its first article, the fact that the laws, the customary practice and the general principles of law represent sources of the civil law, noting that, out of them, the laws form the almost omnipresent institution, in the matter of regulation, as part of the civil legal system. In the following paragraph, the same article also specifies the modality for establishing a hierarchy, as to the applicability of the legal norms of civil nature, incident to a certain case, based on the formal sources of the Romanian civil law mentioned above, specifically in the cases that are not provided for by law, it is the customary practice that shall apply and, in the absence of such, the legal provisions on similar situations, and when there are no such provisions, the general principles of law.

Nevertheless, according to some law specialists, such as Uliescu, et al. (2012, pp. 55-62), the laws and the custom may, as a general rule, constitute the only two formal sources of the Romanian civil law. Therefore, if the laws emanate from the society through the state bodies qualified for this purpose, when it comes to custom, it is the society - referring to the individuals which make it up - which observes it.

Along the same lines, it is noted that, according to (Paraschiv, 2007, p. 22) the manner in which they are created and applied, the formal sources of law may be classified as primary, comprising directly applicable legal norms - i.e. the laws or the custom - or secondary, such as, for example, the doctrine, the general principles of law or the jurisprudence, which, as a rule, influence the generation of the norms corresponding to the primary sources, which, in the main, are not directly applicable as legal rules.

### ***1.4. General presentation of the existing legal systems at an international level***

Apart from the nations in which there is an overwhelming proportion in favor of one of the formal sources of law, as is the case in our country, it should also be mentioned that at the global level we meet various states with a mixed legal system, which means it is underpinned by a combination between two or even more sources, considered to be related to the form of the legal rules, from the perspective of their significance.

The legal systems – characterized by the fact that the norms pertaining to them are predominantly based on a certain formal source of law, which is also the primary one - of the states, are grouped into several legal families, namely the large Romano-Germanic legal family, the Anglo-Saxon law system, the Muslim legal system, and the customary law.

In the main, but particularly in the large Romano-Germanic legal family, of which the Romanian legal system is part, the formal source, which is dominant, in terms of the rules of civil law, representing, among others, one of the various branches of the law existing in the

society, is assimilated to the written law, due to the fact that the civil law originates from the Roman private law.

With regard to the Romano-Germanic legal system, also called „civil law”, „continental law” or „Romano-French law”, we can (Paraschiv, E. and Paraschiv, R.-G., 2007, pp. 174-177) also consider the fact that it is a milestone legal system, implemented in most of the states across the globe, with roots in the Western Europe, with its most important trait being that according to which the fundamental ideas of the system are listed and included in a well-defined collection, which is, consequently, the main formal source of law.

Aside from the countries within the scope of the aforementioned standard, there are nations in whose legal systems we can find other primary formal sources of law. Hence, state entities (Paraschiv, E. and Paraschiv, R.-G., 2007, pp. 177-184) including the United Kingdom of Great Britain and Northern Ireland, the United States of America, Canada or Australia, which are mainly based on the Anglo-Saxon legal system, govern by means of the courts’ jurisprudence, or, in other words, court decisions, which are compulsory, with respect to the similar situations, for the subsequent courts.

Another dominant category as to the formal sources of the law, is the Muslims’ religion, which (Paraschiv, E. and Paraschiv, R.-G., 2007, pp. 187-188) at first encompassed the Islamic law organically and which governs, in respect of the legal field, only in the nations whose ruling is reserved to an Islamic authority.

But, the legal systems of some states situated on (Paraschiv, E. and Paraschiv, R.-G., 2007, pp. 191-192) the African or Asian continents are based on local habits, also called customs.

## **2. The law as the primary, formal source of the civil law**

### ***2.1. Notion and characteristics***

The law – or, otherwise put, „the normative legal act”, with its shortened form, „normative act” – identified as a general and abstract order, basically represents the first-class formal source of the Romanian legal system, in particular of the rules of civil law, being related to the state, more precisely it is issued by Parliament or any other such state bodies.

The law is considered to be the expression of (Paraschiv, 2007, pp. 23-27) the deliberate and conscious general will, the result of the act of will of a social authority. It expresses the people’s interests and governs the most general and important social relations, including the civil ones. As a rational and democratic expression of the jurisprudence, the law is the most suitable technical modality of adopting legal norms, having the advantage to be the creation of a representative body of the people, in comparison with other formal sources of the law.

The law is regarded as the main formal source of the law - including of the civil law - the reasons for which are multiple. Hence, it represents the creation of a public authority body vested with the power to legislate - for instance, in Romania, the Parliament, as the supreme legislative body, is empowered by the Constitution to elaborate organic laws or ordinary laws. It is the only formal source of the law, which by its force, has the capacity to ensure the legal order in the state, being able to call on the state’s coercive force, if necessary - or, in other words, on the law enforcement bodies. In addition, it is the only source of the law, which has the capacity to fulfill the mobility and dynamism requirements of the legal system, as an effect of the complexity of the social relations subject to regulation, it can cover all the fields of social relations, including those of civil nature, by means of the legal norms, it can be communicated to the public much faster than the other sources of the law - because it is drawn up in written - it can be easily identified - as anyone has the possibility to study its text - it provides continuity with respect to the accomplishment of the act of justice and ensures the protection of everyone’s subjective rights - because of its stability and accuracy - and last but not least, it can be amended, incorporated, systematized and codified more easily.



## ***2.2. The senses of the notion „law”***

The description of the term „law” above takes into account the broad sense of the word - which refers to the entire variety of normative legal acts, including those of civil nature, and whose *raison d'être* consists in the fact that, irrespective of the state's adopting authority, the normative acts regulate its recipients' conduct, without having the possibility to evade them - in opposition with the narrow sense of the word in question, which considers only the normative legal acts issued by the Parliament of Romania, based on Article 73 of the Constitution.

Therefore, by (Paraschiv, 2007, pp. 23-24) law, in the broad sense of the word – that is, „*lato sensu*” – is meant any permanent, compulsory and general written norm edicted under the form of a commandment and originating not only from the state supreme power, but also from other authorities of the state, vested with normative prerogatives, such as Parliament, the Government or the local administrative bodies.

The concept of civil legal act refers to all the forms - i.e. the law, the decree, the decision, the ordinance, the instructions or the regulation - under which the legal rules specific to the field of civic law occur in the society, being edicted by the aforementioned state bodies and whose observance can also be achieved through the intervention of the state's coercive force if the recipients of the legal prescriptions fail to comply with them.

In the narrow sense – or, otherwise put, „*stricto sensu*” – the notion of „law” designates the normative act of a higher legal value, it represents the most important source of the law and emanates from Parliament, the supreme body of the state power and the exponent of the people's sovereign power, according to a pre-established procedure.

## ***2.3. Classification of the civil normative legal acts***

Taking into consideration the legal force of the civil normative acts and, at the same time, the issuing state body, as well as their nature, we can note a wide range of categories of normative acts, which can constitute sources of the civil law, namely (Boroi and Anghelescu, 2021, pp. 11-12) the Constitution, the laws – both the constitutional laws and the organic or ordinary laws – the Government ordinances – including the emergency ordinances – the Government decisions, the orders, the instructions and the regulations of the leaders of the state administration central bodies, the normative acts issued by the local public administration authorities, the category of normative acts - as long as they are still in force, such as the laws, the decrees, the decisions of the former Council of Ministries, the orders and instructions – before 1990, as well as the international legal instruments put in place for the purpose of regulation, such as the international conventions, pacts or agreements – of which Romania is part, by ratification, and which have thus become an integral part of our internal law – or those issued by the European institutions, with direct applicability and direct effect, as appropriate, in the national law, if they contain legal norms of civil nature.

It should be noted that a major formal source of the Romanian civil law is represented by Law no. 287/2009 or, otherwise put, the Civil Code. The latter was adopted in 2009 and entered into force on 1st October 2011, repealing the Civil Code adopted in 1864. Furthermore, the Civil Code of 2009 is a source for other branches of the Romanian legal system, too, stipulating in the second paragraph of the second article the fact (Civil Code, 2009) that it is composed of a set of rules constituting the common law for all the fields to which the letter or spirit of its provisions refer.

As for the international regulations, according to the first paragraph of the fourth article of the Civil Code (2009), it is noted that, in the matters governed by this code, the provisions on personal rights and liberties will be interpreted and enforced in compliance with the Constitution, the Universal Declaration of Human Rights, the pacts and other treaties of which Romania is part. The second paragraph of the same article provides that the enforcement of the

pacts and treaties concerning the fundamental human rights and liberties, of which Romania is part, will prevail in the event there are discrepancies between them and the provisions of the Civil Code, and more favorable provisions can't be found in the code.

Similarly, the fifth article of the Civil Code (2009) stipulates the preeminence of the European Union law as to the matters governed by the Civil Code, irrespective of the parties' capacity or status.

### 3. Customary practice

In accordance with the first article of the Civil Code (2009) – more specifically, according to the sixth paragraph, customary practice consists in habits – or, otherwise put, customs – as well as professional usage. Thus, the habit and the custom, respectively, represent (Boroi and Anghelescu, 2021, p. 12) a long, rooted and continuous practice, considered compulsory by those who apply it, whereas the professional usage comprises those rules which regulate the relations established between the members of a profession, or, between members and clients, as applicable, on the occasion of practising the profession.

The second paragraph of the same article contains an enumeration also implying the idea that customary practice appears as a second formal source of the civil law, with the *de facto* situations, non-regulated by the civil law, being applicable - no matter if they are general or special, as there is a legislative void, as far as (Stănescu, 2021 cited in Boroi and Anghelescu, 2021, p. 12) they are concerned. Moreover, according to the third paragraph, customary practice is also incident to the matters governed by law, inasmuch as customary practice is expressly referred to, only.

On the other hand, the fourth paragraph emphasizes the fact that only the usages compliant with the public order and good morals are recognized as formal sources of the civil law. But, such provision may as well (Uliescu, et al., 2012, p. 57) be absent, as it is useless in terms of practice, because no regulating text can be applied if it is contrary to the public order or good morals.

Additionally, in accordance with the first thesis of the fifth paragraph, usages may constitute formal sources of the civil law only if the interested party as to the application of the usages concerned, demonstrates their existence and content, by any means of evidence (Ungureanu and Toader, 2019 cited in Boroi and Anghelescu, 2021, p. 12). It is also noteworthy, along the same lines as those mentioned above, that in the third paragraph of its 255th article, the Civil Procedure Code (2010) stipulates the fact that usages, the deontological rules and the established practice between parties, must be substantiated, according to the law, by the one invoking them, and the local rules and regulations must be proved by the one invoking them only at the court's request. Nevertheless, regarding the usages published in compendiums elaborated by the entities or bodies authorized in the field, the second thesis of the fifth aforesaid paragraph establishes a relative presumption with respect to their existence, until proven otherwise.

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## SECTION V MARKETING AND TOURISM

### INTERNATIONAL PENSION MARKET – A DESCRIPTIVE STUDY

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#### **Abstract:**

*In recent decades, the number of citizens benefiting from pensions is growing at a faster rate than the active population, which puts a huge pressure on public finances and pension funds. Also, the population aging process takes place at different speeds from country to country, the impact of demographic changes on the age structure and population size is overwhelming.*

*The public pension system pays “benefits” defined by a formula that takes into account the employee's earnings, as well as the years worked, being financed by contributions on a “Pay-As-You-Go” basis, which means that the sums currently collected as contributions are used to pay the pensions.*

*This system has functioned for a long time and is the most common, but it puts more and more pressure on the system and society. That is why its reformation is being discussed, a real social revolution, also based on the idea that the “benefits” mentioned above will know a continuous decrease in the world.*

**Keywords:** pensions, citizens, system, reform, investments

**JEL Classification:** H55, H75

#### **1. Introduction**

Population aging is a global phenomenon. Exceptions are only a few countries with poor economic development. For governments on the European continent, this problem has become an acute one, especially when it comes to the payment of pensions.

For several years, the number of citizens receiving pensions has been growing at a faster rate than the active population. This situation puts a huge strain on public finances and pension funds. Some projections show that the dependency ratio of people over 65 compared to 15-64 will increase to 50.1% in 2060, compared to 27.8% in 2014 (Hans Van Meerten, J. J. Van Zanden, 2021, p. 66).

The population aging process takes place at different speeds from country to country. The impact of demographic changes on the age structure and size of populations is overwhelming. According to forecasts, the average age of the population is expected to increase further. In addition to the aging process, states will also experience a decline in population. The European Union as a whole is expected to lose 10% of its population by the year 2050 (Giuliano Bonoli, Toshimitsu Shinkawa, 2005, p. 1).

In many countries the pension system is still a public one. Through these systems, defined „benefits” are paid based on a formula that takes into account the earnings of the worker and the years worked, being financed by contributions on a „Pay-As-You-Go” basis. This means that the sums currently collected as contributions are used to pay the pensions. This model, although it has worked for a long time and is the most common, puts more and more pressure on the system and society. Among the problems generated are:

- simultaneously with the aging of the population, the contributions increase more and more and higher unemployment is reached;
- in companies where productivity is low, the level of evasion increases;
- increases the number of employees who retire early and this decreases the number of experienced human resources;

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- increasing the financing of public resources at the expense of the allocation of financial resources for infrastructure development or for education and health;
- insufficient redistribution of funds is created for low-income workers;
- an imbalance of the system is created and an indebtedness and burden for the young and future generations (Smaranda Dobrescu, Mihai Şeitan, 2005, p. 13).

The reform of the pension system can be seen in any country as a social revolution. The main reason for the reform is that „the benefits obtained from public Pay-As-You-Go systems will continue to diminish around the world”. Even the benefits of implementing a private system are not easy to evaluate because they depend on the worker's contribution period, the benefits obtained based on the investment of the funds, the size of the contribution and the increase in earnings during the active life period (Smaranda Dobrescu, Mihai Şeitan, 2005).

The viability of „Pay-As-You-Go” systems has been viewed with disbelief and the governments of most states have tried to identify other ways to ensure security for senior citizens. The alternative ways were also thought because „increasing the contribution rates to the public pension systems and the normal retirement age cannot be achieved beyond a certain bearable limit for taxpayers” (Iulia Ban, 2007, p. 33).

The most used method by governments has been to gradually replace „Pay-As-You-Go” systems with private pension systems. In this way, the citizens' pension is ensured as a result of the investments in the capital markets of those funds accumulated following the contributions of those who are members of a private pension plan. In some developed countries, such as Great Britain or the United States of America, this type of system has been adopted much more intensively than in other developed countries. Some states in Eastern Europe are leading the way in the process of gradually replacing public pension systems with private systems. The situation is due to the imbalances that these countries had in relation to the public pension insurance budget. They could not be covered in the macroeconomic context of these countries and the governments were forced to implement a reform of the public pension system much earlier than other countries that had a developed economy (Iulia Ban, 2007).

Developing countries in Eastern Europe have reformed their pension systems and introduced either a substitute or a mixed or parallel model based on individual workers' accounts. They followed the global neoliberal trend and introduced individual private pension accounts: Hungary in 1998, Poland in 1999, Latvia and Kazakhstan in 2001, Bulgaria and Croatia in 2002, Lithuania in 2004 and Slovakia one year later (Bruno Bonizzi, Diego Guevara, 2019, p. 61). In Romania, in the period 2006-2007, the implementation process of the private pension system was launched and in 2008, the collection of contributions to privately administered pension funds began (CSSPP, Annual Activity Report 2008).

## **2. Models related to international pension systems**

The choice of the following examples is not accidental, but is based on the fact that these countries brought innovative elements to the field. It will be possible to easily deduce the concern of the governments of these countries for the senior population. We must mention not only their concern for people, but also, above all, for future budgets, which must be fed and used responsibly.

### **2.1. Switzerland**

The Swiss system is based on three pillars ([www.ca-nextbank.ch](http://www.ca-nextbank.ch)): the public pension pillar, the occupational pension plan and the private pension plan. The state pension is mandatory and aims to ensure a legal minimum income for the entire population of the Canton Country.

*The public pension pillar* is made up of three insurances: old-age and survivor's insurance - AHV; disability insurance and extended benefits; compensation for loss of income.

a) Old-age and survivor's insurance - AHV has the role of replacing the salary at retirement age. Old-age pensions, pensions and survivors' allowances are paid. This insurance also operates in case of death. A survivor's/orphan's pension is established until the age of 18 or 25.

b) **The difference** is that the disability insurance and extended benefits cover accidents that may occur until retirement. Once retirement age is reached, disability insurance turns into a pension. All persons who have reached the age of 20 and work in Switzerland are obliged to contribute to this system. Some defining elements should be noted ([www.ca-nextbank.ch](http://www.ca-nextbank.ch)):

- any person who has contributed at least one year is entitled to the minimum pension;

- to benefit from a full pension, a person must meet the following conditions: contribution from the age of 20; contribution for 44 years; earning an average annual income of CHF 84,600.

When the contribution period is shorter, a pension is calculated proportional to the years of contribution. The same is done when the salary criterion is not met.

c) Also, something **different** are compensations for loss of income. This is in fact an insurance that allows the completion of the AHV insurance in the conditions of failure to meet the criterion regarding the annual income.

*The occupational pension plan* is notable for starting from the condition that the occupational pension is mandatory for all employees in Swiss companies who must meet two conditions: to receive a minimum annual salary of CHF 21,150 and to have been employed since the age of 17.

The contribution is paid by both the employer and the employee. The employee's contribution is deductible, but the employer's is not. There is also the possibility that part of the employee's contribution will be borne by the employer.

**This insurance/pension is complementary to the AHV insurance**, being an additional income at retirement age. This amount can be paid in the form of an annuity/pension or the entire capital depending on the option of the insured. The system works as an insurance. That is why the maximum insured amount represents a summation of average wages of CHF 84,600, which applies in the event of disability or death. The replacement rate of the first two pillars is 60% of the last salary income.

*Private pensions* were introduced in Switzerland in 1972. In Switzerland they are optional, but the right to ownership is stipulated in the Constitution, the government encouraging optional plans by facilitating tax deductions. A private pension can only be accessed by a resident of Switzerland. The amounts will be paid either into a bank account or into a life insurance.

**The replacement rate of a private pension scheme** is approximately 40% of the last salary income, which denotes a very pronounced capitalization.

The advantages of the private pension are linked to ([www.ca-nextbank.ch](http://www.ca-nextbank.ch)):

a) building over time a capital that will be able to increase, having several destinations: buying houses, starting a business, reducing the mortgage, running an independent activity;

b) transferring money into a life insurance. This solution provides financial security to the client's family. Thus, in case of total permanent disability or death, on the one hand the family is covered by financial worries, and on the other, the accumulated sums will increase the pension income;

c) the existence of tax deductions both during the period of payments and when withdrawing assets. For every CHF 100 invested, the Swiss government returns CHF 35.

The private pension is presented in two forms ([www.ca-nextbank.ch](http://www.ca-nextbank.ch)): restricted, when the money can be withdrawn only under certain conditions, but there is the possibility of deductions; unrestricted, in which the person has greater freedom, but deductions are only possible in two cantons: Geneva and Friborg.

The withdrawal of the accumulated amounts can be done under the following conditions: upon reaching the retirement age, i.e. at 65 years; upon early retirement, i.e. five years before the standard retirement age; if the activity can be continued for a maximum of five years beyond the legal retirement age; upon leaving Switzerland; when the person goes on to carry out an independent activity; when using the amounts to reduce the mortgage on the main residence.

## 2.2. France

In France, a simpler system operates, consisting of two pillars: basic pension and additional pension.

*The basic pension* was legislated immediately after the Second World War, namely in 1945. It was designed as a universal pension, from which every French worker could benefit. Over time, the evolution of the labor market proved that this type of pension was not sufficient, which is why additional, optional pensions appeared. Since 1972, the additional pension has become mandatory.

There are currently 42 pension plans (<https://maretraite.fr/quelles-sont-...>), differentiated according to professional activity. Thus, for employees, the funds that manage pensions are: for the basic one, Caisse Nationale D'assurance Vieillesse (CNAV) and for the additional pension AGIR – ARRCO. For civil servants, the basic pension is managed by the State Pension Services, and for the additional pension the fund is called the Régime de Retraite de la Fonction Publique - Pension Plan for the Public Service - RAFP.

Also, there are funds for non-permanent employees, for traders or for farmers.

The funds for the basic pension are more general, and the funds for the additional pension are specialized: for notaries, dentists, doctors with individual private practice etc.

The calculation of the pension is differentiated between the two types of pensions. For the basic pension, it is calculated according to the average salary of the best 25 years and the number of validated quarters. For the additional pension, the calculation is as follows: with each amount paid, points are bought that are updated annually and converted into annuities.

It should be noted that this calculation of the basic pension is capped at a certain income. For example, in 2018, the cap was 39,732 euro. Above this threshold, the amounts are taken over by the additional pension funds that also offer better incomes. It follows that the basic pension remains limited, and the additional pension also increases with income from the basic pension.

Through an approved law, starting from 01.10.2019, a new product was introduced on the French market, called the Pension Savings Plan - PER. The purpose of this law was to remove a series of deficiencies of the previous system (<https://maretraite.fr/quelles-sont-...>), which also appeared due to the developments in the labor market: compared to the large saving capacity of the French, the old system brought few and small savings; the products were complicated and lacked flexibility, the terminology was rigid, the savings were not portable, the commissions were high, the returns were low.

The new PER plan is divided into two components, the collective and the individual. In the period 2018-2020, PER products circulated in parallel with the existing products on the market (PERP, Madelin, PERCO, PERE), their owners having the option to keep or transform them into PER. In addition, the possibility of transferring a life insurance contract to PER was also foreseen.

PER consists of the following payments (<https://maretraite.fr/quelles-sont-...>): voluntary payments of the taxpayer; payments of the firm/company, representing its contribution; mandatory payments of the employee and the employer. The funds placed in the PER remain blocked until the retirement date without being able to be redeemed earlier. However, there are also exceptions for exiting the PER: purchase of the main residence; in the case of an over-indebted depositor; the death of the spouse; invalidity; judicial liquidation; the expiration of the rights arising from the unemployment allowance.

At retirement age, the amounts accumulated in the individual and collective PER can be recovered through three ways: single payment, a life annuity or a combined option, that is, a part paid in capital and the difference in annuities.

It follows that a French person who accesses a PER plan has all the investments accumulated in one. However, French specialists say that compared to life insurance, PER remains an inferior product.

In general, to prepare for retirement, one hesitates between a life insurance contract and an individual retirement savings plan (PER IN) (<https://maretraite.fr/preparer-votre-...>). Comparing the two products, life insurance is at a relative advantage depending on several criteria. These are:

- Contract flexibility. In France, *life insurance* is the preferred product because it presents a series of advantages: flexibility, clauses can be attached/withdrawn at any time; they are unlimited in duration; taxation is reduced, therefore advantageous; several life insurance policies can be concluded with different insurers, without capping the insured amount; partial withdrawals can be made.

Compared to the above, the *PER - Pension Savings Plan* becomes much more rigid.

In the case of a savings plan, redemptions can be made under certain conditions (<https://maretraite.fr/preparer-votre-...>): when it is made by the contractor; death of partner, spouse, civil partner; the occurrence of a handicap to the holder/a family member; over-indebtedness; completion of unemployment; absence of an employment contract for at least two years; termination of an independent activity by a court decision.

- Deductibility of payments. The PER would be more advantageous because in the case of life insurance you can benefit from the amount in the account if there is an inheritance advantage. The reason why PER is a more efficient product from this point of view is the deduction of certain amounts, namely 10% of the net income, within the limit of 32,419 euros/year.

- Investments. Capital investments are made according to the client's risk appetite. Thus, they are guaranteed investments (euro funds) or riskier (units, account units).

- Maturity of the contract/Expiration of the contract. In the case of life insurance, the amount accumulated in the client's account, on the one hand, can be redeemed in full or in periodic, scheduled amounts/annuities, and on the other hand, in a life annuity. The PER can be liquidated at retirement either by paying the entire capital or in the form of a life annuity.

● Once the payment is made, the fiscal advantages that also separate the two products appear. For life insurance, if one opts for the payment of the entire accumulated amount, taxation is differentiated depending on the time of application: up to 4 years, between 4 and 8 years or over 8 years. If one opts for the payment of the capital formed in the form of annuities, only part of it is taxed depending on the insured's age. Regarding the PER, where there is a deduction of the amounts during the payment period, in the end the taxation is progressive.

In case of death of the insured/contractor, there is a right of inheritance. In addition, investment means assumed risk. This answers a series of questions (<https://maretraite.fr/preparer-votre-...>):

- how to anticipate your retirement?
- how to create an additional income when you retire?
- is it efficient to invest regularly?
- how effective is the investment?

Progressive investment, which is also called planned saving in shares, means to invest frequently, with regularity, fixed amounts in one or more long-term or even very long-term share funds (<https://maretraite.fr/preparer-your-...>).

Investing in shares is based on two characteristics: shares are the most profitable in the very long term; diversification of payments, i.e. payments to be made at different moments in time and in the same financial assets. Investing the same amount strengthens the investment in periods of economic downturn and reduces it when it is expanding. Amounts invested in shares can be optimized through a life insurance or through an eligible fund.

### 2.3. Poland

The pension system in Poland is structured on three pillars, the mandatory state pension, the occupational pension and the optional pension (<https://stat.gov.pl/en/>).

a) *The compulsory state pillar* with defined contributions, PAYG – Pay As You Go, feeds the Social Insurance Fund – FUS, which is managed by the Polish state social insurance institution – ZUS.

The mandatory pension contribution is equal to 19.92% of the gross salary. Upon reaching retirement age, a person can decide whether they want to retire or stay in the labor market and retire later. The later the person retires, the higher their pension will be. The statement is supported by the fact that the retirement pension depends on several factors: the amount of pension contributions; the value of the initial capital; the amount of funds accumulated in a sub-account; life expectancy.

As of 01.10.2017, the retirement age in Poland is 65 for men and 60 for women. The minimum seniority condition must also be met, namely 25 years for men and 20 years for women (<https://stat.gov.pl/en/>).

The pension is calculated by summing the initial capital and the contributions accumulated in an individual account, then everything is divided by life expectancy. The initial capital is the capital paid by each person before the reform of 1999. The person has the right to request the calculation of the initial capital at any time.

The pension reform of 1999 aimed to transform the PAYG system: every employee born after 31.12.1968 must join a mandatory personal pension plan (OPF). People born between 01.01.1949 and 31.12.1968 had the right in 1999 to also opt for the new system. The decision was irreversible. The people who opted for the transition to the new system received a so-called „credit”, i.e. a starting capital, based on an actuarial evaluation of their social security contributions. People who did not opt for OPF were randomly assigned by the regulatory authority to an eligible pension fund.

After 1999, this system of open pensions underwent many transformations, redemptions, prohibitions from the state. The reason is understood: the problems raised by ensuring the budget necessary for the payment of pensions.

After the 2014 reform, starting 10 years before the legal retirement age, the amounts accumulated in OPF are transferred to ZUS.

Currently, out of the 19.92% contribution, only 2.92% goes to open pension funds.

Through this system, OPF's only accumulate income, and the benefit is paid by ZUS. Investments in government bonds are prohibited.

The public pension file can be submitted physically or electronically through the Electronic Services Platform (PUE), where the person must have an account and a trust profile or an electronic signature. Along with the requested documents, the termination of the employment contract must be presented.

*b) Occupational pensions*

In 2017, occupational pensions were accessed in Poland by a limited number of employees, less than 2% of the workforce. To be a member of an occupational scheme, it is necessary to conclude a contract between the employer and the employee. The investment plan is established by the employer, based on some limits imposed by law, including a basic contribution from him. The employee pays an additional contribution also established by law. The investment plan can be made and validated by the Polish Financial Supervisory Authority - KNF if it is offered to a percentage of at least 50% of the company's employees.

It was not a popular system among the Poles, which is why another scheme became functional, IKE, which proposes the following: tax exemption up to a ceiling of 7% of the employee's salary; the employee can make additional but limited contributions; employer contributions are taxable, but income and benefits from investments are exempt from paying taxes; the amounts can be withdrawn at retirement age.

*c) Optional pensions*

Optional plans are managed by investment funds, life insurance companies, pension funds, foreign companies. The condition is, however, that the Plans are based in Poland. The investment regime is relaxed, these plans having the possibility to invest in government bonds.

In 2017, there were 1053 voluntary schemes, almost 400 thousand members and assets of 3.9 billion US dollars (<https://stat.gov.pl/en/>).

## **2.4. Hong Kong**

In the end, we chose to present a non-European model, because it is appreciated by specialists as an excellent example. Hong Kong's pension system is also based on three pillars (<https://www.pensionfundsonline.co.uk/>): the public pillar which provides a minimum/social pension for those in need; the occupational pillar which is mandatory, being based on defined contributions and which has been functional since 2000, called the Mandatory Provident Fund Scheme - MPF; the optional pillar.

At the end of the second millennium, the realities in Hong Kong were very worrying (<https://www.pensionfundsonline.co.uk/>): Hong Kong had the lowest fertility rate in the world, very few children were born. Life expectancy was among the highest in the world, and as a result, the working population was one of the oldest in Asia, after Australia and Japan. A change was required, which would give pensioners the opportunity to have something to live on.

The public pension consists of five subsystems:

a) The system of social security allowances. It protects the elderly and includes old age and disability allowances. There are two age groups (<https://www.pensionfundsonline.co.uk/>): people aged between 65 and 69, who receive a normal age allowance, and people over 70, who receive an old-age allowance.

Also, these people receive a lump sum from the state budget, 61 euros for the first installment and 69 euros for the second installment.

In 1997, a reform was adopted: the portable social assistance system, which we can explain as follows: people over the age of 60 who receive social security benefits can settle in the provinces bordering Hong Kong, namely Guangdong and Fujian continuing to receive the benefits, because there the cost of living is lower and thus living a more decent life.

The other public subsystems are:

b) *Subsystem of civil servants;*

c) *Subsystem of judicial officials;*

d) *Staff of teachers in schools;*

e) *Staff from public hospitals and clinics.*

The mandatory scheme of the provident fund (MPF) was adopted by law in 1995, but was implemented only in 2000. Until that date, voluntary occupational schemes were operating, which appeared in the 1970s and 1980s and were used by large companies. These schemes were regulated later, in 1993 by the ORSO Ordinance (the ORSO schemes were defined benefit, defined contribution or hybrid type and covered only 30% of the active workforce).



After the year 2000 these schemes continued to operate in parallel with the MPF requirements with certain restrictions/conditions imposed by the Authority for compulsory fund schemes.

People caught in the ORSO system could choose between staying in the old schemes or joining the new MPF schemes. In the period 2001-2006, the number of ORSO schemes decreased from 9,800 to 7,700, and currently they manage assets worth 21.5 billion euros.

The MPF system is based on mandatory personal defined contribution accounts. Participants can be:

- full-time and part-time employees aged between 18 and 65. For the latter, the condition is to have been employed for more than 60 days. The payment can be made by employers and employees and represents 5% of each person's salary up to the limit of 1949 euros;

- self-employed persons pay 5% of the income obtained;

- casual employees, who contribute fixed amounts, together with their employers.

In Hong Kong, the retirement age is 65 for both women and men, and early retirement is possible after the age of 60.

Employers choose MPF schemes which are provided by banks, insurance companies, asset managers and trust companies. The most popular MPF schemes are master trust schemes (<https://www.pensionfundsonline.co.uk/>). They present several funds, approved by the Authority of Mandatory Source Fund Schemes. They offer different investment policies, but one must necessarily be related to capital preservation. Companies managing these funds must be incorporated in Hong Kong.

The regulation of the investments made by these funds is not left to chance. Thus, a series of mandatory conditions are provided: a maximum of 10% of assets must be invested in securities; minimum 30% must be invested in HKD – Hong Kong Dollar; exposure to foreign capital cannot exceed 70%; a maximum of 5% can be invested in warrants - derivative financial instruments that give the right, but not the obligation, to buy or sell a security, usually a share, at a certain price before expiration (investopedia.com ).

If the value of the fund is below 780,000 euros, investments of a maximum of 25% can be made in cash deposits. If the funds exceed this ceiling, the amount placed is reduced to 10%; A maximum of 10% in shares can be listed on the stock exchange.

There are over 300 funds to choose from, of which 90% are main fiduciary schemes. More than 50% of the amounts are placed in the country. The keeping of money in the country is kept under strict control.

When it comes to payments (to beneficiaries paying contributions over time), they are made in the form of lump sums. Amounts up to a maximum of 1,170 euros per year for employees and 15% of the salary for employers are exempt from paying the tax (tax deduction).

### **3. Conclusions**

Descriptive studies are important tools for researchers and specialists from a wide range of disciplines. Valuable information can be obtained about the characteristics, behaviors and trends of the populations, groups or phenomena under investigation. Through this tool you can build hypotheses, identify superior models and add new information about a subject or area of interest.

Through this paper, we mainly aimed to present a summary and yet relevant, bringing to attention a subject of great interest all over the world: how some states manage to solve the financial problem related to the payment of pensions and what innovations have brought in the attention of the population so that they can live decently at retirement age.

If we were to characterize the populations we are referring to, beyond the differences we note a common aspect: the fact that at retirement age all people need to receive their pensions on time for which they have contributed during their working years. Whether these pensions are large or small, sufficient for a decent living or not, depends to a large extent on the country where the people in question live, how their jobs were remunerated, how they each saved etc.

We identified some models and trends that can guide us in future research and developed the hypothesis that some of the descriptions can turn into ways to follow. We have offered the possibility to understand and compare more easily, by joining several pension models from around the world in a single work.

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# NEW BUSINESS MODELS IN THE HOSPITALITY INDUSTRIES – DIGITIZED NETWORKS

Iuliana Pârvu<sup>1</sup>  
Cristina Ciami<sup>2</sup>

## **Abstract**

*AIRBNB has introduced one of the most fascinating innovations of the last decade to the tourism and hospitality sectors. By using a peer-to-peer digital platform, Airbnb has expanded short-term accommodation options in an unprecedented way, attracting the attention and reaction of both the hotel industry and local authorities and regulators. But more than that, Airbnb's business needs to be understood and analyzed as an exponent of new models of value creation in the current and future economy. Understanding how Airbnb manages to successfully interconnect strategic decisions with its operations adds theoretical and practical value to management. The present work presents the most important characteristics of the Airbnb business model, approaching it as an example of good practices in the field of business carried out in the context of the digitalized economy.*

**Key-words:** digitized economy, peer-to-peer platforms, business models

## **1. Introduction**

Over the last decade, in all types of business and, implicitly, in the field of hospitality can be noted, "new ways of creating value and new innovative business models generated by the fundamental changes taking place in society from a philosophical, sociological, psychological and economic perspective". (Oskam & Boswijk, 2015). The traditional hierarchically structured economy is transforming into a network-based economy, facilitated by digitized platforms, which, as stated in the specialized literature, determines the transfer from an "era of possession to an era of access". Rapid digitization is disrupting old business models and the physical world is becoming digitized. According to Rifkin (2014), we are in the midst of a third industrial revolution and moving into an era of the Internet of Things. In addition to these changes, we see an increase in social commerce and an emerging peer-to-peer society (Kostakis & Bauwens, 2014 ) as part of a digitized, network-based economy (Boswijk, Peelen & Olthof, 2015). Consumers have become co-creators of value and have the potential to become entrepreneurs by trading their own assets, such as solar energy and renting out their homes and apartments (Boswijk, Peelen, & Olthof, 2015). At the same time, traditional providers lose market control if they fail to gain an important position in digitized networks.

In this context, in all market sectors, successful companies are starting to stand out for the way of doing business in peer-to-peer networks. The Peer-to-Peer (P2P) economy is that type of economy where sellers and buyers interact directly without the need for an intermediary. It represents a decentralized business system. One of the limits of this system is the risk felt by the buyer that the products/services they purchase are not of quality corresponding to the requested price, respectively the risk felt by the seller that one or more buyers do not pay. These risks, in traditional business systems, were eliminated by involving a third party that guaranteed the safety of the transaction. On the other hand, the advantages of this system are lower prices and lower costs. A solution to these dilemmas were Internet and the technological revolution which have the ability to transform Peer-to-Peer businesses into more viable ones adapted to modern times, with

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IT platforms helping to provide better visibility of P2P transactions, increasing security and increasing long-term efficiency .

In the field of P2P accommodation services, Airbnb is the undisputed market leader, and this paper presents the business model of this successful company, useful for managers to understand the current and future challenges of the digital economy.

## **2. Airbnb – exponent of new business models in the hospitality industry**

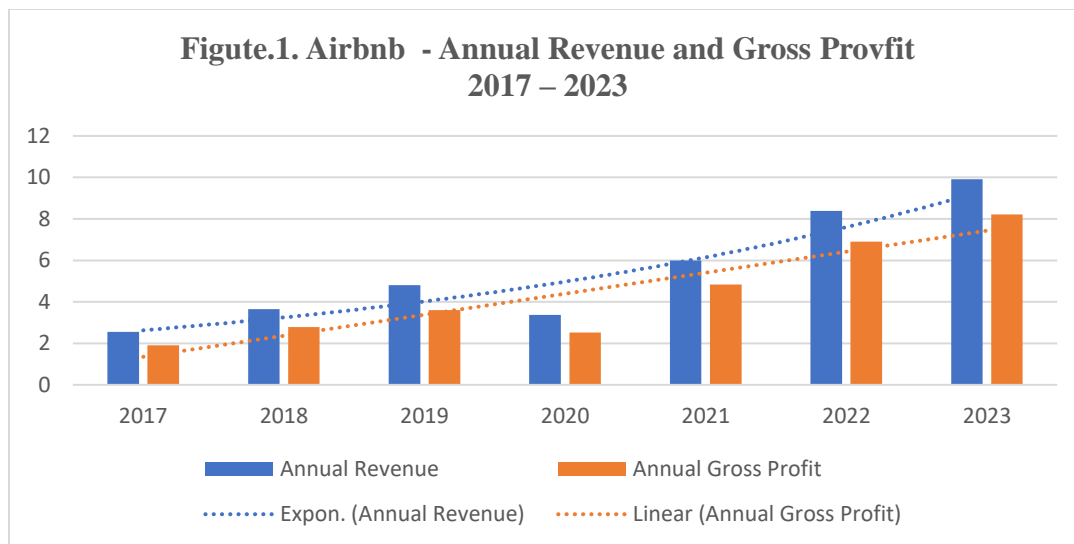
Understanding Airbnb's business model is important for those entrepreneurs interested in developing a business in the context of the sharing economy. This business model consists of using an online platform that facilitates the booking and renting of rooms or entire apartments for tourists or, in general, for people visiting a city. The success of the business is driven by its ability to provide travelers with unique and cost-effective accommodation options, while providing property owners with a profitable way to utilize their unused space. Currently, the platform has more than 4 million hosts offering accommodation in more than 220 countries and regions. The platform works on a commission-based system, earning revenue by taking a percentage of each booking.

The history of the company begins in 2007, when Brian Chesky and Joe Gebbia, graduates of the Rhode Island School of Design, settled in San Francisco where they were facing financial difficulties and the high price of rent. When a conference of industrial designers was coming up in San Francisco, they anticipated the lack of hotel rooms during the event and decided to rent a space in their apartment where people could sleep on one of three air mattresses, against the sum of 80 dollars per night. They called their project "AirBed & Breakfast" and promoted it on design blogs, highlighting the features of their apartment. In just a few days, three customers made reservations. Later, after receiving positive feedback, they began to explore the possibility of acting as intermediaries, using other people's apartments to earn money, involving a programmer in their business. At first, they had trouble getting people to open their homes to strangers, but with the 2008 Democratic National Convention in Denver, they decided to place ads on local blogs. This initiative attracted media attention, generated very good results, and after the New York Times published an article about the initiative, approximately 800 people signed up as hosts, resulting in 80 successful bookings. Over time, the company has become an affordable and adventurous alternative to traditional lodging, attracting millennials in particular.

The success of the business is demonstrated both by the evolution of financial performance indicators and the evolution of the number of nights rented through Airbnb, as presented below.

**Table 1. Airbnb – Annual Revenue and Gross Profit – from 2017 to 2023**

<b>Metrics</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Annual revenue (Millions of US \$)</b>	2,562	3,652	4,805	3,378	5,992	8,399	9,917
<b>Gross Profit (Millions of US \$)</b>	1,914	2,788	3,609	2,502	4,836	6,900	8,214

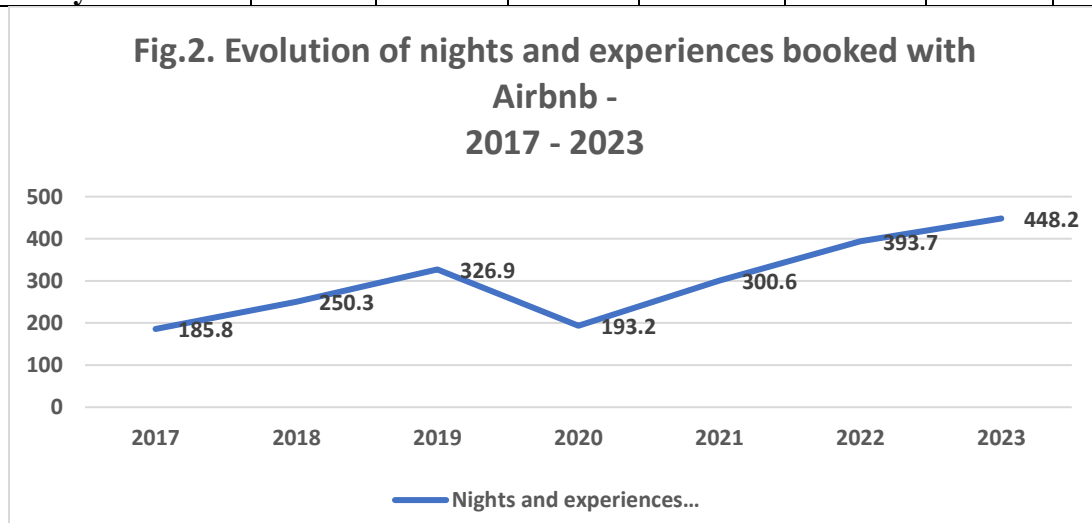


It can be noted that during the analyzed period, both the company's revenue and profit had an upward evolution, interrupted in 2020, probably as a result of the decrease in tourist traffic in the context of the pandemic. Thus, revenues registered an increase of approximately 300%, and profit an increase of approximately 330%.

The evolution of nights and experiences booked with Airbnb from 2017 to 2023 also had an upward evolution, as shown in table 2 and figure 2.

**Table 2 Evolution of nights and experiences booked with Airbnb – from 2017 to 2023**

Metrics	2017	2018	2019	2020	2021	2022	2023
<b>Nights and experiences booked (Millions)</b>	185,8	250,3	326,9	193,2	300,6	393,7	448,2
<b>Increase from previous year</b>	-	35,67%	30,60%	-40,89%	55,59%	30,97%	13,84%



It can be noted an upward trend of nights and experiences booked with Airbnb from 2017 to 2023. Similar to the evolution of revenues and profits, in 2020 there was a decrease of approximately 41% compared to 2019, but which was later recovered. Thus, in 2023 there was a 37.1% increase compared to the peak before the pandemic.

Airbnb's innovative approach to lodging has reshaped the travel industry, creating new opportunities for both hosts and guests. As the company continues to expand its offerings, the analysis of its business model provides insights into managerial aspects specific to this type of business.

### **3. Managerial elements specific to the Airbnb business model**

Key components of Airbnb's business strategy include:

- leveraging technology to ensure ease of use;
- ensuring user trust and safety;
- diverse property listings;
- global reach with local experiences.

The main features of the Airbnb business model are presented below:

- **Airbnb's Vision Statement:** Belong Anywhere
- **Airbnb's Mission Statement:** "To create a world where anyone can belong anywhere." ; "The opportunity to live in an authentic location, where you wouldn't normally come and meet people you wouldn't normally meet, at a fair price".

- **Airbnb's Values are:**

- Promoting an inclusive economy by sharing homes and experiences so hosts win, travelers save and communities thrive;
- Trust: Guests and hosts rely on reviews for secure transactions.
- Impact on the local economy: money spent often stays in the local community.
- Sustainability: home sharing reduces the need for new hotel construction and efficient and sustainable consumption.

- **Competitive advantage of Airbnb's Values:**

Airbnb's success is based on its real value proposal to both hosts and travelers, creating a balanced ecosystem where all can thrive. Hosts earn by monetizing the living space they own but do not use, guests have access to unique living conditions at a reasonable cost.

- **Airbnb's operational features**

Airbnb offers an interactive, seamless service. The operational characteristics of the business are:

- The registration and booking process – is the essence of Airbnb's business. Hosts can easily showcase their properties by providing details and highlighting their unique features. For this purpose, photos, descriptions and prices are presented. The platform's intuitive interface guides hosts every step of the way. Guests can search for properties using filters such as location, price and amenities. The process is easy to use and efficient. If they find a match, the booking takes place directly through the platform.
- Rating system – in such a business model, trust is crucial, and the Airbnb rating system contributes to increasing the degree of trust. After a stay, guests and hosts leave reviews for each other. These reviews are public, encouraging transparency and honesty in the community. The system includes star ratings and detailed feedback, which helps both guests and potential guests make informed decisions. It also motivates hosts to maintain high standards of hospitality and guests to behave civilly. This feature has been a key factor in Airbnb's continued success and growth.

- **Airbnb's revenue model**

The Airbnb platform is an intermediary between travelers and local hosts. The company does not own the properties, but collects revenue every time someone books a stay or experience. Airbnb's revenue comes from commissions. Basically, both guests and hosts pay when a rental is accepted, like this: guests pay between 14% and 16% of the total price of the reservation, hosts pay about 3% of the price of the reservation, and Airbnb earns from these fees.

- **Tariffs**

Hosts have control over rates, being able to decide what rate they charge for the space they rent. But Airbnb offers two technical tools that help hosts set competitive prices. These two smart options are: *Smart Pricing* – this option automatically adjusts the rates and *Price Suggestions* – this option conveys when the rate can be increased based on demand, season and local events. By using these two options, hosts optimize their earnings. fact that makes the platform attractive to new users.

- **Target Market**

Understanding the characteristics of the market segment is extremely important for the success of any business and obviously for Airbnb as well. Statistical data shows that users come from diverse backgrounds with the following characteristics:

- ✓ Age: Millennials (Generation Y, those born from the mid-90s to early 2000s) make up the majority of Airbnb customers, but there are users of all ages;
- ✓ Revenues: Airbnb offers both budget options as well as luxury experiences.
- ✓ Purpose of Travel: The Platform serves both leisure and business travelers.
- ✓ Geographical location: Users are global, requiring a wide range of accommodation

Airbnb excels at customizing experiences for different guest preferences, with features to facilitate searches. In addition, they suggest activities that resonate with users' interests.

The personalization of the offer is carried out based on the collection and analysis of data related to: the online actions of the users, the search history, the information accessed by the users, the time spent on various sites and on the platform etc.

- **Strategic partnerships and collaborations**

Airbnb has not only redefined how people travel, but also how they connect with local communities and cultures. Through strategic partnerships and new service offerings, Airbnb continues to expand its horizons, ensuring a robust and scalable business model.

Airbnb enters into strategic partnerships with:

- Local governments: Partnerships with policymakers pave the way for Airbnb to seamlessly integrate into local economies.
- Travel companies: Collaboration with travel companies brings Airbnb to a wider audience and creates the opportunity to integrate the Airbnb offer into tourism offer packages
- Event organizers: So that the participants of the respective events can find accommodation options near the venue of the event.

- **Diversification of the offer**

As the offer is diversified and growing Airbnb is trying to expand the business beyond just offering a place to stay. Thus, on the platform tourists find the option to participate in cooking classes, themed trips, local fairs etc. Such initiatives not only diversify revenue streams but also enrich users' travel experience, building a stronger community.

- **Technological infrastructure and safety**

Airbnb's business could not have developed without an advanced technological infrastructure. The system used allows all interactions between hosts and guests to be easy, secure

and personalized. The platform also ensures advanced security of payments and communication between parties.

Trust is essential for such a business. Both hosts and guests may perceive a high risk in using such services. Airbnb, however, uses several strategies to build trust: User profiles with verified information; A system of reviews and ratings; Insurance coverage for hosts and guests.

- **Sustainability and impact on the community**

Airbnb balances profitability with positive societal impact. The model promotes sustainability and supports local economies. Both hosts and guests are encouraged to support green practices and community well-being. For example, in order to increase their degree of attractiveness, hosts are proposed initiatives with a positive impact on the environment such as: the use of trash cans that prevent recycling; installation of energy-efficient household appliances; use of organic guest toiletries; implementing measures to conserve water and electricity etc.

### **Conclusions**

This paper presented the characteristics of a successful business model representative of the digitized economy. This type of business, based on data, intelligent interfaces and algorithms, is becoming the present and the future not only of the tourism industry but also of businesses in many fields of activity. At the same time, both the Airbnb business and other similar types of economic activities have not reached maturity, but are in full growth being subject to challenges that must be solved on the fly. The work highlighted the aspects that make businesses run on the basis of digital platforms viable and which, both now and in the future, represent elements of managerial interest, respectively: the collection and analysis of user data, the payment management method, guaranteeing security of users and payments, possibilities of business diversification, ways of personalization, obtaining income etc.

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# EFFECTS OF CULTURAL VITALITY ON INCREASING THE QUALITY OF MUSEUM SERVICES

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## Abstract

*Cultural vitality is evidence of creating, disseminating, validating and supporting the art of leadership as a dimension of social life in everyday activity. Cultural vitality is based on three dimensions: participation, opportunities and support.*

*The level of cultural participation is significant in cultural vitality, marked by the degree of participation of society, of members of the interest group. Promoting the concept of creative culture, a symbol of culture that expresses local identity, that is attractive to the community, but also to those outside it who are attracted to visit, is open to diversity and represents the art of beauty.*

*Opportunities involve placing beneficiaries at the center of cultural vitality and developing appropriate cultural infrastructure as well as specialized human capital, together with a dynamic entrepreneurial zone to facilitate quality cultural products and services.*

*The support must come from the local authorities, by allocating financial resources in favor of culture, art.*

*Through this scientific approach, it is proposed to promote the increase in the quality of services in the cultural field by identifying and increasing the three dimensions of cultural vitality, which will have as a final result, the achievement of organizational objectives.*

**Keywords:** management, marketing, culture, cultural vitality, museum

**Jel Code:** A14, M12, M31

Cultural vitality is an essential driving force for the development and evolution of a society. It reflects the ability of a community to preserve its cultural identity while adapting to economic, social and technological change.

The process of cultural revitalization involves the preservation of traditions, but also the innovation and integration of new forms of artistic expression. Through tradition, art, music, dance and literature, culture remains alive and relevant, contributing to social cohesion and the development of individual and collective identity.

Another important aspect is accessibility and community participation. Cultural projects that actively involve the community can revitalize museum spaces and stimulate the local economy. Cultural education also plays a crucial role in giving people the tools to appreciate and contribute to cultural diversity.

Thus, cultural vitality is not only about preserving traditions, but also about a culture's ability to integrate new influences, innovate and remain relevant in a changing global landscape. Cultural revitalization projects can include educational initiatives, community programs, art festivals, and community interventions designed to transform niche activities into common activities.

Romania has an impressive variety of museums, each with unique characteristics and special cultural values. Here are some of the most famous and popular museums in Romania:

## Bucharest

1. The National Art Museum of Romania: Located in the Royal Palace, this art museum is the most important in the country and houses an impressive collection of Romanian and international works of art.

2. The National History Museum of Romania: It is located in the former Post Office Palace and presents the cultural and historical evolution of Romania, from prehistoric times to the present day.

3. "Grigore Antipa" National Museum of Natural History: The richest museum in Bucharest, with over 2 million pieces grouped in zoological, paleontological and mineral collections.

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4. "Dimitrie Gusti" Village Museum: An open-air museum that represents rural life in Romania, with over 380 monuments and representative houses for villages throughout the country.

#### **Other cities**

1. "Moldova" National Museum Complex - Iasi: Located in the Palace of Culture in Iasi, this complex includes museums of art, history and science.

2. Brukenthal National Museum in Sibiu: One of the oldest museums in Romania, with art, natural history and pharmacy collections.

3. Ploiesti Clock Museum: A unique museum in Europe, dedicated to the history of clocks and mechanisms.

4. Museum of Ethnography in Braşov: This museum presents the traditions and folk customs of the Braşov region.

5. The ASTRA National Museum Complex in Sibiu is one of the largest open-air museums in Europe. It presents the tangible and intangible heritage of Romania and its national minorities, offering a unique experience for visitors. Outdoor exhibitions: The museum includes over 300 traditional Romanian structures, such as houses, churches, mills and craft workshops, brought from different regions of Romania. It organizes festivals, performances and hands-on workshops that enrich the visitor experience.

6. The Goleşti Viticulture and Pomculture Museum is a remarkable museum located in the village of Goleşti, just 20 km from Piteşti, Argeş county. Established in 1939, the main purpose of the museum is to present and promote Romania's viticultural and fruit-growing traditions. Permanent and temporary exhibitions: The museum presents a series of exhibitions covering various aspects of viticulture and horticulture, including traditional techniques and old equipment used in these fields. The section dedicated to the Goleşcu family: Goleşti Manor where you discover the history and important contribution of the Goleşcu family to Romanian culture and politics. The Open Air Museum contains traditional households: Within the museum, you will find traditional Romanian houses and annexes, windmills and wooden churches, all brought from different regions of the country and carefully reconstructed to recreate the rural life of yesteryear. The museum organizes workshops where visitors can learn traditional techniques of winemaking, fruit growing and other rural crafts, the museum hosts various events and festivals that promote local and national traditions. These are just a few examples, but Romania has many other museums to visit, each with its own charm and contribution to preserving and promoting national culture.

The connection between museums and cultural vitality is deep and complex. Museums are not only places where museum objects and works of art are preserved and exhibited; they are veritable centers of knowledge, education and inspiration.

#### **Here's how museums contribute to cultural vitality:**

##### **Connecting with cultural roots**

Museums help communities understand and appreciate their history and cultural heritage. They preserve traditions and cultural values, providing a vital link with the past. For example, in Romania, museums such as the "Dimitrie Gusti" Village Museum in Bucharest or the Goleşti Viticulture and Pomculture Museum preserve and promote rural traditions.

##### **Education and outreach**

Museums play an essential role in educating the public. They offer educational programs for children and adults that help develop a deeper understanding of culture and history. Thus, museums stimulate curiosity and promote lifelong learning.

Museums offer educational programs and exhibits that increase knowledge and appreciation of culture, history, and science. They can inspire young people to pursue careers in various fields and help create an informed and educated society.

### **Innovation and creativity**

Museums are not just about the past; they are also about the present and the future. Through contemporary exhibitions and collaborations with modern artists, museums contribute to cultural evolution and create a dialogue between different art forms and cultural expressions.

Museums encourage cultural innovation by collaborating with contemporary artists and promoting new forms of artistic expression. This can lead to a diversification of the local cultural landscape and the attraction of new audiences.

### **Identity and social cohesion**

Museums are spaces where people can gather, regardless of age, social status or origin. They stimulate intercultural dialogue and mutual understanding, contributing to social cohesion and building a more tolerant and inclusive society.

Museums help preserve cultural identity and strengthen community ties. By preserving and exhibiting traditions and values, museums facilitate a sense of pride and belonging among community members.

### **Economic development and tourism**

Museums are also economic engines. They attract tourists, who spend money in the local community, supporting businesses and creating jobs. For example, museums such as the ASTRA National Museum Complex in Sibiu or the National Art Museum of Romania in Bucharest are major attractions for domestic and international visitors.

Museums attract tourists, which can bring significant economic benefits to the local community. Visitors spend money on accommodations, restaurants, and other local services, which boosts the economy and creates jobs.

### **Regional revitalization**

Museums can be catalysts for regional revitalization. By restoring historic buildings and creating new cultural spaces, museums contribute to improving the quality of life in communities. For example, the development of the National Museum of Contemporary Art in Bucharest has revitalized the area where it is located.

The ASTRA Museum is an excellent example of how a museum can contribute to the cultural vitality of a region. Located in a picturesque natural landscape, the museum offers not only permanent exhibitions about traditional Romanian life, but also cultural events, festivals and interactive workshops. Through these activities, the museum not only preserves, but also reinterprets traditions, making them relevant to contemporary audiences.

The ASTRA Museum, with its extensive outdoor exhibits and cultural events, has become an important center for education and social cohesion in Sibiu. The festivals and workshops organized here attract visitors from all over the country and abroad, generating income for the local community and promoting traditional Romanian culture.

Through all these functions, museums are true pillars of cultural vitality, contributing to the preservation and development of cultural heritage for future generations. Museums play a significant role in the development of communities.

Cultural vitality is the lifeblood of a community, showing itself through the preservation of traditions and the integration of innovations. It is that ability to adapt and evolve while maintaining its cultural essence. Museums are key in this process, bringing together the past and the present through exhibitions, events and education.

For example, the events organized at the ASTRA Museum in Sibiu, as well as those organized at the Golești Viticulture and Pomiculturii Museum in Argeș, not only celebrate traditions, but also encourage innovation, creating a dialogue between old and new. These events contribute to social cohesion and the development of a strong cultural identity.

Through cultural events, educational programs and community activities, museums support cultural vitality by making culture accessible and relevant to everyone. Without these centers of culture and tradition, many aspects of our identity would risk being forgotten or neglected.

Cultural vitality plays a crucial role in the development of museum activity, as it contributes to increasing the relevance, attractiveness and involvement of the public. Here are some ways that cultural vitality can stimulate museum activity.

#### **Innovation in exhibitions**

Cultural vitality fosters innovation, which means museums can create dynamic and engaging exhibitions that blend traditions with new forms of art and technology. This attracts diverse groups of visitors, from young to seniors, and enhances the visitor experience.

#### **Increasing community involvement**

Museums that reflect and celebrate the cultural vitality of a community tend to attract more involvement from local residents. Community programs and cultural events held in the museum can strengthen the ties between the museum and the community, which can lead to increased visitor numbers and increased financial support.

#### **Partnerships and collaborations**

By supporting cultural vitality, museums can establish partnerships with other cultural institutions, arts organizations and local artists. These collaborations can lead to new projects and exhibitions, diversifying the museum offer and attracting a wider audience.

#### **Education and educational programs**

Museums can develop innovative educational programs that address different audiences, from schoolchildren to adults. By promoting cultural vitality, these programs can include traditional craft workshops, contemporary art classes and interactive events, enriching visitors' knowledge and experiences.

#### **Promotion of cultural tourism**

Museums that reflect the cultural vitality of a region can become important tourist destinations, attracting visitors from home and abroad. This not only helps the economic development of the region, but also increases the visibility and prestige of the museum.

For example, the National Art Museum of Romania integrated cultural vitality by organizing thematic exhibitions that reflect the diversity and complexity of Romanian and European art. Through collaborations with contemporary artists and international institutions, the museum has been able to attract a diverse audience and enhance the visitor experience.

Cultural vitality not only enriches museum activity, but also ensures the relevance and sustainability of the museum in the long term.

Modern museums have made major efforts to become more accessible and relevant to the general public. This means not only preserving artifacts and exhibits, but also creating interactive and educational experiences.

#### **How museums address the general public:**

##### **Interactive exhibits:**

Many museums have adopted digital technology to create interactive exhibits that attract and engage visitors of all ages. For example, the Argeş County Museum Planetarium offers engaging educational sessions about the universe.

##### **Educational programs:**

Museums organize workshops and programs for schools, children and adults, promoting lifelong learning and interaction with art and science.

**Accessibility:**

Many museums have improved accessibility for people with disabilities, ensuring that all visitors can have an enjoyable experience.

**Cultural events:**

Organizing cultural events, festivals and openings attract the general public and promote cultural diversity.

Modern museums are no longer only accessible to art lovers or history buffs, but have something to offer everyone.

***Hypotheses and theories***

In this scientific work we will analyze the impact that cultural vitality has on the development of museum activities.

Hypotheses and theories that explain the effects that cultural vitality has on increasing the quality of museum services:

- community involvement in museum activities can influence the development of museum activities;
- correct visitor feedback can increase the quality of museum services;
- the cultural vitality of the community can bring more efficiency in the activity of museums and increase performance;
- cultural vitality can improve the real perception of museums.

To better understand how the community can actively engage in culture, we asked some clear and direct questions, like this:

**1. How can the contribution and involvement of each individual help to preserve local cultural traditions?**

Each individual can contribute by participating in local cultural events, promoting traditions on social media, and engaging in workshops and educational programs that pass these traditions on to new generations.

By actively participating in local events, individuals can help keep traditions alive. Also, by contributing stories, they can bring a personal and authentic touch to museums and exhibitions.

Individuals can organize and participate in historical reenactment events and local festivals. Also, by helping to collect and document the oral stories of community elders, they can help preserve intangible cultural heritage.

**2. What cultural programs or initiatives are available in our community and how can people participate in them?**

Local festivals, art exhibitions, traditional dance classes and craft workshops are available in our community. People can get involved through active participation, volunteering.

Amateur theater programs, painting and sculpture workshops, and reading clubs are available. Participation can be as simple as signing up for events or becoming an active member of these initiatives.

Cultural programs available include public poetry readings, local documentary film screenings and traditional craft fairs. Participation can be facilitated by online registration or by contacting the organizers directly.

**3. What role do volunteers play in organizing and running local cultural events?**

Volunteers are essential to the success of cultural events, helping to organize, promote and manage logistics. Through their work, volunteers bring extra energy and enthusiasm, making events more accessible and enjoyable for all participants.

Volunteers are often involved in everything from organizing the logistics and marketing of the event, to guiding visitors and ensuring a pleasant atmosphere. Through their work, they bring additional human resources essential for the success of the events.

Volunteers play a crucial role in the promotion and coordination of events, often being involved in distributing promotional materials, managing logistics and ensuring that events run smoothly.

#### **4. How can schools and educational institutions collaborate with museums to promote culture among young people?**

Schools and museums can collaborate by organizing educational trips, cultural exchange programs and interactive workshops. These activities give young people the opportunity to learn about cultural heritage in a hands-on and engaging way.

By collaborating on joint projects such as school exhibitions, art competitions and cultural exchange programmes, schools can integrate cultural learning into the curriculum, giving young people a practical and deep understanding of cultural heritage.

#### **5. What are the ways in which the community can financially support local cultural activities?**

The community can financially support cultural activities through donations, sponsorships and participation in fundraising events. Also, buying event tickets and museum memberships are direct ways to support local culture.

Organizing charity events, such as art auctions, concerts or fundraising balls, can bring in essential financial resources. Also, support through individual and corporate donations is vital for the maintenance and development of cultural activities.

#### **6. What impact does active community participation have on the revitalization of cultural spaces?**

Active community participation brings new energy and essential resources to the revitalization of cultural spaces. This can include the restoration of historic buildings, the organization of cultural events and involvement in the planning decisions of the region.

Community involvement can transform unused spaces into vibrant cultural hubs. For example, through joint efforts of renovation and organizing events, abandoned spaces can become active and attractive cultural hubs.

#### **7. How can technology help create a cultural dialogue within the community?**

Technology can facilitate cultural dialogue through online platforms for sharing experiences and ideas, webinars, virtual tours of museums and social networks that promote cultural events and initiatives.

Online forums, webinars and virtual tours can be facilitated through technology, which allow the exchange of ideas and cultural experiences. Social platforms and interactive websites can attract a wide and diverse audience, stimulating dialogue and collaboration.

#### **8. How can the views and ideas of community members be integrated into the planning of cultural events?**

The views and ideas of community members can be collected through surveys, focus groups and public consultations. Active involvement in event organizing committees ensures that community voices are heard and integrated into planning.

Implementing surveys and focus groups can gather feedback directly from the community. In addition, the involvement of community members in the organizing committees ensures that the events truly reflect the interests and needs of the public.

#### **9. What strategies can be implemented to attract more community members to cultural events?**

Strategies may include promoting through social media, creating programs accessible to all ages, offering discounted or free tickets for certain social groups, and holding events in accessible and friendly venues.

Promoting events through various channels such as social media, local posters and collaborations with local influencers can increase visibility. Providing accessible and diverse programs that appeal to all ages and interests is also essential.

#### **10. How can cultural initiatives promote diversity and inclusion within the community?**

Cultural initiatives can promote diversity and inclusion by organizing events that reflect the different cultures and traditions present in the community, by working with different ethnic and social groups, and by educating the public about the importance of cultural diversity.

Organizing events that celebrate diverse cultures, inviting artists and speakers from diverse backgrounds, and creating platforms for intercultural dialogue can promote diversity and inclusion.

These questions can open up valuable discussions and help identify ways in which the community can be more engaged and connected to cultural life. These responses can serve as starting points for more in-depth discussions and for identifying concrete ways in which the community can be actively involved in promoting and sustaining local culture. They provide a more detailed insight into how the community can actively contribute to the cultural vitality and development of museums.

### **Conclusions**

The factors that make the difference are: the image presented, the lived experiences, the predominance of positive emotions in relation to the museum visited. The perception of the museum concept is reflexively associated with history, art, paradigms that may seem interesting only to connoisseurs, but the modern museum meets the needs of all categories of visitors. The addressability of the modern museum is on a much wider scale and satisfies many more requirements.

Education plays an important role in the perception visitors may have. Education is done at home and in schools, teachers, fortunately, have a great contribution in bringing children to museums, familiarizing them with traditional crafts and games, with creative workshops. If they are brought to museums since childhood, from kindergarten, children will become familiar with them and perceive them as creative, developmental, learning areas. It should be noted that recently, museums are full of children who come with great pleasure, who show a special interest in modern museum activities. Museums are no longer static, the modern museum is alive, it is dynamic, it is interactive. The museum is no longer "don't touch", the modern museum is "touch, live, feel".

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# INTRINSIC MOTIVATION AND ITS INFLUENCE ON EDUCATIONAL PERFORMANCE

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## Abstract

*The aim of this article is to highlight the role, characteristics and methods of cultivating intrinsic motivation within the educational institution. In contemporary result-oriented and performance-oriented society, it is important to study the factors that influence and determine the achievement of expected results.*

*In line with the literature we will approach intrinsic motivation as that inner determination of the individual that exists and persists, beyond the desire to obtain financial and material rewards, beyond the fear of punishment. This factor leads to personal and professional development, continuous learning and those behaviors that have a positive impact on the whole educational process.*

*We will show that there is a relationship between the intrinsic motivation of the teaching staff and the results obtained by the school institution and we will present methods for cultivating motivation*

**Keywords:** motivation, intrinsic motivation, educational performance, methods of motivation cultivation

Motivation is an important element of management and is a much studied topic, because the results and performance achieved are closely related to the motivation factor. People want to feel fulfilled, respected and valued at work. The attitude of the manager and the managerial philosophy are the factors that actually determine successful employee motivation.

## The role of intrinsic motivation in the education system

In an educational institution, motivation can be explained by directing employees to achieve institutional goals (Hasibuan, 1991). Motivation is a complex of internal factors, psychological mechanisms that support employees' activity beyond the achievement of personal goals (Hoy, Miskel, 1978). Motivation is the degree of orientation of a persistent effort towards the achievement of one or more goals (Burduș, Popa, 2018).

Depending on the employee's need to accomplish or not to accomplish a certain task, we distinguish intrinsic and extrinsic motivation (Burduș, Căprărescu, 1999). While the extrinsically motivated employee accomplishes the task with the hope of obtaining financial incentives, intrinsically motivated employees by accomplishing the task find a soul fulfillment, they like what they do and through this they become self-motivated.

Motivation can be a dynamizing, energizing and directed internal state at the same time. It represents the totality of need states that demand to be satisfied and that push, instigate and drive the individual to satisfy them (Omer, 2009).

Intrinsic motivation is essential for personal development and job performance.

Intrinsic motivation, as many specialists observed, manifests itself through actions of exploration, challenge and play. Exist the believes that for teachers intrinsic motivation is desirable and has better results than extrinsic motivation.

In general, motivation includes the totality of employees' beliefs, perceptions, values and personal interests. Turner (1995) defines motivation as cognitive commitment.

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Since intrinsic motivation is actually a positive attitude of a person towards a situation, a task and is not supported by a material reward but only by the person's psychological factors, this type of motivation needs to be stimulated continuously, giving the possibility that it can be maintained over time.

There are effective ways to stimulate and cultivate intrinsic motivation, such as:

1. Identifying the elements of one's own value system, defining personal goals and values, through which daily activities can be linked to what really matters to the person. At the same time, the proposed goals must be achievable and be in line with their interests, passions.

2. Create a calm, comfortable, stimulating work environment in which employees feel safe, are supported in collaboration and interact within the group. Ambient, inspiring space that promotes creativity, develops a desire to learn.

3. Providing positive and constructive feedback materializes through recognition and appreciation of hard work. It is not only the final results that are important but also the progress towards the final outcome. In this context, it would be very important to take a minute to reflect on achievements from time to time.

4. Promote a positive mindset by encouraging a focus on the process not just the end and a healthy approach to the possibilities of failure. Every failure can open a new path to success.

5. Provide autonomy in solving tasks and the ability to adapt to the demands of the work environment.

6. Supporting staff in finding interesting subjects of study, which require and challenge critical thinking and stimulate critical thinking.

### **Characteristics of intrinsic motivation**

Cook (2008) argues that teachers' job satisfaction is defined as the happiness they experience when they are able to work.

Intrinsic motivation is the desire and enjoyment to learn, the drive to accomplish activities for pleasure with maximum satisfaction. Those teachers who have a strong motivation for results will work with tremendous inner energy with the aim to work as effectively as possible. So, the attitude to do things at a qualitatively high level stems from a strong intrinsic motivation.

The desire to explore, to constantly discover innovative methods, natural curiosity in a word, stimulates teachers' intellect and creativity, leading to increased intrinsic motivation.

It should be noted that all the activities carried out due to the inner desire to work, provide a deep satisfaction, a strong sense of fulfillment, especially when it is followed by learning a new skill or when it leads to overcoming one's own limits.

Teachers often associate this internal experience of motivation with control over the activities carried out. The sense of control comes from being able to carry out the activities freely, as they wish, at their own pace or that of the pupils, in the order they choose. Last but not least, motivated people are more insistent, more focused on their work, thus achieving better results.

### **Motivation and work performance**

Motivation of employees plays a crucial role in the organization that sets strategic goals with the aim of achieving high performance (Rusu and Avasilicăi, 2013). In this context, managers need to find those factors that motivate employees, make them perform their daily tasks and perform.

Motivation at work involves a set of processes that determine a person's persistence to allocate personal resources in a series of possible actions with an impact on organizational achievements and employees' intention to direct their efforts towards achieving organizational goals and satisfying individual needs (Balog, 2018).

Employee motivation in the workplace can be assessed and measured by observing attitudes and behavior but also by other methods such as:

- Application of standardized questionnaires at certain time periods, to be completed by colleagues as well as students and parents,
- Interviewing school managers about teachers' performance, results,
- Observing the behavior of teachers during class time by having either the manager or other colleagues assist or observe during extracurricular activities,
- Creating the right environment for self-evaluation, carrying out a diagnostic analysis by listing points
- Carrying out a broad contextual analysis, identifying the varied, modern educational sources available to teachers that have an effect on pupils (classVR)
- We can also include in this category the use of different elements of organizational culture, And last but not least the personal characteristics and attributes of teachers in a school.

Performance is the degree of participation of a member of an organization in achieving its goals (Burduş, Popa, 2018).

Motivation and performance are distinct things, between which the connection is not always direct. There are motivated people who work passionately, but do not necessarily achieve work performance.

Performance can also be understood as the expected level of the organization by setting strategic goals. If a teacher achieves these, it means that he or she is performing otherwise, he or she is not.

Performance depends on several factors, namely: skills, abilities, ability to understand the task and chance (Burduş, Popa, 2018).

Zlate (2007) identified several factors that influence performance: a) factors related to the organization (working conditions, type and nature of work), b) factors related to the group (cohesion, morale within the group, working relationships with bosses, subordinates, colleagues), c) factors related to the teacher (gender, religion, nationality, work experience, level of schooling, personality type, etc.)

No matter how well motivated a person is, a teacher may underperform or lack performance altogether. And it can happen that an unmotivated or less motivated teacher can achieve extraordinary performance.

Just as intrinsic motivation can be measured, so can performance in the educational system, provided that the measurement criteria used are well established. The most commonly used criteria for measuring performance are: degree of achievement of performance objectives, performance standards and competencies (Bădescu et al., 2008).

Performance is influenced by the 3Cs, namely: task focus (concentration), effective communication and group collaboration.

Performance can be calculated on the basis of the formula:  $P = M * A * R$ , where M - represents the motivation of the teacher, A - represents the teacher's abilities and R - represents the role occupied by the teacher in the school institution.

### **Research method**

This paper reviews some researches on motivation in general and intrinsic motivation in particular as well as the relationship between intrinsic motivation and teachers' performance in the pre-university system worldwide.

Shikalepo (2020) mentions in his research that quality teaching has become a central element in the educational policy of several countries, but he makes the observation that it would

be better to focus on improving teacher motivation and achieving high quality results. Also, the motivation that teachers have directly influences students' performance which is closely related to the quality of education received by students (Alam and Farid, 2011). He argues that the motivational theories he analyzed can be contextualized in the educational system. These theories provide the necessary framework for creating tools to motivate teachers and increase their desire to perform. A thorough understanding of motivational theories and their proper application clearly determines the motivation of employees .

In the paper "Influence of motivation on teachers job job performance" by Joti Kumari and Jai Kumar (2023) the analysis of motivation-job performance was done in private schools based on quantitative research. The variables investigated are intrinsic motivation, financial motivation and factors influencing teacher motivation.

They hypothesized that there is a link between intrinsic motivation and teachers' work performance and that factors influencing teachers' motivation have an impact on teachers' performance. The questionnaire used a 7-point Likert scale from 1-strongly disagree to 7-strongly agree.

The hypotheses were tested by analyzing 405 responses (representative sample) from private schools of Pakistan. The research confirmed the null hypotheses and showed that intrinsic motivation and factors influencing teachers' motivation play a vital role in the performance achieved by teachers. Employees can be motivated through participation and achievement when individual goals overlap with institutional goals.

Atiya Inayatullah and Palwasha Jehangir (2016) in their paper "The Role of Motivation", argue that when changes occur in the external environment of an institution, it is necessary for the institution to accommodate, to bring changes in internal conditions because these changes can lead to the emergence of competitive advantages. For this to happen, competent employees are needed, Latt (2008) states. Motivation is a key element in the organization because it leads to increased employee productivity and goals can be achieved in an efficient way. In fact, in any organization, schools being no exception, employee behavior can be changed through motivation. The level of individual motivation changes from employee to employee (Robbins et comp., 2005).

The central theme of the research focused on assessing teachers' performance through the lens of their motivation. The aim was to identify the relationships between motivation and teacher performance in both state and private schools; to identify the motivational factors that affect teacher performance in the two types of schools, etc.

Three factors influence individual performance (Griffin, 2005): motivation, work environment and ability to work. From the teachers' perspective there is a difference between work output and work motivation (Dessler, 2005). Motivation is an input in the work process and performance is an output of motivation. One of the hypotheses of the research was that there is a significant relationship between teachers' motivation and their performance.

The research focused on measuring the two variables, teacher motivation and teacher performance, based on a 20-question questionnaire. The measuring instrument was a 5-point Likert scale, 1 - representing total disagreement and 5 - representing total agreement. High scores indicated high levels of teacher motivation.

The hypothesis was tested by calculating the correlation coefficient and with regression analysis. In both cases the positive relationship between the two variables was observed. As the motivation increases the work performance of teachers will also increase. Research also revealed that intrinsic motivation is higher in female teachers than male teachers. The motivation level of teachers in private schools was 3 times higher than that of teachers in state schools. Intrinsic motivation is not influenced by teachers' age and qualification level.

Research has shown that the high motivation of teachers is due to the calm and friendly working environment, low stress levels and recognition of teachers' efforts.

Motivation is related to metacognition (Emily R.Lai, 2021) and in this context motivation can be viewed as the sum of beliefs and attitudes that affect the use and development of cognitive and metacognitive skills. Therefore, the author argues that, intrinsic motivation is highly dependent on the achievement and IQ level of the individual; Motivation is closely related to critical thinking, analyzing arguments, ability to think deductive and inductive reasoning; to make judgments and evaluate; to make decisions or solve problems. Linked to metacognition, intrinsic motivation monitors and controls individuals' thoughts.

### **Conclusions**

It has been shown in the literature that motivation is a factor influencing performance and that intrinsic motivation has a significant and positive influence on job performance. Achieved performance depends to a large extent on staff motivation in general especially intrinsic motivation, which determines metacognition.

### **Proposals**

As it has been shown, motivation can be stimulated and it is proposed to use methods to stimulate intrinsic motivation in the workplace, as this is one of those factors through which we can modify and modify the performance.

In order to increase performance, metacognition should be activated by introducing incentives such as: participation in refresher courses, workshops, training, etc.; stimulating critical thinking (thinking outside the box) and creativity, innovative methods in teaching and assessment, and giving teachers the freedom to choose the content of the subjects taught for the topics set by the curriculum.

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# WAYS IN WHICH HISTORY AND SOCIAL CONTEXTS CAN CHANGE THE COURSE OF TRANSLATION

Georgiana Mîndreci<sup>1</sup>

## Abstract

*Each novel, each masterpiece in literature will have a diverse and unique reception on the readership depending on who is reading it, when and where as well. Aspects related to the social, political, economic, scientific, and technological fields are equally important in this respect since they influence an author's literary creations, at least to a certain extent. A good example in point would be to analyze a highly popular novel, at least in the pop culture, and to see if its translation in a very different culture, with a highly opposing political context, suffers any alterations in terms of readership reception and impact. For this purpose, J.D. Salinger's novel, "The Catcher in the Rye" seems a perfect choice given the time of its publication in the USA, in the 1950s, and the time of its first translation into Romanian, in the 1960s – that of the communist regime. This article is trying to point out that such differences can have a significant impact on a translation and its evolution.*

**Keywords:** *Literary reception; influence; translation; impact; social and cultural contexts.*

**JEL Classification:** *KO*

## Introduction

The reason for choosing one particular novel for pointing out that certain differences have a significant impact on a translation and its evolution refers to selection criteria such as time and context of publication, literary success, popularity, multiple translations throughout time in at least one target language since such criteria can help assess the various elements that significantly impact the evolution of the book. In the light of the above, the novel chosen for discussion here is J.D. Salinger's "The Catcher in the Rye," since it meets all the above-mentioned criteria and also for reasons related to Salinger's impact on contemporary writers, on national and international level, and to the reception of his novel in the USA and also in Romania in recent years, namely after 2000. To these we can also add aspects from the social, political, economic, scientific, and technological fields, in which Salinger created his literary works, trying to emphasize the most important aspects from the American history of the 1950s which reflected on Salinger's literary creations or influenced them to a certain extent, using the modern and recent studies of contemporary writers.

## Social and Cultural Contexts

The period in which the first Romanian translation of Salinger's "The Catcher in the Rye" appeared in our country is that of the 1960s, more precisely in 1964, a translation done by Catinca Ralea and Lucian Bratu and entitled "De Veghe în Lanul de Secară." The period was that of Communism, the much feared threat of the USA. This means that Romania which met Holden Caulfield for the first time had the exact political and social context that the Americans, Holden's compatriots, were fighting against. This brief outlook on Romania's communist period will greatly help explain the decisions and choices made by the Romanian translators; they will also help profoundly analyze the text in relation to the socio-cultural context and better understand why the first Romanian translation was not a very successful one. In 2009, more specifically on September 1, the entire world commemorated seven decades from the burst of the Second World War. In this

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context it is also very important to understand Romania's position in the period before, during and after the Second World War in order to better understand the changes that took place in our country and that shaped its history for almost five decades before the revolution against Communism, in 1989, which represented a spiritual, cultural, economic, political and historical rebirth for our nation.

This brief outlook will mostly summarize and emphasize the main political events that took place in Romania shortly before, during and after the Second World War. At the time when Salinger was starting his literary career and then, later on, when he was fighting in the war, in Romania there was a period of communist regime establishment and of suppression of the national cultural elites. The communist regime was installed in Romania under direct pressure of the Soviet occupation forces, against the will of the Romanian people, in the geopolitical conjunction appeared after the end of World War II. This process has known, in the period between 1945-1947, a troubled transition period, which ended by the act of forced abdication of King Michael, on December 30, 1947, and by adopting the new Constitution in April 1948, which annulled the political pluralism, consecrated the complete seizure of power by the communist forces and the instauration of the system of "popular democracy."

After this harsh period there was a period of repression and institutionalization of ideological control, which was known as censorship. As it is known, in the context of the Soviet military occupation of the countries in Central and South-eastern Europe, after World War II, communist regimes were transplanted in these countries. These regimes, when they fully took over the power, they destroyed the intellectual elite, using violence in the repression and physical extermination, in prisons and camps, of a large number of members of the old political class. At the same time, they have also disfigured the national culture of the respective countries and they have imposed, through a dogmatic ideological directive, a "new culture," under the slogan of "proletarian internationalism." In Romania, the year 1948 represented a turning point, because there was a change towards "a systematic policy of communization of society," under the apparent legitimacy of the new legislation and of the essentially communist laws. Since then, the communist regime started the action of nationalization of economic enterprises and the collectivization of agriculture, and on the political and cultural level there was a wild repression towards the representatives of old political and intellectual classes, in parallel with a program of "Sovietization of the culture."

The new education law from 1948 radically changed the structure, the content and the meaning of education. Marxism-Leninism became the official ideology of the state and, therefore, all school subjects had to be adapted to the new "revolutionary conception" of the world. Also, security was established in 1948 under the direct supervision of the Soviet agents, the main tool of repression of the regime. It was directed towards the control of the population and potential adversaries. This climate of terror continued until the end of the sixth decade, when the Soviet troops stationed in Romania were withdrawn (1958).

In the same year, 1948, the ideological censorship was institutionalized, affecting all areas of creative or cultural activity. Lists of publications were established; and the same happened to works or authors who had seen the light of print, and lists of publications and works that had to be prohibited, with authors to be removed from the public domain. The public libraries were purged of banned works, but they were invaded by translations from Russian literature, the Russian films flooded the screens, the publishers and newspapers were put under a strict ideological control. The works of Marx, Engels, Lenin and Stalin were translated and disseminated to saturation. This situation can be slightly linked to the attempts to ban Salinger's novel after its publication in 1951 or to censor certain parts, actually words (such as the case of the "F" word) from the book. This

harsh political context from Romania affected all strata of life; especially the cultural one and this had a great impact on the first Romanian translation of "The Catcher in the Rye."

The religious life was not an exception from all the political changes that were taking place in the above-mentioned period. Under the pressure from Moscow, in 1948 the Greek Catholic Church was disbanded and its leaders were imprisoned. The atheistic-scientific propaganda had the task of "emancipating" people of the religious faith. Consequently, in the early '50s, the Communist regime succeeded with the use of terror to suppress the opposition (except the armed resistance of some groups withdrawn in the mountains), important intellectuals were imprisoned or marginalized, education, publishers, publications, radio (and later television) were rigorously controlled and the whole culture was ideologically subordinated to the communist directives.

In broad terms, from a cultural point of view, the article written by Sarah Graham and Martin Halliwell distinguishes three relatively distinct periods of the communist regime: the Stalinist dogmatism of the '50s, the era of relative liberalization between 1964 - 1971, and the age of re-Stalinization until 1989.

The years between 1948-1964 represented the period during which, after the "Phanariot era," the most terrible national tragedy took place, it is the period of a "holocaust" of the national culture, in which the previous cultural elite was physically exterminated or marginalized, the period during which Romania lived under the aggression of a model of cultural occupation, aiming at the destruction of the historical memory and the changing of the institutions, of education and of culture as a whole into Russian ones. The period was also called one of "proletarian culture," taking into consideration Lenin's thesis, according to which, after the establishment of communism, the new "proletarian culture" should remove the "bourgeois culture," a reactionary one, in order to ensure the spiritual homogeneity of the new society. Under this motto, the great Romanian writers were removed from the curricula, the most significant Romanian thinkers were qualified as "reactionary"; some scientific school subjects such as cybernetics, sociology and geopolitics were considered "bourgeois science," as they developed out of Marxism. But there were also translations from the great classics of Russian literature (Gogol, Turgenev, Tolstoy, Chekhov, and later Dostoevsky). The modern Romanian writers were only published fragmentarily, after a severe screening and with removal of some chapters, paragraphs or verse.

Consequently, by everything that happened during "the obsessive decade," the thread of the historical continuity on the cultural level was interrupted through a violent political action. The culture was that it was important to build solidly by continuity. Romania has experienced an era of effective "demolition" of the national culture, under the motto of the proletarian internationalism. The 1950s have confirmed the fact that, qualitatively different, the economic capital has become a handicap, and the cultural one, a suspect form. It was the time when the owners of the new political capital, "the counter-elites," focused their position on top of the Communist hierarchy. Although considered a "valuable good" in the early communist period, the cultural capital was secondary compared to the political one, assailed by imposing the counter-selection phenomenon, an assault of the symbolic capital.

Yet, after this ruthless period, there was a period of political liberalization and cultural openness. It was the period of relative liberalization, which had beneficial effects on the cultural environment, between the years 1964-1974. It was the period in which the important values of the national culture were rediscovered and used, in which the intellectual contacts with the Western world were resumed; art and cultural activities claimed and got a relative autonomy over the official policy directives, directives that knew, in their turn, a relaxation phase, and the ideological censorship became more lax.



The fine arts, the theatre, the cinema, literature and cultural media were experiencing a renewal of substance, a stylistic diversification and performance achievements.

In fine arts and theatre movement, music and movies there appeared valuable works, the new forms of the Western literature were assimilated, literary criticism acquired a solid theoretical foundation, radically renewing its language, approaches, style, the scale of values was restored by aesthetic criteria, the errors and abnormal approaches from the “proletarian culture” years were eliminated. In general, there was a diversity of the cultural field, there appeared new groups that promoted certain styles and magazines that individualized themselves by promoting aesthetic directions and programs, some intellectuals, released from prisons, began to publish in journals, some being gradually integrated in education or research. In the main centres of the county there appeared important cultural magazines, in which a new generation of intellectuals was expressing itself, detached from the Marxist dogmatism, with references to the contemporary theoretical models.

At the same time, there was openness to the Western culture, yet limited and selective, but the academic environment began to have access to specialized journals and books from the West, intellectuals returning thus to the scientific and information circuit. There were massive translations from contemporary writers, important authors from philosophical thinking were translated (Kant, Hegel, Plato, Aristotle, Leibnitz, Croce, Sartre, Camus). Humanist education curricula were rebuilt, there appeared new textbooks, concerning the content and its method of approach for subjects such as history, philosophy, history of Romanian literature; the social subjects gradually released themselves from the dogmatic Marxism, etc. There was also a more intense interest for the assertion of the Romanian culture in the world.

Together with the forced industrialization and urbanization, the communist regimes have triggered a complex process of schooling and education, which, although partially affected by ideological programs, produced, by the nature of things, a substantial increase in the level of instruction and cultural education of the citizens.

This was, broadly speaking the socio-cultural and political context in Romania at the time when “De Veghe în Lanul de Secară” was translated for the first time, in 1964. This analysis can thus help us better understand the censorship present in the choices made by the two Romanian translators. One of the important advantages of this first translation is that it appeared in the so-called period of political liberalization and cultural openness, in 1964 and this allowed our country to come into contact with a highly controversial book, banned especially because of its “inappropriate” language.

Catinca Ralea and Lucian Bratu were the first ones who translated Salinger’s novel into Romanian. She was a radio and television journalist and translator. Catinca Ralea was born in 1929 (the daughter of the philosopher and esthetician Mihail Ralea), she was translator of English, American and French literature; she made TV and transmissions, starting with 1953 she worked in the English department of the editorial broadcasting office for overseas transmissions of the Romanian National Radio Station (she was an announcer, an editor, then head of the department). Her literary translations included the series “Cvartetul din Alexandria: Justine,” written by Lawrence Durrell re-published by Polirom in 2002 and “Cvartetul din Alexandria: Balthazar,” by Lawrence Durrell and **re-published by Polirom in 2003**, besides the first Romanian translation, in 1964, of J. D. Salinger’s “The Catcher in the Rye” (“De Veghe în Lanul de Secară,” re-published by Polirom in 2001) in collaboration with Lucian Bratu.

**Tudor Petruț** mentioned in an article called “Din Aduceri Aminte (2)” from 2008 that Catinca Ralea coordinated the English department from the Romanian National Radio Station for many years and she has made exceptional interviews with writers such as Saul Bellow, William

Saroyan, Alvin Toffler, or Iris Murdoch, with musicians such as Yehudi Menuhin and Arthur Rubinstein, the sculptor Henry Moore, with Margaret Thatcher and politicians such as Edward Kennedy, with the famous Barbara Walters and Doctor Christiaan Barnard. Radio was her great love to which she gave creative energy with all her beneficial vitality and passion. **Tudor Petruț mentions that** Ilie Purcaru, the writer, confessed she had “a strong culture, both Romanian and Anglo-Saxon,” and that “in a time when Ceaușescu drastically reduced foreign exchange costs, we see good movies on TV, obtained for free, thanks to Tudor Vornicu and his relations with his Western counterparts, but also thanks to Catinca Ralea and her relations with the free world.”

Catinca Ralea was a well-known TV presenter who had access to the Western world and this had undoubtedly contributed to her better understanding of the novel and of what it represented both for the American and Romanian cultures, each from its specific point of view. Regardless how good or bad the translation may be ranked or how modern or old-fashioned the language of the novel may look like to different generations of readers, the work of the first two Romanian translators is of great value since it united the Romanian and American cultures, shedding light on the latter in the eyes of Romanian readers and awakening their interest in wanting to find out more about Holden Caulfield and his teenage dilemmas. From this point of view the translation can be considered a bridge between cultures and a good starting point for further analysis of different cultural and historical aspects and events that highly influence the writing, translating and decoding process of a literary work. These are some of the main reasons why I have focused on the socio-cultural and historical contexts related to the birth, and respectively to the translation of Salinger's novel.

### **Conclusion**

In this article I have tried to focus on presenting the most important data, facts and critics' points of view on the social and cultural contexts of, firstly, Salinger's creation and publication of his novel (America in the 1950s) and, secondly, on presenting the outline of the Romanian cultural and social context at the time of the publication of the first Romanian translation (Romania in the 1960s). The presentation of these contexts was advantageous for deeply understanding the influences and the period in which Salinger lived and created his fiction. This approach involved an interdisciplinary perspective, focusing on historical, political, economic, social and cultural aspects of the USA in the 1950s. Salinger started writing the novel in the 1940s, but the main reason for choosing to focus on the 1950s was it representing the period in which Salinger published his novel and the fact that during this period it had rapidly gained worldwide reputation. I have also tried to emphasize that without the very specific events of the post-war America the popularity of Salinger's novel would not have been possible. The focus of this article was on the huge impact that the Second World War had on all levels and on all nations, but mainly on the USA and Romania and on how it affected life, developments and social evolutions in these two very different countries.

Another important aspect discussed in this paper was the social, political and cultural context of Romania in the 1960s. The reason for choosing this period is that the first Romanian translation of Salinger's novel appeared in 1964. Thus, the period discussed was that of the Communist regime (the much feared threat of the USA). The main aim of this outlook on Romania's political regime was to help explain the decisions and choices made by the two Romanian translators, also for further deep understanding and analysis of the text in relation to the socio-cultural context and finally to offer some pertinent reasons for the partially not complete success of the first Romanian translation, especially concerning the colloquial language used by Holden Caulfield. All the events

presented in this paper are important for understanding Romania's position in the pre- and post-war period, as well as for understanding the changes that took place in our country and shaped its history for almost five decades before the anti-communism revolution, which represented a spiritual, cultural, economic, political and historic rebirth of our country.

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# THE IMPACT OF THE ECONOMIC BOOM IN POST-WAR AMERICA AS REFLECTED IN LITERATURE

Georgiana Mîndreci<sup>1</sup>

## Abstract

*Apparently, there would be little connection between the economic, social, political or cultural contexts of any given country and literature, but at a closer look it can be argued that quite the opposite is to be considered. To highlight this idea it would be interesting to analyse a successful literary novel within the context and time of its creation and further observe the diverse external influences as reflected in it.*

*The novel chosen for discussion is that of J. D. Salinger, "The Catcher in the Rye," and the period is that of the 1950s since it is the time of its publication. That particular period was one of great changes and developments in the USA, at all levels: social, political, economic, scientific, and technological. The appearance and development of television had great impacts on people and their leisure habits and family life; it was the beginning of the entertainment industry which was to have huge effects on the entire world in the second half of the 20<sup>th</sup> century. It was a decade of transition, of new beginnings, of prosperity, developments and changes (both positive and negative) which affected not only the entire American nation but also had effects sooner or later in the entire world.*

*Without knowing and understanding this period from the American history we cannot claim to understand the literary masterpieces written during this decade, J. D. Salinger's novel included, and that is the focus of this article.*

**Keywords:** Social context; political and historical contexts; economic boom; influences on literature.

**JEL Classification:** KO.

## Introduction

J. D. Salinger's literary masterpiece cannot be profoundly understood without taking into consideration the social and cultural context and the influences of the period in which Salinger lived and created his fiction. This involves an interdisciplinary approach of the topic, dealing mainly with historical, political, economic, social and cultural aspects of the 1950s. Although Salinger started working on his novel much earlier, in the 1940, the 1950s is the period in which the novel was published and rapidly gained national and international reputation. But without the specific events that took place in post-war America, which will be main focus of this article, the huge popularity of Salinger's novel may not even have been possible. In order to emphasize the main events I shall make reference to some very recent studies, mainly belonging to Sarah Graham and Martin Halliwell.

The period right before, during and after the Second World War had a huge impact, at all levels, on all the nations involved, but the focus in this article will be on the USA and Romania, and on how the war affected life and its evolution in these two different countries. This part represents the core of understanding how all the new changes and developments, both in positive and negative directions, in the post-war era were actually shaped and how they influenced life, in all its spheres, with an emphasis on literature in this unique context in the above-mentioned nations.

## External Influences and the Literary Creation

Martin Halliwell in "American Culture in the 1950s," published in 2007, starts his *Introduction* section by a discussion of a comeback concerning censorship, just as the one in the

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fifties, giving examples of social and political issues going on in 2004 (such as Janet Jackson's concert incident, the terrorist attacks from 9/11, George Bush's last year of his first term, etc.) (1). Before embarking on discussing and presenting the most important events from the decade of the 1950s, I believe it is important to briefly remind what the atmosphere was like in the mid-1940s, when Salinger had actually started working on his novel. The respective period "had seen an almost complete reversal of the alliances of World War II: the Germans and Japanese were no longer the sworn enemy, even though West Coast Japanese Americans have been interned and relocated *en masse* in the late 1940s, causing widespread resentment" (Halliwell 28). The real dangers or threats were now Red China and the Soviet Union.

But in order to better understand the post-war period we have to look even further back in the history of the USA, to the period of the Great Depression. Sarah Graham, in her book "J. D. Salinger's *The Catcher in the Rye*," published in 2007, in a chapter entitled "Post-war America: society and culture," mentions that the post-war American atmosphere cannot be really understood without going back to the Wall Street Crash in 1929, when the US stock market suffered an immense collapse which lasted until the beginning of World War II in 1939 and which was known as the Great Depression, "an economic crisis that threw millions of people into poverty" (Graham 9). The USA had hoped to avoid getting involved in the war. "Anxious about the rise of communism, keen to limit immigration, and resistant to a European influence on American identity, the USA was happy to stay isolated from the rest of the world" (Graham 9). But Japanese attack on Pearl Harbor on 17 December 1941 killed more than 2,400 American service people and civilians and this fact made the USA decide by 11 December to go to war with Japan, Germany and Italy. America's participation in the war pulled her out of the Depression by creating many jobs, especially new ones. S. Graham mentions that "[s]ix million women (of a female population at that time of 66 million) entered the American workforce during the war, and although women were encouraged to return home when the war was over, many enjoyed the opportunity to have a role outside the family and make money in their own" (9). Of course, this increasing number of women that decided to stay employed after the end of the war developed the economic boom of post-war America.

There were devastating effects of the discovery and use of the atomic bomb, "not only for Japan, which suffered the loss of thousands of lives when the cities of Hiroshima and Nagasaki were bombed by the USA in August 1945 (forcing Japan's surrender)" (Graham 10), but for the entire world which was now entering "the perilous atomic age." S. Graham provides statistic data which suggest that "the USA lost around 400,000 lives in the war, most of them in the battle. (...) Around 35 million people died in the Second World War, about half of them civilians" (10).

The two major dangers that America was facing after the end of the war were: "the possible spread of Communism from the USSR and the fear that the Soviets would develop and use atomic weapons" (Graham 10). These dangers influenced America in all its major fields of life for many years. Capitalism and Soviet Communism are deeply opposing concepts. For Americans capitalism means that "individuals or companies own the means of production and employ a workforce" (Graham 10). Soviet Communism is at the opposite pole, it is "a state-run, rather than privately owned economic system in which, ideally, the workforce owns the means of production" (Graham 10). These are the reasons which led to the 'Cold War' between America and the USSR. "The boom of America's economy was a very important aspect and an influential one in everybody's life" (Graham 10). Martin Halliwell believes that the "Cold War ideology is central to understanding 1950s culture but it was also a period in which the economic prosperity that began during World War II started to have tangible effects on middle class life" (2).

The American economic boom had very important and obvious symbols, and S. Graham mentions, for example, that cars represented the symbol of luxury, the appearance of fast-food restaurants was the side effect of “the relocation from city dwelling to the suburbs,” and the appearance of “drive-in movie theatres and chains of motels” stood as a symbol for a “population that was mobile and affluent in a way it had never been before” (12). Martin Halliwell believes that “(...) on closer inspection the decade reveals a number of political, social and cultural currents that cannot easily be expressed as ‘cold war culture’” (3). To all these symbols mentioned by S. Graham, Martin Halliwell adds the ones from the popular culture, such as the birth of Elvis Presley, king of rock-and-roll, that of “high-school romances, Tupperware, the *Peanuts* comic strip, Hollywood blondes, 3-D cinema, and black baseball star Jackie Robinson helping the Brooklyn Dodgers to six World Series finals” (3).

Some other advantages created by the economic boom in the post-war period in America were: a shorter working week, which meant more leisure time, leisure activities, such as church-going. At the same time the post-war period in the USA presented paradoxical effects since there were two opposing views on domesticity: it “was promoted as an ideal for women and many women were perfectly content with marriage and children, but a significant number were dissatisfied” (Graham 15). But women’s lifestyle and women’s emancipation were not the only new concepts in post-war American culture. The same happened to the concept of “teen-ager,” which was, as S. Graham mentions, “first identified as a recognized developmental period and social phenomenon in the 1950s,” due to the nation’s prosperity, “wider inclusion in high-school education,” and even to “the greater mobility afforded by the boom in the car ownership” (16). All these new elements, S. Graham continues, “combined to create ‘peer culture’ (that is, one in which young people refer to each other for a sense of belonging and shared values, rather than to the older generation) such as never seen before” (16). This seems to have created the perfect environment for the appearance of such a character as Holden Caulfield – the hero of the novel and the teenage rebellious prototype of a generation. S. Graham notices that these young people, from an entirely new generation, had to “express their sense of difference from the world created by their parents,” and to do this they needed “films, music, clothes, books and innumerable other products that were designed especially for them” (16).

The long array of developments that took place in the USA due to the economic boom made Martin Halliwell call the 1950s “the decade of popular and avant-garde music; of abstract and commercial art; of eggheads and dumb blondes; of gray flannel suits and loafer jackets; of ballet and westerns; of bus boycotts and B-52 bombers; and of the growth of big corporations and increased membership of workers’ unions” (4). But things did not stay this way. Not everything was milk and honey, not everything that this flourishing period of the ‘50s brought was considered an advantage and thus “[t]he decade was vilified in the 1960s for its conservatism, particularly by those who saw themselves as its victims: the young, black, female and gay all found collective voices to denounce that promised so much, but delivered little to those on the margins” (Halliwell 4). Martin Halliwell also notes that a period as such of the 1950s “was necessary for the social revolution of the next decade to happen” and that “the decade was one of the defining periods of the twentieth century, prefiguring the materialism of the 1980s, the media control of the 1990s, and the ascendancy of the Right in the early twenty-first century” (4).

The connection between culture, language and different translations of Salinger’s novel is also of great importance. All the meanings (more or less hidden), themes and symbols of the novel arise from Salinger’s use and choice of language. The language and style are extremely important for all Salinger’s writings in general, and especially for “*The Catcher in the Rye*.” W. French said,

in “J. D. Salinger,” that although the novel’s “idiom and situations are characteristically American, *Catcher* has by no means been confined to an American audience. In an age of nuclear terror, adolescents everywhere—despite cultural difference—are perplexed by the same problems” (124).

The task of translating the distinctive idiom of the novel was not an easy one for the translators—some of them even having problems and thus having little success in arriving at literary equivalents—but the book was rapidly translated in over twenty countries, especially in northern Europe. Among the many translations of the book, I shall quote a few referring to the translation of the title as described by W. French in 1963: the Italian translation was “*Vida da Uomo*” (*A Man’s Life*), the Japanese one, “*Kikenna Nenrei*” (*Dangerous Time of Life*), the Norwegian one, “*Hver Tar Sin—Så Får Andre Ingen*” (*Every Man for Himself and the Devil Take the Hindmost*). In 1953 the Scandinavian countries published their translation of the novel: in Sweden, “*Räddaren I Nöden*” (*The Rescuer in Time of Need*), in Denmark, “*Forbandede Ungdom*” (*Outcast Youth*). W. French mentions that the translator, Vibeke Schram, translated for the first time, in 1955, *Nine Stories* (French 126). In France, “*L’Attrape-coeurs*” (*The Catcher of Hearts*) was published in 1953, in Germany, “*Der Mann im Roggen*” (*The Man in the Rye*) appeared in 1954. The Dutch edition, “*Eenzame Zwerftocht*” (*Lonesome Ramble*) was published in 1954, but it was later changed to “*Puber*” (*Puberty*). In Israel, the translation “*Ani, New York W-khol Ha-Shear*” (*Myself, New York, and All the Rest*) appeared in 1956. W. French also mentioned the first translation published in a communist country, Yugoslavia, but also later editions in Czechoslovakia and Russia, entitled “*Nad Propastyu vo rzhi*” (*Above the Cliff in the Rye Field*) in 1960 (French 125-6). Other reported translations refer to publications in 1961 in Finland, Estonia, Argentina, and Portugal. In Romania, the translation did not appear as fast as in the above-mentioned countries, but this does not mean that it did not have the same success as the original, the first Romanian translation by Catinca Ralea and Lucian Bratu, with the title “*De Veghe în Lanul de Secară*” (the second Romanian translation published in 2005, by Cristian Ionescu).

## Conclusion

As a conclusion it can be easily said that the period of the 1950s was one of great changes and developments in the USA, at all levels: social, political, economic, scientific, and technological; there were also new approaches and perspectives on gender issues. The appearance and development of television had great impacts on people and their leisure habits and family life; it was the beginning of the entertainment industry which was to have huge effects on the entire world in the second half of the 20<sup>th</sup> century. It was a decade of transition, of new beginnings, of prosperity, developments and changes (both positive and negative) which affected not only the entire American nation but also had effects sooner or later in the entire world. Without knowing and understanding this period from the American history we cannot claim to understand the literary masterpieces written during this decade, J. D. Salinger’s novel included.

In this article I have tried to focus on presenting the most important data, facts and critics’ points of view on the social and cultural contexts of Salinger’s creation and publication of his novel (America in the 1950s) for a understanding of the influences and the period in which Salinger lived and created his fiction. This approach involved an interdisciplinary perspective, focusing on historical, political, economic, social and cultural aspects of the USA in the 1950s. Salinger started writing the novel in the 1940s, but the main reason for choosing to focus on the 1950s was its representing the period in which Salinger published his novel and the fact that during this period it has rapidly gained worldwide reputation. I have also tried to emphasize that without the very specific events of the post-war America the popularity of Salinger’s novel would not have been

possible. The focus of this article was on the huge impact that the Second World War had on all levels and on all nations, but mainly on the USA and on how it affected life, developments and social evolutions.

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# ORGANIZING UNIVERSITY EDUCATION IN ACCORDANCE WITH THE NEEDS AND EXPECTATIONS OF STUDENTS

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Cristina Ciami<sup>2</sup>

## **Abstract**

*The digital transformation leads to major economic and social changes such as: the disappearance of certain jobs and the appearance of new ones, the need for retraining and specific training for the new professions required on the labor market, the use of new work tools, maintaining those jobs that require unique human skills that artificial intelligence and machines cannot replicate, such as: creativity, abstract thinking or complex communication. In this sense, a Eurostat report concluded "In the coming years, it is expected that there will be an increased demand for people with high qualifications and relevant education needed to manage more flexible and complex jobs". Universities must therefore adapt their curricula to the current expectations of the labor market and students. This paper presents the results of some studies regarding the types of skills and abilities needed by graduates of economic and law studies to be able to integrate into the labor market of the new economy.*

**Key-words:** digitized economy, new skills, university programs

## **1. Introduction**

The labor market is going through a transformation process generated by multiple causes and factors, a process that has seen an obvious acceleration after the COVID-19 pandemic. Predictions about the evolution of the labor market reveal that most jobs will disappear by 2040 and will be replaced by new ones. In this context, higher education institutions are called upon to provide graduates with the necessary training to respond to the structural changes on the labor market and in society generated by the digital transformation and the green transition, aspects that will be the key transformational elements of the economy in the medium and long term.

The EC 2023 Report, "*Employment and Social Developments in Europe*" reveals the following trends in the evolution of the labor market and of the skills expected from graduates of higher education:

- current technological progress causes an increase in the demand for high-skilled jobs at simultaneously with a decrease in the demand for medium-skilled jobs;
- the digitization process ensures flexibility, from the perspective of time and workplace, which implies that the diminishing of human resources generated by the lack of skills specific to new jobs can be covered by the ability of those competent to streamline their activity by working remotely and in different periods of time, not being constrained by the rigors of a specific physical workplace or strict work schedule;
- digital skills will be required in all fields of activity, not only in those specific to the ICT field; it is expected that few occupations on the EU labor market require a high digital intensity of work (approximately 3% of jobs), followed by occupations that need intermediate digital skills (around 7%), and the rest, around 90% of jobs in the EU require basic digital skills.

On the other hand, *The Education and Training Monitor 2022 Report* highlights the following regarding the results of higher education in Romania:

- Romania's tertiary education attainment rate remains the lowest of all EU countries - In 2021, this rate stood at 23.3%, which is almost half of the EU average (41.2%).

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- Participation in higher education registered a slight increase between 2018 and 2022, but the graduation rate has not registered an increase since 2019, as has happened constantly since 2004.
- There is a decrease in the employment rate of recent graduates (from 68.7% in 2020 to 61.4% in 2021);
- Participation of adults (25-64 years) in learning in Romania is 1.3%, compared to the EU average of 10.8%
- Romania has set the goal for 2030 that 17.4% of adults have been involved in learning activities in the last 12 months, which is three times higher than in 2016.

Starting from these findings, this paper highlights the results of some studies on the training needs of higher education graduates in the economic (management) and legal fields. Knowing them is important in the context of efforts to improve the curriculum content to increase the relevance of university education. This is also a way by which potential graduates can be "convinced" of the usefulness of the efforts involved in obtaining a university degree.

## **2. The needs of future graduates according to specific studies**

In order to understand, as a whole, how students of the new generation perceive the relevance of higher education and the benefits they could obtain as graduates of a university, we analyzed a series of specific studies carried out at the international level. These studies have a high degree of relevance (being carried out after 2020) and reflect the results of the survey of a relevant number of students from all over the world, including Europe and Romania. Moreover we focused on students enrolled in study programs in the economic/management field, respectively in study programs in the legal field. Below are presented relevant results:

➤ *Global Student Survey* by Chegg.org took place in 2023 included 16,839 students from 21 countries, and among the European countries the students who participated in the study come from France, Germany, Italy, Spain, Great Britain. The main objective of the study was to understand the lifestyle characteristics, expectations and fears of today's students. Results include:

- In 14 of the 21 countries, the majority of those surveyed want online learning activities to have a greater weight in teaching activities (in European countries, the situation is as follows: Germany – 51% of students want to increase the weight online activities; Italy – 43%; Spain and Great Britain – 38%);

- 63% of surveyed students hope that completing higher education will secure them a better-paid job (in European countries, the share of students who have such an expectation was: Germany – 62%; Great Britain – 57%; France – 52%; Spain – 50%; Italy – 47%);

- Obtaining a job is the main motivation for which the students decided to higher education. Thus, globally, 21% of students answered that they want to develop in a professional field that requires higher education; 19% answered that their motivation is to expand their employment opportunities; 19% answered that they are passionate about the field of study; 14% are motivated by the desire to earn more; 7% attend college because that is the family tradition; 5% want to experience student life; 5% want to make friends; 4% other motivations.

➤ *Enrolled Students Survey* developed by *Graduate Management Admission Council (GMAC)* took place in 2021 – 2022, being published in September 2022, included 1,718 students in the field of management (271 students from Europe) from 57 countries (in which all European countries, including Romania), Among the results of this study we highlight the following:

- The objectives mentioned by students when asked to identify the first three expectations they have as a result of graduating were: to develop their professional potential and, on this basis, to enrich their professional and personal life (41%) ; changing the current professional route

(39%); to increase their income level (36%); to obtain information about the business environment (36%); to expand their network of knowledge (25%); to promote in the professional career (22%); to increase job security (21%); to gain status and social respect (13%).

- 77% of respondents agreed with the statement "Completing a management degree program is worth the investment even in times of economic uncertainty." Although this is a high share of students who agree with this statement, it is still down from 80% of students who agreed with the same statement a year ago.

- 78% of responding students enrolled in management study programs in Europe are confident in their employability after graduation even in times of economic uncertainty. However, this percentage represents a significant decrease, from 86% a year ago;

- *Thomson Reuters Law Student Insights – Challenges, Expectations and Careers Prospects* took place in November – December 2020 and included exclusively students on legal study programs studying in Europe. The main objective of the study was to identify the expectations and challenges felt by students in this field of study in the current socio-economic context. We present the following results:

- Approximately 60% of respondents believe that in the perspective of the next 5-10 years, the main impact on the legal profession will be the increase in the level of digitization of activities, which is why they expect to understand how online tools can be used in legal activity. On the other hand, only 30% of those surveyed believe that, during the years of study, they obtain the digital skills necessary to face the challenges of the profession, and another 30% appreciate that they do not benefit at all from the development of digital skills during college;

- 87% of the respondents are determined to remain, in the long term, in the legal profession after graduation;

- The expectations that students have as future professionals in the legal field are, in order, the following: the activity carried out should be one that generates professional satisfaction; there will be multiple opportunities for professional development; high social status; a good salary; varied and interesting professional activity; the opportunity to advance quickly; a secure job in an economic landscape characterized by uncertainty; a balanced personal life / balanced professional life;

- Regarding the aspects that worry students as future professionals, they are, in order, the following: job security, busy work schedule and lack of free time, lack of employment opportunities, the possibility of having a successful career, a unfriendly work environment, stress.

- Regarding the transversal skills developed during the years of study, more than 50% of students appreciate that the following are developed: analytical thinking, the ability to formulate arguments, the ability to evaluate and interpret complex information, the ability to express oneself concisely in writing, research skills, lateral thinking and problem-solving ability. On the other hand, less than 50% of respondents believe that the following transversal skills are developed during the years of study: basic financial education, self-confidence, digital skills.

- The majority of students are interested in participating in practical activities during their study years, appreciating that they help develop a wide range of skills they need and which can also be developed from extracurricular sources. Thus, students on the law of studies appreciate that during the practical activities they can develop the following skills: the ability to speak in public, self-confidence, critical thinking, interpersonal skills, leadership, organizational skills, the ability to apply the learned theoretical concepts in practice, teamwork. Regarding digital skills, he appreciates that they can only be developed through individual study, since the educational system is not prepared to provide them;

- Regarding the frequency with which students use mobile devices for learning, more than 80% declare that they use the laptop/computer daily;
- When choosing a future employer, the first three reasons that make future graduates prefer some over others are: reputation and a specific activity that corresponds to the graduates' aspirations; work environment; professional development opportunities;
- The students included in the present study were also questioned about the type of questions they would be most afraid of in a job interview. These were, in order: questions about the use of digital technology, questions specific to the profession, questions about the motivation for choosing a specific recruiter, the motivation for choosing a legal career, questions about personal qualities.

### **3. The needs of future graduates according to employers**

As a consequence of the analysis of students' needs, which revealed, regardless of the methods used and its level, the fact that the main need of students, as future graduates, is to find a job in accordance with their qualification, we carried out a study regarding the expectations of employers from graduates in the economic and law fields, potentially employable in positions corresponding to the "beginner" level. The results of the study highlight those professional and transversal skills that make graduates sought after on the labor market, therefore whose development represents a need for students.

The study consisted of applying a questionnaire to a number of 25 employers from the South-East Region. The domains represented in the study were: tourism and ecotourism, distribution, automotive industry, information technology and telecommunications, food and beverage processing, health and pharmaceuticals, creative industries, construction, wood and furniture. The purpose of the study was to identify, through specific methods, the first 5 professional skills and the first 5 transversal skills that employers expect from university graduates of management and law field. In summary, the results obtained are presented below:

#### **The most important professional / transversal skills expected by employers in the Southeast Region from Management graduates (entry level)**

<b>Professional skills</b>
1 Knowledge and understanding of the principles and concepts that underpin the organization of a company / department (e.g.: understanding the concept and relevance of a company's organizational structure, of the hierarchical relationships, types of organizational structures, relationships between objectives - tasks - skills - responsibilities, of the concept of organizational culture, etc.)
2 Knowledge and understanding of the principles and concepts that underpin the financial management of a company (e.g.: understanding the efficiency concept, how to draw up a budget, how to draw up a cash-flow, methods of calculating costs, prices etc.
3 Knowledge and understanding of the principles and concepts that underpin the commercial activity of a company (e.g.: understanding how marketing can contribute to business success, understanding how marketing mix components can contribute to business success, understanding the concept of market segments etc.)
4 The ability to easily use figures, numerical and financial data to plan, organize, control the activity and be able to interpret various mathematical results related to the company's activity (e.g.: for budgeting, for cost calculation, for sales estimation, for price estimation, for the calculation of profit/loss, the break-even point etc.)

5 The ability to organize and implement the company's sales activity, respectively to establish tasks, responsibilities, reward systems, evaluation and control in relation to the company's sales objectives.
<b>Transversal skills</b>
1 Ability to focus on work tasks and follow established rules
2 The ability to get things done, and a knack for mobilizing other employees, as well
3 The ability to observe/understand the real problems of the organization/firm
4 The ability and interest to permanently document oneself according to the profession, awareness of the importance of this endeavor
5 Ability to easily communicate both in writing and verbally

**The most important professional / transversal skills expected by employers in the Southeast Region from Law graduates (entry level)**

<b>Professional skills</b>
1. Concepts specific to commercial law (e.g.: typology of commercial companies, setting up of commercial companies, legal documents substantiating the activity of commercial companies, specific procedures regarding merger, insolvency, bankruptcy etc.)
2 Concepts specific to labor law (e.g.: issues related to labor legislation, individual employment contracts, issues related to dismissals, unemployment etc.)
3 Concepts specific to administrative law (e.g.: legal aspects regarding the activity of the public administration, validity conditions of administrative acts, aspects related to administrative litigation etc.)
4 The ability to prepare various documents specific to commercial law (e.g.: incorporation documents of commercial companies, documents regarding mergers, insolvency, bankruptcy etc.)
5 Ability to draft commercial contracts, employment contracts and other types of contracts
<b>Transversal skills</b>
1. Ability to focus on work tasks and follow established rules
2. The ability and interest to permanently document oneself according to the profession, awareness of the importance of this endeavor
3. The ability to get things done, and a knack for mobilizing other employees, as well
4. Ability to easily communicate both in writing and verbally
5. The ability to observe/understand the real problems of the organization/firm

Also, all employers mentioned that, regardless of the field of study, entrepreneurial and digital skills have a great relevance in the hiring decision process.

*Entrepreneurial skills* mentioned by potential employers are:

- the ability to work cooperatively and flexibly within a team;
- the ability to take initiative and the ability to respond positively to changes
- the ability to identify weaknesses and strengths related to a certain situation
- the ability to evaluate and assume risks in various situations

*Digital skills* mentioned by potential employers are:

- the ability to use the main computer applications for: word processing, spreadsheets, databases, information storage and management, as well as an understanding of the opportunities and potential risks of the Internet and electronic communication
- the ability to understand how ICT can support creativity and innovation and to be aware of issues related to the validity and reliability of available information and the legal and ethical principles involved in the interactive use of ICT.
- the ability to search, collect and process information and use it in a critical and systematic way, evaluating the relevance and distinguishing the real from the virtual, at the same time recognizing the types of links that point to the sources of information.
- the ability to use IT tools to produce, present and understand complex information
- the ability to access, search and use internet-based services. Individuals should also be able to use ICT to support critical thinking, creativity and innovation.

### **Conclusions**

The conclusions of this paper are:

- The main expectation of students is to develop the fundamental professional and transversal skills necessary to obtain a future job, so that they can integrate into the labor market naturally and according to their qualification, also the workplace to generate satisfactory financial rewards, opportunities for professional development and a high social status.
- Both students and employers understand that the labor market go through a process of intensifying the level of digitalization, and the habit of working in the digital space is becoming a fundamental requirement in the context of current and future jobs, so they are interested in the development of digital skills and the adaptation of both professional and traditional transversal skills to the online way of working;
- Students are aware that aspects related to sustainable development, environmental protection, the transition to the "green economy", climate change will become more and more present in the economy and in society, and during their active lives these concepts will it had great significance;
- Students are interested to benefit from the combination of theory and practice during the years of study and getting involved in volunteer activities as well as in various projects that involve collaboration with representatives of the labor market;
- Regarding the obstacles that students anticipate during their student life and, subsequently, in the exercise of the profession, they can be overcome by developing some skills of a socio-emotional nature, such as: time management; stress management; teamwork skills; public communication skills, self-confidence
- A significant share of the issues that concern students as future professionals is the fear of job security in an economy and society undergoing major transformations. As a result, lifelong learning in a university space capable of understanding the trends of economic-social evolution and adapting to them, becomes a necessity for current and future students, as well as a direction of university development.

Following this paper, we highlight the need to carry out the following types of activities in the university environment in order to achieve objectives consistent with the expectations of future graduates:

- Increasing the practical relevance of the activities carried out in the academic environment by concluding partnerships with the representatives of the labor market that offer students the opportunity to carry out practical activities specific to the jobs for which they are preparing during the years of study;

- Carrying out activities aimed at determining the development of transversal and socio-emotional skills of students, so that they are prepared to face a constantly changing socio-economic environment and a labor market marked by structural transformations, aspects that can generate, at the level of the workforce, stress, the inability to balance free time with work time, integration difficulties in work teams that collaborate remotely, workplace instability etc.
- Activities aimed at developing the digital skills necessary for jobs in the economic and legal fields in accordance with the technological and digital changes taking place in society;
- In order to ensure the sustainability of educational efforts, it is relevant that university activities to establish mechanisms for anticipating the need for skills by researching trends in the evolution of the labor market and by collaborating with partners from the social environment.

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# THE NEED TO MEASURE TEACHING VOCATION IN THE CHOICE OF TEACHING CAREER AND IN THE EVALUATION OF TEACHERS

Sorin - Strătilă Dorin<sup>1</sup>  
Irma Ferencz<sup>2</sup>

## **Abstract**

*The aim of this paper is to aid reflections on the importance of pedagogical vocation in the process of choosing a teaching career and in the evaluation of teacher performance, since it is being regarded as a specific tool in performance management in education and training organizations. The study attempts to define the concept of teaching vocation according to views of specialists from different areas. What is more, the study emphasizes the role of teaching vocation in the professionalization of teaching in the current socio-economic conditions. Considering high demands on teachers and low social prestige, young people shy away from pursuing the teaching vocation as a career path.*

*Teachers are at the intersection of two areas of competence: pedagogical expertise and specialists within their fields. At present, performance standards and ways of evaluating teachers in different education systems concern mainly contextual outcomes and field-specific knowledge. Pedagogical competences are left with no effective set of tools to quantify teaching vocation.*

**Keywords:** *vocation, pedagogical vocation, psychometric analysis of vocation, teaching career, teaching performance management*

## **1. Introduction**

According to the 2030 Agenda of the Department for Sustainable Development of the Romanian Government, one of the Sustainable Development Goals, namely Goal 4, is Quality Education. This is driven by the awareness of the importance of education in society and the efforts needed to ensure quality education for sustainable development. These concerns are a direct consequence of the increasing attention being afforded to quality in education, both at European and global level.

Approaches to the concept of quality in education consider the totality of the constituent elements of study programs and their providers to meet the expectations of beneficiaries, as well as quality standards.

As proven below, the focus is mainly placed on actions that develop institutional capacity to design, plan, organize and implement curricula that guarantees the confidence of beneficiaries and the education provider organization meeting quality standards when it comes to the quality of education. Less emphasized is the fact that a fundamental element in providing high-quality education is having teachers who are effective (in terms of student outcomes) and focused on their task (teaching).

Teaching, understood as a diversified set of activities and behaviours through which learning is intended to take place, has two core components: a profession-related one and a vocation-related one. "Profession" implies that knowledge is required, which usually requires an adequate period of preparation, while "vocation" is linked to the motivational aspect that allows said action to be maintained over time.

Viewed as a profession, teaching can be characterized as an activity based on specialized education within two areas of competence: pedagogical and specialized. The concept of quality, in this case, is associated with a certain level of performance, value or merit, thus with explicit and implicit quantifiable benchmarks of the culture of a community or nation.

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As this approach is the dominant one, this article attempts to draw attention to the other approach: teaching as a vocation, hence shedding light on the relevance of the statement that "The way we think about teaching has an influence on the way we teach" (Hare, 1993 apud Joseph A. Buijs 2005).

### ***The concept of vocation***

Complexity of empirical measurements related to factors incidental to teacher performance. The methodological framework of this paper has deduced the following directions in defining the concept: as an inclination, innate aspect; as a human virtue; as a motivational attribute, respectively.

Vocation as an inclination, innate aspect.

Historically, the term vocation has been considered an apostolate or religious mission. From this perspective, the teacher is born with this inclination and should only achieve the mastery of certain basic knowledge. From this point of view, the task of the future teacher is to complete this type of destiny (Tenti, 1999).

Vocation as a human virtue that expresses the capacity to give and serve others - a strongly affective activity - a response to a natural calling of the spirit.

An activity that is considered "vocational" has meaning as it stands and cannot be subject to rationality or reward. From this point of view, the teacher does what they must do (educate, teach, etc.), without any other consideration.

"the main quality of the teacher is pedagogical vocation, expressed in -feeling called, chosen for this task and fit to fulfil it-. He considers that the pedagogical vocation is characterized by three elements: pedagogical love, belief in social and cultural values, awareness of responsibility towards the child, towards the fatherland, towards the whole humanity" (Hubert, 1965 apud Sălăvăstru, 2004).

Vocation as a motivational attribute in relation to behavioural and attitudinal aspects as a perspective of professional identity construction.

It is the most recent, the most modern and the most compatible approach to be scientifically researched and thus the most suitable to be quantified in teacher selection, training and evaluation. Underpinning this approach to vocation is motivation for teaching.

Teaching is a very important social practice with complex dimensions and implications that are never fully known and understood. Teachers work in public environments, under the supervision of all social actants: students, parents, community, social organizations, local administrative structures, etc. Although most teaching takes place in the classroom, what happens there always goes beyond that perimeter. The results of the intersection between pupil and teacher become part of the life of each individual learner, part of the culture of the school and often even a central part of the life of the teacher himself. Teachers play an important role in what young people learn and how they "learn to learn", in how they come to see learning itself. Classroom activities influence young people's personal dispositions towards others and towards their own future, far beyond the duration of their studies.

The sense of vocation finds expression at the intersection of public duty and personal fulfilment. Consequently, beyond having social value, an activity must produce a sense of personal fulfilment to be considered a vocation.

Vocation is important in relation to attitudes to work and job satisfaction as it influences them directly and in the long term.

## **2. Findings**

Even though the teaching vocation is nowadays considered an important factor in the selection, the motivational aspect of training and evaluating teachers in practice is often neglected altogether.

Both in research and literature and in all formal and informal systems at all professional and administrative levels (e.g. at EU and national level) strategies, training and evaluation programmes do not address the motivational aspect of teaching, but rather focus solely on the professionalization of teaching activity, mainly through the improvement of teaching methods, skills training, etc. (David Middlewood, Carol Cardno ed. 2001; Education & Training 2020; João Casanova de Almeida 2017; Vocational teacher professional development in a policy learning perspective, ETF; Zhou, N. 2023).

The prevailing approach is therefore that "the teacher is a professional" and that the improvement of teaching consists, more often than not, in the acquisition of "new" teaching methods.

However, the need to increase the importance of the vocational component in the professionalization of the teaching function has been manifested for a very long time and in different forms. It has however become all the more acute with the increasingly accentuated development of the socio-economic environment, the profound social transformations and especially the emergence of new crises in recent years that require rethinking the perspective on the professionalization of teaching.

In the early winter of 2021, dozens of educators of all types on the Marquette University campus accepted an invitation from the Center for Teaching and Learning to reflect on the prospects for the teaching profession in light of three crises overlapping: the global pandemic that has turned education upside down, the rising awareness of racial injustice that has motivated people to take to the streets in protest, and the crises in higher education that had been building for some time but erupted in the spring of 2020 (Jennifer S. Maney, Melissa M. Shew ed. 2022).

Scientific and popularizing works are already in support of and argue for the idea of a teaching (pedagogical) vocation (ex. Joseph A. Buijs 2005).

Solutions are being sought for the implementation of public policies to select future vocational teachers, e.g. in Chile- the Teacher Vocation Scholarship, which pays the pedagogical tuition to those students who score the best in the university selection test on a vocational basis. This initiative emphasizes the idea that developing internal vocation is an essential prerequisite for being a good teacher (Carlos Javier Ossa Cornejo et. all., 2018).

## **3. Approach**

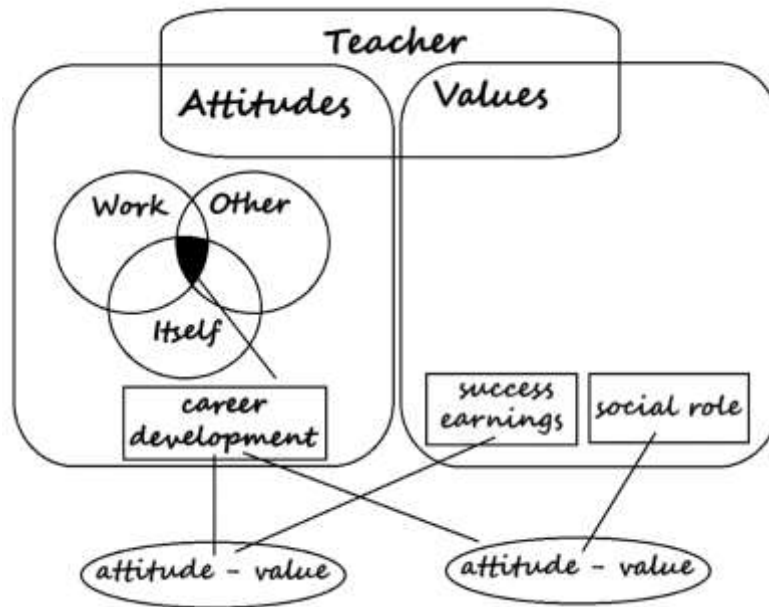
The teaching profession is considered a noble profession on grounds of the social role it plays: it contributes to the structuring of independent and authentic personalities that are socially integrable, with the honing of cognitive, critical and creative thinking skills, as well as good resilience over time and adaptable professionalism. Due to this social importance of the teacher, this paper argues that the attitude towards teaching, which gives the specificity of the teaching profession, must also be regarding equally.

A teacher cannot be confined to being a mere source of knowledge. In their teaching, teachers must take a leading role, which is one of the paramount coordinates of their mission.

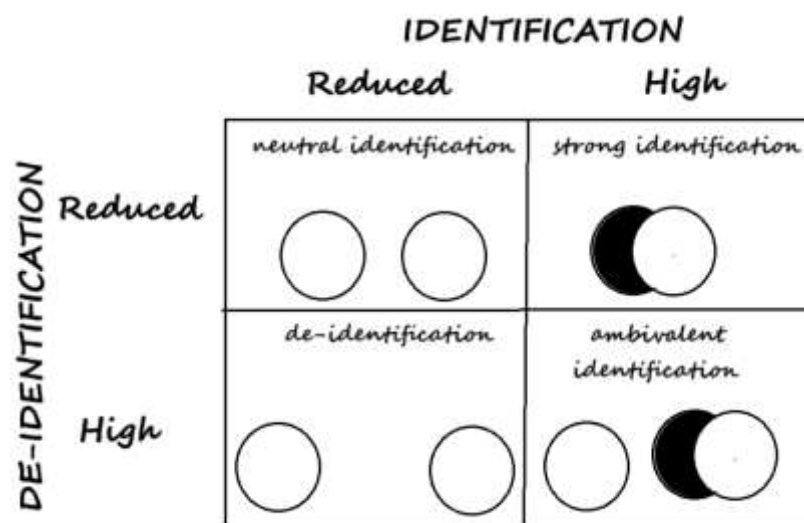
In assuming the roles imposed on them by their profession, teachers must be aware that the exercise of these roles depends on the personality they shape. The basic components of personality: professional culture, attitude and aptitude qualities, must be therefore geared to this.

Vocation is important in relation to attitude towards work and job satisfaction. It has a direct and long-term influence on them.

We are, whether we recognize it or not, a consumer society, and as mentioned above, the paradigm has changed; money, success and compliance to trends are important today. The teacher, like any human, aims to achieve his goals. It is what motivates him and to this end he channels his efforts and will have a "psychological tendency to evaluate with a certain degree of favorability" whatever is useful for him to achieve his goal - that is, he will have a positive attitude for what supports his interest (Dorin, 2020).



Depending on the behavioural responses given by the teacher, the goal pursued, personality, etc., the following hypostases of the identification of the type of activity (research / didactic) with the value (money-success / social role - student's development) can be postulated.



The existence of vocation does not bring about professional fulfilment by default. Without constant practice and perseverance, professional inclination can be lost. A proactive attitude is required in the case of teachers, for science and teaching practice. All this coupled together results in a system of interconnections (Dorin, 2020).

Structurally, the attitude towards teaching activity (as a vocational indicator) should be analysed from the perspective of the following components/dimensions:

1. The way in which the teacher relates to the student - what professionally represents the student;
2. Teaching and assessment as closely as possible to the real knowledge and skills needs required by the socio-economic environment;
3. The finality of the didactic act from the student's perspective, his/her satisfaction resulting from the awareness of the knowledge and skills acquired;
4. The aspect / motivational dimension of the teaching activity. Satisfaction as a motivational element.

The study of satisfaction, in connection with the attitudinal components presented above, should be carried out along the following dimensions:

1. Social role/function fulfilment;
2. Consequences of results expressed by the progress achieved by students and their real competitiveness in the labour market;
3. Stimulus of the effort of permanent self-improvement in the teaching field for the fulfilment of professional vocation;

From a structural point of view, the attitude towards teaching activity (as a vocational indicator) should be analysed from the perspective of the following components/dimensions:

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#### **4. Discussion**

At present, performance standards and ways of evaluating teachers in different education systems focus mainly on contextual outcomes, i.e. specialized competences, while for pedagogical competences there is no set of effective tools to measure teaching vocation.

There is little existent research on the levels of teaching vocation, both in teachers and in students of pedagogy or in the fields of preparation of future teachers. Consequently, there are few studies that contribute to conceptual and methodological clarity of approach. Furthermore, there are no instruments to measure such a construct in a specific and scientific field that would make it possible to adapt the information to the reality of those who want to pursue a teaching career.

The development of questionnaires which, based on a set of definitions of the teaching vocation, could engender the quantification of this construct with an adequate level of reliability.

The results obtained should then be subjected to psychometric validation for use in the specific economic and social context.

Vocation investigation tools should:

- I. Identify the attitude and satisfaction with teaching as a professional activity that materializes the role, the purpose of the teacher in the student's future professional life and career (social role);
- II. Relate the ability to balance or integrate public obligations with personal belief and purpose in teaching;
- III. The relationship between the three forms of development: professional, social, but above all material.

## 5. Conclusions

More interdisciplinary research (with specialists in psychology, sociology, educational sciences, statistics, etc.) is required to develop appropriate tools and units of measure to determine the importance of internal vocation as an essential element for a good teacher.

The answers that these motivational assessment tools should provide should include a broad spectrum of quantifiable values based on on:

- ✓ Interest in teaching;
- ✓ Academic achievement motivation;
- ✓ Social role assumption;
- ✓ Intrinsic motivation;
- ✓ Self-determination.

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